

TAX COMMISSION OF THE CITY OF NEW YORK
OPINION AND DETERMINATION
ON APPLICATION FOR CORRECTION OF ASSESSMENT

APPLICANT: Masjid Al-Aman, Inc.

PROPERTY: Block: 4206, Lots: 6, 7 and 8
Street Address: 197, 201 and 203 Forbell Street
Borough of Brooklyn

NOTIFY: Paula Z. Segal, Esq.
Community Development Project
123 William Street, 16th Floor
New York, NY 10038

HEARING DATE: September 24, 2019

TAX YEAR[S]: 2018/2019

The owner of these properties (collectively the Property), Masjid Al-Aman Inc. (Applicant) was organized under the New York Not-for-Profit Corporation Law in October 1990.¹

The Applicant purchased the Property by deeds dated April 29, 1991 with respect to Lot 6, June 8, 1995 with respect to Lot 7, and October 19, 1998 with respect to Lot 8. The Property currently includes a three-story building classified in the records of the New York City Department of Finance (Department) as containing 2,906 square feet classified in Tax Class 4 and Building Class M1 (church, synagogue, chapel, mosque).

The Applicant submitted an Application for Exemption from Real Estate Taxation for Property Owned by Non-Profit Organizations dated March 26, 2018, to the Department seeking a full (100%) exemption from New York City Real Property Tax (RPT) for the Property under RPTL §420-a.

In a letter dated July 9, 2018, the Department denied the exemption on the grounds that there were existing Class 1 building violations on the Property that needed to be corrected and that the Department would reconsider its determination denying the exemption once a certificate of occupancy or public assembly permit was issued with respect to the Property.

¹ The copy of the Certificate of Incorporation provided lists the name of the Applicant as Masjid Ul Aman, Inc. The website of the New York State Secretary of State also lists the Applicant's name as Masjid Al Aman, Inc. The New York City Tax Commission does not consider the small differences in spelling significant.

The Applicant filed an Application for Correction of Assessment, Form TC106 dated July 24, 2018, (Application) with the New York City Tax Commission (Tax Commission) seeking exemption of the Property under RPTL §420-a for the 2018/2019 tax year.²

The Applicant's corporate purposes are:

“The promotion of Islamic principles, the preservation of the spiritual well-being of its members and the perpetuation of the faith and discipline of the Islamic religion and to foster a greater and better understanding between Muslims and people of other religious faith. . . . The [Applicant] shall construct and maintain an Islamic center consisting of a mosque and an Islamic Institute of learning.”

The Applicant provides prayer services, religious education, and numerous activities benefiting the community it serves in East New York, with programs assisting various age groups and families within the community. During the hearing, numerous members of the Applicant testified to the importance of the Applicant to their lives and the lives of their families, and described some of the various services the Applicant provides to the community.

The Applicant submitted a copy of a letter from the Internal Revenue Service dated January 13, 2017 confirming that the Applicant was granted an exemption from federal income tax under Internal Revenue Code §501(c)(3) in 1994 and remains exempt.

In a letter dated February 25, 2011, the Department granted a full RPT exemption to the portions of the Property designated as Lots 7 and 8, retroactive to July 1, 2010. The portion of the Property designated as Lot 6 had been previously granted a full RPT exemption beginning with the 1997/1998 tax year. By a letter dated June 1, 2015, the Department denied an exemption for the entire Property plus lot 9, which is not the subject of this determination, due to the failure to secure a certificate of occupancy for a newly constructed building. The Applicant did not file an application with the Tax Commission challenging the Department's denial of a RPT exemption for the Property in 2015 and did not re-apply to the Department for a RPT exemption for the Property until March 2018. By a letter dated July 9, 2018, the Department denied the exemption on the basis that there were Class 1 building violations at the Property but that the Department would review the exemption “once certificate of occupancy or public assembly permit is issued”. The Applicant submitted no documentation establishing that it took any other steps to obtain reinstatement of the RPT exemption for the Property between 2015 and March 2018.

² The Applicant filed a single 2018/19 Form TC106 covering all three lots but subsequently filed separate applications for lots 7 and 8. The building covers all three lots.

Although the Property is currently under construction and has been under construction for approximately ten years, portions of the Property have been in use as a mosque and for related uses since at least as early as October 7, 2009, on which date a Class 1 violation was issued to the Applicant by the New York City Department of Buildings (DOB) for using the first floor and basement as a mosque by approximately “80 persons & children” without a valid certificate of occupancy.

