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TAX APPEALS

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IN THE SUPREME COURT OF OHIO

THE CHAPEL	)	Supreme Court Case No:
	)	10-0562
Appellant	)	On Appeal from the Ohio Board
	)	of Tax Appeals
-vs.-	)	
	)	
WILLIAM W. WILKINS	)	Board of Tax Appeals Case No.
(now Richard A. Levin)	)	2007-V-2
Tax Commissioner of Ohio	)	
	)	
Appellee	)	

NOTICE OF APPEAL OF APPELLANT THE CHAPEL

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 MAR 31 2010  
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 SUPREME COURT OF OHIO

**Notice of Appeal of Appellant The Chapel**

The Chapel appeals the March 2, 2010 Decision and Order of the Board of Tax Appeals, a copy of which is attached hereto, insofar as it determined that 18.6795 acres of The Chapel's real property is not exempt from real property tax.

The March 2, 2010 Decision and Order of the Board of Tax Appeals is unreasonable and unlawful because it determined that recreational areas, located on a church's property, that are open for use and are used by the public for recreational purposes are not exempt from real property tax pursuant to R.C. § 5709.12.

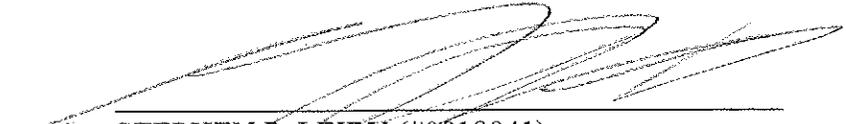
The March 2, 2010 Decision and Order of the Board of Tax Appeals is unreasonable and unlawful because it determined that 18.6795 acres of recreational areas located on The Chapel's property that are open for use and are used by the public for recreational purposes are not exempt from real property tax pursuant to R.C. § 5709.12 because the property would not otherwise qualify under R.C. § 5709.07.

The March 2, 2010 Decision and Order of the Board of Tax Appeals is unreasonable and unlawful because it determined that 18.6795 acres of recreational areas located on The Chapel's property that are open for use and are used by the public for recreational purposes are not exempt from real property tax pursuant to R.C. § 5709.12 because the property is primarily used to support public worship.

The March 2, 2010 Decision and Order of the Board of Tax Appeals is unreasonable and unlawful because it determined that 18.6795 acres of recreational areas located on The Chapel's property that are open for use and are used by the public for recreational purposes are not exempt from real property tax pursuant to R.C. § 5709.12 because the property is ancillary to the property's primary use for public worship.

The March 2, 2010 Decision and Order of the Board of Tax Appeals denied The Chapel the equal protection of the law in determining that 18.6795 acres of recreational areas located on its property that are open for use and are used by the public for recreational purposes are not exempt from real property tax pursuant to R.C. § 5709.12.

The March 2, 2010 Decision and Order of the Board of Tax Appeals denied The Chapel substantive due process in determining that 18.6795 acres of recreational areas located on its property that are open for use and are used by the public for recreational purposes are not exempt from real property tax pursuant to R.C. § 5709.12.



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### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF APPEAL was forwarded to Richard Cordray, Ohio Attorney General, attention Sophia Hussain, Assistant Attorney General, Taxation Section, attorney for William W. Wilkins (now Richard A. Levin), Tax Commissioner of Ohio, and to the Office of the Tax Commissioner by certified U.S. mail, return receipt requested, this 30<sup>th</sup> day of March, 2010.



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STEPHEN P. LEIBY (0018041)

OHIO BOARD OF TAX APPEALS

The Chapel,	)	
	)	CASE NO. 2007-V-2
Appellant,	)	
	)	(REAL PROPERTY TAX EXEMPTION)
vs.	)	
	)	DECISION AND ORDER
William W. Wilkins, Tax	)	
Commissioner of Ohio,	)	
	)	
Appellee.	)	
	)	

APPEARANCES:

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For the Appellee	Richard Cordray Attorney General of Ohio Sophia Hussain Assistant Attorney General Taxation Section State Office Tower, 25th Floor 30 East Broad Street Columbus, Ohio 43215-3428
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Entered MAR 02 2010

Ms. Margulies, Mr. Johrendt, and Mr. Dunlap concur.

