

IN THE SUPREME COURT OF OHIO

Geneva Area Recreational, Educational and Athletic Trust)	Case No. 2014-1778
)	
Appellant,)	Appeal from the Ohio Board of Tax Appeals
)	
v.)	BTA Case No. 2012-A-841
)	
Joseph W. Testa, Tax Commissioner)	
)	
Appellee.)	

**APPELLANT GENEVA AREA RECREATIONAL, EDUCATIONAL
AND ATHLETIC TRUST'S MERIT BRIEF**

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INTRODUCTION

This case involves the Board of Tax Appeals' ("BTA") erroneous interpretations of R.C. 5709.12 and 5709.121 regarding real property belonging to a charitable institution.

Real property belonging to an institution (whether a charitable or non-charitable institution) that is used exclusively for charitable purposes is exempt from taxation under R.C. 5709.12(B). *Community Health Professionals, Inc. v. Levin*, 113 Ohio St.3d 432, Ohio-2007-2336, 866 N.E.2d 478, ¶¶ 17-18. Further, R.C. 5709.121(A) provides real property belonging to a *charitable institution* is considered to be used exclusively for charitable or public purposes if it is made available under the direction or control of the charitable institution for use in furtherance of or incidental to the charitable institution's charitable, educational, or public purposes and not with the view to profit. (Emphasis added.) *Id.* at ¶¶ 13-18.

Appellant, Geneva Area Recreational, Educational and Athletic Trust, operating as SPIRE Institute ("SPIRE"), is an Ohio nonprofit corporation recognized as a public charity exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. SPIRE constructed and operates a one-of-a-kind, state-of-the-art, community multi-sport complex located in Harpersfield Township, Ashtabula County, Ohio. SPIRE exclusively engages in activities that qualify as charitable under Ohio law.

SPIRE is an incomparable non-profit with a vision to "cultivate character and produce good citizens who know how to cooperate, compete, and lead" by providing area students and seniors, Olympic caliber athletes and wounded veterans, and competitors at the top of their game and those just taking their first steps toward health and wellness a state-of-the-art facility staffed by educators, physicians, trainers, nutritionists, and psychologists regardless of their ability to pay.

SPIRE applied to the Tax Commissioner for charitable tax exemption for its real property under R.C. 5709.12 and R.C. 5709.121. Nearly two years later, the Tax Commissioner denied SPIRE's application in a deeply-flawed decision. First, for purposes of R.C. 5709.12 and R.C. 5709.121, the Tax Commissioner erroneously held that despite a 99-year renewal ground lease with SPIRE, the subject property belonged to Roni Lee, LLC, a non-charitable entity.

Second, after nearly two years of investigation, the Tax Commissioner somehow found "no evidence" SPIRE engaged in any charitable activities. Instead of recognizing SPIRE's very clear charitable mission and purpose, the Tax Commissioner concluded SPIRE's primary goal was "to develop an elite sports training facility to develop Olympic and professional caliber athletes." Finally, the Tax Commissioner concluded without basis the undeveloped portion of the subject property was not exempt because it "may be sold to developers for commercial use."

Following an evidentiary hearing at which SPIRE presented evidence to support all of the elements required under R.C. 5709.12(B), R.C. 5709.121(A)(2), and the applicable case law, the BTA issued a Decision and Order dated September 16, 2014 (the "BTA Decision") (App. A6). Despite the Tax Commissioner's obvious errors, the BTA erroneously affirmed the Tax Commissioner, resting its decision upon inapplicable case law and the erroneous application of this court's opinions.

SPIRE's appeal presents five flaws in the BTA Decision for this court's consideration. First, the BTA repeated the Tax Commissioner's error as it failed to distinguish or even acknowledge binding legal precedent that certain long-term leases vest lessees with fee ownership, holding the subject property "belongs to" Roni Lee, LLC not SPIRE. (*See* Proposition of Law No. 1, *infra*). The BTA compounded this error by failing to analyze whether SPIRE was a charitable institution and whether its property was exempt under R.C. 5709.121

(See Proposition of Law Nos. 2 and 4, *infra*). While the BTA correctly recited this court’s broad definition of “charity” in *Planned Parenthood Assn v. Tax Commr.*, 5 Ohio St.2d 117, 214 N.E.2d 222 (1966), it then misapplied it.

Then, even if the BTA had conducted the proper analysis and concluded SPIRE was not a charitable institution under R.C. 5709.121, it ignored extensive precedent and relied almost exclusively on an inapposite opinion regarding an exemption requested by a regional business development organization to conclude SPIRE did not use the subject property exclusively for charitable purposes under R.C. 5709.12. (See Proposition No. 3, *infra*).

The BTA also misconstrued plain statutory language and then engrafted a “quid pro quo transactions” test onto the law despite the fact neither the applicable statutes nor this court’s decisions preclude the collection of fees for services nor do they require a certain percentage of free services to establish charitable use. (See Proposition of Law No. 5, *infra*).

Finally, the BTA’s erroneous conclusion SPIRE was not engaged in charitable activities led it to misapply the “prospective use doctrine” for the unimproved acreage of the subject property (See Proposition of Law No. 6, *infra*).

Because of these five flaws, SPIRE respectfully requests the court reverse the BTA Decision as a matter of law and remand with instructions to grant charitable tax exemption for the subject property under R.C. 5709.12 and R.C. 5709.121.

STATEMENT OF FACTS

A. SPIRE’s Charitable Mission

SPIRE is an Ohio nonprofit corporation organized in 2008. Its articles of incorporation indicate it was formed exclusively for charitable purposes (Transcript of BTA Hearing (“Tr.”), p.

21; Ex. C). It is recognized as a public charity exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. (Tr. 20-22; Ex. B).

SPIRE's mission is "to unlock the full potential of the human spirit through athletics, academics and service." (Tr. 18-19; Ex. A). Its ultimate vision is "to cultivate character and produce good citizens who know how to cooperate, compete and lead." (Ex. A). SPIRE operates a one-of-a-kind multi-sport complex serving the local, regional, and national communities with various opportunities for education, sports, and other community events. (Tr. 16). SPIRE is open to "athletes at all levels, in all sports, from all backgrounds," including "high achieving athletes training to reach their peak,...high school students and active seniors, Paralympians and Special Olympians, Wounded Warriors and weekend warriors." (Ex. A). The only criterion for acceptance is "a love of sports and a desire to strengthen your mind, body and character." (*Id.*) SPIRE's facilities and services are open to everyone interested in using them, regardless of his or her ability to pay. (Tr. 25).

SPIRE's annual gross revenue does not cover—and never has covered—its annual operating costs. (Tr. 32). SPIRE relies on charitable donations from the community to sustain its operations. (Tr. 33). SPIRE fills a void left by local government by providing community facilities and services that would not otherwise exist in Ashtabula County, Ohio. (Tr. 18). Northeast Ohio's local governments and school districts, and specifically those of Ashtabula County, are in no financial position to construct and maintain such facilities and provide such services given the significant expenses involved. (*Id.*)

Through its Board of Directors, SPIRE officially adopted a charitable policy to offer its services, facilities, and programs to all individuals without regard to their ability to pay for them. (Tr. 30-31; Ex. F). Like the YMCA, SPIRE makes a special effort on behalf of those in need of

advancement and benefit by offering its services free of charge or for whatever fee a person can afford. (Tr. 30-31). The fees SPIRE does charge are comparable or below what other facilities, such as the YMCA, charge. (Tr. 32). SPIRE describes its charitable mission and advertises its charitable policy on its website and invites participants to seek financial assistance. (Tr. 19, 82).

B. The SPIRE Property

The subject property is located in Harpersfield Township, Ashtabula County, Ohio, and consists of over 160 acres of land and improvements (collectively, the “SPIRE Property”). (Tr. 22). Roni Lee, LLC, an Ohio limited liability company, is the record owner of the real property and leases it to SPIRE for \$1.00 per year pursuant to a renewable 99-year Ground Lease Agreement. (Tr. 22-23; Ex. D).

Approximately 45 acres of the SPIRE Property are improved with a large indoor, multi-sport training, education, and wellness center and acres of outdoor facilities known as the SPIRE Complex. (Tr. 23, 158; Ex. E). The evidence at the hearing established the SPIRE Complex consists of the following facilities:

1. A Field and Courts Building containing a synthetic turf field for soccer, lacrosse, football, baseball, softball, field hockey or rugby fields or small training areas; a multipurpose court surface for volleyball, basketball, tennis or futsal courts and for a variety of gymnastics and mat sports; multipurpose suites overlooking the outdoor stadium to be used as hospitality suites, team rooms, press boxes or conference rooms; and Seeds Orthopaedics/All Star Physical Therapy & Wellness (Tr. 24-26; Ex. E). The Field and Courts Building is made available to sports/rec clubs, traveling sports leagues, as well as individuals, regardless of their ability to pay. (Tr. 24-25).

2. An Outdoor Track & Field/Football/Soccer/Lacrosse Stadium containing a synthetic multisport field; polyurethane track; long jump pits, high jump apron, pole vault boxes, throw stadium; seating (bleachers, captain's chairs, press boxes, coaches boxes, luxury suites) for over 6,000; and locker rooms. (Tr. 26-27; Ex. E). The Stadium serves as the home for Geneva High School's football, soccer, and track and field programs. (Tr. 26-27).

3. An Indoor Track & Field containing a 300-meter track with two 150 meter straight-aways; high jump and long jump areas, pole vault pits, shot put circles and throw cages; synthetic turf field; locker rooms; video pitching machines and batting cages; the temporary location of SPIRE Fit; spectator capacity of over 4,000; and a 25,000 square foot glass-encased banquet, hospitality and meeting space featuring tiered dining/viewing areas, a banquet hall, private conference room, and a custom kitchen. (Tr. 27-28; Ex. E). The Indoor Track & Field likewise hosts Geneva High School's athletic programs as well as other local, regional, and national events. (Tr. 27-28).

4. An Aquatics/Performance Training/Medical Center containing an Olympic-size pool, diving area, therapeutic pools; research, rehabilitation and medical center; educational facilities; Michael Johnson Performance Training Center; SPIRE Fuel; and locker room facilities. (Tr. 28-30; Ex. E). The Aquatics Center has the only 50-meter, 10-lane pool in the area (by contrast, the Ashtabula YMCA's pool is 25 yards and 4 lanes). (Tr. 28). It is open to the community, regardless of individuals' ability to pay. (Tr. 29).

C. SPIRE's Charitable Activities

SPIRE owns and operates the SPIRE Complex with its charitable mission statement as its guidepost. As the evidence at the hearing established, the major activities that occur at the SPIRE Complex consist of the following:

1. SPIRE Fit. SPIRE offers a community fitness center with a variety of membership options and rates for adults, children, families, and seniors, as well as a “Walker’s Program” allowing participants to walk the facility for \$1 per day or \$15 per month. (Tr. 33-34). Discounted memberships are available to community residents and those unable to pay the regular rates. (*Id.*)

2. SPIRE Club/Rec. Community recreational leagues, comprised of children and adults, use the SPIRE Property to learn or enhance their athletic skills. (Tr. 34-35). Traveling club leagues in aquatics, basketball, soccer, volleyball, track and field, and football from all over the country also use the SPIRE Property to hold competitive events. (Tr. 111-113). Pricing is negotiated with each league based upon ability to pay. (*Id.*)

3. SPIRE Academy. SPIRE operates a residential academy for grades 9 through 12 and for post-graduates focused on specific training in swimming, volleyball, track and field, and basketball. (Tr. 35). For grades 9 through 12, SPIRE Academy has partnered with Andrews Osborne Academy, a college preparatory day and boarding academy located in Mentor, Ohio, where the high school students live and attend their classes. (*Id.*) SPIRE Academy offers a unique opportunity for athletically talented high-school students to develop their abilities in a way that would not be available to them at a standard high school. (Tr. 36-37). Tuition, room and board costs, as well as extended payment plans, are negotiated with each student’s family, based on their ability to pay. (Tr. 37-41; Ex. G). Because of this policy, *not one* student enrolled at SPIRE Academy pays full tuition. (Tr. 38-41; Ex. H). SPIRE even pays tuition and room and board at Andrews Osborne Academy for those students who cannot afford to pay. (Tr. 39-40).

4. Geneva Area City Schools Athletic Programs. SPIRE provides use of its facilities to the Geneva Area City Schools throughout the year for football, soccer, and a number

of other sports. (Tr. 49). Geneva High School plays its home football games at the SPIRE Stadium. (*Id.*) Under SPIRE's arrangement with Geneva Area City Schools, SPIRE provides its state-of-the-art facilities to the Geneva Schools for not a dollar more than it cost the Geneva Schools to maintain their former, run-down football field. (Tr. 49-51). Geneva's lacrosse, baseball, soccer, and swimming teams also use the SPIRE facilities, and Geneva High School holds its graduation ceremonies at SPIRE free of charge. (Tr. 51-52).

5. U.S. Olympic and Paralympic Training Site. SPIRE is a designated U.S. Olympic Committee training site for USA Track and Field, and a designated Paralympic training site for USA Wheelchair Basketball. (Tr. 53). SPIRE provides its facilities to USA Track and Field and USA Wheelchair Basketball free of charge. (Tr. 53-54).

6. Training Camps. SPIRE organizes individual and team camps for young people in the community. (Tr. 41). Discounted camp fees and multi-family member discounts are available. Camps are available to anyone regardless of his or her ability to pay. (Tr. 41-43).

