

American Legion Lamott Kenneson Post #76

v.

Town of Wentworth

Docket No. 7419-89

DECISION

Introduction:

The property owned by the "Taxpayer" is an irregular parcel of land of 45.86 acres fronting on the North Dorchester Road and accessed from Rte. 25. A portion of it is improved with a quarter mile race car track, pit and associated buildings, lights and bleachers. The balance is essentially unimproved except for a powerline right-of-way through the middle of the parcel.

Prior to the town-wide reassessment of 1989, the property had not been taxed. While apparently never having applied for a charitable exemption, the Taxpayer had in essence previously received a de facto exemption under RSA 72:23 V. As a result of the reassessment in 1989, an assessment was placed upon the property and a tax bill sent to the Taxpayer. The Taxpayer appeals, pursuant to RSA 76:16-a, the 1989 assessment of \$159,800 (land \$109,500; buildings \$50,000).

Issues:

This appeal raises two general issues:

- (1) is the property exempt from taxation under RSA 72:23 V?
- (2) if not, is the assessment reasonable and proportional?

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(1) Exemption under RSA 72:23 V

RSA 72:23 V reads:

V. The real estate and personal property owned by charitable organizations and societies organized or incorporated in this state or having a principal place of business in this state, and occupied and used by them for the purposes for which they are established, provided that none of the income or profits thereof is used for any other purpose than the purpose for which they are established. (emphasis added)

For a property to be eligible for charitable exemption, two general provisions must be met:

(a) the organization must be organized and under an obligation to provide the general public, or some indefinite segment of it, a service of public good or benefit without any specific monetary or other benefit to its members (See Society of Cincinnati v. Exeter, 92 N.H., 348 (1943) and Nature Conservancy v. Town of Nelson, 107 N.H., 316 (1966)); and

(b) the organization must occupy and use the property directly for the charitable purposes for which the organization was formed.

Based on the testimony and the board's general knowledge of the purpose and actions of the American Legion, there is no doubt that the Taxpayer qualifies as an organization described in (a).

However, the Taxpayer does not occupy and use, to any significant amount, the property directly for the organization's charitable purpose. The main use of the property is for a seasonal race car track. The proceeds from either the Taxpayer running the races themselves or from a percentage of the "gate" as rent when leased to a third party are used by the Legion in support of the charitable endeavors. That, however, does not lead to the property being exempt because the use generating those revenues is not part of the charitable purpose and benefit of the organization.

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There was evidence that the Taxpayer has held some meetings of the Legion on the property in the summer. However, the testimony was that these

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meetings have been few in number, sporadic in occurrence, and result in a very negligible use in comparison to the race track use and improvements.

Therefore, the board rules the property does not qualify for a charitable exemption.

2)Valuation

Based on the evidence we find the correct assessment should be \$51,750 (land \$41,750; buildings \$10,000). This assessment is ordered because:

- 1)the total acreage by survey is 45.86 acres rather than the 72.2 acres assessed by the Town;
- 2)the main access to the property and race track is across the land of Frank Hall, Jr.; the Taxpayer has no easement or right-of-way across the Hall property, only verbal permission; this is not a transferable real estate right and thus not taxable; therefore the Town's first acre site value should be reduced 75 percent to \$7,000;
- 3)the value for a site off North Dorchester Road was properly assessed by the Town at \$8,450;
- 4)as shown by the Taxpayer's survey, the area developed as a race track is only 6.91 acres rather than the 26 acres (first acre site and 25 acres of excellent rear land) assessed by the Town; thus the value of 5.91 acres (6.91 total developed minus first acre site) is \$8,850;
- 5)as shown on the Taxpayer's survey, the balance of the more accessible but undeveloped land east of the powerline totals 7.47 acres and the proper assessment is as fair rear land for \$5,250;
- 6)the balance of the parcel, 30.48 acres including the powerline right-of-way is properly graded poor rear land and should be valued at \$12,200;
- 7)the bleachers are personal property and not taxable; they are not fixtures due to their negligible attachment to the real estate and due to the fact their use is not intrinsically intertwined with

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the real estate (i.e., the bleachers mere existence at that site does not cause them to take on any aspects or rights of real estate). See King Ridge, Inc. v. Town of Sutton, 115 N.H. 294 (1975); and 8)the value of \$10,000 for the various buildings and lighting is reasonable.

If the taxes have been paid, the amount paid on the value in excess of \$51,750 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Henry G. Martin (Comm.), Francis Burnham, FO, Representatives for the Taxpayer; and Chairman, Selectmen of Wentworth.

Valerie B. Lanigan, Clerk

Date: April 9, 1992

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