

**Dublin Community Center**

**v.**

**Town of Dublin**

**Docket No.: 25943-11EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2011 denial of the Taxpayer’s request for an RSA 72:23, V charitable exemption on a 0.25-acre lot with a building (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, it was entitled to the statutory exemption for the year under appeal. See RSA 72:23-m; and Tax 204.05. The board finds the Taxpayer met this burden.

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

(1) the Taxpayer, a ‘501(c)(3)’ nonprofit corporation, was formed in February, 2009 to “acquire, renovate and refurbish the historic Burt House in Dublin, New Hampshire and ensure its future use by the local community”;

(2) this charitable purpose is expressly stated in the incorporation document (the “Articles of Agreement”) filed with the Secretary of State on February 6, 2009; see also Taxpayer Exhibit No. 2, (unnumbered) p. 5) and the Taxpayer is legally obligated to perform it;

(3) the Taxpayer has an undisputed charitable purpose and qualifies for the RSA 72:23, V exemption for the reasons presented at the hearing;

(4) as shown by the photographs and other evidence presented (see Taxpayer Exhibit Nos. 1 and 2,<sup>1</sup> the Taxpayer is carrying out its charitable purpose by diligently taking the many steps required to renovate and refurbish the building (built in 1840, used as a general store for well over a century and known as the “Old Dublin Store”);

(5) these steps include, without limitation, hiring an architect and creating architectural plans, hiring qualified contractors who have done extensive remedial renovation work on the building, seeking planning board and zoning board approvals and resolving boundary, parking and other issues with the neighboring church;

(6) the Town denied the exemption application in tax year 2011 without stating a reason for the denial (but had granted a partial exemption in tax year 2010); and

(7) the Town erred in denying the charitable exemption for tax year 2011 and the appeal should be granted.

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

(1) while the Town is sympathetic to the Taxpayer’s goals and objectives and has granted many other charitable exemptions, the use and occupancy requirements set forth in the statute have not yet been met for the Property;

(2) because of the planning and renovation work on the building, a process that has not been completed, the Property has not yet been issued an occupancy permit and cannot be used for the “community center” the Taxpayer now envisions; and

(3) the appeal should be denied.

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<sup>1</sup> The Taxpayer presented additional photographs on a laptop during the hearing and, as agreed, submitted printed copies after the hearing.

### **Board's Rulings**

Based on the evidence presented, the board finds the Taxpayer met its burden of proving it is entitled to an RSA 72:25, V charitable exemption for tax year 2011. The appeal is therefore granted for the following reasons.

Qualification for a charitable exemption requires fulfillment of the requirements set forth in RSA 72:23, V. This statute provides an exemption from taxation for:

The buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in this state, owned, used and occupied by them directly for the purposes for which they are established, provided that none of the income or profits thereof is used for any other purpose than the purpose for which they are established.

In turn, RSA 72-23-l defines what is "charitable."<sup>2</sup>

The Town does not dispute the Taxpayer met three of these four requirements necessary to qualify for a charitable exemption (as stated in the ElderTrust of Florida, Inc. v. Town of Epsom, 154 N.H. 693, 697-98 (2007), decision referenced at the hearing). Namely, the Town acknowledged: the Taxpayer was formed for a valid charitable purpose; is obligated to perform that charitable purpose to the public; and has not used its funds for any non-charitable purpose.

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<sup>2</sup> See RSA 72:23-l:

The term "charitable" as used to describe a corporation, society or other organization within the scope of this chapter, including RSA 72:23 and 72:23-k, shall mean a corporation, society or organization established and administered for the purpose of performing, and obligated, by its charter or otherwise, to perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being of the general public or a substantial and indefinite segment of the general public that includes 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. The fact that an organization's activities are not conducted for profit shall not in itself be sufficient to render the organization "charitable" for purposes of this chapter, nor shall the organization's treatment under the United States Internal Revenue Code of 1986, as amended. This section is not intended to abrogate the meaning of "charitable" under the common law of New Hampshire.

The sole reason for denial of the exemption was the Town's belief the use and occupancy requirement for a charitable exemption cannot be met until such time as an occupancy permit is granted (a step that cannot occur until the Taxpayer completes the renovation of the building on the Property and can apply for and receive such a permit). Under the special facts presented in this appeal, the board disagrees.

