



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

Upper Peninsula Land Conservancy,  
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 17-003964

Michigamme Township,  
Respondent.

Presiding Judge  
Preeti P Gadola

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

ORDER SEVERING 2019 TAX YEAR AND ASSIGNING IT DOCKET NO. 19-000636

## INTRODUCTION

The subject property's<sup>1</sup> exempt status pursuant to MCL 211.7o(1) and MCL 211.7o(5) for the 2017 and 2018<sup>2</sup> tax years is in dispute. On November 30, 2018, the

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<sup>1</sup> The subject property consists of 10 parcels: Parcel Nos. 5209-305-001-00, 5209-305-001-30, 5209-305-002-00, 5209-431-004-00, 5209-432-006-00, 5209-432-007-00, 5209-432-009-00, 5209-432-010-00, 5209-432-013-00, 5209-432-014-00.

<sup>2</sup> 205.737(5)(a) states,

(5) A motion to amend a petition to add subsequent years is not necessary in the following circumstances:

(a) If the tribunal has jurisdiction over a petition alleging that the property is exempt from taxation, the appeal for each subsequent year for which an assessment has been established shall be added automatically to the petition. However, upon leave of the tribunal, the petitioner or respondent may request that any subsequent year be excluded from appeal at the time of the hearing on the petition.

Petitioner filed its Petition in this matter on July 27, 2017 appealing the exemption of the subject property pursuant to MCL 211.7o(1). On February 15, 2018, Petitioner filed a motion to amend its petition to add a claim pursuant to MCL 211.7o(5), which the Tribunal granted on March 13, 2018. In its amended petition, Petitioner indicated its appeal was for 2017 "and all future tax years." Despite this proclamation, the Tribunal does not have jurisdiction over all future tax years, but accepts jurisdiction over the 2017-2019 tax years, pursuant to the statute cited above. Nevertheless, Tribunal has carefully considered the

Tribunal issued a Scheduling Order indicating the parties shall file motions for summary disposition by January 18, 2019 and responses to the opposing party's motions by February 15, 2019. Both parties complied with the Scheduling Order.

The Tribunal has reviewed the motions, responses, and the evidence submitted and finds that granting Respondent's Motion for Summary Disposition is warranted at this time and denying Petitioner's Motion for Summary Disposition is also warranted at this time.

The subject property, consisting of 635.47 acres surrounding Indian Lake, is owned by Upper Peninsula Land Conservancy (UPLC), which, in 2014, received the property by donation from Mark Murphy and Peshekee Headwaters LLC. Petitioner's Articles of Incorporation state it is organized to:

[A]cquire, preserve, maintain, improve, and protect significant natural, agricultural, and scenic land areas for conservation, outdoor recreation by the general public, scientific study, preservation of biodiversity and historical sites, the education of the general public, and to advance land stewardship in Michigan's Upper Peninsula now and for future generations.<sup>3</sup>

## PETITIONER'S CONTENTIONS

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parties' motions, responses, briefs and exhibits and finds it does not have enough information to make a determination as to the potential exemption of the subject property for the 2019 tax year. As such, the Tribunal is accepting jurisdiction over tax year 2019, but severing it from this appeal, in order for Petitioner to file a new petition, if desired.

<sup>3</sup> Petitioner's Brief in Support of Motion for Summary Disposition (Petitioner's Brief) at p 2. See also Petitioner's Exhibit 1 (P-1). In May 2017, Petitioner amended its articles of incorporation to add/amend the verbiage as follows: "to acquire, maintain, and protect nature sanctuaries, nature preserves, and natural areas in the State of Michigan that predominantly contain natural habitat for fish, wildlife, and plants." See P-2. This comports with the language in MCL 211.7o(5)(a). The Tribunal notes, the declaration of a charitable purpose in the articles of incorporation is not determinative that the corporation is entitled to a tax exemption. See *Michigan Baptist Homes and Dev Co v Ann Arbor*, 55 Mich App 725; 223 NW2d 324 (1974), judgment aff'd, 396 Mich 660, 670; 242 NW2d 749 (1976). It appears the Petitioner is amending its articles of incorporation and bylaws to comport with exemption statutes, but an analysis of its purposes and activities is still required. See *Moorland Township v Ravenna Conservation Club, Inc*, 183 Mich App 451; 455 NW 2d 331 (1990).

In support of its Motion, Petitioner contends the subject property is exempt from ad valorem taxes pursuant to MCL 211.7o(1) and (5). Petitioner is a Michigan nonprofit corporation and tax-exempt under 26 U.S.C. 501(C)(3). It originally filed Articles of Incorporation in 1999 and amended those articles in 2017. Further, in May 2017, Petitioner amended its Bylaws to be in accord with MCL 211.7o(5). Petitioner contends the subject property is pristine, undeveloped land supporting diverse, rare, threatened, or endangered plant and animal species, as detailed by its land management plan and conservation preserve. However, in this instance, Petitioner contends it is still developing a preserve or reserve plan for the land because it is a recent acquisition.

Petitioner contends that it occupies the subject property by maintaining and using a boardwalk, maintaining trails and roads, regularly monitoring the land, conducting recreational and educational events, and holding it out for public use in perpetuity. It holds itself out to the public by inviting the public upon the land, free of charge, for educational opportunities. It contends this occupancy is consistent with the standard set forth in *Liberty Hill*<sup>4</sup> because the improvements are always present at the property and that the property is regularly operated by staff and volunteers. Petitioner claims that it occupies the land for the purposes mandated in its bylaws and in accord with its Baseline Report and Land Management Plan (2015-2024) (BRLMP). It contends that *Kalamazoo Nature Center v Cooper Township*<sup>5</sup> stands for the proposition that physical use of the entirety of the preserve is not required.

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<sup>4</sup> See *Liberty Hill Housing Corp v Livonia*, 480 Mich 44; 746 NW2d 282 (2008).

<sup>5</sup> See *Kalamazoo Nature Center v Cooper Twp*, 104 Mich App 657; 305 NW2d 283 (1981).

Petitioner further contends the subject property qualifies for exemption under MCL 211.7o because it is a nonprofit charitable institution pursuant to the six factors set forth in *Wexford Medical Group v City of Cadillac*.<sup>6</sup> Petitioner contends that its mission is consistent with the State Constitution as well as environmental statutes. It contends that the subject property meets its nonprofit charitable purpose because it supports biological diversity, supports wetlands, protects the habitats of plants and animals, and prevents soil erosion, degradation, and sedimentation, thereby lessening the burden of government. It surmises that the summation of its efforts is to bring hearts and minds under the influence of education and relieve minds and bodies from stress so as to lessen the burden of government.

