



STATE TAX COMMISSION OF MISSOURI

ROLLA ALUMNI CHAPTER OF) Appeal No. 20-78002
BETA SIGMA PSI,) Parcel No. 1-09-1.0-02-0030-002-001.803
)
Complainant,)
)
v.)
)
BILL STOLTZ¹, ASSESSOR,)
PHELPS COUNTY, MISSOURI,)
)
Respondent.)

ORDER AFFIRMING HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

HOLDING

On September 10, 2021, a State Tax Commission (STC) hearing officer (Hearing Officer) entered a Decision and Order (Decision) affirming the decision of the Phelps County Board of Equalization (BOE) and finding that a portion of the subject property was not exempt from *ad valorem* taxation as of January 1, 2020. Rolla Alumni Chapter of Beta Sigma Psi (Complainant) subsequently timely filed an Application for Review of the

¹ Tim Kean is the current assessor of Phelps County, Missouri.

Decision of the Hearing Officer. Bill Stoltz, who was Assessor, Phelps County, Missouri, (Respondent) at the time, did not file a response.

We AFFIRM the Decision of the Hearing Officer. Segments of the Hearing Officer's Decision may have been incorporated into our Order without further reference.

FINDINGS OF FACT AND PROCEDURAL HISTORY

The record reveals that the subject property is located at 2 Fraternity Drive in Rolla, Missouri. The parcel/locator number is 1-09-1.0-02-0030-002-001.803. The subject property consists of a lot classified as residential real property and improved by a fraternity house comprised of three stories and a basement totaling 24,847 square feet of gross building area. Of this total, 7,157 square feet are devoted to "support" areas for mechanical equipment, laundry rooms, restrooms, storage areas, and hallways. The remaining 17,690 square feet consists of living quarters, meeting rooms, a 429-square-foot library and multiple study rooms on all three floors. The library and study areas total 7,180 square feet. The subject property's improvements were renovated in 2019 to include the library and study rooms.

Complainant owns the subject property. Complainant is a not-for-profit organization exempt from federal income taxes under Internal Revenue Code 501(C)7 and with a membership comprised of only males. The local chapter of the organization has a membership comprised of only males who are students at Missouri University of Science and Technology in Rolla, Missouri. No benefits are provided free to those who cannot

afford them. Complainant’s stated purpose is to “promote a fraternity of Lutheran university students.”

On or about July 14, 2020, Complainant filed an application for exemption from *ad valorem* property taxes for the subject property with Respondent on the basis that Complainant was a not-for-profit and that 40.6% of the “total building living floor area” of the subject property was being used regularly and exclusively for charitable purposes as of January 1, 2020. In its application for exemption Complainant declared:

The use of the building is by students at Missouri S&T who are members of ETA Chapter of Beta Sigma Psi. The portion subject to this exemption request consists of the designated educational purpose areas. This includes the library, the several group study rooms within the building on three floors, and the study portion of rooms for two and three person rooms. The sleeping and dressing areas are separate sections in each of the student rooms and is not included as educational purpose areas percentage. Common areas such as hallways, restrooms, dining area, kitchen area, mechanical/service areas and shop/basement garage and the large 1st floor meeting room are not part of the educational purpose areas percentage. The educational areas described provides benefit to the university by removing the obligation of the university to provide these facilities. The educational purpose areas are exclusive for educational usage, other than minor social use. The group study rooms are available to non-member students to conduct group studies with member students.

...

The educational purpose areas replicate those provided by the university for education of the general student body. These educational purpose areas benefit the university by supplementing the universities (*sic*) resources thus providing public benefit.

...

As student non member and member individuals and groups have access to the provided educational purpose areas it serves public interest by furthering education.

...

Private benefit to the members is incidental to the public benefit derived from the use of educational purpose areas.

(Respondent's Exhibit 2)

Respondent subsequently denied Complainant's request for exemption of a portion of the subject property as of January 1, 2020. Complainant appealed to the BOE, which also denied Complainant's request for exemption of a portion of the subject property as of January 1, 2020.

Complainant timely filed an appeal with the STC claiming that a portion of the subject property was exempt from *ad valorem* property taxation pursuant to Article X, Section 6 of the Missouri Constitution and Section 137.100² for tax year 2020 because Complainant was a not-for-profit organization that owned and operated the property for a charitable purpose.³ Following an evidentiary hearing, the Hearing Officer subsequently issued the Decision containing Findings of Fact and Conclusions of Law affirming the BOE's determination that the subject property was not exempt from *ad valorem* real property taxes as of January 1, 2020.

