

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

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GUY DIPLACIDO, HAROLD GOTTLIEB,  
FRANK MEIDA, STUART SHERMAN and  
LEON VAN WASSENHOVE,

UNPUBLISHED  
May 28, 2009

Plaintiffs-Appellants,

v

STATE TAX COMMISSION,

No. 281295  
Ingham Circuit Court  
LC No. 06-001163-AA

Defendant-Appellee.

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Before: Bandstra, P.J., and Whitbeck and Shapiro, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted from an order granting summary disposition in favor of defendant. On appeal, plaintiffs argue that the trial court erred because defendant exceeded its statutory role by determining the taxable value of property rather than the taxable status of the property at issue. Further, they assert that the trial court erred by finding facts not in the record, and by accepting defendant's incorrect interpretation of defendant's enabling statute. We affirm.

I. Basic Facts and Proceedings

Plaintiffs were members of the 2005 Board of Review for the City of Birmingham located in Oakland County (the Board). In October 2005, the Assistant City Attorney sent a request for an investigation to Kelli Sobel, the State Tax Commission's (STC) Executive Secretary. The request alleged that there might have been some inappropriate actions with respect to various tax assessments made by the Board. Specifically, the request for investigation alleged that the plaintiffs may have lowered assessments for property owned by board members. The STC had a division of the Department of Treasury (Treasury staff), within the STC, review the actions of the Board. After completing its review of the Board's actions, the Treasury staff issued a letter to the STC, which stated that the Board "may have been heavily influenced by the parcels' sales prices when making its decisions," and that "14 parcels received reductions in their tentative 2005 assessed value with little or no supporting information in the Board of Review records." The Treasury staff also reviewed plaintiffs' parcels that received a reduction in value. It determined that assessed reductions were inappropriate because the plaintiffs provided "little or no" documentation to support the reductions in value.

Based on the review of the Board's actions, on March 1, 2006, the STC directed the City of Birmingham's 2005 Board, the Assessor, and the City Attorney to attend a future STC meeting to discuss the plaintiffs' actions. At the STC meeting on April 10, 2006, the STC approved a "14-Point Review to be conducted by the Assessment and Certification field staff." The STC also assumed jurisdiction over the 2005 assessment roll of the City of Birmingham, holding that the Board's actions were against the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, and the requirements of the Administrative Procedures Act (APA), MCL 24.201 *et seq.*, which were known by the Board through "State Tax Commission Bulletin 17[sic 19] of 1997 and Bulletin 3 of 2005." Further, the STC directed the Oakland County Equalization Department to provide information to the STC to properly certify the assessment roll.

In June 2006, Sobel reported in a letter to the STC that the Treasury staff had completed the 14-point review and that the City of Birmingham was in compliance with the GPTA and STC procedures. Oakland County also completed their review of the City of Birmingham and provided recommended values for the properties at issue, including the properties owned by plaintiffs. At a meeting held on June 14, 2006, the STC approved the Oakland County proposed values for 2005. On August 29, 2006, Sobel also recommended that the STC assume jurisdiction over the 2006 assessment roll to prevent the 2006 roll from being based on the incorrect assessments from 2005. The STC agreed and assumed jurisdiction over the 2006 assessment roll pursuant to MCL 211.10f(1).

Plaintiffs filed a complaint with the Ingham Circuit Court by which they sought appellate review of the STC's decision. The trial court noted that there was no case law interpreting MCL 211.10f and concluded that "STC is empowered by MCL 211.10f to assume jurisdiction when the Board of Review is not in substantial compliance with the General Property Tax Act." The trial court next considered whether the Board was in substantial compliance and determined that STC "had an adequate basis for assuming jurisdiction of the tax rolls under MCL 211.10f based on insufficient minutes and/or documentation." It further concluded that STC "was authorized by law and had factual support for taking jurisdiction of the 2005 and 2006 tax rolls based on its finding that the Board of Review lowered property values without documentation and had followed sales." Having found a basis for jurisdiction, it granted summary disposition in favor of STC.

## II. STC Jurisdiction

Plaintiffs argue the trial court erred by holding that the STC properly assumed jurisdiction over the City of Birmingham's 2005 assessment roll. Because the STC assumed jurisdiction pursuant to a statute, this case presents a question of statutory interpretation, which we review *de novo*. *Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007). When construing a statute, our primary goal is to give effect to the intent of the Legislature. *Id.* "The first step is to review the language of the statute. If the statutory language is unambiguous, the Legislature is presumed to have intended the meaning expressed in the statute and judicial construction is not permissible." *Id.* (citations omitted). "[A] provision of the law is ambiguous only if it 'irreconcilably conflicts' with another provision or when it is *equally* susceptible to more than a single meaning." *Mayor of Lansing v Pub Service Comm*, 470 Mich 154, 166; 680 NW2d 840 (2004) (citation omitted; emphasis in original). Words and phrases are not read "discretely," but rather within the context of the whole act. *Id.* at 167-168.

