

Advent Christian Church

v.

Town of Meredith

Docket No.: 23069-07EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” denial in 2007 of the Taxpayer’s request for a religious exemption under RSA 72:23, III on Map U07, Lot 48 (the “Property”). 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; and Tax 204.05. The Taxpayer carried this burden.

The Taxpayer argued it was entitled to an RSA 72:23, III religious exemption because:

- (1) the Town does not dispute the Taxpayer, also known as the Calvary Bible Church, is a regularly recognized and constituted denomination eligible for a religious exemption under RSA 72:23, III;
- (2) the Property was acquired in July, 2005 from a now-deceased member of the church and the house located on it was cleared away;

(3) after the Property was acquired, a lot of the work of cutting trees and bushes, rock removal, raking and seeding of loam material on the land was done as a “ministry activity” by various church groups (see Municipality Exhibit “D”);

(4) the Property abuts Lot 50, where the church, its parking lot and a modular classroom for religious education are all located, and was used regularly, starting in 2006, for Sunday school activities, by the church’s junior high youth group, for the vacation bible school and as the site preparation area for the church painting project, and was also used in June, 2007 as the site of the church’s birthday celebration (100 years); and

(5) the Property is an integral part or piece of the ministry of the church and is needed both for present use and for the future expansion of the church, when sufficient funds become available.

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

(1) after purchasing the Property for \$145,000, the Taxpayer demolished the residential structure on it and, in December, 2005, conveyed a deeded easement over a substantial part of the Property (designated as “Parcel C” in Municipality Exhibit Nos. A, pp. 8 and 11, and B) to two abutters (“Pond” and “Neary”) for \$90,000;

(2) the deeded easement gives up substantial rights to the abutters for view, steps/staircases and pedestrian access, parking (for up to three passenger vehicles), utilities and the placement of a tent (up to three times per year, for up to seven days each, when not in conflict with church events); and

(3) as stated in Municipality Exhibit No. A, the Taxpayer’s only “occasional and slight uses of the [P]roperty” are not “essential and integrally related” to the church and are therefore not sufficient to qualify for a religious exemption, based on First Congregational Church of Laconia

v. Town of Gilmanton, 123 N.H. 343 (1983) and Emissaries of the Divine Light v. Town of Epping, BTLA Docket Nos. 8648-90EX and 11193-91EX.

Board's Rulings

Based on the evidence, the board finds the Taxpayer met its burden of proving the Property is entitled to a religious exemption under RSA 72:23, III.¹ The appeal is therefore granted.

As noted above, the Town emphasizes the terms of a recorded easement conveyed to two abutters (Pond and Neary) and what the Town contends is only “occasional and slight uses” of the Property by the Taxpayer as reasons why the exemption was properly denied. While the board acknowledges the issues presented are somewhat unique (especially insofar as the easement is concerned) and the issue of legally sufficient use has been a difficult and close question in a number of supreme court and board decisions, the board disagrees with the Town’s denial of a religious exemption for the reasons discussed below.

The question of whether a particular use of land is sufficient to qualify for an exemption depends on the facts of each appeal, as the case law makes abundantly clear. See, e.g., Franciscan Fathers v. Town of Pittsfield, 97 N.H. 396, 399, 401 (1952) (to qualify for religious exemption, use of land must be more than “slight and insignificant”; majority of 113 acres of land qualified for exemption, but 26 acre artificial pond and 30 acres north of pond did not); citing Society of Cincinnati v. Town of Exeter, 92 N.H. 348, 357 (1943) (use of land three times

¹ This statute exempts from taxation:

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 . . .

per year for committee meetings failed to qualify it for a charitable exemption). See also Girl Scouts of Swift Water Council v. Town of Antrim, BTLA Docket No. 21006-04EX (November 2, 2006) (charitable exemption granted on adjacent 180 acre lot used as part of “Camp Chenoa,” where primary, developed lot had little room for the hiking, orienteering and other program activities conducted by the taxpayer); Harbinger Bible Conference, Inc. v. Town of Dalton, BTLA Docket No. 20941-04EX (June 29, 2006) (full religious exemption granted on each of three adjacent lots, in addition to primary lot, because all were found to meet statutory requirements for exemption); and Sovereign Grace Fellowship v. Town of Boscaawen, BTLA Docket No. 19595-02EX (May 12, 2004) (church use of lot even before completion of building construction qualified it for religious exemption based on totality of evidence and testimony presented; further noting formulating and applying a “bright line test” in exemption cases can be difficult).

Focusing on the facts of this appeal, the board has carefully reviewed the layout of the Property (Lot 48), a small lot consisting of 0.28 acres, the adjoining church property (Lot 50), which is also relatively small (1.13 acres), and the nature of the interests of the abutters (Pond, Lot 40 and Neary, Lot 41) in the deeded easement. The board has also examined the photographs and other evidence presented in Municipality Exhibit Nos. A, B and C.

