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IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Wexstten concurred in the judgment.

Held: The Department of Revenue's decision denying a property tax exemption on the bases of charitable use and religious use to a residential community for the elderly was not clearly erroneous where the primary uses of the property were neither charitable nor religious.

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denial of the charitable-use exemption was clearly erroneous and reversed it, but it found that the Department's denial of the exemption based on religious use was not clearly erroneous and affirmed it. The Department and two intervenors, Edwardsville Community School District No. 7 and the Village of Glen Carbon, appeal from the circuit court's judgment with respect to the charitable-use exemption. Meridian Village cross-appeals from the circuit court's judgment with respect to the religious-use exemption.

As always in matters of administrative review, we review the decision of the Department rather than the decision of the circuit court. See *Three Angels Broadcasting Network, Inc. v. Department of Revenue*, 381 Ill. App. 3d 679, 692 (2008). The amount of deference given to the agency on review depends on whether the issue presented is a question of fact, a question of law, or a mixed question of law and fact. *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 693. Where the resolution of the case requires determining the legal effect of a given set of facts, the agency's determination should be affirmed unless clearly erroneous. *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 693. As was the case in *Three Angels Broadcasting Network, Inc.*, the determinative facts in the case at bar—that is, the actual uses to which the subject property was put—are not in dispute. See *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 693. The issue is whether, given the undisputed facts presented, Meridian Village is entitled to a religious-use or charitable-use property tax exemption. See *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 693. We will only reverse the decision of the Department to deny the exemptions if that decision was clearly erroneous. See *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 693.

When reviewing an agency's decision for clear error, we give significant deference to the agency's experience in construing and applying the statutes that it administers. *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 693. An agency's decision will be

deemed clearly erroneous only where the reviewing court, on the entire record, is left with the definite and firm conviction that a mistake has been committed. *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 693. The burden of proving the right to an exemption is on the party seeking it, and in determining whether property is included within the scope of an exemption, all the facts are to be construed and all the debatable questions resolved in favor of taxation. *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 155 (1968).

Meridian Village operates a residential community for the elderly on the subject property. The property was originally purchased by Lutheran Child and Family Services (LCFS) in 1997. Meridian Village was incorporated to facilitate a construction loan to build the community. LCFS also underwrote additional financing and construction costs. Meridian Village's "sole member" is LCFS, its 12-member board of directors is elected by the LCFS board of trustees, and six of its directors are LCFS trustees. In 2000, Meridian Village maintained a separate checking account that was controlled by LCFS. LCFS transferred funds to the account to cover any shortfalls. Meridian Village also received a loan from LCFS's successor, Lutheran Senior Services, which took the form of a demand note at 6% interest. Meridian Village's property tax liability for the year 2000, in the absence of an exemption, was \$160,501.43.

The bylaws of Meridian Village provide, "[T]he Corporation shall waive or reduce, based on the individual's ability to pay, any entrance fee, assignment of assets or fee for services." Meridian Village has a stated policy that if a resident or prospective resident is "financially needy"—that is, if they cannot afford the fee customarily charged as a condition to residency or any entrance fee, assignment of assets, or fee for services as they come due—they will be granted financial assistance. This policy further states that Meridian Village will inform potentially needy residents or prospective residents that it offers this financial

assistance and that it must be applied for. These bylaws also state that one of the primary purposes of Meridian Village is to solicit charitable funds.

Meridian Village submitted, in support of its application for a tax exemption, an "Affidavit of Use" that states as follows:

"As to the elderly residents of its housing facilities, Meridian provides not only for their housing needs, but their health care, recreational, spiritual, social, and financial security needs. Meridian has established, and will maintain at all times, a policy of accepting into residence and maintaining in residence, any individual who is unable to pay any entrance fee, assignment of assets, or fee for services based upon the individual's ability to pay. Meridian will maintain a fund for such financial hardships.

* * *

The [s]ervices Meridian provides will benefit an indefinite number of elderly persons—not only residents of its housing facilities, but also elderly in surrounding communities as beneficiaries of Meridian's community services outreach program. [A] major source of Meridian's revenue is seeking grants and donations[;] *** Meridian's charitable services will be provided to all elderly without obstacles to receiving such benefits."

