

IN THE SUPREME COURT OF OHIO

ORIGINAL

THE CHAPEL

Appellant

Case Number: 10-0562

-vs.-

On Appeal from The Ohio Board of Tax
Appeals (Case No. 2007-V-2)

WILLIAM W. WILKINS
(now Richard A. Levin)
Tax Commissioner of Ohio

Appellee

MERIT BRIEF OF APPELLANT

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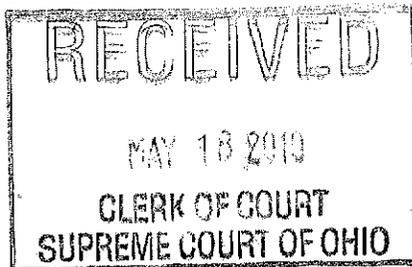


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B. Parcel nos. 2806681 and 2806683 and 16.4395 acres of parcel no. 2813492 are together use exclusively for the identical charitable purposes. 4

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Proposition of Law 2:

A parcel ordered split from another parcel in the course of proceedings on an application for exemption from real property taxation may be exempted if it is used exclusively for an exempt purpose. *Olmsted Falls BTA of Education v. Limbach* (1994), 69 Ohio St.3d 686, 635 N.E.2d 367, applied and followed.

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STATEMENT OF THE FACTS

On December 30, 2002, Appellant, The Chapel, filed an Application for Real Property Tax Exemption and Remission.¹ In that application, it sought exemption for parcel nos. 2806681 (0.69 acres) and 2806683 (1.55 acres) and 18.6795 acres of parcel no. 2813492 under R. C. § 5709.12. It also sought exemption for the remaining 57.9678 acres of parcel no. 2813492 under R.C. § 5709.07.² Hereafter, unless indicated otherwise, the recitation of the facts is limited to those pertinent to two parcels and partial third parcel which exemption was sought under R. C. § 5709.12 inasmuch as exemption was granted for 57.9678 acres under R.C. § 5709.07.

In his RECOMMENDATION, the Tax Commissioner determined that The Chapel is not entitled to exemption for any of its property under R.C. § 5709.12 because “an organization which is a primarily religious institution is not entitled to exemption under R.C. 5709.12 . . .”³

The Chapel objected to the Recommendation. The Commissioner then determined that “As the applicant 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.”⁴ The Chapel timely appealed the Commissioner's Final Determination to the Board of Tax Appeals.

¹ Tax Commissioner's FINAL DETERMINATION, p. 1.

² Application, items 1 a), b) and c) and item 13.

³ Tax Commissioner's RECOMMENDATION, pp. 2-3.

⁴ FINAL DETERMINATION, p. 2.

The use of the land at issue is not in dispute. Two softball fields and one soccer field were constructed on the land.⁵ There is a fourth field planned but which had not been constructed at the time of the hearing before the Board of Tax Appeals.⁶ There is also a jogging trail.⁷ The softball and soccer fields, as well as the jogging trail are open to and used extensively by members of The Chapel, members of the public, the City of Green Parks and Recreation Department, leagues, corporations, the YMCA, and other community organizations and individuals.⁸ No fees are charged by The Chapel for use of the fields or the jogging trail.⁹

After the Board of Tax Appeals conducted an evidentiary hearing on The Chapel's appeal, it determined that parcel nos. 2806681 and 2806683 and 16.4395 acres of parcel no. 2813492 are not entitled to exemption.¹⁰ It is from the BTA's Decision and Order that The Chapel appeals.

⁵ Hearing transcript, p. 46, lines 4-23.

⁶ Hearing transcript, p. 47, lines 19-21.

⁷ Hearing transcript, p. 27, lines 3-4.

⁸ Hearing transcript, pp. 15-18, 24, 60, 87-115, 122-123, 125-126, and 135-149. These uses are also described in the BTA's Decision and Order, pp. 3-6.

⁹ Hearing transcript, pp. 109-111, 128-130, and 154-155.

¹⁰ Decision and Order, p. 18.

Proposition of Law 1:

Land which belongs to a church and which is used solely for athletic and recreational activities is exclusively used for charitable purposes and is eligible for exemption from real estate taxation. R.C. § 5709.12 construed. *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St.3d 405, 644 N.E.2d 284, *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117, 742 N.E.2d 638, and *College Preparatory School for Girls v. Evatt* (1945), 144 Ohio St. 408, 59 N.E.2d 142 applied and followed.

Two parcels (2806681 and 2806683) and 16.4395 acres of a third (2813492) are at issue. They are together used by The Chapel exclusively for athletic and recreational purposes. That use and the applicable law, argued under this proposition of law, are important to both propositions of law and all of the land just identified. It is necessary, however, to focus on the first two parcels under the argument for Proposition 1 and to address the 16.4395 acres of the third parcel in the argument for Propositions 2 because of the distinctions drawn and reasoning used by the BTA in its Decision and Order.

A. The Chapel is an institution.

For parcel nos. 2806681 and 2806683 and 16.4395 acres of parcel no. 2813492, the Chapel did not apply for nor does it argue for exemption from taxation under R.C. §5709.07 pertaining to schools, churches, and colleges but under R.C. § 5709.12 pertaining to property, owned by an institution, that is used for charitable purposes.