The board finds the Property was acquired to accomplish the mission and fulfill the activities of the church. This finding is supported by the Taxpayer representatives’ factual statements to the Town and testimony at the hearing, namely, Property Deacon Marvin P. Keniston (see Municipality Exhibit No. D), Pastor Roger Brown and member John Donovan, that the Property is ‘an integral part or piece of its ministry.’ The relatively small size of Lot 50, where the church itself, its parking lot and a modular classroom are all located, indicates more

land was needed to accomplish the church activities described above and the church acquired the Property, as needed abutting land, when it became available. The board is persuaded the Property is used for the church activities described above and the Property is a safer and better location than the church parking lot, which had been used for some of these activities before the Property was acquired. The Taxpayer's representatives testified regarding their continuing use of the Property and also about their intent to merge and use it for a future expansion of the church, when adequate funding is raised.²

The Town cites First Congregational Church of Laconia v. Town of Gilmanton, 123 N.H. 343 (1983) in support of its position for denial of an exemption, but the board finds the facts of that case to be distinguishable. In that appeal, the parties agreed the lot in question was only used "three or four times for outings" by a Boy Scout troop affiliated with the church and the master found, relying on Nature Conservancy v. Nelson, 107 N.H. 316, 319-20 (1966), "negligible and insignificant" use of the land was not sufficient for a religious exemption. First Congregational Church, 123 N.H. at 344. In contrast, the board finds the Taxpayer uses the Property for its own mission and in a manner that is more frequent than in these cases and integrally related to the religious uses of the adjoining Lot 50. Consequently, we do not find the uses either negligible or insignificant.

The board also finds meaningful distinctions can be drawn with the board's decision in the Emissaries case, cited by the Town, which was appealed to the supreme court and affirmed. 140 N.H. 552 (1996). In Emissaries, the board carefully reviewed all aspects of the uses to

² The board notes, however, that the possibility of using the land for future expansion, when no plans have been submitted or approved, would not, in and of itself, qualify property held by a religious organization for an RSA 72:23, III exemption. Cf. Sovereign Grace Fellowship v. Town of Boscawen, BTLA Docket No. 19595-02EX (May 12, 2004).

which land was put (consisting of “vacant lots,” agricultural land and other property) before finding that some of the land was entitled to an exemption and some was not and the supreme court agreed these findings were supported by the record.

The board further finds the easement conveyed to the abutters (Pond and Neary) with respect to a portion of the Property (designed as Parcel C) does not conflict with its entitlement to a full exemption. Granting the easement in question (contained in Municipality Exhibit No. A, pp. 8 – 10) is not inconsistent with the Taxpayer’s own use of the Property and nothing contained in the easement militates against granting a religious exemption. The primary objective of the easement appears to be to preserve the views of the neighboring Pond and Neary properties over part of the Property and to give a right of first refusal if and when the Taxpayer decides to sell it.³

The easement (in Section III, A) does not prevent the Taxpayer from using the Property for “Church-related events” and also for construction activities related to the church lot activities. The easement (in Section V) also expressly contemplates and allows for the Taxpayer’s “building program” to include the possibility of merging the Property with Lot 50 (where the church, parking lot and classrooms are located). While it appears any building activity will occur on the area designated as “Parcel D” in the easement, approximately 53% of the total land, the Taxpayer can still use the remainder of the Property for the purpose of satisfying any setback, lot coverage or other restrictions that would be imposed by the Town. (The board further notes

³ The Town’s assessor, Jim Commerford, testified the abutters are being taxed on the property rights conveyed to them through the easement; hence, they have not escaped taxation and the magnitude of the exemption of the property rights retained by the Taxpayer is diminished due to this easement conveyance to the abutters.

the right of first refusal granted to one abutting easement holder, Pond, in Section V, for a term of 25 years, will be terminated if the two lots are merged to expand the church.)

This review leads the board to conclude the grant of certain easement rights to the abutters and the Taxpayer's own use of the Property to fulfill its religious mission and activities are not inconsistent and can coexist with each other. The board also notes the Taxpayer owns other property in the Town, a parsonage, Lot 61, which is exempt, and land on Route 25 (Map S-02, Lot 26) for which it has not claimed a religious exemption. See the Taxpayer's appeal document on file with the board. The Taxpayer appears to recognize not all property owned by a religious organization is automatically entitled to an exemption, but that the requirements of ownership, use and occupancy directly for its religious purpose stated in the statute (see fn. 1, supra) must also be met.

In summary, while there may have been reason for the Town to question whether a religious exemption should be granted on the Property in light of the easement and the other facts presented, the board finds the Taxpayer has met its burden of proof. The appeal is therefore granted. If the 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Marvin P. Keniston, Property Deacon, 147 Main Street, Meredith, NH 03253, Taxpayer; and Chairman, Board of Selectmen, Town of Meredith, 41 Main Street, Meredith, NH 03253.

Date: March 7, 2008

Anne M. Stelmach, Clerk