

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

In the Matter of the Application of

LEGION OF CHRIST, INCORPORATED,

Petitioner,

-against -

THE TOWN OF MOUNT PLEASANT, a Municipal Corporation, its Assessor and Board of Review,

Respondent.

- and -

THE MOUNT PLEASANT CENTRAL SCHOOL DISTRICT,

Intervenor-Respondent.

For a Review under Article 7 of the RPTL of the State of New York of the 2004 assessment of certain real property situated in Respondent Municipal Corporation, located in the County of Westchester and State of New York.

-----X

LaCAVA, J.

The following papers numbered 1 to 7 were considered in connection with this motion by petitioners for an Order granting partial summary judgment on their petition seeking renewal of a religious exemption pursuant to RPTL §§ 420-a (1) (a) and 420-a (3):

DECISION/ORDER

Index No:
16648/04

Motion Date:
4/25/07

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION/AFFIRMATION/AFFIDAVIT	1
EXHIBITS	2
MEMORANDUM OF LAW	3
AFFIDAVIT/EXHIBIT	4
AFFIDAVIT/EXHIBITS	5
MEMORANDUM OF LAW	6
REPLY AFFIRMATION	7

In this tax certiorari action, petitioner (Legion) seeks an Order granting partial summary judgment on its petition seeking to challenge the failure of respondent Town of Mt. Pleasant (the Town) to renew the Legion's prior religious use exemption. In December 1996, the Legion purchased two parcels of land from IBM Corporation. The parcel at issue herein (the Vacant Parcel) was unimproved and consisted of 168 acres of heavily wooded land. (A second parcel [the Conference Center Parcel] is not a subject of this proceeding.) The Vacant Parcel is designated on the Town tax map as Section 112.16, Block 1, Lot 1.

As a recognized Order of the Roman Catholic Church, incorporated under Section 402 of the Not-For-Profit Corporation Law, the Legion qualifies as an exempt organization under RPTL § 420-a. Accordingly, from May 1997 through May 2003 the Legion filed tax exemption applications pursuant to RPTL § 420-a (3); however, these applications were denied annually by Respondent's Assessor, and the Board of Assessment Review. The applications premised the parcel's exemption status on a site plan which had been "in good faith contemplated" to utilize the property for outdoor religious activities. Respondents' premised their denials on the absence of a special use permit which, they asserted, was required to develop the property.

In a previous Article Seven litigation challenging these determinations, the Court of Appeals held that determination of good faith is necessarily fact-specific, and that each taxable year is distinct and separate for RPTL § 420-a (3) purposes. As years pass, they noted, a taxpayer might be required to show a concrete act or acts towards improving the property for tax-exempt purposes within the reasonably foreseeable future. However, while obtaining a special use permit would be evidence of "good faith contemplation", it was not a prerequisite to tax exemption eligibility. See *Legion of Christ, Inc. v. Town of Mount Pleasant*, 1 N.Y.3d 406 (2004-*Legion I*). The Court thus remanded to the Appellate Division to determine whether the Legion had taken appropriate steps toward the completion of the religious use plan. On remand, the Second Department found that the Legion had taken such steps, and that it was thus entitled to an exemption for tax

years 1998 through 2001. *Legion of Christ, Inc. v. Town of Mount Pleasant*, 10 A.D.3d 609 (2nd Dept. 2004)¹.

In May 2003, the Legion had filed applications for a special permit, site plan approval, and a wetlands permit with the Town, to establish Westchester University, a proposed four-year undergraduate college, on the parcel. Their subsequent tax exemption application for the 2004 tax year premised eligibility upon either actual use of the parcel for outdoor religious activities under RPTL § 420-a (1) (a), or a good faith plan to establish Westchester University pursuant to RPTL §420-a (3). The Legion's application was granted for the 2004 tax year; renewal of the exemption for tax year 2005 was, however, denied.

