

Emissaries of the Divine Light

v.

Town of Epping

Docket Nos.: 8648-90 and 11193-91 EX

DECISION

I. INTRODUCTION

The "Taxpayer" appeals the "Town's" partial denial of an RSA 72:23 III religious exemption. The appeals were made pursuant to RSA 71-B:5 I and RSA 71-B:11 (for the 1990 tax year) and RSA 72:34-a (1992 Supp.) (for the 1991 tax year). The Taxpayer seeks a 100% exemption on its properties in the Town known as "Green Pastures," which term shall be used to refer to all of the Taxpayer's property in the Town even though properties are separately identified on several tax lots. The Town conceded the Taxpayer was a qualified religious organization but argued only the Taxpayer's chapel, classroom, administrative offices, and parsonage should be exempt. (Note: Pursuant to the board's previous decision in docket no. 4424-88, the Town actually exempted 60% of Green Pastures. The Town contended the remainder of the property was not exempt.) For the reasons stated below, we deny the Taxpayer's request for total exemption and grant a partial exemption as summarized on pages 24-26.

II. FACTS

To provide a brief background, the following facts are recited. More details are provided later in this decision and in the board's answers to the requests for findings.

A. Corporate Status and Purpose

The Taxpayer is an RSA ch. 292 voluntary corporation (incorporated 1963). The Taxpayer is affiliated with a "Mother Church" in Colorado (incorporated 1940 in California). The Mother Church is lead by a "bishop," and the Mother Church conducts at its facilities and supervises at other facilities: a) training and education of members and ministers; b) ordination of ministers; and c) distribution of Emissaries of the Divine Light material.

(The term "Emissaries" will be used to refer to the Emissaries as an entity and not to this specific Taxpayer.) Internationally, the Emissaries have twelve large church facilities called "units," and the Emissaries also conduct services at several satellite facilities. The total Emissaries' membership, which was based on a mailing list, was 2,300 internationally and 200 in New England.

B. Religious Beliefs

The 1940 incorporation articles for the Mother Church reference the "Third Sacred School" under the direction of Lloyd A. Meeker (aka "Uranda"), the Emissaries' founder. The articles reference the "laws of spiritual and material life *** enunciated by Jesus Christ and by Sages of the ancient and modern world ***,]" including the writings of Uranda and the Bible.

Taxpayer's Exhibit 28, Article II. The Taxpayer's original, 1963 incorporation articles did not reference the Mother Church or its teaching, but the articles stated the Taxpayer's corporate purpose was the "spiritual regeneration of the human race under the inspiration of the spirit of God ***." Taxpayer's Exhibit 26, Article III. The Taxpayer's amended, 1978 articles referenced the Mother Church. Taxpayer's Exhibit 26, Article III.

Because this is a religious exemption case, evidence was presented

concerning the Emissaries' beliefs. The testimony concerning the Emissaries' religious beliefs was varied. The Emissaries who testified described the Emissaries' religion as theism¹, humanism², realism³, and pantheism⁴, with the acceptance of agnostics⁵ and atheists⁶. (The preceding words are the board's, based on the testimony and the definitions in the footnotes below. The terms were not necessarily used by the witnesses, but the terms allow the board to summarize the testimony.) All Emissaries' witnesses expressed the common belief that as humans they were required to express "goodness" as a light to the world through living in a particular way. In essence, through their lives and examples the spiritual rejuvenation of the earth could occur. Some witnesses were well informed about the Emissaries' beliefs, and others appeared not to be. Some witnesses referred to the Emissaries as a religion, but the Taxpayer's minister, Richard S. Friedman, referred to it as a "program." When questioned on the apparent lack of religiosity in their

¹ Theism means belief in the existence of a god or gods; belief in the existence of one God viewed as the creative source of man and the world who transcends yet is immanent in the world.

² Humanism means a devotion to the humanities; literary culture; the revival of classical letters, individualistic and critical spirit, and emphasis on secular concerns characteristic of the Renaissance; a doctrine, attitude, or way of life centered on human interests or values; a philosophy that usually rejects supernaturalism and stresses an individual's dignity and worth and capacity for self-realization through reason.

³ Realism means concern for fact or reality and rejection of the impractical and visionary; a doctrine that universals exist outside the mind; the conception that an abstract term names an independent and unitary reality; the conception that objects of sense perception or cognition exist independently of the mind; fidelity in art and literature to nature or to real life and to accurate representation without idealization.

⁴ Pantheism means a doctrine that equates God with the forces and laws of the universe; the worship of all gods of different creeds, cults, or peoples indifferently; toleration of worship of all gods (as at certain periods of the Roman empire).

⁵ Agnostics are ones who hold the view that any ultimate reality (as God) is unknown and probably unknowable.

⁶ Atheists are ones who deny the existence of God.

(All definitions from Webster's Ninth New Collegiate Dictionary (1989)).

terminology, Taxpayer's witnesses testified that religious-laden terms are not used so the Emissaries can be open to all faiths.

The Taxpayer's witnesses testified that community living was an essential part of being an Emissary. Additionally, the witnesses testified the regeneration of the earth was another important aspect, which was expressed through farming and other agricultural activities. However, one is not required to directly participate in community living or community regeneration of the earth to be a member in good standing. The community living and agricultural participation is, however, required for certain Emissaries' courses, albeit only while the courses are in session. For example, the introductory course -- The Art of Living -- requires a 5-day stay at Green Pastures, during which stay the individual will live in the Green Pastures' community and will engage in the agricultural activities. Full-time residents at Green Pastures routinely take part in varying degrees of community living and agricultural activities. Internationally, only 24% of all Emissaries reside in the units, and only 32% of New England Emissaries reside at Green Pastures, which is the only Emissaries' unit in New England. Taxpayer's Exhibit 29.

C. Physical Description of the Property

The following is a brief property description. As required, more detail will be provided later in this decision and in the findings. Note: As part of the 1988 appeal, the board viewed Green Pastures with both parties.

Green Pastures consists of 10 tax lots (six being vacant lots) with a total of 163 acres and approximately 26 buildings of various sizes with various components. See Town Exhibits F (tax maps), G (summary sheet of assessments) and I (property-record cards for properties involved and the assessment thereon).

