

NO. A12-0632

State of Minnesota
In Supreme Court

Living Word Bible Camp,

Appellant,

vs.

County of Itasca,

Respondent.

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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STATEMENT OF THE ISSUES

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

The Tax Court failed at Trial and in response post-trial motions to rule on whether LWBC is an institution of purely public charity, which is a material issue.

II. LIVING WORD BIBLE CAMP'S CURRENT USE OF PROPERTY AND PREPARATION FOR FURTHER DEVELOPMENT WARRANTS TAX EXEMPTION.

The Tax Court failed, contrary to the law and the facts, to grant tax exempt status to LWBC's property.

III. TAX COURT ERRED IN CONCLUDING PETITIONER WAS LEGALLY BARRED FROM USING PROPERTY.

The Tax Court concluded, contrary to the law and the facts, that LWBC was legally unable to use the subject property for an exempt purpose.

IV. ITASCA COUNTY'S INTERFERENCE WITH LIVING WORD BIBLE CAMP'S USE AND DEVELOPMENT OF PROPERTY SHOULD NOT BE A BASIS FOR DENIAL OF EXEMPTION.

The Tax Court erred in allowing the County's interference with LWBC's use and development of the property as a basis to deny exemption.

V. TAX COURT ERRED IN ESTABLISHING NEW AND UNSUPPORTED RULES.

The Tax Court erred in precluding consideration of LWBC's exempt activities conducted on leased property in determining whether it is an institution of purely public charity; and

The Tax Court erred by requiring an organization to own property and conduct exempt activities on the owned property before such organization could receive property tax exemption for non-adjacent owned property.

STATEMENT OF THE CASE AND FACTS

Appellant, Living Word Bible Camp (LWBC), is a 501(c)(3) tax exempt organization that owns 270 acres of property in Itasca County, Minnesota. Appellant was originally awarded exemption from property taxes after the property was purchased in 2000, which status continued through 2007. In 2008, for taxes payable in 2009 and thereafter, LWBC's property was reclassified as non-exempt and was denied exemption.

Appellant filed petitions seeking review of Itasca County's denial of exemption relative to property taxes payable in 2009 and in 2010.

The matter proceeded to hearing in the Minnesota Tax Court on June 1, 2010. After post-hearing submissions, the Tax Court issued its initial decision on March 28, 2011, denying the request for exemption. Said decision failed to determine whether Appellant was an institution of purely public charity (IPPC), wrongly ruled that the property was not exempt because LWBC was "legally unable to build" on the property (Tax Court Findings, Conclusions and Order, dated March 28, 2011, A-0002) and wrongfully found a lack of exempt use of the subject property.

LWBC filed a Motion for Amended Findings and New Trial on April 7, 2011. Oral arguments on said motion were heard on September 30, 2011, after which the Tax Court issued its Order and Memorandum, dated February 24, 2012, filed in the Itasca County Court on February 27, 2012.

In the February 24, 2012, Order and Memorandum, the Tax Court continued its failure to state whether Living Word Bible Camp is an institution of purely public charity and affirmed its denial of property tax exemption. The Tax Court also established a new standard, which Appellant was unable to meet; that for a property to be tax exempt under State v. Fairview, 114 N.W.2d 568 (Minn. 1962), an institution must own and use separate real property for a tax exempt purpose before it can seek “an additional exception for non-adjacent property used to support the institution’s main purpose.” Tax Court Memorandum, dated February 24, 2012, A-0020

For the above and other reasons, Appellant seeks review upon the grounds that the subject Tax Court Orders are not in conformity with Minnesota tax law and the decisions were unwarranted by the evidence.

ARGUMENT

The Minnesota Supreme Court reviews Minnesota Tax Court decisions “to determine whether [such] decisions are supported by the evidence and in conformity with the law.” Healtheast v. County of Ramsey, 749 N.W.2d 15, 18 (Minn. 2008). Legal determinations are reviewed *de novo*. Id.

