Roman Catholic Bishop of Manchester

v.

City of Nashua

Docket No.: 20663-04EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "City's" 2004 denial of the Taxpayer's request for a religious exemption as provided under RSA 72:23, III on Map 37, Lot 3, St. Casimir Church, rectory and classrooms ("St. Casimir"); Map 37, Lot 42, adjacent land to St. Casimir Church containing parking and church landscaping; and Map 41, Lot 3, St. Francis Xavier Church and rectory ("St. Francis") (collectively, the "Properties"). For the reasons stated below, the appeal is granted.

The Taxpayer has the burden of demonstrating the Property meets the requirements of the statute under which the exemption is claimed 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) although religious services in these churches were "suppressed" (closed), the Properties continued to be part of the mission of the Roman Catholic Church (the "Church");

(2) the storage and preservation of religious and sacred artifacts at the Properties continued to fulfill a qualifying tax exempt purpose; and

(3) an exemption is supported by the board's prior decision in Roman Catholic Bishop of Manchester v. City of Berlin, BTLA Docket No. 18328-99EX (May 9, 2001).

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

(1) the Properties ceased being used for religious purposes and were deconsecrated prior to April 1, 2004 and these facts are confirmed by the "A-9" forms filed by the Taxpayer with the City which indicated the Church facilities were "closed";

(2) the storage and maintenance uses mentioned by the Taxpayer are not enough to meet the requirements of the religious exemption statute;

(3) the religious use of the Properties must be 'direct' rather than incidental; and

(4) the case law from New Hampshire and another state (Wisconsin) supports the denial of the exemption.

Board's Rulings

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

Background

A financial task force was formed by Bishop John McCormack (the "Bishop") in 2001 which determined it was in the best interest of the Church's mission to reorganize and redistribute the Catholic churches in the City because the Church could not financially maintain

all of them. A merger began in 2003 after the Bishop made the decision to suppress St. Francis and St. Casimir along with St. Stanislaus Parish[1] for several reasons:

- St. Francis is located in the French Hill neighborhood and because of the City's demograghics, it was not feasible to maintain the parish;
- St. Francis' structural condition was deteriorated to the extent it was determined the Church could not afford to repair it;
- the Church has a shortage of priests to staff all of its parish churches; and
- it would work for the betterment of the Church's mission.

St. Francis

St. Francis was suppressed and the members of its parish became parishioners of St. Aloysius Parish. Although the buildings were deconsecrated, the Church continued to maintain the buildings and use them to house items of religious significance, i.e., marble altars[2], marble pulpits, the church cross, stained glass windows, organs, stations of the cross, statues, pews, and vesting cabinets among other items. Many of these items could not be dismantled without destroying the building's integrity, some were not removed because of risk of damage in moving them to temporary storage and some were not removed because there was no other location to move them to. Further, the religious belongings were being held to offer to other parishes undergoing renovations and to new Catholic churches being constructed. It was also determined some items should remain in the Properties until a determination of whether the purchaser, if another religious organization, could use them.

[1] St. Stanislaus is not under appeal as the City determined its continued use as a place of prayer qualified for the religious exemption.

[2] Father Rick Dion of St. Aloysius of Gonzaga a/k/a St. Louis of Gonzaga in Nashua testified he oversaw all the Properties assets and liabilities and the side altars were embedded with the relics of saints.

St. Francis was closed in March 2003 and placed for sale. Some members of St. Francis challenged the Bishop's authority to sell the property because an 1885 conveyance to the then Bishop of Manchester, Denis Bradley, expressly conditioned the land be used to build a church and the land "always be used and occupied as a place of public religious resort and for public religious and pious uses and purposes, and never for any other use or purpose whatever." The supreme court upheld the lower court's decision that "the 1885 deed conveyed this property to the RCBM [Roman Catholic Bishop of Manchester] and not to St. Francis Xavier. …the RCBM holds legal title [to the land in question] for the Diocese of Manchester." Berthiaume v. McCormack, ____N.H.____, 891 A. 2d 539, 542 (2006).

After St. Francis was placed for sale, the rectory remained open until late summer of 2003. The rectory continued to be used for storage of office supplies, furniture and equipment and to house the records of the pre-school that had operated on the ground floor of the Church building.[3] The rectory was also used for a period of time by the "Neighborhood Watch" and other service organizations.

