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Julius J. Brecht
Cheryl Rawls Brooking
Cynthia L. Cartledge
Michael Gatti
Clyde W. Hutchins Jr.
Leila R. Kimbrell
Eric E. Wohlforth

ATTORNEYS AT LAW
900 WEST 5TH AVENUE, SUITE 600
ANCHORAGE, ALASKA 99501-2048

TELEPHONE
907.276.6401

FACSIMILE
907.276.5093

WEBSITE
WWW.AKATTY.COM

MEMORANDUM

TO: Theresa Hillhouse, Municipal Attorney

FROM: Michael Gatti, Esq.

DATE: October 28, 2011

SUBJECT: Property Tax Questions
Our File No. 5640.0100

The City and Borough of Sitka ("CBS") has sought legal advice on the scope of the Board of Equalizations ("BOE") jurisdiction to hear real property tax appeals and the criteria for the review of certain property tax exemptions, namely the mandatory charitable and educational property tax exemptions, and the optional community purpose property tax exemption. Our analysis is set forth below. A summary is contained in the final section.

I. BOARD OF EQUALIZATION.

AS 29.45 et seq. establishes a comprehensive statutory scheme for the assessment, valuation and appeal of real property assessments which must be followed because of the limitation contained in AS 29.10.200(50). This statute prohibits even home rule municipalities from acting otherwise than as provided in AS 29.45.010 - 29.45.560 and 29.45.800 (Property Taxes). An ordinance inconsistent with the required Title 29, statutes must be disregarded.

Several provisions of Title 29 provide guidance on the scope of the BOE's jurisdiction. AS 29.45.190(a) establishes that a person whose name appears on the assessment role or the agent or the assigns of that person may appeal to the BOE for relief from an alleged error in "valuation" not adjusted by the assessor as requested.

The statute contains several additional sections which outline the process for an appellant to follow when filing an appeal. It states in subsection (d) that the assessor shall prepare for use by the BOE a summary of assessment data relating to each assessment that is appealed. The language of AS 29.45.190, establishes the BOE's jurisdiction applies solely to valuation not adjusted by the assessor to the taxpayer's satisfaction, including the assessment data relating to the valuation. Fairbanks North Star Borough v. Dena ´Nena ´Henash, 88 P.3d 124 (Alaska 2004). There is no mention of exemptions in AS 29.45.190. Based on this language, the most reasonable interpretation of AS 29.45.190 is that it only authorizes a BOE to hear challenges to property valuation appeals. It does not authorize exemption appeals.[1]

This conclusion is furthered supported by AS 29.45.200 which establishes the BOE and directs that "notwithstanding other provisions in this section, a determination of the assessor as to whether property is taxable under law may be appealed directly to the Superior Court." AS 29.45.200(c). This language supports the jurisdictional requisites of AS 29.45.190 by clearly establishing that the question of whether property

[1] Limited exceptions to the general rule are discussed later in this memorandum.

is taxable (or exempt) is not within the jurisdiction of the BOE. Exemption challenges must be filed as a direct administrative appeal to the superior court.

The legislative grant of limited BOE jurisdiction is further supported by AS 29.45.210(b) which establishes the Appellant bears the burden of proof. It also establishes the only grounds for adjustment of assessment are proof of unequal, excessive or improper or undervaluation based on facts that are stated in a valid written appeal or proven at the appeal hearing. If a valuation is found to be too low, the BOE my raise the assessment, AS 29.45.210(b).

The BOE's grounds for adjustment of the assessment, if it is found to be unequal, excessive, and improper or under valuation, are all terms relating to valuation of the assessment and not whether property is taxable or exempt. Taxability questions are left for the assessor's expertise to determine based upon a properly filed application for one of the mandatory exemptions contained in AS 29.45.030, including property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes.[2] This approach also has the effect of removing mandatory exemption questions from the political process that may result in property tax exemption matters being granted improperly or inconsistently, a problem which could lead to constitutional problems such as a failure of due process or equal protection.

[2] The legislature added nonprofit hospital purposes to AS 29.45.030.