² All statutory references are to RSMo. 2000, as amended, unless otherwise indicated.

³ Complainant also checked the box on the Complaint for Review of Assessment form for "educational" exemption as a grounds for appeal.

Complainant timely filed an Application for Review. The STC thereafter issued its Order allowing the Application for Review and granting Respondent time to file a response. Respondent did not file a response.

CONCLUSIONS OF LAW

Complainant's Points on Review

Complainant asserts the Hearing Officer's Decision should be set aside and the subject property should be exempt from *ad valorem* property taxation as of January 1, 2020, because Complainant's evidence established that all three elements of the *Franciscan* test were satisfied. In particular, Complainant argues that the subject property's library and study areas benefit an indefinite number of people under the third element of the *Franciscan* test.

Standard of Review

A party subject to a decision and order of a hearing officer of the STC may file an application requesting the case be reviewed by the STC. Section 138.432. The STC may then summarily allow or deny the request. Section 138.432. The STC may affirm, modify, reverse, set aside, deny, or remand to the hearing officer the decision and order of the hearing officer on the basis of the evidence previously submitted or based on additional evidence taken before the STC. Section 138.432.

The Commission reviews the hearing officer's decision and order de novo. *Lebanon Properties I v. North*, 66 S.W.3d 765, 770 (Mo. App. 2002); *Union Electric*

Company, d/b/a Ameren Missouri, v. Estes, 2020 WL 3867672 (Mo. St. Tax Com., July 2, 2020); *AT&T Mobility, LLC, v. Beverly Alden, Assessor, Caldwell County, Missouri, et al.*, 2020 WL 3867819 (Mo. St. Tax Com., July 2, 2020). “The extent of that review extends to credibility as well as questions of fact.” *Lebanon Properties I*, 66 S.W.3d at 770. The Commission “is free to consider all pertinent facts and estimates and give them such weight as reasonably they may be deemed entitled to.” *St. Louis Cty. v. State Tax Comm'n*, 515 S.W.2d 446, 450 (Mo. 1974).

Commission’s Ruling

For the reasons that follow, the Commission finds Complainant’s arguments to be unpersuasive. The Commission, having reviewed the whole record and having considered the Hearing Officer’s Decision and the Application for Review of Complainant affirms the Hearing Officer’s Decision.

There is a presumption of validity, good faith and correctness of assessment by the BOE. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958). This presumption is a rebuttable rather than a conclusive presumption. The presumption of correct assessment is rebutted when the taxpayer presents substantial and persuasive evidence to establish that the BOE’s assessment is erroneous and what assessment should have been placed on the property. *Id.*

The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, Complainant bears the burden of proving by substantial and persuasive evidence the vital elements of the case, i.e., the assessment was “unlawful, unfair, improper, arbitrary, or capricious.” See, *Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P.D. George Co.*, 77 S.W.3d 645 (Mo. App. E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003); *Industrial Development Authority of Kansas City v. State Tax Commission of Missouri*, 804 S.W.2d 387, 392 (Mo. App. W.D. 1991). *Substantial evidence* can be defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Cupples Hesse Corp. v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959). *Persuasive evidence* is evidence that has sufficient weight and probative value to convince the trier of fact. *Cupples Hesse Corp.*, 329 S.W.2d at 702. The persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief. *Brooks v. General Motors Assembly Division*, 527 S.W.2d 50, 53 (Mo. App. 1975).

The hearing officer is the fact finder and the relative weight to be accorded any relevant factor in a particular case is for the hearing officer to decide. *St. Louis County v. Security Bonhomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977); *St. Louis County v. STC*, 515 S.W.2d 446, 450 (Mo. 1974); *Chicago, Burlington & Quincy Railroad Company v. STC*, 436 S.W.2d 650 (Mo. 1968).

Article X, Section 6, of the Missouri Constitution sets forth property exempt from *ad valorem* property taxation. It states, in part:

All property, real and personal, of the state, counties and other political subdivisions, and nonprofit cemeteries, and all real property used as a homestead as defined by law of any citizen of this state who is a former prisoner of war, as defined by law, and who has a total service-connected disability, shall be exempt from taxation; all personal property held as industrial inventories, including raw materials, work in progress and finished work on hand, by manufacturers and refiners, and all personal property held as goods, wares, merchandise, stock in trade or inventory for resale by distributors, wholesalers, or retail merchants or establishments shall be exempt from taxation; *and all property, real and personal, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, for agricultural and horticultural societies, or for veterans' organizations may be exempted from taxation by general law.*

(Emphasis added.)