Petitioner also claims its property qualifies for exemption under MCL 211.7o(5), which it parses to mean that it must own the land at issue, be a qualified conservation organization, hold the land for conservation purposes, and have the land open to all residents of Michigan for educational or recreational use. Having already established ownership, Petitioner states it is a qualified conservation organization and purports to establish a number of facts – that it has already proven its qualification as a nonprofit charitable institution, that its Articles of Incorporation effectively quote the statutory language from MCL 211.7o(5) in identifying the purpose for which Petitioner is organized, and that the language in its bylaws supports such a finding both prior to and after the 2017 amendment. Further, it relies upon its Articles of Incorporation, bylaws, and BRLMP to demonstrate that the property is held for conservation purposes. Finally, it states that it organizes educational or recreational events open to the public.

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<sup>6</sup> See *Wexford Medical Group v Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

*Respondent's Response to Petitioner's Contentions*

Respondent states it is true that the land was donated to Petitioner but that the donor retains exclusive benefits, such as controlling entry to the property, that does not comport with the requirement of open access to the public. Respondent contends that control continues even during Petitioner's purportedly public events.

Respondent contends there is no connection between the requirement that the land be held primarily for conservation purposes under MCL 211.7o(5) and Petitioner's purported activities. Further, it contends the land is not open for recreational or educational use.

**RESPONDENT'S CONTENTIONS**

In support of its response, Respondent contends that the subject property is not, in fact, open to all residents of the state. Instead, it contends that Mike Murphy, the donor who gifted the parcels to Petitioner, kept the only private residence on Indian Lake, that he retains actual and practical unrestricted access to the donated lands, and its use is for private events involving Mr. Murphy, his guests, members of the conservancy, and adjacent private landowners and their guests.

The land donation at issue was from Mr. Murphy's wholly owned LLC to Petitioner but excluded a lodge on Indian Lake, and further, he retained all easement rights in the donated land. He also donated a boardwalk on Indian Lake, but in the bylaws prior to the 2017 amendment, his corporation retained rights of usage and maintenance obligations associated with the boardwalk. Respondent contends that only Petitioner and Murphy enjoy unrestricted free access to the entire lake frontage.

Citing its interrogatories answered by Mr. Murphy, Respondent purports to establish that his privileges associated with the land exceed those enjoyed by the public, that most of his uses of the land, including boating, fishing and bicycle usage, are not permitted to the public, that there is no evidence of any member of the public engaging in recreational activities without pre-approval or a guide provided by Petitioner, that educational use is restricted, that the site lacks handicapped access or legally permissible public parking, and that not even the assessor has been allowed to access the property since the 2014 transfer. Respondent states that Petitioner fails to display signage identifying the property as a conservancy, provide directions, or act as if the public is permitted, instead requiring a member of the public to ignore a number of warnings typically associated with private property ownership.

Respondent contends that Petitioner's Board has final say over who can access the property and must be hosted by a member or donor of Petitioner. Respondent states there were no public events in 2014 or 2015; five events, including one public event, in 2016; and seven events, including one public event, in 2017. Meanwhile, Respondent contends that at least 17 private events were held between 2016 and 2018 and that many events are attended by only Murphy and Mr. Chris Burnett.<sup>7</sup>

As a result of the foregoing facts, Respondent contends that Petitioner fails to qualify for either exemption because it is not a charitable institution. Specifically, Respondent contends that Petitioner fails to meet numbers 2, 3, and 4 of the six-part charitable institution test established by the Michigan Supreme Court in *Wexford*

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<sup>7</sup> Mr. Burnett is the Assistant Director of UPLC.

*Medical Group v Cadillac*.<sup>8</sup> Respondent also contends that Petitioner fails to occupy the property as required under MLC 211.7o(1) because it is not habitually present.

*Petitioner's Response to Respondent's Contentions*

Petitioner contends Mr. Murphy's use of the property is normal, given his ownership of an adjacent lakefront property through the Murphy Family Preserve, as well as a member of the public using the subject property. Petitioner also contends that Respondent misrepresents its position with respect to boating, fishing, bikes, and public access, and that bikes, kayaks and canoes are allowed into the preserve.<sup>9</sup> Petitioner contends the property is always open to the public, although the easiest time to access the property is at public events, and that it is partially handicapped accessible. Petitioner contends it does not keep track of how many members of the public visit the property. It claims visitors, however, who contact UPLC can add an interactive map to their cell phone Google Maps.<sup>10</sup> With respect to low turnout at Petitioner's events, it contends this is natural, given the remote location of the property.<sup>11</sup> Petitioner further claims its sole purpose is not to provide access to the public, but protecting and maintaining the preserve is at least as important as providing public access.<sup>12</sup>

Petitioner contends that the gates identified by Respondent restrict guests from accessing private land which the private road crosses by easement, and further, that Petitioner recently acquired another parcel which will allow the public to cross onto the

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<sup>8</sup> See *Wexford, supra*.

<sup>9</sup> See Petitioner's Response to Respondent's Motion for Summary Disposition (Petitioner's Response) at 2. See Affidavit of Andrea Denham, Executive Director, UPLC, Exhibit 2.

<sup>10</sup> See Affidavit of Andrea Denham, Petitioner's Response, Exhibit 2.

<sup>11</sup> Michigamme Township is approximately 40 miles from Marquette, Michigan and 25 miles from Ishpeming, Michigan. Marquette, Michigan is the largest city in the Upper Peninsula of Michigan and Northern Michigan University is located there. See [www.marquettemi.gov](http://www.marquettemi.gov), viewed April 19, 2019.

<sup>12</sup> See Petitioner's Response at 2.

land from a public road without need for an easement.<sup>13</sup> Petitioner admits it does not have a sign identifying the property but contends that social media is a more effective way of marketing the property than a wooden sign on a post in the woods.

Petitioner contends that Respondent has failed to meet its burden of proof under both MCR 2.116(C)(8) and MCR 2.116(C)(10) because Petitioner meets all requirements under *Wexford*.

### **STANDARD OF REVIEW**

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.<sup>14</sup> In this case, Respondent moves for summary disposition under MCR 2.116(C)(8) and (C)(10). Petitioner does not move for summary disposition under any particular rule, but the Tribunal finds that its Motion implies that it seeks summary disposition under MCR 2.116(C)(10).

