BEFORE HEARING OFFICER FOR THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU

VOLUNTEERS OF AMERICA, Appellant, vs. CBJ ASSESSOR, Appellee,	Appeal of: April 6, 2018 Notice of Decision March 7, 2018, Appeal Case No. 2018-01

FINAL DECISION ON APPEAL

I. Introduction

The above captioned appeal was timely filed by Appellant Volunteers of America (VOA), on April 6, 2018. VOA appealed from the March 7, 2018, decision of the City and Borough of Juneau (CBJ) Assessor denying the request from VOA for a property tax exemption of two parcels based upon their use as non-profit charitable use property or non-profit religious use property under AS 29.45.030(a)(3) and CBJ Code 69.10.020(8).[1]

The two parcels which are the subject of this appeal are related. One is identified variously as Terraces at Lawson Creek, 2570 Vista Drive[2], assessor Parcel ID 2D040C050075[3], and Lot 2, Emerald 3 Subdivision, according to plat 2014-21 recorded in the Juneau Recording District, First Judicial District, State of Alaska.[4] This parcel will be referred to as Terraces I. The other is

[1] Record on Appeal (R.) at 554-555. Citations are to the Record as supplemented and distributed October 26, 2018.
[2] R. 552, 616
[3] R. 1-2.
[4] R.269.

Terraces at Lawson Creek II[5], 2578 Vista Drive[6], Assessor Parcel ID 2D040C050073.[7] This parcel will be referred to as Terraces II.

Terraces I is a four-building complex of 40 residential low-income housing units constructed in 2014.[8] The land is owned by Intrepid VOA, LLC.[9] The improvements for Terraces I are owned by Juneau I VOA LLC.[10] Juneau I LLC is owned by JI VOA MM LLC, its managing member, NHT Equity, LLC, an Ohio limited liability Company, as a non-managing member, and Volunteers of America National Services, a Minnesota Non-profit corporation, as a withdrawing member.[11] JI VOA MM LLC is in turn owned by Volunteers of America Alaska, Inc. (VOA AK) and Volunteers of America National Services (VOANS).[12]

Terraces II is a two-building complex of 35 residential low-income housing units constructed in 2017.[13] The land is owned by Intrepid VOA, LLC.[14] The improvements for Terraces II are owned by Juneau II VOA LLC.[15] Juneau II VOA LLC is owned by JII VOA MM LLC, its managing member, Key Community Development Corporation, as a non-managing member, and Volunteers of America National Services, a Minnesota Non-profit corporation, as a withdrawing member.[16] JII VOA MM LLC is in turn owned by Volunteers of America Alaska, Inc. (VOA AK) and Volunteers of America National Services (VOANS).[17] VOANS is asserted to be the sole owner of

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[5] R. 335-336.
[6] R. 335-336.
[7] R. 335-336.
[8] R. 8-9.
[9] R.610.
[10] R. 609.
[11] R. 8 and 13.
[12] R. 8, 6090.
[13] R. 3340-341.
[14] R. 610.
[15] R.609.
[16] R. 340, 349-350, 415.
[17] R. 609.

Intrepid LLC.[18] However, other parts of the record discuss the real property as being owned by a new company formed by VOANS and the developers Trapline and V2.[19]

Terraces I and Terraces II were constructed in reliance on the Low-Income Housing Tax Credit (LIHTC) program. This program allows entities which have substantial taxable income to invest in low-income housing projects and receive a tax credit for doing so.[20] The Appellants applied for an exemption under AS 29.45.030(a)(3) as property used exclusively for nonprofit charitable purposes.[21] The City and Borough of Juneau (CBJ) Assessor reviewed the materials submitted and consulted other Assessors.[22] The CBJ Assessor reviewed the materials and sought additional information.[23] The CBJ Assessor issued a decision on March 7, 2018.[24] The CBJ Assessor's decision effectively denied four requests: 1) the request for an exemption for Terraces I as religious use property under AS 29.45.030(a)(3); 2) the request for exemption of Terraces I as charitable use property under AS 29.45.030(a)(3); 3) the request for an exemption for Terraces II as religious use property under AS 29.45.030(a)(3); and 4) the request for exemption of Terraces II as charitable use property under AS 29.45.030(a)(3).[25]

II. Procedural posture

A. General Proceedings.

This case is an appeal to the Assembly Sitting as the Board of Equalization (Board) under CBJ Code Chapter 1.50. The Board appointed a hearing officer under CBJ Code 1.50.040. The

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[18] R. 610.
[19] R. 568.
[20] R. 573-602.
[21] R. 1-314 for Terraces I and R. 335-539 for Terraces II.
[22] R. 315-316.
[23] R. 544-553.
[24] R. 554-555.
[25] Id.

appeal was timely filed by the Appellant.

A pre-hearing conference was held telephonically on June 29, 2018. At that time, the parties jointly agreed that the case should be briefed on the record with no in-person hearing. A pre-hearing order was issued July 2, 2018, setting the schedule for preparation of the record, requests for supplementation of the record, and briefing. The record was supplemented by unopposed requests. The briefing scheduled was modified by unopposed extensions for both parties and was complete on November 26, 2018. The case is now ripe for decision.

The Proposed Decision on Appeal was issued January 2, 2019. Timely objections were filed by the Appellant pursuant to CBJ Code 1.50.140 on January 9, 2019. A statement in support was timely filed by Appellee January 14, 2019. Under CBJ Code 1.50.140(c) the hearing officer shall reconsider the Proposed Decision in light of timely filed objections and statements of support and shall either prepare amendments to proposed decision or shall issue a statement that the objections and statements of support have been considered and that no change in the decision shall be made.

B. Consideration of Objections.

Here the objections and statement in support have been considered and amendments to the decision have been made to clarify the decision in the following respects:

1. The Objection noted that all 35 of the units in Terraces II are for low income or disabled tenants, and only the 15 units in Terraces I rent for over 90% of market rates, and stated that the Proposed Decision improperly focused on the units which rent at near market rates. The Objection appears to misunderstand the Proposed Decision. I have modified that portion to clarify that I find that the Appellant failed to meet the burden to establish that the properties are

used for exclusively charitable purposes because 1) the use of the properties established by Appellant was use as deed restricted LIHTC property, and 2) establishing that the properties are deed restricted LIHTC projects is not sufficient, absent other charitable use, to entitle the properties to a mandatory exemption. The comment in the Proposed Decision regarding units with near market rents was not directly controlling, but was more in the nature of dicta observing that even if use of the property for LIHTC purposes were sufficient to qualify for a mandatory exemption, the Terraces I project would likely require apportionment due to the higher rents charged on up to 15 units. I have revised the findings in the conclusion to be more declarative statements in order to make this more clear.

