

JUN 19 2020

Montana Tax Appeal Board

RESURRECTION CEMETERY
ASSOCIATION, INC,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE No: SPT-2018-37

FINDINGS OF FACT, CONCLUSIONS
OF LAW, ORDER AND
OPPORTUNITY FOR JUDICIAL
REVIEW

STATEMENT OF THE CASE

This is an appeal of the final determination letters issued by the Montana Department of Revenue (Department) denying Resurrection Cemetery Association's (RCA) property tax exemptions for three properties. *Dept. Ex. F, G and H.* RCA originally sought property tax exemptions under MCA §15-6-201 for three parcels of real property: a parcel on which sits the Resurrection Cemetery and Helena Self-Storage, an adjoining parcel of non-qualified agricultural/vacant land and a parcel on which sits the Home2 Suites by Hilton Helena Hotel. *Dept. Ex. A, B and C.* The exemptions only relate to the real property and not the improvements, which are independently owned and operated. *Stip. Fact 3.*

RCA argued in their pleadings that sufficient evidence was provided to prove they are entitled to a tax exemption on the three parcels of real property. *RCA File.* The Department in turn stated they appropriately denied the property tax exemptions, as RCA does not meet the standard set in MCA §15-6-201(h) to qualify for exemption status. *Id.* At the oral arguments before this Board, however, and as detailed below, RCA conceded

BEFORE THE MONTANA TAX APPEAL BOARD
Resurrection Cemetery Association, Inc. v. Montana Dept. of Revenue

that they could not defend the exemptions for the excess vacant acres, vacant land and the hotel parcel. *MTAB Oral Argue. 33:36-34:58 and 6:53-7:08.*

As reflected in the following decision and order, RCA's appeal is denied, and the Department's determination shall stand.

ISSUE TO BE DECIDED

Whether the real property under a retail storage facility, the proceeds of which are devoted to the maintenance of a cemetery, should be classified as exempt from taxation under MCA §15-6-201, which allows tax free status for certain lands used for charitable, educational or governmental purposes.

PROPERTY DESCRIPTION

Cemetery and Self-Storage

S17, T10 N, R03 W, C.O.S. 3295815, Acres 47.5, Tract A-2-A, IN W2W2,
Geocode 05-1888-17-2-01-01-0000,
Address 3685 N Montana Avenue,
Resurrection Cemetery and Helena Self Storage. *RCA Stip. Facts.*

Non-Qualified Agricultural/Vacant Land

S17, T10 N, R03 W, C.O.S. 3295815, Acres 59.35, Tract A-1-A, IN W2,
Geocode 05-1888-17-2-01-10-0000,
Address 1344 Jordan Drive,
Vacant land. *Id.*

Hotel

S17, T10 N, R03 W, C.O.S. 3295815, Acres 4.96, Tract B-1-A-1, IN NE4SW4,
Geocode 05-1888-17-3-02-40-0000,
Address 3325 North Sanders Street,

Home2 Suites by Hilton Helena. *Id.*

EXHIBIT LIST

(The parties have stipulated to the exhibits listed herein. *RCA File 34.*)

The Board admitted the following exhibits submitted by RCA:

- 1: Letter issued by James M. Carney, Treasurer for RCA, addressed to the Department in response to the Department's request for additional information, dated February 2, 2017;
- 2: Letter issued by the Internal Revenue Service - Department of the Treasury, addressed to the United States Conference of Catholic Bishops confirming RCA's continued federal tax-exempt status, dated May 27, 2016;
- 3: Certificate of Incorporation for Resurrection Cemetery Association, Inc., dated December 26, 1984;
- 4: Articles of Incorporation of Resurrection Cemetery Association, Inc., dated December 26, 1994;
- 5: The Official Catholic Dictionary with a highlighted section showing the Diocesan Cemeteries of Helena, dated 2016;
- 6: Certificate of Survey: A survey to relocate a common boundary between adjoining properties, dated revised November 20, 2015;
- 7: Certificate of Survey: A survey to relocate a common boundary between tract A-1 and A-2, dated revised August 30, 2016;
- 8: Notes on exemption tab for all three properties;
- 9: Email from Linda Sather, Department Management Analyst, to Roz Olson, Wanda Warsinski and Paul Langer, with instructions on the disposition of the three RCA properties;