In contrast, AS 29.45.040 establishes optional exemptions and exclusions and authorizes a municipality, by ordinance, to classify and exempt from taxation various uses of property. This includes the property of an organization not organized for business or profit making purposes and used exclusively for community purpose, if the income derived from rental of that property does not exceed the actual cost to the owner or use by the renter. In the case of optional exemptions, since the legislature has seen fit to authorize a municipality to adopt an ordinance to classify and exempt from taxation such property, this process inherently requires the assembly to approve a community purpose exemption since the statute requires such exemptions to be granted by ordinance. As you know only the assembly, as the governing body of a municipality, may adopt an ordinance. Alaska Const. art. X, § 4; AS 29.71.800(2)(10).[3]

A limited exception to the forgoing mandatory tax exemption analysis is found in Alaska regulations at Chapter 135 entitled "Senior Citizen and Disabled Veterans Property Tax Exemption", and in particular at 3 AAC 135.110, pertaining to the mandatory tax exemption at AS 29.45.030(e)[4] which provides:

> (a) An applicant aggrieved by any determination of the local assessor, except a decision as to the purpose of a transfer, may appeal under AS 29.53.130 - AS 29.53.135 to his local board of equalization.[5]

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[3] CBS has adopted various ordinances pertaining to the BOE Appeal process. See SGC 4.12 et seq. These must be consistent with AS 29.45 et seq., as required by AS 29.10.200 (50).
[4] AS 29.45.030(e) requires the first $150,000 of the assessed value of the primary residential real property of seniors 65 years old or a disabled veteran to be exempt from taxation.
[5] The current citation is AS 29.45.190 et.seq.

(b) The determination of the board of equalization is appealable under AS 44.62.560 - AS 44.62.570.

One possible explanation for the forgoing regulation is that at the time of its adoption in 1973, the political contingencies associated with senior citizens and disabled veterans resulted in an agency view that appeals of these senior citizen and disabled veterans property tax exemptions should be filed with the Board of Equalization.

Likewise, cases involving BOE appeals have in the past, it is submitted, improperly dealt with exemptions, or the issue was never raised by the parties whether the BOE should have addressed an exemption. Sometimes an exemption issue is raised as part of an alternative agreement to the taxable value, such as whether the property is taxable. See Greater Anchorage Area Borough. v. Sisters of Charity, 553 P.2d 467 (Alaska, 1976); City of Nome v. Catholic Bishop of No. Alaska, 707 P.2d 870 (Alaska 1985); but see Matanuska-Susitna Borough v. King's Lake Camp, 439 P.2d 441 (Alaska 1968), where the court refused to address an exemption argument based upon the appellant's bypass of the BOE. These Alaska Supreme Court cases are rather dated, and are inconsistent with the property tax appeal process during recent years. The current State Assessor has for years maintained that the local Assessor and not BOE should be addressing at least the mandatory property tax exemptions.[6]

[6] State Assessor Steve Van Sant was contacted regarding this issue, and confirms it has been his position for years. It is my understanding he also met with the Sitka Assembly in a recent BOE training

In summary, a more contemporary analysis of the statutes in question and case law results in the objective conclusion that appeals of mandatory property tax exemptions, with the exception of limited regulatory issues concerning senior citizens and disabled veterans residential property taxes, must be filed directly with the superior court. In contrast a community purpose exemption, which is a non-mandatory property tax exemption, must be granted by ordinance which only the governing body may adopt. Appeals from this type of non-mandatory property tax exemption may be reviewed by an Assembly rather than handled only by the Assessor, and then appealed to Superior Court.

In the following section, I will address the mandatory charitable purpose and education purpose property tax exemptions, and the optional community purpose property tax exemption.

II. MANDATORY PROPERTY TAX EXEMPTIONS

A. Charitable Purposes Exemption

Article IX, § 4 of the Alaska Constitution authorizes tax exemptions if all, or any portion of property is used exclusively for nonprofit religious, charitable, cemetery or educational purposes. . . . Article IX, § 4 is complimented by AS 29.45.030 and SGC 4.12.025 authorizing similar exemptions.

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session and advised its attending members as to this point, and requested amendments to SGC to strike any reference to the "Board of Equalization" handling community purpose exemptions, and substitute instead that the "Assembly" would handle those types of permissive property tax appeals.