2. The Objection argued that the Proposed Decision erroneously stated that a deed restriction limiting the property to LIHTC uses alone would not be sufficient to entitle a property to an exemption as non-profit charitable property. In support of this argument the Objection referenced legislative history statements that there is no profit in low income housing, and referenced other states which exempt low income rental properties from property tax.

The legislative history for HB 272, which became Ch. 79 SLA 2000, does not support the Objection. The Bill Sponsor, Representative Halcro stated in the House Community and Regional Affairs Committee hearing on the bill that deed restrictions should be taken into account when valuing property, but did not indicate that they should entitle property to an absolute exemption.[26] Later in the hearing Representative Halcro stated that: "since the property is not exempted and has to be assessed based upon the deed restriction, the community receives a net gain because there are property taxes on the roll that would not be present if these tax credits

[26] House Community and Regional Affairs Committee hearing on HB 272, February 1, 2000.

were not in place."[27] This statement makes clear that LIHTC properties like this were intended to receive a reduced assessment under AS 29.45.110(d) but would still have some assessed value included on the tax roll. Interpreting AS 29.45.030(a)(3) to give deed restricted LIHTC properties a mandatory exemption based upon their LIHTC status and associated deed restrictions would be inconsistent with the intent behind AS 29.45.110(d), a statute which is *in pari materia* with the exemption statute AS 29.45.030(a)(3), and must be read consistently, giving meaning to all terms.[28] Granting a mandatory exemption to LIHTC deed restricted property where those are the only charitable use attributes identified would be inconsistent with the clear legislative intent behind AS 29.45.110(d) that such properties be included on the tax roll, albeit at a reduced value.

Clearly the legislation contemplated that a deed restriction would be considered for a reduced assessment, but would not provide a complete exemption. Further, were this so, then all LIHTC property with a deed restriction to qualify for the program would be entitled to a full exemption and there would be no reason for the legislation calling for a reduced assessment of such property. This point of objection is rejected. The deed restriction for LIHTC property does not, by itself, qualify property for a mandatory exemption under AS 29.45.030(a)(3).

3. The Objection disputes the hearing officer's consideration of the financial interests of parties to the transaction other than the nominal non-profit entity which owns and operates a LIHTC project. Instead, the Objection argues for focus only on the use of the property by Juneau I VOA, LLC and Juneau II VOA LLC. This Objection is not well taken. Juneau I LLC is owned by JI VOA MM LLC, its managing member, NHT Equity, LLC, an Ohio limited liability Company, as a non-

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[27] House Community and Regional Affairs Committee hearing on HB 272, February 1, 2000.

[28] See **Hafling v. Inland Boatmen's Union**, 585 P.2d 870, 878 (Alaska 1978) and **Alaska Airlines v. Darrow**, 403 P. 3d 1116, 1122 (Alaska 2017).

managing member, and Volunteers of America National Services, a Minnesota Non-profit corporation, as a withdrawing member.[29] NHT Equity LLC is a for profit entity which earns a return on its investment in Terraces I from the tax credits and depreciation it obtains due to its participation. Were there no low-income housing units complying with the LIHTC program requirements, NHT Equity LLC would not receive these profits. As explained by Mr. Sieberts in the debate on HB 272, "the purchase of tax credits are an investment with considerable federal restrictions and oversight. It would be like making an investment in a municipal bond or loan or home mortgage."[30] The participation of NHT Equity LLC, one of the two members of the LLC owning Terraces I, is clearly an investment for purposes of financial gain to NHT Equity LLC, and is thus motivated by a dominant profit motive. The other member, JI VOA MM LLC is, in turn, owned by Volunteers of America Alaska, Inc. (VOA AK) and Volunteers of America National Services (VOANS).[31] VOANS, as owner of the underlying real property through a separate LLC, receives an annual payment of land rent.

Similarly, Terraces II are owned by Juneau II VOA LLC.[32] Juneau II VOA LLC is owned by JII VOA MM LLC, its managing member, Key Community Development Corporation, as a non-managing member, and Volunteers of America National Services, a Minnesota Non-profit corporation, as a withdrawing member.[33] JII VOA MM LLC is in turn owned by Volunteers of America Alaska, Inc. (VOA AK) and Volunteers of America National Services (VOANS).[34] For Terraces II it is Key Community Development Corporation who, like NHT Equity LLC, is the owner

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[29] R. 8 and 13.
[30] House Community and Regional Affairs Committee hearing on HB 272, February 1, 2000.
[31] R. 8, 6090.
[32] R.609.
[33] R. 340, 349-350, 415.
[34] R. 609.

of the project with a dominant profit motive in providing the low income housing.

The hearing officer has considered this Objection, and maintains the position that it is appropriate to look to the financial motivations of the underlying owners of the nominal LLC entity owning and operating the project.

C. Issues.

The issues stated in the appeal filed April 6, 2018, were:

> "A. The Assessor's decision erroneously concluded that the property, (identified as parcels 2D040C050073 and 2D040C050075) fails to qualify as being used exclusively for charitable purposes because "the Articles of Incorporation [do not] include any charitable program or purpose statements to establish the purpose of the organization as charitable." The property is owned by limited liability companies with Operating Agreements, rather than by corporations with Articles of Incorporation. The Operating Agreements set forth the charitable purpose and use of the property.
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> B. The Assessor's decision erroneously cites to the definition of "tax-exempt use" within the Code by the Internal Revenue Service ("IRS"), as referenced in the Operating Agreements of Juneau I VOA LLC and Juneau II VOA LLC, as support for denying the requested real property tax exemption pursuant to Alaska Statute 29.45.030(a)(3). The IRS definition of "tax-exempt use" is not controlling with regard to determining real property tax exemption under Alaska Statute 29.45.030(a)(3).
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> C. The Assessor's decision failed to recognize that Terraces at Lawson Creek is operated in a manner that furthers the charitable purposes of providing decent, safe, sanitary, and affordable housing for low-income persons and families, (including the elderly or physically handicapped, as applicable), as set forth in sections 1.06 of the Operating Agreements of Juneau I VOA LLC and Juneau II VOA LLC.
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> D. The Assessor's decision erroneously denied real property tax exemption for the subject property pursuant to Alaska Statute 29.45.030(a)(3) without any legal reasoning or analysis. Specifically, the Alaska Supreme Court in **Dena Nena Henash**, 88

> P.3d at 130, set forth a two-part analysis: "first, whether there is a nonprofit, charitable purpose, and second, whether the property is being exclusively used for an exempt purpose."

