Dear Counsel,

This matter is before the Court upon the Petition of Christian Scholars Network, d/b/a the Bradley Study Center (hereinafter "Petitioner") seeking a correction of a denial of exemption from real property taxation pursuant to various sections of the Virginia Code. The action was brought against the Montgomery County Commissioner of the Revenue, the Montgomery County Treasurer, the Board of Supervisors of Montgomery County, the Town Council of the Town of Blacksburg, as well as Montgomery County and the Town of Blacksburg proper (hereinafter "Respondents"). Following a two-day bench trial before the Court in April of 2024, post-trial oral arguments were heard on September 12, 2024. The Court has considered all of the evidence presented, the briefs submitted and the arguments of Counsel.

For the reasons set forth below, the Court finds that Petitioner is not entitled to an exemption from real property taxation under these statutes, and that Respondents' denial of the exemption was not in error.

Facts

Petitioner operates the Bradley Study Center at 104 Faculty Street in Blacksburg, Virginia. On its website, Petitioner states that it is "a Christian study center at Virginia Tech, helping students and faculty explore the rich intellectual traditions of the Christian faith and dedicated to a thoughtful Christian presence in the university." Petitioner offers a wide variety of services to the student body of Virginia Tech, serving primarily as a study space and meeting venue for a variety of faith-based organizations on the Virginia Tech campus and in the Blacksburg community.

Legally, Petitioner is a nonstock Virginia corporation and 503(c)(3) nonprofit. The board of directors is self-perpetuating. Petitioner, as an intentionally nondenominational organization, is not formally affiliated with any hierarchical religious authority. That is, Petitioner is not a church in the typical sense, but rather is a private organization with a religious theme and mission. Michael Weaver, Petitioner's Executive Director, is both an educated theologian and an ordained minister, holding a master's degree from Wesley Theological Seminary and Duke Divinity School as well as a doctorate from the University of Winchester.

Petitioner acquired the property that would become the Bradley Study Center on or around March 29, 2019. Since this acquisition, Petitioner has allowed the property to be used by a large number of other organizations, including Calvary Chapel and Chi Alpha of Virginia Tech, among others. Petitioner also allows space to on the property to be used by Abundant Life Christian Counseling, a for-profit counseling business.

Petitioner's property was assessed real property taxes in the amount of $1744.84 for the tax year of 2019 and $1744.85 for the tax year of 2020. On November 19, 2019, Petitioner sought exemption from real property taxes pursuant to Virginia Code § 58.1-3980, challenging the real property tax assessments and seeking a correction. On January 30, 2020, the Commissioner of the Revenue of Montgomery County replied to this request by denying a correction to the real property taxes which had been assessed against the property. In doing so,

the Commissioner of the Revenue provided a detailed explanation for the denial. This denial was made after collaboration with the County Attorney for Montgomery County and the Town Attorney for Blacksburg. Blacksburg's Finance Director concurred in the denial. Petitioner filed suit on June 10, 2020, naming as defendants the Montgomery County Commissioner of the Revenue, the Montgomery County Treasurer, the Board of Supervisors of Montgomery County, the Town Council of the Town of Blacksburg, as well as Montgomery County and the Town of Blacksburg themselves.

Discussion

Because any one of the statutory provisions relied upon by Petitioner would have been sufficient to grant an exemption, each must be addressed in turn. Article X § 1 of the Constitution of Virginia provides that "All property, except as hereinafter provided, shall be taxed." Article X § 6(f) further provides that "Exemptions of property from taxation as established or authorized hereby shall be strictly construed." The Supreme Court of Virginia has observed that "[e]xemption from taxation is the exception, and where there is any doubt, the doubt is resolved against the one claiming exemption." *Golden Skillet Corp. v. Commonwealth*, 214 Va. 276, 278 (1973). Therefore, a claimant's entitlement to an exemption from real property taxes "must appear clearly from the statutory provisions upon which it relies." *See Westminster-Canterbury of Hampton Rds., Inc. v. Virginia Beach,* 238 Va. 493, 501 (1989). That is, strict construction under Article X § 6(f) requires that even when there are reasonable arguments both for and against an exemption, the doubt between the two arguments must be resolved in favor of taxation. *See id* at 500. As the Supreme Court of Virginia has put it, "[t]o doubt an exemption is to deny it." *Commonwealth, Dep't of Taxation v. Progressive Community Club, Inc*., 215 Va. 732, 736 (1975).

