

NO. A12-0632

State of Minnesota
In Supreme Court

Living Word Bible Camp,

Appellant,

vs.

County of Itasca,

Respondent.

**REPLY BRIEF AND APPENDIX OF
APPELLANT LIVING WORD BIBLE CAMP**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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INTRODUCTION

Respondent County of Itasca made three arguments in its brief: 1.) Appellant Living Word Bible Camp (“LWBC”) has not demonstrated implementation of its plans, thereby negating any entitlement to exemption; 2) The tax court did not err by not considering the activities conducted by LWBC at Timber Bay; and 3) In order to be exempt as an institution of purely public charity, LWBC must demonstrate that its activities are provided to those who are disadvantaged or are in need.

Respondent’s first argument is based off a misreading and misapplication of the standard that a property owner should be given a reasonable amount of time to adapt the property to carry out the organization’s charitable use. LWBC has demonstrated progress towards implementing its plans and this Court should uphold the standard that an institution of purely public charity should property tax exemption while affixing the property for use.

Respondent’s second argument would create new law by requiring charities attempting to move to a new county to be operational prior to receiving property tax exemption; contrary to longstanding case law.

Respondent’s third argument is demonstrably wrong, and essentially asks this Court to overturn well-established law and make new law. Respondent’s suggestion that only those non-profit entities that serve the “disadvantaged” or “needy” is a departure from the existing standard, and if the Court chose to overturn current law, dozens if not

hundreds of Minnesota charities would be affected. In Itasca County alone, about 38 non-profits, including the Itasca County Family YMCA, the Charles K. Blandin Foundation, Grand Rapids Players, Inc. (theater company), Itasca Ski and Outing Club, Inc., Leech Lake Area Watershed Foundation, Northern Community Radio and Sugar Lake Community Club, would be potentially squeezed out of the definition of charity, thereby losing their property tax exemption. The County's defective definition of charity is a bold attempt to further narrow the exemption.

ARGUMENT

I. THE TAX COURT ERRED BY NOT RULING ON WHETHER LIVING WORD BIBLE CAMP IS AN INSTITUTION OF PURELY PUBLIC CHARITY

The tax court's ruling was clearly erroneous because it did not rule on whether Living Word Bible Camp was an institution of purely public charity. To determine property tax exemption, it is not the use of the property that qualifies the organization as an exempt entity; rather it is the activities of the tax exempt entity, whether conducted on the subject property or in another location. The law holds that for an organization to qualify for property tax exemption there must be (1) a concurrence of ownership of the property by an institution of the type prescribed by the constitution, in this case an institution of purely public charity, and (2) a use of the property for which such institution was organized. *Christian Business Men's Committee of Minneapolis v. State*, 228 Minn. 549, 554-555, 38 N.W.2d 803, 808-809 (Minn. 1949).

In subsequent case law and interpretation by the Minnesota Department of Revenue, the requirement for property tax exemption has evolved into a three-prong test. To be exempt, the parcel of land must be (1) owned by an institution of purely public charity; (2) used by the institution for charitable purposes; and (3) the ownership must be reasonably necessary to the organization as a means to accomplish its charitable purposes. *Minnesota Department of Revenue, Bulletin: Property Tax Exemption for Institutions of Purely Public Charity*, pgs. 1 and 6, March 1, 2010. A-0065.

Therefore, prior to making any determination of use, the assessor (and court) must first determine whether or not the organization is an institution of purely public charity. To do this, the tax court should have examined the activities of the organization and analyzed them based upon the *North Star* factors and Minn. Stat. § 272.02, subd. 7. Rather than making a determination by examining the activities and applying them to the *North Star* factors and statute the court refused to consider the activities of the organization on property leased at Timber Bay Lake. Minnesota Tax Court Order, pg. 4, February 24, 2012. This was error.

The courts failure to make a determination because the camp's activities took place at a location in a different county creates a new rule of law that an organization cannot qualify for property as an institution of purely public charity in a county until it is actively using property in that county as an institution of purely public charity. The Respondent's ardent support of this position leads it to state that the issue may not even

be justiciable because much of the activities the organization conducts are happening in a different county. The court's holding and Respondent's argument would not allow for any existing entity looking to expand its services by moving into a new county and then receive property tax exemption until the activities of the organization in the new county qualified it for exemption as an institution of purely public charity. For example, if the YMCA or Red Cross did not have activities in Itasca County it would not be eligible for property tax exemption for Itasca County property as an Institution of Purely Public Charity based upon its prior or then existing activities in other counties. Rather, it would have to wait until it could prove its activities in the new county met the burden for qualification as an institution of purely public charity. Such a holding would be contrary to well settled law. *See State v. Second Church of Christ*, 185 Minn. 242, 240 N.W. 532 (1932); *Skyline Preservation Foundation v. County of Polk*, 621 N.W.2d 727 (Minn. 2011).