The STC assumed jurisdiction under MCL 211.10f, which provides in relevant part:

(1) If a local assessing district does not have an assessment roll that has been certified by a qualified certified assessing officer, or if a certified assessor or a board of review for a local tax collecting unit is not in substantial compliance with the provisions of [the GPTA], the state tax commission *shall* assume jurisdiction over the assessment roll and provide for the preparation of a certified roll. [Emphasis added.]

Thus, under the statute, for the STC to have properly assumed jurisdiction, the Board must not have been in substantial compliance with the GPTA. Importantly, if the Board was, in fact, not in substantial compliance with the GPTA, the STC's assumption of jurisdiction was mandatory given the Legislature's choice of the word "shall." *City of South Haven v Van Buren Co Bd of Comm'rs*, 478 Mich 518, 526; 734 NW2d 533 (2007). Accordingly, the first question is whether the Board was in substantial compliance with the GPTA.

The trial court agreed with the STC that the Board was not in substantial compliance with the GPTA "based on insufficient minutes and/or documentation." The trial court reasoned:

Any review of whether the Board of Review was in substantial compliance with the Act requires first an examination of what is required under the Act and the rules promulgated thereunder. MCL 211.30(4) provides:

At the request of a person whose property is assessed on the assessment roll of his or her agent, and if sufficient cause is shown, the board of review shall correct the assessed value or tentative taxable value of the property in a manner that will make the valuation of the property relatively just and proper under this act.

A party aggrieved by the board of review's actions, i.e. a party who believes that sufficient cause was not shown for the correction, may appeal to the Tax Tribunal. Plaintiffs and Defendant both point to the State Tax Commission Bulletin No. 3 of 2005. (Defendant's Brief in Opposition, Exhibit 8.) The Court also finds it illustrative in providing that a "written record of the annual Board of Review proceedings is necessary" because of the ability of a taxpayer to file an appeal and "[a] complete record eliminates misunderstanding and provides a year to year record." (*Id.*, p. 16.)

In accordance with the need for a complete record, 1979 AC, R 209.28 provides that minutes of the proceedings of the board of review must be taken. Further, "[t]he commission shall prescribe the minimum requirement for the record" and "shall not be less than prescribed." In the event the board of review changes a valuation, it "shall be by roll call vote and shall be entered in the minutes of the board." Rule 209.28(4). Bulletin No. 3 of 2005 notifies boards of review that minutes shall include completed form L-4035, form L-4035a when applicable, and shall also include:

- a. Place, day, and time of meeting.
- b. Members present and members absent; correspondence or telephone calls, made or received, and discussion recorded regarding each petition.
- c. Actual hours in session should be recorded daily, and time of daily adjournments recorded.
- d. Date and time of closing of the final annual session should be recorded.

Minutes of the Board of Review in this case show the dates and times that the board met, as well as members present and the time the board stopped and started. The minutes are silent as to the discussion regarding each petition or the actions taken with respect to changes in valuations. Even if form L-4035a (documenting a change to taxable value) was attached to those Petitions where the Board of Review made changes, the Board must also record discussion regarding each petition. As is evident from the discussion at the April 20[sic], 2006 meeting, time and again Board members had to explain the reasons for their actions because there was a lack of information about why they took the action they took. The minutes and the Petitions in many cases are silent as to the basis for any board action. The minutes are completely bereft of any indication that sufficient cause was shown for a correction.

In addition to inadequate documentation of its decisions, the STC was concerned that the Board of Review may have been engaging in the illegal and unconstitutional practice of “following sales.” Discussion before the STC at the April 10, 2006 meeting supported this concern. Mr. Meida’s comments indicate that he believed sales were the measure of assessed value.