In fact, Meridian Village did not maintain a fund for financial hardship cases. Meridian Village did not advise potential residents of its financial assistance policy unless the potential residents inquired. Applicants who inquired about financial assistance in 2000 were told that no further charitable assistance was available. Meridian Village did not solicit funds for its community service and outreach programs, nor did it produce evidence of the actual existence of these programs. Meridian Village did not conduct any fundraising activities in 2000. Meridian Village had received no funds other than rent and security deposit payments.

Meridian Village admitted that it is unable to accept every applicant seeking charitable

care. In 1999 and 2000, Meridian Village granted \$30,000 in financial assistance to three potential residents and stated that \$30,000 was the total allowable amount for financial assistance. Those three residents who were granted financial assistance moved into Meridian Village in 1999 and early 2000. After that \$30,000 was allocated, Meridian Village no longer considered itself to be in a financial position to take on additional charity residents. Other needy applicants were "wait-listed." In 2000, many of the residential units remained unoccupied despite the existence of needy applicants on the waiting list, and Meridian Village did not reach full occupancy until the end of 2002. During 2000, at least 19 additional potential residents applied for charitable care and were placed on the waiting list. No one from the waiting list was given a residence in 2000. Meridian Village stated that whether it would maintain a resident in the facility notwithstanding an inability to pay would be determined by financial considerations.

Meridian Village is a part of the Lutheran Church, and its reason for existence is to serve the mission of the Lutheran Church. A part of that mission is to meet the needs of older adults. Meridian Village has a chapel, and religious pictures line the walls. There are Bibles in the lobby, as well as copies of a religious periodical. Worship services are held there every Sunday, although there is no paid minister on staff. Bible studies are conducted on the property, but not by the staff. Neither employees nor residents have to be Lutheran or even Christian. However, employees are educated about church beliefs and are asked to honor and respect them. One of the purposes of Meridian Village is to bring people to faith. Meridian Village is open to all regardless of religious beliefs.

Meridian Village has no stock or stockholders and does not distribute dividends or profits. Its operations were subsidized by LCFS in 2000 in an amount close to \$1 million. For financing, Meridian Village looks first to the Lutheran Church. It hopes to provide more financial assistance to potential residents in the future, if finances allow.

The Department issued a written decision in which it made the following findings of fact. The amount of property tax due on the subject property for tax year 2000 was \$160,501.46. There is no note or legal obligation between Meridian Village and LCFS to repay funds provided by LCFS. Meridian Village did not reach full capacity until 2002. Meridian Village does not employ ordained ministers. One ordained minister is a resident and receives a small discount on his monthly fee in exchange for his services. Residents of Meridian Village do not have to be Christians or Lutherans, nor do employees, and employees are not expected to impart Christian doctrine to the residents. There is no room or area at Meridian Village that is used exclusively for religious purposes. Meridian Village provided financial assistance in the amount of \$30,000 to three residents, allowing one to live rent-free and two others to have a reduced rent. However, two of these residents paid security deposits in the amount of \$1,345 and \$1,400. Meridian Village has sole discretion to determine if someone is financially needy and, depending on how much money is available in its benevolence fund, may choose to accept as a resident a person who is financially secure over one who is financially needy. In 2000, Meridian Village held no events or fundraisers to raise money. At least 19 potential residents applied for charitable care and were placed on a waiting list. None of these people were given a residence in 2000. Meridian Village had never established the financial hardship fund as called for by its affidavit of use attached to its application for a tax exemption.

The Department found that the majority of evidence presented by Meridian Village was devoted to the proposition that the provision of housing and care to seniors is a religious mission and that the creation and operation of Meridian Village was motivated by a desire to carry out that mission. In its conclusions of law, the Department rejected Meridian Village's argument that because the primary use of the property was the provision of housing and care to seniors, it was entitled to the religious-use property tax exemption. The

Department held that Meridian Village provides housing for elderly people for fees. It does not carry on religious activity. A religious motivation is not enough to qualify for a property tax exemption; the property must actually be used primarily for that purpose. Meridian Village's actual religious use of the property is minimal.