The Constitution authorizes the legislature to enact exemptions from taxation. Section 137.100 expressly lists properties qualifying for exemptions from taxation for state, county or local purposes, including, in relevant part:

(5) All property, real and personal, actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational or charitable purposes

Taxation of property is the rule and exemption from taxation is the exception.

United Cerebral Palsy Ass'n of Greater Kansas City v. Ross, 789 S.W.2d 798, 799 (Mo.

banc 1990). Tax exemptions are not favored in the law and statutes granting exemptions are to be strictly, yet reasonably, construed against the one claiming the exemption. *Missouri Church of Scientology v. State Tax Commission*, 560 S.W.2d 837, 844 (Mo. banc 1987); *State ex rel. Union Electric Co. v. Goldberg*, 578 S.W.2d 921, 923 (Mo. banc 1979). A property owner who claims the exemption bears a substantial burden to prove that his property falls within the exempted class. *United Cerebral Palsy Ass'n of Greater Kansas City*, 789 S.W.2d at 799.

Section 137.100(5) provides that real and personal property actually and regularly used for purely charitable purposes is exempt from taxation for state, county, or local purposes. The Missouri Supreme Court set forth the test for exemptions in *Franciscan Tertiary Province of Missouri v. State Tax Commission*, 566 S.W.2d 213 (Mo. banc 1978). In order to qualify for an exemption based upon charitable use of the property, it must be established that:

- 1) The property is dedicated unconditionally to the charitable activity;
- 2) The property is owned and operated on a non-for-profit basis; and
- 3) The dominant use of the property is for the benefit of an indefinite number of people and directly or indirectly benefits society.

In *Franciscan*, the Missouri Supreme Court established the criteria for determining whether a property is exempt. The criteria have been restated and reinforced in subsequent cases such as *Pentecostal Church of God v. Hughlett*, 737 S.W.2d 728 (Mo. banc 1987)

and *Senior Citizens Bootheel Services, Inc. v. Dover*, 811 S.W.2d 35 (Mo. App. W.D. 1991).

In this case, the evidence established that as of January 1, 2020, the entire subject property was owned by a not-for-profit organization and operated on a not-for-profit basis. However, the evidence also established that the subject property was not actually and regularly used exclusively . . . for purposes purely charitable for the benefit of an indefinite number of people and directly or indirectly benefitted society. The evidence established that as of January 1, 2020, the relevant tax date, the educational benefits of the library and study rooms were available only to fraternity members and their invitees.

With regard to the first element of the *Franciscan* test, the Hearing Officer properly found that the substantial and persuasive evidence established that the educational areas of the subject property were dedicated unconditionally to charitable activity. Education is a charitable purpose. *City of St. Louis v. State Tax Commission*, 524 S.W.2d 839, 845 (Mo. banc 1975). Providing “places and facilities of study” is a charitable educational purpose. *YMCA of St. Louis & St. Louis Cty. v. Sestric*, 242 S.W.2d 497, 506 (Mo. 1951).

With regard to the second element of the *Franciscan* test, there was no dispute that the subject property was owned and operated on a not-for-profit basis.

With regard to the third element of the *Franciscan* test, i.e., whether the dominant use of the subject property was for the benefit of an indefinite number of people and directly

or indirectly benefitted society, the Missouri Supreme Court stated in *City of St. Louis*, 524 S.W.2d at 844 (internal quotations omitted):

Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. . . . A charity may restrict its admissions to a class of humanity, and still be public; it may be for the blind, the mute, those suffering under special diseases, for the aged, for infants, for women, for men, for different callings or trades by which humanity earns its bread, and as long as the classification is determined by some distinction which involuntarily affects or may affect any of the whole people, although only a small number may be directly benefitted, it is public.

