

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

The Greening of Detroit,
Petitioner,

v

MTT Docket No. 16-002016

City of Detroit,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING PETITIONER'S MOTION TO FILE REPLY TO RESPONDENT'S RESPONSE
TO PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING THE PARTIES' REQUESTS FOR COSTS AND FEES

FINAL OPINION AND JUDGMENT

On May 18, 2017, Petitioner filed a Motion for Summary Disposition under MCR 2.116 (C)(10) (“Motion”), asserting there are no genuine issues of material fact and that Petitioner is entitled to judgment in its favor as a matter of law. On June 15, 2017, Respondent filed a Response to the Motion (“Response”). Petitioner seeks a charitable exemption from the payment on property tax for the subject property, Parcel No. 22014144-6, under MCL 211.7o. The Tribunal has reviewed the Motion, Response, and the exhibits submitted and finds granting Petitioner’s Motion for Summary Disposition for tax years 2016 and 2017 is warranted at this time.¹ Further, on June 21, 2017, Petitioner filed a Motion requesting permission to submit a reply to Respondent’s response to Petitioner’s Motion for Summary Disposition. The Tribunal finds that denying the June 21st Motion is appropriate at this time. Finally, in its Motion, Petitioner requests costs and fees, “as Respondent’s actions have unreasonably increased Petitioner’s costs.”² The Tribunal finds it will not order Respondent to pay costs and fees associated with its alleged actions. Respondent has also requested costs and fees, but put forth no reason for its request. As such the request is denied.

¹ Petitioner in this matter seeks an exemption from the payment of property tax for the subject property, however, if the exemption is denied, Petitioner seeks a reduction in the true cash value, assessed value and taxable value of the property. This motion applies only to the exemption claim. See Petition filed May 24, 2016.

² Motion at 10.

Petitioner’s Contentions:

Petitioner contends that The Greening of Detroit (“Greening”) is a charitable organization that enhances “the beauty of the City of Detroit, Michigan and [improves] the quality of life it provides through reforestation of the City’s streets, boulevards and public areas”³ Petitioner claims it also creates gardens in the City and maintains the trees it plants and gardens it creates, by watering, planting, and caring for them through a network of trained volunteers. “The benefit of the training programs overlaps that of tree planting, because those trained are trained to plant and maintain trees and other plants and work on Petitioner’s planting and tree-garden maintenance projects.”⁴

Petitioner contends it provides training programs for Detroiters who wish to learn to plant trees and gardens and/or train others to plant trees and gardens. By training its volunteers, they become employable in the green industry.⁵ There is no charge for the training programs, however, Petitioner is sometimes paid for its services, however, not in any amount exceeding those necessary to sustain the organization.

Petitioner also contends that it works in partnership with other job training organizations and expects to train more than 2,500 Detroiters in the skilled trades.⁶ The program helps Detroiters who have been incarcerated, homeless, suffered from substance abuse, lack of education or job skills, get training for entrance in the workforce. Petitioner also trains high school students through hiring them for summer jobs. Petitioner alleges it puts hearts and minds under the influence of education and assists people to establish themselves for life. Petitioner contends it trains those less fortunate, but is open to anyone wishing to utilize its services. Petitioner notes, “Detroit is a large city with huge unemployment and youth unemployment problems.”⁷

Petitioner alleges its planting is the “equivalent of erecting and maintaining public works.”⁸ Petitioner contends the trees are often planted in the City right of way between the sidewalk and street or in other public places, such as parks. Petitioner also alleges it relieves the City’s burden of maintaining its urban tree cover and notes as evidence of its relief of the government’s tree planting burden, that it is listed

³ See Motion at 4.

⁴ Motion at 8-9.

⁵ Motion at 6.

⁶ *Id.*

⁷ Motion at 9.

⁸ *Id.*

on the City's Forestry and Landscape Division webpage, as its planting partner.⁹ Petitioner alleges its trees intercept rain and snowmelt that burden the City's sewer system, improve air quality, provide shade to cool nearby houses, block wind, reduce heating and cooling bills and increase property values. As noted above, the benefits provided by trees are achieved through their planting and care by trained volunteers.