During the pendency of the litigation, the Bishop entered into a purchase and sale agreement to sell the St. Francis property to an individual who would donate it to the Armenian Orthodox Church which agreed to continue the use of the Property for religious purposes in accordance with the 1885 deed.[4] This sale would lessen the need for the Church to remove many of the religious items such as the confessionals, pews, bells, and a seven-foot statue of St. Francis. Many small items were removed and relocated to other parishes but the larger items were held pending the court's decision. The Church could not sell the relics of the saints which are embedded in the center of an altar. The relics would have to be buried in "sacred ground"

[3] The Taxpayer was granted a 2004 exemption for the basement area used for classrooms and school furnishings.

[4] The Armenian Church is similar to Roman Catholicism and many of the religious items used by the Church would also be used by the Armenian Church; thus, there would be no need to remove them.

(cemetery) or in safes of the Church by canon law. The proceeds of the sale would be held in trust for the successor parish, St. Aloysius; however, the Church had to continue to house and maintain the St. Francis property until the litigation was concluded.

St. Casimir

St. Casimir was suppressed and the members of its parish became parishioners of St. Patrick's Parish. St. Casimir was sold on September 22, 2004. St. Casimir Church and rectory were also used to store a significant amount of religious items, furniture and equipment similar to those articulated above relative to St. Francis. When it was determined the buyer would be using the church for secular purposes, only then did the Church remove the stained glass windows, the organ, the bell from the tower, the cross and other religious artifacts. All of these actions took place subsequent to April 1, 2004. Some items that were too large to be stored were sold to a company that deals specifically with churches and other items were transferred to another location to create a chapel. The proceeds of the sale were held for the benefit of the successor parish, St. Patrick.

Prior to the sales of the Properties, the Church expended $10,000 repairing windows and protecting the stained glass windows by putting sashes on the outside. The Church also paid approximately $1,000 per month for maintenance and security to insure no vandalism or desecration of the Properties occurred.

Holdings

The City does not dispute the Taxpayer is a "regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state," but argues the Properties, as of April 1, 2004, do not qualify for an exemption under RSA 72:23, III because they were not "used and occupied directly for religious training or for other religious purposes." The City argued the churches were closed, final mass had been held in each parish,

they were deconsecrated and, thus, they no longer qualified for the exemption. The majority disagrees.

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 majority finds the Taxpayer carried its burden and is entitled to exemption on the Properties. This finding is based not on a single piece of evidence but, rather, on the totality of the 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 v. Town of Wolfeboro, 138 N. H. 496, 499 (1994). Further, we find the City's position is too narrow and not in keeping with the overall intent of the statute to provide appropriate religious exemptions. "A tax exemption statute is construed not with rigorous strictness but 'to give full effect to the legislative intent of the statute." Id. at 499.

The reorganization and restructuring of the parishes in the City were found to be necessary by both the Church's task force and the Bishop. The Properties' assets and proceeds when sold, were held for the benefit of the successor parishes. The majority finds these Properties were "used and occupied … directly for other religious purposes" by the church through its maintenance and storage of the structures and religious, consecrated artifacts which were held solely for the purpose of promoting the overall mission of the Church as it was evolving. The fact the Properties needed to be sold, as part of the overall mission of the Church, does not nullify their contribution during that period of time when they were marketed for sale and had to be maintained and protected against vandalism or desecration. Further, St. Francis

was in litigation until February, 2006 and thus could not be sold or used for any other purpose until the supreme court issued its final order in Berthiaume.

In Sovereign Grace Fellowship v. Town of Boscawen, Docket No.: 19595-2002EX (May 12, 2004) the board found the taxpayer, who was in the process of building a church, clearly demonstrated the property was "never intended to be developed for any purpose other than for a church." See also Trinity Gospel Chapel v. Town of Sutton, Docket No. 3001-85 (August 5, 1986) ("the construction of the church was consistent with Trinity's ultimate religious design purpose … proceeding in good faith, in a manner fully in keeping with it religious and charitable purposes").

In Roman Catholic Bishop of Manchester v. City of Berlin, Docket No. 18328-99EX (May 9, 2001), the board found a former school building (5 story structure) used as a cold storage facility for the parish was exempt under RSA 72:23, III ("if the [t]axpayer did not use this building for this purpose, other church operations and facilities would have been adversely affected.").