Generally, the land consists of four components:

1. land appurtenant to nonagricultural buildings;
2. agricultural land, including fields and land appurtenant to agricultural buildings;

3. wood lots; and
4. vacant land that was not a wood lot or a farm lot.

The buildings fall into the following general categories:

1. chapel;
2. classrooms;
3. administrative offices;
4. parsonage (single-family home);
5. multi-unit residential buildings (some being apartments and some being single-family houses with various additions);
6. dormitories;
7. dining room;
8. agricultural buildings; and
9. support buildings, e.g., laundry and garage.

There are a total of 77 bedrooms and 118 beds at Green Pastures.

D. Use Of Green Pastures

The Taxpayer's sought a full RSA 72:23 III religious exemption for Green Pastures, even for living spaces and farming spaces, because the Taxpayer claimed everything it does at Green Pastures is religious. Additionally, the Taxpayer claimed Green Pastures is akin to a monastery or a church headquarters. All of the witnesses who presented this testimony were living either at Green Pastures or at the Mother Church's property. See also the Taxpayer's hearing memorandum for the Taxpayer's summary of the various uses of the properties.

Green Pastures is used in the following ways:

1. some members live and work full time at Green Pastures without any outside employment;
2. some members live at Green Pastures but work full time outside, paying, in essence, rent to the Taxpayer with additional voluntary financial contributions;
3. some members and some visitors use the facilities for classes that relate to Emissaries' religious programs, with some of the students staying at Green Pastures;
4. some members and some visitors use the facilities for classes that

- do not relate to Emissaries' religious programs, with some of the students staying at Green Pastures;
5. the chapel is used for weekly services and other events, both sponsored by the Emissaries and a very few sponsored by the community;
 6. once a year a council is held, during which time the activity at Green Pastures reaches a peak because the bishop from the Mother Church makes a visit;
 7. Green Pastures acts as a magnet community and facility for Emissaries in New England, the northeast, and to a lesser extent, internationally; and
 8. some of the buildings and land are dedicated to agricultural activities that produce food for the residents and that allow residents to practice stewardship of the land.

In terms of community living, there are both self-sufficient units (single-family homes or apartments with bedrooms, living room, bathroom and kitchen) and dormitory-style space (separate bedrooms, but shared bath and common areas without kitchen facilities). Additionally, there is a common dining hall and a common laundry facility. Green Pasture residents sleep and eat on the property, and to some extent, depending on their employment status off the property, they participate in the property's management and agricultural activities. There are three, weekly worship services and some (although not detailed sufficiently) other weekly meetings to address various aspects of Green Pastures and the Emissaries. There is a stable group of residents, with 65% of the residents having been there at least seven years, and there is a diversity of ages. Taxpayer's Exhibits 34 and 3.

In 1990, 65 of the 118 beds were available for visitors and 53 of the 118 were used by full-time residents. Additionally, 29 of the 77 bedrooms were available for visitors and 48 of the 77 bedrooms were used by full-time residents. Taxpayer's Exhibit 29. The Taxpayer, at the board's request, submitted its 1990 and 1991 guest lists. The lists demonstrated that a number of people stayed or visited Green Pastures. However, the lists did not, with limited exceptions, indicate why the guests stayed at Green Pastures and what activities the guests engaged in. The board attempted to, but was unable to,

calculate the number of visitors for religious events. For example, groups visited from other states, but no information was provided about whether the activities were religious. The same for the women's weekend. Additionally, the board was unable to calculate the number of nights spent by visitors because the guest lists were inconsistently kept. The Taxpayer should have submitted an understandable and supportable summary. Unfortunately, it is too late for such a submission. Suffice it to say, no conclusions could be made concerning whether the guests stayed for religious activities.

E. Taxation

Pursuant to the board's decision in a prior appeal for the 1989 tax year (Docket No. 4424-88), the Town in 1990 and 1991 exempted 60% of Green Pastures and taxed 40%.

III. GENERAL FRAMEWORK OF ANALYSIS OF THE RESPECTIVE ASSESSMENTS

This section will spell out the analytical framework the board will follow in this decision. Because of the Taxpayer's evidence and the Taxpayer's assertion of full exemption, the board had little difficulty or disagreement in denying the appeal. The board, however, was truly challenged in deciding what analytical method should be employed. This challenge occurred for three reasons: 1.) the concern about having due deference to the Taxpayer's religious beliefs; 2.) the lack of certainty in particular statutory provisions; and 3.) the lack of full guidance and consistency from caselaw.

The board's main struggle related to how much deference the board was required to give to the Taxpayer's subjective religious use of the Green Pastures. Thus, the board discussed two possible approaches to this case. Both approaches assumed: a) the Taxpayer was a qualified religious entity; b) the Taxpayer owned the property; and c) any property actually occupied by the entity and used for religious purposes, as viewed objectively, e.g., the

chapel, classroom building and administrative buildings, would be exempt. The divergence occurred when looking at buildings and land that were not objectively used for religious purposes, e.g., as the members' residences and the agricultural properties. Certain board members thought only an objective approach should be applied while other board members thought a combined, objective-and-subjective approach should be applied.

Under an objective approach, the board would look at the property's particular principal use and determine whether the activity occurring there, objectively viewed, was principally secular or principally religious. If the principal use was religious, that property would be exempt. If the principal use was secular, that property would be taxable. Under an objective approach, the Taxpayer's subjective beliefs would not bind the board to conclude the use was religious simply because the Taxpayer asserted the use was religious.

Under the combined, objective-and-subjective approach, the board would employ the objective approach but would also consider the Taxpayer's subjective use of the property. Under the subjective approach, the Taxpayer, as a qualifying religious entity, would be entitled to a presumption that what it says is a religious use shall be treated as a religious use. See New Canaan Academy, Inc v. Town of Canaan, 122 N.H. 134, 138 (1982) (educational entity entitled to presumption concerning asserted educational uses). Thus, the Taxpayer's asserted subjective use of a particular property would, in most cases, control if the Taxpayer produced sufficient objective evidence that the subjective religious belief was sincerely held and that the particular property was used in accordance with that belief.