BEFORE THE MONTANA TAX APPEAL BOARD
Resurrection Cemetery Association, Inc. v. Montana Dept. of Revenue

- 10: Memorandum of Understanding by and among Deposit and Loan Restoration Trust, Trinity Development Partnership LLC, Trinity Development Partnership II LLC, Resurrection Cemetery Association Inc., and the Roman Catholic Bishop of Helena, dated April 29, 2015;
- 11: Amended Irrevocable Limited Power of Attorney for Development of Real Property (Perpetual Care Parcel), dated May 21, 2015;
- 12: Amended Irrevocable Limited Power of Attorney for Development of Real Property, dated May 21, 2015;
- 13: United States Bankruptcy Court for the District of Montana: Disclosure Statement for First Amended Joint Chapter 11 Plan of Reorganization Proposed by the Roman Catholic Bishop of Helena, Montana and the Official Committee of Unsecured Creditors, dated January 20, 2015;
- 14: United States Bankruptcy Court for the District of Montana: Findings of Fact and Conclusions of Law Regarding Second Amended Joint Plan of Reorganization Proposed by the Roman Catholic Bishop of Helena, Montana and the Official Committee of Unsecured Creditors, dated March 5, 2015;
- 15: United States Bankruptcy Court for the District of Montana: Order Confirming Second Amended Joint Plan of Reorganization Proposed by the Roman Catholic Bishop of Helena, Montana and the Official Committee of Unsecured Creditors, dated March 5, 2015;
- 16: United States Bankruptcy Court for the District of Montana: Second Amended Joint Chapter 11 Plan of Reorganization Proposed by the Roman Catholic Bishop of Helena, Montana and the Official Committee of Unsecured Creditors, dated March 4, 2015;
- 17: Schedule 2.38(a) Deposit and Loan Fund: Loans as of 11/30/2014, dated March 5, 2015;
- 18: Schedule 2.38(b) Deposit and Loan Trust: Book Value of Liabilities to be Transferred, dated March 5, 2015;

BEFORE THE MONTANA TAX APPEAL BOARD
Resurrection Cemetery Association, Inc. v. Montana Dept. of Revenue

- 19: Schedule 2.40 Diocese Parties, dated March 5, 2015;
- 20: Operating Agreement of Perpetual Care LLC, dated April 29, 2015;
- 21: Operating Agreement of Trinity Restoration LLC, dated April 29, 2015;
- 22: United States Bankruptcy Court for the District of Montana: In re Roman Catholic Bishop of Helena, Montana, a Montana Religious Corporation Sole (Diocese of Helena), dated July 31, 2015;
- 23: Exhibit F: Deposit and Loan Restoration Trust Agreement, dated March 5, 2015;
- 28: Bylaws of Resurrection Cemetery Association, Inc., dated June 30, 2016;
- 29: Department's Property Classification and Appraisal Notice issued to Perpetual Care LLC concerning Resurrection Cemetery and Helena Self Storage, with estimated 2018 general taxes of \$39,881.90, dated April 3, 2019;
- 30: Department's Property Classification and Appraisal Notice issued to Perpetual Care LLC concerning Resurrection Cemetery and Helena Self Storage, with estimated 2017 general taxes of \$28,354.46, dated April 3, 2019;
- 31: Department's Property Classification and Appraisal Notice issued to Trinity Restoration LLC concerning Resurrection Cemetery and Helena Self Storage, with estimated 2018 general taxes of \$114,153.41, dated April 3, 2019;
- 32: Photograph of an aerial view of the three properties, showing the parcel boundaries, undated.