The Chapel appeals from a final determination of the Tax Commissioner, in which the commissioner granted portions and denied portions of The Chapel's request for real property tax exemption. Upon review, we affirm and further modify the commissioner's determination.<sup>1</sup>

<sup>1</sup> We do not reach the question of whether or not the contested acreage was used for an exempt purpose on January 1 of the year for which exemption was requested, as the law requires, based upon our determination that such property is not tax exempt based on other grounds.

The Chapel owns 78.8963 acres of land situated upon three parcels in the city of Green, Summit County, Ohio. The land is improved with a 136,000-square-foot church, an 87-classroom building, paved parking lots, preserved wetland reserves, a jogging trail, baseball/softball diamonds, a soccer field, and an area designated for a fourth field. At issue is a portion of the land utilized for recreational purposes (i.e., jogging trail and athletic fields) which are situated across all three parcels before this board.

In its application for exemption, appellant sought to have the entire property exempted from real property taxation under two theories: land being used for public worship, R.C. 5709.07, and the recreational land used for charitable purposes, R.C. 5709.12. In general terms, the commissioner granted appellant's exemption under R.C. 5709.07 for portions of the property (church, classrooms, parking areas, access roads, preserved wetlands, and detention basins) used for public worship. However, the commissioner denied the remaining recreational areas and jogging path, finding that said areas did not qualify under R.C. 5709.12.

In denying the exemption under R.C. 5709.12, the commissioner held:

The applicant seeks exemption for the recreational fields pursuant to R.C. 5709.12. While the Ohio Supreme Court has recognized that religious institutions may seek exemption under R.C. 5709.12, see, *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117, the Court has held that '[I]n order for its property to be considered for exemption under R.C. 5709.12, the religious institution itself must be using the property exclusively for charitable purposes.' *First Baptist Church of Milford v. Wilkins* (2006) 110 Ohio St.3d 496. According to the information supplied by the applicant, the primary users of the recreation field are outside parties, including independent sports leagues, baseball clinics, cycling

clubs and youth sports programs conducted through the City of Green. Additionally, the applicant allows the public to use its walking and jogging trails. As the applicant itself is not using the property for charitable purposes but rather is merely holding the property open to the public and allowing various third parties to use it, its use is not charitable and thus does not qualify for exemption under R.C. 5709.12.” S.T. at 2.

At hearing before this board, appellant provided the testimony of three of its pastors who testified about the subject property’s recreational area and its use. The commissioner rested upon the cross-examination of appellant’s witnesses.

Paul Sartarelli, appellant’s co-senior pastor, identified appellant’s articles of incorporation and letter from the Internal Revenue Service granting appellant 501(C)(3) status. H.R. at 9-10, Exs. 1 and 5. Sartarelli further testified that appellant’s recreational areas are open for public use and that the appellant does not charge for its use. H.R. at 28-29, 34.

Michael Castelli, appellant’s associate pastor, testified that appellant acquired the smaller parcels in June 2000 and the large parcel in April 2001. H.R. at 38-39, Exs. 6, 7. In 2000, Castelli worked with an architectural design firm to design the church facility and recreational fields. H.R. at 41-47. Castelli identified the engineer’s map, dated October 11, 2000, which was subsequently attached to the exemption application. Ex. 8. Castelli testified that construction of the three recreational fields began in 2001 and the fourth field has yet to be constructed because topsoil from the construction of the facility has yet to fully settle in the area. H.R. at 47-48, 57-58. Castelli further testified that the two oil wells are not located on the

recreational areas at issue. *Id.* at 73. When asked how the recreational areas relate to the church's mission, Castelli testified:

"Our mission would include both of those, engaging our congregation and using our facilities to enhance fellowship or for recreational purposes within our community. But our mission would also include engaging our community and using what we own to -- as a means of contribution to the well-being of the community. So benevolent use of the fields, something to enhance the programming in our community for the City's use.

\*\*\*\* Our mission would be to, in a sense, do good to the community. So that fulfills our mission, while, at the same time, obviously, is a good thing for the City and the neighbors and those around us.

"So our mission is not only to do such things for people who would call themselves members of regular attendees of The Chapel, but at the same time use our resources, of which the recreational fields would be part of as a means to do good for the community." *H.R.* at 74-75.

