

ORIGINAL

IN THE SUPREME COURT OF OHIO

INNKEEPER MINISTRIES, INC. : Case No. 2014-0490
Appellee :
v. : On Appeal from the Ohio Board of
Tax Appeals
TAX COMMISSIONER, STATE OF OHIO :
Appellant :

**MERIT BRIEF OF APPELLEE
INNKEEPER MINISTRIES, INC.**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iv
STATEMENT OF FACTS	1
PROCEDURAL POSTURE	4
ARGUMENT	5
<u>Appellant’s Proposition of Law No. 1</u>	5
Property owners claiming tax exemption carry an affirmative burden to show that the use of their property satisfies the elements for the claimed exemption.	
<u>Appellee’s Argument Contra to Appellant’s Proposition of Law No. 1</u>	5
The Board of Tax Appeals, after applying presumption of validity to the Tax Commissioner’s denial of tax exemption and requiring Appellee to carry the affirmative burden to establish a clear right to the same, found in favor of Appellee, thereby shifting the burden to Appellant to prove the BTA’s decision unreasonable or unlawful.	
<u>Appellant’s Proposition of Law No. 2</u>	8
Private residential property is not used exclusively for charitable purposes where there is no overriding public benefit to overcome the personal and private use of a residence.	
<u>Appellee’s Argument Contra to Appellant’s Proposition of Law No. 2</u>	8
Contrary to Appellant’s argument and in keeping with the Supreme Court’s ruling in <i>Cincinnati Community Kollel v. Testa</i> there is no “primary use”, “principal use”, nor “on call 24 hours” test for charitable use of residential property by a charitable institution in furtherance of or incidental to said institution’s charitable purpose and not with a view to profit.	

TABLE OF CONTENTS (Cont'd)

Appellant's Proposition of Law No. 3 14

Permanent residences used by residents and their personally invited guests are not "used exclusively for charitable purposes" because private of a personal residence does not amount to "charity" as it fails to provide a benefit to "mankind in general" or to those with a particularized need for sheiter.

Appellee's Argument Contra to Appellant's Proposition of Law No. 3 14

The findings of the BTA after its review of Appellee's charitable activities that such activities are charitable in accordance with the *Planned Parenthood* definition of charity, nullify and supersede Appellant's inapplicable ad hoc "particularized need" standard as well as its misapplication of the "charity" definition, thereby establishing Appellee's charitable use under R.C. §5709.12(B) and §5709.121(A)(2).

Appellant's Proposition of Law No. 4 17

For property to qualify for charitable exemption pursuant to R.C. §5709.121(A)(2), it must be made available under the direction or control of a charitable institution for a *principal, primary, and essential* use in furtherance or incidental to the owner's charitable purposes.

Appellee's Argument Contra to Appellant's Proposition of Law No. 4 17

Appellant's use of the inapplicable ad hoc standard of "substantial and essential use" is inapplicable and superseded by the standard contained in R.C. §5709.121(A)(2) as applied by this court in *Cincinnati Community Kollel v. Testa*.

Appellant's Proposition of Law No. 5 22

Vacant and sparsely used land does not qualify for charitable exemption pursuant to R.C. §5709.12 or R.C. §5709.121

Appellee's Argument Contra to Appellant's Proposition of Law No. 5 22

The mere vacancy of land is not determinative of whether or not the use of such land complies with R.C. §5709.12 or R.C. §5709.121

CONCLUSION 24

PROOF OF SERVICE 26

APPENDIX Appx. Page

Tax Commissioner’s Post-Hearing Brief 1

Appellant’s Post-Hearing Brief and Final Argument 11

TABLE OF AUTHORITIES

Cases

<i>Alcan Aluminum Corp. v. Limbach</i> (1989) 42 Ohio St.3d 121	6
<i>American Chemical Society v. Kinney</i> (1982) 69 Ohio St.2d 167	23
<i>American National Can Co. v. Tracy</i> (1995) 72 Ohio St.3d 150; 648 NE2d 483	7
<i>Belgrade Gardens v. Kosydar</i> (1974) 38 Ohio St.2d 135	6
<i>Cincinnati Community Kollel v. Testa</i> , 135 Ohio St.3d 219; 2013-Ohio-396	8, 11, 12, 13, 14, 17, 21, 24
<i>Cincinnati Nature Center Association v. BTA</i>	12
<i>CNBC-USA Hous. Inc.-5 v. Levin</i> , 125 Ohio St.3d 394, 2010 Ohio 1553, ¶¶6-9, and 17 and 18	12
<i>Community Health Professionals, Inc. v. Levin</i> , 113 Ohio St.3d 432, 2007 Ohio 2336, ¶21	13
<i>Dialysis Clinic v. Levin</i> , 127 Ohio St.3d 215, 2010 Ohio 5071	17, 18, 24
<i>Faith Fellowship Ministries</i> , 32 Ohio St.3d 432	21, 22
<i>Federated Dept. Stores, Inc. v. Lindley</i> (1983) 5 Ohio St.3d 213	6
<i>First Baptist Church of Milford v. Wilkins</i> , 110 Ohio St.3d 496, 2006-Ohio-4966	9, 10, 14, 15
<i>Galvin v. Masonic Toledo Trust</i> , 34 Ohio St.2d 157, 159-160; 296 NE2d 542 (1973)	12
<i>Growth Partnership for Ashtabula Co. v. Testa</i> , 2012-Ohio-37	7
<i>Highlights for Children, Inc. v. Collins</i> (1977) 50 Ohio St.2d 186	7
<i>Jewell Companies v. Porterfield</i> (1970) 21 Ohio St.2d 97, 99; 255 NE2d 630	7
<i>Kister v. Ashtabula Co. Bd. of Revision, Eleventh District No. 2007-A-0050</i> , 2007 Ohio 6943	7
<i>Midwest Transfer Co. v. Porterfield</i> (1968) 13 Ohio St.2d 135	6

<i>Planned Parenthood Association v. Tax Commissioner (1966), 5 Ohio St.2d 117</i>	2, 4, 8, 13, 14, 15, 16, 18, 19, 20
<i>Satullo v. Wilkins, 111 Ohio St.3d 399, 2006 Ohio 5856 at ¶14</i>	7
<i>True Christianity Evangelism v. Tracy (2001) 91 Ohio St.3d 117, 120</i>	8
<i>Western Reserve Academy v. Board of Tax Appeals, (1950) 153 Ohio St. 133; 91 NE2d 497</i>	10

Statutes

Ohio Revised Code Title 5709	17
Ohio Revised Code §5709.07	2
Ohio Revised Code §5709.07(A)	4
Ohio Revised Code §5709.07(A)(2)	20, 21
Ohio Revised Code §5709.07(A)(4)	22
Ohio Revised Code §5709.12	4, 9, 10, 12, 16, 21, 22
Ohio Revised Code §5709.12(B)	5, 9, 13, 14, 18, 21, 24
Ohio Revised Code §5709.121	9, 10, 11, 12, 13, 16, 17, 18, 21, 22, 23
Ohio Revised Code §5709.121(A)	4
Ohio Revised Code §5709.121(A)(2)	5, 12, 13, 14, 17, 18, 20, 21, 24
Ohio Revised Code §5715.271	5
Ohio Revised Code §5717.04	7

Administrative Decisions

2011 Ohio Tax LEXIS 2547 @7	11
2011 Ohio Tax LEXIS 2547 [WL] @6	11

STATEMENT OF FACTS

Robert and Jan Hartenstein founded and incorporated Innkeeper Ministries, Inc. as an Ohio not-for-profit corporation on October 26, 2000. Over the course of 5 years, the entire 71 acres were donated to the ministry to fulfill the vision of a remote, secluded site to provide spiritual renewal through Sabbath rest for fulltime Christian workers and pastors. The Hartensteins occupy a small suite in one of the buildings on the premises in order to be immediately available to the workers in distress for counseling as well as the practical necessity created by having only themselves to perform all of the many functions of the ministry as well as the maintenance and upkeep of the property and perpetuation of a ministry environment that provides (1) the appropriate Biblical and literary resources (*H.R., T.r. page 66, lines 20-25, page 67, lines 1-5*)¹, (2) physical resources including lodging, meals, cleaning, and laundry related physical plant amenities, as well as (3) human resources; counseling, companionship, emotional and spiritual discipleship and support.

Contained within the 71 acres are two buildings that house the Christian workers served by the ministry. The remainder of the property consists of improved and unimproved acreage that serves to make the entire premises sufficiently remote and reclusive to create the proper environment to offer those served true Sabbath rest. Mrs. Hartenstein's mother lived with the proprietors the last two years of her life, being unable to live on her own. In addition, Mr. Hartenstein's sister lived at the facility for a short period of time that she was homeless. No workers to be served were displaced by this help temporarily provided to these family members.

¹ We will refer to the transcript of proceedings of the Board of Tax Appeals' hearing as "H.R., T.r., page _____"; the Supplement as "Supp. ____"; and statutory transcript of evidence certified by the appellee Tax Commissioner to the Board of Tax Appeals pursuant to R.C. §5717.02 as "S.T. _____", in keeping with the references in Appellant's Merit Brief.

Innkeeper's stated mission is to provide Sabbath rest to full time Christian ministry workers. The nature of Sabbath rest in the context of the Christian life is a time of personal worship, prayer, meditation, reflection, as well as the reading and studying of the Bible. Said Sabbath rest is most effectively achieved in a reclusive atmosphere such as that provided by Innkeeper's property located in a remote rural setting. Such Sabbath rest can, and many times does, include the providing of Biblically based Christian counseling, the details of which were elucidated at the Board of Tax Appeals hearing. The meaning, essence and intention of Sabbath rest is not merely taking a break from full time Christian employment or endeavors, but rather, to provide a time of spiritual renewal. The physical rest afforded to such workers is important but incidental to the spiritual renewal intended to be achieved through the aforementioned elements comprising Sabbath rest.

Innkeeper is a full time Christian ministry that fulfills the second aspect of the Ohio Supreme Court's definition of "charity" as set forth in *Planned Parenthood Association v. Tax Commissioner (1966)*, 5 Ohio St.2d 117. Its core activities are decidedly and demonstrably charitable to which its property is dedicated and used year around.

Appellee's property is not used for public worship. Appellee's original application for tax exemption was prepared and filed by Appellee, pro se, prior to Appellee retaining legal counsel. Said application erroneously listed public worship exemption under R.C. §5709.07 as one of its grounds. Appellee, by and through its legal counsel does not assert that the real property in question is used for public worship pursuant to R.C. §5709.07. Hence, Appellee will not argue nor assert the same in its Merit Brief.