The issues and argument here are straight forward. Eligibility for exemption from real estate taxes under R.C. § 5709.12 is determined by the answers to two questions. Is the land owned by an institution? Is it used exclusively for charitable purposes? In determining first whether land is owned by an institution, the nature of the institution is

irrelevant.¹¹ Thus, any institution may take advantage of the exemption,¹² including a religious institution.¹³

In his Final Determination and in his brief before the BTA, the Tax Commissioner did not dispute that The Chapel is an institution and acknowledged that a religious institution may seek exemption under R.C. § 5709.12.¹⁴ More importantly, the BTA made no finding to the contrary. Since The Chapel is an institution, if it is using its land exclusively for charitable purposes, the land is eligible for exemption.

B. Parcel nos. 2806681 and 2806683 and 16.4395 acres of parcel no. 2813492 are together use exclusively for the identical charitable purposes.

Land used exclusively for athletic events and other recreational purposes is used exclusively for charitable purposes.¹⁵

In its Decision and Order, the BTA observed that the Tax Commissioner “does not dispute . . . that the property is open for use by the public for recreational purposes.”¹⁶

The context of that statement encompasses all of Parcel nos. 2806681 and 2806683 and

¹¹ *Highland Park Owners, Inc. v Tracy* (1994), 71 Ohio St.3d 405, 407, 644 N.E.2d 284; *True Christianity Evangelism v Zaino* (2001), 91 Ohio St.3d 117, 118, 742 N.E.2d 638; *First Baptist Church of Milford, Inc. v Wilkins* (2006), 110 Ohio St.3d 496, ¶15, 854 N.E.2d 494; *Olmsted Falls BTA of Education v. Tracy* (1997), 77 Ohio St.3d 393, 396, 674 N.E.2d 690; and, *Episcopal Parish v Kinney* (1979), 58 Ohio St.2d 199, 200-201, 389 N.E.2d 847.

¹² *Episcopal Parish v Kinney supra*, 201.

¹³ *First Baptist Church of Milford, Inc. v Wilkins, supra*, ¶17, citing *True Christianity Evangelism v Zaino, supra*, 118.

¹⁴ FINAL DETERMINATION, p. 2. BTA Decision and Order, p. 9.

¹⁵ *Highland Park Owners, Inc. v Tracy, supra*, 407; and, *College Preparatory School for Girls v. Evatt* (1945), 144 Ohio St. 408, *Syllabus by the Court* 2, 59 N.E.2d 142.

¹⁶ Decision and Order, p. 9.

16.4395 acres of parcel no. 2813492. The land at issue consists of baseball/softball fields, a soccer field and a jogging trail, all of which are open to and used by its members and the public without restriction or fee for softball, baseball, soccer, walking, jogging, and other such recreational purposes. The land, thus, is used exclusively for charitable purposes. The BTA's Decision and Order discusses at length the athletic and recreational uses of the land by The Chapel's members and the public, including the City of Green, corporate groups and community organizations.¹⁷ Regarding this there is no dispute.

C. The BTA unlawfully and unreasonably denied real property tax exemption for parcel nos. 2806681 and 2806683 which are used for athletic and other recreational activities and for nothing else.

The BTA concluded that parcel no. 2806683 (1.55 acres) "is improved with the majority of one of the baseball/softball diamonds and portions of the jogging track" and parcel no. 2806681(0.69 acres) "is improved with a portion of the jogging path;"¹⁸ and, "these two smaller parcels contain no other improvements other [sic] than a portion of a softball field and jogging path."¹⁹ Nonetheless, the BTA concluded that these two parcels must "remain on the tax list . . ."

Where a property owner applies for exemption from real estate taxation for multiple parcels, separately numbered by the county auditor, a determination of eligibility for exemption must be made separately for each parcel. One or more parcels could be exempt while the other(s) is not; or, all could be exempt.

¹⁷ Decision and Order, pp. 3-6. This description of use is applicable to Parcels 2806681 and 2806683 as well some of the acreage of Parcel 2813492.

¹⁸ Decision and Order, p. 15.

¹⁹ Two "defunct" oil wells existed on these two parcels, one of which was "'deactivated' for the tax year 2000 . . ." As required by R.C. § 5713.06, those wells "had previously been assigned separate parcel numbers by the Summit County Fiscal Officer . . ." Decision and Order pp. 15-16.

While the BTA in form addressed parcel nos. 2806683 and 2806683 separately, in substance it wholly ignored the use of each of these two parcels. The BTA acknowledged the athletic and recreational uses of these two parcels and did not dispute that they are used for such purposes. Nonetheless, the BTA inexplicably denied exemption under R.C. § 5709.12. Its decision in that regard is unreasonable and unlawful.

Proposition of Law 2:

A parcel ordered split from another parcel in the course of proceedings on an application for exemption from real property taxation may be exempted if it is used exclusively for an exempt purpose. R. C. 5713.04, construed. *Olmsted Falls BTA of Education v. Limbach* (1994), 69 Ohio St.3d 686, 635 N.E.2d 367, applied and followed.

A. The BTA's reasoning does not support its denial of an exemption for use for charitable purposes of 16.4395 acres of parcel no. 2813492.

