

Kathleen G. Moody
v.
Bishop of Protestant Episcopal Church of N.H.
(All Saints Episcopal Church) and Town of Wolfeboro

Docket No. 3644-87

DECISION

A hearing in this appeal was held, as scheduled, on February 22, 1989. The complainant represented herself. The defendant was represented by Robert C. Varney, Esquire and David Haeger, Senior Warden. The Town was represented by Mark Puffer, Esquire, Chester L. Spinney, Town Assessor, Edward W. Zulauf, Selectman and H. E. Erickson, Selectman.

The complainant filed her challenge to the 1987 assessment of the defendant pursuant to RSA 71-B:16 (supp.) which states in part:

The board may order a reassessment of taxes previously assessed or a new assessment to be used in the current year or in a subsequent tax year of any taxable property in the state:

- I. When a specific written complaint is filed with it, by a property owner, within 90 days of the date on which the last tax bill on the original warrant is sent by the collector of taxes of the taxing district, that a particular parcel of real estate or item of personal property not owned by him has been fraudulently, improperly, unequally or illegally assessed. The board shall consider only one complaint from a property owner for each parcel of land until such time as a reassessment has been made. The complainant shall pay a fee of \$10 for each specific particular parcel or specific item of personal property complained of. The board shall send notice by certified mail to the taxpayer against whose property the complaint is made.

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The first issue raised by the complainant in the above entitled case was the failure of the defendant to timely file the required A-9 form for the 1987 tax year. The complainant argued the Town could not properly evaluate the defendant's entitlement to an exemption without the A-9 form since it lists the status of the properties on which an exemption is sought.

The Town's position was the defendant did not file because the Town, being under the misapprehension that the A-9 form need not be filed every year, had erroneously informed the defendant it did not need to file the A-9 form for the 1987 tax year. The Town stated it had corrected its mistake and was now requiring the A-9 forms. The Town argued that an exception to the requirement should be made under the good faith rule of Appeal of C.H.R.I.S.T., Inc., 122 N.H. 982, 985 (1982).

The Board rules as follows. The filing of the A-9 form is required by RSA 72:23-c (1987 supp.) which states:

Annual List. Every religious, educational and charitable organization, Grange, and the Grand Army of the Republic, the United Spanish War Veterans, Veterans of Foreign Wars, the American Legion, the Disabled American Veterans, the American National Red Cross and any other national veterans association shall annually, on or before April 15, file a list of all real estate and personal property owned by them on which exemption from taxation is claimed, upon a form prescribed and provided by the commissioner of revenue administration, with the selectmen or assessors of the place where such real estate and personal property are taxable. A copy of such list shall at the same time be filed with the commissioner, which shall be a public record. If any such organization or corporation shall wilfully neglect or refuse to file such list upon request therefore, the selectmen may deny the exemption. (Emphasis added.)

The Board finds the defendant filed its A-9 form October 27, 1987. The Defendant was late in filing its A-9 form due to erroneous information given it by the Town and through no fault of its own.

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The Board therefore rules the Town did not abuse the discretion granted it under RSA 72:23-c (1987 supp.) and declining to deny the exemption.

Mrs. Moody argued the property complained against covers from Main Street down to the water. Mrs. Moody further argued the parking lot on the complained against property is not large and does not cover a substantial portion of the property.

Mrs. Moody maintained the church tried to build a housing development which was voted down by the Town. Mrs. Moody submitted the church also had bought a property which it paid taxes on. Mrs. Moody held the property was composed of 4.5 acres and was used for nothing and was just wild land. The counsel for the Town argued the lot under question has parking on it and does not have to be absolutely necessary to the principal purpose of the church that only must be reasonably and customarily necessary.

Mr. Varney, counsel for the church, argued the lot in question is wild but is contiguous to the principal church property and is used in the summer time for the church fair and year round for some overflow parking. Mr. Varney also submitted the housing was not in existence in 1987 and the housing project proposed was a not for profit housing scheme to benefit the citizens of Wolfeboro.

Mr. Zulauf stated for the Town churches are not aggressively acquiring property and stated the Town recognized its churches as beneficial to the community.

The Board finds the lot in question and under complaint is appertaining to the principal property of the church. The Board finds Lot 28 is properly exempt from taxation by the Town of Wolfeboro. The Board therefore rules, complaint dismissed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

(See dissenting opinion below.)

— Anne S. Richmond, Esquire, Chairman

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— George Twigg, III, Member

— Peter J. Donahue, Member

— (Mr. Franklin did not sit.)
Paul B. Franklin, Member

Date:

I respectfully dissent from my colleagues on the question of the tax exempt status of Map 5, Block 1, Lot 28 (Lot 28). The complainant challenges the granting of a tax exemption on this parcel based on the occupancy requirements of RSA 72:23 III. The complainant stated Lot 28 was wild land and there had been a proposal to build housing on it that was turned down by the Town.

The Town's attorney stated he did not know the extent to which the parcel was used for parking but the standard is land is exempt if reasonably necessary to the entity; it need not be absolutely necessary. Selectman Zulauf stated the church used Map 5, Block 1, Lot 27 (lot 27) for parking.

