

Girl Scouts of Swift Water Council

v.

Town of Antrim

Docket No.: 21006-04EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2004 denial of the Taxpayer’s request for an RSA 72:23, V charitable exemption for the “Property,” a Girl Scout camp known and operated as “Camp Chenoa.” The Property consists of two contiguous lots: “Lot 56” has approximately 116 acres, multiple buildings and frontage on Gregg Lake; and “Lot 59” has approximately 180 largely undeveloped acres¹, with two “Adirondack-type shelters” and an “old beaver pond.” Only Lot 59 remains at issue because, just before the hearing of this appeal, the Town recently granted a charitable exemption on Lot 56.

For the reasons stated below, the appeal on Lot 59 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 board finds the Taxpayer met this burden.

¹ The Town’s assessment-record card for Lot 59 shows this total acreage; a 2003 appraisal refers to “184” acres. See Town’s Request for Finding of Fact No.7, infra, and Municipality Exhibit No. A-3, p. 27.

The Taxpayer argued it was entitled to the charitable exemption on Lot 59 because:

- (1) the Property was granted a full charitable exemption for 12 prior years until the Town notified the Taxpayer of the denial for tax year 2004;
- (2) prior to the hearing of this appeal, however, the Town withdrew its prior denial and granted an exemption for Lot 56, but not for Lot 59; and
- (3) although Lot 59 is, by design and intention, less developed than Lot 56, it is an integral part of the Property and is used and occupied for a variety of hiking, camping and outdoor orienteering activities and is entitled to a full charitable exemption.

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

- (1) while there is no dispute the Taxpayer is a charitable organization and owns the Property, the use and occupancy of Lot 59 does not meet the requirements of the charitable exemption statute;
- (2) after completing discovery (interrogatories and a deposition) and conducting a site visit attended by the Town administrator, the selectmen and their attorney, the Town granted an exemption on Lot 56, but not Lot 59;
- (3) the “Master Plan” and other documents presented indicate the Taxpayer has considered divestiture of Lot 59 and has no plans to develop it more intensively;
- (4) the actual use and occupancy of Lot 59 by the Taxpayer is “slight and insignificant” and it is neither presently developed nor planned to be developed more intensively; and
- (5) the board should either affirm the denial of an exemption on Lot 59 or, in the alternative, rule that only a very small part of it (two to three acres where the Adirondack-type shelters are located) is entitled to an exemption.

Board's Rulings

Based on the evidence, the board finds the Taxpayer met its burden of proving Lot 59 is entitled to a full charitable exemption. The board considered the Town's arguments for denial of the exemption in detail and has responded to its Requests for Findings of Fact and Rulings of Law below.

In its Memorandum of Law (at p. 1), the Town concedes the Taxpayer is a charitable organization whose "stated purpose is to build confidence and character in girls to make the world a better place." The Town cites Greater Lowell Girl Scout Council, Inc. v. Town of Pelham, 100 N.H. 24 (1955), where the supreme court recognized, "as a general proposition," that organizations "promoting Boy Scout and Girl Scout programs and activities are charitable in nature and purpose" and affirmed the granting of a charitable exemption.²

There is no dispute the Property is owned by the Taxpayer and is operated exclusively as a Girl Scout camp. It was acquired in 1991 from the Boy Scouts of America, who had been operating it as a camp, and, as noted above, the Town granted the Taxpayer a full charitable exemption under RSA 72:23, V for 12 years before the denial in tax year 2004.

The question posed by the Town is a closer one: whether the use of Lot 59 by the Girl Scouts is sufficient to qualify for the statutory exemption. RSA 72:23, V grants a tax exemption to charitable organizations for property "owned, used and occupied by them directly for the purposes for which they are established." As noted above, the Town initially denied and then granted an exemption on Lot 56 for tax year 2004. The Town contends however, Lot 59 is not 'used and occupied' by the [Taxpayer] to the extent necessary to support a tax exemption.

² The Girl Scout camp at issue in that case was "Camp Reynolds" in Pelham, New Hampshire. The trial court described its activities "are typical of a girl's boarding camp" and "comprehensively include a full range of Scout activities such as swimming, boating, nature studies, camp craft, arts and crafts, hiking, and overnight camping." Id. at 24-25, a description of activities not dissimilar to what occurs at Camp Chenoa.

Town's Memorandum of Law at p. 2. The board disagrees and finds the Taxpayer met its burden of proving Lot 59 is entitled to a full exemption.

