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Ada County Bd. of Equal. v. J.R. Simplot Appellant's Reply Brief Dckt. 44898

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ADA COUNTY BOARD OF
EQUALIZATION,

Petitioner-Respondent,

vs.

J.R. SIMPLOT FOUNDATION, INC.,

Respondent-Appellant.

Supreme Court Docket No. 44898-2017
Ada County No. CVOC-2016-09520

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the Fourth
Judicial District for the County of Ada

Honorable Richard D. Greenwood, District Judge, Presiding

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STATEMENT OF THE CASE

J.R. Simplot Foundation, Inc. (“Foundation”) previously set forth its Statement of the Case in its Appellant’s Brief at pages 1 through 2 and incorporates those remarks into this brief.

ISSUES ON APPEAL

Similarly, the Foundation set forth its Issues on Appeal in pages 17 and 18 of its original Appellant’s Brief and incorporates those by reference as well.

SUMMARY OF ARGUMENTS IN REPLY

A. Summary Of Arguments In The Ada County Board Of Equalization’s (“Ada County”) Respondent’s Brief Filed July 31, 2017.

Ada County makes the following arguments in its Respondent’s Brief which the Foundation responds to as hereinafter set forth in each of the remaining sections of this brief:

1. Granting the Foundation’s application for an exemption would violate the principles of fairness, equality and uniformity bearing the tax burdens which support the doctrine of strict construction.
2. No public benefit or gift was provided to the public based upon the specific facts of this case.
3. The uses of JUMP during calendar year 2015 are irrelevant.
4. The legislative history of the hospital exemption statute, Idaho Code § 63-602C, is irrelevant.
5. To qualify for a charitable exemption the building must be fully constructed and used for its ultimate charitable purpose.
6. The charitable use must occur on the property.
7. District Court Judge Eismann’s decision in the St. Luke’s case was properly decided and supports Ada County’s position.
8. How JUMP was funded is irrelevant.
9. Idaho Supreme Court decisions and non-Idaho Supreme Court decisions

support Ada County's position.

10. The non-construction uses of JUMP during construction were de minimis and not charitable.

For the following reasons, the foregoing arguments advanced by Ada County are not persuasive and should be rejected by this Court for the reasons set forth below with regard to each of Ada County's arguments.

B. Granting The Foundation's Application For An Exemption Would Not Violate The Principles Of Fairness, Equality And Uniformity In Sharing The Tax Burdens Which Support The Doctrine Of Strict Construction.

Ada County suggests that the policy underlying the rule of strict construction of tax exemption could be violated because granting an exemption to JUMP would be contrary to the principle of fairness, equality and uniformity in the allocation of the tax burden among taxpayers. No principle of fairness or equality could possibly be violated by JUMP receiving its tax exemption for its activities in 2015 at the property because the project was irrevocably committed to the public good at seventy percent (70%) complete with a huge financial investment made by the Foundation in its construction and which will also require the Foundation to financially support JUMP every year for the foreseeable future because of its non-profit nature. Accordingly, the suggestion that somehow the Foundation is escaping its fair share of the tax burden simply makes no sense in this context. Indeed, committing tens of millions of non-taxpayer dollars to this project is a huge private contribution to the public far exceeding any tax during construction.

Further, as emphasized in the Foundation's opening brief, the rule of strict construction is only applicable in determining whether projects are within the appropriate charitable goals and objectives of the institution. In the current litigation, it is uncontested that the objects and objectives of JUMP are charitable and fall clearly within the purpose and intent of the exemption statute. Aside

from the fact that Ada County concedes such point in its briefing, it bears emphasis again that the County granted JUMP its exemption for 2016 because its purposes were clearly charitable.

C. Public Benefits Were Provided To The Public Based Upon The Specific Facts Of This Case.

Ada County also argues that during 2015 there was no charitable activity or use that could be characterized as a gift to the public.

As noted above, JUMP has been permanently dedicated to the public for the general good as a community center, museum, and urban park. As urged by the Foundation in its briefing, the significant financial act of construction of this public facility is an essential part of the public benefit being granted to the people of the State of Idaho.

