

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Oak Grove Cemetery,
Petitioner,

MTT Docket No. 307475

v

Amber Township,
Respondent.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

INTRODUCTION

A hearing was held in the above-captioned case on July 25, 2007. Petitioner was represented by Mr. James M. Kieszkowski, President of Oak Grove Cemetery. Respondent was represented by Mr. Devon Hall, Assessor for Respondent Amber Township.

BACKGROUND

On June 16, 2003, Petitioner purchased the subject property, parcel number 53-001-016-016-00, for the purpose of cemetery development. Respondent issued a notice of assessment for the 2004 tax year, assessing the subject property as vacant commercial property. Petitioner timely protested the 2004 assessment of the subject property to Respondent's Board of Review citing "to remove from tax rolls for cemetery development" as the reason for protest. The Board of Review denied Petitioner's request stating "on December 31, 2003, this property had no evidence of cemetery in use." On June 3, 2004, Petitioner filed a letter with the Tribunal requesting a "re-determination" of the property's taxable status. Petitioner filed a formal petition with the Tribunal on June 28, 2004. On December 28, 2004, Respondent filed an answer with

attachment. On December 28, 2006, the Tribunal issued an Order Transferring the Case to the Entire Tribunal.

PETITIONER'S CONTENTIONS

Petitioner offered the following exhibits which were admitted without objection:

- OG1 Warranty deed
- OG2 Future Advance Mortgage
- OG3 MCL.456.109; Sec 9
- OG4 MCL 211.7t
- OG5-1 State Of Michigan (Section 7t) Bulletin #7, Cemetery Exempt
- OG5-2 MCL 456.205
- OG-6 Michigan Dept of Labor and Economic Growth Nonprofit Corporation update
- OG-7 Michigan Dept of Labor and Economic Growth Registration to operate Cemetery
- OG-8 Soil Erosion and Sediment Control
- OG-9 Proposed Entrance for Oak Grove Cemetery
- OG10 Cemetery Regulation Act; MCL 456.522(f)
- OG11-1 Picture of Mausoleum for sale
- OG11-2 Invoice from Town Bros setting of Mausoleum
- OG11-3 Invoice from Seng Crane Transportation of Mausoleum
- OG12-1 Petition to Board of Review
- OG12-2 2nd page of Petition to Board of Review
- OG13 Picture of Veterans memorial
- OG14 Hand drawn Irrigation Map
- OG 15 Picture of Proposed site for Crematory Building
- OG16 Design of Columbarium, Mausoleum and Office
- OG17 Hand drawn site plan

James M. Kieszkowski, President of Oak Grove Cemetery, testified on behalf of Petitioner. Mr. Kieszkowski contends that Oak Grove Cemetery “is licensed in the State of Michigan to operate a cemetery, and ...we have done that in ... Amber Township.”¹ Petitioner further contends that “through our purchase of that property and the direction that we’re going because we are, quote, a ‘cemetery,’ we believe that the property should be taken off the tax rolls and exempt under MCL 211.7t.”² Mr. Kieszkowski testified that the subject property was purchased on June 16,

¹ Transcript p 11, ll 7-10

² Transcript p 11, ll 10-14

2003 solely for the purpose of establishing a cemetery. Petitioner asserted that the language in MCL 211.7t, under which Petitioner is claiming exemption, provides that the exemption is allowed while the property is “reserved” and being prepared for use as a cemetery. Mr. Kieszkowski testified that it is his belief that “the problem actually exists [and]... Amber Township would agree to take the taxation off once they drive by and see a stone out there.”³ Mr. Kieszkowski offered Petitioner’s Nonprofit Corporation Information Update,⁴ filed with the Department of Labor and Economic Growth, indicating the purpose of the Corporation is to “maintain a perpetual care cemetery.”⁵ Mr. Kieszkowski asserts that under MCL 211.7t, the property qualified for exemption when Petitioner acquired land and continues to be exempt while Petitioner holds it reserved for future cemetery development. Mr. Kieszkowski contends that actual use, meaning burials on site, is not necessary to qualify for the cemetery exemption.

