

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

CASE NO. 2017-0187

THE MARIST BROTHERS OF NEW HAMPSHIRE

V.

TOWN OF EFFINGHAM

BRIEF OF APPELLANT
THE MARIST BROTHERS OF NEW HAMPSHIRE

ON APPEAL FROM FINAL DECISIONS OF THE
CARROLL COUNTY SUPERIOR COURT

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QUESTIONS PRESENTED

1. Whether the Superior Court (Ignatius, J.) erred in ruling that the real estate embracing Camp Marist, a Catholic summer youth camp owned and operated by Appellant, The Marist Brothers of New Hampshire, which advances the religious, spiritual, educational, and cultural development of youth from New Hampshire and beyond, is not entitled to a charitable exemption under N.H. REV. STAT. ANN. §§ 72:23, V, and 72:23-I, having ruled, contrary to the record and this Court's settled precedent, that The Marist Brothers of New Hampshire:

- a. lacks a charitable purpose, because it offers no public benefit (App. 96-119, 129-34);¹
- b. does not use the Camp Marist property for charitable purposes (App. 120-21, 134-36); and
- c. forfeits its right to a charitable exemption by paying an annual assessment to the U.S. Province of The Marist Brothers of the Schools, the ministry under which it is organized, which established, built, and staffed Camp Marist without compensation, and which continues to direct, manage, and confer significant financial benefits on Camp Marist (App. 124-27, 136-40).

2. Whether the Superior Court (Ignatius, J.) erred in excluding as irrelevant evidence that each and every one of the 26 religiously-affiliated, 22 YMCA-affiliated, and 12 Girl and Boy Scout-affiliated New Hampshire summer youth camps, *except for Camp Marist*, has been granted an exemption from taxation by the State of New Hampshire, through its municipal subdivisions, disregarding the principle that similarly situated taxpayers must be treated equally. (App. 85-87.)

¹ References to "App." are to the Appendix filed in connection with this Brief. References to "Tr." are to the transcript of the trial in this matter.

APPLICABLE STATUTORY PROVISIONS

RSA 72:23 [Real Estate and Personal Property Tax Exemption]

* * * *

V. The buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in this state, owned, used and occupied by them directly for the purposes for which they are established, provided that none of the income or profits thereof is used for any other purpose than the purpose for which they are established.

* * * *

RSA 72:23-1 [Definition of “Charitable”]

The term “charitable” as used to describe a corporation, society or other organization within the scope of this chapter, including RSA 72:23 and 72:23-k, shall mean a corporation, society or organization established and administered for the purpose of performing, and obligated, by its charter or otherwise, to perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being of the general public or a substantial and indefinite segment of the general public that includes residents of the state of New Hampshire, with no pecuniary profit or benefit to its officers or members, or any restrictions which confine its benefits or services to such officers or members, or those of any related organization. The fact that an organization's activities are not conducted for profit shall not in itself be sufficient to render the organization “charitable” for purposes of this chapter, nor shall the organization's treatment under the United States Internal Revenue Code of 1986, as amended. This section is not intended to abrogate the meaning of “charitable” under the common law of New Hampshire.

STATEMENT OF THE CASE AND FACTS

Camp Marist is a Catholic summer camp situated on 159 acres of land on the shores of Ossipee Lake in Effingham, New Hampshire, which is owned and operated by the Appellant, The Marist Brothers of New Hampshire (or “MBNH”).² MBNH operates Camp Marist for the purpose of advancing the religious, spiritual, educational, and cultural development of youth from throughout the world, including New Hampshire.³ This appeal arises from a January 30, 2017 decision of the Carroll County Superior Court (Ignatius, J.), following a two-day bench trial held in October 2016, that MBNH does not qualify for a charitable purpose property tax exemption for Camp Marist, under N.H. REV. STAT. ANN. § 72:23, V, Real Estate and Personal Property Tax Exemption – Charitable Organizations (“RSA 72:23, V”), and N.H. REV. STAT. ANN. § 72:23-I, Definition of “Charitable” (“RSA 72:23-I”). The Superior Court rendered that decision on evidence of the facts that follow.

I. THE MARIST BROTHERS OF THE SCHOOLS

MBNH is affiliated with The Marist Brothers of the Schools (*F.M.S. – Fratres Maristae a Scholis*), an international Catholic teaching Order founded in 1817 by Father Marcellin Champagnat (now known as Saint Marcellin).⁴ For over two centuries, this Catholic Order has been devoted to education of youth.⁵ As “witnesses to, and servants of the Kingdom of God,”⁶ the Brothers devoted to this Order take “vows of chastity, poverty, and obedience,”⁷ and are called to:

² App. 41.

³ App. 176-317, 318-324, 325-351, 353, 354-355, 879-916.

⁴ App. 505-506.

⁵ App. 556-566.

⁶ App. 506.

⁷ *Id.*

- “reach out to others, especially young people, to make Jesus Christ known”,⁸
- “evangelize people, especially by educating the young, particularly those most neglected”;⁹
- provide “Christian education [to] the young, especially those most in need”,¹⁰
- “help[] children and young people become good Christians and good citizens”;¹¹
- “awaken in young people the desire to give themselves to follow Christ”;¹² and
- “help [young people] discover their vocation in the Church and in the world.”¹³

Mindful of “the hard facts of the lives of young people,”¹⁴ Marist Brothers are dutifully “[e]ngaged in schools or in other forms of education”¹⁵ in over 70 countries throughout the world, including at Camp Marist.¹⁶

⁸ App. 514; *see also* App. 421, 505.

⁹ App. 556-567.

¹⁰ App. 505-506.

¹¹ App. 557-558.

¹² App. 558.

¹³ App. 558-559.

¹⁴ App. 559.

¹⁵ App. 560.

¹⁶ App. 41-42, 477, 487, 509.

II. THE PRECEPTS OF MARIST EDUCATION

Guided by precepts set forth by Saint Marcellin Champagnat that address “what it means to educate a child,”¹⁷ Marist Brothers aim to “see[] to the child’s physical development as well as his intellectual, moral and religious growth” and “*give him the means to acquire the total perfection of his being*, making this child a complete person.”¹⁸ Thus, Marist education “draws faith, culture, and life into harmony.”¹⁹ It favors “active” rather than “mechanical learning,” embracing “prayer groups, retreats, and other spiritual experiences that are open to all.”²⁰ Marist education also includes “sports activities to develop [children’s] skills and physical coordination, as well as to enhance character formation, teamwork, recognition of personal limits, coping with failure and the desire to succeed.”²¹

¹⁷ App. 959-963.