The District Court in its Memorandum Decision in this case specifically acknowledged the charitable nature of the educational and other uses during construction but unfortunately concluded that construction was a use and a non-charitable use at that.

D. The Uses Of JUMP During Calendar Year 2015 Are Relevant.

Ada County's argument that the uses at JUMP during 2015 are irrelevant misses the point of such evidence being admitted into the record.

The tours, educational events, and public engagement of JUMP during construction was an integral part of its mission throughout the period of construction and were not incidental events or occurrences. The activities were continuous and substantial during 2014 and 2015 and were not an ad hoc or de minimis type of occurrence at JUMP. It was essential to have these activities ongoing and was specifically recommended by the Foundation's independent management consultant, Julie Bowen, who stated in her Declaration filed in this matter the following:

In 2014 and 2015 during the lead up to the official opening of JUMP, the

extensive testing of programs, workshops, activities and in providing tours to interested parties was a critical part of the development of the site and the cultivation of relationships with the non-profit community along with the citizens of Boise. In the development of anything that is new to a community, early exposure to the potential of the site, early testing and rapid iteration are all critical components of the future success of the non-profit. In my experience, foregoing this step in the life cycle of a new nonprofit can result in fractured relationships with the community and nonprofit partners that can take years to overcome or result in the development of programs/activities and workshops that do not meet community needs.

R. p. 360

Accordingly, the continuing activities at JUMP in the 2014 through 2015 timeframe prove and establish that such on-site activities were an integral part of the creation of JUMP and its public purpose and were not episodic or de minimis.

E. The Legislative History Of The Hospital Exemption Statute, Idaho Code § 63-602C, Is Relevant.

Ada County argues that the legislative history of the hospital exemption statute is irrelevant. However, in the Conclusion section of District Court Judge Richard D. Greenwood's Memorandum Decision And Order On Cross-Motions For Summary Judgment in this litigation, he specifically relies upon his erroneous assumption that because only the hospital exemption statute was amended that the Legislature specifically intended not to grant a construction exemption for any other charitable uses.

The District Court's err in this regard is clearly shown by the legislative history and undermines one of the primary rationales relied upon the District Court for its decision. Thus, the legislative history with regard to the hospital exemption statute is material especially when one considers that the Idaho Board of Tax Appeals felt that JUMP was entitled to its exemption during construction and because when the Legislature actually looked at the construction issue at only hospitals, it granted such an exemption.

F. To Qualify For A Charitable Exemption The Building Must Not Be Fully Constructed And Used For Its Ultimate Charitable Purpose.

Ada County contends that it is impossible as a matter of law to have an exemption for any type of structure until the building is fully completed and *all* of the ultimate charitable uses are actually being implemented. This is a variation of the argument of Ada County that JUMP somehow was not actually engaged in charitable activities as part of its mission during the construction.

First, it must be emphasized that no statute denies an exemption during construction and indeed the purpose of the current litigation is to clarify the undecided policy in the State of Idaho with regard to an exemption for a charitable structure under construction.

Secondly, while the Foundation urges this Court to adopt the majority and better reasoned authority that significant construction of a building for the public good is entitled to an exemption, the Foundation also urges that the exemption can be granted in this specific case based upon the activities that were actually occurring on the property as was held by the Idaho Board of Tax Appeals. The Tax Board itself weighed the evidence and concluded that the activities being conducted at JUMP by the Foundation during construction were significant, were related to its charitable mission, and justified the exemption.

Accordingly, the Foundation was not engaged in future charitable acts but was actually engaged in activities during construction that fulfilled its mission of educating the public and inspiring human potential and daring to experiment and engage in creative activities. The JUMP building is a world class structure and community center with multiple rooms for non-profit events and activities. The essential community engagement for its eventual full use filled a vital role of helping JUMP to be a success when it became fully open and available to the general public in December, 2015.