Mr. Kieszkowski stated that he had begun moving over 30,000 yards of soil on June 3, 2004 and pursuant to a soil erosion permit. The permit, invoice for crane use, and a trucking bill all relating to the preparation for the cemetery were presented. Petitioner argued that the subject property will not resemble a typical cemetery as it will never have any bodies in the ground but that it is still a cemetery eligible for exemption. Petitioner contended that over the next several years, additional improvements will be made to prepare for the future use of the land as a cemetery with a crematory and mausoleums. Petitioner stated that the future exclusive use of the subject property is as a cemetery.

³ Transcript p 17, ll 11-14

⁴ Petitioner’s Exhibit OG6

⁵ Transcript p 19, l 20

Petitioner provided several photos showing improvements made to the property to prepare for the future use as a cemetery. The photos include leveled land, grass, lamp posts, a veteran's memorial, and a paved driveway.

RESPONDENT'S CONTENTIONS

Respondent offered the following exhibits:

- R1 333 Mich 700; Saginaw Hebrew Benevolent Society v Budd; Petition of Gundry; pages 700 through 709 Incl.
- R2 127 Mich 125; Avery v Forest Lawn Cemetery Co.; Pages 125 through 130 Incl.
- R3 S.G. Cemetery Association, Inc. v City of Sterling Heights; Michigan Tax Tribunal Docket # 275542; November 09, 2001; Pages 1 through 20 Incl.
- R4 Page 20 of 32, Michigan Tax Tribunal Docket Nos. 310622 and 310850; Girl Scouts of Metro Detroit v Township of Putnam, Township of Metamora
- R5 192 Mich 553; Woodmere Cemetery Association v City of Detroit; Pages 553 through 566 Incl.
- R6 260 Mich 238; White Chapel Memorial Association v Wilson; Pages 238 through 245 Incl.
- R7 189 Mich 408; St. Joseph's Church v City of Detroit; Pages 408 through 415 Incl.
- R8 MCL 211.7t; General Property Tax Act, Act 206 of 1893 (Excerpt) Sec. 7t
- R9 MCL 456.101; Rural Cemetery Corporations Act 12 of 1869 (Excerpt) Sec. 1
- R10 MCL 456.108; Rural Cemetery Corporations Act 12 of 1869 (Excerpt) Sec. 8
- R11 Mortgage of Subject Property; Dated 26 November 2003; Liber 555 Pages 977 through 981 Incl. Mason County Records
- R12 MCL 456.109, Rural Cemetery Corporations, Act 12 of 1869 (Excerpt) Sec. 9
- R13 MCL 456.533; Cemetery Regulations Act, Act 251 of 1968 (Excerpt) Sec. 13(1)(2)
- R14 MCL 456.535; Cemetery Regulations Act, Act 251 of 1968 (Excerpt) Sec.15(1)
- R15 Subject Property Record Card computer Printout 2004
- R16 March 2004 Amber Township Board of Review Petition for Subject Property
- R17 Subject Property Record Card Computer Printout 2005
- R18 2005 Amber Township Board of Review Listing of all Petitions to come before the March 2005 Amber Township Board of Review
- R19 Subject Property Record Card Computer Printout 2006

- R20 2006 Amber Township Board of Review Petition Regarding Subject Property
- R21 Letter from Petitioner to Amber Township Assessor Dated 05 April 2006
- R22 Subject Property Record Card Computer Printout 2007
- R23 Soil Erosion and Sediment Control Application for Subject Property Dated 08 July 2003
- R24 Copy of Aerial Photograph Section 16, T18N R17W Amber Township, Mason County showing Subject Property
- R25 Hand-drawn sketch, to scale, of area of Subject Property filled and leveled, drawing done by Respondent's Representative, Devon Hall
- R26 Copy of Pages 66 through 67 Incl. Mason County Zoning Ordinance; In effect since 01 November 2003
- R27 Copy of Pages 10 through 13 Incl.; Mason County Zoning Ordinance; In effect on the date of Subject Property's Purchase by Petitioner; 16 June 2003