¹⁸ App. 451 n. 4.16, 962. According to the Champagnat Precepts, educating a child means:

- I. *enlightening his mind* and helping him to know religion ...
- II. ... *reforming his evil inclinations*...
- III. ... *training his heart* and developing all his good dispositions ...
- IV. ... *forming his conscience* ...
- V. ... *training him in piety* ...
- VI. ... *making virtue and religion loved* ...
- VII. ... *training his will* ...
- VIII. ... *training the child’s judgment* ...
- IX. ... *molding and polishing his character* ...
- X. ... *maintain[ing] constant vigilance over him* ...
- XI. ... *inspir[ing] him with love of work* ...
- XII. ... *giving him the knowledge he will need* in his position and station in life ...
- XIII. ... seeing to the child’s *physical development* as well as his intellectual, moral and religious growth ...
- XIV. ... *giv[ing] him the means to acquire the total perfection of his being*, making this child a complete person.

App. 958-963 (emphasis in original).

¹⁹ App. 562.

²⁰ App. 404, 406.

²¹ App. 405.

To promote Marist education, the United States Province of The Marist Brothers of the Schools has founded and/or staffed and funded educational ministries, open to youth of all faiths, throughout the United States, including, but not limited to, Camp Marist.²²

III. THE MARIST BROTHERS OF NEW HAMPSHIRE

The United States Province of the Marist Brothers of the Schools established The Marist Brothers of New Hampshire in connection with the acquisition, development, and operation of Camp Marist.²³ MBNH is a non-profit corporation organized under the laws of the State of New Hampshire, and is tax exempt under Section 501(c)(3) of the Internal Revenue Code.²⁴ Its mission, set forth in its Articles of Agreement, states in relevant part:

The object for which this Corporation is established is to offer recreational and educational services to persons of whatever race, nationality, ethnic background, state or nation of residence. The corporation recognizes and affirms its traditional affiliation and faith in the Roman Catholic Church. In furtherance of the object, this corporation shall provide opportunities to meet primarily the spiritual, cultural, and physical needs of youth.²⁵

MBNH is managed by a Board of Directors, including Marist Brothers within the United States Province of The Marist Brothers of the Schools.²⁶ No Director receives compensation from MBNH, or indeed, any compensation as a Director.²⁷ The Board of Directors reports to Members of MBNH, who are the Major Superior (Reverend Brother Provincial) and the Provincial Council of the United States Province of The Marist Brothers of the Schools.²⁸ No Member of MBNH receives compensation as a Member.²⁹ The Members' duties include, among

²² App. 42.

²³ App. 41.

²⁴ *Id.*

²⁵ App. 44.

²⁶ App. 146-148.

²⁷ App. 146, 150.

²⁸ App. 146.

²⁹ App. 150.

other things, the “articulation and mediation of the philosophy of [Camp Marist] that underlies its religious and charitable ministry[,] ... [including] decisions regarding major policy changes and long-range planning[,]” as well as the appointment of “an Executive Director, who [is] . . . the overall manager of the operation and programs of [Camp Marist] . . . responsible for the day-to-day running of the [camp] and a Camp Director, who is responsible for the day to day running of the summer programs at Camp Marist”³⁰

It is at Camp Marist that MBNH carries out its purpose of “meet[ing] primarily the spiritual, cultural, and physical needs of youth.”³¹

IV. CAMP MARIST

Because the United States Province of The Marist Brothers of the Schools wished “to create a [summer] camp [that] complemented what [it was] doing in [its] schools,”³² in 1949, it established MBNH to purchase the subject Effingham real estate — 159 acres on the shores of Ossipee Lake.³³ The following year, in 1950, it founded Camp Marist.³⁴ Thereafter, Marist Brothers devoted substantial labor, and expense, to building and renovating the Camp’s facilities — for example, constructing residences, a canteen, stables, and a 300-seat worship space called Our Lady of Fatima Chapel.³⁵ Since the Camp’s founding, Marist Brothers have also dedicated substantial labor, time, and effort to its operations.³⁶ Today, Camp Marist continues to be staffed by Marist Brothers — to whom Camp Marist pays no compensation (beyond room and board) for their services — among other staff from around the world.³⁷

³⁰ App. 146-147.

³¹ App. 41-44.

³² App. 932.

³³ App. 41.

³⁴ App. 42.

³⁵ App. 42.

³⁶ *Id.*

³⁷ App. 320; Tr. 146:12-147:10.

Starting out as an all-boys' camp, Camp Marist is now a co-educational residential summer camp, drawing about 500 youth each year from the United States, including New Hampshire, and around the world.³⁸ In 2015, 490 campers attended the Camp.³⁹ The Marist Brothers provide "a nurturing Christian environment" at Camp Marist "that fosters personal growth in faith, mind, body, and friendship through challenging and educational activities."⁴⁰ The Camp Marist property has buildings and facilities to accommodate these aims of a Marist education.

For example, the property embraces the 300-seat Our Lady of Fatima Chapel; a "Log Cabin" that accommodates 20 people for meetings and retreats; a dining hall to accommodate 350 persons; camper cabins; staff housing; counselor training buildings; a health lodge; an arts & crafts building; an activity pavilion; courts for tennis and basketball; fields for soccer, baseball, softball, rugby, badminton, and lacrosse; rifle and air rifle ranges; an expansive beach; and playground area.⁴¹ In addition, expanses of the property that are not covered by structures include a waterfront, hiking trails, nature trails, bridle paths, and an area devoted to a nature program, "Call of the Wild," and an amphitheater known as "The Mound," where campers congregate.⁴²

A framed parchment within the Camp's main office recites:

Let it be known to all who enter here that Jesus Christ is the reason for this camp, the unseen but ever-present teacher in all its activities, the model for its staff, and the inspiration for its campers.⁴³

³⁸ App. 42.

³⁹ App. 856-878.

⁴⁰ App. 177, 181, 880.

⁴¹ App. 185-186.

⁴² Tr. at 121-24, 159.

⁴³ App. 917; Tr. 44, 76.

Each day at Camp Marist begins with a prayer at The Mound, and ends with prayer and reflection led by Cabin prefects in the campers' cabins before lights are turned out for the night.⁴⁴ Each day, campers and staff also assemble at The Mound to witness two campers ceremoniously light a lantern beside a statue of the Blessed Virgin Mary.⁴⁵ There is a Catholic priest on campus throughout the Camp season,⁴⁶ and a stream of visiting priests to perform the sacraments of the Catholic Church, including Mass and confession.⁴⁷ Campers are encouraged to attend an early morning Daily Eucharist at Our Lady of Fatima Chapel, and are invited to a Campers Mass each Sunday evening, where “a special homily is prepared and the Music, Readings and Petitions are presented by the Campers.”⁴⁸ In addition, Camp Marist provides “two weekend Masses for local people and visitors.”⁴⁹

But, as noted, the aims of Marist education and the purpose of MBNH are not only to foster the religious and spiritual development of youth, but to also meet the “cultural[] and physical needs of youth.”⁵⁰ Toward that end, Camp Marist staff members are instructed on the Champagnat Precepts of educating a child,⁵¹ and are further guided by a Staff Manual that reminds them: “The campers will experience the program through each of us as individual counselors. It is our job to help them grow and mature into a better understanding and

⁴⁴ App. 323, 353; Tr. 45, 48, 92.

