

**SUSC**

**v.**

**Town of Hampton**

**Docket No.: 19745-02EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” denial of the Taxpayer’s tax year 2002 application for charitable exemption under RSA 72:23, V. The appeal pertains to a 7.58-acre lot containing a large building, used for indoor soccer and other sports, and parking (the “Property”). For the reasons stated below, the appeal for exemption is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the Property was entitled to the statutory exemption for the year under appeal. See RSA 72:23-m; TAX 204.06.

The Taxpayer argued the Property was entitled to the charitable exemption because: (1) the Taxpayer was formed as a nonprofit corporation in February, 2002 and acquired the Property in March, 2002 from a related for-profit corporation (Seacoast United Soccer Club, Inc.);

- (2) the change of ownership was made because the Town's selectmen had refused to grant an exemption in a prior year because of the "technicality" that the Property was owned by a for-profit corporation (Seacoast United Soccer Club, Inc.);
- (3) none of the directors or officers receive "pecuniary profit or benefit" from the Taxpayer and any documents indicating otherwise are either mistaken or have been misinterpreted;
- (4) nothing precludes a charitable organization from paying employees for services rendered;
- (5) neither membership nor benefits or services are restricted by the Taxpayer;
- (6) none of the income or profits of the organization are used for anything other than the charitable purpose for which the Taxpayer was organized;
- (7) the Taxpayer's activities advance the physical and social well-being of a substantial and indefinite segment of the general public; and
- (8) while the Taxpayer's accounting and other documents may be incomplete or faulty, the Property is still entitled to a charitable exemption.

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

- (1) the Taxpayer and its affiliated entities have listed two individuals (Paul Willis and Ian Burgess) as "officers" on various accounting and other documents and these individuals receive pecuniary profit and benefit for their activities;
- (2) the Taxpayer became the owner of the Property only to qualify for a tax exemption and, aside from ownership as the title holder, the Taxpayer neither conducts activities necessary to qualify as a charitable organization nor uses or occupies the Property for a charitable purpose;
- (3) while a soccer club may be successful in promoting sports and fitness, this does not make it a charitable organization distinguishable from a commercial venture engaged in similar activities;

(4) the scope of the charitable contributions made is limited, in comparison to the revenue stream generated by the soccer activities;

(5) the Taxpayer's motive of retaining funds for the construction of soccer fields in other municipalities does not provide a charitable benefit to the Town;

(6) the Taxpayer has not filed with the New Hampshire Director of Charitable Trusts as a "charitable trust" organization and the related entity (Seacoast United Soccer Club) is not presently in compliance with such filing obligations; and

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

### **Board's Rulings**

At the outset, the board must clarify the legal status and roles of three distinct entities as they bear on the issue of entitlement to a tax exemption under RSA 72:23, V.

This appeal was originally filed in the name of "Seacoast United Soccer Club." In response to the Town's immediate Motion to Dismiss, the Taxpayer's attorney claimed this designation was "most likely a clerical error" and, based on "accident, mistake or misfortune," requested leave to amend the appeal to name the Taxpayer ("SUSC"). See the Taxpayer's prior Objection to Motion to Dismiss, ¶¶ 2, 3, 8, 10 and 11; the Taxpayer's Motion to Amend Tax Exemption Appeal; and the board's Order dated November 14, 2003 granting leave to amend.

The parties do not dispute the Taxpayer was organized as a nonprofit corporation in February, 2002 to hold title to the Property that was transferred in March, 2002 from Seacoast United Soccer Club, Inc., a for-profit corporation (hereinafter "Soccer Inc.") See also Taxpayer Exhibits 1 and 3. Soccer Inc. is a wholly-owned subsidiary of Seacoast United Soccer Club (hereinafter "Soccer Club"). See, e.g., Town Exhibit E. Soccer Club was "founded" in 1992 and was organized as a nonprofit corporation in November, 1997. See Town Exhibits I and M.

At the hearing, the Taxpayer's representatives testified it has the same directors and officers as Soccer Club. Unlike Soccer Inc., however, the Taxpayer is not a subsidiary or otherwise legally connected to, or controlled by, Soccer Club.<sup>1</sup> (This finding is opposite to repeated representations made to the board that the Taxpayer is "wholly owned" by Soccer Club. See the Taxpayer's prior Motion for Summary Judgment, containing an affidavit under oath, and the Objection to Town's Motion to Dismiss, which are pleadings previously filed with the board without subsequent correction.)