Although that violation was resolved in January of 2010, the DOB issued a similar violation in August 2011 at “Aggravated Offense Level 1” because the new building was being occupied without a valid certificate of occupancy and that at the first-floor level “there are several men in process of prayer services”. Additional safety violations were issued later in 2011 and 2012 including violations for occupancy without a second means of egress, unsafe conditions and repeated failure to comply with previous notices of violation.

On August 6, 2018 three separate notices of violation were issued for occupancy of the Property as a mosque without a certificate of occupancy, electrical work without a permit and for the absence of fire safety materials. On August 7, 2018, a full vacate order was issued for the entire building due to safety concerns including occupancy while work was ongoing and the lack of certain fire safety protections. On November 5, 2018 the vacate order was partially rescinded and a partial vacate order substituted in its place allowing the use of the first floor and bathrooms located in the cellar. The partial vacate order applied to the remainder of the cellar (excluding the bathrooms) and the second and third floors, which were still under construction and deemed to be unsafe for occupancy.

The original vacate order also referred to a daycare and pre-k occupied at the Property with no secondary means of egress. However, the Applicant’s President, several senior board members and the architect testified at the hearing that the Applicant does not operate a daycare or pre-k but had classes for school-age children during the summer throughout the week. The first floor and the basement were being primarily used for prayer.

Responding to the Department’s statement in its July 9, 2018 letter that it would reconsider its denial of the exemption once a certificate of occupancy or public assembly permit was issued, in November 2018, the Applicant applied to the DOB for a Temporary Place of Assembly Permit limited to prayer on the first floor. The DOB issued a Temporary Place of Assembly Permit on December 7, 2018, covering the period from March 7, 2018 through March 7, 2019. To allow prayer to continue uninterrupted on the first floor, the Applicant has obtained additional Temporary Place of Assembly Permits covering the periods from March 8 to December 10, 2019. The record shows that the Applicant is keeping its Temporary Place of Assembly Permits current.

In compliance with these permits, the Applicant has not been using the second or third floors or the basement, except for the basement bathrooms. According to the credible

testimony of the Applicant's architect, Franklyn Estrella, one obstacle preventing the Applicant from obtaining a temporary certificate of occupancy, is that the DOB is presently requiring a sprinkler system, which Mr. Estrella is contesting, because he does not believe it is required in these circumstances.

The Applicant requests a full (100%) RPT exemption for the Property for the 2018/2019 tax year.

RPTL §420-a provides:

“1. (a) Real property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association or by another such corporation or association as hereinafter provided shall be exempt from taxation as provided in this section.

...

“3. Such real property from which no revenue is derived shall be exempt though not in actual use therefor by reason of the absence of suitable buildings or improvements thereon if (a) the construction of such buildings or improvements is in progress or is in good faith contemplated by such corporation or association or (b) such real property is held by such corporation or association upon condition that the title thereto shall revert in case any building not intended and suitable for one or more such purposes shall be erected upon such premises or some part thereof.”

RPTL §420-a requires that, to be exempt from real property tax, property must be owned by an entity organized or operated “exclusively” for one or more of the enumerated tax-exempt purposes and that it be used “exclusively” for such a purpose, which has been construed to mean that it be used principally or primarily for such purpose. (*Matter of Association of Bar of City of NY v Lewisohn*, 34 NY2d 143, 153 [1974].) The Taxpayer bears the burden of proof on both issues. (*Matter of New York Botanical Garden v Assessors of Town of Washington*, 55 NY2d 328 [1982].)

Tax exemption statutes are strictly construed against the taxpayer, but “while exemption statutes should be construed strictly against the taxpayer seeking the benefit of the exemption, an interpretation so literal and narrow that it defeats the exemption’s settled

purpose is to be avoided.” (*Matter of Association of Bar of City of NY v Lewisohn*, 34 NY2d 143, 153 [1974].) In addition, “purposes and uses merely auxiliary or incidental to the main and exempt purpose and use” will not defeat an exemption. (*Id.*)