The briefs filed by the parties focus the issues on whether Terraces I or Terraces II qualify for the mandatory tax exemption as property owned by a non-profit entity which is exclusively used for charitable purposes.

III. Standard of Review

Under CBJ Code section 1.50.070, the Assessor's decision may be set aside if:

> "(1) The appellant establishes that the decision is not supported by substantial evidence in light of the whole record, as supplemented at the hearing;
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> (2) The decision is not supported by adequate written findings or the findings fail to inform the appeal agency or the hearing officer of the basis upon which the decision appealed from was made; or
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> (3) The appeal agency or hearing officer failed to follow its own procedures or otherwise denied procedural due process to one or more of the parties."

This section also provides that the burden of proof is on the Appellant.

This case involves an appeal from the denial of a request by Appellants for a property tax exemption for two parcels based upon their use as non-profit charitable use property or non-profit religious use property under AS 29.45.030(a)(3) and CBJ Code 69.10.020(8).[35] The appeal challenges the merits of an Assessor's decision regarding application of the law to the facts. Questions of law are subject to review under a substantial evidence standard.[36] Substantial evidence is "evidence that a 'reasonable mind might accept as adequate to support a conclusion'."[37]

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[35] R. 1-2, 335-336, 554-555.

[36] **Fairbanks North Star Borough v. Dena Nena Henash**, 88 P.3d 124, 128 (Alaska 2004).

[37] **Williams v. Ketchikan Gateway Borough**, 295 P.3d 374, 375 (Alaska 2013).

Here, there is apparently not a dispute about the underlying facts, only the interpretation of those facts as they relate to the charitable exemption. The Appellant argues that the entitlement to an exemption should be interpreted in accordance with the rule that ambiguity is resolved in favor of the taxpayer.[38] Appellee points out that exemptions from ad valorem taxes are narrowly construed.[39]

"A taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption. Furthermore, the courts must narrowly construe statutes granting such exemptions." But, as the superior court observed, "[t]his canon of strict construction 'is an aid to, not a substitute for, statutory interpretation; the interpretation must still be a reasonable one.' "[40] "A taxpayer claiming a tax exemption must produce evidence sufficient to prove the property's eligibility for the exemption."[41]

IV. Discussion

A. Issues not in Dispute.

1. Any request for religious exemption is withdrawn.

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[38] See **Union oil v. dept of rev**, 560 P2d 21 at 25 (Alaska 1977).

[39] "A taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption. Furthermore, the courts must narrowly construe statutes granting such exemptions. The policy behind these rules was expressed in **Animal Rescue League of Boston v. Assessors of Bourne**, 310 Mass. 330, 37 N.E.2d 1019, 1021 (1914): All property is benefited by the security 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 of all. An exemption from taxation releases property from this obligation to bear its share of the cost of government and serves to disturb to some extent, that equality in the distribution of this common burden upon all property which is the object and aim of every just system of taxation. 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." **Greater Anchorage Area Borough v. Sisters of Charity of House of Providence**, 553 P.2d 467, 469 (1976). And See **Fairbanks North Star Borough v. Dena Nena Henash**, 88 P.3d 124, 129 (Alaska 2004).

[40] See **Fairbanks North Star Borough v. Dena Nena Henash**, 88 P.3d 124,129 (Alaska 2004) (Footnotes omitted.)

[41] See **City of Nome v. Catholic Bishop of Northern Alaska**, 707 P.2d 870, (1985) citing **Sisters of Providence in Washington v. Municipality of Anchorage**, 672 P.2d 446, 447 (Alaska 1983).

The initial application for an exemption forms submitted by Appellants asserted entitlement to an exemption under AS 29.45.030(a)(3) as exclusively religious property as well as charitable use property.[42] The CBJ Assessor denied any exemption for religious use.[43] The Appellants have withdrawn or waived any claim to entitlement to an exemption as property used for exclusively religious purposes. Appellants did not address arguments regarding entitlement to a religious use exemption, except when Appellant's Reply Brief specifically stated that "Appellants did not request or imply that the LIHTC Property was used for religious purposes or seek exemption on that basis."[44] This statement is notwithstanding the fact that the application for an exemption indicates a claim of religious use exemption.[45] Moreover, the operating agreements and corporate documents do not address religion or religious use. Accordingly, I find that any request for an exemption for property used exclusively for non-profit religious purposes is withdrawn, and the CBJ Assessor's denial of such request is upheld.

2. Review of the CBJ Assessor's determination of entitlement to exemptions is subject to de novo review as a question of law.

Appellants have argued that the decision of the Assessor regarding charitable exemptions are questions of law, and no deference is due the Assessor's determination.[46] Appellees argue that the case presents an issue of law, and notes that the facts are not in dispute so much as the interpretation of those facts and application of the law.[47] Appellees maintain that the Assessor's conclusions regarding the tax exemption based upon the Assessor's interpretation of statutory and case law is the subject to de novo review, but the Assessor's factual findings are subject to

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[42] R. 2.
[43] R. 554.
[44] Appellant's Reply Brief at 7.
[45] R. 2, 336.
[46] Appellant's Brief at 7.
[47] Appellee's Brief at 2.

the substantial evidence standard of review.[48]

B. Issues in Dispute.

The parties generally agree that the issues are those questions identified in the standard in **Dena Nena Henash**[49]: 1) Is the property used for exclusively charitable purposes; 2) if the use is in exchange for payment, is the payment incidental to and reasonably necessary for the accomplishment of the exempt activity and does not exceed operating costs; and 3) is the payment sought as part of a dominant profit motive? The parties disagree as to the answers to these questions.