Castelli further surmised that roughly 50 percent of the use of the recreational fields is by individuals who have no formal connection to the church. *Id.* at 75.

Dale Saylor, pastor of the appellant, testified that he is in charge of appellant's sports ministry, which includes the coordinating activities on the recreational fields. *H.R.* at 86.

Regarding the jogging trail, Saylor testified it is used every day, twelve months a year by individuals in the community. Once a year, a walk-a-thon is conducted there in a partnership with the local YMCA. *Id.* at 87-88.

Regarding the recreational fields, Saylor testified that the appellant has 14 different sports ministry events that take place annually. *Id.* at 89. Saylor

identified a chart titled "2007 Impact Report" which quantifies the number of participants of the varied athletic groups. H.R. at 134-156, Ex. 10. Scheduled leagues for flag football spring and fall, youth soccer spring and fall, co-ed adult soccer, women's softball, co-ed softball, and men's softball use the recreational fields. H.R. at 138-158, 170-171. Additionally, the appellant hosts a one-day soccer clinic and a sports camp. Id. at 170-171. Depending on the league, Saylor testified that roughly half to slightly more than half of the teams are community groups with no affiliation to the church. Id. at 90-96. Further, ministry groups: college, singles, kids, and cycling, all utilize the recreational areas. Although Saylor admittedly does not monitor the numbers of individuals in the varied ministries, he testified that many individuals are not church members. Id. at 102-104. Additionally, groups and teams with no affiliation with the appellant routinely utilize the recreational fields such as: the City of Green Softball/Baseball Federation, adult and children's teams organized through the city of Green's parks department; Camp Straight Street, a youth summer camp; corporate groups from FedEx and Chick-Fil-A, and WAGS, a canine training group for use in hospitals. Id. 97-100, 109-110, 111, 152. In all, Saylor estimates that roughly 3,000 individuals use the recreational facilities in a year's time. Id. at 101. Saylor testified that, depending on the league, nominal fees are charged to participants to pay for umpires and team jerseys; however, the appellant does not charge any fee for the use of the recreational areas. H.R. at 122-123, 130, 138-158.

Saylor further testified that the recreational fields were opened in the spring of 2006 and the jogging trail opened late in the summer of 2005. H.R. at 105.

Appellant additionally provided the testimony of Daniel Croghan, former mayor of the city of Green from 2000 through 2003 and member of The Chapel. H.R. at 184-191. Croghan testified that the recreational areas at issue were identified in appellant's initial zoning plans with the city. *Id.* Croghan further testified that appellant's recreational areas have been a great benefit to the city because the city has not had to fund the development of additional youth baseball facilities. H.R. at 186-187. Further, Croghan testified, to the best of his knowledge, that the city of Green has never been charged a fee by the appellant for the use of appellant's recreational fields. *Id.* at 188-189.

In reviewing appellant's appeal, we recognize the presumption that the findings of the Tax Commissioner are valid. See *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121, 123. It is therefore incumbent upon a taxpayer challenging a finding of the commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135, 143; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138, 142. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213, 215.

### **Exemption**

Because appellant seeks to exempt real property from taxation, we also note the general rule that statutes granting exemptions from taxation must be strictly construed. *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 407, at paragraph two of the

syllabus; *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 201; *Am. Soc. for Metals v. Limbach* (1991), 59 Ohio St.3d 38. See, also, *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186 (holding that “[e]xemption from taxation is the exception to the rule and statutes granting exemptions are strictly construed.”).

R.C. 5709.01(A) subjects all real property located in Ohio to taxation, except as expressly exempted by statute. The General Assembly is empowered by the Ohio Constitution to pass laws to exempt certain types of property. Section 2, Article XII, of the Ohio Constitution reads:

“\*\*\* Land and improvements thereon shall be taxed by uniform rule according to value \*\*\*. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the \*\*\* exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, \*\*\*.”

Exemption from taxation is the exception to the rule. *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186. Statutes granting exemptions from taxation must be strictly construed and the burden of establishing exemption is on the taxpayer. *Id.*; *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 407, at paragraph two of the syllabus; *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 201; *Am. Soc. for Metals v. Limbach* (1991), 59 Ohio St.3d 38, 40. See, also, *Willys-Overland Motors, Inc. v. Evatt* (1943), 141 Ohio St. 402; and *Goldman v. Robert E. Bentley Post* (1952), 158 Ohio St. 205.