The District Court on the cross-motions for summary judgment also evaluated the evidence but concluded that the construction activities were more substantial or outweighed the charitable activities being conducted by JUMP. He concluded that the weight of the evidence was against finding a charitable use since the District Court unreasonably concluded based upon the Court's opinion that construction was, as a matter of law, not a charitable use and thus outweighed the charitable activities being conducted on site. Thus, the weighing of the evidence should not have occurred at the summary judgment stage of these proceedings but instead should have been resolved at trial through a full presentation of evidence at which time the court would then have had the authority and discretion to weigh the facts one way or another.

G. The Charitable Uses Did Occur On The Property.

Ada County argues that the general contractor for JUMP held some student meetings at its construction office located across the street from the JUMP structure and was an educational program the contractor did on its own.

The general contractor for the construction of JUMP confirms in his declaration that the Boise State University students who participated in the construction classes and workshops at JUMP were conducted actually on site at JUMP. R. p. 861

Significantly, the contractor's employees in charge of the construction of JUMP stated:

Our company was directed by the J.R. Simplot Foundation, Inc. to use the construction process of JUMP as an important part of JUMP's goal of using it to inspire creativity and thinking outside the box. We were also directed to cooperate in allowing community engagement during the construction process in order to make sure the community was educated about the charitable goals of JUMP and its availability for use. As a result, our company's strategic plan for the construction of JUMP incorporated this strategic goal of inspiring the public in community engagement. A true and accurate copy of our strategic plan for the construction of JUMP is attached hereto as Exhibit "A" and is incorporated herein by reference. Certain sections have been redacted from the plan because they constitute proprietary

trade secrets of our company but such sections are irrelevant to the issue now before the Court.

R. p. 862

H. District Court Decision In The St. Luke's Case Should Not Be Followed.

Ada County gives the impression that the issue now before this Court has already been decided in Idaho and therefore the rule has now been well established for twenty years.

Attaching such great weight to the St. Luke's decision is misplaced.

First, District Court Judge Eismann specifically noted, as did Judge Greenwood, that there were good policy reasons why the exemption during construction should be granted. Thus, he was inviting a review and possible reversal by this Court or the Legislature.

Secondly, the District Court in that case granted the exemption to St. Luke's for the Parkcenter facility. In fact, the Parkcenter hospital was not open and was only being used to train staff *in preparation for the opening of the hospital*. Judge Eismann thus held that the training of staff in anticipation of future hospital uses was sufficient use to entitle St. Luke's to receive its exemption.

Similarly, in this litigation, the public engagement and significant on-site activities being conducted by the Foundation in order to have the public and other non-profits eventually use JUMP as a community center upon its completion was a vital and necessary part of its success. Indeed, without it, opening such a large venue without any preparation and engagement with the non-profits and others in the state to actually use and enjoy the facility would have been a huge mistake as is confirmed by the affidavit of the independent consultant, Julie Bowen. Thus, if the training of nurses at a hospital is a charitable use when the hospital is not open, then certainly the participation by the public and other non-profits in the marketing and promotion of JUMP was just as essential

and important to its charitable use. Ada County seems to acknowledge the value of these efforts during construction in its brief in footnote number 9 where it states, “It was in the interest of the Foundation to generate anticipation and excitement regarding a building that it intended for a multitude of future uses.” Respondent’s Brief, p. 19.

Finally, when the Legislature did finally look at the hospital exemption statute, it in fact granted the exemption for construction thereby affirming the fact that the Legislature fully believed that it was appropriate that such an exemption be granted in light of the private money being expended for the benefit of the public.

I. Idaho Supreme Court Decisions And Non-Idaho Supreme Court Decisions Do Not Support Ada County’s Position.

Ada County cites a series of out-of-state cases on pages 15 through 17 of its Respondent’s Brief.

The first series of cases cited by Ada County are vacant land cases which are totally irrelevant to the issue that is now before the Court regarding an exemption during construction. The facts of the current case show that literally tens of millions of dollars were being spent on constructing JUMP at the relevant time involved in this litigation and thus the vacant land cases do not in any way assist in the determination of the issues to be decided by this Court.

