

**Ossipee Mountains Habitat for Humanity**

v.

**Town of Wolfeboro**

**Docket No.: 18555-01EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2001 denial of the Taxpayer’s application for an exemption under RSA 72:23 III or V on the “Property,” which consists of four residential building lots (Lots 43-3, 43-4, 43-5 and 43-6), each 0.97 acres in size. For the reasons stated below, the appeal for exemption is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, it was entitled to the statutory exemption for the year under appeal. See RSA 72:23-m; TAX 204.06. We find the Taxpayer sustained its burden of proof and is entitled to an exemption.

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

- (1) it is a well-known charitable organization organized for the purpose of constructing housing for and with low-income people;
- (2) the Property was deeded to it in December, 2000 as a charitable donation;
- (3) while the Taxpayer conceded that no low-income houses were started or completed by the

tax date of April 1, 2001, the Property was and is being “used and occupied” exclusively for its charitable purpose in light of the process involved in fulfilling the Taxpayer’s charitable mission;

(4) time is needed for fund raising, organizing and marshaling the physical and human resources for constructing “Habitat for Humanity” houses, including selecting the appropriate low-income family to participate in the actual construction;

(5) the Taxpayer is an “all-volunteer” organization and is able to build one house every year or two, depending on available resources; and

(6) a charitable exemption under RSA 72:23, V is warranted in this case.

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

(1) the Taxpayer applied for a “religious” exemption from the Town by marking the box that selects religious exemption on its application and is bound by the check mark on its exemption application;

(2) as of April 1, 2001, the Property was not being “used and occupied” for any charitable purpose;

(3) the Taxpayer’s intent to build low-income housing at some point in the future is insufficient to meet the statutory use and occupancy requirements in RSA 72:23, III and V for either “religious” or “charitable” exemption; and

(4) the Taxpayer failed to meet its burden of proof.

### **Board’s Rulings**

The board finds the Taxpayer is entitled to a charitable exemption under RSA 72:23, V.

The Town argued the Taxpayer was not entitled to the exemption for two primary reasons. First, the Taxpayer checked, and therefore, applied for a “religious” exemption on its RSA 72:23-c annual exemption application (BTLA A-9 form) and neither the Town nor the board should grant the Taxpayer a “charitable” exemption when the Taxpayer failed to apply for one. Second, although the Taxpayer is a charitable organization, it did not ‘use and occupy’ the Property by April 1, 2001 for its charitable purpose. The board will address each of these issues separately.

#### Religious or Charitable Exemption Application

It is undisputed that the Taxpayer checked the box for “religious” exemption on its BTLA A-9 form. However, at the hearing, the Taxpayer explained it made an error when the box was checked on the A-9 form due to the short time it had to file the request. Its actual intent was to apply for a charitable exemption and the Town was not misled by this error. The board finds the Taxpayer is not bound by the misplaced checkmark on the form when it was due to an error and a lack of understanding of the exemption statute and application process. See East Coast Conference v. Town of Swanzey, 146 N.H. 658 (2001).

There are several indications the Taxpayer was, in fact, requesting a charitable exemption. In addition to submitting the BTLA A-9 form to the Town (which is the application form for either religious, educational or charitable exemptions), the Taxpayer also filed the RSA 72:23, VI financial statement documents which are only required for charitable, but not religious or educational, organizations. On the Taxpayer’s appeal to the board, it wrote “religious, charitable” as the exemption sought in Section E. The Taxpayer also wrote RSA 72:23, followed by an illegible roman numeral. The Taxpayer’s articles of agreement are replete with references

to “charitable organization.” See Articles of Agreement, Art. I (b), (d), (e). Additionally, in the Taxpayer’s April 11, 2001 letter to the Town’s board of selectmen there is reference to “the charitable gift” of real estate. Further, the Town had invited the Taxpayer to attend a forum addressing the issue of providing affordable housing for low-income families. The board finds these references to charitable organizations and charitable works override the inadvertent placement of the checkmark on the A-9 form. In addition, the Town, for purposes of the hearing, conceded the Taxpayer is a charitable organization within the meaning of the exemption statutes in that it provides some benefit to an indefinite segment of the general public. See RSA 72:23-1.

As the supreme court has noted in interpreting RSA 72:23, V, “[t]he legislative purpose to encourage charitable institutions is not to be thwarted by a strained overtechnical and unnecessary construction.” Appeal of City of Franklin, 137 N.H. 622, 626 (1993) quoting from Young Women’s Christian Association v. Portsmouth, 89 N.H. 40, 42 (1937). Therefore, the board finds the placement of the checkmark on the A-9 form is not fatal to the Taxpayer’s request for a charitable exemption.

#### Use and Occupancy

The board finds the Town’s technical reading of the “use and occupancy” requirements for an exemption cannot be sustained. The mission of the Taxpayer necessitates acquiring vacant land before it can comply with its goals. The Town argues that while the Taxpayer has laudable goals and aspirations, it fails to “use and occupy” the Property in a traditional sense. The board finds it is necessary for the Taxpayer to have a reasonable period of time after it acquires vacant land to obtain funds, survey and clear the land, select an appropriate family, and

assemble the necessary contractors and materials to construct a dwelling.<sup>1</sup> The Taxpayer testified there is no shortage of prospective clients and the primary deterrent to building more homes more quickly is the need to do substantial fund raising. The board finds that fund raising is more feasible and accomplished more quickly when there is an inventory of buildable lots on hand. It would not be unreasonable for prospective financial donors to require the organization to have land available for development before making their donation for the home construction. While the board generally agrees with the Town's comments about clear and actual use of the land, in this case, the Taxpayer will not ever physically occupy the Property itself. Rather, it will "occupy" it only in the sense that it will hold the land after its acquisition, as a component of its mission of providing housing for low-income individuals; after completion of the home construction and sale to an eligible family, the Property will then return to the tax role of the Town.

---

<sup>1</sup> The client provides 400 hours of "sweat equity" prior to purchasing the dwelling from the Taxpayer "at no profit with a zero percent 20 year mortgage." See Taxpayer's letter dated "04/11/2001" to the Town.

The board recognizes the decision in this case is based on the specific facts presented and, based on those facts, the Taxpayer is entitled to the exemption. We do note, however, that while we find the four lots under appeal are a reasonable “inventory” to fulfill the Taxpayer’s mission and will be used in the immediate future for constructing low-income homes, there is a point where the ownership of much more land could result in it not being immediately needed for building low-income housing, and thus, would not be “used and occupied” within the intent of RSA 72:23, V.<sup>2</sup>

### **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

---

<sup>2</sup> See also St. Mary’s School v. Concord, 80 N.H. 436, 437 (1922) (“There is no suggestion that the plaintiffs are not proceeding in good faith or that their procedure is in any respect unreasonable”; educational exemption granted even though school not yet constructed on acquired land, where taxpayer was raising funds for that purpose); quoted in Christian Science Pleasant View Home v. City of Concord, 117 N.H. 239, 242 (1977) (distinguishing cases where property claiming exemption: “had not been operated . . . for 2 or 3 years” for “benevolent and charitable purposes”; or where “building would probably remain ‘indefinitely idle’”). Accord, Speare Memorial Hospital v. Town of Plymouth, No. 14996-94EX, 1995 WL 156819 (BTLA 1995)(exemption granted even though preparatory steps to ‘fit up’ and occupy building for charitable purpose not completed by April 1 tax date).

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

---

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: John Cochrane, representative for the Taxpayer; Mark Puffer, Esq., counsel for the Town; and Chairman, Selectmen of Wolfeboro.

Date: May 6, 2002

---

Anne M. Bourque, Deputy Clerk