A portion of Appellant's Merit Brief deals with the counseling aspect of Innkeeper's ministry. The counseling that takes place at Innkeeper is an important element of the overall

ministry of Sabbath rest provided to guests by the Hartensteins. A major portion of the Board of the Tax Appeals hearing was devoted to discussion of the on-site counseling, where it took place, and under what circumstances it was administered. *H.R., T.r., pages 37-47*. It is evident from the record that the counseling component of the Sabbath rest provided by Innkeeper is based upon Christian counseling principles that emanate from a Biblical world view and is central to the ministry's mission.

The testimony found in the transcript of the Board of Tax Appeals evidentiary hearing demonstrates that, despite the distinction drawn between Christian counseling and secular psychiatric therapy, such counseling is appropriate and effective in the setting of Sabbath rest for the guests who are Christians working full time for various Christian ministries. In its Final Argument Brief, the Tax Commissioner erroneously asserted that "...counseling...is clearly intended to aid full time Christian leaders and pastors so they may return to their congregations with an enhanced ability to facilitate public worship." *Tax Commissioner's Post-Hearing Brief, page 3, Appendix, page 3*. Regarding the foregoing, the Commissioner cites the Transcript of the Board of Tax Appeals hearing, page 42, line 19, page 44, lines 2-7, and page 47, lines 5-15. None of these citations of the record indicate that the purpose of the counseling has anything to do with "an enhanced ability to facilitate public worship". As previously stated, neither public worship, nor the enhancement thereof is an objective of Appellee's ministry.

The testimony adduced at the BTA hearing revealed that between 45% and 50% of the guests on the property requested counseling. *H.R., T.r. page 17, lines 3-7*. Despite the Appellant's apparent criticism of the Christian counseling that takes place on a regular basis at Innkeeper, such counseling is nevertheless an important, and at times a potentially lifesaving

(*H.R., T.r., page 16, lines 17-24; pages 44-45*) substantive element of the ministry that provides further evidence that the core activities of the ministry are charitable in nature.

In the Tax Commissioner's statement of facts of its Post-Hearing Brief, the Commissioner opines that the amenities of the property resemble those of a "nonexempt hotel". *Tax Commissioner's Post-Hearing Brief, page 4, Appendix page 4.* However, the testimony adduced at the hearing substantiated that the swimming pool, hot tub, and basketball court already existed on the property when it was donated to the ministry (*H.R., T.r. page 65, lines 17-25*) and that Appellee expanded the walking trails and built the chapel. *H.R., T.r., page 66, lines 16-19.* The availability of the pre-existing amenities, though being an overall positive aspect of the property has no substantive bearing upon the charitable use of Appellee's property.

Innkeeper's ministry is an example of the whole being greater than the sum of its parts. All aspects of the use of the property are intended to provide and enhance the ministry in a setting intentionally conducive to the emotional rest and rehabilitation and spiritual renewal inherent in Sabbath rest; all provided by Appellee on the subject property in a secluded, remote rural setting. It is the confluence of all of the above, provided by two dedicated individuals that comprise a ministry that serves "those in need of advancement and benefit in particular", as the beneficiaries of a "charity" are defined in *Planned Parenthood Association v. Tax Commissioner, supra.*

PROCEDURAL POSTURE

On April 14, 2008, Innkeeper Ministries, Appellee herein, through Robert Hartenstein, applied for real property tax exemption for tax year 2008. *S.T. 62-63, Supp. 106-07.* Appellee specifically applied for charitable exemption pursuant to R.C. §5709.12 and R.C. §5709.121(A) and exemption as a house of public worship under R.C. §5709.07(A). *S.T. 63, Supp. 107.*

Through his final determination dated August 9, 2010, the Commissioner denied exemption because the property is not used exclusively for public worship or charitable purposes. The Commissioner found that property must be used in a charitable manner to qualify for charitable exemption, and further, that the private residence at issue here does not provide the public benefit required to satisfy the definition of “charity” under Ohio law. *S.T. 4, Supp. 48*.

Upon appeal to the BTA, Appellee, represented by counsel, sought only charitable exemption for tax years 2008 through 2010 having abandoned its claim to exemption as a house of public worship upon appeal to the BTA and this Court. On February 28, 2014 the BTA finding that Appellee is a charitable institution, held that Appellee’s property qualified for real property tax exemption under R.C. §5709.12(B) as defined by §5709.121(A)(2), as “used exclusively for charitable purposes”. *BTA Decision and Order, page 4*. On March 31, 2014 Appellant filed its Notice of Appeal with the Court.

ARGUMENT

Appellant’s Proposition of Law No. 1

Property owners claiming tax exemption carry an affirmative burden to show that the use of their property satisfies the elements for the claimed exemption.

Appellee’s Argument Contra to Appellant’s Proposition of Law No. 1

The Board of Tax Appeals, after applying presumption of validity to the Tax Commissioner’s denial of tax exemption and requiring Appellee to carry the affirmative burden to establish a clear right to the same, found in favor of Appellee, thereby shifting the burden to Appellant to prove the BTA’s decision unreasonable or unlawful.

In Appellant’s Proposition of Law No. 1 Appellant correctly asserts that property owners claiming a tax exemption carry an affirmative burden to show that the use of the property

satisfies the elements for the claimed exemption under R.C. §5715.271. However, based upon the prevailing case law of Ohio and the provisions of the Ohio Revised Code, it is evident from the record that the Board of Tax Appeals was correct in its decision to grant charitable tax exemption to Appellee. The evidence that supports the BTA's granting of the charitable tax exemption to Appellee is contained in its Decision and Order.

In its Decision and Order, the BTA begins its analysis with its standard of review:

“The findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989) 42 Ohio St.3d 121. Consequently, it is incumbent upon a taxpayer challenging a determination of the Commissioner to rebut the presumption and to establish a clear right to the requested relief. *Belgrade Gardens v. Kosydar* (1974) 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968) 13 Ohio St.2d 135. In this regard, the taxpayer is assigned the burden of showing in what manner and to what extent the Commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983) 5 Ohio St.3d 213.”

In light of the foregoing it is apparent that the BTA was aware of the taxpayer's burden of proof to be applied in the evidentiary hearing. As a result, one must assume that such standard of review was considered and adhered to by the Board.

Throughout the Appellant's Merit Brief, the argument is made that the BTA decision to reverse the Commissioner's determination and thereby grant a charitable exemption to Appellee is erroneous for lack of application of the strict construction doctrine. However, Appellant cites no evidence in the record nor in its Merit Brief to rebut the BTA's recognition of Appellee's burden and the overcoming of the same. Nor is there evidence adduced that such doctrine was not correctly applied. Despite the foregoing, Appellant argues that the decision of the BTA to grant the exemption is, in and of itself, proof of error. Such conclusion is unsupported by any facts or law set forth by Appellant. There is no evidence before the Court that the strict

construction doctrine was not applied by the BTA in its decision. As a result, going forward in the instant appeal, it is the Appellant that bears a substantial burden of proof.

Section R.C. §5717.04 provides for an appeal from the Board of Tax Appeals decision to the Supreme Court or the court of appeals. In *Growth Partnership for Ashtabula County v. Testa*, the Eleventh District appellate court explains the court's standard of review:

“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. *Growth Partnership for Ashtabula Co. v. Testa*, 2012-Ohio-37. Stated differently, the Board of Tax Appeals ‘is responsible for determining factual issues and, if the record contains reliable and probative support for these BTA determinations,’ we will affirm. *Satullo v. Wilkins*, 111 Ohio St.3d 399, 2006 Ohio 5856 at ¶14 quoting *American National Can Co. v. Tracy* (1995) 72 Ohio St.3d 150; 648 NE2d 483.

Regarding the weighing of evidence by the court in such context, the court in *Growth Partnership* stated:

“It does not matter whether we [as a reviewing court] might have weighed the evidence differently from the board had this court been making the original determination. As long as there is evidence which reasonably supports the conclusion reached by the board, its decision must stand.” *Highlights for Children, Inc. v. Collins* (1977) 50 Ohio St.2d 186 citing *Jewell Companies v. Porterfield* (1970) 21 Ohio St.2d 97, 99; 255 NE2d 630. The *Board of Tax Appeals has wide discretion in determining the weight to be given the evidence and the credibility of witnesses that come before it...and the burden of demonstrating that the determination is unlawful and unreasonable falls upon the appellant.*” (Emphasis added). *Kister v. Ashtabula Co. Bd. of Revision, Eleventh District No. 2007-A-0050*, 2007 Ohio 6943.

On page 4 of its Decision and Order the BTA states that:

“Based upon the foregoing this Board finds Innkeeper's year round use of the subject property, in providing a place of respite for the

physical and spiritual renewal of Christian leaders, without charge, to be sufficiently charitable in nature to fall within the definition of charity set forth in *Planned Parenthood, supra*. See *True Christianity Evangelism v. Tracy (2001) 91 Ohio St.3d 117, 120.*”

Said ruling shifts the evidentiary burden from Appellee to Appellant thereby rendering Appellant’s oft mentioned strict construction argument inapplicable.

Given the BTA’s factual analysis of Innkeeper’s application for charitable exemption in light of the case law cited by the Board of Tax Appeals, there is ample evidence that, in utilizing its wide discretion in determining the weight to be given evidence and the credibility of the witnesses, the Board’s determination was, in fact, not unreasonable nor unlawful.

Appellant’s Proposition of Law No. 2:

Private residential property is not used exclusively for charitable purposes where there is no overriding public benefit to overcome the personal and private use of a residence.

Appellee’s Argument Contra to Appellant’s Proposition of Law No. 2

Contrary to Appellant’s argument and in keeping with the Supreme Court’s ruling in *Cincinnati Community Kollel v. Testa* there is no “primary use”, “principal use”, nor “on call 24 hours” test for charitable use of residential property by a charitable institution in furtherance of or incidental to said institution’s charitable purpose and not with a view to profit.

In arguing its second proposition of law, the Appellant characterizes the use of Appellees’ property as a “purely private residential use”. *Appellant’s Brief, page 11, lines 10 and 11*. The transcript of record of the Board of Tax Appeals’ hearing as well as the Decision and Order of the Board, refutes such characterization.

