

First United Methodist Church in Flushing v Assessor, Town of Callicoon
2023 NY Slip Op 35020(U)
March 20, 2023
Supreme Court, Sullivan County
Docket Number: Index No. E2021-1248
Judge: David M. Gandin
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

FIRST UNITED METHODIST CHURCH IN FLUSHING,
Petitioner,

**DECISION AND ORDER
AFTER TRIAL**

-against-

Index No. E2021-1248

ASSESSOR, TOWN OF CALLICOON, and BOARD OF
ASSESSMENT REVIEW OF THE TOWN OF
CALLICOON, COUNTY OF SULLIVAN and SULLIVAN
WEST CENTRAL SCHOOL DISTRICT,
Respondents.

FIRST UNITED METHODIST CHURCH IN FLUSHING,
Petitioner,

Index No. E2022-1392

-against-

ASSESSOR, TOWN OF CALLICOON, and BOARD OF
ASSESSMENT REVIEW OF THE TOWN OF
CALLICOON, COUNTY OF SULLIVAN and SULLIVAN
WEST CENTRAL SCHOOL DISTRICT,
Respondents.

Petitioner commenced these proceedings pursuant to Article 7 of the Real Property Tax Law challenging the Town of Callicoon’s denial of its 2021 and 2022 applications for a real property tax exemption for property located at 229 Menges Road based on its status as a religious organization.

Article 7 of the Real Property Tax Law was designed as a remedy for a tax payer wishing to challenge an excessive or illegal assessment on property in which he or she has an ownership interest. *Dudley v Kerwick*, 52 NY2d 542, 548 (1981). A challenge to an assessment may be brought based on claims that the assessment is excessive, unequal, unlawful or that real property is misclassified. RPTL §706(1). An assessment is unlawful if there is an entry on the taxable portion of an assessment roll of the assessed valuation of real property which is wholly exempt from taxation. RPTL §701(9)(a). A property owner seeking an initial property tax exemption has the burden of proving an entitlement to same. *People Ex Rel. Watchtower Bible & Tract Soc. v Haring*, 8 NY2d 350 (1960). Petitioner maintains it is entitled to a religious exemption from taxation pursuant to RPTL §420-a(1). To demonstrate entitlement to this exemption, petitioner must demonstrate: (1) it was organized exclusively for purposes enumerated in the statute; (2) it uses the property primarily for the furtherance of such purposes; (3) no pecuniary profit other than reasonable compensation may inure to the benefit of any officers, members or employees; and (4) the petitioner

is not simply using the property as a guise for profit-making. *Matter of Pine Harbour, Inc. v Dowling*, 89 AD3d 1192, (3rd Dept. 2011).

In this proceeding it is undisputed that petitioner is a religious corporation organized for the purposes enumerated in RPTL §420-a(1). Respondents maintain, however, that petitioner's actual use of the parcel is in violation of the Town of Callicoon zoning laws thereby prohibiting petitioner from receiving a property tax exemption under RPTL §420-a. The Court joined these two related actions for a trial held on January 18, 2023. At the trial petitioners presented the testimony of Church Counsel Chairperson Shung Kim and introduced photographic evidence (petitioner's 1 and 2A, F, G and H). The respondents presented the testimony of Town Assessor Jacqueline Pilny and Town Supervisor Thomas Bose. Respondents further introduced petitioner's 2021 exemption application, responses to interrogatories and Mr. Kim's affidavit offered in opposition to a summary judgment motion, the Town zoning code and photographic evidence (respondents' A-I).

Mr. Kim testified that the First United Methodist Church ("church") is based out of Flushing, Queens. It has a church building in Flushing at which it holds services for its congregation of approximately 900-1,000 members. In 2018 the church purchased the subject property, an approximately 70-acre parcel in the Town of Callicoon. Mr. Kim testified that prior thereto the church had held annual retreats, and it purchased the property for the purpose of owning a retreat property. He testified that none of the church members were residents of Sullivan County and the church never intended to conduct formal church services at the property. Mr. Kim was a member of the church's retreat center task force in addition to being a former chairperson of the Board of Trustees. He stated that upon purchase of the property a task force developed plans to clean the physical structure on the property, put up fencing for farming purposes and for the church to distribute any food grown to low income residents of the Flushing, Queens area. He testified that half of the property was wooded and that the church farmed only 1-2 acres. He and his wife were the primary caretakers of the farm since they resided in Washingtonville, New York. He states that the farming activities included weeding, seeding and growing tomatoes, cucumbers, peppers, squash and Korean radishes. Church volunteers would travel to the property primarily to help with the harvesting and transporting the produce to Queens for distribution. Mr. Kim identified photographs of farming activities, produce and the distribution of the produce. He stated that the property was never used for any organized religious activity other than occasional church retreats. He acknowledged there was a prayer service held when church members traveled to the property to celebrate its purchase. He states that there have been two retreats for young adults and new church members during which individuals stayed overnight. The first retreat had approximately eight people and the second had ten. He acknowledged that these individuals engaged in religious activity while on the property that may have included Bible studies, prayer and singing. On cross examination Mr. Kim acknowledged in the 2021 exemption application and in other signed statements he described the structure on the property as a 'prayer house' and stated it was being used for prayer services. He acknowledged another written response stating that the property was purchased as a retreat center for religious purposes and to grow fruit and vegetables for use by church members. He further provided details as to the amount of produce grown.

