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CONGREGATION CHATEAU PARK SEFARD, Plaintiff, v. TOWNSHIP OF LAKEWOOD, Defendant.	)	TAX COURT OF NEW JERSEY DOCKET NO. 010868-2016 Approved for Publication In the New Jersey Tax Court Reports

Decided: October 20, 2017

John F. Casey for plaintiff (Chiesa, Shahinian & Giantomasi, P.C, attorneys).

Lani M. Lombardi for defendant (Cleary, Giacobbe, Alfieri & Jacobs, LLC, attorneys).

DeALMEIDA, P.J.T.C.

The question before the court is whether a residence in Lakewood Township qualifies for an exemption from local property taxes as a parsonage occupied by an officiating clergyman within the meaning of N.J.S.A. 54:4-3.6. There is no dispute that plaintiff, a religious corporation, owns the residence, and that the home is occupied by a rabbi who officiates at religious services for plaintiff's congregation. The dispute arises from the decision of the municipal tax assessor to deny an exemption for the residence because the building in which the rabbi officiates, the community center on the common property of a condominium association, is neither owned by plaintiff, nor exempt from taxation.

For the reasons explained more fully below, the court concludes that the parsonage exemption is not contingent on the ownership or exempt status of the building in which the

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occupant of the parsonage officiates at worship services. The relevant statute sets forth in plain terms the criteria for a parsonage exemption, none of which concerns the ownership or tax-exempt status of any building other than the parsonage itself. To infer any such requirements where none exists in the statute would constitute a trespass on legislative authority by this court.

In reaching this conclusion, the court determines that the holding in Borough of Chester v. World Challenge, Inc., 14 N.J. Tax 20, 27 (Tax 1994), that the parsonage exemption is "a derivative exemption" requiring the "association of the parsonage with an exempt church" refers to the "church" in the sense of a religious congregation and not as an exempt building. Judge Lasser's opinion nowhere analyzes the ownership or exempt status of the building in that case, a Broadway Theater, in which the members of the religious organization that owned the parsonage met for services. Instead, the court based its denial of the parsonage exemption on the fact that the members of the organization met, worshipped, and provided charitable services in New York State and not in New Jersey. Because there is no dispute in the present matter that the occupant of the subject property officiates at religious services in New Jersey for a congregation that practices its faith in this State, the grant of an exemption here does not contradict the holding in World Challenge. Moreover, to the extent that the holding in World Challenge can be interpreted as predicating the award of a parsonage exemption on the tax-exempt status of the building in which the resident of the parsonage officiates, this court declines to follow that decision.

I. Findings of Fact

The court makes the following findings of fact based on the materials submitted by the parties in support of their cross-motions for summary judgment.

Plaintiff Congregation Chateau Park Sefard (the "Congregation") is a tax-exempt, non-profit religious organization. In 2014, the Congregation took title to a residence in defendant

Lakewood Township. The property, a one-family home, is designated in the records of the municipality as Block 430, Lot 37.15 and is commonly known as 26 Shayas Road. The residence is occupied by Rabbi Moshe Wosner, the officiating clergyman of the Congregation.

The Congregation, which has over 100 paying members, holds prayers services six times a day in a building located at 71 Cushman Street in Lakewood. In addition, the Congregation conducts two religious studies classes at the Cushman Street property on a daily basis, and stores two Torahs in an Ark at the property on a permanent basis.

The Cushman Street building is on property designated in the records of the municipality as Block 430, Lot 56.01. The parcel is owned by the Chateau Park Homeowners Association, Inc. ("Chateau Park HOA"), a non-profit entity created with the sole purpose of being a homeowners association responsible for controlling and administering the common areas of the Chateau Park planned development. According to the Chateau Park HOA Master Deed and By-Laws, all "common areas" of the planned development are owned by the owners of each single-family residential dwelling unit within the development as tenants in common, with each owning an undivided 1.124% interest. The subject property is not part of the Chateau Park planned development.[1]

