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INTRODUCTION

This appeal concerns whether The Chapel's property consisting of a walking trail, recreational fields, and an undeveloped field (i.e., "the property at issue")¹ are "used exclusively for charitable purposes" as set forth in R.C. 5709.12(B). The Chapel's claim of exemption fails for two compelling, yet independent, reasons. First, if The Chapel is permitted to exempt the property at issue under the broader terms of R.C. 5709.12(B), then the "house of public worship" exemption set forth at R.C. 5709.07(A)(2) will effectively be rendered a nullity. Indeed, there would be no reason for a taxpayer to pursue exemption under R.C. 5709.07(A)(2) if exemption could be claimed under the broader terms of R.C. 5709.12(B). Second, The Chapel failed to establish, through probative and competent evidence, that the property at issue was used in an exempt manner as of the tax lien date for the tax years in question. Each reason is more fully addressed in turn.

As to the first reason, this Court just recently explained 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." *Church of God in N. Ohio v. Levin*, 124 Ohio St.3d 36, 2009-Ohio-5939, ¶ 30 (citing *Rickenbacker Port Auth. v. Limbach* (1992), 64 Ohio St.3d 628, 631-632). Moreover, this Court's jurisprudence countenances against interpreting statutes in a manner that renders their respective "provision[s] meaningless or inoperative." *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.* (1917), 95 Ohio St. 367, 373.

Under the settled-interpretation of R.C. 5709.07(A)(2), property that facilitates public worship in a "principal, primary, and essential way" is entitled to exemption; however, property

¹ The terms "walking trail, recreational fields, and an undeveloped field" and "the property at issue" will be used interchangeably throughout the Brief.

that is “merely supportive” of public worship is not. *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432, 436-437; *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134, 136. Thus, this Court, as well as the Tenth Appellate District, have reasoned that church-owned recreational property cannot meet the requirements of R.C. 5709.07(A)(2) because such property is “merely supportive” of public worship. *Faith Fellowship*, 32 Ohio St.3d at 437; *Moraine Hts. Baptist Church*, 12 Ohio St.3d at 137; *Columbus Christian Ctr. v. Zaino*, Tenth Dist. Ct. App. No. 02AP-563, 2002-Ohio-7033, ¶ 15.

Keenly aware of the limited scope that inheres in claims brought under R.C. 5709.07(A)(2), The Chapel strategically postured its claim of exemption so as to avoid falling within the sweep of *Moraine Hts. Baptist Church* and its progeny. To wit, for its property consisting of a church, classrooms, parking areas, access roads, wetlands, and a detention basin, The Chapel relied on R.C. 5709.07(A)(2) as the basis for its exemption. This property was held exempt by the Tax Commissioner—the taxable status of this property is not before the Court.

However, for its property consisting of a walking trail, recreational fields, and an undeveloped field, The Chapel charted a different course for exemption. Implicitly conceding the futility of pursuing an exemption claim brought under R.C. 5709.07(A)(2) for the aforesaid property, The Chapel instead based its claim on R.C. 5709.12(B). The Chapel’s pursuit of exemption under R.C. 5709.12(B) for the walking trail, recreational fields, and an undeveloped field constitutes The Chapel’s attempted end-run around the limitations that *Moraine Hts. Baptist Church* and its progeny have placed upon R.C. 5709.07(A)(2).

This Court has consistently rejected similar attempted end-runs around the express criteria that apply to exemption statutes. See, e.g., *Church of God in N. Ohio*, 2009-Ohio-5939, ¶ 30; *Rickenbacker Port Auth.*, 64 Ohio St.3d at 630-631; *Toledo Business & Professional*

Women's Retirement Living, Inc. v. Bd. of Tax Appeals (1971), 27 Ohio St.2d 255, 256-258. The Court's recent decision in *Church of God in N. Ohio* poignantly illustrates this legal principle.

In *Church of God in N. Ohio*, a church sought exemption under R.C. 5709.12(B) for its administrative office building that was used to support the functions of the church's local congregations. Much like The Chapel, the church in that case strategically postured its exemption claim so as to avoid falling within this Court's adverse decision in *Christian Church of Ohio v. Limbach* (1990), 53 Ohio St.3d 270, wherein exemption was denied under R.C. 5709.07(A)(2) for a building that served as the regional headquarters of a church. Mindful that any claim of exemption brought under R.C. 5709.07(A)(2) would be denied on the authority of *Christian Church of Ohio*, the church in *Church of God in N. Ohio* instead sought exemption for its administrative office building pursuant to R.C. 5709.12(B). The Court, however, rejected the exemption claim brought under R.C. 5709.12(B). Put simply, the Court declined to allow the church to "evade the limitations imposed with respect to a specific tax exemption [i.e., R.C. 5709.07(A)(2)] by claiming exemption under a broad reading of other exemption statutes [i.e., R.C. 5709.12(B)]." *Id.* at ¶ 30.

Heeding the Court's clear guidance from *Church of God in N. Ohio*, the BTA found in this case that the property at issue was not entitled to an exemption under R.C. 5709.12(B). The BTA properly concluded that the property at issue was ancillary to The Chapel's primary use for public worship—as such, the property at issue was not used "exclusively for charitable purposes" but, rather, supportive of the public worship functions that occurred on The Chapel's property. The BTA's decision was reasonable and lawful, and therefore, should be affirmed.

The second compelling reason that The Chapel's claim for exemption fails is due to its inability to establish, through probative and competent evidence, that the property at issue was

used in an exempt manner as of the tax lien date for the tax years in question. It is well-settled that “[t]he Tax Commissioner may not exempt property from taxation unless the **exempt use** began by the tax lien date of the tax year for which exemption is sought.” *Sylvania Church of God v. Levin*, 118 Ohio St.3d 260, 2008-Ohio-2448, ¶ 9 (emphasis added) (quoting *Christian Benevolent Assn. v. Limbach* (1994), 69 Ohio St.3d 296, 297). Though the BTA declined to rule on this issue², the evidentiary record confirms that The Chapel failed to demonstrate that the property at issue was used in an exempt manner as of the tax lien date. Thus, exemption must be denied.

Aside from the merits of whether The Chapel can meet the demands of R.C. 5709.12(B), The Chapel has belatedly raised two new issues in this appeal. First, The Chapel contends that it has been denied equal protection of the law because the property at issue was not granted exemption under R.C. 5709.12(B). Similarly, The Chapel contends that it has been denied substantive due process for the same reason. However, the Court is jurisdictionally barred from addressing these two new issues because The Chapel failed to raise these two issues in the proceedings below. See e.g., *Ohio Bell Tel. Co. v. Levin*, 124 Ohio St.3d 211, 2009-Ohio-6189, ¶ 16; *Brown v. Levin*, 119 Ohio St.3d 335, 2008-Ohio-4081, ¶ 17; *Queen City Valves, Inc. v. Peck* (1954), 161 Ohio St. 579, 583. Moreover, the Court is further barred from addressing these two constitutional issues because the allegations are so generic that they could be advanced in nearly any case. See *Turner v. Levin*, 124 Ohio St.3d 1233, 2010-Ohio-922, ¶ 2; *Castle Aviation, Inc. v. Wilkins*, 109 Ohio St.3d 290, 2006-Ohio-2420, ¶ 41.

² See Appellant’s Appx. 4; BTA Decision and Order (“BTA Decision”) fn. 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.”

STATEMENT OF THE CASE AND FACTS

A. The Chapel's statement of purposes and continued expansion.

The Chapel is a religious organization that, according to its articles of incorporation, has as its stated purposes:

Promoting the cause of the Christian faith according to the customs and regulations of the Independent Baptists; providing and maintaining a place of worship for its members; owning and maintaining suitable real estate and buildings for a place of worship; receiving, holding and disbursing gifts, bequests and funds arising from other sources; and doing all and sundry the things necessary or incident to carrying on such purposes.

Appellee's Supp. 74. The Chapel incorporated in 1953 and, prior to 2000, based its operations in the City of Akron. Appellee's Supp. 3-4; Hearing Transcript ("Tr.") 9, 12. From 1953 to 2000, The Chapel experienced a consistent and substantial growth in attendance. Appellee's Supp. 4; Tr. 11-12. In 1953, The Chapel's attendance was roughly 1,500; however, by 2000, attendance had grown to roughly 7,000. Appellee's Supp. 4; Tr. 11-12.

Due to the increase in attendance, a decision was made to expand The Chapel's operations. Appellee's Supp. 5; Tr. 15-16. However, because The Chapel's property in the City of Akron was landlocked, The Chapel was forced to consider the purchase of a new site to expand its operations. Appellee's Supp. 4-5; Tr. 13, 16. In order to select the most suitable site for expansion, The Chapel conducted a demographic study that analyzed the various localities from which The Chapel drew its members. Appellee's Supp. 5; Tr. 16. The results of the study indicated that, aside from the City of Akron, The Chapel drew "many people" from the City of Green. Appellee's Supp. 5; Tr. 16. Thus, The Chapel settled on the City of Green as the site for its second location. Appellee's Supp. 5; Tr. 16.

B. The Chapel's real property exemption application.

As reported on its real property exemption application, The Chapel purchased three parcels of property in the City of Green to develop its second location. Appellee's Supp. 72. The exemption application states that the first parcel (i.e., Parcel No. 2806681, a.k.a. parcel A) consists of 0.69 acres and was purchased on 6/16/2000. Appellee's Supp. 72-73. The second parcel (i.e., Parcel No. 2806683, a.k.a. parcel B) consists of 1.55 acres and was also purchased on 6/16/2000. Appellee's Supp. 72-73. The third and final parcel (i.e., Parcel No. 2813492, a.k.a. parcel C) consists of 76.6563 acres and was purchased on 4/16/2001. Appellee's Supp. 72-73. Taken together, The Chapel's three parcels situated in the City of Green comprise roughly 79 acres. Appellee's Supp. 72.

The Chapel's real property exemption application further specifies the tax years for which exemption was sought. With respect to parcels A and B, The Chapel sought exemption for the 2002 tax year and remission of penalties for the 2001 and 2000 tax years. Appellee's Supp. 72. As for parcel C, the Chapel sought exemption solely for the 2002 tax year. Appellee's Supp. 72.

The Chapel's property in the City of Green is improved with a 136,000-square-foot church, an 87-classroom building, paved parking lots, access roads, preserved wetlands, a detention basin, a walking trail, recreational fields, and an undeveloped field. Appellant's Appx. 5; BTA Decision 2. Also situated on the property are two oil wells; however, the taxable status of the oil wells is not at issue here. Appellee's Supp. 46; Tr. 181.

In its exemption application, The Chapel cited to the "house of public worship" exemption set forth at R.C. 5709.07(A)(2) for the property comprising the church, the classroom building, the parking areas, access roads, preserved wetlands, and a detention basin. Appellee's

Supp. 53-54, 72-73; Appellant's Appx. 5; BTA Decision 2. The Tax Commissioner found that the aforesaid property was used in accordance with the requirements of R.C. 5709.07(A)(2) and, thus, granted exemption for this property. Appellee's Supp. 53-55. The taxable status of the exempt property is not at issue here.

The Chapel additionally contended in its exemption application that the walking trail, recreational fields, and an undeveloped field were being "used exclusively for charitable purposes" as provided by R.C. 5709.12(B). Appellee's Supp. 53-54, 72-73; Appellant's Appx. 5; BTA Decision 2. The Tax Commissioner disagreed with this contention and, therefore, denied exemption for this property. Appellee's Supp. 53-55. The BTA subsequently affirmed this denial with slight modifications to the acreage. Appellant's Appx. 16-21; BTA Decision 13-18. The taxable status of the walking trail, recreational fields, and an undeveloped field is the issue that is before this Court.

C. The Chapel's purpose for developing the property at issue.

The former Mayor of the City of Green, Mr. Daniel Croghan, testified that The Chapel's campus in the City of Green was "zoned for residential construction with a conditional use being a **place of worship.**" Appellee's Supp. 47; Tr. 185 (emphasis added). The Chapel's senior associate pastor, Michael Castelli, testified that The Chapel developed the campus in the City of Green to "create a ministry there that would include both more traditional aspects of church and worship and community" as well as to develop an "outdoor sports ministry" program and community outreach to the City of Green. Appellee's Supp. 11; Tr. 41.

The Chapel's sports ministry program is operated by Dale Saylor. Appellee's Supp. 23; Tr. 86. According to Mr. Saylor, his "basic job is to oversee the sports ministry and events that we have and the various opportunities that we have within The Chapel under sports." Appellee's

Supp. 41; Tr. 159-160. Some of Mr. Saylor's tasks with respect to the sports ministry program include writing "various studies and devotional guides," coordinating the budget, and scheduling the athletic fields. Appellee's Supp. 41; Tr. 160. According to Mr. Saylor, sports ministry is a "great way to bring people into a [sic] understanding of what we do at the Chapel. * * * Sports ministry is a great avenue to do outreach and to be very missional in the community." Appellee's Supp. 42; Tr. 162. Mr. Saylor explained that the sports ministry program enables individuals to realize "that God has given us physical attributes that we can use to worship." Appellee's Supp. 42; Tr. 162-163. Mr. Saylor stated that "I think we do as much worship on our fields and in our gyms as we do in sanctuaries or worship centers within the confines of the buildings. * * * you worship God by making use of the bodies that he's given us and the talent that he's given us * * * ." Appellee's Supp. 42; Tr. 163-164.

