

Liberty Assembly of God

v.

City of Concord

Docket No.: 24506-08EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “City’s” 2008 denial of the Taxpayer’s request for a religious exemption as provided under RSA 72:23, III on Map 12/1/10A (the “Property”/“Liberty”). For the reasons stated below, the appeal is denied.

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; Tax 204.05. We find the Taxpayer did not carry this burden.

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

- (1) until 2008 the City granted a religious exemption on the Property; in 2008, the City determined 60% was now taxable stating a portion was not used and occupied for religious training or other religious purposes;
- (2) Liberty suffered a loss in membership due to the loss of its full-time pastor in June 2008; however, the remaining members continued to attend the church having Sunday worship,

weekday teaching, fellowship meetings and a food pantry and a new pastor was installed in November 2008;

(3) although several rooms in the building were not actively used, the building as a whole is used and occupied for church facilities as the rooms were available for housing the homeless or missionaries on furlough;

(4) Liberty's caretaker, Mr. Richard Bagnall, testified he was also on the church board in 2008 and his duties as caretaker were to mow the lawn, plow snow, Property repairs and building security;

(5) the building has a prayer room which is open 24 hours a day; this room has an exterior door which can be accessed at night with an interior door to restrict entry into the rest of the building; and

(6) the Property's sole purpose is and its use pertains to the ministries to support the tenets of the organization.

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

(1) the City conducted an inspection in 2008 and determined there were five apartments without building permits on record;

(2) the City acknowledge Liberty is part of a "regularly recognized and constituted denomination, ... organized, incorporated or legally doing business in this state;"

(3) prior to the hearing, the City granted Liberty a partial exemption on all areas that appeared to be used for its religious purposes including the parsonage, garage and barn, the entire first floor of the main building with the exception of the apartment and missionary room and the land immediately surrounding the main building in proportion to its taxable area (55%);

(4) based on the City's inspection and discussions with Mr. Bagnall, the City determined the caretaker apartment and the entire second floor of the main building was also either being used for personal storage or personal residences and should be taxed as New Hampshire law does not support a religious exemption on portions of the Property that were not used and occupied for religious purposes;

(5) as a result of testimony during the hearing, the City conceded the "recreation room" on the first floor was used for religious purposes; a November 15, 2010 post hearing submission by the City ("November 15, 2010 Submission") revised the exemption of the main building to be 60% exempt and adjusted the land assessment similarly, resulting in a taxable valuation of \$422,700 and the value attributable to the exempt portions of the Property being \$880,200; and

(6) the City's revised exemption determination should be upheld.

Board's Rulings

The totality of the evidence submitted by both parties in this appeal is extensive. It includes transcripts of depositions taken by both sides, photographs and sketches of the Property, wide-ranging legal arguments made by the attorneys for both sides and their case law support both from New Hampshire and other jurisdictions. The board has reviewed in detail the documents and arguments submitted and find only the controlling statute (RSA 72:23, III) and New Hampshire case law are necessary for the resolution of the appeal. See Appeal of Public Service of New Hampshire, 125 N.H. 46, 57 (1984) (If sufficient clarity of law exists within New Hampshire, it is not necessary to seek or rely on authority from outside this jurisdiction.)

For the reasons that follow, the board finds the City's revised exemption, outlined in its November 15, 2010 Submission, is the proper allocation between taxable and exempt property for 2008.

RSA 72:23, III states:

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 and the personal property used by them for the purposes for which they are established.

The Taxpayer asserts that once a “house of public worship” has been determined to exist in a building, then all further inquiry as to the use and eligibility for exemption of that building must cease. We disagree. RSA 72:23, III inherently places several conditions on all of the enumerated religious uses itemized therein. Each of those uses, including the first one identified – “houses of public worship” – must be “owned, used and occupied directly for religious training or other religious purposes” As the court has recently emphasized in Appeal of City of Nashua, 155 N.H. 443 (2007), just because the property in question in general terms was a “house of public worship”, it had to be actively and directly used and occupied for religious purposes to receive the exemption. In New Hampshire, it has long been established that taxation is the rule and exemption is the exception (See, e.g., Boody v. Watson, 63 N.H. 320, 321 1885), and Portsmouth Shoe Co. v. City of Portsmouth, 74 N.H. 222, 223-24 (1907)) and this principle is also reflected in the statutes. See RSA 72:6 (“All real estate, whether improved or unimproved, shall be taxed except as otherwise provided.”).