The municipal tax assessor designated the Cushman Street property as non-exempt, Class 2 Residential Property with the notation "clubhouse." The assessor apportioned the value of the parcel equally among the residential units in the Chateau Park planned development, and added

[1] The Congregation contends that many of its members own homes in the Chateau Park development and, therefore, have an ownership interest in the Cushman Street property. This contention was not developed in the motion record and, given the court's holding, is not germane to the award of an exemption to the subject property. The court offers no opinion with respect to the significance, if any, of the ownership interest of the members of the Congregation in the Cushman Street property.

the proportional share of value to the assessment on each residential unit. Because the full value of the Cushman Street property is reflected in the collective assessments on the residential units in the development, the assessor assigned the Cushman Street property an assessment of $0.

In July 2015, the Congregation filed an initial statement requesting that the assessor grant the Shayas Road residence an exemption from local property taxes for tax year 2016 as a parsonage pursuant to N.J.S.A. 54:4-3.6.

On September 24, 2015, the municipal tax assessor denied the exemption. His denial letter provided, in relevant part:

> The Assessor's office regrets to inform you that your application for real property exemption pursuant to N.J.S. 54:4-3.6 has been denied for tax year 2016 for the following reason(s):
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> No associated exempt house of worship in congregation name.

The Congregation challenged the assessor's determination before the Ocean County Board of Taxation.

On June 15, 2016, the county board issued a Judgment affirming the assessor's denial of the exemption.

On July 25, 2016, the Congregation filed a Complaint in this court challenging the Judgment of the county board.

On October 26, 2016, the Congregation moved for summary judgment in its favor. In its moving papers, the Congregation argued that the sole basis for the tax assessor's denial of the exemption was that the Congregation did not own the property at which the occupant of the subject property officiates at religious services.

On January 10, 2017, the municipality opposed the Congregation's motion and cross-moved for summary judgment in its favor.

After oral argument on the motion and cross-motion, the court ordered supplemental briefing and evidentiary submissions. The parties agreed that the court would decide the motions without additional oral argument once the supplemental submissions had been made. The final supplemental submission was received on September 1, 2017. It is apparent from the supplemental submissions that the municipality advances a second basis for the denial of the exemption: that the property at which the Congregation holds services is not itself exempt from local property taxes.

II. Conclusions of Law

Summary judgment should be granted where "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2. In Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995), our Supreme Court established the standard for summary judgment as follows:

> [W]hen deciding a motion for summary judgment under Rule 4:46-2, the determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

The court finds that there are no disputed material facts in this matter. The parties' claims, therefore, are ripe for resolution by summary judgment.

The Legislature provided a parsonage exemption through enactment of N.J.S.A. 54:4-3.6. That statute provides an exemption for "the buildings, not exceeding two, actually occupied as a parsonage by the officiating clergymen of any religious corporation of this State, together with the accessory buildings located on the same premises . . . ." N.J.S.A. 54:4-3.6. The exemption includes the land, not to exceed five acres, on which the premises are located, provided those lands

are necessary for the fair enjoyment of the premises and are devoted to no purpose other than for use as a parsonage. Ibid. In addition, the statute provides that the exemption is met only if the premises, the land and any entities occupying them are not conducted for profit and "shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is . . . authorized to carry out the purposes on account of which the exemption is claimed." Ibid.

The unambiguous language of the statute provides for an exemption if five factors are met: (1) the residence must be occupied as a parsonage by the officiating clergyman of a religious corporation of this State; (2) the land on which the residence sits, not in excess of five acres, must be necessary for the fair enjoyment of the premises and not devoted to a purpose other than use as a parsonage; (3) the entity claiming the exemption must not be conducted for profit, nor may the building or land associated with the parsonage be conducted for profit; (4) the entity claiming the exemption must own "the property in question"; and (5) the entity seeking the exemption must be authorized to carry out the purposes of a parsonage.

