

Sovereign Grace Fellowship

v.

Town of Boscawen

Docket No.: 19595-02EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2002 denial of the Taxpayer’s request for religious exemption as provided under RSA 72:23, III on a one-acre portion of a 17-acre lot (16 acres in current use) containing a church and parking area (the “Property”). 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. The Taxpayer carried this burden.

The Taxpayer argued it was entitled to the religious exemption because:

- (1) it is a nondenominational Christian church first organized in 1997;
- (2) the 17-acre lot was purchased in 1998 for the express purpose of establishing a church;
- (3) its mission included constructing the church building on the Property, with much of the actual construction done by members and congregants and each day’s construction activity was preceded by prayer services, devotion and fellowship;

- (4) the Town granted the Taxpayer a religious exemption for tax year 2003; and
- (5) the Taxpayer is entitled to an exemption for tax year 2002 because it meets the requirements of the statute with respect to ownership, use and occupancy.

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

- (1) as of April 1, 2002, the church building was not complete or ready to be used for religious services;
- (2) the congregation was meeting regularly at an alternative site for services;
- (3) when the one-acre parcel, on which the church building was to be constructed, was removed from current use, the Taxpayer paid a land-use-change tax and did not request an exemption or waiver from this tax;
- (4) the occasional use of the Property for conducting Easter services is not sufficient to qualify for an exemption;
- (5) the Property could not technically be occupied until construction was completed in October, 2002; and
- (6) the Taxpayer failed to meet its burden of proof.

Board's Rulings

Based on the evidence, the board finds the Taxpayer sustained its burden of proving the Property was entitled to a religious exemption pursuant to RSA 72:23, III.

RSA 72:23, III provides:

“Houses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings and the lands appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state and the personal property used by them for the purposes for which they are established.”

At the outset, the burden of proving an institution's entitlement to a tax exemption rests on the applicant. See Nature Conservancy v. Nelson, 107 N.H. 316, 319 (1966). The board finds the Taxpayer carried this burden and is entitled to an exemption on the Property. The board makes this finding based not on any single piece of evidence but rather on the totality of evidence and testimony presented. Each exemption case must stand on its own specific facts. Cf. New Canaan Academy, Inc. v. Town of Canaan, 122 N.H. 134, 137 (1982) ("bright-line test . . . is impossible" in exemption case involving educational institution: "each case will necessarily depend on its own peculiar facts,"); accord Wolfeboro Camp School Inc. v. Town of Wolfeboro, 138 N.H. 496, 499 (1994). See also Camp Merrimac, LLC v. Town of Hopkinton, Docket No. 18289-99EX.

During the hearing, the parties agreed there was no factual dispute in this appeal, rather a legal question concerning the interpretation of a portion of RSA 72:23, III which states "[h]ouses of public worship . . . owned, used and occupied directly for religious training or for other religious purposes . . ." and whether the Taxpayer meets these requirements. There was agreement between the parties that the Taxpayer "owned" the Property at the time of the exemption application. The Taxpayer purchased the Property in 1998 for the express purpose of constructing a church. During several meetings with the Town planning board seeking approval for a building permit to begin construction on the Property, the Town, as reflected in the minutes to those meetings contained in both Taxpayer Exhibit 2 and 3, regularly referred to the Taxpayer as the Sovereign Grace Fellowship. Further, in Taxpayer Exhibit 1 at tab 7, the Town's certificate of zoning compliance identifies the Property as being owned by Sovereign Grace Fellowship for the purposes of constructing an 84-foot by 60-foot "church." The board finds these exhibits and the testimony at hearing from the Taxpayer to be probative evidence the

Property was never intended to be developed for any purpose other than for a church. The question to be resolved is, therefore, was the Taxpayer “using and occupying” the Property directly for religious training or for other religious purposes on April 1, 2002. In this case, the board finds the Taxpayer was using and occupying the Property for the religious purposes for which it was intended.