In most cases involving a “house of public worship”, there are easily recognizable areas such as the sanctuary and customary supporting improvements such as Sunday school rooms, “fellowship” areas, kitchens, clergy study room/library, storage areas, bathrooms, mechanical room, etc. In most instances, those customary uses are relatively easy to determine whether they

are actively and directly used for or in direct support of religious training or other religious purposes. Here, because of the unique history of the Property, those discreet uses are not as easily distinguishable. The main building on the Property had its origins as a bull breeding barn that was subsequently converted to educational and dormitory uses before being acquired by the Taxpayer. This building history does not of itself necessitate any different standard of review by either the City or the board in determining its qualification for religious exemption; it simply highlights the unique challenge of determining the proper extent of religious exemption due to the history and configuration of the main building. The supreme court held in Appeal of Emissaries of Divine Light, 140 N.H. 552, 556 (1995) (“Emissaries”) that inquiry into the uses of various buildings or portions thereof was permissible and, indeed, necessary to determine which portions of a property were eligible to receive a religious exemption and which were not. This was illustrated in the board’s decision of Emissaries of the Divine Light v. Town of Epping, Docket Nos.: 8648-90 and 11193-91EX (February 17, 1994) (subsequently appealed to the supreme court as “Emissaries”). The 1990 section of the board’s decision contained an allocation of a portion of the dining hall for use as a “chapel” before a separate chapel building was built and used in 1991. This allocation by the board of one of the various components of the overall property owned by Emissaries was upheld by the court in Emissaries. This concept of apportionment of a discrete section of a building for educational exemption was favorably noted in Emissaries by the supreme court’s reference to St. Paul’s School v. City of Concord 117 N.H. 243 (1977) where faculty quarters within dormitories were determined to be exempt. Even more recently in Appeal of City of Concord, ___ N.H. ___, No. 2009-491, slip op. (January 13, 2011), the court noted the potential for allocation of the taxability of office space between two related entities, Home Care Association and Granite State Home Health Association, if on remand, the

board finds some of the shared space is not used for exempt purposes. Consequently, the board concludes the City's inquiry, and the board's review, is "appropriate to determine [the] organization's eligibility for tax exemption." Emissaries at 556.

Nonetheless, the board finds such inquiry must not be taken to an absurd extreme so that every square foot of a building is rigidly scrutinized. Rather, as in determining proportionate assessments for taxation, "judgment is the touchstone." See Tennessee Gas Pipeline Co. v. Town of Hudson, 145 N.H. 598, 600 (2000). Similarly, the supreme court recently reaffirmed "[t]he legislative purpose to encourage charitable institutions is not to be thwarted by a strained, over-technical and unnecessary construction." Town of Peterborough v. MacDowell Colony, 157 N.H. 1, 5 (2008), Young Women's Christian Ass'n v. Portsmouth, 89 N.H. 40, 42 (1937) (quotation omitted). The board has reviewed the City's room by room review and finds its methodology is not overly technical and generally comports with the cited case law.

Before proceeding to the board's findings relative to the allocation of the main building between taxable and exempt portions, for clarity, it is helpful to summarize the several components of the Property and how the City assessed them. The entire Property is comprised of 26.13 acres (6.0 acres not in current use and 20.13 acres in current use), the "main building", a free standing barn and the parsonage and associated garage. The City has exempted the parsonage, garage and free standing barn and one of the 6.0 acres not in current use that is "appertaining to them." The remaining 5.0 acres not in current use are assessed as a 2.2 acre primary commercial site supporting the main building and 2.8 acres of supplemental commercial land. Those "primary" and "supplemental" land assessments are then allocated between taxable and exempt at the same proportion as the taxable and exempt square footage of the main building. The City estimated the taxable/exempt 40%/60% ratio of the main building based on

the use of the various areas of the combined calculated square footage of “living area” of both the first and second floor.