Petitioner alleges it is a charitable institution that meets all the necessary factors enumerated by the Supreme Court in *Wexford Medical Center v City of Cadillac*.¹⁰

Respondent's Contentions:

Respondent contends that Petitioner's property is unentitled to an exemption from the payment of property tax for tax years 2016 and 2017. Respondent claims that Petitioner's Articles of Incorporation state that it exists to enhance "the beauty of the City of Detroit, Michigan" and improve the quality of life "through reforestation of the City's streets, boulevards and public areas. . . ."¹¹ Respondent claims, however, that Petitioner does not relieve any governmental burden because the City has no requirement to conduct beautification projects and the City limits its forestry activities to the removal of dangerous trees.

Respondent notes that Petitioner claims it has a number of training programs allegedly conducted at the subject property, however, it also notes training is not the purpose for which Petitioner was incorporated. Respondent states, "The *Wexford* Court was very clear that: 'the exemption exists only when the building and other property thereon are occupied solely for the purposes for which it was incorporated."¹² Respondent contends that any other benefit derived by any individual from Petitioner is only as an indirect result of its purpose which is to beautify the City of Detroit.

Conclusions of Law

Summary Disposition

Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment

⁹ Motion at 5.

¹⁰ *Wexford Medical Center v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

¹¹ Response at 4-5.

¹² Response at 5, (emphasis supplied).

as a matter of law.¹³ In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied.¹⁴

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.¹⁵ The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.¹⁶ The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.¹⁷ Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.¹⁸ If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.¹⁹

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions. TTR 111(4). In the instant case, both parties moved for summary disposition under MCR 2.116(C)(10).

Charitable Exemption Pursuant to MCL 211.7o

The general property tax act provides that “all property, real and personal, within the jurisdiction of this state, *not expressly exempted*, shall be subject to taxation.”²⁰ Exemption statutes are subject to a rule of strict construction in favor of the taxing authority.²¹ The rule to be applied when construing tax exemptions was well summarized by Justice Cooley as follows:

[I]t is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and *an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable*

¹³ See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

¹⁴ See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

¹⁵ See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

¹⁶ See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

¹⁷ *Id.*

¹⁸ See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

¹⁹ See *McCormic v Auto Club Ins Ass’n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

²⁰ See MCL 211.1 (emphasis added).

²¹ *Retirement Homes v Sylvan Twp*, 416 Mich 340, 348-349; 330 NW2d 682 (1982), *APCOA, Inc v Dep’t of Treasury*, 212 Mich App 114, 119; 536 NW2d 785 (1995).

doubt. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant.²²

As in *Michigan Bell*, there is no dispute that the subject property, but for any exemption afforded it, is subject to property tax.²³

It is also well settled that a petitioner seeking a tax exemption bears the burden of proving that it is entitled to the exemption. The Michigan Court of Appeals, in *ProMed Healthcare v City of Kalamazoo*, discussed Justice Cooley's treatise on taxation and held that:

[T]he *beyond a reasonable doubt* standard applies when the petitioner attempts to establish that an entire class of exemptions was intended by Legislature. However, the *preponderance of the evidence* standard applies when a petitioner attempts to establish membership in an already exempt class.²⁴

In the instant case, Petitioner asserts that the subject property is exempt from property taxation because Petitioner is a charitable institution under MCL 211.7o. Charitable institutions have already been recognized as exempt classes. Because Petitioner is attempting to establish membership in the class, the preponderance of evidence standard applies. Also, it appears that Petitioner is a non-profit Michigan corporation and is designated as a federal 501(c)(3) organization exempt from taxation;²⁵ however, the Michigan standard for exemption is more rigorous than the federal standard: "the fact that a petitioner may qualify for tax exempt status under Federal law, i.e., Section 501(c)(3) of the Internal Revenue Code, creates no presumption in favor of an exemption from property taxes."²⁶ See also *American Concrete Institute v State Tax Comm*, which states: "The institute's exemption from Michigan ad valorem tax is not determinable by its qualification as an organization exempt from income tax under section 501(c)(3)

²² *Michigan Bell Telephone Co v Dep't of Treasury*, 229 Mich App 200, 207; 582 NW2d 770 (1998), quoting *Detroit v Detroit Commercial College*, 322 Mich 142, 149; 33 NW2d 737 (1948), quoting 2 Cooley, *Taxation* (4th ed.), §672, p. 1403.