The essence of the BTA decision is that church land used exclusively for athletic and recreational purposes by its members and the public is neither eligible for the public worship exemption nor eligible for the charitable purposes exemption because the charitable purposes are merely ancillary to public worship. As to exemption from real property taxation for use for charitable purposes, the BTA's conclusion does not follow from the premise and misconstrues this Court's holdings as well as its own.

The BTA made a series of three rulings to justify its conclusion that the 16.4395 acres of parcel no. 2813492 are not eligible for exemption under R.C. § 5709.12, under which alone The Chapel sought exemption. First, it posited that two decisions of this Court and six of its own²⁰ contain the "common thread . . . that the primary . . . use of the

²⁰ Decision and Order, pp. 10-11; *Faith Fellowship Ministries v. Limbach* (1987), 32 Ohio St.3d 432, 437; *Moraine Heights Baptist Church v. Kinney* (1984), 12 Ohio St.3d

land was for athletic type activities, not worship” and that “[s]uch use is ‘at best, merely supportive of religious purposes’ which do not qualify for exemption.” None of the cases upon which the BTA relies stands for or can be construed as intimating the proposition advanced here.

In each case which the BTA cited, the applicant attempted to transmogrify athletic and other uses into public worship under R.C. § 5709.07. In none of those cases did the religious institutions seek exemption under R.C. § 5709.12. In none of those cases was the decision made under that code section. Rather, in all of the cases exemption was sought under R.C. § 5709.07 and the cases were decided on that basis.²¹ The BTA thus uses cases construing R.C. § 5709.07 to deny exemption sought under R.C. § 5709.12. The BTA confuses the two exemptions. The tests for determining eligibility under those code sections bear no relation to one another.

The BTA next turned to the ruling in *Rickenbacker Port Authority v. Limbach*²² and concluded that “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,

134; *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; *First Christian Church of Medina v. Zaino* (April 12, 2002) 2000-N-480, unreported; and, *Islamic Assn. of Cincinnati v. Tracy* (Aug. 27, 1993), BTA No. 1991-X-1763, unreported.

²¹ *Moraine Heights Baptist Church v. Kinney*, *supra*, this Court declined to address exemption under R.C. § 5709.12 because the appellant failed to assign as error the denial of exemption under that statute.

²² (1992), 64 Ohio St.3d 628.

then the taxpayer may not seek exemption under general charitable use statutes.”²³ But, the proposition as stated is not nor has it ever been the law of Ohio. More to the point, the *Rickenbacker* court held only that the applicant may not, by seeking exemption for charitable use, circumvent a specific statutory prohibition against exemption for port authority land that had been leased out. There is no such statutory, or decisional, prohibition in the case *sub judice*. *Rickenbacker* in no way speaks to the matter now before this Court. It does not follow, though the BTA so holds, that ineligibility for exemption under one code section necessarily precludes eligibility under another. Were that the case, no church could ever obtain an exemption for property used exclusively for charitable purposes even under R.C. § 5709.12. Such use is, in the BTA’s view, merely ancillary to public worship.

Third, and finally, the BTA relied upon *Church of God in Northern Ohio v. Levin*²⁴ in stating

Distinguishing the facts in *True Christianity*, [*supra*] the court in *Church of God* [sic] found that because the property was primarily used to support public worship, the taxpayer could not qualify for exemption under charitable use.

In the same manner, appellant’s property is nearly 79 acres improved with a church. . . . [T]he ground attached to it . . . is necessary for its use and occupancy. The primary use of appellant’s property is for public worship. The recreational fields and jogging path are ancillary to appellant’s primary use for worship.

²³ Decision and Order, p. 12.

²⁴ (2009)124 Ohio St.3d 36, 2009-Ohio-5939, 918 N.E.2d 981.

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]ppellant'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.²⁵

The BTA ignores both the facts and the holding of *Church of God*. There, regional denominational headquarters sought exemption for charitable use for its administrative office building used by its officials to oversee and assist member congregations. This Court observed that those offices were not used for public worship. Rather, their use was merely ancillary to public worship. Further, the use for offices does not constitute charitable use. Therefore, the applicant there was not entitled to exemption under either R.C. § 5709.07 or R.C. § 5709.12. The facts of that case have no application to the instant cause, even remotely.

Note also the non-sequitur in the BTA's reasoning. Stated succinctly, the BTA concluded from *Church of God* that because regional administrative offices are not used for public worship and are not used for charitable purposes, The Chapel's property used for athletic and recreational purposes open to the public is not eligible for exemption as a charitable use. The reasoning of the BTA is neither sound nor consistent with Ohio law.

The Decision and Order of the BTA are unreasonable and unlawful. It was able to reach its conclusion only through the misapplication of inapplicable precedent. In the instant matter, the 16.4395 acres of parcel no. 2813492 are owned by an institution and

²⁵ Decision and Order, p. 13.

are used exclusively for charitable purposes. As such, they qualify for exemption from real estate taxation.

B. 16.4395 acres of Parcel No. 2813492 was, during these proceedings, ordered by the Tax Commissioner and then by the BTA to be “split listed” pursuant to R.C. § 5713.04 as non-exempt. Since those 16.4395 acres are used exclusively for charitable purposes, they are exempt from real estate taxation notwithstanding that they were not identified by a separate parcel number prior to The Chapel’s application.

