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OCEAN GROVE CAMP MEETING ASS'N OF: THE UNITED METHODIST CHURCH, Plaintiff, v. TOWNSHIP OF NEPTUNE, Defendant.	:	TAX COURT OF NEW JERSEY DOCKET NO. 013693-2017 Approved for Publication In the New Jersey Tax Court Reports

Decided: April 20, 2021

James M. McGovern, Jr., for plaintiff
(Davison, Eastman, Muñoz, Paone, P.A., attorneys)

Gene J. Anthony, for defendant
(Law Offices of Gene J. Anthony, Esq.)

SUNDAR, P.J.T.C.

This letter opinion addresses the parties' respective summary judgment motions in the above captioned matter. Defendant's summary judgment motion seeks affirmance of its denial of tax exemption for tax year 2018 on property owned by plaintiff and located in defendant municipality, a retreat center identified as Block 111, Lot 9 (Subject or Grove Hall). Defendant maintains that the Subject was used no differently than a commercial bed and breakfast in that both individuals and groups (secular) were permitted overnight stays at a charge or fee, which included provision of beach badges and a continental breakfast. Further, defendant contends, since plaintiff (1) rarely organized structural religious programs or conducted retreats at the Subject, (2) did not have a vetting/review process for its guests' eligibility to stay, and (3) is not formally affiliated with any religious order or organization, the Subject should not be tax exempt. Its motion

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was supported by depositions of several of plaintiff's employees (past and present) or other representatives, and certain documents as to plaintiff's incorporation and activities.

Plaintiff's cross-motion for summary judgment seeks restoration of the Subject's tax exemption for tax year 2018 claiming that it is used with other contiguous property as a religious retreat and conference center where guests "can enjoy a special time with God outside a conventional church format." Plaintiff also argues that it is not required to provide worship service or maintain minimum level of religious activities on the Subject for it to qualify for the exemption. Its motion was supported by certifications of plaintiff's employees with attached documents.

For the reasons stated below, the court reverses defendant's exemption denial for 2018.

PROCEDURAL HISTORY

Plaintiff is a federally income tax-exempt entity under I.R.C. §501(c)(3). By letter dated November 13, 2017, defendant's assessor notified plaintiff that the Subject would not be given a tax exemption for tax year 2018. The reasons were:

> The property's use as of October 1 of the pretax year. This use must be a qualifying exempt use. Property's use must be an integral part of the exempt organization's operations, not just a convenience, and reasonably necessary for the proper and efficient fulfillment of the organization's exempt purpose. Property must be actually used for a permitted or qualifying use pursuant to the statute under which exemption is sought.
>
> Failure to submit 2017 schedule of weekly worship and name(s) of facilitator at location.
>
> Failure to submit 2017 schedule of weekly bible services and name(s) of facilitator at location.
>
> Failure to submit 2017 schedule of weekly retreats for guests at location, including facilitator at location.

On December 27, 2017, plaintiff filed a direct complaint with this court challenging the local property tax assessment of $1,240,000 (allocated $412,800 to land and $827,200 to

improvements) for tax year 2018, imposed upon the Subject. In Count One, plaintiff claimed that the Subject was entitled to an exemption under N.J.S.A. 54:4-3.6. In Count Two, it challenged the assessment as exceeding the Subject's true value. Defendant (Township) filed a counterclaim alleging that the Subject is not entitled to a tax exemption and that it was under-assessed.

FACTS

The following facts are taken from deposition testimony adduced by defendant, certifications of plaintiff's employees or other representatives, and documents as to plaintiff's incorporation, activities, and operations. None of the facts or documents are disputed in any materially significant manner.

(1) Plaintiff's Statutory Incorporation

Plaintiff's history culminating into its incorporation is detailed in Schaad v. Ocean Grove Camp Meeting Ass'n of the United Methodist Church, 72 N.J. 237, 254-58 (1977) and State v. Celmer, 80 N.J. 405, 410-13 (1979). Methodist clergymen bought 260 acres of land near the ocean in Ocean Grove to establish camp meeting grounds in 1869. Schaad, 72 N.J. at 254. The organizers incorporated under L. 1870, c. 157 as the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church[1] which retained "title to all the lands . . ." and "sold leaseholds for 99 years, renewable in perpetuity, at a fixed sum down and a stated annual ground rental" to the residents "[t]o maintain the special character of the place." Ibid. (citations omitted).

When incorporated, plaintiff's purpose was that "of providing and maintaining for the members and friends of the Methodist Episcopal Church a proper, convenient and desirable

[1] The name was changed to "The Ocean Grove Camp Meeting Association of The United Methodist Church." Celmer, 80 N.J. at 410 (citation and internal quotation marks omitted).