Plaintiffs take issue with the trial court’s reasoning in several regards. First, they argue that the Board was substantially compliant with the GPTA because “[t]he only statutory requirements set forth in the GPTA itself are those extant in MCL 211.28 – MCL 211.34.” Plaintiffs have erroneously limited the scope of the GPTA. MCL 211.10f does not give the STC jurisdiction only where a board of review is not in substantial compliance with MCL 211.28 through MCL 211.34, but where a board of review “is not in substantial compliance with the provisions of this act.” Had the Legislature intended to limit STC’s jurisdiction to situations involving compliance with only specific sections of the GPTA, it could have, but it did not. It required boards of review to be in compliance with the GPTA as a whole, i.e. “this act.” Thus, under the plain language of MCL 211.10f, we reject plaintiffs’ contention that we should be focused solely on the requirements found in MCL 211.28 through MCL 211.34.

However, even if we limit our review to those sections, we still find that the Board was not in substantial compliance with the GPTA. MCL 211.33 provides:

The supervisor shall be the secretary of said board of review and shall keep a record of the proceedings of the board and of all the changes made in such assessment toll, and shall file the same with the township or city clerk with the

statements made by persons assessed. In the absence of the supervisor, the board shall appoint 1 of its members to serve as secretary. *The state tax commission may prescribe the form of the record whenever deemed necessary.* [Emphasis added.]

Thus, under MCL 211.33, STC had the authority to prescribe the form of the record to be kept by boards of review. In accordance with that authority, as well as pursuant to the Administrative Procedures Act (APA), MCL 24.201, *et seq.*, STC promulgated certain “General Rules,” 1979 AC, R 209.1, *et seq.*<sup>1</sup> 1979 AC, R 209.28 (rule 28) provides:

Board of review; procedure.

(1) The secretary of the board of review shall make a record of proceedings of the board of review. The proceedings shall consist of the minutes of the proceedings of the board of review, which, together with the petition for review, shall constitute the record of the board of review.

(2) The commission shall prescribe the minimum requirements for the record through its bulletins.

(a) A sample form for taxpayer petition to the board of review shall be furnished by the commission.

(3) The record, as prescribed by the commission, may be expanded, but shall not be less than prescribed.

(4) Each action of the board of review to change the valuation, either upon its own motion or upon petition filed by a property owner, shall be by roll call vote and shall be entered in the minutes of the board and entered by the board in permanent ink in a separate column of the assessment roll being reviewed.

Rules that are properly promulgated under the APA have the force of law. *Danse Corp v City of Madison Heights*, 466 Mich 175; 644 NW2d 721 (2002). There being no indication that this rule was not properly promulgated, the Board was legally required to follow it. And, because MCL 211.33 permitted the STC to prescribe the form of the record, any failure by the board to comply with rule 28 constituted noncompliance with the GPTA.

Next, plaintiffs argue that the trial court erred by relying on STC’s bulletins to determine whether the Board was in substantial compliance. We disagree. Although the STC bulletins

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<sup>1</sup> Additional authority for the enactment of 1979 AC, R 209.28 is also found in MCL 205.3, which provides that “the department [of treasury] may promulgate rules consistent with this act in accordance with the administrative procedures act of 1969 . . . necessary to the enforcement of the provisions of tax and other revenue measures that are administered by the department.”

generally have no force of law, *Moshier v Whitewater Twp*, 277 Mich App 403, 408 n 2; 745 NW2d 523 (2007), we note that there is an interplay here between rule 28 and STC's Bulletin No. 3 of 2005 (Bulletin 3) that changes the general application. Rule 28(2) provides that the STC "shall prescribe the minimum requirements for the record through its bulletins." As previously noted, the use of the term "shall" made the STC's obligation mandatory. *City of South Haven, supra*. Because rule 28 carries the force of law, the STC was legally required to prescribe the boards of review's minimum record requirements in its bulletins. Therefore, the record requirements contained in STC bulletins are incorporated by reference into rule 28, making those requirements (but not the bulletins themselves) legally binding as well. As already noted, the Board's failure to comply with rule 28 would constitute noncompliance with the GPTA. Consequently, the trial court properly considered the record requirements contained in Bulletin 3 when determining whether the Board was in compliance with the GPTA.

Having concluded that the trial court properly relied on rule 28 and Bulletin 3 to determine whether the Board was in substantial compliance with the GPTA, we must next address plaintiff's argument that the STC and the trial court erroneously used a strict compliance requirement, instead of the "substantial compliance" standard provided for in MCL 211.10f.