⁴⁵ This ritual is done in remembrance of Saint Marcellin, who having journeyed on foot to visit a seriously ill brother, was lost in a snow storm and would have perished in the night had not a farmer, at that moment, through divine providence, gone outside with a lantern that would guide his way to find refuge — that is, just after Saint Marcellin knelt in the snow and recited *The Memorare*, a Roman Catholic prayer to the Virgin Mary, in which one seeks her help in desperate circumstances. See Tr. at 44-48; App. 1049, 1056, 1060-1061 [Photos].

⁴⁶ Tr. at 52.

⁴⁷ App. 203; see also Videos from Mass (submitted on CD at App. 1126).

⁴⁸ App. 203, 353, 548.

⁴⁹ App. 203.

⁵⁰ App. 44.

⁵¹ Tr. 24-26, 71-72, 75-76.

knowledge of themselves as people.”⁵² Thus, at Camp Marist, traditional summer camp activities (*e.g.*, athletics, water sports, arts & crafts), have a distinct Marist overlay. By way of example, and without limitation, each week “The Champagnat Award” is given to a camper and staff member who best “exemplifies the virtues of St. Marcellin [Champagnat] by being kind, compassionate and a leader to others.”⁵³ Camp Marist also offers academic programs, including tutoring across a range of subjects, remedial mathematics, Digital Photo and Media, and English as a Second Language (ESL).⁵⁴

Cultural diversity is an important part of the educational experience at Camp Marist. During the last ten years, Camp Marist has served youth not only from New Hampshire and elsewhere within the United States and its territories, but also from France, Luxembourg, Mexico, Canada, the Netherlands Antilles, the United Kingdom, Ireland, Spain, Venezuela, Dominican Republic, Italy, Switzerland, and Singapore.⁵⁵ Addressing the international diversity of each season’s campers, MBNH’s Executive Director testified about the educational benefits thus provided to campers:

[W]e do have campers really from all over the world. This past year, we had 26 campers from Beijing, China. And what we provide for them, most of them come for the purposes of practicing their English, and we do offer . . . ESL classes for them. We also provide an international night where we bring everyone down to the [M]ound and the staff from all different countries will perform. They might sing songs from their native land, they might even bring — make some food for the staff and the campers.⁵⁶

⁵² App. 880.

⁵³ App. 313; see also photos at App. 1039, 1073, 1077; Tr. 67-68.

⁵⁴ App. 44.

⁵⁵ App. 1074 [Photo]; App. 681-878.

⁵⁶ Tr. 124:18-25, 125:1.

Marist campers not only experience and learn about other cultures, “they [also] get a sense of community . . . living together in a cabin. . . . They share the activities that they are participating in. And they’re teaching each other . . . different aspects of their culture as the day goes on.”⁵⁷

Beyond youth, there are no qualifications, religious or otherwise, for attendance at Camp Marist.⁵⁸ Tuition ranges from \$1,900 for a two-week session in the early-summer, to \$5,900 for a seven-week summer session, which in addition to lodging “include[s] all meals and canteen expenses, laundry services, and selected cabin trips.”⁵⁹ There is also a \$175 registration fee.⁶⁰

MBNH provides full or partial scholarships to children based on financial need.⁶¹ A scholarship application is available on its website, and when MBNH receives inquiries about financial aid, it directs people to the online scholarship application.⁶² MBNH has never denied a camper application based on an inability to pay.⁶³ And when space has been available, no scholarship application has ever been denied.⁶⁴ For the 2015 Season, MBNH granted 47 full or partial scholarships, totaling \$108,739.00.⁶⁵

MBNH collected \$1,239,565 in tuition and fees for the 2015 Season, but had expenses totaling \$1,255,313.⁶⁶ When Camp Marist is not in session, MBNH rents the property, or

⁵⁷ Tr. 125:10-14 (Testimony of Joseph Bouchard, Camp Marist Executive Director).

⁵⁸ Tr. 125:25, 126:1-7 (Testimony of Joseph Bouchard, Camp Marist Executive Director); App. 43.

⁵⁹ App. 323.

⁶⁰ *Id.*

⁶¹ App. 352.

⁶² Tr. 133:17-22.

⁶³ App. 1100.

⁶⁴ App. 1098.

⁶⁵ App 352. In addition, MBNH works with and grants scholarships through organizations that serve families in poverty, including but not limited to Boys & Girls Club of Lawrence (MA), a youth development agency, and Guadalupe Regional Middle School (“GRMS”) of Brownsville, TX, a tuition-free Catholic school jointly sponsored by the Congregation of Christian Brothers, The Marist Brothers of the Schools, and the Sisters of the Incarnate Word and Blessed Sacrament. GRMS students come from families of low to modest incomes who qualify for federal assistance under the free and reduced lunch guidelines. *See* Tr. 134:21-25; 135:1-5; 179:11-25, 180.

⁶⁶ App. 1122-1125. *See* Order at 7.

portions thereof, to various organizations for retreats and functions, for a fee.⁶⁷ There are no formal restrictions on who may rent the property,⁶⁸ but educational institutions, particularly Catholic educational institutions, are “typical renters.”⁶⁹ In 2015, MBNH earned \$92,854 in off-season rental income.⁷⁰ These revenues were largely attributable to leases with Catholic educational institutions such as *St. Mary’s* High School (Manhasset, NY), Central *Catholic* High School (a *Marist* institution in Lawrence, MA) and *St. Joseph’s* College (Standish, ME).⁷¹

Marist Brothers ministries within the United States Province, including seven high schools, a retreat house in Esopus, New York, and Camp Marist, make an annual contribution to the United States Province of The Marist Brothers of the Schools, aimed at stabilizing and ensuring the survival of each, including Camp Marist,⁷² and also in recognition of the substantial financial assistance provided by the United States Province to them.⁷³

In 2015, MBNH made a contribution of \$106,000 to the United States Province.⁷⁴ The Chief Financial Officer of the United States Province, Frank Pellegrino, testified that the assessment goes to “ministries of the Marist Brothers that need assistance,”⁷⁵ including Camp Marist, as “was the case in 2008 when it had the snow [storm and] — the accident with three cabins. . . . [T]he Province gave Camp Marist a check for \$75,000.”⁷⁶ Another recipient of aid from the United States Province is the Marist Brothers’ retreat house in Esopus, New York,

⁶⁷ Tr. 138:5-21.

⁶⁸ Tr. 159:18-20.

⁶⁹ Tr. 138:4-21; 160:5-15.

⁷⁰ Tr. 164:18-20.

⁷¹ App. 943-955.

⁷² Tr. 200-01 (Testimony of U.S. Province CFO Frank Pellegrino).

⁷³ App. 1119; Tr. 209:20-21.

⁷⁴ App. 1119.

⁷⁵ Tr. 209:20-21.

⁷⁶ Tr. 210:12-14; *see also* Tr. 135-147 (Testimony of Joseph Bouchard, Camp Marist Executive Director, discussing the 2008 snowstorm, the loss of three building structures, a group Lloyd’s policy, and the payment by the U.S. Province of each \$25,000 deductible for restoration).