Although in this case Complainant argued that fraternity members used the library and study rooms and such use established a “benefit to an indefinite number of people” because fraternity membership changes over time, the hearing officer found:

While it is true that the fraternity’s future membership is mathematically indefinite, Complainant's burden of proving a benefit to an indefinite number of people entails a showing that the alleged educational service is ‘public.’ *Evangelical Ret. Homes*, 669 S.W.2d at 554. To the extent facilities are available only to members, a property is not used exclusively for purposes purely charitable. *Frisco Emp. Hosp. Ass'n v. State Tax Comm'n*, 381 S.W.2d 772, 779 (Mo. 1964). Consequently, standing alone, the fact that present and future fraternity members may use the library and study rooms does not establish that Complainant is providing a benefit characterized as ‘public.’

The fact that fraternity members may invite non-members to use the library and study rooms does not save Complainant's exemption claim. There is no substantial and persuasive evidence regarding the existence or frequency of such invitations and, therefore, no evidence of whether or to what extent the library and study area are actually used by non-member students.

Consequently, Complainant has not shown that the dominant use of the library and study rooms benefits an indefinite number of people and can be ‘characterized as ... public’ so as to qualify for a charitable exemption. *Evangelical Ret. Homes*, 669 S.W.2d at 554.

We agree with these findings. Furthermore, in concluding that Complainant had not satisfied the third element of the *Franciscan* test in this appeal, the Hearing Officer examined at length the facts in the *City of St. Louis* case against the facts presented in the instant case and specifically found:

Unlike the public invitations extended in *City of St. Louis*, there is no evidence Complainant’s library and study areas were open to anyone other than fraternity members or their invitees. Unlike *City of St. Louis*, there is no evidence fraternity members provided organized educational programming or public, educational discussions. Finally, unlike *City of St. Louis*, there is no evidence of whether or how often invitees utilize the library and study areas. These material factual distinctions demonstrate the fraternity’s library and study areas are, on this record, decidedly less ‘public’ than the public educational outreach shown in *City of St. Louis*.

Based on the overwhelming evidence in the record, we agree with the Hearing Officer’s findings and conclusions. The dominant use of the subject property as of January 1, 2020, including the areas within the improvements designated for educational and study purposes, were only for the members of the fraternity and their invitees, not the general student body of the university and not the public at large. ⁴

⁴ Complainant’s Exhibits J and K are not persuasive evidence establishing a claim of exemption; rather, the exhibits are grant reports signed by Complainant’s alumni president and local chapter president certifying that the “Educational Purpose Areas, Educational Equipment and Educational Materials provided at the Chapter House at the Missouri University of Science

The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, in this appeal, Complainant had the burden of proving that the BOE's determination that the subject property was not exempt from taxation was erroneous. The Hearing Officer found that Complainant did not present substantial and persuasive evidence establishing the subject property was exempt as of January 1, 2020. The record supports the Hearing Officer's findings. The Commission finds that a reasonable mind could have conscientiously reached the same result as the Hearing Officer based on a review of the entire record. *Hermel*, 564 S.W.2d at 895-96; *Black v. Lombardi*, 970 S.W.2d 378 (Mo. App. E.D. 1998). The Hearing Officer did not err in affirming the BOE's determination denying exemption.

ORDER

The Decision of the Hearing Officer is AFFIRMED. The Decision of the Hearing Officer, including the findings of fact and conclusions of law therein, is incorporated by reference, as if set out in full, in this final decision of the Commission.

Judicial review of this Order may be had in the manner provided in Sections 138.432 and 536.100 to 536.140 within 30 days of the mailing date set forth in the Certificate of Service for this Order.

and Technology located in Rolla, MO have . . . not been used for non-educational purposes or activities.”

If judicial review of this Order is made, any protested taxes presently in an escrow account in accordance with this appeal shall be held pending the final decision of the courts unless disbursed pursuant to Section 139.031.8.

If no judicial review is made within 30 days, this Order is deemed final and the Collector of Phelps County, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes presently in an escrow account in accord with the decision on the underlying assessment in this appeal.

SO ORDERED June 16, 2023.
STATE TAX COMMISSION OF MISSOURI

Gary Romine, Chairman

Victor Callahan, Commissioner

Debbi McGinnis, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on June 16, 2023, to:

Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent, and County Collector.

Stacy M. Ingle
Legal Assistant



STATE TAX COMMISSION OF MISSOURI

ROLLA ALUMNI CHAPTER OF) Appeal No. 20-78002
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BILL STOLTZ, ASSESSOR,)
PHELPS COUNTY, MISSOURI,)
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Respondent.)

