

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

APPLICANT: Mary Mitchell Family and Youth Center, Inc.

PROPERTY: Block: 3110
Lot: 26
Borough of Bronx
Street Address: 2107 Mapes Avenue

NOTIFY: Wanda Salaman

HEARING DATE: June 12, 2018

TAX YEAR: 2017/2018

The owner of the property (Property) is Mary Mitchell Family and Youth Center, Inc., which is also the Applicant. The Property was purchased by the Applicant by deed dated July 24, 2007. The Applicant's Certificate of Incorporation (Certificate of Incorporation) filed with the State of New York on June 24, 1986. The Certificate of Incorporation states that Applicant is incorporated under §402 of the New York Not-for-Profit Corporation Law (N-PCL); and is an organization as defined in N-PCL §102 (a) (5). The Certification of Incorporation provides that the Applicant's purpose is:

“[t]o improve the living conditions and to promote the welfare of persons in need of assistance such as the elderly, youth, the indigent, and adults by providing food assistance and clothing and by offering informational, advocacy, referral, and problem-solving assistance to such persons in the areas of housing, education, employment, social welfare, and health. . . .

“[t]o conduct any and all other activities as shall from time to time be found appropriate in connection with any or all of the purposes of the Corporation.”

The Applicant received a letter dated April 9, 1987 from the Internal Revenue Service confirming that it is exempt from federal income tax pursuant to Internal Revenue Code §501(c)(3).

The Applicant's federal Form 990 Return of Organization Exempt From Income Tax for its fiscal year ending June 30, 2016 states that it "provides an after-school youth program [for] neighborhood children. The program includes athletic and educational activities, as well as providing nutrition through a snack grant." Its audited financial statements for that year indicates that its funding primarily comes from contributions and government grants. In a letter dated September 29, 2017, the Executive Director of the Applicant stated that it has "broader community initiatives such as our nutrition and fitness campaign and a safe and healthy neighborhood campaign that seeks to reduce violence in the area."

The Applicant's submissions provide that the Applicant is a community-based organization in the Crotona section of the Bronx that works to improve the lives of families and youth through programs that develop leadership and build community. The Applicant submitted that its projects for youth include an after school enrichment program and programs in dance, martial arts, self-defense and band/baton.

The New York City (NYC) Department of Finance (Department) is not disputing the status of the Applicant as a nonprofit organization eligible for an exemption from New York City Real Property Tax (RPT) under RPTL § 420-a.

For the tax years 2011/2012 through 2015/2016, the Applicant received a full RPT exemption for the Property as a nonprofit organization.

The Department revoked the exemption for the 2016/2017 Tax Year because the Department concluded that there was "no evidence of demonstrative steps toward future exempt use."¹

¹ The Applicant submitted copies of two letters from the Department. The first, dated April 25, 2016 refers to a renewal application filed by the Applicant. The second, dated December 13, 2016 refers to an application for exemption filed by the Applicant. The Applicant did not submit copies of either its renewal application or any other application for an RPT exemption for the Property.

The Applicant filed an Application for Correction of Assessment (Application), 2017 Form TC106, with the NYC Tax Commission on October 3, 2017 appealing the Department's revocation of the RPT exemption and seeking to restore the full RPT exemption for the Property.

The Property is classified by the Department as Tax Class 2B (primarily residential property with seven to ten units) and Building Class C1 (walk-up apartments). There is no Certificate of Occupancy for this Property in the NYC Department of Buildings (DOB) website and none has been submitted by the Applicant.

The Property is vacant and not suitable for any use. The Applicant submitted that the contemplated renovation of the Property will allow the Applicant to use the Property to expand the Applicant's community services and the number of people who will benefit from those services. The Applicant submitted information that shows that it intends to renovate the Property as the Astin Jacobo Center, which will house:

“a Food Hub (part of [its] focus on food justice), a media center (to create opportunities for local entrepreneurs) and classrooms. It will also include offices for workers in a local Cure Violence Program who will work to reduce neighborhood violence by engaging youth who are already involved in conflict and violence.”

The Applicant decided to renovate the Property because it is a less expensive option than demolishing the Property and constructing a new building, which is what the Applicant originally intended to do when it purchased the Property. The Applicant states that it currently leases space in a nearby building where it provides services to over 1,000 families each year.

