New England Baptist Church of Boston, Inc.

v.

Town of Pelham

Docket No.: 27296-14EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "Town's" 2014 denial of the Taxpayer's request for a religious exemption as provided under RSA 72:23, III on Map 16, Lot 12-105, 15 Webster Avenue (the "Property"). For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of demonstrating the Property meets the requirements of the religious exemption statute, RSA 72:23, III, for the year under appeal. See RSA 72:23-m; and Tax 204.05. The board finds the Taxpayer did not carry this burden.

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

(1) the Property, a house with 11 rooms on three acres, was acquired in 2012 with the intent of converting it into a church;

(2) unable to comply with Town requirements to operate the Property as a church or even as a place to help recovering drug and alcohol addicts, the Taxpayer converted the use of the Property into a parsonage;

(3) the Taxpayer is an established church located in Medford, Massachusetts and the Property serves the church's mission because it allows for outreach into New Hampshire and a fundamental belief of the established church is to "birth" and "plant" new churches (as further explained in the Taxpayer's "Hearing Brief," p. 1);

(4) the Property is occupied by Pastor John Barnes and his family and he "is an ordained minister whose primary job is to plant a new church" in New Hampshire (id.);

(5) even if the board finds the Property does not fit the definition of a parsonage, it still qualifies for an RSA 72:23, III religious exemption because it is being used "for the principal benefit of the Taxpayer and its religious functions" (id., p. 4) in a manner consistent with Trinity Baptist Church v. City of Concord, BTLA Docket No. 22564-06EX (April 8, 2008); and

(6) the Town erred in concluding the Property does not satisfy the requirements for a religious exemption in tax year 2014 and the appeal should therefore be granted.

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

(1) the Property, located in the Town, does not qualify as a church parsonage for the Taxpayer, a Massachusetts church which is not even "registered" to operate in the State of New Hampshire;

(2) Pastor Barnes, who occupies the Property with his family, is the pastor of a new church he established (the State Line Baptist Church located in Portsmouth, New Hampshire) and his church has no connection to the Town (see Municipality Exhibit A, Tabs 5-8);

(3) the Taxpayer did not meet its burden of proving the Property is either a parsonage or, alternatively is being "used and occupied directly for religious training or other religious purposes"; and

(4) the appeal should be denied.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayer failed to meet its burden of proving the Town erred when it denied the Property an RSA 72:23, III religious exemption in tax year 2014. The appeal is therefore denied for the following reasons.

RSA 72:23, III provides a tax exemption for:

> 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 previously appealed the Town's denial of a tax year 2013 exemption on the Property, but that appeal was denied. See BTLA Docket No. 27131-13EX (February 14, 2014 Decision) (copy included in Taxpayer Exhibit No. 1). On page 4 of that decision, the board found the Property was not entitled to a religious exemption in tax year 2013 because the occupancy requirement was not satisfied as of the April 1, 2013 assessment date, but this was only one of several reasons why the Town denied the exemption for that tax year. (Id., p. 2.)

There is no dispute Pastor Barnes relocated his family from another town and began occupancy of the Property in September, 2013. In tax year 2014, the Town denied a second application for a religious exemption because the Town concluded the Property did not satisfy other requirements of the religious exemption statute. The board finds the Town did not err in reaching this conclusion and denying the Property a religious exemption in tax year 2014.

First, the Taxpayer has not met its burden of proving the Property qualifies under the statutory category of "church parsonages occupied by their pastors." While Pastor Barnes is designated as an "assistant pastor" and provides some teaching services (at prayer meetings and

bible study sessions on Wednesday nights 'when time permits') at the established church in Medford, Massachusetts, the Taxpayer has acknowledged Pastor Barnes' main duties and "primary" responsibilities are to establish a new "church in Portsmouth, New Hampshire" and he did so "in May, 2014" when "Pastor Barnes and his family started State Line Baptist Church." (See Hearing Brief, p. 1; see also Municipality Exhibit A, Tabs 5-8.) While this new church no doubt receives encouragement and support from the Taxpayer and its members, it is legally independent and not directly affiliated with the Taxpayer. Moreover, the evidence indicates State Line Baptist Church is located and operates in the Portsmouth area for the benefit of individuals who reside or work there, not in the Town approximately 45 miles away, where no church services are held. (Pastor Barnes even acknowledged in his testimony at the hearing that it is his hope to move his residence to the Portsmouth area to be closer to this church and its members.)

