

STATE OF NEW HAMPSHIRE

CHESHIRE, SS

SUPERIOR COURT
Case Number: 213-2014-CV-00178

SHIRE FREE CHURCH: MONADNOCK

VS

CITY OF KEENE

MOTION TO DISMISS

NOW COMES the City of Keene, by and through its counsel, Thomas P. Mullins, Esq., and submits this Motion to Dismiss in the above-captioned matter, and respectfully states as follows:

1. This matter is before the Court on an appeal by Shire Free Church: Monadnock ("Plaintiff"), arising from the denial by the City's Board of Assessors of an application by Plaintiff seeking a religious use property tax exemption under RSA 72:23, III. Despite Plaintiff's statement that it is filing an appeal under RSA 72:23, an appeal from a denial of a religious exemption arises under RSA 72:34-a.

2. RSA 72:34-a provides that "[w]henver the selectmen or assessors refuse to grant an applicant an exemption, deferral, or tax credit to which the applicant may be entitled under the provisions of RSA 72:23...the applicant may appeal in writing, **on or before September 1 following the date of notice of tax under RSA 72:1-d**, to the board of tax and land appeals or the superior court" (emphasis supplied).

3. RSA 72:1-d defines the '[d]ate of notice of tax' as "... the date the board of tax and land appeals determines to be the last mailing date of the final tax bill for which relief is sought." RSA 72-1-d, II.

4. The tax year for real property taxation commences on April 1, and concludes on March 31 of the following year. RSA 76:2. Accordingly, the tax year for 2014-2015 commenced on April 1, 2014, and concludes on March 31, 2015. The City issues tax bills twice during the tax year, the first bill generally in June and the second bill generally in November. See Affidavit of Dan Langille, City Assessor, attached hereto as Attachment A (“Langille Affidavit”).

5. An applicant seeking a religious tax exemption must file annually, on or before April 15th, a list of all real estate and personal property for which the exemption is claimed, on the form proscribed by the Board of Tax and Land Appeals. RSA 72:23-c, II.

6. The Board of Assessors may, on a finding of accident, mistake, or misfortune, receive the application after April 15th, “**but no such application shall be received or exemption granted after the local tax rate has been approved for that year.**” RSA 72:23-c, I (emphasis supplied).

7. The local tax rate for the 2014-2015 tax year has not yet been determined, but generally occurs in November. See Langille Affidavit. See also eg. Department of Revenue Administration 2013 Tax Rate Calculation dated November 13, 2013, attached as Attachment B.

8. Nor has the Date of Notice of Tax under RSA 72:1-d been determined for the 2014-2015 tax year, but the notice date generally corresponds with the date of the setting of the annual tax rate. See Langille Affidavit. See also eg. Board of Tax and Land Appeals, Notice to All Tax Collectors, Final Tax Billing Date, November 17, 2013, attached as Attachment C.

9. Plaintiff filed its List of Real Estate On Which Exemption is Claimed Pursuant to RSA 72:23-c with the City on March 6, 2014, in compliance with the requirements of the statute, which list is attached as Attachment D.

10. Because the tax rate for 2013 was previously approved in November 2013, the relief sought by Plaintiff's exemption application must be considered within the 2014-2015 tax year, and cannot be considered retroactively to the 2013-2014 tax year. See RSA 72:23-c, I.

11. The Board of Assessors conducted a hearing on Plaintiff's exemption application on June 11, 2014, and denied the application on that same date by concluding that the Plaintiff had failed to meet its burden of proof with respect to the application as required by RSA 72:23-m. See Langille Affidavit.

12. On August 28, 2014, Plaintiff appealed the June 11 denial of its exemption application to this Court.

13. Plaintiff's appeal to the Court is premature. In accordance with RSA 72:34-a, the appeal must be filed "on or before September 1 **following the date of the notice of the tax** under RSA 72:1-d...." (emphasis supplied) The Date of the Notice of the Tax for the 2014-2015 tax year has not yet been determined, and Plaintiff may not file an appeal of the decision of the Board of Assessors to the Superior Court until that date has been finally determined.

14. Accordingly, the Court lacks subject matter jurisdiction to consider Plaintiff's appeal filed with the Court on August 28, 2014, and Plaintiff's Complaint/Appeal should be dismissed.

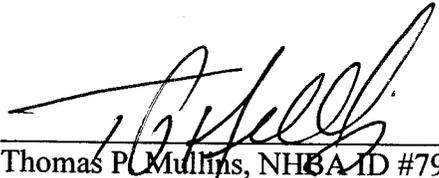
WHEREFORE, the City of Keene respectfully requests that the Court:

- A. Grant the within Motion to Dismiss based upon the Court's lack of subject matter to consider the premature appeal of the decision of the City of Keene Board of Assessors; and
- B. Dismiss Plaintiff's Appeal; and
- C. Grant such other and further relief as is necessary.

Respectfully submitted,

CITY OF KEENE
By Its Attorney,

Dated: September 11, 2014

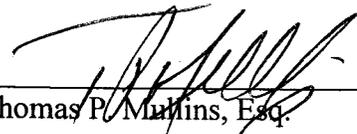


Thomas P. Mullins, NHBA ID #7919
3 Washington Street
Keene, N.H. 03431
(603) 357-9806

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2014, I mailed a true and correct copy of the within Motion to Dismiss by First Class Mail, postage prepaid, to Plaintiff, pro se, at 73 Leverett Street, Keene, New Hampshire 03431

I further certify that I did not seek an assent to the within Motion to Dismiss under the reasonable belief that such assent would not be provided.



Thomas P. Mullins, Esq.

STATE OF NEW HAMPSHIRE

CHESHIRE, SS

SUPERIOR COURT
Docket Nos. 213-2014-CV-00178

SHIRE FREE CHURCH: MONADNOCK

vs

CITY OF KEENE

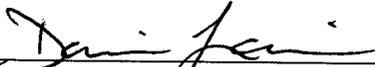
AFFIDAVIT

I, Daniel Langille, of Keene, Cheshire County, New Hampshire, being duly sworn, depose and state the following

1. That my name is Daniel Langille and I am the City Assessor for the City of Keene ("City"), the defendant in the above-captioned matter.
2. I have served the City as its duly appointed City Assessor since January 2013.
3. Property taxes in the City are billed semi-annually, in June and November.
4. The first bill each year is based on one-half of the previous year's tax.
5. In the fall of each year, new property tax rates in New Hampshire are set by the Department of Revenue Administration in accordance with RSA 21-J:35.
6. The second bill uses the new tax rate.
7. The City's new tax rate for 2014/2015 has not yet been set.
8. The date of the notice of tax under RSA 72:1-d for 2014/2015 has not been determined.
9. On June 11, 2014, the Board of Assessors conducted a hearing on Plaintiff's 2014 application for a religious exemption under RSA 72:23, III, and denied the application concluding that Plaintiff failed to meet its burden of proof.

AND FURTHER THE AFFIANT SAYETH NOT.

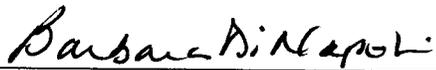
DATED this 11th day of September, 2014.



Daniel Langille, City Assessor

STATE OF NEW HAMPSHIRE
CHESHIRE, SS.

Before me, appeared Daniel Langille on this the 11th day of September, 2014, and took oath that the foregoing information provided is true and accurate to the best of his knowledge and belief.



Notary Public/Justice of the Peace
BARBARA DINAPOLI, Notary Public
My Commission Expires July 28, 2015