Another "Methodist camp meeting association[] . . . was incorporated as the Camp Meeting Association of the Newark Conference of the Methodist Episcopal Church" in the 1800s, "and maintains a community called Mount Tabor in Morris County." Schaad, 72 N.J. at 255, n.7.

permanent camp meeting ground and [C]hristian seaside resort." L. 1870, c. 157, §1. Article II of plaintiff's By-Laws reiterate the "object" of plaintiff is "to provide and maintain for members and friends of the United Methodist Church a proper, convenient, and desirable permanent camp-meeting ground and Christian seaside resort as provided in the Statute of Incorporation." Plaintiff's mission statement is "providing opportunities for spiritual birth, growth and renewal through worship, education, cultural activities and recreation in a Christian seaside setting."

Twenty-six trustees manage plaintiff's affairs. Id. §4. They must be members of the Methodist Episcopal church. L. 1870, c. 157, §4; Celmer, 80 N.J. at 411 (trustees had to "be and remain members of The United Methodist Church in good and regular standing"). Associate trustees should be members of a Christian Church "in good and regular standing." By-Laws, Art. III, §4. Honorary trustees can be anyone who is "Christian clergy or lay person, by reason of his or her contribution to Christianity, and interest and support of" plaintiff. Id., Art. III, §10.

The trustees manage the daily operations by serving on the "Board's executive, program and development committees." Celmer, 80 N.J. at 412. "The executive committee serves as the administrative arm of the Board, and represents the Board in all official matters," while the "program committee" is responsible for "organizing religious services and meetings" for residents, and the "development committee is charged with the duty of initiating and implementing financial programs necessary to provide and maintain [Ocean Grove] . . . as a proper, convenient and desirable permanent Camp Meeting Ground and Christian Seaside Resort." Ibid.

Currently, plaintiff agrees that it is not a church within the conference of Methodist churches, nor under the control of a Bishop of the United Methodist Church. Deposition testimony also shows that there is no "agreement" between the United Methodist Church and plaintiff, and plaintiff is not considered as a congregation of the United Methodist Church.

Plaintiff's incorporating statute authorized it to purchase, hold, and/or sell real property, "in fee simple or otherwise" as deemed "necessary, proper or desirable for the purposes and objects of the corporation." L. 1870, c. 157, §2. Improvements "deemed necessary or desirable" could also be made by plaintiff. Id. §3. Any real and personal property owned by plaintiff (not to exceed $5,000 in value) is "exempt from all assessment and taxation." Id. §6. "Any surplus funds remaining . . . after defraying the necessary expenses thereof for improvements or otherwise," is to be "devoted to such charitable, benevolent or religious objects or purposes" as agreed to by plaintiff's trustees. Ibid.

(2) The Subject

Plaintiff owns the Subject, a building commonly known as Grove Hall, which is located at 15 Pilgrim Pathway in the Township. Plaintiff deems Grove Hall a "Christian conference and retreat center." Plaintiff's website read into the record by plaintiff's Chief Operating Officer during his deposition described Grove Hall thus:

> Grove Hall is the Ocean Grove Camp Meeting Association beautiful[] Victorian retreat center. It is a perfect place for your next church retreat, small group gathering, leadership team meeting place or family reunion. Enjoy the sea breezes as you experience LBGR while rocking on the porches. Take a short walk and see God's glory in the sunrise. Come reflect, relax and be rejuvenated in God's square mile at the Jersey Shore.
>
> Grove Hall amenities. 31 double occupancy rooms. Meeting spaces available on the first and third floors. Commercial kitchen available for use. Continental breakfast included.

Plaintiff points out that the 2017 website version also described Grove Hall as follows:

> Christian conference and retreat center, offering a place to stay for your Church, business, ministry or family group while visiting Ocean Grove . . . to attend our daily bible hours and Sunday's services during the season or hold your own worship services, devotional services or educational curriculum in our dining room, parlor or third floor lounge. Your retreated group will enjoy in just

> a few steps to auditorium square or our famous historical buildings located, including the Great Auditorium, the Bishop James Tabernacle, Thornley Chapel, the Youth Chapel and the bookstore.

The Subject has 31 double occupancy rooms available for overnight stays. Some rooms have attached bathrooms. There are common bathrooms as well. There is common space that can be used for meetings and dining (the dining room can seat up to 60 people comfortably), and porches. Grove Hall also has a kitchen, which visitors can use to make their own lunch or dinner by paying an amount in addition to paying rental charges for the rooms. The room charges include free continental breakfast.

Plaintiff's record of bookings indicates that its visitors included churches, educational institutions, and social work-based groups. Some on the list are identified as for "family reunion" or for "mom's 90th birthday." The local police department was allowed to use Grove Hall for breakfast prior to its annual memorial service for the fallen officers held at the Great Auditorium, a large hall owned by plaintiff and located on plaintiff's premises in the Township.

Plaintiff has itself held a structured religious program at Grove Hall only sporadically. Visiting groups had their own agenda, not one imposed by plaintiff. The court was provided with an agenda of the Jesus Fellowship Calvary Chapel -- Ladies Retreat, and another called the "Splash 2019 Itinerary." Plaintiff only participates in the programs organized by the visiting groups if requested by those groups.