D. Various uses of The Chapel's walking trail and recreational fields. The undeveloped field is not used.

Mr. Saylor testified that the walking trail was completed in the late summer or early fall of 2005. Appellee's Supp. 27; Tr. 105. As reflected on the engineering drawing, the walking trail is outlined with an orange line. Appellee's Supp. 83-84; Tr. 68; Exs. 8-9. Mr. Saylor further testified that the walking trail is used "pretty much 12 months out of the year" by The Chapel members and employees, as well as by people from the surrounding community. Appellee's Supp. 23; Tr. 87-88. The walking trail is held open for use from dawn to dusk. Appellee's Supp. 27; Tr. 102.

Mr. Saylor explained that the recreational fields opened in the spring of 2006. Appellee's Supp. 27; Tr. 105. As reflected on the engineering drawing, the fields are outlined with a green line. Appellee's Supp. 83-84; Tr. 88; Exs. 8-9. The Chapel operates 14 different sports ministry events on the fields, including baseball, softball, and soccer events. Appellee's Supp. 23; Tr. 89.

The Chapel also sponsors several sports leagues, including a flag football league, a softball league, and a soccer league. Appellee's Supp. 23-25, 42; Tr. 89-94, 164. A devotional is performed in every one of the leagues that the Chapel sponsors. Appellee's Supp. 42; Tr. 164. The devotional occurs either before or after the sporting event takes place, and usually lasts about fifteen or twenty minutes. Appellee's Supp. 42; Tr. 165. Mr. Saylor regards the devotional "as an act of worship" and considers it part of The Chapel's "missional responsibility." Appellee's Supp. 42; Tr. 165.

As implied by its name, the undeveloped field is not used by anyone. Appellee's Supp. 13; Tr. 46. The undeveloped field has not gone through a final construction phase because of problems with the soil. Appellee's Supp. 13; Tr. 47-48.

The property at issue, aside from the undeveloped field, is used both by members of The Chapel as well as by non-members. While Mr. Castelli testified that roughly 50% of the use of the property at issue is by those who have no formal connection with The Chapel, Mr. Saylor explained that in "quite a few" instances a non-member of The Chapel has decided to become a member after using The Chapel's walking trail and/or recreational fields. Appellee's Supp. 20, 43; Tr. 75, 166. Mr. Saylor estimated that roughly fifty individuals join The Chapel's congregation each year due to the individuals' usage of The Chapel's property. Appellee's Supp. 43; Tr. 166-167. Mr. Saylor explained that non-member usage includes sports leagues run by Fed-Ex, Chick-Fil-A, and the City of Green. Appellee's Supp. 24; Tr. 90.

Mr. Saylor estimated that roughly 3,000 individuals use the walking trail and recreational fields per year. Appellee's Supp. 26; Tr. 101. The Chapel pays for the maintenance of this property. Appellee's Supp. 7; Tr. 25. Sometimes a fee is charged to participate in one of the many leagues that The Chapel hosts—typically the fee covers the costs of providing referees and

jerseys. Appellee's Supp. 32; Tr. 122-123. The fee charged is roughly \$15 to \$25 per participant. Appellee's Supp. 32; Tr. 123.

The primary method by which The Chapel advertises the availability of its walking trail and recreational fields is through internal postings located at its campuses in the City of Akron and the City of Green. Appellee's Supp. 30; Tr. 116. According to Mr. Saylor, postings are also made at the local YMCA; however, these postings were never made a part of the record. Appellee's Supp. 30; Tr. 116-117.

ARGUMENT

Tax Commissioner's First Proposition of Law: Tax exemption statutes are strictly construed against the party claiming exemption.

Pursuant to Article XII, Section 2 of the Ohio Constitution, all real property in this state is subject to uniform taxation. The principle of uniformity may be disregarded only to the extent that the General Assembly provides an express exemption from taxation. The General Assembly's power to exempt real property from taxation emanates from this same constitutional provision. See *Bethesda Healthcare, Inc. v. Wilkins*, 101 Ohio St.3d 420, 2004-Ohio-1749, ¶ 20. Section 2 provides in relevant part that: "Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt * * * institutions used exclusively for charitable purposes * * *."

In recognition of the principle of uniformity, this Court has long held that statutes granting real property tax exemptions are to be strictly construed because they "are in derogation of equal rights." *Cincinnati College v. State* (1850), 19 OHIO 110, 115. For over 150 years, the principle of strict construction has continued unabated. See e.g. *First Baptist Church of Milford v.*

Wilkins, 110 Ohio St.3d 496, 2006-Ohio-4966, ¶ 10; *Welfare Fedn. of Cleveland v. Glander* (1945), 146 Ohio St. 146, 177. “A right to exemption from taxation must appear with reasonable certainty in the language of the Constitution or valid statute and must not depend upon a doubtful construction of such language.” *Hosp. Service Assn. of Toledo v. Evatt* (1944), 144 Ohio St. 179, 182. “In all doubtful cases exemption is denied.” *A. Schulman, Inc. v. Levin*, 116 Ohio St.3d 105, 2007-Ohio-5585, ¶ 7.

Tax Commissioner’s Second Proposition of Law: A taxpayer should not be permitted to evade the jurisprudential limitations placed on R.C. 5709.07(A)(2) by seeking exemption under the broader terms set forth in R.C. 5709.12(B).

A. The property at issue supports the worship functions that occur on The Chapel’s campus in the City of Green.

Though The Chapel stakes its claim of exemption for its walking trail, recreational fields, and an undeveloped field solely on R.C. 5709.12(B), it is necessary, as it was in *Church of God in N. Ohio*, to examine the interplay between R.C. 5709.12(B) and R.C. 5709.07(A)(2) to properly resolve this controversy. As developed below, The Chapel should not be permitted to do an end-run around the “house of public worship” exemption set forth at R.C. 5709.07(A)(2) and, concomitantly, claim exemption under the broader terms of R.C. 5709.12(B).

Pursuant to R.C. 5709.07(A)(2), exemption is available for “[h]ouses 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.” However, under the broader terms of R.C. 5709.12(B), exemption is available for real property “belonging to institutions that is used exclusively for charitable purposes * * * .”³ Both statutes

³ Though the General Assembly has never defined “charity,” this Court has explained that:

contemplate that the property must be used “exclusively” for an exempt purpose to qualify for exemption; however, caselaw has equated exclusive use with primary use. See *Church of God in N. Ohio*, 2009-Ohio-5939, ¶ 22 (interpreting R.C. 5709.12(B)); *Faith Fellowship*, 32 Ohio St.3d at 437-438 (interpreting R.C. 5709.07(A)(2)). The primary use test involves “more than simply measuring the amount of time property is used in a taxable *vis a vis* a nontaxable use.” *Faith Fellowship*, 32 Ohio St.3d at 437. “‘Primary use’ also connotes primacy in utility or essentiality, in quality as well as quantity.” *Id.* (quoting *Ace Steel Baling v. Porterfield* (1969), 19 Ohio St.2d 137).

To claim exemption under R.C. 5709.07(A)(2), the property must facilitate public worship in a “principal, primary, and essential way * * * .” *Faith Fellowship*, 32 Ohio St.3d at paragraph 2 of the syllabus. Property that is “merely supportive” of or incidental to public worship is not entitled to the exemption. *Id.* at 436. See also *Moraine Hts. Baptist*, 12 Ohio St.3d at 135.

In *Moraine Hts. Baptist Church*, the Court denied exemption under R.C. 5709.07(A)(2) for the church’s lodging facilities, swimming pool, cafeteria, and recreational/nature areas because the property was “at best, merely supportive of [the church’s] goal to promote worship.” 12 Ohio St.3d at 136. Likewise, in *Faith Fellowship*, the Court examined whether a series of

In the absence of a legislative definition, ‘charity,’ in the legal sense, is 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 to 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 Assn. v. Tax Commr. (1966), 5 Ohio St.2d 117, paragraph one of the syllabus.

church-owned buildings were exempt under R.C. 5709.07(A)(2). The Court concluded, *inter alia*, that the rooms used for church services were exempt under R.C. 5709.07(A)(2) because the primary use of the rooms was for public worship. 32 Ohio St.3d at 436-437. However, exemption was denied, *inter alia*, for the church's gymnasium and retreat building because such property was "merely supportive" of public worship. *Id.* (citing *Moraine Hts. Baptist Church*).

The Court's reasoning in *Faith Fellowship* and *Moraine Hts. Baptist Church* was later reaffirmed by the Tenth Appellate District in *Columbus Christian Ctr.* In that case, the court denied exemption under R.C. 5709.07(A)(2) for a football field and an unimproved area used occasionally for outdoor worship and recreation. In denying the exemption, the court explained that "[t]he Ohio Supreme Court has consistently concluded that recreational facilities owned by religious organizations do not qualify for the exemption provided by R.C. 5709.07(A)(2), as such facilities are, at best, merely supportive of religious purposes." 2002-Ohio-7033, ¶ 15 (citing *Faith Fellowship* and *Moraine Hts. Baptist Church*).⁴

Keenly aware of the limited scope that inheres in claims brought under R.C. 5709.07(A)(2), The Chapel strategically postured its exemption claim so as to avoid falling within the sweep of *Moraine Hts. Baptist Church* and its progeny. To wit, for its property consisting of a church, classrooms, parking areas, access roads, wetlands, and a detention basin, The Chapel relied on R.C. 5709.07(A)(2) as the basis for its exemption. However, for the property consisting of a walking trail, recreational fields, and an undeveloped field, The Chapel charted a different course for its exemption. Implicitly conceding the futility of pursuing an

⁴ Guided by *Moraine Hts. Baptist Church*, *Faith Fellowship*, and *Columbus Christian Ctr.*, the BTA has repeatedly denied exemption under R.C. 5709.07(A)(2) for church-owned property used for recreational purposes. See, e.g., *Grace Chapel v. Levin* (May 4, 2010), BTA No. 2007-K-835, unreported; *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.

exemption claim brought under R.C. 5709.07(A)(2), The Chapel instead based its exemption claim under the broader terms of R.C. 5709.12(B). The Chapel's pursuit of exemption under R.C. 5709.12(B) constitutes its attempted end-run around the limitations that *Moraine Hts. Baptist Church* and its progeny have placed upon R.C. 5709.07(A)(2). The Court should not countenance The Chapel's attempt to evade the jurisprudential limitations of R.C. 5709.07(A)(2).

Indeed, the Court recently addressed an analogous issue in *Church of God in N. Ohio*. In that case, a church sought exemption under R.C. 5709.12(B) for its administrative office building that was used to support the functions of the church's local congregations. 2009-Ohio-5939, ¶ 3. Much like The Chapel, the church in that case strategically postured its exemption claim so as to avoid falling within this Court's adverse decision in *Christian Church of Ohio*, 53 Ohio St.3d 270, wherein exemption was denied under R.C. 5709.07(A)(2) for a building that served as the regional headquarters of a church. Mindful that any claim of exemption brought under R.C. 5709.07(A)(2) would be denied on the authority of *Christian Church of Ohio*, the church in *Church of God in N. Ohio* instead sought exemption for its administrative office building pursuant to R.C. 5709.12(B). The Court, however, rejected the exemption claim brought under R.C. 5709.12(B).

The Court first found that the primary use of the administrative office building was to support the public worship functions of the local congregations. The Court failed to endorse the notion, however, that supporting public worship was tantamount to charity. *Id.* at ¶ 26. The Court explained that if this notion were correct, there would have been no need for the General Assembly to have enacted the "house of public worship" exemption set forth at R.C. 5709.07(A)(2). Moreover, if supporting public worship constituted charity, the limited scope of

R.C. 5709.07(A)(2)'s "house of public worship" exemption could be avoided, and concomitantly rendered a nullity, because an applicant could claim exemption under the broader statutory language set forth in R.C. 5709.12(B). Cf. *Rickenbacker Port Auth.*, 64 Ohio St.3d at 630-631; *Toledo Business & Professional Women's Retirement Living*, 27 Ohio St.2d at 256-258. In sum, the Court declined to allow the church to "evade the limitations imposed with respect to a specific tax exemption by claiming exemption under a broad reading of other exemption statutes." Id. at ¶ 30. The cogent reasoning set forth in *Church of God in N. Ohio* compels the conclusion that The Chapel's walking trail, recreational fields, and an undeveloped field are not entitled to exemption under R.C. 5709.12(B).

As the BTA correctly concluded, the "[p]rimary use of [The Chapel's] property is for public worship. The recreational fields and jogging path are ancillary to [The Chapel's] primary use for public worship." Appellant's Appx. 16; BTA Decision 13. Put another way, the property at issue is supportive of the public worship functions that occur on the property that was exempted under the "house of public worship" exemption. Several reasons bolster the propriety of the BTA's conclusion.

First, at the outset, it is particularly instructive to note that The Chapel's City of Green campus was "zoned for residential construction with a conditional use being a **place of worship**." Appellee's Supp. 47; Tr. 185 (emphasis added). This language mirrors the language set forth in R.C. 5709.07(A)(2) and cements the conclusion that, from the beginning, The Chapel's property was specifically and primarily intended as a place of worship. At no point in the BTA proceedings did The Chapel state that the *primary* purpose of the property at issue was to resemble something akin to a park that would inure to the benefit of the public-at-large. Indeed, Mr. Castelli testified that The Chapel developed the campus in the City of Green to

“create a ministry there that would include both more traditional aspects of church and worship and community” as well as to develop an “outdoor sports ministry” program and community outreach to the City of Green. Appellee’s Supp. 11; Tr. 41. Thus, while Mr. Castelli’s testimony certainly suggests that The Chapel had the public-at-large in mind (at least to some extent) when it created the City of Green campus, Mr. Castelli’s testimony is equally clear that the primary purpose for creating the City of Green campus was not to benefit the public-at-large. The inescapable reality is that the City of Green campus is primarily used for public worship and that the walking trail, recreational fields, and an undeveloped field support the public worship that occurs there. Accordingly, The Chapel’s reliance on *Highland Park v. Tracy* (1994), 71 Ohio St.3d 405 is misplaced. Appellant’s Br. 4. Whereas the property in *Highland Park* resembled a bona fide park that was untethered to any worship-related functions, the property at issue here is inextricably tied to the public worship functions that occur on the City of Green campus.

