

STATE OF MICHIGAN
COURT OF APPEALS

WILLARD G. PIERCE and JESSIE M. PIERCE
FOUNDATION, d/b/a PIERCE CEDAR CREEK
INSTITUTE,

Petitioner-Appellant,

v

BALTIMORE TOWNSHIP,

Respondent-Appellee,

and

HOPE TOWNSHIP,

Amicus curiae.

UNPUBLISHED
November 2, 2004

No. 247422
Michigan Tax Tribunal
LC No. 00-285744

WILLARD G. PIERCE and JESSIE M. PIERCE
FOUNDATION, d/b/a PIERCE CEDAR CREEK
INSTITUTE,

Petitioner-Appellant,

v

BALTIMORE TOWNSHIP,

Respondent-Appellee,

and

HOPE TOWNSHIP,

Amicus curiae.

No. 247425
Michigan Tax Tribunal
LC No. 00-286171

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal's opinion and judgment denying it a charitable institution exemption under MCL 211.7o for certain real and personal property for the 2001 and 2002 tax years. We affirm, in part, and reverse, in part.

Petitioner is a nonprofit¹ environmental education and conservation institute located in Barry County. Petitioner owns approximately 605 acres of real property. In Docket No. 247422, the Tribunal denied petitioner's claimed charitable institution exemption for approximately 555 acres of real property for the 2001 and 2002 tax years. In Docket No. 247425, the Tribunal denied petitioner's claimed charitable institution exemption for approximately fifty acres of real property for the 2001 tax year, but granted the exemption for the 2002 tax year. The cases were consolidated before the Tribunal and have been consolidated for this Court's consideration.

Petitioner's mission is:

to provide ecological education for adult environmental professionals, students, and interested nonprofessionals through classroom and outdoor education and research. This education will foster stewardship of ecosystems and species by way of preservation, management, and restoration of natural landscapes.

Petitioner's articles of incorporation² state, in relevant part, that petitioner's purpose is "[t]o receive and maintain fund or funds of real or personal property, or both, and, subject to the restrictions and limitations hereinafter set forth, to use and apply the income therefrom and the principal thereof exclusively for charitable, religious, scientific, literary or educational purposes" According to petitioner's "Public Use Policy," one of petitioner's "founding principles is the proposition that no individuals should be excluded from enjoying opportunities it provides."

The real property at issue in this case includes a 555-acre parcel and a fifty-acre parcel. The 555-acre parcel houses petitioner's visitor's center, an education building, a research laboratory, a residence for petitioner's on-site residence manager, lodging units, and approximately 5.5 miles of hiking trails. This parcel, which is actually comprised of four contiguous parcels, is burdened by a conservation easement benefiting the Southwest Michigan Land Conservancy. The primary purpose of the conservation easement is to "assure[] that the Property will be perpetually preserved in its predominately natural, scenic, historic, agricultural, forested, open space condition." Under the terms of the conservation easement, petitioner must "[p]reserve[] . . . the Property in its natural state for the environmental education of the general public." According to the easement, the burdened property "is preserved pursuant to a clearly

¹ Petitioner is exempt from federal taxation under § 501(c)(3) of the Internal Revenue Code. 26 USC 501(c)(3). However, an exemption claimant's income tax status does not predetermine the taxable status of its Michigan property. *American Concrete Institute v Michigan State Tax Comm'n*, 12 Mich App 595, 605; 163 NW2d 508 (1968).

² The articles of incorporation are actually the foundation's, not the institute's, articles of incorporation. However, petitioner filed a certificate of assumed name with the Department of Consumer and Industry Services indicating that "The Willard G. Pierce and Jessie M. Pierce Foundation" was doing business under the assumed name of the "Pierce Cedar Creek Institute."

delineated federal, state or local conservation policy and yields a significant public benefit.” The fifty-acre parcel is an ecologically undisturbed parcel of real property that contains a 150-foot deep glacially scoured gorge and a hiking trail. There are no buildings on the fifty-acre parcel.