In applying these statutory criteria to the facts in this case, the court is mindful that because they represent a departure from the fundamental approach that all property owners bear their fair share of the local property tax burden "[t]ax exemption statutes are strictly construed, and the burden of proving entitlement to an exemption is on the party seeking it." Abunda Life Church of Body, Mind & Spirit v. City of Asbury Park, 18 N.J. Tax 483, 485 (App. Div. 1999)(citing New Jersey Carpenters Apprentice Training and Educ. Fund v. Borough of Kenilworth, 147 N.J. 171, 177-78 (1996), cert. denied, 520 U.S. 1241, 117 S. Ct. 1845, 137 L. Ed. 2d 1048 (1997); Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 214 (1961)). "'[A]ll doubts are resolved against those seeking the benefit of a statutory exemption . . . .'" World Challenge, supra, 14 N.J. Tax at

27 (quoting Township of Teaneck v. Lutheran Bible Inst., 20 N.J. 86, 90 (1955)). These standards, however, do "not justify distorting the language or the legislative intent" of the exemption statute. Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 398 (1977). "[W]hile the construction of the applicable statute must be strict, it must also be reasonable." Phillipsburg Riverview Org., Inc. v. Town of Phillipsburg, 26 N.J. Tax 167, 175 (Tax 2011)(citing International School Serv., Inc. v. Township of West Windsor, 412 N.J. Super. 511, 524 (App. Div. 2010), aff'd, 207 N.J. 3 (2011)), aff'd, 27 N.J. Tax 188 (App. Div.), certif. denied, 215 N.J. 486 (2013). "The rule of strict construction must not defeat the evident legislative design." Ibid.

This court has recognized that a parsonage is "defined as a 'house owned, or held in trust, by a religious organization for religious uses in which a minister serving those uses lives.'" Friends of Ahi Ezer Congregation v. City of Long Branch, 16 N.J. Tax 591, 594 (Tax 1997)(quoting St. Matthew's Lutheran Church for the Deaf v. Division of Tax Appeals, 18 N.J. Super. 552, 557 (App. Div. 1952)). There is no dispute that Rabbi Wosner is an officiating clergyman of the Congregation who resides in the Shayas Road residence.

In addition, there is no dispute that the Shayas Road parcel is less than five acres, that the land is necessary for the fair enjoyment of the premises, and is devoted only to use as a parsonage. Nor is there any dispute that Congregation owns the Shayas Road property, is a non-profit organization, and that the residence is operated only as a parsonage, a purpose consistent with the organizational purpose of the Congregation. The five express statutory criteria for the exemption, therefore, have been met.

The municipality's denial of the exemption is based on the ownership and tax-exempt status of the Cushman Street property, where the Congregation meets to worship and engage in other religious activities. The unambiguous language of the controlling statute, however, does not

predicate the award of a parsonage exemption on these factors. The exemption applies to "the buildings, not exceeding two, actually occupied as a parsonage" and the statute's only reference to property ownership requires that "the association, corporation or institution claiming the exemption owns the property in question . . . ." N.J.S.A. 54:4-3.6.

Statutory construction begins with the statute's plain language. Merin v. Maglaki, 126 N.J. 430, 434 (1992). "A statute should be interpreted in accordance with its plain meaning if it is clear and unambiguous on its face and admits of only one interpretation." Board of Educ. v. Neptune Twp. Educ. Ass'n, 144 N.J. 16, 25 (1996)(quotations omitted). "[T]he best approach to the meaning of a tax statute is to give to the words used by the Legislature their generally accepted meaning, unless another or different meaning is expressly indicated." Public Serv. Elec. & Gas Co. v. Township of Woodbridge, 73 N.J. 474, 478 (1977)(quotations omitted). "'The duty of . . . this court, is to give meaning to the wording of the statute and, where the words used are unambiguous, apply its plain meaning in the absence of a legislative intent to the contrary.'" Vassilidze v. Director, Div. of Taxation, 24 N.J. Tax 278, 291 (Tax 2008)(quoting Sutkowski v. Director, Div. of Taxation, 312 N.J. Super. 465, 475 (App. Div. 1998)).