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

The Tax Court, in its Findings of Fact, does not discuss the issue of whether or not Living Word Bible Camp is an Institution of Purely Public Charity, even though the Court states in the first paragraph of its Memorandum that LWBC “seeks real property tax exemption as an institution of purely public charity.” Memorandum of George W. Perez, Chief Judge Tax Court, dated March 28, 2011. Appendix, A-0006. The only other mention of a determination was in footnote 25 of the same Order where the Court stated “an independent determination must be made to determine whether Petitioner qualifies as a purely public charity for real property tax purposes.” A-0006

The issue of whether or not LWBC was an institution of purely public charity is central to determining the subject property tax exemption and this issue was extensively briefed by both parties, including the preparation of supplemental briefs on the issue six months after trial at the request of Judge Perez.

Under Minnesota Statute §272.02, Subd. 7, institutions of purely public charity are exempt from real property taxation. For tax years prior to 2009, the Minnesota Supreme

Court utilized six factors to test whether an organization's activities qualify it as an institution of purely public charity:

1. Whether the stated purpose of the undertaking is to be helpful to others without immediate expectation of material reward;
2. Whether the entity involved is supported by donations and gifts in whole or in part;
3. Whether the recipients of the "charity" are required to pay for the assistance received in whole or in part;
4. Whether the income received from gifts and donations and charges to users produces a profit to the charitable institution;
5. Whether the beneficiaries of the "charity" are restricted or unrestricted and, if restricted, whether the class of persons to whom the charity is made available is one having a reasonable relationship to the charitable objectives; and
6. Whether dividends, in form or substance, or assets upon dissolution are available to private interests.

North Star Research Inst. v. County of Hennepin, 236 N.W. 2d 754, 757 (Minn.1975).

These six factors are not six mandatory elements that must be considered and satisfied in every charitable exemption case. Under the Rainbow Child Care Center v. County of Goodhue, 741 N.W.2d 880, 885 (Minn.2007). These factors are to serve only as guidelines, and not all factors must be satisfied to qualify for the exemption, rather each case must be decided on its own facts. Id., at 885-886.

If one or more of the North Star factors is not helpful in assessing whether an organization is an institution of purely public charity, those factors need not be analyzed. Id., at 886. However, because factor 3 tests for a value that is “fundamental to the concept of charity – that is, whether the organization *gives* anything away,” factor three must be satisfied to be considered an institution of purely public charity. Id.

For tax year 2009 and tax years after, amended Minnesota Statute §272.02, Subd. 7, applies in determining whether an organization is an institution of purely public charity. This statute is a codification of the North Star factors, and the parties agreed this statute applies to the 2009 assessment year. The codified factors are stated as follows:

1. Whether the stated purpose of the undertaking is to be helpful to others without immediate expectation of material reward;
2. Whether the institution of public charity is supported by material donations, gifts, or government grants for services to the public in whole or in part;

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;
4. Whether the income received, including material gifts and donations, produces a profit to the charitable institution that is not distributed to private interests;
5. Whether the beneficiaries of the charity are restricted or unrestricted, and, if restricted, whether the class of persons to whom the charity is made available is one having a reasonable relationship to the charitable objectives; and
6. Whether dividends, in form or substance, or assets upon dissolution, are not available to private interests.

Minn. Stat. §272.02, Subd. 7.

The codified factors are substantially the same as the common law North Star factors except for factor three. Factor three now includes the “lessening of the burden of government” that is a part of Factor Five of North Star. As a distinction to North Star, this requirement is now expressed as an “or” in statutory factor three. The charity must

either provide services at a reduced or no cost to a material number of recipients “or” it must alleviate governmental responsibilities.

LWBC satisfies all of the statutory factors for the same reasons that it fulfills the common law North Star factors, noting that as to factor three, it can be satisfied by meeting either of the two components. Even so, LWBC meets both of the components of factor three. As the analysis of the statutory factors does not differ from the North Star analysis, LWBC meets these requirements for 2009 and the analysis will not be repeated.