R.C. § 5713.04 provides in substance that where part of a parcel is found to be used for exempt purposes and part is found not to be used for exempt purposes, the former and latter are to be split listed, with the latter not being exempt. In the Final Determination by the Tax Commissioner on The Chapel’s application for exemption from real estate taxation, he ordered that Parcel No. 2813492, which contains a total of 76.6563 acres of land, be split listed, with all acreage to be exempted for exclusive use for public worship except for, it seems, 19.87 acres not exempted because of its use for athletic fields and other recreational purposes.²⁶ The BTA followed suit and determined the non-exempt acreage to be 16.4395.²⁷

Whether a parcel split from an original parcel during proceedings on an application for exemption from real property taxation may be exempted was one of the subjects of *Olmsted Falls BTA of Education v. Limbach*.²⁸ The appellant there, who contested the decision of the BTA exempting the property, argued before this Court that

²⁶ FINAL DETERMINATION, p. 3. Taking the 22.11 acres mentioned as not exempt, minus the acreage for parcel nos. 2806683 and 2806681, the remainder is 19.87.

²⁷ Decision and Order, p. 18. The total of the exempt and non-exempt acreage for parcel no. 2813492 as determined by the BTA is 75.2139. It did not make any disposition of or reference to the other 1.4424 acres (76.6565-75.2139).

²⁸ (1994), 69 Ohio St.3d 686, 635 N.E.2d 367.

“a parcel split from original parcels during the proceedings” may not be exempted.²⁹ To the contrary, this Court ruled that the appellant

has not established that the BTA’s decision was unreasonable or unlawful. [The applicant] listed the proposed parcel in its application, even though it did not exist as a distinct parcel at filing. In any event, the property in fact existed as a part of the then-existing parcels. Olmsted Falls’ argument that [the applicant] could not obtain exemption for a parcel that did not exist at the filing of the application ignores the existence of the property as part of the existing parcels. Enumerating property as parcels identifies the property, and the statutes exempt property from taxation. We refuse to hypertechnically limit exemption in this case.

That is precisely the case in the proceedings now before the Court.

Both the Tax Commissioner and the BTA upheld the exemption of The Chapel’s acreage used exclusively for public worship, but unreasonably and unlawfully ordered the remaining 16.4395 acres of parcel 2813492, which are used exclusively for athletic and recreational purposes, to be split listed as non-exempt. That acreage was used exclusively for athletic and recreational purposes at the time of the filing of the application. As in *Olmsted Falls BTA of Education v. Limbach, supra*, that acreage existed as part of parcel 2813492 at the time of the filing of the application. As this Court observed, “Enumerating property as parcels identifies the property, and the statutes exempt property from taxation.” The BTA’s decision in the instant cause is a “hypertechnical limitation of exemption.”

This is further demonstrated by the specific pertinent language of R.C. § 5713.04.

If a separate parcel of improved or unimproved real property has a single ownership and is so used so that part thereof, if a separate entity, would be exempt from taxation, and the balance thereof would not be exempt from taxation, the listing thereof shall be split, and the part thereof used exclusively for an exempt purpose shall be regarded as a separate entity and be listed as exempt, and the balance thereof used for a purpose not exempt shall, with the approaches thereto, be listed at its taxable value and taxed accordingly.

²⁹ 69 Ohio St.3d at 688.

This statute thus accounts only for the circumstances where a single parcel of land is used partly for exempt purposes and partly for non-exempt purposes. It was under the authority of this statute that the BTA ordered the 16.4395 acres of parcel no. 2813492, which is used exclusively for athletic and recreational purposes, to be split listed as not exempt.³⁰ The rest of the acreage of that parcel is used solely for public worship. The BTA found the latter to be exempt under R.C. § 5709.07. The former is exempt under R.C. § 5709.12. Because each discrete area of parcel no. 2813492 is being used for different and distinct exempt purposes, R.C. 5713.04 is inapplicable. That is, it is not here the case that part of parcel no. 2813492 is being used for exempt purposes and part is not being used for exempt purposes.

This Court's decision in *Olmsted Falls BTA of Education v. Limbach, supra*, accounts for the rare situation where land, designated by the county auditor as a single parcel, is used separately used for two distinct exempt purposes and where the applicant has applied for exemption under each of the appropriate code sections. In its application, The Chapel correctly applied for exemption of land used for public worship (57.9678 acres) under R.C. § 5709.07 and for exemption of land used for charitable purposes, the 16.4395 acres and the two other parcels, under R.C. § 5709.12.³¹

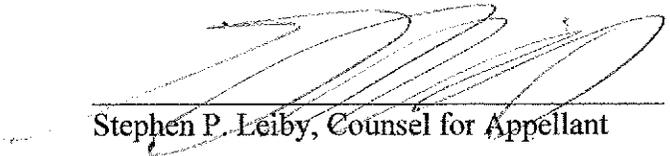
In denying exemption for 16.4395 acres of parcel no. 2813492, which at the time of the Application was, and is, used exclusively for athletic and recreational purposes, the BTA acted unreasonably and unlawfully.

³⁰ Decision and Order, pp. 14 and 18.