“where we have these camps for the young that have AIDS and cancer, and they are deaf, and special needs. [Other recipients include] . . . two high [Marist] schools that the students cannot afford a Catholic education, so we try to help those high schools to assist those students to attend those two Catholic high schools.”⁷⁷

Further, beyond the uncompensated service of those who acquired, established, built, and have since directed, managed, and staffed Camp Marist, the United States Province of The Marist Brothers of the Schools provides additional financial benefits to MBNH, including:

- health insurance for Marist Brothers who serve as Camp Marist staff;⁷⁸
- property and liability insurance (insuring Camp Marist under a group policy along with seven Marist high schools and a retreat, yielding better coverage; in fact, premiums for Camp Marist, allocated by the Province at \$58,000 for each of the last twelve years, would have exceeded \$100,000 each year if underwritten on a stand-alone basis);⁷⁹
- motor vehicle insurance (again under a group policy; Camp Marist has ten vehicles – a dump truck, three buses, a van, and six cars. While the group premium is \$1,200 per vehicle, the Province allocates a \$300 per vehicle charge to MBNH).⁸⁰

That is to say, the United States Province of The Marist Brothers of the Schools does not “derive any pecuniary profit or benefit” from MBNH’s operations or the assessment.⁸¹ And as noted, the Marist Brothers and the Members and Directors of the U.S. Province of The Marist Brothers of the Schools, who established, built, and have since directed, managed, served, and staffed Camp Marist, have derived no compensation from MBNH.

⁷⁷ Tr. 209:21-25, 210:1-2.

⁷⁸ Tr. 206:12-16; *see also* Tr. 109.

⁷⁹ Tr. 206-208.

⁸⁰ Tr. 208:12-25; 209:1-6 (Testimony of Frank Pellegrino, U.S. Province CFO).

⁸¹ *ElderTrust of Florida, Inc. v. Town of Epsom*, 154 N.H. 693, 698 (2007); *see* RSA 72:23-1 [Definition of “Charitable”].

V. MBNH'S CLAIM FOR EXEMPTION FROM TAXATION

On or about March 23, 2015, MBNH presented a Claim for Exemption from Taxation to the Town of Effingham, seeking a charitable tax purpose exemption pursuant to RSA 72:23, V, and RSA 72:23-1.⁸² By letter, dated July 28, 2015, the Board of Selectmen for the Town of Effingham denied the Claim for Exemption from Taxation.⁸³ Pursuant to RSA 72:34-a, MBNH appealed that decision to the Carroll County Superior Court.

VI. THE SUPERIOR COURT'S RULING THAT MBNH DOES NOT QUALIFY FOR A CHARITABLE TAX EXEMPTION

Before the trial on MBNH's appeal from the denial of its Claim for Exemption from Taxation, the Superior Court (Ignatius, J.) excluded from evidence a survey of the tax treatment of 102 licensed New Hampshire non-profit camps, which discloses that each and every one of the 26 religiously-affiliated, 22 YMCA-affiliated, and 12 Girl and Boy Scout-affiliated New Hampshire summer youth camps, *except for Camp Marist*, has been granted an exemption from taxation by the State of New Hampshire, through its municipal subdivisions.⁸⁴ See Order, dated Oct. 17, 2016.

Following a two-day bench trial, the Superior Court entered an Order, dated January 30, 2017 (the "Order"), ruling that MBNH is not entitled to a charitable tax exemption for Camp Marist under RSA 72:23, V, and RSA 72:23-1, because, in its view, MBNH satisfied none of the

⁸² App. 41-42.

⁸³ App. 42.

⁸⁴ The survey disclosed as follows:

<u>Affiliation</u>	<u>Number</u>	<u>Not Tax Exempted</u>
Religious	26	1 (Camp Marist)
Young Men's Christian Association	22	0
Girl Scouts	5	0
Boy Scouts	7	0
All Others	42	5

See Order dated Oct. 17, 2016 at 2.

four factors for a charitable tax exemption set forth in *ElderTrust of Florida, Inc. v. Town of Epsom*, 154 N.H. 693 (2007), which consider whether:

- (1) the institution or organization was established and is administered for a charitable purpose;
- (2) an obligation exists to perform the organization's stated purpose to the public rather than simply to members of the organization;
- (3) the land, in addition to being owned by the organization, is occupied by it and used directly for the stated charitable purposes; and
- (4) any of the organization's income or profits are used for any purpose other than the purpose for which the organization was established.

ElderTrust, 154 N.H. at 697-98.

On evidence of the foregoing facts, the Superior Court ruled that MBNH does not qualify for a charitable tax exemption because, so it declared:

1. Although "MBNH's stated purpose of offering religious, educational, and recreational services to 'persons of whatever race, nationality, ethnic background, state or nation of residence' and the obligation to 'provide opportunities to meet primarily the spiritual, cultural and physical needs of youth' are arguably public charitable purposes," and *further*, although "there is no dispute that MBNH offers religious, educational, and recreational services to its youth campers," MBNH does so "for the benefit of a limited group of children," and offers no benefit to the general public. Order at 15-16 (citing *Granite State Mgmt. & Res. v. City of Concord*, 165 N.H. 277, 284 (2013); *City of Concord*, 161 N.H. at 352).

2. MBNH's "occupancy of the [Camp Marist] property [is not] reasonably necessary for the charitable organization to carry out its mission," Order at 19, because MBNH rents the property in its off-season to organizations that do not "directly fulfill[] its asserted goal of 'advancing education' or 'aiding religion'" and, further, does not limit the use of rental fees "to the direct expenses of operating the [Camp itself]." Order at 20.

3. MBNH contributes money to the United States Province of The Marist Brothers of the Schools that is not "related to the value of the benefit MBNH receives as a result of its

affiliation with the U.S. Province,” and such payment merely supports the Marist ministries, doing “little to aid the stated purpose of MBNH.” Order at 22.

Each of these rulings was erroneous, but MBNH’s Motion for Reconsideration⁸⁵ was denied in summary fashion by Order, dated March 7, 2017.

SUMMARY OF ARGUMENT

The Marist Brothers of New Hampshire proved each of the *ElderTrust* factors. *First*, it is a nonprofit charitable organization founded and administered for the charitable purposes of “advancing education” and “aiding religion.” *Granite State Mgmt. & Res.*, 165 N.H. at 284. At Camp Marist, MBNH fulfills its corporate mission “to meet primarily the spiritual, cultural, and physical needs of youth.”⁸⁶ Hundreds of youth from around the world, from diverse socio-economic, ethnic, and religious backgrounds, gather at Camp Marist for a uniquely Marist summer camp experience that, among other things, fosters their spiritual growth, encourages teambuilding and leadership, and promotes cultural sensitivity. As the campers then return to their communities, the benefits of the Camp Marist experience reach “a far greater segment of society” than each individual camper. *Town of Peterborough v. MacDowell Colony, Inc.*, 157 N.H. 1, 7 (2008). *Second*, MBNH is obligated by its charter to perform its charitable mission of attending to “the spiritual, cultural, and physical needs of youth” at Camp Marist.⁸⁷ *Third*, MBNH occupies and uses Camp Marist directly for its stated charitable purposes. *Fourth*, MBNH does not profit in any measure from Camp Marist’s operations, nor does the United States Province of The Marist Brothers of the Schools derive any pecuniary benefit therefrom.