Petitioner objected to Respondent's exhibits 2, 3, 4, 5, 6, 7, 9, 10, and 12 as irrelevant. Petitioner asserted that at the prehearing conference the Tribunal "explicitly ...stated that the only case that you could find through research that would apply to this tax matter was Respondent's Exhibit 1."⁶ In response, Respondent contended that the Tribunal's direction was a "helpful suggestion."⁷ The Tribunal ruled that the exhibits would be admitted and determine applicability based upon the ability of Respondent to lay a proper foundation. The Tribunal further reminded Respondent that the Tribunal will "balance the credibility of them and take into consideration Mr. Hall's distinguishing these cases – or reconciling the differences in these cases to the facts we have in hand."⁸

Petitioner objected to Respondent's exhibits 9, 10, and 12 as irrelevant. Petitioner asserted that Oak Grove Cemetery "is not governed... [or] regulated [by] the Rural Cemetery Corporation Act, [Act] 12 of 1869, and that we follow the Cemetery... Regulation Act, Act 251 of 1968."⁹

⁶ Transcript p 55, ll 2-5

⁷ Transcript p 56, ll 13-14

⁸ Transcript p 57, ll 13-15

⁹ Transcript p 58, ll 4-11

The Tribunal ruled that the exhibits would be allowed and that the Tribunal would “weigh the credibility”¹⁰ and applicability.

Respondent’s contentions of true cash value, assessed value, state equalized value, and taxable value for the tax years at issue are:

Parcel No. 53-001-016-016-00

Tax Year	TCV	AV	SEV	TV
2004	\$359,600	\$179,800	\$179,800	\$179,800
2005	\$359,600	\$179,800	\$179,800	\$179,800
2006	\$383,600	\$191,800	\$191,800	\$185,733
2007	\$407,600	\$203,800	\$203,800	\$192,605

In its answer, Respondent asserted that there are no improvements whatsoever on the property.

This includes “no improvements of any nature that could even be in any fashion, construed as representing a cemetery or any activity related to a cemetery, as of December 31, 2003.”¹¹

Further, Respondent asserted that it is the opinion of the Assessor and “it was the opinion of the March 2004 Board of Review, that the cogent element in this matter turns on the questions of ‘use’”¹² and that this means “with graves and/or headstones, including headstones only in the case of cremations, and that he has burial plots clearly laid out... .”¹³ At the time of the appeal, it is Respondent’s contention that the subject property is vacant commercial property with a “hope and a plan”¹⁴ to be a cemetery. Respondent contends that MCL 211.7t requires that, in order to be eligible for an exemption, the subject property must be “used exclusively as burial grounds ...

¹⁰ Transcript p 58, l 16

¹¹ Answer, letter attached, p 1

¹² Answer, letter attached, p 1

¹³ Answer, letter attached, p 2

¹⁴ Answer, letter attached, p 1

and the tombs and monuments in the land ... in use for that purpose”¹⁵ and that Petitioner’s claim of “use” will be recognized and implemented at the time that “graves and/or headstones ... and burial plots”¹⁶ exist.

Mr. Devon Hall, Respondent’s Assessor, testified on behalf of Respondent. Mr. Hall first testified that although the Tribunal had suggested that he look to the opinion in *Saginaw Hebrew Benevolent Society v Budd; Petition of Gundry*, 333 Mich 700, 53 NW2d 586, 588 (1952) for guidance in this matter, it was his opinion that the “dissenting opinion in Gundry... should be looked at for assistance in making a decision in the matter before us today.”¹⁷ Mr. Hall further testified that he interpreted that the use, in that case, of the phrase “to preserve and maintain burial place of the dead”¹⁸ by the Supreme Court and the Supreme Court’s citing of other cases in which “there was an existing cemetery to preserve and an existing cemetery to maintain” established the criteria applicable to this matter and, in response to Petitioner’s objections, established the relevance of the cases cited therein.

