

Trinity Baptist Church

v.

City of Concord

Docket No.: 22564-06EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “City’s” denial of the Taxpayer’s 2006 request for a religious exemption as provided under RSA 72:23, III on Map 95, Lots 1-14 (“66 Clinton Street”) and 1-17 (“72 Clinton Street”) (collectively, the “Properties”). For the reasons stated below, the appeal is granted in part.

The Taxpayer has the burden of demonstrating the Properties met the requirements of the statute under which the exemption is claimed for the year under appeal. See RSA 72:23-m; Tax 204.05. We find the Taxpayer carried its burden for 66 Clinton Street but did not carry its burden for 72 Clinton Street.

The Taxpayer argued it was entitled to the religious exemption on the Properties because:

- (1) they “appertain” to the house of public worship located at 80 Clinton Street; and
- (2) they were owned, used and occupied by the Taxpayer in accordance with the statute.

The City argued the denial of the religious exemption for the Properties was proper because, even though the Taxpayer owned the Properties, they were not “used and occupied” by the Taxpayer for religious training or other religious purposes on April 1, 2006.

Board's Rulings

RSA 72:23, III provides the statutory guidelines for religious exemptions and reads in pertinent part: “[h]ouses 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.” There was no dispute the Taxpayer is a regularly recognized denomination legally doing business in the state. Further, there was no dispute the Taxpayer owned the Properties at the time of the exemption request. The parties disagree, however, the Properties were “used and occupied directly for religious training or for other religious purposes” on April 1, 2006.

The board finds, for the 2006 tax year, 66 Clinton Street is entitled to an RSA 72:23, III religious exemption. The board finds 72 Clinton Street, however, does not qualify for a religious exemption in 2006. The board will address each of the properties individually.

66 Clinton Street

The board finds the Property at 66 Clinton Street was owned, used and occupied by the Taxpayer for religious purposes and is entitled to a full religious exemption for the 2006 tax year. The testimony at hearing was 66 Clinton Street had multiple uses as the land included an athletic field for the students of the Trinity Baptist School and the dwelling was used to house pastoral ministers who were on sabbatical from their duties around the world and were allowed to live there rent and expense-free but with the understanding they would be required to perform pastoral duties at the Taxpayer’s church or school. Further, this dwelling provided housing for summer interns who also lived there rent and expense-free while learning and fulfilling their teaching duties at the church and school. The Taxpayer testified it provided monetary support

for several individuals who spread the mission of the Taxpayer throughout the world. These missionary workers used the dwelling at 66 Clinton Street during brief respites from their travels as missionaries for the Taxpayer. For example, on April 1, 2006 Bill Edmondson, a full time missionary supported by the Taxpayer, occupied the dwelling with his family. Later, during the 2006 summer, four interns used the dwelling and, in the fall, Phil Buck, a full time teacher at the Taxpayer's school, resided there with his family. 66 Clinton Street "appertains" to the Taxpayer's main church building at 80 Clinton Street and any individuals residing there are involved on a full time basis with the Taxpayer's religious mission. See Municipality Exhibit No. I. The board finds while this dwelling may not be occupied by a single person or family for several years at a time, it is used continuously by a combination of local and outreach people who work full time in furthering the Taxpayer's mission, therefore qualifying it for the religious exemption.

The City's position is the intermittent use of 66 Clinton Street did not qualify it for a religious exemption. The City cites East Coast Conference of Evangelical Covenant Church of America v. Town of Swanzey, 146 N.H. 658, 664 (2001) and Alton Bay Camp Meeting Association v. Alton, 109 N.H. 44, 50 (1968) in support of its position that the dwelling at 66 Clinton Street is not used for religious purposes. The board finds there is a distinction between East Coast Conference and Alton Bay and the instant case. The dwelling at 66 Clinton Street differs from the housing units in East Coast Conference and Alton Bay in that it is only used by members of the Taxpayer's church who are involved full time in the furtherance of the Taxpayer's religious mission. In contrast to the cited cases, 66 Clinton Street is never rented or used for any secular purposes; rather, it is only used for religious purposes. Both the testimony of the Taxpayer's witnesses and the Article of Agreement (Taxpayer Exhibit No. 1) established a significant function of the Taxpayer's religious activities is the support and education of

individuals to carry “on a vigorous missionary program around the world.” The board finds the nature of the Taxpayer’s mission is such that it provides support for recent graduates of bible colleges and other missionaries and pastors who are between assignments and who may need housing while they retrain or refresh themselves prior to returning to their missionary work in this country and around the world. The board finds these uses, albeit unique, are consistent with the mission of the Taxpayer and this property is owned, used and occupied for religious purposes and is entitled to a religious exemption in 2006.

