

**Stinson Lake Association Inc.**

**v.**

**Town of Rumney**

**Docket No.: 17514-98EX**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "Town's" 1998 denial of the Stinson Lake Association Inc.'s (Association) request for charitable exemption pursuant to RSA 72:23 V on Map 02-01-42, a 2-acre lot with a small community house with an assessment of \$45,250 (land \$23,950; buildings \$21,300) (the "Property"). For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of showing it was entitled to the statutory exemption for the tax year under appeal. See RSA 72:23-m; Tax 204.06. We find the Taxpayer failed to carry this burden.

The Taxpayer argued it was entitled to a charitable exemption because:

- (1) it is recognized by the State of New Hampshire Director (Registrar) of Charitable Trusts as a charitable organization and must file an annual report;
- (2) the Internal Revenue Service has classified the Association as a section 501(c)(3) organization qualifying it for tax exempt status;

(3) the eight objectives of the Association as listed in Article III of the Articles of Agreement show that due to its activities the Association is a charitable organization;

(4) the Association meets the requirements of RSA 72:23 V and RSA 72:23-1 to be deemed a charitable organization;

(5) the Association is not primarily a recreational, social club; and

(6) no member of the Association receives any pecuniary profit or benefit from the Association.

The Town argued the denial of the charitable exemption was proper because:

(1) the Taxpayer has failed to demonstrate that the general public, or at least a substantial portion of the general public, benefits from the activities of the organization;

(2) the Taxpayer has not shown that the Property claimed to be exempt was both occupied and used for the claimed public, charitable purposes;

(3) the Taxpayer's objectives or purposes are so vague or general they would be unenforceable by the attorney general's office; and

(4) some of the objectives either do not relate to the use of the Property or are unrelated to any charitable activity.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to prove the Property was entitled to a charitable exemption. We also find the Town supported its denial of the charitable exemption.

In 1997, the Taxpayer applied for a charitable exemption pursuant to RSA 72:23 V which exempts: “[t]he buildings, lands and personal property of charitable organizations and societies

organized, incorporated, or legally doing business in this state, owned, used and occupied by them directly 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.”

RSA 72:23 V must be read in concert with RSA 72:23-1 as it contains the statutory definition of charitable relative to chapter 72.

**72:23-1 Definition of “Charitable”.** The term “charitable” as used to describe a corporation, society or other organization within the scope of this chapter, including RSA 72:23 and 72:23-k, shall mean a corporation, society or organization established and administered for the purpose of performing, and obligated, by its charter or otherwise, to perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being of the general public or a substantial and indefinite segment of the general public that includes residents of the state of New Hampshire, with no pecuniary profit or benefit to its officers or members, or any restrictions which confine its benefits or services to such officers or members, or those of any related organization. The fact that an organization’s activities are not conducted for profit shall not in itself be sufficient to render the organization “charitable” for purposes of this chapter, nor shall the organization’s treatment under the United States Internal Revenue Code of 1986, as amended. This section is not intended to abrogate the meaning of “charitable” under the common law of New Hampshire.

Summarizing RSA 72:23 V and RSA 72:23-1, for property to receive a charitable exemption, several conditions must be met: 1) it must be owned by a charitable organization, organized, incorporated or doing business in this state; 2) none of the income derived from the use of the property can be used for any other purpose than the purpose for which the organization was established; 3) it must be obligated to perform some service of public good or welfare to the general public or a substantial and indefinite segment of the general public; and 4) it must be occupied and used by the organization directly for the purposes for which it is established.

The board will address each of these summarized requirements individually.

1) The Association was originally incorporated in 1959 under the provision of chapter 292 with two subsequent amendments to the articles of agreement in August 1992 and February 1994. Based on this incorporation, the board finds the Taxpayer meets the requirement of being organized to conduct business in this state.

2) It is clear from the testimony, the submitted financial statements and the dissolution clause of the February 1994 amendment to the articles of agreement that none of the income or assets of the organization are used for any other purpose than that for which the organization was established. All the officers volunteer their time and receive no form of compensation for their involvement.

3) To determine whether the Taxpayer was obligated to perform some service of public good to the general public or a substantial and indefinite segment of the general public, the board reviewed both the Taxpayer's stated objectives contained in its articles of agreement and the Taxpayer's operations. The Taxpayer's amended article III reads as follows:

ARTICLE III. The objects for which this Corporation is established are for purposes of the improvement, conservation, protection and preservation of the natural attributes of the Stinson Lake district, including the specific objectives listed below:

(1) In conjunction with the State of New Hampshire and federal and local agencies, the testing of lake water content to insure it is safe for use of residents and the public.

