

TAX COURT OF NEW JERSEY

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Corrected Opinion Notice

Date: March 1, 2018

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From: Lynne E. Allsop

Re: CHRISTIAN MISSION JOHN 316 V. PASSAIC CITY
Docket number: 013203-2013

The attached corrected opinion replaces the version released on February 28, 2018. The Opinion has been corrected as noted below:

Defendant firm name corrected

Page 6, citation changed to - (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986)).

Page 13, citations changed to - (citing *Institute of Holy Angels*, 80 N.J.L. 545 (1910); *Max & Sarah Bamberger Seashore Home*, 91 N.J.L. 330 (1917)).

**NOT FOR PUBLICATION WITHOUT THE APPROVAL
OF THE TAX COURT COMMITTEE ON OPINIONS**

Corrected 3/1/18 - pg. 1 firm name, pgs. 6 & 13 citations corrected

CHRISTIAN MISSION JOHN 316,	:	TAX COURT OF NEW JERSEY
	:	DOCKET NO. 013203-2013
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
PASSAIC CITY,	:	
	:	
Defendant.	:	

**Approved for Publication
In the New Jersey
Tax Court Reports**

Decided: February 28, 2018

Tova L. Lutz, Esq., for plaintiff (Lutz Law Group, LLC, attorneys)

Kenneth A. Porro, Esq., for defendant (Chasan Lamparello Mallon
& Cappuzzo, P.C., attorneys)

NOVIN, J.T.C.

This matter comes before the court by motion for summary judgment from Christian Mission John 316 (“plaintiff”), and cross-motion for partial summary judgment from Passaic City (“defendant”).

Plaintiff challenges the denial of its 2013 tax year application for local property tax exemption under N.J.S.A. 54:4-3.6. Conversely, defendant charges that the denial was appropriate because the property failed to satisfy the criteria for exemption under N.J.S.A. 54:4-3.6, and seeks partial dismissal of plaintiff’s complaint.

For the reasons stated more fully below, the court concludes that the subject property was not entitled to local property tax exemption for the 2013 tax year under N.J.S.A. 54:4-3.6. Therefore, the court denies plaintiff’s motion for summary judgment and grants defendant’s cross-motion for partial summary judgment.

I. Findings of Fact and Procedural History

Pursuant to R. 1:7-4, the court makes the following findings of fact and conclusions of law based on the certifications and exhibits of the parties.

Plaintiff operates a church, with an appurtenant parking lot, located at the northeasterly corner of Madison and Leonard Streets, in the City of Passaic, County of Passaic, and State of New Jersey. Plaintiff's church and parking lot are exempt from local property tax. However, as plaintiff's congregation has grown, it sought opportunities to expand its facilities.

In September 2009, plaintiff purchased the adjoining property, known as 250 Madison Street ("subject property"). The subject property was formerly designated as Block 2168.A, Lot 11 on defendant's municipal tax map. Prior to the sale, the subject property was improved with a commercial warehouse, used for the storage and sale of beverages.

Sometime between 2009 and 2012, plaintiff filed an application for local property tax exemption for the subject property. Defendant denied the application. Plaintiff did not appeal the denial.¹

Plaintiff maintains that from 2009 through 2011, it used the subject property in furtherance of plaintiff's work. According to plaintiff, between 2009 and 2011, the subject property was used as an "extension of its regular religious activities," including for "ceremonial activities, religious services during mild weather months, youth rallies, women's rallies, fundraising activities, fairs and storage of various items associated with church functions."² Photographs of the interior of the

¹ The tax year for which plaintiff sought a local property tax exemption for the subject property, and the basis for defendant's denial of the application, were not part of the record before the court.

² Plaintiff did not assert or maintain that the subject property was used for any of these activities during the 2012 tax year.

subject property, submitted in support of plaintiff's motion, depict a commercial warehouse with exposed ceiling joists and roof rafters, a roll-up steel door, concrete floors, and a lack of a functioning heating system (the photographs illustrate individuals inside the subject property adorning winter coats, scarfs, and hats).

Beginning in late 2011, plaintiff began a series of "significant renovations" and improvements to the subject property to convert it from a commercial warehouse into a large sanctuary, offices, and meeting space. Building permits were issued for the interior construction and renovation, including building, framing, electrical, plumbing, mechanical (installation of HVAC systems), and installation of fire protection apparatus. Soon thereafter, construction of the renovations and improvements to the subject property began.

On April 15, 2013, defendant issued plaintiff a temporary certificate of occupancy for the subject property. Defendant issued plaintiff a final certificate of occupancy for the subject property on July 23, 2013.