Motions under MCR 2.116(C)(8) are appropriate when “[t]he opposing party has failed to state a claim on which relief can be granted.” The Court of Appeals has held that:

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. Under this subrule “[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant.” When reviewing such a motion, a court must base its decision on the pleadings alone. In a contract-based action, however, the contract attached to the pleading is considered part of the

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<sup>13</sup> See Petitioner’s Response at 3. See Petitioner’s Response, Affidavit of Andrea Denham, Exhibit 2. She alleges public access to the preserve from Lake Keewaydin Road (a public road), is available through Indian Lake West, acquired from Mr. Murphy on 1-19-19. “The acquisition will provide access to the preserve from Lake Keewaydin Road through Weyerhaeuser Corporation lands via deeded easement. There are no gates on this easement.”

<sup>14</sup> See TTR 215.



pleading. Summary disposition is appropriate under MCR 2.116(C)(8) “if no factual development could possibly justify recovery.”<sup>15</sup>

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 “when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law.”<sup>16</sup>

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.<sup>17</sup> The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.<sup>18</sup> The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.<sup>19</sup> 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.<sup>20</sup> If the opposing party

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<sup>15</sup> *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003) (citations omitted).

<sup>16</sup> *Lowrey v LMPS & LMPJ, Inc*, 500 Mich. 1, 5; 890 NW2d 344 (2016) (citation omitted).

<sup>17</sup> See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

<sup>18</sup> See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

<sup>19</sup> *Id.*

<sup>20</sup> See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.<sup>21</sup>

### CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion under MCR 2.116 (C)(10) and finds that granting the Motion is warranted. The Tribunal also finds denying Respondent's Motion under MCR 2.116 (C)(8) is warranted. Additionally, the Tribunal finds denying Petitioner's Motion pursuant to MCR 2.116 (C)(10) is warranted at this time.

Petitioner claims the subject property is tax-exempt under MCL 211.7o(1) and (5). The requirements as stated by statute:

(1) 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.

....

(5) Real property owned by a qualified conservation organization that is held for conservation purposes and that is open to all residents of this state for educational or recreational use, including, but not limited to, low-impact, nondestructive activities such as hiking, bird watching, cross-country skiing, or snowshoeing is exempt from the collection of taxes under this act. As used in this subsection, "qualified conservation organization" means *a nonprofit charitable institution* or a charitable trust that meets all of the following conditions:

(a) Is organized or established, as reflected in its articles of incorporation or trust documents, for the purpose of acquiring, maintaining, and protecting nature sanctuaries, nature preserves, and natural areas in this state, that predominantly contain natural habitat for fish, wildlife, and plants.

(b) Is required under its articles of incorporation, bylaws, or trust documents to hold in perpetuity property acquired for the purposes described in subdivision (a) unless both of the following conditions are

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<sup>21</sup> See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

satisfied:

(i) That property is no longer suitable for the purposes described in subdivision (a).

(ii) The sale of the property is approved by a majority vote of the members or trustees.

(c) Its articles of incorporation, bylaws, or trust documents prohibit any officer, shareholder, board member, employee, or trustee or the family member of an officer, shareholder, board member, employee, or trustee from benefiting from the sale of property acquired for the purposes described in subdivision (a).<sup>22</sup>

For qualification for exemption under sections (1) or (5) above, the property must be a nonprofit charitable institution.

The Michigan standard for a charitable 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.<sup>23</sup> In *Wexford Medical Group v Cadillac*,<sup>24</sup> the Supreme Court presented the test for determining if an organization is a charitable one under MCL 211.7o(1) and stated:

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 buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.

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<sup>22</sup> Emphasis added.

<sup>23</sup> See *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753 n 1; 298 NW2d 422 (1980); see also *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 606; 163 NW2d 508 (1968), 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) of the internal revenue code of 1954, but by the much more strict provisions of the Michigan general property tax act . . . ."

<sup>24</sup> *Wexford, supra*.

The first step in determining whether an organization is charitable is to understand the definition of “charity.” The Michigan Supreme Court established the following definition of “charity”:

“[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 buildings or works or *otherwise lessening the burdens of government*.”<sup>25</sup>

In order to determine if it is entitled to a property tax exemption under MCL 211.7o(1) and (5), 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.<sup>26</sup> In *Michigan Baptist Homes and Dev Co v Ann Arbor*,<sup>27</sup> the Michigan Supreme Court stated that “exempt status requires more than a mere showing that services are provided by a nonprofit corporation.” 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.”<sup>28</sup>

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*<sup>29</sup> that several 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

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<sup>25</sup> *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340, 348-349; 330 NW2d 682 (1982).

<sup>26</sup> *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 673; 378 NW2d 737 (1985).

<sup>27</sup> *Michigan Baptist Homes and Dev Co v Ann Arbor*, 396 Mich 660, 670; 242 NW2d 749 (1976).

<sup>28</sup> *Id.* at 671.

<sup>29</sup> *Wexford* at 215.

as a nonprofit charitable institution. A failure to meet any of the six tests disqualifies a claimant from consideration as a charitable institution and receiving a tax exemption for its property pursuant to MCL 211.7o. The six factors under *Wexford* are:

- (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.
- (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.

Because, as noted above, Petitioner must qualify as a nonprofit charitable institution for the subject property to be exempt from ad valorem property taxation under MCL 211.7o(1) and (5),<sup>30</sup> the Tribunal will commence its analysis pursuant to the six *Wexford* factors, enumerated above.

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<sup>30</sup> Respondent references the *in pari materia* canon of construction in relation to “nonprofit charitable institution” under MCL 211.7o(1) and (5). However, the Tribunal does not find the canon applies to the subsections here, under the same specific statute, but statutes in apparent conflict. The Court in *SBC Health Midwest, Inc. v. City of Kentwood*, 500 Mich. 65, 74, 894 N.W.2d 535, 540 (2017), found, *in pari materia* (or the related-statutes canon) provides that “laws dealing with the same subject ... should if possible be interpreted harmoniously. See Scalia & Garner, *Reading Law: The Interpretation of Legal*

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

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. Further Petitioner has provided documentation that it is a Michigan non-profit organization. As such, the Tribunal finds this requirement met.<sup>31</sup>

(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.

