

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>LARIMER COUNTY BOARD OF COMMISSIONERS, GRAND COUNTY BOARD OF COMMISSIONERS, SCOTT G. CAST, LUCILLE M. YOUNGLUND, DAVID HABECKER, BARBARA M. HOFFMAN, WESLEY E. HOFFMAN AND BRYAN P. MICHENER,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PROPERTY TAX ADMINISTRATOR, and</b></p> <p>Property Owner and Intervenor:</p> <p><b>YMCA OF THE ROCKIES.</b></p>	<p><b>Docket Nos.: 44667, 44670, 44672, 44674, 44677, 44681, 44682, 44683 (consolidated)</b></p>
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<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>GRAND COUNTY BOARD OF COMMISSIONERS, LARIMER COUNTY BOARD OF COMMISSIONERS, AND YMCA OF THE ROCKIES</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PROPERTY TAX ADMINISTRATOR.</b></p>	<p><b>Docket Nos.: 53058, 53173, 53475 and 53476</b></p>
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**ORDER**

**THIS MATTER** is before the Board of Assessment Appeals on remand from the Colorado Court of Appeals. On April 11, 2013, the Court of Appeals vacated the Board's February 2, 2007 Order denying Petitioner YMCA of the Rockies' application for a religious purposes property tax exemption. In the same opinion, the court also vacated the Board's February 25, 2011 Order denying YMCA's application for a charitable use property tax exemption. The Court of Appeals issued a mandate on December 18, 2013.

The Court of Appeals held that the Board erred as a matter of law and remanded for further proceedings consistent with its opinion. For the reasons set forth below, the Board now grants YMCA's application for a religious purposes exemption. Because the Board holds that the YMCA is entitled to a religious purposes exemption for the properties in question, the Board does not address at this time whether the YMCA is additionally entitled to a full or partial charitable use exemption.

## **I. Background and Procedural History**

YMCA of the Rockies ("YMCA") applied for religious purposes and charitable use property tax exemptions for two separate properties in December 2003. The subject properties are described as follows:

### **Estes Park Center**

**2515 Tunnel Road, Estes Park, Colorado**

**Larimer County Parcel Nos.: 3404200022, 3404106001, 3404300032, 3404306006, 3404306008, 3404306010, 3404306012, 3404306021, 3404306034, 3404400064, 3405000022, 3405000024, 3409100001, 3409100028, 3409200006, 3410000013, 3410000014**

The Estes Park Center consists of 179 cabins, 25 vacation homes, and 451 lodge rooms situated on approximately 860 acres of land. Additional amenities include a museum, library, laundromat, chapel, swimming pool, skate park, skating rink, miniature golf course, auditoriums, and multiple conference cabins, dining halls, and administration buildings.

### **Snow Mountain Ranch**

**1101 County Road 53, Granby, Colorado**

**Grand County Parcel No. 158906400179**

Snow Mountain Ranch consists of 40 cabins, 12 vacation homes, and 61 campsites situated on approximately 2,187 acres of land. Additional amenities include a library, laundromat, swimming pool, chapel, conference facilities, dining halls/restaurants, multiple athletic/recreational facilities, and administration buildings.

Both Estes Park Center and Snow Mountain Ranch (collectively, “the properties”) offer a wide variety of recreational activities, including hiking, volleyball, snowshoeing, tennis, ice skating, fishing, mountain biking, basketball, roller skating, miniature golf, softball, crafts, horseback riding, swimming, cross-country skiing, hayrides, ropes courses, and fitness rooms. The properties also offer special activities and family programs including archery, yoga, soccer, nature hikes, arts and crafts, story time at the library, and scavenger hunts. Most activities are free or at a nominal cost to guests. Upon arrival, guests receive a program bulletin that lists all of the activities being offered for the week. The YMCA program materials list bible studies and worship services as well. However, guests are not required to participate in any of the activities or religious services.

The YMCA is a 501(c)(3) non-profit entity exempt from federal income tax. The YMCA filed Applications for Exemption of Property Owned and Used for Religious Purposes with the Property Tax Administrator (PTA) in December 2003. The applications covered the majority of the properties, but did not include some areas that the YMCA conceded did not meet the requirements for the religious purposes or charitable use exemptions. Those areas, including residences of full-time, residential staff and property contracted to third-party vendors for commercial use, are not subject to this order and are not at issue in this appeal.