In 2012, plaintiff applied for local property tax exemption for the subject property for the 2013 tax year. Defendant denied the application. Plaintiff appealed the denial, as well as the reasonableness of the 2013 tax year assessment of \$213,000 allocated as follows³:

Land:	\$ 64,700
<u>Improvement:</u>	<u>\$148,300</u>
Total:	\$213,000

Plaintiff then moved for summary judgment under R. 4:46-1, requesting the court find the subject property exempt from local property tax for 2013, under N.J.S.A. 54:4-3.6. Plaintiff's motion is premised on two arguments: (1) plaintiff's use of the subject property as of the October 1, 2012 valuation date satisfies the criteria for local property tax exemption under N.J.S.A. 54:4-

³ Defendant did not levy an added assessment on the subject property for the 2013 tax year. For tax year 2014, plaintiff's application for exemption from local property tax was granted by defendant.

3.6; and, (2) the lack of a temporary or final certificate of occupancy has no bearing on the criteria for local property tax exemption under N.J.S.A. 54:4-3.6. Plaintiff relies on the holding in Society of the Holy Child Jesus v. City of Summit, 418 N.J. Super. 365 (App. Div. 2011), in support of its position that issuance of a temporary or final certificate of occupancy is not seminal in gauging actual use.

In further support of its motion, plaintiff submitted the certification of its minister. The certification disclosed that during construction, the minister conducted a daily 20-minute morning prayer service in the subject property. The prayer service was held for approximately 10 people per day, consisting of church members and their spouses, who were part of the construction team. According to the minister, the prayer service included holding hands, reading scripture, singing, and concluded with a prayer and blessing of the construction team as they began their day. The minister's certification asserts that "community religious services began some time [sic] around September" and "formal [religious] services commenced around the time of Thanksgiving 2012." Thus, plaintiff maintains that it satisfied the actual use criteria under N.J.S.A. 54:4-3.6 as of the October 1, 2012 valuation date, despite the lack of a temporary or final certificate of occupancy for the subject property.

In its cross-motion, defendant maintains the subject property was not actually used, and could not be used by the public for religious purposes as of the October 1, 2012 valuation date. Thus, defendant seeks partial dismissal of plaintiff's complaint.⁴ Defendant submits that due to the incomplete state of construction, and lack of a certificate of occupancy, public use of the subject property for religious purposes was not authorized or permitted, as of the October 1, 2012 valuation

⁴ Defendant's cross-motion misstated the standard for granting local property tax exemption for corporations organized exclusively for religious purposes under N.J.S.A. 54:4-3.6 as "actually and exclusively" used. During oral argument, defendant's counsel acknowledged that in 2001, N.J.S.A. 54:4-3.6 was amended to remove the exclusivity element, requiring that "all buildings actually used in the work of associations and corporations organized exclusively for religious purposes." N.J.S.A. 54:4-3.6.

date. In support of this argument, defendant cites Grace & Peace Fellowship Church, Inc. v. Township of Cranford, 4 N.J. Tax 391 (Tax 1982), Beranto Towers v. City of Passaic, 1 N.J. Tax 344 (1980), and an unpublished Appellate Division decision.⁵ Moreover, defendant asserts that because the subject property was not previously afforded a local property tax exemption, the continued exempt character exception, under Paper Mill Playhouse v. Township of Millburn, 7 N.J. Tax 78 (Tax 1984), is not applicable to renovation of the commercial warehouse on the subject property, vitiating any claim for local property tax exemption.

II. Conclusions of Law

A. Summary Judgment

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.” Alpha I, Inc. v. Director, Div. of Taxation, 19 N.J. Tax 53, 56 (Tax 2000) (citing R. 4:46-2). Rule 4:46-2 outlines the circumstances under which a motion for summary judgment should be granted:

if 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 Insurance Company of America, our Supreme Court adopted the federal approach to resolving motions for summary judgment, in which “the essence of the inquiry is . . . whether the evidence presents a sufficient disagreement to require submission to a jury or

⁵ City of Newark v. (148) Block 1861, Lot 24, 605-611 Central Avenue, 2010 N.J. Super. Unpub. LEXIS 2352 (App. Div. 2010). However, the court notes that “[n]o unpublished opinion shall constitute precedent or be binding upon any court.” R. 1:36-3; see also Trinity Cemetery Ass’n v. Township of Wall, 170 N.J. 39, 48 (2001).

whether it is so one-sided that one party must prevail as a matter of law.” 142 N.J. 520, 536 (1995) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986)). In conducting this inquiry, the trial court must engage in a “kind of weighing that involves a type of evaluation, analysis and sifting of evidential materials.” Ibid. The standard established by our Supreme Court in Brill is as follows:

[W]hen deciding a motion for summary judgment under R. 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.

[Id. at 523.]