³¹ See The Chapel's DTE FORM 23, APPLICATION FOR REAL PROPERTY TAX EXEMPTION AND REMISSION, items 1 a), b) and c) and item 13. As to parcel 2813492, The Chapel identified 18.6795 acres as being used for exempt purposes. The BTA changed that acreage to 16.4395 acres as noted earlier—Decision and Order, p. 18.

CONCLUSION

For the foregoing reasons, the Decision and Order of the Board of Tax Appeals should be reversed and exemption should be granted for parcel nos. 2806681 and 2806683 and the 16.4395 acres of parcel no. 2813492.



Stephen P. Leiby, Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MERIT BRIEF was forwarded to Sophia Hussain, Assistant Attorney General, Taxation Section, attorney for Appellee by regular U.S. mail this 17th day of May, 2010.



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2010 MAR 31 AM 10:34

IN THE SUPREME COURT OF OHIO

THE CHAPEL

Appellant

-vs.-

WILLIAM W. WILKINS
(now Richard A. Levin)
Tax Commissioner of Ohio

Appellee

Supreme Court Case No:

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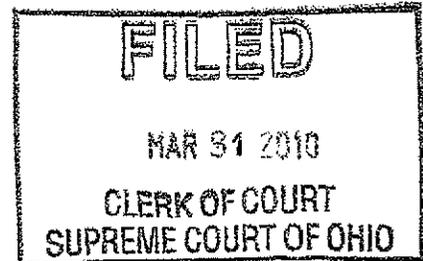
On Appeal from the Ohio Board
of Tax Appeals

Board of Tax Appeals Case No.
2007-V-2

NOTICE OF APPEAL OF APPELLANT THE CHAPEL

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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.

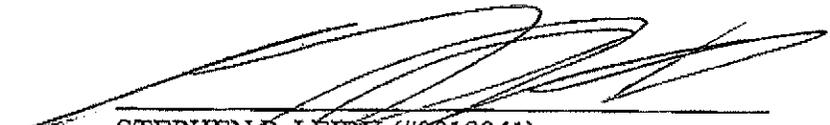
The March 2, 2010 Decision and Order of the Board of Tax Appeals is unreasonable and unlawful because it determined that 18.6795 acres of recreational areas located on The Chapel's property that are open for use and are used by the public for recreational purposes are not exempt from real property tax 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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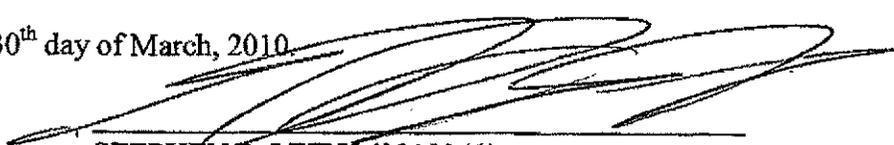
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CERTIFICATE OF SERVICE

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 30th day of March, 2010.



STEPHEN P. LEIBY (0018041)

OHIO BOARD OF TAX APPEALS

The Chapel,

Appellant,

vs.

William W. Wilkins, Tax
Commissioner of Ohio,

Appellee.

CASE NO. 2007-V-2

(REAL PROPERTY TAX EXEMPTION)

DECISION AND ORDER

APPEARANCES:

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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.¹

¹ 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,² 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*

² 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. 5709.07.³

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

³ 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.⁴

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.

⁴ 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.⁵ 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.

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

“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.⁶ 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

⁶ 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.⁷

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.



Sally F. Van Meter, Board Secretary

⁷ 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.

Date: NOV 07 2006

The Chapel
c/o Stephen P. Leiby
Parker, Leiby, Hanna & Rasnick, LLC
388 South Main St., Suite 402
Akron, OH 44311

Re: DTE No.: HE 3809
Auditor's No.: 8812
County: Summit
School District: Green LSD
Parcel Numbers: 2806681, 2806683, 2813492

This is the final determination of the Tax Commissioner in the matter of an application for tax exemption filed on December 30, 2002. A recommendation was issued by the agent examiner in this matter, to which the applicant responded.

I. Factual Background

The applicant is requesting exemption of three parcels of land pursuant to R.C. sections 5709.07 and 5709.12. The applicant seeks exemption for tax year 2002 for all of the parcels and seeks remission of taxes and penalties for tax years 2000 and 2001 for parcel numbers 2806681 and 2806683. The parcels total approximately 78.8963 acres. The largest parcel, number 2813492, is approximately 76.6563 acres in size and adjoins the two smaller parcels. The property includes a 136,000 square foot church seating 1800 people and an 87 classroom building. These structures are used for public worship services and various church functions, including Sunday school, bible study and religious education, as well as various church fellowship and ministry activities.

According to information supplied by the applicant, the City of Green has mandated certain "set backs" for the church structure to screen it from two surrounding neighborhoods. Two operating oil wells are also located on the property, under parcel numbers 2802298 and 2807245, from which the applicant receives a one-eighth royalty on the production from each well.¹ Furthermore, ten areas of the property are designated as "preserved wetlands" and there are several areas designed for mandated detention basins, to collect run-off from the parking lots.