II. LIVING WORD BIBLE CAMP IS AN INSTITUTION OF PURELY PUBLIC CHARITY.

LWBC is an institution of purely public charity as it meets all *North Star* factors, including factor three as it gives charitable services to its recipients free of charge or at considerably reduced rates, thereby conferring a gift.

The Respondent in its brief asks this Court to adopt sweeping changes to laws affecting qualification as an institution of purely public charity for property tax exemption. If the Respondent's legal theory was adopted charities would be forced to

verify that all recipients of their gifts be “needy” or “disadvantaged” or risk losing the property tax exemption. This would mean that groups like the Boy Scouts and Girl Scouts, crisis pregnancy centers, the YMCA, Alcoholics Anonymous, the Humane Society, and art institutes like the Minneapolis Institute of Art would have to ask every user for proof of income or lose their property tax exemption.

There are at least three problems with Respondent’s “need” or “disadvantaged” argument. First and foremost, it is not the law. The definition of “charity” is well established and modern-day cases continue to confirm that definition. Second, Respondent makes an assumption that religious influence is not charitable. Third, the County’s argument requires an unmanageable bright-line standard to determine who is needy or disadvantaged or disabled.

1. North Star Factor Three tests whether the organization confers a “gift”, not the economic or physical condition of the recipient.

Petitioner’s 2008 petition for taxes payable in 2009 must be judged pursuant to the six-factor test specified in *North Star Research Institute v. County of Hennepin*, 236 N.W.2d 754, 757 (Minn. 1975). The third *North Star* factor tests whether the organization “gives” something, tangible or intangible, away. It does not test whether or not the recipient is “disadvantaged” or in “need.” *Id.*

The Court in *Under the Rainbow* stated unequivocally that factor three tests whether or not the organization in question *gives* something away. *Under the Rainbow Child Care*

Center v. County of Goodhue, 741 N.W.2d 880, 886 (Minn. 2007). The *Under the Rainbow* majority states that they understand the essence of charity to be the “provision of the service as a gift to the recipient.” *Id.* at 887. They reject the dissent’s definition of charity, which would test the nature of the organization. *Id.* Living Word Bible Camp seeks tax-exemption based upon the majority’s definition of the law as it provides services, namely religious instruction to bring the hearts and minds of youth under the influence of Jesus Christ, as well as giving away marital counseling, arts and crafts instruction, nature instruction, and additional training in activities. The *Under the Rainbow* Court then clarifies the third *North Star* factor to require that the charity be provided “free of charge, or at considerably reduced rates.” *Id.* at 890. The considerably reduced rates requirement means “considerably less than market value or cost.” *Id.*

It is clear from this analysis that the Court’s perception is from the angle of the giver (whether the organization confers a gift), rather than from the recipient (whether or not the person is in physical or economic need). This standard rightly recognizes that the need for charity crosses socio-economic and physical condition lines.

Despite this opinion, the County asks this Court to rely on dicta in footnote four of *Under the Rainbow* to create a “need” or “disadvantaged” test. Respondent cites a Utah Supreme Court decision in footnote four that discusses “a substantial imbalance in the exchange between the charity and the recipient of the services,” as meaning the charity must go to the needy or disadvantaged. *Id.* at 890, footnote 4, citing to *Utah County v.*

Intermountain Heath Care, Inc., 709 P.2d 265, 269 (Utah 1985). However, if this footnote is read in context with additional quotes in footnote four such as, “an essential element of charity is an act of giving” (from *Utah County* and the other three cases cited which discuss giving something away), it is clear that the majority opinion uses this footnote to show the decision is not uncommon, stating “the position we take here is not unique.” *Under the Rainbow*, 741 N.W.2d at 890, footnote 4.