1. Are Terraces I and Terraces II used for exclusively non-profit charitable purposes?

Both parties briefed arguments regarding the proper interpretation of AS 29.45.110(d) and whether it precludes an exemption under AS 29.45.030(a)(3).

(a) Does AS 29.45.110(d) preclude an exemption under AS 29.45.030(a)(3)?

The CBJ Assessor's opinion also made reference to the Low-Income Housing Tax Credit reduced assessment program and the qualification of projects in Juneau for the LIHTC exemption program.[50] Appellants challenge the CBJ Assessor's apparent interpretation that LIHTC properties cannot be mandatorily exempt under AS 29.45.030(a)(3) due to the reduced assessment program under AS 29.45.110(d). Appellants argue that the availability of a reduced assessment for LIHTC properties under AS 29.45.110(a) does not preclude an exemption as charitable property under AS 29.45.030(a)(3), and that the two statutes can be interpreted

[48] Appellee's Brief at 3.
[49] 88 P.3d 124, 132-33.
[50] R. 554. Presumably the reference is the reduced assessment program under AS 29.45.110(d) for LIHTC property.

compatibly.[51]

Appellants argue that a separate decision challenging the CBJ Assessor's treatment of the assessment reduction statute applicable to conservation easements, AS 29.45.062(a), was similarly interpreted as allowing a non-profit organization to seek an exemption in addition to the reduction in assessment.[52] Appellants also argue that because the exemption for charitable property is derived from Article IX, Section 4 of the Alaska Constitution, the legislature could not override or remove the entitlement to a non-profit charitable use exemption by adopting AS 29.45.110(d).[53]

Appellee argues that, while the Alaska Supreme Court has not ruled on the issue of whether AS 29.45.110(d) providing for a reduced assessment for LIHTC properties is mutually exclusive with an exemption under AS 29.45.030(a)(3), the entitlement to a complete exemption for LIHTC properties under AS 29.45.0630(a)(3) would render AS 29.45.110(d) largely superfluous, contrary to rules of statutory construction.[54] Appellee also argues that the underlying purpose of AS 29.45.110(d) was not meant to exempt LIHTC projects, and that it was recognized that LIHTC projects were generally run by non-profits.[55] Appellee relies on references to legislative history and hearings on the legislation.

Appellee also relies upon the decision in **Horan v. Kenai Peninsula Borough Board of Equalization**[56], in support of its interpretation of AS 29.45.110(d). Appellee argues that **SEAL Trust v. CBJ Assessor**, a prior case appealed to the Assembly sitting as a Board of Equalization,

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[51] Appellant's Brief at 8.
[52] Appellant's Brief at 9.
[53] Appellant's Reply Brief at 4-5.
[54] Appellee's Brief at 4-5.
[55] Appellee's Brief at 6-7.
[56] 247 P.3d 995 (Alaska 2011)

does not apply to entitle a property owner to both a reduction and an exemption in this case. The **SEAL Trust** matter is not a reported case, and thus is not binding precedent, but may be persuasive authority.[57] Appellee also argues that exemption treatment of LIHTC property in Anchorage is not a relevant guide because the Anchorage Assessor did not consistently treat such property as exempt under AS 29.45.030(a)(3), and corrected an erroneous exemption in 2012.[58]

In response, Appellants argue that the legislature intended AS 29.45.110(d) and AS 29.445.030(a)(3) to be read in harmony and not to eliminate eligibility of LIHTC projects from qualification for an exemption under AS 29.45.030(a)(3). Appellant asserts the legislative debate was focused on costs and benefits of LIHTC projects and that there was no discussion of AS 29.45.030(a)(3) and therefore no intent to override that section.[59] Appellee argues that **Horan** only addressed assessment methodology, not entitlement to an exemption, and further, that **Horan** is distinguishable because "[t]hat property was owned by for-profit entities with no charitable intent and at no time was exemption or AS 29.45.030(a)(3) discussed or interpreted."[60]

The parties offered competing arguments regarding the legislative intent behind AS 29.45.110(d) and whether it precludes a mandatory exemption. "The goal of statutory construction is to give effect to the legislature's intent, with due regard for the meaning the statutory language conveys to others."[61] This involves consideration of "three factors: the language of the statute, the legislative history, and the legislative purpose behind the statute."[62]

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[57] See **McCoy v. State**, 80 P.3d 757 (Alaska App. 2002) and cases cited therein.
[58] Appellee's Brief at 9. And See R. 312-316, 338-339, and 541-543
[59] Appellee's Reply at 3.
[60] Appellees Reply Brief at 3.
[61] **Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.**, 746 P.2d 896 (Alaska 1987).
[62] **Western Star Trucks, Inc. v. Big Iron Equipment Service, Inc.**, 101 P.2d 1047, 1050 (Alaska 2004). See also, **Theresa L. v. State, Dept. of Health & Social Services**, 353 P.3d 831, 838 (Alaska 2015) ("We interpret a statute according to

The Alaska Supreme Court has "rejected a mechanical application of the plain meaning rule in favor of a sliding scale approach."[63] However, the language of the statute is the "primary guide."[64] It is presumed "that every word in the statute was intentionally included, and must be given some effect."[65] "The language of the statute is 'construed in accordance with [its] common usage,' unless the word or phrase in question has 'acquired a peculiar meaning, by virtue of statutory definition or judicial construction'."[66] "The plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be."[67]

"When statutory language is ambiguous, [the court is to] look to the purpose of the legislation and the legislative history for indications of legislative intent."[68] Statutes addressing common subject matter are read "as a whole in order that a total scheme evolves which maintains the integrity of each act and avoids ignoring one or the other."[69] "When interpreting statutes . . . seemingly conflicting provisions must be harmonized unless such interpretation would be at odds with statutory purpose."[70]

Appellants argue that there may be any number of LIHTC projects which are not owned or operated by non-profit entities, and which would not qualify for a mandatory exemption under

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reason, practicality, and common sense taking into account the statute's language, its legislative history, and its purpose.").

[63] **Municipality of Anchorage v. Suzuki**, 41 P.3d 147, 150 (Alaska 2002).

[64] **State v. Strane**, 61 P.3d 1284, 1286 (Alaska 2003) (quoting **Commercial Fisheries Entry Commission v. Apokedak**, 680 P.2d 486, 489-90 (Alaska 1984)).

[65] **Suzuki**, 41 P.3d at 151. See also, **Tesoro Alaska Petroleum Co.**, 746 P.2d at 906.

