**Fleur De Lis Camp**

**v.**

**Town of Fitzwilliam**

**Docket No.: 21564-05EX**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "Town's" denial of the Taxpayer's request for a tax year 2005 RSA 72:23, V charitable exemption on Lots 20/17 and 03/14 (the "Property"). For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence; the Property was entitled to the statutory exemption for the year under appeal. See RSA 72:23-m; and TAX 204.06. The Taxpayer failed to satisfy this burden.

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

(1) the Taxpayer is a nonprofit (voluntary) corporation and has been in existence since 1930, as reflected in its Articles of Agreement (Taxpayer Exhibit No. 2);

(2) Article 2 of the Articles of Agreement provides: "The object for which this corporation is established is to promote the welfare of girls, religiously, educationally, and socially, through the medium of a non-profit-producing church camp for girls";

(3) although originally affiliated with the Episcopal Church, the Taxpayer is not a religious organization and owns, uses and occupies the Property for the purpose of operating a summer camp for girls between the ages of 8 and 15 that is secular in its activities, not religious, and, as noted on the Taxpayer's website, the Property "provides a fun, safe, and nurturing camp experience for girls, relying on enduring traditions to instill lifetime values, integrity, loyalty and service" (Taxpayer Exhibit No. 4);

(4) the Taxpayer does not discriminate on the basis of race, religion or other factors and provides scholarship aid to girls who need financial assistance to attend the camp;

(5) the Taxpayer is quite frugal and careful in its financial affairs and has managed to conduct successful fund raising campaigns to fund repair and improvement of the Property, and this success accounts for the increases in its financial assets noted by the Town and the "net profit" calculated for accounting purposes only, but no portion of the assets or funds generated by the Taxpayer benefit any member; and

(6) the Taxpayer's purpose and activities meet the definition of charitable under RSA 72:23-l in tax year 2005 and the Property is entitled to an RSA 72:23, V tax exemption.

The Town argued the charitable exemption was properly denied because:

(1) the Taxpayer has paid taxes based on the Town's assessment for many years, but in tax year 2005 the Taxpayer applied for an abatement, a payment in lieu of taxes ("PILOT") and a charitable exemption apparently because its taxes increased sharply due to a Town-wide revaluation in that year;

(2) the Town denied the abatement, which the Taxpayer has not appealed, and denied the exemption application, making it unnecessary to consider the PILOT request;

(3) the Town is familiar with the Taxpayer's activities in operating the girls summer camp on the Property and, while these activities may be "laudable," they do not qualify the Property for a charitable exemption;

(4) the purposes and activities of the Taxpayer are indistinguishable from summer camps who are not exempt from taxation, even if operated by nonprofit entities;

(5) the Taxpayer has raised tuition substantially over the years, generates a "net profit," has been accumulating assets in its money market and mutual fund accounts and provides only a modest amount of financial aid, all of which raise questions as to its charitable nature and entitlement to an exemption; and

(6) the Taxpayer failed to meet its burden of proof.

**Board's Rulings**

Based on the evidence presented and the applicable law, the board finds the Taxpayer failed to sustain its burden of proving the Town erred in denying it a charitable exemption in tax year 2005 and the appeal is therefore denied. The board's findings and rulings are detailed below. (See also Addendum A, which contains the board's specific responses to the parties' requests for findings of fact and rulings of law.)

The Taxpayer operates a residential summer camp for girls between the ages of 8 and 15. The camp's history dates back to at least 1930. Although having roots in the Episcopal Church, the summer camp is now secular. The Taxpayer seeks a charitable exemption for the Property based on RSA 72:23, V because it contends it meets the statutory definition of "charitable" contained in RSA 72:23-*l*. The parties appear to agree that simply being a nonprofit is not enough under this statutory definition: "The fact that an organization's activities are not conducted for profit shall not in itself be sufficient to render the organization 'charitable' . . . [and this definition] is not intended to abrogate the meaning of 'charitable' under the common law of New Hampshire." Id.