7. Michael Johnson Performance. SPIRE has entered into a License and Consulting Agreement with Michael Johnson Performance, Inc., allowing SPIRE to implement the athletic performance training programs and protocols developed by the former Olympic gold-medalist. (Tr. 42-43). The Michael Johnson Performance Center at SPIRE provides community-based health and wellness programs to SPIRE Academy students, participants in Training Camps, and the public. (*Id.*)

8. SPIRE Fuel. SPIRE operates a restaurant located in the Aquatics/Performance Training/Medical Center that serves high quality, freshly prepared food and emphasizes wellness, nutrition, and educating the consumer about healthy eating choices.

(Tr. 44). It is available to SPIRE Academy/Training Camp attendees and is open to the public. (Tr. 44-45).

9. Event Hosting. SPIRE serves as the host of district, regional, state-wide and multi-state elementary, middle, and high school athletic events, as well as regional and national college and amateur sporting events. (Tr. 45-48). In regard to collegiate sports, SPIRE hosts less popular sports that do not usually generate a profit, such as Track and Field, Swimming and Diving, and Volleyball. (Tr. 47-48). SPIRE offers state-of-the-art facilities that otherwise would not be available for these collegiate athletic events in the region. (*Id.*) The parties negotiate the terms of the hosting agreement, including fees and the allocation of proceeds, but in many cases, the hosting fee is waived. (Tr. 48). Proceeds do not cover the cost of these events, and therefore SPIRE relies on charitable donations to make up the difference. (*Id.*; Tr. 33).

10. Space rental. Various nonprofit organizations, charities, schools, and universities rent portions of the SPIRE Complex, such as SPIRE's 30,000-square foot banquet facility, for events, programs, weddings, and other purposes, often for free or for a nominal fee that is below market rate. (Tr. 135-36). For example, SPIRE provides programs for members of the military and veterans, and SPIRE hosts military funerals free of charge. (Tr. 54-56). In addition, SPIRE leases 4,000 square feet of space in the SPIRE Complex to Dr. William Seeds, an orthopaedic surgeon specializing in sports medicine, and his affiliated physical therapy group, All-Star Physical Therapy & Wellness, for a nominal fee. (Tr. 57-58, 169-71).

Dr. Seeds and All-Star provide significant on-site physical therapy and training services to athletes at SPIRE without additional compensation, and the amount of the leased space constitutes less than one-half of one percent of the entire SPIRE Complex. (Tr. 57, 150-51). Dr.

Seeds also presents health and wellness seminars at the SPIRE Complex free of charge. (Tr. 128).

Future plans for other portions of the SPIRE Property include student dormitories and additional athletic facilities. (Tr. 58-60). Initial surveys have been conducted for these prospective uses, and all prospective uses will be consistent with SPIRE's charitable mission. (*Id.*)

ARGUMENT

I. PROPOSITION OF LAW NO. 1: Real property a charitable institution leases pursuant to a 99-year renewable ground lease agreement "belongs to" that charitable institution for purposes of applying R.C. 5709.12 and R.C. 5709.121.

A. This court should conduct a *de novo* review of the BTA's interpretation of the applicable statutes and legal standards.

This case involves a direct appeal under Ohio Revised Code 5717.04 from a final decision of the BTA. Pursuant to R.C. 5717.04, this court reviews the BTA Decision in order to determine whether it is "reasonable and lawful." Under this standard of review, this court ordinarily defers to the BTA's determination of factual issues "if the record contains reliable and probative support for these BTA determinations." *The Chapel v. Testa*, 129 Ohio St.3d 21, 2011-Ohio-545, 950 N.E.2d 142, ¶ 9. On the other hand, this court has stated it "will not hesitate to reverse a BTA decision that is based on an incorrect legal conclusion." *Id.* Therefore, the court's review of a "question of law is not deferential but *de novo*." *Id.* at ¶ 10.

As discussed more fully below, the BTA Decision should be reversed as a matter of law because the BTA failed to properly apply the correct legal standards on the issues presented to it. It is well-established the proper interpretation and application of statutory authority presents a question of law subject to *de novo* review. *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167, ¶ 8. Accordingly, the court should conduct *de novo* review of whether

the BTA properly applied the correct legal standards with respect to tax exemption under R.C. 5709.12 and 5709.121.

B. The BTA erred as a matter of law in its determination that the SPIRE Property does not “belong to” SPIRE for purposes of R.C. 5709.12 and R.C. 5709.121.

While SPIRE is not the owner of record, the SPIRE Property “belongs to” SPIRE for purposes of R.C. 5709.12(B) and 5709.121 by virtue of its perpetual ground lease. But the BTA erroneously concluded the lessor, Roni Lee, LLC, a for-profit limited liability company, is the owner of the SPIRE Property for purposes of R.C. 5709.12 and 5709.121. (BTA Decision, p. 3). (App. A8).

R.C. 5709.12(B) refers to “[r]eal and tangible personal property *belonging to* institutions.” (Emphasis added.) R.C. 5709.121 references “real property and tangible personal property *belonging to* a charitable or educational institution or to the state or a political subdivision.” (Emphasis added.) The BTA correctly observed that generally it is the record owner’s use of property, rather than a lessee’s use, that determines whether the property is exempt. *Northeast Ohio Psych. Inst. v. Levin*, 121 Ohio St.3d 292, 2009-Ohio-583, 903 N.E.2d 1188, ¶ 14. However, this court has held certain long-term leases, like perpetual ground leases, vest lessees with fee ownership. *Ralston Car Co. v. Ralston*, 112 Ohio St. 306, 309, 147 N.E. 513 (1925) (holding a 99-year lease renewable forever created a “permanent fee-simple estate”).

The BTA failed to even consider *Ralston* and its progeny, including *Carney v. Cleveland City School Dist. Pub. Library*, 169 Ohio St. 65, 157 N.E.2d 311 (1959). In *Carney*, the Cleveland City School District Public Library applied for exemption from taxation for a building it had purchased for library expansion. *Id.* at 65. The library did not own in fee part of the land on which the building was situated, but leased it under a 99-year lease renewable for two 99-year

terms. *Id.* at 69. This court held that laws exempting property from taxation apply to real property held under a 99-year lease, renewable for two such terms, to the same extent as real property held in fee. *Id.* at paragraph two of the syllabus.

By contrast, in *Evans Invest. Co. v. Limbach*, 51 Ohio App.3d 104, 554 N.E.2d 941 (10th Dist. 1988), the Tenth District Court of Appeals held that real property a charitable institution leased for 20 years, renewable for successive 20-year periods, did not “belong to” that institution for purposes of R.C. 5709.121. *Id.* at syllabus. According to the court, the lease could not be considered “permanent” because the term was much shorter than in *Carney*, and because the lease contained termination provisions. *Id.* at 106.

SPIRE leases the SPIRE Property from Roni Lee, LLC for \$1.00 per year pursuant to the 99-year renewable Ground Lease Agreement. (Tr. 22-23; Ex. D). Given the permanent and perpetual nature of this lease and the fact SPIRE owns the SPIRE Complex pursuant to the terms of the lease, SPIRE essentially owns the SPIRE Property in fee. Accordingly, the SPIRE Property “belongs to” SPIRE for purposes of R.C. 5709.12 and 5709.121 pursuant to *Carney*.

The BTA mischaracterized SPIRE’s argument as attempting to make a distinction between the phrases “belongs to” and “owned by.” (BTA Decision, p. 3). (App. A8). This has never been SPIRE’s position. SPIRE sees no meaningful difference between these two phrases, but simply notes that the statutes use the phrase “belongs to.” The BTA further mischaracterized SPIRE’s argument as a significant expansion of R.C. 5709.121 “beyond the legislature’s intention.” (*Id.*) This is not accurate. Rather, SPIRE presented this court’s binding legal precedent in *Carney* based in fundamental principles of real property law.

The cases the BTA cites in support of its holding are not applicable to this matter. (BTA Decision, p. 3). (App. A8). The case of *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d

178, 2010-Ohio-4904, 937 N.E.2d 547, involved a for-profit entity that leased property to a community school for profit. In *Anderson/Maltbie*, this court was applying R.C. 5709.07(A)(1), the public school house tax exemption, which does not contain similar language to R.C. 5709.12(B) or 5709.121(A). The case of *Bexley Village, Ltd. v. Limbach*, 68 Ohio App.3d 306, 588 N.E.2d 246 (10th Dist. 1990), also involved the interpretation of R.C. 5709.07. The Tenth District Court of Appeals specifically distinguished *Carney* and *Evans* as being inapplicable. *Id.* at 309.

By determining the SPIRE Property “belongs to” Roni Lee, LLC, the BTA erred as a matter of law.

II. PROPOSITION OF LAW NO. 2: An institution operated without any view to profit and exclusively for charitable purposes is a charitable institution.

The determination whether the SPIRE Property is exempt under the charitable use provisions of R.C. 5709.12 and 5709.121, begins with an initial determination whether SPIRE is a charitable or non-charitable institution under Ohio law. *Olmsted Falls Bd. of Edn. v. Tracy*, 77 Ohio St.3d 393, 396, 674 N.E.2d 690 (1997).

If SPIRE is a non-charitable institution, the SPIRE Property is exempt if SPIRE uses it exclusively for charitable purposes pursuant to R.C. 5709.12(B). *See id.* If SPIRE is a charitable institution, the SPIRE Property is exempt if SPIRE uses it exclusively for charitable purposes pursuant to R.C. 5709.12(B) *or* if SPIRE uses the SPIRE Property under the terms set forth in R.C. 5709.121. *See id.*

As demonstrated above (*See* Proposition of Law No. 1.B, *supra*), the BTA erred as a matter of law in determining Roni Lee, LLC, a non-charitable institution, was the owner of the SPIRE Property for purposes of R.C. 5709.12 and R.C. 5709.121. Therefore, the BTA refused to consider whether SPIRE is a charitable institution under R.C. 5709.121. (BTA Decision, p. 3).

(App. A8). When the law is properly applied, however, there should be no dispute SPIRE is a charitable institution under R.C. 5709.121.

A. SPIRE is operated without a view to profit and exclusively for charitable purposes.

Neither R.C. 5709.12 nor R.C. 5709.121 contains a definition of “charitable institution.” However, this court has held “[s]o long as an institution is operated without any view to profit and exclusively for a charitable purpose, it is a charitable institution.” *Herb Soc. of Am., Inc. v. Tracy*, 71 Ohio St.3d 374, 376, 643 N.E.2d 1132 (1994). This court has broadly defined “charity” as:

[T]he attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources, and without hope or expectation, if not with positive abnegation, of gain or profit by the donor or by the instrumentality of the charity. *Planned Parenthood Assn. v. Tax Commr.*, 5 Ohio St.2d 117, 214 N.E.2d 222 (1966), paragraph one of the syllabus.

In other words, charity is “that which benefits mankind and betters its condition.” *Am. Issue Publishing Co. v. Evatt*, 137 Ohio St. 264, 266, 28 N.E.2d 613 (1940). Charity “embraces and includes all which aids man and seeks to improve his condition.” *Waddell v. Young Women’s Christian Assn.*, 133 Ohio St. 601, 604-05, 15 N.E.2d 140 (1938).

SPIRE is an Ohio non-profit corporation and its articles of incorporation specifically state it was organized exclusively for charitable purposes. (Tr. 21; Ex. C). SPIRE’s Mission Statement expounds on its charitable purposes and reiterates its activities are intended to benefit the entire community. (Tr. 19; Ex. A). In its Decision, the BTA made no mention of SPIRE’s articles of incorporation or mission statement. Instead, the BTA declared without any support from record evidence that SPIRE’s actual purpose was “to create an elite athletic training facility to train professional and Olympic caliber athletes.” (BTA Decision, p. 4). (App. A9).

The BTA should not be permitted to impose an alternate purpose on an institution, especially one that so blatantly contradicts the institution's own organizing documents. For example, in *Growth Partnership for Ashtabula v. Levin*, BTA No. 2008-K-1030 (Dec. 7, 2010), *aff'd*, 11th Dist. Ashtabula No. 2011-A-0002, 2012-Ohio-37 (a decision on which the BTA heavily relies), the BTA determined a nonprofit organization did not qualify as a charitable institution because the language in its articles of incorporation indicated its primary purpose was to "facilitate development of the business community in Ashtabula County." *Id.* at 10. Similarly, in *Dialysis Clinic, Inc. v. Levin*, BTA No. 2006-V-2389 (Nov. 24, 2009), *aff'd*, 127 Ohio St.3d 215, 2010-Ohio-5071, 938 N.E.2d 329, the BTA emphasized how the taxpayer's "indigency policy" stated it was "not a charity or a gift to patients" and it retained the right to refuse services for those who had "no ability to pay." *Id.* at 15. Neither situation is applicable to SPIRE. SPIRE's organizing documents are entirely consistent with its stated charitable purposes, yet the BTA disregarded them.

SPIRE is also recognized by the Internal Revenue Service as a public charity exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. (Tr. 20-21; Ex. B). In determining SPIRE was a public charity, the Internal Revenue Service considered SPIRE's actual and anticipated activities to determine if they primarily benefit the public. Exemption from federal income taxes, just like exemption from real estate taxes, is the rare exception to the general rule, so the IRS closely examined SPIRE's application materials and conducted its own independent investigation. After doing so, the IRS determined SPIRE exclusively engaged in charitable activities benefitting the public.

The BTA disregarded this undisputed fact based on this court's language in *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, 938 N.E.2d 329. (BTA Decision, p.