It is ironic that the Respondent has chosen to utilize this footnote citing cases from Pennsylvania and Illinois to support its argument, because the theory that charity only exists if provide to the poor and needy has been soundly rejected in both those jurisdictions, much like it is absent in Minnesota law and should be explicitly rejected by this Court. The Pennsylvania case of *Unionville-Chadds Ford School Dist. v. Chester County Bd. Of Assessment*, 552 Pa. 212, 218, 714 A.2d 397, 400 (1998) states charity can benefit both the rich and the poor. *See also*; Missouri, *Cape Retirement Community, Inc. v. Kuehle*, 798 S.W.2d 201, 203 (Mo. 1990); (stating that providing a service in a non-profit manner rises to a charitable purpose and tax exempt status if the same is available to both rich and poor); West Virginia, *Maplewood Community, Inc. v. Graig*, 216 W.Va. 273, 607 S.E.2d 379 (W.Va. 2004) (adopting the language of the Missouri Court in *Cape Retirement*); and Illinois, *People v. Y.M.C.A.*, 365 Ill. 118, 6 N.E.2d 166 (1937) (granting property tax exemption where charities do not screen applicants for financial ability and do not turn people away for inability to pay).

Similarly, the County asks this Court to require the “need” or “disadvantaged” test by citing to a characteristic of *Rio Vista Non-Profit Housing Corp. v. County of Ramsey*, 277 N.W.2d 187 (Minn. 1979), specifically that Rio Vista was created to serve “moderate and low income people.” *Under the Rainbow* at 890. To clarify, Rio Vista did not receive their tax exemption because they served moderate and low income people. Rio Vista received their tax exemption because “tenants receive the housing at considerably less than market value or cost.” *Rio Vista*, 277 N.W.2d at 192. In deciding *Rio Vista*, the Supreme Court did not rely on the fact that the recipients were moderate or low income, rather they focused, especially in its factor three inquiry, as to whether or not the recipients had to pay for the charity received. *Id.*

Further, Respondent improperly reads into the *Under the Rainbow* analysis that charities that charge recipients substantially market rates and don’t serve the poor are denied IPPC designation and attempts to correlate it to the situation at hand, citing *SHARE v. Commissioner of Revenue and Community Memorial Home*. Both *SHARE* and *Community Memorial Home* charged market rates. It is important to note that these cases do not apply in the case at hand because LWBC has sufficiently proven that it does not charge market rates to any recipients of its charity; all receive LWBC services either free or at considerably reduced rates.

Respondent first uses *SHARE* to attempt to bolster its claim that a “need” or “disadvantaged” test exists, because *SHARE* stated that there was “no policy to provide

substantial discounts to those for whom cost of treatment would be an unreasonable burden.” 363 N.W.2d 47, 52 (Minn.1985). However, this is not the reason SHARE failed factor three. SHARE failed factor three because only those able to pay its market rate fees were eligible to receive its services and there were no lower fees or free services for those unable to pay. *Id.* at 52. (Emphasis added). It is notable however that in *SHARE* the court states that “the term ‘charitable’ as applied to health care facilities has been broadened since earlier times, when it was limited mainly to almshouses for the poor.” *Id.* The fact that the term “charitable” has been broadened to mean more than just serving the poor goes directly against Respondent’s argument.

Further in *SHARE*, the Court specifically states the opposite of Respondent’s argument that the charity must go only to those in “need” or “disadvantaged,” when it cites *Mayo Foundation*. The *SHARE* court found *Mayo Foundation* met the criteria for an institution of purely public charity because “the public at large received without charge the benefits of the Mayo institutions’ research and education programs.” *Id.* The Court stated that Mayo “had a policy of offering medical care *regardless of a patient’s financial circumstances* and gave substantial discounts each year so that the cost of treatment did not place an unreasonable burden on *any* individual.” *Id.* (Emphasis added.)

Respondent again relies on dicta in *Under the Rainbow*, discussing *Community Memorial Home*, where there was “no evidence of overall intent to serve the disadvantaged on a charitable basis.” *Under the Rainbow*, 741 N.W.2d at 891-892.

However, a full reading of *Community Memorial Home* shows that the organization failed factor three because it did not give away any services. *Community Memorial Home at Osakis, Minnesota, Inc. v. County of Douglas*, 573 N.W.2d 83 (Minn.1997). Rather, about 55% of the residents paid in whole or in part through alternative grant programs administered by the county and the difference between market rates and the grants was written off by the organization. *Id.* at 85. In that case, the Court stated that to satisfy factor three, *Community Memorial* must prove that residents of Terrace Heights “received housing or services free of charge, or at considerably reduced rates.” *Id.* at 87. The Court held that residents did not receive housing or services free of charge, or at considerably reduced rates and further that the alternative grants which allowed some residents to stay there was a mere business decision because the alternative would be to have empty rental units. *Id.*