Petitioner filed separate petitions with the Tribunal seeking a charitable institution exemption for the 555-acre parcel and the fifty-acre parcel. The Tribunal held a hearing and denied petitioner’s claimed charitable institution exemption, in part, and granted it, in part, in an opinion and judgment dated February 28, 2003. In Docket No. 247422, for the 555-acres of property, the Tribunal denied the exemption for both the 2001 and 2002 tax years. The Tribunal also denied petitioner’s request for revisions in the taxable, true cash, and assessed values of petitioner’s personal property. In Docket No. 247425, for the fifty-acre parcel of property, the Tribunal denied the exemption for the 2001 tax year, but granted it for the 2002 tax year.

I

“Absent fraud, this Court’s review of a Tax Tribunal decision is limited to determining whether the tribunal made an error of law or adopted a wrong legal principle.” *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). Factual findings of the Tribunal will be upheld “unless they are not supported by competent, material, and substantial evidence.” *Id.* “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.” *Id.* The “[f]ailure to base a decision on competent, material, and substantial evidence constitutes an error of law requiring reversal. *Id.*

Tax exemptions are disfavored and are strictly construed against the taxpayer. *Guardian Industries Corp v Dep’t of Treasury*, 243 Mich App 244, 249; 621 NW2d 450 (2000). “[T]he burden of proving an entitlement to an exemption is on the party claiming the right to the exemption. *Id.* The General Property Tax Act provides that all real and personal property within the jurisdiction of the state of Michigan and not expressly exempted is subject to taxation. MCL 211.1. MCL 211.7o provides an exemption from property taxation for nonprofit charitable institutions. Specifically, MCL 211.7o(1) provides:

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 it was incorporated is exempt from the collection of taxes under this act.

To qualify for a charitable institution exemption under MCL 211.7o(1), the following requirements must be met:

- ‘(1) The real estate must be owned and occupied by the exemption claimant;
- (2) The exemption claimant must be a library, benevolent, charitable, educational or scientific institution;

(3) The claimant must have been incorporated under the laws of this State;[³]

(4) 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.’ [*Holland Home v Grand Rapids*, 219 Mich App 384, 396-397; 557 NW2d 118 (1996), quoting *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 751; 298 NW2d 422 (1980), quoting *Engineering Society of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944).]

The proper test for determining whether the charitable institution exemption applies focuses on the definition of the word “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*.’ [*Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 671; 378 NW2d 737 (1985), quoting *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), and cases cited therein. (Emphasis in original.)]

In rejecting petitioner’s claimed exemption for the 2001 tax year in both Docket Nos. 247422 and 247425, the Tribunal determined that because the institute was not fully constructed and operational as of December 31, 2000,⁴ petitioner had not occupied the property and therefore did not satisfy the first requirement of the three-part test articulated above. In rejecting petitioner’s claimed exemption for the 555-acre parcel for the 2002 tax year in Docket No. 247422, the Tribunal held that petitioner was not a charitable institution and therefore did not satisfy the second requirement of the three-part test articulated above.

II

We first address petitioner’s argument that the Tribunal erred in finding that petitioner was not entitled to a charitable institution exemption for both the 555-acre parcel and the fifty-acre parcel for the 2001 tax year based on its conclusion that petitioner did not physically occupy the property as of December 31, 2000. In concluding that petitioner did not occupy the property

³ While petitioner was incorporated under the laws of the state of Michigan, this Court has held that this requirement is unconstitutional because it denies equal protection to corporations incorporated in other states. *McCormick Foundation v Wawatam Twp*, 186 Mich App 511, 514-515; 465 NW2d 14 (1990).

⁴ The taxable status of real and personal property “for a tax year shall be determined as of each December 31 of the immediately preceding year.” MCL 211.2(2).

for the 2001 tax year, the Tribunal found that petitioner's facilities were not completed or operational as of December 31, 2000. The record supports the Tribunal's conclusion in this regard. Although some of petitioner's buildings had been completed as of December 31, 2000, petitioner's Strategic Plan for 2001-2005, which was prepared in April 2001, indicated that "[t]he Institute is in the very early stages of its development. The physical facility is not yet completed; staff is still being hired; and programming is just beginning." The fact that petitioner did not hold its Grand Opening until June 2001 further supports the Tribunal's finding that petitioner did not occupy its property as of December 31, 2000.

