

**Harbinger Bible Conference, Inc.**

**v.**

**Town of Dalton**

**Docket No.: 20941-04EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” denial of the Taxpayer’s tax year 2004 application for a full religious exemption under RSA 72:23 III on Lots 408-10, 11, and 12 (the “Properties”). The Taxpayer also owns Lot 408-9 which is not under appeal as it was granted a full religious exemption by the Town. For the reasons stated below, the appeal 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 and the Town erred in denying the application for religious exemption. See RSA 72:23-m; TAX 204.06. We find the Taxpayer carried this burden.

The Taxpayer argued it was entitled to a full religious exemption because:

- (1) it filed its application for a religious exemption with the Town on April 12, 2004 for tax year 2004 (Taxpayer Exhibit 10) on all four lots, but was granted a full exemption only on Lot 9;
- (2) it meets the statutory requirements for a full exemption;

- (3) the Properties are used as a spiritual retreat for Christian church groups and also provide temporary housing for needy people as part of its religious mission; and
- (4) the religious use of the Properties has been continuous since the first lot was purchased in 1976 and the Town granted full exemptions for 27 years (until tax year 2003).

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

- (1) use of several of the lots for religious purposes was negligible and incidental;
- (2) attendance at the Taxpayer's religious gatherings may be declining; and
- (3) the Taxpayer failed to meet its burden of proof.

### **Board's Rulings**

Based on the evidence, the board finds each of the Taxpayer's lots is entitled to a full religious exemption. The board will address the Properties individually.

#### **Lot 10**

The Town determined this lot was not entitled to any religious exemption. The lot contains the building referred to as the "Grey Lodge", several pads used to park some individually owned camping trailers, an area for tent sites, a septic system that serves the Grey Lodge and the trailer pads, a grassy area used for youth activities and a portion of the driveway that originates on Lot 12 and leads to Lot 9. The camping trailers are taxed to the individual trailer owners and the parties agreed the assessments on the trailers are not part of this appeal. The Grey Lodge is primarily used to provide housing facilities for people who come to attend and participate in the religious retreats and conferences and thus is a use directly related to the Taxpayer's religious mission. Similarly, the trailers and tent sites are used solely by people attending the Taxpayer's religious events or by persons working on or maintaining the Taxpayer's facilities.

The board finds the nature of the Taxpayer's use of Lot 10, providing various types of sleeping areas for the attendees of the religious retreats, to be a logical use of this lot. Because the Properties are in a somewhat remote location and many of the retreats last more than one day and into the evening, it is reasonable and necessary for the Taxpayer to fulfill its religious purpose to provide overnight accommodations on the premises. The board finds this use is incidental to the Taxpayer's primary purpose. For these reasons, the board finds Lot 10 is entitled to a full religious exemption.

#### Lot 11

The Town determined this lot was entitled to a partial (50%) religious exemption. The lot contains a dwelling with three levels. The bottom level provides a living area that is occupied by a minister and his family who fill the additional role of caretaker for the Properties. Also on this level is an area serving as a utility room for the structure. The second level has a kitchen/eating area, rest rooms, meeting rooms for small groups of retreat attendees and an area for laundry facilities. The upper level is used for lodging for retreat attendees. Further, this house has been used to provide a haven for individuals or families who have no place to live and are in need of lodging on an interim basis whether for a few days or a few months. The Taxpayer provides these services at no charge.

The board finds the use of this house is completely devoted to the Taxpayer's mission and religious purpose. Other structures on Lot 11 include a building known as the "firehouse" used for youth gatherings during retreats and a small cabin that had been used to house camp staff and the "Greisner" cabin. In addition, this lot contains two campsites and an area with a fire pit for youth activities utilized by conference/retreat participants. The board finds Lot 11 is not

used for any purposes not directly related to the Taxpayer's religious mission and is entitled to a full exemption.

Lot 12

The Town determined this lot was not entitled to a religious exemption. Lot 12 provides an entrance from Mountain Road to the Properties. The driveway entrance is the primary traffic artery of the Properties giving access to Lots 9, 10 and 11. There is an area for some campsites for conference attendees as well as an additional parking area. This lot also provides a buffer/barrier between the Properties and the abutters, thereby providing some privacy. Due to the nature of the Properties' usage as a religious retreat complex, the additional privacy this lot provides enhances the utility of the other three lots. The board finds this lot to be an integral part of the complex and entitled to a full religious exemption.

In brief, the board finds the four lots are so intertwined in their usage that it is not feasible to separate them in any logical manner. The testimony and evidence supports the Taxpayer's position that the Properties are used directly for the Taxpayer's religious purposes. The Town questioned the intensity of the use of the Properties and testified the use had become slight and insignificant since the original founders of the Harbinger Bible Conference no longer participated in regular activities on the Properties. While the Taxpayer's use of the Properties is not continual throughout the year, its various retreats and other meetings are a significant use of the Properties, well beyond the "slight, negligible, or insignificant" standard mentioned in Nature Conservancy v. Town of Nelson, 107 N.H. 316, 320 (1966). Further, the Properties are used for no purpose other than religious purposes and that the nature of a facility for religious retreats in a rural location requires some facilities for accommodations for the attendees. While the accommodations may be spartan and relatively few in number, they are only used during the

religious retreats or when Harbinger Bible Conference members visit the Properties to repair and maintain them. The testimony from all parties was that there was no evidence of any usage for other than a religious purpose on any of the four lots except for the Greisner cabin.

The board's findings in the instant case are similar to the board's rulings in Camp Merrimac, LLC v. Town of Hopkinton (BTLA Docket No. 18289-99EX), where we held there was extensive evidence of a genuine, deliberate and planned use of all facilities at Camp Merrimac for religious purposes. Further, the board sees a distinction between the instant case and the cases of the East Coast Conference of the Evangelical Covenant Church of America, Inc. v. Town of Swanzey, 146 N.H. 658, 663-664 (2001) and Alton Bay Camp Meeting Association v. Town of Alton, 109 N.H. 44, 49 (1968). In those cases, the court found some of the properties under appeal were used for private and secular purposes rather than used and occupied directly for religious activities as established by the Taxpayer.

For these reasons, the board finds the Properties are entitled to a full religious exemption.

The board declines to respond specifically to the Taxpayer's Requests. They are voluminous and exceed the limit set in the board's rules. See TAX 201.36(c) The board has addressed the material findings in this Decision.

If the taxes have been paid, the amount paid 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.

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

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Janet E. Michael, Esq., Law Office of Janet E. Michael, PO Box 10631, Portland, ME 04104, Taxpayer Representative; and Chairman, Board of Selectmen, Town of Dalton, 741 Dalton Road, Dalton, NH 03598.

Date: June 29, 2006

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Anne M. Stelmach, Clerk