Mr. Hall testified that “the position of the township in the past was that, you know, the township wanted to see a headstone out there with somebody’s name on it.”¹⁹ Mr. Hall further testified that although he did not agree with that position, the Board of Review had denied Petitioner’s appeal because Petitioner failed to establish eligibility under that criteria. Mr. Hall further asserted that, even if Respondent’s Board of Review position was not upheld, Petitioner should be denied the exemption for all of the following reasons:

¹⁵ Answer, letter attached, p 1

¹⁶ Answer, letter attached, p 1

¹⁷ Transcript p 67, ll 12-15

¹⁸ Transcript p 67, ll 6-7

¹⁹ Transcript p 79, ll 6-8

1. Petitioner in *S.G. Cemetery Association, Inc v City of Sterling Heights*²⁰ did not qualify for exemption and Petitioner in this matter should be denied based on the following:
 - a. “Petitioner relied on 211.7t and also MCL 456.108” and made the same claims.”²¹
 - b. “There is no existing cemetery [and the purchase was] for the purpose of starting one up.”²²
 - c. Petitioner’s position is similar in that “he has vacant land he’s making a claim for.”²³
 - d. Petitioner’s “failure to have gone forward under those statutes and got permission from the Cemetery Commissioner to actually operate – legally operate a cemetery.”²⁴
2. “There’s no demarcation or delineation. There’s no fencing.”²⁵
3. Petitioner did not appear before Respondent’s Board of Review for the 2005 or 2006 tax years.²⁶
4. “There's no cemetery there. There's no cemetery next door to expand into adjacent vacant and contiguous land.”²⁷
5. Petitioner has not “applied to the Cemetery Commissioner and received permission to operate a cemetery. ...so we feel that ... the property is not yet reserved because it is still available to have a change of use by Petitioner’s change of mind.”²⁸

²⁰ Michigan Court of Appeals, July 31, 2003 (unpublished); MTT Docket No. 275542

²¹ Transcript p 69, ll 7-8

²² Transcript p 69, ll 21-22

²³ Transcript p 69, ll 15-16

²⁴ Transcript p 78, ll 11-14

²⁵ Transcript p 85, ll 2-37-8

²⁶ Transcript p 98, ll 10-12

²⁷ Transcript p 102, ll 14-16

²⁸ Transcript p 102, l 21- p 103, l 21 – 18

Mr. Hall argued that the requirement under MCL 211.7t that a site be both “reserved” and “exclusively” used for cemetery purposes is not met where no burial plots are available for sale.

Mr. Hall further argued that Petitioner does not meet the requirements of MCL 456.108 because the land is not enclosed or set apart for cemetery purposes. Mr. Hall contends that Petitioner also does not qualify for the exemption under MCL 456.205, because Petitioner has not enclosed its property or, in the alternative, does not have a crematorium on the property.

Mr. Hall further testified that it was his position that *S.G. Cemetery Association, Inc v City of Sterling Heights*,²⁹ should be used to establish criteria for determining eligibility in the matter. In that case, Petitioner “had not actually gone forward to do anything on that particular property they were asking a tax exemption for. ... it just remained vacant land.” In that case, the Tribunal upheld the denial of an exemption under MCL 211.7t. The Tribunal’s decision was affirmed on appeal.

Mr. Hall also testified that Petitioner should be denied the exemption for the 2005 and 2006 tax years because Petitioner did not appear before or protest to Respondent’s Board of Review for 2005 or 2006.

FINDINGS OF FACT

The Tribunal's factual findings must be supported by competent, material, and substantial evidence. *Antisdale v Galesburg*, 420 Mich 265; 362 NW2d 632 (1984). In that regard, the Tribunal finds that Petitioner acquired the subject property, parcel no. 53-001-016-016-00, on June 16, 2003. Petitioner is incorporated as a non profit cemetery association and incorporated under the Cemetery Corporations Act, 1855 PA 87. Petitioner was incorporated by fewer than 10

²⁹ Michigan Court of Appeals, July 31, 2003 (unpublished); MTT Docket No. 275542

“persons.” Petitioner purchased the subject property with the intent of using the land for cemetery purposes. Petitioner requested of Respondent’s 2004 Board of Review that “the property be removed from the tax rolls because it was being used for cemetery purposes as described under MCL 211.7t.”³⁰

Petitioner erected a sign designating the property as Oak Grove Cemetery in 2003, the year in which the property was purchased, and made improvements to the property during all tax years at issue. Petitioner submitted credible evidence that Petitioner has “done the drainage;”³¹ leveled the property; prepared and paved the entrance; and put in a sprinkler system. A mausoleum was built in 2003 and a “sign [is] up saying that Oak Grove Cemetery is selling this mausoleum”³² A Veteran’s Memorial was erected on the property and a temporary office has been built. All of these improvements were completed under Petitioner’s initial soil erosion permit. Petitioner “took out another permit ...[for] another three or four acres.”³³ Petitioner has provided pictures, soil erosion permits, and building permits in support of its contention that the subject property is being prepared for future use as a cemetery.