4). (App. A9). SPIRE has never argued its status a public charity is determinative of its charitable use of the SPIRE Property under Ohio law. However, SPIRE's status as a public charity speaks to the nature of the institution. See *First Baptist Church of Milford, Inc. v. Wilkins*, 110 Ohio St.3d 496, 2006-Ohio-4966, 854 N.E.2d 494, ¶ 15 (“the first inquiry [under R.C. 5709.121] must be directed to the nature of the institution applying for an exemption”). (Citations omitted.) It should be a relevant factor as to whether SPIRE is a charitable institution, just like Roni Lee, LLC's status as a for-profit limited liability company was a relevant factor in the BTA's determination it was a non-charitable institution. (BTA Decision, p. 3). (App. A8).

By failing to consider whether SPIRE is a charitable institution under R.C. 5709.121, the BTA committed a reversible error of law.

B. SPIRE produced sufficient evidence to establish its charitable policy for providing services.

This court has also predicated entitlement to the charitable-use exemption on services being provided “on a nonprofit basis to those in need, without regard to race, creed, or ability to pay.” (Citations omitted.) *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, 938 N.E.2d 329, ¶ 26.

Through its Board of Directors, SPIRE has officially adopted a charitable policy to offer its services, facilities, and programs to all individuals without regard to their ability to pay for them. (Tr. 30-31; Ex. F). Like the YMCA, SPIRE makes a special effort on behalf of those in need of advancement and benefit by offering its services free of charge or for whatever fee a person can afford. (Tr. 30-31). The fees SPIRE does charge are comparable or below what other facilities, such as the YMCA, charge. (Tr. 32).

SPIRE's Chief Operating Officer, Jeffrey Orloff, testified that the written statement of charitable policy merely reflects SPIRE's actual mode of operation from day one of SPIRE's

inception. (Tr. 95). This policy is advertised on SPIRE's website, and is well-known by SPIRE's staff, who communicates it to the general public on a daily basis. (Tr. 95-97; 99-100).

The BTA ignored evidence presented at the hearing regarding SPIRE's charitable policy, finding Mr. Orloff "testified that it had no formal policy for providing services without regard to ability to pay." (BTA Decision, p. 4). (App. A9). This is an incorrect statement of fact. The record reflects Mr. Orloff testified, "regardless of the document," the charitable policy has been in place since "day one." (Tr. 95).

The BTA then inexplicably conceded SPIRE's actual written charitable policy was offered into evidence, but then disregarded it because it was not properly authenticated for evidentiary purposes. (BTA Decision, p. 4). (App. A9). But even if the BTA properly excluded SPIRE's written charitable policy from evidence, it does not follow that SPIRE has no valid charitable policy. SPIRE can find no legal authority which requires a charitable policy to be in writing in order to be valid. The BTA Decision did not contain any such statement of authority in support of its conclusion. And in fact, R.C. 5715.271, which sets forth a property owner's burden of proof, does not state a property owner can only satisfy its burden of proof through documentary evidence.

Moreover, the BTA has recognized unwritten charitable policies in other cases. For example, in *Cleveland Clinic Found. v. Wilkins*, BTA Nos. 2005-A-1726, 2006-A-99 (July 21, 2014), the BTA determined the Cleveland Clinic Foundation was a charitable institution. Although the Clinic's charitable policy was not set forth in its articles of incorporation or other specific operating documents, the BTA found the Clinic provided services charitably based on the its "articulated policies" and "actual practice." *Id.* at 6.

By refusing to recognize SPIRE's charitable policy of providing services without regard to ability to pay, the BTA committed reversible legal error.

C. SPIRE produced sufficient evidence to establish it provides services without regard to ability to pay.

The key inquiry regarding SPIRE's charitable policy is not whether it is written, but whether SPIRE's actual activities reflect a charitable policy of providing services to those who are unable to pay for them. SPIRE produced sufficient evidence demonstrating it has operated pursuant to its charitable policy since day one.

SPIRE's evidence demonstrated it offers discounts and flexible payment arrangements on a case-by-case basis, in accordance with its officially adopted policy, to ensure everyone has the opportunity to use the SPIRE Property and participate in available activities. (Tr. 24-41; Ex. H). All of the fees associated with SPIRE Club/Rec, SPIRE Fit, SPIRE Academy, event hosting, and space rental are negotiated on a case-by-case basis and are determined based on what the particular individual, organization, or family can afford. (*Id.*) Since its inception, SPIRE has regularly provided free and discounted services to local schools, training camps/clinics, individual athletes, charities, and military personnel/veterans. (*Id.*)

The BTA found that SPIRE "presented no concrete evidence" of providing services for a reduced fee, such as "a listing of users of the facility corresponding to the fee paid and the fee normally charged." (BTA Decision, p. 4). (App. A9). This is an incorrect statement of fact. With respect to SPIRE Academy, SPIRE demonstrated tuition, room and board costs, as well as extended payment plans are negotiated with each student's family, based on their ability to pay. (Tr. 37-41; Ex. G, H). In this matter, although only 30 students were enrolled in SPIRE Academy in 2013-2014, ***not one*** student paid full tuition. (Tr. 38-41; Ex. G, H). In other words, ***100 percent*** of SPIRE Academy students experienced reduced fees.

This fact was illustrated at the hearing in an exhibit containing a redacted listing of enrolled SPIRE Academy students and the amount of tuition each student actually paid – the exact type of evidence the BTA claimed SPIRE did not present at the hearing. (Ex. H). The evidence also established SPIRE has paid tuition and room and board at Andrews Osborne Academy for those students who cannot afford to pay. (Tr. 39-40). Accordingly, the BTA’s factual finding on this issue is not supported by, and is in fact, contradicted by, reliable and probative evidence of record. *HealthSouth Corp. v. Testa*, 132 Ohio St.3d 55, 2012-Ohio-1871, 969 N.E.2d 232, ¶ 11 (“if a material portion of a Board of Tax Appeals decision is not supported by any probative evidence of record, the decision is unreasonable and unlawful under R.C. 5717.04”). (Citations omitted.)

The BTA noted there was “some indication” SPIRE Academy students regularly pay reduced fees, but it disregarded this evidence because there were only 30 students enrolled for the 2013-2014 school year. (BTA Decision, p. 4). (App. A9). The BTA’s complete dismissal of SPIRE Academy’s fee reductions because of a low number of enrolled students is a misapplication of the legal standard. In *Bethesda Healthcare, Inc. v. Wilkins*, 101 Ohio St.3d 420, 2004-Ohio-1749, 806 N.E.2d 142, ¶ 38, an institution that ran a private fitness center only provided eight free memberships to 5,400 members (i.e., one-tenth of one percent of the total members). This court held that the small number of members able to use the facility without payment of membership dues did not indicate a charitable use. *Id.* at ¶ 39. Therefore, the relevant inquiry is the amount of people receiving free or discounted services as compared to the total amount of people receiving services. It is not simply the total amount of people receiving free or discounted services.

Accordingly, the BTA Decision should be reversed because the BTA's finding that SPIRE does not provide services without regard to ability to pay its not supported by reliable and probative evidence in the record. In addition, BTA applied the wrong legal standard to assess SPIRE Academy's reduced tuition.

III. PROPOSITION OF LAW NO. 3: Real property that is used exclusively for charitable purposes is exempt from taxation under R.C. 5709.12(B).

Even if SPIRE were not a charitable institution under R.C. 5709.121, the SPIRE Property is still exempt because SPIRE uses it exclusively for charitable purposes under R.C. 5709.12(B). This court has held that the phrase "exclusive use" referred to in R.C. 5709.12(B) is synonymous with "primary use." *True Christianity Evangelism v. Zaino*, 91 Ohio St.3d 117, 120, 742 N.E.2d 638 (2001). As previously stated, this court has defined "charity" as:

"[Th]e attempt in good faith, spiritually, *physically, intellectually, socially* and economically *to advance and benefit mankind in general*, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources, and *without hope or expectation, if not with positive abnegation, of gain or profit by the donor or by the instrumentality of the charity.*" (Emphasis added.) *Planned Parenthood Assn. v. Tax Commr.*, 5 Ohio St.2d 117, 214 N.E.2d 222 (1966), paragraph one of the syllabus.

As demonstrated below, SPIRE's activities at the SPIRE Property qualify as charitable under this court's definition.

A. SPIRE advances and benefits mankind intellectually.

SPIRE advances and benefits mankind *intellectually* by serving as an instructional facility for sports and wellness and by partnering with educational institutions like Andrews Osborne Academy to provide education services. This court has long-held "the dissemination of useful information to benefit mankind is, traditionally, charity." *Herb Soc. of Am., Inc. v. Tracy*, 71 Ohio St.3d 374, 376, 643 N.E.2d 1132 (1994). *See also Battelle Mem. Inst. v. Dunn*, 148

Ohio St. 53, 60, 73 N.E.2d 88 (1947) (“Generally, the dissemination of knowledge for the edification and improvement of mankind is regarded as a charitable object”).

This court has also recognized the “maintenance of a school for the benefit of the public” is charitable. *College Preparatory School for Girls v. Evatt*, 144 Ohio St. 408, 413, 59 N.E.2d 142 (1945). The operation of a private school is charitable, so long as the school “is operated to give service to the public generally, and is available to some without charge, even if a substantial amount is paid by others.” *Id.* Cogent to SPIRE’s mission, this court has long recognized education as both “mental and physical in character.” *Id.* at 414.

Despite the fact SPIRE cited and discussed these critical cases in both its Pre- and Post-Hearing Briefs, the BTA Decision is dismissive of the educational component of SPIRE’s charitable mission and provides no analysis for a reviewing court to conduct a meaningful review.

By failing to find (or even consider the argument) SPIRE exclusively engages in charitable activities by advancing and benefitting mankind intellectually, the BTA committed a reversible error of law.

B. SPIRE advances and benefits mankind physically and socially.

SPIRE’s use of the SPIRE Property advances and benefits mankind *physically* and *socially* by providing a recreation center for the general public and amateur sports leagues, by hosting local, statewide, and national athletic events, by serving as a training site for Olympic athletes, and by providing a community meeting space. This court has long held that making recreational facilities available to members of the public constitutes exclusive charitable use of property.

For example, in *Highland Park Owners, Inc. v. Tracy*, 71 Ohio St.3d 405, 407, 644 N.E.2d 284 (1994), this court held recreation facilities owned by a nonprofit corporation the public used for walking, jogging, boating, swimming, and fishing were being used exclusively for charitable purposes. Similarly, in *The Chapel v. Testa*, 129 Ohio St.3d 21, 2011-Ohio-545, 950 N.E.2d 142, ¶ 13, this court held two softball diamonds, a soccer field, and a jogging path owned by a church whose primary users were outside parties, including independent sports leagues, baseball clinics, cycling clubs, youth sports programs, day camps, and the public for walking and jogging were used exclusively for charitable purposes.

In addition, in *College Preparatory School for Girls v. Evatt*, 144 Ohio St. 408, 59 N.E.2d 142 (1945), paragraph two of the syllabus, this court held property belonging to a non-profit school used solely as an athletic field and playground for students of the school and other children within the school's vicinity was being used exclusively for charitable purposes.

There is also a long line of BTA decisions supporting the proposition that making recreational facilities available to members of the public constitutes exclusive charitable use of property. For example, in *Fair Park Swimming Pool Assn. v. Limbach*, BTA No. 84-B-26, 1987 Ohio Tax LEXIS 559 (May 13, 1987), the BTA held swimming pool, bath house, and concession stand used by the public (including pursuant to paid memberships), youth athletic teams, women's organizations, and school groups, senior citizens, and children were being used exclusively for charitable purposes.

In *Corpus Christi Athletic Assn., Inc. v. Limbach*, BTA No. 89-J-722, 1991 Ohio Tax LEXIS 1526 (Nov. 29, 1991), the BTA held a 33-acre parcel of land run by a nonprofit charitable athletic association containing baseball fields, soccer fields, a concession area, a utility

area, a shelter house, and wooded areas and used for youth sport activities such as baseball, soccer, hiking, and picnicking was being used exclusively for charitable purposes.

And in *Bethesda Healthcare, Inc. vs. Zaino*, BTA No. 00-J-1591, 2002 Ohio Tax LEXIS 1523 (Sept. 20, 2002), *aff'd*, 101 Ohio St.3d 420, 2004-Ohio-1749, 806 N.E.2d 142, the BTA held a portion of property owned by a charitable institution consisting of a running track available to the public was being used exclusively for charitable purposes.

The BTA Decision before this court also ignored its own precedent in two distinctive cases considering property being utilized for purposes very similar to SPIRE. The case of *City of Cincinnati vs. Tracy*, BTA No. 93-X-75, 1996 Ohio Tax LEXIS 817 (June 21, 1996), involved a facility containing an indoor rowing tank. The facility was used by various groups, including a rowing club comprised of students trying to qualify for the U.S. Olympics team, a community rowing program, a learn-to-row program, and a program making rowing accessible to disabled people.

The BTA recognized the owner's charitable purpose was to "edify, educate, and enlighten mankind through the sport and camaraderie of rowing." *Id.* at *24. Further, the BTA recognized the public was the beneficiary of the facility's programs based on the operator's efforts to serve "diverse needs of a public made up of both young and old, sighted and blind, disabled and Olympically-fit." *Id.* at *25. Accordingly, the BTA concluded the facility was being used exclusively for charitable purposes because it benefitted the public "intellectually" by "teaching the skills of a sport," "physically" by "sponsoring the experience of rigorous athletic endeavor," and "socially" by "organizing teams and hosting regattas of national significance." *Id.* at *26.