²³ *Michigan Bell*, 229 Mich App at 207.

²⁴ *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002) (emphasis added).

²⁵ Petitioner's Brief, Exhibit A8.

²⁶ *Ladies Literary Club v City of Grand Rapids*, 409 Mich 748, 752 n 1; 298 NW2d 422 (1940).

of the internal revenue code of 1954, but by the much more strict provisions of the Michigan general property tax act.”²⁷

Both Petitioner and Respondent have presented or referred to the relevant statute and case law regarding a charitable exemption from taxation under MCL 211.7o. The Tribunal finds that MCL 211.7o states in pertinent part:

Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.

In *Wexford Medical Center v City of Cadillac*, the Supreme Court presented the test for determining if an organization is a charitable one under MCL 211.7o and required that:

1. the real estate must be owned and occupied by the exemption claimant;
2. the exemption claimant must be a nonprofit charitable institution; and
3. the exemption exists only when the building and other property thereon are occupied by the claimant solely for the purpose for which it was incorporated.²⁸

The real estate must be owned and occupied by the exemption claimant

Petitioner contends it owned and occupied the subject property as of December 31, 2015 and December 31, 2016. In its Response, Respondent does not challenge such contention. As such, the Tribunal finds this requirement met.²⁹

The exemption claimant must be a non-profit charitable institution

Pursuant to the second requirement under MCL 211.7o, the claimant must be a non-profit charitable institution. In determining whether an organization is charitable is to understand the definition of “charity.” The Michigan Supreme Court established the following definition of “charity” as such:

‘[C]harity . . . is a *gift*, to be applied consistently with existing laws, *for the benefit of an indefinite number of persons*, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public

²⁷ *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 606; 163 NW2d 508 (1968).

²⁸ *Wexford Medical Center*, 474 Mich at 203.

²⁹ MCL 211.2(2) states: “The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding.” See also Motion, Exhibit A2, Owner’s Title Insurance Policy, Exhibit A3, Confirmation of Closing, Exhibit A4, Quit Claim Deed, and Exhibit A5, Property Transfer Affidavit.

buildings or works *or otherwise lessening the burdens of government.* (Emphasis supplied.)³⁰

In order to determine whether Petitioner is entitled to a property tax exemption under MCL 211.7o, Petitioner must prove by a preponderance of the evidence that it is a “charitable institution.” In this regard, the Michigan Supreme Court concluded that the institution’s activities as a whole must be examined.³¹ The Court in *Michigan United Conservation Clubs v Lansing Twp* (“MUCC”), held that “[t]he proper focus in this case is whether MUCC’s activities, *taken as a whole*, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons.”³² In *Michigan Baptist Homes v City of Ann Arbor*, the Michigan Supreme Court stated that “exempt status requires more than a mere showing that services are provided by a nonprofit corporation.”³³ The Court also stated that to qualify for a charitable or benevolent exemption, the use of the property must “. . . benefit the general public without restriction.”³⁴

Whether an institution is a charitable institution is a fact-specific question that requires examining the claimant’s overall purpose and the way in which it fulfills that purpose. In this regard, the Michigan Supreme Court held in *Wexford*, that six factors must be considered in determining whether an entity is a charitable institution for purposes of MCL 211.7o. A claimant must meet all six of these tests in order to qualify as a nonprofit charitable institution. A failure to meet any of the six tests disqualifies a claimant from being considered a charitable institution and receiving a property tax exemption under MCL 211.7o.