First Floor of Main Building

On the first floor, the City estimated 12,516 square feet of the total 13,988 square feet were exempt as they were used directly for religious purposes including the sanctuary, church offices, children/day care, prayer room, recreation room, kitchen and fellowship hall, library/record room, classrooms/computer lab, food pantry, storage rooms and restrooms. The balance of 1,472 square feet on the first floor, which entail an apartment and additional room available for missionaries on furlough, was deemed taxable by the City.

The board agrees with the City that the apartment and missionary room available for missionaries on furlough are taxable because they are not “used and occupied directly for religious training or for other religious purposes” Those rooms were not used by furloughed missionaries at any time throughout 2008 and, during the four year time period that Mr. Bagnall resided on the second floor of the main building, he could recall missionaries using those areas only three or four times. (Municipality Exhibit C at p. 33). Such use is slight and insignificant and does not qualify the area for being used for religious purposes. Franciscan Fathers v. Town of Pittsfield, 97 N.H. 396 (1952) (A use that is “slight and insignificant” does not create occupancy sufficient to warrant granting an exemption); Society of Cincinnati v. Exeter, 92 N.H. 348, 357 (1943) (“The use must be more than trivial and negligible to give reasonable effect to the demand of the statute.”) See also Concord, ___ N.H. ___ (slip op. at 7); and Nature Conservancy v. Nelson, 107 N.H. 316, 320 (1966). Further, the fact that Liberty designated and made these areas available for missionary use does not by such designation automatically qualify them as being used “directly for religious training or for other religious purposes” As noted

by the court in Concord, ___ N.H. ___ (slip op. at 7) citing The Housing Partnership v. Town of Rollinsford, 141 N.H. 239, 244 (1996), “ a tax exemption is not warranted when the asserted compliance with any of the requirements therefor is no more than ... ‘indefinite and prospective,’”

Because the board has ruled that the actual use of these areas by missionaries was “slight and insignificant” and the availability of the space for such use was “indefinite and prospective,” the board need not address the City’s alternative argument that occupancy of such space is a secular, residential use and not a religious use.

Second Floor of Main Building

The entire second floor of the main building (6,916 square feet) was determined by the City as not being used for religious purposes and thus, is taxable. This second floor square footage, when combined with the 1,472 square feet of taxable area of the first floor and compared to the total “living area” square feet of 20,904, resulted in the City concluding approximately 40% ($[6,916 + 1,472] \div 20,904 = 40\%$ rounded) of the main building was taxable. (See November 15, 2010 Submission). As detailed below, the board finds the City’s determination is supported by the evidence and law.

The evidence indicates the uses of the second floor can be generally categorized in five areas: 1) an apartment and two storage rooms occupied or utilized by the Richard Bagnall family; 2) a room occupied by Chris Bergeron; 3) vacant apartments; 4) “dorm” rooms minimally used for storage; and 5) the men’s bathroom.

1) Testimony indicated Richard Bagnall and his wife lived in the two bedroom apartment on the south end of the second floor for approximately four years before moving out in January 2010. Both Mr. and Mrs. Bagnall had day-time jobs in the seacoast area and Mr. Bagnall

performed duties after work and on weekends characterized as caretaker in nature including mowing grounds, plowing snow, routine maintenance and security “after hours.” The board finds the Bagnall’s occupancy of the apartment, and, in particular, Mr. Bagnall’s caretaker functions, while perhaps convenient for the Taxpayer, were not critical and integral to the Taxpayer’s direct use of the Property for religious purposes. Mr. Bagnall’s testimony indicated he did similar caretaker work at the Property while living in Manchester before moving to the Property and that others before, during and after his residency also augmented his caretaker duties. There also was no evidence submitted to show any compelling need for on-site security. The main building could be secured (even the “prayer room” which had 24/7 exterior access had its interior door locked) and the adjacent parsonage provided on-site physical presence for any security concerns. Thus, no compelling evidence was submitted that Mr. Bagnall’s physical presence at the Property was necessary for the religious use of the Property by the Taxpayer. “Cf. St. Paul's School, 117 N.H. at 252, 372 A.2d at 275 (benefit of faculty housing must be to entity, not individual faculty members).” Emissaries at 559.