After the Court determined *Community Memorial Home* failed factor three, it looked to see if the organization could qualify for property tax exemption by reducing the government burden. (Prior to *Under the Rainbow*, an organization could fail factor three and still receive exemption.) Respondent bases its need or disadvantaged argument on this analysis of factor five in *Community Memorial Home* where the Court stated that the organization did not reduce the governmental burden of providing assisted living facilities to the poor as there was no “evidence demonstrating that Terrace Heights’ intended purpose is to provide housing and services for the economically disadvantaged

or that it will continue to do so in the future.” *Id.* at 88. Respondent asks this Court to use the factor five analysis in *Community Memorial Home* to create a test of “need” or “disadvantaged” while analyzing the factor three gift test. This argument is contrary to the law and would have extreme repercussions, including the potential loss of property tax-exemption for hundreds of Minnesota non-profits.

Respondent’s reliance on the foregoing cases and failure to discuss *Worthington Dormitory, Inc. v. Commissioner*, the fourth case cited in the majority opinion of *Under the Rainbow*, is noteworthy. In *Worthington Dormitory*, the Court reversed the ruling of the tax court and granted exemption to the organization because it found that the students paid less than cost for the housing they received and that it was doubtful that they paid market rents. *Worthington Dormitory, Inc. v. Commissioner of Revenue*, 292 N.W.2d 276, 281 (Minn.1980). The only factor necessary to qualify a student to receive the charity was that he or she be taking at least one college credit, and in some cases even college personnel and recent graduates were allowed to live in the low cost housing. *Id.* at 278. There was no test for “need” or “disadvantage.”

Following its analysis of *Rio Vista*, *SHARE* and *Community Memorial Home*, the *Under the Rainbow* Court summarizes the cases to state that they establish a precedent that to qualify for property tax exemption as an institution of purely public charity, an organization must “provide its charity to recipients free of charge or at considerably reduced rates.” *Under the Rainbow*, 741 N.W.2d at 892. Noticeably lacking from this

test is a statement that the organization must provide the charity solely or even primarily to those in “need” or the “disadvantaged,” as the County of Itasca asks the Tax Court to hold.

No Minnesota Court has ever said that if the gift is not to someone in “need” or “disadvantaged” it fails to qualify as an IPPC. Further, this issue is not ripe for adjudication. The 45-year track record of Minnesota case law has not tested for “need” or “disadvantage.” Decisions have tested whether the charity is dispensed to the public as a whole or to a large group of people.

Starting with *Junior Achievement* in 1965, the court granted property tax exemption to an organization that provided a place for training of young people between the ages of 15 and 19. *Junior Achievement of Greater Minneapolis, Inc. v. State of Minnesota*, 271 Minn. 385, 387, 135 N.W.2d 881, 883 (Minn.1965). There the program was available to all, males and females alike, between the ages of 15 and 19. *Id.* The organization was not limited in opening its programming to only those deemed in “need” or “disadvantaged.” In *White Earth Land Recover Project v. County of Becker*, 544 N.W.2d 778 (Minn.1996), a non-profit corporation organized and operated for the purpose of preserving the cultural and natural resources and promoting the culture and educating members of the Anishinabe tribe was given tax-exemption as institution of purely public charity. Charity was open to all members of Anishinabe tribe. Similarly, in cases such as *Skyline*, tax exemption as a purely public charity was granted when the community as a whole was

the intended beneficiary of the organization's charity, not just limited to those in "need" or "disadvantaged."

There must be "a substantial charitable, or gift, component to an organization's operation in order to qualify as an institution of purely public charity. That means the organization must provide a substantial proportion of its goods or services free or at considerably reduced rates." *Under the Rainbow*, 741 N.W.2d at 896. Living Word Bible Camp has sufficiently proven it meets this test and should therefore be granted property tax exemption.

2. Bringing one's heart and mind under the influence of religion is a charitable act.

The County's argument implies that religious influence has no social value and is not charity. The County again has taken a position that is totally contrary to the law. "The legal meaning of the word 'charity' has a broader significance than in common speech and has been expanded in numerous decisions. Charity is broadly defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government." *Under the Rainbow Child Care Center*, 741 N.W.2d at 886, quoting *Junior Achievement of Greater Minneapolis* (emphasis added).

