

STATE OF NEW HAMPSHIRE

GRAFTON, SS:

SUPERIOR COURT

CASE NO: 215-2014-CV-_____

**PEACEFUL ASSEMBLY CHURCH
860 MAIN STREET
GRAFTON, NH 03240**

v.

**TOWN OF GRAFTON
7 LIBRARY ROAD
GRAFTON, NH 03240**

COMPLAINT

Peaceful Assembly Church (“Peaceful Assembly”) appeals the Town of Grafton's (“Grafton”) unlawful and unreasonable denial of its request for a land-tax exemption under RSA 72:31-a. Peaceful Assembly asks this Court to find that it is entitled to the tax exemption and abate its 2014 property taxes. Peaceful Assembly further states that:

Parties & Jurisdiction

1. Peaceful Assembly Church is a 501(c)(3), non-profit corporation, incorporated in the State of New Hampshire.
2. Town of Grafton is a municipal corporation in the State of New Hampshire.
3. This Court may exercise personal jurisdiction under both parties because they are, in fact, physically located within Grafton County.
4. This Court has general subject matter jurisdiction under RSA 491:7. Further, RSA 72:31-a specifically authorizes a tax appeal to be filed in the superior court.

Factual Background

A. About Peaceful Assembly Church

5. Before incorporation, Peaceful Assembly existed as a congregation and church community since June 2010.
6. Peaceful Assembly is a regularly recognized and constituted sect of the Christian faith. Peaceful Assembly's mission is to, "Foster peace as prescribed by God." All who believe in peace and forgiveness are welcome at Peaceful Assembly.
7. Peaceful Assembly is automatically recognized as a qualifying, tax-exempt 501(c)(3) organization for federal income tax purposes.¹
8. Whether Peaceful Assembly was an unincorporated organization or incorporated, Peaceful Assembly was established to advance the spiritual and intellectual well-being of New Hampshire residents seeking religious and church fellowship. No specific pecuniary profits or benefits inuring to Peaceful Assembly's officers or members.
9. Because of a tax dispute with Grafton, the Peaceful Assembly community later incorporated as Peaceful Assembly Church.
10. By generous donation, Peaceful Assembly acquired a property for its church uses at 860 Main Street in Grafton ("Property"). This was the same property that Peaceful Assembly had been meeting in, but title was, in fact, conveyed to Peaceful Assembly.
11. The Property consists of approximately a half-acre of land and its improvements. The improvements are a main church building, a storage shed, and a paved parking area.
12. The main building was constructed in 1798 to be used as church—and it has been used

¹ Internal Revenue Code § 508(c)(1)(A).

continuously as a church since that time. A meetinghouse was later added on to the church building. A few small outbuildings are used for storage for maintenance of the property.

13. In addition to its regular services and community potlucks on the property, each year in Autumn, Peaceful Assembly hosts the annual Grafton Apple Festival on its property. The proceeds of this event benefit Peaceful Assembly.

B. Tax Exemption History

14. RSA 72:23 provides that:

“The following real estate and personal property shall, unless otherwise provided by statute, be exempt from taxation:

...

III. Houses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings and the lands appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state and the personal property used by them for the purposes for which they are established.”

15. In previous years, Peaceful Assembly asked for prior tax exemptions for its church. On at least one occasion, Grafton insisted that no tax exemption would be granted because Peaceful Assembly was not an incorporated entity.²
16. In response to the Town's denial, Peaceful Assembly incorporated as a New Hampshire voluntary, nonprofit corporation in 2013.
17. In 2014, Peaceful Assembly filed another tax exemption with Grafton, claiming the benefits of RSA 72:23, III (tax exemption for religious institutions).

² No such requirement exists.

18. Because Peaceful Assembly's application met the requirements of the statutory exemption, Grafton's legal counsel recommended that Peaceful Assembly's exemption application be granted.
19. Conversely, the Grafton's tax assessing agent, Avitar Associates, recommended that Peaceful Assembly's tax exemption be denied because Peaceful Assembly did not "file with the IRS as a 501(c)(3) charitable organization." This was the sole reason offered by Avitar for denying the exemption.
20. However, Peaceful Assembly did **not** ask for exemption under RSA RSA 72:23, V (charitable tax exemption). Even if it had, RSA 27:23-I defines "charitable" organization such that an organization's tax treatment by the IRS, alone, is non-dispositive.)
21. During discussion of the tax exemption, of the Grafton Selectmen argued that Peaceful Assembly did not "do enough" for the community to earn a tax exemption (perhaps incorrectly believing that exemptions of RSA 72:23, III is a quid-pro-quo arrangement).
22. Grafton's discussion on whether to approve the exemption application also improperly focused on Grafton's need for tax revenue.
23. On June 30, 2014, Grafton's Board of Selectmen voted, 2-1, to deny Peaceful Assembly's application for a tax exemption. The dissenting selectman stated that he approved of the exemption because the requirements for exemption were met.
24. At no point did Grafton apply the simple, statutory decision-making process provided by RSA 72:34, III. Nor did Grafton inquire whether Peaceful Assembly made false statements. Nor did Grafton request supplementary information under RSA 72:34, II.
25. Despite denial, Peaceful Assembly meets the criteria for a religious tax exemption. This

appeal directly to the Superior Court has followed.

**COUNT I – Appeal from Refusal to Grant Exemption Under RSA 72:23, III,
RSA 72:34-a**

26. All prior paragraphs are incorporated.
27. Peaceful Assembly is regularly recognized and constituted religious sect and which owns real estate containing a house of public worship, church parsonage occupied by the church's pastor, and corresponding lands and buildings used for the purposes of the church.
28. Accordingly, Peaceful Assembly is a religious organization which may invoke the exemption of RSA 72:23, III.
29. Peaceful Assembly filed a sworn tax exemption application, pursuant to the requirements of 72:33 prior to April 15, 2014.
30. Grafton refused to grant Peaceful Assembly, a religious organization, a religious tax exemption under RSA 72:23, III.
31. In reaching their decision, Grafton did not follow the statutory decision-making process described by RSA 72:34, III.
32. If Grafton had followed RSA 72:34, Grafton would have been required to grant Peaceful Assembly's tax exemption.

WHEREFORE, Peaceful Assembly Church requests the following relief:

- A. Find that Peaceful Assembly Church is a religious organization within the meaning of RSA 72:23, III for the 2014 tax year;
- B. Order and decree that the property owned by Peaceful Assembly is entitled to tax

exemption under RSA 72:23;

- C. Order an abatement of assessed taxes for tax-year 2014;
- D. Order the Town of Grafton to pay Peaceful Assembly's reasonable attorneys fees and costs under the substantial benefit doctrine; and
- E. Any other relief that may be just or equitable.

Respectfully submitted,

Peaceful Assembly Church

By its attorney,

Date: August 27, 2014

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