As noted in the City’s Hearing Memorandum of Law, the holding by the supreme court in Franciscan Fathers at 756 citing Hedding Camp Meeting Ass'n v. Epping, 88 N.H. 321, (1937) that a residence is exempt when occupied by a caretaker acting as an agent for the monastery is no longer applicable due to the current different language of RSA 72:23, III that requires the property be directly used, not indirectly as an agency relationship infers, for religious purposes. Consequently, the board finds the Taxpayer failed to establish the Bagnall’s residency was a necessary religious use of the Property.

2) One room on the second floor was occupied by Mr. Chris Bergeron who was a grandson of the secretary/treasurer of Liberty at that time, Ms. Marie Jenkins. The testimony

indicates Mr. Bergeron had been living with his parents before they moved out of state and the church then allowed him to live in a room on the second floor of the Property. Mr. Bergeron was primarily employed at a grocery store, infrequently attended Liberty services and, from time to time, assisted Mr. Bagnall in caretaker/maintenance duties. The Taxpayer argued his residency (in addition to one family of the congregation who resided at the Property for six months in 2007 after being burned out of their residence) is evidence of Liberty's biblical mandate to provide housing for the needy. Similar to the board's ruling relative to the furloughed missionaries' use of first floor rooms, we find any potential religious use in providing housing for the needy was not established by the Taxpayer. There was no evidence that Liberty, through its articles of agreement or other church related documents, enunciated one of its religious tenants was providing housing for the needy or simply, that such housing was available at the Property. The Taxpayer argues (see The Church's Trial Brief at pages 7-9) that for centuries churches in general have had a history of "[s]helting the homeless and caring for the poor ..." and thus such use serves a religious purpose. The board need not rule on whether such assertion creates a basis for granting a religious exemption in this instance because there was no evidence of any recent historical use of the Property for such purpose that was more than 'slight, negligible or insignificant' or 'indefinite and prospective.' Concord, ___ N.H. ___ (slip op. at 7). The board finds Mr. Bergeron's occupancy was not so much the result of an expression of Liberty's intent to provide housing for the needy as it was a consequence of him being related to a member of Liberty's advisory board and a convenience for him by not having to find alternative housing.

Furthermore, the testimony of Concord's director of human services (city welfare office), Jacqueline Whatmough, established that Liberty was not one of the identified churches or shelters providing immediate or short term housing for needy people in the Concord area.

Ms. Whatmough indicated Concord tended to have an acute need for such housing and she had worked for a number of years with area social organizations and churches to develop a network for placing needy individuals. Yet, never during this process had she ever been aware of Liberty or the availability of housing for the needy at the Property.

To be clear, the board is neither, on one hand, questioning Liberty's stated assertion that providing such housing is one of its biblical mandates nor, on the other, ruling that such use would necessarily qualify as a religious use; rather, we simply find neither by public knowledge nor in practice is there evidence the Property is used to any significant degree to house the needy. (In determining whether the statutory requirements for receiving an exemption have been met, "we 'look to both its charter or organizational statements and its actions taken pursuant to those statements.' E. Coast Conf. of the Evangelical Covenant Church of America v. Town of Swanzey, 146 N.H. 658, 662 (2001)." Concord, ___ N.H. ___ (slip op. at 7).

3) The Taxpayer asserted the vacant apartments on the second floor were available for missionary and staff use and for needy individuals. The board finds the evidence was that the apartments had not been used for those purposes and the Taxpayer's assertion of their availability is at best an "indefinite and prospective" use. The Taxpayer argued it should not be penalized by losing tax exemption for these portions of the main building simply because of their inactive use due to Liberty struggling with reduced attendance at that time. (see The Church's Trial Brief at page 6). The court affirmed in Appeal of City of Nashua that inactive use of a church due to diminishing congregation disqualifies the church for a religious exemption and requires taxes to be paid on the property. While on its face, this may appear to be a harsh consequence and largely outside the religious owner's control, it is no different than the hardship taxable property owners are subjected to when, despite reduced or lost employment or business

income, they are still required to pay the entire property tax or risk loss of the property. (see RSA ch. 80).