R.C. 5709.12(B) specifically provides that “[r]eal \*\*\* property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation.” In *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St.3d 405, the court set forth the requirements imposed by R.C. 5709.12 for obtaining exemption:

“[T]o grant exemption under R.C. 5709.12, the arbiter must determine that (1) the property belongs to an institution,<sup>2</sup> and (2) the property is being used exclusively for charitable purposes. We have held that a private profit-making venture does not use property exclusively for charitable purposes. *Cullitan v. Cunningham Sanitarium* (1938), 134 Ohio St. 99 \*\*\*; *Cleveland Osteopathic Hosp. v. Zangerle* (1950), 153 Ohio St. 222 \*\*\*; *Lincoln Mem. Hosp., Inc. v. Warren* (1968), 13 Ohio St.2d 109 \*\*\*. Nevertheless, “any institution, irrespective of its charitable or non-charitable character, may take advantage of a tax exemption if it is making exclusive charitable use of its property.” *Episcopal Parish v. Kinney*, supra, 58 Ohio St.2d at 201 \*\*\*. As the BTA concluded, the applicant for exemption under R.C. 5709.12 need not be a charitable institution, but simply an institution.” *Id.* at 406-407. (Parallel citations omitted and emphasis sic.)

In addition, to qualify for exemption under the above statute, real property must not be used with a view to profit. See *Girl Scouts-Great Trail Council v. Levin*, 113 Ohio St.3d 24, 2007-Ohio-972; *Am. Soc. for Metals*, supra; *Lutheran Book Shop v. Bowers* (1955), 164 Ohio St. 359. See, also, *Seven Hills Schools*, supra; *Seven Hills Schools v. Tracy* (June 11, 1999), BTA No. 1997-M-1572, unreported; *Youngstown Area Jewish Fedn. v. Limbach* (June 30, 1992), BTA No. 1988-G-117, unreported; *Jewish*

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<sup>2</sup> In *Highland Park Owners*, supra, at 407, the term “institution” was defined as “An establishment, especially one of eleemosynary or public character or one affecting a community. An established or organized society or corporation. It may be private in its character, designed for profit to those composing the organization, or public and charitable in its purposes, or educational (e.g. college or university).\*\*\* ”

*Community Ctr. of Cleveland v. Limbach* (June 30, 1992), BTA No. 1988-A-124, unreported; and *Dayton Art Inst. v. Limbach* (June 19, 1992), BTA No. 1986-A-521, unreported.

The commissioner, in his brief, does not dispute that the appellant is an institution or that the property is open for use by the public for recreational purposes. Appellee's brief at 2.

The commissioner argues that the recreational areas do not qualify for exemption under R.C. 5709.07 and that because the property is owned by a church, the appellant should be limited to seeking exemption under R.C. 5709.07.<sup>3</sup>

In the past, the Ohio Supreme Court had held that a religious institution could not seek exemption as a charitable institution under R.C. 5709.12. *Summit United Methodist Church v. Kinney* (1982), 2 Ohio St.3d 72. However, the court reversed its position and found that religious institutions are not excluded from R.C. 5709.12. *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117, 2001-Ohio-295.

In *True Christianity*, the court observed:

"In *Episcopal Parish v. Kinney* (1979), 568 Ohio St.2d 199, 201, \*\*\*, we adopted Justice Stern's concurring opinion in *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 203, \*\*\*, wherein he stated that as regards R.C. 5709.12, 'any institution, irrespective of its charitable or noncharitable character, may take advantage of a tax exemption if it is making exclusive charitable use of its property.' (Emphasis *sic*) Thus, R.C.5709.12 is applicable to

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<sup>3</sup> R.C. 5709.07 exempts houses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper use and occupancy.

‘any institution’; religious institutions are not excluded from the application of R.C. 5709.12.” *Id.* at 118.

Similarly, the court in *First Baptist Church of Milford v. Wilkins*, 110 Ohio St.3d 496, 2006-Ohio-4966, held that under R.C. 5709.12 the religious institution may seek exemption if it is using the property exclusively for charitable purposes. *Id.* at ¶18.