The Court in *Christian Business Men's Committee* held that the general purpose of the organization (which was an IPPC) was to “promote the moral and education welfare of youth by bringing them under religious influences for the improvement of their characters and for the stimulation in them of higher ideals of life and conduct.” *Christian Business Men's Committee*, 228 Minn. at 555, 38 N.W.2d at 809. (emphasis added). The law could not be more clearly inclusive of religious influence as one type of charity.

In wrapping up its argument for a new legal standard the Respondent states that giving charity to those who might be able to afford it is “a shallow form of giving,” is “giving something to others they don’t necessarily need,” and “marginalizes the gift factor.” Respondent’s Brief at page 32. Much the charity dispensed by Living Word Bible Camp has positive societal benefits that people of all age groups, races, life situations, and economic classes can benefit from and has been long considered positive for society. That includes bringing people’s hearts under the influence of education and religion. See *Junior Achievement of Greater Minneapolis*, 271 Minn. at 390, 135 N.W.2d at 885. Adults attend marriage retreats at the Deer Lake property free of charge which help strengthen their marriage and strengthen their families. Certainly helping people become better husbands, wives, fathers, and mothers is not shallow or unneeded, but rather something that reduces the burden of government.

In addition to providing its charity to recipients free of charge or at considerably reduced rates, the charity dispensed reduces the burdens of government. Under the 2008

Statute, following the *North Star* factors, the Court has found a sub-factor to factor 5, which is reducing the burden of government. *Worthington Dormitory*, 292 N.W.2d at 280. This has been codified for 2009 in Minn. Stat § 272.02, Subd. 7(3): Whether a material number of the recipients of the charity receive benefits or services at reduced or no cost, *or whether the organization provides services to the public that alleviate burdens or responsibilities that would otherwise be borne by the government.*

Under the 2009 statute, the County has argued that an organization must both give out a material number of services at a substantially reduced cost and reduce the burdens of government. This contention fails to take into consideration the plain language of the statute, which states that you must do one or the other. Both are not required.

Under the 2008 and 2009 tests, Petitioner's charitable actions reduce the burden of government, therefore qualifying it for property tax exemption as an institution of purely public charity.

In Minnesota, it has been held that daily programs in conservation, resource management, and wildlife taught on a conservation reserve reduce the burdens of government. *Young Men's Christian Association – Camp Olson v. County of Cass*, 1987 WL 12473 at 11 (Minn. Tax). A-0046. Such programs are common elements of a youth camp.

Other jurisdictions affirm this. In Pennsylvania, an organization relieves or lessens the burden borne by government by the advancement of social, moral, education or physical objectives. 10 P.S. § 375(f)(4) (2010).

Similarly, in Montana a children's bible camp was found to be a tax exempt charitable organization based upon the education and instruction the camp provided to the campers. *Flathead Lake Methodist Camp v. Webb*, 144 Mont. 565, 399 P.2d 90 (1965). The Court found religious education to be an educational purpose. *Id.* at 93, 569-570. The Court continued, stating that the education may be particularly directed to either mental, moral, or physical powers or faculties, but in the broadest and best sense it embraces them all. *Id.* The District of Columbia has also held that education includes the cultivation of one's religious or moral sentiment. *Commissioners of District of Columbia v. Shannon & Luchs Const. Co.*, 57 App.D.C. 67, 17 F.2d 219 (1927). Previous briefing by Petitioner has outlined the many activities that take place at LWBC that are the same as or similar to the activities in these cases, including extensive religious education, which furthers the broader state interest of education.

Therefore, LWBC extensively reduces the burdens of government through education, as well as the arts, recreation, and family services.

The Tax Court erred by not making the requisite findings either in its initial order or in response to the post-decision motions and should have concluded that Petitioner qualifies as an Institution of Purely Public Charity under both the *North Star* test (2008)

and the statutory test (2009). Because of the Tax Court's failure to do so, Appellant asks this Court to make the decision finding LWBC to be an institution of purely public charity.

3. A bright-line test for "need" or "disadvantage" is unmanageable and contrary to the law.

The County is attempting to sway this Court to require a bright-line standard to determine who is needy or disadvantaged or disabled. Who or what entity is to determine who is "needy" of religious instruction or who is disadvantaged or disabled? If the County's position prevailed, children from a middle-class family (one that is not poor but is living paycheck-to-paycheck) would be precluded from receiving subsidies. No IPPC would be allowed to serve these families without losing its IPPC status.