The board finds the level of religious involvement by the congregation during the construction of the church building to be so pervasive that the Taxpayer was actually using and occupying the Property as part of its mission as of April 1, 2002. Although the church members could not do every aspect of the construction and it was necessary for them to use outside contractors for the foundation, plumbing and drywall, the rest, and by far the greatest amount, of the construction was performed by members of the congregation. This began with clearing the land and digging the area for the foundation and continued throughout the construction phase. Prior to the beginning of the daily construction activities, the congregants held a prayer session and gathered for fellowship and to come together and to encourage each other. The board finds the construction of the church building was part of the fulfillment of the Taxpayer’s mission.

The Town questioned whether the Taxpayer was entitled to an exemption prior to the completion of the building. Part of the Town’s concern was based on the fact the building could have been constructed and, upon its completion, sold to a third party at a profit. The board finds that while that may have been possible, it was clearly demonstrated not to be the Taxpayer’s intent to construct anything other than a church. Further, the Town noted the congregants gathered at other locations to hold regular services while the church building was being constructed. The Taxpayer did not dispute the fact that some services were held at an alternate location, but the board finds in this unique case that the Taxpayer’s religious activities are so

intertwined with the construction of the church building on a daily basis that the Taxpayer was using and occupying the Property for its religious mission. Evidence supports the Taxpayer's contention that the "hands on" construction of the church and the daily religious expression that occurred during that process was part of the Taxpayer's religious faith and mission that qualifies the Property as being used and occupied for religious purposes.

Although the board finds the Taxpayer's one acre and improvements are entitled to a religious exemption pursuant to RSA 72:23, III, the parties should be aware the remaining 16 acres of vacant land are not currently entitled to the exemption, will remain in current use and continue to be assessed at current-use rates. The entire Property was assessed in 2002 for \$137,553. Based on the Town's assessment-record cards, the one-acre site removed from current use and the improvements were assessed for \$136,800 while the 16 acres still in current use were assessed at \$753. Consequently, the board's ruling exempts the one acre and improvements assessed at \$136,800 but not the 16 acres of current-use land assessed at \$753.

Therefore, if the taxes have been paid, the amount paid on the value in excess of \$753 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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(f). 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.

Findings of Fact and Rulings of Law

With respect to the Requests for Findings of Fact ("Requests"), 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.

The Requests are replicated in the form submitted without any changes, typographical or otherwise, made by the board.

I. Petitioner Sovereign Grace Fellowship's Proposed Findings of Fact and Rulings of Law.

A. Church Background.

1. Sovereign Grace Fellowship is an independent, non-denominational, evangelical Christian Church originally organized in 1997, Federal ID # 02-049541 (see Exhibit 4, after the

McCandless letter), and operated as a voluntary association under New Hampshire law from its inception until it organized as a New Hampshire Nonprofit Corporation on May 27, 2003.

Granted, changing 02-049541 to 02-0495941.

2. Sovereign Grace exists to fulfill its religious purposes as a Christian Church, including conducting worship services, prayer, Bible teaching, religious instruction, youth activities, and service projects connected to the Church's goal of advancing the teachings of and about Jesus Christ contained in the Bible. Sovereign Grace is organized like many Protestant churches, with members who join the Church or other persons who participate in the Church's affairs on a regular basis, and who are lead by a pastor and other leaders who serve as deacons or elders. Sovereign Grace is a tax exempt church under Section § 501(c)(3) of the Internal Revenue Code.

Granted.

B. The Property in Question and Construction of the Church Building.

3. On June 19, 1998, Sovereign Grace purchased 17 acres of land located in the Town of Boscawen, New Hampshire, identified on Tax Map M 47 L318 B. The land was purchased from the owner for the specific purpose of using the land to build a church building to support the religious and charitable activities of Sovereign Grace.

Granted, changing L318B to L31B.

4. Sovereign Grace obtained from Boscawen a permit (Certificate of Zoning Compliance, # 061201-1) on June 12, 2001 to begin construction of a 80' by 60' church building. See Exhibit 7, first page.

Granted, changing 80' to 84'.