The Applicant's submissions include copies of Board meeting minutes dating from February 2016 to April 2018 documenting plans for redevelopment of the Property; space and program design work and environmental sustainability research; authorization to hire an architect and contractor; responses to a request for expressions of interest from the NYC Department of Housing Preservation and Development (HPD) to potentially place the property into a Community Land Trust (CLT); discussions of the start of a capital

campaign for the Property development; and updates on fundraising for the Property development.

The Applicant's submissions provide that the estimated cost of the Property renovation is \$5 million. To raise funds for the Property renovation the Applicant established a fundraising committee; applied for and, together with eight other organizations, was selected to participate in a program called the Learning Exchange to "provide foundational training in forming [community land trusts] and more targeted technical assistance for groups at various stages of the CLT process";² applied to the New York Department of Environmental Conservation Office of Environmental Justice for a \$900,000 grant; submitted a funding request to the NYC Council for \$2,652,500; secured a letter of interest from Enterprise Community Loan Fund, Inc. for a \$1,500,000 loan; and established plans to fundraise through private donors to fill any funding gap.

The Applicant submitted executed 2016 contracts for parapet repair work and interior debris removal project; for space and program design work and environmental sustainability research; architectural services; and asbestos inspection. The Applicant submitted copies of cleared checks for the payment for these services and a copy of an architectural proposal for the Property dated March 14, 2018.

The Applicant's witness stated during the hearing that it is uncertain about the starting date for the renovation of the Property because it expects to begin the renovation once it raises the needed funding for it and that the capital campaign to raise such funding might take years to be completed.

The NYC Department of Buildings (DOB) website shows that the DOB issued a permit to the Applicant on October 31, 2016 for the installation of a temporary sidewalk shed but there are no applications for permits for demolition or renovation of the Property.

RPTL §420-a provides, in relevant part:

"1. (a) Real property owned by a corporation or association organized or conducted exclusively for religious, charitable,

² HPD press release dated July 7, 2017.

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.”

In order for a property to be entitled to a RPT exemption, RPTL §420-a generally requires that the property be owned by an entity organized or conducted for one or more of the enumerated tax-exempt purposes and that it be used “exclusively” for such purposes, 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 [1974]). The property owner generally bears the burden of proof on both issues (*Matter of New York Botanical Garden v Assessors of Town of Washington*, 55 NY2d 328 [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]; *Matter of Lackawanna Community Dev. Corp. v Krakowski*, 12 NY3d 578, 581 [2009]; *Matter of New York Botanical Garden v Assessors of Town of Washington*, 55 NY2d 328, 334 [1982]).

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.” The court’s conclusion was reached, in part, because “the obstacles that petitioner faced with regard to ever operating the property as a summer camp-including the zoning issue-are certainly relevant to determining whether petitioner had a realistic plan in place to reach that goal.” (*Id* at 1160.)

Similarly, where the applicant does not have a plan for development of the property, does not indicate whether existing buildings will be renovated, expanded, or used, and states it is “undecided” as to when construction is to begin, the exemption is properly denied (*Matter of World Buddhist Ch’An Jing Ctr., Inc. v Schoeberl*, 45 AD3d 947, 950 [3d Dept, 2007]).

On the other hand, 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.”

The Applicant has presented evidence showing concrete and definite plans for using and modifying the Property for its exempt purposes within the reasonably foreseeable future. Although the Applicant has not submitted evidence of any filed application with DOB for renovation construction work, the Applicant submitted a recent Architectural Proposal for the Property, and the Applicant submitted evidence of contracts between the Applicant and an architect, contractor, space and program designer, environmental sustainability researcher, and asbestos inspector regarding the contemplated renovation of the Property.

The Applicant submitted evidence of its Board’s construction approval, its Board’s approved funding plans, affirmative and specific efforts to obtain construction funding, and payments incurred towards the preliminary steps of the renovation of the Property. However, the Applicant is uncertain regarding the expected starting date of the renovation construction work on the Property.

Although the Property is not in actual use, we find that plans to adapt it for a qualifying nonprofit use are in good faith contemplated by the Applicant, which has taken concrete, if preliminary, steps towards implementing those plans. Therefore, under RPTL § 420-a. the Applicant is entitled to a RPT exemption for the Property for the 2017/2018 Tax Year.

New York City Tax Commission
Dated: August 13, 2019