At the hearing, the Taxpayer cited ElderTrust, quoted above, and Housing Partnership v. Town of Rollinsford, 141 N.H. 239 (1996), as support for the legal principles governing this appeal. In Housing Partnership, the supreme court reasoned that the occupancy necessary to qualify for an exemption "must be reasonably necessary for the charitable organization to carry out its mission." Id. at 242<sup>3</sup>; accord, ElderTrust, 154 N.H. at 701. Applying this principle, the board finds the Taxpayer is doing what is reasonably necessary to fulfill the use and occupancy requirements in light of its mission: this mission requires the Taxpayer to engage in extensive and costly restoration and refurbishment of the Property so that it can meet current health and safety requirements and concerns while preserving the historic façade and character of the building. This activity is reasonably necessary to carry out the Taxpayer's charitable purpose and must, of necessity, occur prior to the time when the Property can qualify for a formal certificate of occupancy.

Granting a charitable exemption in this appeal is consistent with several prior decisions. In Sovereign Grace Fellowship v. Town of Boscawen, BTLA Docket No. 19595-02EX (May 12, 2004), for example, the board granted the appeal of the denial of an RSA 72:23, III religious exemption (where the statute has similar statutory ownership, use and occupancy

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<sup>3</sup> In Housing Partnership, unlike here, the supreme court concluded that providing housing to low and moderate income individuals at rents "close to market levels" was not "reasonably necessary to fulfill the plaintiff's charitable purpose"; the court found "rent stability" was an "indefinite and prospective benefit" and "the plaintiff has failed to demonstrate that the rental of the units is not simply an adjunct to its charitable purpose." 141 N.H. at 244.

language). The board considered and rejected the municipality's argument in Boscawen that denial of the exemption was proper until an occupancy permit could be issued (since the church "could not be technically occupied until construction was completed"). Id. at p. 2. The board granted the exemption because of findings (analogous to this appeal) that "construction of the church building was part of the fulfillment of the [t]axpayer's mission." Id. at p. 4.

Quite similarly, in Trinity Gospel Chapel v. Town of Sutton, BTLA Docket No. 3001-85 (August 5, 1986), the board rejected a municipality's argument that a church was not entitled to a religious exemption for that part of a tax year before it completed construction of its building. In support of the granting of the exemption for the full year, the board in Trinity relied upon prior case law, as follows:

The Supreme Court has declared that the language of the statute is to be construed liberally in favor of exemptions. As the Court in Trustees of Phillips Exeter Academy v. Exeter, 90 N.H. 472 (1940) stated:

"In any event, classifications between taxable and non-taxable property are not to be tested by a hard and fast measure favoring taxability, and the statute under consideration is of classification, and not a special exemption. As to charities in general, the law's good-will towards them is not to be changed to a hostile attitude, in passing upon legislative favor for them. In determining whether a particular charity is within an exempt classification, or how much of its property comes within the exemption, resort to "rigorous strictness and a technique of narrowing application" does not best construe the expression of legislative will."

In St. Mary's School for Girls v. Concord, 80 N.H. 436 (1922), the issue was whether real estate owned by a girl's school, which "was purchased to be used as a site for new buildings and grounds", id., was entitled to tax exempt status even though there was no school on the site (or one under construction). . . .

In Hedding Camp Meeting Association v. Epping, 88 N.H. 321 (1937), the Court reiterated its holding in St. Mary's School and added: "(R)real estate owned and occupied by the institution and held either for investment or for eventual use in the direct service of its organic purposes shall be tax exempt .... It is use in aid of the final purpose rather than immediacy of use in such purpose that is determinative." Id. at 324 (emphasis added).

This body of case law demonstrates an overly literal and narrow reading of the use and occupancy language in the statute is not warranted, nor will the statutory purpose be served if an exemption is denied when preservation of a historic structure through substantial renovation and refurbishment work is an integral part of an organization's charitable mission. See, e.g., Pennelli v. Town of Pelham, 148 N.H. 365, 366 (2002) ("A tax exemption statute is construed not with rigorous strictness but 'to give full effect to the legislative intent of the statute'"); accord, Town of Peterborough v. MacDowell Colony, 157 N.H. 1, 5 (2008) ("[t]he legislative purpose to encourage charitable institutions is not to be thwarted by a strained, over-technical and unnecessary construction." Young Women's Christian Ass'n. v. Portsmouth, 89 N.H. 40, 42 (1937).") As further noted in ElderTrust, 154 N.H. at 701 (quoting from "84 C.J.S. Taxation, § 323"), "each case must be decided on its own peculiar, or particular, facts."

The Town noted it was sympathetic to the Taxpayer's purpose of historic preservation of the Property situated in Dublin Village. The village is well-known for this special character and quality and the Taxpayer's representatives were motivated by concerns the historic building would have been torn down if its members had not organized to acquire and preserve the Property.