Second, the recitations contained in The Chapel’s articles of incorporation reveal, in unmistakable terms, the overriding worship-related functions of The Chapel. Such functions include: “[p]romoting the cause of the Christian faith according to the customs and regulations of the Independent Baptists;” “providing and maintaining a **place of worship** for its members;” and “owning and maintaining suitable real estate and buildings for a **place of worship.**” Appellee’s Supp. 74 (emphasis added). Notably, none of the aforesaid purposes contain a recitation that The Chapel’s property is to be used, let alone **primarily** used, for purposes that this Court has come to regard as “charitable” under R.C. 5709.12. See *Church of God in N. Ohio*, 2009-Ohio-5939, ¶¶ 19-20 (collecting cases). Indeed, the central theme running throughout the articles of incorporation is that The Chapel’s property is to be used as a place for worship.

Third, the establishment of The Chapel’s sports ministry program provides further

support for the BTA's finding that the property at issue supports the worship functions that occur on The Chapel's property. According to Mr. Saylor, sports ministry is a "great way to bring people into a [sic] understanding of what we do at the Chapel. * * * Sports ministry is a great avenue to do outreach and to be very missional in the community." Appellee's Supp. 42; Tr. 162. The sports ministry program resembles public worship insofar as a fifteen to twenty minute devotional is performed either before or after each athletic event. Appellee's Supp. 42; Tr. 165. Mr. Saylor regards the devotional "as an act of worship" and considers it part of The Chapel's "missional responsibility." Appellee's Supp. 42; Tr. 165. Mr. Saylor never defined the word "missional," however, in the religious context, "mission" (a variant of the word "missional") is defined as "the sending out of persons to preach, teach, and proselytize." Webster's New World Dictionary (2nd College Ed. 1986) 909.

In light of the foregoing, it is apparent that the primary use of the property at issue is to support the public worship functions that occur on The Chapel's campus in the City of Green. To be sure, non-Chapel members may use the property at issue; however, this is not the primary use of the property. "[T]he character of the property's use must be determined in light of its *primary* use, not secondary or ancillary activities." *Church of God in N. Ohio*, 2009-Ohio-5939, ¶ 22 (italics in original). Moreover, even in the instances where non-Chapel members may have used the property at issue, Mr. Saylor testified that approximately fifty individuals join The Chapel's congregation each year due to the individuals' usage of The Chapel's property. Appellee's Supp. 43; Tr. 166-167. In short, The Chapel's claim of exemption should be denied because the property at issue is not used *primarily* for charitable purposes.

B. The Chapel's proffered basis for reversing the BTA decision would require this Court to revisit the same arguments raised in the *Church of God in N. Ohio* decision—elementary principles of stare decisis counsel against such a course of action.

For its part, The Chapel argues that the BTA erred by considering the interplay between R.C. 5709.12(B) and R.C. 5709.07(A)(2). Appellant's Br. 7. The Chapel argues that because exemption for the property at issue was sought under R.C. 5709.12(B) and not R.C. 5709.07(A)(2), the BTA therefore erred by considering the contours of R.C. 5709.07(A)(2). Unfortunately for The Chapel, a virtually identical argument was considered and rejected by the Court in the *Church of God in N. Ohio* case. Under elementary principles of stare decisis, the Court should follow the rationale elucidated in *Church of God in N. Ohio*. See, e.g., *Brown*, 2008-Ohio-4081, ¶ 26 (adhering to principles of stare decisis); *Columbia Gas v. Limbach* (1994), 68 Ohio St.3d 366, 368-369 (same); *State ex rel. Monnett v. Baker* (1896), 55 Ohio St. 1, 8 (same).

As it was in *Church of God in N. Ohio*, it is necessary to examine the contours of R.C. 5709.07(A)(2) along with R.C. 5709.12(B) to ensure that the Court gives full force and effect to the statutory language in each respective statute. See R.C. 1.47(B); *State ex rel. Bohan v. Indus. Comm.* (1946), 147 Ohio St. 249, 251. Under the Chapel's theory, the "house of public worship" exemption set forth at R.C. 5709.07(A)(2) would truly be rendered a nullity if exemption could be claimed under the broader terms of R.C. 5709.12(B). Bedrock rules of statutory construction counsel against construing statutes in a manner that renders their language "meaningless or inoperative." *State ex rel. Myers*, 95 Ohio St. at 373.

Relatedly, The Chapel superficially argues that this Court's decisions in *Church of God in N. Ohio* and *Rickenbacker Port Auth.* offer no guidance here because the facts of those cases are different from what is at issue here. Appellant's Br. 7-9. The Chapel's facile attempt to elide

the powerful reasoning of *Church of God in N. Ohio* and *Rickenbacker Port Auth.* simply is not persuasive. Naturally, factual differences will generally exist among any set of cases. But it does not follow that just because factual differences exist, a court must turn a blind-eye to precedent as The Chapel suggests. If The Chapel's view were correct, the universe of caselaw that a court could look to for guidance would be razor-thin. At a more fundamental level, The Chapel simply misses the point. *Church of God in N. Ohio* and *Rickenbacker Port Auth.* offer compelling guidance here not so much because of the factual similarities (or dissimilarities as The Chapel suggests) in those cases, but rather because of the rationale the Court employed in construing statutory language in a manner that bars a property owner from "evad[ing] the limitations imposed with respect to a specific tax exemption by claiming exemption under a broad reading of other exemption statutes." *Church of God in N. Ohio*, 2009-Ohio-5939, ¶ 30 (citing *Rickenbacker Port Auth.*, 64 Ohio St.3d at 631-632).

As a final point in its brief, The Chapel embarks on a cryptic discussion of the split-listing statute, R.C. 5713.04, as well as this Court's decision in *Olmsted Falls Bd. of Edn. v. Limbach* (1994), 69 Ohio St.3d 686. Appellant's Br. 10-12. Respectfully, the Tax Commissioner does not understand the import of The Chapel's argument with respect to these pages—thus, he is incapable of formulating a response. Suffice it to say, the Tax Commissioner does not quarrel with the BTA's decision to perform a split-listing pursuant to R.C. 5713.04, nor does he quarrel with the BTA's decision to deny exemption to the walking trail, recreational fields, and an undeveloped field under R.C. 5709.12(B).

Tax Commissioner's Third Proposition of Law: Exemption must be denied where real property is not used in an exempt manner as of the tax lien date for the tax years in question.

As discussed above, The Chapel's claim for exemption fails under the rationale elucidated in the *Church of God in N. Ohio* decision. However, an alternative but equally compelling reason exists for denying The Chapel's claim of exemption—namely, The Chapel failed to show that the property at issue was used in an exempt manner as of the tax lien date for the tax years in question.⁵ The Chapel's inability to meet its evidentiary burden on this point provides a further basis for denying its claim of exemption.

The tax lien date is codified at R.C. 323.11, which provides in relevant part that the "lien of the state for taxes levied for all purposes on the real and public utility tax list and duplicate for each year shall attach to all real property subject to such taxes on the first day of January, annually * * * ." Thus, this Court has held that "the taxable or exempt status of property should be determined as of the tax lien date, which is January 1 of whatever tax year is at issue." *Episcopal School of Cincinnati v. Levin*, 117 Ohio St.3d 412, 2008-Ohio-939, ¶ 23 (interpreting R.C. 323.11). It is well-settled that "[t]he Tax Commissioner may not exempt property from taxation unless the exempt use began by the tax lien date of the year for which exemption is sought." *Sylvania Church of God*, 2008-Ohio-2448, ¶ 9 (emphasis added) (quoting *Christian Benevolent Assn.*, 69 Ohio St.3d at 297).

⁵ Because the BTA found that The Chapel's walking trail, recreational fields, and an undeveloped field were not used in an exempt manner under R.C. 5709.12(B), the BTA declined to rule on whether such property was used in an exempt manner as of the tax lien date. See BTA Decision fn. 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.").

Here, The Chapel's real property exemption application indicates that exemption for parcels A and B was sought for the 2002 tax year and remission of taxes and penalties was sought for 2001 and 2000. Appellee's Supp. 72. For Parcel C, the Chapel's real property exemption application indicates that exemption was sought solely for the 2002 tax year. Appellee's Supp. 72. However, the testimony from the BTA hearing plainly establishes that The Chapel did not use the walking trail, recreational fields, and an undeveloped field in an exempt manner as of the tax lien date for the tax years at issue.

Specifically, Mr. Saylor testified, and the BTA found, that the walking trail opened in the late fall or summer of 2005. Appellee's Supp. 27; Tr. 105. Thus, at a minimum, the earliest tax year for which the walking trail could possibly receive an exemption is 2006. Similarly, Mr. Saylor testified, and the BTA found, that the recreational fields opened in the spring of 2006. Appellee's Supp. 27; Tr. 105. Thus, at a minimum, the earliest tax year for which the athletic fields could possibly receive an exemption is 2007. As a final point, the undeveloped field is not used in any manner. Appellee's Supp. 13; Tr. 46-48. Thus, the undeveloped field cannot qualify for exemption.

In short, under this Court's settled jurisprudence, The Chapel's request for exemption of its walking trail, recreational fields, and undeveloped field must be denied because The Chapel failed to demonstrate that such property was used in an exempt manner as of the tax lien date for the tax years in question.

Tax Commissioner's Fourth Proposition of Law: A taxpayer may not raise new issues on appeal that were not raised in the proceedings below. Moreover, a specification of error is jurisdictionally deficient where it is so generic that it may be used in nearly any case.

For the first time in this matter, The Chapel has raised two constitutional issues. Specifically, The Chapel contends in its notice of appeal to this Court that it has been denied equal protection of the law and substantive due process because its recreational property was not granted exemption under R.C. 5709.12(B).⁶ Appellant's Appx. 3. These two allegations were never raised as issues to the Tax Commissioner or to the BTA. Appellee's Supp. 61, 63, 81. Moreover, these two allegations are bereft of any specificity and could be advanced in nearly any case. For the reasons set forth below, this Court lacks jurisdiction to address these two new issues.

First, this Court has repeatedly held that it cannot consider an issue unless it was raised in the proceedings below. See e.g., *Ohio Bell Tel. Co.*, 2009-Ohio-6189, ¶ 16; *Brown*, 2008-Ohio-4081, ¶ 17; *Queen City Valves*, 161 Ohio St. at 583. Here, The Chapel failed to raise the two alleged constitutional deprivations in the proceedings before the Tax Commissioner and the BTA. Accordingly, the Court lacks jurisdiction to consider these two issues now.

⁶ Specifically, The Chapel's notice of appeal states in-part that:

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.

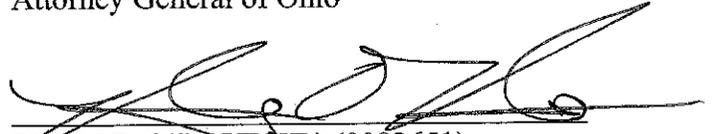
Second, The Chapel's two alleged constitutional deprivations are far too generic to pass muster under R.C. 5717.04, therefore, this Court lacks jurisdiction to consider them. R.C. 5717.04 sets forth the mechanism by which an appeal may be filed with this Court from a BTA decision. Just recently, this Court held that under R.C. 5717.04, an "assignment of error in a notice of appeal does not confer jurisdiction if the errors set out are such as might be advanced in nearly any case." *Turner*, 2010-Ohio-922 ¶ 2 (internal quotations omitted). See also *Lawson Milk Co. v. Bowers* (1961), 171 Ohio St. 418, 419-420. Here, The Chapel's two alleged constitutional deprivations are bereft of any specificity and fail to tie the facts of the case to the alleged deprivation. Cf. *Castle Aviation*, 2006-Ohio-2420, ¶ 41 (declining to exercise jurisdiction where the taxpayer's notice of appeal failed to adequately specify an equal-protection argument). Thus, this Court lacks jurisdiction to consider the alleged constitutional deprivations.

CONCLUSION

The BTA's decision and order, not being clearly unreasonable and unlawful, should be affirmed.

Respectfully Submitted,

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1 of 1 DOCUMENT

Columbus Christian Center, Appellant-Appellant, v. Thomas M. Zaino, Tax Commissioner of Ohio, Appellee-Appellee.

No. 02AP-563

COURT OF APPEALS OF OHIO, TENTH APPELLATE DISTRICT, FRANKLIN COUNTY

2002 Ohio 7033; 2002 Ohio App. LEXIS 6841

December 19, 2002, Rendered

PRIOR HISTORY: [**1] APPEAL from the Ohio Board of Tax Appeals.

DISPOSITION: Board of Tax Appeals' judgment was affirmed.

COUNSEL: J.C. Deboard & Co., L.P.A., and Susan N. Hayes, for appellant.

Betty D. Montgomery, Attorney General, and Richard C. Farrin, for appellee Tax Commissioner.

Rich, Crites & Wesp, LLC, Jeffrey A. Rich, and Mark H. Gillis, for appellee Board of Education.

JUDGES: DESHLER, J. BRYANT and KLATT, JJ., concur.

OPINION BY: DESHLER

OPINION

(REGULAR CALENDAR)

DECISION

DESHLER, J.