Throughout the years the Alaska Supreme Court has issued opinions analyzing the charitable purpose exemption. The first opinion issued was in 1968, and involved a camp used by children organizations.

In Matanuska-Susitna Borough v. King's Lake Camp, 439 P2d 441, (Alaska, 1968) the Matanuska-Susitna Borough (MSB) denied the camps charitable use exemption request arguing that it derived rentals or profits from its property. Therefore, the property was not exempt based upon the requirements of the borough ordinance. The camp disagreed and presented facts that while it has winter camping, the main season of the camp is timed to correspond with school vacation. It argued that the children and other campers who use the property are members of user groups which are organizations such as the Alaska Crippled Children, American Baptist Church, Campfire Girls, YMCA, and 4-H Clubs. The user groups pay $3.25 a day for each child using the facilities. If the child was not able to pay, the user group made payment for the child. The camp also assessed each user group organization $250 annually. In addition, there were memberships of $2 in annual dues. The court found that the evidence did not defray the operational expenses of the camp. In reviewing the fees charged by the camp, the court found as follows:

> Appellant has raised a question of first impression concerning the construction of subsection (c) of AS 29.10.336 and its relation to subsection (a) of the same enactment. We believe that appellant's interpretation of subsection (c) of AS 29.10.336 is too restrictive. There are numerous precedents from other jurisdictions holding that a benevolent or charitable undertaking is not shorn of tax-exempt status

> because it charges fess and thereby realizes rent or income from its property.

King's Lake Camp, 439 P.2d at 443.

The court next rejected the idea that rent for dormitory rooms would somehow eliminate the charitable purpose of the organization. However, it found there was not any real profit motive involved in the rental of the rooms since they were simply designed to defray operating expenses. The court found:

> Therefore, income derived by plaintiff here from dormitories maintained for its members in the normal pursuit of its exempt purposes, that is to say, from a facility which is incidental to and reasonably necessary for the accomplishment of its exempt purposes, is to be distinguished from income derived from a facility which is not so correlated with exempt purposes.

Id. at 444. The court continued its analysis of the camp profit motive and concluded:

> We find this decision persuasive and believe its rationale points to a reasonable interpretation of the limiting provision of AS 29.10.336(c). In short, property which is used exclusively for nonprofit charitable purposes does not thereby become disqualified for a charitable tax exemption solely because rents or income are not derived therefrom. If it appears that the rentals or income are not derived as a result of a dominant profit motive on the charity's part, but are incidental to and reasonably necessary for the accomplishment of its charitable purposes, then such rentals or income are not within the ambit as AS 29.10.336(c)'s limitation upon properties which qualify for a charitable exemption.

Id.

In Greater Anchorage Area Borough v. Sisters of Charity, of the House of Providence, 553 P.2d 467 (Alaska 1976), the court was called upon to determine whether a nonprofit charitable and religious corporation was eligible for a tax exemption

on a building or a portion of the building that was not being used exclusively for nonprofit hospital purposes. Initially the court reviewed the facts and found that the professional building had four floors including a basement and a tunnel. Several of the floors were rented to doctors having hospital staff privileges at Providence Hospital for use as private office space. Rentals were on a square foot basis and the lease agreement provided that the Sisters would pay real property taxes which became payable on the lease areas.

In beginning its analysis, the court reiterated the basic principal that a taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption and that courts must narrowly construe statutes granting such exemptions.

> A taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption. Furthermore, the courts must narrowly (SIC) construe statues granting such exemptions. Id. at 469

The court also found:

> All properties benefited by the securities and protection furnished by the State, and it is only just and equitable that expenses incurred in the operation and maintenance of government should be fairly apportioned upon the property involved. . . .
>
> While reasonable exemptions based upon various grounds of public policy are permissible, yet taxation is the general rule. . . . It is for this reason that statutes granting exemptions from taxation are strictly construed. A Taxpayer is not entitled to an exemption unless he shows that he comes within either the express words or the necessary implication of some statute conferring this privilege upon him. Id. at 469

The court found that the actual use of the property rather than the owner's use would be determinative of whether or not it was exempt.[7] In concluding that the actual use of the property included the doctors' use of the building for their own private professional practices, the court held the property was not used exclusively for nonprofit hospital purposes and therefore was not entitled to an exemption. Id., at 470, 472.