[66] **Suzuki**, 41 P.3d 147, 150-51 (quoting **Muller v. BP Exploration Alaska Inc.**, 923 P.2d at 783, 788 (Alaska 1996) (citations omitted)).

[67] **Suzuki**, 41 P.3d at 150 (quoting Muller, 923 P.2d at 788 (citation omitted)).

[68] **Municipality of Anchorage v Adamson**, 301 P.3d 569, 576-77 (Alaska 2013).

[69] **Strane**, 61 P.3d at 1286 n. 4 (quoting **Hafting v. Inlandboatmen's Union of the Pacific**, 585 P.2d 870, 878 (Alaska 1978)).

[70] **Davis Wright Tremaine LLP v. State, Dept. of Administration**, 324 P.3d 293, 299 (Alaska 2014) (citing **Progressive Ins. Co. v. Simmons**, 953 P.2d 510, 516-17 (Alaska 1998)).

AS 29.45.030(a)(3), but which would qualify for a reduced assessment under AS 29.45.110(d). The legislative history discussion cited by the parties makes clear that the reduced assessment was intended to benefit non-profit owners and operators of LIHTC projects. The reduced rental income of such projects as compared to market rent projects made it inequitable to assess them based upon a full value when the income approach, taking into account actual rents, would provide a reduced assessed value. Thus, it is clear that a reduced assessment under AS 29.45.110(d) was intended to be available to non-profit owners and operators of LIHTC projects, and the scope of that section was not limited to for-profit LIHTC projects. That legislative history does not support the conclusion that AS 29.45.110(d) was intended to prevent owners of LIHTC projects, in appropriate circumstances, from also qualifying for a mandatory exemption which may apply to the particular property.

While the legislative history clearly supports the intent to entitle LIHTC projects to a reduced tax assessment value, it does not clearly indicate the understanding that non-profit LIHTC projects are entitled to a charitable exemption. In fact, the legislative history supports the opposite conclusion. If every LIHTC project was entitled to a charitable use exemption, then AS 29.45.110(d) would only apply to for profit LIHTC projects. However, the legislative history shows that it was intended to apply to non-profit LIHTC projects. Thus, simply being a LIHTC non-profit project might entitle a property to a reduced assessment under AS 29.45.110(d), but unless there are additional attributes which qualify the property for a mandatory or optional exemption, it will not be entitled to a complete exemption.

Therefore, I conclude that AS 29.45.110(d) was not intended to foreclose application of AS 29.45.030(a)(3) in appropriate factual circumstances. This does not end the inquiry into

whether the use is exclusively for charitable purposes. The parties disputed whether the purpose here is a qualifying charitable purpose. In order to qualify for a mandatory exemption as non-profit charitable use property under AS 29.45.030(a)(3), the property owner here must show entitlement to that exemption.

(b) Is use of the property for the LIHTC project a charitable use?

Appellants argue that Terraces I and Terraces II are both used exclusively for charitable purposes, and therefore qualify for the charitable tax exemption under Article IX, Section 4 of the Alaska Constitution, and the parallel provisions of AS 29.45.030(a)(3) and CBJ Code 69.10.020(8).[71] Appellants argue that the only relevant factor for eligibility for a charitable exemption under AS 29.45.030(a)(3) is whether the subject property is being used for exclusively charitable purposes.[72]

Appellants argue that the Operating Agreement for the LLC which operates Terraces I requires the managing member of the LLC to manage the properties for charitable purposes.[73] Appellants assert the same for Terraces II. Appellants also identify the stated purpose of providing "decent, safe, sanitary, and affordable housing for low-income persons and families (including the elderly or physically handicapped, as applicable)."[74] Appellants argue that these purposes qualify as charitable purposes.

The CBJ Assessor's decision had stated in part that the Articles of Incorporation did not include any charitable program or purpose statements to establish the purpose of the

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[71] Appellants Brief at 7.
[72] Appellant's Brief at 9-10.
[73] Appellant's Brief at 10 citing R. 19-20 and 349. See also R. 341.
[74] Appellant's Brief at 10 R. 8,19-20 and 341.

organization as charitable.[75] Appellants argue that the Assessor erred in concluding that entitlement to a federal tax exemption as a 501(c)(3) charitable organization had no impact on qualification for an exemption from property tax as a non-profit charitable organization.[76]

AS 29.45.030(a) provides in the relevant part:

> "(a) The following property is exempt from general taxation:
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> ...
>
> (3) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes."

CBJ Code 69.10.020 provides:

> "The following property shall be exempt from the general tax levied pursuant to CBJ 69.10.010 and the flat tax levied pursuant to CBJ 69.10.015:
>
> (8) The property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of that property does not exceed the actual cost to the owner of the use by the renter. In order for property to be considered used exclusively for community purposes, its use must benefit a significant portion of the public and the organization seeking the exemption must have a current 501(c)(3) or 501(c)(4) exemption ruling from the Internal Revenue Service. In order to qualify for this exemption, the claimant must file a written application for the exemption no later than January 31 of each assessment year for which the exemption is sought. The application shall be on a form prescribed by the City and Borough Assessor and shall include all information determined necessary by the assessor to determine the character of the organization and the nature of the uses made of the property. An exemption granted under this subsection shall be only for the assessment year for which the exemption was sought."

The CBJ Code defines charitable use as "that property owned by a nonprofit charitable

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[75] R. 554.

[76] Appellant's Brief at 11.

corporation and which is used only for the purpose of improving the moral, mental and physical welfare of the public generally."[77]

The parties did not argue or brief the CBJ Code requirements which are more specific than AS 29.45.030(a)(3) regarding what will show a charitable use, in particular, the requirement to benefit a significant portion of the public and the requirement for a 501c3 or 501c4 exemption ruling from the IRS. The lack of these attributes was part of the basis for the CBJ Assessor's decision.[78] Indirectly, the issue was addressed by both parties in the context of arguments over whether the charitable program or purpose statement was adequate. To the extent that CBJ 69.10.020(8) conflicts with AS 29.45.030(a)(3), it will be preempted.[79] Thus, if the property qualifies under AS 29.45.030(a)(3), that is sufficient.