In this instance, the County is arguing that these children of middle-class families are not in need of religious instruction. Apparently the County believes that religious instruction to children of poor families is a benefit to society, but that such instruction to children from middle-class families has no societal benefit. Respondent's Brief at 32. This argument presumes that the poor or disadvantaged are more morally deprived and therefore "needy" of religious influence. This argument is discriminatory, illogical and contrary to the law.

The County's position would severely hinder if not shut down a charity like the Red Cross. When a tornado rips through a small town, and the Red Cross offers

assistance to those whose homes have been destroyed, Red Cross volunteers do not ask town residents for their annual income and tax returns prior to giving them emergency shelter or other assistance in the aftermath of the tornado. The needs are not measured in dollars. Even if a person in that town has significant means, he still has needs that can be met by the Red Cross in aftermath of a tornado. No one should require the Red Cross to gather financial information from people prior to helping them after a storm. The Red Cross helps all who are affected, whether they are poverty-level or whether they are millionaires.

In determining whether an entity is a charity, there is no test to determine who is needy or what ailment or disability makes a person disadvantaged. Further, LWBC does not need to make this determination because it is *not required* by the law.

III. ALL LIVING WORD BIBLE CAMP OWNED PROPERTY IN ITASCA COUNTY IS DEVOTED TO AND REASONABLY NECESSARY TO THE ACCOMPLISHMENT OF ITS CHARITABLE PURPOSES

The County separates out Parcel 4201, claiming that it does not qualify for the IPPC exemption because it is used for personal dwelling purposes. When an institution is exempted from taxation this includes all its property devoted to and reasonably necessary for the accomplishment of its purposes. *State v. Board of Foreign Missions of Augustana Synod*, 221 Minn. 536, 541, 22 N.W.2d 642, 645 (1946). Further, it is the nature of the use of the property and its reasonable relation to the accomplishment of the objectives of the institution which owns it that determines whether or not the property is tax-exempt.

Id. It is immaterial that there is a residence occupied by a director of the organization. *Id.* at 542, 645.

Respondent asks this Court to adopt a rigid and narrow standard, that when a property is used as dwelling unit for a organization's director it is automatically taxable. This test is even more narrow than the "essential" or "indispensable to the principal purposes" test rejected by the Minnesota Supreme Court in *State v. Fairview Hospital*, 262 Minn. 184, 187, 114 N.W.2d 568, 571 (1962). Rather, in *Fairview Hospital* the Court followed precedent to state that the test is "reasonably necessary for the accomplishment of the purposes of the institution." *Id.* The Court went on to caution about interpreting "necessary" too narrowly saying, "this word 'necessary' should not be read in its strictest," rather "the language has this broader meaning, reasonably necessary or appropriate for the proper occupancy, use, and enjoyment of the institution." *Id.* at 188, 571.

Therefore, to qualify for tax exemption for Parcel 4201 the Petitioner must only prove that the cabin is "appropriate for the proper occupancy, use, and enjoyment of the institution." *Id.*

The use of the cabin on Parcel 4201 by LWBC Camp Directors Ron and Judy Hunt is similar to the use of houses in *Board of Foreign Missions, Pacem in Terris v. County of Isanti*, 1992 WL 382672 (Minn.Tax). A-0080, and *Central Minnesota Council, Boy Scouts of America v. County of Crow Wing*, 1988 WL 9692 (Minn.Tax). A-0083. In

Board of Foreign Missions a church owned fully-furnished residential property that was occupied by the executive director who was in charge of directing the missionary work and policies of the church. *Board of Foreign Missions*, 221 Minn. at 543, 22 N.W.2d at 646. In that case, the Court held that furnishing a rent free residence to a church executive “whose guiding hand coordinates and directs the missionary activities of an entire church is reasonably related to the accomplishment of church purposes.” *Id.* Further, church use of the home was not required for exemption and the executive director was not asked to pay for any utilities.

In *Pacem*, the organization used the house much like LWBC utilizes the cabin on Parcel 4201. *Pacem* used the property to house temporary volunteers, overflows guests, staff, for Board of Director meetings, as an office and for storage. *Pacem*, 1992 WL 382672 at 3. Further, and directly against Respondent’s view of the law, property tax exemption was upheld when the property was the home to the organization’s full-time volunteer. *Id.* at 2.