The Tax Court failed to make proper Findings, despite the evidence presented, to support the conclusion that LWBC is an institution of purely public charity.^a

^a The following are Findings which the Tax Court should have made, based upon the evidence at trial:

1. LWBC’s purpose is to present the Gospel of Jesus Christ and Christ-centered principles of living and Godly character to children, young people, and adults while providing a meaningful camp experience in a beautiful setting, reflective of God’s beauty, creation and goodness to people. (Petitioner’s Trial Exhibit 4, Trial Transcript, page 21, line 6).
2. LWBC is, and has been since 1973, the operator of a children’s camp and a retreat center for youth, adults and families. (Trial Transcript, page 20)
3. LWBC offers the campers recreational activities, healthy food, shelter, Bible studies, nature walks, canoeing, swimming, arts and crafts, music and singing. (Trial Transcript, pages 27-37, Respondent’s Exhibit 141, Transcript of Deposition of Brian Connors, pages 33-34)
4. Along with providing educational and recreational opportunities, LWBC presents Christ-centered principles of living to children, young people and adults. LWBC works with campers to open their hearts to Jesus Christ, encouraging them toward character improvement and training them to live a morally upright life. (Trial Transcript, pages 31, 61, 152-153)
5. Days at camp consist of Bible Study and teaching; recreational activities, such as swimming, fishing and boating; singing and music; environmental studies; and crafts. (Trial Transcript, pp. 28-29).
6. LWBC is supported almost entirely by gifts and donations. (Trial Transcript, page 40, Exhibits 24 through 27, Respondent’s Exhibit 118).
7. For 2008, LWBC’s total receipts were \$135,156. Of this amount, only \$12,481 was received from camper fees (P41). In 2008, campers paid on average \$37 per person for a week of camp (P42). The out-of-pocket cost of camp for 2008 per camper was \$229. The difference of \$192 was made up by contributions (Transcript P42 and 104).
8. The out-of-pocket cost of camp does not reflect the value or cost of the service of the volunteers who serve at camp. All camp workers whether counselors, cook staff or the camp nurse, are volunteers (P44).

9. The camp directors, Ron and Judy Hunt, who have served the camp for 38 years and as Executive Directors for 20 years, receive no compensation (P20; P44).
10. The percentage of public support by donations and gifts for 2004 through 2008 is:

Year	Public Support Percentage
2004	97%
2005	91%
2006	93%
2007	83%
2008	90%

(P55 – 56; Exhibit P108)

11. Campers have never been required to pay more than \$40 per week. The initial fee for camp began as \$5 per week in 1973 and increased to \$40 per week for 2008 in 2009 (P46). Even so, no camper has ever been turned away because of finances (P50).
12. Fees charged to campers in similarly situated camps of elementary aged children is \$300 - \$400 per week (P67). LWBC campers pay 10% of the weekly fee of similar camps.

13. According to Exhibit P104, each LWBC camper was subsidized for the years 2005 through 2008 as follows:

Year	2005	2006	2007	2008
<i>Total Cost</i>	82,288	90,793	82,155	76,508
<i>Camper Fees</i>	90,137	12,740	14,032	12,401
<i>Cost per Camper</i>	329	298	233	229
<i>Contribution per Camper</i>	37	42	40	37
<i>Subsidy per Camper</i>	293	256	193	192

14. Ron Hunt testified that campers were asked to pay the minimum fee of \$40 to secure the camper's commitment for the week (P50).
15. Given the above subsidies, LWBC operates at a breakeven or less. For 2006 through 2008, its expenses have been greater than its donations and minimum camper charges combined (P69). As Exhibit P107 demonstrated, LWBC's cash position has decreased each year for 2006, 2007 and 2008 meaning that the camp is spending more than it is taking in each year (P70).
16. LWBC imposes no restrictions on those who can attend camp other than the requirement that the campers be in 3rd through 8th grade (P72). These grades were focused on because the camp has the ability to serve a limited number of students, having a long waiting list, and it did not want to mix older students with younger students given the challenges of wide age ranges (P72– 73). Otherwise, LWBC imposes no restrictions on who can attend.
17. The camp is open to anyone, including atheists. There is no denominational restriction or any other kind of restriction (P73). No preference is given to any camper based on denomination or church affiliation (P75).
18. As a 501(c)(3) organization, LWBC's Articles of Incorporation mandate that in the event of its dissolution, all of its assets must be distributed to another 501(c)(3) organization (P76). None of the assets of LWBC are given or distributed for the private benefit of any individuals (P154).
19. Only the camp director or the caretaker lives at the Property, which is customary for camp property in order to maintain it.
20. None of the directors on LWBC's board receives any material gain from LWBC or the Property. (Petitioner's Exhibits 2, 3, 24-27)

