

**United Church of Lyndeborough**

**v.**

**Town of Lyndeborough**

**Docket No.: 26442-12EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2012 partial denial<sup>1</sup> of the Taxpayer’s request for a RSA 72:23, III religious tax exemption on Map 231/Lot 4, 315 Forest Road, a 4.25 acre lot with a shed (the “Property”). For the reasons stated below, the appeal for a full tax exemption on the Property 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. The board finds the Taxpayer did not carry this burden.

The Taxpayer argued it was entitled to a full tax exemption on the Property because: (1) the Taxpayer owns three separate parcels of land in the Town for its church activities and was granted a RSA 72:23, III religious tax exemption on two of them (the “Village Church,” Map 239, Lot 31; and the “Center Church,” Map 221, Lot 5), but not on the Property in tax year 2012 (see Taxpayer Exhibit No. 1);

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<sup>1</sup> The appeal document, filed in response to the Town’s August 10, 2012 denial letter, understandably assumed the Town had denied the exemption on the entire Property. However, at the hearing, the Town’s representatives clarified that the Taxpayer was granted a partial tax exemption on the Property, as discussed further in this Decision.

(2) the Taxpayer duly filed the “A-9 form” (required by RSA 72:23-c) listing all three parcels and describing their religious uses, but the Town denied the exemption on the Property, even though it is used for “prayer meeting June-August” and for “personal reflection and prayer,” which are religious purposes;

(3) the entire Property should be exempt because of an agreement by the Town selectmen, reflected in their April 22, 2009 letter (Taxpayer Exhibit No. 2), that the “4.25 [acre] parcel located on Forest Road” was entitled to an exemption and the Town granted the Property a full tax exemption for each year until 2012;

(4) although authorized and required to do so under RSA 72:23-c, II, the Town made no effort to investigate and communicate with the Taxpayer before denying the tax exemption in the August 10, 2012 letter (contained in the appeal document); and

(5) the appeal should be granted.

The Town argued the denial of a full tax exemption was proper because:

(1) the Town did grant a partial RSA 72:23, III tax exemption for 2012 on a portion of the Property (0.10 acres out of a total of 4.25 acres) based on its occupancy and use and the August 10, 2012 letter stating otherwise resulted from an inadvertent error;

(2) the remaining 4.15 acres do not qualify for an exemption because it is not being “occupied and used” directly for a religious purpose as required by the exemption statute;

(3) the process of reviewing tax exemption applications is an annual event and the Town was not bound by the prior 2009 determination to exempt the entire Property;

(4) the Town was not required to make a further investigation in 2012 (pursuant to RSA 72:23-c, II) prior to issuing its decision unless it felt more information was needed; and

(5) the appeal should be denied.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer did not meet its burden of proving the Property was entitled to a full RSA 72:23, III religious tax exemption in tax year 2012. The appeal is therefore denied for the following reasons.

The complications in this appeal resulted, in part, from confusion caused by some miscommunication between the Town and the Taxpayer during the tax exemption application and denial process. The board gained a fuller understanding of the facts and clarified these points of confusion through the testimony and documents presented by the parties at the hearing of this appeal.

One source of confusion was the size of the Property. The parties confirmed at the hearing that the Property was 4.25 acres rather than 4.35 acres in size. The Property's assessment-record card in Municipality Exhibit A shows the correct acreage.<sup>2</sup>

A more serious source of confusion was whether the Property, in tax year 2012, had been denied any exemption at all or had been granted a partial exemption. The Town's August 10, 2012 letter (contained in the appeal document) mistakenly states the Town was denying the exemption on the "4.25 parcel located on Forest Road due to the fact that the property is not being used for religious purposes." At the time of filing of the appeal document (on August 30, 2012), the Taxpayer had not yet received the 2012 tax bill and concluded, based on the August 10, 2012 letter, the Town had issued a "blanket denial" of a religious exemption on the Property.

In fact, and as disclosed at the hearing, the Town did grant a partial exemption on the Property in tax year 2012 for the 0.10 acres of land encompassing the "Cutter Chapel" structure

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<sup>2</sup> The Taxpayer's representatives gained the impression, prior to the hearing, the Town had increased the acreage to 4.35 acres and then applied a partial exemption to 0.10 acres, but the Town's representatives at the hearing testified this was not true.