In *Central Minnesota Council, Boy Scouts of America*, the organization operated a 300-acre Boy Scout camp with primarily summer use, but also winter camping excursions. *Central Minnesota Council, Boy Scouts of America*, 1988 WL 9692 at 2. The organization desired to have a full-time ranger on the premises, so it constructed a two-bedroom home and permitted a camp ranger to move in with his wife and daughter year round, rent-free, in exchange for performing his camp ranger duties. *Id.* at 3. The

camp ranger performed many of the same tasks the Hunts perform for LWBC; he was in charge of preventing unauthorized persons from using the camp, mowed the grass, kept the grounds neat, was the community and government liaison, maintained the property, and was a supervisor in camp programs. *Id.* Similarly, Mr. Hunt testified he would not allow guests onto the property who were not coming to the property for an LWBC purpose (preventing unauthorized access), he was in charge of upkeep including snowplowing, yard work, and controlling the property. [Exhibit R 142, T. at 181-85.] The Hunts also serve as a community and government liaison in the development of the Deer Lake property.

The use of the cabin by the Hunts is not for vacation, or to have a place to live, it is so that they can conduct the operations of the organization. The cabin serves as the Camp's retreat center, and the office where all business is conducted, including camp administration, summer camp planning, lesson preparation, and craft preparation. Similarly, it allows the organization to build relationships with government and community leaders, as well as neighbors, activities found to show necessity in *Central Minnesota Council, Boy Scouts of America*. 1982 WL 9692 at 3.

Mr. Hunt testified that the cabin is not used like their home, there is no television, and they would much rather be living in the home they own in Ramsey, Minnesota. However, it is necessary for the camp director to maintain a residence on site to carry out

the objectives of the camp as it now exists and for its future development. [Exhibit R 142, T. at 179-80, 187.]

Respondent argues that there is not a need for the camp director to live on site, however the Court rejected this same argument in *Pacem* and stated that because the organization relied entirely on volunteers, much like LWBC, and the work performed by Pacem's full-time volunteer was necessary it was reasonable that she be housed on site. *Pacem*, 1992 WL 382672 at 3.

Finally, the reasonable necessity of the use of the cabin as a residence for directors is bolstered by the fact that moving the cabin from one part of the property to the main camp road and remodeling it shows need. It is a rule of law that an organization does not generally purchase something it does not need. *Id.* at 2, citing *Concordia College Corporation v. State*, 265 Minn. 136, 129 N.W.2d 601 (1963). Here, LWBC recognized the need to have a camp director present on the property, the need for a space to plan camp activities, and the need for a place to conduct retreats. All these functions are reasonably necessary to the accomplishment of the charitable purposes of the camp. Therefore, the property should be held tax exempt.

1. Petitioner's use of the cabin does not violate *North Star* factor six or requirement six of Minn. Stat. § 272.02, Subd. 7.

Respondent argues that use of the property is open only to "select individuals" and attempts to argue that this is an improper benefit to private parties, violating both non-

profit status and factor six under *North Star*. This argument could not be farther from the truth. It is not based on any evidence, but rather is a fabrication of Respondent. The evidence proves the exact opposite. Mr. Hunt testified that “[w]e’ve never excluded guests...[w]e’ve never – we admit people for the purpose of our camp. Period. I mean, if someone comes up to have marriage counseling, we admit them.” [Exhibit R 142, T. at 183].

Under the 2009 Statute, requirement six is met because under the organization’s Articles provide that dividends, in form or in substance, or assets upon dissolution are not made available to private interests, which is a factor that has helped them receive IRS tax exemption as a 501(c)(3). Under the March 1, 2010 Minnesota Department of Revenue bulletin, its states that if an organization applying for property tax exemption is classified by the IRS as a 501(c)(3), they are assumed to meet requirement six.

IV. LIVING WORD BIBLE CAMP’S CURRENT USE OF THE PROPERTY AND PREPARATION FOR FURTHER DEVELOPMENT WARRANTS TAX EXEMPTION.

Respondent argues that LWBC is dissimilar from *Second Church*. However, the Respondent’s analysis of *Second Church* is flawed. The timeline utilized by Respondent to show the building progress purports to show that construction of the buildings by the church was nearly completed at the time of the trial, in essence stating the project was almost complete. This is a misreading of the facts of *Second Church*. *Second Church*, 185 Minn. at 243, 240 N.W. at 533. At the time of the trial construction on an administrative

building had been started and later completed. *Id.* It was the building of this administrative building for which property tax exemption was granted, because it demonstrated progress toward Second Church's ultimate goal. *Id.* at 245, 534.