Similarly, the case of *Northland Community Ctr., Inc. v. Limbach*, BTA No. 90-R-1154, 1993 Ohio Tax LEXIS 641 (Apr. 23, 1993), involved a community center consisting primarily of a swimming pool. In addition to its recreational uses, the facility was used as a meeting place for civic and charitable organizations, for educational programs in swimming and water safety, and as a supervised meeting place for children that was free of drugs and alcohol. *Id.* at *12-13. The BTA concluded the property was being used exclusively for charitable purposes. *Id.* at *13.

Once again, despite the fact SPIRE cited and discussed these critical cases in both its Pre- and Post-Hearing Briefs, the BTA Decision is dismissive of the physical and social benefits to mankind component of SPIRE's charitable mission and provides no analysis for a reviewing court to conduct a meaningful review.

By failing to find (or even consider the argument) SPIRE engages exclusively in charitable activities by advancing and benefiting mankind physically and socially, the BTA committed reversible legal error.

C. SPIRE advances and benefits mankind by lessening the burdens of government.

SPIRE's use of the SPIRE Property is consistent with the public policy underlying real property tax exemption. The public policy justifying real property tax exemption for charitable institutions is that a present benefit to the general public exists from the operation of the charitable institution sufficient to justify the loss of tax revenue. *White Cross Hosp. Assn. v. Bd. of Tax Appeals*, 38 Ohio St.2d 199, 201, 311 N.E.2d 862 (1974).

The evidence at the hearing established SPIRE is addressing important and diverse community needs that governmental authorities and agencies in Ashtabula County, Ohio, would traditionally address but simply do not have the resources to provide. (Tr. 18). Without SPIRE, Ashtabula County, Ohio, would simply go without these services and their inherent benefits.

This court and the BTA have both recognized the importance of institutions that lessen the burdens of government. *See The Chapel v. Testa*, 129 Ohio St.3d 21, 2011-Ohio-545, 950 N.E.2d 142, ¶ 7 (the city's mayor testified that the city itself benefitted from the institution's development of public recreational facilities the city would otherwise have to pay for itself), and *Northland Community Ctr., Inc. v. Limbach*, BTA No. 90-R-1154, 1993 Ohio Tax LEXIS 641 (Apr. 23, 1993) (the BTA recognized that offering a supervised meeting place for young people was an attempt to cut down on juvenile delinquency that would hopefully lessen the burdens of government).

It is remarkable that unlike numerous cases filed with the Tax Commissioner, no local school board has entered an appearance in this matter urging a denial of SPIRE's application for exemption. Geneva Area City Schools would directly benefit by receiving a large portion of the real estate tax revenue from the SPIRE Property. The fact the local school board has not raised any objections should speak volumes about how SPIRE's activities benefit the Ashtabula County community.

By failing to find SPIRE exclusively engages in charitable activities by lessening the burdens of government, the BTA committed reversible legal error.

D. The BTA erred by relying on its decision in *Growth Partnership for Ashtabula v. Levin*.

A major flaw in the BTA Decision is the BTA summarily denied SPIRE's charitable exemption based on its inapposite decision in *Growth Partnership for Ashtabula v. Levin*, BTA No. 2008-K-1030 (Dec. 7, 2010), *aff'd*, 11th Dist. Ashtabula No. 2011-A-0002, 2012-Ohio-37. (BTA Decision, p. 4). (App. A9). That case involved a chamber of commerce-like nonprofit organization whose stated purpose found in its articles of incorporation was to retain jobs and create new jobs in Ashtabula County, Ohio. *Id.* at 10.

The Growth Partnership sought tax exemption for its office building. *Id.* at 2-3. The BTA determined the Growth Partnership was not a charitable institution engaged in charitable activities. *Id.* at 2. According to the BTA, although the Growth Partnership provided “tangential benefit” to the area, its activities were not charitable or educational. *Id.* at 10. Rather, the Growth Partnership’s primary purpose (apparent from its articles of incorporation) and the principal use of its property were devoted to facilitating the development of the business community in Ashtabula County. *Id.*

The BTA’s reliance on *Growth Partnership for Ashtabula* is an incorrect application of law. First, the Growth Partnership and SPIRE are completely different types of institutions whose activities are not comparable. The Growth Partnership had three paid employees and volunteer board members. *Id.* at 6. It operated from a two-story office building situated on less than an acre of land, part of which was leased to other institutions. *Id.* at 2-3. By contrast, SPIRE is a much larger institution that employs 60 to 100 people. (Tr. 64). As set forth above, the SPIRE Complex spans approximately 45 acres containing numerous athletic facilities and playing fields.

SPIRE also engages in a diverse selection of charitable activities, such as serving as a community fitness center, host of local school sports teams, a training site for Olympic and Paralympic athletes, host of local, regional, and national sporting events, and providing a residential academy for students, training camps for young people, a community meeting place, and health and wellness programs. The only characteristics the two institutions have in common are they are both non-profits and are both located in Ashtabula County, Ohio.

Second, the Growth Partnership’s articles of incorporation and activities demonstrated its primary purpose was to facilitate business development. *Id.* at 10. While it engaged in certain

community projects, its focus was clearly on economic development. *Id.* Here, SPIRE's organizational documents specifically indicate its primary purpose is to better mankind through athletics, academics, and service. They say nothing about business development. While SPIRE's facilities and services have undoubtedly brought new visitors to the area, which has likely benefitted local businesses, these are the actual "tangential" results from SPIRE's charitable activities.

Instead of recognizing SPIRE's stated charitable purpose and actual charitable activities, the BTA declared what it deems to be SPIRE's "actual" purpose. Unfortunately, this "actual" purpose originates from a narrow and inaccurate description of SPIRE Academy and SPIRE's designation as a training site for Olympic athletes, which are only two of SPIRE's activities at the SPIRE Complex. Such a constrained view is contrary to this court's directives to determine charitable use of property based on "the totality of the circumstances" considering "the overall operation being conducted." *Community Health Professionals, Inc. v. Levin*, 113 Ohio St.3d 432, 437, 2007-Ohio-2336, 866 N.E.2d 478, ¶ 22 (quoting *Bethesda Healthcare, Inc. v. Wilkins*, 101 Ohio St.3d 420, 2004-Ohio-1749, 806 N.E.2d 142, ¶¶ 35, 39). Viewing SPIRE's operation as a whole, as required by law, clearly demonstrates SPIRE is a charitable institution exclusively engaged in charitable activities.

By relying on its inapplicable decision in *Growth Partnership for Ashtabula v. Levin* instead of this court's and the BTA's own factually similar decisions, the BTA committed reversible legal error.

IV. PROPOSITION OF LAW NO. 4: A charitable institution's real property is exempt from taxation under R.C. 5709.121(A)(2) if it is made available under the direction or control of the charitable institution for use in furtherance of or incidental to the charitable institution's charitable, educational or public purposes and not with a view to profit.

A. The BTA erred as a matter of law by failing to apply the elements of R.C. 5709.121(A).

As previously stated (*See* Proposition of Law No. 3, *supra*), if SPIRE is a charitable institution, its property is exempt if it uses the SPIRE Property exclusively for charitable purposes pursuant to R.C. 5709.12(B) *or* if it uses the SPIRE Property consistent with the requirements set forth in R.C. 5709.121(A)(1) or (2). *See Olmsted Falls Bd. of Edn. v. Tracy*, 77 Ohio St.3d 393, 396, 674 N.E.2d 690 (1997). In addition to being exempt under R.C. 5709.12(B), the SPIRE Property is also exempt because it is being used under the terms set forth in R.C. 5709.121(A)(2).

R.C. 5709.121 provides, in relevant part, as follows:

(A) Real property and tangible personal 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: (1) It is used by such institution, . . . or by one or more other such institutions, . . . under a lease, sublease, or other contractual arrangement: * * *(b) For other charitable, educational, or public purposes [or] (2) It is made available under the direction or control of such institution . . . for use in furtherance of or incidental to its charitable, educational, or public purposes and not with the view to profit.

As demonstrated above, the BTA erred by failing to analyze whether SPIRE was a charitable institution. As a result of this error, the BTA only addressed whether the SPIRE Property was exempt under R.C. 5709.12(B). However, as further demonstrated above, SPIRE is a charitable institution. Therefore, the BTA should have also addressed whether the SPIRE Property was exempt under R.C. 5709.121(A)(1) or (2). By failing to do so, the BTA committed reversible legal error.

B. SPIRE produced sufficient evidence to establish it makes its real property available under its direction and control for use in furtherance of or incidental to its charitable, educational and public purposes and not with a view to profit under R.C. 5709.121(A)(2).

After a proper application of R.C. 5709.121(A)(2), this court should conclude there is more than sufficient evidence in the record to establish SPIRE is legally entitled to charitable tax exemption under the three-part test set forth in this statute.

1. SPIRE makes the SPIRE Property available under its direction and control.

First, the SPIRE Property is owned by SPIRE by virtue of the Ground Lease Agreement with Roni Lee, LLC. Further, SPIRE operates the SPIRE Complex by providing various facilities for use by third parties under agreed terms. (Tr. 26-58). Accordingly, there can be no dispute the SPIRE Property is made available under SPIRE’s “direction and control.”

2. The SPIRE Property is being used in furtherance of or incidental to SPIRE’s charitable, educational, and public purposes.

Second, the SPIRE Property is being used “in furtherance of or incidental to” SPIRE’s charitable, educational, and public purposes. In determining whether property is used “in furtherance of or incidental to” an institution’s charitable purpose, the focus is on “the relationship between the actual use of the property and the purpose of the institution.” *Community Health Professionals, Inc. v. Levin*, 113 Ohio St.3d 432, 2007-Ohio-2336, 866 N.E.2d 478, ¶ 21.

This element is satisfied if there is a functional relationship (even if only “incidental”) between the use of the property and the charitable purpose of the institution. In essence, the use of the property must not be “functionally removed” from the institution’s charitable purpose. *See Community Health Professionals* at ¶ 21 (holding property was entitled to charitable tax exemption under R.C. 5709.121(A)(2) because the evidence demonstrated the use of the property was not “functionally removed” from appellant’s charitable purpose) (distinguishing *Ohio Masonic Home v. Bd. of Tax Appeals*, 52 Ohio St.2d 127, 130, 370 N.E.2d 465 (1977) (land used

as a farm in order to raise funds for nursing home was not exempt because farming was “functionally removed from appellants’ charitable purpose”).

SPIRE Fit, SPIRE Club/Rec, SPIRE Academy (including the Michael Johnson Performance and SPIRE Fuel), training camps, serving as an Olympic training site, and the hosting of athletic events are charitable activities, so SPIRE is making these portions of the SPIRE Property available in furtherance of its charitable activities under R.C. 5709.121(A)(2) (*See* Proposition of Law No. 3, *supra*).

SPIRE’s rental of space to third parties, such as the lease to Dr. Seeds and All Star Physical Therapy & Wellness, or the rent of SPIRE’s banquet facility, is at the very least incidental to SPIRE’s charitable purposes under R.C. 5709.121(A)(2).

This court has consistently recognized a charitable institution’s use of property to generate income as being in furtherance of or incidental to a charitable purpose. *See, e.g., Girl Scouts-Great Trail Council v. Levin*, 113 Ohio St.3d 24, 2007-Ohio-972, 862 N.E.2d 493 (finding exempt a store that existed to accommodate the Girl Scouts, whose prices charged covered the cost of operation, and whose merchandise sold was not marketed to compete with commercial enterprises); *Bowers v. Akron City Hosp.*, 16 Ohio St.2d 94, 243 N.E.2d 95 (1968) (holding the generation of revenue to operate a parking lot did not defeat exemption because the parking lot was essential and an integral part of a hospital’s function and not property used mainly for income purposes); and *Community Health Professionals, supra* (holding an institution’s receipt of rent commensurate with the costs of utilities and depreciation did not undermine its exempt status when the property was being used in furtherance of a charitable purpose).

SPIRE's lease of a small portion of space in the SPIRE Complex to Dr. Seeds and All-Star Physical Therapy & Wellness for a nominal fee is also consistent with SPIRE's charitable use of the SPIRE Property. Dr. Seeds and All-Star provide significant on-site physical therapy and training services to athletes at SPIRE *without compensation*. (Tr. 57-58, 128, 170-71). In addition, any rental activities associated with Dr. Seeds/All-Star constitute a small portion of SPIRE's total activities and take up a fraction of space available at the SPIRE Complex. (*Id.*) The rent charged is below market rates, and SPIRE uses any income generated to help defray the significant costs of the charitable activities conducted at the SPIRE Complex. (Tr. 32-33).