DECISION AND ORDER

Rolla Alumni Chapter of Beta Sigma Psi (Complainant) appeals the Phelps County Board of Equalization's (BOE) decision finding the subject residential property is not partially exempt from *ad valorem* taxation and that its true value in money (TVM) was \$1,331,480 as of January 1, 2020. Complainant asserts the subject property is partially exempt from *ad valorem* taxation and that based on the overall TVM assigned by Respondent, the TVM of the taxable portion was \$791,033 as of January 1, 2020.

Complainant did not produce substantial and persuasive evidence showing the subject property is partially exempt. The BOE decision is AFFIRMED.⁵

The evidentiary hearing was conducted via WebEx and telephone on June 2, 2021. Complainant was represented by counsel Steven Akre. Respondent appeared *pro se* via telephone. Complainant filed a post-hearing brief on July 2, 2021.

FINDINGS OF FACT

1. The Subject Property. The subject residential property is a fraternity house located at 2 Fraternity Drive in Rolla, Missouri. The fraternity house has three stories and a basement totaling 24,847 square feet of gross building area. Of this total, 7,157 square feet are devoted to "support" areas for mechanical equipment, laundry rooms, restrooms, storage areas, and hallways. The remaining 17,690 square feet consists of living quarters, meeting rooms, a 429 square-foot library and multiple study rooms on all three floors. (Ex. E) The library and study areas total 7,180 square feet. The property was renovated in 2019 to include the library and study rooms.

2. Assessment and Valuation. Respondent issued a notice of change of assessment informing Complainant that as of January 1, 2020, the TVM of the subject property increased from \$530,600 to \$1,331,486. Complainant appealed Respondent's 2020

⁵ Complainant timely filed a complaint for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainant's appeal. Mo. Const. art. X, sec. 14; Section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

assessment and claimed the study rooms and library qualify for a charitable exemption.

(Ex. 1, 2) The BOE sustained Respondent's assessment.

3. Complainant's Evidence. Complainant submitted Exhibits A through K. All exhibits were admitted into evidence and are summarized as follows:

Ex. A	Circuit court order filed in 1962 and establishing the Rolla Alumni Chapter of Beta Sigma Psi pursuant to Chapter 352 of the Missouri Revised Statutes entitled "Religious and Charitable Associations."
Ex. B	"Certificate of Fact" from the Missouri Secretary of State confirming Complainant is a "Benevolent" organization in good standing.
Ex. C	Complainant's 2020 federal income tax return showing Complainant is exempt from federal income tax pursuant to 26 U.S.C. section 501(c)(3).
Ex. D	Respondent's 2020 Notice of Change of Assessment for the subject property increasing the 2020 TVM to \$1,331,430 from the 2019 TVM of \$530,600.
Ex. E	Lease dated 1966 by which the Curators of the University of Missouri lease the subject property to Complainant.
Ex. F	Group exemption letter issued by the IRS in 2018 to the Society of Beta Sigma Psi National Fraternity and identifying the Rolla ETA Chapter as a subordinate to which the exemption applies.
Ex. G	Architectural drawing of renovations and itemization of space utilization concluding that 40.59% of the occupied area of renovated fraternity house is devoted to educational space.
Ex. H	March 17, 2017, letter from the Associate Vice Chancellor of the University stating the subject property's group study areas and library supplement similar facilities provided by the University for students generally and help "alleviate current use of the University's existing facilities by providing an alternative source for chapter members and their guests."
Ex. I	BOE decision affirming Respondent's assessment.
Ex. J	Grant Report stating that as of May 31, 2020, the educational areas have not been used for non-educational purposes and have been used for "individual and group study as intended."
Ex. K	Grant Report stating that as of November 30, 2020, the educational areas have not been used for non-educational purposes and that remote

	learning instituted due the COVID-19 pandemic "highlighted the benefit and usefulness of the Educational Purpose areas[.]"
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Complainant's evidence establishes Complainant is a not-for-profit organization and that the library and study areas are used by fraternity members and their invitees for educational purposes.

Complainant's proposed value of \$791,033 is based on the fact that 40.59% of the 17,667 square feet of occupied area is devoted to the library and study area ($\$1,331,480 \times [1 - 0.4059] = \$791,033$). Complainant's proposed value excludes 7,157 square feet of area used for mechanical equipment, restrooms, stairways, hallways, and storage. There is no evidence these areas have no value and should be excluded. Dividing the subject property's entire square footage (24,847) by the area devoted to library and study areas shows the library and study areas comprise only 28.9% of the fraternity house's total area.

