COURT OF APPEALS STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, CO 80202	
Colorado Board of Assessment Appeals Docket Nos.: 44682;44670;44667; 44672 44683; 44674;44681;44677	
Petitioner-Appellees: Grand County Board of Commissioners, Larimer County Board Of Commissioners, Scott G. Cast, David Habecker, Barbara M. Hoffman, Wesley E. Hoffman, and Lucille M. Younglund, and **Appellee:** Board of Assessment Appeals v. **Respondent:** Colorado Property Tax Administrator, and **Intervenor-Appellant:** YMCA of the Rockies.	▲ **COURT USE ONLY** ▲ Case No. 07CA422 11 CA 725
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REPLY BRIEF OF THE PROPERTY TAX ADMINISTRATOR

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

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Respondent-Appellant, the Colorado Property Tax Administrator ("PTA"), through the Colorado Attorney General's office, files this Reply Brief.

INTRODUCTION TO REPLY

The PTA's Opening Brief argued that the Board of Assessment Appeals ("BAA") erred in reversing and denying religious and charitable exemptions to the YMCA as a result of two legal errors.

First, in reversing the PTA's religious exemption determination, the BAA committed an Establishment Clause violation when it applied an incorrect legal standard and failed to follow the Colorado Supreme Court's decision in *Maurer v. Young Life*, 779 P.2d 1317 (Colo. 1989). Second, the BAA clearly misapplied statutes restricting the amount of non-exempt use that may be made of the property, and failed to defer to the PTA's regulations concerning partial, charitable exemptions.

In response, Grand County and Larimer County (collectively, "Counties") offer an incorrect standard of review and fail to effectively address the central arguments of the PTA.

ARGUMENT

I. This Court has jurisdiction to hear the appeal; the PTA is a required party.

The Counties contend that this appeal is not properly before the Court because the YMCA lacks standing to bring this appeal. Grand Ans. Br., p. 31; Larimer Ans. Br., p. 14-18. The issue is better presented as one of jurisdiction rather than standing.[1] The PTA disagrees with the Counties' argument however it is framed.

The PTA agrees with the YMCA's argument, set forth in its reply brief, that this Court has jurisdiction to hear this appeal. Further, the PTA is a required party to this consolidated appeal pursuant to section 24-4-106(11)(d), C.R.S. (2011); *see also* § 39-2-113, C.R.S. (2011) (PTA authorized to appear and intervene). Accordingly, this Court issued an

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[1] Standing exists if the plaintiff was injured in fact and if that injury was to a legally-protected right. *See, e.g., Bennett v. Bd. of Trustees*, 782 P.2d 1214, 1216 (Colo. App. 1989). Here, there is not dispute that YMCA, if entitled to its exemptions, has suffered an injury to a legally-protected right. Jurisdiction, however, encompasses a broader inquiry to determine whether the General Assembly has authorized the Court to review a particular matter. *See, e.g., Polhill v. Buckley*, 923 P.2d 119, 122 (Colo. 1996) (no statutory authorization for courts to review legislative referenda before they are adopted).

Order approving the PTA's withdrawal of its separate appeals and designating the PTA as Respondent.

Additionally, section 39-3-101, C.R.S. (2011), provides that "only the judiciary may make a final decision as to whether or not any given property is used for charitable purposes within the meaning of the Colorado constitution…." This statute recognizes that the BAA's order is appealable – certainly by the taxpayer. Appeal to this Court is expected. Otherwise, this section giving the judiciary the final authority to determine whether property is used for charitable purposes would be a nullity. Parallel statutory provisions concerning appellate rights should be construed in harmony with the legislative declaration. *People v. Johnson*, 797 P.2d 1296, 1297 (Colo. 1990) (statutory provisions "must be construed in harmony with the overall statutory scheme, so as to accomplish the purpose for which [the statute] was enacted."). This Court has jurisdiction.