The building, originally constructed in 1840 and used as a general store for well over a century, has a "historically significant façade." The Taxpayer has succeeded in preserving the building despite a plethora of issues, including asbestos removal, roof replacement, negotiation and acquisition of an easement on an abutting parcel to construct a needed septic system, and updating the heating and electrical systems. (See Taxpayer Exhibit No. 2.) A significant amount of work has been completed in a relatively short period of time (since the Property was acquired in 2009) which is evidence the Taxpayer has been diligent in performing and fulfilling its

charitable purpose and the Town did not argue otherwise. The Town's Board of Selectmen have stated their support for the Taxpayer's activities and plans, noting the "restoration project" would be "ongoing throughout 2011 and may stretch into the first part of 2012." (See Taxpayer Exhibit No. 2, (unnumbered) p. 8.)<sup>4</sup> Simply because the Taxpayer's charitable purpose consisting of renovation and refurbishment activities to accomplish historical preservation was ongoing and not completed as of the April 1, 2011 assessment date is not a sufficient reason to deny the exemption for that tax year.

The conclusion that historical preservation activities can fulfill a charitable purpose is consistent with tax exemption decisions by courts in other jurisdictions. See, e.g., College Corner, L.P. v. Dept. of Local Government Finance, 840 N.E.2d 905, 909 (Tax Court of Indiana 2006) (finding that an organization devoted to "historical preservation" does "provide( ) a general benefit to the community that is charitable in nature" and is entitled to a tax exemption).<sup>5</sup>

The undisputed evidence presented demonstrates the Taxpayer's activities were reasonably necessary and integral to the Taxpayer's charitable purpose of historical preservation, not simply preparatory steps taken in order to make improvements to a building to make it ready for occupancy and use for a different charitable purpose. In other words, the board finds the Taxpayer's dominant and primary purpose was "to acquire, renovate and refurbish the historic

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<sup>4</sup> In anticipation of completing the renovation and refurbishment of the Property, the Taxpayer changed its name from The Burt House Preservation Society to the Dublin Community Center in March, 2010. The Taxpayer's representatives testified as to a variety of community center activities the building could be used for when construction is completed. (See also Taxpayer Exhibit No. 2 (unnumbered) p. 4.) One of the Taxpayer's representatives further testified title to the Property may be transferred to another charitable organization once the process of renovation and refurbishment is completed.

<sup>5</sup> In support of its decision, the Indiana Tax Court cited cases reaching the same conclusion from Texas and Pennsylvania. (College Corner, 840 N.E.2d at 910.) In one of these cases, the court noted "the purpose of preserving historical buildings . . . is a purpose the accomplishment of which is beneficial to the community and therefore a purely charitable purpose." City of Houston v. River Oaks Garden Club, 360 S.W.2d 855, 857 (Tex.Civ.App. 1962). For organizations whose dominant and primary purpose is historical preservation, completion of the necessary renovation and refurbishment activities can bring to an end the charitable purpose for which they were formed.

Burt House,” as set forth in the articles of incorporation filed with the Secretary of State. While there is no question the Taxpayer intends to pursue other uses of the Property to benefit the community once renovation and refurbishment of the building is completed, those future activities do not negate or diminish the “dominant or primary purpose” for which it qualified for the tax exemption in tax year 2011. Cf. Appeal of City of Concord, 161 N.H. 344, 352 (2011).<sup>6</sup>

In summary, the specific and exceptional facts presented in this appeal cause the board to find the Taxpayer has met its burden of proving the Property was entitled to a charitable exemption for tax year 2011. The appeal is therefore granted.

If the taxes have been paid for tax year 2011, the amount paid shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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(g). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those

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<sup>6</sup> These points distinguish the granting of an exemption on the specific facts presented in this appeal from the usual rule applicable to most organizations (who may have acquired land and started construction but not yet received an occupancy permit to fulfill their own dominant or primary purpose (such as to operate a church or provide community services) where fulfilling that purpose is not dependent on historic restoration or preservation of a building). Cf., Chinese Bible Church of Greater Nashua v. City of Nashua, BTLA Docket No. 25544-11EX (December 2, 2011) (religious exemption denied when church failed to obtain certificate of occupancy to conduct church services until approximately three weeks after April 1 assessment date).

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

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Albert F. Shamash, Esq., Member

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Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Dublin Community Center, c/o Nancy Cayford, President, PO Box 497, Dublin, NH 03444, Taxpayer; Chairman, Board of Selectmen, Town of Dublin, PO Box 277, Dublin, NH 03444; and David M. Tower, Esq., Tower & Crocker, PO Box 510, 47 Main Street, Jaffrey, NH 03452, counsel for the Town.

Date: May 9, 2012

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Anne M. Stelmach, Clerk