

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

CRAFTSMEN RECREATION CLUB, INC.

C.A. No. 27357

Appellant

v.

TAX COMMISSIONER OF OHIO

Appellee

APPEAL FROM JUDGMENT
ENTERED IN THE
OHIO BOARD OF TAX APPEALS
COUNTY OF SUMMIT, OHIO
CASE No. 2010-3673

DECISION AND JOURNAL ENTRY

Dated: March 31, 2015

HENSAL, Presiding Judge.

{¶1} Appellant Craftsmen Recreation Club, Inc. (“Craftsmen”) appeals an Ohio Board of Tax Appeals (“BTA”) decision and order that affirmed the final determination of a tax commissioner denying Craftsmen’s application for real property tax exemption. For the following reasons, this Court affirms the decision of the BTA.

I.

{¶2} Craftsmen submitted an Application for Exemption of Real Property from Taxation on August 1, 2006, requesting tax exemption for tax years 2003 through 2006 for three parcels of land totaling 58.5 acres that comprise Craftsmen Park. The first parcel is 37.8 acres of campgrounds, recreational fields, a lake with boat docks, and buildings with various meeting, recreation, and food preparation and dining spaces. The second parcel is 1.86 acres and includes a house for the park manager. The third parcel is 18.84 acres of vacant land. On October 12, 2010, the tax commissioner issued its final determination that denied Craftsmen’s application,

finding that the activities conducted in Craftsmen Park could not, as a whole, be considered for the charitable use exemption.

{¶3} Craftsmen appealed the commissioner’s decision to the BTA, arguing that it is a charitable institution and, therefore, its use satisfies the test for exemption under Revised Code Sections 5709.12 and 5709.121. On April 8, 2014, the BTA affirmed the commissioner’s decision. Craftsmen timely appeals to this court and raises two assignments of error, arguing that the BTA incorrectly determined that Craftsmen is not a charitable institution and that the use of Craftsmen Park is not primarily charitable in nature.

II.

ASSIGNMENT OF ERROR I

THE BOARD OF TAX APPEALS (“BTA”) ERRED IN FINDING THAT CRAFTSMEN IS NOT A “CHARITABLE INSTITUTION.”

{¶4} Craftsmen argues that the BTA was incorrect when it found that Craftsmen more closely resembles a fraternal organization than a charitable institution. We overrule Craftsmen’s first assignment of error and sustain the BTA’s finding that the club is not a charitable institution.

{¶5} An appeal of a BTA decision may be made to the district court in which the property in question is situated. R.C. 5717.04. This Court reviews a decision of the BTA to determine if it is reasonable and lawful. *Id.* This standard acknowledges that “[t]he BTA is responsible for determining factual issues and, if the record contains reliable and probative support for these BTA determinations,” then this Court should affirm the BTA. *Satullo v. Wilkins*, 111 Ohio St.3d 399, 2006-Ohio-5856, ¶ 14, quoting *Am. Natl. Can Co. v. Tracy*, 72 Ohio St.3d 150, 152 (1995).

{¶6} Craftsmen has the burden to prove it is entitled to exemption.

Because laws that exempt property from tax are in derogation of equal rights, they must be strictly construed. The principle of strict construction requires that the statute's language be construed against the exemption, meaning that the onus is on the taxpayer to show that the language of the statute clearly expresses the exemption in relation to the facts of the claim. The fact that the burden is on the taxpayer means that in all doubtful cases exemption is denied.

(Internal citations and quotations omitted.) *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904, ¶ 16.

{¶7} To be exempt from taxation under Revised Code Section 5709.12, the property must (1) belong to a charitable or educational institution and (2) be used exclusively for charitable purposes. *True Christianity Evangelism v. Zaino*, 91 Ohio St.3d 117, 118 (2001), citing *Highland Park Owners, Inc. v. Tracy*, 71 Ohio St.3d 405, 406 (1994). Section 5709.121(A) provides, however, that, if property belongs “to a charitable or educational institution,” it “shall be considered as used exclusively for charitable or public purposes * * * if * * * [i]t is used by such institution * * * (b) for other charitable, educational, or public purposes [or] (2) [i]t is made available under the direction or control of such institution * * * for use in furtherance of or incidental to its charitable, educational, or public purposes and not with the view to profit.”