The Tribunal finds there is overlap, in this matter, between Wexford factors two, three and four and, as such, will discuss them together. As noted above, Petitioner contends that the subject property meets its nonprofit charitable purpose, pursuant to the Natural Resources and Environmental Protection Act,<sup>32</sup> because it supports biological diversity, supports wetlands, protects the habitats of plants and animals, and

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*Texts* (St. Paul: Thomson/West, 2012), p. 252.” Further, “[s]tatutes *in pari materia*, although in apparent conflict, should, so far as reasonably possible, be construed in harmony with each other, so as to give force and effect to each....” *Int’l Bus. Machines Corp. v. Dep’t of Treasury*, 496 Mich. 642, 652–53, 852 N.W.2d 865, 872 (2014). It also does not appear, in this matter, that the parties disagree that Petitioner must be a nonprofit charitable institution for its property to qualify for exemption from ad valorem property taxation, under either subsection of MCL 211.7o. See Petitioner’s Brief at 6 discussing first, Petitioner’s status as a nonprofit charitable institution pursuant to *Wexford* and then, pursuant to MCL 211.7o(5), “UPLC is a nonprofit charitable institution, for the reasons stated above.” Further, “Petitioner agrees with Respondent that for the preserve to qualify as exempt under either MCL 211.7o(1) or MCL 211.7o(5) UPLC must be a qualified conservation organization. Petitioner also agrees with Respondent that *Wexford Medical Group v City of Cadillac*, cited in both Petitioner’s and Respondent’s brief, lays out the six-part test to determine whether UPLC is such an institution.” See Petitioner’s Response at 4.

<sup>31</sup> See Petitioner’s Brief exhibits 1, 2 and 6.

<sup>32</sup> See MCL 324.21301, parts 355, 303, 301, 91 and 93. The Tribunal notes MCL 324.21301 was repealed by P.A. 1995, No 22 and is now MCL 324.21301a.

prevents soil erosion, degradation, and sedimentation, thereby lessening the burden of government.<sup>33</sup> Petitioner contends it specifically lessens the burdens of government by preserving and holding the property for the benefit of all, conducting inventories of the plants and animals on the land, and monitoring the land. Petitioner contends that its mission is consistent with the State Constitution,<sup>34</sup> the Natural Resources and Environmental Protection Act and 26 USC 170(h)(4)(A), which defines conservation purpose pursuant to federal tax, qualified conservation property contribution. The Tribunal finds, however, that there is no requirement that the relevant property be that of a nonprofit charitable institution pursuant to federal statute.<sup>35</sup>

Petitioner also contends it brings hearts and minds under the influence of education and relieves bodies from stress, which further lessen the burdens of government. Petitioner claims it is open to the public and it maintains a boardwalk, trails and roads, holding it out for public use, free of charge, in perpetuity.<sup>36</sup> Further, the property is regularly operated by staff and volunteers.<sup>37</sup> Petitioner contends it provides opportunities to the public to visit the land for educational and/or recreational purposes.<sup>38</sup> Petitioner does contend, however, that it is still developing plans for the land, including additional public recreational and/or educational events there, because it is a recent acquisition.<sup>39</sup> Petitioner alleges it does not discriminate among members of

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<sup>33</sup> See Petitioner's Brief at p 5.

<sup>34</sup> Article IV, section 52 states, "[t]he conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction."

<sup>35</sup> See 26 USC 170 (a), (b)(E), and (h).

<sup>36</sup> See Petitioner's Brief at 2-3. See Exhibit P-11.

<sup>37</sup> See Petitioner's Brief at p 4.

<sup>38</sup> See Petitioner's Brief at p 5.

<sup>39</sup> See Petitioner's Brief at p 3.

the public as to who may participate in its educational activities, and access to the conservancy property is available at any time.

Respondent contends Petitioner does not lessen the burdens of government and further discriminates within the group that it purports to serve, because it is not open to the public. As such, it does not benefit the general public without restriction.

Respondent contends that the subject property is not in fact open to all residents of the state. Instead, it claims that Mike Murphy, the donor who gifted the parcels to Petitioner, kept the only private residence on Indian Lake,<sup>40</sup> that he retains actual and practical unrestricted access to the donated lands, and its use is for private events involving Mr. Murphy, his guests, members of the conservancy, and adjacent private landowners and their guests.<sup>41</sup> The land donation at issue was from Mr. Murphy's wholly owned LLC to Petitioner but excluded his lodge, storage shed, sauna, carport and outhouse, adjacent to Indian Lake, and the only boat launch, and further, that he retained all easement rights in the donated land.<sup>42</sup> He also donated a boardwalk on Indian Lake, but in the bylaws prior to the 2017 amendment, his organization and family members retained rights of usage and maintenance obligations associated with the

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<sup>40</sup>See Affidavit of Howard Robare, Assessor Michigamme Township, Respondent's Exhibit B to its Motion for Summary Disposition (R-B)

<sup>41</sup> See Respondent's Brief in Support of Motion for Summary Disposition, (Respondent's Brief) at p 2-3.

<sup>42</sup> See Respondent's Brief at p 3. See R-C3, "Agreement."



boardwalk.<sup>43</sup> Respondent contends that only Petitioner and Murphy enjoy unrestricted free access to the entire lake frontage.<sup>44</sup>

Respondent's Assessor, Mr. Howard Robare, indicated in his affidavit that he has visited the property six times over the years, however, since the property was purchased by UPLC, he has been unable to access it. He noted the property is "surrounded by private property" and "[t]here is no public roadway that provides access to the property and the only access is by private roadway with 'No Trespassing' signs posted." He indicated the only access to the "preserve is from the Northeast via about 3.5 miles off a seasonal road, the Peshekee Grade (County Road 607). After turning off of Country Road 607 you travel a short distance on a private two-rut road and further access to the property is blocked by a locked gate. Down the private road a short distance further, there is a second locked gate." Mr. Robare stated there is no signage on the roadway designating the conservancy and he did not observe any parking area or access for handicapped individuals, and in fact, "there are natural obstacles and debris and make it impossible for a disabled person to access the property past the [first] gate."<sup>45</sup> In Petitioner's BRLMP it states, "[t]he boardwalk facilitates inspection of the property, except when it is wet and slippery."<sup>46</sup> "[T]he boardwalk does not meet

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<sup>43</sup> See Respondent's Brief at 3-4, R-C3, "Agreement." See Petitioner's Brief, Affidavit of Christopher Burnett at 3, which states, "UPLC agreed to this because it understood these rights were the same as the rights the general public would have in the land." Petitioner further contends, all of Mr. Murphy's rights of usage were terminated by court order on March 13, 2017, because "it understood Respondent treated the reservations as creating rights in the donor that were not the same as the rights the general public has in the land." See Petitioner's Brief, P-10. See Petitioner's Brief, Affidavit of Christopher Burnett at 3.