As Berthiaume confirms, the purpose of the reconfiguration of the parishes was to arrive at a way for the Church "to fulfill its mission in Nashua while also managing its resources in the face of a declining number of priests and inner city parishioners." The Properties and proceeds from their sales were held for the successor parishes. The churches were not used for non tax-exempt purposes during the time they were on the market[5] and although the churches were closed in terms of their worship space, they were being held and used to house and protect the

[5] The board's findings might have been different if the Properties were held for an unreasonable period of time without attempts to convey them; however, that is not the case in these appeals.

religious artifacts[6] until the Properties were sold. The board concurs with the minority opinion that its authority and powers are "entirely statutory" in nature. See Appeal of Land Acquisition, 145 N.H. 492, 294 (2000). However, the majority finds the Taxpayer sustained its burden of proof that the Properties were owned, used and occupied solely for religious purposes, in carrying out the mission of the Church, during this transition period and, thus, rules the religious exemption is granted. To find otherwise would not be in keeping with the legislative intent of RSA 72:23, III.

Further, to the extent the Town and the minority opinion suggest because the Taxpayer indicated St. Francis and St. Casimir were closed (as indicated on the A-9 form), and final mass had been said is not, in and of itself, an admission that the Properties were no longer fulfilling the mission of the Church. There is no question the Bishop "suppressed" the Properties, in effect closing them to religious services. The minority asserts the exemption should not be granted because the court in Berthiaume stated "all items of religious items value and significance were removed." We note, however, the court's further statement "[w]e assume all facts pleaded in the plaintiffs writ are true, and we construe all reasonable inferences drawn from these facts in the plaintiff's favor." The majority finds there was significant conflicting testimony and evidence at the hearing, as elicited in this Decision, which supports there were substantial religious artifacts left in the Properties and the Taxpayers were vigilant in the preservation and protection of these religious items.

Last, the majority does see a distinction between Dominican Nuns v. City of La Crosse, 419 N.W. 2d 270 and Franciscan Fathers v. Town of Pittsfield, 97 N.H. 396, 401 (1952). The Dominican Nuns had maintained a convent on property for a period of 30 years when it moved

[6] The board notes the court in Berthiaume indicated "all items of religious value and significance [at St. Francis] were removed by the diocese." However, the testimony and evidence, including the photographs submitted at hearing, supports the board's findings herein.

its "headquarters and all its members to new facilities in another part of the country." Although the property was listed for sale, had an existing mortgage and "continued to maintain heat and electric service … and arranged for its continued maintenance until it was sold," the majority finds the fact the order was relocated to another part of the country and only furnishings, not items of a religious nature, were left on the property is a distinguishing factor from the Properties under appeal. The majority also finds a distinction in Franciscan Fathers where "an artificial pond from which fish are caught and consumed by members," and "land for hunting, hiking and fishing" were ruled to be non-exempt by the court is distinguishable from the restructuring of the Catholic churches in the City in furtherance of the mission of the Church.

Therefore, the majority finds in favor of the Taxpayer and orders the City to totally exempt the Properties for the tax year 2004.

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.

Responses to Requests of Findings of Fact and Rulings of Law

The "Requests" received from the City are replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in bold face. 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 overly broad or narrow so 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.

CITY OF NASHUA'S FINDINGS OF FACT AND RULINGS OF LAW

1. This is an appeal under RSA 72:34-a from denial of property tax exemptions sought under RSA 72:23 III, religious exemption, for tax year 2004, for the following identified parcels:

- Account #39,506, Map 41, Lot 3, 41 Chandler Street, St. Francis Xavier Church, church and rectory, assessed value $1,571,000
- Account #39,500, Map 37, Lot 3, 117 Temple Street, St. Casimir Church, church, rectory, classroom building, assessed value $1,017,500
- Account #39,501, Map 37, Lot 42, 119 Temple Street, cemetery land, assessed value $76,100

Neither granted nor denied.

2. For the property at 41 Chandler Street, Map 41, Lot 3, the A-9 Form designates the primary use of the church and rectory as "Closed".

Granted.

3. "The St. Francis Xavier Church was closed in March 2003 and all items of religious value and significance were removed by the diocese and transferred to the newly expanded St. Aloysius of Gonzaga Parish." Berthiaume v. John B. McCormack, The Roman

Catholic Bishop of Manchester, A Corporation Sole, New Hampshire Supreme Court Decision, February 14, 2005, slip opinion pp. 2-3.

Granted.

4. On or about April 1, 2004, Stebbins Commercial Properties was engaged to sell the former St. Francis Xavier Church property at 41 Chandler Street.

Granted.

5. A purchase and sale agreement has been signed for the property at 41 Chandler Street. Berthiaume, supra, at p. 3.

Neither granted nor denied.

6. For the property at 119 Temple Street, Map 37 Lot 3, the A-9 Form designates the primary use of the church, rectory and classroom building as "Closed".