3. The SPIRE Property is operated without a view to profit.

Finally, the evidence established the SPIRE Property is not made available with a view to profit. Although SPIRE often charges fees for the use of its facilities, the fact an institution charges fees does not automatically negate the charitable nature of the institution or the property's use. As this court has held, "that one or more persons receiving the benefits of a charitable institution have the means, in whole or in part, to purchase those benefits in the market place or that some consideration is exacted from them on receipt of the benefits does not detract from the charitable character of the institution." *Bethesda Healthcare, Inc. v. Wilkins*, 101 Ohio St.3d 420, 2004-Ohio-1749, 806 N.E.2d 142, ¶ 34 (quoting *Planned Parenthood Assn. v. Tax Commr.*, 5 Ohio St.2d 177, 214 N.E.2d 222 (1966), paragraph three of the syllabus). *See also, College Preparatory School for Girls v. Evatt*, 144 Ohio St. 408, 413, 59 N.E.2d 142 (1945) ("the fact that tuition in a substantial amount is paid by others does not destroy the charitable character"). This court has said so long as an educational institution, such as SPIRE Academy, is "operated to give service to the public generally, and is available to some without charge, even if a substantial amount is paid by others," it is operated charitably under Ohio law. *Id.*

This court and the BTA have consistently approved of charitable institutions charging fees, including membership fees, to cover their operating costs and to fund their charitable activities. *See Corpus Christi Athletic Assn., Inc. v. Limbach*, BTA No. 89-J-722, 1991 Ohio Tax LEXIS 1526 (Nov. 29, 1991) (finding exempt a 33-acre parcel of land used for sports activities where membership fees were charged and all monies from concession were used for the programs and expenses); *City of Cincinnati vs. Tracy*, BTA No. 93-X-75, 1996 Ohio Tax LEXIS 817 (June 21, 1996) (finding exempt a facility containing an indoor rowing center and a parking lot where membership fees were charged to defray equipment costs); *Fair Park Swimming Pool Assn. v. Limbach*, BTA No. 84-B-261987, Ohio Tax LEXIS 559 (May 13, 1987) (finding exempt a community pool in which fees were charged to defray costs); *Northland Community Ctr., Inc. v. Limbach*, BTA No. 90-R-1154, 1993 Ohio Tax LEXIS 641 (Apr. 23, 1993) (finding exempt a community pool that charged membership fees to cover operating expenses). Instead, the controlling issue is the *use of the property* rather than the fact some revenues are collected and received. (Emphasis added.) *Bowers v. Akron City Hosp.*, 16 Ohio St.2d 94, 96, 243 N.E.2d 95 (1968) (quoting *Vick v. Cleveland Mem. Med. Found.*, 2 Ohio St.2d 30, 206 N.E.2d 2 (1965)).

Like the YMCA, SPIRE generally charges nominal fees for the use of the Property, and in many cases charges no fee at all. (Tr. 32-33). The fees SPIRE does charge are significantly low compared to the Property's operating costs. (*Id.*) Indeed, SPIRE's revenues do not come anywhere close to covering SPIRE's cost, so SPIRE relies on charitable donations to make up the difference. (Tr. 32).

While full tuition for SPIRE Academy is not inexpensive, none of the SPIRE Academy students are paying full tuition, and some students have received education free of charge. (Tr. 39-40).

Because SPIRE is a nonprofit corporation, none of its revenues are distributed as profit or for any wrongful uses. (Tr. 20). There has been no allegation any individuals made a profit from any of the revenues SPIRE has generated. *See Community Health Professionals, Inc. v. Levin*, 113 Ohio St.3d 432, Ohio-2007-2336, 866 N.E.2d 478, ¶ 6 (“while some financial surplus exists, no individuals made a profit as a result of the business activities”). *See also Galvin v. Masonic Toledo Trust*, 34 Ohio St.2d 157, 157, 296 N.E.2d 542 (1973) (“appellee is not operating the facility for profit, and any excess of income over expenses is and will be used for maintenance and improvement of the facility”). Instead, SPIRE’s revenues are used to offset the costs of operating the SPIRE Property and to fund SPIRE’s numerous charitable activities. (Tr. 20). This court and the BTA have deemed such uses of funds to be consistent with a charitable use of property.

By failing to determine the SPIRE Property was exempt under R.C. 5709.121(A)(2), the BTA committed reversible legal error.

V. PROPOSITION OF LAW NO. 5: R.C 5709.12 and R.C. 5709.121 do not preclude the collection of fees for services nor do they require a certain percentage of free or discounted services.

The BTA has engrafted a new metric onto the exemption statutes - the existence of “quid pro quo transactions.” (BTA Decision, p. 4). (App. A9). In essence, the BTA held the only activities that qualify as “charitable” under Ohio law are providing goods and services entirely free of charge or at discounted rates. However, the phrase “quid pro quo transactions” appears nowhere in the statutory language of R.C. 5709.12 and R.C. 5709.121 or in this court’s

application of the statutes.

Rather, this court recognized long ago the definition of “charity” is broader than aid to the poor. *Gerke v. Purcell*, 25 Ohio St. 229, paragraph four of the syllabus (1874) (“A charity, in a legal sense, includes not only gifts for the benefit of the poor, but endowments for the advancement of learning, or institutions for the encouragement of science and art, without any particular reference to the poor”).

R.C. 5709.12(B) does not require an institution to “show a particular percentage” of unreimbursed service to qualify for charitable use of property. *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, 938 N.E.2d 329, ¶ 38. Instead, so long as the institution “proves its commitment to providing” services “on a nondiscriminatory basis,” without regard to the ability to pay, “a threshold amount of unreimbursed [services] is not required.” *Id.* at ¶¶ 38-40.

R.C. 5709.121 also does not mandate free services to qualify for charitable use of property. The question of “[w]hether an institution renders sufficient services to persons who are unable to afford them” relates to whether an institution is a “charitable institution,” not whether it “use[s] the property in furtherance of or incidentally to its charitable purposes” under R.C. 5709.121(A)(2). *Community Health Professionals, supra*, at ¶ 22. Since the BTA refused to consider whether SPIRE was a charitable institution and therefore did not apply R.C. 5709.121, the BTA’s reference to “quid pro quo transactions” is entirely misplaced.

As a practical matter, one would be hard pressed to identify a charitable institution that could operate under the BTA’s proposed legal standard. Public charitable institutions that actively offer services (as opposed to private foundations that only make charitable gifts) must necessarily purchase goods and services from third parties. Accordingly, charitable institutions

must necessarily charge many of its participants for its goods and services. Otherwise, there is no possible way for the institution to exist.

As demonstrated above (*See* Proposition of Law No. 2, *supra*), SPIRE operates according to a charitable policy of providing services without regard to ability to pay. Therefore, it was reversible legal error for the BTA to reject SPIRE's charitable use of the SPIRE Property on the basis of a BTA created standard-"quid pro quo transactions."

VI. PROPOSITION OF LAW NO. 6: Engaging in extensive planning to develop real property for activities consistent with a charitable institution's charitable purposes satisfies this court's "prospective use" standard.

The SPIRE Property consists of approximately 160 acres, approximately 45 of which are currently approved with the SPIRE Complex. (Tr. 158). SPIRE leases the entire SPIRE Property under the Ground Lease Agreement. The final holding in the BTA Decision was SPIRE was not engaged in charitable activities with regard to the SPIRE Complex, so therefore SPIRE could not meet this court's "prospective use doctrine" with regard to the approximately 115 unimproved acres. (BTA Decision, p. 4). (App. A9). Since, as demonstrated above (*See* Proposition of Law Nos. 2, 3, and 4), SPIRE is a charitable institution that engages exclusively in charitable activities under R.C. 5709.12(B) and R.C. 5709.121(A)(2), the BTA committed reversible legal error by failing to apply the "prospective use doctrine."

When the "prospective use standard" is properly applied to the evidence in the record, the unimproved acreage of the SPIRE Property should also be exempt from taxation. This court recognized in *Holy Trinity Protestant Episcopal Church of Kenwood v. Bowers*, 172 Ohio St. 103, 107, 173 N.E.2d 682 (1961), the dilemma a nongovernmental charitable institution faces in real property ownership:

Necessarily, under ordinary circumstances, a period of time must elapse between the time of acquisition of the land and the actual construction and occupancy of

the building. Plans must be prepared, surveys made and, perhaps most important of all, funds raised, all of which, especially as to a nongovernmental entity which does not have access to tax revenues, must necessarily take time. To tax the property during such period prior to actual construction would be to subvert the purpose of the tax exemption.

Accordingly, this court determined “mere ownership, standing alone, is not sufficient to create a right to tax exemption.” *Id.* Rather, ownership must accompany “the purpose, supported by tangible evidence, that the property will be devoted to an actual physical use for the public benefit.” *Id.* This “tangible evidence” includes “[e]vidence that surveys have been made and plans drawn or that active fund-raising campaigns are being carried on.” *Id.*

The evidence in the record indicates SPIRE has engaged in extensive planning to develop the unimproved acreage of the SPIRE Property for activities relating to its charitable purposes. (Tr. 58-60). For example, SPIRE’s website contains an artist’s rendering of the “future” SPIRE Complex, which includes student dormitories, a student union and an academic wing for SPIRE Academy, a research and development center, and a hotel and conference center. (Ex. E).

Mr. Orloff testified SPIRE plans to develop the remaining acreage of the Property in a manner consistent with SPIRE’s charitable purpose. Specifically, SPIRE intends to build dormitories to serve as living quarters for SPIRE Academy student athletes and construct additional athletic facilities, such as indoor and outdoor sports fields. (Tr. 58-59, 90-91). SPIRE has prepared surveys and drawings of its future plans for these facilities and fundraising discussions are ongoing. (Tr. 59, 200; Exhibit E).

The evidence established SPIRE intends to use the remainder of the SPIRE Property as soon as possible for activities similar to and in conjunction with those being conducted at the SPIRE Complex – activities which Ohio law recognizes as charitable. By failing to apply the “prospective use standard,” the BTA committed reversible legal error.

CONCLUSION

For the foregoing reasons, the court should reverse the Board of Tax Appeals' Decision affirming the Tax Commissioner's denial of a tax exemption for the SPIRE Property and remand with instructions to grant a charitable tax exemption to the SPIRE Property under R.C. 5709.12 and 5709.121.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Appellant's Merit Brief was served via regular first-class mail, postage prepaid, on April 30, 2015, to Mike DeWine, Ohio Attorney General, David D. Ebersole, Assistant Attorney General, 30 East Broad Street, 25th Floor, Columbus, OH 43215-3428, Attorneys for Appellee Joseph W. Testa, Tax Commissioner of Ohio.

/s Ryan M. Ellis

Ryan M. Ellis

APPENDIX

ORIGINAL

IN THE SUPREME COURT OF OHIO

Geneva Area Recreational,
Educational and Athletic Trust

Appellant,

v.

Joseph W. Testa, Tax Commissioner

Appellee.

Case No. 14-1778

Appeal from the Ohio Board of Tax Appeals

BTA Case No. 2012-A-841

NOTICE OF APPEAL OF APPELLANT GENEVA AREA RECREATIONAL,
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SUPREME COURT OF OHIO

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IN THE SUPREME COURT OF OHIO

Geneva Area Recreational, Educational and Athletic Trust)	Case No.
)	
Appellant,)	Appeal from the Ohio Board of Tax Appeals
)	
)	BTA Case No. 2012-A-841
)	
v.)	
)	
Joseph W. Testa, Tax Commissioner)	
)	
Appellee.)	

**NOTICE OF APPEAL OF APPELLANT GENEVA AREA RECREATIONAL,
EDUCATIONAL AND ATHLETIC TRUST**

Appellant, Geneva Area Recreational, Educational and Athletic Trust, doing business as SPIRE Institute (hereinafter, "SPIRE"), hereby gives notice of its appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals (hereinafter, the "BTA") entered on September 16, 2014, in Case No. 2012-A-841. A true copy of the BTA's Decision and Order is attached hereto as Exhibit A and is incorporated herein by reference.

SPIRE complains of the following errors in the unreasonable and unlawful Decision and Order of the BTA:

ASSIGNMENT OF ERROR NO. 1:

The BTA erred as a matter of law in its determination that the subject property does not "belong to" SPIRE under R.C. 5709.121 inasmuch as the property is leased to SPIRE pursuant to a 99-year renewable Ground Lease Agreement.

ASSIGNMENT OF ERROR NO. 2:

The BTA erred as a matter of law and fact in its determination that SPIRE is not a "charitable institution" under R.C. 5709.121.

ASSIGNMENT OF ERROR NO. 3:

The BTA erred as a matter of law as it failed to consider whether SPIRE uses the subject property for charitable, educational or public purposes under R.C. 5709.121(A)(1)(b) or whether SPIRE makes the subject property available under its direction or control in further of or incidental to its charitable, educational, or public purpose and not with a view to profit under R.C. 5709.121(A)(2).

ASSIGNMENT OF ERROR NO. 4:

The BTA erred as a matter of law and fact in its determination that SPIRE does not use the subject property exclusively for charitable purposes under R.C. 5709.12(B).

ASSIGNMENT OF ERROR NO. 5:

The BTA abused its discretion in determining that SPIRE's witness could not authenticate SPIRE's written charitable policy and in finding it to be unreliable hearsay thus according it no evidentiary weight.

ASSIGNMENT OF ERROR NO. 6:

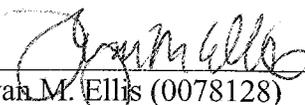
The BTA erred as a matter of law and fact in determining SPIRE did not satisfy its burden with regard to the "prospective use doctrine" for the unimproved acreage of the subject property.

ASSIGNMENT OF ERROR NO. 7:

There is insufficient, probative evidence in the record to support the BTA's basic factual findings and factual conclusions derived from those factual findings; thus the BTA's decision is unreasonable and unlawful.

WHEREFORE, SPIRE respectfully requests that this honorable court reverse the BTA's Decision and Order and find the subject property to be exempt from real property taxation.

Respectfully submitted,



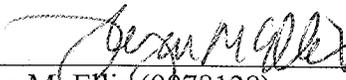
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PROOF OF SERVICE UPON OHIO BOARD OF TAX APPEALS

I hereby certify that a copy of the foregoing Notice of Appeal was filed with the Ohio Board of Tax Appeals, State Office Tower, 30 East Board Street, 24th floor, Columbus, OH 43215, as evidenced by the date stamp set forth hereon.