5. Work on the site began in the summer of 2001; at that time Sovereign Grace paid the Current Use Tax on the one acre of land on which the building and surrounding parking lot and amenities were to be located. See Exhibit 3. See Exhibit 1 for photos of the construction and Exhibit 7 for receipts relating to construction expenses. The preparation of the lot and the construction of the church building were conducted by members of Sovereign Grace, much like the barn raisings of years ago or one might find in Amish country. Only a small percentage of tasks were contracted out for hire, in areas where Church members did not have the specialty (i.e., pouring the foundation, and the plumbing/heating system and drywall.) The balance of the construction work (site preparation, framing, roofing, siding, electrical, windows, fixtures, cabinets, etc.) was performed by church members or those who regularly attending Sovereign Grace's services and participated in its religious and charitable activities. The construction progressed as follows:

June 12, 2001: Building Permit for Church obtained

June 14, 2001: Excavation begun

July/August 2001: Ditches dug by hand and foundation complete

August/September 2001: Trusses up

October 14, 2001: Building/Framing Begun

April 1, 2002: building totally framed; electrical and plumbing begun inside

April to October 2002: Electrical, plumbing, sheet rock, painting, finish

October 25, 2002: Construction Complete

Granted.

C. The Use and Occupancy of the Church Property.

6. Sovereign Grace began to use the property to conduct its religious activities even before construction began in 2001, having held Easter Sunrise services on the property in 2001 and 2002. See Exhibit 8. Each day in which church members or congregants worked on the site or building, Sovereign Grace conducted prayer, held teachings from the Bible (i.e. “devotional times”), and participated in Christian fellowship (i.e., encouragement of one another in the faith) on the property, as the work in constructing the church building progressed in the summer, fall and winter of 2001 and into 2002.

Granted.

7. In this regard, even though regularly conducted Sunday worship services were not conducted in the unfinished building, Sovereign Grace did use and occupy the property to support its religious mission as the church congregants worked to complete the building.

Neither granted nor denied.

8. Sovereign Grace conducted an Easter Sunrise Service on the steps of the building on March 31, 2002. A sermon was delivered, worship conducted through the singing of hymns, prayers, as Sovereign Grace members and congregants met on the property.

Granted.

9. From the date construction had begun in the summer of 2001 through the completion of construction in October 2002, Sovereign Grace members and congregants had met on the property in a regular fashion to construct the building. In addition to the construction work, the Sovereign Grace members prayed, conducted teachings from the Bible, and had Christian fellowship on the property. Further, Sovereign Grace held regular worship services during this time period, held youth activities, and also served the Boscawen community through such activities as visiting the sick and elderly in the Boscawen nursing home.

Granted.

10. When construction of the building was completed (10/25/02), Sovereign Grace inquired of Boscawen’s Life Safety Code Officer, Harold Hamilton, whether the church needed

an occupancy permit at that point. They were informed that the Town did not require or issue occupancy permits.

Granted.

D. Sovereign Grace's Efforts to Obtain Tax Exemption for the Property.

11. Sovereign Grace filed three BTLA Form A-9's, seeking tax exemption for the property in question. See Exhibit 2. The first A-9 was filed in July 2001; the second filed in June 2002 with the church's federal tax identification number, as requested by the Town; and a third filed in December 2002, again at the request of the Town of Boscawen. See Exhibit 2.

Neither granted nor denied.

12. At a November 28, 2001 Selectmen's meeting, the Town discussed with two of Sovereign Grace's leaders the request for exemption that had been filed in July 2001. At that meeting the Selectmen noted that Sovereign Grace's one acre parcel would be exempt upon proof of the Church's existence as a church. The Town requested that Sovereign Grace provide to them their federal identification number as such proof, which information was provided. Nevertheless, the Town did not exempt the property for tax year 2002. See copies of the Selectmen's minutes identified as Plaintiff's Exhibit 9.

Granted.

13. By letter dated June 4, 2003, the Town of Boscawen denied Sovereign Grace's request for exemption of the one acre parcel under RSA 72:23, stating as the grounds for the denial that Sovereign Grace had not "occupied" the building by April 1, 2002.

Granted.

14. Sovereign Grace paid the 2002 taxes on the one acre parcel in the amount of \$4,825. See Exhibit 5. Sovereign Grace filed this timely appeal of the denial of its request for exemption of the one acre parcel from taxes under RSA 72:23.

Granted.

15. The Town of Boscawen exempted from tax under RSA 72:23 the one acre lot for tax year 2003 in the amount of \$3,558, taxing the Church \$14 for the remaining land in current use. See Exhibit 6.