The defendant stated Lot 28 was wild land that was not extensively used but that it abutted the church. The main parking lot was Lot 27, but Lot 28 was used for overflow parking. The annual fair was held on Lot 28. Lot 28 was not held for speculation or profit. In 1988 there was a proposal to build not for profit housing on Lot 28.

I find as follows. The defendant owns Lot 27, which is .833 acre and on which the church and a parking lot sit. The taxpayer also owns Lot 28 which is 4.5 acres and which is wild land sometimes used for overflow parking. The annual fair is held on Lot 28. In 1988 the defendant proposed a not-for-profit housing development that was rejected by the Town. There are no further plans to use Lot 28 for non-tax exempt purposes. The property is not held for speculation or for profit.

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Part I Article 12 of the New Hampshire Constitution states:

Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary.

On the question of tax exemptions the New Hampshire Supreme Court has interpreted the above Article as follows:

"It will never be assumed that the government intended to release any part of the property entitled to its protection from the burden incident to such protection, and it is the duty of those who assert that claim to show it in language which can admit of no other conclusion; and where doubt arises as to the meaning of the language used which it is claimed confers the exemption, it will be construed most strongly against those who maintain the exemption." Phillips Exeter Academy v. Exeter, 58 N.H. 306,307; Boody v. Watson, 63 N.H. 320, 321; Kimball Carriage Co. v. Manchester, 67 N.H. 483, 484; Alton Bay Campmeeting Ass'n v. Alton, 69 N.H. 311, 312. Williams v. Park, 72 N.H. 305, 311-312 (1903).

The New Hampshire legislature created the following exemption for religious organizations:

The following real estate and personal property shall be exempt from taxation: . . .

III. Houses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings used principally for religious training or for other religious purposes, and the lands thereto appertaining owned and occupied by any regularly recognized and constituted denomination, creed or sect, organized or incorporated in this state and the personal property used by them for the purposes for which they are established,

In Alton Bay Camp Meeting Association v. Alton, 109 N.H. 44, 49 the Supreme Court held that under RSA 72:23 III (supp.) "exempted land must not

only be owned by a religious organization but must also be occupied by it and also

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appertaining to buildings used by the religious organization for religious purposes."

The occupancy requirement was not met. "The statute contemplates occupancy as more than bare possession. Such possession is not an existing use for the owner's purposes, even with a plan and purpose of future use therefor." Society of Cincinnati v. Exeter, 92 N.H. 348, 351 (1943).

"A use which is slight and insignificant is not 'an occupancy sufficient to warrant a conclusion of use for the Society's purposes, such as the statute requires.'" Society of Cincinnati v. Exeter, 92 N.H. 348, 357. . . Possession, ownership and use of land, which is part of a larger tract, must be more than negligible to give reasonable effect to the demand of the statute that it be occupied. Academy v. Exeter, 90 N.H. 472, 506. Sisters of Mercy v. Hooksett, 93 N.H. 301, 312; Academy v. Exeter, 92 N.H. 473, 476.

Franciscan Fathers v. Pittsfield, 97 N.H. 396, 401 (1952). In Trustees of Phillips Exeter Academy v. Exeter, 90 N.H. 472, 506 (1940) the Supreme Court held that a "disused" building which the plaintiff planned to convert to an exempt use did not qualify for a tax exemption, it not being in any present use. The court went on to hold that "unimproved lots having no present use are also taxable." Interpreting RSA 72:23 V-a (supp.) the Supreme Court held:

It is agreed that the only use made of the land in 1981 was by a Boy Scout troop affiliated with the plaintiff. The scouts used the land three or four times for outings. Relying upon the standards set down in Nature Conservancy v. Nelson, 107 N.H. 316, 319-20, 221 A.2d 776, 778-79 (1966), the master found that the use made of the land was "negligible and insignificant" and ruled that the plaintiff had failed to meet the use and occupancy requirements of the statute. First Congregational Church of Laconia v. Gilmanton, 123 N.H. 343, 344 (1983). Our review of the record indicates that the evidence before the master supported his findings of fact and that he committed no errors of law. See Appeal of C.H.R.I.S.T., Inc., 122 N.H. 982,

984, 455 A.2d 1006, 1007 (1982).

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The use of Lot 28 once a year for a fair and for overflow parking to an unknown extent does not meet the more than negligible standard of Franciscan Fathers supra and First Congregational Church supra.

The planned non-profit housing development indicates the land is not appurtenant to buildings used by the religious organization for religious purposes.

To adopt a policy of allowing tax exempt status simply on the basis of changed ownership and incidental use, even if the Board had such authority, could potentially impose an onerous and unfair burden on those Taxpayers left to pick up the Town tab, particularly in an era of rapidly rising property taxes.

For the foregoing reasons, I conclude that Lot 28 is not entitled to a tax exemption under RSA 72:23 III and a tax bill should be issued forthwith.

Anne S. Richmond, Esquire,
Chairman

I certify that copies of the within Decision have this date been mailed, postage prepaid, Kathleen G. Moody, the Complainant; Bishop of Protestant Episcopal Church of N.H. (All Saints Episcopal Church), the Defendant; and Mark Puffer, Esquire, Counsel to the Town of Wolfeboro.

— Michele E. LeBrun, Clerk

Date:

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