The statutes at issue in this case contain undefined general terms which follow specific terms. As such, the doctrine of *esjudem generis* must be applied in order to properly construe those general terms. "Properly applied, the rule of *ejusdem generis* suggests that "when a particular class of persons or things is enumerated in a statute and general words follow, the general words are to be restricted in their meaning to a sense analogous to the less general, particular words."" *Tomlin v. Commonwealth*, 302 Va. 356, 367 (2023) (quoting *Norton v. Board of Supervisors of Fairfax Cnty*., 299 Va. 749, 759 (2021)).

As a preliminary matter, Petitioner relies heavily upon the dominant purpose test set out in *Smyth County Community Hospital v. Town of Marion*, 259 Va. 328 (2000) for most of its statutory claims, using the test elucidated in that case to frame many of its arguments. That case did indeed hold that revenue-generating property may nonetheless be exempt from real property taxation. However, Petitioner's reliance on this case is misplaced. *Smyth* itself states that the dominant purpose test only applies when the property in question is generating revenue in the first place. To wit, "the dominant purpose test assumes that some activity is occurring which is revenue producing…" *Id*. At 336. Petitioner itself has pointed out that it "has no revenue producing property or activity." Petitioner's Post-Trial Brief at 25. Therefore, in the absence of such revenue producing activity, the dominant purpose test is inapposite, and the strict construction requirement applies unaltered.

Petitioner cites numerous statutes as justification for why it should be granted exemption from real estate taxes. However, Petitioner fails to meet the requirements of these statutes, strictly construed.

§§ 58.1-3609 and 58.1-3617

Petitioner first claims an exemption under §§ 58.1-3609 and 58.1-3617. § 58.1-3609 provides that

> "[t]he real and personal property of an organization classified in §§ 58.1-3610 through 58.1-3621 and used by such organization for a religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purpose as set forth in Article X, § 6 (a) (6) of the Constitution of Virginia, the particular purpose for which such organization is classified being specifically set forth within each section, shall be exempt from taxation, so long as such organization is operated not for profit and the property so exempt is used in accordance with the purpose for which the organization is classified."

§ 58.1-3617, which § 58.1-3609 incorporates by reference, provides in relevant part that

> "[a]ny church, religious association or religious denomination operated exclusively on a nonprofit basis for charitable, religious or educational purposes is hereby classified as a religious and charitable organization. Notwithstanding § 58.1-3609, only property of such association or denomination used exclusively for charitable, religious or educational purposes shall be so exempt from taxation."

In order to be granted an exemption under § 58.1-3617, a claimant must meet three requirements. To be granted an exemption the claimant must (1) be a church, religious association, or religious denomination; (2) operate exclusively as a nonprofit; and (3) operate for charitable, religious, or educational purposes.

Petitioner has not claimed that it is a church or religious denomination as those terms are typically understood. Rather, Petitioner claims an exemption under the statute on the grounds that it is a "religious association." Petitioner is correct in saying that the Virginia Code does not define the term "religious association." Petitioner is also likely correct in saying that when terms are not defined in the Virginia Code, they ought to be assigned their ordinary meaning. *See Horton v. Commonwealth*, 255 Va. 606, 612 (1998) (citing *McKeon v. Commonwealth*, 211 Va. 24, 27 (1970)).[1] With this as prelude, Petitioner argues that for purposes of this statute an "association" is merely "an organization of persons having a common interest." "Association," Webster's Third New International Dictionary, Unabridged, 2020.

However, "religious association" is, without context, a term that is susceptible to numerous meanings, no single one of which has the ultimate claim of being the sole ordinary

[1] The ordinary meaning rule recited in *McKeon* predates the 1971 addition of a strict construction requirement to the interpretation of tax exemption. While *Horton* appears to preserve that rule, that case did not address the subject of strictly constructing real property tax provisions.

meaning. Various sources of law use the term inconsistently, using it to refer to entities as diverse as local churches and the Young Men's Christian Association. *See Carr v. Union Church of Hopewell*, 186 Va. 411, 413 (1947); Va. Code § 58.1-3606(A)(5). Respondents contend that "[c]ourt decisions have used the term "religious association" as a synonym or near-synonym for "church."" Respondents' Post Trial Brief at 11. A searching review of caselaw reveals this statement to be factual.