4. Respondent's Evidence. Respondent submitted Exhibits 1 through 11. All exhibits were admitted into evidence and are summarized as follows:

Ex. 1	Complainant's Property Appeal Assessment Form.
Ex. 2	Complainant's Application for Exemption for Tax Year 2020.
Ex. 3	STC Assessor's Manual.
Ex. 4	BOE Minutes.
Ex. 5	Revised Scheduling Order issued by STC.
Ex. 6	Complainant's Certification to Prosecute Appeal.
Ex. 7	Information Provided By Complainant, consisting of an appeal form and copies of case law and constitutional and statutory provisions regarding exemptions.
Ex. 8	Respondent's Property Record Card for the subject property.
Ex. 9	Mo. Const. Article I, section 6.

Ex. 10	Section 137.098.
Ex. 11	Section 137.100.

CONCLUSIONS OF LAW

1. Assessment and Valuation. Residential real property is assessed at 19% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(a).

Section 137.115.1 provides the assessed value in the odd-numbered year applies in the following even-numbered year, "except for new construction and property improvements which shall be valued as though they had been completed as of January first of the preceding odd-numbered year." An "improvement consists of any change to the physical characteristics of the property, whether that change is one that causes an increase or a reduction in value." 12 CSR 30-3.001(3). The addition of the library and study areas is an "improvement" authorizing the STC to remedy an erroneous even-year assessment.

2. Complainant's Burden of Proof. "Tax exemptions are construed strictly against the taxpayer, and any doubt must be resolved in favor of application of the tax." *SEBA, LLC v. Dir. of Revenue*, 611 S.W.3d 303, 313–14 (Mo. banc 2020). Exemptions are "allowed only upon clear and unequivocal proof, and any doubts are resolved against the party claiming it." *Id.* (internal quotation omitted).⁶

⁶ See also *Am. Polled Hereford Ass'n v. City of Kansas City*, 626 S.W.2d 237, 240 (Mo. banc 1982)(noting the taxpayer bears the burden of establishing a property tax exemption "by unequivocal proof that such release is required by the terms of the statute..."); *City of St. Louis v. State Tax Comm'n*, 524 S.W.2d 839, 845 (Mo. banc 1975)(noting the taxpayer

3. Charitable Exemption. Article X, section 6 of the Missouri Constitution provides "all property, real and personal, not held for private or corporate profit and used exclusively . . . for purposes purely charitable . . . may be exempted from taxation by general law."

Section 137.101(1) provides:

The activities of nationally affiliated fraternal, benevolent, or service organizations which promote good citizenship, humanitarian activities, or improve the physical, mental, and moral condition of an indefinite number of people are purposes purely charitable within the meaning of Subsection 1 of Section 6 of Article X of the Constitution and local assessing authorities **may exempt such portion** of the real and personal property of such organizations as the assessing authority may determine is utilized in purposes purely charitable from the assessment, levy, and collection of taxes.

(Emphasis added).⁷ Section 137.101.1 "requires the assessor to determine which portions of the property are used for purely charitable purposes and which portions of the property are used for private economic purposes." *Loc. Union No. 124, Int'l Bhd. of Elec. Workers v. Pendergast*, 891 S.W.2d 417, 418 (Mo. banc 1995). Because a partial exemption is at

claiming a charitable exemption must make "a clear and convincing showing that the specific activity in question does fall within an accepted category found in the definition").

⁷ In addition to the specific provisions of Section 137.101, Section 137.100(5) generally exempts from taxation:

All property, real and personal, **actually and regularly used exclusively . . . for purposes purely charitable**, and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational or charitable purposes[.]

issue, "there is a question of the valuation to be assigned to each part of the property by the assessor." *Id.* It follows that a taxpayer must – as Complainant has here – appeal the assessment to the BOE. *Id.* The BOE's valuation is presumptively correct. *See Rinehart v. Laclede Gas Co.*, 607 S.W.3d 220, 228 (Mo. App. W.D. 2020) (holding the STC is "obligated to give the Board's valuation a presumption of validity"). The taxpayer must rebut this presumption with substantial and persuasive evidence showing the valuation is erroneous. *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 7 (Mo. App. S.D. 2020).