The Tax Court should have made 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, Appellants ask this Court to make the decision finding LWBC to be an institution of purely public charity.

II. LIVING WORD BIBLE CAMP'S CURRENT USE OF PROPERTY AND PREPARATION FOR FURTHER DEVELOPMENT WARRANTS TAX EXEMPTION.

The Tax Court found that Appellants's use of the property did not qualify for tax exemption as it was not currently using the property for its intended purpose; that it did not qualify for the Second Church rule; and that it was legally barred from using the property for its intended purpose.

LWBC presented evidence outlining many of its efforts to put its plans for the subject property into action. The Tax Court was wrong to conclude that LWBC made no progress or made insufficient progress on implementing its plans. LWBC did everything within its power and authority to improve the property in preparation for its intended use. Evidence was presented and the Tax Court should have made findings that:

1. The property had been surveyed. (Trial Transcript, PP.. 82, 212).
2. LWBC hired an architect; plans were 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 were 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 had been upgraded and was available to host retreats. (P. 132, 166-168, 178, 212).
8. An outbuilding was erected, for use as a shop in which camp equipment was repaired. (P. 160, 168, 179).

LWBC proceeded toward its intended use as much as the law and the County allowed.

The Tax Court held that LWBC is dissimilar from Second Church. However, a thorough reading of Second Church, shows that there are more similarities than dissimilarities in the two cases. The first and most significant is that Second Church was given property tax exemption after only one building was completed as part of a construction project, which showed progress toward the ultimate goal. State v. Second Church of Christ, Scientist, 185 Minn. 242, 245, 240 N.W. 532, 534 (1932).

However, the Tax Court analyzed Second Church as if the main church was the first building constructed. Rather, it was an 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. Similarly, LWBC constructed the buildings on the subject property which it was able to construct to this point and then showed time and time again, through its actions, its good-faith intention to construct other buildings as soon as the necessary permits will allow.

Second Church states that “the test” in determining whether to grant tax exemption, “is the use to which the property is devoted or about to be devoted. It is not necessarily the use or nonuse of the property at the exact time when the tax is levied.” Id. at 244, 532. The Second Church test is not a specified period of time, like the 5 year term cited by the Tax Court here.

The Tax Court cited to Skyline and stated repeatedly that “taxation is the rule and exemption is the exception.” Memorandum of Judge Perez, A-0010. However, the Minnesota Supreme Court ruled in the Skyline decision that the “evident purpose of the exemption is to foster and facilitate delivery of charitable services by private institutions by exempting them from taxation..., [and therefore, exemptions] should not be interpreted in a manner which frustrates the very purpose the exemption.” Skyline Preservation Foundation v. County of Polk, 621 N.W.2d 727, 732 (2001).

The Tax Court reasoned that Skyline “is not helpful to” LWBC because it has been “eight years” and LWBC is “no closer to commencing its plans to develop the Subject Property than it was at the time of purchase...” Memorandum, Judge Perez, A-A-0012. Such conclusions by the Tax Court are inconsistent with the evidence presented at trial.

In Skyline, the Minnesota Supreme Court stated that “an organization may not merely buy and hold property and continue to maintain an exemption as a purely public charity based only on planned future use... where there is no evidence of efforts to bring the plans to fruition.” Skyline, 621 N.W.2d at 735. This is fully consistent with LWBC and its current use of the subject property for all office and administration work, for counselor training and for retreats, and its efforts to bring its plans for use of the property as a summer camp with all necessary facilities for same, to fruition as soon as allowed. LWBC cannot be blamed for the continued opposition and litigation and time consuming appeals. LWBC has acted diligently in completing as much construction as has been allowed and in using the property for charitable purposes to the extent it has been able to.