The tests are as follows:

- (1) a “charitable institution” must be a nonprofit institution.
- (2) a “charitable institution” is one that is organized chiefly, if not solely, for charity.
- (3) a “charitable institution” does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a “charitable institution” serves any person who needs the particular type of charity being offered.
- (4) a “charitable institution” brings people’s minds or hearts under the influence of education or religion; relieves people’s bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
- (5) a “charitable institution” can charge for its services as long as the charges are not more than what is needed for its successful maintenance.

³⁰ *Retirement Homes*, 416 Mich 340 at 348–349, quoting *Jackson v. Phillips*, 96 Mass (14 Allen) 539 (1867) and other cases subsequently adopting the same definition. *Retirement Homes*, 416 Mich App at 348-349 n. 14.

³¹ See *Michigan United Conservation Clubs v Lansing Township*, 423 Mich 661; 378 NW2d 737 (1985).

³² *Id.* at 673 (emphasis added).

³³ *Michigan Baptist Homes v City of Ann Arbor*, 396 Mich 660, 670; 242 NW2d 749 (1976).

³⁴ *Id.* at 671.

(6) a “charitable institution” need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year.³⁵

An analysis of whether an organization qualifies as a charitable institution requires a discussion of each of these factors.

(1) A “charitable institution” must be a nonprofit institution.

In its Response to Petitioner’s Motion for Summary Disposition, Respondent has not contested this factor. Further, Petitioner has provided a letter from the Internal Revenue Service confirming its status as a tax exempt organization under section 501 (c)(3) of the Internal Revenue Code.³⁶ Petitioner has also provided a copy of its 2015 Michigan Non-Profit Corporation Annual Report. As such, the Tribunal finds Petitioner has met factor one.³⁷

(2) A “charitable institution” is one that is organized chiefly, if not solely, for charity.

(4) A “charitable institution” brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.

The Tribunal finds there is overlap between Wexford Factors two and four and, as such, will discuss them together.

Respondent contends that Petitioner’s Articles of Incorporation state its only purpose is: “[t]o act in the interest of the enhancement of the beauty of the City of Detroit, Michigan and the improvement of the quality of life it provides through reforestation of the City’s streets, boulevards, and public areas. . . .”³⁸

Respondent contends that reforestation of the City of Detroit does not fit into the definition of charity put forth by the Supreme Court in *Retirement Homes*, as Petitioner’s purpose, per its Articles of Incorporation, does not include a gift that brings hearts and minds under the influence of education, it does not help assist an indefinite number of persons to establish themselves for life and it does not erect

³⁵ *Wexford*, 474 Mich at 215.

³⁶ Motion, Exhibit A8.

³⁷ Motion, Exhibit A10.

³⁸ Response at 4-5.

or maintain public works, as alleged by Petitioner.³⁹ Its only alleged gift is to plant trees for beautification.

The Tribunal finds Petitioner’s articles of incorporation should be considered in determining its purpose or alleged gift given, however, they are not conclusive. “While the articles bear relevance to whether the use of the property qualifies as charitable, they are not definitive.”⁴⁰ Further, the Articles do include the statement that Petitioner’s organized “[to] operate and act exclusively for charitable purposes.”⁴¹ In any event, “an institution’s activities as a whole must be examined, it is improper to focus on one particular facet or activity.”⁴² The Tribunal finds a discussion of Petitioner’s reduction of specific governmental burdens will shed light on its gift, rather than consideration of its articles, only.

Petitioner contends that it lessens the burdens of government by alleviating the City’s required tree planting. Petitioner bases this contention, in part, on the fact that it’s listed on the City’s Forestry and Landscape Division website, as its “planting partner . . . for all tree planting requests.”⁴³ On the other hand, the City offers only dangerous tree removal from City property, but no planting.⁴⁴ Petitioner further claims, “[a] 2008 American Forests’ survey reported a tree canopy of just 22.5% in Detroit, far below the recommended 40% canopy cover.”⁴⁵ There is no confirmation provided, however, that the City is required to plant trees or required to create a 40% canopy cover. While it appears The Greening of Detroit has the admirable goal of improving and creating additional City greenspace, through the use of trained volunteers, the Tribunal finds it does not alleviate an alleged governmental burden of planting trees and increasing tree canopy, by doing so.