The Board admitted the following exhibits submitted by the Department:

- A: Real Property Tax Exemption Application, Resurrection Cemetery and Helena Self Storage, dated February 11, 2016;
- B: Real Property Tax Exemption Application, vacant parcel of land, dated February 11, 2016;
- C: Real Property Tax Exemption Application, handwritten notes state the geocode was deactivated and combined with 05-1888-17-2-01-10 (vacant parcel of land), dated February 11, 2016;

BEFORE THE MONTANA TAX APPEAL BOARD
Resurrection Cemetery Association, Inc. v. Montana Dept. of Revenue

- D: Letter from the Department requesting supporting information for the three exemption applications, dated January 5, 2017;
- E: Email response and additional information from RCA to the Department, dated February 1, 2017 and February 2, 2017;
- F: Final Decision Letter issued by the Department, Resurrection Cemetery and Helena Self Storage, dated March 21, 2018;
- G: Final Decision Letter issued by the Department, vacant land, dated March 21, 2018;
- H: Final Decision Letter issued by the Department, Home2 Suites by Hilton Helena, dated March 21, 2018;
- I: Photographs (16) taken by the Department of the Helena Self Storage units and office, dated October 12, 2016;
- J: Photographs (3) taken by the Department of the Home2 Suites by Hilton Helena while under construction, dated November 30, 2017;
- K: Photograph taken by the Department of the vacant land, dated October 12, 2016;
- L: Property Classification and Appraisal Notice issued by the Department for the vacant land dated October 2, 2017, Resurrection Cemetery and Helena Self Storage dated May 28, 2019 (two copies) and Home2 Suites by Hilton Helena dated April 3, 2019.

FINDINGS OF FACT

Resurrection Cemetery Association, Inc. was incorporated as a non-profit in 1984 under MCA Title 35 Chapter 2. *RCA Ex. 3*. RCA is a 501(c)(3) corporation, and as such is exempt from federal income taxation. *RCA Ex. 2*.

The three parcels of real property at issue in this appeal are identified as: Resurrection Cemetery Association and Helena Self Storage (Cemetery & HSS), a parcel of vacant land (Land) and the Home2 Suites by Hilton Helena (Hotel). *MTAB Appeal Form*. The three parcels of land were classified as tax exempt until the passage of HB

389 in 2015, which requires a periodic reapplication for property tax exemptions. *Stip. Fact 8*. The improvements on the properties are not at issue as they are independently owned by entities other than RSA. *Stip. Fact 3*.

Cemetery & HSS

The development rights to the Cemetery were transferred by RCA to Perpetual Care, a for-profit limited liability company. *Stip. Fact 10*. As stated in the *Irrevocable Limited Power of Attorney for Development of Real Property*, the development rights will be used to fulfill the perpetual care obligations of the Cemetery. *RCA Ex. 11*. RCA maintains a “permanent care and improvement fund” as required by law, to care for cemetery maintenance. *Stip. Facts 9*.

Helena Self Storage (HSS) is a retail storage facility, owned and operated by Perpetual Care, LLC. *Stip. Fact 10*. The storage units take up approximately 3 acres of land on the Cemetery parcel, and began operation in 2016. *Id.* The income generated by HSS will be distributed to RCA until all of RCA’s obligations are met. *MTAB Oral Argue. 8:10-8:55*. Once RCA’s needs are met, any income overflow will be distributed as follows: RCA 80% and HSS developer (Trinity Development Partnership, LLC) 20%. *Stip. Fact 12 and RCA Ex. 10 and 20*. “There is no evidence in the record that there’s ever been a profit made off of this land. Nor, is there any evidence in the record that it’s likely that any profit ever will be made off this land.” *RCA Counsel, Murry Warhank: MTAB Oral Argue. 8:56-9:10*.