The Legion's instant motion for partial summary judgment involves an Article Seven proceeding challenging this denial of the tax exemption renewal application for the Vacant Parcel for the 2005 tax year. Notably, while the renewal application, filed in May 2004 for the 2005 tax year, premised exemption eligibility upon the exact same criteria as the 2004 approved application, namely both current actual religious use, and the Westchester University plan which was, they asserted, in good faith contemplated, it was apparently denied solely because, according to Respondent's Assessor, he believed that the Legion did not pursue the proposed Westchester University plan in a diligent manner, i.e. they failed to meet the requisite "good faith standard." The Assessor's June 3, 2004 denial letter lists only four bases for his determination: First, no scoping session had taken place to establish the nature of a Draft Environmental Impact Statement ("DEIS"); second, no DEIS or Final Environmental Impact Statement had been completed; third, only one Planning Board meeting had been attended since July 21, 2003, which (May 17, 2004) visit was procedural in nature and discussed no substantive issues; and fourth, the Legion had not yet applied for a Charter from the New York State Department of Education to open and operate a college or university. The Assessor's letter did not discuss the presence (or absence) of actual use of the parcel for outdoor religious activities, nor did he premise denial of the application upon such grounds.

¹Besides the current petition, several related actions are currently pending. First, the Legion has filed Article Seven proceedings concerning the Vacant Parcel for tax years 2002 and 2003. In addition, valuation proceedings for both parcels are pending for tax years 1998 through 2003. Finally, in 1997 the Town commenced a declaratory judgment action against the Legion for zoning noncompliance. In June 2006, the Court of Appeals found that the Legion's use of the Conference Center Parcel was compliant with zoning regulations; however, but the Town's petition for a writ of certiorari to the United States Supreme Court is currently under review.

The Legion maintains that they diligently pursued the Westchester University plan and have met the good faith standard for the 2005 tax year. During the July 21, 2003 meeting, for example, the Legion requested that the Board commence the formal statutory environmental review process mandated by Article 8 of the Environmental Conservation Law and the State Environmental Quality Review Act, codified in 6 N.Y.C.R.R. Part 617 ("SEQRA"). The planning board directed the Legion to first respond to a detailed memorandum prepared by their planning consultant, Matthew D. Rudikoff Associates ("MDRA"), stating that this response was necessary before commencing the SEQRA review. On March 24, 2004 the Legion submitted their reply to the Town which consisted of an alternative master plan and a written response to the MDRA Memorandum. Although the planning board commenced SEQRA review following the petitioner's appearance at the May 17, 2004 meeting, the eight-month gap convinced the Assessor that the Legion was "in no hurry to move the proposed project along."

The Legion further bases their argument that they made good faith efforts on several concrete actions. First, the MDRA Memorandum required the Legion to re-survey the wetlands on the 168 acre parcel in the presence of the Town's planner, enabling the Town to confirm the wetland delineation completed by the petitioner's wetland consultant. The Legion contends that significant delays, which were largely caused by the Town's planner, postponed this survey until December 2003. Once this delineation established boundaries for wetlands and wetlands buffers, the Master Plan revisions were commenced. Twelve alternate site layout plans were considered before the Legion settled on the alternative master plan submitted in March 2004. Significant changes also included the relocation of buildings, primary road access, and re-design of on-site faculty housing structures. Additionally, to date the Legion has spent almost \$500,000 in pursuit of the land use, zoning, and planning applications for Westchester University, while four expert witnesses submitted affidavits to Respondent Board of Assessment Review stating that the Legion's application was, in fact, one of the most comprehensive they had seen and unquestionably pursued in good faith.

Subsequently, the Town granted the Legion a 2006 tax exemption for this parcel, and the Town further renewed the exemption in 2007. The Court notes that the applications, and the resulting exemptions, were based both upon the continued and continuing tax exempt use of the parcel for religious purposes, and the pursuit by the Legion of a good faith plan for approvals for Westchester University.

Under CPLR 3212(b), a moving party is entitled to summary judgment "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing judgment" in their favor. In a proceeding pursuant to Article Seven of the Real Property Tax Law, summary judgment is properly granted when there is no genuine issue of material fact and the petitioner is entitled to judgment as a matter of law." (*See Sailors' Snug Harbor in City of New York v. Tax Commission of City of New York*, 26 N.Y.2d 444, 449 [1970]).

Religious corporations incorporated under Section 402 of the Not-For-Profit Corporation Law are organizations eligible for tax exemption under RPTL § 420-a. (*See Waltz v. Tax Commission of City of New York*, 24 N.Y.2d 30 [1969]).

RPTL § 420-a (1) provides that a non-profit corporation is entitled to an exemption if it owns real property and demonstrates that it is

1) conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes, [and that] 2) the property is used exclusively for carrying out thereupon one or more of such purposes.

Additionally, RPTL § 420-a (3) provides that a non-profit corporation owning unimproved property not in actual use qualifies for a tax exemption upon demonstrating that "the construction of such buildings or improvements is in progress or is in good faith contemplated."