II. The BAA's decision violates the Establishment Clause and is contrary to Colorado statute and case law.

A. Standard of Review and Preservation.

Though conflicting at times, the Counties contend the proper standard of review is whether substantial evidence supports the BAA orders. Grand Ans. Br., p. 29; Larimer Ans. Br., p. 19-20. If the PTA were contesting factual determinations, that would be correct.[2] However, the PTA contends that the BAA committed primarily legal error. This Court reviews the BAA's legal determinations de novo. *See Washington County Bd. of Equalization v. Petron Dev. Co.*, 109 P.3d 146, 149 (Colo. 2005). *See also* § 24-4-106(7), C.R.S. ("In all cases under review, the court shall determine all questions of law and interpret the

[2] The PTA *does* challenge one factual finding by the BAA concerning its marketing materials. PTA Op. Br. at 36. For this particular challenge, the PTA asserts the relevant appellate standard is whether the factual finding is "clearly erroneous on the whole record, unsupported by substantial evidence when the record is considered as a whole …." § 24-4-106(7), C.R.S. (2011). On the whole, the record does not support the BAA's finding that YMCA's marketing materials lack "any mention of religion." *See* Ex. G19, Vol. 4, p. 10-13, Filing ID 39647697; Ex I – E8, Filing ID 39672174.

statutory and constitutional provisions involved and shall apply such interpretation to the facts duly found or established.").

The Counties also contend that the PTA did not preserve her argument concerning the Establishment Clause. Grand Ans. Br., p. 30. Grand County erroneously argues that the PTA did not make this contention in her closing argument to the BAA. The record reflects that the PTA argued in closing that under *Maurer v. Young Life*, 779 P.2d 1317 (Colo. 1989), the general policy of receptiveness to religious exemptions "serves the important purpose of avoiding any detailed governmental inquiry into or resultant endorsement of religion that would be prohibited by the establishment clause of the First Amendment to the United States Constitution." Religious Record, Vol. I, pp. 0415-16 (quoting *Maurer*, 779 P.2d at 1333, n. 21.). The PTA further argued that "The Colorado General Assembly has reinforced the proscription against unnecessary governmental intrusion or endorsement of religion by limiting the role of state officials in reviewing religious exemption applications." Religious Record, Vol. I, p. 0415. Hence, the PTA preserved its Establishment Clause argument.

B. The Counties do not dispute the BAA applied an incorrect legal standard.

The Counties implicitly acknowledge the BAA applied an incorrect legal standard when it utilized a "solely and exclusively" standard rather than the "primarily … [and] necessarily incidental" standard announced in *Maurer*, 779 P.2d at 1335, and reaffirmed in *Catholic Health Initiatives Colorado v. City of Pueblo*, 207 P.3d 812, 818-19 (Colo. 2009).

Rather than apply the correct standard, Grand County instead attempts to distract the Court by reciting lengthy passages from federal and out-of-state cases. Grand Ans. Br., pp. 36-37, 42-45. These authorities are wholly irrelevant. The governing law *in Colorado* is *Maurer*, which applies a "primarily … [and] necessarily incidental" standard. 779 P.2d at 1335; *see also Id.* at 1331 ("although not all the activities conducted on the Young Life properties are inherently religious in nature, … the Board could and did conclude that any nonreligious aspects of these activities were necessarily incidental to

the religious worship and reflection purposes for which Young Life claimed the properties were used.).

The BAA's failure to apply the correct legal standard demands reversal. *See Jefferson County Bd. of County Comm'rs v. S.T. Spano Greenhouses, Inc.*, 155 P.3d 422, 426-27 (Colo. App. 2006) ("Because the BAA employed an incorrect legal standard, we set aside its decision.").

The Counties also contend that the use of YMCA's properties is not "religious" enough. They argue that the proximity of the Estes Park Center ("EPC") and Snow Mountain Ranch ("SMR") to recreational activities undermines their ability to be "effective vehicles for presenting the gospel." *Maurer*, 779 P.2d at 1331. Two responses are merited.