An example of the two approaches is the analysis required for buildings used for sleeping and eating. Everyone must sleep and eat. Thus, by their very nature, these activities are secular not religious. Under an objective test, buildings used by full-time residents for sleeping and eating would not be principally used for religious purposes and thus not exempt. Under a subjective test, if the Taxpayer asserted sleeping and eating in community were core religious principals, the board would be required to assume the

sleeping and eating activities were religious. Thus, the Taxpayer would be entitled to an exemption if the Taxpayer introduced sufficient evidence to prove that sleeping and eating in community were core religious principals and the property was used consistent with those beliefs.

As detailed below, the board reached a consensus that the real focus was not based on an objective-use test or a subjective-use test but rather whether the use was principally for the benefit of the entity or the members.

A. Burden of Proof

The taxpayer has the burden to prove it was entitled to a full exemption. See New Canaan Academy v. Town of Canaan, 122 N.H. 134, 138 (1982); TAX 205.03(c) (repealed September 1, 1993, replaced with TAX 204.06).

B. Statutory Construction

In construing RSA 72:23, the exemption statute, we must attempt to ascertain the legislative intent from the statute as written. Thus, neither a strict nor liberal construction will be taken. Franciscan Fathers v. Pittsfield, 97 N.H. 396, 400 (1952). Rather, a reasonable interpretation will be given. St. Paul's Church v. Concord, 75 N.H. 420, 424 (1910).

The pertinent part of RSA 72:23 states as follows.

The following real estate *** shall, unless otherwise provided by statute, 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.

C. Constitutional Issues

Part 1, articles 3 and 12 of the New Hampshire Constitution provide that

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"every member of the community" and all property is to be protected by society and in return each person is "bound to contribute his share in the expense of such protection ***." Further, part 2, article 5 empowers the legislature to "levy proportional and reasonable *** taxes upon all inhabitants *** and *** estates within [the state]." These constitutional provisions demonstrate that all inhabitants must pay their fair share of the taxes, and the legislature is empowered to decide how those taxes will be levied.

Since this is a religious case, a brief discussion is required concerning constitutional issues surrounding religious exemptions. First, the constitution does not create any entitlement to a religious exemption. The Franklin Street Society v. Manchester, 60 N.H. 342, 348-51 (1880). However, all religious entities must be similarly treated consistent with the exemption statutes. See N.H. CONST. pt 1, art. 12. Second, while raised by the Taxpayer, see, e.g., Taxpayer's request number 139, this exemption appeal does not in any way implicate the free-exercise clauses of the New Hampshire

Constitution or the Federal Constitution. This case involves the Taxpayer's tax status, not whether the Taxpayer can freely practice its religion.

IV. ANALYSIS -- IS GREEN PASTURES A MONASTERY OR CONVENT UNDER RSA 72:23 III?

The first issue to be discussed is whether Green Pastures is a convent or monastery under RSA 72:23 III. If Green Pastures is a monastery or convent, it would be exempt. The board finds Green Pastures is not a convent or monastery. "Monastery" is defined as "a house for persons under religious vows; especially: an establishment for monks." Id. Webster's Ninth New Collegiate Dictionary (1989). Convent is defined as "a local community or house of a religious order or congregation; especially: an establishment of nuns."

Green Pastures is not a monastery or a convent under RSA 72:23 III for the following reasons:

1. the residents do not take any vows;
2. not all residents are members of a religious clergy, rather most are only members of the Emissaries;
3. the lives of the residents are not curtailed or subject to the rule of a superior as are the lives of the religious who live in convents and monasteries;
4. not all of the Green Pasture living units are shared-living units -- some are independent apartments with kitchens and dining rooms; and
5. the residents are able to work off Green Pastures and retain that income subject to paying rent.

In addition to these itemized factors, the Taxpayer's evidence and the board's view of Green Pastures clearly demonstrated that Green Pastures was not a monastery or a convent under RSA 72:23 III.

V. ANALYSIS -- IS GREEN PASTURES USED PRINCIPALLY

FOR RELIGIOUS TRAINING OR FOR OTHER RELIGIOUS PURPOSES?

Having concluded Green Pastures is neither a monastery nor a convent, we are left to consider whether Green Pastures is "used principally [1] for religious training or [2] for other religious purposes ***." RSA 72:23 III. We will begin by discussing the statutory framework on this issue, and we will then spell out the analytical approach the board will follow, concluding with the application of that approach to the various properties involved.

A. RSA 72:23 III -- Generally

Pursuant to constitutional authority cited above, the legislature has required that "all real estate *** shall be taxed except as otherwise provided." RSA 72:6. Thus, we begin with the assumption that Green Pastures is taxable. RSA 72:23 III provides an exemption for property owned and occupied by religious entities for religious purposes. Thus, when read together, RSA 72:6 and RSA 72:23 III establish that property is not exempt solely because it is owned by a religious entity. Rather, such property is exempt only if the property is occupied by the entity and used for the entity's religious purposes. In this case, the Town has decided only the Taxpayer's chapel, religious education classrooms, administration buildings, and parsonage meet these criteria.

B. Religious Training

The board concludes the Taxpayer failed to prove that any buildings other than the classroom building were used principally for religious training. Although not separately argued, the Taxpayer sought an exemption on some of the living accommodations, dining accommodations and other support buildings as part of the religious training that occurs at Green Pastures. However, the evidence failed to establish that those properties were used principally for religious training. Specifically, the Taxpayer failed to show what intensity of religious training occurred at Green Pastures, especially as compared to training on nonreligious topics. Additionally, the Taxpayer failed to introduce sufficient evidence to establish that the residential and dining uses were directly and integrally related to the religious training. For example, the Taxpayer provided its guest lists only after a board request.

As discussed above, the board was unable to draw any conclusion from those guest lists because the guest lists did not specify why individuals were staying at Green Pastures. We assume, without deciding, the Taxpayer could have introduced sufficient evidence to show that certain residential units were dedicated to principally serving as overnight accommodations for individuals attending religious courses. However, no such evidence was introduced. Therefore, other than the classroom, no other buildings are entitled to an exemption as buildings used principally for religious training.