<sup>44</sup> See Respondent's Brief at p 3-4.

<sup>45</sup> See R-B, R-B2, B4 and B5 (photographs of locked gates), R-B3 (photograph of "No Trespassing" sign), R-B6 (photograph of "private" road sign), RB-7, (photograph of "two rut" road).

<sup>46</sup> P-11 at 8

ADA (American Disabilities Act) specifications and can be very slippery when wet.”<sup>47</sup> In responses to second discovery requests, it states, however, “[t]here is a two-track road through the North half of the Preserve through beautiful second-growth forest and other scenic features that is available for use by individuals using OPDMDs or wheelchairs. Such individuals would need to contact UPLC to arrange a time for drive-in access.”<sup>48</sup> The discovery responses indicate UPLC has “plans to increasingly provide opportunities for the differently-abled to explore and recreate in UPLC’s Preserves and Reserves.”<sup>49</sup>

Respondent contends that there is no evidence of any member of the public engaging in recreational activities without pre-approval or a guide provided by Petitioner. Mr. Burnett, Assistant Director<sup>50</sup> of UPLC, read into the record and confirmed his discovery response, on behalf of Petitioner, that stated, “[a]ll activities that include the public on the Preserve are planned in advance. UPLC agents unlock the two gates, - - allow participants access and relock the gates after the participants pass through, in and out.”<sup>51</sup> He testified in his deposition, “we would have to unlock the gates because there are adjacent private landowners that we don’t control those gates. We feel responsible to respect those other owners’ rights and to treat their gates that way.”<sup>52</sup> In the alternative, the public would require specific permission from the private landowners and request them to open the gates. Mr. Burnett also confirmed there is no signage advertising the Preserve nor any directional signs. In Petitioner’s first set of

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<sup>47</sup> See P-11 at 24. OPDMDs is an acronym for “other power driven mobility devices.”

<sup>48</sup> See R-D at 10.

<sup>49</sup> See R-D at 11.

<sup>50</sup> In Petitioner’s first and second set of discovery responses, Mr. Burnett signed his name as Executive Director, not Assistant Director. See Respondent’s Brief, R-C2 and R-D.

<sup>51</sup> See R-C at 16, Deposition of Mr. Burnett.

<sup>52</sup> See R-C at 17. UPLC maintains keys and lock combinations to the fences.

discovery responses, Mr. Burnett noted there are about six hiking trail signs in the preserve that were installed by Mr. Murphy and provided a photograph of a “conservancy area” sign attached to a tree.<sup>53</sup> He also read into the deposition record, his answer to interrogatory 10, “no person or entity other than UPLC, its guests and invitees, including the public have any rights in the Subject Property. All members of the public have the right to participate in activities on the Subject Property that are announced events.”<sup>54</sup> He testified the discovery answer had to do with planned activities, only. He testified, “it is possible for individuals -- for the public to - - to go into the preserve on their own. If anyone were to drive - - wanting to take a vehicle in, we would have to unlock the gates . . . .”<sup>55</sup>

The planned events are advertised on Facebook, the UPLC website and its newsletter, sent to people who request to be on its mailing list.<sup>56</sup> In responses to Respondent’s discovery requests dated September 12, 2018, the UPLC website is referenced relative to unguided visits,

Indian Lake and the nearby Murphy Family Preserve require that visitors be able to travel savvy through wilderness areas and we highly recommend bringing a map and compass along with a working knowledge of these tools. You will not have cell service in or around the Preserve, so be sure to have an emergency contingency plan in place. Trails are a work in progress and may not be clearly marked or completed at this time (though that is in the work plan to be completed over the next two years). Hunting and fishing are not allowed on the preserves, nor is overnight camping or fires. Please call UPLC for a full list of permissible activities and for a detailed map. UPLC is not responsible for anything that may happen while you travel in the wild.”<sup>57</sup>

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<sup>53</sup> See R-C2 at 13-14.

<sup>54</sup> See R-C2 at 17.

<sup>55</sup> See R-C2 at 17.

<sup>56</sup> R-C at 18-19.

<sup>57</sup> See R-D at 8-9.

Mr. Burnett testified regarding guided events, by considering a preserve occupancy log.<sup>58</sup> He testified that there were no public events in 2014 or 2015. In 2016, there were five total events, including one public event, “[t]he July 23<sup>rd</sup> botanical survey,” where “UPLC invited local botanists and botany learners to conduct a botanical survey of the Preserve.” The 2016 event was attended by 10 people, including Mr. Murphy, Mr. Burnett, and Andrea Denham. In 2017, there were seven events, including one public event, a field trip for the public including “orienteeing and natural history off-trail hike through the Indian Lake Preserve and adjacent Murphy Family Preserve.” The 2017 event occurred on August 19 and was attended by 9 people, including Mr. Burnett, Ms. Denham and Adam Berger, identified as “UPLC People.” Mr. Murphy and five other people were identified as “other people present.” In 2018, there was one event where the public was invited “to circumnavigate Indian Lake on existing and planned hiking trails.” Participants learned to identify plants and features of the preserve. The 2018 event was held on August 11 attended by 6 people, Mr. Burnett, Andrea Denham, Adam Berger, and Jill Sekely, identified as “UPLC People,” and Mr. Murphy and one other person identified as “other people present.”<sup>59</sup> Mr. Burnett also answered the second set of interrogatories, “The U.S. Forest Service maintains a permanent research plot for the Forest Inventory and Analysis (FIA) for the study of Michigan’s forest resources.”<sup>60</sup>

The Court in *Michigan United Conservation Clubs v Lansing Township* (MUCC),<sup>61</sup> found a conservation club, situated on five acres of land, was not a

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<sup>58</sup> See R-C4.

<sup>59</sup> See R-C at 26-29. Mr. Burnett was reading from Petitioner’s occupancy log, See R-C4. See R-D at 9-10.

<sup>60</sup> See R-D at 10.