First, this exact issue was settled in *Maurer*. There, the PTA argued that Young Life's activities were "uses typical of mountain camps and resorts" that did not qualify for the religious exemption. 779 P.2d at 1331. The extensive evidence supporting the PTA's argument included:

- The camps were used by school, community, government agencies and other nonreligous groups for "meetings, meals, and receptions." *Id.* at 1328-29.

- At one camp, a mere 30% of campers participated in Young Life's religious programs. *Id.* at 1329.

- Numerous recreational facilities and activities were available, all of them of a nonreligious character, including: swimming, basketball, shuffleboard, horseback riding, hiking, river rafting, and cookouts. *Id.* at 1328-29.

- The property included a hotel where "any paying person or group" could stay, regardless of their faith or lack of faith. *Id.* at 1329.

- Large portions of the properties were used as a "ranching operation" and not for religious purposes. *Id.* at 1341-42 (Mullarkey, J., concurring in part and dissenting in part).

- The properties lacked "crucifixes and other religious symbols," promoting an environment of "informality." *Id.* at 1328.

Despite these indicia of nonreligious uses, the *Maurer* court held the properties qualified for the religious exemption. The court explained that Young Life's purpose was to "spread the Christian gospel among young persons," and that the "character of the owner may often illuminate the purpose for which the property is used …." *Id.* at 1331. The high court reasoned that, "although not all of the activities

conducted on the Young Life properties are inherently religious in nature, … the uses of the properties were to advance in an informal and often indirect manner Young Life's purposes ...." *Id.* As the court recognized, "it is easier for young people to have … an initial experience—religious experience—in the less formal setting out-of-doors." *Id.* at 1332 (internal quotations omitted). The court agreed there can be "no segmentation where we are doing something Christian, now something secular … [because] [t]here is a wholeness of the expression of the Christian faith." *Id.* at 1332 (internal quotations omitted).

Similarly here, the character of the YMCA reveals a religious purpose for its activities. YMCA's policy statement provides it is a Christian organization that serves "members and groups of various faiths [and] provides resources for Christian and spiritual growth for those who desire to participate." Ex. I – E1, p. 10, Filing ID 39648282. Testimony establishes that, like Young Life, YMCA seeks to foster religious experiences more informally rather than through the traditional doctrinal methods that some find confrontational. Ms. Van

Horn testified, "We can't serve our Christian mission unless people come to the property, and so, again, it's my job to get them there, and then it's our job to serve them in a Christian environment." Ex. G19, Vol. 4, p.10, ll. 11-19, Filing ID 39647697. *See also* Gueldenzopf Testimony, Ex. G19, Vol. 3, p. 143, ll. 11-15, Filing ID 39647697 (explaining YMCA's mission may be furthered through camp experiences because "low-key subtle message[s]" will get across to visitors).

And like Young Life, YMCA offers an array of programs and activities, most occurring in a natural outdoor setting, which are "effective vehicles" for presenting YMCA's Christian principles. *Maurer*, 779 P.2d at 1331; Ex. I – E1, p. 13, Filing ID 39648282 (explaining YMCA's principle that "contemplation of the beauty of this earth leads to a richer appreciation of life, of others and of God and His creation."). If *Maurer* is to have any precedential force, it must apply here to YMCA. Accordingly, the Counties' strained arguments attempting to draw the finest of distinctions between *Maurer* and this case must be rejected.