Petitioner is a cemetery corporation organized pursuant to the Cemetery Corporations Act, 1855 PA 87, MCL 456.1 et seq. Petitioner is not, and does not claim to be, a cemetery under the Rural Cemetery Corporations Act, 1869 PA 12, MCL 456.101 et seq. However, Respondent inexplicably continued to rely on the argument that Petitioner did not meet the criteria of the Rural Cemetery Corporations Act. As Petitioner is not incorporated under that act, an inquiry

³⁰ Respondent’s exhibit R 20

³¹ Transcript p 43, l 17

³² Transcript p 44, ll 15-16

³³ Transcript p 44, ll 20-22

into whether Petitioner complied with that act is unnecessary and irrelevant. That being the case and despite Respondent's emphasis on this point, whether Petitioner enclosed the area designated as the cemetery, as required under the Rural Cemetery Corporations Act, 1869 PA 12, is also irrelevant as enclosure is not a requirement under the Cemetery Corporations Act, 1855 PA 87.

Petitioner is a corporation with an ongoing cemetery operation in Manistee which has been in operation since 1888. The subject property is an expansion of that cemetery operation. Petitioner contends that the Cemetery Commission, in response to his inquiry related to the need for a separate certificate for the Amber Township cemetery, allowed Petitioner to extend its existing license for the cemetery in Manistee as Petitioner prepared the property and until the subject property is ready for actual use as a cemetery. Petitioner plans to use the subject property as a crematory and mausoleum and may not ever have actual physical burials, with visible headstones, on the site.

Petitioner has not applied for any building permits for activities on the subject property.

Respondent has not denied any building permits or cited Petitioner for not having a required permit for any activity that would require such a permit. This issue is not properly before the Tribunal as there is no final decision or action by Respondent for Petitioner to have appealed related to building permits.

Petitioner has not requested any zoning variance for a purpose for which the subject property is being used or for the intended use as a cemetery. Respondent has not denied any zoning variance request by Petitioner and has not cited Petitioner for any activity that would require such a

variance. This issue is not properly before the Tribunal as there is no final decision or action by Respondent for Petitioner to have appealed related to zoning variances or use that is not permitted.

Additionally, Respondent's reliance on the dissent in *Petition of Gundry*³⁴ lacks merit. Beyond the basic premise that a dissent does not establish precedent, the opinion in that case is clear and unambiguous. The Supreme Court's standard for review of cemetery exemptions were established with this case and have not changed since it was issued. The case has not been overturned, nor has the statutory provision on which it was decided been substantively amended. Further, with Bulletin 7,³⁵ issued by the State Tax Commission in 1991, and which Respondent is obligated to follow, affirmed the criteria established in *Petition of Gundry*.³⁶

Additionally, Respondent relied heavily on *S.G. Cemetery Association, Inc., v. City of Sterling Heights*.³⁷ That reliance is also misplaced. The facts in that case are so significantly distinguishable from those in the instant matter as to make that case of no value to the Tribunal in its deliberations here. More specifically, in that case, Petitioner was a cemetery incorporated under the Rural Cemetery Corporations Act, 1869 PA 12. Enclosure, as required under that act,³⁸ had initially existed but had been torn down. Further, Petitioner had an existing cemetery, purchased the adjacent property, and continued cemetery functions only at the previously existing cemetery. At the newly purchased property, "[n]o lots had been sold... [and] the Association had never advertised and the only sign posted anywhere was one sign on the one-

³⁴ *Saginaw Hebrew Benevolent Society v Budd; Petition of Gundry*, 333 Mich 700 (1952)

³⁵ State Of Michigan (Section 7t) Bulletin #7, Cemetery Exempt

³⁶ *Saginaw Hebrew Benevolent Society v Budd; Petition of Gundry*, 333 Mich 700 (1952)

³⁷ Michigan Court of Appeals, July 31, 2003 (unpublished); MTT Docket No. 275542

³⁸ MCL 459.102

acre parcel that was the original Sterling Grove Cemetery.”³⁹ Petitioner purchased the land in question in 1973 and for 27 years, “no formal plan or design for laying out the lands...was ever adopted by the board of...the Association.”⁴⁰ In the instant case, Petitioner purchased the subject property in 2003, erected a sign on the property in that year, secured permits, leveled the property, put in a driveway and building, and secured permits for further improvements in the year of purchase and during the subsequent two tax years, which are here at issue.