Karen Dvorak, Property Tax Specialist, analyzed the applications filed with the PTA and conducted field inspections of the subject properties. Ms. Dvorak ultimately recommended granting the religious purposes exemption for both properties, excluding staff housing, liveries, and facilities that the YMCA leases to outside vendors for commercial use. On May 24, 2005, the PTA granted the religious use exemption. The PTA did not consider the YMCA’s request for a charitable use exemption at that time. Petitioners Grand and Larimer Counties and several individual property owners (collectively, “the Counties”) subsequently appealed to the Board on grounds that the properties were being used primarily for commercial, rather than religious, purposes.

The Board conducted a hearing in August 2006 and issued an order in February 2007 reversing the PTA’s determination. The Board held that only the chapels and the religious activities center were exempt. The Board found that the remainder of the two properties were not used “solely and exclusively for religious purposes” as required under Section 39-3-106(1), C.R.S. (2013).

The YMCA appealed the Board's order to the Court of Appeals. The court stayed the appeal to enable the PTA to rule on the YMCA's application for a charitable use exemption. In November 2009, the PTA granted Snow Mountain Ranch a 96% exemption and the Estes Park Center a 97% exemption based on charitable nonresidential use under Section 39-3-108(1)(a), C.R.S.

The Larimer and Grand County Boards of Commissioners appealed the PTA’s charitable use determination to the Board, asserting that the YMCA's use of the properties was not exclusively for charitable purposes. After conducting a hearing in June 2010, the Board issued an order on February 25, 2011 reversing the PTA’s determination. The Board found that the YMCA

had not provided sufficient documentation of its guests' actual use to support its application for a charitable use exemption.

After the YMCA appealed the Board's charitable use Order, the Court of Appeals lifted the stay on the YMCA's appeal of the Board's religious purposes Order and considered both appeals at the same time. On April 11, 2013, the Court of Appeals issued its decision. In its opinion, the court vacated both of the Board's Orders. With regards to the Board's religious purposes Order, the court held that the Board erred as a matter of law in failing to apply the proper legal standards for evaluating a religious purposes exemption. Specifically, the court held that the Board failed to consider the YMCA's religious declaration and its presumptive effect under Section 39-2-117(1)(b)(II), C.R.S. The court went on to hold that in classifying certain YMCA activities as "religious" and others as "secular," the Board ran afoul of the Establishment Clause as well as Section 39-3-106(2), C.R.S.<sup>1</sup>. The court also held that the Board erred in focusing incorrectly on how the YMCA's guests used the properties instead of how the YMCA used the properties in light of its stated religious purpose and mission.

As for the Board's charitable use Order, the Court of Appeals held that the Board erred as a matter of law in applying a presumption against exemption. The court also held that the Board did not adequately consider the majority of activities that the YMCA asserted were charitable uses of the property. Finally, the court ruled that the Board failed to address whether the YMCA was entitled to a partial charitable use exemption if indeed it was not entitled to a full one.

In light of the Court of Appeals' opinion, and after re-examining the law as interpreted by the Court of Appeals, the record, and the parties' briefs, the Board now grants the YMCA a religious purposes exemption for all portions of the properties included in the applications. Because the YMCA qualifies for a property tax exemption under the religious purposes exemption, the Board does not consider at this time the Counties' appeal of the PTA's charitable use determination.

## **II. Religious Purposes Exemption**

The Counties contend that the YMCA does not qualify for a religious purposes exemption because the properties are not used "solely and exclusively for religious purposes." In light of the Court of Appeals' interpretation of Section 39-2-117(1)(b)(II), C.R.S., the Board disagrees.

### **a. Law**

Article X, Section 5 of the Colorado Constitution provides, "Property, real and personal, that is used solely and exclusively for religious worship... shall be exempt from taxation, unless otherwise provided by general law." Colo. Const. Art. X, Section 5. Section 39-3-106(1), C.R.S. likewise provides, "Property, real and personal, which is owned and used solely and exclusively

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<sup>1</sup> ("[T]he general assembly hereby finds and declares... 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....").

for religious purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax.”