The Taxpayer presented extensive testimony, including that of Patricia K. Mellor, its chief executive officer, Anne Edwards, the president of its board of directors, and Carrie E. Green, the Chenoa Camp Director, as well as some additional comments from Tracy Gillick, a vice-president and asset manager. These witnesses confirmed the Taxpayer used and occupied Lot 59 for hiking and 'orienteering' activities, including what has become known as "geocaching,"³ and that the use and occupancy of Lot 59 for its charitable purpose encompasses much more than just the two Adirondack-type shelters. For example, Girl Scouts working to obtain "badges" pertaining to wetland protection and outdoor orienteering use the Property, including Lot 59, for this purpose. For example, they stated it was "very important" for the girls who attended Camp Chenoa to have an outdoor, natural experience and they followed a "leave no trace" philosophy in their outdoor activities. The Taxpayer conducts both "resident" camping programs in the summer and "troop" camping on weekends and during vacation periods during the rest of the year.

The board finds Lot 59 is especially conducive to the many hiking and orienteering activities described by the Taxpayer's witnesses. Lot 59 has an old beaver pond which is a dynamic and changing ecosystem. It also has a woods road which bisects the lot and makes the entire area more safely accessible, even without an extensively developed trail system. The Taxpayer's witnesses testified Lot 59 is used for various camping and hiking activities, including the "Lost" and "Survivor" programs. Some of these programs required the scouts (as well as

³ This term refers to an outdoor treasure-hunting game where participants use navigational tools and techniques to seek and discover a logbook and "treasure," usually toys or trinkets of little monetary value. See Wikipedia, Geocaching, <http://en.wikipedia.org/wiki/Geocaching> (as of Sep. 26, 2006, 12:52 GMT).

counselors in training) to plan and accomplish camping exercises lasting 24-hours with no contact to the rest of the Property or other campers. The board finds Lot 59 has been intentionally left in a relatively undeveloped and unaltered natural state to enable the Taxpayer to fulfill part of its purpose to provide camping and hiking activities in a pristine environment. In comparison to Lot 59, there is little, if any, room for these programs and activities on Lot 56, which is smaller and far more intensively developed with structures and other facilities (described below).

The Taxpayer has approximately 13,600 Girl Scout members plus 4,200 adult volunteers. It operates a number of other summer camps and facilities in New Hampshire and Vermont, as well as Camp Chenoa, and has surveyed its membership regarding use of its various facilities. Anne Edwards, one of the Taxpayer's witnesses, testified a "consensus" of its membership believes Lot 59 should be retained (rather than divested) and kept in a "pristine" condition. Consequently, the Taxpayer has no plans to sell Lot 59 or to change its character, such as by creating more extensive hiking trails than already exist or undertaking other types of development.

The Town, for its part, bases its denial of a tax exemption on several types of evidence and its reading of certain charitable and religious exemption cases decided by the supreme court and the board. The board reaches different findings on the evidence presented and concludes the case law cited by the Town is distinguishable for the reasons briefly explained below.

The Town argues only Lot 56, not Lot 59, is depicted on an informal map distributed to prospective campers, but the board does not place much relevance on this fact. The board finds the main purpose of this map (Municipality Exhibit No. A-9) is to orient prospective camp visitors to the location of key facilities that may be unfamiliar to first time visitors, not to depict

only those parts of the Taxpayer's land that are actually being used or to imply, for example, that Lot 59 is not being used. The basic facilities depicted on the informal map include the program center, the dining hall, the shower house, the amphitheater, and other structures, as well as the beach front on Gregg Lake, all of which are located on Lot 56. The board further notes a number of other maps of the Property, such as the "Site Plan" dated April, 1995 (Municipality Exhibit No. A-2), depict Lot 59 to be an integral part of Camp Chenoa.

The Town also cites an appraisal of the Property prepared for the Taxpayer in 2003 (the "Leidinger Appraisal," Municipality Exhibit No. A-3). The Leidinger Appraisal was completed to facilitate a refinancing of the Property to allow the Taxpayer to renovate certain facilities in Camp Chenoa and, for purposes of estimating the economic value of the Property, considered Lot 59 to be "excess land" which could be held "for future expansion of the camp or subsequent development." (See Leidinger Appraisal, p. 27, summarized in the Town's Memorandum of Law at p. 5.) These comments, however, pertain to relative economic values to support a loan: they do not warrant any conclusion that Lot 59, in its undeveloped state compared to Lot 56, was not being used and occupied for a charitable purpose.