{¶8} Craftsmen argues that it is a “charitable” institution under Section 5709.121. Neither Section 5709.12 nor Section 5709.121 defines “charitable institution.” In the absence of legislation, the Ohio Supreme Court has looked to the definition of “charity” to define the term. It has been defined as “the attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to the ability to supply that need from other sources, and without hope or expectation, if not with positive abnegation, of gain or profit by the donor of the instrumentality of the charity.” *Church of God in N. Ohio, Inc. v. Levin*, 124 Ohio St.3d 36,

2009-Ohio-5939, ¶ 18, quoting *Planned Parenthood Assn. v. Tax Commr.*, 5 Ohio St.2d 117 (1966), paragraph one of the syllabus.

{¶9} The Ohio Supreme Court has explained that whether an institution qualifies as charitable depends on the activities of the institution seeking the exemption. *OCLC Online Computer Library Ctr., Inc. v. Kinney*, 11 Ohio St.3d 198, 201 (1984). An institution qualifies as a charitable institution when its core activities involve the provisions of its services “on a nonprofit basis to those in need, without regard to race, creed, or ability to pay.” *Church of God in N. Ohio* at ¶ 19, citing *Vick v. Cleveland Mem. Med. Found.*, 2 Ohio St.2d 30 (1965), paragraph two of the syllabus.

{¶10} Craftsmen argues that, because it does not operate with a view to profit in fulfilling its charitable mission, it should qualify as a charitable institution. Although the record does not contain Craftsmen’s articles or bylaws, the record does contain a quasi-mission statement stating that Craftsmen formed as a nonprofit institution in 1933, and the club purchased property in 1948 and established Craftsmen Park to provide a facility for children’s camps. The records show that the club has operated at a loss for three of the four years under review. However, the affirmative obligation remains with Craftsmen to show that its activities from 2003 to 2006 qualify it for exemption. This test does not consider profitability but, rather, the activities of the institution seeking exemption. *OCLC* at 201. The record reflects that Craftsmen’s core activities do not consist of providing provisions or services for the benefit of mankind in general or for those in need of advancement and benefit in particular. Rather, the evidence presented at the BTA hearing reflects that, during the period under review, the core activities on the property consisted of operating a camper’s club and boater’s club for Masons. The record indicates that Craftsmen rented campsites only to Masons, who resided at the

campsites for months at a time and who erected semi-permanent structures at their campsites. Masons also had a right of first refusal for renting the boat slips.

{¶11} The core activities of Craftsmen resemble the core activities of the Donauschwaben German Cultural Center (“Donauschwaben”) in *Olmsted Falls Bd. of Edn. v. Tracy*, 77 Ohio St.3d 393 (1997). Donauschwaben owned 20 acres of land named Lenau Park that contained a lake, recreational fields, and buildings with meeting and activity spaces, and the club primarily served its dues-paying members through membership in internal interest groups and through facilitating activities that occurred on its property. *Id.* at 393-394. Even though the club facilitated charitable and civic activities on its property, the Supreme Court denied Donauschwaben tax exemption because it “[did] not advance or benefit mankind in general or those in need of advancement or benefit in particular; it benefit[ed] its members.” *Id.* at 397. Similarly, Craftsmen has primarily served Masons through the park’s campgrounds and boating facilities. While it is true that various nonprofit organizations have used the recreational facilities and lands for free or at a greatly reduced cost, Craftsmen itself more closely resembles the administrator of a campground whose services were mostly limited to Masons.

{¶12} The fact that Craftsmen generates revenue from some uses of its property does not necessarily defeat its claim for charitable status. *See Girl Scouts-Great Trail Council v. Levin*, 113 Ohio St.3d 24, 2007-Ohio-972, ¶ 20. At the same time, an organization does not qualify as charitable merely because the revenue from its income-producing activities is applied to charitable purposes. *N.E. Ohio Psych. Inst. v. Levin*, 121 Ohio St.3d 292, 2009-Ohio-583, ¶ 16. In *Northeast Ohio Psych. Inst.*, the institute (“Northeast”) was a nonprofit organization that sought to concentrate mental health resources in one location to better serve Summit County citizens. Northeast also engaged in the ongoing business activities of leasing its property and

providing psychiatric-staffing services. *Id.* at ¶ 17. In upholding the BTA’s decision to withhold tax exempt status, the Supreme Court explained that, even though revenue from leasing and staffing services funneled directly to supporting Northeast’s mental health mission, “none of the services that Northeast provides has been shown to be charitable in nature.” *Id.* at ¶ 19.

