

**New Hampshire Land Surveyors Foundation**

**v.**

**Town of Raymond**

**Docket No.: 21523-05EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2005 denial of the Taxpayer’s request for charitable exemption under RSA 72:23, V on an office condominium located at 77 Main Street, Unit 1, Map 28-3, Lot 31-1 (the “Property”). For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, it was entitled to the statutory exemption or credit for the year under appeal. See RSA 72:23-m; and TAX 204.06. The board finds the Taxpayer failed to meet this burden.

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

- (1) at the Town’s request, the Taxpayer amended its articles of incorporation (by September, 2005) to include an express obligation to perform charitable services;
- (2) the Property was acquired in February, 2005 by warranty deed and the Taxpayer clearly owned the Property as of the assessment date (April 1, 2005);

(3) while it is “closely knit” with the New Hampshire Land Surveyors Association (“Association”), the Taxpayer uses and occupies the Property to conduct legitimate charitable activities independent of the Association, including fundraising and awarding scholarships to deserving high school and college students and grants to colleges and universities to promote education pertaining to the land surveying field;

(4) the Property was used during the tax year for two meetings, an “open house” and to display an informal “museum” of “antique” surveyor instruments, maps and other items; and

(5) the Property is entitled either to a full exemption or, in the alternative, a partial exemption based on “apportionment” between use by the Taxpayer and by the Association.

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

(1) the charter of the Taxpayer was not amended to include any obligation to perform charitable services until September, 2005, which is well after the assessment date of April 1, 2005;

(2) the Taxpayer could conduct its scholarship and other activities anywhere, not necessarily at the Property, and has met in public spaces (restaurants) in the past;

(3) while the Taxpayer’s officers may hold meetings twice a year at the Property to select scholarship winners and conduct any other business, the meetings are quite brief (about 30 to 40 minutes each), making the use and occupancy of the Property for a charitable purpose “insignificant and negligible” and “virtually non-existent”;

(4) the Association, which is not a charity, also conducts its business on the Property and therefore the Property is not exclusively used by the Taxpayer;

(5) mail is received at a post office box and there is no signage on the Property for the Taxpayer, casting further doubt on whether the Property is used and occupied directly for a charitable purpose; and

(6) neither a full exemption nor an “apportionment” is warranted.

### **Board’s Rulings**

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving it is entitled to a charitable exemption.

The Taxpayer has the unobjectionable goal of encouraging awareness and appreciation of the land surveying profession by awarding scholarships to high school and college students and grants to area colleges to further this goal. It is closely affiliated with the Association, a professional group organized to promote the interests of its members, and conducts fundraising directed primarily, if not exclusively, to these members. See Municipality Exhibit B.

To obtain a charitable property tax exemption under RSA 72:23, V, however, the Taxpayer must establish the Property is not only owned, but also used and occupied directly for a charitable purpose. The Town correctly questioned whether these latter statutory requirements have been met.

While these questions are invariably dependent on the unique facts of each case, a long line of New Hampshire authorities have established that use or occupancy that can be fairly characterized as slight, negligible or insignificant does not qualify a property for a tax exemption. See, e.g., Society of Cincinnati v. Town of Exeter, 92 N.H. 348, 357 (1943) (committee meetings held three times per year fail to satisfy this test; court also finds property not needed to further activity of providing financial aid); Franciscan Fathers v. Town of Pittsfield, 97 N.H. 396, 401 (1952) (use of pond for fishing and providing food to members of religious order was too slight and insignificant to qualify property for exemption); Nature Conservancy v. Town of Nelson, 107 N.H. 316, 320 (1966) (exemption denied on similar grounds); and First Congregational Church of Laconia v. Town of Gilmanton, 123 N.H. 343, 344

(1983) (exemption denied on land used “three or four times for outings” by Boy Scout troop affiliated with church); accord, Stinson Lake Association., Inc. v. Town of Rumney, BTLA Docket No. 17514-98EX (December 17, 1999) (exemption denied for 1,738 square foot seasonal building open less than 30 days per year and used primarily for annual meeting of the association, several social events and for keeping various historical items and publications).

In light of these authorities and the facts presented, the board finds the use of the Property by the Taxpayer for charitable purposes to be too slight, negligible and insignificant to warrant a property tax exemption. The board is unpersuaded by the distinction the Taxpayer tries to draw (in its Memorandum of Law, p. 3) between the use and occupancy required in “vacant land” cases, such as First Congregational Church of Laconia v. Town of Gilmanton, 123 N.H. 343 (1983), and the present appeal involving a developed office condominium.

The statutory requirement of direct use and occupancy applies to all property seeking a charitable tax exemption; if the charitable use of such property, considering its nature and function, is slight, negligible or insignificant, as it is found to be in this appeal, then an exemption is properly denied. If anything, the use and occupancy of a developed office condominium should be more substantial than for property that consists of vacant land and/or is only suitable for seasonal use.

