Servants of the Word,
Petitioner,

v

City of Grand Rapids,
Respondent.

MICHIGAN TAX TRIBUNAL

MAHS Docket No. 17-002810

Presiding Judge
David B. Marmon

ORDER DENYING RESPONDENT'S MOTION FOR SUMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Servants of the Word, appeals ad valorem property tax assessments levied by Respondent, City of Grand Rapids, against Parcel No. 41-14-29-377-006 for the 2017 and 2018 tax years. Thomas Hitch, Attorney, represented Petitioner, and Jason Grinnell, Attorney, represented Respondent.

On March 1, 2019, Respondent filed a Motion for Summary Disposition along with a motion for immediate consideration. On March 3, 2019, the Tribunal entered an order taking Respondent's motion under advisement. The Tribunal concludes that issues of fact remained from that motion, which have been resolved at hearing. The March 3rd Order also allowed Petitioner to file a Prehearing Brief in lieu of a response to Respondent's Summary Disposition motion.

A hearing on this matter was held on March 13, 2019. Petitioner's sole witness was Michael Kramer. Respondent did not present any witnesses. The parties

stipulated to Petitioner's statement of facts found in its Trial Brief, filed on March 6, 2019.

Based on the evidence, testimony, and case file, the Tribunal finds that the taxable values ("TV") of the subject property for the 2017 and 2018 tax years are as follows:

Parcel No.	Year	TV
41-14-29-377-006	2017	$143,600
41-14-29-377-006	2018	$143,800

PETITIONER'S CONTENTIONS

Petitioner contends that the property is exempt under MCL 211.7s and MCL 211.7o(1). As to §7s, Petitioner contends that the subject is a modern-day monastery and thus exempt. Additionally, Petitioner argues that the subject is exempt from property taxes as a charitable organization.

PETITIONER'S ADMITTED EXHIBITS

P-1 Articles of Incorporation of The Sword of the Spirit.

P-2 Restated Articles of Incorporation of Petitioner.

P-3 Amended and Restated Articles of Incorporation of the Servants of the Word.

P-4 Statutes and Bylaws of the Servants of the Word.

P-5 Covenant of the Servants of the Word.

P-6 IRS Letter Ruling of qualification under 501(c)(3) dated January 26, 1984.

P-7 Letter Rulings under 501(c)(3) dated March 24, 1992 and July 7, 1992.

P-8 Record Card of subject property.

P-9 Warranty Deed of subject dated August 31, 2015.

PETITIONER'S WITNESS

Petitioner's sole witness was Michael Kramer. Kramer described his background as a son of a Baptist pastor, his educational background, and how he became involved with Petitioner.[1] He next testified regarding the stages that a young man must go through to become a brother with the entire process taking seven to eight years.[2]

Kramer described communal living as a brother of Petitioner as follows:

> We're all committed to following a certain pattern of life, where we begin the day in a common meal together around the table and then we go from there to pray, a ritual type of prayer, praying the psalms and other types of forms of prayer.
>
> And then we have quiet times and meditation following that. And then because to my knowledge no one in any of our households does the same job, we disperse for the day and then we come back in the evening. We gather once again in our chapel and then pray the psalms and then have a common meal together.[3]

Kramer then answered in the affirmative to leading questions concerning the brothers' commitment to chastity, poverty, and obedience.

Kramer discussed his own duties to Petitioner as steward of the house, administrative work performed at Petitioner's headquarters in Chelsea Michigan, and event planning. One of those events is the Kairos Mission Trips that involve ten-day mission trips for high school and university students, mainly in northern Mexico along the border.[4] He testified that the mission trips are back to back during the summer and he is usually out of the country for four to five weeks.[5] In response to questions from

[1] T at 8-10.
[2] T at 11.
[3] T at 13.
[4] T at 15.
[5] T at 19.

the bench, Kramer testified that there are usually two, sometimes three trips a year which take place in the summer, in the dessert for 10 days each.[6]

Kramer described the work as building very simple family shelters for persons in need across the border in Mexico. He testified that he also works with orphanages in the same area. He also delivers durable medical supplies, (wheel chairs, crutches and band-aids) to northern Mexico.