RCA filed a Real Property Tax Exemption Application with the Department on or before March 1, 2016, for the entire parcel of land covering 47.5 acres. *Stip. Fact 14 and Dept. Ex. A*. The exemption was granted for the 25.5 acres currently in use by the Cemetery, and 8 acres set aside for future cemetery expansion, with a total exemption granted on 33.5 acres. *Stip. Fact 15 and Dept. Ex. F*. The Department denied the

exemption on the remaining 14 acres; 3 acres used by HSS for the physical storage facility, and 11 acres of vacant land. *Stip. Fact 16 and Dept. Ex. F.* The Department's stated reason: "Denied on approximately 3 acres as property leased to a for-profit business does not meet the use requirements of 15-6-201, MCA. Denied on the remaining approximately 11 acres as this is excess vacant and does not meet the use requirements of 15-6-201, MCA." *Id.*

Vacant Land

The parcel of non-qualified agricultural/vacant land is owned by RCA, and the development rights are owned by Trinity. *Stip. Fact 18.* The land was classified as non-qualified agricultural land prior to 2016. *Stip. Fact 17.*

RCA filed a Real Property Tax Exemption Application with the Department on or before March 1, 2016, for the parcel of land covering 59.35 acres. *Stip. Fact 19 and Dept. Ex. B.* The Department denied the exemption for the entire parcel of vacant land. *Stip. Fact 20 and Dept. Ex. G.* The Department's stated reason: "Vacant excess land does not meet the use requirements of §15-6-201, MCA." *Id.*

Hotel

The parcel of land where the Hotel is located was divided from the parcel of vacant land in 2017 and classified as commercial. *Stip. Fact 21.*

The Hotel is owned by Trinity Restoration, LLC and Trinity Development Partnership, LLC (manager of Trinity Restoration) owns the development rights for the hotel parcel. *Stip. Facts 22.* Trinity Restoration is a for-profit limited liability company. *Id.*

RCA filed a Real Property Tax Exemption Application with the Department on or before March 1, 2016, for the parcel of land under the hotel development, covering 4.96

BEFORE THE MONTANA TAX APPEAL BOARD
Resurrection Cemetery Association, Inc. v. Montana Dept. of Revenue

acres. *Stip. Fact 27 and Dept. Ex. C.* The Department denied the exemption for the entire hotel parcel. *Stip. Fact 28 and Dept. Ex. H.* The Department's stated reason: "Property leased to a for-profit entity does not meet the use requirements of §15-6-201, MCA." *Id.*

JURISDICTION AND STANDARD OF REVIEW

An owner of real property who is denied an exemption on any portion of their land "... may seek review of the department's final determination with the state tax appeal board." MCA §15-6-231(3).

The Board has jurisdiction over this appeal, and its order is final and binding upon all parties unless altered upon judicial review. *MCA §15-2-302.*

"The state board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act." *Id.*

CONCLUSIONS OF LAW

Plain Language Doctrine

The primary purpose of statutory construction is to determine the legislative intent. *MCA 1-2-102.* In order to make such a determination we must first look to the plain language of the statute in question. *Clark v. Massey, 271 Mont. 412, 897 P.2d 1085.* "In the search for plain meaning, 'the language used must be reasonably and logically interpreted, giving words their usual and ordinary meaning.'" *Were v. David, 275 Mont. 376, 913 P.2d 625 (quoting Gaub v. Milbank Ins. Co, 220 Mont. 424, 715 P.2d 443.)*

If the legislative intent can be determined by examining the plain language of the statute at issue, the court may not look beyond and use other means of statutory construction. *Curtis v. District Court, 266 Mont. 231, 879 P.2d 1164 (citing State v. Hubbard, 200 Mont. 106, 649 P.2d 1331.)* When the language of the statute is "plain,

unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the court to construe.” *State v. Hubbard* (citing *State v. Roberts*, 194 Mont. 189, 633 P.2d 1214.)

“In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.” *MCA §1-2-101*.

A court should not interpret a statute in a manner which would defeat the legislative purpose. *Lovell v. State*, 260 Mont. 279, 860 P.2d 95 (citing *Maney v. State*, 255 Mont. 270, 842 P.2d 704.) Instead, the court’s “interpretation should achieve the social purpose for which the statute was enacted.” *Id.* A statute should be seen “as part of a whole statutory scheme, and [a court should] construe [it] so as to forward the purpose of that scheme. *Vader v. Fleetwood*, 348 Mont. 344, 201 P.3d 139 (citing *State v. Burch*, 342 Mont. 499, 182 P.3d 66.) As a part of this process a court must refrain from isolating terms within a statutory framework. *State v. Triplett*, 346 Mont. 383, 195 P.3d 819 (citing *Montana Sports Shooting Ass’n, Inc. v. State, Montana Dept. of Fish, Wildlife and Parks*, 344 Mont. 1, 185 P.3d 1003). A statute must be read as a whole “to avoid an absurd result and to give effect to the purpose of the statute.” *Id.* (quoting *Infinity Ins. Co v. Dodson*, 302 Mont. 209, 14 P.3d 487.)