Tax exemptions are generally construed narrowly, and in favor of the taxing authority. *Catholic Health Initiatives Colo. v. City of Pueblo*, 207 P.3d 812, 817 (Colo. 2009). Further, the presumption is against tax exemption and the burden is on the party claiming exemption to establish clearly the right to such relief. *Id.*

However, Colorado courts have repeatedly held that tax exemptions for religious purposes are entitled to a “liberal rule of construction.” *McGlone v. First Baptist Church of Denver*, 97 Colo. 427, 431 (1935); *Maurer v. Young Life*, 779 P.2d 1317, 1333 (Colo. 1989). In *Young Life*, the court explained the reasoning behind this policy, “Avoiding a narrow construction of property tax exemptions based upon religious use also 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.” *Id.*; see also *Catholic Health Initiatives Colorado*, 207 P.3d at 818 (“[I]t is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious.”).

Moreover, despite the “solely and exclusively” language in both the constitutional and statutory provisions, Colorado courts have routinely exempted “necessarily incidental” property and activities of religious organizations as part of a “policy of receptiveness toward exemptions implementing the constitutional policy of support for charitable and religious endeavors.” *Young Life*, 779 P.2d at 1332.

As an additional measure of deference towards religious organizations, the General Assembly has declared that:

- religious worship has different meanings to different religious organizations;
- 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;
- many activities of religious organizations are in the furtherance of the religious purposes of such organizations; and
- such religious activities are an integral part of the religious worship of religious organizations.

Section 39-3-106(2), C.R.S. Most importantly for the resolution of this case, the General Assembly has also declared that “activities of religious organizations which are in furtherance of their religious purposes *constitute religious worship* for purposes of section 5 of article X of the Colorado Constitution.” *Id.* (Emphasis added).

Section 39-2-117(1)(b)(II) provides a framework for evaluating an application for a religious purposes exemption. It provides that every application must include “a declaration that sets forth the religious mission and religious purposes of the owner of the property being claimed as exempt and the uses of such property that are in the furtherance of such mission and purposes.” Section 39-2-117(1)(b)(II), C.R.S. Further, the statute provides that the declaration “shall be presumptive as to the religious purposes for which such property is used.” *Id.* Finally, the statute provides that this presumption can only be challenged upon the following three grounds:

- a) “the religious mission and purposes are not religious beliefs sincerely held by the owner of such property,”
- b) “the property being claimed as exempt is not actually used for the purposes set forth in such application,” or
- c) “the property being claimed as exempt is used for private gain or corporate profit.”

*Id.* Accordingly, an organization’s declaration of its religious purposes is presumed valid unless it can be shown that the organization is not sincere in its stated religious mission, the property is not actually being used for the purposes set forth in its declaration, or the property is being used for private gain or corporate profit. *Id.*

## **b. Analysis**

Applying the law as directed by the Court of Appeals to the facts of this case, the Board holds that the YMCA is entitled to a religious purposes exemption for all portions of the properties included within its applications.

### **i. The YMCA’s Religious Declaration**

In its application for a religious purposes exemption, the YMCA explains its religious mission and outlines its strategy for accomplishing that mission. The YMCA states that its “primary purpose” is:

to provide a Christian environment and the necessary facilities and equipment to hold religious and educational conferences in the interests of youth; to foster in every way possible the interests and program of the Young Men's Christian Associations; and, to provide a program for family groups under Christian leadership.

The YMCA explains that “a Christian environment is based on Christian principles,” and, accordingly, it strives to put “Christian principles into practice through programs, staff and facilities in an environment that builds healthy spirit, mind and body for all.” The YMCA lists six principles that it believes form the foundation of a Christian environment: 1) strong and unified families; 2) character and educational development for youth; 3) stewardship of one’s

mind, body, and spirit; 4) appreciation of and respect for the beauty of God's creation; 5) service to the community and the needy; and 6) scriptural teaching.