(an 8' x 10' shed with three glass windows) and the parking area, but not the remaining 4.15 acres of land. The Property's assessment-record card in Municipality Exhibit A shows the exempt value to be \$44,200 (\$43,200 land and \$1,000 'shed') and the non-exempt value of the remaining 4.15 acres of land to be \$44,700. (At the hearing, the Town's Assessing Assistant Cynthia Hasty, acknowledged the inadvertent errors in the wording of the August 10, 2012 letter and testified the Town is processing a nominal abatement due to the fact the tax bill reflected a higher assessment of \$45,100 rather than \$44,700.)

The key issue in this appeal is therefore whether the Taxpayer met its burden of proving the Town's denial of a religious exemption on the remaining 4.15 acres of undeveloped land was erroneous. Based on the evidence presented and the applicable law pertaining to tax exemptions, the board finds the Taxpayer did not meet this burden.

The parties agree qualification for a religious exemption requires compliance with the requirements stated in RSA 72:23, III. To qualify, property must be "owned, used and occupied directly for. . . religious purposes by any regularly recognized and constituted denomination, creed or sec . . . ." There is no dispute the Taxpayer is a church (a recognized religious denomination) and owns the Property (donated by a church member "around 1970").

The Town denied the exemption on the undeveloped 4.15 acres on the Property in tax year 2012 because the Town concluded that land was not being used and occupied directly for a religious purpose. The board finds the evidence presented in this appeal supports this conclusion. The Taxpayer's representatives (Reverend Paul G. LeMire and Mary E. LeMire) testified there are plans to build, at some point in the future, a trail along the "perimeter" of this land with designated stops ("20 stations") for physical and spiritual exercise and contemplation, but in 2012

the 4.15 acres of land was undeveloped and was not being occupied and used for any religious activity (unlike the “Cutter Chapel” structure and the parking lot discussed above).

The Town’s authority to grant a partial tax exemption, when some land is being occupied and used for a religious purpose but other land is not, is well established. See, e.g., Franciscan Fathers v. Pittsfield, 97 N.H. 396, 401-402 (1952) (granting only a partial exemption because remainder of land was not “sufficiently occupied” by a religious order); and Appeal of Emissaries of Divine Light, 140 N.H. 552, 557-58 (1995) (affirming the grant of only a partial exemption). Similarly, in Camp Merrimac, LLC v. Town of Hopkinton, BTLA Docket No. 18289-99EX (May 9, 2002) p. 9, the board found, on the facts presented, that “largely undeveloped woodland” was only “minimally used. . . for religious purposes” and did not qualify for a tax exemption, even though the Camp Merrimac taxpayer, essentially like the Taxpayer in this appeal, had plans to develop in the future “trails. . . for walking and meditation” on the undeveloped woodland.

The Taxpayer further argued the Town was obligated, before acting on the exemption application in 2012, to comply with RSA 72:23-c, II, but did not do so. This statute, however, only requires a municipality to seek information from a taxpayer that is “reasonably required to make determinations of exemption.” The board finds the Town Selectmen could reasonably have concluded based on the multiple meetings attended by the Taxpayer’s representative (reflected in the Selectmen’s meeting minutes and other documents in Municipality Exhibit A) that they already had sufficient information to make a determination for tax year 2012 without seeking additional information from the Taxpayer at that time.

Finally, to the extent the Taxpayer contends the Town should be bound by its prior determination (in 2009) that the Property was entitled to a full tax exemption, the board does not agree. Assessments, and the process of seeking a tax exemption (including the timely filing of the

A-9 form required by RSA 72:23-c, I), are annual events, which is confirmed by the fact the A-9 form must be filed annually. The fact a taxpayer was granted a tax exemption for one or more prior years does not result in automatic entitlement to an exemption in 2012 or future years. Cf. Appeal of City of Nashua, 155 N.H. 443, 445-47 (2007) (church no longer occupied and used directly for religious purposes lost qualification for a tax exemption).

For all of these reasons, the appeal for a full exemption on the Property for tax year 2012 is 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

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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: United Church of Lyndeborough, PO Box 8, Lyndeborough, NH 03082, Taxpayer; Chairman, Board of Selectmen, Town of Lyndeborough, 9 Citizens' Hall Road, Lyndeborough, NH 03082; and Granite Hill Municipal Services, PO Box 1484, Concord, NH 03302, Contracted Assessing Firm.

Date: March 25, 2013

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Anne M. Stelmach, Clerk