To obtain a partial exemption, the taxpayer must show the property: (1) is "actually and regularly used exclusively for purposes purely charitable" per the definition of "charity" set forth in *Salvation Army v. Hoehn*, 188 S.W.2d 826, 830 (Mo. banc 1945); (2) is "owned and operated on a not-for-profit basis;" and (3) that "the dominant use of the property must be for the benefit of an indefinite number of people and must directly or indirectly benefit society generally." *Barnes Hosp. v. Leggett*, 589 S.W.2d 241, 244 (Mo. 1979) (citing *Franciscan Tertiary Province of Missouri. Inc. v. State Tax Comm'n*, 566 S.W.2d 213 (Mo. banc 1978)).

Actual, Regular, and Exclusive Use for Charitable Purposes

Education is a charitable purpose. *City of St. Louis*, 524 S.W.2d at 845. Providing "places and facilities of study" is a charitable educational purpose. *YMCA of St. Louis & St. Louis Cty. v. Sestric*, 242 S.W.2d 497, 506 (Mo. 1951).

Complainant must also show the library and study areas are actually, regularly, and exclusively used for the educational purposes. Property is "used exclusively" for a charitable purpose when that purpose is "the primary and inherent use as over against a mere secondary and incidental use." *Cent. States Christian Endeavors Ass'n v. Nelson*, 898 S.W.2d 547, 549 (Mo. banc 1995). A secondary or incidental non-educational use does not preclude finding the property is used exclusively for charitable purposes if it "does not interrupt the exclusive occupation" of the property for an exempt purpose and "dovetails into or rounds out that purpose[.]" *Id.*

Complainant's Exhibits G, H, J, and K show Complainant renovated the subject property to add the library and study areas. The grant reports in Complainant's Exhibits J and K assert the library and study areas were used exclusively for educational purposes. There is no evidence rebutting these assertions.

Respondent asserted the library and study areas are not used exclusively for education because Complainant admitted social activities occur in the library and study areas. Even if social activities occur in the library and study areas, it is common knowledge that group study entails some social interaction. There is no evidence the library and study areas are used extensively for social activities unrelated to education. On this record, any socialization in the library and study areas "dovetails into or rounds out" the educational purpose. *Cent. States Christian Endeavors Ass'n*, 898 S.W.2d at 549. Complainant's

evidence establishes the library and study areas are actually, regularly, and exclusively used for educational purposes.

The Subject Property is Owned and Operated on a Not-for-Profit Basis

Exhibits A, B, C, and F demonstrate Complainant is a non-profit organization and that the subject property is operated on a not-for-profit basis. Respondent does not assert Complainant owns or operates the subject property for profit.

Dominant Use for the Benefit of an Indefinite Number of People

While Complainant satisfied the first two prerequisites for an exemption claim, Complainant's exemption claim fails on the third and final element: the necessity of producing clear and unequivocal evidence that "the dominant use of the property must be for the benefit of an indefinite number of people and must directly or indirectly benefit society generally." *Leggett*, 589 S.W.2d at 244.

The requirement of showing a benefit to "an indefinite number of people" is satisfied when there is a "direct or indirect benefit to society in addition to and as a result of the benefit conferred on the persons directly served by the humanitarian activity." *Franciscan*, 566 S.W.2d at 224. The requirement of showing a benefit to "an indefinite number of persons ... is otherwise characterized as a requirement that the humanitarian service be public." *Evangelical Ret. Homes of Greater St. Louis, Inc. v. State Tax Comm'n*, 669 S.W.2d 548, 554 (Mo. banc 1984) (internal quotation omitted). A benefit may be

"public" if it is not available to all and, instead, is directed at groups with specific needs or interests. *Id.* Thus,

[a] charity may restrict its admissions to a class of humanity, and still be public; it may be for the blind, the mute, those suffering under special diseases, for the aged, for infants, for women, for men, for different callings or trades by which humanity earns its bread, and as long as the classification is determined by some distinction which involuntarily affects or may affect any of the whole people, although only a small number may be directly benefited, it is public.

Salvation Army v. Hoehn, 188 S.W.2d 826, 830 (Mo. banc 1945) (quoting *In re Rahn's Est.*, 291 S.W. 120, 128 (Mo.1926)).