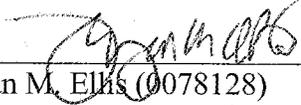


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was mailed by certified mail, return receipt requested, on October 14, 2014, to Mike DeWine, Ohio Attorney General, David D. Ebersole, Assistant Attorney General, 30 East Broad Street, 25th Floor, Columbus, OH 43215-3428, Attorneys for Appellee Joseph W. Testa, Tax Commissioner of Ohio.



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OHIO BOARD OF TAX APPEALS

GENEVA AREA RECREATIONAL,
EDUCATIONAL, AND ATHLETIC TRUST, (et.)
al.),)
Appellant(s),)
vs.)
JOSEPH W. TESTA, TAX COMMISSIONER OF)
OHIO, (et. al.),)
Appellee(s).)

CASE NO(S). 2012-841

(EXEMPTION)

DECISION AND ORDER

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Entered Tuesday, September 16, 2014

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

Appellant appeals a final determination of the Tax Commissioner in which he denied exemption from real property taxation for the subject property, i.e., parcel numbers 22-007-00-038-00 and 22-002-00-006-97, located in Ashtabula County, Ohio, for tax year 2010. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified by the commissioner pursuant to R.C. 5717.02, the record of the hearing before this board, and the parties' briefs.

Appellant ("GaREAT" dba "SPIRE") occupies the subject property pursuant to a 99-year ground lease agreement with the owner, Roni Lee, LLC. The property consists of approximately 163 acres, 45 of which are improved with 750,000 square feet of state-of-the-art indoor and outdoor athletic training facilities known as the "SPIRE Complex." The complex includes fields for soccer, lacrosse, football, baseball, softball, field hockey, and rugby; a multipurpose court surface for volleyball, basketball, tennis, futsal, or gymnastics, an outdoor track and field, football, soccer, and lacrosse stadium; an indoor track and field; an aquatics center containing an Olympic-size pool, therapeutic pool, and cafeteria (named "SPIRE Fuel"); a

community fitness center; and a 30,000-square-foot banquet facility. In its brief on appeal, appellant describes the following major activities that take place on the property: a community fitness center, community recreational leagues and traveling club leagues' competitive events, SPIRE Academy – a residential academy that combines educational instruction through Andrews Osborne Academy and athletic training, Geneva City Schools athletic events and training, U.S. Olympic and Paralympic training site, training camps for community youth, athletic and wellness training programs through the Michael Johnson Performance Center, a public cafeteria (SPIRE Fuel), athletic event hosting, banquet space rental, and lease of 4,000 square feet to All-Star Physical Therapy & Wellness.

SPIRE applied for exemption from real property taxation pursuant to R.C. 5709.12 and R.C. 5709.121, which generally provide for exemption of property used exclusively for charitable purposes. In his final determination, the commissioner found that the subject property was not used exclusively for charitable purposes, but, instead, was used for leasing purposes, to develop the property as an elite sports training facility. Specifically, he found no evidence of charitable activity by GaREAT/SPIRE:

"Certainly, the applicant is doing things that benefit the surrounding community, but this benefit is basically the same as any other large business that might be developed in the community. The applicant's primary goal is to develop an elite sports training facility to develop Olympic and professional caliber athletes. The facilities primarily benefit elite athletes locally and from beyond the local region, and the facilities incidentally benefit the local community by generating business activity and by providing recreational activity that can be accessed for a fee. Further, the operation of the GaREAT complex, though by a non-profit entity, is based on a for-profit business model, not a charitable model. The programs and usages of the premises are based on significant user fees and charges that are, in turn, based on market rates. Further, the applicant acknowledges that it neither has, nor plans to have, any charitable reduced fees or an income-based sliding scale for the use of the facilities."

Further, the commissioner found that appellant's status as a federal tax-exempt entity was not dispositive, per the Supreme Court's statement in *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, at ¶25, that it has previously rejected the substitution of more lenient federal standards for Ohio law on charitable use. Finally, the commissioner found insufficient evidence of plans for charitable use of the remaining acreage, i.e., approximately 118 acres, that would entitle it to exemption under the "prospective use doctrine."

Appellant thereafter appealed to this board, specifying as error the commissioner's findings that GaREAT is not a charitable institution and that the property is used exclusively for charitable purposes under R.C. 5709.12 and/or R.C. 5709.121. Appellant also appears to argue that GaREAT/SPIRE should be considered the owner for purposes of R.C. 5709.121, rather than the titled owner, Roni Lee, LLC. At this board's hearing, appellant presented the testimony of Jeffrey K. Orloff, Chief Operating Officer of SPIRE, who testified that appellant provides reduced or free services to many of those who use the subject facility, though he was unclear about when such a policy was put into writing. Counsel for the commissioner presented financial records for GaREAT indicating it generated significant profits throughout 2008, 2009, 2010, and 2011.

In our review of this matter, we are mindful that 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 138. 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.

Because this matter involves the exemption of real property, we are also mindful that the rule in Ohio is

that all real property is subject to taxation. R.C. 5709.01. Exemption from taxation is the exception to the rule. *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186. The burden of establishing that real property should be exempt is on the taxpayer. Exemption statutes must be strictly construed. *Am. Soc. for Metals v. Limbach* (1991), 59 Ohio St.3d 38; *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432; *Willys-Overland Motors, Inc. v. Evatt* (1943), 141 Ohio St. 402. However, such construction must also be reasonable. *In re Estate of Morgan v. Bowers* (1962), 173 Ohio St. 89.

R.C. 5709.12(B) provides that "[r]eal and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation." As the Supreme Court recently explained in *Cincinnati Community Kollal v. Testa*, 135 Ohio St.3d 219, 2013-Ohio-396, "[p]ursuant to R.C. 5709.12(B), any institution, charitable or noncharitable, may qualify for a tax exemption if it is making exclusive charitable use of its property. But if the property belongs to a charitable or educational institution, R.C. 5709.121 defines what constitutes exclusive use of property in order to be exempt from taxation." *Id.* at ¶23. R.C. 5709.121 states, in pertinent part:

"(A) Real property *** belonging to a charitable or educational institution *** shall be considered as used exclusively for charitable or public purposes by such institution *** if ***:

"(1) It is used by such institution, the state, or political subdivision, or by one or more other such institutions, the state or political subdivisions under a lease, sublease, or other contractual arrangement:

"***

"(b) For other charitable, educational, or public purposes.

"(2) It is made available under the direction and control of such institution, the state, or political subdivision for use in furtherance of or incidental to its charitable, educational, or public purposes and not with a view to profit."

Initially, we note appellant's argument that Roni Lee, LLC need not be found to be a "charitable institution" for purposes of exemption under R.C. 5709.121. Rather, appellant argues, this board should only look to whether GaREAT/SPIRE is a charitable institution, as the language of R.C. 5709.121 requires that property "belong to" a charitable institution – not "owned by" a charitable institution. Upon review, we reject appellant's argument, as it significantly expands the reach of R.C. 5709.121 beyond the legislature's intention. As the court noted in *Dialysis Clinic, supra*, "R.C. 5709.121 was enacted to address a restriction on the availability of exemption under R.C. 5709.12(B). Historically, the exemption for charitable use had not been permitted when the *owner* had leased the property to another, even if that lessee was using the property for charitable purposes." *Id.* at ¶23 (emphasis added). The court further stated that "[u]nder R.C. 5709.121, when the *owner* qualifies as a charitable institution, property used exclusively for charitable purposes is exempt if the property is (i) leased to another charitable institution and used for charitable purposes, R.C. 5709.121(A)(1)(b), or (ii) made available under the control of the owner for use in furtherance of the owner's charitable purposes, R.C. 5709.121(A)(2)." *Id.* at ¶24 (emphasis added). Cf. R.C. 5715.27 (giving a lessee standing to file an application for exemption); *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904 (distinguishing "belonging to" from "connected with" for purposes of R.C. 5709.07); *Bexley Village, Ltd. v. Limbach*, 68 Ohio App.3d 306 (10th Dist.1990).

It is clear from the record that Roni Lee, LLC is not a charitable institution. The only evidence of its activities indicates that it solely leases the subject property to appellant. We therefore must determine whether the property is used by appellant exclusively for charitable purposes under R.C. 5709.12.

The Supreme Court has broadly defined "charity" in *Planned Parenthood Assn. v. Tax Commr.* (1966), 5 Ohio St.2d 117, as follows:

"In the absence of a legislative definition, 'charity,' in the legal sense, is the attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources, and without hope or expectation, if not with positive abnegation, or gain or profit by the donor or by the instrumentality of the charity."

However, this board has recognized that the above definition is not all-inclusive. In *Growth Partnership for Ashtabula v. Levin* (Dec. 7, 2010), BTA No. 2008-K-1030, unreported, affirmed by 11th Dist., 2012-Ohio-37, this board stated:

"Undeniably, appellant has demonstrated its worthwhile purpose and considerable value to the community it serves. However, this alone does not qualify appellant as a charitable institution or its activities as charitable or educational in nature, as any number of organizations may provide a communal benefit without qualifying themselves as charitable. Apparent from its articles of incorporation, appellant's primary purpose, and the principal use to which the subject property is devoted, is to facilitate the development of the business community within Ashtabula County. While there is an undeniable tangential benefit to the area's general citizenry, reflected by the various community projects which have been led or participated in by appellant, the record demonstrates appellant's focus remains upon attracting new, and expanding existing, business in the county." *Id.* at 10. (Footnote omitted.)

Our review of the record in this matter leads us to the same conclusion as that reached by the commissioner in his final determination – that appellant's main goal is to create an elite athletic training facility to train professional and Olympic caliber athletes. As counsel for the commissioner notes in his brief, the majority of uses of the facilities are pursuant to quid pro quo transactions. Though appellant argues that many uses are provided for a reduced fee, it presented no concrete evidence of such, i.e., a listing of users of the facility corresponding to the fee paid and the fee normally charged. There was some indication that reduced fees are regularly provided to those students participating in SPIRE Academy; however, such use is limited, as the Academy only included 30 students for the 2013-2014 school year. Moreover, appellant's witness testified that it had no formal policy for providing services without regard to the ability to pay. Appellant did provide a copy of appellant's charitable policy; however, the witness could not authenticate the document, and we find it to be unreliable hearsay.

We find the facts of this matter analogous to those of *Growth Partnership for Ashtabula*, *supra*. While appellant certainly appears to provide a benefit to its community, i.e., by providing low-cost facilities for the area schools' sports teams, such benefit is tangential to its primary purpose of establishing itself as an elite athletic training facility. Appellant argues that its status as a federal 501(c)(3) tax exempt entity is "relevant, useful, and persuasive." Appellant's Initial Brief at 17. However, the Supreme Court has made very clear in *Dialysis Clinic*, *supra*, that such an argument "would conflate Ohio's property-tax exemption with standards under federal law for tax-exempt charities. We have already rejected that contention, stating that 'tying charitable use so tightly to Congress's policy goals is wrong because Congress does not define the scope of charitable use under Ohio law.' *NBC-USA Hous., Inc.-Five v. Levin*, 125 Ohio St.3d 392, 2010-Ohio-1553, ***, ¶20." *Id.* at ¶25.

For the same reasons, we further find that appellant has not satisfied its burden with regard to the "prospective use doctrine" for the unimproved acreage. See, e.g., *Episcopal School of Cincinnati v. Levin*, 117 Ohio St.3d 412, 2008-Ohio-939; *Trinity Fellowship Church, Inc. v. Levin* (June 23, 2009), BTA No. 2007-H-566, unreported.

Based upon the foregoing, we find that appellant failed to satisfy its burden on appeal. Accordingly, we find that the final determination of the Tax Commissioner must be, and hereby is, affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Johrendt		
Mr. Harbarger		

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



A.J. Groeber, Board Secretary



FINAL DETERMINATION

Date: JAN 23 2012

Geneva Area Recreational, Educational and Athletic Trust
c/o Craig Parker, Secretary
P.O. Box 316
Geneva, Ohio 44041

Re: DTE No.: SE 1376
Auditor's No.: 1694
County: Ashtabula
School District: Geneva Area CSD
Parcel Numbers: 22-007-00-038-00
22-002-00-006-97

This is the final determination of the Tax Commissioner on an application for exemption of real property from taxation filed on April 30, 2010. The applicant seeks exemption of real property from taxation for tax year 2010 under R.C. 5709.12 and R.C. 5709.121.

I. Factual Background

The applicant, Geneva Area Recreational, Educational and Athletic Trust (hereinafter referred to as "GaREAT" or "applicant"), a nonprofit Ohio corporation organized in 2008, is requesting exemption on the above referenced parcels, totaling 163.09 acres. The applicant states that exempt use began on April 1, 2009. The applicant makes note of its IRS recognition under Section 501(c)(3) of the Internal Revenue Code as a federal-tax-exempt entity in support of its application.

The subject property is located next to Interstate 90 at the Geneva, Ohio exit. The location is equidistant from both Cleveland, Ohio and Erie, Pennsylvania, being approximately 50 miles from each on I-90.

The applicant entered into a ninety-nine year ground lease for the subject property on March 31, 2009, from Roni Lee, LLC, an Ohio for-profit limited liability company. The stated rent payment for the premises is \$1.00 per year. The applicant states that exempt activity commenced on April 1, 2009. One of the three initial directors of GaREAT, Ronald Clutter is the primary owner/member and the managing member of Roni Lee, LLC, and his wife, Tracy R. Clutter, is the minority owner/member of the remainder of Roni Lee, LLC. Ronald Clutter is also the chief executive officer for GaREAT.