The Taxpayer's president, Michael Simchik, explained the Property was first held by Soccer Inc. (rather than by Soccer Club itself) to qualify for financing through a Small Business Administration ("SBA") program. See also Town Exhibit L (April 23, 2003 letter to Town from Paul A. Willis on behalf of Soccer Club). Soccer Inc. acquired title to the Property in June, 1997. See Town Exhibit A ("Warranty Deed").

No explanation has been given, however, as to why, when this SBA financing constraint no longer existed, the Property was not transferred to Soccer Club, rather than to the Taxpayer, a newly formed nonprofit corporation. One possibility is that the Taxpayer intended at some point to "assume the operations" of Soccer Club (see fn. 1 supra). The evidence indicates, however, that Soccer Club, not the Taxpayer, continued to operate and to undertake all soccer and other youth sports activities directly, through its own employees and programs, both as of the operative date of April 1, 2002 (for a tax year 2002 exemption) and to the present. In this regard, the Taxpayer presented no evidence that it undertook any such programs on its own, either using its

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<sup>1</sup> See, e.g., Town Exhibit E, which includes the Taxpayer's IRS 501(c)(3) application, and, in particular, response to question 5 in Part II of that application. The board draws a distinction between control by the same individuals who control the Soccer Club, as officers and directors, and control by the Soccer Club itself.

own employees and/or volunteers.<sup>2</sup> In other words, the Taxpayer failed to satisfy its burden of showing it directly used and occupied the Property, as opposed to simply holding title and making the Property available for the use and occupancy of Soccer Club.

The board has reviewed Town Exhibits H, F and G, which are the independent accountant's reports for Soccer Club and its subsidiary, Soccer, Inc., for the fiscal years ending June 30, 2001, 2002 and 2003, respectively. No mention is made in these reports of any affiliation or other relationship with the Taxpayer; nor do they disclose any transfer of ownership of the Property to the Taxpayer from Soccer Inc. To the contrary, the balance sheets continue to show Soccer Inc. as the owner of the Property and the income statements reflect the transfer of substantial rental payments between Soccer Club and Soccer Inc. for these years.<sup>3</sup>

The Taxpayer applied for a charitable exemption for tax year 2002 under RSA 72:23, V, which requires that property of "charitable organizations" must be "owned, used and occupied by them directly for the purposes for which they are established." (Emphasis added.) Based on the evidence, the board finds the Taxpayer is the owner of the Property (notwithstanding the accountants' reports mentioned above), but the use and occupancy is actually by the Soccer Club.

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<sup>2</sup> Cf. Town Exhibits J and K, the Soccer Club's federal (Form 990) information tax returns for fiscal years 2001 and 2002. These Soccer Club returns confirm substantial activities (revenues of \$1.699 and \$1.624 million, respectively) and employment of three individuals (Paul Willis, Ian Burgess and Karl Edmonds) for substantial compensation before and after the Taxpayer's formation; none of the documents submitted mention or reflect any transfer of activities or responsibilities to the Taxpayer. For its part, the Taxpayer failed to present any evidence, such as information tax returns, that it was performing these activities or undertaking these responsibilities or was directly using and occupying the Property for a charitable purpose. It is also undisputed the Taxpayer has not registered with the Attorney General's Office and has not made the annual filings required, which include the federal Form 990 and a list of officers and directors; these requirements apply to all "charitable trusts" and "charitable organizations" in New Hampshire. See RSA 7:21, RSA 7:28; and Affidavit of Terry Knowles, the Registrar of Charitable Trusts.

<sup>3</sup> \$223,911.56, \$228,649.01 and \$194,487.72, in fiscal years 2001, 2002 and 2003, respectively, as stated in Town Exhibits H, F and G. No testimony or other evidence was presented regarding how these amounts were determined or whether they reflect the fair rental value of the Property.

Mere ownership, where use and occupancy are by a different entity, is not enough to satisfy the statutory requirements for an RSA 72:23, V charitable exemption. As noted in Society of Cincinnati v. Exeter, 92 N.H. 348, 350-51 (1943), occupancy means more than mere possession or prospective use; the possession must be for an existing use to fulfill the owner's own charitable purpose and not merely part of a plan or purpose for some future use, or, as in this case, use by a different entity.