The Supreme Court has recently summarized the requirements reflected in these statutes in terms of a "four-factor test" which must be met in order to qualify for a charitable tax exemption. See ElderTrust of

Florida, Inc. v. Town of Epsom, __ N.H. __ (slip. op., January 18, 2007), a case both parties cite and rely upon. As the Supreme Court stated:

> We hold that the plain language of RSA 72:23, V and RSA 72:23-*l* requires the institution to satisfy each of the following four factors: namely, whether: (1) the institution or organization was established and is administered for a charitable purpose; (2) an obligation exists to perform the organization's stated purpose to the public rather than simply to members of the organization; (3) the land, in addition to being owned by the organization, is occupied by it and used directly for the stated charitable purposes; and (4) any of the organization's income or profits are used for any purpose other than the purpose for which the organization was established. . . . Although these four factors are anchored in the plain language of the statutes, they also have firm moorings in our case law. (Citations omitted.)

Id. at p. 4-5. The board has relatively little doubt that the Taxpayer occupies and uses the Property for its purpose and that its income is used for that purpose, the third and fourth factors noted in ElderTrust. The problem in this exemption appeal however, centers on the first and second factors (charitable purpose and obligation).

A. Charitable Purpose

Notwithstanding the Taxpayer's arguments to the contrary, the board finds the Taxpayer failed to prove its operation of a summer camp fulfills a charitable purpose which is legally sufficient to qualify for an exemption. In the words of ElderTrust, the Taxpayer failed to prove it "was established and is administered for a charitable purpose." Id.

The camp information brochure notes: "Fleur de Lis Camp is for the girl who is looking for summer fun, lasting friendships, and confidence in her own ability." (Taxpayer Exhibit No. 9.) The Town argued this camp cannot be meaningfully distinguished from either profitable (commercial) camps or nonprofit camps who do not receive a tax exemption. As reflected in Taxpayer Exhibit Nos. 5 and 9, the activities on the Property, like most summer camps, are predominantly recreational in nature (swimming, sailing, boating,

canoeing, kayaking, surfing, windsurfing, diving, waterskiing, lifesaving, tennis, riflery, archery, field sports, a "ropes course," horseback riding, arts and crafts, and theatre arts). While the "Mission Statement" on the Taxpayer's website (Taxpayer Exhibit No. 4) does state "Fleur des Lis provides a fun, safe and nurturing camp experience for girls, relying on enduring traditions to instill lifetime values of integrity, loyalty and service," this recitation, in and of itself, is not sufficient to establish a charitable purpose, since for profit and nonprofit camps who are not exempt, also market and promote themselves to parents and the public with claims of similar values fostered and developed by the summer camp experience.

In this respect, a distinction has been drawn in the charitable exemption case law between Boy Scout and Girl Scout camps, on the one hand, and other types of summer camps, even when operated as non-profit institutions. In Greater Lowell Girl Scout Council, Inc. v. Pelham, 100 N.H. 24, 26 (1955), decided under a prior statute, the Supreme Court upheld an exemption granted by the trial court, noting:

> As a general proposition non-profit institutions, societies and organizations promoting Boy Scout and Girl Scout programs and activities are charitable in nature and purpose. *Tillinghast v. Boy Scouts, 47 R.I. 406; Tharpe v. Central Georgia Council, B. S. A., 185 Ga. 810;* . . . They are considered charities since their primary objective is training young people for citizenship. 3 Scott, Trusts, *s.* 370.3. See *Charter Oak Council, B. S. A. v. New Hartford, 121 Conn. 466.* This conclusion is supported by the Restatement, Trusts, *s.* 370, *comment* f: 'A trust for the purpose of training boys or girls in citizenship, character and leadership is charitable. Thus, a trust to promote the purposes of such organizations as that of the Boy Scouts or Girl Scouts is charitable.' While the litigated cases are not numerous, they are quite uniform in holding that Boy Scout or Girl Scout organizations are charitable and therefore entitled to exemption from taxation as charities if they meet the other necessary tests prescribed by the local tax statute. Anno. *116 A. L. R. 378.*

Boy Scout and Girl Scout programs promote "citizenship, character and leadership" through carefully articulated, structured and universally recognized programs of community and public service; these values are promoted and reinforced through established camping programs suffused with these values ("since their

primary objective is training young people for citizenship"). In comparison, the summer camp offered by the Taxpayer may be fun, socially enriching and provide a "home" atmosphere for some or all of the girls. The evidence, however, failed to demonstrate how it fulfills a charitable purpose which is equivalent or analogous to the paradigm or standard set by a Boy Scout or Girl Scout camp.