In Sister's of Providence in Washington, Inc. v. Municipality of Anchorage, 672 P.2d 446 (Alaska 1983), a similar issue was raised with respect to personal property tax being levied on equipment leased to the hospital on which the hospital was contractually obligated to pay all taxes. The court found that the lessor's leasing of hospital equipment for profit constituted use of property which was not for nonprofit hospital purposes and therefore no tax exemption was in order. The court found that such commercial use of the property by the owner was, in fact, a use that rendered the hospital lessee's use of the property non-exclusive and the exemption inapplicable, citing Sisters of Charity, 553 P.2d at 472.

> To say that an investor who own valuable property, real or personal, and leases it for profit is not using his property ignores the obvious fact that the owner-lessor is exercising his right to use the property just as surely as if he were utilizing it in a physical sense for his own objectives. . . . The renting of the lessor and the physical use by the lessee constitute simultaneous uses of the property and when an owner leases his property to another, the lessee cannot be said to be the only one using the

[7] The doctor's office building at issue there provided all the benefits the Professional Building does, and in addition served to improve the educational function of the hospital. The New York exemption statute relied upon by the Sisters of Charity court requires exclusive use, like the Alaska statute: the court held that the use by the doctors was not exclusively for the hospital purposes. Sisters of Charity, 553 P.2d at 472.

> property. The owner is using it as he sees fit to reap a profit from investment just as surely as if he physically operated the property.

Sister's of Providence in Washington, Inc., 672 P.2d at 451. The Court further held, 672 P.2d at 452:

> Property used by the lessee for nonprofit hospital purposes which is also used by the lessor to generate profit is not within the express language of the exemption statute. If there are policies to be implemented by granting an exemption under these circumstances, then it must be done by the legislature.

City of Nome v. Catholic Bishop of Northern Alaska, The American Lutheran Church v. Nome, 707 P.2d 870 (Alaska, 1985) was a similar case defining the scope of exclusive use requirements for tax exempt purposes. The court was called upon to determine a number of issues associated with a request for tax exempt status involving religious residences, sanctuaries, religious administrative offices and religious education programs operated by the church owner, and church property leased to other nonprofit organizations.

The court enunciated important principals to assist in evaluating tax exemption applications. It held:

> The appeal concerns tax exemptions under AS 29.53.020. The churches sought to exempt religious residences, administrative offices, sanctuaries, and property used for both religious educational and charitable purposes. They also sought to exempt properties used as support for exempt properties, and church property leased to other nonprofit organizations. For each exemption we interpret AS 29.53.020 to require both spatial apportionment and exclusive use for a religious, charitable or educational purpose. We recognize two narrow exceptions to the "exclusive use" requirement. First, a *de minimus* use will not defeat the exemption.

> Second, property may be exempt if its use is both directly incidental to and vitally necessary for the use is both directly incidental to and vitally necessary for the use of exempt property. We also acknowledge that some church property leased to other nonprofit organizations may be exempt. Finally, we recognize that support property may be exempt if it is necessary to the convenient use of exempt property. In this opinion, we apply these rules to the numerous properties at issue, and summarize our rulings in chart form for the City on remand.

Catholic Bishop of No. Alaska, 707 P.2d at 874.[8]

The court further noted that property must be used for the direct and primary exempt purpose and that a charitable organization raising money for the group's charitable activities is not exempt since the properties direct and primary use is fund raising and not the charity itself. The court also noted that property occasionally used for non-exempt purposes is not exempt since the property must be used exclusively for exempt purposes.

The court also held that a combination of the exempt purposes may meet the exclusive use requirement.

> Property need not be devoted exclusively to a single exempt purpose to meet the "exclusive use" requirement. If the property is used exclusively for any combination of religious, charitable or educational purposes, AS 29.53.020(a)(3) is satisfied. See Ladies Literary Club v. City of Grand Rapids, 409 Mich. 748.298 N.W.2d 422 (1980); Young Women's Christians Association v. Baumann, 130 S.W.2d 499, 502 (Mo.1939)

Catholic Bishop of No. Alaska, 707 P.2d at 880.