Petitioner contends that planting trees “in the City right of ways and City parks is also the equivalent of erecting public works.”⁴⁶ Petitioner, however, has presented no statute or case law regarding the definition of public works, or the inclusion of tree planting as the creation or maintenance of public works. “An appellant may not merely announce his position and leave it to this Court to

³⁹ *Retirement Homes*, 416 Mich 340 at 348–349.

⁴⁰ *Camp Retreats Found, Inc v Twp of Marathon*, unpublished opinion per curiam of the Court of Appeals, issued May 15, 2012, (Docket No. 304179) (citing *Michigan Baptist Homes v City of Ann Arbor*, 396 Mich 660; 242 NW2d 749 (1976), wherein the court looked beyond the articles of incorporation).

⁴¹ Motion, Exhibit A7.

⁴² See *Baruch SLS, Inc v Titabawassee Twp*, ___ Mich ___; ___ NW2d ___ (2017) (Docket No. 152047), quoting *Wexford* at 212.

⁴³ Motion, Exhibit B, Affidavit of Petitioner’s President, Lionel Bradford (“Affidavit”), paragraph (“para”) 18.

⁴⁴ *Id.*

⁴⁵ Affidavit at para 17.

⁴⁶ Motion at A8, emphasis supplied.

discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority.”⁴⁷ “An appellant’s failure to properly address the merits of his assertion of error constitutes abandonment of the issue.”⁴⁸ As Petitioner has not provided any authority for its claims that the planting of trees in City right of ways or in parks, alleviates the governmental burden of erecting and maintaining public works, the Tribunal finds Petitioner has not proven this allegation, by a preponderance of evidence.⁴⁹

Finally, Petitioner alleges it brings hearts and minds under the influence of education and assists persons in establishing themselves for life. Respondent contends, again, that Petitioner’s only purpose is to beautify the City of Detroit by planting trees. It contends that any additional benefits derived are an indirect result of the organization’s sole purpose. Petitioner concurs that it plants trees, but it also plants gardens, and waters and cares for both. According to Petitioner’s President, Lionel Bradford, Petitioner “trains people, largely volunteers, to do that work.”⁵⁰ Petitioner contends its articles also state its purpose of participation in “like or other activities having as their principal purpose the enhancement of the beauty of the City and the improvement of the quality of life it provides.”⁵¹ Petitioner contends its “purpose of reforestation [is] also consistent with its authorization to undertake other charitable activities,” like training.⁵²

Petitioner contends that it educates any member of the public and provides him/her skills to obtain employment in the green industry, but is especially aimed at Detroiters who have been incarcerated, homeless, suffered from substance abuse or lack of education or job skills.⁵³ Petitioner contends it trains, on the subject property,⁵⁴ Citizen Foresters in “volunteer management, safe use of tools, community engagement, public speaking, tree identification and maintenance and pruning.”⁵⁵ Petitioner also contends “its adult workforce training program has provided general workforce skill training and nursery training leading to a certification in the green industry to more than 350 graduates of that program.”⁵⁶ The program

⁴⁷ *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003). [Citations omitted].

⁴⁸ *Id.* at 339-340.

⁴⁹ See Motion at 9.

⁵⁰ Affidavit at para 19.

⁵¹ Motion, Exhibit A7.

⁵² Affidavit at para 20.

⁵³ Affidavit at para 20, section (“sec”) c.

⁵⁴ Affidavit at para 22, 23.

⁵⁵ Affidavit at para 20, sec a.