Granted.

7. St. Casimir Church had its last service in September 2002, and its religious articles were thereupon removed.

Denied.

8. CB Richard Ellis was engaged in June 2003 to sell the former St. Casimir Church property.

Granted.

9. For the property at 117 Temple Street identified as Map 37, Lot 42, the primary use of the cemetery land is stated as "Religious burials". However, there are no actual burials on the property.

Granted.

10. An application to the Nashua planning board for site plan approval for redevelopment as housing was filed on April 9, 2004 for both St. Casimir lots.

Neither granted nor denied.

11. Both St. Casimir properties, Map 37 Lot 42, 117 Temple Street, and Map 37 Lot 3, 119 Temple Street, were sold to Casimir Place Limited by deed dated September 22, 2004 recorded in the Hillsborough County Registry of Deeds Book 7328, Page 1823.

Neither granted nor denied.

12. Under RSA 72:23 III, the following property is eligible for exemption:

> III. Houses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings and the land 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.

Granted.

13. Only property "used and occupied directly for religious purposes" is eligible for exemption. E. Coast Conf. of the Evangelical Covenant Church of America v. Swanzey, 146 N.H. 658, 663 (2001).

Neither granted nor denied.

14. If the religious use is slight, property does not qualify for a religious or charitable exemption. Appeal of C.H.R.I.S.T., Inc., 122 N.H. 982, 984 (1982); Franciscan Fathers v. Pittsfield, 97 N.H. 396, 401 (1952).

Neither granted nor denied.

15. For all the properties involved in this appeal, pending sale of the closed churches, rectories, and school, the only use claimed as the basis for a religious exemption for tax year 2004 under RSA 72:23 III is storage of religious items and other furniture and furnishings that had been used in the buildings when they were in active use.

Neither granted nor denied.

16. Each property, itself, owned by a charitable, educational, or religious organization must be examined according to its particular use to determine its eligibility for exemption. Appeal of Wolfeboro, 152 N.H. 455, 462 (2005)

Neither granted nor denied.

17. Mere storage of items and maintenance of property pending sale after cessation of active use for religious purposes does not qualify as sufficient use for a religious exemption. See Dominican Nuns v. City of LaCrosse, 142 Wis. 577, 419 N.W. 2d 270 (1987).

Neither granted nor denied.

18. Although storage may be a reasonable use under the circumstances and may well benefit the diocese as a whole, the test is whether each property, itself, is directly used for religious purposes, and storage of unused items does not qualify the property for exemption.

Neither granted nor denied.

19. Under all the circumstances the appeal from denial of exemption should be denied.

Denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Michele E. LeBrun, Member

_____
Douglas S. Ricard, Member

DISSENTING OPINION

For the reasons stated below, I respectfully dissent from the conclusion of the majority hearing this appeal that an RSA 72:23, III religious exemption should be granted.

The board's authority and powers are "entirely statutory" in nature. See Appeal of Land Acquisition, 145 N.H. 492, 494 (2000). It therefore has no equitable power or discretion to adopt either a broader or narrower reading of each exemption than expressed by the legislature in the statutes.

The exemption statutes, including those for religious organizations, must at the very least be carefully, if not strictly, construed to insure that the claimant (a taxpayer seeking an exemption) satisfies its burden of proof as to each statutory element (requirement). See RSA 72:23-m:

> "The exemptions afforded by RSA 72:23 . . . shall be construed to confer exemption only upon property which meets [the] requirements of the statute under which the exemption is claimed. The burden of demonstrating the applicability of any exemption shall be upon the claimant."(Emphasis added.);

quoted in Appeal of Town of Wolfeboro, 152 N.H. 455 (2005), (reversing tax exemption because taxpayer did not meet burden of proving it was entitled to an exemption).[7] See also Appeal of Emissaries of Divine Light, 140 N.H. 552, 555-57 (1995) ("expansive reading" of the statute not required by either the legislative history or the case law under the religious exemption statute, RSA 72:23, III, and "[t]he taxpayer bears the burden of proving its entitlement to a tax exemption.").

RSA 72:23, III, quoted in full in the majority decision, exempts from taxation "[h]ouses of public worship," such as a church, when they are "owned, used and occupied . . . directly for

[7] In Wolfeboro, the supreme court found the taxpayer (Taylor Home) did not meet its burden of proving the real property (used for independent living units for the elderly) was used and occupied directly for Taylor Home's charitable purpose or that it was reasonably necessary for Taylor Home "to carry out its mission." Id.