We reject petitioner's suggestion that the Tribunal erroneously interpreted the requirement that petitioner occupy the property as requiring physical use of the property. Petitioner is correct that physical use of land is not a condition precedent to a charitable institution exemption for a nature center or other similar environmental institution. *Kalamazoo Nature Center, Inc v Cooper Twp*, 104 Mich App 657, 666-667; 305 NW2d 283 (1981) ("In terms of contemporary environmentalism, the best 'occupancy' maybe visual, educational, or other demonstrative type occupancy. Nothing in the statute requires physical use. . . . The 'physical use' test is inconsistent with the sound land management policies demanded by contemporary environmentalism.") The Tribunal articulated this modern approach to occupancy in its opinion and judgment and applied it in concluding that petitioner did occupy the fifty-acre parcel for the 2002 tax year. In its opinion and judgment, the Tribunal specifically noted that the absence of physical use does not preclude a finding of occupancy. Thus, we reject petitioner's contention that the Tribunal erroneously denied petitioner's claimed exemption for the 2001 tax year based on its application of the physical use test. It is apparent that the Tribunal determined that petitioner did not occupy the 555 and fifty acre parcels in the 2001 tax year not because petitioner did not satisfy the physical use test, but because the institute was not fully constructed and operational on the relevant tax days. As of December 31, 2000, petitioner's buildings were under construction on the 555-acre parcel, and, since petitioner's Strategic Plan for 2001-2005 indicated that programming was just beginning in April 2001, neither the 555-acre parcel nor the fifty-acre parcel was being used in a manner consistent with petitioner's purposes of owning the institution as of December 31, 2000. We therefore hold that the Tribunal did not err in concluding that petitioner did not occupy either the 555-acre parcel or the fifty-acre parcel for the 2001 tax year. See *Holland Home*, *supra*, 398-399.

III

We next address petitioner's argument the Tribunal erred in finding that petitioner was not entitled to a charitable institution exemption for the 555-acre parcel for the 2002 tax year because petitioner was not a charitable institution (the second element of the three-part test articulated above). According to petitioner, the fact that it charged fees for some of its programs and courses and placed certain restrictions on the public's use of the property does not destroy the charitable nature of the institution. In determining whether petitioner is entitled to a charitable institution exemption, the "proper focus . . . is whether [petitioner's] activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons." *MUCC*, *supra*, 673.

The record reveals that petitioner has instituted some restrictions on the public's use of the property. Petitioner's "Public Use Policy" contains the following restrictions:

The Institute's property is subject to a number of restrictions. Persons using the property are required to enter the property only at designated times and places. The property is not open to hunting or fishing except for controlled and designated habitat management purposes. No collecting or taking of plants, animals, geologic specimens, or cultural resources is allowed except for specifically designated research, education, or habitat management purposes. The consumption of alcoholic beverages, use of tobacco products, or use of illegal drugs or substances is not allowed. In general, pets are not allowed on trails or in designated natural areas. In general, the property is not for such recreational activities as athletics, camping, campfires, snowmobiling, or use by motorized vehicles or bicycles. Hiking and cross country skiing on the trails provided are encouraged at designated times.

We find that petitioner's restrictions are reasonable restrictions designed to further petitioner's mission of preserving natural landscapes. The conservation and promotion of natural resources and wildlife is an important objective in this state. *Moorland Twp v Ravenna Conservation Club, Inc*, 183 Mich App 451, 460; 455 NW2d 331 (1990). Const 1963, art 4, § 52 declares the conservation and development of the state's natural resources to be of paramount public concern. Protecting and preserving the state's natural resources and providing and developing facilities for outdoor recreation are "purposes intended to benefit the general public without restriction." *Id.*, 460-461. We therefore agree with petitioner's contention that petitioner's restrictions do not destroy the charitable nature of petitioner's institution.

