

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
ALBANY COUNTY ASSESSOR) **Docket No. 2019-34**
FROM A DECISION BY THE ALBANY)
COUNTY BOARD OF EQUALIZATION)
(2019 Property Tax Assessment))

DECISION AND ORDER

APPEARANCES

Joel H. Defebaugh, Deputy Albany County and Prosecuting Attorney, appeared on behalf of Petitioner, Albany County Assessor Grant Showacre.

Jason M. Tangeman, Nicholas & Tangeman, LLC, appeared on behalf of Taxpayer, Laramie Senior Housing, Inc.

SUMMARY

[¶ 1] Laramie Senior Housing, Inc. owns a facility in Laramie that provides government-subsidized housing to low-income seniors and disabled persons. For decades, Assessor and his predecessors had considered the LSH property to be tax-exempt, but in 2019, Assessor determined the property was not exempt. LSH appealed to the Albany County Board of Equalization, which held an evidentiary hearing and found that LSH is exempt from property tax as a charitable organization under Wyoming Statutes section 39-11-105(a)(xli) (2019). Assessor appealed to the Wyoming State Board of Equalization. Neither party requested oral argument, so the State Board, Chairman David L. Delicath, Vice-Chairman E. Jayne Mockler, and Board Member Martin L. Hardsocg, decided the appeal on the parties' briefs and the County Board record. We affirm the County Board's decision.

ISSUES

[¶ 2] Assessor raises two issues:

- I. Whether the County Board’s Decision was arbitrary, capricious, an abuse of discretion, not in accordance with the law, or otherwise not supported by substantial evidence when the County Board failed to offer a conclusion on the commercial nature of the Property.
- II. Whether the County Board’s finding that the LSH’s application process benefited an indefinite number of individuals was supported by substantial evidence.

(Assessor’s Br. 2).

[¶ 3] LSH articulates a single issue:

Whether the Albany County Board of Equalization’s decision that Laramie Senior Housing qualifies as a “charitable society or association” pursuant to W.S. § 39-11-105(a)(xli) and therefore is exempt from property taxation was arbitrary, capricious, an abuse of discretion, not in accordance with law, or otherwise not supported by substantial evidence?

(LSH Br. 4).

JURISDICTION

[¶ 4] The State Board shall “hear appeals from county boards of equalization[.]” Wyo. Stat. Ann. § 39-11-102.1(c) (2019). A taxpayer or county assessor may file an appeal with the State Board within 30 days of the County Board’s final decision. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2006). The County Board issued its final decision on October 2, 2019. (R. at 275). Assessor filed his appeal 28 days later. (R. at 0738). Accordingly, we have jurisdiction to decide this matter.

PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD

[¶ 5] LSH is a non-profit corporation that owns a 56-unit apartment complex in Laramie. (Tr. 32). All of LSH’s residents are low-income and are either seniors or disabled. (Tr. 51-52). The United States Department of Housing and Urban Development determines fair market value for the LSH apartments, and HUD guidelines determine how much each

resident pays based on their income. (Tr. 53). HUD pays LSH the balance of fair market value for each resident. (Tr. 65).

[¶ 6] From 1981 to 2018, Albany County Assessors considered LSH to be a charity and thus exempt from property tax. (Tr. 133). That changed in 2019, when Assessor determined that LSH was not exempt. He assessed the LSH property at \$3,752,313, which led to an estimated property tax liability of \$26,022. (R. at 0020). LSH appealed to the County Board, claiming that it should be statutorily exempt from property tax as a secret and benevolent society or association under Wyoming Statutes section 39-11-105(a)(xxvi) (2019), as a senior citizens center under Wyoming Statutes section 39-11-105(a)(xl) (2019), and as a charitable society or association under Wyoming Statutes section 39-11-105(a)(xli) (2019). (R. at 0096-0102; Tr. 10-11).

[¶ 7] The County Board held a hearing at which Assessor testified that he concluded LSH was not exempt because 1) LSH receives fair market value for the apartments; 2) LSH doesn't relieve the state's burden to care for the residents: it's actually HUD that provides the residents' housing with federal dollars; and 3) housing is a "commercial purpose" under the Department's rules, so LSH doesn't fit the definition of "charity" in the Department's rules. (Tr. 112-14).

[¶ 8] The County Board found that LSH is exempt as a charitable society or association, and elected not to address whether LSH is a secret and benevolent society or a senior citizens center. (R. 0728). Assessor timely appealed to us. (R. at 0738).