<sup>61</sup> *Michigan United Conservation Clubs v Lansing Township*, 423 Mich 661, 378 NW2d 737 (1985).

charitable institution because its activities did not amount to gifts for the benefit of an indefinite number of people or the general public without restriction. MUCC was a nonprofit organization composed of individuals and local affiliate clubs and its bylaws indicated its purposes were to:

advance the cause of the environment and conservation in all its phases, and to perpetuate and conserve the fish, game, mineral, air, water, forest and land resources of the state, to so manage the use of all natural resources that this generation and posterity will receive the maximum benefit from the same," and "[t]o promote conservation education programs designated to educate citizens in the cause of natural resource conservation and environmental protection and enhancement, creating in them an awareness and understanding of the importance of this aim, equipping them to work knowledgeably and effectively toward this achievement and through rational discussion to attempt resolution of all issues affecting our environment." "To protect and defend the right of our citizens to own, keep and bear arms." "To disseminate these purposes and objectives through a publication known as Michigan Out-of-Doors . . ."<sup>62</sup>

MUCC's Executive Director testified that it offered a natural resources leadership training course, national hunting and fishing day, hunter training courses, and summer youth camps focusing on natural resource management, outdoor survival and water and hunting safety. He also testified, however, "[w]hile these activities are available to the general public, most participants in the natural resource leadership training courses are MUCC members."<sup>63</sup> He testified MUCC has a library, which is open for public research, but materials are not loaned to the public. He further testified MUCC trains public school teachers in the Wildlife Discovery Program which is conducted in their school

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<sup>62</sup> MUCC, *supra*, at 665.

<sup>63</sup> MUCC, *supra*, at 665.

classrooms and fishery courses were taught and accepted for credit at Michigan State University.<sup>64</sup>

The Court in MUCC denied the subject property educational and charitable exemptions from taxation. The charitable exemption was denied even though it found MUCC provided several services which would be considered charitable gifts. “For example, MUCC contributed various pamphlets and books on conservation and natural resource management. The hunter safety classes are provided to children in youth camps for a fee, but if a child cannot afford the program, affiliate members pay the fee.”<sup>65</sup> The Court focused on “whether MUCC’s activities, taken as a whole, constitute a charitable gift for the general public without restriction or for the benefit of an indefinite number of persons.”<sup>66</sup> It found members of the public occasionally visited MUCC’s office building and library, but the property is generally not available to non-MUCC members. Further, the vast majority of MUCC’s publications are only available to the public for a fee. Finally, the Court found MUCC’s purposes and activities “benefit its members and others with an active interest in the conservation of our natural resources.” However, MUCC did not confer the “requisite charitable gift . . . on the general public without restriction or on an indefinite number of people.”<sup>67</sup>

Pursuant to MUCC, the subject property is also not entitled to a charitable exemption from taxation. UPLC has offered three public events in four years and provides no charity other than free admittance into the events attended by a total of 25

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<sup>64</sup> *MUCC, supra*, at 666.

<sup>65</sup> *MUCC, supra*, at 671.

<sup>66</sup> *MUCC, supra*, at 673.

<sup>67</sup> *MUCC, supra*, at 674.

people, including Mr. Murphy, Ms. Denham, Mr. Burnett, and UPLC members.<sup>68</sup>

Further, the property is not open to the public as it is virtually impossible to find it or enter it without a UPLC guide, as gates need to be unlocked or walked around, no trespassing signs ignored, and knowledge of map and compass usage, as well as an emergency plan, required. There are six signs marking trails on 635-plus acres, and though there is a boardwalk, it is unclear how a member of the public may access it. Per Petitioner's website, there is no fishing allowed, though it is unclear if Mr. Murphy may fish,<sup>69</sup> and there is no public boat launch, though it is unclear if Mr. Murphy may launch more than a canoe or kayak from his private boat launch. Further, there is limited handicap access, and "UPLC is not responsible for anything that might happen while you travel in the wild."<sup>70</sup> There is nowhere to check in, no monitoring of visitors to the preserve, and no cell service according to Petitioner's website, so use of an "interactive map" provided by UPLC might not be available. UPLC's activities, taken as a whole, do not constitute a charitable gift for the general public without restriction or for the benefit of an indefinite number of persons. Further, the Tribunal finds UPLC cannot lessen the burdens of government by bringing "people's minds or hearts under the influence of education, [or] by relieving their bodies from disease, suffering, or constraint," as alleged by Petitioner, because one cannot freely access the preserve.<sup>71</sup>

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<sup>68</sup> Although the amount of charity given is not relevant for qualification under *Wexford*, nevertheless, this is hardly a scenario where free and low cost medical care is given to any member of the public who enters the medical center's doors. See *Wexford, supra*.

<sup>69</sup> Petitioner's co-counsel, Mr. John E. Yonkers, III, attached an affidavit to Petitioner's response, indicating he fished on Indian Lake at the preserve on August 22, 2015 after attending its public dedication ceremony, yet Petitioner's website, quoted in Petitioner's discovery responses dated September 12, 2018, indicates members of the public, in unguided visits, may not fish. See Petitioner's response, Exhibit 1. See R-D at 8-9.

<sup>70</sup> See R-D.

<sup>71</sup> See Petitioner's Brief at 4.

In *Moorland Township v Ravenna Conservation Club, Inc. (RCC)*,<sup>72</sup> the Court found the property of a wildlife conservation club was entitled to a tax exemption as a charitable organization. It distinguished MUCC and found the conservation club provided classes and publications to the public free of charge, and its property was always available to the general public. RCC's bylaws indicated its purpose was to "conserve and promote our natural resources and wildlife and assist the Department of Natural Resources in preserving and developing our natural resources and wildlife. And educating our youth in hunter safety and better use of our Natural Resources."<sup>73</sup> RCC owned 20 acres on which was located a clubhouse, archery range, rifle range, nature trail and stream. "The nature trail contains markers identifying the trees along the trail. The property is not fenced in and is always available to the public at no charge. Various local groups such as the cub scouts, boy scouts, 4-H Club and Lions Club are permitted to use the clubhouse at no charge, although a fee for the cost of utilities is charged to the Lions Club."<sup>74</sup> There were 159 volunteers who donated their time toward the club purposes. They raised and released 500-1500 pheasants, placed 5000 brook trout into public streams, distributed bird houses and bird feeders at no charge, and participated in a bluebird restoration program and water pollution control and cleanup.<sup>75</sup> RCC is also involved with the Department of Natural Resources ("DNR") on a regular basis, and assists it:

in connection with the breeding and raising of various fish and game and assists them in various other programs and projects. For instance, the RCC had recently worked with the DNR on both a turkey release program and a steelhead program to obtain finclips and scale samples. Testimony

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<sup>72</sup> *Moorland Township v Ravenna Conservation Club, Inc.*, 183 Mich App 451; 455 NW 2d 331 (1990).