In considering all of the material evidence before it with which to determine if there is a genuine issue of material fact, the court must view most favorably those items presented to it by the party opposing the motion and all doubts are to be resolved against the movant. Ruvolo v. American Casualty Co., 39 N.J. 490, 499 (1963). The moving party bears the burden “to exclude any reasonable doubt as to the existence of any genuine issue of material fact” with respect to the claims being asserted. United Advertising Corp. v. Borough of Metuchen, 35 N.J. 193, 196 (1961). However, if the party opposing the motion merely presents “facts which are immaterial or of an insubstantial nature, a mere scintilla, fanciful, frivolous, gauzy or merely suspicious,” then an otherwise meritorious application for summary judgment should not be defeated. Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954) (citation and internal quotation marks omitted). Thus, “[b]y its plain language, R. 4:46-2 dictates that a court should deny a summary judgment motion only where the party opposing the motion has come forward with evidence that creates a ‘genuine issue as to any material fact challenged.’” Brill, 142 N.J. at 529.

In applying these standards to plaintiff's motion and defendant's cross-motion for summary judgment, the court finds that no dispute exists, as to the following material facts: (a) plaintiff is a New Jersey nonprofit corporation, organized exclusively for religious purposes; (b) plaintiff's operations on the property are not conducted for profit; (c) the use of the subject property, prior to plaintiff's acquisition, was not tax-exempt; (d) for the 2009 to 2012 tax years, the subject property was not exempt from local property tax under N.J.S.A. 54:4-3.6; (e) for the 2009 to 2012 tax years, plaintiff did not challenge the denial of any application for local property tax exemption; (e) a temporary certificate of occupancy for the subject property was issued on April 15, 2013; and (f) a final certificate of occupancy for the subject property was issued on July 23, 2013.

Thus, the legal issues facing this court are: (1) whether plaintiff was actually using the subject property for its religious purposes, as of the October 1, 2012 valuation date; and, (2) was the subject property available to the public for religious services, absent issuance of a temporary or final certificate of occupancy, as of the October 1, 2012 valuation date.

B. Local Property Tax Exemption

Unless expressly exempted by our Legislature, "[a]ll property real and personal. . . shall be subject to taxation annually. . . ." N.J.S.A. 54:4-1. Our State's Constitution of 1947 expressly limits the Legislature's authority to grant an exemption from local property tax, providing in part, that "[e]xemption from taxation may be granted only by general laws." N.J. Const. art. VIII, § 1, ¶ 2. Thus, the grant of a local property tax exemption represents a significant departure from the principle of equality of treatment and the duty to share the tax burden.

Moreover, in considering the grant of a local property tax exemption, our Legislature "must base exemptions on the property's use, not the owner's identity." Township of Holmdel v. New Jersey Highway Authority, 190 N.J. 74, 87 (2007). Thus, tax exemption statutes, which are "based on the personal status of the owner rather than on the use to which the property is put, run afoul

of” our State’s Constitutional mandate that all property be “assessed for taxation under general laws and by uniform rules.” New Jersey Turnpike Authority v. Township of Washington, 16 N.J. 38, 44-45 (1954) (citation and internal quotation marks omitted).

N.J.S.A. 54:4-3.6 affords the following property an exemption from local property tax stating, in pertinent part, that:

[t]he following property shall be exempt from taxation under this chapter . . . all buildings actually used in the work of associations and corporations organized exclusively for religious purposes, including religious worship, or charitable purposes, provided that if any portion of a building used for that purpose is leased to a profit-making organization or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion shall be exempt from taxation, and provided further that if any portion of a building is used for a different exempt use by an exempt entity, that portion shall also be exempt from taxation. . . .

[N.J.S.A. 54:4-3.6.]

Because exemption from local property tax represents a marked departure from our State’s constitutional tenets and compelling public policy principles, tax-exemption statutes must be strictly constructed against the claimant. Accordingly, the burden rests with the claimant to prove entitlement to local property tax exemption. Princeton University Press v. Borough of Princeton, 35 N.J. 209, 214 (1961); N.J. Carpenters Apprentice Training & Educ. Fund v. Borough of Kenilworth, 147 N.J. 171, 177-78 (1996), cert. denied, 520 U.S. 1241 (1997).

The “raison d’etre for [affording taxpayers] statutory exemptions from taxation is the benefit conferred upon the public by such religious, charitable or other similar institutions and the consequent relief, . . . of the burden imposed on the state to care for and advance the interest of its citizens.” Grace & Peace Fellowship Church, Inc., 4 N.J. Tax at 399. Thus, in New Jersey, the grant of a local property tax exemption is viewed as a quid pro quo, for the taxpayer’s performance of a public service. See Carteret Acad. v. State Bd. of Taxes & Assessment, 102 N.J.L. 525, 528

(Sup. Ct. 1926) (“[T]he concession is due as quid pro quo for the performance of a service essentially public, and which the state thereby is relieved . . . from the necessity of performing.”), aff’d, 104 N.J.L. 165 (E & A 1927); see also Roman Catholic Diocese of Newark v. Borough of Ho-Ho-Kus, 42 N.J. 556, 566 (1964) (“The exemption is granted by the State because of the contribution of the exempt facility to the public good.”).