According to the site map provided by the applicant, a total of approximately 22.11 acres are designated as recreation fields. The applicant seeks exemption for these properties pursuant to R.C. 5709.12. According to the applicant, these areas are used for numerous activities, including inter-church softball leagues, a soccer camp, cycling races by independent cycling clubs and

¹ According to the applicant, these parcel numbers were assigned to the oil/gas well properties, with parcel number 2802298 being "deactivated" for tax year 2000. The auditor's records indicate that both parcel numbers are now defunct. Accordingly, for the sake of completeness, any real property associated with the oil/gas wells is addressed herein.

teams, fellowship and recreational activities co-sponsored by an independent University of Akron campus group, baseball clinics sponsored by an independent organization, community youth sports programs by the City of Green, independent soccer, baseball and softball leagues, and daily public use by the community of the walking/jogging trail.

II. Ohio Revised Code Section 5709.07 and 5709.12

The applicant seeks exemption pursuant to R.C. 5709.07 and 5709.12. The agent examiner recommended that the property be split listed, with that portion of the property not used for public worship or directly supportive of public worship remaining taxable.

R.C. 5709.07(A)(2), provides tax exemption for "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 property occupancy use and enjoyment." The subject property includes an 1800-seat church, as well as an 87 room classroom/bible study/church center. These clearly are either used for public worship or directly facilitate public worship. Additionally, the parking areas clearly qualify for exemption as they are necessary for the occupancy and use of the property. Similarly, the preserved wetlands and detention basins also qualify for exemption.

The applicant seeks exemption for the recreation 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 fields 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.

The oil and gas wells are leased to a third party and the applicant derives a 1/8 royalty on the production from each well. As this use is neither charitable nor for public worship, these areas do not qualify for exemption.

Property for which an applicant seeks exemption from real property taxation must have been owned by the applicant and used for an exempt purpose as of the tax lien date, January 1, in the year in which exemption is sought. See *Greater Cincinnati, Inc. v. Limbach* (1994), 69 Ohio St.3d 296; R.C. 323.11; R.C. 5713.08. In addition to seeking exemption for the entire property for tax year 2002, the applicant seeks remission of taxes and penalties for two of the parcels (parcel numbers 2806681 and 2806683) for tax years 2000 and 2001. According to the record, the applicant did not acquire these parcels until June 16, 2000. Therefore, exemption cannot be reviewed for these parcels for tax year 2000.

III. Conclusion

Based on the foregoing, the Tax Commissioner finds that part of the subject property is entitled to exemption and part of the subject property is not.

Pursuant to R.C. 5713.04, the Tax Commissioner orders that the property be listed as follows:

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.

The subject property shall remain on the exempt list until either the county auditor or the Tax Commissioner restores the property to the tax list.

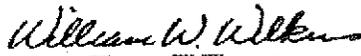
Property to remain on the tax list:

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.

The Tax Commissioner orders that penalties charged against this part of the property for these tax years be remitted.

THIS IS THE TAX COMMISSIONER'S FINAL DETERMINATION WITH REGARD TO THIS MATTER. NOTICE WILL BE SENT PURSUANT TO R.C. 5715.27 TO THE COUNTY AUDITOR. UPON EXPIRATION OF THE SIXTY-DAY APPEAL PERIOD PRESCRIBED BY R.C. 5717.02, THIS MATTER WILL BE CONCLUDED, AND THE FILE APPROPRIATELY CLOSED.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE COPY OF THE FINAL DETERMINATION RECORDED IN THE TAX COMMISSIONER'S JOURNAL


WILLIAM W. WILKINS
TAX COMMISSIONER

/s/ William W. Wilkins

William W. Wilkins
Tax Commissioner

SW

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NOV 1 2005



Ohio Department of
TAXATION
Office of the Tax Commissioner
30 E. Broad St., 22nd Floor • Columbus, OH 43215
tax.ohio.gov

RECOMMENDATION

Date: NOV 17 2005

The Chapel
c/o Stephen P. Leiby-Parker, Leiby, Hanna & Rasnick, LLC
388 South Main St-Suite 402
Akron, OH 44311

Re: DTE No.: HE 3809
Auditor's No.: 8812
County: Summit
School District: Green SD
Parcel Number(s): 2806681
2806683
2813492

This is a recommendation of the agent examiner in the matter of an application for tax exemption filed with the Tax Commissioner on December 30, 2002. It is not a final decision of the Tax Commissioner. The applicant has ten days from receipt of this recommendation to file written objections. Any written objections will be considered before a final decision is issued in this matter.

I. Factual Background

Applicant, The Chapel, is requesting exemption for 78.8963 acres of land and the improvements located thereon. The subject property contains a church, teaching classrooms, parking areas, recreation fields, and basketball and volleyball courts. There is a 1.52 acre jogging trail that encompasses the church and most of the recreation areas. The recreation areas are open to the public without any charge. The church is located in a 136,000 square foot building. There are 1,800 seats in the sanctuary in addition to 87 classrooms and 17 offices. There are two producing oil and gas wells on the property. The applicant receives a one-eighth royalty on the production from each oil and gas well. The applicant submitted a site plan with their application for exemption. The site plan identified ten areas as "preserved wetlands" on undeveloped property in various locations around the church and recreation fields. The applicant is requesting that 57.9768 acres of land be exempted under Ohio Revised Code Section 5709.07, public worship. The applicant has requested that the remainder of the property be exempted under ORC Section 5709.12, charitable.