In order to define a particular word or phrase in one statute, it is appropriate to look at how the word or phrase is defined in other parts of the code. *MCA §1-2-107*. The exception to this rule occurs when the intention of the legislature is plainly contrary. *Id.*

Standard Exemption Three Part Test

“The following categories of property are exempt from taxation: (h) property that is: (i)(A) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21; or

(B) owned by a federally recognized Indian tribe within the state and set aside by tribal resolution; **and**

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; **and**

(iii) not maintained and not operated for gain or profit.” MCA §15-6-201 (emphasis added).

Cemetery and Self-Storage

This Board has carefully considered the briefs and oral arguments presented in this dispute, and we find that the three-part test contemplated in the law should be used to determine this application for exemption. The Department has provided convincing support for their claims that the use of the land in question does not comport with the three conditions of the test.

Thus, we begin our discussion of the application of the facts to the law by noting that this issue was raised in the first instance by the Legislature's passage of the curative legislation requiring those who had exemptions to periodically submit certain information to the Department for a re-determination. This was done because of the Legislature's concern that too many exemptions were granted or simply renewed without question, which resulted in loss of revenue and unfairness to those remaining taxpayers who picked up this share of the tax burden.

Additionally, we emphasize that the Legislature has seen fit to be very specific in two instances about the framework for examining cemeteries: the money generated by them and those entities and activities which fall under the definitions and purposes of the framework. Generally, a cemetery is in the business of caring for and dealing with the remains of our deceased citizens. Those activities which logically and naturally arise out of and are related to this business qualify for special tax treatment. The Legislature has

BEFORE THE MONTANA TAX APPEAL BOARD
Resurrection Cemetery Association, Inc. v. Montana Dept. of Revenue

further fleshed out this dictate by also requiring that the cemetery business activities be non-profit. If they are for-profit, they do not qualify for the special treatment of a tax exemption.

The sole issue before us is what to do with the three acres of real property owned by RCA upon which a storage unit, for-profit, business has been placed, which the Department has previously determined does not qualify for a real property tax exemption under Montana law. The fact that the business does not appear to have ever generated a profit, while interesting, is not dispositive. The point is that it could, that it is voluntarily organized under Montana law to do so. But, even if some portions of this complicated business scheme between and among the various entities involved here, indeed fall into the non-profit column, our discussion and analysis does not end there.

If we were to weigh the facts and law using the canons of statutory construction, our analysis would conclude that this sought-after exemption language results in a decision in favor of the Department. It boggles credulity to posit that a cemetery or a cemetery association which has allowed a for-profit storage unit business to be constructed, maintained and operated on its real property, is entitled to a tax exemption on that real property. Even if the business located on the non-profit's land is itself non-profit, or the proceeds from the surface owner's business are used to do "good things", this does not make a difference under the statutory framework. No matter how mighty the efforts to obfuscate the facts, we find that the efforts fail as a matter of law because a storage unit business is in no way related to the operations of a cemetery. In short, it has "nothing to do with" the primary activity. *King Colony Ranch, 137 Mont 145, 147, 350 P.2d 841, 842.*

We were not presented with facts that the business of a cemetery gives rise to, or is associated with, a storage unit business. And yet it has been clearly held that for a tax exemption to be given for an exclusive use for an exempted purpose, this use must be "the primary and inherent use and not the mere secondary or incidental uses of the

property.” *Flathead Lake Methodist Camp v. Webb*, 144 Mont. 565, 399 P.2d 90, 1965 Mont. LEXIS 524 (citing *Salvation Army v. Hoehn*, 354 Mo. 107, 188 S.W.2d 826.)