It is important to note that while the appellant did not seek exemption for the recreational areas under R.C. 5709.07, previous claims for church-owned recreational areas have been denied under R.C. 5709.07 in the past. In *Faith Fellowship Ministries v. Limbach* (1987), 32 Ohio St.3d 432, 437, the court held that a building that housed a cafeteria, sleeping rooms, and gymnasium, separate from the church’s sanctuary, were not used primarily for public worship and was merely supportive and incidental to public worship. In *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134, the court held that a youth camp, improved with lodging, cafeteria, chapel, swimming pool, basketball court, and recreational fields did not qualify for exemption under R.C. 5709.07 because it was not being used exclusively for public worship. This board has on many previous occasions reached the same result. *Zion Baptist Church v. Levin* (Sept. 16, 2008), BTA No. 2007-A-660, unreported; *Vandalia Church of the Nazarene v. Zaino* (Jan. 17, 2003), BTA No. 2001-N-883, unreported; *South Norwood Church of Christ v. Zaino* (Jan. 12, 2001), BTA No. 2000-P-487, unreported; *Somerset Presbyterian Church v. Tracy* (Feb. 25, 1994), BTA No. 1992-A-1502, unreported. See, also, *First Christian Church of Medina*, supra; *Islamic Assn. of Cincinnati v. Tracy* (Aug. 27, 1993), BTA No. 1991-X-1763,

unreported. The common thread in all these previous cases was that the primary purpose for the use of the land was for athletic-type activities, not worship. Such use is “at best, merely supportive of religious purposes” and therefore would not qualify for exemption. *Columbus Christian Center v. Zaino* (Apr. 19, 2002), BTA No. 2000-R-669, unreported, affirmed (Dec. 19, 2002), Franklin App. No. 02APH563, unreported.

The commissioner argues that appellant should be precluded from seeking exemption under R.C. 5709.12 for property that would not otherwise qualify under R.C. 5709.07.

In *Rickenbacker Port. Auth. v. Limbach* (1992), 64 Ohio St.3d 628, a port authority was denied exemption under R.C. 4582.46 (Tax Exemption for Port Authority Property) because the statute precluded the exemption of property subject to any lease of a term of a year or more. The land at issue owned by Rickenbacker was subject to a seventy-year lease. Before the court, Rickenbacker argued that the property was exempt under R.C. 5709.08 (exemption of government and public property) and R.C. 5709.121 (property used exclusively for charitable purpose), as property held for a public purpose. The court held that to allow the owner to seek exemption under R.C. 5709.08 and/or R.C. 5709.121 would effectively negate the limitation contained in R.C. 4582.46, which prohibits port authority property subject to a seventy-year lease to be exempt from taxation. The court in *Rickenbacker* cited to its previous holdings in *Toledo Business & Professional Women’s Retirement Living, Inc. v. Bd. of Tax Appeals* (1971), 27 Ohio St.2d 255, and *Summit United Methodist*

*Church v. Kinney* (1982), 2 Ohio St.3d 72, which held “the General Assembly has exclusive power to choose the subjects, and to establish the criteria, for exemption from taxation. After the General Assembly has marked a specific use of property for exemption and has established the criteria therefore, the function of the judicial branch is limited to interpreting and applying those criteria.” *Rickenbacker*, supra at 631. The *Rickenbacker* court reasoned, as in its prior cases, that when the legislature creates specific criteria, and the taxpayer fails to meet said specific criteria, then the taxpayer may not seek exemption under general charitable use statutes.

The court recently affirmed the same concept in *Church of God in Northern Ohio v. Levin*, 124 Ohio St.3d 36, 2009-Ohio-5939. In that case, the church-owned property was used as the regional headquarters and offices. Taxpayer sought exemption under R.C. 5709.12, arguing that the charitable use of the property was “facilitating the proclamation of the Gospel of Jesus Christ and supporting public worship.” *Id.* at ¶3. The court reasoned that the character of the property’s use must be determined based upon the property’s primary use as administrative offices, not its secondary or ancillary use of supporting public worship.