4) The photographs and testimony indicate the second floor “dorm rooms” were either largely vacant or used for insignificant storage. The photographs (Municipality Exhibit A, Lakeman photographs 13 and 14) indicate the storage was sparse and haphazard and certainly do not indicate that the rooms were directly or integrally necessary for Liberty’s religious use of the Property. Again, the uses, at best, were ‘slight, negligible or insignificant’ and not warranting an exemption. Concord, ___ N.H. ___ (slip op. at 7).

5) The men’s bathroom on the second floor appeared to exist primarily to serve any occupants of the second floor dorm rooms and did not appear to be critical for the congregation’s activities that occur on the first floor. Part of the City’s first floor exempted areas include multiple bathrooms for both genders. While the Taxpayer stated some use occurred of the second floor men’s bathroom, such use did not appear to be significant or critical for the religious use of the Property on the first floor. Id.

Last, the Taxpayer asserted the current use land should be exempt from taxation due to the existence of a “prayer trail” around the perimeter of the undeveloped land. As the board has similarly held in Camp Merrimac, LLC v. Town of Hopkinton, Docket No. 18289-99EX (April 5, 2002), the current use land is primarily used for agricultural and forestry purposes and minimally used for religious purposes. See also Franciscan Fathers v. Town of Pittsfield, 97 N.H. 396, 401 (1952) (“use of the 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.”).

The “Requests” received from the Parties 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 Decision.

City’s Requests for Findings of Fact and Rulings of Law

1. The petitioner, Liberty Assembly of God (“Liberty”), owned land and buildings in the City of Concord on April 1, 2008, the subject tax year, on which it requested an exemption under RSA 72:23, III (religious).

Granted.

2. The property at 339 Mountain Road is made up of 26.13 acres of land with four buildings (“subject property”). *See* Exhibit K.

Granted.

3. The subject property was a former school and dormitory prior to Liberty’s purchase of it. Testimony of Ms. Temchack.

Granted.

4. In addition to classrooms and offices, there are five apartments in the two-story portion of the “main building”. Testimony of Mr. Bagnall and Ms. Temchack. [Note: the “main building” is defined by the City as the building with the sanctuary, classrooms, offices, fellowship hall, kitchen, and two-story “dorm” area and intended to be distinct from the parsonage, barn and garage which were the three other buildings on the property.]

Granted.

5. One apartment on the second floor of the main building was the residence of a caretaker who maintained the buildings and grounds and his wife on the assessment date of April 1, 2008. Testimony of Mr. Bagnall.

Granted.

6. The caretaker had a full-time job in Seabrook, New Hampshire on weekdays in 2008. Testimony of Mr. Bagnall.

Granted.

7. The remaining three apartments on the second floor, and one apartment on the first floor, were vacant and unoccupied on the assessment date of April 1, 2008. Testimony of Mr. Bagnall; *see also* Exhibit B (Liberty's answers to City interrogatories).

Granted.

8. On the date of inspection by the City in July 2008, the main building was found to be in fair condition and there was an odor of mildew and reported leaks in the roof, among other maintenance issues. Testimony of Ms. Temchack; *see also* Exhibit G (deposition of Mr. Lakeman).

Granted.

9. The only persons that resided in the main building at any time during the entire calendar year 2008 were the caretaker and his family and one young man who lived in a former dormitory room. *See* Exhibit B (Liberty's answers to City interrogatories).

Granted.

10. The one young man who lived in a former dormitory room in the main building was the grandson of the secretary/treasurer of Liberty during 2008. Testimony of Ms. Jenkins.

Granted.

11. There was no evidence of a policy or regular practice to house homeless persons in the main building during 2008. Testimony of Ms. Jenkins and Mr. Bagnall.

Granted.

12. The second floor of the main building also had 1-2 rooms that were used to store the personal belongings of the caretaker and the young man who also lived there in 2008. Testimony of Mr. Bagnall.

Granted.

13. No missionaries resided in any apartments or the so-called missionary room in the main building during 2008. Testimony of Mr. Bagnall; *see also* Exhibit B.

Granted.

14. The church appeared to actively use only the first floor of the main building for its indoor church functions in 2008. Testimony of Ms. Temchack.

Granted.

15. Most of the rooms on second floor of the main building in 2008 did not appear to be used, except in an incidental manner by Liberty.

Granted.