In St. Paul's School v. City of Concord, 117 N.H. 243, 258-59 (1977), an educational exemption appeal subject to a similar "owned, used and occupied" statutory requirement, the court held:

"The tax exemption granted by RSA 72:23 IV applies to '[t]he buildings and structures of schools . . . owned, used and occupied directly by them for the purposes for which they are established . . . .' It is clear from this language that not only must the school be the entity which owns the property, but it must also be the entity which uses and occupies the property. As it is the Audubon Society and not the school which uses and occupies the land south of Interstate Route 89, the school is not entitled to a tax exemption on this tract of land under RSA 72:23 IV which excludes lands and buildings not used and occupied directly by the school for its purposes. It is irrelevant that the Audubon Society might be entitled to an exemption under RSA 72:23 V, were it the owner of this land. See Evangelical Baptist, &c. Society v. Boston, 204 Mass. 28, 90 N.E. 572 (1910)." (Emphasis added.)<sup>4</sup>

The burden rests with the Taxpayer to establish it meets each of the requirements for a tax exemption under RSA 72:23, V for the year under appeal. RSA 72:23-m ("The burden of demonstrating the applicability of any exemption shall be upon the claimant."). "It is elemental that determination of the rights of plaintiff to an exemption from taxation is statutory. The existence and extent of exemptions depends on legislative edict." Christian Camps &

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<sup>4</sup> While the legislature added RSA 72:23, V-a, effective July 16, 1977, after St. Paul's was decided, the Taxpayer has not asserted or established that it was entitled to a charitable exemption based upon the special requirements of this distinct statutory exemption provision.

Conferences v. Town of Alton, 118 N.H. 351, 353 (1978), quoted in E. Coast Conf. of the Evangelical Covenant Church of America v. Town of Swanzey, 146 N.H. 658, 661 (2001).

Both in its application with the Town, as well as throughout the appeal and hearing process before the board, the Taxpayer has relied on RSA 72:23, V only, and not any other exemption provision, such as RSA 72:23, V-a. See, e.g., the Taxpayer's previously filed "Motion for Summary Judgment" (asserting its entitlement to an exemption under RSA 72:23, V, without mention of RSA 72:23, V-a); and Section E of the Taxpayer's appeal form filed with the board (listing RSA 72:23, V as the "Exemption, Deferral or Tax Credit Sought").

While it is true the Taxpayer's charter documents<sup>5</sup> reflect an intention to undertake activities to "enhance the interest in the game of soccer and other youth sports" through "player and coach clinics and camps and other soccer programs" and so forth, they do not mention any intent to simply hold real estate for the direct use and occupancy of some other organization that may qualify as having a charitable purpose, such as Soccer Club. As discussed above, the evidence considered as a whole reflects Soccer Club, rather than the Taxpayer, has engaged in the activities mentioned in the Taxpayer's charter documents.<sup>6</sup>

Denial of the Taxpayer's exemption appeal based on the RSA 72:23, V use and occupancy requirements does not, of course, mean the Town's other arguments supporting denial are without merit. The Town has raised legitimate issues, for example, regarding whether an alleged purpose and obligation to promote youth soccer and other sports can fit within the

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<sup>5</sup> See Taxpayer Exhibits 1 ("Articles of Agreement") and 2 ("Constitution and By-Laws").

<sup>6</sup> Cf. Appeal of Kiwanis Club of Hudson, 140 N.H. 92, 93-95 (1995) (not a violation of 'use' restriction in prior version of RSA 72:23,V where organization has primary charitable purpose broad enough to encompass renting some of its property to other charitable organizations for fund-raising purposes benefiting the community). In brief, the board finds Kiwanis, not cited by either party, to be distinguishable on the facts from the present appeal.

general definition of “charitable” set forth in RSA 72:23-1, as well as whether certain identified individuals (Paul Willis and Ian Burgess) are or are not “officers or members” of the relevant entity who receive “pecuniary profit or benefit” that is prohibited by the exemption statutes. Several of these issues may include questions of first impression in New Hampshire. In the interest of judicial economy, however, the board will not at this time further address these issues, which involve substantially conflicting testimony and arguments, since the Taxpayer has not met the specific and elemental requirements of RSA 72:23, V nor asserted an alternate statutory qualification for an exemption.<sup>7</sup>

Consistent with this decision and the board’s prior rulings, the board has responded to the Taxpayer’s and the Town’s respective requests for findings of fact and rulings of law in Addendum A attached hereto.