In John and Anna Newton Porter Foundation v. Town of Alton, BTLA Docket No. 19139-02EX (January 16, 2004), the board denied a charitable exemption to a non-profit boys summer camp on similar grounds. In the appeal, the board noted "the ideals mentioned in the Taxpayer's documents ('character, leadership, resourcefulness and dependability') are very general in nature and can be said to be an inherent part of most, if not all, camping programs." Id. at p. 7 (See also fn. 1 infra). The same can be said of the Taxpayer's stated objectives posted on its website.

Although state statutes pertaining to charitable exemptions vary to some degree, a number of states have denied exemptions to summer camps comparable to the type involved here. See, e.g., Camping and Education Foundation v. State, 164 N.W.2d 369, 371, 373 (Minn. 1969) (exemption denied to nonprofit operating "supervised camp for boys to improve their health, develop good character, and provide them with outdoor recreation," even though "good purposes" of corporation were not in question); Circle Pines Center v. Orangeville Township, 302 N.W.2d 917 (Mich. 1980) (exemption denied to nonprofit organization operating summer camp programs); cf. Matanuska-Sustina Borough v. King's Lake Camp, 439 P.2d 441, 446 (Ala. 1968) (affirming trial court's finding that operation of summer camp entitled to exemption); all cited In the Porter Foundation decision. While cases from other jurisdictions may not be uniform, the board finds the better reasoned weight of authority supports the denial of a charitable exemption in these circumstances.

Jane Lawson, the Taxpayer's President (since 2004) and former Treasurer, (from 1984 to 2004) testified at some length regarding the summer camp and its activities and finances. On cross-examination, the following questions were asked of Ms. Lawson by the Town's attorney and answered:

> Q. . . . And if we look at the activities, would I be correct in understanding that these activities that your camp offers are typical of the kind of activities that a girl could experience at almost any New Hampshire camp. Is that right?
>
> A. I would expect so.
>
> Q. Whether profit or not for profit?
>
> A. I would expect so.
>
> Q. And there aren't any activities here that are peculiarly related to charitable activity?
>
> A. No.
>
> Q. In other words, you don't have the girls doing things for the community, volunteering in the community to put on a food drive or solicit donations for some particular chartable organization, do you?
>
> A. No, we do not.

(February 6, 2007 Hearing Transcript [submitted by the Taxpayer], p. 49.) On re-direct by the Taxpayer's own attorney, Ms. Lawson responded to the same issue as follows:

> Q. Last question, Miss Lawson. You were asked if Fleur de Lis, if other camps offer the same sort of programs as Fleur de Lis. Can you speak to what makes Fleur de Lis special from other summer camps offering the same sort of activities?
>
> A. Certainly we are a traditional girls summer camp. . . . And one mother . . . said that these girls look really happy. . . . And I think that is what we are about. We are about a community. We are about a community of girls, young women, and helping them to learn to be a member of a community. . . . It is a place where girls can find themselves, be confident in themselves, and to grow and become independent, confident young women.
>
> Id. at pp. 78 -79.

The board agrees with the Town's drawing of a distinction between otherwise "laudable" purposes of providing a beneficial and rewarding summer camp experience to girls, id. at p. 112, as well as being a good municipal 'citizen' by making some facilities available for Town activities (such as fire department evacuation

drills, social events and awards ceremonies and possible, occasional public use of the playing field on the Property, id. at p. 28), on the one hand, and satisfying the charitable purpose factor necessary to qualify for a tax exemption.

Because there is no "bright line" test, each exemption case must, in the final analysis, stand or fall on its own specific facts. Cf. Wolfeboro Camp School v. Town of Wolfeboro, 138 N.H. 496, 499 (1994) (educational exemption partially granted), citing New Canaan Academy v. Town of Canaan, 122 N.H. 134, 137 (1982) (educational exemption denied); see also Girl Scouts of Swiftwater Council v. Town of Antrim, BTLA Docket No. 21006-04EX (November 2, 2006) (full charitable exemption granted to Girl Scout summer camp on property with extensive acreage); and Camp Merrimac, LLC v. Town of Hopkinton, BTLA Docket No. 18289-99EX (April 5, 2002) (religious exemption granted for buildings and land at a summer camp devoted to the Greek Orthodox religion except for "additional undeveloped woodland" minimally used for this purpose).