{¶13} Craftsmen’s income-producing activities of operating a campground and boating club are noncharitable in nature and are a substantial part of the operations that take place in the park. “When considering R.C. 5709.121 and the question of whether a charitable institution uses its property in furtherance of or incidently [sic] to its charitable purposes, this court focuses on the relationship between the actual use of the property and the purpose of the institution.” *Community Health Professionals, Inc. v. Levin*, 113 Ohio St.3d 432, 2007-Ohio-2336, ¶ 21. *See also Ohio Masonic Home v. Bd. of Tax Appeals*, 52 Ohio St.2d 127, 130 (1977) (affirming a BTA determination that denied tax exemption for a portion of a nonprofit nursing home’s property because the nursing home’s operation of a farm on that portion of property “remains functionally removed from appellant’s charitable purpose” even though revenue went to the operation of the home).

{¶14} The record indicates that, from 2003 to 2006, Craftsmen generated over half of its approximately \$467,000 in revenue from campsite and boat slip rentals. The noncharitable qualities of offering camping and recreational activities to Masons are a substantial part of the nature of Craftsmen Park and do not align with the definition of charity advanced by the Supreme Court in *Planned Parenthood* and *Church of God in N. Ohio*. The core activities of the club as a campground administrator do not benefit mankind in general or those in need of advancement and benefit in particular. *Church of God in N. Ohio*, 124 Ohio St.3d 36, 2009-Ohio-5939, ¶ 18.

{¶15} Craftsmen operated the park as a campground that primarily benefited Masons. Charitable enterprise, as defined in *Planned Parenthood*, does not encompass the core activities of Craftsmen, which more closely resemble residential, camping, and recreational activity for Masons. We, therefore, conclude that the BTA reasonably and lawfully determined that Craftsmen is not a charitable institution under Section 5709.121. Craftsmen’s first assignment of error is overruled.

III.

ASSIGNMENT OF ERROR II

THE BTA ERRED IN FINDING THAT THE SUBJECT PROPERTY DOES NOT SATISFY THE TEST FOR PROPERTY EXEMPTION UNDER R.C. 5709.12.

{¶16} Craftsmen also argues that the BTA improperly denied it tax exempt status under Section 5709.12. We overrule Craftsmen’s second assignment of error and sustain the BTA’s decision to deny Craftsmen Park tax exemption based upon the property’s primarily noncharitable use.

{¶17} A noncharitable institution must rely on Section 5709.12 if it seeks tax exempt status for real property. “It is well established that even if it does not qualify as a charitable institution, [a taxpayer] would be entitled to exemption from tax if it showed that the operations at a particular facility constitute an exclusively charitable use of that particular parcel of real property.” *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, ¶ 36. The Supreme Court has explained the “be used exclusively for charitable purposes” requirement to mean “primary use.” *True Christianity Evangelism*, 91 Ohio St.3d 117, 119-121 (2001). Just as “used exclusively for public worship” means primary use in the context of Section 5709.07,

determining the exclusive use of property for charitable purposes means primary use in the context of Section 5709.12. *Id.* at 120-121.

{¶18} In the case before us, the record reflects that the primary use of Craftsmen Park and the operations of Craftsmen Recreation Club do not differ significantly. The core activities that disqualify the club as a charitable institution, as explained above, show that the primary use of the park is noncharitable in nature. The BTA determined that the primary use of the park during the period under review was for typical campground activities for restricted clubs. From 2003 to 2006, membership in the camper's club required rental of a campsite. Further, camper's club membership was restricted to Masons. During the same period, membership in the boater's club required rental of a boat slip, and although a non-Mason could become a member of the boater's club, Masons retained the right of first refusal for boat slip rental. Although the general public, as well as charitable organizations, were allowed to rent and reserve activity spaces, such as the dining halls, dance halls, and cabins, these activities do not compel a finding that the primary use of Craftsmen Park was charitable in nature. For these reasons, we conclude that the BTA reasonably and lawfully determined that Craftsmen Park is not primarily used for charitable purposes pursuant to Section 5709.12. Craftsmen's second assignment of error is overruled.

IV.

{¶19} The facts in the record support that the BTA acted reasonably and lawfully when it affirmed the tax commissioner's denial of real property tax exemption. The decision of the Ohio Board of Tax Appeals is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Ohio Board of Tax Appeals, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

CARR, J.
WHITMORE, J.
CONCUR.

APPEARANCES:

LESLIE S. JOHNSON and PHILLIP G. ECKENRODE, Attorneys at Law, for Appellant.

DAVID D. EBERSOLE, Assistant Attorney General, for Appellee.