CONCLUSIONS OF LAW

A. State Board's review function and burdens of proof

[¶ 9] This Board reviews county board decisions as an intermediate appellate body and treats the county board as the finder of fact. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002). Our standard of review of a county board decision is nearly identical to the Wyoming Administrative Procedure Act standard, found at Wyoming Statutes section 16-3-114(c)(ii) (2017), that a district court must apply in reviewing such decisions. Our review is limited to determining whether a county board's action is:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;

- (c) Without observance of procedure required by law; or
- (d) Unsupported by substantial evidence.

Rules, Wyo. State Bd. of Equalization, ch. 3 § 9(a)-(d) (2006). “Substantial evidence is relevant evidence which a reasonable mind might accept in support of the [County Board’s] conclusions. It is more than a scintilla of evidence.” *In re Lysne*, 2018 WY 107, ¶ 12, 426 P.3d 290, 294-95 (Wyo. 2018) (quoting *Walton v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 2007 WY 46, ¶ 9, 153 P.3d 932, 935 (Wyo. 2007)).

[¶ 10] We review questions of law de novo and will affirm the County Board’s conclusions of law “only if they are in accord with the law.” *Maverick Motorsports Grp., LLC v. Dep’t of Revenue*, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011) (quoting *Bowen v. State Dep’t of Transp*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011)).

[¶ 11] We also apply de novo review to the County Board’s ultimate findings of fact:

When an agency’s determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an “ultimate fact,” we separate the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency’s ultimate factual finding if there is an error in either stating or applying the law.

Basin Elec. Power Coop., Inc. v. Dep’t of Revenue, State of Wyo., 970 P.2d 841, 850-51 (Wyo. 1998) (quoted in *Chevron U.S.A., Inc. v. Dep’t of Revenue*, 2007 WY 79, ¶ 10, 159 P.3d 131, 134 (Wyo. 2007)).

[¶ 12] Wyoming law exempts from property taxation:

(xli) Property owned and used by a charitable society or association, if the property is not for investment purposes but rather the property is used directly for the operation of the charity and which is directly beneficial to the people of this state.

Wyo. Stat. Ann. § 39-11-105(a)(xli) (2019). “Charity” isn’t defined in statute, but the Department has defined it:

(a) “Charity” is a gift for the benefit of an indefinite number of persons in Wyoming, by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or

maintaining public buildings or works.¹ The fundamental basis for this exemption is the benefit conferred upon the public, and the consequent relief, to some extent, of the burden upon the state to care and advance the interest of its citizens.

(b) The property shall not be used for investment purposes as defined in Section 23 of this chapter.

(c) The property must be used directly for the operation of the charity, which would directly benefit the people of this state.

Rules, Wyo. Dept. of Revenue, ch. 14, § 15 (2015).

[¶ 13] Assessor contends the County Board erred in two ways: 1) substantial evidence does not support the finding that LSH is a charitable society providing a gift for the benefit of an indefinite number of persons; and 2) the County Board failed to rule on whether LSH is ineligible for an exemption because it uses the property to provide housing, which is an investment purpose. (Assessor's Br. 11-15). The County Board's decision is short on legal analysis. The County Board should have addressed two broad questions: 1) is LSH a charitable society or association, and 2) is the LSH property used for investment purposes?

B. Is Laramie Senior Housing a charitable society or association?

[¶ 14] The definition of "charity" at Chapter 14, § 15(a) (*supra* ¶ 9) poses four questions: 1) Does LSH provide a gift? 2) Does that gift benefit an indefinite number of persons? 3) Does the gift relieve suffering or constraint? 4) Does the gift confer a benefit upon the public by relieving the state's burden to care for its citizens?

Does LSH provide a gift?

[¶ 15] Between what the residents pay and what HUD pays, LSH receives fair market value for its apartments. The County Board nonetheless found that LSH provides a gift, and Assessor doesn't challenge that finding. (R. at 0735; Assessor's Br. n. 3). We may not address issues that the parties do not present, so we won't address this one. *Solvay Chem., Inc. v. Dep't of Revenue*, 2018 WY 124, ¶¶ 12-28, 430 P.3d 295, 299-304 (Wyo. 2018).

¹ This definition has been around for well over a century. *See, e.g., State v. Bd. of Com'rs of Laramie Cty.*, 55 P. 451, 456 (Wyo. 1898) ("In the legal sense, charity 'may be defined as a gift to be applied, consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education of religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting and maintaining public buildings or works, or otherwise lessening the burdens of government.'").

Does LSH's gift benefit an indefinite number of persons?