Improvements are in good faith contemplated within the meaning of section 420-a where the applicant seeking an exemption has "concrete and definite plans for utilizing and adopting the property for exempt purposes within the reasonably foreseeable future." *Legion I*, 1 N.Y.3d, 411 (2004) quoting *Congregation K'hai Torah Chaim, Inc. v. Town of Ramapo*, 72 A.D.2d 804, 805 (2d Dep't 1979).

Although each taxable year is distinct for eligibility purposes, once an RPTL § 420 exemption has been granted, the municipality seeking to withdraw the exemption, or to deny renewal thereof, bears the burden of proving that the petitioner is subject to taxation. *Miriam Osborn Memorial Home Ass'n v. Assessor of City of Rye*, 275 A.D.2d 714 (2d Dep't 2000); see also *Miriam Osborn Memorial Home Ass'n v. Assessor of City of Rye*, (Supreme Court,

Westchester County, Dickerson, J., February 3, 2005). By contrast, the burden of proof lies with a petitioner who seeks an initial property tax exemption. *People ex rel. Watchtower Bible & Tract Soc. v. Haring*, 8 N.Y.2d 350 (1960). In *New York Botanical Garden v. Assessors of the Town of Washington*, 55 N.Y.2d 328 (1982), the Town therein had failed to meet their burden of proving that the petitioner was organized and used for primarily scientific rather than educational purposes, where the Botanical Garden's charter listed objectives which included "providing instruction and information concerning plants and their importance." Because the petitioner's activities included numerous public educational programs, the Town did not meet their burden of proof sufficient to withdraw the property tax exemption.

Here, the Legion is entitled to partial summary judgment if no genuine issue of material fact exists as to the Vacant Parcel's eligibility for a property tax exemption. During the 2004 tax year, the Legion enjoyed an exemption based both upon actual use of the parcel for outdoor religious activities under RPTL § 420-a (1) (a), as well as, and separately, upon the existence of a good faith plan to establish Westchester University pursuant to RPTL §420-a (3). Because the Legion's 2005 renewal application was also premised upon these same two criteria, as stated in *Miriam Osborn Memorial Home Ass'n*, the Town therefore bears the burden of proving that the Vacant Parcel was then no longer eligible for the exemption under either of these two grounds. In other words, the Town herein must set forth new or changed facts which demonstrated the Vacant Parcel's ineligibility for a continued exemption for the tax year 2005.

Despite the fact, obvious from even a cursory look at the application, that renewal was sought based on current religious use, and despite uncontested continued religious use by the petitioner of the parcel at the time of the application, there is no evidence before this Court that the petitioner's actual continuing use of the parcel for outdoor religious activities was ever a factor considered by the Town when it denied the 2005 property tax exemption. Specifically, Respondent Assessor's denial letter failed to even mention, much less analyze or discuss, the continued outdoor religious use; rather, the denial only addressed the issue of good faith contemplation of the Westchester University plan.

Irrespective of whether the Legion has diligently pursued its good faith plan for Westchester University, then, the Town still bears the burden of proving its reasons for denying the renewal application insofar as it is based on actual exempt religious use. Petitioner's renewal application for the 2005 tax year stated that

no change in exempt use occurred during the 2004 assessment period, and respondent neither contested this statement nor presented any proof to the contrary, although Respondent Assessor Timming's affidavit does note that "the purported use of the Property at the time is necessarily a factual issue." While true, as the party bearing the burden of proof on the denial of a renewal application, respondent must come forward with such facts to avoid imposition of summary judgment.

Thus, from the facts presented to this Court, the Town has failed to meet its burden of proving that the Petitioner was not entitled to a renewal of its property tax exemption for the 2005 tax year, for the continued religious use of the property. Accordingly, the Legion is entitled to partial summary judgment, at least as it relates to that aspect of its application for renewal of its 2004 exemption.

Having established, due to respondent's failure to articulate any reason for denial of the application, and their bare argument without elaboration or specification of the existence of questions of fact on the issue, that the Petitioner is entitled to judgment as a matter of law based upon their actual continued exempt use under RPTL § 420-a (1) (a), this Court need not determine whether a genuine issue of material fact exists as to the Legion's good faith contemplation of the Westchester University Plan pursuant to RPTL §420-a (3) as well. In any event, the Court concludes that the petitioner is entitled to partial summary judgment on this basis as well.