16. With the exception of the caretaker's apartment, the apartments and other rooms on the second floor of the main building were only heated to 60 degrees during the winter. *See* Testimony of Mr. Bagnall, including deposition testimony at Exhibit C.

Granted.

17. The religious exemption under RSA 72:23, III requires more than ownership of real estate; there must be a religious use that is "direct and immediate" (*see Appalachian Mountain Club v. Meredith*, 103 N.H. 5 (1960)) to qualify for that exemption.

Neither granted nor denied.

18. In the context of a religious tax exemption case, the N.H. Supreme Court has stated that there was "no indication that [a rooming building] is specially adapted to religious uses or purposes nor is it so used. On the contrary, its principal use is for housing, a purely secular purpose. The fact that many of those using its facilities are there also to attend the Association's religious activities does not alter the predominant character of its use which is for the residential convenience of the occupants." *Alton Bay Camp Meeting Ass'n v. Town of Alton*, 109 N.H. 44, 50 (1968).

Granted.

19. Residences on the St. Paul's School campus used by staff who were engaged by the school to maintain the buildings, grounds and equipment, to staff the kitchen and dining rooms, and to perform custodial and general housekeeping services, were denied an educational exemption as they were a convenience and not reasonably necessary to promote the school's purposes. *St. Paul's School v. City of Concord*, 117 N.H. 243, 251-53 (1977).

Granted.

20. The vacant apartments at the subject property were not used or occupied for Liberty's religious purpose on the assessment date of April 1, 2008.

Granted.

21. Having a live-in caretaker for the subject property was a convenience for Liberty and for the caretaker but not necessary for the church to continue its religious functions.

Granted.

22. Real estate which is constructed as a house of public worship but is not under active use as such is not eligible for the religious tax exemption. *Appeal of City of Nashua*, 155 N.H. 443 (2007).

Granted.

23. The rooms on the second floor of the main building, other than residential spaces, were only used in an incidental manner and did not evidence the active use required by RSA 72:23, III.

Granted.

24. Land that is in current use as forest or farm land cannot also qualify for a religious tax exemption and the land so designated at the subject property is taxable.

Neither granted nor denied.

25. The City's apportionment between exempt and taxable space at the subject property for the assessment date of April 1, 2008 was reasonable and supported by the evidence, as well as by New Hampshire law.

Granted.

Church's (Taxpayer's) Proposed Findings of Fact and Conclusions of Law

1. Liberty Assembly of God (the "Church") is a New Hampshire non-profit corporation, the purposes of which include "[t]o establish and maintain a place of worship of Almighty God, our Heavenly Father, and through the Holy Spirit, and for the promotion of Christian fellowship and edification [and] [t]o obey in [its] capacity the Great Commission. (Matthew 28:18-20; Mark 16:15-20; Acts 1:8; 8:4)."

Neither granted nor denied. Similar, but not as exactly stated in the articles of agreement. (Taxpayer Exhibit No. 1, Tab 1).

2. The Liberty Assembly of God Church is a regularly recognized and constituted denomination, incorporated in the State of New Hampshire.

Granted.

3. The Church owns one parcel of land identified as Tax Map 122, Block 1, Lot 10 (122/1/10), and also known as 339 (the Church) and 341 (the parsonage) Mountain Road, Concord.

Neither granted nor denied.

4. This parcel of land is approximately 26 acres upon which there is a church building; a parsonage with a detached garage; and a barn.

Neither granted nor denied.

5. The entire Church property has always been completely exempt from taxation since it first occupied the property in 1994.

Granted.

6. On April 1, 2008, the church building was used for weekly and mid-week worship services and ministry events; offices for church and ministry related leadership and church operations; religious training classrooms; storage of items used for religious services and other ministry related activities; living quarters for an onsite church caretaker; living quarters for visiting or returning missionaries; living quarters for emergency housing of homeless/needful persons; a fellowship hall for church related functions, which included religious training and fellowship; and a kitchen for church related functions.

Neither granted nor denied.

7. On April 1, 2008, the church building was a house of public worship.

Neither granted nor denied.

8. On April 1, 2008, the caretaker, Richard Bagnall and his family, occupied one of the living quarters. Mr. Bagnall was responsible for doing repairs and maintaining the entire church property (including the parsonage) and keeping it safe against vandalism and mischief.