72 Clinton Street

The board finds 72 Clinton Street, although owned by the Taxpayer, was neither used nor occupied for religious training or other religious purposes on April 1, 2006. The prior owners, Mr. and Mrs. Tilton, sold 72 Clinton Street to the Taxpayer in December 1997 but reserved a life estate in this property for as long as either could live there full time (Municipality Exhibit No. D). Mr. and Mrs. Tilton lived there full time until Mrs. Tilton died in October 2005 and Mr. Tilton died in January 2006. On April 1, 2006 some of Mr. Tilton’s personal effects were still in the house and his daughter was in the process of cleaning the house and removing all of her father’s belongings. In a September 20, 2006 letter to the City, the Taxpayer’s Director of Facilities, Mr. Marv Everson, wrote “[t]he property at 72 Clinton Street has been occupied since June by one of our pastoral staff members and his family.” There was no testimony the 72 Clinton Street property was occupied by anyone associated with the Taxpayer on April 1, 2006. For this reason, the board finds the Property at 72 Clinton Street was not being used or occupied for religious purposes and is not entitled to an RSA 72:23, III religious exemption.

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 Report.

Taxpayer’s Proposed Findings of Fact and Conclusions of Law

Findings of Fact

1. Trinity Baptist Church (the “Church”) is a new Hampshire non-profit corporation, the objectives of which include “. . . conducting a Baptist church in accordance with the Word of God, promoting the worship of God, edifying believers, . . . seeking to win the lost to Christ through . . . the preaching of the gospel, carrying on a vigorous missionary program around the world, [and] . . . ordaining men of like-faith to the gospel ministry A further purpose of the Trinity Baptist Church . . . is to be a regular church with the authority to operate and maintain associated ministries for education, care, evangelism, and personal spiritual growth.”

Granted.

2. The Church owns four contiguous parcels at 66, 72, 76, and 80 Clinton Street in Concord, N.H., which parcels are designated by the City of Concord as Tax Map 95, Block 1, Lots 14, 17, 18, and 19, respectively.

Granted.

3. At its property at 80 Clinton Street, the Church owns and operates its sanctuary, church offices, fellowship areas, and facilities for Trinity Christian School (the “School”).

Granted.

4. The School is a closed enrollment K-12 facility serving principally the children of Church members. A small percentage of the School's student body is composed of children of pastors of churches without school facilities.

Granted.

5. The School's entire curriculum is taught from a Christian perspective by teachers who are members of the Church.

Granted.

6. The School's facilities are owned by the Church and paid for under the Church's budget, and the School pays no rent for its use of the facilities.

Granted.

7. The Church's Board of Deacons directs the School's affairs.

Granted.

8. The houses at 66 and 72 Clinton Street have been set aside by the Church as housing for four categories of individuals, namely new pastoral staff, missionaries sponsored by the Church while on deputation or furlough, pastoral interns, or teachers at the School.

Neither granted nor denied.

9. To preserve its tax exemption, the Church has consistently declined to make the houses at 66 and 72 Clinton Street available to church members in need of temporary housing or to out-of-town lay visitors.

Neither granted nor denied.

10. In April of 2006, the house at 66 Clinton Street was occupied by an ordained pastor and his family who were on deputation to become full-time missionaries and were members of and being sponsored by the Church.

Granted.

11. In the summer of 2006, four pastoral interns resided at 66 Clinton Street, and in the fall of 2006, a teacher at the School began residing at 66 Clinton Street with his family.

Granted.

12. In April of 2006, the house at 72 Clinton Street was vacant, but in June 2006, a new associate pastor at the Church took up residence at 72 Clinton Street with his family.

Granted.

Proposed Conclusions of Law

1. RSA 72:23, III exempts from property taxes “buildings . . . appertaining to . . . [houses] of public worship . . .” so long as they are “owned, used and occupied directly for . . . other religious purpose.”

Denied.

2. The houses at 66 and 72 Clinton Street appertain to the house of public worship at 80 Clinton Street.

Denied.

3. The houses at 66 and 72 Clinton Street are owned by the Church and have been set aside as housing for individuals engaged full time in one of the Church’s ministries.

Neither granted nor denied.

4. RSA 72:23, III does not require that a building be “used and occupied directly for . . . other religious purposes” continuously to be eligible for the exemption; rather, the statute requires only that a building be set aside exclusively for such purposes when it is being used and occupied.

Neither granted nor denied.

5. The houses at 66 and 72 Clinton Street are exempt from ad valorem real property taxes under RSA 72:23, III.

Denied.

City’s Requests For Findings of Facts and Rulings of Law

1. On April 1, 2006, Trinity Baptist Church (“Trinity”) owned six parcels of real estate in the City of Concord, as follows:

Tax Map/Lot No.	Street Address	Property Description
95/1/14	66 Clinton Street	House & barn
95/1/17	72 Clinton Street	House
95/1/18	76 Clinton Street	Duplex
95/1/19	80 Clinton Street	Church and Christian education buildings, offices, and land
86/1/35	10 Blevens Drive	House
113/2/2	75 Old Loudon Road	House

Granted.

2. Trinity requested tax exemptions of all six parcels owned on April 1, 2006 under RSA 72:23, III, and the City granted the tax exemption for the properties located at 76 Clinton Street, 80 Clinton Street, 10 Blevens Drive, and 75 Old Loudon Road while denying the tax exemption for 66 and 72 Clinton Street.