The court also found that spatial apportionment is required in determining exclusive use of potentially tax exempt property. It found:

[8] The current citation is AS 29.45.030 instead of AS 29.53.020.

> The "exclusive use" requirement means that property cannot be apportioned by time into exempt and nonexempt uses. The City believes that, except for religious residences, property cannot be apportioned by *space* into exempt and nonexempt portions. It bases its argument on the statute's use of the specific words "structure" and "lots" to describe exempt property. The superior court held that spatial apportionment is proper and we agree.

Catholic Bishop of No. Alaska, 707 P.2d at 881.

In analyzing the question of spatial apportionment, the court reviewed the provisions of Article IX, § 4 of the Constitution that used language stating that all or any portion of property used exclusively for nonprofit, religious, charitable, cemetery or educational purposes, as defined by law shall be exempt from taxation.

The court next looked to the minutes of the Constitutional Convention which provided:

> . . . Minutes from the Constitutional Convention shed the determinative light on this provision:
>
> [T]he intent of the Committee [on Finance and Taxation] here is to allow for tax exemptions on property used for religious, charitable, cemetery, or educational purposes, to be exempt from taxation, but to provide for taxation of income-producing property, and furthermore, to allow for proration of such income-producing property. For example, if a religious organization should own an office building, a part of which is rented out, a part of which is used for its own purposes, the intent here is to allow the taxation of the income-producing part of that office building and exemption on the non-income producing part.
>
> Proceedings of the Alaska Constitutional Convention 1112 (December 19, 1955). We conclude that the "[a]ll, or any portion of, property" language of art. IX, § 4 mandates the spatial apportionment of all property into exempt and nonexempt portions. Because we must construe a statute as constitutional when reasonable to do so, we hold that AS 29.53.020

> mandates spatial apportionment of applicable "property," "residences," "structures," and "lots." . . . . (emphasis added).

Catholic Bishop of No. Alaska, 707 P.2d at 881.

B. Educational Purposes Exemption.

Alaska Constitutional Article IX, § 4 authorizes a tax exemption for property used exclusively for educational purposes. Alaska jurisprudence on the subject of educational tax exemption is somewhat limited; however, there is a 1971 case that discusses the concept.

In McKee v. Evans, 490 P.2d 1226 (Alaska, 1971), the court was presented with the question of whether the Apprenticeship and Manpower Training Trust Fund was entitled to an exemption from real property taxation by then the Greater Anchorage Area Borough, on the ground that its property was used exclusively for nonprofit educational purposes within the meaning of the tax exemption statute. The court analyzed the facts associated with the request for the educational exemption and found that there were three buildings involved in the application: a school building; storage building; and a welding shop. The property was owned by the Apprentice and Manpower Training Trust Fund, a management trust set up in 1957 by the collective bargaining agreement between the National Electrical Contractors Association ("NECA") and Local Union No. 1547 of the International Brotherhood of Electrical Workers ("IBEW"). The Trust Fund property was handled by the joint apprenticeship training school committee which had ten members with equal representation from the IBEW and NECA. The committee

employed a Director/Instructor, an Assistant and a Secretary on a full-time basis. The training program consisted of five and half months of formal training at the school, three years of apprenticeship or on the job training and a brief refresher course at the school. The formal training consisted of lectures and demonstrations on theory and practice of electrical work somewhat similar to that of state supported high schools and colleges.

At the conclusion of the program an electrician exam was given, and the successful apprentice would receive a certificate as a Journeyman Electrician from the United States Department of Labor. To enroll in the program one must have a high school degree, successful completion of a mathematics exam and pay a ten dollar fee which is refunded on completion of 75% of the training. There are approximately 25 to 40 students taking advantage of the program over the last several years, and the students are recruited from all over the state to participate. Other than the $10 fee, there was no charge for any of the formal training. However, the student must purchase their own textbooks which costs at that time about $50 and arrange for their own lodging. The Trust Fund is nonprofit and it is used for the operation of the school. The facilities are also used for training and refresher courses for journeymen electricians and have been utilized by the Alaska Electrified Village Group of the Bureau of Indian Affairs to train Alaska Natives. The facilities have not been used for any other purpose.