We agree that substantial compliance is not strict or exact compliance. However, we disagree that the Board was in substantial compliance with the GPTA. First, the City Assessor stated that the Board is required to keep documentation provided by property owners appealing tentative assessments. Contrary to plaintiffs' contention, keeping this documentation is a requirement. The documentation provided to the Board from the property owners constitutes correspondence and Bulletin 3 provides that the minutes "shall also include" any correspondence received. However, the Board did not keep the documentation. Indeed, plaintiff Stuart Sherman stated that the Board was told unequivocally not to keep supporting documentation. Sherman also stated that the Board was "told to dispose of them or return them" and that the Board was "specifically instructed not to retain them." Nonetheless, a misunderstanding would not change the fact of noncompliance.

Additionally, under the law set forth above, the Board was required to record detailed minutes from their meetings and they did not. Specifically, the minutes of the 2005 board of review meeting should have included a discussion by the Board of each petition reviewed. However, the 2005 board of review minutes only reveal when the meeting began, stopped for lunch and reconvened, and when it concluded for the afternoon. As noted by the trial court, the minutes failed to include any discussion of the petitions or actions taken with respect to changes in valuation.

At the April 10, 2006 meeting, Board members had to explain their actions because there was a dearth of information in the record to explain why they took their actions. The Board's failure to properly document and keep minutes is not a minor issue. Our Supreme Court has held that when a board of review makes a tax determination, it is acting in a quasi-judicial capacity such that, "it must weigh the facts as presented and cannot make an arbitrary ruling not warranted by the uncontroverted facts presented." *Nat'l Bank of Detroit v Detroit*, 272 Mich 610, 615; 262 NW 422 (1935). The Board's documents and minutes form the record for the Tax Tribunal to make appeal determinations. To the extent that any taxpayer had wished to appeal the Board's decision, there was basically no board of review record on which the Tax Tribunal could have relied to determine whether the Board, acting in its quasi-judicial capacity, acted

properly. Thus, the Board's failure to keep documents or record other substantive information regarding the proceedings in their minutes as legally required was a failure to substantially comply with the GPTA.

Plaintiffs' reliance on the Board's use of a form for minutes provided by the STC is unavailing. To the extent that the form does not provide for what is legally required to be in the minutes, the legal requirements trump the form. See *Danse Corp, supra* at 181-184 (holding that although MCL 211.10e required assessors to use the *Assessor's Manual*, the manual was only a guide and its provisions did not carry the force of law, such that to the extent its contents disagreed with a rule properly promulgated under the APA, the rule trumped the manual).

Accordingly, we conclude that the trial court properly found that the Board was not in substantial compliance with the GPTA. Having so concluded, the mandatory language contained in MCL 211.10f required STC to take jurisdiction over the 2005 tax roll and provide for the preparation of a certified roll.

Plaintiffs argue that STC's jurisdiction under MCL 211.10f in this case is improper because MCL 211.10f(1) is related to status and not valuation "as it relates to an improperly prepared roll and not to the valuations within the roll." Plaintiffs are reading terms into the statute that are not present. MCL 211.10f(1) provides simply that if the Board was not in substantial compliance with the GPTA, STC "shall assume jurisdiction over the assessment roll." It then provides multiple ways for STC to prepare the roll, including "contract with a commercial appraisal firm to conduct an appraisal of the property." MCL 211.10f(1). The appraisal of a property is a determination of its value, not its status. Therefore, the jurisdiction granted to the STC under MCL 211.10f is not limited to issues of status, but implicitly includes determinations of value. Thus, the language of the statute contains no such "status" limitation.

Further, plaintiffs have provided us with no case law that makes such a distinction. At the trial court level, plaintiffs apparently argued that this distinction came from *Richland Twp v State Tax Comm*, 210 Mich App 328; 533 NW2d 369 (1995). However, as the trial court noted, "*Richland Twp* makes no reference to MCL 211.10f." Having found no statutory language to support plaintiffs' position, and plaintiffs having failed to direct us to any legal authority to support their position, we disagree with their position that the jurisdiction granted to the STC under MCL 211.10f is somehow limited to issues of status.

### III. Summary Disposition

Next, plaintiffs argue that the trial court improperly granted summary disposition in favor of defendant. Specifically, plaintiffs argue that defendant did not submit the proper affidavits to support their motion for summary disposition. We disagree.

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The moving party must specifically identify the matters that have no disputed factual issues, and has the initial burden of supporting his position by affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3)(b); MCR 2.116(G)(4); *Coblentz v Novi*, 475 Mich 558, 569; 719 NW2d 73 (2006). The party opposing the motion then has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists, and the disputed factual

issue must be material to the dispositive legal claims. MCR 2.116(G)(4); *Coblentz, supra*, at 569. Normally, the existence of a disputed fact must be established by admissible evidence. MCR 2.116(G)(6); *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002). An affidavit submitted in support of or in opposition to a motion must affirmatively show that the affiant, if sworn as a witness, could testify competently to the facts stated in the affidavit. MCR 2.119(B)(1)(c); *Regents of the Univ of Mich v State Farm Mut Ins Co*, 250 Mich App 719, 728; 650 NW2d 129 (2002). Finally, when deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley, supra*, at 278.