⁸⁵ App. 129-40.

⁸⁶ App. 44.

⁸⁷ *Id.*

At each step of the Superior Court’s analysis, the Court stumbled. Its rulings that MBNH met not one *ElderTrust* factor cannot be squared with *ElderTrust* and its progeny, and, indeed, reflect the sort of “strained, over-technical and unnecessary construction [of RSA 72:23, V and RSA 72:23-I]” that this Court has repeatedly rejected. *Granite State Mgmt. & Res.*, 165 N.H. at 284 (citation omitted). Analyzing the first and second *ElderTrust* factors together, the Superior Court misapplied them both, and created hurdles for a charitable tax exemption that the law does not impose. Its analysis of these factors should have ended with its finding that MBNH serves “arguably public charitable purposes.” Order at 16. Instead, it imposed an artificial numerosity requirement on the performance of public service, and failed to consider the societal benefits of the Marist summer camp experience, ruling that MBNH does not satisfy the first two *ElderTrust* factors because there was no general public benefit to the advancement of education and promotion of religion among the 490 campers at Camp Marist during 2015. Further, the Superior Court opined that MBNH would have to offer more scholarships and charge less tuition (overlooking that tuition collected roughly matched expenses) to make a “significant charitable effort.” Order at 17. This, too, was error.

As to the third *ElderTrust* factor, the Superior Court misplaced its focus on *off-season* rentals (*i.e.*, incidental uses) of the Camp Marist property, and based its ruling on a misunderstanding of *Appeal of Kiwanis Club of Hudson, Inc.*, 140 N.H. 92 (1995). The trial court noted that MBNH did not restrict *off-season* rentals to organizations that fulfill its charitable purposes and did not limit the use of *off-season* rental income “to the direct expenses of operating the [Camp], or . . . otherwise . . . carry[ing] out its alleged charitable mission.” Order at 20 (citing *Kiwanis Club*, 140 N.H. at 94). *Kiwanis Club* imposes no such requirements. To the contrary, *Kiwanis Club* holds that the primary or dominant use, not the incidental use, of

the property must advance the organization's charitable purpose. Certainly, MBNH's dominant use of the Camp Marist property is as a summer camp where it carries out its charitable missions.

Likewise, the Superior Court erred in its application of the fourth *ElderTrust* factor, holding that MBNH's payment of an annual contribution to the United States Province of The Marist Brothers of the Schools rendered it ineligible for a charitable tax exemption. Neither MBNH nor the United States Province derives any pecuniary profit or benefit from the operation of Camp Marist. Further, the contribution made to the United States Province in fact supports MBNH's charitable purposes of advancing education and aiding religion. Accordingly, MBNH satisfied this factor as well.

For the foregoing reasons, as discussed in more detail below, MBNH qualifies for a charitable tax exemption under RSA 72:23, V, and RSA 72:23-I, and the Order of the Superior Court should, therefore, be reversed.

ARGUMENT

I. STANDARD OF REVIEW

The determination of the right to an exemption from taxation is statutory, and this Court is "the final arbiter of legislative intent as expressed in the words of the statute considered as a whole." *MacDowell Colony*, 157 N.H. at 5 (citation omitted). This Court "will overturn the trial court's decision 'if we find that the [trial court] misapprehended or misapplied the law.'" *Id.* (citation omitted). Further, this Court has repeatedly observed that "[t]he legislative purpose to encourage charitable institutions is not to be thwarted by a strained, over-technical and unnecessary construction." *Granite State Mgmt. & Res.*, 165 N.H. at 284; *see also MacDowell Colony*, 157 N.H. at 5; *Young Women's Christian Ass'n v. Portsmouth*, 89 N.H. 40, 42 (1937).

II. THE SUPERIOR COURT ERRED IN RULING THAT THE REAL ESTATE EMBRACING CAMP MARIST, A CATHOLIC SUMMER CAMP THAT ADVANCES THE RELIGIOUS, SPIRITUAL, EDUCATIONAL, AND CULTURAL DEVELOPMENT OF YOUTH, DOES NOT QUALIFY FOR A CHARITABLE TAX EXEMPTION UNDER 72:23, V, AND 72:23-1, HAVING MISAPPLIED EACH ELDERTRUST FACTOR.

A. The Statutory Framework and *ElderTrust* Factors

Under RSA 72:23, V, “buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in this state, owned, used and occupied by them directly for the purposes for which they are established,” are exempt from tax “provided that none of the income or profits thereof is used for any other purpose than the purpose for which they are established.” The statutory definition of “charitable” appears at RSA 72:23-1, and, in relevant part, provides that “charitable”

shall mean a corporation, society or organization established and administered for the purpose of performing, and obligated, by its charter or otherwise, to perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being of the general public or a substantial and indefinite segment of the general public that includes residents of the state of New Hampshire, with no pecuniary profit or benefit to its officers or members, or any restrictions which confine its benefits or services to such officers or members, or those of any related organization. . . .

RSA 72:23-1. There is also a common law overlay to the statutory definition. Because the “Definition of ‘Charitable,’” under RSA 72:23-1, “is not intended to abrogate the meaning of ‘charitable’ under the common law of New Hampshire,” this Court has gone further, stating that categories of “charitable purposes,” include:

- (1) relieving poverty; (2) promoting health; (3) **advancing education;**
- (4) **aiding religion;** (5) providing governmental or municipal facilities and services; and (6) **other purposes that are beneficial to the community.**

Granite State Mgmt. & Res., 165 N.H. at 284 (emphasis added); *see also MacDowell Colony, Inc.*, 157 N.H. at 12 (Dalianis, J., concurring specially) (observing that “the common law

definition of ‘charitable’ . . . is derived from the law of charitable uses and charitable trusts.”). The “charitable mission must be its dominant or primary purpose,” as expressed in the organization’s charter. *In re City of Concord*, 161 N.H. 344, 352 (2011).

Thus, taken together, RSA 72:23, V, RSA 72:23-I, and the foregoing common law overlay gave rise to the following four requirements:

- (1) the institution or organization was established and is administered for a charitable purpose;
- (2) an obligation exists to perform the organization’s stated purpose to the public, rather than simply to members of the organization;
- (3) the land, in addition to being owned by the organization, is occupied by it and used directly for the stated charitable purposes; and
- (4) any of the organization’s income or profits [must not] be used for any purpose other than the purpose for which the organization was established.

ElderTrust of Florida v. Town of Epsom, 154 N.H. 693, 697-98 (2007) (the “*ElderTrust* Factors”).