The application also sets forth the YMCA's strategy in promoting these principles and in fostering a Christian environment:

We will accomplish this by serving conferences of a religious, educational or recreational nature, providing unifying experiences for families, offering traditional summer camping experiences for boys and girls, and serving our staff with leadership opportunities and productive work experiences.

The YMCA explains in its application that the ultimate goal of introducing guests into its Christian environment is to further unite people "by a common loyalty to Jesus Christ for the purpose of building Christian personality and a Christian society." The YMCA's overarching philosophy is that Christianity is more effectively promoted through creating "receptivity to Christian principles" than by directly "proselytizing." The YMCA uses a metaphor to illustrate this concept:

Before the grain of Christian faith may be harvested, a number of steps are required including planting a seed and providing nourishment until the grain is ripe.... However, before a seed can even be planted, it is often necessary to prepare the soil (representing a person's mind and spirit) to receive the seed or create an environment conducive to spiritual growth. This is where YMCA's Christian environment often fits in. The environment, which is open to people of all faiths (or no faith), is intended to create in all people a receptive mind and spirit to the "seed" of Christian principles.

Under Section 39-2-117(1)(b)(II), the declaration contained in an organization's religious purposes application is presumed to be valid. *Larimer Cnty. Bd. Of Comm'rs v. Prop. Tax Adm'r*, 316 P.3d 60, 69 (Colo. App. 2013). Accordingly, the YMCA's declaration can be challenged only upon a showing that 1) the YMCA is not sincere in its stated religious mission and purpose; 2) the properties are not actually being used for the purposes set forth in the YMCA's application; or 3) the properties are being used for private gain or corporate profit. Section 39-2-117(1)(b)(II), C.R.S. We address each of these factors in turn.

## **ii. Sincerity**

After reviewing the record, the Board has no reason to doubt that the YMCA is sincere in its stated religious mission and purpose.

The YMCA has identified itself as a Christian organization since its inception in 1907. Every year, the YMCA's board members are required to confirm their loyalty to Jesus Christ. Specifically, they are required to affirm the following statement:

The Young Men's Christian Association we regard as being, in its essential genius, a world wide fellowship united by a common loyalty to Jesus Christ for the purpose of building a Christian personality and a Christian society.

Further evidence that the beliefs expressed in YMCA's application are sincerely held is that the same statements of belief can be found in the YMCA's other corporate materials. For example, the YMCA's articles of incorporation provide that the organization's "primary purpose" is to "provide a Christian environment and the necessary facilities and equipment to hold religious and educational conferences in the interests of youth..." Likewise, the YMCA's "vision statement," which was adopted by its board of directors, reads, "That the spirit of the YMCA of the Rockies be enhanced and handed from generation to generation for the good of all people and for God's glory." In 1998, five years prior to filing its application for a religious purposes exemption, the YMCA instituted a "strategic plan," a focus of which was to "lift up the 'C' in YMCA of the Rockies." The plan outlined several of the organization's goals, which included "further strengthening the Christian atmosphere for members, staff and the surrounding community" and "increasing the opportunities for personal and spiritual development for staff."

The Counties argue that the lack of overtly Christian references in the YMCA's promotional literature is evidence that the organization is not sincere in its stated religious mission. However, the Board is not convinced that the YMCA's decision not to advertise the more overtly religious aspects of the properties in its promotional literature is indicative of a lack of sincerity. In making this finding, the Board relies on the YMCA's application and the testimony of YMCA CEO Kent Meyer. In its application, the YMCA explains that the core of its philosophy is that Christianity is more effectively promoted through creating a "receptivity to Christian principles" rather than by directly "proselytizing." At the hearing, Mr. Meyer stated that the goal of the YMCA's advertising is simply to bring people into their Christian environment. Mr. Meyer explained that advertising the properties in an expressly religious manner would alienate potential guests and discourage them from visiting the properties, thus undermining, instead of advancing, the YMCA's mission. The YMCA's marketing director, Ms. Van Horn, expressed a similar sentiment in her testimony, "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."