The court reviewed the principals underlying the educational purposes exemption and drew upon a Supreme Court of Tennessee case that was somewhat similar. In

Nashville Labor Temple v. City of Nashville, 146 Tenn. 429, 243 S.W. 78 (1922), the court determined "stressing the public benefit derived from the classes" was an important principal of exemption analysis.

> To teach men in these art or crafts is as essential and beneficial to the public as to teach one astronomy, civil engineering, medicine, pharmacy, or other useful professions. All of such arts or crafts, in which instructions are given by complainant corporation, are highly essential to the commercial and business interests of the country, and to the public welfare. Instructions which will make a better machinist, boiler maker, steam pipe fitter, plumber, or carpenter confers a benefit upon the public, and a consequent relief, to some extent, of the burden upon the state to care for and advance the interests of its citizens.

In McKee, 490 P.2d at 1229 the Alaska court noted that the type of school that generated the greatest amount of litigation in this area was the business school or college, which is analyzed based upon the public benefit analysis in determining whether an institution is entitled to an exemption. The court evaluated Wilson Modern Business College v. King County for Washington, 4 Wash.2d 636, 104 P.2d 580,(1940), which explicitly rejected a generalized/specialized school distinction and held that:

> The plain import of the exemption statute is that the terms "school or college * * * should be given their ordinary meaning. The fundamental object of the statute is to exempt from taxation property used for school purposes and it would be a narrow construction to hold that business colleges like the respondent are not within the purview of the statute.

The court in McKee, 490 P.2d at 1229 noted that other courts reviewing educational exemption provisions require that the program of instruction given generally parallel that offered in public supported educational institutions. The rationale for this

limitation is only such school properties that relieved some substantial educational burden from the states should receive rights of tax exemption.

The McKee court rejected this quid pro reasoning finding that it had superficial appeal, but upon analysis, it was not supported by the statute in effect at the time. The court found that AS 29.10.336 in no way limited the term "educational purposes," and there was no justification for the court to give that term anything other than its ordinary meaning.

> Nor do we find the quid pro quo policy logically compelling. Even if the education given at a private school (e. g., a trade school) were not substantially similar to the provided in publicly supported schools, some lessening of the state educational tax burden probably occurs from election by students to forego general public education in favor of more specialized training. National College of B. v. Pennington County, 82 S.D. 391, 146 N.W.2d 731, 735 (1966). Moreover, where no such tax relief occurs, the public benefit may be most profound since without the private school there would be no such specialized training. McKee, 490 P.2d at 1230.

The court also noted that the phrase educational purposes will not be an easy application or inclusive in all contexts, and that further refinement of the term should be left to the legislature. However, the court held the phase educational purposes as used in Article IX, § 4 of the Alaska Constitution and then AS 29.10.336(a) includes systematic instructions in any and all branches of learning from which a substantial public benefit is derived.

> Under our statute once it is determined that the institution involved is nonprofit in character and the property is exclusively used for educational purposes, the exemption attaches. The legislature has directed that the exemption be available to all such properties; it did not see fit to add limitation or qualification. Because

> the Trust Fund is an institution following within the broad terms of the constitution and the statute, there is no occasion for employing the canon of strict construction. Id. at. 1231

In conclusion the court found:

> Turning to the apprenticeship training program, it is clear that the property at issue qualifies for exemption. It would be difficult to characterize the training given as anything but formal and educational. Moreover, not only is the Trust Fund itself nonprofit, but the students of the school pay no tuition. Nor are students chosen from any special groups in Alaska. Nevertheless, appellant denies the accrual of public benefit, arguing that "[t]he primary function of [a]ppellee is to supervise the operation of an apprentice training program for the benefit of the electrical industry and the Union." We deem the arguable lack of eleemosynary motives on the part of the school's sponsors inconsequential. The purpose of the exemption statute is to encourage the establishment of privately supported nonprofit educational institutions; the motivation for their establishment is largely irrelevant. Here, the general public is clearly benefited both by the increased opportunity for Alaskans to obtain vocational training not otherwise available, and by the increased quality of service from a skilled trade. Id. at. 1231

III. NON-MANDATORY COMMUNITY PURPOSE EXEMPTION.

AS 29.45.050(b)(1)(A) authorizes the optional community purpose exemption.