The real property and buildings that comprise the facilities of the ministry including the Hartenstein’s living quarters are part of, as well as the site of, crucial elements of such ministry. *H.R., T.r., pages 22 and 23*. Mr. and Mrs. Hartenstein perform, literally, all of the tasks and

functions of the ministry; i.e. cooking, laundry, housekeeping, property maintenance, cleaning, counseling, worship and Bible study, as well as generally providing all personal attention to, and care for, the persons served by such ministry in and on the premises. *Decision and Order*, p. 2; *H.R., T.r.*, pages 12, 17. Such all-encompassing provisions provided by Appellees could not be performed if Appellees were not present at the ministry site 24 hours a day, 7 days a week during the 50 weeks per year that the ministry is open. *H.R., T.r.* at 23, 24. Appellees' occupation of a small portion of the premises, though incidental to the actual operation of the ministry, is nonetheless necessary, from a practical standpoint, to facilitate such ministry. *H.R., T.r.* at 22, 23.

In its Proposition of Law No. 2 as well as throughout its Merit Brief, Appellant cites *First Baptist Church of Milford v. Wilkins*, 110 Ohio St.3d 496, 2006-Ohio-4966 as authority for disqualifying Innkeeper from charitable tax exemption. However, a careful reading of *First Baptist* reveals that it is easily distinguished from the instant case for a number of reasons and provides no authority.

First, unlike Appellee, the taxpayer in *First Baptist* was not seeking a tax exemption under R.C. §5709.121 as a charitable institution. Rather, it relied solely upon fulfilling the exclusive use standard of R.C. §5709.12(B) for its claim of exemption. *First Baptist*, ¶11. Second, *First Baptist* sought an exemption based upon a use of its property by another separate entity. As explained by the Ohio Supreme Court in paragraph 17 of *First Baptist*, if the property owner who leases the property to another entity “does not justify exemption by establishing any of the situations described in RC 5709.121, the property is not exempt under R.C. §5709.12.” *Id.*, ¶17. Contrary to *First Baptist*, Appellee uses its own property, and has established such aforementioned situations, and is therefore exempt. Third, in *First Baptist*, the applicant was

applying for a charitable tax exemption for property that had four separate uses including two residential apartments. Appellee's property is dedicated to one use. Contrary to the instant case, no evidence was presented in *First Baptist* "that any of the persons who occupy the apartments perform any function for *First Baptist* or BPS (the separate entity) that would make it *crucial* for that person to be housed in these apartments. The apartments are used for personal residences." (Emphasis added) *Id.*, ¶20. Given the scope of the ministry and the more than full time attention and effort it requires, it is indeed, crucial that the Hartensteins reside on premises. *Id.*, ¶20. and *H.R., T.r. at 22, 23*. Fourth, Appellant and *First Baptist* cite *Western Reserve Academy v. Board of Tax Appeals*, (1950) 153 Ohio St. 133; 91 NE2d 497, a 1950 case by means of which Appellant argues that a "residence in a dwelling with a family must necessarily be private use of the premises. Where the exercise of such private rights constitutes the primary use of the property...such property is no longer used exclusively for charitable purposes." *Id.* Such case has no application to the instant case based upon the Supreme Court's recognition contained in paragraph 22 of the *First Baptist* decision:

"We recognize that *Western Reserve Academy* was decided before the enactment of R.C. §5709.121. However, the case is relevant here because *First Baptist* does not contend that any of the *situations* described in R.C. §5709.121 are applicable."(Emphasis added). *Id.*, ¶22.

Hence, the statutory standard by which *First Baptist's* exclusive charitable use is measured is the R.C. §5709.12 standard applied to institutions not classified as charitable institutions. In light of the fact that Appellee was found to be a charitable institution by the Board of Tax Appeals (*Decision and Order, page 4*), thereby falling under the provisions of R.C. §5709.121, neither *Western Reserve Academy* nor *First Baptist* have application to the instant case.

Further on in Appellant's Proposition of Law II Appellant asserts the following:

"The primary use of the property as a residence thus controls analysis and defeats exemption".

Such assertion is erroneous, from a factual, as well as case law standpoint. A careful reading of the transcript of the BTA hearing reveals only evidence in contradiction of Appellant's unsupported assertion that the "primary use" of Appellee's property is a residence. In light of the testimony concerning the many facets of the Appellee's ministry there is no factual support of such residential use being the "primary use" of the property found in the record. More importantly, with regard to the legal efficacy of such assertion, this Court has recently rejected the "primary use" test, espoused by Appellant as the determining factor regarding residential use of exempt property.

In *Cincinnati Community Kolliel v. Testa*, 135 Ohio St.3d 219; 2013-Ohio-396, this Court rejected the "primary use" test similar to that argued by Appellant. In *Kolliel*, a similar question was broached by the Court regarding the residential use of apartments used to house scholars working at the Kolliel. The Board of Tax Appeals had ruled that although the properties were used at certain times in a manner not inconsistent with the *Kolliel's* mission, the "primary use" of apartment houses on the property was as private residences. 2011 Ohio Tax LEXIS 2547 at 7. The Board of Tax Appeals also found that the residential use of the Kolliel's apartments was not similar to situations that required the "around the clock presence of the resident" to carry out the institutions purposes. As a result of such findings, the BTA ruled that the use of the *Kolliel's* apartments was not comparable to those situations because the "principal use" of the properties was residential. Based upon the foregoing, the BTA affirmed the Tax Commissioner's denial of exemption. 2011 Ohio Tax LEXIS 2547 [WL] at 6. However this Court reversed such decision.

In reversing the BTA decision, this Court stated as follows:

“We find that the BTA misconstrued the plain meaning of the language set forth in R.C. §5709.121(A)(2). The BTA’s interpretation of R.C. §5709.121(A)(2) went beyond the statutory language and in effect imposed a primary-use test to qualify the subject property for a tax exemption. But there is no primary use or principal use test set forth in R.C. §5709.121. Indeed, this Court previously rejected the argument that property must be primarily used for the purposes specified in R.C. §5709.121 to qualify for tax exemption.” *Galvin v. Masonic Toledo Trust*, 34 Ohio St.2d 157, 159-160; 296 NE2d 542 (1973). Rather, R.C. §5709.121(A)(2) provides a clear test for exemption: property belonging to an educational institution is marked for exemption if it is ‘use[d] in furtherance of or incidental to the institutions educational purposes and not with a view to profit.’ Had the General Assembly intended for an exemption to hinge on the primary or principal use of the property, it could have used words to the affect.

Contrary to the BTA’s apparent belief, nothing in the statutory language or case law makes residential use inimical to a finding that such use is “in furtherance of” the Kolllel’s educational purposes. Historically, as the Tax Commissioner points out, a distinctly residential use of real property has defeated a charitable use exemption claim, even when the property is used at times for charitable purposes. But this principal applies to R.C. §5709.12, not R.C. §5709.121. (Emphasis added). CNBC-USA Hous. Inc.-5 v. Levin, 125 Ohio St.3d 394, 2010 Ohio 1553, ¶¶6-9, and 17 and 18.

Despite the fact that the *Kollel* case dealt with an educational use rather than charitable use, the provisions of R.C. §5709.121(A)(2) apply equally to charitable institutions conducting charitable uses as well.

On page 14 of its Merit Brief, Appellant argues that the “on call” case law represented by *Cincinnati Nature Center Association v. BTA* (1976) 48 Ohio St.2d 122, 123 applies to a “narrow line of cases” in which charitable exemption was granted to a property residentially used by the nature center’s naturalists who were required to be on call 24 hours a day in order to prevent damage to the property. Despite the fact that Appellee actually is “on call” 24 hours a day (*H.R.*,

T.r. at 22, 23) the recent decision by this Court in *Kollel* has completely negated the premise of the charitable exemption of residential property being dependent upon the occupants being “on call” or on duty around the clock. As set forth in *Kollel v. Testa*: this Court held:

Likewise, no requirement exists in R.C. §5709.121 that a resident be present “around the clock” to carry out the institution’s purposes, contrary to the BTA’s holding in this case. *Rather, when considering the question of whether an educational institution uses its property in furtherance of or incidental to its educational purposes, the focus of the inquiry should be on the relationship between the actual use of the property and the purpose of the institution.* (Emphasis added). See *Community Health Professionals, Inc. v. Levin*, 113 Ohio St.3d 432, 2007 Ohio 2336, ¶21.”

In light of the foregoing, the ruling of this Court in *Kollel* renders the four cases cited by Appellant on page 15 of its Merit Brief wholly inapplicable. Appellant’s argument is decisively refuted in paragraph 27 of the *Kollel* decision as cited on the previous page of this Merit Brief. The essence of this Court’s ruling is contained in the last sentence of paragraph 27 of the *Kollel* decision:

“In short, nothing about the phrase ‘in furtherance of’ in R.C. §5709.121(A)(2) disqualifies residential property for exemption”.
Id. ¶27.

The record in the instant case, as well as the pertinent case law, confirms the BTA’s decision that Appellee, as a charitable institution, exclusively used its property, as required by R.C. §5709.12(B) in the furtherance of and incidental to the charitable purposes of its ministry “not with a view to profit” as defined by R.C. §5709.121(A)(2).

Appellee’s use of its property complies with the second prong of the definition of a “charity” as set forth by this Court in *Planned Parenthood Association v. Tax Commissioner* (1966), 5 Ohio St.2d 117 by its “...attempt in good faith, spiritually, physically, intellectually,

socially, and economically to advance and benefit...those in need of advancement and the benefit in particular..”. When viewed in the context of *Kollel’s* “focus of the inquiry”, it is clear that the relationship of the actual use of the property coincides with the charitable purpose of the institution, as found by the BTA. *BTA Decision and Order, pages 4 and 5.*

Appellant’s Proposition of Law No. 3

Permanent residences used by residents and their personally invited guests are not “used exclusively for charitable purposes” because private use of a personal residence does not amount to “charity” as it fails to provide a benefit to “mankind in general” or to those with a particularized need for shelter.

Appellee’s Argument Contra to Appellant’s Proposition of Law No. 3

The findings of the BTA after its review of Appellee’s charitable activities that such activities are charitable in accordance with the *Planned Parenthood* definition of charity, nullify and supersede Appellant’s inapplicable ad hoc “particularized need” standard as well as its misapplication of the “charity” definition, thereby establishing Appellee’s charitable use under R.C. §5709.12(B) and §5709.121(A)(2).

In its discussion of the definition of “charity” contained in Appellant’s Proposition of Law No. 3, Appellant misconstrues such term by erroneously conflating a self-authored ad hoc element, “general public benefit”, with the case law definition of “charity” as set forth in *Planned Parenthood Association v. Tax Commissioner (1966), 5 Ohio St.2d 117.*

On page 16 of its Merit Brief, Appellant argues:

“The definition of ‘charity’ in Ohio reflects the long held principle that tax exemption is appropriate only when there is a *general public benefit* to justify the loss of tax revenue.”(Emphasis added). *First Baptist Church of Milford v. Wilkins, 110 Ohio St.3d 496, 2006-Ohio-4966 ¶10.*

Appellant erroneously cites paragraph 10, of *First Baptist* as authority for the inclusion of “general public benefit” as a required element of the Ohio case law definition of “charity”.

There is no such required element in Ohio charitable exemption case law that deals with the second prong of the *Planned Parenthood* definition; the prong fulfilled by Appellee's charitable use. Rather, said paragraph 10 deals with the strict construction doctrine, not the definition of "charity".

The issue of the strict construction doctrine and which party bears the burden thereof, are discussed in Appellant's Proposition of Law No. 1 and Appellee's response thereto. *Appellant's Merit Brief, pages 10 and 11* and *Appellee's Merit Brief, pages 5, 6 and 7*. Contrary to Appellant's argument, the analysis and discussion of the strict construction doctrine contained in paragraph 10 of *First Baptist* has nothing to do with the second prong of the case law definition of "charity" as set forth in *Planned Parenthood Association v. Tax Commissioner (1966), 5 Ohio St.2d 117*. This Court's definition of the two pronged term, "charity" in *Planned Parenthood* does not ascribe "general public benefit" to those "in need of advancement and benefit in particular", the second prong of such definition. *Id.* The objects of charity as defined in that portion of the *Planned Parenthood* definition, bear no relationship to Appellant's "present benefit to the general public".

As previously stated, such phrase emanates from the application of the strict construction doctrine that justifies the loss of tax revenue as described in paragraph 10 of *First Baptist*. As a result, contrary to Appellant's argument, there is no "general public benefit" component of the case law definition of "charity", a definition fulfilled by the core activities of Appellee's ministry.

Appellant devotes a portion of its Proposition of Law No. 3 to the argument that Innkeeper Ministries fails to "benefit mankind at large"; a claim never made nor advanced by Appellee at any stage of the tax appeal process. In all pleadings and arguments, Appellee has

asserted that the ministry serves "...those in need of advancement and benefit in particular..." [the second prong of the case law definition of "charity" as set forth in *Planned Parenthood*,] In light of the foregoing, Appellee will not waste the Court's time and Appellee's effort to rebut an argument it has not argued nor advanced. Appellee would respectfully request that the Court ignore said irrelevant argument.

On pages 19, 20, and 21 of its Merit Brief Appellant erroneously substitutes its own nuanced standard concerning the "shelter" aspect of Appellee's charitable use of its property in its capacity as a charitable institution. Appellant argues that Appellee must show, separate and distinct from its core charitable activities, that all guests have a "particularized need for shelter". As with Appellant's erroneous interjection of the "primary use" test, (*Appellant's Merit Brief, page 13*) Appellant attempts to substitute its own "particularized need for shelter" standard for the exclusive charitable use standard found in R.C. §5709.12 as defined by R.C. §5709.121. A review of the Ohio charitable exemption case law reveals that such "particularized need for shelter" standard does not exist.

Next, Appellant introduces another of its own standards that questions the individual's "particularized need for counseling services", ostensibly to be used at the admission stage of Innkeeper's charitable use ministry. In addition to using this fabricated standard, Appellant dismisses out of hand, Appellee's counseling abilities and credentials and evaluates, sight unseen, the efficacy of such counseling. Appellant also evaluates the spiritual conversations conducted and shared, having never heard any of them, arbitrarily deeming such services and activities as something that "cannot be considered a charitable activity". *Appellant's Merit Brief, page 21.*

In Appellant's analysis, it is asserted that from people never seen, in work never witnessed, as well as conversations and counseling never heard by Appellant, that Appellant has somehow established that Appellee has failed to fulfill the fictional and inapplicable standard of providing shelter and counseling to those of a "particularized need"; a standard found nowhere in Title §5709 or in any of the pertinent Ohio case law dealing with charitable exemption. Appellant attempts to add an element of its own making to the R.C. §5709.121(A)(2) test of charitable use of property to conclude that charitable activity is "completely lacking on the property". In light of the foregoing, Appellant's argument has no merit.

Appellant's Proposition of Law No. 4

For property to qualify for charitable exemption pursuant to R.C. §5709.121(A)(2), it must be made available under the direction or control of a charitable institution for a *principal, primary, and essential* use in furtherance or incidental to the owner's charitable purposes.

Appellee's Argument Contra to Appellant's Proposition of Law No. 4

Appellant's use of the inapplicable ad hoc standard of "substantial and essential use" is inapplicable and superseded by the standard contained in R.C. §5709.121(A)(2) as applied by this court in *Cincinnati Community Kollel v. Testa*.

In its Proposition of Law No. 4 Appellant alleges that "charitable activity is completely lacking on the property". *Appellant's Merit Brief, p. 21*. This assertion lacks both legal as well as factual support.

In its decision granting Appellee a charitable tax exemption, the Board of Tax Appeals found that Innkeeper's core activities were charitable as set forth in *Dialysis Clinic v. Levin*, 127 Ohio St.3d 215, 2010 Ohio 5071. *Dialysis Clinic* requires the determination of an owner's status as a "charitable institution" under R.C. §5709.121 and also requires a review of the charitable activities of the taxpayer seeking such exemption. In *Dialysis Clinic* the BTA found

that; “activities have been deemed charitable if they accord with the standard of charity that we have developed when determining the charitable use of property directly under R.C. §5709.12(B).” *Id.*, at 222; page 4 of the BTA Decision and Order. In the instant case, the BTA, in its finding of fact, made a factual finding in its Decision and Order as follows:

“Based upon the foregoing, this Board finds Innkeeper’s year round use of the subject property, in providing a place of respite for the physical and spiritual renewal of Christian leaders, without charge, to be sufficiently charitable in nature to fall within the definition of charity set forth in *Planned Parenthood, supra*. See *Trust Christianity Evangelism v. Tracy (2001) 91 Ohio St.3d. 117, 120.*”

Hence, based upon case authority, the Board of Tax Appeals found that the nature of the charitable core activities of Innkeeper, when measured against the Ohio case law, qualified Innkeeper as a charitable institution thereby applying the R.C. §5709.121(A)(2) definition of exclusive charitable use to Innkeeper’s core activities. Such core activities as measured by the R.C. §5709.121(A)(2) definition is the applicable Ohio case law standard that must be used rather than the ad hoc standard of “for a substantial and essential use” as erroneously asserted by Appellant in its Proposition of Law No. 4 on page 21 of its Merit Brief.

Subparagraph A of Appellant’s Proposition of Law No. 4 on page 22 of its Merit Brief reads as follows:

“In situations where ownership and claimed exempt use of property do not coincide in the same entity, the property must qualify for exemption, if at all, pursuant to R.C. §5709.121. *Dialysis Clinic v. Levin, 127 Ohio St.3d 215, 210 Ohio 5071, ¶23 and 24.*”

Said argument is wholly inapplicable given the fact that in the instant case, both the ownership and claimed exempt use reside in one entity: the Appellee. Appellant argues that the use of the property cannot be “in furtherance of or incidental to charitable purposes when there are no

charitable activities in the first place.” *Appellant’s Merit Brief, page 23*. The findings of the Board of Tax Appeals refute such an ill-founded allegation. On page 3 of the Board of Tax Appeals Decision and Order, the Board conducts a thorough review of the charitable activities found by the Board to exist upon the Appellee’s property:

“In its application for exemption, Innkeeper described its use of the subject property as ‘providing, free of charge, a quality facility with services that encourage, support and edify Christian leadership, weary and, at times, wounded from their godly pursuits. Innkeeper Ministries is called to offer a unique experience that equips and encourages those leaders.’***The ministry is able to provide a diverse setting that strives to meet the physical, emotional and spiritual needs of the ‘wounded traveler.’” S.T. at 73. ‘Innkeeper’s stated mission is to provide Sabbath rest to full time Christian ministry workers. ***[T]he nature of Sabbath rest in the context of the Christian life is a time of personal worship, prayer, meditation, reflection, as well as the reading and studying of the Bible. Said Sabbath rest is most effectively achieved in a reclusive atmosphere such as that provided by Innkeeper’s 71 acres located in a remote rural setting. Such Sabbath rest can, and many times does, include the providing of Biblically based Christian counseling***. The meaning, essence and intention of Sabbath rest is not merely taking a break from full time Christian employment or endeavors, but rather, to provide a time of spiritual renewal.’ Appellant Brief at 2. See, also. H.R. at 23. Further, ‘[a]ny pastor or full time Christian worker and their spouse, who is in need of a Sabbath rest,’ as well as ‘[a]ny pastoral team that needs to get away for fellowship and team building or to simply worship God’ are permitted to utilize the subject property, at ‘no charge or suggested donation’ (although ‘unsolicited donations *** will be accepted’). S.T. at 73”.

In light of these findings of the Board of Tax Appeals, Appellant’s allegation that there are “no charitable activities in the first place” is completely unsupported in the record.

In subparagraph B of Appellant’s Proposition of Law No. 4, Appellant asserts that, once again, “residential property that is closed to the public is not ‘charity’ under *Planned Parenthood* because it does not provide a benefit to mankind in general or to those of particularized need for shelter.” *Appellant’s Merit Brief, page 25*. As stated previously in this Merit Brief, the BTA

did not find, nor is it true in light of Ohio case law, that Appellee's property is "residential property that is closed to the public..." as argued by Appellee in its paragraph denominated as **First** on page 25 of Appellee's Merit Brief. In addition, as stated before in this Merit Brief, Appellee never claimed to provide a "benefit to mankind in general" nor to those "with a particularized need for shelter", a nonexistent standard asserted by Appellant earlier in its Merit Brief. *Proposition of Law No. 3, Appellant's Merit Brief, page 16.*

The other arguments contained in the section denominated **Second** on page 25 of Appellant's Merit Brief assert that the phrase contained in R.C. §5709.121(A)(2) "in furtherance of or incidental to" has somehow been misapplied to Appellee's property by the Board of Tax Appeals as set forth in its Decision and Order. Such is not the case. The entire line of reasoning asserted by Appellant is based upon the false premise that Appellee's property is nothing more than residential property that is "closed to the public" and does not qualify as a charity under *Planned Parenthood*. According to the BTA's findings, none of these assertions are valid.

Appellant next advances an unsupported argument based upon the BTA's pronouncement that "Innkeeper has demonstrated that its use of the property is related to its stated mission of providing 'a place of Sabbath rest for full time Christian servants'". *Board of Tax Appeals Decision and Order, page 5.* From this quote Appellant erroneously assumes that the Board of Tax Appeals failed to implement the strict construction doctrine of construing strictly the provisions of the Ohio Revised Code that provide for charitable exemption. However, no basis for such argument nor any statutory or case law is given as authority. Appellant cannot demonstrate within the record any instance supported by Ohio case law that demonstrates that such strict construction doctrine was not followed by the BTA.

On page 26 of its Merit Brief, Appellant argues that R.C. §5709.121 must be read in a manner that harmonizes the statute with the entire statutory scheme for real property exemption and avoids absurd results. *Church of God in Northern Ohio, Inc.* is cited as authority. However, such case is easily distinguished by virtue of the fact that the applicant in *Church of God* claimed an exemption under the public worship exemption section contained in R.C. §5709.07(A)(2) or R.C. §5709.12. In said case, this Court determined that the exemption was properly denied because neither the activities conducted at the site, nor the public worship conducted by the member congregation constituted charitable activity. The basis for the exemption that exists in the instant case (R.C. §5709.121(A)(2)) is not mentioned in *Church of God*.

Appellant's continuation of said argument centers around the property owner applying for a charitable exemption under R.C. §5709.121 but the exempted activity being carried out "by a third party instead". *Appellant's Merit Brief, page 26*. Though this situation has been argued more than once in the Appellant's Merit Brief, it bears no factual similarity to the instant case. Based upon these false premises, Appellant then presents a hypothetical argument utilizing a "de minimus use standard" to build a theoretical case from which Appellant concludes that Innkeeper "implicitly argues for that position". *Supra, page 26*. Additionally, Appellant charges that Innkeeper "is effectively arguing for an interpretation of R.C. §5709.121(A)(2) that will 'swallow up' R.C. §5709.12(B) and render R.C. §5709.12(B) meaningless." The final conclusion of this sophistry is stated on page 27 of the Appellant's Merit Brief; "For the first time, a primarily private, residential purpose will be held exempt." These obscure arguments are a result of Appellant's reluctance to recognize that under the *Kollel* decision, residential use that is in furtherance of or incidental to the charitable purposes of a charitable institution is exempt. Appellant's characterization of the BTA's finding that Appellee's charitable use is "de minimus"

is unsupported by the transcript of the BTA hearing, as well as the Decision and Order of the Board of Tax Appeals.

In subparagraph C of its Proposition of Law No. 4 Appellant again attempts to apply the wrong standard in its argument that Appellee's use is not exempt. Once again Appellant cites R.C. §5709.07(A)(2), the house of public worship exemption section, as the basis for its argument. Such section is wholly inapplicable to the instant case. The *Church of God in Northern Ohio, Inc.* case sets forth the established standard that houses of public worship "must be used in a principal, primary, and essential way to facilitate the public worship" and that accordingly, "uses which are merely supportive of public worship may not be exempted". *Faith Fellowship Ministries*, 32 Ohio St.3d 432. Unlike the *Faith Fellowship Ministries* standard for houses of public worship, the instant case does not involve the public worship exemption nor the corresponding Ohio Revised Code section. Likewise, the provisions of R.C. §5709.07(A)(4) which provide real property tax exemption for public colleges is similarly inapplicable to the instant case.

Appellant's Proposition of Law No. 5

Vacant and sparsely used land does not qualify for charitable exemption pursuant to R.C. §5709.12 or R.C. §5709.121

Appellee's Argument Contra to Appellant's Proposition of Law No. 5

The mere vacancy of land is not determinative of whether or not the use of such land complies with R.C. §5709.12 or R.C. §5709.121

In its Proposition of Law No. 5, Appellant supplants legal analysis and argument with pure speculation. A careful reading of the BTA transcript reveals not one scintilla of evidence

that would suggest that Innkeeper Ministries intends to sell the charity's property. In its argument, Appellant states:

“If the property were to appreciate in value, or even if Innkeeper merely holds the property for sale, such use does not constitute exempt use. Instead, the property is held for sale and with a view to profit.” *Appellant's Merit Brief, page 33.*

Appellant then builds an argument solely upon the false premise that the property will be sold. Upon this unfounded, speculative conjecture Appellant concludes that the property is currently held with a view to profit, and by reason of such, is not entitled to exemption. There is nothing in the record that would lend the smallest modicum of credence to such an argument.

The second argument set forth in Appellant's Proposition of Law No. 5, is;

“Simply put, vacant land is not used exclusively for charitable purposes”. *Appellant's Merit Brief, page 33.*

There is likewise, no evidentiary basis nor lawful authority to support such declaration. In fact, the *American Chemical Society v. Kinney (1982) 69 Ohio St.2d 167*, case cited by Appellant, provides support for one of Appellee's previously stated arguments.

In *American Chemical* this Court recognized the valuable effect that the otherwise undeveloped portions of land have upon the use of the property of the education institution that owns it and the purpose of that institution. In paragraph 2 of the Syllabus this Court held:

“When landscaped and beautified property surrounding a charitable institution is shown to be instrumental in the recruitment, retention and productivity of the institution's employees, and such employees play an integral role in the continued success of the institution, the property is exempt from taxation and falls within the purview of R.C. §5709.121.”

As with *American Chemical*, and as stated previously in this Merit Brief, it is the characteristics of Appellee's entire property; its size, character, facilities, and most importantly, its remote, secluded, and rural location that provides an environment and atmosphere most conducive to the objective of Sabbath rest. Indeed, the undeveloped acreage of the Appellee's property creates a physical as well as psychological buffer between the people served and the "outside world". As in *American Chemical*, the undeveloped portion of the Innkeeper property is an asset used in furtherance of and incidental to its charitable purpose and not with a view to profit. In light of the foregoing, Appellant's unfounded and unsupported argument fails.

CONCLUSION

Appellee respectfully submits that the findings and ruling of the Board of Tax Appeals are reasonable and lawful in granting charitable exemption to Appellee. Appellant attempts to hold Appellee and its property to standards of Appellant's own making. The "primary use", "principal use", "around the clock", and "particularized need..." tests are just some of the inapplicable ad hoc standards Appellant attempts to apply to Appellee's property and its charitable use. Notwithstanding the foregoing, the record reflects that the Board of Tax Appeals', in finding that Appellee is a charitable institution, considered Appellee's charitable core activities as discussed in *Dialysis Clinic, Inc. v. Levin*. The Board also correctly applied the seminal case authority recently set forth by this Court in *Cincinnati Community Kollel v. Testa* in its recognition that residential use of the property of educational institutions is not inimical to exemption. In light of these findings, Appellee would respectfully suggest that the R.C. §5709.12(B) standard of exclusive charitable use as defined in R.C. §5709.121(A)(2) should be applied to the property of Appellee, a charitable institution.

Based upon the foregoing, Appellee respectfully requests that the ruling of the Board of Tax Appeals' granting charitable exemption to Appellee be affirmed.

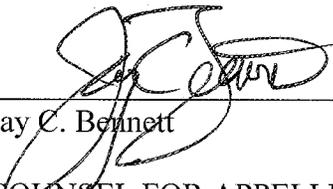
Respectfully submitted,
Jay C. Bennett, Counsel of Record



COUNSEL FOR APPELLEE,
INNKEEPER MINISTRIES, INC.

Certificate of Service

I certify that a copy of this brief was sent by ordinary U.S. mail and email to counsel of record for Appellant, David D. Ebersole, Assistant Attorney General, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43215-3428, this 13th day of October, 2014.



Jay C. Bennett
COUNSEL FOR APPELLEE,
INNKEEPER MINISTRIES, INC.

APPENDIX

OHIO BOARD OF TAX APPEALS

INNKEEPER MINISTRIES, INC.,	:	
	:	
Appellant,	:	
	:	
v.	:	Case No. 2010-V-2803
	:	
JOSEPH W. TESTA,	:	
TAX COMMISSIONER OF OHIO,	:	
	:	
Appellee.	:	

TAX COMMISSIONER'S POST-HEARING BRIEF

I. INTRODUCTION

Appellant Innkeeper Ministries, Inc. (“Innkeeper” or “Appellant”) appeals from the Tax Commissioner’s final determination denying Innkeeper’s application for real property exemption. The property is run by Bob and Jan Hartenstein (“the Hartensteins”), and Mr. Hartenstein is the sole incorporator of Innkeeper. Innkeeper’s Board members are Mr. Hartenstein, his son Christopher, and a Mr. Robert Kline.

Innkeeper’s mission is to provide a “getaway” where full-time Christian ministers or workers can rest for a few days and recharge from the demands of their work. While this respite may be beneficial to those who avail themselves of the accommodations, this use does not meet the requirements for exemption from property taxation under R.C. 5709.12, R.C. 5709.121 or R.C. 5709.07. The bases for affirming the Tax Commissioner’s denial of an exemption are more fully developed below.

II. STATEMENT OF FACTS

A. The property is not used for public worship

Despite its religious overtones, Innkeeper is not owned by or affiliated with a church. Tr.¹ 54: 7-24; 63: 21-23. No regular church services are performed on the property. Tr. 48: 6-8. No religious services are available to the general public. Tr. 48: 4-5. Only a small portion of the property is dedicated to worship, but this portion of the property (on which sits a small chapel) is not open to the public. Tr. 48: 4-5. There is no public component to the property, and in fact, each potential guest is screened very carefully by Mrs. Hartenstein so she can determine if they are qualified to be a guest on the property. Tr. 18: 6-9, 20-23. Only full-time church leaders are allowed to stay on the property. Tr. 16: 1-2. The purpose of the property is to allow full-time Christian leaders and pastors a place to rest and sabbatical so they can return to their religious duties. Tr. 12: 17-24; ST 6, 28, 37. Indeed, every amenity on the property is provided to Christian leaders with the sole intent to allow them rest so that they can better carry on their Christian leadership duties. Id.

B. Any counseling provided to guests is not from a licensed psychologist or therapist, but is Christian-based and is intended to help guests return to their pastoral responsibilities.

Nouthetic counseling is usually available to full-time Christian leaders staying as guests on the property. Tr. 38: 6-11, 62: 17-20. Nouthetic counseling is not counseling in the medical or psychological sense, but counseling founded in biblical liturgy. Tr. 38: 6-11. Counseling is provided by the Hartensteins, whose training consisted of thirty-two to forty hours of classroom time at a church called Clearcreek Chapel. Tr. 38: 22-39: 2. Upon completion, the trainees were not given a license from a governing counseling body but rather a "class certificate" from the

¹ References to "Tr." are to the transcript of the March 25, 2013 hearing.

church. Tr. 39: 3-14. The training did not have a didactic or practical component. Tr. 39: 22-40: 4. There is no Diagnostic Statistical Manual on the property, and the training did not cover use of the Diagnostic Statistical Manual. Tr. 42: 20-25.

Indeed, even without training, anyone with a story to tell, and with experiences acceptable to the Hartensteins, would be allowed to counsel guests on the property. Tr. 68: 20-69: 10. Between 45-50% of the guests on the property request counseling. Tr. 17: 3-7. Counseling occurs on the property between ten minutes and three hours out of a day. Tr. 43: 15-20. The Hartensteins do not receive referrals from other counselors, psychologists, or social workers. Tr. 43: 1-4. Further, there are times when guests are staying on the property without the benefit of a counselor. Tr. 34: 14-17.

This counseling, though not a “driving force” of Innkeeper, is clearly intended to aid full-time Christian leaders and pastors so they may return to their congregations with an enhanced ability to facilitate public worship. Tr. 42: 19, 44: 2-7, 47: 5-15. Testimony revealed only one aspect in which a guest requested counseling in the middle of the night. Tr. 16: 21-24. That guest needed psychological counseling and was referred to a practitioner not affiliated with Innkeeper. Tr. 45: 9-25.

Most guests, however, visit the property for the worship aspect, and not for counseling. ST. 95-103; Tr. 17: 3-7. The statutory transcript is replete with letters from former guests attesting to their worship experiences. ST 95-103. None of these letters, however, reference the availability of counseling as the purpose for their visit. Id. Indeed, the common theme running through each letter is that the property gave the guest a new place to pray. Id. One letter mentioned that worship was the “*primary* reason” for the guest’s visit to the property. ST 96 (emphasis in original).

C. The other amenities on the property resemble those of any non-exempt hotel

The only services Appellant provides, besides counseling, are the provision of meals, and upkeep of the amenities. Tr. 47: 19-24. While there are a swimming pool, hot tub, basketball court, and walking path on the grounds, these are maintained to make the property resemble a full-service hotel. Tr. 24: 23-25; 48: 16-49: 7. The pool and the basketball court are closed during the winter. Tr. 49: 8-14. Further, these amenities were on the property prior to it being converted to Innkeeper. Tr. 65: 17-25. None of the letters tendered by Appellant reference using the swimming pool, the hot tub, the basketball courts, or the walking paths. ST 95-103.

D. The Hartensteins and their family members frequent and reside on the property

The Hartenstein's children and grandchildren visit the property several times throughout the year. Tr. 32: 3-9. While no family members of guests, other than spouses, are allowed on the property, when the Hartenstein's family members visit, they are allowed to use the amenities including the swimming pool, basketball court, and hot tub. ST 30; Tr. 31: 10-32: 22. The family members have had access to the amenities ever since the inception of Innkeeper. Tr. 33: 2-5.

Further, Mrs. Hartenstein's mother resided on the property from November, 2011 until October, 2012. Tr. 26: 14-24. Mr. Hartenstein's sister, Debbie, currently lives on the property and has since November, 2011. Tr. 28: 7-11. While Mrs. Hartenstein's mother lived on the property, she occupied a suite that would otherwise have been available for guests. Tr. 29: 21-23. Likewise, Debbie resides in a suite that would otherwise be available for guests. Tr. 29: 15-20. Debbie's presence is not necessary for the upkeep of the property. Tr. 28: 23-25. Of the seven suites in the Chesed Inn, only five were available for guests between 2011 and 2012. Tr.

30: 14-24; ST 33. As mentioned above, the Hartensteins also occupy a suite in the Chesed Inn. Tr. 21: 24-22: 11.

III. LAW AND ARGUMENT

A. The property is not entitled to exemption under R.C. 5709.07 as it is not used exclusively for public worship.

Appellant requests an exemption over the entire property pursuant to R.C. 5709.07(A). ST. 63. For property to be exempt under that code section, however, its exclusive use must be for public worship. *Faith Fellowship Ministries, Inc. v. Limbach*, 32 Ohio St.3d 432, 436 (1987). Public, in this context, means open or equally available to the public. *Id.* at 435. In *Christian Church of Ohio v. Limbach*, 53 Ohio St.3d 270, 271 (1990), the Court held that because “there was no public worship” occurring on the property, the appellant was not entitled to exemption under R.C. 5709.07.

Innkeeper is not a “house used exclusively for public worship” under R.C. 5709.07(A), as it is not open to the public². It is clear that the purpose and mission of Innkeeper is to help full-time Christian leaders in their own religious endeavors. ST 8-9, 28. Thus, the property is used, not for the free exercise of public worship, but merely in support of public worship occurring elsewhere. *Id.* Indeed, each potential guest is screened very carefully by Mrs. Hartenstein to ensure they would qualify to stay as a guest on the property. Tr. 18: 6-9, 20-23. Further, Mr. Hartenstein testified that they do not allow groups on the property. Tr. 71: 3-4. Children (other than those related to the Hartensteins) are also not allowed on the property. ST 30. Even the

² Indeed, Appellant appears to have abandoned the notion that the property is entitled to exemption pursuant to R.C. 5709.07 as it does not reference, as an assignment of error, the Tax Commissioner’s denial of exemption of the property pursuant to that section. See NOA, dated March 6, 2013. Thus, this Board is without jurisdiction to consider this issue. R.C. 5717.02; *Delaney v. Testa*, 2011 Ohio 550, ¶14.

only place on the property reserved for worship, the small chapel, is not open to the public. Tr. 48: 4-5.

As the property is open only to full-time Christian leaders and their spouses, Appellant is not entitled to an exemption reserved for open, equally available institutions. Tr. 18: 6-9, 20-23; 71: 3-4; ST 30. *Faith Fellowship*, at 432; *Christian Church of Ohio*, 271. “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.” *Watterson v. Halliday*, 77 Ohio St. 150, 173 (1950) (emphasis in original). As this property is used merely to support public worship, and not exclusively for public worship, it is not entitled to an exemption under R.C. 5709.07.

B. Appellant is not a charitable institution and is not using its property exclusively for charitable purposes.

1. Providing accommodations in an inn as a getaway for full-time pastoral leaders is “merely supportive” of those engaged in a career in religious ministry, and is not a charitable use under R.C. 5709.12.

“In spite of its apparent breadth, the definition of charity does not encompass public worship”. *Church of God in N. Ohio, Inc. v. Levin*, 2009 Ohio 5939, ¶26, citing *Faith Fellowship*, at paragraph one of the syllabus. Further, the “worship of any particular church, synagogue, mosque, or other temple will typically share a characteristic with fraternal associations: it inevitably focuses on serving the spiritual needs of those participants who are already to a greater or lesser degree members of the congregation, or at least of the larger denomination.” *Church of God in N. Ohio*, ¶26. In short, property primarily used to support public worship that is conducted at other locations by local congregations does not by itself constitute a charitable use of real property. *Church of God in N. Ohio, Inc.*, ¶32. Thus, Appellant is not entitled to an exemption under R.C. 5709.12(B).

In *Church of God in N. Ohio*, the appellant filed a real property exemption for an office building under R.C. 5709.12. The building contained conference rooms and classrooms used for church leadership meetings and ministerial teaching and training. *Church of God in N. Ohio*, ¶3. Appellant believed it was entitled to a charitable exemption as it saw its member congregations carrying on charitable purposes. *Id.* at ¶2. The Court soundly rejected this reasoning. *Id.* It held that public worship does not constitute charitable activity. *Id.* at ¶16.

While the facts in *Church of God in N. Ohio* differ slightly from the ones *sub judice*, Appellant uses the property with the same intention: to facilitate public worship occurring elsewhere. Indeed, as developed above, the primary purpose of Innkeeper is to provide full-time Christian leaders and pastors a place to enjoy a Sabbath rest. This rest, Appellant contends, enables the leaders to better carry on their ministerial duties. Tr. 14: 11-20; ST. 8, 55, 59. In short, Appellant's goal, like that in *Church of God in N. Ohio*, is to enable church leaders to facilitate public worship in their own congregations. *Id.*; ST 95-106. Thus, despite Appellant's insistence that it is entitled to an exemption based on the definition of charity in *Planned Parenthood Association v. Tax Commissioner*, (1996), 5 Ohio St.2d 117, Appellant's activities are not "charitable".

Even to the extent this Board feels Innkeeper would otherwise be entitled to an exemption based on R.C. 5709.12(B), three facts prevent this Board from determining that the property is used "exclusively for charitable purposes." First, the fact that various Hartenstein family members have lived on the property continuously since October, 2011 prevents the property from being used "exclusively for charitable purposes." Tr. 26: 14-24, 28: 7-11. Further, these family members resided in rooms otherwise available for guests. Tr. 29: 15-24.

Second, the fact that other family members frequent the property, and use the amenities, demonstrates that the property is not used “exclusively for charitable purposes.” As fully developed above, the Hartenstein’s family members use the various amenities throughout the property, even though guests’ family members (other than spouses) are not allowed on the property. Tr. 32: 7-22.

Third, the Hartensteins themselves live full-time on the property. While parsonages are, at times, entitled to exemption from real property, those exemptions are based on R.C. 5709.121. As Appellant is not a charitable institution, its property must be used, not in furtherance of or incidental to Appellant’s goals, but exclusively for a charitable purpose. *Highland Park Owners v. Tracy*, 71 Ohio St.3d 405, 406-407 (1994). The Hartenstein’s use of the property as a residence, therefore, necessarily prevents the property from being used “exclusively for a charitable purpose.”

2. As Appellant is not a charitable institution it is not entitled to exemption pursuant to R.C. 5709.121

R.C. 5709.121 only entitles *charitable* institutions to an exemption if their property is used incidental to, or in furtherance of, charitable activities. *Bethesda Healthcare, Inc. v. Wilkins*, 2004 Ohio 1749, ¶27 (emphasis added). Thus, the first inquiry must be directed to the nature of the institution applying for an exemption. *Id.* As fully developed above, Innkeeper’s mission is to enable Christian leaders to rest to reinvigorate them in their public worship activities. Tr. 14: 11-20; ST. 8, 55, 59. Pursuant to *Church of God in N. Ohio*, public worship

itself is not a charitable activity. Thus, though its mission may be laudable, Appellant is not a charitable institution and it is not entitled to exemption under R.C. 5709.121³.

Herein lies the main distinction between this case and *Cincinnati Kolloel v. Levin [Testa]*, 2013 Ohio 396, upon which Appellant heavily relies to convince this Board that it is entitled to an exemption. In *Kolloel*, the court determined that the appellant was an educational institution. 2013 Ohio 396, ¶6, ¶9, ¶15. Innkeeper does not claim to use its property for educational or public purposes. There is no testimony that any education is provided to guests on the property, and the record is clear the property is not open to the public. Likewise, as demonstrated above, Innkeeper is not a charitable institution. It thus cannot take advantage of R.C. 5709.121 or cases, such as *Kolloel*, granting exemptions under that statute.

Finally, Appellant's reliance on *Kolloel* is, at best premature, and at worst misplaced. The Court did not determine that the subject property was used in furtherance of the kolloel's educational purposes, but remanded the case back to this Board for a determination as to whether the property is so used. Should this Board determine that the kolloel does not use the property incidental to, or in furtherance of, its educational purposes, that case will be of little value to Appellant. As the ultimate decision on that issue has yet to be rendered, *Kolloel* is of little aid to Appellant.

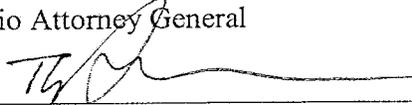
³ Though *Church of God in N. Ohio* did not involve R.C. 5709.121, its ruling that encouraging public worship elsewhere is not a charitable activity would prevent Appellant here from enjoying an exemption pursuant to that language, as it only allows exemptions for charitable organizations.

Conclusion

Based on all the foregoing, the Tax Commissioner moves this Board to affirm his decision denying Innkeeper's application for real property exemption for this property.

Respectfully Submitted,

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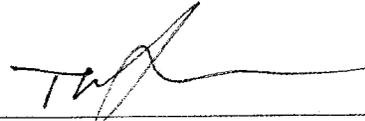
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Tax Commissioner of Ohio

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by regular U.S. mail on this 3rd day of 6, 2013, upon the following:

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Counsel for Appellant



THOMAS ANGER

OHIO BOARD OF TAX APPEALS

INNKEEPER MINISTRIES, INC. : Case No. 2010-V-2803
Appellant :
v. :
TAX COMMISSIONER, STATE OF OHIO : APPELLANT'S POST HEARING
Appellee : BRIEF AND FINAL ARGUMENT

I. Introduction

Appellant Innkeeper Ministries, Inc. has appealed the Tax Commissioner's Final Determination denying Innkeeper's application as a charitable institution for a real property tax exemption. Appellant files this Post Hearing Brief and Final Argument to be considered along with its Prehearing Statement of Position as well as the evidence adduced at the hearing conducted by the Board of Tax Appeals on March 25, 2013.

Appellant's mission and charitable purpose is to provide Sabbath rest to full time Christian ministry workers. Appellant was erroneously denied a tax exemption by the Tax Commissioner despite the fact that it is a charitable institution as defined by Ohio case law that fulfills the exclusive charitable use standard as required by R.C. 5709.12 and defined by R.C. 5709.121(A)(2). As previously stated, the grounds for reversing the Tax Commissioner's denial of said tax exemption are set forth in the following Post Hearing Brief and Final Argument to be considered in conjunction with Appellant's Prehearing Statement of Position on the Issues and the transcript of the March 25, 2013 Board of Tax Appeals evidentiary hearing.

II. Statement of Facts

Contrary to the Commissioner's assertion that Innkeeper's mission and purpose is to provide a "get away" for Christian clergy, Innkeeper's stated mission is to provide Sabbath rest to full time Christian ministry workers. Contrary to the argument of the Commissioner, the nature of Sabbath rest in the context of the Christian life is a time of personal worship, prayer, meditation, reflection, as well as the reading and studying of the Bible. Said Sabbath rest is most effectively achieved in a reclusive atmosphere such as that provided by Innkeeper's 71 acres located in a remote rural setting. Such Sabbath rest can, and many times does, include the providing of Biblically based Christian counseling, the details of which were elucidated at the Board of Tax Appeals hearing. The meaning, essence and intention of Sabbath rest is not merely taking a break from full time Christian employment or endeavors, but rather, to provide a time of spiritual renewal. The physical rest afforded to such workers is incidental to the spiritual renewal intended to be achieved through the aforementioned elements comprising Sabbath rest.

Innkeeper is a full time Christian ministry that fulfills the second aspect of the Ohio Supreme Court's definition of "charity" as set forth in *Planned Parenthood Association v. Tax Commissioner (1966)*, 5 Ohio St.2d 117. See *Appellant's Prehearing Statement of Position on the Issues*, page 2. Its core activities are decidedly and demonstrably charitable in nature to which its property is dedicated and used year around.

The Commissioner's first factual argument for denial of tax exemption contained in his Post Hearing Brief is that the Appellant's property is not used for public worship. Appellant's application for tax exemption was prepared and filed by Appellant, pro se, prior to Appellant retaining legal counsel and erroneously listed public worship exemption under R.C. 5709.07 as one of its grounds.

Appellant, by and through its legal counsel does not assert that the real property in question is used for public worship pursuant to R.C. 5709.07. Hence, Appellant will not argue nor assert the same in its response to Section A of the Commissioner's Statement of Facts, rendering the Commissioner's said argument moot.

Section B of the Commissioner's Statement of Facts deals with the counseling aspect of Innkeeper's ministry. The counseling that takes place at Innkeeper is an important element of the overall ministry of Sabbath rest provided to guests by the Hartensteins. A major portion of the hearing was devoted to discussion of the on-site counseling, where it took place, and under what circumstances it was administered. It is evident from the record that the counseling component of the Sabbath rest provided by Innkeeper is based upon Christian counseling principles that emanate from a Biblical world view and is central to the ministry's mission.

The testimony found in the transcript of the evidentiary hearing demonstrates that despite the distinction drawn between Christian counseling and secular psychiatric therapy, such counseling is appropriate in the setting of Sabbath rest for the guests who are Christians working full time for various Christian ministries. In its Final Argument Brief, the Commissioner erroneously asserts that "...counseling...is clearly intended to aid full time Christian leaders and pastors *so they may return to their congregations with an enhanced ability to facilitate public worship.*" (Emphasis added). *Tax Commissioner's Post-Hearing Brief, page 3.* Regarding the foregoing, the Commissioner cites the *Transcript, page 42, line 19, page 44, lines 2-7, and page 47, lines 5-15.* None of these citations of the record indicate that the purpose of the counseling has anything to do with "an enhanced ability to facilitate public worship". As previously stated, neither public worship, nor the enhancement thereof is an objective of Applicant's ministry.

The testimony revealed that between 45% and 50% of the guests on the property requested counseling. *Tp. page 17, lines 3-7.* Despite the Commissioner's apparent criticism of the Christian counseling that takes place on a regular basis at Innkeeper, such counseling is nevertheless an important substantive element of the ministry and provides further evidence that the core activities of the ministry are charitable in nature.

In Section C of the Statement of Facts the Commissioner opines that the amenities of the property resemble those of a "nonexempt hotel". The testimony adduced at the hearing substantiated that the swimming pool, hot tub, and basketball court already existed when the property was donated to the ministry (*T.p. page 65, lines 17-25*) and that Appellant expanded the walking trails and built the chapel. *T.p., page 66, lines 16-19.* The availability of the pre-existing amenities has no substantive bearing upon the charitable use of Appellant's property.

The first sentence of Section C of the Commissioner's Post Hearing Brief is an understatement of the charitable use and character of Appellant's property;

"The only services Appellant provides, besides counseling, are the provision of meals, and upkeep of the amenities."

Innkeeper's ministry is an example of the whole being greater than the sum of its parts. The overriding "service" provided by Innkeeper is the creation, maintenance, and perpetuation of a ministry environment that provides (1) the appropriate Biblical and literary resources (*T.p. page 66, lines 20-25, page 67, lines 1-5*), (2) physical resources including lodging, meals, and related physical plant amenities, as well as (3) human resources; counseling, companionship, emotional and spiritual discipleship and support. All of this is provided in a setting intentionally conducive to the emotional rest and rehabilitation and spiritual renewal inherent in Sabbath rest; all provided by Appellant in a

secluded, remote rural setting. It is the confluence of all of the above, provided by two dedicated individuals that comprise a ministry that serves “those in need of advancement and benefit in particular”, as the beneficiaries of a “charity” are defined in *Planned Parenthood Association v. Tax Commissioner, supra*.

Section D of the Commissioner’s post hearing brief mentions the occasional family visits to the ministry facilities. The infrequent one or two day visits of family members is insignificant given that Appellant’s 48 to 50 week work schedule and in light of the fact that the lodging quarters of Innkeeper facilities have never been completely full (*T.p. page 30, line 25, and page 31, lines 7-9*) and the fact that when family comes to visit they stay in the Hartenstein’s suite. *T.p. page 32, lines 7-15*.

III. Law and Argument

In the interest of avoiding repetition, Appellant’s Law and Argument section will cite and supplement the legal arguments contained in Appellant’s Prehearing Statement of Position on the Issues. There was no evidence adduced at the March 25, 2013 hearing that would cause revisions to any of the legal arguments contained in Appellant’s Assignments of Error I through IV contained in Appellant’s Prehearing Statement of Position of the Issues. However, Appellant will endeavor to respond to any of the Commissioner’s rebuttal of the legal arguments contained in Appellant’s Prehearing Statement of Position on the Issues as well as to offer a rebuttal of the Law and Argument presented by the Commissioner in its Post Hearing Brief.

Appellant need not respond to Section A of the Commissioner’s law and argument since such argument is based upon a tax exemption for public worship pursuant to R.C. 5907.07. Appellant has previously stated that despite the erroneous listing of R.C. 5907.07 as grounds for exemption in

Appellant's original application, there is no public worship conducted upon the property.