GaREAT also operates under the names "Spire Institute" and "Spire Academy". "Spire" appears to be the primary name used in promotional materials for the programs and facility usage.

Currently, the evidence indicates that approximately forty acres are being actively developed with sports facilities and their ancillary improvements, such as parking. Future plans include development of a commercial village, hotels and sports academy facilities on the remaining property.

The first building on the complex is a 215,000 square foot (the equivalent of about 5 acres under roof) field and courts building designed to hold up to 8,000 fans and athletes. It includes a full-size synthetic turf soccer or lacrosse field on one side and a multi-purpose court area that can be configured into 12 volleyball courts, 6 basketball courts or 9 tennis courts, as well as other gymnasium uses. Also included is a 25,000 square foot, tiered restaurant and banquet area providing spectators a view of the activities in the field and courts areas. The indoor field is rented at the rate of \$300.00 per hour for the full turf and \$150.00 per hour for half. Each volleyball court is rented at \$30.00 per hour and basketball courts are rented at \$50.00 per hour.

The second facility is the outdoor football, soccer and track stadium covering 9 acres. This stadium provides permanent seating for 10,000, including 1,200 captain's chairs. There are also ten enclosed luxury suites above the outdoor seating. The suites, which can accommodate 10 fans each, are available for rental for sporting events at a published basic package rate of \$350.00 per game. The field is rented at the rate of \$150.00 per hour without lights and \$200.00 per hour with lights. The applicant also is selling seat licenses for the captain's chairs in the grandstand entitling the purchaser to reserve a specific seat for events, but the purchaser must also buy tickets for each event.

The third part of the complex is the 240,000 square foot indoor track, football and baseball building that is compared to the facilities of the Cleveland Browns and Ohio State University by the *Cleveland Plain Dealer* in an article dated May 3, 2011. This facility also has four professional batting machines for baseball and softball, which the *Plain Dealer* noted are the same as those at the Cleveland Indians' and New York Yankees' stadiums. The batting machines are available for rental at a rate of \$40.00 to \$60.00 per hour. The turf field in the building is rented at the rate of \$300.00 per hour for the full turf and \$150.00 per hour for half.

The fourth facility is the 293,000 square foot aquatics, performance training and fitness center. This houses a ten-lane 50-meter Olympic-size pool plus an additional 25-yard pool and four therapeutic pools. There is also a 1-meter and 3-meter diving area. This indoor facility connects the fields and courts building with the indoor track and field building by way of indoor walkways. The applicant's promotional brochure also lists an "expansive public food court" as part of this facility.

Future plans include a tennis complex, a track and field throws stadium, broadcast facilities, a spa and wellness center, a hotel and conference center, free-standing restaurants, commercial development, and a retail village, as well as facilities for the residential Spire Sports Academy.

The Geneva Area City School Board has entered into a contract with the applicant for conducting the school system's sporting events at the complex, including football, outdoor track, band practice and soccer for a five year term, renewable for an additional five years. The school

board pays the applicant \$20,000.00 per year for the initial term. The contract also provides for revenue sharing between the applicant and the school board of gate revenue for all events for which admission is charged. For football games, the school board will receive the historical average gate revenue that it received for games previously held at its smaller school board owned stadium, after which the school board receives 25% of the excess over that historical amount and the applicant receives 75% of that excess. Further, the contract provides that all food, candy and beverage sales at events shall be conducted exclusively by the applicant. As an additional part of the contract, the school board leases the use of the school board owned athletic field complex known as Memorial Field to the applicant for the fee of \$1.00 per year.

On its website, the applicant advertises a number of programs such as high school team camps, soccer, volleyball, baseball and basketball camps and leagues for various age groups. All of these programs have posted fees on a per-person or per-team basis. Availability to be rented for athletic meets at all levels of competition is also advertised. The facility can be used by senior citizens or others seeking an indoor location to walk for a charge of \$1.00 per person per day.

Though the applicant stated that there is intent to allow discounted membership rates for county residents once membership rates are set, it acknowledged that there is no plan for a sliding scale or fee waiver policy based on need. The online membership price chart has no provision for discounts for local residents or based on need.

The applicant also advertises the facility as a banquet and conference center that is available to be rented for events or meetings of from 30 to 1,200 guests. There are two cafés, one in the field and courts building and one in the track building. A coffee shop is located in the field and courts building, also. A food court is being developed in the aquatic/training/fitness building, as well. There are several other food service locations throughout the facilities used during various events operated by the applicant.

In October 2011, the applicant added a new restaurant called *Spire Fuel*. This restaurant is operated by FLIK International, a subsidiary of the Compass Group North America, whose client list includes NFL teams, ESPN and other sports organizations.

MJ Performance, an athletic training business operated by former Olympic track athlete, Michael Johnson, has contracted to operate his business at the applicant's facilities as one of his branded training facilities, operating out of the aquatics/performance training facility and utilizing the rest of the applicant's facilities.

Two other for-profit tenants located in the facilities are *Seeds Orthopaedics & Sports Medicine* and *All-Star Physical Therapy & Wellness*. These businesses have their signs attached to the front of the building closest to the entrance road.

The applicant is developing a Spire Sports Academy for residential sports training for pre-college-age athletes in soccer, volleyball, lacrosse, track and field, and swimming and diving, with plans for additional sports to be added. Once in operation, the academy will provide academic instruction in classrooms Geneva public schools while athletic programs will be primarily on the subject property. Plans call for optional housing close to the athletic facilities, which may be rented by academy participants.

The applicant's stated model for the Spire Academy is the IMG Academy operated by IMG Worldwide in Florida. Spire has hired a former IMG Worldwide executive who helped develop the IMG Academy, along with three other former IMG Worldwide top executives, to run the Spire Academy. IMG Worldwide is described in its literature as "a global sports, fashion and media business". IMG Worldwide acts as a business agent and develops athletes into professional level performers in a number of sports, as well as representing fashion models, fashion designers and media celebrities. IMG Worldwide is known for representing sports personalities such as Tiger Woods, Peyton Manning and Bobby Knight.

In a *Cleveland Plain Dealer* article, dated May 3, 2011, about the Spire Institute and its facilities and programs, based on interviews with Spire officials, the reporter wrote:

[A Spire executive] said the only other academy in the U.S. that compares to what is planned at Spire is the one he helped develop, IMG Academies in Bradenton, Fla., which is owned by Cleveland-based IMG Worldwide. IMG Academies instructs students in tennis, golf, soccer, baseball, basketball and lacrosse.

The business models are similar in that both are part of larger revenue streams. IMG Academy's 300-acre campus includes a country club, spa and condominiums. Spire says it has plans to build a hotel and develop commercial property, while attracting paying users to its state-of-the-art training facility. A major difference is Spire is part of a nonprofit trust, the Geneva Area Regional Education and Athletic Trust (GaREAT).

At IMG Academies, soccer and lacrosse boarding students pay \$43,800 and nonboarding students pay \$31,100 a year. Spire's prices have yet to be determined.

"It's not going to be cheap," [Ron] Clutter said. It's going to be competitive within the market place."

Spire on-line marketing materials note that: "Geneva can reach the largest number of consumers within a 250-mile radius of any U.S. metro market."

Public records show that Roni Lee, LLC owns approximately 444.757 acres of adjacent land, in addition to the 163.09 acres leased to the applicant and subject to this application.

II. Standing

Here the owner of the land, Roni Lee, LLC, has leased the subject property to GaREAT on which to build improvements. The term of the lease is ninety-nine years and may be renewed for a like period. Pursuant to the lease, the lessor has agreed to "pay any real estate taxes and assessments which may be payable during the term of the lease." By its terms, the lease may be modified by the parties at any time.

According to the provisions of R.C. 5715.27, GaREAT has standing to file an application for exemption on the subject property, because it is "a lessee for an initial term of not less than thirty years..."

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The Board of Tax Appeals held that real property tax is assessed on the land and the buildings on the land as a single estate or interest. *In re National Tube Co.* (1950), 98 NE2d 78. Although “real property may be split listed into exempt and nonexempt parts pursuant to R.C. 5713.04, there exists no statutory authority for dividing, for tax purposes, a building from the land to which it is attached”. *Bd. of Trustees of the Ohio State University v. Limbach* (Apr. 24, 1992), BTA No. 87-B-729. The Ohio Supreme Court held that Ohio law does not provide for a separate tax on leaseholds. *Visicon v. Tracy* (1998), 83 Ohio St.3d 211, at 216. Regarding taxation of a building separately from the land the Board of Tax Appeals found that only “the existence of a permanent leasehold creates a sufficiently separate interest in property that the lessee may be taxed apart from the owner of the property”. *Bd. of Trustees of the Ohio State University*, supra, citing *Cincinnati College v. Yeatman* (1876), 30 Ohio St. 276.

The property for which exemption is sought includes buildings and other improvements affixed or to be affixed permanently to the land. Buildings, “permanent fixtures, structures or improvements upon land, as those terms are used in Section 5701.02 of the Revised Code, are to be taxed as real property.” *Parkbrook Golf Corp. v. Donahue* (1966), 6 Ohio St.2d 198; *Reed v. Board of Education* (1949), 152 Ohio St. 207. A building that is affixed or annexed to the land becomes part of the realty. *Teaff v. Hewitt* (1853), 1 Ohio St. 511; *PBI Industries, Inc. v. Lindley* (1983), 6 Ohio St.3d 203 at 205. Accordingly, the subject buildings and improvements cannot be separated from the land for taxation or exemption purposes, but must be considered as part of the realty owned by Roni Lee, LLC. See R.C. 319.28; R.C. 323.13; R.C. 323.43.

III. Ohio Revised Code Sections 5709.12 and 5709.121

In *Planned Parenthood Association v. Tax Commissioner* (1966), 5 Ohio St. 2d 117, the Ohio Supreme Court defined charity as:

...the attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard for their ability to supply that need from other sources, and without hope or expectation, if not with positive abnegation, of gain or profit by the donor or by the instrumentality of the charity.

To be entitled to exemption under R.C. 5709.12(B), two requirements must be met: (1) the property must belong to an institution, and (2) the property must be used exclusively for charitable purposes by that institution. *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St.3d 405; *Tallmadge Lions Club v. Tracy* (Mar. 24, 1995), B.T.A. Case No. 93-R-394.

Similarly, Ohio Revised Code Section 5709.121, provides, in pertinent part, exemption for "Real property and tangible personal property belonging to a charitable or educational institution or to the state or a political subdivision, * * *" if it is either (A) used by such institution or by one or more other such institutions under a contractual arrangement as a community or area center, for other charitable, educational or public purposes (or) (B) otherwise made available under the direction or control of such institution for use in furtherance of or incidental to its charitable, educational, or public purposes and not with the view to profit."

In *Episcopal Parish v. Kinney* (1979), 58 Ohio St. 2d 199, the Ohio Supreme Court defined the charitable use provisions of R.C. 5709.12 and R.C. 5709.121 as follows:

R.C. 5709.12 states “*** real and tangible personal property belonging to an institution that is used exclusively for charitable purposes shall be exempt from taxation.” *** The legislative definition of exclusive charitable use found in R.C. 5709.121, however, applies only to property “belonging to, ‘i.e. owned by’ a charitable or educational institution, or the state or a political subdivision.”

R.C. 5709.12(B), then, applies to property owned by an institution and used exclusively for a charitable purpose and R.C. 5709.121, “while not itself granting an exemption”, states that only property owned by a charitable, educational or public entity, and used exclusively for a purpose as defined by that section is to be considered as property used for a charitable purpose. The Ohio Supreme Court stated that one cannot apply the definition of exclusive charitable use found in R.C. 5709.121, to property owned by non-charitable entities. *Bethesda Healthcare, Inc. v. Wilkins* (2004), 101 Ohio St.3d 420; *Episcopal Parish*, supra.

Similarly, the Ohio Supreme Court noted in *Dialysis Clinic, Inc. v. Levin* (2010), 127 Ohio St.3d 215 that R.C. 5709.121 is a refinement of R.C. 5709.12(B), regarding charitable use.

Here the owner, Roni Lee, LLC is a for-profit limited liability company. In spite of the \$1.00 per year rent, the owner, Roni Lee, LLC, benefits from the extensive improvements being made to the land by the lessee, particularly should the property revert to Roni Lee, LLC and/or be sold. Roni Lee, LLC also benefits from the appreciation of the other property held by Roni Lee, LLC, due to its close proximity to the leased premises. Hence, the owner’s use of the property is that of land development and commercial leasing.

The evidence on record shows that the applicant, GaREAT, is a nonprofit company; however, there is no evidence of charitable activity by the applicant. Certainly, the applicant is doing things that benefit the surrounding community, but this benefit is basically the same as any other large business that might be developed in the community. The applicant’s primary goal is to develop an elite sports training facility to develop Olympic and professional caliber athletes. The facilities primarily benefit elite athletes locally and from beyond the local region, and the facilities incidentally benefit the local community by generating business activity and by providing recreational activity that can be accessed for a fee. Further, the operation of the GaREAT complex, though by a non-profit entity, is based on a for-profit business model, not a charitable model. The programs and usages of the premises are based on significant user fees and charges that are, in turn, based on market rates. Further, the applicant acknowledges that it neither has, nor plans to have, any charitable reduced fees or an income-based sliding scale for the use of the facilities.

The applicant is apparently recognized under Section 501(c)(3) of the Internal Revenue Code as a federal-tax-exempt entity. The applicant argues that, in light of this designation by the Internal Revenue Service, it should be eligible for exemption under R.C. 5709.12 and R.C. 5709.121.