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

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<sup>7</sup> Cf. Trustees of Dartmouth College v. City of Lebanon, BTLA Docket No. 13865-93EX (July 10, 1995), 1995 WL 488336 (property owned by a university, but occupied by a nonprofit university press consortium that included this university and other institutions, seeking claims for exemption under both RSA 72:23, IV and 72:23, V-a).

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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Albert F. Shamash, Esq., Member

**Addendum A**

Responses to Requests for Findings of Fact and Rulings of Law

Docket No. 19745-02EX

The “Requests” received from the Taxpayer are replicated below, in the form submitted and without any typographical corrections or other changes. The board’s responses are in bold face. With respect to the Requests, “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.

**Taxpayer’s Requests for Findings of Fact and Rulings of Law**

1. SUSC is a non-profit organization legally doing business in the State of New Hampshire.

**Granted.**

2. SUSC owned the real property at 311 Winnacunnet Road, Hampton, New Hampshire (the “Property”) on April 1, 2002.

**Granted.**

3. SUSC was established for the purpose of the enhancement of interest in the game of soccer and other youth sports in the New Hampshire and Southern Maine regions via the development of competitive youth boys and girls teams, player/coaching clinics and camps, and special soccer programs.

**Neither granted nor denied.**

4. The Property is used by SUSC for youth soccer teams and leagues, soccer clinics and camps and other programs.

**Denied.**

5. In addition to its soccer programs, SUSC uses the Property and the money derived therefrom to provide scholarships, grants, donations of money, facility time and equipment, and reduced fees to needy players, charitable organizations and school groups, including Special Olympics, Winnacunnett High School and other schools and organizations.

**Denied.**

6. SUSC provides services to more than 5,000 children in the New Hampshire Seacoast and Southern Maine regions.

**Denied.**

7. Any member of the general public may join a SUSC soccer team or program and use the facilities, and members of the public may even create their own teams.

**Neither granted nor denied.**

8. The money saved by SUSC to purchase and build outdoor soccer fields is being or will be used for the purpose for which SUSC was established.

**Denied.**

9. Paul Willis is not an officer of SUSC.

**Granted.**

10. Ian Burgess is not an officer of SUSC.

**Granted.**

11. The Property is owned, used and occupied by SUSC directly for the purposes for which SUSC was established.

**Denied.**

12. None of the income or profits derived from the Property is used for any other purpose than the purpose for which SUSC was established.

**Neither granted nor denied.**

13. SUSC was established and is administered for the purpose of performing a service of public good or welfare.

**Neither granted nor denied.**

14. SUSC's activities advance 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 New Hampshire.

**Neither granted nor denied.**

15. SUSC is obligated by its Articles of Agreement, Constitution and By-Laws to perform the service of public good or welfare for which it was established.

**Neither granted nor denied.**

16. There are no pecuniary profits or benefits to SUSC's officers or members.

**Neither granted nor denied.**

17. There are no restrictions which confine SUSC's benefits or services to its officers or members, or those of any related organization.

**Neither granted nor denied.**

18. RSA 72:23 et seq. does not require that SUSC register with the Charitable Trust Division of the New Hampshire Attorney General's Office to be eligible for a charitable tax exemption.

**Granted.**

19. RSA 72:23 et seq. does not prohibit SUSC from paying salaries to its employees, including its Director of Club Development and Director of Operations, to be eligible for a charitable tax exemption.

**Neither granted nor denied.**

20. RSA 72:23 et seq. does require that SUSC be obligated to give charitable donations to be eligible for a charitable tax exemption.

**Denied.**

21. RSA 72:23 et seq. does not require that SUSC use the Property in a significantly different way than if it were being used as a for-profit corporation.

**Denied.**

22. The appearance of the Property is not a relevant factor to be considered in determining whether SUSC is eligible for a charitable tax exemption under RSA 72:23 et seq.

**Granted.**

23. The amount of SUSC's annual revenues are not a relevant factor to be considered in determining whether SUSC is eligible for a charitable tax exemption under RSA 72:23 et seq.

**Granted.**

24. The amount of Paul Willis' annual salary is not a relevant factor to be considered in determining whether SUSC is eligible for a charitable tax exemption under RSA 72:23 et seq.