Similarly, we agree with petitioner's contention that the fact that petitioner charges some fees does not destroy petitioner's charitable nature. The record reveals that petitioner does charge some fees for programs, lodging, and facility use. However, the fees charged for programs are nominal and cover only a fraction of the costs associated with the programs. Moreover, admission to the property, use of the hiking trails, use of certain buildings, and participation in certain programs are free. While there is a fee structure in place for use of petitioner's facilities, nonprofit groups generally are permitted to use the facilities free of charge or at a reduced rate. Furthermore, while petitioner holds a for-charge brunch on the second Sunday of each month, the public is invited to attend the environmental education presentation that accompanies the lunch at no charge.

Notwithstanding the fact that petitioner charges some fees, petitioner's total revenue for the 2001 tax year was about \$50,000, while its total expenses were about \$1.1 million. For the 2002 tax year, petitioner's total revenue was approximately \$58,314, while its total operating and administrative expenses were almost \$1.6 million. Clearly petitioner did not profit from the fees it charged. Moreover, the fact that petitioner charges some fees does not destroy its charitable nature. *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340, 350 n 15; 330 NW2d 682 (1982); *Gull Lake Bible Conference Ass'n v Ross Twp*, 351 Mich 269, 274-275; 88 NW2d 264 (1958); *Huron Residential Services for Youth v Pittsfield Charter Twp*, 152 Mich App 54, 62-63; 393 NW2d 568 (1986).

We further hold that the Tribunal erred in refusing to consider petitioner's significant external charitable grant making activities during the 2001 and 2002 tax years in determining whether petitioner was entitled to an exemption under MCL 211.7o. The record reveals that in 2000, petitioner made grants totaling \$36,650, and in 2001, petitioner made grants totaling

\$29,365. Several of the groups that received grants from petitioner can be characterized as groups benefiting the general public. The Tribunal was required to determine whether petitioner's activities, "*taken as a whole*, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons." *MUCC, supra*, 673 (emphasis added). The institute and foundation are financially and physically dependent upon each other. Monies from the foundation primarily fund the institute, and the foundation's offices are housed on the institute's property. Moreover, as we previously noted, the foundation filed a certificate of assumed name indicating that it was doing business under the assumed name of the "Pierce Cedar Creek Institute." In failing to consider petitioner's external grant making charitable activities for the 2001 and 2002 tax years, the Tribunal did not consider petitioner's activities as a whole in making its determination and therefore made an error of law.

IV

We finally address petitioner's argument that the Tribunal erred in refusing to consider petitioner's personal property valuation disclosure documents and in denying petitioner's request for a revision of personal property values. Before the hearing, petitioner submitted to the Tribunal documents relating to the value of its personal property. The Tribunal sent a "notice of defect" letter to petitioner's counsel, informing petitioner that the valuation disclosure did not "meet the criteria of 'valuation disclosure' as set forth in the Tribunal's rules." On appeal, petitioner does not challenge or even address the Tribunal's finding that petitioner's valuation disclosure documents were defective. Furthermore, petitioner did not offer any valuation disclosure information into evidence at the hearing or offer any testimony regarding the value of the personal property. Petitioner had the burden of proving the true cash value of the property. *Professional Plaza, LLC v Detroit*, 250 Mich App 473, 475; 647 NW2d 529 (2002). Because petitioner presented no evidence at the hearing regarding the value of the real property, the Tribunal did not err in refusing to consider the issue and in denying petitioner's request for a revision of personal property values.

V

In sum, we affirm the Tribunal's denial of a charitable institution exemption for petitioner for the 2001 tax year in both Docket Nos. 247422 and 247425. We also affirm the Tribunal's granting of a charitable institution exemption for petitioner's fifty-acre parcel for the 2002 tax year in Docket No. 247425. However, for the reasons articulated above, we reverse the Tribunal's denial of a charitable institution exemption for the 555-acre parcel for the 2002 tax year in Docket No. 247422.

Affirmed in part, and reversed in part.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood