

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TURNBERRY HOMES, L.L.C.,

Petitioner-Appellant,

v

ORION TOWNSHIP,

Respondent-Appellee.

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UNPUBLISHED

April 7, 2009

No. 280584

Tax Tribunal

LC No. 00-326895

Before: Murray, P.J., and Gleicher and M.J. Kelly, JJ.

PER CURIAM.

Petitioner Turnberry Homes, L.L.C. appeals as of right an order dismissing its petition challenging respondent Orion Township's 2006 assessments of 10 residential parcels owned by Turnberry Homes in a condominium development site. We affirm.

Turnberry Homes commenced this Tax Tribunal action by filing one petition encompassing 10 identified parcels of real property located in Orion Township. The township responded by requesting dismissal of the petition, in part because the petition violated one of the administrative rules governing Tax Tribunal proceedings, 1999 AC, R 205.1240, "for the reason that [eight of] the parcels are not . . . contiguous." The township urged that Turnberry Homes had to file separate petitions for each noncontiguous parcel. Early in March 2007, the Tax Tribunal, in an "Order Extending the Time for Petitioner to Cure Default," announced in pertinent part, "A review of the map provided by Respondent indicates that only two of the ten parcels are actually contiguous (i.e., abutting). As such, Petitioner is required to file separate petitions for the non-contiguous parcels, as required by [Rule 205.1240]." In April 2007, the Tax Tribunal entered an order dismissing Turnberry Homes's petition. The tribunal rejected as unsupported by law Turnberry Homes's "argument that properties 'connected by a private road system' are contiguous," and mentioned dismissal of the petition as appropriate under 1999 AC, Rule 205.1247.

Turnberry Homes maintains that its parcels fall within the plain meaning of "contiguous," and that under Rule 205.1240 it properly filed a single petition involving all 10 parcels. "Our review of a decision of the Tax Tribunal is typically limited to whether the decision was authorized by law and whether the tribunal's findings were supported by competent, material, and substantial evidence on the whole record." *Professional Plaza, LLC, v Detroit*, 250 Mich App 473, 474; 647 NW2d 529 (2002).

The Tax Tribunal rule central to the parties' dispute provides in relevant part as follows:

(1) A petition shall contain a statement of facts, without repetition, upon which the petitioner relies in making its claim for relief. The statement shall be made in separately designated paragraphs, the contents of each of which shall be limited, as far as practicable, to a statement of a single fact. Each claim shall be stated separately when separation facilitates the clear presentation of the matters set forth. *A petition shall not cover more than one assessed parcel, except as follows:*

(a) *A single petition involving real property may cover more than 1 assessed parcel if the real property is contiguous and within a single assessing unit. . . .* [Rule 205.1240 (emphasis added).]

The rules do not further define "contiguous."

In construing administrative rules, courts apply the principles of statutory construction. *Attorney Gen v Lake States Wood Preserving, Inc*, 199 Mich App 149, 155; 501 NW2d 213 (1993).

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. The first criterion in determining legislative intent is the specific language of the statute. If the plain and ordinary meaning of the language is clear, judicial construction is neither necessary nor permitted . . . . [*Hamilton v AAA Michigan*, 248 Mich App 535, 541; 639 NW2d 837 (2001).]

"If the language is ambiguous, this Court must strive to give effect to the intent of the Legislature by applying a reasonable construction, considering the purpose of the statute and the object it seeks to accomplish." *Taylor v Currie*, 277 Mich App 85, 94; 743 NW2d 571 (2007).

Because neither Rule 205.1240 nor any other Tax Tribunal rule specifically explains the meaning of "contiguous" in the context of filing a Tax Tribunal petition, this Court may consult a dictionary definition in attempting to ascertain the term's ordinary meaning. *Haynes v Neshewat*, 477 Mich 29, 36; 729 NW2d 488 (2007). The *Random House Webster's College Dictionary* (1991) defines "contiguous" as "1. touching; in contact. 2. being in close proximity without touching; near." It defines "touch" as "into contact with (something) so as to feel it." *Id.* Our review of the subdivision map supplied by the parties reveals that only two of Turnberry Homes's 10 marked parcels touch or have any contact with one another. A portion of the southern border of the southernmost parcel on Greenan Lane touches the northern border of the northernmost property on Craig End Court. Consequently, the tribunal's finding that two of Turnberry Homes's 10 parcels were contiguous finds support in evidence of record and properly applies the plain and ordinary meaning of "contiguous" within Rule 205.1240. Because Turnberry Homes's remaining eight parcels do not come into contact with each other, but instead are divided by condominium site roads and neighboring parcels, the assessments of which were not challenged in the petition, these eight parcels do not qualify as "contiguous" under the "touching; in contact" portion of the dictionary definition.

Turnberry Homes alternatively urges that the eight parcels fall within the “close proximity” or “near” meanings of contiguous. The *Random House Webster’s College Dictionary* (1991) defines “close,” in relevant part, as “27. being in or having proximity in place or time,” and defines “proximity” as “nearness in place, time, relation, etc.” The dictionary defines “near” as “at, within, or to a short distance; close in space.” These definitions do not set forth clear, applicable spatial boundaries; for example, it remains unclear if parcels qualify as contiguous if separated by inches, feet, or even acres. We therefore find ambiguous the meaning of “contiguous” under its “close proximity” or “near[ness]” definitions. Accordingly, we must consider “the purpose of the [rule] and the object it seeks to accomplish.” *Taylor, supra* at 94.

The Tax Tribunal’s objective in placing the term “contiguous” in Rule 205.1240 can be reasonably inferred from the language in that rule governing the composition of petitions. The rule states in pertinent part, “Each claim shall be stated separately when separation facilitates the clear presentation of the matters set forth.” One object apparent from this sentence is clarity in the claims presented to the Tax Tribunal. Claims involving bordering parcels inherently share certain characteristics, like location, and arguably could be presented more clearly together. But claims involving parcels that do not share a border lack this common element. Additionally, the eight parcels at issue in this case were in different stages of improvement; some parcels featured fully or partially completed condominiums, whereas others exhibited no structures. Orion Township assessed the parcels separately and Turnberry Homes claimed they had different true cash values. Given the differences between each noncontiguous parcel, the filing of separate petitions would have enhanced the clarity of Turnberry Homes’s claims.

The Tax Tribunal’s intent with respect to Rule 205.1240 can also be inferred from its website’s glossary. Michigan Tax Tribunal, Glossary of Terms <<http://www.michigan.gov/taxtrib/0,1607,7-187--126336--,00.html>> (accessed March 23, 2009). The glossary defines “contiguous” as, “Adjoining (i.e., next to each other). Parcels are generally not considered to be contiguous if they are separated by a road.” *Id.* (emphasis omitted).<sup>1</sup> Considering this evidence of the object of Rule 205.1240, we find that the Tax Tribunal did not intend for “contiguity” to encompass parcels separated by condominium site roads and neighboring parcels that are not challenged in a petition. We thus conclude that the tribunal correctly found eight of Turnberry Homes’s parcels noncontiguous, under the ordinary meaning of “contiguous” as considered in light of the purposes of Rule 205.1240.

Turnberry Homes invokes the doctrine of *in pari materia*, theorizing that the meaning of “contiguous” in Rule 205.1240 should harmonize with the Legislature’s use of “contiguous” in MCL 211.7dd(c). In MCL 211.7dd(c), the Legislature defined the term “principal residence” for purposes of a tax exemption under MCL 211.7cc and MCL 211.7ee. Relevant to this discussion, it sets forth the following:

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<sup>1</sup> Turnberry Homes asserts that the tribunal violated the Michigan Administrative Procedure Act by adopting this unpromulgated glossary. However, because the tribunal did not rely on the glossary meaning in any of its orders, we find this argument unpersuasive.