Respondent also relied on cases decided in 1901, 1915, 1916, and 1932.⁴¹ These decisions were issued pursuant to different statutory provisions, in previous compilations of the Michigan Statutes. Further, the issue in *Avery*⁴² and *Woodmere Cemetery Association*⁴³ related to whether cemetery land could be levied against and sold to collect special assessments and delinquent taxes, quite a different issue than the instant issue. Additionally, the *White Chapel Memorial Association*⁴⁴ case dealt with the need to enclose the cemetery property; again, not an issue in this matter. And the *St. Joseph's Church*⁴⁵ case was related to the exemption of a parsonage, which requires analysis under different statutory provisions.

Respondent also pointed to the general rule that exemptions are to be strictly construed in favor of the taxing authority. Respondent forgets that, as to cemeteries, the Court has clearly reversed this presumption.⁴⁶

³⁹ Michigan Court of Appeals, July 31, 2003 (unpublished); MTT Docket No. 275542

⁴⁰ Michigan Court of Appeals, July 31, 2003 (unpublished); MTT Docket No. 275542

⁴¹ *Avery v Forest Lawn Cemetery Co.* 127 Mich 125; *Woodmere Cemetery Association v City of Detroit*, 192 Mich 553; *White Chapel Memorial Association v Willson*, 260 Mich 238; and *St. Joseph's Church v City of Detroit*, 189 Mich 408

⁴² *Avery v Forest Lawn Cemetery Co.*, 127 Mich 125

⁴³ *Woodmere Cemetery Association v City of Detroit*, 192 Mich 553

⁴⁴ *White Chapel Memorial Association v Willson*, 260 Mich 238

⁴⁵ *St. Joseph's Church v City of Detroit*, 189 Mich 408

⁴⁶ *Saginaw Hebrew Benevolent Society v Budd; Petition of Gundry*, 333 Mich 700 (1952);

CONCLUSIONS OF LAW

Generally, “[i]n Michigan, exemptions from taxation are to be strictly construed in favor of the taxing unit.” *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 298 NW2d 422 (1980). The petitioner bears the burden of establishing beyond a reasonable doubt that the class of exemption claimed was intended by the Legislature if the class has not already been established by statute or through case law. *Detroit v Detroit Commercial College*, 322 Mich 142, 148-149, 33 NW2d 737, 739 (1948). “[Petitioner’s] burden of proof in establishing that it was within an already established class of property entitled to charitable use exemption from property tax [is] proof by a preponderance of [the] evidence, rather than proof beyond a reasonable doubt.” *Holland Home v City of Grand Rapids*, 219 Mich App 384, 557 NW2d 118 (1996). Therefore, it is Petitioner’s burden to establish that it is more likely than not that the facts and evidence support its position that the requirements for an exemption have been met. Michigan’s Supreme Court has indicated that the reason for this heightened burden is because “[exemption] from taxation effects the unequal removal of the burden generally placed on all landowners to share in the support of local government [and] [s]ince exemption is the antithesis of tax equality, exemption statutes are to be strictly construed in favor of the taxing unit.” *Ladies Literary Club, supra*, 409 Mich at 753.

However, the Court in *Saginaw Hebrew Benevolent Society v Budd; Petition of Gundry*, 333 Mich 700 (1952), stated that, as related to cemetery exemptions unlike the standard for other exemptions, the Court is “inclined toward liberality in construing this exemption because of the expressed policy we have in ‘common with the universal sentiment of mankind, to preserve and maintain the burial places of the dead.’ *Avery v Forest Lawn Cemetery Co.*, 127 Mich 125;

Avery v Forest Lawn Cemetery Co., 127 Mich 125; *Woodmere Cemetery Association v City of Detroit*, 192 Mich 553; *White Chapel Memorial Association v Willson*, 260 Mich 238

Woodmere Cemetery Association v City of Detroit, 192 Mich 553; *White Chapel memorial Association v Willson*, 260 Mich 238....⁴⁷

MCL 211.7t provides, in pertinent part:

- (1) Land used exclusively as burial grounds, the rights of burial, and the tombs and monuments in the land, while reserved and in use for that purpose is exempt from taxation under this act. The stock of a corporation owning a burial ground shall not be exempt.