Kramer described the mission trips to northern Mexico as follows:

> Because it's a border town, a lot of people are moving through -- from South America and through Central America up to the border. And in many cases they -- they rebound, they're not able to cross the fence, the wall, and so they end up fairly destitute there with their families having paid the coyotes, human coyotes exorbitant funds to get them there, so they're in need.
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> So the families we work with are extremely destitute and for our high school students, who by comparison have very privileged lifestyles, this is -- this is quite a shock. To be right in the house, to be with the family, to see the medical disabilities that they deal with, and those are very shocking things. Perhaps the most shocking for them is to see how happy the people are in their circumstances.[7]

When prompted in Direct Examination regarding usage of the subject property, Kramer testified:

> We do have retreats of sorts. We have a lot of people that visit us. There are small -- small groups of men that come over. They're mainly college students associated with some of the outreaches that we have in the Grand Rapids area.[8]

He also testified that they invite additional people over for a “paramount service” on Saturday night, typically 3 or 4 sometimes 5-6, usually young men.[9] He also testified

[6] T at 53, 55.
[7] T at 21-22.
[8] T at 23.
[9] T at 24.

that there are regular meetings with Light of Christ at the subject; once-a-year board meetings and weekly or every other week leadership training meetings at the subject.[10] Kramer also testified to mentoring activities that take place by the brothers with groups of four to six young men.[11]

Kramer testified that Petitioner is an ecumenical brotherhood, and the brothers attend separate churches. Two of the brothers in the home are Roman Catholic, Kramer is an evangelical free --, and the fourth brother attends a Calvin Reformed Church.[12] He testified that none of them were ordained ministers.[13]

Kramer described his own outside employment with the Potter High School tutoring program as a Title I teacher, paid by the Grand Rapids Public Schools. He testified that he hands over his net income from teaching and receives a stipend of $80 per month.[14] He testified that another brother works with junior high school boys setting up wilderness backpacking and canoe trips.[15] He described this activity as a "feeder program."[16]

As to income sources for Petitioner, Kramer testified as follows:

> The Servants of the Word we have a software company so some of our income comes from that. Some of the brothers are I don't know if it's most, but many of the brothers are engineers, professional engineers. And so some of those brothers are involved in work outside of our ministry, so we refer to it as outside work, professional work. We have some brothers who are professors, seminary professors. of them is an -- a couple of them are adjunct professors one at Eastern Michigan University

[10] T at 25.
[11] T at 26.
[12] T at 28.
[13] T at 45.
[14] T at 33-34.
[15] T at 37.
[16] *Id*.

> and one in Grand Rapids at Davenport University, then I tutor. We have a couple other teachers.[17]

He then agreed that each of those salaries are contributed to Petitioner. Additional funds are raised for Petitioner through fundraising.[18]

Kramer also testified that he and the brothers occasionally help out their elderly neighbors by shoveling snow mowing lawns and raking leaves, and once hosted a neighborhood picnic. [19]

On cross examination, Kramer described the subject property. The main floor has a dining room, kitchen, parlor, living room, sitting room and a small office. The basement has a 15 by 15-foot chapel that holds perhaps a dozen persons. Meetings are held on the main floor. Upstairs contains five bedrooms along with a bathroom.[20] Kramer testified that a total of six persons live at the subject; the four brothers plus two "affiliates."[21]

When questioned as to whether persons could freely walk in and worship, Kramer responded that one could if he contacted them beforehand. He also explained that the public would know the subject is open for services "[m]ainly by word of mouth."[22] He agreed that for the most part, members invite specific people to come to the subject property to participate in their activities.[23]

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[17] T at 38.
[18] T at 39.
[19] T at 35-36.
[20] T at 40-42.
[21] T at 43.
[22] T at 42.
[23] T at 42-43.

Kramer agreed that while planning mission trips takes place at the house, all of the teaching and ministry takes place outside the subject.[24] He had the following exchange on cross examination:

> Q. Would you agree that the primary purpose of the house is residential purposes for the four members who are living there and for the two affiliates?
>
> A. Well, I think one could make that case. I mean, we spend as much sleeping as everyone else does.
>
> Q. Right.
>
> A. But -- but a typical day the waking hours our life is very unusual. Yes, it is a residence but we have a lot of religious activity going on each day.[25]

Kramer then added:

> And throughout the week I don't personally do that much teaching in the house, but the other brothers -- we have a lot of people in our house. On Tuesdays we have probably eight or ten university people that work with our University Christian Outreach group there receiving teachings and praying and encouragement, those types of things.[26]

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is not exempt under either MCL 211.7s or MCL 211.7o. Respondent contends that the primary purpose of the subject is as a residence.

RESPONDENT'S ADMITTED EXHIBITS

R-2 Letter from Petitioner to code enforcement

R-3 Property record cards for 2554 Annchester; 560 Jefferson and 564 Jefferson

R-4 Exemption application.

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[24] T at 46-47.
[25] T at 47.
[26] T at 48.