It provides:

> A municipality may by ordinance classify and exempt from taxation the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes if the income derived from rental of the property does not exceed the actual cost to the owner of the use by the renter

Sitka General Code ("SGC") 4.12.025E sets out the requirements for approval of a community purpose tax exemption. It provides:

> All or a portion of the property of an organization not organized for business or profit making purposes and used exclusively for community

purposes, may be exempted if income derived from rental of that property does not exceed the actual cost to the owner of the use by the renter.

This ordinance requires approval of the community purpose tax exemption by the BOE,[9] requiring that the applicant may not be a business or profit making organization, and the property must be used exclusively for community purpose.[10] This means that the benefits provided to the community by the organization are to be considered, as well as the amount of property to be removed from the tax role. Finally, the property may remain exempt if income from the rental of the property does not exceed the actual cost to the owner of the use by the renter.

The ordinance also contains three factors that must be met in order for an organization to be considered a community service organization:

1. It must benefit a significant portion of the public;
2. Not profit persons other than employees; and
3. Qualify for a tax exemption under 26 USC 501.

Each one of the three factors must be met in order to receive a community purpose exemption due to the use of the word "and" in its text.[11]

Research has not discovered any Alaska Supreme Court cases addressing community purpose exemption issues. The only judicial analysis of the community

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[9] This ordinance should be amended to state Assembly rather than BOE to be consistent with the analysis in the prior section.
[10] This ordinance also addresses an outdated inapplicable deteriorated property tax exemption.
[11] Another noteworthy comment about SGC 4.12.025E.3. is that no particular subsection of 26 USC 501 is referenced. Presumably, any 26 USC 501 organization is eligible for a community purpose exemption.

purpose exemption is found is a 1993 Superior Court case. The case also analyzes the charitable exemption.

In Kachemak Heritage Land Trust v. Kenai Peninsula Borough, Case No. 3KN-96-1115 CI, the court addressed the community purpose exemption vis à vis the Trust's use of the subject property. The court then reviewed the parameters of a community purpose exemption for a land trust formed exclusively for land acquisition and cultural heritage purposes. The court reviewed the articles of incorporation of the trust and found that it was formed to "promote for the benefit of the general public the preservation of significant natural lands and resources principally in but not limited to, the Kenai Peninsula Region." The trust was also qualified under the IRS code to accept tax deductible interests in land and to hold conservation easements pursuant to AS 34.17.060(2)(B).[12]

However, the court noted that statutes granting tax exemptions must be narrowly construed and that the taxpayer claiming the exemption has the burden of showing that the property is eligible for the exemption. The Court concluded that the land trust may be eligible for a community purpose exemption based upon AS 29.45.050(b)(1)(a), the state charitable purposes exemption, and the Kenai Peninsula Borough community purpose exemption.

[12] Article IX, § 4 of the Alaska Constitution provides in part: all, or any portion of, property, used exclusively for nonprofit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation.

The Borough, through its Clerk, had denied the Trust's exemption application which was appealed to the Borough Assessor. The Assessor denied the charitable purposes exemption request because of the vast amounts of undeveloped land in Kenai, arguing there was no benefit conferred on the mental and physical welfare of the general public. The Assessor had also rejected the community purposes exemption because the preservation of land in its natural state was intended to benefit more than the immediate community. The Assessor reasoned that the community does not need the parcel in its natural state at this time, so no community purpose is served, nor would policy reasons for the tax exemption be served by granting the land trust's application.

The court first tackled the Trust's charitable purposes exemption. After a thorough analysis of the cases existing at the time, the court concluded that the Assessor had erred. It found that the Trust was formed for the sole purpose of preserving natural land and resources as a benefit for the general public and that the purpose in purchasing the tract was the protection of habitat and as natural space for public recreation and education. Relying on Sisters of Charity, 553 P.2d at 470, the court found that land protection efforts confer significant economic and social benefits on the surrounding community, that combined with the lack of any profit motive, resulted in the court's conclusion that the land trust was entitled to a property tax exemption for the parcel under the state charitable purposes exemption.