[*P1] Appellant, Columbus Christian Center, appeals from a judgment of the Ohio Board of Tax Appeals ("BTA") affirming the final determination of appellee, Thomas M. Zaino, Tax Commissioner of Ohio, granting appellant's application for a real property tax exemption in part and denying the application in part.

[*P2] On December 18, 1997, appellant filed an application with the Tax Commissioner seeking a real property tax exemption pursuant to *R.C. 5709.07* for a 25-acre parcel it owns in Franklin County. Following a review of appellant's evidence, the Tax Commissioner, on May 10, 2000, issued a final determination granting 15 acres of the subject property the requested tax exemption, but denying the exemption to ten acres of the property. [**2] Appellant appealed the Tax Commissioner's determination to the BTA.

[*P3] According to the evidence presented before the BTA, appellant purchased the subject property in August 1996, with the intent of building a church and related facilities on the property. At the time of the hearing, a portion of the property had been improved with a church building, a play area, two parking lots, and a football field; a portion of the property was used for storm water retention as required by local zoning; and two and one-half acres of the property had been sold to the U.S. Postal Service. The balance of the property, which remained unimproved, except for having been graded and seeded with grass, was intended to be used for the future expansion of the church building and parking areas and the construction of baseball fields and basketball courts. However, appellant presented no evidence that it planned to proceed with any of these improvements in the near future. Rather, the unimproved portion of the property was occasionally being used for outdoor worship, neighborhood block parties, recreational activities, and overflow parking. Based on this evidence, BTA affirmed the final determination [**3] of the Tax Commissioner. Appellant appeals from the BTA's decision assigning the following error:

[*P4] "The Board of Tax Appeals' decision and order affirming the Tax Commissioner's determination finding only 15 of 25 acres exempt was contrary to § 5709.07 and therefore unreasonable or unlawful."

[*P5] The standard for review for appeals from the BTA is set forth in *R.C. 5717.04*, as follows:

[*P6] "If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification."

[*P7] Thus, our determination in the present case is limited to determining whether the BTA's decision was reasonable and lawful. *PPG Industries, Inc. v. Kosydar (1981)*, 65 Ohio St.2d 80, 81, 417 N.E.2d 1385. Further, in reviewing the BTA's decision that ten acres of the subject property were not entitled to the tax exemption, we are mindful that a statute [**4] which grants a tax exemption is to be strictly construed against exemption, *Faith Fellowship Ministries, Inc. v. Limbach (1987)*, 32 Ohio St.3d 432, 433, 513 N.E.2d 1340, and that the burden of establishing entitlement to such an exemption is on the party seeking the exemption. *Id. at 437*. Finally, *R.C. 5713.04* permits real property to be split into tax exempt and non-tax exempt parts if the tax exempt portion can be precisely delineated. *Id. at 436*.

[*P8] In the present case, appellant sought to have its entire 25-acre parcel declared tax exempt pursuant to *R.C. 5709.07(A)(2)* and (3) which provide as follows:

[*P9] "(A) The following property shall be exempt from taxation:

[*P10] " * * * ;

[*P11] "(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;

[*P12] "(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 [**5] 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."

[*P13] *R.C. 5709.07(A)(2)* and (3) provide tax exemptions for three types of real property: (1) buildings used primarily as houses of public worship, *Moraine Heights Baptist Church v. Kinney (1984)*, 12 Ohio St.3d 134, 135-136, 12 Ohio B. 174, 465 N.E.2d 1281; (2) the land appurtenant to houses of public worship that is necessary for the occupancy, use, and enjoyment of the houses of public worship; and (3) land owned and operated by a church that is primarily used for church retreats or church camping. Property that is merely supportive of public worship does not qualify for the tax exemption. *Faith Fellowship*, 32 Ohio St.3d at 436.

[*P14] In the present case, the BTA concluded that the church building was entitled to an exemption because it was used primarily as a house of public worship. The BTA also concluded that the land adjacent to the church building and the two improved parking lots were entitled to an exemption as property that is necessary for the [**6] occupancy, use, and enjoyment of the church building. Together, these portions of the property amount to 15 acres. All of the parties agree that the BTA correctly exempted these 15 acres. However, the BTA also concluded that the entire unimproved portion of the property, the football field, the area set aside for storm water retention, and the two and one-half acres sold to the postal service were not entitled to the exemption. Together, these portions of the property amount to 10 acres. It is the BTA's conclusion regarding these 10 acres with which appellant takes issue.

[*P15] Appellant first contends that the BTA wrongly concluded that the unimproved area and the football field were not entitled to the tax exemption because the evidence establishes that these areas are used for recreation, which promotes Christian values. The Ohio Supreme Court has consistently concluded that recreational facilities owned by religious organizations do not qualify for the exemption provided by *R.C. 5709.07(A)(2)*, as such facilities are, at best, merely supportive of religious purposes. *Id.*, 32 Ohio St.3d at 437; *Moraine Heights*, 12 Ohio St.3d at 136-137. Appellant also suggests that the unimproved area qualifies for [**7]

the exemption provided by *R.C. 5709.07(A)(3)*. While appellant did present evidence that the unimproved area was occasionally used for outdoor worship, recreation, and neighborhood block parties, appellant presented absolutely no evidence that area was ever used for church retreats or church camping, much less primarily used for either of those purposes, as *R.C. 5709.07(A)(3)* requires.

[*P16] Appellant also contends that the BTA wrongly concluded that the unimproved area was not entitled to an exemption because the evidence established that the area was necessary for the occupancy, use, and enjoyment of the church. The record does not support appellant's contention. It is true that appellant's Director of Operations, Lavonne Bailey, testified that the unimproved portion of the property was used for overflow parking when the weather permitted. However, Bailey failed to provide any indication of how often the overflow parking area was needed, whether the need arose in connection with worship services, or what portion of the unimproved area, which in its entirety is at least as large as the two improved parking lots on the site, is actually needed for overflow parking. This lack [**8] of evidence left the BTA with no choice but to deny the tax exemption to the entire unimproved portion of the property.

[*P17] Appellant next challenges the BTA's conclusion that the area set aside for storm water retention is not entitled to an exemption. Specifically, appellant ar-

gues that the BTA's determination is unreasonable because it was based on the incorrect conclusion that appellant failed to present any evidence regarding the size of the retention area. While appellant is correct that the record does include evidence regarding the total size of the retention area, appellant is incorrect in its assertion that the BTA relied on the lack of such evidence in concluding that the retention area was not entitled to the exemption. Rather, the BTA concluded that appellant had failed to provide any evidence of how much of the retention area is attributable to the other exempt property. The record indicates that the BTA was correct in reaching this conclusion. In the absence of any evidence from which it could determine how much of the retention area was necessary for use of exempt property, the BTA was required to conclude that none of the retention area was entitled to an [**9] exemption.

[*P18] Based on the foregoing, we conclude that the BTA's decision was both reasonable and lawful. Accordingly, appellant's assignment of error is overruled.

[*P19] Appellant's assignment of error having been overruled, the judgment of the Ohio Board of Tax Appeals is affirmed.

Judgment affirmed.

BRYANT and KLATT, JJ., concur.



1 of 1 DOCUMENT

Grace Chapel, Appellant, vs. Richard A. Levin, Tax Commissioner of Ohio, Appellee.

CASE NO. 2007-K-835 (REAL PROPERTY TAX EXEMPTION)

STATE OF OHIO -- BOARD OF TAX APPEALS

2010 Ohio Tax LEXIS 616

May 4, 2010, Entered

[*1] APPEARANCES:

For the Appellant - Taft, Stettinius & Hollister LLP, J. Donald Mottley

For the Appellee - Richard Cordray, Attorney General of Ohio, Ryan P. O'Rourke, Assistant Attorney General

OPINION:

DECISION AND ORDER

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

Appellant appeals a final determination issued by the Tax Commissioner in which he granted in part and denied in part appellant's application to exempt from ad valorem taxation certain real property located in Warren County, Ohio. We proceed to consider this appeal upon the transcript certified by the commissioner pursuant to R.C. 5717.02, the record of this board's hearing, and the written argument submitted on behalf of the parties.

These proceedings were initiated by appellant in December 2004 through the filing of its application seeking to exempt from real property tax four parcels of realty, i.e., 16-36-451-001.0, 16-36-407-002.1, 16-36-407-002.2, and 16-36-407-002.3. In its application, question 13 asks the applicant to state the statutory basis under which exemption is sought, with question 14 seeking information regarding the property's use. Appellant provided the following responses:

"13. Under what section(s) [*2] of the Ohio Revised Code is exemption sought?

"O.R.C. 501(c)(3)

"14. How is this property being used? **Do not** give conclusions such as charitable purpose, public worship, or public purpose. Be specific about what is being done on the property and who uses it. If the property is not currently being used, but there is an intent to use it later for an exempt purpose, describe the intended use and the date set for the intended use

"The property is being used as the main campus for all of the ministry and outreach programs of Grace Chapel. This would include Sunday morning worship services, small group meetings, youth group meetings, church offices, food pantry & outreach center." S.T. at 10. (Emphasis sic.)

In a written recommendation dated April 20, 2007, see S.T. 4-6, an agent examiner of the Department of Taxation interpreted appellant's application as a request to exempt the subject property pursuant to R.C. 5709.07, which exempts from taxation "[h]ouses used exclusively for public worship *** 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[.]" Under this [*3] provision, the agent examiner recommended parcel number 16-36-451-001.0 be exempted for tax years 2004

through 2006. While it was recommended that parcel numbers 16-36-407-002.2 and 16-36-407-002.3 be denied exemption, it was recommended that penalties for tax years 2004 through 2006 be remitted. The agent examiner considered parcel number 16-36-407-002.1 as used in ways entitling it to be partially exempted and, as a result, recommended that the property be split-listed pursuant to R.C. 5713.04. n1 Id. As with the two preceding parcels, it was recommended that penalties be remitted for tax years 2004 through 2006. The recommendation advised appellant it had ten days within which to respond, S.T. at 4, and although appellant indicated written objections would be filed by May 8, 2007, S.T. at 8, the Tax Commissioner's June 21, 2007 final determination indicated none were forthcoming.

n1 In this regard, R.C. 5713.04 provides that "[i]f 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."

[*4]

Reiterating the agent examiner's recommendation, the commissioner proceeded to address appellant's application, stating in pertinent part with respect to parcel numbers 16-36-407-002.1 and 16-36-407-002.2, as follows:

"The applicant, Grace Chapel, is requesting exemption for the above-referenced parcels totaling 5.1241 acres. The property was acquired on August 21, 2003 from Deerfield Manufacturing Co. (now known as Defco, Inc.). The property consists of four parcels containing various improvements. The auditor's property record cards contain notes about the uses and intended uses of the various improvements on the parcels based on the appraiser's review of the property with Pastor Jeff Greer on December 27, 2004. The auditor's records also include a site diagram identifying each building or portion of a building by number. These numbers will be used to identify the improvements. According to the auditor's documents and other information provided by the applicant, the parcels are improved and used as follows:

"Parcel B[, i.e., 16-36-407-002.1]: This parcel is improved with Building 10, which is used as a church sanctuary and classrooms, Buildings 3,4,5,6,7, and 11, which [*5] are used for storage for a thrift store; Buildings 1,12 and part of 2, which are used as church offices and youth worship facilities; the balance of Building 2 and all of Buildings 2-A and 9, which are being remodeled into a recreational facility and possible storage area; Buildings Y-5 and Y-6, which the applicant intends to remodel and use as a computer repair shop in the future.

"Parcel C[, i.e., 16-36-407-002.2]: The first floor of the building on this parcel is intended to be remodeled into a retail store that will be leased to a self-sustaining, non-profit enterprise. At the time the application was filed, the second floor was being used as a parsonage, which will be vacated when the remodeling of the first floor commences." S.T. at 1-2.

Like his agent examiner, the commissioner surmised that "[e]xemption is sought pursuant to Ohio Revised Code Section (R.C.) 5709.07," S.T. at 2, and proceeded to order that the property be split-listed:

"Property exempt from taxation:

"Parcel B: which is used as a church sanctuary and classrooms; Buildings 1,12 and part of 2, which are used as church offices and youth worship facilities; and the land underneath these portions [*6] of Parcel B.

"The Tax Commissioner orders that the portion of real property described above be entered upon the list of property in the county which is exempt from taxation for tax years 2004, 2005 and 2006, and that tax, penalties and interest charged and paid for this part of the property for these tax years be refunded in the manner provided by R.C. 5715.22. 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:

"Parcel B: Buildings 3,4,5,6,7, and 11, as storage for a thrift store; the portions of Building 2 and all of Buildings 2-A and 9, as a future recreational facility and storage area; Buildings Y-5 and Y-6, as a future computer repair shop; and the land underneath these portions of Parcel B.

"Parcel C, as a parsonage and property intended for use as a retail store.

"The Tax Commissioner further orders that penalties charged through the date of this determination be remitted." S.T. at 2.

From this determination, appellant filed a notice of appeal with this board, specifying the following as error:

"The Final Determination [*7] erroneously denied real property tax exemption under Revised Code Section 5709.07 to the following portions of the subject property which are used for public worship and thus are exempt from property taxation under that section:

". Parcel B, Building 2A and all of Building 2 are being used or are being remodeled for use in public worship, including classroom space and the largest assembly hall for church services, and thus should be exempt along with the rest of Building 2.

". Parcel B, Building 9 is used for public worship as the main youth worship facility, including youth worship services on Sundays, vacation Bible school classes, midweek children's church and midweek classes.