ANALYSIS

(1) Appropriateness of Summary Judgement

Summary judgment will be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c).

Here, the sole issue is whether the Subject is entitled to a tax exemption for tax year 2018. The facts in this regard are adduced from documents provided by parties in support of their respective summary judgment motions. The documents are undisputed. The deposition testimony is also not disputed. That each party offers their respective opinions/arguments on how these facts should be used or applied vis-à-vis the tax exemption, is not to the court, a showing that there are "genuine issue as to any material fact." Therefore, summary judgment as a method of disposition is appropriate.

(2) Exemption Under L. 1870, c. 157

As noted above, this law exempts plaintiff's real and personal property from "all assessment and taxation," as long as the "value" does not exceed $5,000. L. 1870, c. 157, §6. Neither party proffered evidence of what the $5,000 value limit translates to for tax year 2018. Plaintiff's financial statements as of December 31, 2017 value land owned by plaintiff at $324,413 and buildings at $11,132,019. Other property including equipment is valued at $4,812,568. The depreciation (for depreciable property and equipment) is reported as -$416,086 while the "accumulated depreciation" is -$8,941,300. However, the court cannot speculate that the net amount (value less depreciation), in fact, exceeds the $5,000 value limit in the 1870 law.

Without evidence that the Grove Hall is worth less than what $5,000 would be worth as of October 1, 2017 (the assessment date for tax year 2018), the court is hesitant to use the 1870 law's tax exemption provision as the basis for deciding the instant summary judgment motions.

(3) Exemption Under Federal Income Tax Laws

Plaintiff is federally income tax-exempt under I.R.C. §501(c)(3). However, this is not a basis to exempt the Subject under our local property tax law. See Black United Fund of N.J., Inc.

v. City of East Orange, 17 N.J. Tax 446, 455 (Tax 1998) ("entitlement to a § 501(c)(3) exemption . . . does not mean that the entity is entitled to an exemption under New Jersey law"), aff'd, 339 N.J. Super. 462 (App. Div. 2001).

(*4) Exemption under N.J.S.A. 54:4-3.6*

N.J.S.A. 54:4-3.6 exempts buildings which are used for certain specified purposes, and the supporting land (not exceeding 5 acres). An exemption is afforded to

> all buildings actually used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women and children, provided that if any portion of a building used for that purpose is leased to profit-making organizations or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt.
>
> [Ibid.] (hereinafter "MMI Clause").

The same statute also exempts from tax

> all buildings actually used in the work of associations and corporations organized exclusively for religious purposes, including religious worship, or charitable purposes, provided that if any portion of a building used for that purpose is leased to a profit-making organization or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion shall be exempt from taxation, and provided further that if any portion of a building is used for a different exempt use by an exempt entity, that portion shall also be exempt from taxation.
>
> [Ibid.] (hereinafter "Religious/Charitable Clause")

Additional conditions, including that that the real property must be owned by the corporate claimant which should be "authorized to carry out the purposes on account of which the exemption is claimed," are contained in the overarching proviso portion of the section thus:

> provided, in case of all the foregoing, the buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying them as aforesaid, are not conducted for profit,

> except that the exemption of the buildings and lands used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the buildings; provided the building is wholly controlled by and the entire income therefrom is used for said charitable, benevolent or religious purposes;

Thus, an entity can raise funds to support its charitable, benevolent, or religious works carried on in its building by imposing fees and charges on those who use or occupy the building (i.e., the "beneficiaries"). As our Supreme Court summarized, an entity "must be organized exclusively for the" statutorily allowed tax-exempt purpose; the entity's "property must be actually and exclusively used for the tax-exempt purpose;"[2] and further, the entity's "operation and use of its property must not be conducted for profit." Paper Mill Playhouse v. Twp. of Millburn, 95 N.J. 503, 506 (1984).

(i) Organization Criteria

The Township argues that plaintiff is not a religious institution or a church but an independent affiliate, which exists and operates without any control by or direction from the United Methodist Church or any other Higher Order. Therefore, the Township contends, it is not organized for any specific tax-exempt purpose. Plaintiff counters that the special legislation, its mission statement, charter, and By-Laws, are sufficient evidence that its incorporation fits into either the Religious/Charitable Clause or the MMI Clause. The court agrees with plaintiff.

Because plaintiff was incorporated by statute, there is no need for it to possess an independent Articles of Association. That special legislation is the basis for Plaintiff's claim that it was created exclusively for religious purposes and in its furtherance thereof. Plaintiff's By-

[2] The Legislature subsequently deleted the exclusivity of use requirement.

Laws, which were adopted in 1980, also reiterates plaintiff's religious purposes which were recited in the 1870 legislation.