. . . “Principal residence” also includes all of an owner’s unoccupied property classified as residential that is adjoining or contiguous to the dwelling subject to ad valorem taxes and that is owned and occupied by the owner. Contiguity is not broken by a road, a right-of-way, or property purchased or taken under condemnation proceedings by a public utility for power transmission lines if the 2 parcels separated by the purchased or condemned property were a single parcel prior to the sale or condemnation. [MCL 211.7dd(c).]<sup>2</sup>

“Statutes in pari materia are those sharing a common purpose or those that relate to the same subject.” *Sinicropi v Mazurek*, 273 Mich App 149, 157; 729 NW2d 256 (2006). “Statutes in pari materia are to be read and construed together as one law even if they were enacted at different times and without specific reference to each other.” *Id.*

Although MCL 211.7dd(c) and Rule 205.1240 both relate to the same general subject of taxation, they do not share a common purpose. In Rule 205.240, the term “contiguous” helps define the contents of a permissible Tax Tribunal petition. In MCL 211.7dd(c), the Legislature included the term “contiguous” to define a “principal residence” in the specific context of claiming a real property tax exemption. Moreover, the Legislature limited the scope of the definitions contained in MCL 211.7dd to the exemptions it provided in MCL 211.7cc and MCL 211.7ee. The Legislature explicitly prefaced the definitions in MCL 211.7dd with the phrase, “As used in sections 7cc and 7ee . . . .” Because the contexts and purposes of “contiguous” differ between Rule 205.1240 and MCL 211.7dd, which plainly has limited applicability, we decline Turnberry Homes’s invitation to apply the doctrine of in pari materia.

Turnberry Homes lastly suggests that if the Court does not find its parcels contiguous we should remand to allow 21 days for it to amend its filing. A tribunal has the power to enter a decision, including a dismissal, against a petitioner who fails to properly prosecute its appeal or comply with the tribunal’s rules. *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 548; 656 NW2d 215 (2002); *Lawrence v Dep’t of Treasury*, 128 Mich App 741, 745; 341 NW2d 200 (1983). However, “a motion to amend should be granted unless one of the following particularized reasons exists: (1) undue delay, (2) bad faith or dilatory tactics, (3) repeated failure to cure deficiencies by amendment previously allowed, (4) undue prejudice to the opposing party, or (5) futility.” *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 447; 716 NW2d 247 (2006).

After Orion Township challenged the contiguity of Turnberry Homes’s parcels, the tribunal afforded Turnberry Homes 21 days to prove contiguity or file separate petitions. When this period lapsed, the tribunal deemed the parcels contiguous and again ordered Turnberry Homes to amend its filing within 21 days. Because Turnberry Homes failed to comply with this order, the tribunal dismissed the petition. Subsequently, the tribunal denied Turnberry Homes’s untimely request for a filing extension and its motion for reconsideration. The tribunal explained that Turnberry Homes had repeatedly failed to amend its petition in conformity with prior

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<sup>2</sup> Turnberry Homes also cites the “Guidelines for the Michigan Homeowner’s Principal Residence Exemption Program,” which offer examples of exemptions and contiguity.

deadlines. In light of Turnberry Homes's particularized failure to cure, we find no abuse of discretion by the tribunal in refusing Turnberry Homes's request for an additional filing extension, and no basis for ordering a remand to permit Turnberry Homes to file separate petitions. *Ford, supra* at 447.<sup>3</sup>

Affirmed.

/s/ Christopher M. Murray

/s/ Elizabeth L. Gleicher

/s/ Michael J. Kelly

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<sup>3</sup> We also note that Orion Township requests reasonable attorney fees and costs from this Court. However, this request does not comport with the requirement in MCR 7.211(C)(8) that a party must file a separate motion requesting damages.