Tri-County Community Action Program, Inc.

v.

Town of Dummer

Docket No.: 18329-99EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the denial by the "Town" of a request for charitable exemption under RSA 72:23, V, for the 1999 tax year on the "Property." The Property consists of two separate lots on either side of Route 16: Lot 0R12-0001-0000, an 11.1-acre lot with a "ranch" style house formerly used as a hunting lodge (the "Developed Lot") assessed at $118,600; and Lot 0R12-001A-0000, a 30.44-acre vacant lot of fields and woods (the "Vacant Lot") assessed at $11,039. Based on the evidence presented and the requirements of RSA 72:23, V, the board grants the appeal in part, because it finds the Taxpayer was entitled to an exemption on the Developed Lot, but not on the Vacant Lot.

The Taxpayer has the burden of showing it was entitled to the statutory exemption for the year under appeal. See RSA 72:23-m; and TAX 204.06. The board finds the Taxpayer sustained its burden only as to the Developed Lot.

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

(1) it is a charitable organization and the Town has stipulated to this fact;

(2) the previous owners of the Property donated the Developed Lot outright and, at the same time, sold the Vacant Lot for a modest sum ($30,000), but both transfers were intended as contributions to further the Taxpayer's charitable purpose;

(3) while the tax exemption application dated April 8, 1999 submitted to the Town by the Taxpayer (Municipality Exhibit B) indicated the Property was "Not presently occupied," this was an inadvertent error, and the Town knew, because of prior and subsequent Taxpayer submissions and meetings with its representative, the true nature of the occupancy and use of the Property in 1999;

(4) the contributions of the Property, by possession in October, 1998 followed by the recording of deeds in December, 1998, were somewhat unexpected, leaving only a short period of time for the Taxpayer to plan and implement use and occupancy prior to April 1, 1999;

(5) even in this limited time period, the Taxpayer did occupy and use the Property in significant ways, including appointment of an onsite caretaker, hosting at least five meetings to further the Taxpayer's mission, operating a bed and breakfast on an interim basis, and permitting additional meetings and uses of the Property by other nonprofit organizations, all consistent with the Taxpayer's charitable purpose; and

(6) sufficient use and occupancy was demonstrated for the Developed Lot as of April 1,1999, even if the board finds otherwise for the Vacant Lot.

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

(1) the Taxpayer admitted on its own application the Property was "Not presently occupied";

(2) the exemption statute, RSA 72:23, V, requires a showing the Property was "owned, used and occupied by [the Taxpayer] directly for the purposes for which [it is] established" and this ownership, use and occupancy must be accomplished as of the start of the tax year: April 1, 1999; and

(3) the Taxpayer failed to meet this burden of showing substantial use and occupancy directly for its charitable purpose, because it only provided the Town with information about five meetings held on the Developed Lot (three actually held before the formal transfer of title) and, at most, fairly general plans about how the Property would be occupied and used in the future, rather than actual use and occupancy by the required date.

Board's Rulings

The Town stipulated the Taxpayer is a qualifying charitable organization and that it owned the Property as of April 1, 1999. The sole contested issue is whether the Taxpayer has sustained its burden of showing it used and occupied each of the two lots on the Property directly for its charitable purpose by that date, thereby entitling it to an exemption under RSA 72:23, V.

The Town aptly cites Wolfeboro Camp School, Inc. v. Town of Wolfeboro, 138 N.H. 496 (1994) in its "Memorandum" of law. In Wolfeboro, the taxpayer claimed an "educational" tax exemption (RSA 72:23, IV) on a total of "approximately 45.7 acres" used for school buildings and camp facilities; the trial court denied an exemption on 24.1 acres of "vacant, unimproved land" and the supreme court denied an exemption on a further 4.4 acre parcel designated "as the future site of faculty housing." Id. at 497 and 501-02. The supreme court interpreted the same statutory language ("owned, used and occupied") to require a "present" use, not plans for future use, and cited several prior cases in denying the exemption. Id. at 501-02. See Trustees of

Phillips Exeter Academy v. Exeter, 90 N.H. 472, 503 (1940) ("disused" building planned for conversion to other uses was "wholly taxable"); and Society of the Cincinnati in the State of New Hampshire v. Exeter, 92 N.H. 348, 350-51 (1943) (actual use, not plan and purpose for future use, required to make property tax exempt).