In reviewing the Trust's request for a community purpose exemption, the court noted that the organization was not organized for profit making purposes, and that it fell within the scope of the borough ordinances. The main focus of this dispute was based upon the phase, "use exclusively for community purposes." The Assessor argued that the community purpose exemption must serve only a local community interest while the Trust argued that the community purpose exemption requirements are satisfied if the property serves a general public interest. The court found that both the borough ordinance and state statute related to community purposes were meant to apply the community purpose exemption to properties that provide a specific benefit to the community. It rejected the idea that a community purpose must serve only a local community interest or need without incidentally providing some larger public benefit as well. The court noted that there may be hikers, photographers, tourist, hunters, biologists and others from outside the immediate community that would visit the land and benefit from it in some matter. The court rejected the narrow view of the Assessor finding that such a view would result in community purpose exemptions never being granted. The court concluded that property is used exclusively for community purposes if it is intended to benefit the borough community. The court found that if a property benefiting a local community also provides a collateral benefit to the general public it is of no consequence to the determination whether a community purpose exemption should be granted. The court further noted that there may be a *de minimus* private

benefit to the nonprofit organization that owns the property or to the individuals that control the organization. The court also found that there was ample evidence showing that communities derive a number of benefits from the proactive preservation of land in its natural state. Basing its conclusion on the study about the economic impacts of protecting rivers, trails and greenway corridors, the court found that designating public access green areas often results in increased real property values, increased tourism, more leisure and educational opportunities, increased appeal to businesses looking to relocate and opportunities for collateral commercial development in the form of concessions, guiding services, etc. The court found that the study demonstrated that communities derive long term economic and social benefits simply from the grant that nearby parcels of public access land will never be developed. Hence, the land trust was entitled to a community purpose exemption under state and local law.

IV. SUMMARY.

It is our opinion that the BOE, with limited exceptions, does not have subject matter jurisdiction over property tax exemption matters. There are two Alaska regulations that authorize appeals directly to the BOE related to limited issues concerning the senior citizens and disabled veteran exemptions only.

While mandatory property tax exemptions should be handled by the Assessor, and appealed to Superior Court, optional exemptions may be appealed to the municipal

assembly or council, such as provided by SGC 4.12 et seq. and AS 29.45.190, based on an approved ordinance.

There are a number of complex principals associated with property tax exemption analysis which must be carefully evaluated before determining whether or not an organization is entitled to a tax exemption, either a mandatory or optional exemption. In keeping with these principals, it is important to develop the factual record outlining exactly what activities or use the organization will be engaged in prior to granting a mandatory charitable education, or religious exemption, or an optional tax exemption, such as for community purpose.

Throughout the years the Alaska Supreme Court has evaluated tax exemption requests and has identified some key principals, including:

- Exemptions are to be narrowly construed, with the taxpayer having the burden of proof.
- Exclusive use is the general rule as D*e minimus* or minor incidental use will not defeat the tax exemption.
- More than one type of exemption may apply, particularly if there are different types of uses of the property during the year, as long as the other type of use falls within an exemption. For example, at some times of the year, property may be used for charitable or educational purposes, and therefore may not be taxed because of these exemptions.

- Spatial apportionment of applicable property, residences, structures and lots is also mandated under the statute authorizing tax exemption for property used for a nonprofit religious, charitable, cemetery, hospital or educational purpose. Thus, some portions of the property may be taxable while others are exempt.
- Receipt of some monies for use of the property claimed to be exempt to defray operating costs does not necessarily bar the right to an exemption.
- Concerning educational purpose exemption, these are generally for schools, universities, etc,. but may also be for vocational programs and those with educational curriculum, certified teachers, State Department of Education certification, etc.,
- Concerning the optional community purpose exemption, there are no Supreme Court cases addressing that exemption. However, the Katchamak case, while only a Superior Court case and therefore not precedent setting, provides a thorough analysis of the approach to be taken with respect to this exemption. It concludes that general benefit to the community, without a dominant profit motive, may be sufficient to grant a community purpose exemption based upon AS 29 45.050(b)(1)(a) and applicable local law.