Plaintiff's independence from, control by, or direction from the United Methodist Church or any other higher religious order does not require a conclusion that plaintiff is no longer organized exclusively for religious purposes. It still aligns itself with the Methodist faith and beliefs. Its By-Laws (as of 2015) continue to reiterate plaintiff's religious missions and goals, and its committees are tasked with the same religious responsibilities as stated in Celmer. As plaintiff's former employees confirmed, plaintiff still defines itself as Methodist and its trustee and Board members are Methodists or pastors, which indicated plaintiff's continued connection with the Methodist Church.

Evidence before the court shows that plaintiff continues to adhere to its original purpose of "providing and maintaining for the members and friends" of the Methodist beliefs and Christian faith, a permanent camp meeting ground to encourage, foster, maintain and renew religious and spiritual way of life. Tents are erected every summer at plaintiff's campgrounds in the Township for these purposes including meditation in, and with nature. Tenters visit and stay every summer at plaintiff's campgrounds. That plaintiff welcomes people of any branch of Christianity as tenters, and to its worships and services does not foreclose a conclusion that plaintiff's organizational purpose and primary objective continues to be influenced by religious beliefs and teachings in its efforts to promote, serve, and further its members' and the public's spiritual and religious needs. Plaintiff continues to conduct regular worships, services, and Bible studies in alignment with the Methodist faith. In summer, during the "tent" months, these activities are even more frequent. The Bishop for the United Methodist Church has preached at plaintiff's property and can appoint

or remove plaintiff's current Chief Operating Officer who used to be a pastor at a United Methodist Church.

The court therefore does not view plaintiff's independent status (i.e., with no formal association to the United Methodist Church or any other organized religion) as failing satisfaction of Criteria 1.[3] See e.g. Fountain House of N.J., Inc. v. Twp. of Montague, 13 N.J. Tax 387, 400-01 (Tax 1993) (generally, the "purposes stated in a corporation's certificate of incorporation are reflective of purposes (intent) at the time of incorporation" which can change "over the course of time" and what is relevant are the "purposes pursued by a corporation" and "the facts and circumstances surrounding the corporation's operations" as of the applicable assessment date).

While the Township may be skeptical that plaintiff's mission statement is so broad as to be of no assistance in deciding Criteria 1, the court views such statement as plaintiff's continued goals and objects in keeping with the 1870 special legislation. None of plaintiff's employees or representatives who were deposed disagreed with plaintiff's mission or expressed disagreement with the same vis-à-vis plaintiff's activities. Therefore, plaintiff passes the Criteria 1 test under the Religious/Charitable Clause.

The above facts also permit satisfaction of Criteria 1 of a tax exemption under the MMI Clause. The MMI "classification has been applied to various public and civic organizations, which directly serve the public by contributing to the educational, cultural and spiritual development in society in general." Phillipsburg Riverview Org., Inc. v. Town of Phillipsburg, 26 N.J. Tax 167,

[3] In 1968, law was enacted to address the United Methodist Church. See N.J.S.A. 16:10A-1 to 10A-15. This law allowed "all religious corporations or churches" which were known as, among others, "'The Methodist Church,' . . . 'Methodist Episcopal Church,' . . . and all . . . associations or other organizations directly connected therewith" to change their name to "The United Methodist Church." N.J.S.A. 16:10A-1. However, the statute does not "limit, change, affect or alter any other existing right, power, property, obligation, liability or duty of any such religious corporation or church." Ibid.

176 (Tax 2011) (citation omitted), aff'd, 27 N.J. Tax 188 (App. Div. 2013). Plaintiff's object and purpose is to better people's spiritual well-being through worship, education, community awareness, and its annual summer tent camps. Therefore, plaintiff would pass the Criteria 1 test under the MMI Clause.

(ii) Use Criteria

The Township argues that Grove Hall is no different than any commercially operated bed and breakfast because: (1) there was rarely any structured religious program directly organized by plaintiff; (2) secular groups and even individuals were allowed to stay; and (3) plaintiff did not have a vetting or screening process to determine whether a particular group was eligible to stay. Plaintiff agrees that it imposed charges for using or staying at Grove Hall for the tax year at issue, but maintains that it only rented to groups, never individuals, and the groups included only non-profit entities, including religious groups and churches. It vehemently disagrees that this use of Grove Hall is analogous to a bed and breakfast or any other commercial hostelry.