Property for which an applicant seeks exemption from real property taxation must have been owned by the applicant and used for an exempt purpose as of the tax lien date, January 1, in the year in which exemption is sought. See *Greater Cincinnati, Inc. v. Limbach (1994)*, 69 Ohio

St.3d 296; R.C. 323.11; R.C 5713.08. Here the applicant did not acquire title to the property until June 15, 2000 for parcels 2806681 and 2806683, and March 28, 2001 for parcel 2813492. Therefore, exemption cannot be reviewed for tax year 2000 for parcels 2806681 and 2806683 and tax year 2001 for parcel 2813492.

II. Ohio Revised Code Section 5709.07

Applicant has requested tax exemption pursuant to R.C. 5709.07, which provides tax exemption for "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 occupancy, use, and enjoyment."

The main sanctuary, teaching classrooms, the grounds attached, and the parking areas used for the support of the church, are used exclusively for public worship, and qualify for exemption under R.C. 5709.07.

However, the jogging track and various athletic fields are used for recreation. Church-owned property that is designated for athletic or recreational uses does not qualify for exemption. The Ohio Supreme Court has held that church-owned recreational areas are at best, merely supportive of public worship. *Moraine Heights Baptists Church v. Kinney* (1984), 12 Ohio St.3d 134. Property with uses that are merely supportive of public worship may not be exempted. *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432. Therefore, the jogging track and athletic fields used for church recreation do not qualify for exemption under R.C. 5709.07.

II. Ohio Revised Code Sections 5709.12

Ohio Revised Code section 5709.12 provides that "(r)eal and tangible personal 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, 406-407, the Supreme Court held that "to grant exemption under R.C. 5709.12, the arbiter must determine that (1) the property belongs to an institution, and (2) the property is being used exclusively for charitable purposes."

The Supreme Court has defined "charity" as "the attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard for their ability to supply that need from other sources, and without hope or expectation, if not with positive abnegation, of gain or profit by the donor or by the instrumentality of the charity." *Planned Parenthood Association v. Tax Commissioner* (1966), 5 Ohio St. 2d 117. This definition has been used by Ohio courts to determine whether the use of the property in question is exclusively charitable.

The Ohio Supreme Court has held that an organization which is primarily a religious institution is not entitled to tax exemption under R.C. 5709.12 and R.C. 5709.121. *Summit United Methodist Church v. Kinney* (1983), 7 Ohio St.3d 13; *Summit United Methodist Church v. Kinney* (1982), 2 Ohio St.3d 72. Since the applicant is primarily a religious institution, the first

part of the test for exemption under this section is not satisfied. Therefore, the jogging track and athletic fields used for church recreation do not qualify for exemption under R.C. 5709.12.

III. Conclusion

R.C. 5713.04 provides that portions of property used exclusively for exempt purposes shall be regarded as separate entities and listed as exempt while the balance thereof used for a non-exempt purpose shall be listed at its taxable value. Accordingly, the agent examiner in this matter recommends split-listing the applicant property as follows:

Property to be exempted from taxation:

The church building, parking areas, access roads and 30 acres of land. The agent/examiner recommends that exemption be granted to this part of the property for tax years 2002, 2003, and 2004, and that taxes, penalties and interest for tax year 2001 for parcels 2806681 and 2806683 be remitted.

Property to remain on tax list:

The balance of the property. The agent/examiner recommends that penalties assessed against this portion of the property for these tax years be remitted.

INSTRUCTIONS FOR SUBMITTING OBJECTIONS

If you wish to object to this recommendation, submit your written objections to the Division of Tax Equalization, ATTN.: Don Kernich, Department of Taxation, P.O. Box 530, Columbus, Ohio 43216-0530, or fax your objections to (614) 752-9822.

cc: The Honorable John A. Donofrio
Summit County Auditor

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE LVII. TAXATION
CHAPTER 5709. TAXABLE PROPERTY--EXEMPTIONS
MISCELLANEOUS EXEMPTIONS

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Current through 10/1/02, including File 185 of the 124th GA (2001-2002),
apv. 8/8/02

5709.07 EXEMPTION OF SCHOOLS, CHURCHES, AND COLLEGES

(A) The following property shall be exempt from taxation:

(1) Public schoolhouses, the books and furniture in them, and the ground attached to them necessary for the proper occupancy, use, and enjoyment of the schoolhouses, and not leased or otherwise used with a view to profit;

(2) 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 occupancy, use, and enjoyment;

(3) Real property owned and operated by a church that is used primarily for church retreats or church camping, and that is not used as a permanent residence. Real property exempted under division (A)(3) of this section may be made available by the church on a limited basis to charitable and educational institutions if the property is not leased or otherwise made available with a view to profit.

(4) Public colleges and academies and all buildings connected with them, and all lands connected with public institutions of learning, not used with a view to profit.

(B) This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state; but leaseholds, or other estates or property, real or personal, the rents, issues, profits, and income of which is given to a municipal corporation, school district, or subdistrict in this state exclusively for the use, endowment, or support of schools for the free education of youth without charge shall be exempt from taxation as long as such property, or the rents, issues, profits, or income of the property is used and exclusively applied for the support of free education by such municipal corporation, district, or subdistrict.

(C) As used in this section, "church" means a fellowship of believers, congregation, society, corporation, convention, or association that is formed primarily or exclusively for religious purposes and that is not formed for the private profit of any person.