The statute is amendable to only one interpretation: "the property in question" that must be owned by the entity claiming a parsonage exemption is the parsonage. The place at which the officiating clergyman resides is the subject of the parsonage exemption and is, therefore, "in question" when the statutory provisions are applied. No portion of N.J.S.A. 54:4-3.6 links an award of the parsonage exemption to the ownership of the property at which the officiating clergyman presides at religious services.

This observation is consistent with the approach taken in the past by this court. For example, in City of Plainfield v. Goodwill Home and Missions, Inc., 4 N.J. Tax 537 (Tax 1982),

this court rejected the municipality's contention, not expressly stated in N.J.S.A. 54:4-3.6, that to qualify for an exemption a parsonage need be located in the same taxing district as the building at which the clergyman occupying the parsonage officiates at religious worship. As the court explained,

> There is nothing either in the present statutory language or in any of the precursory legislative enactments exempting parsonages from local property taxation from which it could be said that the Legislature actually intended to limit the exemption to only those parsonages that were located in the same taxing district as their church buildings.
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> [Id. at 539.]

The court continued:

> There is not the slightest suggestion in the statutory language that would deny an exemption for a parsonage simply because it was not located in the same taxing district as the church owned by the claimant.
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> It is clear that the function of the judiciary is to interpret, not to legislate. If the words of a statute plainly convey legislative intent, we must give effect to the language employed by the legislative body. The plain language of the exemption provision suggests that [the taxing district's] contention is wide of the mark. To conclude otherwise would require this court to add additional words to the parsonage exemption in N.J.S.A. 54:4-3.6.
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> To make the distinction between parsonages as posited by Plainfield would, in the absence of any indications of legislative intent to that effect, be to engage in judicial legislation. This court does not have the authority to write into the statute additional limitations to the exemption grant where, as here, the parsonage provision is clear and unambiguous.
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> [Id. at 540-541 (citations omitted).]

This is precisely the case here. Because N.J.S.A. 54:4-3.6 is unequivocal in setting forth the requirements for a parsonage exemption, and those express requirements do not address the ownership of the property at which the occupant of the parsonage officiates, there is no cause to

resort to legislative history or intent to interpret the statute and no judicial authority to add a requirement to the statute. The Legislature addressed ownership only once in N.J.S.A. 54:4-3.6. The only property that the Congregation must own to obtain a parsonage exemption is the parsonage itself. See St. Matthew's Lutheran Church, supra, (finding home of pastor who officiated at a church owned by a separate congregation qualified for parsonage exemption).

Nor is there a statutory requirement that the parsonage exemption can be obtained only where the officiating clergyman who resides in the parsonage officiates at religious services in a building that is itself exempt. There is an absence of a statutory provision creating such a requirement.

In support of its position, the municipality relies primarily on the holding in World Challenge, Inc., supra. That case concerned a residence in Morris County for which a parsonage exemption was sought. The owner of the residence was World Challenge, Inc., a Texas non-profit corporation doing business as a trans-denominational church. 14 N.J. Tax at 24-25. As Judge Lasser found:

> There is no evidence that any of World Challenge's activities are carried on in New Jersey with the exception of its ownership of the subject property. World Challenge's activities in evidence are principally in New York City, where it operates Times Square Church located in the Mark Hellinger Theater at 51st Street and Broadway. It also operates Timothy House on 106th Street, for former male addicts and alcoholics, Hannah House for Women on 51st Street and a facility on 41st Street, all in Manhattan. World Challenge does not operate a church in the State of New Jersey.
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> [Id. at 25.]

The residence for which the parsonage exemption was sought was occupied by a clergyman "responsible for preaching, teaching, counseling and performing administrative duties at the Times Square Church." Ibid.

The court described the issue before it concisely:

> The issue to be decided in this case is whether World Challenge is entitled to the parsonage exemption for the New Jersey residence of a minister of a church and congregation located in New York.
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> [Id. at 27.]