The Town placed even more emphasis on a "master planning process" which began in 2004. (Town's Memorandum of Law at pp. 5 – 7.) The board notes, preliminarily, the first draft of this master plan is dated August 31, 2004 (Municipality Exhibit No. A-4), which is five months after the assessment date (April 1, 2004) governing this appeal. The planning was undertaken as part of a "needs assessment." Typically, the time frame for such planning is more long range than immediate, extending over five to ten years -- a fact corroborated by the testimony of at least two of the Taxpayer's witnesses (Mellor and Edwards). In addition, a careful reading of these documents (Municipality Exhibit Nos. A-4 – A-8) indicates that

“divestiture” of all or part of Camp Chenoa was only one of a number of options recommended by the independent consultant. Other options, of course, included retaining and using the Property in its entirety. The final Master Plan Report, dated September 20, 2005 (Municipality Exhibit No. A-8 at Appendix A, p. 13), recommends the Taxpayer “[c]ontinue to operate existing programming and evaluate long term financial and programmatic implications for this property, including divestiture of portions of the property, as well as the establishment of conservation easements and/or restrictive development rights.”

The board does not agree with the Town’s arguments that the potential future disposition of Camp Chenoa or the lack of future, more extensive development planning for Lot 59 signifies that it was not being used and occupied sufficiently in tax year 2004 to qualify for a charitable exemption.

The board further finds the prior cases cited by the Town on the issue of use and occupancy to be distinguishable. Nature Conservancy v. Town of Nelson, 107 N.H. 316 (1966), involved a 400-acre “island” property accessible “almost entirely by boat.” In a brief opinion noting the occurrence of only sporadic and intermittent activities (such as 3 – 5 field trips by college students, a student “survey” of the island, one climb to the “pinnacle” of the island by Appalachian Mountain Club members and so forth, combined with slightly increased recreational use by neighboring private property owners), the supreme court held that “occupation and use cannot be slight, negligible or insignificant” to qualify for a charitable exemption, citing Franciscan Fathers v. Town of Pittsfield, 97 N.H. 396, 401 (1952). In that 1952 case, the supreme court granted a religious exemption (see RSA 72:23, III) to a farm property owned by a Catholic denomination, except for a 26-acre “artificial pond” used for fishing by its members. Id.

The Town also cites a board decision, Camp Merrimac, LLC v. Town of Hopkinton (BTLA Docket No. 18289-99EX), where the board followed an approach similar to Franciscan Fathers and other religious exemption cases, and granted an RSA 72:23, III exemption for the improvements in a youth camp operated by the Greek Orthodox church, but not for “undeveloped wood land”; the board found no present use and occupancy of that land, but only the testimony and intention of the taxpayer “that it was in the process of developing walking trails in those unimproved areas.” (See Camp Merrimac, quoted in Town’s Memorandum of Law at p. 4.)

In the same general vein as these cases, and also cited by the Town, is First Congregational Church of Laconia v. Town of Gilmanton, 123 N.H. 343 (1983) where a church group claimed an exemption for a tract of land “used only by a Boy Scout Troop for outings three or four times in a particular year.” See Town’s Memorandum at p. 3. Among other things, the frequency of use distinguishes this appeal from the Gilmanton case.

Even without a lengthy discussion comparing these and other cases cited by the Town in comparison to the facts summarized above, the board finds clear differences in the use and occupancy of Lot 59 compared to the cited cases where an exemption was denied in part or in whole. These differences lead the board to conclude, contrary to the Town’s arguments, the use and occupancy of Lot 59 by the Taxpayer was not “slight or insignificant” within the meaning to the applicable law pertaining to charitable exemptions. While Lot 59 is relatively undeveloped (at least in comparison to Lot 56), lack of more intensive development is not synonymous with lack of use and occupancy, when the integral connection between Lot 56 and Lot 59 and the Taxpayer’s purpose of providing hiking and camping activities and programs in a “pristine” environment are kept in mind.

For all of these reasons, the appeal is granted and Lot 59 is entitled to a charitable tax exemption for tax year 2004.

If taxes have been paid on the Property, 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.

Responses to Town’s Requests of Findings of Fact and Rulings of Law

The “Requests” received from the Town 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.

1. In order to qualify for an exemption under RSA 72:23, V, the real estate and personal property owned by a charitable organization must be occupied and used by it for the purposes for which it was established. Nature Conservancy v. Nelson, 107 N.H. 316, 320 (1966).

Granted.

2. “A use which is slight and insignificant is not ‘an occupancy sufficient to warrant a conclusion of use for the society’s purposes, such as the statute requires’.” Society of Cincinnati v. Exeter, 92 N.H. 348, 357. ... Possession, ownership and use of land, which is part of a larger tract, must be more than negligible to give reasonable effect to the demand of the statute that it be occupied. Franciscan Fathers v. Pittsfield, 97 N.H. 396, 401 (1952).

Granted.

3. “Only that part of the property which is used directly for charitable purposes is exempt from property tax. ... Any part of the property on which the charitable use is only slight is not considered tax exempt.” Appeal of C.H.R.I.S.T., Inc., 122 N.H. 982, 984 (1982); Camp Merrimac, LLC v. Town of Hopkinton (BTLA Docket No. 18289-99-EX).