C. Buildings Used Principally for Religious Purposes

The board concludes the Taxpayer failed to prove the other properties were used principally for the entity's religious purposes. Reaching this conclusion was most challenging. However, the analysis and the conclusion presented are consistent with RSA 72:23 III.

The board will first discuss the overall meaning of the RSA 72:23 III exemptions, and then the board will present a specific, step-by-step analysis, concluding with the application of that analysis.

1) The Cases

The board researched almost every New Hampshire case on entity exemptions to determine if any common thread could be found. At first glance, consistency was lacking because of the different statutes, the different circumstances of the taxpayers and even differences on the court makeup. However, one consistent theme was gleaned from these cases. This theme is the key to the board's analysis -- exemptions shall only be granted to properties used for the principal benefit of the entity and exemptions should not be granted if the principal benefit is to the members. St. Paul's School v. City of Concord, 117 N.H. 243 (1977), an educational exemption case, provided an in-depth discussion and analysis on this point. The court stressed the test was whether the "dominant purpose" of the use, 117 N.H. at 252, was for the entity (exempt) or the individual (not exempt). See also, New Canaan Academy v. Town of Canaan, 122 N.H. 134, 138-39 (1982) (communal activities that benefit members are not exempt); Alton Bay Camp Meeting Association v. Alton, 109 N.H. 44, 48-52 (1968) (buildings used principally for the residential convenience of the occupants were not exempt but buildings used principally for the accomplishment of the association's charitable purposes were exempt); Wentworth Home v. Portsmouth, 108 N.H. 514, 516-17 (1968) (living quarters for personnel were exempt where requiring the personnel to live near the home was essential to the home providing care to the patients); Nature Conservancy of New Hampshire v. Nelson, 107 N.H. 316, 319 (1966) (to qualify for an exemption, the property must benefit an indefinite number of people and it cannot be exempted if its purposes are confined mostly to benefitting members); Appalachian Mountain Club v. Meredith, 103 N.H. 5, 10 (1960) (test in organizational exemptions is whether the property for which an exemption is sought is for the benefit of an indefinite group of people); Franciscan Fathers v. Pittsfield, 97 N.H. 396, 401 (1952) ("The members of the plaintiff's order were not merely serving their own spiritual needs but in the conduct of the retreats were an active service for the retreatants."); Sisters of Mercy v. Hooksett, 93 N.H. 301, 309 (1945) (a chapel available to an

indefinite number of the public was exempt whereas if it had been restricted to the private use of the sisters and their private guests, it would not have been exempt).

2) The Test

Based on the statutory language and the above-cited cases, RSA 72:23 III provides exemptions to entities. It was not intended to nor does it provide exemptions to individuals.

Thus, the board must examine this Taxpayer's exemption request to determine whether the asserted uses are principally for the benefit of the entity or the individual members.

For clarity, the board decided to outline next the test for religious exemptions.

1. Does the entity seeking exemption qualify under RSA 72:23 III?

If yes, go to step 2.

If no, deny exemption due to entity's nonqualified status.

2. Does the qualified entity own the property?

If yes, go to step 3.

If no, deny exemption due to entity's nonownership.

3. Does the qualified entity occupy* the property?

* "Occupy" here means either: a) actual occupancy -- the organization itself actually occupies the property, e.g., administrative offices or a church hall; or b) constructive occupancy -- the organization does not actually occupy the property, but the property is occupied by individuals or by uses integrally related to the religious necessities of the entity, e.g., a caretaker's home.

If actually occupied by the entity, go to step 4.

If constructively occupied by the entity, go to step 5.

If not actually or constructively occupied by the entity, deny the exemption due to lack of occupancy.

4. For actual occupancy -- what is the property's objective principal use, e.g., religious or secular?

If secular, deny exemption as not occupied for religious purposes unless secular use is integrally related to religious use.

If religious, grant exemption.

5. For constructive occupancy -- what is the property's objective principal use and has the entity shown this use is integrally related to and reasonably necessary for the entity's religious purposes or activities.

If evidence proves principal use, whether religious or secular, is for the entity's benefit, grant exemption.

If not, deny exemption as not constructively occupied by the entity.

Turning to the properties at issue here, we conclude no further exemption was warranted.

Applying the above test to the residential buildings, residential support buildings and the dining hall yield the following.

1. The Taxpayer was a qualified RSA 72:23 III entity.

2. The Taxpayer owned the properties.

3. The Taxpayer, as an entity, did not actually occupy these properties. The residents actually occupied them. So, we turn to step 5 to determine if the properties were constructively occupied by the entity.

5. The principal objective use of these properties was secular --

sleeping, eating and other personal living activities. The Taxpayer did not show the use of these properties was integrally related to and necessary for the entity's religious purposes.

The residential buildings were occupied by members of the organization, and there was insufficient evidence to show that their residency was essential to the entity. The same can be said for the support buildings and the dining hall. The Taxpayer submitted reams of evidence that focused on the Emissaries' general religious beliefs and the individual practice of those beliefs. However, to the extent the members were simply practicing their religion, their activities were not for the principal benefit of the entity, and thus such uses were not entitled to exemption.

Applying the test to the agricultural buildings and land yields the same ultimate result -- denial of the exemption. The board, however, is not unanimous about the answer to each step. To the extent the members were simply practicing their religion, their activities were not for the principal benefit of the entity, and thus such uses were not exempt.

1. The Taxpayer was a qualified RSA 72:23 III entity.
2. The Taxpayer owned as an entity, these properties.
3. The Taxpayer did not actually occupy these properties. The property was actually occupied by agricultural activities. So, we go to step 5 to determine if the properties were constructively occupied.
5. The principal objective use of these properties was secular -- farming to provide food for individuals. As discussed next, the board is divided over some of the answers in this step.

Two members conclude these properties were no different than the residential properties, i.e., the principal uses were secular uses that were not integrally related to or necessary for the entity's religious purposes. Two members conclude the Taxpayer showed the agricultural uses were integrally related to and necessary for the Taxpayer to fulfill its religious purpose as

an entity. This position is detailed below. Even with this disagreement, all members agreed the Taxpayer's evidence did not show how much of the agricultural buildings and land were necessary to fulfill the entity's religious purposes. This point is discussed further below.