While these cases do provide some support for the Town's position, the supreme court has also noted: "A tax exemption statute is construed not with rigorous strictness but 'to give full effect to the legislative intent . . . (Citation omitted).'" Wolfeboro, supra, 138 N.H. at 499. Moreover, "The construction of a bright-line test . . . is impossible . . . [and] 'each case will necessarily depend on its own peculiar facts . . .." Id.[1]

The board believes these principles apply to other types of tax exemptions, not just the educational exemption at issue in Wolfeboro and several of these other cases. As a result, the statutory requirement of 'ownership, use and occupancy' must be applied to specific cases with some amount of flexibility, taking into account the nature of the charitable organization, the type of property involved, and the duration of time the organization has had to plan and manage the

[1] Cf. St. Mary's School v. Concord, 80 N.H. 436 (1922). In that case, an "educational" exemption was granted for land owned by a charitable corporation "held with the intention of moving their school thereto . . . as soon as the necessary funds can be raised." Id. In the interim, the corporation had been cultivating a "portion of the premises for the use of the school and sold the hay grown thereon" and the court concluded such occupancy was sufficient to meet the statutory requirements for an exemption. Id. at 437-38.

occupancy and use of the property, as well as other factors that may be relevant.

Here, the board makes special note of the relatively short time span (four to six months) between acquisition of the Property and the applicable date for determining the tax exemption as a factor which helps mitigate against an overly rigid application of the use and occupancy requirements of the statute. Especially when the acquisition of land is unexpected, a charitable organization should have a reasonable period to plan and implement those steps necessary to accomplish proper use and occupancy without losing the benefit of a tax exemption. Cf. Spear Memorial Hospital v. Town of Plymouth, No.: 14996-94EX (BTLA 1995) ("Where property is owned by a qualifying organization with an immediate intent to use the property for its purposes and coincident with significant activities to fulfill the intent, such actions qualify as occupancy and direct use under . . . RSA 72:23[,] V.")

The evidence presented at the hearing on use and occupancy differed somewhat as to each lot. The Developed Lot contains a building formerly used as a hunting lodge and now consists of four bedrooms and two fireplaces, as well as a three-car garage. The Vacant Lot, acquired at approximately the same time, consists of an additional 30 acres of fields and woods on the other side of Route 16.

The Taxpayer sent a letter dated February 8, 1999 to the Town (Taxpayer Exhibit 7) outlining its plans for use of the recently donated and acquired Property. This document states the Developed Lot (referred to as the Bayview Lodge) "was put to use immediately" for training for "program personnel" and meetings. The document also mentions a plan written in January, 1999 to use the Property over a three-year time horizon. The plan envisioned using the upstairs area of the building "as a bed and breakfast" and the building as a "destination point for the

Northern Forest Moose Tours."

The Taxpayer also stated an intention to conduct a natural resource inventory: to "identify sensitive natural resources . . . [and] the level of activity that the resources can accommodate." The Taxpayer referred to the project as the "Great North Woods Education & Interpretive Center."

The Taxpayer's Economic Development Director (Norman Charest) met with a selectman from the Town (Brad Wyman) on April 15, 1999, and wrote a letter dated April 16, 1999, (Taxpayer Exhibit 8) confirming the use of the Developed Lot for at least five specific meetings. (While the Town at the hearing emphasized three of these five meetings occurred prior to the formal transfer of the Property in December, 1998, the board does not find this fact to be significant in light of the testimony by Mr. Charest that the prior owners vacated the Property, and the Taxpayer took possession, in October, 1998, prior to the meetings in question.) These meetings involved the Taxpayer's alcohol and drug abuse program, elderly program and economic development program, as well as strategy planning sessions for the organization.

The board does not find the modest and limited use of the Bayview Lodge as a bed and breakfast facility was inconsistent with the Taxpayer's charitable purpose. The lodge only contains four bedrooms, one of which is used by a caretaker who participates in, and is supported by, other charitable programs sponsored by the Taxpayer. This on-site caretaker also manages the bed and breakfast operation. The board cannot find this limited use is in conflict with the Taxpayer's charitable purpose since, among other things, the bed and breakfast provided job training and skills development for the caretaker.

The test, of course, is whether the use and occupancy is "reasonably necessary" to the

Taxpayer's charitable purpose, with a "strong presumption" in favor of the organization's own judgment. St. Paul's School v. Concord, 117 N.H. 243, 250 (1977). On the other hand, in order to qualify for a property tax exemption, use and occupancy cannot be merely "slight and insignificant" or "negligible," but must instead be more substantial in nature. See Franciscan Fathers v. Pittsfield, 97 N.H. 396, 401 (1952), cited in The Schools for Children, Inc. v. Town of Orange, No. 7585-89 (BTLA 1993) (exemption granted on one lot, but denied on second lot because of finding of only "slight and insignificant" use and occupancy). The board finds the Taxpayer met these requirements and sustained its burden of proof under RSA 72:23, V, as to the Developed Lot.