. . . religious purposes" by a regularly recognized and constituted denomination. (Emphasis added.) While the Taxpayer is part of the Roman Catholic Church, a regularly recognized and constituted denomination, and owned the Property as of the assessment date (April 1, 2004), the central question is whether the Property was directly occupied and used for the church's religious purpose as of that date.

The basis of the City's denial of the exemption is clearly set out in certain of its requests for findings of fact which are being ruled upon by the board. The "A-9" forms filed by the Taxpayer with the City indicate both the St. Francis Xavier Church and the St. Casimir Church were "closed" prior to April 1, 2004: St. Francis "was closed in March 2003" and the St. Casimir Church had its last religious service "in September 2002"; the Taxpayer did not, at any time, attempt to correct or modify these statements in the A-9 forms it filed, but does dispute whether all religious articles were removed from St. Casimir Church. Cf. the City's "Findings of Fact" and Rulings of Law, #s 2, 3 and 6 (granted) and 7 (denied); and Berthiaume v. McCormack, __ N.H. __, 891 A.2d. 539, 542 (2006) ("The St. Francis Xavier church was closed in March 2003 and all items of religious value and significance were removed by the diocese and transferred to the newly expanded St. Aloysius of Gonzaga parish.")

The Taxpayer, for its part, further acknowledges "[t]he tax exemption in each case [for each church property] was revoked when the churches ceased offering Mass and the other sacraments and were placed for sale. This occurred for St. Casimir in September 2002 and for St. Francis in March 2003." Taxpayer's Memorandum of Law, pp. 1-2. See also Municipality Exhibit No. A, which indicates the dates of "Last Service" for St. Francis as "03/16/03" and St. Casimir as "09/15/02" and that these properties were listed for sale with two separate commercial brokerage companies following the closures. At that point in time, these church

properties became "surplus" and were no longer being used for any religious services – no "public worship" of any kind.

The majority has decided closure of each church and cessation of all religious services does not disqualify the Taxpayer from continuing to receive a religious exemption from the City. This view implies that a reasonable (but unspecified and presumably indefinite) period of time should be allowed for the Taxpayer to offer each property for sale after the cessation of religious services and closure of each church. St. Casimir was sold (for a secular public housing project operated in the City) "on September 24, 2004" and St. Francis is presently "under contract to be sold" to an individual for eventual use as an Armenian church. Cf. Taxpayer's Memorandum of Law, p. 2.

The Taxpayer's Memorandum of Law (at p. 4) emphasizes the "use" of the church property did not change to a "for profit" use as a justification for continuing to receive the statutory exemption during the period between church closure and sale to third parties. I disagree because this is not the applicable test for an exemption. An owned property that does not generate income (for profit) does not necessarily qualify for an exemption. The statute requires 'use' "and" 'occupancy' "directly" for a religious purpose, as separate elements, not just 'ownership,' and these elements are stated in the conjunctive. A "closed" church, in my view, whether or not held "for profit," is not being used and occupied "directly" for a religious purpose. No religious services of any kind were being conducted and the church buildings were presumably locked at all times. A locked facility used simply to store articles, some of which may have religious significance, until such time as a future use can be determined does not satisfy the requirements of the exemption statute.

Even if some period of time after closure was needed for the church to find buyers for the Property, either because of the nature of the marketing process itself or because of the litigation

described in Berthiaume regarding ownership of St. Xavier, such facts do not require the grant of an exemption during the period between closure and the intended purchase and occupancy by those buyers. In Dominican Nuns v. City of La Crosse, 419 N.W. 2d 270 (Wis. App. 1987), a case cited by the City, the appellate court concluded that property maintained as a monastery for 30 years was not entitled to a continued exemption once the occupants moved and listed the property for sale. In that case, the religious order argued that storage of items, retention of a grounds-keeper and a mortgage with proceeds used to acquire new quarters were all factors supporting continued use of the property for an exempt purpose, but the court denied the exemption because the property was "not being 'used' for any of the order's regular activities or benevolent purposes. ...[and] premises which are 'wholly vacant and unoccupied' do not qualify for exemption." Id. at 271. The court also noted that "[t]axation is the rule, and exemption the exception," id., which is a legal maxim also employed in New Hampshire.[8]