After observing that the parsonage "'exemption is granted as a quid pro quo for an essentially public service rendered to the State and its citizens,'" id. at 26 (quoting City of Plainfield, supra, 4 N.J. Tax at 540), the court held that

> [t]he parsonage exemption is a derivative exemption. A parsonage is exempt only by reason of the fact that it is actually occupied as a residence by the officiating clergymen of a church. The parsonage exemption is therefore derived from the association of the parsonage with an exempt church. If there is no exempt church there can be no parsonage exemption. Furthermore, N.J.S.A. 54:4-3.6 limits this exemption to parsonages of "the officiating clergymen of any religious corporation of this State." (emphasis added). Although the statute may not require the religious corporation to be incorporated in New Jersey, it nevertheless indicates an intent on the part of the Legislature that the church be located in this State.
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> [Id. at 27 (footnote omitted).][2]

Based on its review of the record, and its view of the purpose of the parsonage exemption, the court held that

> [s]ince the parsonage exemption is derived from the exemption for the church, where there is no church in New Jersey, there is no exempt New Jersey church to support a parsonage exemption. Therefore, strictly construing N.J.S.A. 54:4-3.6, as I must, the parsonage exemption may not be granted in this case.
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> [Id. at 28.]

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[2] For the proposition that the State may not limit the exemption to religious corporations incorporated in New Jersey, the court cited in a footnote WHYY, Inc. v. Borough of Glassboro, 393 U.S. 117, 89 S. Ct. 286, 21 L. Ed. 2d 242 (1968)(holding that the equal protection provisions of the United States Constitution prohibit the denial of a property tax exemption solely on the State of incorporation of the property owner).

In support of its conclusion, however, the court, did not discuss the exempt status of the theater in which the Times Square Church held its services. Instead, the court focused solely on the fact that the organization's religious worship and charitable services took place outside of New Jersey. As the court explained:

> Though World Challenge was authorized to conduct religious activities in New Jersey on October 1, 1991, it does not maintain an established church in the State. There is no evidence of benefit to New Jersey or its citizens to justify the taxpayers of Chester Borough bearing the tax burden of the subject residence. Reverend Phillips does not conduct religious worship in New Jersey. Without a New Jersey church, the parsonage provides no benefit to the State and exemption is therefore, not warranted.
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> * * *
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> [I] find that New Jersey case history . . . and legislative intent require an analysis of benefit received by New Jersey and its citizens in determining whether property tax exemption should be granted.
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> [Ibid.]

When explaining its holding that the United States Constitution is not offended by limiting the parsonage exemption to the homes of clergymen who officiate at religious services in this State, the court noted that

> [t]he New Jersey Legislature exempted parsonages from real property taxation in order to facilitate the efforts of religious corporations to serve the citizens of New Jersey and to some extent, relieve the State of its burden to care for the social welfare of its citizens. Grace & Peace Fellowship Church v. Township of Cranford, 4 N.J. Tax 391, 399 (Tax 1982).
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> [Id. at 30.]

The court continued,

> [t]he exemption is given in return for the benefit conferred on the State. To derive the intended benefit, the church associated with the parsonage must be able to provide services or benefits to New Jersey to give rise to the exemption. Grace & Peace Fellowship Church,

> supra, 4 N.J. Tax at 400. A church located on 51st Street and Broadway in Manhattan does not.
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> [Id. at 32.]

The municipality contends that Judge Lasser's opinion construes N.J.S.A. 54:4-3.6 to allow for a parsonage exemption only where the building – i.e. the church as literal structure – is located in New Jersey and is itself exempt from local property tax. The taxpayer interprets the holding in World Challenge to be that the adherents of the religious organization – i.e. the church as a collection of people of the same faith – must worship and exercise their religion in New Jersey, regardless of the tax exempt status of any building in which they may gather.