With respect to the charitable-use exemption, the Department concluded that Meridian Village did not meet the requirements. Residents were asked to provide financial information, on which Meridian Village relied in deciding whether to accept a resident, and residents must possess sufficient assets and income for the payment of the monthly fees, which are at market rates. Residents can be evicted for the nonpayment of fees and rent. Nothing in Meridian Village's brochures or contracts alerts potential residents that they can apply for financial assistance. Meridian Village did no fundraising in 2000. Meridian Village had received no funds since its inception except rent and security deposits. No hardship fund had ever been created out of which to provide financial assistance to needy residents. Many financially needy potential residents were placed on waiting lists and not given housing even though units were vacant and available. The Department concluded that although Meridian Village's bylaws mandate charitable policies, Meridian Village did not, as an actual practice, provide assistance to needy candidates. Finally, the Department concluded that the operations of Meridian Village did not reduce any governmental burden justifying an exemption from paying property taxes.

Because after reviewing the entire record we are not left with the definite and firm conviction that the Department has made a mistake, we cannot conclude that its decision that Meridian Village is not entitled to a property tax exemption on the basis of a religious use or a charitable use is clearly erroneous. See *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 693. Accordingly, we reverse that portion of the circuit court's judgment which held that Meridian Village was entitled to a property tax exemption on the basis of a

charitable use, but we affirm that part of the judgment which held that Meridian Village was not entitled to a property tax exemption on the basis of a religious use. We affirm the decision of the Department in full.

We turn first to the question of Meridian Village's entitlement to a property tax exemption on the basis of its "charitable use" of the property. Section 6 of article IX of the Illinois Constitution permits the legislature to exempt certain property from taxation only if it is "used exclusively for *** charitable purposes." Ill. Const. 1970, art. IX, §6. The legislature has seen fit to so exempt certain property "when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit." 35 ILCS 200/15-65 (West 2008). The legislature has specifically included "[o]ld people's homes" if the home is exempt from federal income tax and if its bylaws provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services. 35 ILCS 200/15-65(c) (West 2008).

Even if an "old people's home" meets the statutory requirements for exemption, it must also meet the constitutional requirement for a charitable use. *Eden Retirement Center, Inc. v. Department of Revenue*, 213 Ill. 2d 273, 287 (2004). In *Methodist Old Peoples Home*, 39 Ill. 2d at 156-57, the supreme court articulated six guidelines or criteria that must be met in order to meet the constitutional requirement for a charitable use. Unless these six criteria are met, the property may be found not to be used exclusively for charitable purposes within the meaning of our constitution and therefore not entitled to an exemption from taxation. *Eden Retirement Center, Inc.*, 213 Ill. 2d at 287.

The six criteria articulated in *Methodist Old Peoples Home*, 39 Ill. 2d at 156-57, as restated by the supreme court in *Eden Retirement Center, Inc.*, 213 Ill. 2d at 287, for determining whether a property meets the constitutional requirement for a charitable use are as follows: (1) the benefits derived are for an indefinite number of persons for their general

welfare or in some way reducing the burdens on government, (2) the organization has no capital, capital stock, or shareholders and does not profit from the enterprise, (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the organization's charter, (4) charity is dispensed to all who need and apply for it, (5) no obstacles are placed in the way of those seeking the benefits, and (6) the exclusive, *i.e.*, primary, use of the property is for charitable purposes. The supreme court further stated that the statements of the agents of an institution and the wording of its governing legal documents evidencing an intention to use its property exclusively for charitable purposes do not relieve the institution of the burden of proving that its property actually and factually is so used. *Methodist Old Peoples Home*, 39 Ill. 2d at 157. The court further clarified that the term "exclusively used" means the primary purpose for which the property is used and not any secondary or incidental purpose. *Methodist Old Peoples Home*, 39 Ill. 2d at 157.

Applying these six criteria to the facts of the case at bar, we conclude that it is clear that the Department's decision to deny Meridian Village a charitable-use exemption for the subject property was not clearly erroneous. Meridian Village does not meet the first criterion of *Methodist Old Peoples Home*: that it benefit an indefinite number of persons or in some way reduces the burdens on government. Although Meridian Village does not restrict its charity to members of any particular religion, race, or creed, it is clear that it does not extend charity to an indefinite number of persons, nor does its charity reduce the burden on government. The amount of charity that it dispenses, \$30,000, is far less than the property tax it would pay in the absence of an exemption, \$160,501.43. It extended financial assistance to only three individuals in tax year 2000. Most of its services were directed to individuals who could afford to pay entrance fees, monthly rent and fees, and security deposits at market value. Its "charity" did not benefit an indefinite number of persons or the

public generally or reduce the burdens on government.