Since purchasing the property in 2000, LWBC has worked diligently toward gaining approval to build, to move forward with adapting the property for its intended use. LWBC has experienced opposition since 2001, including a current appeal pending in the Minnesota Court of Appeals, Case No. A12-281, yet despite all the challenges, LWBC continues to progress through the system toward the necessary approvals. LWBC

has shown commitment to the property and its intended use and has diligently persevered through the County approval process and the courts. LWBC is dedicated to obtaining the required approvals to build on the property and has given no indication of indifference or lack of effort, despite the resistance. But for the delay caused by forces outside of LWBC's control, namely opposition by the County and others, LWBC would have completed construction of all camp buildings on the Deer Lake property. Further, while the various Court challenges have delayed development of the property, it was inaccurate for the Tax Court to conclude that LWBC is legally barred from using the property, or even legally unable to use the property. LWBC may not possess a CUP or have an approved PUD, (though it once did before appeals on the EAW) but both are attainable. A youth camp is an allowed use in Itasca County under LWBC's present zoning. Ultimately, environmental impact conditions or limitations will be determined and agreed to and followed; and a CUP and PUD will be granted. LWBC is being delayed, but it will not be denied. Because LWBC is currently using the subject property for as many exempt purposes as it is allowed to (administration, training, retreats, etc...), and it is working on full exempt use as a camp on the site, the exemption should be allowed for all subject years.

III. TAX COURT ERRED IN CONCLUDING PETITIONER WAS LEGALLY BARRED FROM USING PROPERTY.

First, as argued above, the Petitioner did show at trial that it was using the property for exempt purposes and therefore should be granted tax exempt status. Notwithstanding this showing, the Tax Court incorrectly disregarded the right of an institution of purely public charity to exempt its property from taxation while executing plans and arrangements to fit the property for an exempt use, and concluded incorrectly that legal hurdles forced upon the Petitioner by the taxing authority created a legal bar precluding its exemption. Memorandum of Judge Perez, A-0012-0013.

The Tax Court concluded that Christian Business Men's Committee v. State, 38 N.W.2d 803 (1949), established a "legal bar" theory that precluded exemption of property. The Tax Court then held that the legal challenges faced by the Petitioner are a "legal bar" precluding the tax exemption of its property. The Tax Court misread Christian Business Men's Committee and improperly extended its incorrect holding to LWBC.

The Minnesota Supreme Court did not hold in Christian Business Men's Committee that the existence of a commercial lease was a legal bar to the use of a property and therefore the basis for denying exemption. The case is void of any "legal bar" analysis. Rather, the Supreme Court based its decision on three identified facts involving an outstanding commercial lease which were:

1. That the lease had a considerable period of time to run before expiration;
2. That a substantial income was generated from the lease; and
3. That there was an absence of anything concrete having been done to affect an adaptation or remodeling of the property. Christian Businessman's Committee at, 810. (Emphasis added).

The problem that the Supreme Court identified which does not exist in LWBC's case was stated as follows:

Clearly, a substantial commercial income may not be enjoyed for any considerable period of time upon the theory that the property will in the future be converted to a tax exempt purpose. Id.

The Supreme Court's decision did not turn on the existence of a legal bar, but on the inequity of an institution of purely public charity enjoying exemption while claiming that it would some day put the property to an exempt use and in the meantime deriving a "substantial commercial income." Id.