[¶ 16] Assessor contends that “the County Board did not rely on substantial evidence when finding that LSH provided a gift for the benefit of an *indefinite* number of people.” (Assessor’s Br. 13) (emphasis in original). Assessor relies on *Mountain Vista Ret. v. Fremont Cty. Assessor*, 2015 WY 117, ¶ 17, 356 P.3d 269, 276 (Wyo. 2015) which affirmed a county board’s finding that a 19-apartment housing facility for retired people did not “benefit an indefinite number of persons.” At first blush, *Mountain Vista* seems to make “indefinite” a synonym of “infinite,” and it does not tell us how many apartments would be needed to benefit an indefinite number of persons. But, the Court quoted, with approval, this language from another court:

A nonprofit corporation may benefit only a limited group of people and still be considered “charitable” if that group of people possess a need which government might be required to fill. For example, a facility for physically handicapped persons might be “charitable” even though those persons were all members of a particular church or club because the facility is providing a general benefit to the community by relieving a potential obligation of government.

Mountain Vista, ¶ 16, at 275 citing *In re Appeal of Sunny Ridge Manor*, 106 Idaho 98, 675 P.2d 813, 817-818 (1984).

[¶ 17] A careful reading of *Mountain Vista* reveals that the Court’s primary reason wasn’t the limited number of apartments; rather, the Court saw that *Mountain Vista* residents paid full market value for their apartments, and they had to be able to fully care for themselves. *Mountain Vista*, ¶ 14, at 274. In other words, there was nothing charitable about *Mountain Vista*: it was just a business that rented apartments to seniors who were financially secure and able-bodied. That’s where this case departs from *Mountain Vista*. All of the LSH residents are low-income and either seniors or disabled. (Tr. 51-52). And if the number of units really does matter, we note that LSH has almost three times more units than *Mountain Vista*.

[¶ 18] Other courts have dug deeper into the “indefinite number of persons” criteria. The United States Supreme Court said that “indefinite number of persons” describes something that is not limited to named beneficiaries. *Russell v. Allen*, 107 U.S. 163, 166-67 (1883) (distinguishing a public charitable trust “for the benefit of an indefinite number of persons” from a trust in which “all the beneficiaries are personally designated.”); See also, *Tripp v. Commissioner of Internal Revenue*, 1963 WL 693, T.C. Memo 1963-244 (Tax Court of the United States 1963) (Contributions to a college for the benefit of one named student distinguished from contributions for the benefit of an indefinite number of persons). In other words:

One of the essential features of a charitable use is that it shall be for the public benefit, either for the entire public or for some particular class of persons, *indefinite in number*, who constitute a part of the public. The persons to be benefited must consist of “the general public or some class of the general public indefinite as to names and numbers.”

In re Huebner’s Estate, 15 P.2d 758, 759 (Cal.App. 1932) (italics in original) quoting *Estate of Dol*, 187 P.428, 430 (Cal. 1920). LSH was created, and continues to operate, for the benefit of a class of the general public (persons with low income who are either seniors or disabled) that is indefinite as to names and numbers. (R. at 0123, 0138-39; Tr. 51-52).

[¶ 19] We hold, therefore, that LSH benefits an indefinite number of persons.

Does the gift relieve suffering or constraint?

[¶ 20] Assessor doesn’t dispute this element, so we will not address it.

Does the gift confer a benefit upon the public by relieving the state’s burden to care for its citizens?

[¶ 21] Assessor doesn’t dispute this element, so we will not address it.

[¶ 22] Considering all four questions, we find that LSH fits the Chapter 14, § 15(a) definition of “charity.”

C. *Is the Laramie Senior Housing property used primarily for investment purposes?*

[¶ 23] The County Board found that LSH is a charitable society or association and therefore entitled to the statutory property tax exemption for “[p]roperty owned and used by a charitable society or association, if the property is not for investment purposes but rather the property is used directly for the operation of the charity and which is directly beneficial to the people of this state.” Wyo. Stat. Ann. § 39-11-105(a)(xli) (2019). That language presents a dichotomy between property for “investment purposes” and property “used directly for the operation of the charity.” The LSH property falls into the latter category because it is used to provide housing for low-income persons, which is the stated purpose of LSH. (R. at 0123, 0138-39).

[¶ 24] The County Board’s decision also finds support in the Department’s rule specifying that:

(a) For exemptions that require that property use cannot be for private profit, primarily for commercial purposes, or for investment purposes, the following shall apply.

* * *²

(ii) The property at issue shall not be used primarily for a “commercial purpose”, that is use of property or any portion thereof to provide services, merchandise, area or activities for a charge, which are generally obtainable from any commercial enterprise *and are collateral to the purpose of the entity*.

(A) Commercial purpose includes, without limitation, the operation for charge of bars, restaurants, dancing areas, merchandise shops, housing, theaters and bowling alleys.