D. Agriculture

Two board members conclude that, to some extent, the agricultural pursuits and cultivation of the land at Green Pastures was a religious expression (see Taxpayer's request number 58, 59, 60 and 64). These board members found the record contained adequate evidence of the general incorporation into the Emissaries' doctrine of cultivating the earth as an expression of mankind's responsibility to regenerate the earth.

The board did not find adequate evidence to support the Taxpayer's similar claim that the communal-living aspects at Green Pastures qualifies the property for exemption. However, two members do find agriculture to be a sincere and significant expression of the Emissaries' religious belief by: 1.) its importance in many of the Emissaries' writings; 2.) the actual practices of the individuals at Green Pastures; and 3.) the general practice of all Emissaries being involved to some extent in gardening/agriculture.

The two board members agree with the balance of the board that, normally, agriculture when viewed objectively is a secular activity. However, at Green Pastures, which acts as a training facility and magnet community for the Emissaries, agricultural pursuits are exemplary activities of their religious beliefs. When such activities through doctrine and practice become critical expressions of the organization's religious beliefs, then the religion's subjective viewpoint of the necessity of these expressions controls the determination of exemption. See New Canaan Academy, Inc. v. Town of Canaan, 122, N.H. at 138.

In the 1988 decision, (docket No. 4424-88) the board attempted to apply reasonableness and common sense to a property whose use served dual purposes (secular and sacred) and was in a constant state of flux throughout the year.

However, the parties wished to relitigate the decision and during the hearing for the 1990 and 1991 tax years asked the board to make definitive and quantitative decisions as to what properties are exempt.

As a result, the burden falls heavily with the Taxpayer to show why all the properties should be exempt as they requested. See New Canaan Academy Inc. v. Town of Canaan, 122 N.H. at 138; TAX 205.03(c) (repealed September 1, 1993, replaced with TAX 204.06). Two board members find some of the agricultural property would qualify for an exemption if the Taxpayer could show its primary purpose and use was directly and significantly related to the Emissaries' beliefs. Franciscan Fathers v. Pittsfield, 97 N.H. 396, 401 (1952) (to qualify for an exemption, the use of occupancy of a portion of the real estate must be more than slight, insignificant or negligible). The Taxpayer, however, argued all its property was integral to its religious belief rather than identifying those portions of Green Pastures where their religious use and occupancy was significant.

The two members find this "all or nothing" approach is neither reasonable nor supported by the evidence and caselaw. Therefore, the two members find the Taxpayer failed in its burden of proof by not submitting sufficient evidence as to what agricultural land was critical for their religious expression. (See also section E, How Much is Enough?).

E. How Much is Enough?

One of the major flaws in the Taxpayer's case was the all-or-nothing approach concerning the exemption. The Taxpayer argued that because its members were practicing their religion at Green Pastures and because the activities were essential to religious practices, the entire property should be exempt. However, a line must be drawn somewhere, and that line has been drawn in the supreme court cases under the word "occupy," which has been defined to mean the property is essential and integrally related to the entity's use. For example, to the extent Green Pastures serves as a magnet institution for other Emissaries, the Taxpayer may have a legitimate argument

that a certain number of the residents are required to maintain Green Pastures properties and serve as a magnet for the entity. However, insufficient evidence was introduced on this point. As a second example, certainly the entire 160 acres was not integral to the Taxpayer's (as an entity) religious purposes.

F. Note on Apportionment

The board's previous decision (docket no. 4424-88) and the parties raised the issue of whether RSA 72:23 III requires apportionment between religious and secular uses. See St. Paul's School v. City of Concord, 117 N.H. 243, 250 (1977) (apportionment for education exemption); Alton Bay Meeting Association v. Town of Alton, 109 N.H. 44, 50 (1968) (apportionment for charitable exemption). (Compare: RSA 72:23 III, which includes the word "principally;" a word not in RSA 72:23 IV or V.) The above test answers this question.

Apportionment is made between uses that are principally for the entity's religious purposes, whether objectively religious or secular (exempt), and those not "religious" (not exempt). This apportionment is based on a unit basis or square-foot basis. For example, if the Taxpayer had shown five residents were needed to live at Green Pastures for maintenance, grounds keeping and the like to preserve and operate Green Pastures as a magnet for courses and retreats, those residential units would presumably be fully exempt (i.e., no apportionment concerning the unit) even though the units also serve a secular purpose by providing a place to live. In other words, apportionment is performed based on living units or square footage rather than based on objectively religious versus objectively secular, i.e., apportionment is not done by saying the caretaker sleeps 8 hours a day, therefore, 8/24ths is taxable.

The above approach may not, however, be helpful concerning buildings that lack easily defined boundaries. For example, if it were shown the dining hall served students for religious classes, would apportionment be required

based on the students' use compared to the residents' use? Would the building be entirely taxable or exempt if the principal use were shown to be for the religious students even though also significantly used by the residents? Guidance from the supreme court would be helpful.

VI. CONCLUSION

Based on the above analysis, we find the Taxpayer would not be entitled to any exemption other than on its chapel, dining hall in 1990 (when used as a chapel), classroom/utility building, administration building, and parsonage and the land appurtenant to those buildings. The value of the land appertaining the exempt buildings is calculated based on the ratio of the exempt building value compared to the total building value on each lot. {Example: For 1990 on lot 105-A, buildings 1, 1-A & 2, the total building value was \$473,600 and the exempt building value was \$179,200. Comparing the two produces a ratio of 37.8% ($\$179,200 \div \$473,600 = 37.8\%$). This ratio is then applied to the land value associated with those buildings to result in an exempt land value of \$50,500 ($\$133,700 \times 37.8\%$).}

A summary of the exempt and nonexempt property follows on the next three pages.