FINDINGS OF FACT

1. The subject, located at 1034 Chester Street, Kent County, is a two-story plus home with five bedrooms, a single-family home with over 3,198 square feet of living space, a 408 square foot garage, two bathrooms,[27] and basement with a 15 by 15-foot chapel and a laundry room.
2. Petitioner is an international religious Order with locations in the United States, Great Britain, Mexico, Costa Rica and the Philippines.[28]
3. There are 104 Brothers worldwide, with an additional 40-45 men who are in the process of becoming Brothers with Petitioner.[29]
4. Article II of Petitioner's Amended and Restated Articles of Incorporation sets forth its corporate purpose as follows:

> The Corporation shall be organized and operated as a religious order primarily and exclusively for Christian religious purposes within the meaning of Section 501(c) (3) of the Internal Revenue Code of 1986, as amended. A further description of the order's religious purposes are as follows: to teach and disseminate the Gospel of Jesus Christ throughout the world; to promote and encourage lives of Christian prayer and service to advance the Kingdom of Jesus Christ through various Christian mission activities of the order; and to support other Christian ministry organizations that have missions that are similar to the Christian mission of this order.[30]

5. Petitioner is recognized by the Internal Revenue Service as exempt from federal income tax under IRC §501(c)(3).[31]
6. The subject was purchased by Petitioner on August 31, 2015.[32]

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[27] Exhibit P-8 record card and sketch.
[28] Petitioner's Trial Brief at 2.
[29] *Id*.
[30] *Id*. at 3.
[31] *Id.* at 3; Exhibit P-6, P-7.
[32] Exhibit P-9.

7. The subject houses four men, self-described as “brothers” in Petitioner’s organization, along with two men described as “affiliates.”
8. None of the residents are ordained ministers.
9. Most of the residents of the home are employed outside of the home and the brothers spend portions of their days working outside the home or going to class.
10. Along with household activities, the residents live together communally and spend a significant portion of their day while at home reciting prayers.
11. While occasionally inviting individuals to the subject to dine with them, most of the religious activities take place among the residents.
12. While the public is not barred from participating in religious activities at the subject, individuals other than the residents are generally invited to attend on specific occasions.
13. Petitioner has failed to show that the general public was aware that the services provided by the campus house were available.
14. The subject’s predominant use is as a residence for brothers and affiliates of Petitioner.
15. While prayer occurs at the subject, the subject is not a church or other house of worship, the subject is not used predominantly for religious services or for teaching the religious truths and beliefs of the society.
16. Most of the charitable activities engaged in by the residents occur outside the home on mission retreats outside the home, or “outreach” on campuses.
17. Petitioner failed to provide any financial documentation regarding Petitioner’s income and expenses.

CONCLUSIONS OF LAW

A proceeding before the Tax Tribunal is original, independent, and de novo.[33] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[34] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[35]

"The petitioner has the burden of proof in establishing the true cash value of the property."[36] "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party."[37] "In general, tax exempt statutes must be strictly construed in favor of the taxing authority."[38] The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption.[39]

The statute authorizing an exemption from property tax for religious institutions is MCL 211.7s, which states:

> Houses of public worship, with the land on which they stand, the furniture therein and all rights in the pews, and any parsonage owned by a religious society of this state and occupied as a parsonage are exempt from taxation under this act. Houses of public worship includes buildings or other facilities owned by a religious society and used predominantly for religious services or for teaching the religious truths and beliefs of the society.

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[33] MCL 205.735a(2).
[34] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[35] *Jones & Laughlin Steel Corp,* 193 Mich App 348, 352-353; 483 NW2d 416 (1992).
[36] MCL 205.737(3).
[37] *Jones & Laughlin Steel Corp,* 193 Mich App at 354-355.
[38] *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985); see also *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753; 298 NW2d 422 (1980).
[39] See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).

The Michigan Court of Appeals has opined on the issue of whether a residence owed by a non-profit religious institution is entitled to an exemption. In *Asher Student Foundation v East Lansing*,[40] the Court of Appeals held that a building which held 90 university students of the Christian Science faith was not entitled to an exemption under the charitable and religious statute in effect at the time. The Court of Appeals reasoned that the property was not a church or a parsonage, and that it only benefitted a limited number of persons.

The Court of Appeals next decided *Michigan Christian Campus Ministries v City of Mt Pleasant*,[41] where the Tribunal's holding that that the primary purpose of the campus house was to provide living quarters for selected students and was not entitled to a tax exemption under a prior version of §7s which required *exclusive* (rather than predominant) use for religious services or for teaching religious truths was affirmed. The Court of Appeals noted that although religious services are conducted at times, use of the property as a residence for 10 college students was continuous. It was also noted that the subject property could not be viewed as a parsonage because the ordained minister supervising the students was not a resident. Nor could it be viewed as a house of public worship because:

> The fact that the campus house had an open-door policy to permit access to its facilities was viewed as an incidental function because petitioner had failed to show that the general public was aware that the services provided by the campus house were available.[42]

[40] *Asher Student Foundation v East Lansing*, 88 Mich App 568; 278 NW2d 675 (1979).
[41] *Michigan Christian Campus Ministries v City of Mt Pleasant*, 110 Mich App 787; 314 NW2d 482 (1981).
[42] *Id*. at 795.