It may be true that, after the churches were physically closed, the Taxpayer continued to store some items of religious significance at each property location (as detailed in its responses to the City's interrogatories; but see Berthiaume at 542). These items included "the stain glass windows, the church cross, confessionals, pews, the church bell, pulpits and podiums, altars, statues, Stations of the Cross, an organ, and furniture." (Taxpayer's responses to interrogatories 2 and 4.) Significantly, however, these items remained, not as a religious memorial or a religious shrine for public use, but for four practical and private reasons also specified in the same interrogatory responses: (1) some "could not readily be removed"; (2) some could not because of a "risk of damage from moving them to temporary storage"; (3) some because no other storage

[8] See, e.g., Boody v. Watson, 63 N.H. 320, 321 1885), and Portsmouth Shoe Co. v. City of Portsmouth, 74 N.H. 222, 223-24 (1907), cited in St. Paul's Church v. City of Concord, 75 N.H. 420, 422-23 (1910). In St. Paul's Church, the supreme court further noted that a "house of public worship" can receive a tax exemption "[i]f the house serves all of the religious purposes for which it was designed and is not appropriated to other uses in the sense of a substantial exclusion of the religious use from any part of it." Id. at 425.

or better storage location was available; and (4) some was left in place until a buyer was identified who might want the items "involved in the sale of the property." Id. While each of these motives is understandable from a practical standpoint, I cannot see how the storage and safe-keeping of such items fulfills a religious occupancy and use of the churches as 'houses of public worship' within the meaning of the exemption statute, RSA 72:23, III and the case authorities construing this exemption.

In a recent appeal, Sovereign Grace Fellowship v. Town of Boscawen, BTLA Docket No. 19595-02 EX (May 12, 2004), a panel of this board of which I was a member did grant a religious exemption to a church for land and buildings it was using for public religious services prior to building completion (and issuance of a certificate of occupancy by the Town). There was undisputed evidence in that appeal, unlike this one, that "hands on" construction activity by church members of the church was part of its beliefs and creed as "a daily religious expression of that process" and that communal prayer sessions were held on a "daily" basis during the construction period by church participants. In contrast, no religious activities of any sort occurred at the Property at issue in this appeal after the Taxpayer closed each church.

Also distinguishable is Roman Catholic Bishop of Manchester v. City of Berlin, BTLA Docket No. 18328-99EX (May 9, 2001), which involved not a church ('house of public worship'), but a school building and a parish hall operated by the church. The active storage of items (inflow and outflow) to support other church functions (clothing, furniture, building supplies and other items for church affiliated organizations, including the St. Vincent dePaul Society) was found to be the "highest and best use" of the school property and necessary to "help advance the overall purposes and mission of this church."

While holding real property until it can be sold to a suitable buyer for a suitable price may also arguably advance a church's "mission" in some general sense (to the extent money is

the lifeblood of any organization), it is not the type of activity that entitles a church to an exemption. Otherwise, a church could argue that any property it owns, whether or not used and occupied directly for a religious purpose (such as public worship), helps advance its "mission" by maintaining or augmenting its wealth (through a mortgage, for example, as in Dominican Nuns, 419 N.W.2d at 271) or becoming a potential revenue source when the property is sold at some indefinite point in the future.

The case law is clear that occupancy requires more than mere possession of property and/or a plan and purpose for future use, even when financial inability or some other factor may may prevent present use. See, e.g., Society of Cincinnati v. Exeter, 92 N.H. 348, 350-51 (1943) (further noting that a building owned by a charity is taxable "while it remains indefinitely idle"). In Franciscan Fathers v. Pittsfield, 97 N.H. 396, 401 (1952), certain land owned by members of a Catholic order (consisting of a 26-acre fish pond and an additional 30- acre tract cleared to become a future hayfield) was found not to meet the occupancy test for a religious exemption, even though the property as a whole was arguably devoted to the mission of holding "retreats" by that religious order. A denial of the exemption requested by the Taxpayer is consistent with these decisions and the wording of the religious exemption statute.

For all of these reasons, I respectfully dissent and would affirm the denial of the exemption by the City.

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Albert F. Shamash, Member

Certification

I hereby certify a copy of the foregoing Decision and Dissenting Opinion have this date been mailed, postage prepaid, to: William J. Donovan, Esq., Sheehan, Phinney, Bass & Green, 1000 Elm Street, Manchester, NH 03101, Taxpayer Representative, David R. Connell, Esq., Nashua Office Of Corp. Counsel, 229 Main, Box 2019, Nashua, NH 03061, Municipality Representative; and Chairman, Board of Assessors, City of Nashua, PO Box 2019, Nashua, NH 03061.

Date: 5/23/06

_____
Anne M. Stelmach, Clerk