1990 Summary of Exempt and Non-exempt Properties

<u>Lot No.</u>	<u>Building No./Name</u>	<u>Land Value</u>	<u>Building Value</u>	<u>Property Exempt</u>	<u>1990 Exemption</u>
					<u>Net Value</u>
12	N/A	\$82 *	N/A		\$0
					\$82*
105	N/A	\$976 *	N/A		\$0
					\$976*
109	N/A	\$1,310 *	N/A		\$0
					\$1,310*
111	N/A	\$2,008 *	N/A		\$0
					\$2,008*
103-1	N/A	\$52,500	N/A		\$0
					\$52,500

Emissaries of the Divine Light v. Town of Epping
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18	6, 7-A, 7-B	\$49,400	\$177,200	1/6 Parsonage & land	\$37,767
	\$188,833				
18	8	\$54,900	\$254,700	Parsonage & land	\$309,600
	\$0				
18	N/A	\$103,500	N/A		\$0
	\$103,500				
103	10, 10-A, 10-B	\$74,300	\$246,100		\$0
	\$320,400				
103	N/A	\$562 *	N/A		\$0
	\$562 *				
105-A	1, 1-A, 2	\$133,700	\$473,600	Admin. & Chapel	\$229,600
	\$377,700				
105-A	3 (dining hall)	\$285,300	\$119,600	& 37.8% of land Dining hall used as	\$201,766
	\$203,134				
105-A	3 (kitchen)	w/ dining hall	\$20,700	Chapel & 28.8% of land	\$0
	\$20,700				
105-A	4	"	\$234,000		\$0
	\$234,000				

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105-A	12	"	\$4,500		\$0	\$4,500
105-A	5	"	\$141,100		\$0	\$141,100
105-A	11	"	\$76,600	Classroom and utility room	\$76,600	\$0
105-A	13 (including 9 outbuildings)	"	\$84,200		\$0	\$84,200
105-A	N/A (75.3 acres)	\$63,381 *	N/A		\$0	\$63,381
65	Riverview	\$39,800	85,400		\$0	\$125,200
Total					\$855,333	\$1,924,086

* denotes total or partial current-use assessment

1991 Summary of Exempt and Non-exempt Properties

<u>Lot No.</u>	<u>Building No./Name</u>	<u>Land Value</u>	<u>Building Value</u>	<u>Property Exempt</u>	<u>1991 Exemption</u>	<u>Net Value</u>
12	N/A	\$80 *	N/A		\$0	\$80*
105	N/A	\$948 *	N/A		\$0	\$948*
109	N/A	\$1272 *	N/A		\$0	\$1272*
111	N/A	\$1962 *	N/A		\$0	\$1962*

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103-1	N/A	\$52,500	N/A		\$0	\$52,500
18	6, 7-A, 7-B	\$49,400	\$177,200	1/6 Parsonage & land	\$37,767	\$188,833
18	8	\$54,900	\$254,700	Parsonage & land	\$309,600	\$0
18	N/A	\$103,500	N/A		\$0	\$103,500
103	10, 10-A, 10-B	\$74,300	\$246,100		\$0	\$320,400
103	N/A	\$616 *	N/A		\$0	\$616 *
105-A	1, 1-A, 2	\$133,700	\$813,300	Admin., Chapel & 63.8% of land	\$604,200	\$342,800
105-A	3 (dining hall)	\$285,300	\$119,600	11.3% of land	\$32,239	\$372,661
105-A	3 (kitchen) w/ dining hall		\$20,700		\$0	\$20,700
105-A	4	"	\$234,000		\$0	\$234,000
105-A	12	"	\$4,500		\$0	\$4,500
105-A	5	"	\$141,100		\$0	\$141,100
105-A	11	"	\$76,600	Classroom and utility room	\$76,600	\$0
105-A	13 (including 9 outbuildings)	"	\$84,200		\$0	\$84,200
105-A	N/A (75.3 acres)	\$62,958 *	N/A		\$0	\$62,958*
65	Riverview	\$39,800	\$85,400		\$0	\$125,200
Total					\$1,060,406	\$2,058,230

* denotes total or partial current-use assessment

VII. REQUEST FOR FINDINGS AND RULINGS

A. Decision Takes Precedence

Below are the board's responses to the parties' requests for findings and rulings. If a conflict exists between a board response to a request and the board's written decision, the decision controls.

Though not part of the board's analysis or decision, two board members also question whether the Emmissaries' communal living and agricultural work were a way of life rather than religious activity.

B. Standard on Religious Requests

In answering the requests for factual findings, the board responded based on the evidence. On issues of religion, the board used a subjective approach in making factual findings, i.e., did the Taxpayer present sufficient evidence to find the Taxpayer, as an entity, sincerely professed certain beliefs and the Taxpayer's members sincerely believed. E.g., Taxpayer's requests 58, 59 and 67. These subjective conclusions differ from the board's legal analysis. For example, the Taxpayer's members subjectively believe communal living is a religious way to live, and a request on this would be granted. But in the board's legal analysis, such a granting may have no legal significance. In some instances, the Taxpayer's requests on religious matters were denied because of lack of evidence.

C. Meaning of "Neither Granted nor Denied"

In these responses, "neither granted nor denied" generally means one of the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the request was irrelevant; or
- e. the request cited a board decision or decision from another state, which do not control the decision here.

D. Note Concerning Findings of Fact

The board's responses to the Taxpayer's requests for findings warrant an overall caveat. The Taxpayer's proposed factual finding (and the facts in the Taxpayer's memorandum) paint a picture of much more extensive and pervasive religious activities than shown by the evidence. It is interesting that the Taxpayer's witnesses did not speak in religious terms, and some admitted to purposefully avoiding the use of religious-laden terms. Yet, the Taxpayer's attorney used religious-laden terms throughout her memorandum and requests. Some of this may be attributable to the Taxpayer's assertion that all activities at Green Pastures were religious. Some may be attributable to the attorney's advocacy.

While we conclude the Taxpayer's members sincerely hold and practice certain beliefs, e.g., the spiritual regeneration of the earth, the Taxpayer's attorney's memorandum and requests inaccurately portrayed the overt religiosity of the Taxpayer and its members. This was not the board's perception of the evidence. This discussion also demonstrates the difficulty with writing this decision. Words generally have a common meaning and are understood in the context of their common use. For example, if an individual said he/she was a seminarian, most people would assume the person was a full-time student attending several years of religious training and schooling. The

Taxpayer used this term in a way different than the common meaning. This is not a judgment about the Emissaries or their beliefs. Rather, it is an attempt to discuss this matter with words that have meanings as associated with major religions because this reflects the context of the word's usual usage.