". Parcel B, Building[s] Y-5 and Y-6, are not a future computer repair shop, but rather are storage facilities for the campus' maintenance department. Maintaining the buildings, grounds, and facilities that are used directly in public worship is, like providing parking, necessary for conducting public worship on the site and is thus an exempt use.

"Therefore, Appellant asks that the Final Determination be modified to also enter upon the list of property exempt from taxation, under Revised Code Section [*8] 5709.07, all of Parcel B, Buildings 2, 2A, Y-5n and Y-6 and the land beneath them, and all of Parcel C, as described on the attached Final Determination, for tax years 2004, 2005, and 2006, and thereafter unless and until the Warren County Auditor or the Tax Commissioner returns any of said property to the tax list as provided by law; and that all taxes, penalties, and interest charged and paid for the above-described property be refunded as provided in Revised Code Section 5715.22."

Subsequently, at the hearing convened before this board, appellant withdrew its request to exempt "Parcel C," i.e., parcel number 16-36-407-002.2. Accordingly, appellant's challenges are now restricted to buildings 2, 2-A, Y-5, Y-6, and 9 and underlying land which comprise parcel number 16-36-407-002.1.

Before we address the merits of appellant's appeal, in light of numerous Supreme Court pronouncements highlighting the limits of our jurisdiction, we are compelled to acknowledge our decision in *Grove City, Ohio v. Zaino* (Sept. 24, 2004), BTA No. 2003-K-722, unreported, wherein we reviewed the application/appeals process and the extent to which arguments advanced before the commissioner may serve [*9] to restrict our jurisdiction.

"It was not until appellant filed its appeal with this board that it sought exemption under R.C. 5709.12 and 5709.121. Although the Tax Commissioner questioned this board's jurisdiction to consider the applicability of these statutes, appellant has neither responded to the commissioner's argument nor advocated, other than in its notice of appeal, that the property is entitled to exemption under either R.C. 5709.12 or 5709.121. This board has often held that in order for it to have jurisdiction over a claimed basis for exempting real property, that statutory ground must have been asserted before the commissioner. See, e.g., *New Covenant Believers Church v. Zaino* (May 21, 2004), BTA No. 2002-B-926, unreported; *Oikos Community Dev. Corp. v. Zaino* (Nov. 9, 2001), BTA No. 2000-T-2037, unreported. In reaching this conclusion, we have acknowledged the essential need that notice be provided, at the earliest stage of administrative proceedings, of the arguments to be asserted. Cf. *CNG Dev. Corp. v. Limbach* (1992), 63 Ohio St.3d 28; *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134. [*10] Our rationale that an appellant is restricted on appeal to only those bases raised before the commissioner has been predicated upon the notion that the disclosure of such information necessarily runs to the 'core of procedural efficiency,' according the commissioner reasonable notice regarding the grounds upon which exemption is sought and allowing him the first opportunity to address and resolve such claims. See, generally, R.C. 5715.27. See, also, *Princeton City School Dist. Bd. of Edn. v. Zaino* (2002), 94 Ohio St.3d 66, 72-74. Given appellant's failure to have previously claimed that the subject property was entitled to exemption under R.C. 5709.12 or 5709.121, we conclude that we are without jurisdiction to consider the exemption provided by either of these statutes." Id. at 6-7, fn. 8.

Under circumstances not too dissimilar from those presented herein, in *Mt. Sana Housing Dev. Corp. v. Wilkins* (Feb. 2, 2010), BTA No. 2006-M-2129, unreported, appeal pending Sup. Ct. No. 2010-368, we ultimately concluded that grounds for exemption which we may consider, provided they are raised in the notice of appeal, include not only those expressly raised [*11] by an applicant before the Tax Commissioner, but also those addressed by that official in his final determination:

"Prior to discussing the merits of this appeal, we must address a potential jurisdictional issue. The application for real property tax exemption filed with the Tax Commissioner did not provide a response to the question '[u]nder what section(s) of the Ohio Revised Code is exemption sought?' This question provides the basis of the exemption claim, and case law holds that the Board of Tax Appeals has jurisdiction to consider only the applicability of those sections of the revised code raised by an appellant before the Tax Commissioner. *The Old West End Assn. Inc. v. Wilkins*, (Oct. 27, 2006), BTA No. 2005-H-359, unreported, affirmed *Old W. End Assn., Inc. v. Wilkins*, [Lucas App. No. L-06-1374,] 2008-Ohio-366; *New Covenant Believers Church v. Zaino* (May 21, 2004), BTA No. 2002-B-926, unreported. The board has previously acknowledged that the Tax Commissioner be provided notice of the arguments to be asserted at the earliest stage of the administrative proceedings. *City of Grove City, Ohio v. Zaino* (Sep. 24, 2004), BTA Case No. 2003-K-722, unreported, [*12] fn.8, citing *CNG Development Co. v. Limbach* (1992), 63 Ohio St.3d 28 and *Moraine Hts. Baptist Church v. Kenney* (1984), 12 Ohio St.3d 134. The Ohio Supreme Court has recently affirmed this proposition as it relates to the presentation of an issue to the Tax Commissioner through a petition for reassessment. *Ohio Bell Tel. Co. v. Levin*, Slip Opinion No. 2009-Ohio-6189.

"In the present case, however, the Tax Commissioner did not conclude that he was without jurisdiction to consider the matter. Instead, the Tax Commissioner considered exemption under R.C. 5709.12. Under the same circumstances in prior cases, this board limited our review to the statute considered by the Tax Commissioner. *Oikos Community Dev. Corp. v. Zaino* (Nov. 9, 2001), BTA No. 2000-T-2037, unreported. We take the same action today." Id. at 4-5.

Accordingly, although appellant did not identify in its application the statutory authority for exempting the subject property from ad valorem taxation, this board, like the commissioner, will consider the subject property's entitlement to exemption under R.C. 5709.07.

The authority to exempt property [*13] from taxation emanates initially from Section 2, Article XII, of the Ohio Constitution:

"Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt *** institutions used exclusively for charitable purposes ***."

While the General Assembly has exercised its constitutional grant to enact legislation exempting qualifying property from taxation, it has also expressed the limited scope of such grant, acknowledging that "[a]ll real property in this state is subject to taxation, except only such as is expressly exempted therefrom." R.C. 5709.01(A). As a result, "in any consideration concerning the exemption from taxation of any property, the burden of proof shall be placed on the property owner to show that the property is entitled to exemption." R.C. 5715.271. Apparent from the preceding, "[e]xemption is the exception to the rule and statutes granting exemption are strictly construed." *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186. [*14] n2

n2 The policy reasons underlying the construction to be accorded statutes granting exemption were discussed by the Supreme Court in *Bethesda Healthcare Inc. v. Wilkins*, 101 Ohio St.3d 420, 2004-Ohio-1749:

"In *Cincinnati College v. State* (1850), 19 Ohio 110, 115, *** we stated that 'all laws that exempt any of the property of the community from taxation should receive a strict construction. All such laws are in derogation of equal rights.' The court pointed out, 'If property, employed in one kind of business, is exempted from taxation, the burden will necessarily fall more heavily on property employed in other pursuits.' When an exemption is granted by the General Assembly, '[t]he rationale justifying a tax exemption is that there is a present benefit to the general public from the operation of the charitable institution sufficient to justify the loss of tax revenue.' *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 201 ***. Statutes providing exemption from taxation must be strictly construed. *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 407, *** paragraph two of the syllabus. The burden rests on the party claiming an exemption to demonstrate that the property qualifies for the exemption. *OCLC Online Computer Library Ctr. Inc. v. Kinney* (1984), 11 Ohio St.3d 198, 201 ***." *Id.* at P 19. (Parallel citations omitted.)

[*15]

In an appeal from a decision of the Tax Commissioner, an appellant also has the affirmative burden to demonstrate error:

"Absent a demonstration that the commissioner's findings are clearly unreasonable or unlawful, they are presumptively valid. Furthermore, it is error for the BTA to reverse the commissioner's determination when no competent and probative evidence is presented to show that the commissioner's determination is factually incorrect. ***" *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121, 124. (Citation omitted.)

It is therefore incumbent upon an appellant to rebut this presumption by establishing a clear right to the relief requested, demonstrating in what manner and to what extent the Tax Commissioner's determination is in error. *Id.*; *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213; *Ohio Fast Freight, Inc. v. Porterfield* (1968), 29 Ohio St.2d 69; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138.

As previously indicated, through its appeal appellant claims that the property in issue is entitled to the [*16] exemption allowed for by R.C. 5709.07:

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

"(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[.]"

Although the statute references an "exclusive use," the court in *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432, adopted a more temperate approach, concluding that in order to qualify for exemption a property "must be used in a principal, primary, and essential way to facilitate the public worship." *Id.* at 437. Nevertheless, the court reaffirmed prior decisions holding "that uses which are merely supportive of public worship may not be exempted." *Id.* at 436.

At the hearing convened before this board, appellant presented the testimony of senior pastor Jeffrey R. Greer, who described appellant's efforts leading up to its acquisition of the property, as well as its current and anticipated plans for its use. Appellant began [*17] its fundraising efforts to acquire the property in 2003, with preliminary plans for its use internally approved by late 2003. Appellant was able to acquire the property in August 2003 and in October/November 2004 secured initial architectural and engineering plans to achieve its conversion.

From its inception, appellant contemplated the construction of a "recreation center" or "sports complex," see, e.g., Exs. 15, 18, 20, within buildings 9, 2, and 2A, that would include the construction of areas designated for a volleyball court, rock climbing wall, batting cages, pitching tunnel, basketball court, turf field, weight room, and locker rooms. See, e.g., Exs. 2, 3, 5, 15. Additional areas included intended space for a two-level game room, lounge, sound studio, computer lab, etc. n3 Although Pastor Greer acknowledged the recreational and social aspects of the property, he indicated that such a facility accords appellant an alternative means by which to reach out to individuals and draw them into its ministry. Referring to an article he authored, Pastor Greer described the impact group approach which appellant [*18] 'employs and how the property is utilized to facilitate that approach:

"[W]hen you were in high school, what lunch table did you sit at? Where did you sit when you took your lunch? You sat with the people you were comfortable with. So if you were an athlete, you sat with the athletes; a cheerleader, then cheerleaders. If you were into computers, that's the table you were comfortable with if you were a computer geek, to use the terminology, you don't go sit with the athletes, so you had a different breakup, different cliques in high school.

"So what we did, we said, one size in a church does not fit all. If you have a hundred kids in your group, 50 of them are not comfortable because their friends will not be a part of this group. So we broke it down to what we call impact groups. Impact groups is [sic] a group of like-minded students. They enjoy a similar activity. And that could be athletics, it could be working on cars, it could be working on computers.

"So what the article describes is taking a group of students who like to work on cars and building a bible study around that group where we teach them biblical principles. We go through curriculum. We do public worship [*19] in describing. It is like a Sunday school class, except that after you are done with the religion education, you 'get to do something you enjoy doing, which is what attracts kids.

"I can walk up to a bunch of skaters in my parking lot and say, 'Hey, do you want to sit around and talk about Jesus', and they all laugh at me. But if I build them a skateboard park, they are not laughing anymore. They are coming to the skateboard park and they sit and are willing to sit down and listen to you talk about the gospel because you have met their felt needs.

"So what we are trying to do is meet people's felt needs and then earn the right to be heard and meet their spiritual needs, so it is that kind of approach. If you see a skater, what is a skater's felt need? It's a skateboard park, so you create that environment, you invite those kids and you let them know that you can skate, but here are the boundaries, we have a bible study, we go through the cycle ship and then we have that activity." H.R. 26-28.

n3 It appears that over time, subsequent to tax years 2004 through 2006, the years which are in issue in this appeal, circa 2007-2008, the potential uses of the property may have been modified to some degree. Compare, e.g., Ex. 6.

[*20]

Pastor Greer described several of appellant's current and hoped-for impact groups, e.g., an auto impact group, "Upward" (an "evangelistic sports ministry"), weight lifting, "Ignite," etc., indicating that a bible study curriculum is established and that, on a time basis, the facilities are predominantly used as a place for worship:

"I can totally understand how people can see this and say, 'It's a recreational facility.' The predominant use, like I described, is public worship. Even when we are using it for recreation, it is not -- we are not going to let people just take it over and 24 hours a day use it for baseball. I have a professional baseball player that goes to our church and an ex-professional basketball player. I have talked to both of these gentlemen and they are going to help run our impact groups.

"So what they will do with the impact group, again, like-minded students, if I can get baseball players together with a semi-pro baseball player and basketball player with a retired probasketball [sic] player, these gentlemen will run an impact group. They will teach a bible study with a curriculum that is laid out already. It is written. We have a curriculum. They will [*21] run a bible study and then they will practice in that area.

"Again, how do we reach out to baseball players? What do baseball players love to do? Play baseball. So what is the most effective way to reach baseball players? It is to invite them in to play. They can come and practice and at the same time have their bible study and have their impact time." H.R. 43-44.

In *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134, the Supreme Court spoke to uses of church-owned property substantially similar to those of the subject, concluding they did not qualify for exemption under R.C. 5709.07:

"The phrase 'used exclusively for public worship' has been construed by this court to be equivalent to 'primary use.' Accordingly, an exemption is allowable under R.C. 5709.07 if the property is used primarily for purposes of public worship. *In re Bond Hill-Roselawn Hebrew School* (1949), 151 Ohio St. 70, 77-78 ***; *Bishop v. Kinney* (1982), 2 Ohio St.3d 52, 53; *Summit United Methodist Church v. Kinney* (1983), 7 Ohio St.3d 13.