The board finds, on balance, the "some service of public good or welfare" provision in the RSA 72:23-*l* statutory definition of charitable requires more than simply providing a fun summer camp experience, of acknowledged quality and success, on a 'first come, first serve[d]' basis and without discrimination, for girls who register for it. See Hearing Transcript, p. 29. This statutory provision is not "broad enough to encompass activity which may only have an incidental rather than a central charitable purpose."[1]

[1] John and Anna Newton Porter Foundation, BTLA Docket No. 19139-02EX, February 27, 2004 Order [denying motion for rehearing and reconsideration] at p. 1: "While the experience of attending a summer camp could improve a boy's [or girl's] character and leadership skills, for example, this possibility is true of most, if not all, summer camps, whether they are conducted by a commercial or a nonprofit entity."

The Taxpayer has been financially successful, both in meeting its year-to-year operating expense obligations and in increasing its financial endowment through fund raising activities aimed at improving and renovating the facilities, including the recent building of a new dining hall. (Contrary to the Town's arguments, however, the board does not find this success necessarily disqualifies the Taxpayer for an exemption; nor is it a critical factor in determining exemption eligibility because "while fund raising may not be 'inherently charitable', it is the life's blood of most charitable organizations". Cf. Appeals of Kiwanis Club of Hudson, Inc. 140 N.H. 92, 94 (1995)).

In support of its arguments for a charitable exemption, the Taxpayer indicated some scholarship aid is provided for girls who may not be able to pay the full fees for attending the summer camp.[2] The evidence reflects, however, the amount provided is relatively modest: in 2005, for example, total financial aid ($43,320) amounted to substantially less than one percent of the Taxpayer's total receipts ($583,309). See Taxpayer Exhibit Nos. 6 and 7. The Taxpayer does not advertise its scholarship policy and makes its decisions to provide assistance on an "ad hoc" basis. See Hearing Transcript, p. 85. In addition, the decisions are left entirely with the camp director, with no formal guidelines or input from the Taxpayer's board. Id., pp. 85-86. The evidence further reflects a majority of the limited number of girls who received financial assistance (9 out of 17 girls in 2005) had a family member (such as a parent or grandparent) employed by the camp, id., pp. 67-68, indicating that at least part of the motivation for the aid may have been employee recruitment/retention and/or providing an indirect form of compensation. In light of these facts, the relatively modest amount of scholarship aid provided by the Taxpayer is not persuasive on the question of whether it was established and is administered for a charitable purpose.

[2] See Municipality Exhibit No. E: the "tuition" charges for attending the summer camp in 2005 were $1,575 for two weeks, $2,450 for four weeks and $4,300 for eight weeks; See also Town's Request for Findings of Fact No. 3.

B. Obligation

Even if the Taxpayer could somehow, contrary to the board's findings, satisfy the first factor, substantial doubt also exists as to whether the Taxpayer is "obligated by its charter or otherwise" to fulfill a charitable purpose, another requirement contained in RSA 72:23-*l*. To begin with, the Taxpayer acknowledged it was no longer a "church camp," even though this is the purpose spelled out in Article 2 of its charter (the Articles of Agreement, Taxpayer Exhibit No. 2), which has not been amended. While this article further provides the Taxpayer's "object" is "to promote the welfare of girls, religiously, educationally, and socially," it is doubtful whether these goals amount to an enforceable charitable obligation if, for example, the Taxpayer chose to operate the camp entirely for 'fun,' with no arguable education or welfare component to its programs. Cf. Taxpayer Exhibit No. 3 (the first five pages of the Taxpayer's "Amended By-Laws"). The evidence indicates the camp has a loyal alumni following, which provides considerable financial support and is desirous of keeping things unchanged at the camp, see Hearing Transcript, pp. 14-15, but the board finds this does not amount to an enforceable obligation to fulfill a charitable purpose.

The Supreme Court has recently reaffirmed the obligation requirement must apply to "the public rather than simply to members of the organization." ElderTrust (quoted above at p. 4); see also Appeal of City of Franklin, 137 N.H. 622, 625 (1993) ("in order to qualify as a charitable institution, an obligation must exist to perform the organization's stated purpose to the public, rather than simply to the members of the organization.")