The plain language of N.J.S.A. 54:4-3.6 per se bars an entity covered by that statute from leasing its building to a for-profit entity. Thus, if any "portion of a building" which is "actually used in the work" of an entity organized for MMI or religious/charitable purposes, "is leased to profit-making organizations," then only that portion of the building will be taxed. Ibid.[4]

Here, the court was not provided any proof that Grove Hall or a portion of the same was leased to a for-profit entity, such as a lease agreement. The evidence provided showed that plaintiff imposed a charge for use and occupation of the rooms in Grove Hall (plus for use of the kitchen if

[4] This proviso was enacted to ensure that a property did not lose the entirety of the tax exemption similar to the treatment of educational institutions, and to remove the previous "exclusive use" requirement of the statute. See Assembly Commerce and Industry Committee, Statement to Assembly Bill No. 2246, (Oct. 18, 1984); Roman Catholic Archdiocese of Newark v. City of East Orange, 17 N.J. Tax 298, 318-19 (Tax 1998), aff'd, 18 N.J. Tax 649 (App. Div. 2000).

required) and permitted use of the common areas (dining room; conference room) to groups of people for a short duration, usually a few days a week (mostly Thursday through Sunday). To the court this type of arrangement appears to be more of a license than a lease. See Van Horn v. Harmony Sand & Gravel, Inc., 442 N.J. Super. 333, 341-42 (App. Div. 2015) (a lease provides "exclusive possession of a property" to the lessee "for some period of time" when the "the lessee's rights of possession and use are greater than the landowner's," whereas a license is "permission to use the land at the owner's discretion," so that the user is "not provide[d] protection . . . against interference by the" property owner); Thiokol Chem. Corp. v. Morris Cty. Bd. of Taxation, 41 N.J. 405, 417 (1964) ("a lease gives exclusive possession of the premises against all the world, including the owner, while a license confers a privilege to occupy under the owner").

Regardless of the lease versus license legal distinction, there is no proof that the users/occupiers of Grove Hall were profit-making entities. Rather, the roster of the visitors provided to the court showed that almost all were non-profit entities, primarily religious such as, among others, the Middletown United Methodist Church.[5] This accords with plaintiff's employees deposition testimony that a majority of Grove Hall users are Church groups. Additionally, while it is undisputed that secular groups used the Subject, the facts show that these were non-profits such as educational institutions, women's groups, mental health groups, health-check groups, youth groups, and substance abuse groups. Nothing was provided to the court to show that such

[5] The visitor list included the following: Queens Presbyterian Church PCA; Presbyterian Church in Westfield; St. Mary and St. Athanasius Church; Saint Georges Church; Hawthorne Bible Church; Princeton Meadow Church; Emmanuel Bible Church; Redeemer Presbyterian; New Paltz Reformed Church; Little Flock Church; Chapel at Warren Valley; Oasis Christian Center; Skyline Community Church; Jesse Lee Church; Ebenezer Bible Fellowship; 180 Church; Christian Association at University of PA; PEF Princeton Evangelical Fellowship; Grace Community Church Warwick; Life Chapel; Freedom Church; Trinity UMC; Unity of Montclair Church; Calvary Chapel Perth Amboy; Second Presbyterian Church; Swarthmore Presbyterian.

use by these non-profit groups was non-tax exempt or was in furtherance of the group's for-profit activity. As such, N.J.S.A. 54:4-3.6 does not destroy the building's claim or entitlement for tax exemption where, as here, the use "for purposes which are [] themselves exempt from taxation," or "for a different exempt use by an exempt entity." To state it differently, a claim for tax exemption under this statute is not automatically jeopardized if the non-profit entity rents (imposes fees and charges for use and occupation of) its building which is actually used in its charitable, religious or benevolent work to other non-profit entities or for other tax-exempt activities.

Additionally, and as noted above, the Legislature expressly permits an entity covered by N.J.S.A. 54:4-3.6 to charge fees for use and occupation of its building as a means of supporting itself in the pursuance of its charitable or religious works. This support-through-fees-and-charges portion of the statute was introduced in 1901. Thus, exemption was granted to:

> any building used for purposes considered charitable under the common law; provided, the said building is occupied in whole by the organization owning it, and the entire income from said building is used for the purposes of such organization, although supported partly by fees and charges received from the beneficiaries or from those who receive the advantages of such charitable purposes, with the land whereon the same are erected, and which may be necessary for the fair enjoyment thereof, and the furniture and personal property used therein.
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> [L. 1901, c. 142, p. 300.]

In 1903, the wording changed so it read as follows:

> the exemption described in this paragraph of a building and land used for charitable purposes shall extend to cases where the charity is supported partly by fees and charges received from or on behalf of beneficiaries occupying said building, provided the building is wholly controlled and the entire income therefrom is used by the charitable corporation for its charitable purposes[.]
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> [L. 1903, c. 208, p. 396]

Thus, it was no longer required that the owner of the building also wholly occupies it. The reference to common law (for deciding what is a charitable purpose) was also deleted.

In 1913, the provision was changed such that the exemption for a building used for "charitable, benevolent or religious purposes," continued where the building "and the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of the beneficiaries using or occupying the said building." L. 1913, c. 278, p. 572. In 1918, this provision ceased being a stand-alone sentence, and became part of the section's provisos, and read the way it currently reads (except for the deletion of the word "said" when referencing the building). See L. 1918, c. 236, p. 850.

