STATE OF MICHIGAN

COURT OF APPEALS

ROMULUS LAND PRESERVE,

Plaintiff-Appellant,

v

CITY OF ROMULUS and COUNTY OF WAYNE,

Defendants-Appellees.

UNPUBLISHED
March 11, 1997

No. 190514
Michigan Tax Tribunal
LC No. 00169030

Before: MacKenzie, P.J., and Wahls and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from the Michigan Tax Tribunal's (MTT's) judgment denying plaintiff a property tax exemption. We affirm.

Plaintiff argues that the MTT erred in denying plaintiff's claim. We disagree. Assuming arguendo that plaintiff is a charitable institution for purposes of this statute, see *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661; 378 NW2d 737 (1985); *Moorland Twp v Raveena Conservation Club, Inc*, 183 Mich App 451, 460-461; 455 NW2d 331 (1990), the MTT did not err in determining that plaintiff is not eligible for tax exempt status because it did not "occupy" the subject property as required by MCL 211.7o; MSA 7.7(4-l) (§ 7o). In the absence of fraud, this Court reviews a decision of the MTT to determine whether the tribunal erred in applying the law or adopted a wrong principle. *Holland Home v Grand Rapids*, 219 Mich App 384, 393; ___ NW2d ___ (1996).

Pursuant to the General Property Tax Act, all real and personal property within the jurisdiction of this state and not expressly exempted is subject to taxation. MCL 211.1; MSA 7.1; *McCormick Foundation v Wawatam Twp (Aft Remand)*, 196 Mich App 179, 182; 492 NW2d 751 (1992). MCL 211.7o; MSA 7.7(41) provides:

> Real estate or personal property owned and occupied by nonprofit charitable institutions incorporated under the laws of this state with the buildings and other

property thereon while occupied by them solely for the purposes for which they were incorporated . . . is exempt from taxation under this act.

Under this exemption, a property owner must satisfy the following requirements:

(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;[1] and

(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*, *supra*, pp 396-397.]

Historically, § 7o has been construed to require actual physical use. *Id.*, p 397. However, intentional non-development for purposes of environmental conservation can satisfy the occupancy requirement of § 7o. *Kalamazoo Nature Center, Inc v Cooper Twp*, 104 Mich App 657, 666-667; 305 NW2d 283 (1981). In that case, this Court stated:

In terms of contemporary environmentalism, the best "occupancy" may be visual, educational, or other demonstrative type occupancy. [*Id.*, p 666.]

To illustrate, the petitioner's staff in *Kalamazoo Nature Center* conducted tours for visitors on a daily basis during the summer and the fall. *Id.*, p 665. This Court held that even though visitors did not physically enter the property during these tours, the property was nevertheless "used" as a demonstration project. *Id.*

Importantly, the Court in *Kalamazoo Nature Center* held that the petitioner's use of the preserved area was "not occasional or de minimus." *Id.*, p 667. Here, in contrast, the MTT characterized plaintiff's activities as consisting of the following: "not developing the land, not fencing in the property, infrequently visiting the property and occasionally planting trees." As to the public's use of the property, the MTT found as follows:

Mr. Keene testified at the hearing that he has not actually seen persons on the subject property except for two persons cutting trees to which Mr. Keene did not object. Mr. Keene testified that he has found pop, beer, and whiskey bottles on the subject property. Mr. Keene also testified that subject property has been used by the public since Petitioner's incorporation because there is evidence of use of walking and campfires on the subject property, although Mr. Keene has not actually seen the subject property being used in this manner. Furthermore, Petitioner presented evidence that the public has used the subject property for enjoyment, but has not shown that the subject

> property has been used for the public enjoyment of natural resources, which is one of the stated purposes under Petitioner's Articles of Incorporation.

Courts should strictly construe exemption provisions in favor of the taxing unit because an exemption removes the burden on the exempt landowner to share in the support of local government. *Golf Concepts v Rochester Hills*, 217 Mich App 21, 26; 550 NW2d 803 (1996). In essence, a tax exemption is the antithesis of tax equality. *Id.* However, this rule does not permit a strained construction adverse to the Legislature's intent. *Holland Home*, *supra*, p 396.

Here, plaintiff has not shown that it occupied the property in question in a "visual, educational, or other demonstrative" way. *Kalamazoo Nature Center, supra*, p 666. Although plaintiff argues that its property would provide an ideal location for academic research, it did not provide evidence that it actually is being occupied for such a purpose. Because plaintiff's "occupation" of the property here was "de minimus," compare *IBLP v Watersmeet Twp (Aft Remand)*, 217 Mich App 7, 19-20; 551 NW2d 199 (1996); *McCormick Foundation (Aft Remand)*, *supra*, pp 188-189; *Kalamazoo Nature Center, supra*, p 667, the MTT did not err in denying plaintiff's claim for a tax exemption. *Kalamazoo Nature Center, supra*, p 667.

Affirmed. No taxable costs pursuant to MCR 7.219, a question of public policy involved.

/s/ Barbara B. MacKenzie
/s/ Myron H. Wahls
/s/ Jane E. Markey

[1] This requirement is unconstitutional. *McCormick Foundation v Wawatam Twp*, 186 Mich App 511, 515; 465 NW2d 14 (1990).