In Society of Cincinnati v. Exeter, 92 N.H. 348, 352-353 (1943), the court found the option to perform patriotic services was solely at the uncontrolled discretion of the society and was not enforceable by any public

entity and denied charitable tax exemption on this basis. In Nature Conservancy v. Nelson, 107 N.H. 316, 317 (1966), the court stated,

> The public service which plaintiff is to render must be obligatory so as to enable the Attorney General or other public officer to enforce this right against it if the service is not performed. It follows that if the public benefit is limited to that which the plaintiff sees fit to provide at its option or in its uncontrolled discretion, the requirements of RSA 72:23, V are not satisfied.

It is quite unclear and uncertain, to say the least, how, if at all, the Attorney General or another officer acting on behalf of the public could enforce an obligation to fulfill a charitable purpose on the Taxpayer based on its present charter (Articles of Agreement), Amended By-Laws or manner of operation.

C. Conclusion

For all of these reasons, the board finds the Taxpayer failed to meet its burden of proving the Property, operated as a "traditional girl's summer camp," was entitled to an RSA 72:23, V charitable tax exemption for tax year 2005. The appeal is therefore 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

## Addendum A

Responses to Requests for Findings of Fact and Rulings of Law

Docket No. 21564-05EX

The "Requests" received from the Taxpayer and the Town 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.

The board notes that TAX 201.36 (c) limits each party to 25 requests, unless prior leave to file additional requests is granted. The Taxpayer exceeded this number without obtaining prior leave. Therefore, the board will only respond to the first 25 of its requests here, but has made all relevant findings in the Decision, even if not included in the requests.

Taxpayer's Requests for Findings of Fact and Rulings of Law

1. Fleur de Lis Camp (the "Camp") appeals the Town of Fitzwilliam Board of Selectmen's decision to deny its request for tax exempt status, for failing to meet the definition of "charitable" under New Hampshire RSA 72:23-l.

**Granted.**

2. The Camp is located at 120 Howeville Road, Fitzwilliam, NH 03447

**Granted.**

3. The Camp is a non-profit corporation, properly organized under the laws of New Hampshire, as evidenced by the Articles of Agreement on file with the State. The Camp has Section 501 (c) (3) status under the Internal Revenue Code.

**Granted.**

4. The stated purpose of the Camp, located in Article 1 of its Articles of Agreement, is to "promote the welfare of girls, religiously, educationally, and socially, through the medium of a non-profit-producing church camp for girls."

**Granted, except to note this provision is located in Article 2, not Article 1.**

5. The Camp's Mission Statement is to provide "a fun, safe and nurturing camp experience for girls, relying on enduring traditions to instill lifetime values of integrity, loyalty and service," as expressed on its website, www.fleurdeliscamp.org.

**Granted.**

6. Consistent with its stated purpose and mission, the Camp offers summer sessions of various lengths to girls ranging in age from 8-15, where campers may select from a wide variety of activities, including land and water sports and creative arts. Campers also engage in frequent team-building activities, all designed to encourage the spiritual, physical, intellectual and social development of the campers.

**Neither Granted nor Denied.**

7. The girls who attend the Camp are residents of New Hampshire as well as other states, and the benefits of participation are not limited to officers or members of the corporation; any girl within the age restrictions is free to enroll in the Camp.

**Granted.**

8. Under N.H. RSA § 72:23-l, "charitable organization" means

> 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.

Thus, the statute requires an organization to meet a three-prong test to be considered charitable. First, it must have a **purpose** to perform "some service of public good or welfare advancing the spiritual, physical,

intellectual, social or economic well-being of the general public." Second, it must be **obligated** to perform those services. Third, it must **serve the general public** or a "substantial and indefinite segment of the general public that includes residents of the state of New Hampshire." If each of these elements is met, an organization satisfies the definition of "charitable."

**Neither Granted nor Denied.**

**Purpose**

9. In Housing Partnership v. Town of Rollinsford, 141 N.H. 239, 240-241 (1996), the Town appealed the Superior Court's order that a low-income housing complex warranted charitable status, arguing, *inter alia*, that the organization's stated purpose was too indefinite to satisfy the statute. The Court upheld the charitable status after determining that the organization's purposes were "sufficiently objective so as to be enforceable," based on the language in its articles of incorporation and by-laws. Id. at 241 (where the stated purpose was to "facilitate the development of and preservation of decent, safe, and affordable housing for low and moderate income persons").