(B) The use of property for commercial purpose is controlling, not whether or not a profit is actually made nor how the revenue is ultimately used. If and [sic] activity is considered “commercial”, it does not become “non-commercial” merely because the revenue derived from the commercial use is devoted to charitable or authorized purposes.

Rules, Wyo. Dept. of Revenue, ch. 14, § 23 (2015) (emphasis added). The charitable society or association exemption requires that the property cannot be used for investment purposes. *Id.*, § 15(b). Therefore, the requirements of Chapter 14, Section 23(a)(ii) apply.

[¶ 25] Section 23(a)(ii) appears to define “commercial purpose” two different ways. Paragraph (ii) defines “commercial purpose” as “use of property or any portion thereof to provide services, merchandise, area or activities for a charge, which are generally obtainable from any commercial enterprise and are collateral to the purpose of the entity.” Subparagraph (A) then defines “commercial purpose” to include, “without limitation, the operation for charge of bars, restaurants, dancing areas, merchandise shops, housing, theaters and bowling alleys.” Subparagraph (B) says “[t]he use of property for commercial purpose is controlling, not whether or not a profit is actually made nor how the revenue is ultimately used.” Assessor contends that that’s the last word: LSH provides housing, housing is always a commercial purpose, and commercial purpose is controlling, so property used for housing can never be exempt as “owned and used by a charitable society or association.”

[¶ 26] Were we to accept Assessor’s construction of Chapter 14, § 23(a)(ii)(A) and (B), an organization dedicated solely to providing free housing to the most desperately poor

² Paragraph (i) is limited to use for “private profit,” and is thus inapplicable to this discussion.

members of our society would not be considered a charitable organization. We believe that to be an absurd result. Attempting to harmonize the elements of Paragraph (ii) so that none are rendered meaningless, we conclude the Department intended Subparagraphs (A) and (B) to clarify, rather than contradict or expand the rest of Paragraph (ii).

[¶ 27] We believe this issue turns on a clause in Paragraph (ii) that neither the County Board nor the parties addressed: “and are collateral to the purpose of the entity.” That clause means that the use of LSH’s property for housing is not a “commercial purpose,” and therefore not an “investment purpose” unless it is collateral to the purpose of LSH. “Collateral” isn’t defined in any relevant statute or rule. A leading law dictionary defines it as “supplementary; accompanying, but secondary and subordinate to[.]” *Collateral, Black’s Law Dictionary* 317 (10th ed. 2014). Another dictionary defines it as “accompanying as secondary or subordinate.” *Collateral, Meriam Webster’s Collegiate Dictionary* 243 (11th ed. 2014). Housing is not *secondary or subordinate* to the purpose of LSH; it *is* the purpose of LSH. (R. 0123, 0138-39). Accordingly, we conclude that the LSH property is not used for an investment purpose, and is, therefore, exempt from property tax. Our conclusion that housing can be a charitable purpose is consistent with other Departmental rules that allow exemptions for housing, even while denying exemptions for property used for commercial purposes. Rules, Wyo. Dept. of Revenue, ch. 14, §§ 14(b) & 16(a)(iii) (2015). Accordingly, whatever Chapter 14, § 23(a)(ii)(A) may mean, it cannot mean that housing is always a commercial purpose.

[¶ 28] Finally, Assessor’s appeal to Chapter 14, § 23(a)(ii)(B) is easily disposed of. That subparagraph provides that “use of property for commercial purpose is controlling[.]” Because we have determined that the use of LSH’s property for housing is not a commercial purpose, Subparagraph B does not apply.

[¶ 29] We conclude that the LSH property is not used for a commercial purpose. Thus, the property is not used for investment purposes, and is, therefore, exempt from property tax.

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ORDER

[¶ 30] IT IS, THEREFORE, ORDERED the decision of the Albany County Board of Equalization is affirmed.

DATED this 4 day of June 2020.

STATE BOARD OF EQUALIZATION



David L. Delicath, Chairman



E. Jayne Mockler, Vice Chairman



Martin L. Hardsog, Board Member

ATTEST:



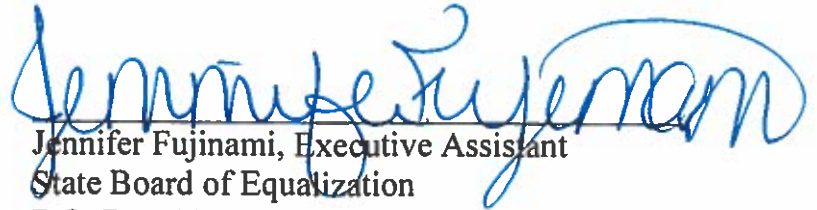
Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 4 day of June 2020, I served the foregoing **DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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