What can be distilled from the above legislative changes is this: Legislature recognized that it is permissible for a non-profit charitable entity to resort to charging fees as a method of self-support, and that imposing such charges should not be deemed the equivalent of the conduct of a for-profit venture such that it endangers the building's tax exemption. The Legislature buttressed this allowance by ensuring that the statutorily qualifying non-profit entity is wholly in control of its building and uses all income received therefrom for and in furtherance of its charitable, benevolent, or religious purposes. Other than these two requirements, there are none. Thus, it is not a mandate that the non-profit entity must wholly occupy the said building as a condition precedent to the exemption. Nor is there any requirement that the entity must initiate, sponsor, participate in, or control the activities of the users/occupiers of that building. See also Borough of Hamburg v. Trustees of Presbytery of Newton, 28 N.J. Tax 311, 319, 323 (Tax 2015) ("[w]hen interpreting N.J.S.A. 54:4-3.6, New Jersey Courts have thus far declined to impose a minimum level of activity requirement on the use test" and that "no requirement in N.J.S.A. 54:4-3.6 that worship services must be offered in order to qualify for exemption").

Nor is there any per se requirement that the users or occupiers of the building must only be religious, thus, use by secular groups is forbidden. While the term "beneficiaries" in the support-through-fees-and-charges portion of the statute is not defined, given strict construction of tax exemption statutes, it likely indicates that use/occupation of a charitable entity's building for a fee by a for-profit entity in furtherance of for-profit activities, can endanger the building's tax exemption status. However, whether a secular group is for-profit, or its use of the premises is for a for-profit use, and whether charges received from such group are used by the owner non-profit entity for purposes unrelated to the reasons for its creation, is a fact-based inquiry. It should not be a conclusory approach that since the occupants are secular groups, the property is being used for for-profit or non-tax-exempt purposes, therefore, the exemption should be summarily denied. Here, as explained above, the only proof submitted by the Township, and which was undisputed by plaintiff, was that the secular groups who visited, stayed, and used Grove Hall were non-profit and/or religious entities.

The court is also unpersuaded that simply because plaintiff did not control the visitors' agendas, it means that Grove Hall was used for non-tax-exempt purposes. See e.g. Ryan v. Holy Trinity Evangelical Lutheran Church, 175 N.J. 333, 352 (2003) (a charitable immunity case where the Court held "[e]ven when a religious organization is not advancing its own religious tenets, or promoting religion at all, it can still be engaged in its 'works'"). In any event, the evidence here shows that the visitors were not using Grove Hall for non-tax-exempt purposes. For instance, the agenda of the Jesus Fellowship Calvary Chapel _ Ladies Retreat, listed "Morning Devotions - enjoy time alone with Jesus," "Evening Devotions _ enjoy time alone with Jesus," and "Prayer time in living room" as scheduled activities. While the parties did not clarify who organized the "SPLASH 2019," the agenda included "worship and prayer at Grove Hall," as Saturday night

activities. These agendas are consistent with the plaintiff's goal of providing a space for worship, and Grove Hall's use is consistent with plaintiff's purpose of providing a "seaside setting for a special time with God." As one employee when deposed testified:

> A. So there's been groups, yoga retreats where, oh, doesn't really fit us, and then these other groups, like the mental health group where they need a couple of weekdays, and that seemed an appropriate use of [Grove Hall].
> Q: Secular groups that don't fit you, does that mean any group that is not pursuing services or pursuing some sort of religious aspect to their secular nature?
> A. It's hard to say. Like if there was a specific example, I might say what our reaction might be, but the reality is we don't advertise anywhere outside of church circles, and it's primarily word of mouth. So we don't get calls that are not connected at all really.
> . . . .
> Q: How do you monitor . . . [a group's] activity other than getting a schedule for them?
> A. We're not monitoring to shake our finger at them if they're not doing it right. If we felt that they were not – if they said they were coming to do a Christian retreat and didn't do that at all, they may not be invited back, but other than that we are not here to monitor, and Christian retreats can look like a lot of different things. Like I said, it can be a wholesome week for a family with devotions in the morning together, or it can be, you know, intense, where every minute of the day is kind of planned out that you'll sit in the dining room at this time and then at five to the hour you'll move to your other room and do a small group.

Plaintiff's employee also certified that plaintiff always encourages those who stay at the Grove Hall to attend and participate in plaintiff's faith-based activities, and that if a non-profit visiting group requests, plaintiff will get involved in the group's spiritual activities. Plaintiff's employees maintained that plaintiff would not permit just any member of the public to use Grove Hall for overnight stays; applications were required for permission to use Grove Hall; plaintiff asked for visiting group's agenda before booking; and the group had to provide insurance coverage showing plaintiff as an additional insured. Employees also deposed that plaintiff accepted checks

only from groups and that visitors cannot directly or unilaterally book rooms online on the website without plaintiff's involvement or consent.