The Court has discussed various definitions of charitable use. Charity is "A gift to the general public use, which extends to the poor as well as the rich."[80] "What is done out of goodwill and a desire to add to the improvement of the moral, mental, and physical welfare of the public generally comes within this meaning of the word "charity." To crowd out coarseness, cruelty, brutality from social man undoubtedly results in this betterment."[81]

Appellants argue that the Assessor failed to analyze the use of the property in rendering a decision on the exemption.[82] Appellants requested that the hearing officer review the record,

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[77] CBJ Code 69.10.005.

[78] R. 554.

[79] Where there is a conflict between an ordinance and a statute, and the statute and ordinance are so irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law, then the ordinance must give way to the statute. See **Jefferson v. State**, 527 P.2d 37, 43 (Alaska 1974) and see **Chugach Electric v. City of Anchorage**, 476 P.2d 115, 122 (Alaska 1972). "When interpreting statutes . . . seemingly conflicting provisions must be harmonized unless such interpretation would be at odds with statutory purpose.

[80] **Kings Lake Camp**, quoting **Topeka Presbyterian Manor, Inc. v. Board of County Comm'rs of Shawnee County**, 195 Kan 90, 402 P.2d 802, 808 (1965).

[81] **Fairbanks North Star Borough v. Dena Nena Henash**, 88 P.3d 124, 132 (2004)

[82] Appellant's Reply Brief at 6-8.

including portions cited by Appellant, and ascertain that the VOA property is exempt under AS 29.45.030(a)(3).[83]

The Appellant argues that providing low-income housing is a charitable purpose. That purpose is identified as providing "decent, safe, sanitary, and affordable housing for low-income persons and families (including the elderly or physically handicapped, as applicable)."[84] While it is true that providing decent affordable housing may be done out of the goodwill to improve the physical welfare of the public served generally[85], the provision of low-income housing through a deed restricted LIHTC project alone does not qualify as a real property tax-exempt charitable use of property.

The factual circumstances will require more than just nominal compliance with the LIHTC program rental rate limits and deed restrictions. If all that was required were minimally qualifying as a LIHTC project under the federal program and not charging more than the maximum rents permitted by the LIHTC program, then every LIHTC project operated by a non-profit entity would be mandatorily exempt, and AS 29.45.110(d) would only apply to a small subset of the potential LIHTC projects. While the legislative history does not clearly show an intent that a LIHTC project would never qualify for a mandatory exemption, it does indicate that the legislature did not intend that all non-profit LIHTC projects would be exempt. The legislative history does indicate that AS 29.45.110(d) was intended to apply to non-profit operated LIHTC projects, and in fact, the testimony offered by Alaska Housing Finance Corporation and other non-profits in support

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[83] Appellant's Reply Brief at 8.

[84] Appellant's Brief at 10, R. 8,19-20, 341 and 349.

[85] It is debatable whether the benefits are to the public generally, as called for in the CBJ Code definition, **Kings Lake** and **Dena Nena Henash**. The parties have not briefed the distinction between the residents of the LIHTC project who are benefitted as compared with the benefits to the general public.

of the legislation would be unnecessary if all that were required were being a non-profit corporation and owning a federally qualified LIHTC project. Thus, the legislative history of AS 29.45.110(d) supports the conclusion that minimal compliance with the LIHTC program requirement is insufficient, by itself, to qualify for a mandatory charitable exemption.

Additionally, qualification requires more than a provision in the Articles of Incorporation or an Operating Agreement that property will be used for charitable purposes. Many non-profit charitable organizations operate enterprises which generate funding for their programs and are taxable. See for example **Greater Anchorage Area Borough v. Sisters of Charity House of Providence**[86] and **Evangelical Covenant Church of America v. City of Nome**.[87] Thus, the fact that the Operating Agreements for the LLC which operates Terraces I and Terraces II require the managing member of the LLC to manage the properties for charitable purposes[88] is not dispositive.

Similarly, the legislative history quoted by Appellee indicates that the legislature contemplated that a deed restriction for LIHTC properties would not be sufficient to entitle it to an exemption.[89] While this was not a debate on the scope of AS 29.45.030, it was directly on the topic of exemption and assessment of LIHTC properties and indicates the legislature did not contemplate that a deed restriction was sufficient to qualify for a mandatory exemption.

Therefore, I conclude that the Appellant has shown that the use of the property is as a LIHTC project with a deed restriction for use for low-income housing. However, this showing is

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[86] 553 P.2d 467 (Alaska 1976).
[87] 394 P.2d 882 (Alaska 1964).
[88] Appellant's Brief at 10 citing R. 19-20 and 349.
[89] Appellee's Brief at 7 and legislative history cited therein.

insufficient to meet the Appellant's burden to show that the property qualifies for a mandatory exemption under AS 29.45.030(a)(3) as property used for exclusively charitable purposes. Use for low-income housing in compliance with the LIHTC program may entitle a property to a reduced assessment under AS 29,45,110(d). Such use is not automatically a charitable use under AS 29.45.030(a)(3).

Even if the LIHTC program were to be entitled to an exemption for a portion of the property, apportionment would be necessary. While the parties here did not apportion the projects between exempt and non-exempt units, even if the Appellant were correct and the units rented to very low-income persons qualified for an exemption, the Assessor would likely need to review whether the units required apportionment between exempt and non-exempt use. The charitable use exemption requires that the property be owned by a non-profit entity, and to be used exclusively for non-profit charitable purposes. Use of portions of the property for non-charitable purposes does not necessarily disqualify the entire property, but if the non-charitable use is severable may call for spatial apportionment of the exempt and non-exempt use areas of the property and taxation of the portion used for non-charitable purposes.[90]

Factually, the record indicates that there are 40 units in Terraces I[91] and 35 slated for Terraces II.[92] The precedent supports looking at them on a unit-by-unit basis and denying an exemption for any which are not used for charitable purposes. The rental assumptions for Terraces I[93] contemplate 1 unit for a manager, 7 two bedroom units rented at over 90% of market

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[90] See **Ketchikan Indian Community v. Ketchikan Gateway Borough**, 75 P.3d 1042, 1045, n. 8 (Alaska 2003) (citing **City of Nome v. Catholic Bishop of Northern Alaska**, 707 P.2d 870, 875 and 881 (Alaska 1985).

[91] R. 8.

[92] R. 340.