On page 16 of Ada County’s brief, it cites a series of seven cases in support of its position against allowing an exemption during construction.

These cases are unpersuasive:

1. *Grace & Peace Fellowship Church, Inc. v. Cranford Tp.*, 4 N.J. Tax 391 (1982).

In this decision, the structure was under construction and the public services being provided by this non-profit were being provided at rented facilities in Rahway and

not at the subject building in Cranford. Accordingly, no substantial uses were occurring at that property.

2. *Memphis Development Foundation v. State Bd. of Equalization*, 653 S.W.2d 266 (1983).

This case is also inapposite. There the court ruled “This Court simply cannot accept the premise that a private, not-for-profit corporation can buy an historic building and offer it for rent for commercial use at a price in competition with owners of other buildings without subjecting the property to taxation.”

3. *Metropolitan Government of Nashville and Davidson County v. State Board of Equalization*, 543 S.W.2d 587 (1976).

The Tennessee statute involved in this litigation specifically stated that the property must be “occupied and *used*” within the meaning of their exemption statutes and thus a different standard was applied in that case.

4. *Dade County Taxing Authorities v. Cedars of Lebanon Hospital Corp., Inc., et al*, 355 So.2d 1202 (1978).

In this case the Supreme Court of Florida affirmed a bankruptcy case which held that a hospital was not actually being used in any manner as a hospital on the date of assessment and thus since it was not being used for its intended purpose the hospital was not entitled to an exemption.

5. *Lake Worth Towers, Inc. v. Gerstung*, 262 So.2d 1 (1972).

The Supreme Court in this case simply reaffirmed its prior rule without any analysis of the issues that were before the Court.

6. *Cedars of Lebanon Hospital v. Los Angeles County*, 35 Cal.2d 729 (1950).

This ruling was overruled by statute at California Revenue Tax Code § 214.1 (1954).

7. *Right Rev. T. Mullen v. Commissioners of Erie County*, 9 Lanc.B. 152 (1877).

In this case the Supreme Court of Pennsylvania in 1877 ruled that the exemption for a church could not be granted because the relevant statute required that the church hold regular worship meetings which admittedly were then not occurring. Accordingly, the exemption was not granted.

J. The Uses Of JUMP During Construction Were Not De Minimis And Were Charitable.

Part of the conceptual confusion with regard to the construction exemption issue is the various approaches used to analyze the “use” requirement set forth in Idaho Code § 63-602C which states, “...used exclusively for the purposes for which such limited liability company, corporation or society is organized...” The Idaho Board of Tax Appeals took the position that construction is not a use. Judge Greenwood in his decision concluded that construction was a use and in his opinion, as a matter of law such use cannot be charitable. The numerous jurisdictions that have considered the issue in granting an exemption considered construction to be part of the charitable use because the construction of a charitable building for a charitable purpose of the organization is inherently charitable.

The section of Ada County’s brief discussing the particular uses at JUMP during construction beginning on page 19 essentially argues the weight of the evidence which should have precluded the District Court from making such a factual determination at summary judgment.

In any event, Ada County’s argument ignores the uncontested testimony of the Foundation’s expert, Julie Bowen, who in 2014 and 2015 worked with JUMP in preparing tests of programs, workshops, and engagement activities of providing tours to interested parties, all as an integral part of the development of the site and the cultivation of relationships with the non-profit community along with the citizens of Boise who would be using the community center. She confirms in her affidavit the critical nature of such activities.

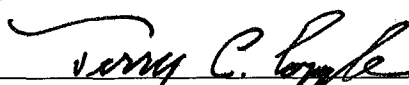
Maggie Soderberg in her affidavit also details the extensive activities that were conducted at the JUMP site.

CONCLUSION

For the reasons set forth herein, J.R. Simplot Foundation, Inc. respectfully requests that the Court reverse the District Court's ruling and determine that JUMP is entitled to its exemption during 2015.

DATED this 6th day of September, 2017.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of September, 2017, a true and correct copy of the foregoing was served upon the following by the method indicated below:

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