The property owner generally bears the burden of proof on both requirements of RPTL §420-a (*Matter of New York Botanical Garden v Assessors of Town of Washington*, 55 NY2d 328, 334 [1982]). However, “where the taxing authority seeks to revoke that exemption previously granted, it is the taxing authority that has the burden of establishing that the property is not exempt from taxation” (*Matter of Greater Jamaica Dev. Corp. v New York City Tax Commn.*, 25 NY3d 614, 623 [2015]). The taxing authority’s “burden may be met by proving, for example, a change in the law governing the applicable exemption (citations omitted), a change in the use of the property (citations omitted), or that the tax exemption ‘was erroneously awarded in the first instance’ *Matter of Quail Summit, Inc. v Town of Canandaigua*, 55 AD3d 1295, 1297 [4th Dept 2008], *lv. denied* 11 NY3d 716 [2009].” (*Matter of Lake Forest Senior Living Community, Inc., v Assessor of the City of Plattsburgh*, 72 AD3d 1302, 1304-05 [3d Dept 2010].)

The Applicant’s representative asserts that because the Department revoked the RPT exemption initially granted effective July 1, 2010, the Department bears the burden of proof that the Property does not qualify for exemption.

The Tax Commission rejects the Applicant’s argument. The Applicant did not dispute the Department’s revocation of its exemption in 2015 by timely filing an application with the Tax Commission. The Applicant does not appear to have taken any action to dispute that revocation at that time or since. In March 2018, the Applicant reapplied to the Department for a RPT exemption, which the Department denied by its letter dated July 9, 2018 and which prompted the Applicant’s filing of the Application for Correction in September 2018 that is the subject of this determination. Therefore, the Tax Commission finds that the Applicant bears the burden of establishing that the Property qualifies for a RPT exemption under RPTL §420-a.

The Department does not dispute that the Applicant is an eligible nonprofit entity organized and operated for qualifying religious purposes under RPTL §420-a. Nor does the Department dispute that the Applicant has the plans, resources and the good-faith intention of completing construction at the Property, satisfying the requirements for a good faith “contemplated use” of the Property within the meaning of RPTL §420-a.3.

The sole issue is whether the numerous repeated safety violations on the Property prompting the 2018 full vacate order issued by the DOB properly precluded the granting of a RPT exemption for the Property for the 2018/2019 tax year.

RPTL § 420-a.3 permits a RPT exemption for property owned by a qualifying entity under RPTL § 420-a if the construction of improvements to permit a qualifying use are in progress or if they are contemplated in good faith. In order to show that the

improvements are “in good faith contemplated,” “the applicant seeking an exemption must have ‘concrete and definite plans for utilizing and adopting the property for exempt purposes within the reasonably foreseeable future’” (*Matter of Legion of Christ v Town of Mount Pleasant*, 1 NY3d 406, 411 [2004] quoting *Congregation K’hal Torath Chaim v Town of Ramapo*, 72 AD2d 804 [2d Dept 1979], quoting 4 Ops Counsel SBEA No. 52 at 90 [1975]). The court further held that “[a]s years pass, the taxpayer may reasonably be required to show some concrete act toward developing or otherwise improving the property to carry out the tax exempt purpose.” (*Matter of Legion of Christ, supra* at 412-13.)

The court in *Matter of Ahavas Chaverim Gemilas Chesed, Inc. v Town of Mamakating*, 99 AD3d 1156, 1160 [3d Dept 2012] held that “[w]hile we do not question petitioner’s good faith intention to operate a religious camp on the premises, we conclude that insufficient evidence exists that it has demonstrated a plan to reach that goal in the reasonably foreseeable future.”

In *Congregation K’hal Torath Chaim v Town of Ramapo*, 72 AD2d 804, 805 [2d Dept, 1979] the court found a definite and concrete plan where the petitioner submitted its applications for building permits. 4 Ops Counsel SBEA No. 52 [1975] presented examples of an adequate plan by stating that “[s]ome evidence of such plans might be the start of or preparation for a fund raising campaign . . . , or the retention of an architect or other consultants relating to the development and use of the property for exempt purposes.”