Plaintiff's employees also stated that there were occasions where visiting groups' applications were rejected because their goals were misaligned with plaintiff's purposes. Plaintiff's President certified there is a strict "no alcohol allowed" policy, and the primary purpose of Grove Hall's use and occupation by any group is for retreat of a spiritual nature, and the provided spartan rooms/basic amenities are intended to "encourage prayer, reflection, and spiritual experiences" in a "tranquil" atmosphere.

The guest list did include some entries that referenced an individual's name as opposed to the name of an organization. However, as explained by the plaintiff's employees, they were either the group leaders or individuals who are tied to the plaintiff such as trustees who flew into town for a trustee meeting, visiting missionaries, a bible archaeologist who came each year, or visitors who came to attend seminars at the Subject. Plaintiff's employees, including the ones who were unsure why the individual's names were included, also asserted that it is not a customary practice to rent out rooms to individuals for over-night stay only.

One employee did testify at her deposition that individuals stayed at Grove Hall, thus:

> Q: What about Grove Hall, unaffiliated religious groups meet there?
> A. So, Grove Hall in the past few years Grove Hall was only religious groups or groups that were allowed to come in and rent the facilities.
> Q: When you say recently, what years are you talking about maybe?
> A. Three to five years off the top of my head.
> Q: Prior to that?
> A. That kind of, you know, went up and down depending on, you know, what group was involved at the moment . . .
> Q: Do you recall secular groups renting space at Grove Hall?
> A. Yeah. There was definitely a time when Grove Hall was available for secular and was also open for individual night stays.
> Q: I am sorry, what was the last thing you said?
> A. Also open for individual night stays. Not groups.

Q: An individual just wanted to stay someplace in Ocean Grove?
A. Uh-huh.
Q: Not affiliated with the Methodist Church?
A. Uh-huh.
Q: No different than staying at a bed and breakfast or a hotel?
A. Right.

However, these questions do not prove that plaintiff used Grove Hall as a bed and breakfast. Rather, the deponent appeared to be agreeing with the Township's counsel's opinion of plaintiff's operations. And while this opinion maybe based on her answers, the deponent also made it clear that such type of rentals occurred in the past, but that for the past three to five years, only groups could stay at the Subject. Similarly, when asked how Grove Hall is different from "any other bed and breakfast in Ocean Grove," plaintiff's Chief Operating Officer noted that plaintiff's mission was to "provide opportunities for Christian fellowship" and get-togethers, and only groups were allowed to stay since plaintiff required the groups to provide proof of insurance, thus "it can't be individuals." When pressed on the difference, this individual responded:

A. I think the biggest difference . . . is who [Grove Hall] is being advertised to. It's being advertised through different churches. You're trying to get church groups to be there. That was the desire to provide opportunities for church groups to come in.
Q: Your website is not limited to church groups though, correct?
A. The website is trying to get as far reaching as possible.
Q: Everyone and anyone?
A. But the intent is there to try to, again, we want them to experience as it says there the initials LBGR. Spiritual birth, growth and renewal. And so there's opportunities when people come in to be exposed to the ministry that's there and understand who the ministry is, introducing them to the ministry.

Another employee also testified similarly when asked whether people can "do nothing at Grove Hall other than stay overnight":

A. Oh, we don't have anybody that's done that I believe.
. . . .
Q: You've never had a situation where someone stayed overnight but all of their activities were outside of the building [Grove Hall]?

A. No, and we don't do individuals . . .

Similarly, that the list showed two entries for birthday celebrations and one for family reunion, is not a reason to conclude that plaintiff was operating Grove Hall akin to a commercially run bed and breakfast. Plaintiff's employees explained that even such events would have to be faith-based ("family groups . . . where they do family week at the beach maybe for their church"). More importantly, as noted above, the statute explicitly permits imposing fees and charges for use/occupation of a religious or charitable-purpose entity's building. Cf. also Bieker v. Cmty. House of Moorestown, 169 N.J. 167, 178-79 (2001) (a charitable immunity case under N.J.S.A. 2A:53A-7, where the Court held that "income from some limited noncharitable activity would" not destroy a charitable entity's immunity because this would "call into doubt the status of any charitable, religious or educational organization that holds fund-raisers or bake sales, or conducts bingo nights").[6]

Nor does the fact that the Grove Hall is used annually by the Chiefs of Police Association require its disqualification for tax exemption. This stay is in conjunction with the annual memorial held for fallen officers, and prayers are held in their honor at the Great Auditorium. The memorial service itself being a community-based social event, the stay at Grove Hall does not therefore convert this use as plaintiff's leasing a portion of the Subject to a for-profit entity or for purposes of making a profit. See e.g. Bianchi v. S. Park Presbyterian Church, 123 N.J.L. 325, 332-33 (E. & A. 1939) (a charitable immunity case, where the court ruled that a church's "function" is "not limited to sectarian teaching and worship" but includes "exercises designed to aid in the