The following is a limited discussion on this issue.

1. At the hearing and in numerous requests, including Taxpayer's 3, 7 and 52, the Taxpayer used the term "seminarians" or "seminary students" when describing anyone who attended a seminar on any topic. The dictionary defines the terms much more narrowly as follows:

Seminary means an environment in which something originates and from which it is propagated; an institution of secondary or higher education; especially: an academy for girls; an institution for the training of candidates for the priesthood, ministry, or rabbinate.

Seminarian means a student in a seminary especially of the Roman Catholic Church.

Webster's Ninth New Collegiate Dictionary (1989).

Certainly, the Taxpayer does not run a full-scale seminary nor are class attendees seminarians as commonly understood. There is some "religious" training, but not to the extent the Taxpayer's attorney's words portrayed.

2. The Taxpayer's attorney used the terms "reside" and "live" in Taxpayer's request 28 and 71 in an expansive and somewhat misleading way. The terms were used to refer to anyone who had stayed or spent a night or several nights at Green Pastures. The dictionary defines these words quite differently. Reside: "to dwell permanently or continuously; occupy a place as one's legal domicile." Live: "to occupy a home." Webster's Ninth New Collegiate Dictionary, (1989).

3. The word "religion" and references to God were used much more extensively in the Taxpayer's attorney's submissions than used by the witnesses or in the written evidence.

4. The words "extensive training" were used in the Taxpayer's requests 35 and 42 to describe the training required for ordained Emissaries'

ministers. Yet, the ordained ministers did not receive the extensive training as one would normally understand that term in connection with ordination. Again, this is not a judgment of the Emissaries. Rather, an attempt at clarity of usage.

E. Number of Requests

The board must comment on the substantial number of requests -- total 273 (143 Taxpayer requests and 130 Town requests). The parties should have submitted fewer, better-written requests. Fortunately, board rule TAX 201.37 will restrict parties to 25 requests ("request" defined as one request for finding or ruling), except if leave is granted for more. One reason this decision has taken so long to issue was the number of requests.

Taxpayer's requests for findings and rulings:

1. Denied.
2. Granted.
3. Denied.
4. Granted.
5. Denied.
6. Granted.
7. Neither granted nor denied. No Exhibit A submitted.
8. Denied.
9. Granted.
10. Neither granted nor denied.
11. Granted.
12. Denied.
13. Granted.
14. Granted.
15. Granted.
16. Neither granted or denied.
17. Granted.
18. Granted.
19. Granted with deletion of word "staff."
20. Granted.
21. Granted with deletion of word "staff."
22. Neither granted nor denied.
23. Granted.
24. Granted.
25. Granted.
26. Granted first three sentences. Denied last sentence.
27. Granted.
28. Denied.
29. Granted.
30. Granted.
31. Neither granted nor denied.
32. Neither granted nor denied.
33. Granted.
34. Granted.
35. Granted with deletion of word "extensive." Extensive is a qualitative word that the board does not believe the evidence

- supports.
- 36. Granted.
- 37. Granted.
- 38. Granted.
- 39. Granted.
- 40. Granted.
- 41. Granted.
- 42. Granted with deletion of word "extensive."
- 43. Granted.
- 44. Granted.
- 45. Granted.
- 46. Granted.
- 47. Neither granted nor denied.
- 48. Denied.
- 49. Granted with church defined as EDL-N.H.
- 50. Denied.
- 51. Denied.
- 52. Granted.
- 53. Denied.
- 54. Neither granted nor denied.
- 55. Neither granted nor denied.
- 56. Granted.
- 57. Granted.
- 58. Granted.
- 59. Granted.
- 60. Granted.
- 61. Neither granted nor denied.
- 62. Granted.
- 63. Neither granted nor denied.
- 64. Granted.
- 65. Denied.
- 66. Granted.
- 67. Denied.
- 68. Denied.
- 69. Granted.
- 70. Granted.
- 71. Neither granted nor denied.
- 72. Neither granted nor denied.
- 73. Granted.
- 74. Neither granted nor denied.
- 75. Granted.
- 76. Denied.
- 77. Granted to the extent seminary means a place that provides education.
- 78. Neither granted nor denied.
- 79. Granted.
- 80. Denied.
- 81. Denied.
- 82. Granted.
- 83. Granted.
- 84. Neither granted nor denied. Ruled irrelevant.
- 85. Granted.
- 86. Granted with deletion of word "staff."
- 87. Denied.
- 88. Granted.
- 89. Denied. (See Taxpayer Exhibit 2A for figures.)
- 90. Neither granted nor denied.
- 91. Granted.
- 92. Neither granted nor denied.
- 93. Denied.

94. Neither granted nor denied.
95. Neither granted nor denied.
96. Neither granted nor denied.
97. Neither granted nor denied. (See Taxpayer Exhibit 2A, B, C for figures.) Denied to extent asserted all class income was from religious classes.
98. Neither granted nor denied. (See Taxpayer Exhibit 2A, B, C for figures.)
99. Granted.
100. Granted.
101. Neither granted nor denied.
102. Neither granted nor denied.
103. Granted.
104. Neither granted nor denied.
105. Neither granted nor denied.
106. Denied.
107. Neither granted nor denied.
108. Granted.
109. Neither granted nor denied.
110. Granted.
111. Granted.
112. Granted.
113. Granted.
114. Granted.
115. Granted.
116. Neither granted nor denied.
117. Neither granted nor denied.
118. Neither granted nor denied.
119. Denied.
120. Neither granted nor denied.
121. Neither granted nor denied.
122. Neither granted nor denied.
123. Neither granted nor denied.
124. Neither granted nor denied.
125. Neither granted nor denied.
126. Neither granted nor denied.
127. Denied.
128. Denied.
129. Neither granted nor denied.
130. Granted.
131. Denied.
132. Neither granted nor denied.
133. Granted except to the citation.
134. Granted except to the citation.
135. Denied.
136. Granted.
137. Denied.
138. Granted.
139. Neither granted nor denied.
140. Neither granted nor denied.
141. Granted.
142. Granted.
143. Neither granted nor denied.