"Thus, in *Bond Hill, supra*, [*22] this court reviewed a decision of the board denying an exemption to a Hebrew school due to the fact that a caretaker and his family were permitted to live in three rooms located above the first floor of the building. In reversing the board's decision, it was stated:

"There are many activities conducted in church buildings which do not constitute public worship but which are designed to encourage people to use the church for public worship. The use of a room in the church to entertain young children while their parents attend church services is not a use for public worship. The use of the church building for meetings of boy scouts is not a use for public worship. The use of part of the building for the preparation of food for a church supper and the eating of such food are not uses for public worship. Certainly it was not the intention of the people that their words, 'used exclusively for public worship,' should be so literally construed that any such uses would prevent tax exemption of a church building.' *Id. at 72-73.*

** ** *

"Unlike the exemption under R.C. 5709.12, which exempts all institutional land and buildings used exclusively for charitable [*23] purposes, the exemption contained under R.C. 5709.07, insofar as it applies to churches, is more restrictive, exempting only 'houses used exclusively for public worship *** and the ground attached to such buildings necessary for the proper occupancy, use, and enjoyment

thereof ***.' In view of the fact that the swimming pool, basketball and shuffleboard courts, as well as the remainder of appellant's unimproved property constituting the vast majority of the forty-nine acre church camp, are neither buildings used exclusively for public worship, nor necessary for the proper occupancy, use and enjoyment of the tax-exempt chapel, we conclude that the board's denial of an exemption to this property is, likewise, both reasonable and lawful." *Id.* at 135-137.

We do not dispute the value of facilities such as those constructed by appellant to expand upon ministries by reaching out to portions of society who might not otherwise be disposed to attend worship services conducted within a sanctuary. However, consistent with the Supreme Court's admonition, this board has repeatedly held that recreational uses of church-owned property are merely supportive of the owner's [*24] mission and do not qualify for the narrow exemption granted by R.C. 5709.07. See, e.g., *Apostolic Faith Assembly, Inc. v. Limbach* (June 14, 1991), BTA No. 1987-H-851, unreported; *Presbyterian Church v. Tracy* (Feb. 25, 1994), BTA No. 1992-A-1502, unreported; *South Norwood Church of Christ v. Zaino* (Jan. 12, 2001), BTA No. 2000-P-487, unreported; *Columbus Christian Ctr. v. Zaino* (Apr. 19, 2002), BTA No. 2000-R-669, unreported, affirmed Franklin App. No. 02AP-563, 2002-Ohio-7033; *Vandalia Church of the Nazarene v. Zaino* (Jan. 17, 2003), BTA No. 2001-N-883, unreported; *Zion Baptist Church v. Levin* (Sept. 16, 2008), BTA No. 2007-A-660, unreported; *Trinity Fellowship Church, Inc. v. Levin* (June 23, 2009), BTA No. 2007-H-566, unreported. We are compelled to reach this same conclusion in this instance.

The contested facilities are doubtless capable of a variety of types of use and may, at times, be used by appellant to engage in worship. However, the design, function, and primary purpose of these facilities, whether used by appellant or the other private individuals/entities who may use it, e.g., Boy Scouts, baseball teams, birthday parties, etc., remain recreational/athletic [*25] and not exclusively nor necessary for public worship. n4

n4 It appears that subsequent to the years in issue, appellant's intended use of portions of the property continue to evolve, with areas anticipated to be used for classroom. However, for the years in issue, we are unable to conclude appellant has demonstrated error in the commissioner's determination that the property was intended to be used for recreational purpose thereby rendering it taxable.

For the same reasons we are unable to conclude that the areas in buildings Y5 or Y6 where appellant intends to relocate its food pantry operations are entitled to exemption. While Pastor Greer testified to the fellowship opportunities which are presented and how both the Warren County Food Bank, the entity with which appellant has partnered in its operations, see, generally, H.R. 66-68, and the community benefit from its presence, we are unable to conclude that decisions of the Supreme Court can be construed to approve such use as "public worship." Compare, e.g., *Bishop of Roman Catholic Diocese of Cincinnati v. Kinney* (Jan. 7, 1987), BTA No. 1981-C-109, [*26] unreported.

Appellant asserts that the subject property is entitled to exemption based upon an intended future use. While property may indeed qualify for exemption under R.C. 5709.07 if there exists an intent to utilize it in an exempt manner in the future, see, e.g., *Ohio Operating Engrs. v. Kinney* (1980), 61 Ohio St.2d 359, the applicability of this doctrine in the present case is limited because accomplishment of the use must occur within a reasonable time and the envisioned use must be one which would entitle it to exemption. In this case, the evidence reflects that appellant's intended uses of the property have been fluid, attributable perhaps in part to the "multipurpose" capabilities of the facilities, and the length of time that it may take to secure funding to physically convert the property. See, e.g., H.R. 94, 103-104 (describing areas as "not legally occupiable" in October 2008 with the construction still two to three years into the future). Under these circumstances, we cannot conclude with a sufficient degree of certainty that the property will be used in a manner entitling it to exemption under R.C. 5709.07.

However, we do find a limited [*27] portion of the commissioner's determination subject to reversal. Although somewhat unclear from the record, compare, e.g., S.T. 3 and H.R. 83-84, it appears areas in buildings Y-5 and Y-6 serve as storage locations for equipment used to maintain the exempted portions of the property and therefore, consistent with *Peoples Faith Chapel, Inc. v. Limbach* (1985), 18 Ohio St.3d 236, wherein the court concluded such use is not inconsistent with R.C. 5709.07, we conclude exemption may reasonably encompass this portion of the property.

Based upon the foregoing, it is the decision and order of this board that the Tax Commissioner's determination must be affirmed, except with respect to those areas located in buildings Y-5 and Y-6 that are used to store equipment used to maintain the exempted portion of the property which is necessary for its proper occupancy, use and enjoyment, and in that sole regard the commissioner's determination is reversed.

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3 of 3 DOCUMENTS

Zion Baptist Church, Appellant, vs. Richard A. Levin, Tax Commissioner of Ohio, Appellee.

CASE NO. 2007-A-660 (REAL PROPERTY TAX EXEMPTION)

STATE OF OHIO -- BOARD OF TAX APPEALS

2008 Ohio Tax LEXIS 1787

September 16, 2008, Entered

[*1] APPEARANCES:

For the Appellant - Zion Baptist Church, Dr. Brodie R. Mathis, Pastor

For the Tax Commissioner - Nancy H. Rogers, Attorney General of Ohio, Alan P. Schwepe, Assistant Attorney General

OPINION:

DECISION AND ORDER

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant, Zion Baptist Church, from a final determination of the Tax Commissioner. Therein, the Tax Commissioner denied appellant's application for the exemption of certain real property from taxation for the years 2002-2005, but remitted all penalties for tax years 2002-2006.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to the board by the Tax Commissioner, and the testimony presented at a hearing before this board.

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

We also acknowledge the general proposition that statutes granting exemption from taxation must be strictly considered. *National Tube Co. v. Glander* (1952), 157 Ohio St. 407, paragraph two of the syllabus; *White Cross Hospital Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 201. "Exemption is the exception to the rule and statutes granting exemptions are strictly construed." *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186.

In the instant matter, appellant appeals from the Tax Commissioner's final determination, which states, in pertinent part, as follows:

"The applicant is requesting exemption for the subject [*3] property pursuant to R.C. 5709.07. The property consists of 38.3786 acres. n1 The subject property is located in Trotwood, Ohio.

"The applicant is the oldest African American Baptist Church in Dayton, Ohio. It is a nonprofit organization and it is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue

Code. Its church building and 1.1395 acres, located at Philadelphia and Earham Drive in Dayton, Ohio, are exempt from taxation. This facility is not adjacent to the subject property.

"Information provided on the application indicates that the property was not being used when this application was filed. At that time, the applicant planned to build a senior citizen nursing facility and a church on this property in 2010. The Montgomery County Auditor's property records on the Internet website show that the property remains vacant commercial land. The property records show that no building permits have been issued for this property.

*** According to its planning concept, 15 acres will be used for a multipurpose center for recreation and other uses for children, youth and senior [*4] citizens. This will include a recreation center, and learning center to assist students with developmental skills, a daycare program for children and a daycare center for senior citizens.

*** The grand opening of the multi-purpose center is tentatively scheduled for December 2010. In addition, planning for a low income senior housing and nursing/assisted living facility is expected to begin in January 2012, and development is anticipated to begin in January 2015. It also planned to build a chapel on this property sometime between 2015 and 2020.

"Additional information provided by the applicant *** indicated that it is 'ready to start several non-profit and taxexempted projects immediately. They include a senior citizen apartment complex, a multi-purpose facility for at risk youth and the disadvantaged adults, and a business development center funded with grants from the U.S. Housing & Urban Development and the U.S. Department of Commerce.' ***

*** [T]he property would not satisfy the requirements for exemption. As stated above, the applicant intends to develop this property in phases. *** There is no evidence that the applicant had obtained blueprints, had hired an architect [*5] or contractors, or had available financing to begin the development of any part of this property as of the tax lien date of any of the years in question. Although its plans are commendable, they are dreams of the future use of the property. This does not satisfy the requirements of R.C. 5709.07." S.T. at 1-4.

n1 In his objections to the attorney examiner's recommendations to the Tax Commissioner, the church's pastor reduced the subject exemption request to approximately 20 acres. However, in the notice of appeal and his testimony before this board, appellant's pastor referred to the 38 acres (approximate) as the property for which exemption was sought. H.R. at 33, 43, 44.

The commissioner went on to indicate that even if the church had made progress in developing the subject property for the purposes it claimed, i.e., as low income senior citizen housing, a multi-purpose center for physical activities, and/or a daycare/business development center, such uses would not qualify for exemption pursuant to R.C. 5709.07, as they would not have been used primarily for public worship.

Further, although the church only sought exemption pursuant to R.C. 5709.07, the commissioner also [*6] went on to consider the request for exemption of the subject property pursuant to R.C. 5709.12(B) and determined that it did not qualify under that section either.

The church's position with regard to its appeal from the foregoing decision of the Tax Commissioner is summarized in its notice of appeal, where the pastor indicated that he offered to bring the documentation, drawings, surveys and other details of the church's plans for the subject property to the commissioner, but was told it was not necessary. N.A. at 2. He went on, as follows:

"The State of Ohio is trying to put God in a 'box' or 'building.' From the Scriptures which I am ordained and sworn to uphold, I can not put God in a building just to appease 'man.' 'God does not dwell in houses like man.'

"The attorney examiner throughout her report was confused. She is trying to put Zion in the category of a regular 501(c)(3) [sic] non profit or for profit corporation. Nothing in my information indicated that we are going to have a 'for profit' operation.

"Since our new and existing ministries will come under the umbrella of holistic ministries of the Zion Baptist Church, there is no need for us to try to comply with your statutes [*7] [sic] of the standard non-profit corporation. Our ministries comply with all charitable and religious entities requirements.

"The Governor, the Tax Commissioner, and attorney examiner are trying to put us in the box and category of a regular non profit organization despite all the documentation that prove otherwise.

"The attorney examiner tried [to] depict the Zion Baptist church as a church with a dream or 'wish list.' Despite proof that shows that the Zion future plans, ministries, and structures are not only obtainable, but our experts have already completed such projects in the past." [sic]

The statutory authority under which exemption was sought by the church, R.C. 5709.07, provides in pertinent part for the exemption of:

"(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;

"(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 [*8] that is not formed for the private profit of any person."

Before this board, Dr. Brodie R. Mathis, pastor of the church, appeared and testified about the current and/or future use of the church's property that was not granted exemption from taxation by the Tax Commissioner. In addition to his testimony, several exhibits were received into evidence which he thoroughly described and believed demonstrated the exempt nature of the subject property. H.R. at 18-23.

Initially, we must note that Dr. Mathis has only been the pastor of the Zion Baptist Church since March 1, 2007. H.R. at 8. The tax years under consideration in this matter are 2002-2005, which calls into question the nature of Dr. Mathis' knowledge regarding the subject property. Arguably, his understanding of the history of the property and its status during the relevant years is not based on first-hand knowledge, but hearsay. As such, we must critically evaluate Dr. Mathis' testimony to determine if it is credible and probative.

Further, our review of the exhibits n2 that Dr. Mathis presented to this board on behalf of the church reveals the [*9] following:

1) Exhibits A, B and C were appellant's responses to discovery requests propounded upon it by the Tax Commissioner; apparently it was Dr. Mathis' intent for such documents to illustrate what had been done with the subject property during the years in question. However, they cannot serve as a substitute for sworn testimony from witnesses who have first-hand knowledge of what occurred with the property. Further, several of the responses to the discovery contained therein refer to attachments which were not included with the exhibits as presented to the board.

2) Exhibit A1 is simply the deed for the property, which was gifted to the church in 1995. H.R. at 25.

3) Exhibit E is a brochure regarding finding and applying for grant opportunities, a brochure containing information for applicants for grants and grantees, and a map of what appears to be the subject property; the brochures are strictly informational in nature and do not demonstrate any specific connection or relevance to the subject, i.e., no actual application for the church is included.

4) Exhibit F is a building site plan of the subject property depicting a proposed church and shelter, as well as parking.

5) [*10] Exhibit G is correspondence from the Governor to Dr. Mathis, dated April 18, 2007, indicating that Dr. Mathis' correspondence to him had been forwarded to the Department of Taxation.

6) Exhibit H is a copy of what appears to be an envelope from an appraising and consulting company to the church; Dr. Mathis testified that this was "evidence that the appraisals and everything was done" H.R. at 21; however, nothing beyond a copy of the outside of an envelope was submitted, which evidences nothing, except that correspondence from that company was apparently sent to the church.