The State Tax Commission in its Bulletin No. 7 “Cemetery Property Exemption and Taxable Business Property” issued October 7, 1991, interprets section 211.7t, providing “[...]and held by a cemetery that is needed and intended for future use for burial purposes is also exempt.”

Section 1 of 1855 PA 87, the Cemetery Corporations Act, MCL 456.1, provides,

That any 5 or more persons ... may organize themselves into a corporation ... for the purpose of acquiring land for a burial ground for the dead, to dispose of rights of burial therein, and to fence, improve, ornament and keep the same in suitable condition, in the manner hereinafter provided.

The Rural Cemetery Corporations Act, 1869 PA 12, MCL 456.101 et seq, provides,

Sec. 1. That any number of persons not less than 10, who shall by articles of agreement in writing, associate themselves according to the provisions of this act, under any name assumed by them, for the purpose of purchasing land for a cemetery in this state, and for fencing, laying out, improving, maintaining and establishing the same and who shall comply with sections 2 and 3 of this act, shall, with their successors and assigns, constitute a body politic or corporate, under the name assumed by them in their articles of association...

...

Sec. 8. All the lands of said corporation enclosed and set apart for cemetery purposes, and all rights of burial therein, shall be wholly exempt from taxation of any kind whatsoever.

Sec. 9. No mortgage, or other lien or incumbrance, shall be executed upon any of the lands of such corporation, actually used for burial purposes, and no rights of burial upon any mortgaged lands of such corporation, lands which are delinquent

⁴⁷ *Saginaw Hebrew Benevolent Society v Budd; Petition of Gundry*, 333 Mich 700 (1952), at 704

for taxes or special assessments or lands to which such corporation does not have title in fee, shall at any time be granted or sold by it.

Sec. 12 of the Cemetery Regulation Act, 1968 PA 241, MCL 456.532, provides, in pertinent part,

- (1) A person shall not establish a cemetery without a valid permit or operate an existing cemetery except under a valid registration issued under this act.
- (2) If a person proposes to purchase or otherwise acquire a controlling interest in an *existing cemetery company*, that person shall first apply to the commissioner for a certificate of approval of a proposed change of control of a cemetery company. (emphasis added)...

Sec. 13 of the Cemetery Regulation Act, 1968 PA 241, MCL 456.532(1), provides, in pertinent part,

Any person desiring to establish a cemetery shall file with the commissioner, on forms furnished by the commissioner, an application for a permit to establish a cemetery. The application shall be accompanied by an investigation fee of \$500.00.

Section 37(5) of the Tax Tribunal Act, 1973 PA 186, MCL 205.737, provides:

- (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.

The Supreme Court in *Saginaw Hebrew Benevolent Society v; Budd; Petition of Gundry*, 333 Mich 700 (1952), establishes the standards by which eligibility for a cemetery exemption under MCL 211.7u is determined. The Court, in that case, ruled, that “[w]hile actual burials had not yet occurred on the disputed land at the time of trial, plaintiff had purchased it to take care of the

future needs of the cemetery.”⁴⁸ The Court pointed out that there was a “shack, the use of which was permitted by plaintiff to the cemetery caretaker....”⁴⁹ And that even though, in that case, the plaintiff was not properly organized as a cemetery because of a change in legislation, the Court would “deem the legislative intent and purpose ... to be of like import”⁵⁰ and did not deny plaintiff’s exemption on that ground. The Court went on to state that “[n]owhere does the legislative intent appear to exempt from taxation only the portions of cemeteries actually constituting graves and to subject the remainder to taxation. It is clearly contemplated that the exemption shall apply to lots intended for future burials.”⁵¹ The Court clear enunciated the rule that land intended for future burials is exempt from taxation. Moreover, the State Tax Commission in its Bulletin 7 unequivocally pronounces that land held by a cemetery that is needed and intended for future use for burial purposes is exempt. Respondent does not make the argument, and does not assert, that the subject property is not intended for future burials. Respondent does not make the argument that Petitioner is not a cemetery corporation or that Petitioner does not operate cemeteries. Respondent states, in its reason for denial of the exemption, only that there are not headstones, and thus the property is not exempt. Respondent’s reason for denial is without merit in light of the Supreme Court’s ruling and the State Tax Commission’s Bulletin.