**Denied.**

25. The amount of Ian Burgess' annual salary is not a relevant factor to be considered in determining whether SUSC is eligible for a charitable tax exemption under RSA 72:23 et seq.

**Denied.**

Town's Requests for Findings of Fact and Rulings of Law

1. This case involves a claim by SUSC to a charitable exemption for the tax year 2002, which runs from April 1, 2002 to March 31, 2003, concerning its property located at 311 Winnacunnet Road in Hampton, New Hampshire.

**Granted.**

2. For that year, the total tax on the property was \$41,191.89, exclusive of interest and costs.

**Granted.**

3. The entity Seacoast United Soccer Club, Inc., a New Hampshire for-profit corporation incorporated on March 27, 1997, was used to take title to the 311 Winnacunnet Road property in 1997 in order to qualify for an SBA loan.

**Granted.**

4. Seacoast United Soccer Club, Inc. then owned this property from 1997 until March 7, 2002.

**Granted.**

5. SUSC, a not-for-profit corporation, was incorporated on February 11, 2002, for the purpose of addressing questions concerning its eligibility for a charitable exemption.

**Neither granted nor denied.**

6. Seacoast United Soccer Club, Inc. then deeded title to the land and building located at 311 Winnacunnet Road to SUSC by a quitclaim deed dated March 7, 2002 and recorded in the Rockingham County Registry of Deeds at Book 3741, Page 2731.

**Granted.**

7. Seacoast United Soccer Club, a different not-for-profit corporation that was incorporated in New Hampshire on November 24, 1997, has occupied the property and has continuously operated an indoor soccer arena there since 1997.

**Granted.**

8. Even though SUSC became the new owner of the real property located at 311 Winnacunnet Road as of March 7, 2002, there were no changes in the operation of the Club as a result of the transfer of title. The role of SUSC is merely that of titleholder to the property.

**Granted.**

9. No transfer of assets from Seacoast United Soccer Club to SUSC occurred during the property tax year in question and Seacoast United Soccer Club filed federal tax returns in its name alone for the years ending June 30, 2002 and June 30, 2003. SUSC has filed no federal returns under its name.

**Granted.**

10. SUSC has not been registered as a charitable organization with the New Hampshire Attorney General's office.

**Granted.**

11. Seacoast United Soccer Club was registered as a charitable organization with the New Hampshire Attorney General's office, but its filings are not up to date.

**Granted.**

12. It is the alleged “Charitable Works” of Seacoast United Soccer Club [from July 2001 to June 2002] that form the basis of SUSC’s claim to a charitable exemption.

**Granted.**

13. The “Charitable Works” that were performed during the time period in question were strictly voluntary and are not considered by the Club as being required by the New Hampshire Attorney General’s Office.

**Neither granted nor denied.**

14. The “Charitable Works” of the Club from July 2001 to June 2002 have been valued by the Club at \$115,500.

**Neither granted nor denied.**

15. According to the Club’s financial statements prepared by the Club’s accountants and covering from July 2001 to June 2002 the Club’s operations generated gross revenues of approximately \$1.8 million for that same time period. The value of the Club’s “Charitable Works” represent less than seven percent of that figure for gross revenues.

**Neither granted nor denied.**

16. The Club claims that it gave out \$9,000 in scholarships to enable participation on its travel teams. This amount paid for 30 to 35 participants out of the 450 travel team players, or between 6% and 8% of those players.

**Neither granted nor denied.**

17. SUSC’s Articles of Agreement state in Article II that the corporation is organized for religious, charitable and educational purposes.

**Granted.**

18. SUSC’s Constitution and By-Laws do not require or obligate it to perform charitable work.

**Neither granted nor denied.**

19. On SUSC’s draft 501(c)(3) application for tax exempt status, (Form 1023) the answer to question 4 on page 3 identified Paul Willis and Ian Burgess as officers.

**Granted.**

20. On page 8, line 17, this draft Form 1023 for SUSC indicates that officers were to receive \$100,000 in compensation for July 1, 2002 through June 30, 2003 and \$105,000 for July 1, 2003 through June 30, 2004.

**Granted.**

21. In a letter to Hampton Town Manager Barrington, dated October 15, 2002 Mr. Willis identified himself as an officer and employee who would be receiving these monies, stating: "Paul Willis, as officer and full time employee of Seacoast United received \$99,570.78 for the year ending June 30, 2002. For the year July 1, 2002 to June 30, 2004, there have been no changes made to compensation thus far."