<sup>73</sup> *RCC*, supra, at 454.

<sup>74</sup> *RCC*, supra, at 455.

<sup>75</sup> *RCC*, supra, at 455



indicated that this latter program would have been eliminated without the cooperation and assistance of the RCC. The RCC also monitors the condition of Crockery Creek, using temperature graphs furnished by the DNR that run twenty-four hours a day. Additionally, the wildlife, fishery, and law enforcement divisions of the DNR often use the RCC's property in carrying out their duties. This too is at no charge.<sup>76</sup>

RCC's involvement extends to area schools, sponsoring a wildlife discovery program, distributing an environmental publication and use of club property for various outdoor education classes and programs, free of charge. The Club also pays for three children to attend a youth camp each year and pays the expenses to allow a teacher to attend environmental courses conducted by DNR. RCC distributes free materials concerning state licensing, hunting and fishing laws, provides educational films related to hunting and fishing, and provides hunter safety classes to approximately 85 people per year, required by the state to obtain a hunting license, all free of charge.<sup>77</sup>

Interestingly, the Court in RCC found:

The conservation and promotion of our natural resources and wildlife is an important objective in this state. Indeed, Const. 1963, art. 4, § 52 declares the conservation and development of the state's natural resources to be of paramount public concern and expressly requires the Legislature to provide for the protection of the air, water and other natural resources. Towards this objective, the Legislature has created the Department of Natural Resources, M.C.L. § 16.350; M.S.A. § 3.29(250), and has designated among its several purposes the protection and conservation of the state's natural resources, the provision and development of facilities for outdoor recreation, the prevention of pollution of lakes and streams, and the fostering and encouraging of the protection and propagation of game and fish. See M.C.L. § 299.3; M.S.A. § 13.3.

These are all purposes intended to benefit the general public without restriction. According to the record, both the stated purposes and actual activities of the RCC address these objectives. The RCC's property is open to the public; and, in addition to its own independent activities, the

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<sup>76</sup> *RCC, supra*, at 455-456.

<sup>77</sup> *RCC, supra*, at 456.

RCC works directly with the DNR in assisting it in carrying out its designated purposes. Without the assistance of the RCC, various DNR projects could not be implemented or would otherwise have to be discontinued.

Therefore, we believe that, by dedicating itself to the conservation and promotion of natural resources and wildlife, areas which have been expressly declared to be of paramount public concern, and by either engaging in independent activities addressing these areas or assisting the state agency charged with the same, the RCC has not only lessened an expressly recognized burden of government but has also conferred a laudable “gift” on the community at the same time.

The Court found the conservation and the promotion of natural resources and wildlife to be a gift that lessens the burden of government. However, unlike the property in *RCC*, the subject property is not always open to the public, but available for the safest visit by invitation only. It does not have identifying wildlife markers along a trail, it is not loaned or open to local groups. It does not release pheasants or brook trout, it does not participate in restoration projects or water pollution control or clean-up. Its activities are not conducted with the guidance of, or request by, DNR. Petitioner does contend the U.S. Forest Service maintains a permanent research plot for the Forest Inventory and Analysis (FIA) for the study of Michigan’s forest resources,<sup>78</sup> however, no further information about the program is given and the Tribunal is unclear if this research is shared with, or desired by, the State of Michigan. Pursuant to the holding in *RCC*, the Tribunal does not find that UPLC provides charitable gift to the general public without restriction or for the benefit of an indefinite number of persons.

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<sup>78</sup> See R-D at 10.

In *Chauncy and Marion Deering McCormick Foundation v Wawatam Township*,<sup>79</sup> the Court found the 520 acres, plus improvements, owned by the Headlands Conference Center was entitled to a charitable exemption from taxation even though it was not open to the general public without restriction, because it was available for the benefit of an indefinite number of persons.<sup>80</sup> The conference center was utilized by a college mentoring program and numerous church and other groups for conferences and retreats, all within a two-year period. The surrounding property was employed by the “faculty and students of the University of Michigan Biological Station, the Michigan Botanical Club and the Red Tail Hawk Society on an unrestricted basis. Petitioner has never turned down a group or organization requesting the use of the property.”<sup>81</sup> However, the property was not open to the public without restriction because of “limitations of the property itself. For example, the facilities contain only a certain number of beds, so the number of overnight visitors may be restricted.”<sup>82</sup> Again, in this matter, Petitioner has only allowed three public events on the property in four years. The events were not well-attended, with only 25 participants, including participation by Mr. Burnett, Ms. Denham and Mr. Murphy, along with other UPLC members, at each event. The property is not open to the public without restriction because it cannot accommodate every person who wishes to use the property, it is not open to the public without restriction, because, among other reasons discussed above, the public cannot easily access the property. Further, it is not available for the benefit of an indefinite

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<sup>79</sup> *Chauncy and Marion Deering McCormick Foundation v Wawatam Township*, 196 Mich App 179; 492 NW2d 751 (1992).

<sup>80</sup> *McCormick Foundation*, supra, at 185.

<sup>81</sup> *McCormick Foundation*, supra, at 185.

<sup>82</sup> *McCormick Foundation*, supra, at 185.

number of persons. The Tribunal agrees with Respondent that it appears at this time that Mr. Murphy, who owns the adjacent private residence, other private neighboring landowners who lock their gates, and UPLC members are the only people who benefit from the property without restriction.

*In Michigan Wildlife and Forest Preservation Foundation v Dover Township*,<sup>83</sup> petitioner owned 350 undeveloped acres of land. It argued that the act of preserving the land in its natural state is its gift for the benefit of an indefinite number of persons and qualifies it as a charitable organization entitled to tax-exempt status. The Court referenced *Kalamazoo Nature Center v Cooper Township*,<sup>84</sup> wherein petitioner sought a charitable exemption for 31 acres of undeveloped land. The nature center, which had 8,000 members, and 10,000 volunteer hours per year, was organized, “[t]o develop in people and especially children a better understanding and appreciation of our natural surroundings and of the problems of wise management of our natural resources.”<sup>85</sup> Other purposes included maintaining natural areas, sponsoring educational programs, ecological research, and working with other agencies concerned with natural history and conservation. Approximately 100,000 people visited the nature center each year. The Court found the property was entitled to a charitable exemption from taxation. The Court also referenced *RCC*, wherein a charitable exemption was granted, but distinguished the property in *Michigan Wildlife*, because in *Kalamazoo* and *RCC*:

the preservation of land in its natural state was combined with a variety of other activities. Here, the facts reveal that petitioner did little more than plant trees in conformance with a forest management plan and grow

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<sup>83</sup> *In Michigan Wildlife and Forest Preservation Foundation v Dover Township*, unpublished *per curiam* opinion of the Court of Appeals, issued June 25, 1999 (Docket No. 209573).