Moreover, it is well settled that the “tax status of property is fixed as of the assessing date.” Atlantic County New School, Inc. v. City of Pleasantville, 2 N.J. Tax 192, 195-96 (1981); See City of Jersey City v. Township of Montville, 84 N.J.L. 43, 44-45 (Sup. Ct. 1913), aff’d, 85 N.J.L. 372 (E. & A. 1913)). Thus, questions of property tax exemption or valuation are determined as of October 1st of the pretax year. See N.J.S.A. 54:4-23; Catholic Relief Services, U.S.C.C. v. Township of South Brunswick, 9 N.J. Tax 25, 27 (Tax), aff’d, 9 N.J. Tax 650 (App. Div. 1987). Here, the relevant valuation or assessing date is October 1, 2012.

When determining whether a property is entitled to an exemption from local property tax our courts have adopted a three-prong test: ““(1) [the owner of the property] must be organized exclusively for the [exempt purpose]; (2) its property must be actually . . . used for the tax-exempt purpose; and (3) its operation and use of its property must not be conducted for profit.”” Hunterdon Medical Center v. Township of Readington, 195 N.J. 549, 561 (2008) (quoting Paper Mill Playhouse v. Township of Millburn, 95 N.J. 503, 506 (1984)). This three-prong test, promulgated in Paper Mill Playhouse has been applied to religious organizations like plaintiff. See Roman Catholic Diocese of Newark v. City of East Orange, 18 N.J. Tax 649, 653 (App. Div. 2000).

In gauging whether a property is actually used for a tax-exempt purpose, our courts consider ““whether the property is ‘reasonably necessary’ for such [tax exempt] purposes.”” Id. at 653 (citing and quoting City of Long Branch v. Monmouth Medical Center, 138 N.J. Super. 524, 532 (App. Div. 1976), aff’d o.b., 73 N.J. 179 (1977)). However, when applying this standard, our

Supreme Court has cautioned that the term “necessary” should not be interpreted as “absolutely indispensable.” Boys’ Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 401 (1977).

1. Actual use; fully operating institution

Cases addressing a tax exemption predicted upon construction of a new building for a property not previously tax-exempt, have principally focused on whether as of the assessing date, the property was in actual use, or was a fully functional establishment prepared to offer its charitable services to the public. Institute of Holy Angels v. Borough of Fort Lee, 80 N.J.L. 545 (Sup. Ct. 1910); Young Men’s Christian Ass’n of the Oranges v. City of Orange, 3 N.J. Misc. 404 (Sup. Ct. 1925); Borough of Longport v. Max & Sarah Bamberger Seashore Home, 91 N.J.L. 330 (E. & A. 1917); Trenton Ladies Sick Benefit Soc. v. City of Trenton, 19 N.J. Misc. 176 (1941); Grace & Peace Fellowship Church, Inc., 4 N.J. Tax 391; Holy Cross Precious Zion Glorious Church of God v. City of Trenton, 2 N.J. Tax 352 (Tax 1981). Stated differently, the inquiry is whether the property was, as of the assessing date, a “fully operating institution, ready and waiting to expend its charitable endeavors on those who might apply for them.” Trenton Ladies Sick Benefit Soc., 19 N.J. Misc. at 177.

In Institute of Holy Angels, 80 N.J.L. 545, the taxpayer was denied a local property tax exemption for a building that was under construction and not in use during the tax year. Our former Supreme Court, strictly construing the exemption statute, stated that in order for a building to be qualified as exempt, it must be actually used, and a taxpayer’s intended charitable use was insufficient to exempt it from taxation. Id. at 546.

Similarly, in Max & Sarah Bamberger Seashore Home, the Court of Errors and Appeals denied the taxpayer’s local property tax exemption, affirming the lower court’s finding that the “institution was not actually opened and in use,” until after the assessment date. 91 N.J.L. 330, 331 (E. & A. 1917).

In Young Men's Christian Ass'n of the Oranges, 3 N.J. Misc. 404, the taxpayer sought an exemption from local property tax on an unfinished building. In denying the exemption, the court emphasized that our exemption statutes must be strictly construed in considering the grant of immunity from taxation. The court found that because the property was not actually and exclusively used as of the assessing date, the taxpayer's exemption claim must be denied. Id. at 405.

In Trenton Ladies Sick Benefit Soc., 19 N.J. Misc. 176, the taxpayer sought local property tax exemption on a building acquired, remodeled, and converted into a home for "aged indigent persons." Id. at 176. There, the record disclosed that remodeling of the building was complete "well in advance of the assessing date," and that the taxpayer had "a fully operating institution, ready and waiting to expend its charitable endeavors on those who might apply for them." Id. at 177. Although no resident occupied the facility on the assessing date, the court found it of no "consequence that the machinery of charity. . . found no object for its beneficence," until after the assessing date. Ibid. Thus, being open and available to the public, ready, and able to perform its charitable functions, was the essential public service received by the State as the quid pro quo for the grant of a local property tax exemption.