Neither granted nor denied.

9. Providing housing for the church caretaker served a religious purpose.

Denied.

10. On April 1, 2008, the Church had rooms that were available for missionaries to stay in while preparing for their missionary assignment. In fact, during the 2008 tax year, several missionaries made use of this availability and stayed in the living quarters for various periods of time.

Denied.

11. Making rooms available for missionaries to stay while preparing for their missionary assignment served a religious purpose.

Neither granted nor denied.

12. On April 1, 2008, the Church had rooms available for the needy to use, and in fact, throughout the year, Church rooms were used by the homeless and those in need.

Denied.

13. Making rooms available for the homeless and needy served a religious purpose.

Neither granted nor denied.

14. No temporary housing arrangement was ever governed by a leasehold agreement, nor did the church realize any profit through its ministry of temporarily housing homeless persons or missionaries.

Neither granted nor denied.

15. No person was required to pay rent for staying at the property, but from time to time monetary offerings were made to the church to offset the church's costs.

Neither granted nor denied.

16. The Church used many of its rooms for storing items belonging to the church, including items used in worship.

Neither granted nor denied.

17. Storing Church items served a religious purpose.

Neither granted nor denied.

18. The Church used its 20+ acres for prayer walks, and it was regularly maintained for this use.

Neither granted nor denied.

19. The Church's land was not used for any purpose other than a religious purpose.

Denied.

20. The Church building was a house of public worship, and was entirely tax exempt. *See* R.S.A. 72:23, III.

Neither granted nor granted.

21. RSA 72:23, III does not require that every room within a house of public worship be “used and occupied directly for . . . religious purposes” to be eligible for the exemption. *See Trinity Baptist Church v. City of Concord*, 2008 N.H. Tax Lexis 37 (Apr. 8, 2008) (intermittent use of church-owned residence by people who further church’s mission qualifies for exemption).

Neither granted nor denied.

22. Housing a caretaker in the Church-building serves a religious purpose and does not render the Church-building taxable. *See Franciscan Fathers v. Pittsfield*, 97 N.H. 396 (1952) (caretaker’s house upon property of a religious society is tax exempt as property occupied for the purposes of the order); *In the Matter of Yeshivath Shearith Hapletah, v. Assessor and Board of Review of the Town of Fallsburg*, 590 N.E.2d 1182 (N.Y. 1992) (a trailer on church property that housed the caretaker was exempt as serving a religious purpose).

Neither granted nor denied.

23. Making rooms available to the homeless and needy served a religious purpose. *See Saint John’s Evangelical Lutheran Church v. City of Hoboken*, 479 A.2d 935, 939 (N.J. Super 1983) (the church “persuasively argued that housing the homeless in a church is a religious use sanctioned by centuries of scripture and practice.”); *Greentree at Murray Hill Condo. v. Good Shepherd Episcopal Church*, 550 N.Y.S.2d 981, 986 (NY 1989) (A homeless shelter is, “as a matter of law, a permissible ‘accessory use’ of the Church.”); *Henley v. Youngstown*, 735 N.E.2d 433 (Ohio 2000) (same); *See Fifth Avenue Presbyterian Church v. City of New York*, 293 F.3d 570, 574-75 (2d Cir. 2002) (providing shelter to the homeless was part of a church’s religious exercise).

Neither granted nor denied.

24. Making rooms available for the homeless and needy is a religious use of the Liberty Assembly of God Church. *Id.*

Neither granted nor denied.

25. Making rooms available for missionaries that return from the mission field is a religious use of the Liberty Assembly of God Church.

Neither granted nor denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Lisa A. Biron, Esq., Welts, White & Fontaine, PO Box 507, Nashua, NH 03061, counsel for the Taxpayer; Joel L. Oster, Esq., Alliance Defense Fund, 15192 Rosewood, Leawood, KS 66224, co-counsel for the Taxpayer; Chairman, Board of Assessors, City of Concord, 41 Green Street, Concord, NH 03301; and Adele M. Fulton, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, counsel for the City.

Date: March 1, 2011

Anne M. Stelmach, Clerk