**Granted.**

22. The Form 990 Tax return for Seacoast United Soccer Club (not SUSC) for the year July 1, 2001 to June 30, 2002 shows Mr. Willis' compensation as \$107,382.00.

**Granted.**

23. The Form 990 tax return for Seacoast United Soccer Club (not SUSC) for the year July 1, 2002 to June 30, 2003 shows Mr. Willis' compensation as \$110,825.00

**Granted.**

24. Mr. Willis' formal educational background is limited to the Bachelor of Science degree he received in 1988 from West Virginia Wesleyan College.

**Granted.**

25. In terms of current assets, the Club's accountant reported in a Compilation Report that as of June 30, 2001 that the Club had \$404,605.46 in current assets, of which 277,274.88 was in four bank accounts. By the next year's June 30, 2002 Compilation Report the Club was reported as having \$592,797.47 in current assets, of which \$413,605.47 was in the four bank accounts. (This same accountant's 2002 Review Report shows this last figure as \$414,486). By the next year's June 30, 2003 Compilation Report, the Club had \$611, 583.61 in current assets, of which \$432,980.48 was in the four bank accounts. (This same accountant's 2003 Review Report shows this last figure as \$433,800).

**Neither granted nor denied.**

26. The Income Statement portion of each of the Club's annual Compilation Reports by its accountant and its fee sheets show that the Club makes revenue on every conceivable aspect of its operation, from player fees to camps to birthday parties to advertising to drinking water.

**Neither granted nor denied.**

27. A taxpayer's entitlement to an exemption under RSA 72:23 is very fact specific. See New Canaan Academy v. Town of Canaan, 122 N.H. 134, 137 (1982) (an education exemption case).

**Granted.**

28. By statute, SUSC as the owner of the property in question is the only party that can maintain this appeal. See RSA 72:33 and RSA 72:34-a.

**Granted, assuming "RSA 72:33" is a typographical error and it was intended to be "RSA 72:23."**

29. According to Rule Tax 204.06, SUSC carries the burden of proving that it was entitled to a statutory exemption for the tax year April 1, 2002 to March 31, 2003.

**Granted.**

30. Under RSA 71-B:11, the issue now before the Board as to SUSC's eligibility for a charitable exemption is one to be determined on a de novo basis.

**Granted.**

31. Under 72:34, IV decisions by the Board of Selectmen on exemption applications are not required to include their reasons. Also according to this same statute, a failure to respond by the Board of Selectmen would constitute a denial.

**Neither granted nor denied.**

32. SUSC's attempt to disprove comments made by the Board of Selectmen does not carry SUSC's burden of proof.

**Neither granted nor denied.**

33. N.H. RSA 72:23-1 defines “Charitable”. According to this definition it is necessary that corporation or organization be “...established and administered for the purpose of performing, and obligated, by its charter or otherwise, to perform some service of public good or welfare...”. (Emphasis added.) The evidence here clearly shows that SUSC is not obligated in any way by its Constitution or By-laws to perform any charitable work.

**Neither granted nor denied.**

34. As stated in Appeal of the City of Franklin, 137 N.H. 622, 625 (1993), quoting from Nature Conservancy v. Nelson, 107 N.H. 316 (1966), “The public service which plaintiff is to render must be obligatory so as to enable the Attorney General or other public officer to enforce this right against it if the service is not performed. It follows that if the public benefit is limited to that which plaintiff sees fit to provide at its option or in its uncontrolled discretion the requirements of RSA 72:23 are not satisfied.” As the “Charitable Works performed here were strictly voluntary, this work does not qualify SUSC for a charitable exemption.

**Neither granted nor denied.**

35. Also as noted in Nature Conservancy v. Nelson, 107 N.H. at 319, “if the public benefit is limited to that which the plaintiff sees fit to provide at its option or in its uncontrolled discretion, the requirements of RSA 72:23 V are not satisfied.” These requirements are not satisfied here by SUSC.

**Neither granted nor denied.**

36. Under RSA 72:23-1, a receipt of any “pecuniary profit or benefit” by its officers or members would disqualify an organization as charitable. Since Mr. Willis has indicated that he is an officer of SUSC, the requirements of RSA 72:23 are not met. As an officer Mr. Willis is only entitled to “expenses incurred in connection with official duties of a director, officer, or trustee”.