Because LWBC's receives no lease income, Christian Business Men's Committee support's the LWBC's position as it recognizes the right of exemption while efforts are being made to fit the property for its intended use. Note the language of the Supreme Court:

The right of exemption carries it with it, as an incident the opportunity to adapt and fit the property for use within a reasonable time in execution of plans or arrangements made for the purposes, but during the period of adaptation the right of tax exemption does not exist if and when the property so purchased yields a substantial commercial income. Id. (emphasis added)

The LWBC's property is not subject to a lease. Appellants are not receiving a substantial income from a lease, and unlike the petitioner in Christian Business Men's Committee, LWBC made substantial gains in fitting the property for its intended use. The facts upon which Christian Business Men's Committee was decided are not the facts of this case, and in that case the Supreme Court does not reach its conclusion in denying exempt status under a legal bar theory. Under the holding of Christian Business Men's Committee, Living Word Bible Camp is entitled to an exemption as it is working to place its property to exempt purposes and is not receiving commercial benefits in the interim.

IV. ITASCA COUNTY'S INTERFERENCE WITH LIVING WORD BIBLE CAMP'S USE AND DEVELOPMENT OF PROPERTY WOULD NOT BE A BASIS FOR DENIAL OF EXEMPTION.

Early in this tax appeal, LWBC sought discovery from the County, including depositions of one or more Itasca County Commissioners. When the County opposed

Commissioner depositions, the Tax Court essentially denied them by instructing LWBC's counsel to withdraw the requests or face a penalizing award of attorney fees as a sanction. Had LWBC been permitted to pursue the depositions, and then to present evidence of its findings at Trial, this Court would have seen the bias of and the disruption created by a member of the Itasca County Board and its impact on the County employees who revoked the LWBC tax exemption.

The history of bias from Itasca County Commissioner McLynn against LWBC has been detrimental to LWBC's ability to develop the property. Her advocacy for those in opposition to the camp surfaced to the Camp's detriment in 2005 when Commissioner McLynn requested the County Assessor look into removing the Camp's property tax exempt status. In the December 10, 2009, deposition of past assessor, Thomas Gilmore, Mr. Gilmore admitted that he was asked to look into the Camp's taxable status by Commissioner McLynn. Affidavit of G. Craig Howse, A-0025. Mr. Gilmore testified that after looking into the Camp's tax status at that time, he decided not to change it and relayed his conclusions to Commissioner McLynn by phone. It was his testimony that Commissioner McLynn was not real happy with his answer because, in his opinion, she wanted the tax exempt status to be revoked and not renewed. Howse Affidavit, A-0026-27.

Further, in 2006, when LWBC was seeking approval of its PUD and CUP before the County's Planning Commission, which is separate from the County Board,

Commissioner McLynn appeared at a public meeting seeking to persuade the Planning Commission to deny the PUD and CUP of the Camp. Referring to Holly Newton of the Deer Lake Association which was opposed to the Camp's plans, and has brought prior litigation against Appellant, McLynn declared she represented Ms. Newton. A-0030.

Commissioner McLynn's efforts to revoke the Camp's tax exempt status did not stop in 2005. She renewed her efforts in 2008. Affidavit of Howse, A-0027. This was at about the same time that Holly Newton, one of the parties that Commissioner McLynn claimed to represent in 2006 approached Mr. Gilmore on the revocation of the Camp's exempt status. Howse Affidavit, Exhibit A (P-69) A-0027. At about that same time, Tom Brown, another opponent of LWBC, was also inquiring about the tax exempt status of Living Word. Howse Affidavit, Exhibit B. In response, Tom Gilmore contacted Commissioner McLynn by e-mail seeking information in opposition to LWBC. Howse Affidavit, Exhibit D A-0033. Commissioner McLynn responded with reasons she felt the Camp's tax exempt status should be denied, though they were errant.

Nonetheless, Mr. Gilmore proceeded to revoke the Camp's tax exempt status and communicated this in January 2008 to Tom Brown, President of the Deer Lake Association, and part of the Newton group represented by Commissioner McLynn, even before Mr. Gilmore informed the Camp that he was going to change their property tax status. Howse Affidavit, A-0031. In concluding his testimony, Gilmore stated that he would not have looked into the property or considered revoking the tax exempt status if it

wasn't for McLynn and that there would not be litigation regarding the taxable nature of the property had she not requested it.