Granted.

4. The Plaintiff has the burden of demonstrating the property meets the requirements of the statute under which the exemption is claimed for the year under appeal. RSA 72:23-m; TAX 204.06.

Granted.

5. The Girl Scouts of Swiftwater Council (hereinafter the “Council”) is the owner of two (2) parcels of land on Brimstone Corner Road in the Town of Antrim, identified in the Town of Antrim tax records as Map 5, Lots 56 and 59.

Granted.

6. Lot 56 consists of approximately 116 acres and 5,000 feet of water frontage on Gregg Lake, and includes thirty-four (34) separate structures, occupying in excess of 21,076 SF, including a dining hall with a capacity of 230, and a 1.2 mile paved road.

Granted.

7. Lot 59 consists of 184 undeveloped acres, including a road predating the acquisition of the land by the Council and two Adirondack-type shelters overlooking an old beaver pond. See, Master Plan Report, September 20, 2005, p. 13; Appraisal by Jeffrey W. Leidinger, NHCG-161, p. 27.

Granted.

8. A master plan developed on behalf of the Council by Lavalee/Brensinger, P.A., and Costello, Lomasney & de Napoli, Inc., circa 1994, proposed development of Lot 59 to include maintenance buildings, riding rings, a horse barn, a year-round camper unit, an eco/nature center and primitive camp sites. None of the improvements proposed for Lot 59 were undertaken.

Neither granted nor denied.

9. In 2003 the Council sought a loan from the Bank of New Hampshire. An appraisal performed by Jeffrey W. Leidinger, Appraiser, NHCG-161 concluded that, “the western portion of the property (184 acres) is undeveloped and not required for the operation of the camp.” And “the maximally productive use of the 184 acres unimproved portion of the property is to hold for future expansion of the camp or subsequent development.” Appraisal, p. 27.

Granted.

10. In 2004 the Council undertook a master planning process with respect to all of its eight (8) outdoor program properties; the first two drafts of which recommended with respect to Camp Chenoa: “Divest of majority of property.” and “Consider divestiture of portion(s) of this property.”

Neither granted nor denied.

11. The third draft, ultimately approved by the Board, recommended the following priority capital improvement: “Continue to operate existing programming and evaluate long-term financial and programmatic implications for this property, including divestiture of portions of the property, as well as the establishment of conservation easements and/or restrictive development rights.”

Neither granted nor denied.

12. The Master Plan Report makes no recommendations to undertake any improvements whatsoever on Lot 59.

Neither granted nor denied.

13. The Master Plan shows no improvements located on Lot 59 other than two small Adirondack-type shelters and the existing driveway bisecting the property and serving an abutting property owner to the rear.

Neither granted nor denied.

14. A limited amount of primitive camping takes place at the two Adirondack shelters located on Lot 59, as well as on Lot 56 at locations identified as “The Point,” “Tree Houses,” and “Gourmet Corners.”

Neither granted nor denied.

15. There are no established hiking trails on Lot 59, other than the trail leading to two Adirondack shelters. See, Master Plan, Base Maps: Contrast Master Plan Narratives and Maps relative to trail systems at other camps (Anne Jackson, (p. 8), Sunset Valley (p.10), Farnsworth (p. 14), Kettleford (p. 16), and Seawood (p. 18)).

Neither granted nor denied.

16. The Master Plan adopted by the Council calls for no improvements to Lot 59, including no improvements with respect to trails or camping areas.

Neither granted nor denied.

17. The Council’s experience with its camps parallels national trends, which demonstrate a precipitous drop in resident camp attendance.

Neither granted nor denied.

18. The Master Planning process was driven, in part, by falling camp attendance and increasing costs.

Granted.

19. The resident camp program at Camp Chenoa was reduced from 2004 to 2005 from eight (8) weeks to six (6) weeks.

Granted.

20. The Council considers camp programming a local, operational decision, not a policy to be established by the Board of Directors. New Canaan Academy v. Town of Canaan, 122 N.H. 134, 138 (1982).

Neither granted nor denied.

21. The Council's use of Lot 59 is slight and insignificant: insufficient to support a tax-exempt status for said parcel.

Denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Charles W. Thompson, Temporary Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Elizabeth M. Leonard, Esq., Wiggin & Nourie, P.A., P.O. Box 808, Manchester, NH 03105, counsel for the Taxpayer; Barton L. Mayer, Esq., Upton & Hatfield, P.O. Box 1090, Concord, NH 03302, counsel for the Municipality; and Chairman, Board of Selectmen, P.O. Box 517, Antrim, NH 03440.

Date: November 2, 2006

Anne M. Stelmach, Clerk