(2) In conjunction with the State of New Hampshire and federal and local agencies, determine proper seasonal water levels at the outlets and shore lines.

(3) Advancing the education and knowledge of the members of the

Corporation and the public concerning environment matters related to the lake and the surrounding watershed.

(4) Work with the State of New Hampshire and federal and local agencies in protecting wild life including fish and game.

(5) Encouraging and promoting social welfare and friendly relations among members, friends and the public through social and educational activities.

(6) Enforcing of public laws, rules and regulations, to the extent permitted by law, for water use, navigation and safety for the benefit of the general public, residents and property owners in the Town of Rumney, especially those who have interests in or use of Stinson Lake and its waterfront, water surfaces and shore lines.

(7) Performing any public service, work or undertaking which improves or conserves the Stinson Lake area or promotes the general welfare hereof for the public and in cooperation with public agencies, State or Federal.

(8) Promoting safe, courteous and sensible use of the lake.

The Taxpayer testified that in carrying out these objectives, it performs several functions:

- 1) collects samples of lake water for testing in conjunction with state agencies;
- 2) holds an annual meeting with a guest speaker discussing relevant environmental issues; and
- 3) disseminates environmental information relative to Stinson Lake and its environs.

The board agrees with the Town that some of the Association's objectives are either so broad or duplicative of other ordinary private or governmental functions they are difficult to be perceived as enforceable charitable obligations. (Eg. Objectives 1, 2, 5, 6 and 8). However, the Taxpayer's general purposes relating to the conservation, preservation or protection of the natural attributes of the Stinson Lake area are such so as to be considered a public service. Cf. Nature Conservancy v. Town of Nelson, 107 N.H. 316 (1966).

However, RSA 72:23-1 not only requires public service be performed but also requires it

be for the “general public or a substantial and indefinite segment of the general public....” The board finds the Taxpayer’s purposes are focused narrowly on the Stinson Lake environs and, as a consequence, its service is not inherently available to a substantial segment of the general public.

The Taxpayer argued that such a narrow view should not be taken because Stinson Lake is part of a larger environment as one of the headwaters of the Pemigewasset River and the Merrimack River. However, the board is not convinced by this argument given the fact that the testimony indicated the Association’s membership is largely comprised (over 90%) of individuals having interest in real estate around Stinson Lake. Nature Conservancy, 107 N.H. at 319 (contributors to the Nature Conservancy for the purchase of the property on which the charitable exemption was being requested were largely comprised of land owners on Lake Nubanusit); and Society of Cincinnati v. Exeter, 92 N.H. 348, 356 (1943) (if the purposes of an organization are confined mostly to benefitting its own members, it cannot be considered charitable).

Even though there was no explicit membership limitation as there was in Cincinnati and thus, its membership is conceivably indefinite, the very narrow focus of the Association’s objectives results in a relatively small group of the general public (those having some personal interest in Stinson Lake and likely benefitting from the Association’s functions) being availed of the Association’s public service.

Further, even if for argument purposes the public service is determined to be for a substantial and indefinite segment of the general public, the board concludes the owner’s use and occupancy of the Property for which the exemption is sought is slight and insignificant relative to the purpose of the organization. The Property is comprised of a two-acre parcel on Stinson

Lake with a 1,738 square foot seasonal building. The Taxpayer testified the structure was open less than 30 days a year and is used primarily for their annual meeting, several social events and for housing various historical items and publications relative to Stinson Lake. The Taxpayer also testified the Property had been used for an annual boat safety course and in several instances for a CPR course. The board finds the incidence of use in carrying out the Taxpayer's objectives to be slight and insignificant. Franciscan Fathers v. Pittsfield, 97 N.H. 396, 401 (1952) (to qualify for an exemption, the use and occupancy of the real estate must be more than slight, insignificant or negligible). The board finds the minimal time the building is open and the limited number of times the Property is used for the public service functions of the organization to be so few in number that its use is slight and insignificant.

In conclusion, despite some of the Taxpayer's objectives qualifying as performing some service of public good or welfare, it relates to a narrow base of individuals in the Stinson Lake area most benefitted by that purpose and the extent the Property is used for carrying out such service of public good is minimal.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances

as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

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Steven H. Slovenski, Esq.

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Will J. Bangs, Representative for Stinson Lake Association Inc., Taxpayer; Walter L. Mitchell, Esq., Counsel for the Town of Rumney; and Chairman, Board of Selectmen of Rumney.

Date: December 17, 1999

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Lynn M. Wheeler, Clerk