However, the Respondent and Tax Court analyze *Second Church* as if the main church was the first building constructed. Rather, it was the administration building, important to the functions of the church, but not the building for which the property was intended. *Id.* at 243, 533. By the time of the Court decision, the church organization had not made further progress on building the church due to lack of financial resources, however the Court granted exemption because "a good-faith intention to build a church plant...within a reasonable time" was shown by that petitioner. *Id.* at 244, 534.

This is an important distinction as Living Word Bible Camp has made even greater progress in developing its property than Second Church had when the Court granted property tax exemption. LWBC has done the following:

1. The property has been surveyed. (Trial Transcript, PP.. 82, 212).
2. An architect has been hired and plans have been drafted and completed for the grading of the property and the construction of buildings. (P 132, 133, 212, Exhibits 8-15).
3. The cabin sites have been staked off. (*Id.*)

4. The EPA and Soil and Water Conservation District approved construction of a driveway and parking lot. The driveway was completed and the parking lot area was cleared. (P. 135-138, 212).
5. LWBC had well and septic plans prepared and obtained estimates on the cost of construction. (P135-139).
6. The property has been landscaped. (P212).
7. An administration/caretaker lodge has been renovated to operate the camp and to host retreats. (P. 132, 166-168, 178, 212).
8. An outbuilding was erected for use as a shop in which camp equipment has been and will continue to be repaired. (P. 160, 168, 179).

The Respondent would have this Court believe that LWBC only has “plans” and has not “demonstrated progress towards implementing plans.” Respondent’s Brief at 16. Clearly, the erection of buildings, grading of parking lots, and paving of driveways prove implementation of the plans. Appellant has proceeded to implement the plans in a concerted way to the extent it is able. However, the actions of the County have wrongfully interfered with these plans. For the past three years, LWBC has attempted to conduct the required environmental review so that it can move forward with the permitting process. (It is important to note that LWBC had obtained the PUD and CUP to build in 2006, but was forced into environmental review through litigation.) Unfortunately, the process was ruled arbitrary and capricious due to the bias and

improper influence against LWBC by Commissioner McLynn. The Itasca County District Court ordered that due to this bias and improper influence a new EAW must be completed. Itasca County District Court, Conclusions of Law, Order, and Memorandum of Judge Maturi, December 15, 2011. A0060. *See also* Itasca County District Court, Findings of Fact, Conclusions of Law, Order, and Memorandum of Judge Maturi, July 25, 2011. A-0050.

The environmental review process is not a legal bar to developing the property, but rather a process that LWBC must conduct as part of its demonstrated progress towards implementing its plans. Had it not been for the irregularities of process due to the bias and improper influence of Commissioner McLynn the environmental review process may have been completed and final permits obtained by this time.

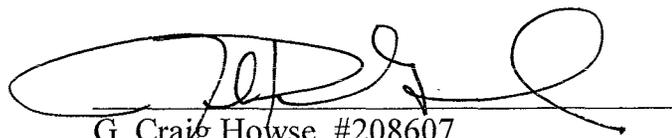
CONCLUSION

The law is clear an organization must confer a gift to receive property tax exemption as an “Institution of Purely Public Charity.” That gift must be given to a material number or recipients and is not limited to, and not required to be given to, solely the needy or disadvantaged.

LWBC met its burden to be classified as an “Institution of Purely Public Charity” under *North Star* and Minn. Stat. § 272.02, Subd. 7 (2009). The Property is reasonably necessary to the organization as a means to accomplish its charitable activities and Petitioner currently uses the property for charitable purposes and is preparing to expand its charitable uses in the future. Therefore this Court should rule that the Tax Court erred and properly reinstate LWBC’s Deer Lake property tax exemption for all parcels in 2008 and 2009.

Respectfully submitted,
HOWSE & THOMPSON, P.A.

Dated: June 14, 2012

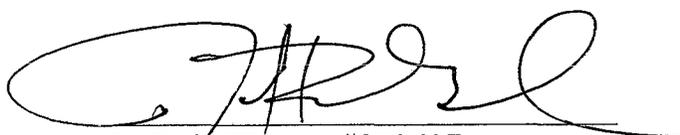


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CERTIFICATE OF COMPLIANCE

This brief complies with the word limitations of Minn. R. Civ. App. P. 132.01, subd. 3(a). The brief was prepared using Microsoft Word 2007 in 13 point Times New Roman text, which reports that the brief contains 6,689 words.

HOWSE & THOMPSON, P.A.

A handwritten signature in black ink, appearing to read 'G. Howse', written over a horizontal line.

Dated: June 14, 2012

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