7) Exhibit I is a copy of a letter dated December 26, 2000, from the chairperson of the church's board of trustees to the Montgomery County Sanitary Engineering Department regarding a proposed easement; Dr. Mathis testified that the letter provided "evidence we were doing what we said we would do"; however, it simply documents one inquiry from the church trustees regarding a proposed easement involving the subject property that remained unresolved.

8) Exhibit J is a copy of several business cards of individuals who apparently have been contacted by the church with regard to the subject property; Dr. Mathis testified [*11] that Exhibit J was "evidence -- these are just business cards of the individuals professionally who have been working with us to make sure we are in compliance, including our attorney." H.R. at 22. When these individuals were contacted and what they did, if anything, for appellant, is not indicated.

9) Exhibit K is a copy of what appears to be portions of the city of Trotwood's planning and zoning code regarding Planned Unit Development (PUD); Dr. Mathis indicated that "Exhibit K shows that we applied to Trotwood *** that we have, indeed started the process ***." However, there is no specific reference to the subject, i.e., no actual application for the church is included. H.R. at 22.

10) Exhibit L is a group of photographs of individuals visiting the subject property.

11) Exhibit M is a copy of a church bulletin from a service that took place at the subject property on December 6, 2007.

12) Exhibit N is an exterior view and floor plan of a multipurpose building that the church would like to build on the subject property.

13) Exhibit O is a map/concept plan of the subject property depicting a proposed church, shelter, parking, multi-purpose building and senior housing on the subject [*12] property.

14) Exhibit P, portions of which, at least, were submitted to the Department of Taxation on November 1, 2006, is entitled A Planning Concept Paper, with a suggested solution, apparently authored by Frederick D. Pitts, in which the development of the subject property is described in phases, S.T. at 64; there is no evidence as to when this document was created, what relationship the author has to the appellant, and what specifically has been done to put this plan into action.

n2 We note that Exhibit D and part of Exhibit M were withdrawn by the appellant.

Thus, based upon the foregoing, we do not find any of the exhibits or testimony offered by the appellant support the conclusion that the subject property was used during the years in question for religious purposes or in furtherance of the church's plans for the subject. None of the evidence demonstrated that concrete plans, other than a map of proposed building sites and a generalized planning outline, had been made. Applications to be made in association with the development of the property were not provided; permits for development of the property were not offered; records demonstrating financial commitments [*13] and/or fundraising for planned projects were not entered into evidence. Evidence of only one service that took place on the subject property that occurred in December 2007, with approximately nine people present, where a portable podium was used for preaching purposes, was offered. Ex. M; H.R. at 26-29. The testimony only reflected generalized goals with no concrete plans tied to specific dates for action. H.R. at 30-32; 35-40; 53-54; 56-57.

In the syllabus of *Holy Trinity Protestant Episcopal Church of Kenwood v. Bowers (1961)*, 172 Ohio St. 103, the Supreme Court, in considering whether vacant land held by a religious institution can be considered exempt, stated that:

"A religious institution which purchases vacant land for the purpose of erecting a house of worship thereon is entitled to have such land exempted from taxation, where such institution is actively working toward use of such land for the public benefit; and the intent to make such a use of the land may be evidenced by a showing that plans had been prepared and funds were available, or were to be available, to

effectuate actual construction of such house of worship within a reasonable [*14] time from the filing of the application for exemption."

Appellant's witness did not demonstrate to this board that there was any kind of concrete plan to use the property for religious purposes in the tax years in question, nor any dedication of church funds to such an endeavor. We consider the plans, as described, to be a dream for the future use of the church's property; as such, this land could potentially qualify in the future for exemption, but only when it can be demonstrated that concrete plans had been made and action had been taken toward the implementation of such plans, including the raising and expenditure of funds for the development. See *Holy Trinity Protestant Episcopal Church of Kenwood, supra*. See, also, *Episcopal School of Cincinnati v. Levin*, 117 Ohio St.3d 412, 2008-Ohio-939.

With regard to any part of the property that would be devoted to athletic or recreational endeavors, i.e., ball fields and an exercise walkway to be used in association with the senior facility, church-owned property used for athletic/recreational activities is not entitled to exemption under R.C. 5709.07. *Vandalia Church of [*15] 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 primary purpose for this use of the land is 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.

Concerning the land to be devoted to a senior citizen assisted living/nursing home facility, we first note that little or no action has been taken on this project to make substantial plans for the creation of or financial support of such facility, and as such we consider it to be a dream for the future use of the church's property. Further, without any specific plans for this facility, it would certainly appear at this time that an exemption [*16] would not be available for it pursuant to R.C. 5709.07, as it would not be used for public worship. Arguably, an assisted living facility would be more properly considered pursuant to the provisions of R.C. 5701.13 as a "home for the aged." See *Missionary Church v. Limbach* (Mar. 19, 1993), BTA No. 1990-A-504, unreported; *Maria-Joseph Living Care Center v. Limbach* (Mar. 19, 1993), BTA No. 1990-A-1562, unreported.

We note that in the Tax Commissioner's final determination, the commissioner attempted to find a means by which to qualify appellant's property for exemption by considering appellant's application pursuant to the provisions of not only R.C. 5709.07, as requested by the church on its application for exemption, but also R.C. 5709.12(B). 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 succinctly 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 [*17] (1) the property belongs to an institution, n3 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. [*18] 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 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.

n3 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 soci-

ety 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).***"

As indicated earlier herein, there is insufficient evidence before this board as to what [*19] specific substantive steps have been taken to initiate the plans Dr. Mathis indicated the church has for the subject property. As such, without more detail about each of the proposed buildings' uses on the subject property and the financial structure associated with each, we are not able to definitively determine whether the second prong of the statute has been met, i.e., whether the property is being used exclusively for charitable purposes.

Therefore, in consideration of all of the foregoing, this board finds that appellant has not overcome the presumption of validity of the Tax Commissioner's determination. See *Hatchadorian v. Lindley* (1986), 21 Ohio St.3d 66. We are constrained to find that appellant has not met its burden of proof herein, as it did not offer sufficient, credible, or probative evidence that the subject property qualified for exemption during the tax years in question. Thus, this board finds that the Tax Commissioner's findings were not unreasonable and unlawful. It is the decision and order of the Board of Tax Appeals that the decision of the Tax Commissioner must be and hereby is affirmed.

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Legal Topics:

For related research and practice materials, see the following legal topics:

Tax LawFederal Tax Administration & ProcedureAudits & InvestigationsExaminations (IRC secs. 7601-7606, 7608-7613)Church Tax Examinations & InquiriesTax LawState & Local TaxesAdministration & ProceedingsJudicial ReviewTax LawState & Local TaxesPersonal Property TaxExempt PropertyGeneral Overview



6 of 6 DOCUMENTS

Vandalia Church of the Nazarene, Appellant, vs. Thomas M. Zaino, Tax Commissioner of Ohio, et al., Appellees.

CASE NO. 2001-N-883 (EXEMPTION)

STATE OF OHIO -- BOARD OF TAX APPEALS

2003 Ohio Tax LEXIS 77

January 17, 2003

[*1]

APPEARANCES:

For the Appellant - Lester Ferguson, Esq., P.O. Box 160, 3010 US 35 East, Xenia, Ohio 45385

For the Appellee - Betty D. Montgomery, Attorney General of Ohio, Janyce C. Katz, Assistant Attorney General, State Office Tower - 16th Floor, 30 East Broad Street, Columbus, Ohio 43266-0410

For the BOE - Rich, Crites & Wesp, Mark H. Gillis, 300 East Broad Street, Suite 300, Columbus, Ohio 43215-3682

OPINION:

DECISION AND ORDER

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

This matter is considered by the Board of Tax Appeals upon a notice of appeal filed by Vandalia Church of the Nazarene (Vandalia) from a final determination of the Tax Commissioner, in which Vandalia's application for exemption of real property from taxation for tax year 1999 and remission of taxes, penalties and interest for 1998 was approved in part by granting exemption to three acres used for parking, and denied in part by disallowing exemption for the remainder of the 9.783 acres at issue.

Vandalia's Notice of Appeal reads in pertinent part as follows:

"This appeal is made because the entire 9.783 acres, which was the subject of the above case consists of unimproved real estate attached to the physical [*2] structure used for worship facility, is not leased, is used exclusively for worship ministries (parking, children's ministries activities, teen ministry activities) and is therefore necessary for the proper use and enjoyment of the worship facility.

"The tax commissioner appeared to base the decision of the rejection of a portion of the 9.783 acres on the premise that the property was vacant and there was no showing that the property owner was actively working toward an exemptive use of the property. While we believe this determination was an inaccurate determination of the facts, the undersigned would point that the appeal is not based solely upon that suggested incorrect factual determination, but is also based upon the fact that pursuant to Ohio Law which permits properties which are not leased and are used exclusively as a part of the public worship to be tax exempt."

An evidentiary hearing was held in which Vandalia, the Tax Commissioner and the board of education appeared and were represented by counsel. This appeal is now submitted upon the notice of appeal, the statutory transcript, the evidence adduced at the hearing, and the arguments of counsel.

We acknowledge at the [*3] outset the affirmative burden borne by an appellant in an appeal taken from a final order of the Tax Commissioner. In *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121, the Supreme Court stated:

"Absent a demonstration that the commissioner's findings are clearly unreasonable or unlawful, they are presumptively valid. Furthermore, it is error for the BTA to reverse the commissioner's determination when no competent and probative evidence is presented to show that the commissioner's determination is factually incorrect." *Id.* at 123. (Citation omitted.)

Turning to Vandalia's claim for exemption, we first note the general rule that "all real property in this state is subject to taxation, except only such as is expressly exempted therefrom." R.C. 5709.01(A). As a result, "in any consideration concerning the exemption from taxation of any property, the burden of proof shall be placed on the property owner to show that the property is entitled to exemption." R.C. 5715.271. The Supreme Court of Ohio explained the rationale for this principle in *Akron Home Medical Services, Inc. v. Lindley* (1986), 25 Ohio St.3d 107:

"Exceptions to a particular tax are governed by [*4] the oft-stated rules to be found in *Youngstown Metropolitan Housing Authority v. Evatt* (1944), 143 Ohio St. 268, 273 [28 O.O. 163]:

"By the decisions it is established in Ohio that exemption statutes are to be strictly construed, it being the settled policy of this state that all property should bear its proportional share of the cost and expense of government; that our law does not favor exemption of property from taxation; and hence that before particular property can be held exempt, it must fall clearly within the class of property specified * * * to be exempt.

"The foundation upon which that policy rests is that statutes granting exemption of property from taxation are in derogation of the rule of uniformity and equality in matters of taxation. (See 38 Ohio Jurisprudence, 853, section 114.) See, also, *Id.* at paragraph two of the syllabus; *Cleveland-Cliffs Iron Co. v. Glander* (1945), 145 Ohio St. 423, 430 [31 O.O. 39]; *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 417 [47 O.O. 313], paragraph two of the syllabus; *First Natl. Bank of Wilmington v. Kosydar* (1976), 45 Ohio St.2d 101 [74 O.O.2d 206]; *Southwestern Portland Cement Co. v. Lindley* (1981), [*5] 67 Ohio St.2d 417, 425 [21 O.O.3d 261]; *Natl. Church Residences v. Lindley* (1985), 18 Ohio St.3d 53, 55." *Id.* at 108.

See, also, *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199. "Exemption is the exception to the rule and statutes granting exemptions are strictly construed." *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186.

R. C. 5709.07, the statutory basis upon which Vandalia claims entitlement to exemption, provides:

"5709.07 Exemption of schools, churches, and colleges. *

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

"* * *

"(2) Houses used exclusively for public worship * * * 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;"

Accordingly, in order to determine whether the subject property qualifies for exemption under R.C. 5709.07, we must first consider whether any structures and attached ground were used exclusively for public worship, and were necessary for public worship.

In *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432, the court held:

"We can derive the definition [*6] of 'public worship' to be the open and free celebration or observance of the rites and ordinances of a religious organization.

"* * *

"The exemption is not of such houses as may be used for the *support* of public worship; but of houses used *exclusively* as places of public worship." Id. at 435.

In our decision in *Allegheny West Conference Seventh-Day Adventists v. Limbach* (Aug. 21, 1992), BTA No. 1990-K-507, unreported, we indicated that a "primary use" test would be applied to determine if property was being "used exclusively for public worship," within the meaning of R.C. 5709.07. We held:

"In *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432, the Supreme Court set forth the requisite characteristics which must be demonstrated by an applicant seeking exemption pursuant to R.C. 5709.07. In paragraph one of its syllabus, the court held:

"For purposes of R.C. 5709.07, "public worship" means the open and free celebration or observance of the rites and ordinances of a religious organization.' (*Gerke v. Purcell* [1987], 25 Ohio St. 229; and *Watterson v. Halliday* [1907], 77 Ohio St. 150, 82 N.E.2d 962, approved and followed.)

[*7]

"Although R.C. 5709.07 requires that the property be used exclusively for public worship, the Supreme Court has adopted a primary use test which requires more than merely calculating the amount of time that the property is used in a taxable as opposed to a nontaxable manner. *Faith Fellowship Ministries, Inc., supra*. Instead, a determination as to taxable status must include an examination of both the quantity and quality of the use for which the property is utilized. As the court held in paragraph two of its syllabus:

"To qualify for an exemption from real property taxation as a house used exclusively for public worship under R.C. 5709.07, such property must be used in a principal, primary, and essential way to facilitate public worship.'