The Superior Court erred in its application of each *ElderTrust* factor.

B. The Superior Court Misapplied the First and Second *ElderTrust* Factors

MBNH “was established and is administered for” the “charitable purpose[s]” of advancing education and aiding religion, among “other purposes that are beneficial to the community.” *Granite State Mgmt. & Res.*, 165 N.H. at 28. Its Articles of Incorporation (a) state its object of providing “recreational and educational services to persons of whatever race, nationality, ethnic background, state or nation of residence,” (b) “affirm[] its traditional affiliation and faith in the Roman Catholic Church; (c) mandate[] that it “shall provide opportunities to meet primarily the spiritual, cultural, and physical needs of youth.”⁸⁸

⁸⁸ App. 41.

Applying the first and second *ElderTrust* factors in combination, the Superior Court observed that MBNH *would have* satisfied both factors, but for the Superior “Court’s find[ing] that [Camp Marist] is actually administered, mostly, if not entirely, for the benefit of a limited group of children [*i.e.*, 490 children who attended Camp Marist in the summer of 2015], rather than for the benefit of the general public or an indefinite segment thereof [the “Benefit of a Few Finding”]. Order at 16.

The Benefit of a Few Finding is erroneous, in the first instance, because it implies a requirement that a threshold number of people must directly benefit from the charitable undertaking. The law imposes no such requirement. Drawing from the law of charitable uses and charitable trusts, this Court has determined that “advancing education” and “aiding religion” are, indeed, charitable purposes beneficial to the community. *See In re City of Concord*, 161 N.H. at 284 (identifying “advancing education” and “aiding religion” as discrete categories of charitable purposes, and identifying a sixth catchall category of “*other purposes that are beneficial to the community.*”) (emphasis added). Beyond a showing (as the Superior Court found) that MBNH was organized and is administered for a charitable purpose, and exists to perform that stated purpose to others beyond members of its organization, MBNH is not required to demonstrate the benefit to the general public of its charitable work.

Further, the Superior Court failed to properly consider the positive individual and societal impacts of the Camp Marist experience. Each year, hundreds of youth from around the world, including New Hampshire, coming from diverse socio-economic, ethnic, and religious backgrounds, gather at Camp Marist for a uniquely Marist summer camp experience that, among other things, fosters their spiritual growth, encourages teambuilding and leadership, offers academic courses, such as English as a Second Language, and promotes cultural sensitivity. Camp Marist staff help the campers “grow and mature into a better understanding and

knowledge of themselves as people,”⁸⁹ and reward them for “being kind, compassionate and a leader to others.”⁹⁰ As the campers then return to their communities, the benefits of the Camp Marist experience reach “a far greater segment of society” than each individual camper. *MacDowell Colony*, 157 N.H. at 7. “[D]irect service to the public is not required for a charitable tax exemption. As *MacDowell* demonstrates, an organization can *indirectly* provide a benefit to the public . . . by means of a service . . . that is provided to certain individuals . . .” *In re City of Concord*, 161 N.H. 344, 350 (2011) (emphasis in original). Thus, in *ElderTrust*, in affirming the ruling that the provision of nursing and assisted living facilities to the elderly constitutes a charitable purpose under RSA 72:23, V, and RSA 72:23-I, the Court did not consider the actual number of elderly people so assisted. *See ElderTrust*, 154 N.H. at 781.

Likewise, the Superior Court’s ruling cannot be squared with *MacDowell Colony*, a case in which the Court rejected the Town’s argument that the 246 creative artists who, by virtue of their *uncommon* talents, won access to The MacDowell Colony’s artist-in-residence program “were not a substantial and indefinite segment of the general public.” *Id.* at 6. Put differently, a largely *untalented* general public was surely ineligible for the charitable largesse of The MacDowell Colony. The Town’s Benefit of a Few argument “misse[d] the mark,” because “[t]he relevant inquiry is not whether the public, or a substantial and indefinite segment of it, benefits from the organization’s *property*, but whether the public, or a substantial and indefinite segment thereof, benefits from the organization’s *performance of its stated purpose*.” *Id.* at 7 (emphasis in original). Thus, while, on one narrow level urged by the Town, The MacDowell Colony benefited only a limited group of 246 artists (read: 490 Camp Marist campers from across the U.S. and around the world), by serving the “charitable purpose . . . [of] promotion of

⁸⁹ App. 880-881.

⁹⁰ App. 313, 1039, 1073, 1077; Tr. 67-68.

the arts . . . a far greater segment of society than the artists who actually use MacDowell’s property” — *i.e.*, the “general public” was served. *Id.* The same is true of the 490 campers from around the world who attend Camp Marist and are shaped by a Catholic summer camp that promotes religion, spiritual growth, cultural diversity and sensitivity, and education. *See, e.g., Greater Lowell Girl Scout Council v. Town of Pelham*, 100 N.H. 24, 26 (1955) (training youth for citizenship is a charitable purpose according to the *Restatement of Trusts*).

The Superior Court’s Benefit of a Few Finding fails to recognize that an organization such as MBNH, which serves the twin “charitable purposes” of “advancing education” and “aiding religion,” provides no less a public benefit than an organization, such as The MacDowell Colony, that promotes the arts. It is well-settled that “advancing education” and “aiding religion” are “purposes that are beneficial to *the community*” at large, and not just a Few. *Granite State Mgmt. & Res.*, 165 N.H. at 284 (emphasis added).

Furthermore, the record plainly shows the breadth of MBNH’s reach. For example, it is undisputed that:

- there are no religious or other qualifications to attend Camp Marist;⁹¹
- the 490 children who attended Camp Marist during the summer of 2015 came from across the United States, including New Hampshire, and Puerto Rico, as well as Europe, Asia, Central America, and South America;⁹²
- MBNH works with, and grants scholarships through, organizations that serve families in poverty throughout the United States;⁹³
- MBNH provides full and partial scholarships to children on account of financial need;⁹⁴ and

⁹¹ App. 43.

⁹² App. 856-878.

⁹³ App. 43.

⁹⁴ App. 352.

- MBNH denies no application for attendance when space is available (barring behavioral issues), and has denied no scholarship application when space is available.⁹⁵

While the Camp’s 2015 tuition/fee revenue roughly equaled its expenses, *and* while MBNH nonetheless devoted \$108,739.00 to full and partial scholarships,⁹⁶ *and* while the law is clear — that “[t]he charge of an admission fee, all of the proceeds of which are used to defray operating expenses, does not alter the plaintiff’s standing as a charity[,]” *Portsmouth Historical Society v. City of Portsmouth*, 89 N.H. 283, 285 (1938) — the Superior Court found, without reference to *any applicable* authority or recognized standard, that a “significant [enough] charitable effort” was not “demonstrated.” Order at 17. The Superior Court’s new “significant [enough] charitable effort” standard is flatly contrary to this Court’s precedents, and is erroneous as a matter of law.