Oorah, Inc. v Town of Jefferson, 119 AD3d 1179, 1182-83 (3rd Dept 2014) (*Oorah, Inc.*) abrogated in part by *Matter of Greater Jamaica Dev. Corp. v New York City Tax Commn.*, 25 NY3d 614 (2015), summarizes the state of the law regarding the availability of a tax exemption for a non-profit use that may be in violation of a certificate of occupancy or local zoning laws:

“the case law makes clear that a property owner’s actual use of a parcel in violation of a municipality’s zoning law – such as where the subject parcel is not zoned for its intended use or the property owner fails to obtain the special use permit required in order to effectuate the intended use—such violation will deprive the property owner of the exemption otherwise afforded by RPTL 420-a(1)(a) [citations omitted]. Here, however, nothing in the record suggests that petitioner’s property is not zoned for use as, among other things, a summer camp or that petitioner otherwise is in violation of the zoning laws promulgated by respondent Towne of Jefferson. Rather, the record reflects—at best—that petitioner was in possession of several open building permits pertaining to ongoing work on the affected parcels for which no

corresponding certificate occupancy or certificate of completion had yet been issued. Even assuming that the affidavits tendered by the Town's code enforcement officer are sufficient to establish that petitioner operated the camp . . . while 'technically in violation' of certain provisions of the Town's building and fire code . . . the claimed violations in no way undermine—or even substantially impair—petitioner's otherwise legal use of the property and, therefore, do not afford a basis upon which to deny petitioner the requested tax exemption. Stated another way, because the alleged violations do not divest petitioner of its ability to use the affected parcels for religious or charitable purposes, such violations cannot operate to deprive petitioner of a tax exemption to which it otherwise has demonstrated entitlement. . . .”

The contrary cases cited in *Oorah, Inc.* conclude that a property operated in violation of applicable zoning laws, even where no notice of the violation had been issued was a sufficient basis for denial of the exemption. (*Matter of Geneva General Hospital v Town of Geneva*, 108 AD3d 1043 [4th Dept 2013].) Similarly, where the owning entity did not indicate any intention to obtain the necessary permits or to make the required changes to the property for its intended use and violations filed against it indicated that the current use was unsafe, the denial of an exemption was appropriate. (*Matter of Ahavas Chaverim Gemilas Chosed, Inc. v Town of Mamakating*, 99 AD3d 1156 [3d Dept 2012].)

The Applicant's representative asserts that *Oorah, Inc. v Town of Jefferson, supra*, stands for the principle that where a property comports with local zoning laws, “the absence of a certificate of occupancy or the presence of local code violations” do not affect the property's tax exemption.³

The Tax Commission disagrees. *Oorah, Inc.* involved no safety violations; the sole issue being whether the failure to comply with certain technical administrative regulatory requirements affects the property's exempt status. As quoted above, the court in *Oorah, Inc.* noted that “the claimed violations in no way undermine – or even substantially impair – Petitioner's *otherwise legal use of the property*. . . .” 119 AD3d at 1183. (Emphasis added.)

The court's emphasis that the building and fire code violations at issue in *Oorah, Inc.* were merely technical compliance issues, involving only the administrative failure to obtain certificates of occupancy and completion that did not otherwise affect the legal use

³ 2019/20 TC159 Affidavit in Support of Application submitted October 22, 2019 at 7.

of the property limit the application of that precedent to situations where violations do not prevent the safe use of the property.

By contrast, in *Matter of Ahavas Chaverim Gemillas Chesed, Inc. v Town of Mamakating et al.*, 99 AD3d 1156 n. 1, 3 (3d Dept 2012), the court, in denying an exemption, noted that operating a summer camp “without first obtaining necessary health and building code permits” where there were “numerous code violations filed against petitioner that the buildings on which the property in their current condition are unsafe for occupation” was an “illegal” use of the property. In that case, the court made it clear that the use of property in violation of local laws is not an exempt use of the property: “the actual use of property in contravention of local laws can be a valid basis for denying an application for tax exemption.” 99 AD3d at 1158.

The Department, therefore, correctly took into account the Applicant’s repeated safety violations in denying the exemption on the Property.

Nevertheless, based on the credible testimony of the Applicant’s President, other Majid board members involved in the construction at the Property, and the Applicant’s architect, the Tax Commission concludes that, by November 2018, those safety violations were sufficiently resolved so as to allow partial use of the Property, and that those violations remaining open thereafter did not implicate the safety of the Property and were no longer open as of the date of the hearing.

Based on the foregoing, the Tax Commission has determined that the Property qualifies for a full RPT exemption under RPTL §420-a.1 and 3 for the 2018/2019 tax year.

New York City Tax Commission
Dated: December 27, 2019