[93] R. 200.

rent, and 8 three bedroom units rented at over 94% of market rent.[94] The restrictive covenant on the project reserves the right to rent 38.46% of the units (15 of 40) as "workforce housing" unencumbered by the household income and occupancy restrictions.[95]

Rentals at so close to market rent do not meet the standard for charity. The overall complex cannot be considered as a unit any more than the medical offices in **Greater Anchorage Area Borough v. Sisters of Charity house of Providence** can be combined with the related exclusive hospital use portions. If the project meets the remaining factors, the status of each unit should be evaluated by the Assessor to determine which units qualify as charitable. Accordingly, even if some of the 25 units in Terraces I and the 35 units in Terraces II used for lower income residents were to be determined entitled to an exemption under AS 29.45.030(a)(3), which I conclude they are not, the Assessor would need to look at the remaining units and apportion the projects between taxable and mandatorily exempt portions.

2. Do rental payments for occupancy of the apartments at Terraces I and Terraces II disqualify the property from a charitable use exemption?

Appellee argues that providing low-income housing, while laudable, is not charitable as that term is used in AS 29.45.030(a)(3).[96] Appellee argues that the rent payments are more analogous to the use in **Greater Anchorage Area Borough v. Sisters of Charity house of Providence**[97] and **Evangelical Covenant Church of America v. City of Nome**[98]; and that the nominal fee payments were not disqualifying in **Kings Lake Camp**.[99] Appellee argues that the

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[94] R. 200.
[95] R. 269, 273.
[96] Appellees Brief at 9-12.
[97] 553 P.2d 467 (Alaska 1976).
[98] 394 P.2d 882 (Alaska 1964).
[99] Appellees Brief at 12-17.

fees allowed in **City of Nome v. Catholic Bishop** and **Kings Lake Camp** are distinguishable because people were not turned away from those housing facilities, while people who do not pay rent to VOA are evicted.[100] Appellee further argues that the rent payment and potential eviction make the use not charitable. Appellants argue in their Reply Brief that the collection of rent does not negate a finding that property is used for exclusively charitable purposes.[101] Appellants also counter that the possibility of eviction does not defeat the charitable purpose because rents are needed to provide the benefits to all remaining qualified tenants.[102]

The fact that **City of Nome v. Catholic Bishop** and **Kings Lake Camp** did not refuse service to persons who could not pay is not dispositive. The Court has held that:

> "We have never interpreted charitable purpose to require, as the borough proposes, a "material gap" between what the charity gives and what the charity receives.
>
> Rather, our decisions have recognized that the existence of a gap between what the beneficiary pays and the value of the services the beneficiary receives could be evidence of a charitable purpose. We held that operating a youth hostel that provided temporary lodging for travelers for a low daily fee was a "gift to the general public," because we concluded that "although some who stay at the Hostel are not needy and could pay more, no one is turned away if the fees are not paid."
>
> Although providing services free of charge is evidence of a charitable purpose, we have not explicitly conditioned charitable purpose eligibility on whether the property supports programs that are free to those who cannot pay. Thus, we have held that properties supporting programs that charge a user fee were exempt, as long as the user fee is "not inspired by a dominant profit motive" or does not exceed operating costs."[103]

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[100] Appellee's Brief at 16.
[101] Appellant's Reply Brief at 9.
[102] Appellant's Reply Brief at 11.
[103] **Fairbanks North Star Borough v. Dena Nena Henash**, 88 P.3d 124, 136 (2004) (Internal footnotes omitted.)

Thus, when there is a charge, the focus is on the relationship of the fee to costs and the profit motive. The receipt of income and rentals by the property does not disqualify the property if the fees are incidental to and reasonably necessary for the carrying out of the primary charitable purposes, and payment is not sought as a result of a dominant profit motive.[104]

The Appellant asserts that the overall project is charitable, and the revenues from all rents are required to serve the charitable purpose. Further, Appellant argues that all of the funds generated by the rents are required for this purpose. Appellants also argue that the balance sheets for Terraces I and Terraces II show no profits above costs for the first 15 years of operation, and any rental fees collected are like the payments in **Kings Lake Camp**.[105] Assuming that Appellant is correct and each property should be treated as an undivided whole for purposes of evaluating charitable purposes, the question remains "how much revenue is necessary for the charitable purposes?"

While the plan is not to produce profit, the budgets and data in the record indicate that the operators and financiers of Terraces I and Terraces II are charging rents based upon the intention of at least having enough operating revenue above expenses to pay real property taxes.[106] The lease and management agreement contemplate that the managing agent will pay all real property taxes[107], and the tenant is responsible for real property taxes.[108] These agreements and budgets illustrate that the project is intended to operate in a manner which generates sufficient funds to pay real property taxes, and allocates responsibility to do so. To the

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[104] **City of Nome v. Catholic Bishop of Northern Alaska**, 707 P.2d 870, 880 (1985).
[105] 439P.2d 441, 445 (Alaska 1968) Appellant's Brief at 12 and 15. R. 18-107, 345-449; 199-219; 430-446.
[106] See R. at 202; 301.
[107] R. at 520.
[108] R. at 475.

extent that those taxes are not paid, the rents represent revenue in excess of charitable purpose needs. While there is a complicated priority list for how excess revenues are applied, one of the possible applications is to the members.[109]

In addition, the rental units which are "workforce housing" are producing returns competitive with market rates. To the extent that Appellant is arguing that the funds generated are needed to support the charitable purpose of lower rents in other units, the Court's decision in **Evangelical Church of America v. City of Nome** supports the conclusion that such rental units are not exempt.

Accordingly, as presented, the revenues are not entirely incidental, and are not all required for charitable purposes. Thus, the property fails this prong of the test.

3. Are the payments received the result of a dominant profit motive?

The Alaska Supreme Court has held that:

> "Our "charitable purposes" doctrine also requires analyzing whether the property sustains activities motivated by a "dominant profit motive." This factor parallels the nonprofit requirement discussed above. Exemption is foreclosed if there is a "real profit motive" in the undertaking."[110]

Appellants explain how the sponsors of LIHTC projects include a mix of entities, and there are for-profit investors which use the federal tax credits available under the program, along with depreciation credits, to benefit from the project, and then exit the project after 10-15 years.[111] Appellants assert that no entity participating in the project will receive a profit from their

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[109] R. 94 and 411.