Town Assessor Jacqueline Pilny testified that she denied petitioner's 2021 exemption application based on a determination that petitioners were using the property for worship and thus it constituted a church. She cited the Town's zoning code which precludes the operation of a church in the Town's RU Rural District without a special use permit. She further stated she denied the application because accessory uses to a church are also not allowed in the RU district. She could not recall whether she gave a written explanation for her denial of the 2021 exemption application to petitioners. She stated that she denied the application based primarily on the content of the application and not based on independent knowledge of the precise activities occurring on the property. Town Supervisor Thomas Bose testified that he lives and farms a property located across the street from the subject property. He stated his family has farmed this property for over fifty years and that he farms hay on approximately 25-acres of the petitioners' property. He stated that petitioners hired him to clear approximately 1 acre in 2020 and 2021. He estimated, however, that petitioners were actually only farming approximately 1/8 of an acre. He states that in 2021 he did not observe much active farming. He stated in 2020 the petitioners planted only a small parcel and disputed the quantities of produce Mr. Kim testified had been grown on the property. Mr. Bose acknowledged that the Town had not issued any violations to petitioners for use of the property in violation of the Town zoning code.

Despite the disputed issues of fact pertaining to the amount of property the petitioners farmed, the Court found all witnesses credible. Mr. Kim candidly acknowledged inconsistencies in representations on the exemption application and in documents filed during the course of litigation and his testimony. However, the Court finds him credible as to both the purpose for which the church purchased the property and the scope of its use.

Respondents' denial of the 2021 exemption application is based on its claim that petitioners are using the property in violation of Town zoning. A property owner's use of a parcel in violation of zoning deprives the owner of RPTL §420-a(1) exemption. See *Congregation Aterer Yasroel v. Town of Ramapo*, 146 AD3d 857 (2nd Dept. 2017); *Havas Chaverim Gemilas Chesed, Inc. v. Town of Mamakating*, 99 AD3d 1156 (3rd Dept. 2012). Petitioners' property is located in the RU Rural District. The Town's zoning code prohibits the operation of a church in that district. The code defines a church as "a building which, by design, is primarily intended and regularly used for conducting organized religious services and accessory uses therewith, but not including any dwelling units other than to accommodate the clergy assigned to the church...." Town of Callicoon Zoning Code §203-4. The code defines an "accessory building or use" as "a use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building located on the same lot with such principal use."

Petitioners have met their burden of establishing they are not operating a church on the subject property. To qualify as a church per the Town code, the building must be "primarily intended and regularly used for conducting organized religious services and accessory uses associated therewith...". Mr. Kim's testimony establishes that the structure on the property was never intended for conducting organized religious services. He testified that none of the church's congregants live in Sullivan County and that the property is too far from the congregation to hold any type of regular

organized religious services. While occasional retreats may have been held at which people engaged in organized prayer, this does not constitute regular organized religious services as required under the code to constitute a church. Nor does the petitioners' use of the property qualify as an accessory use to a church. As there is no church on the property, any use of the property for retreats or farming would not be accessory to the use of a church. The Town zoning code defines an accessory use as the use of land or a building or portion thereof "customary, incidental and subordinate to the principal use of the land or building *and located on the same lot with such principal use.*" (italics added). Petitioners operate a church in Flushing, Queens. Hence, any farming, retreats or sporadic prayer services held on the subject property are not subordinate to any use of the land or building being used as a church on the same lot. As petitioners are not operating a church on the property, any other conduct they engage in cannot be, under the Town code's definition, accessory to such use. Moreover, the fact that petitioners are not using the property to house a church or conduct regular worship services or religious activities on the property does not disqualify it from receiving tax exempt status. The record before the Court demonstrates that petitioners only actual or physical use of the property is in furtherance of its their religious mission. See *Matter of St. William's Church of Troy, NY v. Dimitriadis*, 115 AD3d 1031 (3rd Dept. 2014). There is no evidence petitioners are using the property for any other purpose and the infrequent use of the property does not alter its tax-exempt status. *Id*; *Greater NY Corp. of Seventh-Day Adventists v. Town of Dover*, 29 AD2d 861 (2nd Dept. 1968). Wherefore, petitioners have demonstrated an entitlement to a tax exemption pursuant to RPTL §420-a(1) for the tax years 2021 and 2022.

The Court rejects respondents' contention that petitioner may not obtain a tax exemption for 2022 based on claims it failed to file an exemption application for that year. While the Legislature amended RPTL §420-a to add subdivision 11 after the Court of Appeals' decision in *Kqhal Bnei Emunim and Talmud Torah Bnei Simon Israel v. Town of Fallsburg*, 78 NY2d 194 (1991), the newly added subdivision merely provided that an exemption could be granted upon application by the owner on "a form prescribed by the commissioner or any comparable form." RPTL §420-a(11). Notably, that subdivision permits an assessor to grant an exemption even if no application is filed. Moreover, the Appellate Division has expressly held that Section 420-a does not condition the granting of an exemption upon the completion and filing of a prescribed application form. See *471 Columbian Club of Port Jervis, New York, Inc. v. Duryea*, 104 AD3d 944 (2nd Dept. 2013); *OHR Menachem of Great Neck, Inc. v. Bd. of Assessors*, 48 AD3d 688 (2nd Dept. 2008). The Court finds that respondents had notice of the exemption application based on the 2021 filing on the prescribed form and the documents filed for the 2022 assessment roll.

The foregoing constitutes the decision and order of the Court. The signing of this decision and order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

Dated: March 20, 2023
Kingston, New York

ENTER:



DAVID M. GANDIN, J.S.C.

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty (30) days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty (30) days thereof.