Moreover, under the limiting rule of *esjudem generis*, both "religious association" and "religious denomination" are general terms which follows the specific term "church." Therefore, the possible definitions of these terms are limited to those analogous to that of "church", i.e., a mosque, synagogue, or temple. Under the rules of strict construction, therefore, Petitioner's interpretation of the term must fail.

Because Petitioner fails to meet the first prong of § 58.1-3617's test for exemption, it is unnecessary to address the remainder of the statute.

§ 58.1-3606(A)(2)

Va. Code § 3606(A)(2) provides an exemption for

> "[r]eal property and personal property owned by churches or religious bodies, including (i) an incorporated church or religious body and (ii) a corporation mentioned in § 57-16.1, and exclusively occupied or used for religious worship or for the residence of the minister of any church or religious body, and such additional adjacent land reasonably necessary for the convenient use of any such property. Real property exclusively used for religious worship shall also include the following: (a) property used for outdoor worship activities; (b) property used for ancillary and accessory purposes as allowed under the local zoning ordinance, the dominant purpose of which is to support or augment the principal religious worship use; and (c) property used as required by federal, state, or local law."

This exemption has been construed by the Virginia Court of Appeals as recently as this year. In *Emmanuel Worship Center. v. City of Petersburg*, 80 Va. App. 100 (2024), the Court of Appeals held that a church-owned property primarily leased out to an automobile tinting business was not entitled to an exemption under this statute. Because the church in question had not been used as a residence for a minister (i.e., a parsonage) and because it had not been used exclusively for religious worship, the claimed exemption was denied. *Id* at 112. This is in spite of the fact that various worship activities were conducted at that property, such as Sunday school and youth outreach. *Id*.

Similar to its contentions under § 58.1-3617, Petitioner claims that it is entitled to an exemption under this statute because it is a "religious body" and the property in question is used "exclusively for religious worship." However, the term "religious body" cannot include Petitioner.[2] In the statute, the general term "religious bodies" follows the specific term

[2] The statute exempts both worship spaces and parsonages. The language "for the residence of *the minister of any church or religious body*" also necessarily limits the definition of religious body to entities with a devoted minister.

"churches." Under the rule of *esjudem generis*, "religious body" could refer to a mosque, temple, or synagogue, but not to Petitioner.

Even assuming that Petitioner is a religious body, the claimed exemption must fail under the rules of strict construction because the property is not used exclusively for religious worship. Petitioner claims that "[e]verything [Petitioner] does and uses its Property for serves the dominant purpose of religious worship." Petitioner's Post Trial Brief at 20. However, as we have already discussed, the dominant purpose test upon which Petitioner relies is inapplicable in this context. The test for § 58.1-3606(A)(2) therefore is not what Petitioner's dominant purpose is, nor whether the property in question "tends immediately and directly to promote [the purpose for which Petitioner exists]", but whether the property is, strictly construed, "*exclusively occupied or used for* religious worship…" (emphasis added).[3]

The presence of Abundant Life Christian Counseling is therefore fatal to Petitioner's claim for exemption. Abundant Life is a professional counseling business which charges clients by the hour, an activity which cannot reasonably (let alone strictly) be characterized as religious worship. While Abundant Life may provide its services from a Christian point of view, its activities are not a form of religious worship under the meaning of this statute.

In this way, *Emmanuel* is instructive insofar as it appears to take for granted that an exemption under § 58.1-3606(A)(2) hinges upon a property being either exclusively used as a dedicated worship space or whose use is "ancillary or accessory" to a such a dedicated worship space, such as a church parking lot. *Id*. Because the property is not exclusively used as a worship space and because it is not ancillary or accessory to a worship space, it must fail this exemption.

§ 58.1-3606(A)(4)

§ 58.1-3606(A)(4) provides, in pertinent part, an exemption for

> "[p]roperty owned by…incorporated colleges or other institutions of learning not conducted for profit. This paragraph shall apply only to property primarily used for literary, scientific or educational purposes or purposes incidental thereto and shall not apply to industrial schools which sell their products to other than their own employees or students."

Petitioner contends that it is an institution of learning within the meaning of the statute. However, this contention is unavailing. As Respondents point out, Petitioner is not an accredited school. There are no tests, grades, and no degrees are awarded. There is no formal faculty and no permanent student body.

