

Kathleen G. Moody
v.
Cotton Mt. Community Church Assoc. and
Town of Wolfeboro

Docket No. 3646-87

DECISION

A hearing in this appeal was held, as scheduled, on February 22, 1989. The Complainant represented herself. The Defendant was represented by Franklin D. Miller, President of the Association and Stephanie C. Marsh, Vice President of the Association. The Town was represented by Mark Puffer, Esquire, Chester L. Spino, 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.

Kathleen G. Moody v. Cotton Mt. Community Church Assoc. and Town of Wolfeboro

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 on August 15, 1988. 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.

The Board therefore rules the Town did not abuse the discretion granted

it under RSA 72:23-c (1987 supp.) in declining to deny the exemption.

Kathleen G. Moody v. Cotton Mt. Community Church Assoc. and Town of Wolfeboro

The complainant argued the subject property was a beautiful little church which is open only once or twice a year at best. Mrs. Moody stated the church and its lands are in a pretty spot and some day somebody will come along and develop the property. The Town argued there was a question of ownership of the property under complaint. Mr. Puffer stated the parcel was a landlocked piece of land willed to the church and the Town has still not determined the ownership of the parcel. Mr. Puffer stated the property either belonged to the church or to some estate.

Mr. Miller testified the property under complaint was across the road from the current church and was the original site of the church in 1801. Mr. Miller further stated the original church burned and was rebuilt as the current church on its present site in 1952.

Mr. Miller explained the two acre parcel and the 14 acre contested parcel make up a lot of land across the road from the existing church covering an area from the road down to the right of way of the Wolfeboro Railroad. Mr. Miller reiterated this contested parcel was the site of the original church and is considered by the church's members an integral part of the church property.

The Board finds the property under question is appertaining to the principal church property. The Board finds the size of the parcel is not unreasonable in relation to the location to the church relative to the center of the Town of Wolfeboro. The Board therefore rules, all of the land owned by the church shall be tax exempt and further rules, complaint dismissed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

(See dissenting opinion below.)

Anne S. Richmond, Esquire, Chairman

George Twigg, III, Member

Kathleen G. Moody v. Cotton Mt. Community Church Assoc. and Town of Wolfeboro

—
Peter J. Donahue, Member

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

Date: 5/23/89

I respectfully dissent from my colleagues on the question of the tax exempt status of Map 18, Block 3, Lot 21 (hereafter Lot 21). The complainant challenges the failure to levy a tax on this parcel based on the occupancy requirements of RSA 72:23 III.

The Town stated the ownership of Lot 21 was in question, the parcel had been devised to the defendant by will, and the parcel was given an assessed value of \$1,380 since it was landlocked. The Town stated it did not know if the property were exempt but that no tax bill had been sent for it for the 1987 tax year.

The defendant stated it owned Lot 21 on April 1, 1987, though the ownership of part of the acreage was in dispute. The Taxpayer stated it had never paid any taxes on Lot 21.

I find as follows. The defendant has undisputed title to Map 18, Block 4, Lot 5 (hereafter Lot 5) which consists of .8 acre of land improved by a church and to Map 18, Block 3, Lot 26 (hereafter Lot 26) which consists of 2 acres of land across the street from the church and which is used for church parking. Four services per year are held at the church. Lot 21 consists of approximately 14 or 15 acres of landlocked land behind Lot 26. The title to a portion of Lot 21 is in dispute, however, the defendant claims title to the land. The land is undeveloped and has not changed since it was willed to the church. The land was not put to any known use on April 1, 1987. There were no known plans for future use on April 1, 1987.

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

Kathleen G. Moody v. Cotton Mt. Community Church Assoc. and Town of Wolfeboro

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

Kathleen G. Moody v. Cotton Mt. Community Church Assoc. and Town of Wolfeboro

The defendant's claim of ownership of all of Lot 21 was insufficient proof of ownership to meet the ownership requirement of RSA 72:23 III.

Even if the ownership requirement were met, 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. The use of land for hunting, hiking and fishing is not the type of activity related to religious activities which the Legislature sought to exempt from taxation. 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."

The use of Lot 21 is not even slight or insignificant, it is non-existent disqualifying it from tax exemption under Trustees of Phillips Exeter Academy, supra, as well as under Franciscan Fathers, supra.

Even if the occupancy requirement were met, and it clearly was not, the land must also be appertaining to buildings used by the religious organization for religious purposes. Lot 21 is separated from the church by a road and a 2 acre parcel of land. In current use cases the Board has held that only the land immediately supporting the structure and its improvements are appurtenant

to the

Kathleen G. Moody v. Cotton Mt. Community Church Assoc. and Town of Wolfeboro

structure. See Caroline E. Hibbard v. Town of Loudon, Docket No. 1974. Lot 21 is clearly not appurtenant to the church.

To adopt a policy of allowing tax exemption simply on the basis of a transfer of title, 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 21 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, to Kathleen G. Moody, the Complainant; the Cotton Mt. Community Church Assoc., the Defendant; and Mark Puffer, Esquire, Counsel to the Town of Wolfeboro.

Michele E. LeBrun, Clerk

Date: 5/23/89

0009