The court concludes that the taxpayer's interpretation of the holding in World Challenge is the correct one and better reflects the law. While Judge Lasser noted that the Times Square Church was the place at which the adherents in World Challenge worshipped, his opinion went to great lengths to discuss the adherents' religious practices outside of the physical building and the location of the recipients of the societal benefits resulting from those practices. Had Judge Lasser intended to rely solely on the location and tax-exempt status of the physical building, his discussion of religious activities outside of the physical church would constitute dictum. Dictum is a statement by a judge "not necessary to the decision then being made" and as such is "entitled to due consideration but does not invoke the principle of stare decisis." Jamoneau v. Division of Tax Appeals, 2 N.J. 325, 332 (1949). The court's analysis could have ended with a finding that the Times Square Church met for services in a building in New York State. The court does not accept the proposition that Judge Lasser engaged in an extensive, unnecessary analysis of whether New Jersey's citizens benefitted from the religious practices of the members of the Times Square Church.

This court finds instead that the holding in World Challenge is based on whether New Jersey enjoys the societal benefits resulting from the worship and religious practices of the adherents for which the clergyman who resides at the parsonage officiates. This interpretation of World Challenge comports with a core underlying purposes a local property tax exemption – that "the exemption is granted in recognition of the benefit which the public derives from the fulfillment of the exempt organization's activities and objectives." Grace & Peace, supra, 4 N.J. Tax at 399. The location of the physical building in which the religious organization's adherents worship may be one factor considered in determining whether New Jersey is the recipient of the benefits justifying the parsonage exemption. It is not, as the holding in World Challenge makes clear, the sole determinative factor. To hold otherwise would contravene the plain language of N.J.S.A. 54:4-3.6.

Nor is the court convinced that Judge Lasser's reference to an "exempt church" in World Challenge was a holding that the parsonage exemption is dependent on a finding that the building in which the clergyman officiates at religious services must itself be exempt from local property taxes. Nowhere in the opinion in World Challenge does the court discuss, analyze, or opine upon the tax-exempt status of the theater in which the Times Square Church adherents gathered to worship. This is not surprising, given that N.J.S.A. 54:4-3.6 does not link the parsonage exemption to the tax-exempt status of any property other than the parsonage itself.

To the extent that the holding in World Challenge intended to hold that the parsonage exemption is predicated on the tax-exempt status of the building in which the clergyman officiates, this court declines to follow that holding. See Jusino v. Lapenta, 442 N.J. Super. 248, 251 (Law Div. 2014)("The 'decision of an inferior court is not binding on a court of coordinate jurisdiction.'")(quoting Manturi v. V.J.V., Inc. 179 N.J. Super. 300, 306 (App. Div. 1981)). As is

noted above, the drafting of requirements for an exemption from local property taxes is a matter assigned to the elected branches of government. The legislative and executive branches of government enacted a statute clearly stating the statutory criteria for a parsonage exemption. Those criteria do not include a requirement that the officiating clergyman who resides in the parsonage officiate at religious services in a building that itself is exempt from local property taxes. Engrafting such a requirement onto the statute exceeds the proper role of the judiciary. Where a statute is clear, the court's responsibility is to apply the unambiguous text of the law to the facts brought to the court.[3]

The court will enter Judgment reversing the Judgment of the Ocean County Board of Taxation and awarding an exemption for the subject property for tax year 2016.

[3] Contrary to the municipality's assertions, this court's opinion in Mesivta Ohr Torah Lakewood v. Township of Lakewood, 24 N.J. Tax 314 (Tax 2008), does not stand for the proposition that a parsonage exemption can be granted only if the occupant of the parsonage officiates at services in a building that qualifies for an exemption based on religious use. The issue in that case, among several others, was whether the owner of two residences, for which it sought parsonage exemptions, operated at a separate parcel a house of worship or a yeshiva. Id. at 322. The court's holding was that the taxpayer "maintains a house of worship" at the separate parcel, thus qualifying the residences as parsonages. The court did not explore the question of whether the place at which the taxpayer operated the house of worship itself qualified for a tax exemption based on religious use, given that the municipality had granted that property an exemption based on its use as a school and the validity of the exemption was not questioned.