The court in *Church of God* stated that the Ohio Constitution and statutes “have long distinguished between exempting public worship and exempting charitable use,” and held that “public worship does not fall within the definition of charity.” *Id.* at ¶32. The court further held:

“[I]f public worship constituted a charitable use, then the limited scope the legislature prescribed for the exemption of houses of public worship could be avoided simply by claiming exemption under the charitable-use statute rather

than the house-of-public-worship provision itself. Taken together, these circumstances would amount to a violation of the precept that we should construe statutes to give effect to all the enacted language. (Citations omitted). Indeed, we have recognized a general principle that a property owner may not evade the limitations imposed with respect to a specific tax exemption by claiming exemption under a broad reading of other exemption statutes. *Rickenbacker Port Auth. v. Limbach* (1992), 64 Ohio St.3d 628, 631-632, \*\*.\*”

Distinguishing the facts in *True Christianity*, the court in *Church of God* found that because the property was primarily used to support public worship, the taxpayer could not qualify for exemption under charitable use.<sup>4</sup>

In the same manner, appellant’s property is nearly 79 acres improved with a church. The commissioner has held that all but 22.11 acres (roughly 57 acres) are subject to exemption under R.C. 5709.07(A)(2) as a house of public worship and the ground attached to it that is necessary for its use and occupancy. The primary use of the appellant’s property is for public worship. The recreational fields and jogging path are ancillary to appellant’s primary use for public worship.

We are unable to adopt appellant’s premise that the subject property has two primary uses, one for public worship and the other charitable.

A review of the record in this case and the applicable law demonstrates that appellant’s primary use of the subject property fails to meet the second prong of the test set forth in *Highland Park Owners, Inc.*, supra, and thus the recreational areas and jogging path are not entitled to exemption from taxation.

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<sup>4</sup> The court further noted that its holding was limited insofar as a religious institution was not precluded from seeking exemption for charitable use in other contexts where the primary use of other property might constitute charitable use (e.g., a soup kitchen ) under the holding of *True Christianity*, supra.

### **Split Listing Under R.C. 5713.04**

The commissioner's determination to split list the property between taxable and exempt fails to state with specificity which acreage, among the three parcels, should be listed as taxable and exempt. Based upon a review of the record before us, it appears that the commissioner's determination to split list the property seemingly grants exemption to portions of the property not entitled to exemption under R.C. 5709.07.

In its application for exemption, appellant describes the property as three parcels: a) 2806681 (.69 acres), b) 2806683 (1.55 acres) and c) 2813492 (76.6563 acres). S.T. at 21. Appellant described the recreational areas as all of parcels 2806681 (.69 acres), 2806683 (1.55 acres) and 18.6795 acres of parcel 2813492. Appellant further described the church facility as 57.9768 acres of parcel 2813492.

Viewing an engineer's map submitted with appellant's application (Exs. 8, 14), the two smaller parcels (2806681 and 2086683) combine to form a small triangle which abuts the southwestern corner of the larger parcel, 2813492. Viewing the entire property, a church facility is situated in the middle of the property with parking lots virtually surrounding the church facility in a circular fashion. Between the northern side of the church facility and the entrance on Raber Road are two access drives, water retention basins, preserved wetland areas, and an oil well. The south side of the property abuts an interstate highway. Between the highway and the southern side of the facility are two baseball/softball diamonds, two rectangular recreation fields, area for a future recreation field (the engineers drew another baseball/softball

diamond in this area), a preserved wetland area, and a second oil well. The jogging path encircles the entire facility and recreational fields. One of the smaller parcels (2086683) is improved with the majority of one of the baseball/softball diamonds and portions of the jogging track. The other small parcel (2806681) is improved with a portion of the jogging path. The engineer has created borders around the “recreational area” of all three parcels and identified it to be 17.74 acres, all of parcel 2806683’s 1.55 acres, all of parcel 2806681’s .69 acres, and the remaining acreage situated on parcel 2813492. Based on the engineer’s drawing, the entire recreational area totals 19.98 acres. The engineer has additionally identified the jogging trail to be 1.52 acres; however, it is clear that roughly half of the jogging trail is situated on areas designated as “recreational area” and the remainder is situated on other areas of the property that encircle the facility. The total area at issue computes to 21.5 acres based on the engineer’s drawing. However, the record before this board is not clear as to whether the engineer’s calculations of the “recreational area 17.74 ac.” includes or excludes the smaller parcels’ acreage or whether the engineer’s calculations include/exclude portions of the jogging path that are situated within the recreational area. The record before this board does not contain any pertinent records from the Summit County Fiscal Officer (i.e., property record cards, tax maps) that would enable us to identify with precision the acreage of the parcels.