The record shows the educational benefits of the library and study room are available only to fraternity members and their invitees. Complainant asserts the fact that fraternity members use the library and study rooms establishes a "benefit to an indefinite number of people" because fraternity membership changes over time. While it is true that the fraternity's future membership is mathematically indefinite, Complainant's burden of proving a benefit to an indefinite number of people entails a showing that the alleged educational service is "public." *Evangelical Ret. Homes*, 669 S.W.2d at 554. To the extent facilities are available only to members, a property is not used exclusively for purposes purely charitable. *Frisco Emp. Hosp. Ass'n v. State Tax Comm'n*, 381 S.W.2d 772, 779 (Mo. 1964). Consequently, standing alone, the fact that present and future fraternity members may use the library and study rooms does not establish that Complainant is providing a benefit characterized as "public."

The fact that fraternity members may invite non-members to use the library and study rooms does not save Complainant's exemption claim. There is no substantial and persuasive evidence regarding the existence or frequency of such invitations and, therefore, no evidence of whether or to what extent the library and study area are actually used by non-member students. Consequently, Complainant has not shown that the dominant use of the library and study rooms benefits an indefinite number of people and can be "characterized as ... public" so as to qualify for a charitable exemption. *Evangelical Ret. Homes*, 669 S.W.2d at 554.

Complainant nonetheless asserts the facts of this case are similar to *City of St. Louis*, in which the Court held a private club was entitled to a charitable exemption.⁸ In *City of St. Louis*, the Supreme Court held the Engineers Club of St. Louis was entitled to a charitable exemption for a building housing the Club's activities. The Club's membership was open to any engineer or architect, those engaged in allied occupations, and those "whose interest is in one or more of these fields." *Id.* at 841. The Club used the building for weekly meetings involving a variety of topics. *Id.* at 841–42. These meetings were

⁸ *Leggett* overruled *City of St. Louis* to the extent it is premised on the pre-*Leggett* precedent holding that Section 137.100(5) did not authorize partial exemptions. In all other respects, *City of St. Louis* remains good law and has been relied on in post-*Leggett* cases. See *Affiliated Med. Transp., Inc. v. State Tax Comm'n of Missouri*, 755 S.W.2d 646, 651 (Mo. App. E.D. 1988); *Home Builders Ass'n of Greater St. Louis v. St. Louis Cty. Bd. of Equalization*, 803 S.W.2d 636, 640 (Mo. App. E.D. 1991).

open to members and nonmembers alike. The Club distributed meeting notices to numerous organizations and the news media, and thereby extended invitations to the general public. The Club also provided educational support to engineering students. *Id.* at 842. The Court held these facts showed the Club's activities were predominantly educational and designed to benefit the public and society in general. The Club's building thus qualified for a charitable exemption. *Id.* at 846.

While every exemption case is decided on its own facts, *United Cerebral Palsy Ass'n of Greater Kansas City v. Ross*, 789 S.W.2d 798, 800 (Mo. banc 1990), the record in this case is substantially less compelling than the record in *City of St. Louis*. Unlike the public invitations extended in *City of St. Louis*, there is no evidence Complainant's library and study areas were open to anyone other than fraternity members or their invitees. Unlike *City of St. Louis*, there is no evidence fraternity members provided organized educational programming or public, educational discussions. Finally, unlike *City of St. Louis*, there is no evidence of whether or how often invitees utilize the library and study areas. These material factual distinctions demonstrate the fraternity's library and study areas are, on this record, decidedly less "public" than the public educational outreach shown in *City of St. Louis*.

CONCLUSION AND ORDER

Complainant did not produce substantial and persuasive evidence showing the subject property is partially exempt from taxation. The BOE's decision is affirmed. The taxable TVM of the subject property on January 1, 2020, was \$1,331,480.

Application for Review

A party may file with the STC an application for review of this decision within 30 days of the mailing date set forth in the certificate of service for this decision. The application "shall contain specific detailed grounds upon which it is claimed the decision is erroneous." Section 138.432. The application must be in writing, and may be mailed to the State Tax Commission of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service. Failure to state specific facts or law upon which the application for review is based will result in summary denial. Section 138.432.

Disputed Taxes

The Collector of Phelps County, and the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an application for review, unless the disputed taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED September 10, 2021.

Eric S. Peterson
Senior Hearing Officer
State Tax Commission

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on September 10, 2021, to: Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

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County Collector, Faith Barnes, faith.barnes@phelpscounty.org

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