The Ohio Supreme Court has specifically rejected “a reading of R.C. 5709.121 that essentially substitutes more lenient federal-law standards for the well-developed Ohio law of charitable use.” *Dialysis Clinic, Inc. v. Levin* (2010), 127 Ohio St.3d 215, 221. In *Dialysis Clinic*, the

appellant argued that an IRS finding of tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code “militates heavily in favor of finding it to be a ‘charitable institution.’” Id. at 220. Rejecting this argument, the Court held that such “an expansive construction of R.C. 5709.121 is inconsistent with the legislative purpose behind its enactment and with ordinary principles of statutory construction”. Id. at 220. Explaining its rationale, the Court reasoned that

[The] argument would conflate Ohio’s property-tax exemption with standards under federal law for tax-exempt charities. We have already rejected that contention, stating that “tying charitable use so tightly to Congress’s policy goals is wrong because Congress does not define the scope of charitable use under Ohio law.”

Id. at 220, quoting *NBC-USA Hous., Inc.-Five v. Levin* (2010), 125 Ohio St.3d 215

Thus, an IRS finding that the applicant is a federal-tax-exempt entity under section 501(c)(3) of the Internal Revenue Code is irrelevant to determining whether or not property owned by a for-profit limited liability company and leased to a non-profit corporation entitled to exemption from real estate taxes.

The applicant also notes that it has registered with the Ohio Attorney General as a charitable trust as an argument in support of its application; however, as repeatedly iterated by the Ohio Supreme Court, eligibility for a charitable use exemption turns not on what an organization calls itself but turns on its actual activities and the actual use of the subject property. A designation as a charitable trust makes it more attractive for donations by donors who desire tax deductions for charitable donations but does not affect real property tax exemption status by itself.

The evidence demonstrates that the owner’s primary use of the subject property is leasing it for development as an elite sports training facility to develop Olympic and professional caliber athletes, together with the appreciation and development of the surrounding property controlled by the owner and not subject to the lease. Further, there is no evidence that the applicant is engaged in charitable activity in any substantial way, even though it is a non-profit entity.

Accordingly, the subject property is not entitled to exemption from taxation under R.C. 5709.12 and R.C. 5709.121.

IV. Prospective Use

Though substantial progress has been made in developing forty acres, more or less, the balance of the subject property remains undeveloped and, according to the application, may be sold to developers for commercial use. The Ohio Supreme Court has held that tangible evidence of efforts in preparation for an ultimate exempt purpose must exist. *Carney v. Cleveland City School Dist. Public Library* (1959), 169 Ohio St. 65. Therefore, even if the developed forty acre portion of the subject property were to be deemed eligible for exemption, the remaining undeveloped portion would not be eligible for exemption.

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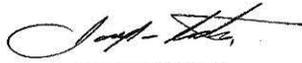
V. Conclusion

Based on the information available to the Tax Commissioner, the Tax Commissioner finds that the property described in the application is not entitled to be exempt from taxation. Therefore, the application is denied.

The Tax Commissioner orders that any penalties charged against this part of the property through the date of the final determination in this matter be remitted.

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

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



JOSEPH W. TESTA
TAX COMMISSIONER

/s/ Joseph W. Testa

Joseph W. Testa
Tax Commissioner

5709.12 Exemption of property used for public or charitable purposes.

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

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

(C)

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

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

(D)

(1) A private corporation established under federal law, as defined in 36 U.S.C. 1101, Pub. L. No. 102-199, 105 Stat. 1629, as amended, the objects of which include encouraging the advancement of science generally, or of a particular branch of science, the promotion of scientific research, the improvement of the qualifications and usefulness of scientists, or the increase and diffusion of scientific knowledge is conclusively presumed to be a charitable or educational institution. A private corporation established as a

nonprofit corporation under the laws of a state that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C.A. 1, as amended, and that has as its principal purpose one or more of the foregoing objects also is conclusively presumed to be a charitable or educational institution.

The fact that an organization described in this division operates in a manner that results in an excess of revenues over expenses shall not be used to deny the exemption granted by this section, provided such excess is used, or is held for use, for exempt purposes or to establish a reserve against future contingencies; and, provided further, that such excess may not be distributed to individual persons or to entities that would not be entitled to the tax exemptions provided by this chapter. Nor shall the fact that any scientific information diffused by the organization is of particular interest or benefit to any of its individual members be used to deny the exemption granted by this section, provided that such scientific information is available to the public for purchase or otherwise.

(2) Division (D)(2) of this section does not apply to real property exempted from taxation under this section and division (A)(3) of section 5709.121 of the Revised Code and belonging to a nonprofit corporation described in division (D)(1) of this section that has received a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code during any of the tax years the property was exempted from taxation.

When a private corporation described in division (D)(1) of this section sells all or any portion of a tract, lot, or parcel of real estate that has been exempt from taxation under this section and section 5709.121 of the Revised Code, the portion sold shall be restored to the tax list for the year following the year of the sale and, except in connection with a sale and transfer of such a tract, lot, or parcel to a county land reutilization corporation organized under Chapter 1724. of the Revised Code, a charge shall be levied against the sold property in an amount equal to the tax savings on such property during the four tax years preceding the year the property is placed on the tax list. The tax savings equals the amount of the additional taxes that would have been levied if such property had not been exempt from taxation.

The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law. The charge may also be remitted for all or any portion of such property that the tax commissioner determines is entitled to exemption from real property taxation for the year such property is restored to the tax list under any provision of the Revised Code, other than sections 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, 5709.63, 5709.71, 5709.73, 5709.78, and 5709.84, upon an application for exemption covering the year such property is restored to the tax list filed under section 5715.27 of the Revised Code.

(E) Real property held by an organization organized and operated exclusively for charitable purposes as described under section 501(c)(3) of the Internal Revenue Code and exempt from federal taxation under section 501(a) of the Internal Revenue Code, 26 U.S.C.A. 501(a) and (c)(3), as amended, for the purpose of constructing or rehabilitating residences for eventual transfer to qualified low-income families through sale, lease, or land installment contract, shall be exempt from taxation.

The exemption shall commence on the day title to the property is transferred to the organization and shall continue to the end of the tax year in which the organization transfers title to the property to a qualified low-income family. In no case shall the exemption extend beyond the second succeeding tax year following the year in which the title was transferred to the organization. If the title is transferred to the organization and from the organization to a qualified low-income family in the same tax year, the exemption shall continue to the end of that tax year. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the tax year in which title is transferred to the organization

shall be remitted by the county auditor for each day of the year that title is held by the organization.

Upon transferring the title to another person, the organization shall file with the county auditor an affidavit affirming that the title was transferred to a qualified low-income family or that the title was not transferred to a qualified low-income family, as the case may be; if the title was transferred to a qualified low-income family, the affidavit shall identify the transferee by name. If the organization transfers title to the property to anyone other than a qualified low-income family, the exemption, if it has not previously expired, shall terminate, and the property shall be restored to the tax list for the year following the year of the transfer and a charge shall be levied against the property in an amount equal to the amount of additional taxes that would have been levied if such property had not been exempt from taxation. The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law.

The application for exemption shall be filed as otherwise required under section 5715.27 of the Revised Code, except that the organization holding the property shall file with its application documentation substantiating its status as an organization organized and operated exclusively for charitable purposes under section 501(c)(3) of the Internal Revenue Code and its qualification for exemption from federal taxation under section 501(a) of the Internal Revenue Code, and affirming its intention to construct or rehabilitate the property for the eventual transfer to qualified low-income families.

As used in this division, "qualified low-income family" means a family whose income does not exceed two hundred per cent of the official federal poverty guidelines as revised annually in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C.A. 9902, as amended, for a family size equal to the size of the family whose income is being determined.

(F)

(1)

(a) Real property held by a county land reutilization corporation organized under Chapter 1724. of the Revised Code shall be exempt from taxation. Notwithstanding section 5715.27 of the Revised Code, a county land reutilization corporation is not required to apply to any county or state agency in order to qualify for the exemption.

(b) Real property acquired or held by an electing subdivision other than a county land reutilization corporation on or after April 9, 2009, for the purpose of implementing an effective land reutilization program or for a related public purpose shall be exempt from taxation until sold or transferred by the electing subdivision. Notwithstanding section 5715.27 of the Revised Code, an electing subdivision is not required to apply to any county or state agency in order to qualify for an exemption with respect to property acquired or held for such purposes on or after such date, regardless of how the electing subdivision acquires the property.

As used in this section, "electing subdivision" and "land reutilization program" have the same meanings as in section 5722.01 of the Revised Code, and "county land reutilization corporation" means a county land reutilization corporation organized under Chapter 1724. of the Revised Code and any subsidiary wholly owned by such a county land reutilization corporation that is identified as "a wholly owned subsidiary of a county land reutilization corporation" in the deed of conveyance transferring title to the subsidiary.

(2) An exemption authorized under division (F)(1) of this section shall commence on the day title to the property is transferred to the corporation or electing subdivision and shall continue to the end of the tax year in which the instrument transferring title from the corporation or subdivision to another owner is

recorded, if the use to which the other owner puts the property does not qualify for an exemption under this section or any other section of the Revised Code. If the title to the property is transferred to the corporation and from the corporation, or to the subdivision and from the subdivision, in the same tax year, the exemption shall continue to the end of that tax year. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the tax year in which title is transferred to the corporation or subdivision shall be remitted by the county auditor for each day of the year that title is held by the corporation or subdivision.

Upon transferring the title to another person, the corporation or electing subdivision shall file with the county auditor an affidavit or conveyance form affirming that the title was transferred to such other person and shall identify the transferee by name. If the corporation or subdivision transfers title to the property to anyone that does not qualify or the use to which the property is put does not qualify the property for an exemption under this section or any other section of the Revised Code, the exemption, if it has not previously expired, shall terminate, and the property shall be restored to the tax list for the year following the year of the transfer. A charge shall be levied against the property in an amount equal to the amount of additional taxes that would have been levied if such property had not been exempt from taxation. The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law.

In lieu of the application for exemption otherwise required to be filed as required under section 5715.27 of the Revised Code, a county land reutilization corporation holding the property shall, upon the request of any county or state agency, submit its articles of incorporation substantiating its status as a county land reutilization corporation.

(G) [Effective 9/15/2014] Real property that is owned by an organization described under section 501(c)(3) of the Internal Revenue Code and exempt from federal income taxation under section 501(a) of the Internal Revenue Code and that is used by that organization exclusively for receiving, processing, or distributing human blood, tissues, eyes, or organs or for research and development thereof shall be exempt from taxation.

Amended by 130th General Assembly File No. TBD, HB 483, §101.01, eff. 9/15/2014, applicable to tax year 2014 and every tax year thereafter.

Amended by 130th General Assembly File No. TBD, SB 172, §1, eff. 9/4/2014.

Amended by 129th General Assembly File No. 127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 09-06-2002; 06-30-2005; 2008 SB353 04-07-2009

5709.121 Exclusive charitable or public purposes defined.

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

(1) It is used by such institution, the state, or political subdivision, or by one or more other such institutions, the state, or political subdivisions under a lease, sublease, or other contractual arrangement:

(a) As a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein;

(b) For other charitable, educational, or public purposes.

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

(3) It is used by an organization described in division (D) of section [5709.12](#) of the Revised Code. If the organization is a corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of section [122.33](#) of the Revised Code at any time during the tax year, "used," for the purposes of this division, includes holding property for lease or resale to others.

(B)

(1) Property described in division (A)(1)(a) of this section shall continue to be considered as used exclusively for charitable or public purposes even if the property is conveyed through one conveyance or a series of conveyances to an entity that is not a charitable or educational institution and is not the state or a political subdivision, provided that all of the following conditions apply with respect to that property:

(a) The property was listed as exempt on the county auditor's tax list and duplicate for the county in which it is located for the tax year immediately preceding the year in which the property is conveyed through one conveyance or a series of conveyances;

(b) The property is conveyed through one conveyance or a series of conveyances to an owner that does any of the following:

(i) Leases the property through one lease or a series of leases to the entity that owned or occupied the property for the tax year immediately preceding the year in which the property is conveyed or to an affiliate of that entity;

(ii) Contracts to have renovations performed as described in division (B)(1)(d) of this section and is at least partially owned by a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of that code.

(c) The property includes improvements that are at least fifty years old;

(d) The property is being renovated in connection with a claim for historic preservation tax credits available under federal law;

(e) The property continues to be used for the purposes described in division (A)(1)(a) of this section after its conveyance; and

(f) The property is certified by the United States secretary of the interior as a "certified historic structure" or certified as part of a certified historic structure.

(2) Notwithstanding section [5715.27](#) of the Revised Code, an application for exemption from taxation of property described in division (B)(1) of this section may be filed by either the owner of the property or its occupant.

(C) For purposes of this section, an institution that meets all of the following requirements is conclusively presumed to be a charitable institution:

(1) The institution is a nonprofit corporation or association, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(2) The institution is exempt from federal income taxation under section 501(a) of the Internal Revenue Code;

(3) The majority of the institution's board of directors are appointed by the mayor or legislative authority of a municipal corporation or a board of county commissioners, or a combination thereof;

(4) The primary purpose of the institution is to assist in the development and revitalization of downtown urban areas.

Amended by 130th General Assembly File No. TBD, SB 243, §1, eff. 3/23/2015.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 12-13-2001; 06-30-2005; 2008 HB562 09-22-2008; 2008 HB458 12-31-2008