In Holy Cross Precious Zion Glorious Church of God, 2 N.J. Tax 352, the taxpayer acquired a parcel of property containing a vacant building, gutted by fire that had not been previously exempt from taxation. The taxpayer intended to use the property as a religious nursery school and day care center for its parishioners, and following its purchase, "embarked upon a program of rebuilding the premises." Id. at 354. However, due to financial constraints, and escalating costs for labor and materials, completion of the building was delayed for a period in excess of two years. In analyzing whether the property was open and available to the public for use, the court emphasized that actual use, not intended use, was the standard for granting local

property tax exemption in New Jersey. Id. at 357. The court stated that an intention to use property for a tax-exempt public purpose, coupled with ongoing renovations and remodeling, failed to satisfy the actual use standard under N.J.S.A. 54:4-3.6. The court further remarked that prior case law dictated that “property which is fully built but not yet open for use” is not eligible for exemption, under N.J.S.A. 54:4-3.6. Id. at 357-58 (emphasis added).

In Grace & Peace Fellowship Church, Inc., 4 N.J. Tax 391, the taxpayer, a New Jersey nonprofit religious corporation, conducted religious services in a rented facility in an adjoining municipality. Id. at 393. The taxpayer acquired a parcel of vacant land, seeking to construct its own church and educational facility. Id. at 394. During the period of construction, the church continued to perform its principle religious services in the rented facility, and following enclosure of the newly constructed structure, conducted weekly and monthly prayer services “within the partially completed edifice.” Ibid. The monthly and weekly prayer services in the partially completed structure were held for members of the church’s congregation that supplied volunteer labor to construct the new facility. Ibid.

As of the assessment date, the exterior of the newly constructed building was complete, “the heating system and most of the electrical wiring had been installed,” and the remaining work focused on completion of interior improvements. Ibid. However, “religious services were not available to the public until February 28, 1980, [five months after the assessing date,] when plaintiff received its temporary certificate of occupancy.” Id. at 395.

The defendant, in Grace & Peace Fellowship Church, Inc., conceded that the taxpayer met the statutory exemption requirements except for the actual use requirement. Ibid. It maintained that the building “cannot be exempt because it was not fully completed, i.e., not ready for public occupancy. . . prior to the issuance of a certificate of occupancy, whether temporary or permanent” Ibid. The defendant further argued that even if the use was considered lawful, the services

carried on at the property were incidental and thus insufficient to warrant an exemption. Id. at 396. In considering the taxing district's arguments, the court remarked that the "actual use and not intended use controls in the determination of a tax exemption." Id. at 398 (citing Institute of Holy Angels, 80 N.J.L. 545 (1910); Max & Sarah Bamberger Seashore Home, 91 N.J.L. 330 (1917)).

Declining to grant the taxpayer a local property tax exemption, the court expressed that the "single thread" pervasive throughout our State's case law, is that:

there must be actual use made of the buildings in accordance with the exemption statute. Actual public use or being ready to provide such public use is the required quid pro quo. Mere intention to use for an exempt purpose at some time in the future will not suffice.

[Id. at 399-400 (citing Trenton Ladies Sick Benefit Soc., 19 N.J. Misc. 176) (emphasis added).]

As stated above, the policy behind granting a local property tax exemption relates to the quid pro quo, afforded to a taxpayer for relieving the government from the obligation to furnish a public service. "[W]ithout the performance of some service essentially public which relieves the state pro tanto from the necessity of performance, the exemption becomes essentially a gift of public funds." Id. at 399 (citing The Kimberly School v. Township of Montclair, 137 N.J.L. 402, 405-06 (Sup. Ct. 1948), rev'd on other grounds, 2 N.J. 28 (1949)). Thus, the court concluded, "the language in N.J.S.A. 54:4-3.6 can reasonably be construed to mean that the exemption is not to be allowed unless the institution actually is in a position to provide the services or benefits deemed important enough to cause the exception from the rule of taxation." Id. at 400.

Applying this analysis to the facts in the instant matter, the court discerns that as of the October 1, 2012 assessing date, plaintiff was making limited use of the partially renovated structure on the subject property by conducting daily 20-minute morning prayer services. However, these prayer services were incidental to the prayer services, offered by the taxpayer, in

its adjacent building, and were limited to church members, who were part of the construction team, offering inspirational blessings as they began their workday to renovate the subject property. These prayer services were not available to the public and do not constitute actual use, as contemplated under N.J.S.A. 54:4-3.6.

