# STATE OF MICHIGAN

# COURT OF APPEALS

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LIVINGSTON CAPITAL LLC,

Plaintiff-Appellee,

v

STATE TAX COMMISSION,

Defendant-Appellant,

and

ROBERT NAFTALY, DOUGLAS ROBERTS, and BARRY SIMON,

Defendants,

and

CHARTER TOWNSHIP OF GREEN OAK,

Defendant-Appellee.

FOR PUBLICATION
July 25, 2013
9:00 a.m.

No. 310125
Ingham Circuit Court
LC No. 10-001224-AA

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LARIAT, INC.,

Plaintiff-Appellee,

v

STATE TAX COMMISSION,

Defendant-Appellant,

and

ROBERT H. NAFTALY, DOUGLAS B. ROBERTS, and BARRY N. SIMON,

Defendants,

No. 311287
Livingston Circuit Court
LC No. 10-025553-AW

and

ROBERT BRANDMIER and CHARTER TOWNSHIP OF GREEN OAK,

Defendants-Appellees.

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Before: SAWYER, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

In Docket No. 310125, defendant State Tax Commission (STC) appeals from the April 16, 2012, order of the Ingham Circuit Court classifying plaintiff's property as "industrial real property." In Docket No. 311287, defendant STC appeals from the June 22, 2012, order of the Livingston Circuit Court classifying plaintiff's property as "industrial real property."

In Docket No. 310125, plaintiff owns two parcels of real property in Green Oak Charter Township that host a facility used by Gordon Food Service, Inc., for the warehousing, packaging, processing, and distribution of consumer goods. In 2010, plaintiff was notified by the assessor that the property would be classified as industrial real property for the 2010 tax year, as it had been in previous years. Plaintiff did not protest the classification, and the classification was accepted to the tax rolls by the board of review.

On April 27, 2010, however, the assessor appealed the acceptance of his industrial real property classification to defendant STC, seeking to have the property reclassified as commercial real property. On August 16, 2010, defendant STC granted the appeal and changed the classification of the subject property for the 2010 tax year from industrial real property to commercial real property, holding that "warehouses are commercial".

Following defendant STC's decision, plaintiff appealed to the circuit court. The circuit court issued an oral opinion reverting the classification of the subject property back to industrial real property for the 2010 tax year. The circuit court had multiple reasons for its decision, including that the assessor did not have standing to appeal the acceptance of his own classification, and that as a result, defendant STC did not have jurisdiction to change the accepted classification.

In Docket No. 311287, plaintiff owns a parcel of real property in Green Oak Charter Township that is leased by three commercial entities, Fonson, Inc., McDonald Modular Solutions, Inc., and CMA Heavy Haul, Inc. In 2010, plaintiff was notified by the assessor that the property would be classified as industrial real property for the 2010 tax year, as it had been in previous years. Plaintiff did not protest the classification, and the classification was accepted to the tax rolls by the board of review.

On April 27, 2010, however, the assessor appealed the acceptance of his industrial real property classification to defendant STC, seeking to have the property reclassified as commercial real property. On August 16, 2010, defendant STC granted the appeal and changed the

classification of the subject property for the 2010 tax year from industrial real property to commercial real property, holding that "excavating contractors are commercial."

Following the decision, plaintiff appealed the decision to the circuit court. The circuit court issued an opinion changing the classification of the subject property back to industrial real property for the 2010 tax year. In support, the circuit court found that the record showed the subject property was clearly used for industrial purposes under MCL 211.34c(d), as it was used for the removal or processing of gravel, stone, or mineral ore. Alternatively, the circuit court found that defendant STC had lacked jurisdiction to hear the county assessor's appeal, as the classification of the subject property had not first been protested to the board of review, and that the order reclassifying the subject property as commercial real property was invalid due to a lack of the statutorily required signature and seal.

These cases are resolved by an issue common to both cases: whether an assessor can appeal to the STC where the classification has not been protested at the board of review. We conclude that an assessor cannot do so.

Appeals to the STC concerning property classifications are governed by MCL 211.34c(6), which reads, in relevant part, as follows:

> An owner of any assessable property who disputes the classification of that parcel shall notify the assessor and may protest the assigned classification to the March board of review. An owner or assessor may appeal the decision of the March board of review by filing a petition with the state tax commission not later than June 30 in that tax year. . . .

Here, although no protests were ever made to the boards of review by the property owners, the assessors still appealed the classification of the subject property. Appellant asserts that such an appeal is still proper under MCL 211.34c(6), as it was an appeal from the decision of the board of review to accept the assessor's original classification of the property under MCL 211.34c(1). This interpretation, however, runs counter to the plain and unambiguous language of MCL 211.34c(6).

> The primary goal of statutory interpretation is to "ascertain the legislative intent that may reasonably be inferred from the statutory language." "The first step in that determination is to review the language of the statute itself." Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. We may consult dictionary definitions to give words their common and ordinary meaning. When given their common and ordinary meaning, "[t]he words of a statute provide 'the most reliable evidence of its intent. . . .'" [*Krohn v Home-Owners Ins Co*, 490 Mich 145, 156-157; 802 NW2d 281 (2011) (citations omitted; omission by *Krohn*.]

Under § 34c(6), an assessor is permitted to appeal "the" decision of the board of review, not "a" decision. In context, see *Atkins v Suburban Mobility Auth for Regional Transp*, 492 Mich 707, 717; 822 NW2d 522 (2012), the reference to "the decision" in the second sentence of

the provision references back to the decision stemming from an appeal by the "owner of any assessable property who disputes the classification of that parcel." Defendant STC's interpretation would divorce the term "the decision" from the context in which it is placed and require that "the decision" include the board of review's decision to accept a classification onto the property tax rolls under MCL 211.34c(1).

Therefore, because plaintiffs never protested the classification of the subject property to the respective boards of review, no appealable decision under MCL 211.34c(6) was ever made. The circuit courts did not err by determining that defendant STC lacked jurisdiction to hear the assessors' appeals in these cases.

Affirmed. Plaintiffs may tax costs.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Pat M. Donofrio