[110] **Fairbanks North Star Borough v. Dena Nena Henash**, 88 P.3d 124, 132-33 (2004)

[111] Appellant's Brief at 12 and see R. 574-602.

participation in the project.[112]

Appellants argue that the participation of for-profit investors does not alter the fact that the properties are being operated for charitable purposes.[113] Similarly, Appellant's argue that the fact that Intrepid VOA[114] is leasing the property to Juneau II does not alter the fact that the property is being used for exclusively charitable purposes.[115] Appellants argue that the Appellee's characterization of rent as related to a profit motive is unsupported because investors in the VOA property are permitted no management authority, are contractually beholden to the nonprofit purposes of the 501(c)(3) managing entity, and will receive no income from operations nor return on the potential sale of the property.[116]

This factor is the most difficult hurdle for the Appellant to clear. Here, the nominal owner of the building is a non-profit entity. The non-profit nature of the nominal owner of the project is not dispositive. Were it otherwise, any manner of use which provides decent housing for low-income persons could be portrayed as providing some benefit to the public and the beneficial interests structured such that the real party in interest receives payments in the form of management fees, ground rent, or other expenses paid by the nominal non-profit entity owner which enable that entity to report zero income and no distributions to investors. Thus, it is important to look not just at the nominal owner, but the structure of the transaction to determine whether there is a dominant profit motive behind the project purposes.

Here, nearly everyone involved in the project besides the nominal owner has a profit

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[112] Appellant's Brief at 12.
[113] Appellant's Brief at 13.
[114] Intrepid VOA is the LLC which owns the ground under the structures at Terraces II.
[115] Appellant's Brief at 14.
[116] Appellant's Reply Brief at 11-12, Note 32.

motive. The owner of the land with a long-term lease receives substantial rents.[117] The investors, who are members of LLC which is the owner, receive a return on investment which exceeds the return they would receive on bonds.[118] The developers who organized and packaged the project get a fee of over $1 million on Terraces II.[119] The lenders receive funds and interest.[120] Some of the lenders are also developers receiving developer's fees as well.[121]

Appellants point out that investors do not have a share in the operating revenues[122], but this is not the entire story. The investors make significant profits or returns on their investment from the tax credits and depreciation allocations they enjoy. Once those credits are exhausted, they normally exit the project.[123] The LIHTC program was structured to provide incentives for private entities to invest in low-income housing. They do so for their own profit motive because federal subsidy for the program has made it attractive to do so.[124]

Even the members remaining may see financial rewards in the future when the project satisfies the program requirements and the LLC is dissolved. Any remaining assets after satisfying obligations are not provided to another charitable organization, but instead, are distributed to members.[125]

Against this background, the record does not support the conclusion that the Terraces I

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[117] 26,000 per year with a 3% annual escalation (R. 473). This long-term lease creates a separate issue. The property owner likely has a taxable interest in the land separate from the interest of the Appellants in the building and leasehold interest, but that issue is not raised in this case.
[118] R. 580.
[119] R. 569 - $1,315,000 developer fee paid 50% ($675,500) to Trapline/V2, 35% ($460,250) to VOANS, 15% ($197,250) to VOA.
[120] R. 208-213.
[121] R. 128-129, Developer's fee of $1,350,000, 40% to VONS, 10% to VOAAK, 30% to Trapline and 20% to V2.
[122] Investors receive no income from operations nor return on the potential sale of the property. (Appellant's Reply Brief at 11-12, Note 32).
[123] R. 586.
[124] R. 573.
[125] R. 310.

or the Terraces II were developed with a purely charitable purpose in mind. I find that the entities developing the project, investing in the project, and benefitting from the development of the project were acting with a dominant profit motive.

V. Conclusion

With the burden on the applicant to show entitlement to the exemption, the record submitted by the applicant must meet the standards that 1) the property is used exclusively for non-profit charitable purposes; 2) any remuneration must be incidental and necessary to accomplish the charitable purposes; and 3) there must not be an underlying profit motive in the undertaking. Based upon the record, I find that the Appellant has failed to satisfy its burden of proof to establish entitlement to an exemption for Terraces I as property used exclusively for non-profit charitable purposes. Similarly, I find that that the Appellant has failed to satisfy its burden of proof to establish entitlement to an exemption for Terraces II as property used exclusively for non-profit charitable purposes. For both properties, I find that the use of the property for deed restricted low-income housing under the LIHTC program is insufficient on its own to qualify as a charitable use. The Appellant has not offered any evidence or argument for a charitable use apart from the fact that it is a LIHTC qualified property. Therefore, the Appellant has failed to satisfy its burden of establishing entitlement to a charitable use exemption under AS 29.45.030(a)(3).

Findings:

1. The Appellant has shown that the use of the property is as a LIHTC project with a deed restriction for use for low-income housing.

2. The use of property as a deed restricted LIHTC project alone is insufficient to meet the Appellant's burden to show that the property qualifies for a mandatory exemption under AS 29.45.030(a)(3) as property used for exclusively charitable purposes.

3. Use for low-income housing in compliance with the LIHTC program may entitle a property to a reduced assessment under AS 29,45,110(d). Such use is not automatically a charitable use under AS 29.45.030(a)(3).

4. As presented in the record, the revenues from the project are not entirely incidental, and are not all required for charitable purposes.

5. The property is owned by a multi-tiered series of limited liability corporations. The beneficial owners are VOA AK, VOANS and NHT Equity for Terraces I, and VOA AK, VOANS and Key Community Development for Terraces II.

6. Substantial beneficial owners, NHT Equity for Terraces I and Key Community Development for Terraces II, participate as an investment and recover a return in the form of tax credits and tax deductions, and thus participate out of a dominant profit motive.

7. VOANS received a substantial fee as a developer and receives land rents from the projects through a separate subsidiary limited liability corporation.

8. I therefore conclude that the beneficial owners of the project have an underlying profit motive in providing the low-income housing in these two LIHTC projects. While the rents charged may not yield profits available for cash distribution, nonetheless they receive beneficial financial remuneration for their participation in the project because the project is operated within the LIHTC program.

9. Because the project fails all 3 of the criteria from **Dena Nena Henash**[126], the property does not qualify for a charitable use exemption under AS 29.45.030(a)(3).

Submitted this 17th day of January, 2019.

Scott A. Brandt-Erichsen
Hearing Officer

[126] 88 P.3d 124, 132-33.