Granted.

3. On April 1, 2006, the property at 66 Clinton Street was unoccupied by Trinity.

Granted.

4. In late spring 2006, summer and fall of 2006, Trinity let a missionary family, four college interns, and a teacher and his family temporarily live at the property at 66 Clinton Street.

Granted.

5. The property at 66 Clinton Street is not qualified for the religious tax exemption for the 2006 tax year, because Trinity did not occupy it on the assessment date.

Neither granted nor denied.

6. None of the persons who later lived at 66 Clinton Street at any time during the tax year 2006 were pastors of Trinity, and it was not a parsonage.

Neither granted nor denied.

7. To qualify for the religious exemption, Trinity's buildings and lands must be "owned, used and occupied directly for religious training or for other religious purposes", which requires that the property be specially adapted to, and directly and actively used, for religious purposes. RSA 72:23, III; East Coast Conference of Evangelical Covenant Church of America v. Town of Swanzey, 146 N.H. 658 (2001); Alton Bay Camp Meeting Ass'n v. Town of Alton, 109 N.H. 44 (1968); St. Paul's Church v. City of Concord, 75 N.H. 420 (1910).

Neither granted nor denied.

8. To qualify for the religious exemption, the predominant use of Trinity's real estate should have a directly religious character. RSA 72:23, III; East Coast Conference of Evangelical Covenant Church of America v. Town of Swanzey, 146 N.H. 658 (2001); Alton Bay Camp Meeting Ass'n v. Town of Alton, 109 N.H. 44 (1968); St. Paul's Church v. City of Concord, 75 N.H. 420 (1910).

Neither granted nor denied.

9. Trinity does not require its leadership to live next to the Trinity church property.

Granted.

10. Some of the pastors at Trinity, as well as many other persons who work at Trinity or participate in its activities, occupy their own homes elsewhere in Concord and in other towns.

Neither granted nor denied.

11. The property at 66 Clinton Street was not used by Trinity for holding religious classes or worship services on a regular basis during the 2006 tax year.

Neither granted nor denied.

12. The property at 66 Clinton Street was predominantly used to meet the residential needs of those persons who lived there and was not specially adapted to a religious use.

Neither granted nor denied.

13. The property at 66 Clinton Street is not qualified for the religious tax exemption for the 2006 tax year, because it was not primarily used and occupied directly for religious training or another religious purpose. RSA 72:23, III.

Denied.

14. On April 1, 2006, the property at 72 Clinton Street was being cleaned out by the daughter of the former owner who had held a life estate in the property until his death in 2005.

Neither granted nor denied.

15. On April 1, 2006, the property at 72 Clinton Street was unoccupied by Trinity.

Granted.

16. After Trinity took constructive possession of the property at 72 Clinton Street sometime in May 2006, a new pastor and his family lived there during the summer months before they moved to another property in the fall of 2006.

Granted.

17. After the new pastor and his family moved out of 72 Clinton Street in the fall of 2006, Trinity reportedly used the property for storage.

Granted.

18. Trinity wrote to the City assessor that the “house [at 72 Clinton Street] is much like a vacant parsonage awaiting the occupancy of a pastor.” Letter of Dr. Phelps, dated December 7, 2006, to Ms. Temchack.

Granted.

19. The plain language of RSA 72:23, III requires a use and occupancy of real estate directly for a religious purpose on the assessment date of April 1, 2006.

Granted.

20. New Hampshire law requires actual occupancy of any parsonage by a pastor on the assessment date before the real estate can be eligible for a tax exemption, and where 72 Clinton Street was not occupied by a pastor on April 1, 2006, it does not qualify as an exempt parsonage. RSA 72:23, III.

Neither granted nor denied.

21. The property at 72 Clinton Street is not qualified for the religious tax exemption for the 2006 tax year, because it was not occupied by Trinity at all on the assessment date.

Granted.

22. Storage of various items owned by Trinity, as the primary use of the house at 72 Clinton Street later in the 2006 tax year, is not an inherently religious use but only an incidental or negligible use of the property by Trinity.

Neither granted nor denied.

23. The property at 72 Clinton Street is not qualified for the religious tax exemption for the 2006 tax year, because it was not used and occupied directly for religious training or another religious purpose. RSA 72:23, III.

Granted.

For the above reasons, the board finds for the 2006 tax year, 66 Clinton Street is entitled to an RSA 72:23, III religious exemption and, 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. The board finds 72 Clinton Street, however, does not qualify for a religious exemption in 2006.

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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Bryan K. Gould, Esq., Brown, Olson & Gould, P.C., 2 Delta Drive - Suite 301, Concord, NH 03301, counsel for the Taxpayer; Adele M. Fulton, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, counsel for the City; and Chairman, Board of Assessors, City of Concord, 41 Green Street Concord, NH 03301.

Date: April 8, 2008

Anne M. Stelmach, Clerk