[6] Whether an entity is charitable under the Charitable Immunities Act, N.J.S.A. 2A:53A-7, is fact-sensitive, since the term "charitable . . . defies precise definition." Ryan, 175 N.J. at 343, 345 (citing Presbyterian Homes v. Div. of Tax Appeals, 55 N.J. 275, 285(1970), a local property tax exemption case which held that "the term 'charity' in a legal sense is a matter of description rather than a precise definition").

advancement of the spiritual, moral, ethical and cultural life of the community in general," thus, "[a] social center is now commonly regarded" as a part of a church because it is "conducive to the public good as well as advantageous to the congregation," and a church's "such endeavors, having in view the public interest, serve the more to give the body the character of a charitable institution" wherein the beneficiaries are the general public).

And as further explicated below, the court is not persuaded that all of the income from fees/charges imposed for the use/occupation of Grove Hall is not in furtherance of plaintiff's mission and purposes. As plaintiff's employee certified, plaintiff runs several charitable endeavors which are not self-supporting, thus uses income from fees/charges imposed for the use and occupation of Grove Hall for such charitable or benevolent purposes. Such use of income is clearly permitted by N.J.S.A. 54:4-3.6.

Thus, based on the above cited facts, plaintiff's use of Grove Hall satisfies Criteria 2 use test since the use furthers its purpose of providing a spiritual retreat, and further does not violate the caveats specified in N.J.S.A. 54:4-3.6 as to "leas[ing]" Grove Hall or a portion thereof to any for-profit entity, or as to imposing charges for the use and occupancy of Grove Hall. Because a majority of Grove Hall guests were from Church or religious organizations, the use satisfied Religious/Charitable Clause. That plaintiff allows some secular non-profit groups to use the premise, is not inconsistent with either the MMI or the Religious/Charitable Clause. See also Ryan, 175 N.J. at 353 ("[b]y supporting social outreach groups that enriched the life of the community at large [the church] fell well within the modern view, now sixty years old, that the good works of churches are not limited to parochial concerns"); Bieker, 169 N.J. at 170-71 ("activities designed to raise monies in support of a charitable organization's core purposes

generally contribute to those purposes and do not change the essence of the entity itself") (citation and internal quotation marks omitted).

(iii) Conducted for Profit Criteria

In assessing whether taxpayer satisfied "not conducted for profit" prong, the court should conduct a "pragmatic inquiry into profitability" and "a realistic common sense analysis of the actual operating of the taxpayer." Paper Mill Playhouse 95 N.J. at 521. "A crucial factor is where the profit goes." Id. at 522.

None of plaintiff's trustees or officers are paid. All revenues, including from Grove Hall, are deposited in the general operating account and spent or used for plaintiff's operating expenses. Plaintiff's financial statements as of December 31, 2017 show $4,118,885 as being spent for "Program Services" which is for several benevolent programs, adult and youth based. This is in accord with plaintiff's incorporating statute, L. 1870, c. 157, §6 ("Any surplus funds remaining . . . after defraying the necessary expenses thereof for improvements or otherwise," is to be "devoted to such charitable, benevolent or religious objects or purpose" as agreed to by plaintiff's trustees), and N.J.S.A. 54:4-3.6. The financial statements show that all incoming revenues, including gifts, donations, charitable contributions are used to meet operating expenses, management expenses, employee wages/pensions, and funding of various endowments or specific funds. Plaintiff's employee also certified that revenues from Grove Hall (as from other sources) are used to support its several charitable endeavors many of which are run (offered) for free, but which nonetheless incur costs.

The Township notes that a large source of revenue (for the period ending December 31, 2017) for plaintiff is from "rental and property income," (which presumably includes income from the charges for the use and occupation of Grove Hall), therefore, it must be true that plaintiff is

engaging in secular for-profit activities. However, this does not help -- there is no breakdown of the income raised from the use/occupation of Grove Hall. Regardless, plaintiff's financial statements as of December 31, 2017, also showed significant receipts from contributions and gifts ($1,117,561 excluding "temporarily restricted" gifts of $277,384), which weakens the Township's inferential argument. There was nothing provided to show that plaintiff diverted any portion of the income from Grove Hall for any for-profit or other non-tax-exempt activity.

CONCLUSION

For the above reasons, the court reverses the tax exemption denial for the Subject for tax year 2018, and grants plaintiff's cross-motion for summary judgment.[7]

[7] Each year's exemption stands on its own. Therefore, if the assessor finds that for any other tax year plaintiff leases any portion of Grove Hall to a for-profit entity, or that plaintiff's expense statements show that the revenue from the charges/fees for use and occupation of Grove Hall is being spent or used for purposes other than religious, charitable, or benevolent, or for purposes unrelated to plaintiff's management and operations, then this opinion should not prevent the Township's assessor from denying a tax exemption to the Subject for such tax year.