The Court of Appeals also noted that as in *Asher*, much of the building space was devoted to the residential function.

In *Institute in Basic Life Principles v Watersmeet Twp,*[43] the Court of Appeals reversed the Tribunal's denial of an exemption under §7s to an organization that was not a church and does not represent a religious denomination. The Tribunal had denied the exemption finding that because Petitioner had no members and prescribed no form of worship and because Petitioner did not exercise superintendence over the discipline of its members. In reversing the Tribunal, the Court of Appeals held that an organization qualifies as a religious society under §7s "if its predominant purpose and practice include teaching religious truths and beliefs."[44]

The *Institute in Basic Life* court further held that the Tribunal erred in applying the quantum of use test. In so holding, the court approvingly quoted language from *Nat'l Music Camp v Green Lake Twp*[45] that the quantum of use test, as to an educational institution was "stringent," "rigorous," and "extreme." In rejecting the quantum of use test in determining an exemption under §7s, the Court of Appeals stated, "[w]e decline to invite the Tax Tribunal to apply the rigorous quantum of use test, finding that the test would unnecessarily intrude into the affairs of religious organizations."[46] The Court of Appeals opined that the proper test was "whether the entire property was used in a manner consistent with the purposes of the owning institution."[47] The Court of Appeals

[43] *Institute in Basic Life Principles v Watersmeet Twp, 217 Mich App 7; 551 NW2d 199 (1996).*
[44] *Id*. at 14.
[45] *Nat'l Music Camp v Green Lake Twp*, 76 Mich App 608, 611; 257 NW2d 188 (1977).
[46] *Institute in Basic Life*, 217 Mich App at 19.
[47] *Id*.

went on to find that the subject property, consisting of large tracks of vacant land qualified under §7s.

After *Institute in Basic Life*, the Court of Appeals decided a pair of cases involving residences for Orthodox Jewish students. In *Congregation Mishkan Israel Nusach H'Ari v City of Oak Park*,[48] the Court of Appeals reversed the Tribunal's decision granting an exemption under §7s for an apartment building owned by Petitioner and used to house 56 students and three dorm counselors who have undergone rabbinical training but are not yet ordained. The Court of Appeals distinguished *Institute in Basic Life* on the basis of the type of subject property. Unlike *Institute in Basic Life*, *Congregation Mishkan* did not involve large tracts of open and contiguous lands. Rather, the subject of that case is a developed parcel of land on a city street. The Court of Appeals stated:

> The question that the statute demands we answer, however, is whether petitioner has met its burden to prove that the apartment complex is being used 'predominantly' for 'teaching religious truths' as opposed to predominantly for residential or other uses.[49]

The Court of Appeals noted that the branch of Judaism followed by Petitioner involves strict adherence to hundreds of commandments, many which address how to perform ordinary tasks of life. The Court of Appeals stated:

> According to the testimony, there are precise religious rules governing how one sleeps, awakens, dresses, conducts personal hygiene and the like. The testimony made clear that students are expected to strictly observe these rules when they are in the apartments just as when they are in the synagogue. One of the counselors, Menachem Rimler, testified that he lives on the subject property with the students, along with the other two counselors. He testified that the students mainly use the subject property for sleeping, recreation, and studying. He explained that in addition to residing there themselves, the counselors supervise and

[48] *Congregation Mishkan Israel Nusach H'Ari v City of Oak Park*, unpublished per curiam opinion of the Court of Appeals, issued December 13, 2012 (Docket No 306465).
[49] *Id.* at 4.

> mentor the students as they practice the numerous rituals associated with their faith and will correct them if they observe them doing so incorrectly or sloppily. However, neither Rimler nor anyone else testified that the students conduct their observances as a supervised group and this appears consistent with the fact that the observances are connected to daily activities such as dressing, washing, using the bathroom and sleeping. Rimler did not testify that the rules that must be followed vary from day to day or week to week such that new teaching is required when changes occur.
>
> * * *
>
> [Rabbi Shemtov] described the provision of student housing as having an educational as well as residential purpose, testifying that '[t]o apply what's taught in the classroom and to make it secondary nature doesn't happen in the classroom . . . it happens when you're interacting with friends in a natural way, in a social way. That's when it really gets inculcated' and that 'communal living [is] essential to facilitate and help us achieve our main objective in educating these kids with the religious truths and beliefs that they . . . shall live a lifestyle twenty-four/seven in accordance to the code of Jewish law.' At the same time, he agreed that 'one can teach the same truths and beliefs without a dormitory' and that many, if not most yeshivas do not provide student housing. He also testified that the students meet as a group with the counselors only once every week or two.[50]