But second, even putting aside the *factual* similarity to *Maurer*, the Counties misapprehend the importance of the BAA's incorrect *legal* standard. The critical point is that, because the BAA erroneously applied a "solely and exclusively" standard, it failed to determine whether the asserted nonreligious incidental uses (such as Wells Fargo's and the fraternities' uses) were acceptable under *Maurer*.[3] For instance, are such uses necessarily incidental to YMCA's purpose of providing a "Christian environment" to all, or to its policy of creating a "receptivity to Christian principles"? Ex. I – E1, pp. 8, 10, Filing ID 39648282. The YMCA cannot accomplish its stated religious goals without opening its facilities to groups of all kinds. Applying the correct legal standard to the undisputed facts, this Court should reverse the BAA and uphold YMCA's right to the religious exemption.

[3] The PTA does not concede that the uses by the Wells Fargo Business Credit Group or fraternities are nonreligious uses. *See* PTA Op. Br. at 7-8, 25-27; §§ 39-2-117(1)(b)(II), 39-3-106(2), C.R.S. (2011) ("many activities of religious organizations are in the furtherance of the religious purposes of such organizations.").

C. The Counties' proposed limiting principle would require the PTA to do exactly what the legislature has prohibited: make judgments about whether particular activities constitute religious worship.

The Counties go to great effort in proposing a "limiting principle" to permit public officials and the courts to determine whether certain property use is entitled to the religious exemption. Larimer Ans. Br., p. 23-24. The Counties' proposed limitation, however, violates state statute.

The General Assembly has instructed in unequivocal terms "that many activities of religious organizations are in the furtherance of the religious purposes of such organizations" and that "the constitutional guarantees regarding establishment of religion and the free exercise of religion prevent public officials from inquiring as to whether particular activities of religious organizations constitute religious worship." § 39-3-106(2), C.R.S. (2011). Therefore, the PTA is allowed to challenge an owner's religious declaration, as relevant here, "only upon the grounds … that the property being claimed as exempt is not actually used for

the purposes *set forth in such application*."[4] § 39-2-117(1)(b)(II), C.R.S. (2011) (emphasis added).

In this case, this final clause in section 39-2-117(1)(b)(II) is particularly important—no allegation is made that the properties are not used as set forth in the YMCA's exemption application. To the contrary, it is precisely the uses mentioned in the application—the roller skating, ice-skating, rock climbing walls, and other such uses—that the Counties incorrectly believe disqualify the properties. Ex. I – E1, Filing ID 39648282, p. 15. Although the PTA did inquire into whether the properties were used in furtherance of YMCA's articulated religious purposes, and into whether YMCA's religious beliefs were sincerely held, it did not (and could not) inquire into whether roller skating, for instance, *is itself* a religious activity. Rather, it was sufficient for the PTA to determine that the properties are actually used

[4] These statutory provisions, enacted in 1989 as part of a legislative overhaul of the exemption scheme, defeat the Counties' assertion that the religious inquiry is heavily "fact intensive." Larimer Ans. Br., p. 21. *See* 1989 COLO. SESS. LAWS, Ch. 326, §§ 1, 3, pp. 1485, 1489-90.

for roller skating and that YMCA uses roller skating to further its religious mission.

Although to some this may seem like an odd or even unfair result, it is a matter of public policy best left to the General Assembly. *See, e.g., Bd. of County Comm'rs of County of Morgan v. Kobobel*, 176 P.3d 860, 864 (Colo. App. 2007).

D. The Counties do not attempt to defend the BAA's application of an adverse presumption against the PTA and YMCA.

The Counties make no attempt to defend the BAA's application of an adverse presumption against the PTA and YMCA. As noted, the typical presumption against tax exemption is reversed in the religious and charitable contexts. *See Maurer*, 779 P.2d at 1332 n. 20. The PTA informed the BAA of this fact in its written closing argument, Religious Record, Vol. I, p. 0415, yet the BAA elected nonetheless to apply the adverse presumption against tax exemption to the detriment of the PTA and YMCA. This error provides an independently sufficient basis to reverse the BAA's Order. *See, e.g., Mile Hi Concrete, Inc. v. Matz*, 842

P.2d 198, 206 (Colo. 1992); *Garcia v. Huber*, 252 P.3d 486, 490 (Colo. App. 2010) (citing *Wiesner v. Huber*, 228 P.3d 973, 976 (Colo. App. 2010)).