Respondent argued that *Petition of Gundry* requires that Petitioner enclose the property to qualify for exemption. While the Supreme Court did so state *in that case*, the requirement for enclosure is found under the Rural Cemetery Corporations Act, 1869 PA 12, the act under which

⁴⁸ *Saginaw Hebrew Benevolent Society v Budd; Petition of Gundry*, 333 Mich 700, 704, 53 NW2d 586, 588 (1952).

⁴⁹ *Id* at 704

⁵⁰ *Id* at 704

⁵¹ *Saginaw Hebrew Benevolent Society v Budd; Petition of Gundry*, 333 Mich 700, 704, 53 NW2d 586, 588 (1952)

Petitioner *in that case* was incorporated. Again, not the act under which Petitioner, in this matter, is incorporated. Petitioner is not required to enclose the property intended for use as a cemetery to qualify for exemption.

Petitioner is a cemetery corporation as defined under MCL 456.1. Petitioner has filed all of the required documentation. Petitioner credibly asserts that the Cemetery Commissioner did not require a filing separate for the Amber Township cemetery and that Petitioner's existing corporate filing for the Manistee cemetery was adequate during the tax years at issue.

Further, and contrary to Respondent's assertion, Petitioner's protest to the 2004 March Board of Review and subsequent filing of its appeal with the Tribunal, allows the Tribunal to automatically include the subsequent tax years without the requirement of a protest of each subsequent tax year to Respondent's Board of Review.⁵²

Based upon the above findings of fact and the applicable law, and acknowledging the Supreme Court's inclination "toward liberality in construing this [cemetery] exemption because of the expressed policy we have in 'common with the universal sentiment of mankind, to preserve and maintain the burial places of the dead,'"⁵³ the Tribunal finds that Respondent's Board of Review improperly denied a cemetery exemption to Petitioner under MCL 211.7t for the 2004, 2005, and 2006 tax years. Therefore, the Tribunal concludes that Petitioner is entitled to an exemption pursuant to MCL 211.7t for the subject property for the 2004, 2005, 2006, and 2007 tax years.

⁵² MCL 205.737(5)

⁵³ *Saginaw Hebrew Benevolent Society v Budd; Petition of Gundry*, 333 Mich 700 (1952); *Avery v Forest Lawn Cemetery Co.*, 127 Mich 125; *Woodmere Cemetery Association v City of Detroit*, 192 Mich 553; *White Chapel Memorial Association v Willson*, 260 Mich 238

JUDGMENT

IT IS ORDERED that the parcel number 53-001-016-016-00 is exempt from taxation pursuant to MCL 211.7t for tax years 2004, 2005, 2006, and 2007.

IT IS FURTHER ORDERED that the true cash values, assessed values, state equalized values, and taxable values of the subject property is as follows:

Parcel No. 53-001-016-016-00

Tax Year	TCV	AV	SEV	TV
2004	\$359,625	\$179,800	\$179,800	\$0
2005	\$359,625	\$179,800	\$179,800	\$0
2006	\$383,600	\$191,800	\$191,800	\$0
2007	\$407,600	\$203,800	\$203,800	\$0

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 assessed and taxable values as finally shown in the Conclusion section of this Final Opinion and Judgment within 90 days of the entry of this Final Opinion and Judgment, subject to the processes of equalization. To the extent that the 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 as required by this Final Opinion and Judgment within 90 days of the 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 of 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. As provided by 1994 PA 254 and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of the 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After December 1, 1995, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ii) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (iii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (iv) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (v) after December 31, 2006, at the rate of 5.42% for calendar year 2007, and (vi) after December 31, 2007, at the rate of 5.81% for calendar year 2008.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: December 30, 2008
Imm/RJA

By: Rachel J. Asbury