In this regard, the evidence cited above persuades the board the Town did not rely on the inadvertent statement in the application submitted by the Taxpayer that the Property was "Not presently occupied." The Town was given information as to the nature of the Taxpayer's use and occupancy of the Developed Lot both in writing and in meetings arranged by the Taxpayer's Economic Development Director with Town officials. The statement in the application filled out by a clerk was clearly more an error than an admission that no exemption is warranted.

On the other hand, the evidence was far less conclusive regarding the Taxpayer's use and occupancy of the Vacant Lot. While the Taxpayer emphasized it intended to use this land as an 'education and interpretive center' and to facilitate job training activities and economic growth opportunities in the North Country, the board cannot find sufficient use and occupancy of the Vacant Lot as of April 1, 1999, to qualify for a tax exemption. The board makes no findings regarding whether the Vacant Lot can qualify for an exemption in tax years subsequent to that date.

For these reasons, the charitable exemption is denied on the Vacant Lot but granted on the Developed Lot for the tax year 1999. As the parties are aware, applications must be completed by the Taxpayer and filed on a timely basis with the Town for each tax year in which an exemption is claimed.

Responses to Taxpayer's "Proposed Findings of Fact and Rulings of Law"

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 is specifically addressed in the decision.

Findings of Fact

1. Granted.

2. Granted.

3. Granted.

4. Granted.

5. Granted.

6. Granted.

7. Granted.

8. Neither granted nor denied.

9. Neither granted nor denied.

10. Neither granted nor denied.

11. Granted.

12. Granted.

13. Neither granted nor denied.

14. Granted as to “Developed Lot,” denied as to “Vacant Lot.”

15. Granted as to “Developed Lot,” denied as to “Vacant Lot.”

Rulings of Law

1. Granted.

2. Granted as to “Developed Lot,” denied as to “Vacant Lot.”

Refund

If the taxes have been paid on the Developed Lot for the 1999 tax year, the amount paid shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Rehearing

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

_____
Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Wayne T. Moynihan, Esq., Counsel for Tri-County Community Action Program, Inc., Taxpayer; James E. Michalik, Esq., counsel for the Town; and Chairman, Board of Selectmen of Dummer.

Date: August 6, 2001

_____
Lisa M. Moquin, Clerk

Tri-County Community Action Program, Inc.

v.

Town of Dummer

Docket No.: 18329-99EX

ORDER

The board has reviewed the timely "Motion for Rehearing and Reconsideration" (the "Motion") filed by the "Town" with respect to the Decision dated August 6, 2001. For the reasons stated herein and in the "Answer and Objection" filed in response by the "Taxpayer," the Motion is denied.

Consideration of the Motion is governed by TAX 201.37. Such motions "shall only be granted for 'good reason' pursuant to RSA 541:3, and a showing shall be required that the [b]oard overlooked or misapprehended the facts or the law and such error affected the [b]oard's decision." TAX 201.37(d). The board finds the Motion fails to meet these standards and also fails to comply with the specific requirement regarding "Additional Facts or New Arguments."[2]

[2] "**Additional Facts or New Arguments.** Parties shall submit all evidence and present all arguments at the hearing. Therefore, rehearing motions shall not be granted to consider evidence previously available to the moving Party but not presented at the original hearing or to consider new arguments that could have been raised at the hearing. Except by Leave of the [b]oard, Parties shall not submit new evidence with rehearing motions. Leave shall only be granted when the offering Party has shown the evidence was newly

As the Taxpayer correctly points out, it was improper for the Town to attempt to present additional evidence ("brochures" pertaining to use of the Property) with the Motion. The Town did so only after the record was closed and without any claim that this evidence was "newly discovered" or any explanation as to why it was not produced at the hearing.

The Town clearly disagrees with the board's "interpretation" and "findings" with respect to the facts presented on occupancy and use of the Property. The board appreciates the issues adjudicated may be close questions actively disputed by the parties and recognizes that, especially in tax exemption cases, "each case will necessarily depend on its own peculiar facts." See Decision at p. 4, quoting from Wolfeboro Camp School, Inc. v. Town of Wolfeboro, 138 N.H. 496, 499 (1994) (impossibility of "bright-line test" to determine eligibility for exemption). Such disagreements, however, do not constitute "good reason" for granting a rehearing or changing those findings after a full hearing and deliberations devoted to careful consideration of the facts.