III. The BAA erred as a matter of law in denying a charitable exemption.

A. The Counties misstate the standard of review and apply an incorrect presumption.

Grand County argues that the court must apply a "presumption against [] exemption." Grand Ans. Br., p. 50. This contention is erroneous, and the cited authority is inapplicable. *See Maurer v. Young Life*, 779 P.2d 1317, 1333 n.20 (Colo. 1989) ("a policy of receptiveness towards exemptions" for charitable and religious endeavors "represents an exception to the general rule that the presumption is against tax exemption ...."). In contrast, the case cited by Grand County, *Security Life & Acci. Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225 (1972), is a sales tax case. It has no application here.

Larimer County confuses the standard of review for factual and legal determinations. Larimer County acknowledges, "In this case, the

facts are undisputed so the inquiry focuses on the reasonable basis in law." Larimer Ans. Br., p. 19. Yet Larimer contends that this Court may not reverse on that basis. *Id.* at 19-20. This is error. Factual conflicts are resolved by the agency. *Charnes v. Lobato*, 743 P.2d 27, 32 (Colo. 1987) ("where conflicting testimony is presented in an administrative hearing, the credibility of witnesses and the weight to be given their testimony are decisions within the province of the agency"). However, this Court reviews questions of law based on undisputed facts de novo. §§ 24-4-106(7) and (11)(e), C.R.S. (2011).

B. The Counties incorrectly claim that a charitable exemption may only be granted for performing a required function of government.

The Counties argue that the legal standard for charitable exemptions requires the YMCA to show that it provides a type of gift that lessens the burden of government. Grand Ans. Br., p. 49; Larimer Ans. Br., p. 29. Specifically, the Counties contend that this only includes the type of activities that "government would otherwise be

required to perform." *Id.,* Grand Ans. Br., p. 49; Larimer Ans. Br., p. 29 (emphasis added).

Larimer contends that this requirement comes from the language of "Gray's rule," which Larimer states has been codified in statute. *Id.* at 28. This statement is in error on all counts. First, "Gray's rule" has not been codified in statute. It has been promulgated in a regulation adopted by Respondent PTA. Rule IV.A.1, 8 C.C.R. 1304-2. Second, Gray's rule does not require all charitable exemption applicants to show that its activities are activities *required* to be performed by government.

The rule states:

> IV. CHARITABLE
>
> The following rules apply to all organizations/properties exempted/applying for exemption as owned and used for strictly charitable purposes. ***
>
> A. GENERAL DEFINITIONS
>
> 1. "Charity" means a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, *either* by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, *or* by erecting or maintaining public buildings or

> works, *or* otherwise lessening the burdens of government.

Rule IV.A.1, 8 C.C.R. 1304-2 (emphasis added).

In claiming that an applicant must show that its activities lessen the burden of government, the counties improperly seek to substitute the word "and" for the word "or" in the above rule. Instead, the rule indicates that lessening the burden of government is one way of demonstrating entitlement to exemption, but not the only way.

A sensible reading of Gray's rule compels this conclusion. First, the rule uses the terms "either" and "or" to describe the methods for establishing the exemption. In addition, these methods are categorically different. For instance, bringing "minds or hearts under the influence of education or religion" is a different matter from relieving disease. For that matter, religious influence is clearly different from education. Under the Counties' theory, an applicant would have to show that it does all these things and that its activities must otherwise be performed by government. The Counties' interpretation would be legally inappropriate and unworkable.

Bringing minds or hearts under the influence of religion is a matter that the government is prohibited from undertaking.