Despite the above quoted testimony, the Court of Appeals rejected the Tribunal's conclusion that the building was used predominantly for teaching religious truths and beliefs of the society. Rather, the Court of Appeals found the facts to be similar to *Campus Ministries*, where the building was used by the students for housing as well as religious counseling, fellowship (group singing, prayer and bible study) religious teaching, sermons and sacraments. The Court of Appeals explained:

> The issue is not whether observances take place, but whether *teaching* is the *predominant* function of this apartment complex that sits apart from the actual synagogue and classrooms. The statute, which must be strictly construed in favor of the taxing authority, only allows for an exemption when the property is 'predominantly' used for holding religious services or teaching religious truths and beliefs and the record does not provide a basis for such a conclusion.[51]

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[50] *Id*. at 2-3.
[51] *Id*. at 4.

The Court of Appeals next reviewed the issue of an exemption under §7s in *Congregation Yagil Torah v City of Southfield*.[52] In this decision, a different panel of the Court of Appeals affirmed the Tribunal's denial of an exemption under §7s to a single-family residence owned by Petitioner and used to house female seminary students. Although the rabbi testified that some classes were held at the subject four-bedroom house, the Court of Appeals affirmed that the predominant use was as a residence rather than as a place to teach religious truths or for religious services. The Court of Appeals also rejected Petitioner's argument that it was a parsonage because it housed non-ordained seminary students. Rather, the Court of Appeals stated that the definition found in *St John's Evangelical Lutheran Church v Bay City*,[53] that "a 'parsonage' is "a residence of the pastor or his assistants who are ordained teaching ministers for a particular congregation."[54] The Court of Appeals also noted that most of the students spent most of their day outside of the residence.

In the subject case, Michael Kramer testified that the communal nature of the residence was essential for them to follow the arduous vows they took as members of Petitioner.[55] He and the other brothers held jobs outside of their life as members of petitioner. When asked on cross as to what distinguished his use of the subject from that of a family that frequently prays together, Kramer answered that it was the vows of poverty, chastity, and obedience that he and the other brothers took.[56]

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[52] *Congregation Yagil Torah v City of Southfield,* unpublished per curiam opinion of the Court of Appeals, issued July 22, 2014 (Docket No 314735).
[53] *St John's Evangelical Lutheran Church v Bay City,* 114 Mich App 616, 624-625; 319 NW2d 378 (1982).
[54] *Yagil Torah*, unpub op at 6.
[55] T at 51-52.
[56] T at 48-49.

After considering the caselaw and testimony, the Tribunal holds that a religious monastic lifestyle that the residents choose is a lifestyle choice and does not qualify as teaching the religious truths and beliefs of the society. Nor does the fact that occasionally, other young men who have not yet become brothers reside with them render the predominant use of the residence a teaching facility. Rather, the facts in this appeal, while dealing with certain Christian practices and teachings, are closely analogous to the facts in *Mishkan Israel* and Y*agil Torah*, the former which dealt with strict adherence to ultra-orthodox Jewish practices, and the latter which dealt with a single-family home. While neither *Mishkan Israel* nor *Yagil Torah* are published, both decisions are recent, reasoned, and on-point. In all three cases, the residents are required to frequently pray, study scriptures and otherwise engage in rituals fundamental to their faith and way of life, intertwined with activities of daily life. The Tribunal cannot conclude that living a pious, observant or rigid lifestyle in and of itself is grounds for a religious exemption under §7s. Rather, the statute and appellate court decisions require the predominant use to be teaching religious truths and beliefs.

While residents of the subject are perhaps living an example of their chosen religion's ideal, the Court of Appeals has rejected this as a basis for granting an exemption under §7s. Rather, the Court of Appeals has instead focused on whether teaching is the predominant use of the building. As the Tribunal has found, teaching generally happens outside of the subject property. Kramer testified that teaching occurs on trips he organizes with young men, as they travel together to help the poor in Arizona and northern Mexico. Teaching may also happen through outreach the brothers engage in at local colleges, praying and proselytizing presumably while handing out

leaflets. While there is bible study among the members at the subject property, as in *Mishkan Israel* and *Yagil Torah*, this is not the predominant use. While Kramer uses the small office in the house occasionally to plan two or three trips a year, and the house in general to occasionally receive guests or potential acolytes, the main function of the 5-bedroom single family home is to provide a residence, where the brothers, two affiliates, and occasional guests eat, sleep and bathe.