The Legislature has been very specific in regulating cemeteries and cemetery associations. To give an idea of how far the appellants are attempting to stretch the general grant of permissible tax exempt activity laid out by the Montana Legislature, consider that the Montana Code contemplates a cemetery association as a group of persons who desire to form an association "for the purpose of procuring and holding lands to be used exclusively for a cemetery or place of burial of the dead", MCA §35-20-101; and, that the legislative concept of a perpetual care fund, created under MCA §35-20-312, contemplates nothing other than the sale of burial lots as a means of raising money for perpetual cemetery care.

The Legislature has also been very specific in tasking the Department with periodically reviewing the granting of tax exemptions. Even the complexities of the entities and ownerships herein cannot overcome the relatively bright lines that the Legislature has drawn. These lines apply to all who are in the business of cemeteries and cemetery associations, not just this one or others with religious affiliations. The Legislature did not confer exemptions on cemetery land hosting unrelated for-profit business enterprises.

Vacant Land

Board Member Doherty questioned the RCA attorneys concerning the 59.35 acres of non-qualified agricultural land and the 11 acres of vacant land on the Cemetery parcel, as they were issues raised in the original filings, but they were not pursued during the oral arguments. *MTAB Oral Argue. 33:36-34:58*. “With regards to the non-qualified ag land, I can’t tell you that I think that we have the facts to support today that we meet that exemption after reading the Department’s briefs. So, we’re not making that argument

BEFORE THE MONTANA TAX APPEAL BOARD
Resurrection Cemetery Association, Inc. v. Montana Dept. of Revenue

today, and I think based on briefing we would expect that the Board would find in the Department's favor upon the non-qualified ag land/vacant land." *Id.*

Based upon RCA's statement, the Board considers the claim related to the non-qualified agricultural land and vacant cemetery land as conceded.

Hotel

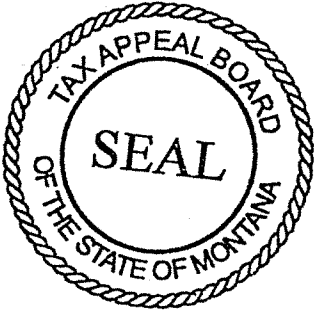
During the MTAB oral arguments, held on March 24, 2020, the attorneys representing RCA conceded the claim related to the exemption of the land under the Home2 Suites by Hilton Helena Hotel. *MTAB Oral Argue. 6:53-7:08.* "The Taxpayer has conceded the issue regarding the ground that underlies the Hotel parcel. Which, prior to our involvement in this matter was in the case, but now we are agreeing with the Department of Revenue's position." *Id.*


ORDER

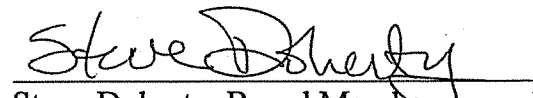
The Department shall value the parcels of real property as presently listed, without exemption of the property tax on the HSS parcel, the excess vacant acres, the vacant land parcel and the hotel parcel. The Cemetery parcel remainder of 33.5 acres shall maintain its present exemption from property taxation.


BEFORE THE MONTANA TAX APPEAL BOARD
Resurrection Cemetery Association, Inc. v. Montana Dept. of Revenue

Ordered June 19, 2020




David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD


Steve Doherty, Board Member
MONTANA TAX APPEAL BOARD


Eric Stern, Board Member
MONTANA TAX APPEAL BOARD


Notice: You are entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. The Department of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. MCA §15-2-303(2).

Certificate of Service

I certify that I caused a true and correct copy of the foregoing Order to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on June 19, 2020 to:

Terry B. Cosgrove, Murry Warhank
Jackson, Murdo and Grant, P.C.
203 North Ewing
Helena, Montana 59601-4240

Nicholas J. Gochis
Montana Department of Revenue
P.O. Box 7701
Helena, Montana 59604-7701


Lynn Cochran, Paralegal Assistant
MONTANA TAX APPEAL BOARD