The Counties cite inapposite authority. Relying on *Bd. of Assessment Appeals v. AM/FM Int'l*, 940 P.2d 338 (Colo. 1997), the Counties claim that lessening the burden of government is a critical element, without which no charitable exemption may be granted. Grand Ans. Br., p. 49; Larimer Ans. Br., p. 35. In that case, the court considered AM/FM's claim "that it benefits the public by offering a service to governmental entities and public utilities, *not by making a gift to individual citizens*." 940 P.2d at 347 (emphasis added).

Therefore, *AM/FM* was about a different method of establishing a charitable exemption. Here, the YMCA claims that it is making a gift to individual citizens that use the property. The *AM/FM* analysis does not apply. The court in *AM/FM* specifically limited its holding to "the context of this case." *Id.* at 344; *see also id.* at 347 ("We emphasize the narrow application of our holding to the facts of this case."). *AM/FM* stands only for the proposition that "[w]hen the public benefit is

channeled through a governmental entity or public utility, … the benefit must necessarily lessen the burdens of government." *Id.* at 347.

Larimer quotes, but seems not to notice, that the legislature has deemed "uses of property which are set forth in this part 1 as uses for charitable purposes … [which] lessen the burdens of government by performing services which government would otherwise be required to perform." § 39-3-101, C.R.S. (2011). YMCA's claim of charitable exemption clearly falls within part 1, section 39-3-108(1)(a), C.R.S. Thus, the legislature has already concluded that "*property used for such purposes* [in part 1] *shall be presumed to be owned and used solely and exclusively for strictly charitable purposes* and not for private gain or corporate profit …." *Id.* (emphasis added). The Counties fail to recognize this declaration, which "shall be entitled to great weight in any and every court." *Id.*

Finally, if the Counties were correct in this argument, it would invalidate nearly every property tax exemption held by a local YMCA in Colorado. Community YMCAs across the state generally hold exemption as charitable organizations. Their mission and activities,

though on a smaller scale, are similar to those of the YMCA in this case. If every charitable exemption is limited to uses performing a required government function, the impact on similarly exempt organizations in Colorado will be tremendous.[5] Such an erroneous construction of the law should not be adopted.

C. The Counties misinterpret the statutes and regulations permitting partial exemption.

The PTA argued in its opening brief that the BAA erred as a matter of law by rejecting the charitable exemption based on erroneous calculations for non-qualifying use. PTA Op. Br., p. 42 (discussing §§ 39-3-116 and 106.5, C.R.S. (2011), and PTA's regulations). The response of the Counties merely repeats the BAA's error. Instead of responding on the merits and addressing the legal issue raised by the PTA, Larimer County responds that certain "unchallenged" BAA findings defeat the exemption.

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[5] For instance, scout troops, arts groups and fraternal organizations receive charitable exemptions without performing a required government function.

In particular, Larimer argues that the BAA found that YMCA does not qualify for exemption because "its use is greater than the statutory limits allowed for non-exempt uses – under 208 hours of non exempt use or under $25,000.00 of non exempt use." Larimer Ans. Br., p. 27 (citing BAA order). The apparent contention is that the legal basis for this conclusion may not be reviewed.[6]

Larimer misapprehends the PTA's argument. The PTA has not challenged BAA's factual finding concerning non-exempt use. As explained in the PTA's opening brief, the BAA erred by failing to follow the clear language of section 39-3-106.5, C.R.S., and the PTA's regulations. The Counties – by not responding – have effectively conceded the point. They merely repeat the unsupported notion that the limits in section 39-3-106.5 are absolute barriers to any exemption if exceeded.

Larimer suggests that section 106.5 is "wholly irrelevant." Larimer Ans. Br., p. 37. This argument compounds the confusion over

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[6] Larimer contends that whether the BAA's order violates the statute is "beside the point." Larimer Ans. Br., p. 27.

this section. If it is irrelevant, then the BAA clearly erred in denying the exemption under that section. Rather than being irrelevant, section 106.5 is central to the proper analysis of a partial exemption. Both the BAA and the Counties have misconstrued this statute, requiring reversal.