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discovered and could not have been discovered with due diligence in time for the hearing and when the new evidence will assist the [b]oard." TAX 201.37(f).

The Motion makes special note of the argument, already considered and disposed of by the board in the Decision at p. 7, that the Taxpayer's responses on the prescribed "A-9" form ("Not presently occupied") should be binding. Testimony at the hearing indicated the form, required by RSA 72:23-c, I , was filled out incorrectly by a clerical employee and signed by the agency head (Laurence M. Kelly), rather than by the person (Norman Charest, the Taxpayer's Economic Development Director) actively seeking the tax exemption and communicating with the Town officials on an ongoing basis, both before and after submission of the form. The Town offered no evidence to rebut Mr. Charest's sworn testimony that the responses were an inadvertent error and should have no binding effect in light of his contemporaneous oral and written communications with the Town.[3]

There is also no evidence the Town relied on these particular form responses in reaching its decision to deny the exemption. In its letter of May 17, 1999 (Municipality Exhibit C), as well as in most of its argument at the hearing, the Town based its denial on "the relatively infrequent use" of the Property rather than on any admitted failure to comply with the occupancy requirement. The May 17th letter was sent well after the form was received by the Town (April 12, 1999), but makes no mention of the form or any of its responses. As noted in the Decision at

[3] The Town has submitted no legal authority on the question of whether the Taxpayer should be bound by the information submitted on the form. At the hearing, the Town's attorney conceded he was "not sure of real answer without having done some research, or if there is a real answer" to this question. Board hearing, June 27, 2001, Tape 2 at 1295 - 1310.

pp. 5 - 6, the Town received several letters from the Taxpayer dated February 8 and April 16, 1999, both before and after submission of the form, describing in more detail its actual use of the Property; one selectman (Brad Wyman) even met with the Taxpayer's representative (Norman Charest) on April 15th to go over information on the Taxpayer's "activities" at the Property and its "eligibility for Property Tax Exemption." See Taxpayer Exhibit A.

The tax exemption statute itself recognizes it may be necessary to go beyond the information contained in the form and authorizes the Town "to request such materials . . . and such other information as shall be reasonably required to make determinations of exemptions of property under this chapter." RSA 72:23-c, II. Since the Town did not reference any of the responses on the form when it denied the Taxpayer's application for tax exemption, but instead relied on other information supplied by the Taxpayer, no compelling reason exists to place conclusive weight on two of those responses, especially when the unrefuted testimony indicated they were inadvertent errors.

Finally, the Town mentions the board's "failure to grant the Taxpayer's requests for rulings, [sic, findings of fact] numbers 8, 9, 10 and 13" as a basis for granting the Motion (at page 3). In this case, the Town failed to submit any requests for findings of fact or conclusions of law of its own. The Taxpayer, with regard to its own requests for findings, correctly notes the board uses the "neither granted nor denied" response to apply to one or more of five possible situations. These possibilities are explicitly stated on page 8 of the Decision and include when "The request is specifically addressed in the [D]ecision" or when "multiple requests" are

contained "for which a consistent response could not be given."[4] Moreover, since the Taxpayer, rather than the Town, submitted the requests for findings, the Town may have "no standing to challenge" the board's responses to them. See Appeal for Campaign for Ratepayer Rights, 133 N.H. 480, 485 (1990).[5]

For all of these reasons, the Motion is denied. RSA 541:6 requires any appeal of the Decision to the supreme court to be filed within 30 days after the date of this Order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

_____

[4] The latter is particularly applicable when, as here, the board granted an exemption as to one of the two lots, but not to the Property as a whole (referred to as the "subject real estate" in the requests for findings). See also TAX 201.36(b).

[5] In addition, the board's findings "upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable." RSA 541:13. "This presumption may be overcome only by a showing that there was no evidence from which the board could conclude as it did." Appeal of Briand, 138 N.H. 555, 558 (1994), citing Appeal of Granite State Elec. Co., 121 N.H. 787, 791 (1981).

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing Order has this date been mailed, postage prepaid, to: Wayne T. Moynihan, Esq., Counsel for Tri-County Community Action Program, Inc., Taxpayer; James E. Michalik, Esq., counsel for the Town; and Chairman, Board of Selectmen of Dummer.

Date: October 9, 2001

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Lisa M. Moquin, Clerk

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