

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**

1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 61934**

Petitioner:

**COMMUNITY WORSHIP LIFESTYLE OF  
POET'S REST,**

v.

Respondent:

**PROPERTY TAX ADMINISTRATOR.**

**ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals on June 13, 2013, Diane M. DeVries and James R. Meurer presiding. Ms. Laura Bartnick appeared *pro se* on behalf of Petitioner via a telephone. Respondent was represented by Robert H. Dodd, Esq. Petitioner is requesting a tax exemption for tax years 2011-2012.

The subject property is described as follows:

**3029 S. Pearl Street  
Englewood, Colorado, 80113  
Arapahoe County Schedule No.: 197134117022**

The subject property is a single-family residence occupied, in part, by William and Laura Bartnick, who use the subject as their residence. The remainder of the home is rented out to the Denver Seminary students and missionaries on furlough. Petitioner's Exhibit 4 contains a printout of a 2007 web post advertising rooms for rent at the subject property to the Denver Seminary students at the price of \$450 per month per room. There was no updated information presented to the Board as to the more current rental rates at the property.

Petitioner is requesting a tax exemption for 2011-2012 based on the religious use of the subject property.

At the outset of the June 13, 2013 hearing, Respondent raised the issue of Petitioner's standing to pursue the appeal.

Respondent's attorney, Robert H. Dodd, Esq., contended that there are no records to support that Community Worship Lifestyle of Poet's Rest is a legal entity. Further, Respondent

pointed out that Community Worship Lifestyle of Poet's Rest is not the record owner of the subject property. Respondent presented the Board with a copy of a Special Warranty Deed (Respondent's Exhibit F) reflecting conveyance of the subject property from the Secretary of Housing and Urban Development to Mr. William Bartnick and Ms. Laura Bartnick, as joint tenants. The Deed was executed on June 29, 2006 and recorded on June 30, 2006. Respondent also referred to Petitioner's Exhibit 4, Page 9, which contained print-outs from Arapahoe County's website, and identified "Bartnick, William & Laura" as the subject's owners of record; this information being consistent with the Special Warranty Deed.

Respondent cited the holding of *First Nat. Bank of Denver v. Board of County Com'rs*, 538 P.2d 427 (Colo. 1975), that the property must be used and owned for exempt purposes in order to qualify for a tax exemption. Respondent argued that the subject was not owned by Petitioner, Community Worship Lifestyle of Poet's Rest, therefore, Petitioner did not have standing to pursue the appeal. Respondent also emphasized that Bartnicks, in their private individual capacity, could not request or qualify for a religious exemption of their home.

Witness for Petitioner, Ms. Laura Bartnick, testified that Bartnicks were not the owners of the subject property, but were "in the process" of purchasing the subject property. Ms. Bartnick testified that Chase Bank was the owner of the subject property at this time. Ms. Bartnick stated that the "Community Worship Lifestyle of Poet's Rest" was an unofficial name of the property.

Ms. Bartnick contended that Article X, Section 5 of the Colorado Constitution requires that the property be used for religious purposes and that the ownership for religious purposes is not required to qualify a property for a tax exemption.

Further, Ms. Bartnick indicated that the petition to the BAA in this matter was originally filed listing William and Laura Bartnick, JT Ten, as the property owner of record. Ms. Bartnick indicated that the petition was later amended to reflect the property's owner as Community Worship Lifestyle of Poet's Rest. During the course of the hearing, Ms. Bartnick indicated that she wished to withdraw the petition listing Community Worship Lifestyle of Poet's Rest as Petitioner and proceed as herself and her husband, individually.

Ms. Bartnick is correct to the extent that the Colorado Constitution requires only usage for religious worship, but no ownership for religious purposes, as a prerequisite for a tax-exempt status. In relevant part, Article X, Section 5 of the Colorado Constitution provides that:

Property, real and personal, that is used solely and exclusively for religious worship, for schools or for strictly charitable purposes . . . shall be exempt from taxation, unless otherwise provided by general law.

However, the express language of the Constitution (e.g., "unless otherwise provided by general law"), left it absolutely within the power of Legislature to limit, modify, or even abolish the exemption provided by the Constitution. *First Nat. Bank of Denver*, 538 P.2d at 428. Therefore, in 1964, the Legislature did what the Constitution authorized it to do and provided

additional requirement, that the property be owned by the person or entity using it for charitable purposes, to qualify for an exemption:

Property, real and personal, which is owned and used solely and exclusively for religious purposes and not for private gain or corporate profits shall be exempt from the levy and collection of property taxes.

#### Section 39-3-106, C.R.S

One seeking an exemption must comply with the statutory prerequisites for qualification, *St. Mark Coptic Orthodox Church v. State Bd. Of Assessment Appeals*, 762 P.2d 775 (Colo. App. 1988). Because the Colorado statute requires both ownership and use for exemption purposes, Petitioner's argument concerning the absence of ownership requirement has no merit. See *First Nat. Bank of Denver*, 538 P.2d at 428-29. The Court held that:

[T]he legislature has removed the tax exemption of certain properties used but not owned for charitable purposes. It has provided that the additional requirement, that the property be owned by the person or entity using it for charitable purposes, is necessary to qualify for exemption.

Based on the above, the Board finds that Petitioner, Community Worship Lifestyle of Poet's Rest, is not a legally-recognized entity. Further, the Board finds that Community Worship Lifestyle of Poet's Rest does not own the subject property. The Bartnicks are the record owners of the subject property. Having not met the ownership requirement of the Colorado law, Community Worship Lifestyle of Poet's Rest does not have standing to pursue an exemption for the subject property.

Similarly, the Board finds that the property would not qualify for an exemption status even if the Bartnicks, as owners of the subject property, pursued the appeal in their individual capacity. To reiterate the above-cited Section 39-3-106, C.R.S., in order to qualify for an exemption, a property must be owned and used "solely and exclusively for religious purposes, and not for private gain. . ."

Based on the exhibits filed in this appeal, the Board finds that the Bartnicks use the property for their private residence and also use the property for the production of income by renting out the property to students and missionaries. Accordingly, the Board finds that the property is not used solely and exclusively for religious worship as required by Section 39-3-106, C.R.S.

#### **ORDER:**

The appeal is dismissed.

Petitioner's Motion for New Hearing, filed on June 25, 2013, is denied.

**APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

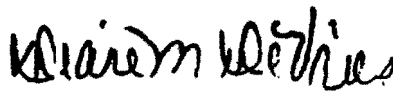
**DATED/MAILED** this 23<sup>rd</sup> day of July, 2013.

**BOARD OF ASSESSMENT APPEALS**

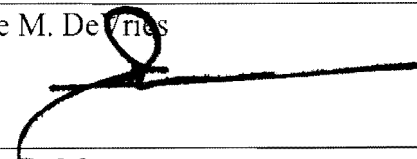
I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



Milla Lishchuk



Diane M. DeVries



James R. Meurer