Within the property are two small areas with an oil well on each. The commissioner’s final determination states that the two oil wells had previously been assigned separate parcel numbers by the Summit County Fiscal Officer; however, one

of which was “deactivated” for tax year 2000, and the commissioner further states “both are now defunct.” S.T. at 1. By separate letter sent to this board by counsel for the appellant, the parties have agreed that the oil wells occupy 1.4424 acres.

Appellant’s counsel represents in his brief that the totality of the recreational area and jogging path constitutes 18.6795 acres.<sup>5</sup> The commissioner did not take issue with appellant’s representation; therefore, we will treat the recreational areas as 18.6795 acres.

We note that the commissioner’s final determination, as well as the recommendation of the commissioner’s agent concerning the specific parcels of the property exempted as “houses used exclusively for public worship” under R.C. 5709.07, is inconsistent with the record before him. The commissioner split-listed the property pursuant to R.C. 5713.04 and determined:

**“Property exempt from taxation:**

“All property not specifically described below as taxable.

“The Tax Commissioner orders that the real property for parcel numbers 2806681 and 2806683 not placed upon the tax list below be entered upon the list of property in the county which is exempt from taxation for tax year 2002, and that taxes, penalties and interest for the tax years 2001, 2002 and subsequent years be remitted.

“The Commissioner further orders that the real property for parcel number 2813492 not placed on the tax list below also be entered upon the list of the property in the county which is exempt from taxation for tax year 2002 and that taxes, penalties and interest for tax year 2002 and subsequent years be remitted.

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<sup>5</sup> Counsel argues that the parties had mistakenly identified the recreational area and jogging path as 22.11 acres. Appellant’s brief at 19.

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**“Property to remain on the tax list:**

“Approximately 22.11 acres designated by the applicant as the location of various recreation areas, as well as those portions of the property designated as the location of the oil/gas wells.” S.T. at 3.

The commissioner’s order fails to adequately specify what acreage on which parcels is taxable or exempt. The commissioner erroneously treats each of the three parcels as containing both taxable and exempt components. Although the commissioner’s order decrees “all property not specifically described below as taxable,” he then describes that all three parcels are exempt, excepting the 22.11 acres used for recreation and oil wells. Adding to the uncertainty, the commissioner fails to specify how said 22.11 acres are situated on the three parcels.<sup>6</sup> The engineer’s map included with the application for exemption clearly portrays that the two smaller parcels, 2806681 (.69 acres) and 2806683 (1.55 acres), are removed from the church facility and parking areas. Further, these two smaller parcels contain no other improvements other than a portion of a softball field and the jogging path. Exs. 8 and 14.

The commissioner’s determination is in error, insofar that the exempted public worship area of the subject property is limited to the larger 76.6563-acre parcel

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<sup>6</sup> The underlying recommendation of the commissioner’s agent examiner, dated November 17, 2005, vaguely described the exempted area as “[t]he church building, parking areas, access roads and 30 acres of land” and further found that the “balance of the property” should remain on the tax list. S.T. at 19.

identified as parcel 2813492. Neither of the smaller parcels (2806681 and 2806683) is entitled to exemption.

This board finds the Tax Commissioner's determination that the recreational areas located on the property are not entitled to exemption under R.C. 5709.12 is correct. This board further modifies the Tax Commissioner's final determination and orders that: parcels 2806681 and 2806683 remain on the tax list; 16.4395 acres of parcel 2813492 remain on the tax list; and 58.7744 acres of parcel 2813492 be placed on the exempt tax list.<sup>7</sup>

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

  
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Sally F. Van Meter, Board Secretary

<sup>7</sup> Beginning with the representation that 18.6795 acres account for the taxable recreational areas across all three parcels, the recreational areas are reduced by the amounts of the smaller taxable parcels (.69 acres and 1.55 acres) to arrive at 16.4395 acres of parcel 2813492 devoted to the recreational areas. Parcel 2813492's 76.6563 acres are first reduced by 1.4424 acres for the oil wells and further reduced by 16.4395 acres for the taxable recreational areas to result in 58.7744 acres exempt from taxation under R.C. 5709.07.