In *Legion of Christ v. Town of Mt. Pleasant I, supra*, the Court of Appeals held that obtaining a special use permit was evidence of good faith contemplation under RPTL §420-a (3), but was not a requirement or prerequisite for tax exemption eligibility. The proper inquiry for good faith contemplation here is whether a public benefit improvement is contemplated, and the subject of concrete or definite plans. By submitting a development plan prepared by a land use specialist, an implementation schedule, and establishing that their Board of Directors had approved \$260,000 for the project, all of these facts unchallenged by respondents, the Legion clearly met this standard, the existence of other material questions of fact notwithstanding.

Furthermore, and as discussed above, it is the Town's burden to prove that the Legion did not meet the requisite good faith contemplation standard for its 2005 tax exemption renewal application. Respondent Assessor's letter bases its denial on the absence of a scoping session, Draft and Final Environmental Impact Statements, Charter applications, and a substantive meeting with

the Town Planning Board. Just as a special use permit was deemed evidence of good faith contemplation in *Legion of Christ I*, but not a prerequisite for a continued exemption, scoping sessions, Environmental Impact Statements, Charter applications, and substantive meetings with a Planning Board similarly constitute mere evidence of good faith contemplation, and not prerequisites to an exemption, particularly in light of the above-mentioned concrete steps in furtherance of the plan taken by the Legion. Thus, the absence of the former factors does not mandate a finding of a lack of good faith contemplation. There is no litmus test as to the prerequisites required to show good faith contemplation or to demonstrate that the public benefit improvement is the subject of concrete or definite plans.

In addition, respondent acknowledges that the Legion addressed the MDRA Memorandum during eight months of the assessment period. This memorandum was a prerequisite to the SEQRA review process, necessarily preceding any Environmental Impact Statements. The memorandum raised substantive design issues, layout inconsistencies, zoning compliance issues, and stated that the proposal substantially deviated from that which was permitted. In response, the Legion submitted an alternative master plan in March 2004. As noted above, significant changes included the relocation of buildings, primary road access, and re-design of on-site faculty housing structures. Moreover, the Legion has spent almost \$500,000 in pursuit of the land use, zoning, and planning applications for Westchester University. Just as a \$260,000 budget, and development plan, were adequate proof of a concretely planned public benefit improvement in *Legion of Christ I*, here, the Legion's \$500,000 expenditures and alternate master plan prepared over an eight month period similarly refute the Town's attempt to meet its burden of proof on the issue of renewing the Legion's exemption. Thus, the Town has failed to raise a genuine issue of material fact as to the Legion's good faith contemplation of the Westchester University plan for the 2005 tax year as well. Accordingly, the Legion of Christ is entitled to partial summary judgment on this basis too.²

Upon the foregoing papers, it is hereby

ORDERED, that the motion by petitioner for an Order granting partial summary judgment on their petition seeking renewal of a religious exemption pursuant to RPTL §§ 420-a (1) (a) 420-a (3), is hereby granted; and it is further

² The Court acknowledges the assistance of Karen Grus, summer intern and second year student at the University of Southern California Law School, in the preparation of this Decision and Order.

ORDERED, that respondent Town shall renew the tax exemption enjoyed by petitioner pursuant to both RPTL §§ 420-a (1) (a) and 420-a (3), for the parcel designated on the Town tax map as Section 112.16, Block 1, Lot 1, for the tax year at issue in the instant petition, namely 2005; and it is further

ORDERED, that the assessment rolls are to be corrected accordingly, and overpayments of taxes, if any, are to be refunded with interest.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York
July , 2007

HON. JOHN R. LA CAVA, J.S.C.

Shamberg Marwell Davis & Hollis, P.C.

By: John S. Marwell, Esq.
Co-Counsel for Petitioner
55 Smith Avenue
Mount Kisco, NY 10549

Bleakley, Platt & Schmidt
By: Hugh D. Fyfe, Esq.
Co-Counsel for Petitioner
One North Lexington Avenue
White Plains, New York 10601

Thatcher, Profitt & Wood, LLP
Attorneys for Respondents
50 Main Street
White Plains, New York 10606

Town Attorney
Attorney for Respondents
One Town Hall Plaza
Valhalla, NY 10595

Ingerman Smith, LLP
Attorneys for Intervenor-Respondent
150 Motor Highway, Suite 400
Hauppauge, New York 11788