Petitioner has argued that the subject is "a monastery for modern times," and is thus entitled to an exemption on the basis of piety alone. In support, Petitioner relies upon a 1990 Tribunal decision, *Rev Father Gabriel Loynes et al v Mundy Twp,*[57] as well as the Tribunal's overturned decision in *Mishkan Israel*,[58] and one line in the Court of Appeals decision overturning the Tribunal's decision, and on *Sisters of Mercy – Province of Detroit v Pennfield Twp.*[59]

In *Father Loynes*, the Tribunal relied upon an Oregon case, *House of Good Shepherd v Dept of Revenue,*[60] which held that a monastery's activities qualified it for an exemption as the purpose for which they used their residence was itself a religious objective. However, the Court of Appeals specifically rejected this reasoning in *Asher,* as such a holding would render the other requirements under the statute then in effect superfluous. It also runs afoul of *Campus Ministries*, where the exemption was denied because the religious functions were ancillary to the residential function of the home.

[57] *Rev Father Gabriel Loynes et al v Mundy Twp,* 6 MTT 623 (1990).
[58] *Congregation Mishkan Israel Nusach H'Ari Lubavitcher Center v City of Oak Park*, 22 MTT 556 (2011).
[59] *Sisters of Mercy – Province of Detroit v Pennfield Twp,* unpublished per curiam opinion of the Court of Appeals, issued May 7, 1982 (Docket No 54362).
[60] *House of Good Shepherd v Dept of Revenue,* 710 P2d 778 *(Or 1985).*

While *Campus Ministries* is a pre-1990 decision, it was relied upon in *Miskan Israel* and *Yagil Torah*.

As to Petitioner's reliance on the Tribunal decision in *Mishkan Israel*, the Court of Appeals (as discussed above), found it to be erroneous and vacated it. The Tribunal does not have the authority to overrule the Court of Appeals, and although the Court of Appeals' decision in *Mishkan Israel* is unpublished, the Tribunal declines to ignore it. As to the one line relied upon in the *Mishkan Israel* Court of Appeals' decision, "Petitioner congregation concedes that the apartment buildings are not a parsonage nor a monestary (sic),"[61] the Tribunal notes that there is no discussion in that opinion as to what constitutes a monastery, or whether that makes a difference under §7s. Finally, Petitioner mischaracterizes the 1982 decision in *Sisters of Mercy* as standing for the proposition that a monastery is automatically exempt under §7s. The unpublished 1982 decision in fact affirmed the Tribunal's dismissal of the case for not timely invoking its jurisdiction and then used its power to vacate the revocation of *Sisters'* exemption by Pennfield Township on due process grounds for failing to give *Sisters* proper notice of its revocation of exemption. In the Court of Appeals' discussion of exemption, the statute in effect was the charitable exemption statute, rather than the religious exemption statute, and the analysis dealt with the pre-curser to MCL 211.7o, rather than §7s. The Court of Appeals also noted Petitioner's mission was to care for the poor and sick and feed the hungry. The religious exemption statute, the charitable exemption statute and case law have changed significantly since 1982. In short, Petitioner in the

[61] *Mishken Israel*, unpub op at 2.

present case has not cited any authority for the proposition that a monastery is automatically entitled to an exemption under §7s.

Nor does Petitioner qualify as a parsonage. To be a parsonage under §7s, the, the Court of Appeals has relied upon the definition found in *St John's Evangelical Lutheran Church v Bay City*,[62] that "a 'parsonage' is a residence of the pastor or his assistants who are ordained teaching ministers for a particular congregation. Kramer testified that none of the residents are ordained, and do not lead a particular congregation.

Finally, the subject property does not qualify under §7s as a house of worship. While the four brothers engage in prayer, and have set up a chapel in the basement, there was no evidence presented that the subject was open to the public. Kramer testified that occasionally, the brothers bring young males into the home for prayer or mentoring, but this practice appears to be by invitation. Moreover, there is no signage alerting the general public of prayer services, or the times that such services are offered. Respondent also offered evidence that Petitioner has neither sought nor received approval from Respondent's building department allowing the basement to be used a public chapel. Per the decisions in *Campus Ministries, Asher, Mishkan Israel, and Yagil Torah,* non-public prayer at the subject is not enough to meet the requirements of a house of worship under §7s. Accordingly, the subject is not entitled to an exemption under §7s.

Exemption Claim under MCL 211.7o(1)

[62] *St John's Evangelical Lutheran Church,* 114 Mich App at 624-625.