First, the holding in *Portsmouth Historical Society* was not qualified by a requirement that the charitable organization mount a “significant [enough] charitable effort” to subsidize the “admission fee.” *See Portsmouth Historical Society*, 89 N.H. at 285. Obviously, no non-profit, tax exempt hospital, college, YMCA camp, or Boy or Girl Scout camp or other charitable organization could operate for very long without revenue to offset its expenses.

Second, “relieving poverty” is a discrete “charitable purpose,” separate and apart from those five *other* charitable purpose “categories” identified in *Granite State Management & Resources*, 165 N.H. at 284 (emphasis supplied) (“relieving poverty, ... promoting health, ... *advancing education*, ... *aiding religion*, ... providing governmental or municipal facilities and services, ... and other purposes that are beneficial to the community”) (emphasis added). Thus, this Court has declared that: (a) “an organization does not necessarily have to serve the poor or

⁹⁵ App. 1098, 1100.

⁹⁶ App 352.

the needy in order to qualify for the charitable exemption,” *ElderTrust*, 154 N.H. at 700 (quoting *Western Mass. Lifecare v. Bd. of Assessors*, 434 Mass. 96, 747 N.E.2d 97, 104 (2001)); and (b) “charging fees does not alone preclude an organization from obtaining a charitable tax exemption, as long as the fees [as here] ‘directly fulfill the organization’s charitable purpose, or are necessary for the organization to accomplish its purpose.’” *Id.* at 701-02 (quoting *Senior Citizens Housing Dev. Corp. v. City of Claremont*, 122 N.H. 1104, 1108 (1982)).

The Superior Court’s citation of the Massachusetts Supreme Court’s decision in *Western Mass. Lifecare*, in support of its erroneous proposition was entirely misplaced. The *Western Mass Lifecare* Court stated:

However, the organization’s services must “be accessible to a sufficiently large and indefinite class of beneficiaries in order to be treated as a charitable organization. An organization that has *expressly* limited its services to those who are financially well off does not meet this test.”

Western Mass. Lifecare, 747 N.E.2d at 105 (emphasis added). It is noteworthy, in the first instance, that the “However,” which begins the quoted passage, is immediately preceded by the following:

Thus, fact that Reeds Landing [a continuing care retirement facility] is not expressly designed to meet the needs of the indigent, and the fact that its fees are **substantial**, would not automatically defeat the claim for exemption.

Id. at 104-05 (emphasis added). Thus, the fact that the Reeds Landing fees may have been “substantial” was not disqualifying. Likewise, the Camp Marist tuition, which the Order, at page 16, declares to be “not insignificant”— that is, without any sort of evidence or context of what similar camps charge, or an acknowledgment of the roughly *equal* expense of providing services — is *not* disqualifying. *But most importantly*, the Superior Court misapprehended the text wherein the *Western Mass. Lifecare* Court states that “[a]n organization that has *expressly* limited its services to those who are financially well off does not meet this test [of accessibility

to a sufficiently large and indefinite class of beneficiaries.” *Id.* (emphasis added). Indeed, in that case, admission to the Reeds Landing continuing care retirement facility, described as a “luxury residential complex,” *id.* at 98, *expressly excluded* “those who [did not] pass its stringent health and financial requirements, requirements that ma[d]e most of the elderly population ineligible for admission.” *Id.* at 104. As noted therein:

Applicants must demonstrate that they have sufficient assets with which to pay the entrance fee and that, from remaining assets, they will have sufficient stable income to meet the ongoing monthly service fees. In order to qualify, an applicant’s monthly income must be at least one and one-half to two times the monthly service fee. If the applicant’s income is less than one and one-half times the monthly fee, admission will be denied unless the applicant demonstrates adequate assets sufficient to cover all projected costs or provides a guarantee of payment from a person or organization of proven means.

Id. at 101 (emphasis supplied). The *Western Mass. Lifecare* Court concluded that “[t]he class of elderly persons who can pay an entrance fee of \$100,000 to \$300,000 and have, from their remaining assets, monthly income of \$2,000 to \$7,000 is a limited one, not a class that has been ‘drawn from a large segment of society or all walks of life.’” *Id.* at 104 (quoting *New England Legal Found. v. Boston*, 423 Mass. 602, 670 N.E. 2d 152 (1996)). No reasonable analogy can fairly be drawn between *Western Mass. Lifecare* and the Camp Marist case.

MBNH clearly satisfied the first two *ElderTrust* factors, and the Superior Court’s ruling to the contrary is erroneous.

C. The Superior Court Misapplied the Third *ElderTrust* Factor

According to the Superior Court, the *third ElderTrust* factor — that “the land is occupied by [the association] and used directly for the stated charitable purposes” — would be met but for the fact that Camp Marist’s *off-season rentals*, which generate revenue to operate the Camp and

fund scholarships,⁹⁷ allow the use of the property by organizations that might not necessarily share “similar charitable missions.” Order at 19-20. This was error.

Camp Marist is a *summer* youth camp that is open seven (7) weeks, with staff arriving earlier for training.⁹⁸ That said, there is no requirement that a property be used year-round in order to qualify for a charitable exemption. *See, e.g., Green Acre Baha’I Inst. v. Town of Eliot*, 110 A.2d 581 (Me. 1954) (charitable exemption is not defeated by only seasonal use). This Court cited *Green Acre* with approval in *Appeal of Kiwanis Club of Hudson, Inc.* 140 N.H. 92, 95 (1995). The fact that *seasonal* use does not disqualify is also self-evident from cases such as *Wolfeboro Camp School v. Town of Wolfeboro*, 138 N.H. 496 (1994), holding that a “camp school program [that] operate[d] for seven weeks each summer” was entitled to an exemption under RSA 72:23, IV [Property Taxes – School Exemption]. Of course, RSA 72:23, IV [Property Taxes -- School Exemption] contains the very same “owned, used and occupied” command that appears in the statute that governs the instant case, RSA 72:23, V [Property Taxes – Charitable Exemption].

Putting aside that the lion’s share of the 2015 off-season rental revenues (\$92,854) was attributable to leases with *Catholic educational institutions*⁹⁹ — organizations that actually do share The Marist Brothers’s twin charitable missions of “advancing education” and “aiding religion” — there is simply *no off-season* requirement, under *ElderTrust* Factor 3, that MBNH, as owner of a Catholic *summer* youth camp, (a) make use of the property or (b) lease it to an

⁹⁷ Tr. at 140-41. The Superior Court Order cites this testimony Joseph Bouchard, Camp Marist Executive Director — that the proceeds from rentals are devoted to camp operating expenses and the funding of scholarships — but inexplicably and erroneously states that it stands for the *opposite* proposition. *See* Order at 20.

⁹⁸ Tr. 158:6-11 (Testimony of Joseph Bouchard, Camp Marist Executive Director).

⁹⁹ App. 943-955.

organization that, in the language of the Superior Court, shares “similar charitable missions.” Order at 15.