Commissioner McLynn's opposition to the Camp and its development of the subject property continues to grow and to show itself. A-0035-0040 In 2009, she insisted on distributing copies of the EAW to LWBC opponents before the Rules allowed, despite the County's EAW Consultant giving his opinion on the record that her actions were wrong. Also see the pending appeal in the Minnesota Court of Appeals, Case No. A12-281.

Clearly, the County is not independent and it should not be allowed to use its interference with and its opposition to LWBC as a basis to claim that the Camp has not been diligent in pursuing the use and development of the subject property.

V. TAX COURT ERRED IN ESTABLISHING NEW AND UNSUPPORTED RULES.

As stated above, the Tax Court erred in precluding consideration of LWBC's exempt activities conducted on leased property in determining whether it is an institution of purely public charity. The Tax Court further erred by requiring an organization to own property and conduct exempt activities on the owned property before such organization could receive property tax exemption for non-adjacent owned property.

Here, the Tax Court establishes two new rules of law. Without citing any precedent, the Tax Court holds that activities conducted by a non-profit on leased

property cannot be considered in determining whether its activities are tax exempt. The Tax Court states in the Memorandum to its Order, dated February 24, 2012, which denied LWBC's post-decision motions, that:

In the instant case, there is no concurrent ownership and use of the Subject Property. Petitioner leases, but does not own, the Timber Bay lake property in Aitkin County where it holds summer bible camp activities that Petitioner is organized to conduct under its Articles of Incorporation. If Petitioner owned the Timber Bay lake property or conducted the summer bible camp activities on the Subject Property, then the summer bible camp activities could be considered as to whether or not these activities are tax exempt under Christian Business Men's, A-0019.

Without any precedent, the Tax Court has eliminated consideration of all the activities of non-profits on leased property in determining whether the organization is an institution of purely public charity. This is a new and unfounded rule of law.

First, in applying the factors of Minn. Stat. § 272.02, subd. 7, as cited above, the statute makes no distinction between activities conducted on leased versus owned property. The factors considered in Minn. Stat. § 272.02, subd. 7, turn on the nature of the organization and the nature of the services and offerings of the organization. The statute does not consider the nature of the title of its real estate in applying these factors. There is no basis for considering activities of a non-profit organization that squarely meet

the criteria for IPPC status if the activities are conducted on property owned by the organization, but precluding consideration of these exact same activities if conducted on leased property.

This is the effect of the Tax Court's decision. It clearly states, "If Petitioner owned the Timber Bay lake property or conducted the summer bible camp activities on the Subject Property, then the summer bible camp activities could be considered as to whether or not these activities are tax exempt under Christian Business Men's." Tax Court's Memorandum, 2/24/2012. A-0019. (Emphasis Added). Not only does the statute fail to make any such distinction, the affects of such a distinction would have wide and unintended consequences on many organizations and it would require re-evaluation of all activities of exempt organizations for IPPC status based upon the nature of the title of the real estate on which it conducts its activities. As in this case, an organization that clearly meets the criteria of an IPPC based on a thirty year history is denied IPPC status because it operates on leased property. This would be a monumental change in the application of the factors for IPPC status not intended by the legislature. Therefore, this new criteria should be stricken and LWBC's thirty years of history on leased property should be considered in determining whether it is a tax exempt organization for purposes of Minn. Stat. § 272.02, subd. 7.

The Tax Court's second new rule of law is based upon its first new rule of law, as discussed above. This second rule is not as clearly stated but it is born out in the analysis

in the Tax Court's Memorandum, dated February 24, 2012. A-0019. The holding can effectively be stated as: To receive tax exemption on real property owned by a non-profit, it must own other property in the same county and conduct activities on the second piece of property that has been previously determined to be exempt.

This holding is most clearly stated by the Tax Court when it says,

“Further, Petitioner does not own the property in which it operates its children's summer bible camp. This is not a case where an institution owns and uses property for a tax exempt purpose and is seeking an additional exemption for non-adjacent property used to support the institution's main purpose under Fairview. Again, if Petitioner owned the Timber Bay Lake property and its summer bible camp activities were tax exempt, then Petitioner could seek exemption of the non-adjacent subject property under Fairview.” Id. A-0020.