**Neither Granted nor Denied.**

10. The Camp's stated purpose, to promote the welfare of girls, religiously, educationally, and socially, is similar to the charitable purpose in Housing Partnership. Both carve out a broad segment of the general public and implement programs to benefit those groups.

**Neither Granted nor Denied.**

11. Other activities of the Camp that reflect upon it having a charitable purpose include its mission statement and the Camp's consistent fulfillment of its purposes stated in its Articles of Agreement and mission statement.

**Neither Granted nor Denied.**

12. Other activities of the Camp that reflect upon it having a charitable purpose include that the Camp operates its financial affairs consistent with its charitable purposes. These include its budget process, treatment of salaries, charitable contributions from donors, provision of an endowment fund, and provision of financial assistance and scholarships to campers.

**Neither Granted nor Denied.**

13. The Camp performs no for-profit style activities and voluntarily offers access to the Camp to the Town of Fitzwilliam.

**Denied.**

14. The Camp satisfies the first prong of the definition of "charitable."

**Denied.**

**Obligation**

15. In Appeal of the City of Franklin, the City argued the nursing home at issue did not qualify for tax-exempt status because its services were not obligatory, as required by the statute. 137 N.H. 622, 622 (1993). The Court explained for an organization to qualify as "charitable," it must have an obligation to perform its stated purpose for the public and not merely for members of the organization. Id. at 625 (citing Society of Cincinnati v. Exeter, 92 N.H. 348, 352 (1943)). Furthermore, if the public benefit is limited to whatever the organization "sees fit to provide at its option or in its uncontrolled discretion," rather than being an enforceable obligation, the organization will not satisfy the definition of "charitable." Id. A narrowly focused charitable purpose in its articles of agreement "places a significant and enforceable limitation on …operation" of a non-profit for the purposes of determining that the public service is "obligatory". ElderTrust of Florida, Inc. v. Town of Epsom __N.H.__, January 18, 2007, quoting Franklin, p. 6. Because the ElderTrust facility had, since its incorporation and consistent with its charter, dedicated itself to the sole purpose of caring for the elderly, the Court determined that the facility had established its obligation to provide those services and was properly classified as "charitable" under the statute. Id. at 626.

**Neither Granted nor Denied.**

16. The Camp's purpose of promoting the welfare of girls, religiously, educationally, and socially, is likewise obligatory within the meaning of the statute and as described in City of Franklin, because Article 1 of the Articles of Agreement is narrowly focused on the public service to be provided, which demonstrates that the Camp is bound to perform such services for the public good. Furthermore, there are no policies or practices that give the Camp any such discretion and the chairperson believes the Camp is fully obligated to perform those services as it consistently has since its incorporation in 1930.

**Denied.**

17. The Court in ElderTrust of Florida, Inc. v. Town of Epsom __N.H.__, January 18, 2007 stated, "'An organization does not necessarily have to serve the poor or the needy in order to qualify for the charitable exemption.'… We find this reasoning persuasive and thus reject the Town's argument that ElderTrust's articles of incorporation could not create an enforceable charitable obligation unless they specified a particular income level for residents of or applicants to the facilities."

**Granted.**

18. The Camp satisfies prong two of the definition of "charitable."

**Neither granted nor denied.**

**Benefits the Public**

19. The Court discussed the final element of the "charitable organization" definition in Society of Cincinnati v. Exeter, where it held an organization whose benefits are confined to its members is not "charitable" under the statute. 92 N.H. 348, 352 (1943). In Society of Cincinnati, the organization's purpose was generally to foster and maintain patriotism in the public mind; however, the Court could find nothing in its charter obligating the organization to focus its services on anyone other than its own members. Id. at 352-353. It was the members' responsibility to determine whether and to what extent those services and benefits would be conferred on the public at all. Id. at 353.

Furthermore, membership opportunity was not offered to the public, but was instead limited to "accident of ancestry," based familial military ties. Id. The Court determined that this limitation did not qualify for charitable status, noting that while the "indefinite beneficiaries of a public charity may be within a limited class or group," a segment of the public "so segregated and so specialized that the benefits to its members are essentially private in nature" will not meet the third prong of the test. Id. at 356. The members were actually a private group, constituting "no defined section of the public," which does not satisfy the third prong of the test. Id. at 356.