⁵⁶ *Id.* at sec b. Also note, Petitioner commenced zoperations in the subject property location in December 2015. See footnote 29.

became certified as an apprenticeship program in 2015 through the U.S. Department of Labor. Petitioner alleges “graduates have obtained jobs in nurseries, garden centers” or were hired by Petitioner to train others⁵⁷. There is no charge for the training programs and hands on tree and garden planting take place outdoors around the City of Detroit, however, training for these plantings occurs in the subject property.⁵⁸

Petitioner also contends that it works in partnership with the Detroit Conservation Corps, with Focus: HOPE and with Neighborhood Services Organization and “is expected to eventually train more than 2,500 Detroiters in the skilled trades of landscape technicians, tree artisans, floral décor, urban agriculture, landscape construction, and urban forestry.”⁵⁹ Overall, “the program includes workforce readiness training as well as specific job skills and training. It helps those in need start over and make a decent living.”⁶⁰

The Tribunal finds Petitioner brings its volunteers and students’ hearts and minds under the influence of education and also assists them to establish themselves for life. In *Karen’s Helping Hands, Inc v City of Riverview*, the Court of Appeals found a home where persons with developmental disabilities and mental illness live, helped to establish its residents for life by teaching them to prepare their meals, how to do laundry and how to make their beds. The director testified that “the goal [of KHH] is to get [residents] prepared for community so that they can go independent”⁶¹ Similarly, in this matter, Petitioner helps its community establish itself for independence by joining the workforce.

The purpose of the Greening of Detroit, written in its Articles of Incorporation, is the reforestation of the City of Detroit and the participation in like or other activities to enhance the beauty of the City and improve the quality of life. Based on the evidence presented, the Tribunal finds when looking at its activities as a whole, Petitioner’s charitable purpose is to educate disadvantaged Detroiters, including high school students, on how to plant, grow, and care for gardens and trees. There are 350 graduates of the program, additional plans to train 2,500 more volunteers/students, and an apprenticeship program, all leading to entry into the workforce which undisputedly aids disadvantaged Detroiters establish themselves for life. The gift given by Petitioner is no cost education leading to job placement in the green industry, which not only reforests and beautifies Detroit, but leads to employment of those with few advantages in life.

⁵⁷ *Id.*

⁵⁸ Affidavit at para 20, sec a.

⁵⁹ *Id.* at sec e.

⁶⁰ *Id.*

⁶¹ *Karen’s Helping Hands, Inc v City of Riverview*, unpublished opinion per curiam of the Court of Appeals, issued April 26, 2011 (Docket No. 295621), in part, clarifying the *Wexford* definition of “establish themselves for life.”

Respondent contends that Petitioner does not lessen the burden of government, however, as stated in *Wexford*:

While “lessening the burden of government” is a component of the definition of “charity” found in *Retirement Homes, supra*, respondent takes it out of context. This Court stated that a charitable institution is one that benefits an indefinite number of persons “‘either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.’ ” *Id.* (emphasis added; citation omitted). Implicit in the definition is that relieving bodies from disease or suffering *is* lessening the burden of government. In other words, petitioner does not have to prove that its actions lessen the burden of government. Rather, it has to prove, as it did, that it “reliev[es] their bodies from disease, suffering or constraint,” which is, by its nature, a lessening of the burden of government. [Emphasis added].⁶²

Here, as fully discussed above, Petitioner brings its participants’ hearts and minds under the influence of education and assists them in establishing themselves for life, and as such, by its actions, lessens the burden of government.

3) A “charitable institution” does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a “charitable institution” serves any person who needs the particular type of charity being offered.

From its Response to the Motion, it appears Respondent does not dispute that Petitioner meets Factor three. In any event, as noted above, training from Petitioner is open to any member of the public and The Tribunal finds there is no evidence of any discriminatory selection process for receipt of Petitioner’s gifts. Further, even if the program is ultimately only open to disadvantaged Detroiters, the Court in *Wexford* clearly indicates that “a charitable institution can exist to serve a particular group or type of person”⁶³

(5) A “charitable institution” can charge for its services as long as the charges are not more than what is needed for its successful maintenance.

⁶² *Wexford*, 474 Mich at 219.