The PTA regularly grants partial exemptions when the adjusted, non-exempt uses exceed 208 hours and $25,000.00 in gross rental income. Affirming the BAA's order would reverse the many long-standing partial, charitable exemptions currently existing in Colorado. The BAA order fails to acknowledge this regulatory history or the cases recognizing partial charitable exemptions. *See Hanagan v. Rocky Ford Knights of Pythias Bldg. Ass'n*, 101 Colo. 545, 548-49, 75 P.2d 780, 781 (1938); *Western v. Slavonic Ass'n v. Property Tax Adm'r*, 835 P.2d 621, 622 (Colo. App. 1992). Accordingly, it should be reversed.

D. The Counties repeat the BAA's error by focusing on the activities of guests rather than the YMCA and by suggesting that marketing materials form the governing standard.

The PTA argued that the BAA applied an erroneous and insurmountable evidentiary burden by requiring records of "guests' actual use of the facility." PTA Op. Br. at 50 (citing charitable Order at 11). The Counties do not respond to the PTA's argument concerning the correct legal standard. At most, Larimer simply repeats the BAA's conclusion that "again Respondent and YMCA did not provide sufficient documentation indicating guests' use, so it is impossible to know exactly how many hours qualify for non-exempt use." Larimer Ans. Br., p. 28.

The Counties' failure to address this critical element of the exemption reveals the weakness of their position. The party whose use of the property must be analyzed is the owner, the YMCA. As Larimer recognizes, the BAA noted the many activities offered by the YMCA, (including hiking, volleyball, snowshoeing, tennis, ice skating, fishing, mountain biking, basketball, roller skating, swimming, and horseback

riding) are offered for "free or at a nominal cost." Larimer Ans. Br., p. 5 (citing BAA findings).

Further, Larimer does not dispute that "[t]he YMCA pricing model does not cover the total operational costs for the properties and it relies on charitable contributions and volunteer support." Larimer Ans. Br., p. 9. "Without donations, YMCA would be insolvent and bankrupt." *Id*. These facts sharply distinguish YMCA from other properties that the Counties propose for comparison. Larimer Ans. Br., pp. 33-35. Based on these factual findings by the BAA and legal authorities clearly holding that the owner's use is the standard (PTA Op. Br., p. 51), the BAA erred as a matter of law in denying the exemption.

Larimer further misstates the law when it argues, "the important and most determinative way to view the YMCA operation and the claimed 'gifts' to users is by how the YMCA presents itself in the marketplace …." Larimer Ans. Br., p. 30. This contention has no support in the law. The advertising materials used by YMCA are not in dispute, and are available in the record. Some prominently mention the YMCA's mission and purposes, and some identify them less fervently.

Compare Ex. I – E8, Filing ID 39672174 (explaining in detail YMCA's core values, mission, inclusion policy, and vision statement), *with* Ex. LC-4, Filing ID 39857633 (mentioning YMCA's mission at p. 00567).

However, while consideration of the YMCA's advertising is permissible, it is not controlling. In fact, Colorado case law strongly suggests that the statements of the property owner are to be disregarded in favor of the actual use of the property. *Bishop & Chapter of Cathedral of St. John The Evangelist v. Treasurer of Denver*, 86 P. 1021, 1023, 37 Colo. 378, 383 (1906) ("The character of the institution is to be determined by the purpose of its construction and the manner of its operation, and not by the opinion of any individual as to whether its work conforms to his notion of charity or not."). On the whole, this factor is not "determinative" as Larimer suggests.

CONCLUSION

For the foregoing reasons, the BAA's orders under religious and charitable exemptions should be reversed, and the PTA's determinations upheld.

Respectfully submitted this 2nd day of August, 2012.

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This is to certify that I have duly served the foregoing upon all parties herein by depositing copies of same in the United States mail, first class postage prepaid, at Denver, Colorado, this 2nd day of August, 2012, addressed as follows:

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