**Neither granted nor denied.**

37. Under RSA 7:19-a, I(c) the ability to receive “reasonable compensation” without its being considered a pecuniary benefit transaction applies only to “services of an executive director.” Since neither Mr. Willis nor Mr. Burgess has the title of executive director, the requirements of this statute are not met.

**Neither granted nor denied.**

38. Given the limits of his formal education and experience, Mr. Willis’ compensation is beyond “reasonable.”

**Neither granted nor denied.**

39. SUSC is seeking to, but is not entitled to, rely upon the activities of Seacoast United Soccer Club to justify SUSC's being given a charitable exemption.

**Granted.**

40. SUSC's role is limited to that of titleholder and as such does not itself "enhance interest in the game of soccer" as called for in its Articles of Agreement or its Constitution and By-Laws.

**Granted.**

41. The "Charitable Works" of Seacoast United Soccer Club represent too small a percentage of its gross revenues to qualify SUSC for a charitable exemption. "When the use is 'slight, negligible or insignificant' or not 'in performance of these public purposes' the plaintiff is not entitled to a tax exemption for the property." The Housing Partnership v. Town of Rollinsford, 141 N.H. 239, 242 (1966), quoting Nature Conservancy, supra, 107 N.H. 320.

**Neither granted nor denied.**

42. If SUSC were found eligible for a charitable exemption on the basis of the Club's claim that its operation advances the physical well being of the general public, every other private soccer arena, hockey rink, indoor tennis court, racquetball court, swimming pool, fitness or health club (gym), yoga center, basketball court, indoor track, boxing ring, dance school, and bowling alley in this State that is not making a profit would seek to declare itself a non-profit organization and would seek to be declared entitled to a charitable exemption.

**Neither granted nor denied.**

43. Seacoast United Soccer Club is a money making machine and its socking away of hundreds of thousands of dollars in bank accounts provides yet another indication that it is not charitable; this shows that income and profit principally benefit the organization and not the general public. Fulton, *To Tax or not to Tax, that is the Annual Question*, New Hampshire Town and City, March 1999 at 21.

**Neither granted nor denied.**

44. SUSC has not met its burden of proof that it is eligible for a charitable tax exemption for the year 2002.

**Granted.**

45. The Hampton's Selectmen's denial for the tax year of 2002 of a charitable exemption under N.H. RSA 72:23, V should be upheld.

**Granted.**

46. The Hampton Board of Selectmen's decision is affirmed and this appeal by SUSC is dismissed.

**Granted, however, the board is denying the appeal, not necessarily dismissing the appeal.**

**Town's Supplemental Request for Ruling of Law**

47. On account of SUSC's representations to the federal government and the Town on SUSC's draft 501(c)(3) application for tax exempt status (Form 1023) [Town Exhibit E] that Paul Willis and Ian Burgess were officers of SUSC, and in light of Mr. Willis' representation to the Town in his letter to Town Manager Barrington in his letter dated October 15, 2002 [Town Exhibit R] that he is an officer who is to receive compensation as referred to in that 501(c)(3) application, and where no effort was made until after this appeal was filed to try and correct these representations, SUSC is estopped from denying that Paul Willis and Ian Burgess are officers who receive a pecuniary profit or benefit from SUSC.

See, Appeal of Cloutier Lumber Co., 121 N.H. 420, 422 (1981) ("Estoppel prevents one party from asserting a position contrary to one previously taken when it would be unfair to allow him to do so"); Conway National Bank v. Pease, 76 N.H. 319, 327-34 (1912) (discussing the doctrine of equitable estoppel and silence itself as a representation to which that doctrine may apply, and cases holding that a party who has made a false representation is precluded from proving that the representation is false and is responsible for the consequences of the false representation); and New Canaan Bank & Trust v. Pfeffer, 147 N.H. 121 (2001), a recent application by the Supreme Court of the doctrine of equitable estoppel.

**Neither granted nor denied.**

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Christopher E. Ratte, Esq., Kalil & LaCount, 681 Wallis Road, Rye, New Hampshire 03870, counsel for the Taxpayer; Mark S. Gearreald, Esq., 100 Winnacunnet Road, Hampton, New Hampshire 03842, counsel for the Town; and Chairman, Board of Selectmen, Town of Hampton, 100 Winnacunnet Road, Hampton, New Hampshire 03842.

Date: May 13, 2004

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Anne M. Stelmach, Deputy Clerk