In *Close Up Foundation v. Arlington County Board of Supervisors*, 39 Va. Cir. 490 (1996), the Circuit Court of Arlington County found the Close Up Foundation, an educational program focused on government and civics, was not entitled to an exemption under this statute

[3] It rather goes without saying then that a property cannot both be exempt under 3606(A)(2) and 3617 if the use of the property is not religious. That is, a property exempt for educational purposes would necessarily be precluded from an exemption under 3606(A)(2) because the property would not be used exclusively for religious worship.

because it was too dissimilar from an incorporated college. While Petitioner certainly possesses more attributes of an institution of learning than the Close Up Foundation did, the rules of strict construction require that the exemption under this statute be denied.

Just as the doctrine of *esjudem generis* limits the possible interpretation of "religious association", so too does it limit our possible interpretation of "other institution of learning." Like in *Close Up Foundation*, Petitioner likely provides substantial educational benefit to the students who use its facilities. Nonetheless, it is clear that a strict construction of the statute precludes granting an exemption in this case. "An organization would not become an institution of learning simply by offering programs providing educational and intellectual benefit." *Id* at 498. Because Petitioner lacks the requisite attributes of an institution of learning to render it sufficiently similar to an incorporated college, such as a prescribed course of study leading towards a formal degree (i.e., an associate's degree, bachelor's degree, or doctorate), formal accreditation by an accrediting entity, a permanent professional faculty, etc., the claim for an exemption based on this statute must fail.

§ 58.1-3606(A)(5)

§ 58.1-3606(A)(5) provides in relevant part an exemption for

> "[p]roperty belonging to and actually and exclusively *occupied* and *used* by the Young Men's Christian Associations and similar religious associations, including religious mission boards and associations, orphan or other asylums, reformatories, hospitals and nunneries, conducted not for profit but exclusively as charities…"

(Emphasis added). Similar to the other statutory provisions, Petitioner's claim for an exemption based on this statute fails for several reasons. First, even assuming that the meaning of "religious associations" in this statute is different from its meaning under § 58.1-3617, and further assuming that Petitioner is a religious association that is sufficiently similar to the YMCA, Petitioner does not both exclusively occupy and use the property as a charity.

The extensive third party use which Petitioner has allowed on the property speaks for itself. Petitioner's Exhibit 16. Petitioner has argued that allowing religious third parties to use the property and coordinating and scheduling such use constitutes their own use for purposes of this statute. However, the statute requires the property to be *actually* and *exclusively used* and *occupied* by the association to which it belongs. This language, by using "used" and "occupied" in conjunction with one another, and following as they do the terms "actually" and "exclusively", make it abundantly clear that such extensive third-party use precludes the property from qualifying for an exemption under a strict construction of the statute.

Moreover, even if such use was not disqualifying, the property is not conducted exclusively as a charity. A "charity" is

> "a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or

> maintaining public buildings or works, or otherwise lessening the burdens of government.
>
> Generally speaking, any gift not inconsistent with existing laws which is promotive of science or tends to the education, enlightening, benefit or amelioration of the condition of mankind or the diffusion of useful knowledge or is for the public convenience is a charity."

3B M.J. Charitable Trusts § 2.

An essential component of this definition is the giving of a gift of some kind, without which the definition fails. Moreover, the legal definition of "charity" in Virginia which commonly appears dates from before the adoption of the strict construction requirement in the Virginia Constitution, leaving it uncertain if such a broad definition would still apply today. See *Children, Inc., v. City of Richmond*, 251 Va. 62, 66-67 (1996). Under the rule of strict construction, the Court is compelled to construe this uncertainty against an exemption.

Petitioner's use of the property is not exclusively conducted as a "charity" under a strict construction of the term. While Petitioner is a 501(c)(3) nonprofit organization for federal income tax purposes, this is not relevant to a determination of whether the property is exempt from Virginia real property taxes. Petitioner has not presented evidence that it provides services to the sick, the aged, or the poor, that it erects or maintains public works, or that it's activities otherwise lessens the government's burden.

For the foregoing reasons, Petitioner's claim for exemption under this statute must be denied.

Conclusion

For the reasons set out in this opinion, Petitioner's claims for exemption from real property taxation under the exemptions laid out in Va Code §§ 58.1-3606(A)(2), 58.1-3606(A)(4), 58.1-3606(A)(5), 58.1-3909, and 58.1-3617 are denied.

It is requested that Mr. Haley prepare an order in conformity with this opinion and circulate same to counsel for whatever endorsement they deem proper. Thereafter, it should be presented to the Court for entry.

With kind regards, I am

Judge Designate