### **iii. Actual Use**

The presumed validity of the YMCA's stated religious purposes may also be challenged on the basis that the property is not actually used for the purposes set forth in the YMCA's application. In this regard, the Court of Appeals directed the Board to analyze the actual use of the properties in relation to the purposes set forth in the YMCA's application. The YMCA's application provides that the organization's religious mission is to build a Christian society by introducing people into its "Christian environment." The YMCA believes that a Christian environment is built upon the following six principles: 1) strong and unified families; 2) character and educational development for youth; 3) stewardship of one's mind, body, and spirit; 4) appreciation of and respect for the beauty of God's creation; 5) service to the community and the needy; and 6) scriptural teaching. In light of Section 39-2-117(1)(b)(II) and the Court of Appeal's interpretation of it, the Board finds that the properties are being used for the purposes



set forth in the YMCA's application and that the YMCA's activities are thus in furtherance of its religious purposes.

In order to promote strong and unified families, the YMCA offers a range of special family-oriented activities, including family nature hikes, yoga, arts and crafts, story time, and scavenger hunts. For youth character and educational development, the YMCA provides school sponsored programming for over 10,000 public school children every year. To promote "appreciation of and respect for God's creation," the YMCA provides hiking, snowshoeing, skiing, horseback riding, and hayrides, among other outdoor activities. As part of its commitment to provide service to the community and the needy, the YMCA offers overnight lodging for transient visitors at no cost and discount lodging for families struggling financially. The YMCA also has a policy to never refuse a child admission to its summer camp, Camp Chief Ouray, even if the child's family cannot afford to pay the camp fees. To foster stewardship of the mind, body, and spirit, the YMCA offers a host of physical activities including mountain biking, tennis, swimming, and volleyball. The YMCA also provides access to ropes courses and fitness rooms.

As part of its mission to encourage physical and mental health, the YMCA prohibits the use of alcohol and drugs on its property. In addition to providing public school programming, the YMCA also offers outdoor educational activities, including courses on survival skills, bird-banding, and meteorology. Finally, to encourage spiritual growth, the YMCA provides church worship services, holy communion services, vespers, Bible studies, spiritual counseling, Sunday school programs, and evening campfire devotions.

The Counties have not offered any evidence that the actual use of the properties is in conflict with YMCA's stated religious purposes. For example, the Counties have not articulated how any of the YMCA's programs conflict with the Christian principles outlined in its application. Instead, the Counties argue that the YMCA "operates like any other resort" and that activities like hiking, skiing, and fishing are not sufficiently religious to warrant exemption. However, as discussed above, Colorado statutes as well as the First Amendment prohibit the kind of analysis that the Counties ask us to engage in. Under Section 39-3-106(2), public officials are prohibited "from inquiring as to whether particular activities of religious organizations constitute religious worship."<sup>2</sup> Instead, under Section 39-2-117(1)(b)(II), the relevant question is whether the actual use of the property is in line with the organization's stated religious purposes, *not* whether the organization's purposes or activities are objectively "religious."

The Counties also argue that the YMCA's marketing and advertising strategies are in conflict with the YMCA's stated religious purposes. The Counties note that the YMCA avoids overtly religious references in its marketing materials and that it encourages individuals of all faiths, and of no faith, to use its properties. However, while this is true, the YMCA's marketing strategies do not conflict with the organization's stated mission. In fact, the YMCA's application states that guests who visit the properties for purely secular reasons are "particularly important to

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<sup>2</sup>See also *Catholic Health Initiatives Colorado*, 207 P.3d at 818 ("[I]t is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious.").

YMCA's religious mission because they are the ones that YMCA has a unique ability to influence."