Petitioner also argues that it qualifies for a charitable exemption under MCL 211.7o(1), which states:

> (1) Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.

"Own and occupy"

Ownership and occupancy is not at issue. Respondent, has stipulated to Petitioner's statement of facts in its prehearing brief, and to the admission of most of Petitioner's exhibits, including the record card for the subject, which shows that Petitioner acquired the subject via warranty deed in 2015. As to occupancy, the six men who live full-time at the 5-bedroom residence are part of "the brotherhood," or are affiliates in training to be part of the brotherhood, as set forth in Petitioner's constitution. The term "occupied" occurs twice in §7o(1). Per *Liberty Hill Housing Corp v City of Livonia,*[63] its use as part of the phrase of "owned and occupied" is a separate requirement from its later occurrence from "occupied . . . solely for the purposes for which that . . . institution was incorporated." Should Petitioner fail to meet either occupancy test, it cannot qualify for an exemption under section 7o(1).

In *Liberty Hill*, the petitioner, a non-profit organization, leased housing units to low income and disabled individuals. In applying the first occupancy requirement under §7o(1), the Supreme Court stated:

> The dissent would hold that a charitable institution may occupy property by using it without maintaining a physical presence there. Such an interpretation leads to one of the following two unsatisfactory conclusions: (1) a charitable institution can occupy property without actually being physically present or (2) a charitable institution need only use the property

[63] *Liberty Hill Housing Corp v City of Livonia* 480 Mich 44; 746 NW2d 282 (2008).

> sporadically or perhaps even once to occupy it. Neither of these conclusions is consistent with proper meaning of the term 'occupy.' Rather, a charitable institution must maintain *a regular physical presence* on the property to occupy the property under MCL 211.7o.[64]

Accordingly, the gravamen of the occupancy requirement is maintaining a regular physical presence. Clearly, Petitioner has a regular physical presence throughout the building which it owns and neither leases nor licenses the property to other groups or individuals. It is uncontested that Petitioner meets the first occupancy requirement under §7o(1).

The second issue in this case as set forth by Respondent is whether or not Petitioner is a nonprofit charitable institution. Crucial to resolving the issue under MCL 211.7o(1) is the Supreme Court's *Wexford* decision which sets forth six factors:

Wexford Factors

> (1) A "charitable institution" must be a nonprofit institution.
> (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.
> (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.
> (4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
> (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
> (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.

[64] *Id*. at 61-62. (emphasis added).

Petitioner must meet all six of these requirements in order to be considered a charitable institution.

Factor (1), that Petitioner is a non-profit institution was established by Amended and Restated Articles[65] and by its most recent IRS Letter Ruling showing it is a §501(c)(3) organization.[66] Respondent has not disputed that Petitioner meets this factor.

Factor (2), that Petitioner is organized chiefly, if not solely, for charity is also established by its Restated Articles. Respondent has not disputed that Petitioner meets Factor (2).

Factor (3) requires that Petitioner does not discriminate and that it serves any person who needs the particular type of charity being offered. In the caselaw discussed above concerning the religious exemption, those petitioners did not qualify for the charitable exemption under §7o because their particular type of charity was aimed at a narrow, non-inclusive group. Under prior caselaw, Petitioner would also likely not comply with Factor (3) because it seeks to benefit only Christian men, especially young males.

However, the Supreme Court has substantially revised the requirements of Factor (3). In *Baruch SLS Inc v Tittabawassee Twp*,[67] the Court stated:

> Factor three is intended to exclude organizations that discriminate by imposing purposeless restrictions on the beneficiaries of the charity. We clarify that *Wexford* factor three accomplishes this goal by banning restrictions or conditions on charity that bear no reasonable relationship to an organization's legitimate charitable goals.[68]

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[65] Exhibit P-3
[66] Exhibit P-7.
[67] *Baruch SLS Inc v Tittabawassee Twp,* 500 Mich 345; 901 NW2d 843 (2017).
[68] *Id*. at 357.

The Supreme Court went on to hold:

> that the key question a court must ask when evaluating whether an institution has met *Wexford*'s third factor is whether the restrictions or conditions the institution imposes on its charity bear a reasonable relationship to a permissible charitable goal.[69]

The Court set forth an example of a restriction of restricting who receives a charitable benefit:

> [A] low-cost daycare that prioritizes the applications of families who cheer for a certain baseball team should fail this test if the daycare cannot show how the restriction bears a reasonable relationship to a permissible charitable goal. That is not to say that such a restriction would not be permissible under any circumstances. Suppose a scholarship, which is funded through a baseball team's charitable foundation, restricts its applications to fans of the team. If the foundation can show that its fundraising is more successful when the application process is limited to fans of the team, then even this restriction might pass the test articulated today because the baseball team cannot offer scholarships if it is not able to gain the necessary donations to fund them. [5]
>
> [5] Whether the desire to attract donors or the need to increase an organization's funds will always justify restrictions on the charitable services offered is not something we decide today; the relationship between the proffered restriction and the charitable goal must be evaluated for reasonableness on a case-by-case basis.[70]

In the present case, Petitioner's goals specifically involve bringing its version of Christianity to young men. Accordingly, under the extremely deferential rational relation test set forth by the Supreme Court, Petitioner qualifies under Factor (3) of *Wexford*. Bringing the minds of young men under their brand of Christianity is a permissible goal, per Factor (4).