CREDIT(S)

(1988 S 71, eff. 5-31-88; 1953 H 1; GC 5349)

<General Materials (GM) - References, Annotations, or Tables>

UNCODIFIED LAW

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE LVII. TAXATION
CHAPTER 5709. TAXABLE PROPERTY--EXEMPTIONS
MISCELLANEOUS EXEMPTIONS

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Current through 10/1/02, including File 185 of the 124th GA (2001-2002),
apv. 8/8/02

5709.12 EXEMPTION OF PROPERTY USED FOR CHARITABLE PURPOSES

(A) As used in this section, "independent living facilities" means any residential housing facilities and related property that are not a nursing home, residential care facility, or adult care facility as defined in division (A) of section 5701.13 of the Revised Code.

(B) Lands, houses, and other buildings belonging to a county, township, or municipal corporation and used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision for public purposes shall be exempt from taxation. Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation, including real property belonging to an institution that is a nonprofit corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code at any time during the tax year and being held for leasing or resale to others. If, at any time during a tax year for which such property is exempted from taxation, the corporation ceases to qualify for such a grant, the director of development shall notify the tax commissioner, and the tax commissioner shall cause the property to be restored to the tax list beginning with the following tax year. All property owned and used by a nonprofit organization exclusively for a home for the aged, as defined in section 5701.13 of the Revised Code, also shall be exempt from taxation.

(C)(1) If a home for the aged described in division (B)(1) of section 5701.13 of the Revised Code is operated in conjunction with or at the same site as independent living facilities, the exemption granted in division (B) of this section shall include kitchen, dining room, clinic, entry ways, maintenance and storage areas, and land necessary for access commonly used by both residents of the home for the aged and residents of the independent living facilities. Other facilities commonly used by both residents of the home for the aged and residents of independent living units shall be exempt from taxation only if the other facilities are used primarily by the residents of the home for the aged. Vacant land currently unused by the home, and independent living facilities and the lands connected with them are not exempt from taxation. Except as provided in division (A) of section 5709.121 of the Revised Code, property of a home leased for nonresidential purposes is not exempt from taxation.

(2) Independent living facilities are exempt from taxation if they are operated in conjunction with or at the same site as a home for the aged described in division (B)(2) of section 5701.13 of the Revised Code; operated by a corporation, association, or trust described in division (B)(1)(b) of that section; operated exclusively for the benefit of members of the corporation, association, or trust who are retired, aged, or infirm; and provided to those members without charge in consideration of their service, without compensation, to a charitable, religious, fraternal, or educational institution. For the purposes of division (C)(2) of this section, "compensation" does not include furnishing room and board, clothing, health care, or other necessities, or stipends or other de minimis payments to defray the cost thereof.

(D)(1) A private corporation established under federal law, defined in 36 U.S.C. 1101, Pub. L. No. 102-199, 105 Stat. 1629, as amended, the objects of which include encouraging the advancement of science generally, or of a particular branch of science, the promotion of scientific research, the improvement of the qualifications and usefulness of scientists, or the increase and diffusion of scientific knowledge is conclusively presumed to be a charitable or educational institution. A private corporation established as a nonprofit corporation under the laws of a state, that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE LVII. TAXATION
CHAPTER 5713. ASSESSING REAL ESTATE
VALUATION AND CLASSIFICATION

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Current through 2002 File 102 of the 124th GA (2001-2002), apv. 3/4/02

5713.04 TRACTS TO BE VALUED SEPARATELY; SPLIT LISTING FOR TAX EXEMPTION; DEDUCTIONS

Each separate parcel of real property shall be valued at its taxable value, excluding the value of the crops, deciduous and evergreen trees, plants, and shrubs growing thereon, and taking into account the diminution in value as the result of the existence of any conservation easement created under sections 5301.67 to 5301.69 of the Revised Code. The price for which such real property would sell at auction or forced sale shall not be taken as the criterion of its value. If the fee of the soil of a tract, parcel, or lot of land is in any person, natural or artificial, and the right to minerals therein in another, the land shall be valued and listed in accordance with such ownership in separate entries, specifying the interest [FN1] listed, and be taxed to the parties owning the different interests.

If a separate parcel of improved or unimproved real property has a single ownership and is so used so that part thereof, if a separate entity, would be exempt from taxation, and the balance thereof would not be exempt from taxation, the listing thereof shall be split, and the part thereof used exclusively for an exempt purpose shall be regarded as a separate entity and be listed as exempt, and the balance thereof used for a purpose not exempt shall, with the approaches thereto, be listed at its taxable value and taxed accordingly.

The county auditor shall deduct from the value of each separate parcel of real property the amount of land occupied and used by a canal or used as a public highway at the time of such assessment.

CREDIT(S)

(1979 H 504, eff. 3-14-80; 131 v H 337, H 199; 128 v 410; 127 v 65; 1953 H 1; GC 5560, 5561)

[FN1] Prior and current versions differ although no amendment to this language was indicated in 1979 H 504; "interest" appeared as "interests" in 131 v H 337.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Pre-1953 H 1 Amendments: 123 v 818; 115 v Pt 2, 272; 107 v 34; RS 2792

CROSS REFERENCES