⁶³ *Wexford*, 474 Mich at 213.

Respondent does not dispute that Petitioner meets Factor five in its Response. The Tribunal finds there is no evidence presented that Petitioner charges more than what is needed for its successful maintenance.⁶⁴

(6) A “charitable institution” need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year.

This factor eliminates any financial threshold of charity in order to qualify as a charitable institution. If the Tribunal finds The Greening of Detroit to be a charitable institution, which it does, the amount of charity it gives is not relevant.

The exemption exists only when the building and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated

The last element under Section 211.7o is whether or not the subject property is used solely for the charitable purposes for which Petitioner is organized. Respondent contends Petitioner does not occupy the property solely for its beautification purposes, but allegedly utilizes the property for training purposes, which is not the purpose for which it was incorporated. The Tribunal finds Petitioner’s purpose is to increase the green space in Detroit by training members of the public to plant and care for trees and gardens, which not only beautifies the City, but also educates its disadvantaged residents in establishing themselves for the workforce. The Tribunal finds the property is occupied by Petitioner for the purpose it was incorporated.

As Petitioner has met all the requirements under MCL 211.7o, the Tribunal finds it is exempt from the payment of the property tax for the tax years at issue, as a charitable institution.

Petitioner’s Motion to File Reply to Respondent’s Response to Petitioner’s Motion for Summary Disposition

On June 21, 2017, Petitioner filed a Motion requesting permission to submit a reply to Respondent’s response to Petitioner’s Motion for Summary Disposition. Respondent did not file a response to the Motion.⁶⁵ The Tribunal finds it shall deny the request as its rules provide for one motion

⁶⁴ See Affidavit, para 21, including The Greening of Detroit’s Revenue and Expenses.

⁶⁵ Respondent did, however, express its objection to the Motion during the telephonic prehearing conference in this matter.

and brief in support, and a single response to the motion, and brief in support. No responses to responses are permitted.⁶⁶

The Parties' Requests for Costs and Fees

In its Motion, Petitioner requested costs and fees associated with its appeal of this matter. Petitioner notes Respondent suggested an inspection of the property, but did not follow through, and never provided any reason for the denial of the requested exemption from the payment of property tax for the subject property.⁶⁷ The Tribunal finds, while useful, there is no obligation for Respondent to inspect the property. Further, the decision to deny the exemption from the payment of property tax is the subject of this appeal to be heard de novo by the Tribunal. With regard to Respondent's request for costs and fees, no reason was put forth for the request,⁶⁸ as such, it shall be denied.

Conclusion

Given the above, the Tribunal finds Petitioner's Motion for Summary Disposition is granted. The Tribunal finds there are no genuine issues of material fact remaining in this case. As such, it finds the subject property to be exempt from the payment of property tax for the 2016 and 2017 tax years, pursuant to MCL 211.7o, and closes the case.

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition is GRANTED and the property is exempt from the payment of property tax for the 2016 and 2017 tax years.

IT IS FURTHER ORDERED that Petitioner's Motion to File Reply to Respondent's Response to Petitioner's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Petitioner's and Respondent's requests for costs and fees is DENIED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.⁶⁹ To the extent that the

⁶⁶ See TTR 225(6).

⁶⁷ Motion at 10.

⁶⁸ Response at 6.

⁶⁹ See MCL 205.755.

final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, and (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, and (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.⁷⁰ Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal

⁷⁰ See TTR 261 and 257.

residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.⁷¹ A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.⁷² Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁷³

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an “appeal by right.” If the claim is filed more than 21 days after the entry of the final decision, it is an “appeal by leave.”⁷⁴ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁷⁵ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁷⁶

By Preeti P. Gadola

Entered: September 8, 2017

⁷¹ See TTR 217 and 267.

⁷² See TTR 261 and 225.

⁷³ See TTR 261 and 257.

⁷⁴ See MCL 205.753 and MCR 7.204.

⁷⁵ See TTR 213.

⁷⁶ See TTR 217 and 267.