Town's request for findings and rulings:

1. Granted.
2. Granted.
3. Granted.
4. Granted.

5. Granted.
6. Granted.
7. Neither granted nor denied.
8. Granted.
9. Granted.
10. Granted.
11. Neither granted nor denied.
12. Neither granted nor denied.
13. Not a finding - the document speaks for itself.
14. Granted.
15. Not a finding - the document speaks for itself.
16. Not a finding - the document speaks for itself.
17. Granted.
18. Not a finding - the document speaks for itself.
19. Granted.
20. Neither granted nor denied.
21. Granted.
22. Granted.
23. Granted.
24. Granted.
25. Granted.
26. Granted.
27. Neither granted nor denied.
28. Granted.
29. Granted.
30. Granted.
31. Granted.
32. Granted.
33. Granted.
34. Granted.
35. Granted.
36. Granted.
37. Granted.
38. Granted.
39. Granted.
40. Granted, 27.2 acres.
41. Granted.
42. Granted.
43. Granted.
44. Granted.
45. Granted.
46. Granted.
47. Granted.
48. Granted.
49. Granted.
50. Granted.
51. Granted.
52. Denied.
53. Denied.
54. Denied.
55. Granted.
56. Granted.
57. Granted.
58. Granted.
59. Granted.
60. Granted.
61. Granted.
62. Granted.
63. Granted.
64. Granted.

65. Granted.
66. Granted.
67. Granted.
68. Granted.
69. Granted.
70. Granted.
71. Granted.
72. Granted.
73. Granted.
74. Granted.
75. Granted.
76. Denied.
77. Granted.
78. Granted.
79. Granted.
80. Granted.
81. Granted.
82. Denied.
83. Denied.
84. Granted.
85. Neither granted nor denied.
86. Granted.
87. Granted.
88. Granted.
89. Neither granted nor denied.
90. Granted.
91. Denied.
92. Granted.
93. Granted.
94. Granted.
95. Granted.
96. Granted.
97. Granted.
98. Granted.
99. Granted.
100. Granted.
101. Granted.
102. Granted.
103. Granted.
104. Granted.
105. Neither granted nor denied.
106. Denied.
107. Denied.
108. Granted.
109. Granted.
110. Denied.
111. Granted.
112. Granted.
113. Granted.
114. Granted.
115. Granted.
116. Granted.
117. Granted.
118. Granted.
119. Granted.
120. Granted.
121. Granted.
122. Neither granted nor denied.
123. Granted.
124. Granted.

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125. Granted.
126. Granted.
127. Granted.
128. Granted.
129. Denied.
130. Denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Paul B. Franklin, Member

Michele E. LeBrun, Member

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Emissaries of the Divine Light v. Town of Epping
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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kathryn Williams, Esq., counsel for Taxpayer; Arthur Green, Esq., counsel for Town of Epping; and Chairman, Board of Selectmen, Town of Epping.

Dated: February 17, 1994

0008

Valerie B. Lanigan, Clerk

Town of Epping

Docket No. 8648-90 and 11193-91-EX

ORDER

This order relates to the "Taxpayer's" rehearing motion. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

Motion denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

I certify that copies of the within Order have this date been mailed, postage prepaid, to Kathryn Williams, Esq., counsel for Taxpayer; Arthur Green, Esq., counsel for Town of Epping; and Chairman, Board of Selectmen, Town of Epping.

Date: March 29, 1994

Valerie B. Lanigan, Clerk

Emissaries of Divine Light, Inc.

v.

Town of Epping

Docket Nos.: 8648-90, 11193-91 and 12909-92EX

ORDER

This order responds to the "Town's" June 10, 1993 letter in which the Town stated the "Taxpayer's" 1991 and 1992 appeals were not timely filed. For the reasons stated below the board rules the 1990 and 1991 were timely filed and will be heard at the July 13, 1993 hearing, but the 1992 appeal was not timely filed and thus is dismissed.

All of these appeals are based on the Town's decision on the Taxpayer's request for an RSA 72:23 III religious exemption. The letters from the parties indicated a misunderstanding about the appeals process and about the applicability of RSA 76:17-c to exemption appeals. Exemption appeals are governed by RSA 72:34-a (supp. 1992). To appeal a municipality's decision on an exemption application, the taxpayer must appeal to the board within six months of the notice of the final tax bill. RSA 72:34-a. There is no requirement, as there is for the usual property-tax appeal under RSA ch.76, for the taxpayer to first file an abatement application with the municipality. See 72:34-a; compare RSA 76:16.

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The following summarizes the notice-of-tax dates, the filing deadlines and the dates the appeals were filed.

<u>Year</u>	<u>Notice-of-Tax Date</u>	<u>RSA 72:34-a Deadline</u>	<u>Appeal Filed</u>	
	<u>Timely?</u>			
1990	Nov. 14, 1990	May 13, 1991	Feb. 25, 1991	
	yes			
1991	Nov. 13, 1991	May 12, 1992	April 10, 1992	
	yes			
1992	Oct. 2, 1992	April 9, 1993	June 2, 1993	no

Based on the above, the 1990 and 1991 appeals were timely filed, but the 1992 was untimely filed and therefore must be dismissed.

The Taxpayer responded to the Town's letter, claiming it did not need to file with the municipality because of RSA 76:17-c. This argument is without merit for two reasons. First, as discussed above, exemption appeals are governed by RSA 72:34-a, which does not require filing an abatement application with the municipality but only requires filing an appeal with the board. We have concluded the 1992 appeal was not timely filed. Second, RSA 76:17-c does not apply to RSA 72:34-a exemption appeals. RSA 76:17-c (copy attached) only applies to RSA 76:16-a appeals.

Based on the above, the board will hear the 1990 and 1991 appeals at the July 13, 1993 hearing, but the 1992 appeal is dismissed as untimely.

Emissaries of Divine Light, Inc.
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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Emissaries of Divine Light, Inc., Taxpayer and Chairman, Selectmen of Town of Epping.

Dated:
0008

Valerie B. Lanigan, Clerk