Weighing all of the evidence presented, the board finds the Town did not err in concluding the Property did not qualify for a statutory religious exemption as a church parsonage for the Taxpayer. The mere fact Pastor Barnes occupied the Property without paying rent (because housing was part of his financial support from the Taxpayer) is not sufficient to qualify the Property for a tax exemption under New Hampshire law. For a house to qualify as a parsonage, it is reasonable to expect it to be located either adjacent to or near the church seeking the exemption, not, as in this appeal, a very far distance away (approximately 35 miles)

in another state (Massachusetts).[1]

Second, the Taxpayer failed to satisfy its burden of proving the Property qualified for a tax exemption (in the alternative) because it was allegedly "used and occupied directly for religious training or for other religious purposes . . ." There was no evidence that any formal religious training of any type occurred on the Property (notwithstanding the time Pastor Barnes testified to spending at his home on the Property, either alone or with his family, informally studying the Bible and privately preparing "sermons"). Nor does the evidence presented persuade the board the Property was being used and occupied for any other religious purposes sufficient to qualify it for a tax exemption under RSA 72:23, III in tax year 2014. In this respect, the facts presented in this appeal are distinguishable from Trinity Baptist Church v. City of Concord, BTLA Docket No. 22564-06EX (April 8, 2008), a board decision cited by the Taxpayer where sufficient facts were presented to establish one of two church properties qualified for the religious exemption because it was being used for the exclusive and clear purpose of lodging church missionaries and interns from around the world while they received religious training to carry out that church's mission.

More on point is Appeal of Liberty Assembly of God, 163 N.H. 622 (2012). In that decision, the supreme court affirmed the municipality's denial of a religious exemption for a substantial portion (60%) of property owned by a church where the church could not satisfy its

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[1] The various definitions of "parsonage" presented to the board in this appeal includes one from "Corpus Juris Secundum" (quoted in the Hearing Brief, p. 2) to the effect that it is a "ministerial residence used in connection with any place of worship of any denomination," but the evidence presented supports a finding the Property is not being used "in connection with" any "place of worship" in the Town or, for that matter, in Medford, Massachusetts, where the Taxpayer, an established church, is located.
In support of denial, the Town cites a prior board decision, Gospel Messenger Service, Inc. v. Town of Lancaster, BTLA Docket No. 10927-91EX (November 23, 1994), where the board found that living space occupied by a reverend employed by a non-profit corporation "[did] not meet the definition of 'parsonage' for the lack of any congregation, regularly scheduled religious services or church edifice on the [p]roperty, as envisioned by RSA 72:23 III."

burden of showing "occupancy and use" of that portion fulfilled a "directly" religious rather than a secular purpose. Id. at 624 and 628. Here, the board finds the occupancy and use of the Property (by Pastor Barnes and his family as their personal residence) are more secular than religious in nature (since housing is an elemental need for all families regardless of religion) and therefore does not satisfy the quoted statutory requirement.

In deciding this appeal, neither the Town nor the board doubts the sincerity of the Taxpayer's articulated religious beliefs and its desire to "birth" and "plant" more churches sharing those beliefs. In Liberty Assembly, however, the supreme court held the "stated religious beliefs" of a church are "inadequate to determine whether land is being used for a religious purpose" and "a tax exemption is not warranted where the asserted compliance with any of the requirements therefor is no more than slight, negligible or insignificant, indefinite and prospective, or theoretical." Id. at 632 and 634, citing and quoting from Appeal of Emissaries of Divine Light, 140 N.H. 552, 556 (1995), and Appeal of City of Concord, 161 N.H. 344, 351 (2010). These principles also apply to govern the outcome of this appeal.

For all of these reasons, the appeal for a tax year 2014 religious exemption on the Property 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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Michele E. LeBrun, Chair

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Albert F. Shamash, 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: Russell L. Ellis, Esq., Gibbs & Associates Law Firm, LLC, 5700 Gateway Blvd, Suite 400, Mason, OH 45040, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Pelham, 6 Village Green, Pelham, NH 03076-3172; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Date: January 7, 2015

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Anne M. Stelmach, Clerk