In using these new criteria to distinguish the holding of *Fairview*, the Court states:

“In Fairview, it was uncontested that Fairview Hospital was already exempt. Fairview sought an additional tax exemption for non-adjacent property used to support the hospital. In contrast, here, Petitioner does not already have tax exempt property.” Id. A-0020

The Tax Court's analysis is contrary to well settled law and the Fairview decision. There is no requirement that the exemption of a particular parcel owned by a non-profit is conditioned upon owning a parcel that has previously been determined to be exempt. If this were the case, it would be impossible for a non-profit organization to exempt the first piece of property it acquired.

In *Fairview*, the Supreme Court was to determine whether or not separate property on Lake Minnetonka was tax exempt when used by nursing students for recreation. The decision did not turn on the fact that the hospital had previously been determined to be an exempt organization and was using its other property for exempt purposes. Nor was the determination of the exemption of the Lake Minnetonka property based on the fact that the hospital owned its other campus rather than leasing it. The focal point of the decision was whether recreational use of the property for swimming and the like was "necessary" for the accomplishment of the purposes of the institution. Fairview, 114 N.W.2d at 569. The Supreme Court put absolutely no weight on the nature of the fee title ownership of the hospital on its other property in reaching the decision as to what is necessary. To the opposite, the Supreme Court stated clearly that it was unconcerned about the connection of the beach property to the hospital's main campus when it stated,

It is not required...that the location of the property be adjacent or even in close proximity to the central structures of the institution claiming exemption. Id.

The case law is clear that the basis for the grant of exemption of a particular piece of property is the fact that it is first owned by an exempt organization and then secondly used by that exempt organization. “Exemption requires a concurrence of ownership by an exempt entity and used for an exempt purpose.” Young Men’s Christian Association-Camp Olson v. County of Cass, 1987 WL 12473, p. 6 (Minn. Tax). A-0046.

The proper analysis is to determine whether Living Word Bible Camp is an exempt entity, i.e. an IPPC, based upon its activities, whether on leased or owned property. If this is determined and it can be shown that LWBC owns the property, which it does, then the first step in the analysis has been completed, namely, whether there is a “concurrence of ownership by an exempt entity”. The second portion of the analysis should then begin, which is determining whether the use of that property is for an exempt purpose, and should be followed with a proper application of the term “necessary” as determined in Fairview. This is a broad use of the term that applies to being “necessary” for the hospital’s exempt purpose. Certainly, LWBC’s use of the subject property, furthering its camp ministry, is a necessary use under this broad standard.

This is in keeping with the well settled rule of law in determining the exemption of property.

As with virtually any other entity seeking the exemption from property taxes, three key items are that the property must be owned by an institution of purely public charity used by the institution for charitable purposes and

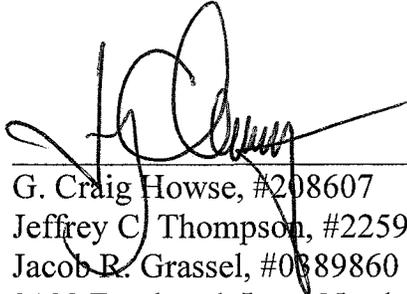
must be reasonably necessary to the organization as a means to accomplishing its charitable purposes. Christian Business Men's, 228 Minn. at 554-555, 38 N.W.2d at 808-809.

The Tax Court's attempt to create a new and narrow standard, based on Fairview, which is broadly applied, is misplaced and should be reviewed. The application of the correct standard results in Appellant's property in Itasca County being tax exempt for all applicable years.

CONCLUSION

Living Word Bible Camp is an institution of purely public charity and its subject Itasca County property is entitled to tax exempt status. The Tax Court erred in its failure to recognize the evidence, make proper findings and draw appropriate and reasonable conclusions. The Tax Court ruling should be reversed and the tax exemptions on the identified parcels should be granted.

Respectfully submitted,
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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 6,443 words.

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