<sup>84</sup> *Kalamazoo Nature Center v Cooper Township*, 104 Mich App 657; 305 NW2d 283 (1981)

<sup>85</sup> *Kalamazoo*, *supra*, at 659.

certain crops to feed native wildlife. Petitioner does not conduct any educational programs or tours of the property. Although petitioner is maintaining the land according to a plan given it by the DNR, petitioner does not appear to be actively assisting the department in any way. Thus, the facts here are distinguishable from those in *Kalamazoo, supra*, and *Moorland, supra*, and support the Tax Tribunal's finding that petitioner was not a charitable organization for exemption purposes because it had not bestowed a "gift" by merely preserving the land in its present state.

In the present case, Petitioner conducts extremely limited "tours" of the property and does not maintain it according to a DNR plan nor assist the DNR in any way. It does not appear that Petitioner conducts any educational programs on a regular basis, nor is it open to the public without restriction. As such, it is distinguishable from the properties in *Kalamazoo, RCC*, and *McCormick Foundation* and is more like the property in *Michigan Wildlife*.<sup>86</sup> The Tribunal finds Petitioner fails *Wexford* factors two and four because it is not organized chiefly, if not solely, for charity and it does not lessen the burdens of government. Further, because it offers no charity, factor three has little bearing, as Petitioner cannot be found to "offer its *charity* on a discriminatory basis." Under factor three, any restrictions or conditions must bear a reasonable relationship to the organization's legitimate *charitable* goals. The Court in *Baruch v Tittabawassee Township* found "[w]hether a charitable institution has a permissible charitable goal is evaluated in factor four . . . ."<sup>87</sup>

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<sup>86</sup> Respondent cites *Lake Louise Christian Community v Hudson Township*, 10 Mich App 573; 159 NW2d 849 (1968) with regard to MCL 211.7o. The case is related to the religious and educational exemptions from taxation, however, the Court did find 1,300 acres, without facilities, adjacent to 300 acres of exempt property, with facilities, was not entitled to an exemption from taxation because beneficial activity, such as nature study hikes, was too infrequent.

<sup>87</sup> *Baruch SLS, Inc. v Tittabawassee Township*, 500 Mich 345, 357-358; 901 NW2d 843 (2017).

It is unnecessary to discuss Wexford factors five and six, as all six factors must be met for an organization to be considered a charitable institution pursuant to MCL 211.7o, however the Tribunal will, nevertheless briefly, address the factors.

*(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.*

There is no indication that Petitioner charges for its “services”.

*(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 found Petitioner to be a charitable institution, the amount of charity it gives is not relevant.

The Tribunal further finds it is not necessary to discuss whether the property is occupied by a nonprofit charitable institution, or occupied solely for the purposes for which that nonprofit charitable institution was incorporated, pursuant to *Wexford*, because, again, the Tribunal finds Petitioner is not a nonprofit charitable institution.

Also, with regard to exemption of the subject property from the payment of ad valorem property taxes, pursuant to MCL 211.7o(5), the property must be that of a nonprofit charitable institution and equally open to all residents of the state. MCL 211.7o(5) states in pertinent part:

*Real property owned by a qualified conservation organization that is held for conservation purposes and that is open to all residents of this state for educational or recreational use, including, but not limited to, low-impact, nondestructive activities such as hiking, bird watching, cross-country skiing, or snowshoeing is exempt from the collection of taxes under this*

*act. As used in this subsection, "qualified conservation organization" means a nonprofit charitable institution or a charitable trust . . .*<sup>88</sup>

Petitioner's property, as noted above, is not open to the public, nor does Petitioner qualify as a nonprofit charitable institution.

The Tribunal has considered affidavits and other documentary evidence, viewed in the light most favorable to the nonmoving parties, and they show that there is no genuine issue as to any material fact. As such, the Tribunal finds Respondent is entitled to judgment as a matter of law pursuant to MCR 2.116(C)(10) and Petitioner is not entitled to judgment as a matter of law. Respondent is not, however, entitled to judgment under MCR 2.116(C)(8) because Petitioner has not failed to state a claim on which relief can be granted.

### **JUDGMENT**

IT IS ORDERED that Respondent's Motion for Summary Disposition pursuant to MCR 2.116(C)(10) is GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition pursuant to MCR 2.116(C)(8) is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition pursuant to MCR 2.116(C)(10) is DENIED.

IT IS FURTHER ORDERED that Petitioner's exemption appeal for the 2019 tax year is SEVERED and ASSIGNED to MTT Docket No. 19-000636.

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<sup>88</sup> Emphasis added.

IT IS FURTHER ORDERED that Petitioner shall file and serve an Entire Tribunal petition for MTT Docket No. 19-000636 within 28 days of the entry of this Order.<sup>89</sup> **A copy of this Order must be attached to the petition.** This order serves as the Notice of Docket; therefore, Respondent shall file its answer to the petition within 28 days of service of the petition.

Failure to comply with this Order may result in Petitioner being held in default in MTT Docket No. 19-000636 and dismissal of that case, as provided by TTR 231.<sup>90</sup>

This Final Opinion and Judgment resolves the last pending claim and closes the 2017 and 2018 exemption appeal 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.<sup>91</sup> 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 residence exemption of at least 50% at the time the petition was filed or the decision

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<sup>89</sup> See TTR 221 and 227.

<sup>90</sup> See also MCL 205.732.

<sup>91</sup> See TTR 261 and 257.



relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.<sup>92</sup> 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.<sup>93</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>94</sup>

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.”<sup>95</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>96</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>97</sup>

By 

Entered: April 30, 2019

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<sup>92</sup> See TTR 217 and 267.

<sup>93</sup> See TTR 261 and 225.

<sup>94</sup> See TTR 261 and 257.

<sup>95</sup> See MCL 205.753 and MCR 7.204.

<sup>96</sup> See TTR 213.

<sup>97</sup> See TTR 217 and 267.