

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

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MYSTIC CREEK GOLF CLUB, LIMITED  
PARTNERSHIP,

UNPUBLISHED  
February 8, 2002

Petitioner-Appellant,

and

GOLF TRUST OF AMERICA,

Intervening Appellant,

v

No. 225492  
Tax Tribunal  
LC No. 244466

TOWNSHIP OF MILFORD,

Respondent-Appellee.

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Before: Cavanagh, P.J., and Neff and B. B. MacKenzie\*, JJ.

PER CURIAM.

Petitioner and intervening appellant appeal as of right from an order granting summary disposition in favor of respondent in this tax action. We affirm.

Petitioner and intervening appellant argue that the Tax Tribunal erred when it held that the golf course property was not exempt from taxation under the lessee-user act, MCL 211.181(1), because the property was not used as a concession under MCL 211.181(2)(b). They argue that the City of Dearborn retained sufficient control over the operation of the golf course conducted on the property to be a concession. We disagree.

Our review of a Tax Tribunal's decision is limited to determining whether the tribunal's factual findings are supported by competent, material, and substantial evidence and whether it erred in applying the law or adopting a wrong principle. *American Golf of Detroit v Huntington Woods*, 225 Mich App 226, 230; 570 NW2d 469 (1997); *Kalamazoo v Richland Twp*, 221 Mich App 531, 535; 562 NW2d 237 (1997); *Golf Concepts, Inc v Rochester Hills*, 217 Mich App 21, 24; 550 NW2d 803 (1996). Substantial evidence is that which a reasonable mind would accept as adequate to support a decision and is more than a mere scintilla but less than a preponderance of the evidence. *In re Payne*, 444 Mich 679, 692 (Boyle, J.), 698 (Riley, J.); 514 NW2d 121

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

(1994). When there is sufficient evidence, a reviewing court must not substitute its discretion for that of the administrative tribunal even if the court might have reached a different result. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). It does not matter that alternative findings also could have been supported by substantial evidence on the record. *In re Payne*, *supra*.

Concessions under the lessee-user statute have been discussed in several cases. See *Detroit v Tygard*, 381 Mich 271, 274-275; 161 NW2d 1 (1968); *American Golf*, *supra*; *Kalamazoo*, *supra* at 536; *Golf Concepts*, *supra* at 25; *Seymour v Dalton Twp*, 177 Mich App 403, 406; 442 NW2d 655 (1989). A concession has been defined as “a ‘privilege or space granted or leased for a particular use within specified premises.’” *American Golf*, *supra*, quoting *Tygard*, *supra*. Central to the concept of a concession is the concession holder’s responsibility to uphold specific obligations, and to maintain particular services under specified terms and standards of the concession agreement. *Id.* at 275-276; *American Golf*, *supra*. The responsibilities and obligations must “bear a reasonable relationship to the purposes” of the facility being operated. *Tygard*, *supra* at 276; *American Golf*, *supra*. To be considered a concession, the enterprise should be a “subsidiary business incidentally related to a public-oriented operation, rather than a privatized, self-contained operation.” *Id.* at 231, citing *Seymour*, *supra* at 409-410. This Court has articulated the relevant inquiry as whether the city specifically retained a sufficient degree of control over the lessee's operation of the facility to constitute a concession as in *Kalamazoo* or, instead, relinquished meaningful control and thereby privatized the operation of the facility as in *Seymour* and *Golf Concepts*. See *American Golf*, *supra* at 230-232.

This inquiry is conducted after it is established that the property in question is at a public airport, park, market, or similar property, and is available for use by the general public. See MCL 211.181(2)(b). In this case, the parties stipulated that these two elements were established. Accordingly, the issue is whether the golf course property falls within the definition of a concession; therefore, the proper focus is on the degree of control retained by the City.

The Tax Tribunal did an extensive factual analysis of the agreement between petitioner and the City to determine whether the level of control retained by the City was consistent with the grant of a concession within the meaning of the lessee-user tax act. The Tribunal cited provisions in the lease that included some City control over the construction of the course, clubhouse, and pro shop. It also referenced several provisions dealing with the post-construction continuing operation of the golf course by petitioner, noting standards for maintenance including water and sewer regulations, fee charges, discounts, minimum hours and days of operation, and assignment of the lease. The Tribunal further noted that the agreement called for an annual meeting between the City and petitioner and concluded that it was the intent of the parties that petitioner would be granted a concession. However, after comparing the facts in this case to the factual scenarios of relevant case law, including *Seymour*, *supra*, and *Kalamazoo*, *supra*, the Tribunal concluded that the controls and restrictions in this case were more than those enumerated in *Seymour*, but did not rise to the level of those in *Kalamazoo*. Accordingly, the Tribunal held that a concession did not exist and that the property could be taxed under the lessee-user act, MCL 211.181(1).

After review of the Tribunal’s decision, we conclude that its factual findings are supported by competent, material, and substantial evidence. See *American Golf*, *supra* at 230;

*Kalamazoo, supra* at 535. The Tribunal reviewed a multitude of facts, applied the relevant law, and answered the appropriate inquiry. See *Id.*; *Golf Concepts, supra* at 24-25. After extensively analyzing the provisions in the lease, the Tribunal interpreted them to demonstrate that the City had some control over the operations of the golf course, but that the lease provisions addressed broader management issues rather than specific obligations. See *Id.* at 29. Although there may be evidence to support the alternative finding, this Court cannot substitute its discretion for that of the Tax Tribunal. See *In re Payne, supra* at 692; *Black, supra*.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Janet T. Neff

/s/ Barbara B. MacKenzie