

STATE OF VERMONT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 445-9-15 Wrcv

GREEN MOUNTAIN BIBLE CONFERENCE CAMP,
Appellant

v.

TOWN OF BETHEL,
Appellee

DECISION

Cross-Motions for Partial Summary Judgment (#1, 2)

This is a tax appeal regarding Plaintiff Green Mountain Bible Conference Camp's property at 112 Camp Brook Road, Bethel, Vermont. Each party's motion is granted in part and denied in part. GMBC was originally represented by Robert P. McClallen, who submitted all the briefing associated with these cross-motions, and is now represented by Paul S. Gillies. The Town is represented by Robert E. Fletcher.

Facts

There are no disputed material facts in this case.

1. Green Mountain Bible Conference is a private, independent, non-profit religious entity.
2. GMBC owns an approximately 4.7 acre property at 112 Camp Brook Road in Bethel.
3. This property is improved with twenty-two buildings, which includes several sleeping cabins, a snack bar, a dining hall, a community bathroom, a storage shed, a recreational field, and a 49' x 40' single-story building referred to as the "tabernacle."
 - a. The Town refers to the so-called tabernacle building as a common building while GMBC refers to the tabernacle building as a church edifice.
4. None of the buildings on the property are heated or insulated.
5. The property is used for eight days each year to host GMBC's annual "one week family camp" meeting; otherwise, the property is vacant and unused.
6. Access to the property is via a one-way road that is inaccessible by car for five months each year.

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7. The stated purpose of the annual camp meeting “is to nurture and encourage spiritual growth through the Good News of Jesus Christ while providing fellowship, fun and relaxation in the beautiful setting of the Green Mountains.”
8. Typical activities for Camp attendees include both religious activities, such as bible study, and non-religious recreational activities.
9. The property is used by GMBC members and occasional invitees.
 - a. Such invitees include any person who wishes to attend church services at the tabernacle building during the camp week.
10. During the GMBC camp, the tabernacle building is primarily used for the following church services:
 - a. A one-hour religious service each morning.
 - b. A two-hour adult bible class each morning.
 - c. A two-hour religious service each evening.
11. A building referred to as the “Faithful Lodge” serves as a dormitory for camp attendees. The first floor of the so-called Faithful Lodge is used for bible study for at least two hours each day.
12. A building referred to as the “Daily Vacation Bible School Classroom/Adult Lodge #3” serves as a dormitory for camp attendees. The first floor of the so-called Adult Lodge #3 is used for bible study five out of the eight days for three hours on each of those days and for prayer meetings seven out of the eight days for thirty minutes on each of those days.

Conclusions

GMBC concedes that the majority of the camp is taxable under the law as stated in *Brownington Center Church of Brownington, Vermont, Inc. v. Town of Irasburg*, 195 Vt. 196, 201 (2013). The remaining dispute for the purposes of these cross-motions is whether three buildings or portions of buildings, namely the tabernacle building, the first floor of the Faithful Lodge, and the first floor of the Adult Lodge #3 are exempt because they serve a primarily religious purpose.

The parties agree that 32 V.S.A. §§ 3802(4) and 3832(2) govern the outcome of this case. In pertinent part, 32 V.S.A. § 3802(4) exempts “Real and personal estate granted, sequestered or used for public, pious or charitable uses; real property owned by churches or church societies or conferences and used as parsonages and personal property therein used by ministers engaged in full time work in the care of the churches of their fellowship within the State.” In pertinent part, 32 V.S.A. § 3832(2) does not exempt “Real estate owned or kept by a religious society other than a church edifice, a parsonage, the outbuildings of the church edifice or parsonage, a building

used as a convent, school, orphanage, home, or hospital, land adjacent to any of the buildings named in this subsection, kept and used as a parking lot not used to produce income, lawn, playground, or garden, and the so-called glebe lands.”