**Neither Granted nor Denied.**

20. The Court also examined the "benefits to the public" prong in East Coast Conference of the Evangelical Church of America, Inc. v. Town of Swanzey, where the plaintiff Church appealed the Superior Court's ruling that certain sections of its property did not qualify for the charitable organization exemption. 146 N.H. 658, 659 (2001). There, the Court held because the Church did not offer use of its property and facilities to "an indefinite number of the public," the property was not tax exempt. Id. at 662. The Court reasoned that for an organization to be considered charitable, it must prove "the general public, or a substantial portion of it, [are] the beneficiaries of [its] uses." Id. While the entire public need not be able to receive the organization's benefits, a significant number of the public should for the charitable organization tax exemption to apply. Id.

**Neither Granted nor Denied.**

21. The Church failed to satisfy its burden of proving this element of the "charitable organization" definition in RSA § 72:23-l because its facilities and programs were directed at a specific religion, and the benefits were not offered to a broad enough segment of the public.

**Neither Granted nor Denied.**

22. To meet the benefits test "the general public, or a substantial portion of it, [are] the beneficiaries of [its] use." Nature Conservancy v. Nelson, 107 N.H. 316, 319.

**Granted.**

23. "The test of the public character of a charitable institution is not that all of the public is admitted to its benefits, but that an indefinite number of the public are so admitted, that its benefits are not restricted to its corporate members." Sisters of Mercy v. Hooksett, 93 N.H. 301.

**Granted.**

24. In contrast to both Society of Cincinnati and East Coast Conference and consistent with Nature Conservancy and Sisters of Mercy, the Camp does not restrict its benefits to members of a particular group, but instead offers its programs and facilities to all girls between the ages of 8 and 15, regardless of characteristics such as race, religion, or nationality. There are no limitations on which girls within this broad group are eligible to receive the benefits of the camp.

**Granted.**

25. Girls between the ages of 8 and 15 constitute a substantial and clearly defined section of the public, as required by Society of Cincinnati and East Coast Conference. Therefore, the Camp satisfies the third and final prong of the analysis.

**Neither granted nor denied.**

Town's Requests for Findings of Fact

1. Petitioner owns and operates a summer camp for girls, ages 8-15.

**Granted.**

2. Petitioner operates the camp for eight weeks each year during June, July and August.

**Granted.**

3. In 2005, Petitioner's registration rates were: two weeks - $1,575; four weeks - $2,450; and eight weeks - $4,300.

a. The two week rate represents a 16.7% increase over the two week rate in 2002.
b. The four week rate represents a 16.9% increase over the four week rate in 2002.
c. The eight week rate represents a 17.8% increase over the eight week rate in 2002.

**Granted.**

4. In 2005, ten percent (10%) of the campers (18 of 185 campers) were residents of New Hampshire. The campers from New Hampshire in 2002-2004 and 2006 follow: 2002 – 9% (20 of 223 campers); 2003 – 9% (18 of 199 campers); 2004 – 10% (18 of 176 campers); and 2006 – 7% (12 of 172 campers).

**Neither Granted nor Denied.**

5. In 2005, Petitioner had a net profit of $67,636. Petitioner's net profit for 2002 – 2004 follows: 2002 – $195,469; 2003 - $140,016; and 2004 - $65,229.

**Granted.**

6. As of December 31, 2005, Petitioner held money market funds totaling $564,864. That represented a 59% increase in money market funds over the money market funds Petitioner held as of December 31, 2002.

**Neither Granted nor Denied.**

7. As of December 31, 2005, Petitioner held mutual funds with a total cost basis of $295,237. That represented an increase of 16% in cost basis of the mutual funds Petitioner held as of December 31, 2002.

**Neither Granted nor Denied.**

8. A portion of Petitioner's net profit during the period 2002 – 2005, which totaled $468,350, was used to increase Petitioner's money market funds and mutual fund holdings.

**Neither Granted nor Denied.**

9. In 2005 Petitioner gave financial aid to seventeen campers, totaling $43,320.
   a. Of the seventeen campers, two were from New Hampshire.
   b. Of the seventeen campers, nine were sisters of people employed by Petitioner in 2005.

