

Grace Fellowship of Nashua, Inc.

v.

City of Nashua

Docket No.: 23523-08EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “City’s” 2008 denial of the Taxpayer’s request for a religious exemption under RSA 72:23, III on Map E, Lot 1424, an undeveloped, partially wooded 14.23 acre lot (the “Property”). For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of demonstrating the Property met 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. We find the Taxpayer did not carry this burden.

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

- (1) the acquisition of the Property (shown on Taxpayer Exhibit No. 1) began in June, 2006 and was finalized on October 30, 2007 and a site plan for church uses of the Property was approved by the City’s Planning Board on March 17, 2007;
- (2) lack of funding in a “failing economy” caused the Taxpayer to delay construction and the City granted a two year extension in February, 2008 of its site plan approval; and

(3) the Taxpayer had good intentions to develop this site in the inner city to minister to refugee and other populations and the City should take these factors into consideration and grant an exemption, especially since it has done so for several other churches in the past.

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

(1) a plain reading of the religious exemption statute, RSA 72:23, indicates the Property must be used and occupied, as well as owned, directly for a religious purpose in order to qualify for an exemption;

(2) prior board decisions indicate the use required for an exemption must be a present use, not a future use;

(3) the Taxpayer receives exemptions on other properties it owns in the City which meet these requirements and the City has corrected the instances noted by the Taxpayer on several other properties owned by others which may have erroneously received a religious exemption; and

(4) the Taxpayer did not meet its burden of proof.

Board's Rulings

Based on the evidence and law presented, the board finds the Taxpayer failed to meet its burden of proving the Property was entitled to a religious exemption for tax year 2008. The appeal is therefore denied.

In deciding religious exemption cases, the board, like the City, is bound by the requirements of the statute and the case law applying its requirements. The statute, RSA 72:23, III, allows exemption of property only when it is “owned, used and occupied directly for religious training or for other religious purposes” by a recognized and constituted “denomination, creed or sect.” As in another recent religious exemption appeal involving the City, Appeal of Nashua, 155 N.H. 443, 445 (2007), there is no dispute regarding ownership or

that the Taxpayer is a recognized and constituted Christian denomination. Like that appeal, the board finds the Taxpayer fails to meet the two important elements of use and occupancy of the Property for a religious purpose. Id. at 445-46, citing Alton Bay Camp Meeting Assoc. v. Alton, 109 N.H. 44, 48-49 (1968) (denial of exemption on property that did not qualify), E. Coast Conf. of the Evangelical Covenant Church of America v. Town of Swanzey, 146 N.H. 658, 663 (2001) (denial of exemption on property that did not qualify), and Society of Cincinnati v. Exeter, 92 N.H. 348, 351 (1943) (occupancy contemplates more than “bare possession”). In Appeal of Nashua, two established Roman Catholic churches that were no longer being used for church services (due to church reorganization and consolidation for financial reasons – “budgetary and staffing concerns”) could no longer receive the religious exemption because they could not fulfill the use and occupancy requirements of the statute. 155 N.H. at 443 and 446.

While the Taxpayer’s representative, Pastor Paul R. Berube, made a clear and eloquent statement of the Taxpayer’s “intentions” to develop the Property for religious purposes when adequate funding could be obtained, the board finds the Property does not qualify for a religious exemption until these steps can be completed and the Property is directly used and occupied for a religious purpose. The incidental activities described (one congregational service and paintball games every few weeks by a church youth group) are insufficient to meet these statutory requirements.¹

The City is also correct in noting other board decisions where the use and occupancy requirements have been applied to defeat a claim of exemption. See Painters & Allied Trades

¹ Compare Sovereign Grace Fellowship v. Town of Boscawen, BTLA Docket No. 19595-02EX (May 12, 2004) (exemption granted where church met its burden of proving direct use and occupancy of property for religious purposes, including prayer and construction activity by congregants, even before occupancy permit was issued by the municipality).

District Council #35 Joint Training Program Trust v. Town of Brentwood, BTLA Docket

No. 21255-05 EX (November 13, 2006) (use and occupancy requirements not met until construction completed); and Tri-County Community Action Program, Inc. v. Town of Dummer, BTLA Docket No. 18329-99EX (August 6, 2001) (vacant lot which the taxpayer intended to develop and use in the future denied exemption because of failure to meet present use and occupancy requirement). The board has also noted the testimony of the City's assessor that the prior inconsistencies cited by the Taxpayer regarding several church properties that received exemptions in the past have been addressed and corrected.

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.

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: Paul Berube, Grace Fellowship of Nashua, Inc., 8 Franklin Street, Nashua, NH 03064, representative for the Taxpayer; and Chairman, Board of Assessors, City of Nashua, PO Box 2019, Nashua, NH 03061.

Date: February 19, 2009

Anne M. Stelmach, Clerk