As noted above, only two meetings of very short duration were held by the Taxpayer on the Property in tax year 2005, each lasting less than one hour, and a social gathering (an “open house”) was held in July, 2005 for the Association, attended by 60 – 70 people. The Property consists of two rooms: a conference room where, in addition to a table and chairs, “museum” artifacts and maps are displayed (as shown in Taxpayer Exhibit No. 3); and an administrative office. Other than the “open house,” the only visitors to the Property have been the local Cub

Scouts, who came twice, and the local Boy Scouts, who came once, to view the objects or display; these objects are loaned by members of the Association.

The Town emphasized the Taxpayer had no real need to conduct any meetings or other business on the Property: in the past, it has held its meetings in public facilities, such as the Cat ‘n Fiddle Restaurant in Concord and The Wayfarer Inn in Bedford. The Town further noted the Taxpayer still conducts some of its key activities, such as the awarding of scholarships, in such other locations, not on the Property. See Town’s Memorandum of Law, p. 3. Thus, there is considerable doubt regarding whether the Property is reasonably necessary in order for the Taxpayer to conduct its charitable activities. See, e.g., Appeal of Town of Wolfeboro, 152 N.H. 455, 459 and 462 (2005) (exemption denied because record failed to establish property at issue was “reasonably necessary” for organization to accomplish its charitable purpose)

When in use, the Property is accessed through the other, larger, adjacent condominium unit where the executive administrator of the Taxpayer and treasurer of the Association (Richard S. Ladd) maintains his own surveying business (“RSL Layout and Design”). Any visitors to the Property must first go through the entrance to this other business. (See Taxpayer Exhibit 1 and 2.) Mr. Ladd candidly admitted he used the Property “occasionally” to conduct his own business in the conference room, but stopped doing so after the Town raised questions about this purely private use.

There is no exterior sign identifying the Taxpayer’s location on the Property and all mail is received at a post office box. While mail service at the physical address is not necessarily a critical element, the Taxpayer’s actual presence on the Property based on this and other facts appears to be rather vague and ill-defined, raising doubts regarding whether the Property was being used and occupied “directly” for a charitable purpose.

Mr. Ladd further testified one individual employed by his business used the administrative office to perform activities pertaining to both the Association and the Taxpayer: he estimated 60-70% of the use of this room was for the Association and 30-40% for the Taxpayer. The employee's administrative tasks include keeping track of the Association's membership and publishing and mailing newsletters and other documents on its behalf, as well as performing work for the Taxpayer. This commingling between Association and Taxpayer activities is further reflected in the stationery used by the Taxpayer, see Municipality Exhibit A, p. 14, which displays the Association seal and the Association's present and past officers and directors above the name of Mr. Ladd, listed as the "Executive Administrator" of the Taxpayer.

In brief, while the Taxpayer may be a "bona fide charity," as argued in its own Memorandum of Law at p. 1, and does have legal ownership of the Property, it failed to prove that it used and occupied the Property directly for its charitable purpose to the degree required by the statute in order to qualify for an exemption for tax year 2005. Such proof is clearly required in order to satisfy its burden of proof and obtain an exemption. See Appeal of Town of Wolfeboro, 152 N.H. at 459 and 462 (reversing the grant of an exemption); citing RSA 72:23-m ("The burden of demonstrating the applicability of any exemption shall be upon the claimant."). The Taxpayer failed to meet this burden in this appeal.

The board also finds merit in a second argument by the Town that the Taxpayer was not legally obligated to perform a charitable purpose "by its charter or otherwise," as required by RSA 72:23-1. The Taxpayer did not amend its charter until September, 2005 in an attempt to state such an obligation. This was done well after the April 1, 2005 operative date for a tax exemption for that year. Town's Memorandum, pp. 6-7.

Finally, the board denies the Taxpayer's alternative request for "apportionment between exempt and non-exempt use" of the Property. See Taxpayer's Memorandum of Law, p. 3, citing Appeal of Emissaries of Divine Light, 140 N.H. 552 (1995). Such apportionment is appropriate only if a taxpayer has satisfied all of the other statutory requirements for an exemption, including the direct use and occupancy and obligation requirements discussed above, which the board finds the Taxpayer has not done.

For all of these reasons, the appeal is denied.

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 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.

### **TOWN'S REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW**

#### I. Findings of Fact:

1. The Plaintiff, New Hampshire Land Surveyors Foundation, ("Foundation"), is an entity independent from the New Hampshire Land Surveyors Association.

**Granted.**

2. The sole purpose of the Foundation is to award scholarship assistance to engineering and surveying students in pursuit of higher education, and the support of engineering and surveying programs at area high schools, colleges, universities, and technical schools.

**Granted.**

3. The Foundation owns an office condominium unit within the Town of Raymond located at 77 Main Street and which is further identified as tax map 28-3, lot 31-1.