In Section B of the Tax Commissioner's law and argument, the Commissioner asserts that Appellant is not a charitable institution and is not using its property exclusively for charitable purposes. Such an assertion is unsupported by the facts of the instant case as well as the statutory law and case law of Ohio. As previously stated, *Planned Parenthood Association v. Tax Commissioner (1966) 5 Ohio St.2d 117* sets forth a two part definition of "charity" that has remained the law in Ohio since the decision of said case. In the Commissioner's Final Determination, it failed to acknowledge the second aspect of the definition of "charity" contained within the above captioned case. See *Appellant's Prehearing Statement of Position on the Issues, page 2*. The evidence adduced at the March 25, 2013 hearing demonstrably confirms that such ministry has "attempt(ed) in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit...those in need of advancement and benefit in particular" *Id.* ...ie. full time Christian ministry workers.

The Commissioner argues that Innkeeper is not a charitable institution "In spite of its apparent breadth the definition of charity does not encompass public worship" citing *Church of God in Northern Ohio, Inc. v. Levin, 2009 Ohio 5939. Tax Commissioner's Post Hearing Brief, page 6*. As stated before, this argument is inapplicable to the instant case since no aspect of the charitable ministry performed by Innkeeper involves or supports "public worship". The Commissioner argues that "property primarily used to support public worship that is conducted at other locations by local congregations does not by itself constitute a charitable use of real property." *Commissioner's Post Hearing Brief, page 6*. There is no evidence presented to the Board to support an allegation that Appellant's ministry is used to support public worship anywhere. There is no public worship

component to the ministry advanced and conducted by Innkeeper. The chapel is used by the guests for prayer and private worship. *T.p., page 47, line 25; T.p. page 48, lines 1-15.* There is no formal religious instruction. *T.p., page 49, lines 17-19.*

The Commissioner cites *Church of God in Northern Ohio, Inc. v. Levin, 2009 Ohio 5939* as authority for denial of the tax exemption sought by Appellant. The real property exemption filed by applicant *Church of God in Northern Ohio* sought an exemption for an office building and classrooms used for church leadership and ministerial teaching and training. The court held that public worship conducted at other locations by local church congregations does not, in itself, constitute a charitable activity. Given the fact that Innkeeper neither promotes nor supports the conduct of, or aid to, public worship renders *Church of God in Northern Ohio* easily distinguishable from the instant case.

The Commissioner asserts that three facts prevent the determination that the Appellant's property is used "exclusively for charitable purposes". *Commissioner's Post Hearing Brief, pages 7-8.* Such assertion is erroneous since the Commissioner fails to apply the R.C. 5709.121 definition of "exclusive charitable use" to the exclusive charitable use requirement of R.C. 5709.12(B). *See Appellant's Assignment of Error III in Appellant's Prehearing Statement of Position on the Issues, page 4 and 5.* The confluence of the aforesaid two Ohio Revised Code Sections results in a statutory definition of "exclusive charitable use" applied to charitable institutions contained in Section 5709.121(A)(2) entitled *Exclusive Charitable or Public Purposes Defined.*

Ohio Revised Code Section 5709.121 states as follows:

(A) Real property and tangible property belonging to a charitable or educational institution...shall be considered as used exclusively for charitable or public purposes by such institution, ...if it meets one of the

following requirements:

- (2) It is made available under the direction or control of such institution, ... for use in furtherance of, or incidental to, its charitable... purposes and not with the view to profit.”

If the use of the property by a charitable institution is “in furtherance of, or incidental to” said institution’s charitable purposes, (and not with the view to profit), such statutorily defined “exclusive charitable use” fulfills the R.C. 5709.12 requirement of the property being exclusively used for charitable purposes. It is clear from the application of the aforementioned statutes as well as the evidence adduced at the Board of Tax Appeals hearing of March 25, 2013 that Innkeeper Ministries’ property has been continually used “in furtherance of, or incidental to, its charitable purpose without a view to profit.” *R.C. 5709.121(A)(2)*.

The three facts that the Commissioner claims “prevent this Board from determining that the property is used exclusively for charitable purposes” are all related to the definition to be applied to the exclusive charitable use of the property. The Commissioner alleges that since members of the Hartenstein family have visited the property and stayed in the Hartenstein living quarters; and that the premises were used temporarily to house Mrs. Hartenstein’s dying mother and Mr. Hartenstein’s once homeless sister in times of family emergency; and that the Hartensteins themselves live on the premises, that under the literal exclusive charitable use requirement of R.C. 5709.12, the property was not exclusively used for charitable purposes. Such allegations would be determinative for any land owner or organization that is not deemed a charitable institution under 5709.121(A)(2). However, the foregoing facts are not determinative of Appellant’s requested tax exemption since Innkeeper Ministries is a charitable institution under Ohio statutory law and case law. *Please see Assignment of Error IV of Appellant’s Prehearing Statement of Position on the Issues*. Four months

ago the Ohio Supreme Court identified the application of the 5709.121(A)(2) definition of exclusive charitable use as a “clear test for exemption”. *Cincinnati Community Kolllel v. Levin* 2013 Ohio 396.

The 1969 enactment of R.C. 5709.121 which created the present statutory definition of “exclusive charitable use” for charitable institutions superseded and rendered inapplicable *Philada Home Fund v. Board of Tax Appeals* (1966) 5 Ohio St.2d 135 as the controlling authority regarding the residential use of property used for charitable purposes. *Grandview Hospital and Medical Care Center v. Zaino*, 2002 Ohio 3292. The Commissioner erroneously cited *Philada* in its Final Determination as grounds for denial of the tax exemption sought. The recent Ohio Supreme Court opinion in *Cincinnati Community Kolllel v. Levin* 2013 Ohio 396 held:

“Contrary to the BTA’s apparent belief, nothing in the statutory language or case law makes residential use inimical to a finding that such use is ‘in furtherance of’ Kolllel’s educational purposes. Historically, as the Tax Commissioner points out, a distinctly residential use of real property has defeated a charitable use exemption claim, even when a property is used at times for charitable purposes. ***But this principle applies to RC 5709.12 not RC 5709.121.*** (Emphasis added). *Cincinnati Community Kolllel v. Levin, Tax Commissioner* 2013 Ohio 396 citing *NBC-USA Housing Inc.-Five v. Levin* 125 Ohio St.3d 394 2010 Ohio 1553. See also *Galvin v. Masonic Toledo Trust* 34 Ohio St.2d 157 (1973)(Reliance on case law construing RC 5709.12 developed prior to the enactment of RC 5709.121 is improper). Please see Appellant’s Prehearing Statement of Position on the Issues, page 6.

The Commissioner’s argument that any residential use summarily disqualifies Appellant’s property from a charitable tax exemption has no merit. The Supreme Court’s pronouncement in *Kolllel* that R.C. 5709.121 comprises the applicable statutory definition of “exclusive charitable use” nullifies or supersedes the former precedent that a “distinctly residential use of real property” will

defeat a charitable use exemption claim even when a property is used at times for charitable purposes. *Id.* Please see *Appellant's Assignment of Error IV of Appellant's Prehearing Statement of Position on the Issues*.

The Commissioner's final argument is that "Appellant's reliance on *Kollel* is, at best, premature, and at worst, misplaced". *Commissioner's Post Hearing Brief, page 9*. The Commissioner ascribes great weight to the fact that the Ohio Supreme Court remanded the case back to the Board of Tax Appeals. However, a careful reading of the Supreme Court's decision indicates that the Court reversed the Board's denial of tax exemption and identified a number of errors made by the Board.

The Court found that the Board erred by relying on a previous decision where it failed to consider "...whether the property at issue qualified for exemption under a separate provision of R.C. 5709.121: former R.C. 5709.121(B), now codified as 5709.121(A)(2)". *Id.*, ¶21. The Court further ruled that the BTA's focus ought to have been on whether the use of the property was "in furtherance of or incidental to" the kollel's charitable, educational, or public purposes. *Id.*, ¶26.

The Court in *Kollel* also found that the Board misconstrued the plain language of R.C. 5709.121(A)(2) explaining that "...if the property belongs to a charitable or educational institution, R.C. 5709.121(A)(2) defines what constitutes exclusive use of property in order to be exempt from taxation." The Supreme Court excluded an ad hoc "primary use" test erroneously created and imposed by the Board, to determine whether the property which was the subject of a tax exemption was to be treated as a private residence based upon a determination that such residential use constituted its "primary use". *Id.*, ¶24. The Court commented that contrary to the BTA ruling, there is no "primary use" nor "principal use" test set forth in 5709.121, an argument that the Supreme

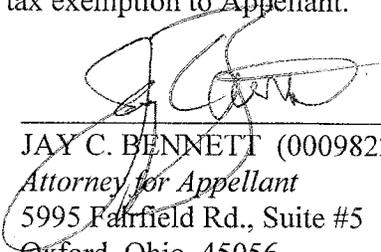
Court had previously rejected in *Galvin v. Masonic Toledo Trust* 34 Ohio St.2d 157 (1973).

The Supreme Court also held in *Kollel* that R.C. 5709.121(A)(2) “provides a clear test for exemption: property belonging to an educational institutional is marked for exemption if it is used in furtherance of or incidental to the institution’s educational purposes and not with a view to profit.” *Id.*, ¶26. The Supreme Court in *Kollel* also stated that “Contrary to the BTA’s apparent belief, nothing in the statutory language or case law makes residential use inimical to a finding that such use is ‘in furtherance of the *Kollel*’s educational purposes’.” *See full quote at page 8 of this brief.*

Hence, although the Court issued no formal order granting or denying of the tax exemption sought in *Kollel*, it appears from a careful reading of the case that a denial of *Kollel*’s application for tax exemption upon remand would likely be struck down and reversed based upon the reasoning and strong language used in the Supreme Court’s decision. To date, *Kollel* is the controlling precedent with regard to residential use of property used for charitable or educational purposes and constitutes the most recent authority supporting Appellant’s charitable tax exemption.

IV. Conclusion

Based upon the transcript of proceedings and the Ohio statutory law and case law as set forth in Appellant’s Prehearing Statement of Position on the Issues and the foregoing Appellant’s Post Hearing Brief and Final Argument, Appellant respectfully requests that the Board reverse the Final Determination of the Tax Commissioner and grant tax exemption to Appellant.

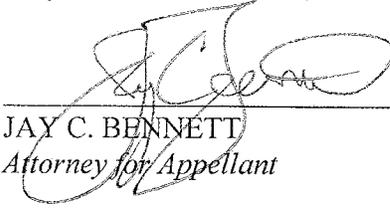


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the within Notice of Appeal has been served upon Thomas N. Anger and Christine Mesirow, Assistant Attorneys General, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43215, by email this 24th day of June, 2013.



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