There is no dispute that GMBC’s camp qualifies as pious use under § 3802(4). However, the Town and GMBC differ as to whether the three named buildings are exempt under § 3832(2). Both parties acknowledge the essential holdings of *Brownington*, that church camps generally are not exempt under § 3832(2), and *Governor Clinton Council, Inc. v. Koslowski*, 137 Vt. 240 (1979), that it is possible for property to be held in an unused state. Nevertheless, GMBC argues that these buildings are exempt .

With respect to the tabernacle building, the court concludes that it qualifies for an exemption as a church edifice. As noted in *Brownington*, “it is not the number of worshippers or the frequency of worship, but the primary use that defines a place of worship.” *Brownington*, 195 Vt. at 202 (quoting *Our Lady of Ephesus*, 2005 VT 16, ¶ 23, 178 Vt. 35, 869 A.2d 145). Here, the undisputed evidence shows that the tabernacle building is used for church services for approximately five hours each day while the camp is in session.

The Town relies on *Governor Clinton Council, Inc. v. Koslowski*, 137 Vt. 240 (1979). In *Koslowski*, the court held that “the mere holding of land constitutes a use,” in determining that wild lands which were visited once per summer were not exempt as an educational use. In this case, the property at issue is an actual building, not acres and acres of undeveloped land. The tabernacle is not being “held” in the same way as undeveloped land, nor, to use the example listed in *Koslowski*, is it being held for investment purposes. Rather, the tabernacle building is a church building that holds services eight days out of the year. While true that it does not hold church services the other 357 days of the year, the building does not cease to be a church during that time any more than a year-round church building ceases to be a church merely because services are only held on Sunday and the building lies dormant the rest of the time. GMBC is entitled to an exemption for the tabernacle building.

With respect to the other two buildings, the primary use of the two lodges is dormitory space, which is not exempt under § 3832. GMBC nevertheless argues that specific portions of these buildings are used exclusively for educational purposes, and thus should be exempt as to that portion. However, such a conclusion does not appear to be supported by the law. The plain language of 32 V.S.A. § 3832 refers to “buildings,” not portions thereof, and all caselaw refers to the primary use of “buildings” or “structures.” *Brownington*, 2013 VT 99 at ¶ 16 (none “fit within the exemptions listed in § 3832(2). based on either the type of or primary use of these structures.”) (emphasis added). Allowing for either lodge to be divided up based on the purported use of each floor or section of the building would effectively allow one structure to have more than one primary use, which defies the statutory scheme.

In reference to GMBC’s supplemental memorandum, while true that *Medical Center Hospital of Vermont, Inc. v. City of Burlington*, 131 Vt. 196, 199 (1973) contains a reference to an Oklahoma decision that permitted fractional apportionment by the number of floors for multistory buildings, there does not appear to be any authority in Vermont law for apportionment within a single building between exempt and nonexempt portions of a structure.

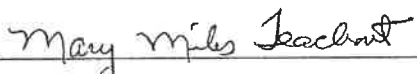
Moreover, GMBC has offered no practical basis for exempting only parts of the lodges. Certainly, buildings have intrinsic values beyond their mere square footage, and allowing exemptions for only parts of buildings could lead to absurd results, such as needing to recalculate taxes based on how much actual space is being used for an exempt purpose, where in the structure this exempt use is taking place, how often it is taking place, and so on. In short, while true that the statutory scheme is intended to exempt from taxation legitimate uses that serve a public, pious, or charitable purpose, the scheme also is not designed to accommodate the granularity sought by GMBC. The approach advocated by GMBC would appear to open the door to organizations seeking exemption for portions of buildings in which certain activities take place from time to time. Such an approach is not consistent with the statutory scheme.

Exemption statutes must be strictly construed against the claimant. *Brownington* at ¶ 9. For the reasons set forth above, the court concludes that GMBC is not entitled to exemptions for the particular portions of the Faithful Lodge and Adult Lodge #3 sought in this case.

Order

A status conference will be scheduled to determine further needs of the case. The attorneys may participate by telephone.

Dated in Woodstock, Vermont this 2nd day of September, 2016.



Mary Miles Teachout
Superior Court Judge