Moreover, plaintiff's minister readily acknowledged that "formal [religious] services commenced [in the subject property] around the time of Thanksgiving 2012," some six to seven weeks after the October 1, 2012 assessing date. Significantly, a temporary certificate of occupancy, lawfully permitting the subject property to be occupied and used by the public for its intended religious purpose, was not issued until April 15, 2013, some six months after the assessing date. The record before the court further discloses that construction on the subject property continued after the October 1, 2012 assessing date, with interior finish work being performed, and building construction code inspections for the fire alarm system, interior building finishes, mechanical systems, building, and electrical systems, being conducted on November 30, 2012, December 30, 2012, January 3, 2013, July 1, 2013, and July 23, 2013.

Plaintiff argues that its construction invoices, for the period, July 2012 through October 2012, demonstrate that finish carpentry work was being performed on the subject property, which commenced only after the interior demising walls were erected. However, plaintiff's arguments are misplaced, as the character of the construction work being performed as of the assessing date is not the barometer by which the court measures the appropriateness of the grant or denial of a local property exemption. Our courts have declared that, in the context of strictly construing the exemption under N.J.S.A. 54:4-3.6, the property must be actually used by the public or must be actually available for such use. A goal, intent, or objective to furnish, on some future date, a tax-exempt purpose for the benefit of the public is insufficient to establish the requisite quid pro quo. As Judge Andrew fittingly pointed out, had our "Legislature intended that an exception to the rule

of taxation apply during the course of construction of a building partially used or to be used for exempt purposes, it could have expressly so provided.” Grace & Peace Fellowship Church, Inc., 4 N.J. Tax at 400.

Here, plaintiff was not in a position to provide its services and/or benefits to the public, as of the October 1, 2012 assessment date. As a result of ongoing construction and renovations, the structure was not available, nor was it ready to be occupied and used by the public for religious or charitable activities until sometime following the October 1, 2012 assessment date. Thus, as of the assessing date, the only recipients of plaintiff’s religious services on the subject property were the parishioners and their spouses, who were part of the construction team, dedicated to renovating the structure. Neither the public, nor the vast majority of plaintiff’s congregation derived any benefit from the partially completed structure as of the October 1, 2012 assessing date. Thus, no quid pro quo was offered by plaintiff thereby entitling it to tax exemption for the subject property.

Therefore, for the above-stated reasons, the court concludes that the subject property was not exempt from local property tax for the 2013 tax year.

2. Certificate of Occupancy

Plaintiff asserts that the failure of a temporary or final certificate of occupancy to issue as of the assessing date, is not dispositive of actual use under N.J.S.A. 54:4-3.6. In support of this position, plaintiff relies upon Society of the Holy Child Jesus, 418 N.J. Super. 365.

In response, defendant maintains that because a temporary certificate of occupancy was not issued until April 15, 2013, actual use of the subject property was not possible until six months following the assessing date. Relying on Grace & Peace Fellowship Church, and the unpublished decision in City of Newark v. (148) Block 1861, Lot 24, 605-611 Central Avenue, defendant argues that the subject property cannot be viewed as actually in use for religious activities as of the October 1, 2012 valuation date.

In Society of the Holy Child Jesus, the Appellate Division was asked to determine whether a change in use of an already tax-exempt property, resulting in a violation of the municipal zoning ordinance, should be considered by the court in resolving the actual use criteria under N.J.S.A. 54:4-3.6. The court declared the language of N.J.S.A. 54:4-3.6 to be “unambiguous,” concluding that the statute “does not require the property be a lawful use under the municipality’s zoning ordinance in order to qualify for tax exemption.” Id. at 386. Rejecting the trial court’s engrafting of a requirement that actual use comport with municipal zoning ordinances, the Appellate Division concluded that a taxpayer is entitled to “exemption if its use of the property is consistent with the tax-exempt purposes embodied” under the statute. Id. at 386. Accordingly, the court afforded the taxpayer the local property tax exemption.

However, the facts in Society of the Holy Child Jesus are distinguishable from the instant matter. There, the property was used as a residence for nuns, and afforded a local property tax exemption for approximately 61 years. The taxpayer discontinued the property’s use as a residence, but continued using the property for other school related purposes. As a result of the change, the municipality revoked the taxpayer’s local property tax exemption, claiming that such use violated a municipal zoning ordinance. Here, however, the subject property was never exempt from local property tax and plaintiff was not changing a tax-exempt use of the subject property. As the court observed in Paper Mill Playhouse, “an exemption predicated upon construction of a new building on property which had not previously been exempt,” is distinguishable from the revocation of a tax exemption resulting from a casualty or a change in use. 7 N.J. Tax at 84. Therefore, while the court in Society of the Holy Child Jesus concluded that, the tax-exempt use and corresponding quid pro quo subsisted, here the court cannot reach the same conclusion.