Finally, the Counties argue that the YMCA's education of public school children and its receipt of government bonds runs contrary to the YMCA's stated religious purposes. The Counties maintain that the YMCA's agreement not to provide any expressly religious content in its public school programming cannot be reconciled with its mission as an allegedly Christian organization. The Counties argue that the YMCA's curriculum cannot be "religious" in the property tax sense and at the same time be "secular" in the public education-religious neutrality sense. Again, however, based on the Court of Appeals direction to analyze the use of the properties only in light of the YMCA's application and its stated purposes, rather than through any objective definitions of terms like "religious" or "Christian," the Board must reject the Counties' argument. At the 2006 hearing, YMCA CEO Kent Meyer explained how the education of public school children furthers the YMCA's Christian purposes, "if the school approves a curriculum where we're teaching respect and responsibility for the environment, if the school approves the program where we're teaching respect for the other children that are with the group, that's great, and we can do that because we also teach that, but the reason we teach it is to further our Christian purpose." Accordingly, even though this kind of curriculum is not "Christian" or even "religious" in a traditional sense, we are directed by the Court of Appeals, under Section 39-2-117(1)(b)(II), to consider only whether the curriculum furthers one of the YMCA's stated purposes. Because the YMCA's Christian purposes are broad enough to be furthered by teaching children a message as generic as "responsibility for the environment," the Board concludes that the education of public school children is a use of the properties in furtherance of the YMCA's stated religious purposes.

The Board must reject the Counties' argument regarding the YMCA's receipt of government bonds for the same reason. While the YMCA agreed to use the bonds for non-"pervasively sectarian" purposes, the YMCA was still capable of using the money to further its stated religious purposes, because those purposes, by the organization's own account even, are non-sectarian.<sup>3</sup>

#### **iv. Private Gain/Corporate Profit**

Finally, the Board holds that the properties are not being used for private gain or corporate profit.

The YMCA is exempt from taxation under section 501(c)(3) of the Internal Revenue Code as a non-profit organization. The YMCA's articles of incorporation provide that the facilities "shall not be operated for profit," but only for "charitable, religious and educational purposes." Between the years 2002 and 2007, the YMCA's expenditures exceeded its revenue from fees by an average of nearly \$1.5 million per year. Further, evidence at the hearing indicated that the YMCA would be insolvent if not for receiving millions of dollars in donations

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<sup>3</sup> Mr. Meyer explained at the 2006 hearing that the YMCA, while religious, does not view itself as a "sectarian" organization. Accordingly, he explained, the organization did not have any reservations about using the bond money.

every year. The YMCA is also kept operational through thousands of hours of work from volunteers.

The Counties argue that the YMCA does not qualify as a non-profit because it charges fees. However, Colorado courts have repeatedly held that charging fees does not, by itself, preclude the award of a property tax exemption. *See, e.g., Board of Assessment Appeals v. AM/FM Int'l*, 940 P.2d 338, 347 (Colo. 1997). Further, in this case, the YMCA is clearly not using its fees to “accumulate wealth,” as the Counties argue, given that the YMCA operates at a significant loss even though it generates some revenue from fees.

Finally, while the Counties contend that the YMCA pays its officers a “significant” salary, there is no evidence in the record to suggest that the YMCA’s officers or employees are paid more than “reasonable compensation for services rendered” as allowed under the statutory definition of “Not for private gain or corporate profit.” *See* Section 39-1-102(8.5), C.R.S. (2013). Further, at the 2006 hearing, the YMCA’s CFO detailed the procedures followed by the board of directors in setting the compensation for YMCA employees, including YMCA’s CEO. The procedures utilized by the board are meant to ensure that compensation for YMCA employees is comparable to similar organizations. Moreover, in its initial review of the YMCA’s application, the PTA found that there was “no evidence that anyone derives an excessive pecuniary benefit from the operation of the subject property.”

#### **v. The Counties’ Other Arguments**

The Counties devote a substantial portion of their brief to arguing that this case would be resolved against the YMCA under Illinois law. The Counties contend that Illinois law is relevant because Illinois’s religious exemption statute is similar to Colorado’s. The Counties further assert that the Colorado Supreme Court, in *Gen. Conference of Church of God-7<sup>th</sup> Day v. Carper*, 192 Colo. 178, 182 (1976), expressly acknowledged the similarity between Colorado and Illinois statutory provisions pertaining to the religious purposes exemption. To be clear, in *Carper*, the court did not hold that Colorado’s religious purposes statute was similar to Illinois’s, but instead noted that *Illinois* courts considered Colorado’s statute to be similar to Illinois’s. In any case, however, the Board believes that Colorado’s statutory framework requires a different analysis than that undergone by the Illinois cases cited by the Counties.