Because the trial court properly found that the STC assumed jurisdiction, and because there is no genuine issue of material fact pertaining to whether the Board was in substantial compliance with the GPTA and the Administrative Code, summary disposition under MCR 2.116(I)(2) in favor of defendant was proper. MCR 2.116(I)(2) states that summary disposition is appropriate in favor of the opposing party if “it appears to the court that the opposing party, rather than the moving party, is entitled to judgment.” Accordingly, the trial court did not err.

Plaintiffs do not present an adequate argument as to what else defendant should have submitted to support the motion for summary disposition. Plaintiffs appear to argue that defendant did not submit the proper affidavits and that defendant relied on inadmissible hearsay, but plaintiffs do not explain this argument. Indeed, plaintiffs have provided no support whatsoever for this argument. Indeed, although they provide a “question presented” that alleges defendant “failed to file an appropriate response, in particular failing to present evidentiary proofs creating a genuine issue of material fact for trial, and instead relied upon opinions, conclusory denials, unsworn averments, and inadmissible hearsay,” we have found no articulation of this argument within the brief itself.

Based on our review of the record, both of defendant’s motions for summary disposition appear to be in order. The brief outlining why summary disposition is appropriate for counts III, IV, and V has the affidavit of executive secretary Kelli Sobel attached, explaining her position on the matter and explaining that she gave plaintiffs notice of the STC meeting. Other documents such as transcripts and case law are attached as well. Further, we cannot find the alleged hearsay statements that plaintiffs argue were relied on by the trial court in granting defendant’s motion for summary disposition. Plaintiffs do not identify, support, or explain what the statements were. “It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow.” See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Accordingly, the trial court properly granted summary disposition in defendant’s favor.

#### IV. Additional Issues

Plaintiffs’ brief lists several “questions presented” that contain multiple sub-issues, some of which reiterate the claims already discussed. However, most of these sub-issues received little



or no support in the actual substantive portion of plaintiffs' brief. As previously noted, plaintiffs cannot leave it up to this Court to discover and rationalize the basis for their claims. Nonetheless, we will briefly address those issues that can be addressed. See *Mitcham, supra*, at 203.

First, plaintiffs argue that the trial court erred in finding that the STC had jurisdiction because there was a lack of evidence that they were "following sales" when assessing property values. Because we concluded that STC properly assumed jurisdiction based on the Board's failure to keep an appropriate record, we need not address this issue. However, we note that one plaintiff at the April 10, 2006 meeting admitted to following sales. He stated in response to a question regarding if he had ever followed sales, "Isn't that the point of the system?" Thus, there was support in the record for this conclusion.

Next, plaintiffs argue they were not given adequate notice or an opportunity to be heard by the STC. This argument is without merit. MCL 24.271 requires notice for a "contested case." MCL 24.203 provides:

(3) "Contested case" means a proceeding, including rate-making, price-fixing, and licensing, in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing. When a hearing is held before an agency and an appeal from its decision is taken to another agency, the hearing and the appeal are deemed to be a continuous proceeding as though before a single agency.

The STC meeting was not a contested case. The STC was seeking only to resolve whether the board of review's actions failed to comply with the GPTA, which would then necessitate that the STC assume jurisdiction over the 2005 assessment roll. At this meeting, the STC did not resolve or determine the legal rights, duties, or privileges of a named party. Further, MCL 211.152(3) provides that "the contested case provisions shall not be applicable to the state tax commission." Thus, no notice was required because none of the APA's provisions for notice and conduct of a contested case apply to the STC in its handling of a matter under the GPTA. Accordingly, the trial court did not err by holding that notice was not necessary.

Finally, plaintiffs argue they were not given the opportunity to rebut the evidence presented against them because they were not given notice of the meeting. This is incorrect. The transcript from the April 10, 2006 meeting illustrates that there was a discussion between the City Assessor, the STC, and various plaintiffs. Further, the plaintiffs were told when the meeting was and they were told to attend.

Affirmed.

/s/ Richard A. Bandstra  
/s/ William C. Whitbeck  
/s/ Douglas B. Shapiro