**Granted.**

4. The Foundation's mailing address is P.O. Box 689, Raymond, New Hampshire, and it is to this P.O. Box that applicants mail their applications for scholarship assistance.

**Granted.**

5. The Foundation's executive officers meet once or twice a year to determine scholarship recipients based on the applications received.

**Granted.**

6. There is no obligation in the Foundation's charter to use the Raymond property by the Foundation to determine the recipients for the scholarships.

**Granted.**

7. On 14 April 2005, the Foundation's executive committee met for approximately half an hour at the Cat'n Fiddle Restaurant in Concord, New Hampshire to determine the recipients of the Moran Family Scholarship.

**Denied.**

8. Scholarships are awarded to the recipients at the Foundation's banquet which was held at the Wayfarer Inn, Bedford, New Hampshire.

**Granted.**

9. Richard S. Ladd is the executive administrator and treasurer of the Foundation.

**Denied.**

10. The Foundation received a warranty deed to the property in Raymond on 15 February 2005 from DREWL, LLC. Debbi R. Ladd, Richard S. Ladd's wife, signed the warranty deed on behalf of DREWL, LLC.

**Granted.**

11. Richard R. Ladd is a surveyor and his company RSL Layout and Design operates from the other condominium in the building located at 77 Main Street, Raymond, New Hampshire.

**Granted.**

12. RSL Layout and Design and Richard Ladd have unrestricted access to the Foundation's condominium unit located at 77 Main Street, Raymond, New Hampshire.

**Granted.**

13. The Foundation amended its charter on or about 7 September 2005 to the following:

That in addition to other stated goals of Article II, entitled Purposes, in the Articles of Agreement, the Foundation further is established and shall be administrated for the purpose of advancing the spiritual, physical, intellectual, social and economic well being of the public or

a substantial and indefinite segment of the general public that includes and residents of the State of New Hampshire, with no pecuniary profit or benefit to its officers or members, or any restrictions which confine its benefits or services to such officers or members, or those of any related organization.

Specifically, the Foundation is established primarily for the granting of scholarship assistance to engineering and surveying students in pursuit of high education, and the support of engineering and surveying programs in NH high schools, colleges, universities, and technical schools.

**Granted.**

14. The Foundation and the New Hampshire Land Surveyors Association, (“Association”), are different entities and the Association is not a charitable organization.

**Granted.**

15. The Association activities at the property in Raymond are not charitable activities and its use of the property does not qualify as charitable use.

**Granted.**

II. Rulings of Law:

1. N.H. RSA 72:6 provides in pertinent part that “[a]ll real estate, whether improved or unimproved, shall be taxed except as otherwise provided.”

**Granted.**

2. It is the Foundation’s legal burden to prove that it is entitled to a charitable tax exemption pursuant to N.H. RSA 72:23 V. (N.H. RSA 72:23-m)

**Granted.**

3. In order to qualify for a tax exemption under N.H. RSA 72:23 V, the “plaintiff’s property must be occupied and used by it for its public charitable purposes.” Nature Conservancy v. Town of Nelson, 107 N.H. 316, 320 (1966).

**Granted.**

4. The Foundation's property must be used "directly for charitable purposes." Appeal of C.H.R.I.S.T., Inc., 122 N.H. 982, 984 (1982).

**Granted.**

5. The Foundation's "occupation and use cannot be slight, negligible or insignificant . . . but must, on the contrary, be in performance of these public purposes." Nature Conservancy v. Town of Nelson, 107 N.H. 316, 320 (1966). (Citation omitted).

**Granted.**

6. For the Foundation's offices to be entitled to a charitable exemption, the Foundation must offer "their use to an indefinite number of the public." East Coat Conference of Evangelical Covenant Church of America, Inc. v. Town of Swanzey, 146 N.H. 658, 662 (2001).

**Neither granted nor denied.**

7. The Foundation's use of its property for charitable purposes is slight and negligible.

**Neither granted nor denied.**

8. The Foundation does not make available its property to the general public to be used for charitable purposes.

**Neither granted nor denied.**

9. When the Foundation applied for an exemption in 2005, its Charter did not obligate to perform any charitable services to the general public.

**Granted.**

10. The Foundation has not proved by a preponderance of the evidence that it is entitled to a charitable tax exemption pursuant to N.H. RSA 72:23

**Granted.**

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Member

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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: Scott Lapointe, Esq., 16 Hampton Road, Exeter, NH 03833, counsel for the Taxpayer; Robert M. Derosier, Esq., Donahue, Tucker & Ciandella, 104 Congress Street - Suite 304, Portsmouth, NH 03801, counsel for the Municipality; and Town of Raymond, Chairman, Board of Selectmen, 4 Epping Street, Raymond, NH 03077.

Date: September 1, 2006

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Anne M. Stelmach, Clerk