**Denied.**

10. Petitioner's daily schedule and activities for campers in 2005 are set forth in Exhibits Q and R.

**Neither Granted nor Denied.**

11. The town of Fitzwilliams underwent a town-wide reassessment in 2005, with the result that the assessed value of Petitioner's summer camp property increased from $1,272,900 in 2004 to $2,326,900 in 2005.

**Granted.**

12. Petitioner's property taxes on its summer camp property increased from $42,514.86 in 2004 to $53, 053.32 in 2005.

**Granted.**

13. Prior to 2005, and dating back to at least 1990, Petitioner paid the real estate taxes assessed on its summer camp property.

**Granted.**

Town's Requests for Rulings of Law

1. To qualify for a charitable tax exemption, Petitioner must prove it complies with the four-factor test set forth in *ElderTrust of Florida, Inc. v. Town of Epsom,* 2007 WL 108936 (January 18, 2007):

> (1) the institution or organization was established and is administered for a charitable purpose; (2) an obligation exists to perform the organization's stated purpose to the public rather than simply to members of the organization; (3) the land, in addition to being owned by the organization, is occupied by it and used directly for the stated charitable purposes; and (4) any of the organization's income or profits are used for any purpose other than the purpose for which the organization was established.

*Id.* at 4.

**Granted.**

2. To comply with the first factor, Petitioner must prove it is both "established and administered for charitable purposes." *ElderTrust* at 4.

**Granted.**

3. To comply with the second factor, Petitioner must prove it is operated exclusively for charitable purposes. *ElderTrust* at 6 ("By the express language of its articles of incorporation, ElderTrust was required to be 'operated[] exclusively for public charitable purposes' … In this context, the use of the word "exclusively" places a significant and enforceable limitation on ElderTrust's operation").

**Neither Granted nor Denied.**

4. To comply with the third factor, Petitioner must prove that (i) "the charitable purpose identified under the first factor is being carried out on the particular parcel of property for which exemption is being sought," (ii) "the occupancy of the property must be reasonably necessary for the charitable organization to carry out its mission," and (iii) "the use is [not] slight, negligible or insignificant, or not in the performance of the public purpose." *ElderTrust* at 7; *cf. Wolfeboro Camp School, Inc. v. Town of Wolfeboro*, 138 N.H. 496, 501 (1994)(no exemption for "4.4 acres of vacant, unimproved land designated by the camp school as the future site of faculty housing").

**Granted.**

5. To comply with the fourth factor, Petitioner must prove that (i) its "income or profits are [not] used for any purpose other than the purpose for which the organization was established," and (ii) it "offers … [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.'" *ElderTrust* at 10.

**Granted.**

6. None of Petitioner's daily activities for campers is inherently charitable in nature. *See* RSA 72:23-*l.*

**Neither Granted nor Denied.**

7. A portion of Petitioner's net profits in 2005, as well as during the period 2001-2004, was used to increase the Petitioner's money market fund and mutual fund holdings.

**Neither granted nor denied.**

8. Petitioner does not meet the definition of a charitable organization set forth in RSA 72:23-***l.***

**Granted.**

9. Petitioner is not entitled to a charitable tax exemption under RSA 72:23,V.

**Granted.**

10. If Petitioner is a charitable organization as defined in RSA 72:23-*l*, it would be entitled to a tax exemption on its residential properties only to the extent such properties are "used and occupied directly for" camp purposes. *St. Paul's School v. City of Concord,* 117 N.H. 243, 253-254 (1977) (Rectory, which headmaster used as living quarters, used for both school and non-school purposes and entitled to partial tax exemption in proportion to its actual usage).

**Neither Granted nor Denied.**

11. If Petitioner is a charitable organization as defined in RSA 72:23-*l*, it would be entitled to a tax exemption for only that portion of its land used and occupied directly for camp purposes or that is "'appertaining' to 'buildings and structures … owned, used and occupied'" for camp purposes. *St. Paul School,* 117 N.H. at 258.

**Neither Granted nor Denied.**

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: William J. Donovan, Esq., Sheehan, Phinney and Bass, 1000 Elm St., Manchester, NH 03101, Taxpayer Representative; James Morris, Esq., Orr and Reno, P.A., 1 Eagle Square, PO Box 3550, Concord, NH 03302, Municipality Representative; and Chairman, Board of Selectmen, PO Box 725, Fitzwilliam, NH 03447.

Date: April 4, 2007

_____
Anne M. Stelmach, Clerk