Significantly, in Society of the Holy Child Jesus, no construction, renovations, or improvements were undertaken on the property requiring building permits, instead, the

municipality's claim for revocation of the local property tax exemption stemmed from an alleged violation of municipal zoning ordinances governing use of the property. Conversely, in the instant matter, substantial construction and improvements requiring building permits were undertaken to the subject property during the eleven months leading up to the October 1, 2012 valuation date, and were ongoing after such date. The certifications and exhibits of the parties submitted in support of their motions discloses that construction continued after the October 1, 2012 assessing date, with interior finish work being performed, and building sub-code inspections for the fire alarm, interior building finishes, mechanical systems, and electrical systems not being concluded until November 30, 2012, December 30, 2012, January 3, 2013, July 1, 2013, and July 23, 2013. Thus, here plaintiff was unable or incapable of expending "its charitable endeavors on those who might apply for them" Trenton Ladies Sick Benefit Soc., 19 N.J. Misc. at 177. These issues and conditions were not present in Society of the Holy Child Jesus.

The ongoing renovations and improvement activities on the subject property as of the assessment date directly affected not only the potential use of the subject property, but the health, safety, and welfare of the occupants and users of the property. A temporary certificate of occupancy, evidencing that the subject property was safe for the users and occupants, and establishing that the newly undertaken construction conformed with basic tenets of the State Uniform Construction Code ("UCC"), was not issued until April 15, 2013, six months following the assessing date. Nevertheless, plaintiff maintains that it impermissibly, and in violation of the UCC, made actual use of the subject property for religious purposes prior to issuance of the temporary certificate of occupancy.

In enacting the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 to -141 , our Legislature sought to address escalating construction costs, reduce the "divergent and burdensome municipal construction codes," and provide a standardized and uniform construction code with up

to date construction standards. DKM Residential Props. Corp. v. Township of Montgomery, 182 N.J. 296, 303 (2005). As our Supreme Court has remarked, the UCC was primarily “designed to address directly matters affecting health, safety and welfare.” Ibid. The UCC provides in part, that:

[n]o building or structure hereafter constructed shall be used or occupied in whole or in part until a certificate of occupancy shall have been issued by the enforcing agency. . . . A certificate of occupancy shall be issued by the enforcing agency when all of the work covered by a construction permit shall have been completed in accordance with the permit, the code, and other applicable laws and ordinances. . . . On request of a holder of a construction permit, the appropriate enforcing agency may issue a temporary certificate of occupancy for a building or structure, or part thereof, before the entire work covered by the construction permit has been completed, if the part or parts of the building or structure to be covered by the certificate may be occupied prior to completion of all work in accordance with the permit, the code, and other applicable laws and ordinances, without endangering the health and safety of the occupants or users. . . . The certificate of occupancy shall certify that the building or structure has been constructed in accordance with the provisions of the construction permit, the code, and other applicable laws and ordinances.

[N.J.S.A. 52:27D-133 (emphasis added).]

Thus, the UCC strictly prohibits the use or occupancy of a structure until a certificate of occupancy has issued. In enacting the UCC, the legislature sought to afford a measure of flexibility to construction permit holders, authorizing issuance of temporary certificates of occupancy when the scope of work has been substantially completed and occupancy of the structure can be accomplished without endangering the health and safety of the occupants or users. Ibid.

This court cannot envision that our Legislature intended to condone behavior of a taxpayer who/which attempts to make actual use of a property under construction, and not previously afforded a tax exemption, prior to the date that such property is permitted to be occupied and used, in order to qualify for local property tax exemption under N.J.S.A. 54:4-3.6. Such actions

jeopardize public safety and are counterintuitive to the very purposes of the exemption statute, which is to offer the public a service in an environment free from danger, thereby relieving the State from a concomitant burden. In requiring that newly constructed or substantially renovated buildings be actually used for a tax-exempt purpose, or available for such use, this court interprets N.J.S.A. 54:4-3.6 as implying that the use cannot be achieved at the expense of the safety, welfare, and well-being of the public, the intended beneficiaries of the non-profit entity's bounty. As eloquently expressed by Judge Andrew in Grace & Peace Fellowship Church, Inc., 4 N.J. Tax 391, it is difficult to "conceive that the Legislature had intended to encourage the use of incomplete structures so that taxpayers could avoid taxation during the construction period. A denial of an exemption discourages the use of incomplete and unsafe structures and fosters a policy in accordance with our construction codes." Id. at 401.

Here, the subject property was not previously afforded a tax exemption, and due to the extensive construction and renovations being performed on the subject property, required a temporary certificate of occupancy to use the property for plaintiff's intended religious purposes. However, the record reveals that a temporary certificate of occupancy was not issued until six months following the October 1, 2012 assessing date. Therefore, the subject property cannot be viewed as actually in use, or fully available for use for religious activities, under N.J.S.A. 54:4-3.6 as of the October 1 2012 valuation date.