Meridian Village failed to prove that it met the third criterion for charitable use: that its funds are derived mainly from private and public charity. Meridian Village admitted that, during tax year 2000, 100% of its funds were derived from the payment of rent and security deposits. Meridian Village conducted no fundraising activities during 2000. Because Meridian Village failed to conduct any fundraising activities, it was dependent on the payment of rent and security deposits for its operating expenses. This made it impossible for Meridian Village to extend financial assistance or charity to all who needed and applied for it.

It is abundantly clear from the record that Meridian Village did not meet the fourth criterion: that it dispense charity to all who needed and applied for it. Financial assistance was provided to only 3 individuals who asked for it, while 19 others were denied housing even though units were vacant and available. Thus, Meridian Village did not meet the fourth criterion of dispensing charity to all who needed and applied for it.

Nor did Meridian Village meet the fifth criterion of not placing obstacles in the way of those seeking benefits. Numerous obstacles are placed in the way of those seeking benefits. Meridian Village does not make its financial assistance program known to prospective residents unless a prospective resident specifically asks about it. Even those residents to whom Meridian Village did extend financial assistance were required to pay a security deposit. Meridian Village required that its residents be in good health and have sufficient funds to meet ordinary and customary living expenses. Residents must "maintain assets and income sufficient under foreseeable circumstances."

Finally, Meridian Village did not meet the sixth criterion of *Methodist Old Peoples Home*: that its primary use of the property be for charitable purposes. Only three of its residents received financial assistance. All the other residents paid rents and fees near

market value. This is not sufficient to establish that the primary use of the property was charitable. Accordingly, the Department's decision that Meridian Village was not entitled to a property tax exemption based on a charitable use was not clearly erroneous.

On cross-appeal, Meridian Village argues that the Department's denial of its application for a property tax exemption on the basis of a religious use is clearly erroneous. Again, we disagree.

Section 15-40 of the Property Tax Code provides that property used exclusively for religious purposes qualifies for an exemption as long as it is not used with a view to profit. 35 ILCS 200/15-40 (West 2006). For purposes of this section, a religious purpose means a use of property by a religious society or body of persons as a stated place for public worship, Sunday schools, and religious instruction. *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 694. While this is not inclusive of everything that might be regarded as a religious use, it is illustrative of the nature of a religious use in the context of property tax exemptions. *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 695. The evidence in the case at bar is undisputed that Meridian Village property is not used as a stated place for public worship, Sunday schools or religious instruction, or anything of that nature. To the contrary, the primary or exclusive use to which Meridian Village property is used is housing for the elderly. We are reminded that when determining whether property is within the scope of an exemption, all the facts are to be construed and all the debatable questions resolved in favor of taxation. *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 697. The Department's decision that the subject property was not used exclusively for religious purposes and that Meridian Village is not entitled to a religious-use property tax exemption is not clearly erroneous.

In any event, Meridian Village failed to demonstrate that its property is not used with a view to profit. The facts that it has no stock and that any profits are not distributed to any

individual do not factor into the analysis. *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 697. When money is made by the use of a building, that is profit, no matter to what purpose the money is applied. *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 697. A view to profit defeats a religious-use property tax exemption regardless of whether that profit inures to a private individual or is applied to maintaining the religious organization. *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 697. It is whether the activities are conducted with a view to profit, and not how the profits are used, that determines whether there should be an exemption. *Three Angels Broadcasting Network, Inc.*, 381 Ill. App. 3d at 697. In the case at bar, Meridian Village is not financially supported through fundraising but through the rental of housing to paying residents. Accordingly, it is operated with a view to profit and it does not qualify for a property tax exemption. It can only afford to continue operating because it charges most of its residents market rates, generating a profit. The Department's denial of the property tax exemption for a religious use was not clearly erroneous.

For the foregoing reasons, we reverse that portion of the circuit court's judgment which held that Meridian Village was entitled to a property tax exemption on the basis of a charitable use, but we affirm that part of the circuit court's judgment which held that Meridian Village was not entitled to a property tax exemption on the basis of a religious use. We affirm the decision of the Department in full.

Circuit court reversed in part and affirmed in part; Department affirmed.