Granted.

II. Proposed Rulings of Law.

16. RSA 72:23, III, provides as follows:

Houses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings and the lands pertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state and the personal property used by them for the purposes for which they are established.

Granted.

17. Further, RSA 72:23, V provides as follows:

The 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.

Granted.

18. The intent of the legislature is clear that the tax exemption provided by RSA 72:23 is to encourage the building and maintenance of churches and the use of property for charitable purposes, and to recognize the beneficial impact religious bodies have on our communities.

Neither granted nor denied.

19. From before construction began in 2001, Sovereign Grace owned, used, occupied the land in question for the purpose for which the church is organized: church people met on the property, conducted religious services, prayed on a regular basis, participated in Christian fellowship, and conducted religious teaching and instruction.

Neither granted nor denied.

20. Church members and congregants met regularly for the purpose of building a church structure that would further their purposes, much like the Amish meet to construct barns or houses of worship.

Granted.

21. Thus, Sovereign Grace owned, used, and occupied the parcel in question in April 2002 in such a way as to qualify for the exemption for the property for tax year 2002. Thus,

whether or not the building was completed as a house of worship is not a determining factor in this analysis. This is much like a charitable youth or religious youth camp which uses open fields to conduct its charitable purposes – although no structure may be located on the property, the property is exempt under RSA 72:23, III and V because its “use” is charitable and supports and furthers the spiritual objectives of the church. In this way, Sovereign Grace has “occupied” the land and the structure, even if construction was not complete.

Neither granted nor denied.

22. The Town denied the application for exemption giving as its basis that the Church had not “occupied” the building on April 1, 2002. Black’s Law Dictionary defines “occupy” as follows: “To take or enter upon possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to take or hold possession. Actual use, possession, and cultivation.” (Copy attached to this pleading.) Sovereign Grace “occupied” the property in question, according to the common usage of the term, on, before and after April 1, 2002, by actually working on the site to build the church structure, and by conducting prayer, teaching, and fellowship activities during the construction process.

Neither granted nor denied.

23. Further, the legislature in enacting RSA 72:23 sought to encourage houses of worship being built and maintained. Here, the house of worship was well on its way to being completed on April 1, 2002. There is no dispute that Sovereign Grace obtained a building permit in 2001 to construct a church building. There is no dispute that religious activities, including worship, were conducted on the property in 2001 and 2002. That the house of worship was under construction on April 1, 2002, does not disqualify it from tax exemption under RSA 72:23, III.

Neither granted nor denied.

24. To hold otherwise would contradict the clear intent of the legislature which exempts not only houses of worship, but the lands appurtenant thereto as well, noting that there is no requirement that in order to qualify for exemption construction need be complete. For example, should Sovereign Grace seek to build a parsonage connected to the present church building, or to expand the church building, there is no dispute that the entire structure would be exempt from taxation under RSA 72:23, despite construction of the addition not being completed at the beginning of the tax year. The New Hampshire Supreme Court has noted that the tax exemption statute is construed not with rigorous strictness, but rather to give full effect to the legislative intent. *Wolfboro Camp School, Inc. v. Town of Wolfboro*, 138 N.H. 496 (1994).

Neither granted nor denied.

25. Here, the only use of the land at the time in question and the only purpose of the construction activities was to assist the Church in conducting its worship and religious missions, and, thus, the land has been owned, used, and occupied directly for the Church’s religious

purposes as required by RSA 72:23. *See Appeal of Emissaries of Divine Light*, 140 N.H. 552 (1995) (affirming exemption of land principally used for religious purposes).

Neither granted nor denied.

26. Boscawen shall refund Sovereign Grace the \$4,825 taxes paid for the parcel with interest.

Denied.

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 a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Roy S. McCandless, Esq., Orr & Reno, Post Office Box 3550, Concord, New Hampshire 03302, counsel for the Taxpayer; Gary Roberge and Craig Nichols, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, New Hampshire 03258, Municipality representatives; and Chairman, Board of Selectmen, Town of Boscawen, 116 North Main Street, Boscawen, New Hampshire 03303.

Date: May 12, 2004

Anne M. Stelmach, Deputy Clerk