In arguing that the YMCA’s stated purpose of creating a Christian environment is not sufficiently religious to qualify for an exemption, the Counties cite to *Fairview Haven v. Department of Revenue*, 153 Ill. App. 3d 763 (1987). In *Fairview Haven*, the Illinois Court of Appeals held that an organization’s religious purpose must be narrower than simply “Christian service” in order to qualify for a tax exemption. The court reasoned that if “Christian service” was an adequate purpose, then “religious purpose” would be effectively meaningless under the statute because virtually any activity could qualify as such. Following *Fairview Haven*, the court in *Provena Covenant Med. Center v. Department of Rev.*, 384 Ill. App. 3d 734, 766-67 (2008) reasoned, “If ‘religious purpose’ meant whatever one did in the name of religion, it would be an unlimited and amorphous concept. Exemption would be the rule, and taxation the exception.” The *Provena* court held that religious use has a “determinable nature” and declared that in order

to qualify as “religious” for purposes of a tax exemption, an activity must fall under one of three categories: public worship, Sunday school, or religious instruction. *Id.*

Although the Counties insist that Colorado’s statutory framework is similar to Illinois’s, Section 39-3-106(2), C.R.S. forbids the kind of analysis performed by the Illinois courts in the above cases. Under Section 39-3-106(2), public officials are prevented from “inquiring as to whether particular activities of religious organizations constitute religious worship.” Accordingly, while Illinois courts have held that religious use has a “determinable nature” and that an activity must fit inside one of three specified categories in order to be considered “religious,” the Colorado General Assembly has declared just the opposite and has instructed that “religious worship has different meanings to different religious organizations” and that “activities of religious organizations which are in furtherance of their religious purposes constitute religious worship...” *Id.* (Emphasis added). Further, not only are we required to interpret “religious purpose” more broadly than Illinois courts, but under Section 39-2-117(1)(b)(II) a religious organization’s declaration of its religious purpose is presumptive “as to the religious purposes for which such property is used.” Consequently, Illinois case law on the religious purposes exemption has little to no bearing on the resolution of this case.

### **c. Conclusion**

Under Section 39-2-117(1)(b)(II), an organization’s religious declaration is “presumptive as to the religious purposes for which such property is used.” This presumption can only be challenged upon a showing that the organization is not sincere in its stated religious mission, that the property is not actually being used for the purposes set forth in organization’s application, or that the property is being used for private gain or corporate profit. In this case, the YMCA’s application states that its mission is to bring people into its Christian environment for the purpose of building a Christian society. The declaration states further that the YMCA creates its Christian environment through the promotion of six core Christian principles. The Board finds that the YMCA is sincere in its stated religious mission. Further, the record supports that the properties are used for the purpose of promoting the YMCA’s Christian principles. Finally, the record supports that the YMCA is a non-profit organization and that the properties are not being used for private gain or corporate profit. Accordingly, the Board holds that the YMCA’s declaration of its religious mission and purposes is valid and that the properties in question are used in furtherance of the YMCA’s stated religious mission and purposes. Finally, because activities that are performed in furtherance of an organization’s religious purposes constitute “religious worship” under Section 39-3-106(2), the Board holds that the YMCA uses the properties solely and exclusively for religious worship and is thus entitled to a religious purposes exemption for all areas of the properties included within its application.

### **III. Charitable Use Exemption**

Because the Board holds that the YMCA is entitled to a religious purposes exemption for the properties in question, the Board does not address whether the YMCA is additionally entitled to a full or partial charitable use exemption. In the event that the Board’s holding regarding the YMCA’s religious purposes exemption is reversed on appeal, the Board will consider at that time the Counties’ appeal of the PTA’s charitable use determination.

**ORDER:**

The properties identified in the YMCA's applications for exemption (located at the Estes Park Center and Snow Mountain Ranch) qualify as exempt properties owned and used solely and exclusively for religious purposes.

**APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

**DATED and MAILED** this 1st day of August, 2014.



**BOARD OF ASSESSMENT APPEALS**

*Debra A. Baumbach*

Debra A. Baumbach

*Louisa Maricle*

Louisa Maricle

*Sondra W. Mercier*

Sondra W. Mercier

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

*Milla Vishchuk*

Milla Vishchuk