[69] *Id*. at 360.
[70] *Id*. at 359.

Petitioner also satisfies Factor (4) which requires in part, that it "brings people's minds or hearts under the influence of education or religion." Bringing people's minds or hearts under the influence of religion is Petitioner's main purpose. Further, the First Amendment of the U.S. Constitution, along with Article I §4 of the Michigan Constitution, forbid an inquiry as to the validity of any particular religion, sect, or religious view. The Michigan Constitution states as follows:

> Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.

The principle of religious tolerance is deeply engraved in the history of the United States, as well as the state of Michigan. History has shown that nations have gone to war over differences in religious views. The only sane alternative is to allow religious freedom. The state therefore cannot go behind the truths of any religion and decide which one is preferable. Petitioner's religious truths are presumed to be as valid as any other religious truths under our law. Accordingly, the Tribunal holds that Petitioner's mission of spreading its brand of religion satisfies Factor (4).

As to Factor (5), Petitioner claims that it does not charge for its services to the public. However, Kramer implied that young men who go on missions with the brothers have to pay their own way. Kramer also testified that he and his house-mates donate their entire salaries from outside employment to Petitioner, and apparently live rent-free, and on an $80 per month stipend as part of their vow of poverty. Members of Petitioner,

who agree to a life of poverty, chastity, and obedience appear to be chiefly among those benefitting from Petitioner's charitable purpose. Michael Kramer's outside salary as an employee of the Grand Rapids School District, as well as the outside salaries of each of the other three brothers are donated to Petitioner. No evidence was given as to how much money this generates, or to what use the money is put to.

Kramer also testified that they receive outside donations and revenue from a software program. Petitioner failed to submit any documentary evidence concerning the amount of this income, or how it is spent. Without this evidence, the Tribunal cannot make a determination as to whether Factor (5) is satisfied or whether Petitioner takes in more than what is needed for its successful maintenance. It is incumbent upon a petitioner to provide this evidence to prove its entitlement to an exemption.[71] In the present case, Petitioner has failed to meet its burden concerning Factor (5).

Factor (6) is not so much a requirement as a prohibition against a quantitative test to determine if Petitioner is a charitable institution. If the first five factors are met, Factor (6) of Wexford would also be met, regardless of how little is actually spent on charity. As Factor (5) has not been proven, the Tribunal cannot conclude that Petitioner is a charitable organization under MCL 211.7(o)(1).

<u>"Occupied solely for the purposes for which that nonprofit charitable institution was incorporated</u>

The last requirement under MCL 211.7o(1) is that the subject be occupied solely for the purposes for which that non-profit institution was incorporated. Even if Petitioner

[71] *ProMed Healthcare*, 249 Mich App at 494-495.

had established that it is a charitable institution, the Tribunal holds that the subject property is not occupied solely for Petitioner's purposes. Rather, it is occupied primarily and predominantly as a residence for Petitioner's brotherhood members and potential recruits. Most of the subject single-family home is used as living area. While Kramer testified to using the small office on the premises for planning missions where Petitioner's charity is delivered, and primarily young men are brought along to learn from and appreciate the experience, the Tribunal is not convinced that is the primary purpose of the subject is for planning missions. Rather, it is a place for four of the brotherhood members and two affiliates to eat and sleep before going to their day jobs or going to college campuses to participate in outreach programs. In short, any other uses of the home are ancillary to its main function of being a residence. Accordingly, the Tribunal holds that petitioner is not entitled to an exemption from property taxes under MCL 211.7o(1). Therefore, the subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are AFFIRMED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in

this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December

31, 2018, at the rate of 5.41%, and (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[72] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[73] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[74] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[75]

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[72] See TTR 261 and 257.
[73] See TTR 217 and 267.
[74] See TTR 261 and 225.
[75] See TTR 261 and 257.

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[76] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[77] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[78]

By _____

Entered: March 29, 2019

[76] See MCL 205.753 and MCR 7.204.
[77] See TTR 213.
[78] See TTR 217 and 267.