However, the court must highlight that its holding in this matter is circumscribed to those properties that: (1) have not previously been granted tax exemption; (2) are experiencing new construction or renovation to permit an intended use of the property for an exempt purpose; and (3) have not been the subject of an added assessment. Accordingly, this court's holding must be distinguished from those matters that involve the intersection of the added assessment statute, N.J.S.A. 54:4-63.1 to – 63.11, and the tax exemption statute, N.J.S.A. 54:4-3.6.

Pursuant to N.J.S.A. 54:4-63.3, an added assessment may be imposed on a property if it “contains any building or other structure which has been erected, added to or improved after October 1 and completed between January 1 and October 1 following. . . .” Similarly, N.J.S.A. 54:4-63.2 permits an assessor to levy an added assessment when a building or other structure has “been erected, added to or improved after October 1 in any year and completed before January 1. . . .” The added assessment statutory scheme represents a marked departure from the taxing principles espoused under N.J.S.A. 54:4-23, requiring an assessor to “determine the full and fair value of each parcel of real property situate in the taxing district. . . on October 1 next preceding the date on which the assessor shall complete his assessments. . . .” N.J.S.A. 54:4-23.

Our courts have recognized the distinction that exists between N.J.S.A. 54:4-23 and N.J.S.A. 54:4-63.3 or N.J.S.A. 54:4-63.2 in gauging eligibility for local property tax exemption. In Schizophrenia Foundation of New Jersey v. Township of Montgomery, 6 N.J. Tax 439 (App. Div. 1984), the Appellate Division observed that:

[i]t is axiomatic that ordinarily October 1 of the pretax year is the controlling date to determine whether a property will be exempt from taxes. Thus a change of use and ownership of a property after October 1 of the pretax year to an exempt status will not invalidate an assessment for a tax year. But obviously such a situation differs from our case since here there was no assessment on the building on October 1 of the pretax year. In the case of a building completed between January 1 and October 1 of a tax year the assessor determines for added assessment purposes the taxable value of the property as of the first day of the month following completion. This process of determining value for added assessment purposes is similar to the assessor's obligation to determine value of an existing building as of October 1. The determination of value includes a decision as to whether the property is exempt from taxes.

[Id. at 441-42 (internal citations omitted).]

As a result, the court concluded that “the tax status of property subject to an added assessment should be ascertained as of the date of the [added] assessment.” Id. at 442 (emphasis added).

Similarly, in Presbyterian Home at Pennington, Inc. v. Borough of Pennington, 409 N.J. Super. 166, 190 (App. Div. 2009), the Appellate Division found that the trial court erred in allowing the municipal assessor to assess the “facility as though it were substantially complete and operational on October 1, 2001, while denying its tax exempt status for both the land and improvements on the basis that it was not operational.” Applying the “substantially ready” test under N.J.S.A. 54:4-63.2, the court concluded that if the improvements were not substantially complete as of the October 1, 2001 assessing date, then “the land should have been taxed as non-exempt for 2002, but the improvements valued [under the added assessment statute] as of the first day of the month following completion and, at that point, accorded tax exempt status.” Id. at 192.

However, the subject property’s tax assessment does not stem from the imposition of an added assessment. In general, absent acquisition of a property by the State or a State Agency, demolition or destruction of a building, or the levying of an added, omitted added, or omitted assessment, our enabling statutes do not permit assessors to re-examine and re-cast the tax status of a property after the October 1st valuation date. See Schizophrenia Foundation of New Jersey, 6 N.J. Tax at 441-42; N.J.S.A. 54:4-3.3b; N.J.S.A. 54:4-35(a); N.J.S.A. 54:4-63.1 to -63.11.

Here the subject property was not afforded tax-exempt status for the 2009 to 2012 tax years and thus, was annually assessed a local property tax during those tax years. The subject property was identified as a ratable on defendant’s 2012 tax roll and was relied upon by the municipality in determining its 2013 annual budget. The underlying viewpoint of N.J.S.A. 54:4-3.6 requires “an exempt use to exist on the October 1 assessing date in order to permit taxing districts to prepare budgets based upon the current tax assessment rolls. Any reduction in the assessment roll during the tax year would interfere with that budget preparation procedure.” Paper Mill Playhouse, 7 N.J. Tax at 86 (citing Schizophrenia Foundation of New Jersey, 6 N.J. Tax 439); see also City of East Orange v. Palmer, 47 N.J. 307 (1966). Thus, the probative date in this matter for examination of

the actual use of the subject property was the October 1, 2012 assessment date, and not some later date.

As stated hereinabove, the subject property was not ready to be occupied and used by the public for a tax-exempt purpose until sometime following the October 1, 2012 assessment date. Therefore, it is not entitled to a local property tax exemption for the 2013 tax year.

III. Conclusion

For the foregoing reasons, plaintiff's motion for summary judgment is denied, and defendant's cross-motion for partial-summary judgment, dismissing those counts of plaintiff's complaint which lay challenge to the denial of the 2013 local property tax exemption, is granted.