"Under this test, the court has recognized that those uses of property sought to be exempted which are merely supportive are not entitled to exemption under R.C. 5709.07. See *Faith Fellowship Ministries, Inc., supra*; *Summit United Methodist Church v. Kinney* (1983), 7 Ohio St.3d 13; *Bishop v. Kinney* (1982), 2 Ohio St.3d 52." Id. at 4.

More recently, the Supreme Court reaffirmed the use of the "primary use" test in determining [*8] qualification for exemption pursuant to R.C. 5709.07 in *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117. Therein, the court stated:

"The General Assembly has used the phrase 'used exclusively' as a limitation in both R.C. 5709.07 (houses used exclusively for public worship) and R.C. 5709.12 (property used exclusively for charitable purposes). In *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134, 135, 12 OBR 174, 175, 465 N.E.2d 1281, 1282, this Court held that for purposes of R.C. 5709.07, the phrase 'used exclusively for public worship' was equivalent to 'primary use.'" Id. at 120.

In the case before us, property comprised of a church building and the surrounding five acres, adjacent to the subject property, has previously been granted exemption. (S.T. 2) These five acres were owned by Vandalia prior to the purchase of the subject property and are not at issue in this matter. Plans for purchasing the 9.783 acres at issue began in 1991. This property was ultimately purchased April 26, 1993 for the purpose of expanding the ministry of the church. (R. 94, 96)

Vandalia's property can be viewed as a square separated into four approximately equal [*9] quadrants. The original five acres is in the upper right hand corner, with parking to the right and the original church structure within this quadrant. Planning for improvements to the new property was begun in 1993. The improvements were planned in three phases. Exhibit 1 is a drawing of the subject property including the current and planned improvements. The planned improvements are described in Exhibit 34. Phase I, consisting of additional rooms for groups such as Sunday School classes, a hall and restroom facilities, was to be built to the left, connecting with the original structure. Phase I construction extends onto the upper left quadrant, which is a part of the additional 9.783 acres. Phase I was completed at the time of the hearing. (R. 65)

Phase II, including an open area and a gymnasium, is intended for use for youth ministry, dramas, holiday presentations, and as an overflow sanctuary. (R. 80) It will be to the left of the original structure and below Phase I, on both the original parcel and extending onto the upper left quadrant. Phase III consists of a sanctuary/multipurpose room which will be to the left of Phase II, entirely on the upper left quadrant. The lower right [*10] and lower left quadrants do not depict any structure and show drawings of softball fields, with a 300-foot fence on each quadrant. Additional parking is shown on the upper left quadrant, presumably the three acres the Tax Commissioner exempted. (The Tax Commissioner did not have the use of this diagram in the proceedings before him.)

A fund-raising program was initiated to purchase the land and to build improvements. (Ex. 3) Testimony and numerous exhibits indicate steady efforts were expended towards fund-raising and designing and planning the structure from 1993 forward. The expansion did not take place in 1993 because permission to build could not be obtained based on the requirement that a sewer replace an existing septic system. To tie into the sewer, the land needed to be annexed to the city of Vandalia. Without annexation, the costs would be \$ 150,000 higher than with annexation. (R. 53)(Exs. 22, 23) Vandalia joined with other property owners and a total of 292 acres were submitted for annexation in early 1996. For various reasons, but primarily the township's opposition, the annexation was not approved until mid 2000. Minutes of Vandalia's board agenda are included as exhibits, [*11] and this issue was continually monitored. The sewer and water were finally installed in February of 2001. A fire in 1996 also slowed progress, and the damage to the original structure caused changes to the proposed addition. (R. 113)

The application for real property tax exemption and remission was filed with the county auditor in January of 1999. Although the county auditor recommended that the exemption be granted, the Tax Commissioner ultimately concluded that only three of the 9.783 acres were entitled to exemption because those three acres were used for overflow parking associated with the church property. (S.T. 2) It is the remaining 6.783 acres not exempted that are at issue herein.

The Assistant District Superintendent of the Southwestern Ohio District Church of the Nazarene, the administrative district in which Vandalia is located, testified before this board. He testified that there are 84 churches in the district and that any of these churches wanting to purchase property must receive district approval. He discussed the process of reviewing the application, and the determination that additional land was necessary for Vandalia's expansion. (R. 25).

Vandalia's board secretary [*12] testified to the history of the church and its expansion process. He discussed various activities taking place on the property, including a summer festival where the children ride horses and play games such as horseshoes. (R. 67) A summer program extending from July 4 to the end of August is being developed. (Ex. 36) The outdoor areas have been used for Bible study. (R. 81) He testified that a volleyball program would be established on Wednesday nights. Although sporting activities will be conducted, the intent is to draw children into the church that normally do not attend. The intent is to focus on spiritual matters, not recreational activities. (R. 61) The same is true of a proposed soccer program. (R. 64) Vandalia will be using sports activities as a "magnet to draw the children in, so that we might be able to present the gospel of God to them." (R. 64) When asked if the use of the property has been primar-

ily ministry or primarily recreational, he responded, "Entirely ministry. We don't do anything except what's ministry led." (R. 81)

The senior pastor testified and indicated that although sporting activities would be played on the land, that is not the primary purpose. Referring [*13] to sporting activities, he stated:

"Well, if that was our usage, there wouldn't be any reason to build it because Vandalia n1 has a great community center. It has soccer lessons for kids, exercise equipment in the community center. Our purpose is not intended for recreation. Our purpose is intended for worship, as our responsibility to the Creator, that through these different methods we can lead people to a relationship with Christ. That gentleman, who has maybe been going down to the rec center for his own physical, personal health well-being, may choose to come to our church to find that we can offer that physical health, well-being, but our main intention is the soul of that man, to train them in a relationship, through scriptures, with God." (R. 102)

n1 Referring to the city of Vandalia.

In *Apostolic Faith Assembly, Inc. v. Limbach* (June 14, 1991), BTA No. 1987-H-851, unreported, we held:

"(1) The land on which the baseball diamond and basketball court are located shall not be exempt from taxation. Regardless of the fact that the baseball teams are part of a church league and a prayer is offered at every game, the primary purpose for the use of the land is [*14] for athletic activities. This Board, in earlier decisions, has determined that as such, 'said property is not "used exclusively for public worship" within the meaning of R.C. 5709.07,' *Free Will Baptist Church v. Kinney*, (May 23, 1985), B.T.A. No. 82-C-959." Id. at 4.

In *Columbus Christian Center v. Zaino* (Apr. 19, 2002), BTA No. 2000-R-669, unreported n2, we held:

"With regard to the witness' statements, the board finds that any land on which a football field is constructed, and basketball courts and a softball field are intended to be built in the future would not be exempt from taxation. The primary purpose for the use of the land is for athletic activities, not worship. Recreational use of property does not qualify for exemption under R.C. 5709.07. *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432; *Free Will Baptist Church v. Kinney* (May 23, 1985), B.T.A. No. 82-C-959, unreported; *Joyce Ave. Church of God v. Limbach* (Nov. 6, 1992), B.T.A. No. 90-P-1253, unreported; *Somerset Presbyterian Church v. Tracy* (Feb. 25, 1994), B.T.A. No. 92-A-1502, unreported." Id. at 9.

n2 This judgment was affirmed by the Tenth Appellate District, Case No. 02APH563, decision rendered December 19, 2002.

[*15]

In their decision affirming this board in *Columbus Christian Center v. Zaino*, the court held:

"The Ohio Supreme Court has consistently concluded that recreational facilities owned by religious organizations do not qualify for the exemption provided by R.C. 5709.02(A)(2), as such facilities are, at best, merely supportive of religious purposes."

Applying the rationale discussed in *Apostolic Faith Assembly* and *Columbus Christian Center*, supra, we must conclude that the soccer/softball fields depicted in Exhibit 1 are not exempt. See, also, *Somerset Presbyterian Church v. Tracy* (Feb. 25, 1994), BTA No. 1992-A-1502, unreported (baseball diamonds fielding teams that were part of the church league where church attendance is required for use not exempt.) Although the witnesses testified the intended use of the outdoor areas is spiritual, rather than recreational, the actual and primary use of the lower two quadrants, with

the diagrams of softball fields in Exhibit 1, is recreational. The fields may be supportive of Vandalia's primary mission, but they are not **necessary** for that purpose. It was testified that there would be non-athletic activities on the land, but [*16] the majority of the testimony as to these areas referred to athletic uses. Vandalia has not presented competent and probative evidence that this area for use as soccer, softball, and gatherings is necessary for Vandalia's use of the property for public worship. Thus, we affirm the commissioner's final determination as to the lower two quadrants of Exhibit 1, on which the softball fields are depicted.

The Tax Commissioner's final determination states:

"In order for vacant property to be entitled to tax exemption based on the intended future use, the property owner must be actively working toward an exempt use of the property. The applicant must show that it had definite plans and proof of available financing so that construction could begin within a reasonable time after the exemption application was filed. *Holy Trinity Protestant Episcopal Church v. Bowers* (1961), 172 Ohio St. 103"

In *Ohio Operating Engrs. v. Kinney* (1980), 61 Ohio St.2d 359, the court held that real property can qualify for an exemption under R.C. 5709.07 if there is an intent to use the land at some reasonable time in the future for the purposes and objectives of the institution.

Phase I was complete [*17] at the time of the hearing. Although the commissioner's final determination indicates Vandalia did not have definite plans and financing available within a reasonable time after the exemption application was filed, the testimony and exhibits presented at hearing indicate otherwise. The building fund was established in 1993. (Ex. 2) Preliminary bids were received in 1995 and a timeline for the entire project was prepared. (Ex. 13) Drawings began in 1997. (Ex. 21) 1998 is the first year in the application. By then, there was clearly intent to use the land within a reasonable time. We reverse the commissioner's final determination to the extent it denies exemption for the ground necessary for Phase I.

Phase II, as depicted at page 7 of Exhibit 34 and described in testimony, includes classrooms and a gymnasium. Plans for Phase II have been drawn on two separate occasions. However, Phase II construction had not begun at the time of our hearing, and Phase II was still in the planning stage. (R. 65, 75, 83, 103) When asked if the gymnasium takes up most of the space in Phase II, the board member responded, "Pretty much so, yes." (R. 86) Because most of Phase II will be used for recreational [*18] purposes, and plans are still being modified, we affirm the commissioner's final determination to the extent it denies exemption for this area, following our previous discussion that recreational uses are not entitled to exemption under R.C. 5709.07.

As for Phase III, the witness testified, "We have not -- We don't have plans for that. That would be -- Down the road, if we build a new sanctuary, that's what it would be." (R. 88) Because development of Phase III is speculative, we affirm the commissioner's final determination to the extent it denies exemption for this area which is used for sports and recreational purposes.

Therefore, for the foregoing reasons, it is the decision of the Board of Tax Appeals that the final order of the Tax Commissioner is affirmed in part and reversed in part. Because the Tax Commissioner did not have the benefit of Exhibits 1 and 34 when rendering his final determination, the matter is remanded for further proceedings in accordance with the foregoing decision.

Legal Topics:

For related research and practice materials, see the following legal topics:

Tax LawState & Local TaxesAdministration & ProceedingsJudicial ReviewTax LawState & Local TaxesPersonal Property TaxExempt PropertyLimitationsTax LawState & Local TaxesReal Property TaxExemptions

SECOND COLLEGE EDITION

**WEBSTER'S
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OF THE AMERICAN LANGUAGE

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PRENTICE HALL PRESS

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Published by Prentice Hall Press
A Division of Simon & Schuster, Inc.

Gulf + Western Building
One Gulf + Western Plaza
New York, New York 10023

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Dictionary Editorial Offices: New World Dictionaries,
850 Euclid Avenue, Cleveland, Ohio 44114.

Manufactured in the United States of America
25 24 23 22 21 20 19 18 17

Library of Congress Cataloging in Publication Data
Main entry under title:

Webster's New World dictionary of the American
language.

1. English language—Dictionaries. 2. Americanisms.

I. Guralnik, David Bernard, 1920-

PE1628.W5633 1986 423 85-26216

ISBN 0-671-41809-2 (indexed)

ISBN 0-671-41807-6 (plain edge)

ISBN 0-671-41811-4 (pbk.)

ISBN 0-671-47035-3 (LeatherKraft)

LEXSTAT ORC 1.47

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH FILE 46 AND INCLUDING FILES 48, 53, AND 54 ***

*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

OHIO REVISED CODE GENERAL PROVISIONS
CHAPTER 1. DEFINITIONS; RULES OF CONSTRUCTION
CONSTRUCTION

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ORC Ann. 1.47 (2010)

§ 1.47. Intentions in the enactment of statutes

In enacting a statute, it is presumed that:

- (A) Compliance with the constitutions of the state and of the United States is intended;
- (B) The entire statute is intended to be effective;
- (C) A just and reasonable result is intended;
- (D) A result feasible of execution is intended.

1 of 1 DOCUMENT

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CONSTITUTION OF THE STATE OF OHIO
ARTICLE XII. FINANCE AND TAXATION

Go to the Ohio Code Archive Directory

Oh. Const. Art. XII, § 2 (2010)

§ 2. Limitation on tax rate; exemption

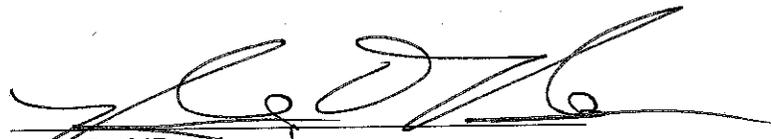
No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or 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, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

CERTIFICATE OF SERVICE

I certify that a copy of the Merit Brief of Appellee, William W. Wilkins [Richard A. Levin], Tax Commissioner of Ohio, was sent by regular U.S. mail on this 7th day of July, 2010 to the following:

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