Still, the Order states that whether, by virtue of (a) leasing the property to organizations that do not “share similar charitable missions,” Order at 19-20, *or* (b) reserving discretion to do so, *id.*, MBNH forfeited its right to a charitable exemption. For this proposition, the Order points to and then misapprehends *Appeal of the Kiwanis Club of Hudson, Inc.*, 140 N.H. 92 (1995), in which this Court held that the Hudson chapter of Kiwanis, whose “*primary use* of its [function] hall [was] to provide [via *rentals*] a fund-raising location to *other* charitable organizations” for “the betterment of the community,” would be allowed a charitable exemption because “the rentals directly fulfill[ed] [Kiwanis’] charitable purpose or [were] necessary for [it] to accomplish [Kiwanis’] purpose.” *Id.* at 94, 95 (emphasis supplied). Further, Kiwanis Club’s *own* use of the function hall was only “*incidental to [that] primary use,*” *id.* (emphasis added), so that even if the Kiwanis Club’s use did “not fulfill Kiwanis’ charitable purpose,” that fact would “not act to deny Kiwanis its exemption.” *Id.* Thus, the *Kiwanis* Court squarely held that it was the *primary* or *dominant* use, *not* the *incidental* use, which would have to advance the charitable purpose.

In the *instant* case, the “dominant” or “primary use” of the property embracing Camp Marist was certainly *not* off-season rentals, but rather the operation of a summer camp aimed at the educational and spiritual development of youth — so that it is of no import whether the *off-season* rental of the Camp Marist property, an “*incidental*” use under *Kiwanis*, might or might not advance the Camp’s twin charitable purposes. *See id.*

MBNH properly met the third *ElderTrust* factor.

D. The Superior Court Misapplied the Fourth *ElderTrust* Factor

Finally, we address *ElderTrust* Factor 4 — that none of “the organization’s officers or members,” and no “related organization,” including The Marist Brothers of the Schools and its U.S. Province, “derive[s] any pecuniary profit or benefit” from the non-profit’s operations. *ElderTrust*, 154 N.H. at 698; *see* RSA 72:23-1. As discussed above, the Members, the Directors and the Brothers who acquired, established, built, and have since directed, managed, served, and staffed Camp Marist, derived *no compensation* from MBNH.¹⁰⁰ According to the Superior Court, the *fourth ElderTrust* factor would have been met but for the fact that there is an annual contribution pursuant to which MBNH paid the United States Province of The Marist Brothers of the Schools \$106,000 in 2015 and \$103,000 in 2014. *See* Order at 21-22.

The Marist Brothers ministries within the United States Province — including seven high schools and Camp Marist — pay an annual amount aimed at stabilizing (meaning ensuring the survival of) each such ministry, including Camp Marist. The Chief Financial Officer of the United States Province, Frank Pellegrino, testified that this money goes to “ministries of the Marist Brothers that need assistance,”¹⁰¹ including Camp Marist, as “was the case in 2008 when it had the snow [storm and] — the accident with three cabins. . . . [T]he Province gave Camp Marist a check for \$75,000.”¹⁰²

The annual contribution reflects not only (a) the value of the financial stabilization furnished by the United States Province — *i.e.*, a premium for insurance against hard times or, as in 2008, *an actual calamity*, and (b) the uncompensated service of those who acquired,

¹⁰⁰ *See supra* pp. 6, 7, 13.

¹⁰¹ Tr. 209:15-21.

¹⁰² Tr. 210:9-14 (Testimony of Frank Pellegrino, U.S. Province CFO); *see also* Tr. at 135-37 (discussing the 2008 snowstorm, the loss of three building structures, a group Lloyd’s policy, and the payment by the U.S. Province of each \$25,000 deductible for restoration) (Testimony of Joseph Bouchard, Camp Marist Executive Director).

established, built, and have since directed, managed, and staffed Camp Marist, but *also* the additional financial benefits that the Province confers on The Marist Brothers of New Hampshire:

- The Province provides health insurance for Marist brothers who [from 1949 to the present] serve as Camp Marist staff.¹⁰³
- The Province purchases property and liability insurance for the Marist Brothers ministries — the seven (7) high schools, Camp Marist and Esopus — as a group, yielding better coverage and substantial cost savings. In fact, premiums for Camp Marist, subsidized by the Province (allocated at just \$58,000 for each of the last twelve years), would have exceeded \$100,000 if underwritten on a stand-alone basis.¹⁰⁴
- The Province purchases motor vehicle insurance for the Marist Brothers ministries — the high schools, Camp Marist and Esopus — as a group. Camp Marist has ten vehicles: a dump truck, three buses, a van, and six cars. While the group premium, itself a savings to The Marist Brothers, is \$1,200 per vehicle, the Province subsidizes that cost, allocating a \$300 per vehicle charge to The Marist Brothers of New Hampshire.¹⁰⁵
- The Province provides accounting services to The Marist Brothers.¹⁰⁶

The value of the foregoing Province-endowed benefits plainly exceeds the amount of the annual contribution. Because the 2015 contribution does not approach the value of the benefits conferred by the Province, the Superior Court erred in declaring that it “heard no evidence to support a finding that the amount of the assessment is related to the value of the benefit.” Order at 22. Indeed, when the Province CFO Mr. Pellegrino testified that he reviews the financial health of The Marist Brothers with a view toward determining “how much these . . . assessments can be for Camp Marist,”¹⁰⁷ it was clear that dollar-for-dollar recompense was not envisaged and

¹⁰³ Tr. 206; *see also* Tr. 109.

¹⁰⁴ Tr. 206-08.

¹⁰⁵ Tr. 208-09.

¹⁰⁶ Tr. 195:14-24, 200:16-25, 201:1-4.

¹⁰⁷ Tr. 206:8.

that the financial capacity of The Marist Brothers to pay some portion of the benefit would drive the determination.

Simply put, none of “[The Marist Brothers of New Hampshire’s officers or members,” and no “related organization,” including The Marist Brothers of the Schools and its United States Province, “derive[s] any pecuniary profit or benefit” from the non-profit’s operations. *ElderTrust*, 154 N.H. at 698. Further, *impermissible* “[s]elf-interest” such as that which would disqualify an applicant for a charitable exemption, “is not evidenced merely by the payment of reasonable compensation [or, as here, substantially less than that] to members [or affiliates] for their service in the maintenance and conduct of [the exempt organization’s] affairs. . . .” *Young Women’s Christian Ass’n v. Portsmouth*, 89 N.H. at 42; *see also Salvation Army v. Town of Standish*, 709 A.2d 727, 729 (Me. 1998) (holding that property used as a summer camp for underprivileged children is exempt from taxation; “the incidental use of buildings [to provide inexpensive vacation lodgings for its officers] constitutes nothing more than ‘compensation’ for the services the officers perform on behalf of the charitable organization”).

The Superior Court erred in declaring that the 2015 assessment rendered MBNH ineligible for a charitable exemption under the fourth *ElderTrust* factor. MBNH properly met this factor as well.

III. THE SUPERIOR COURT ERRED BY EXCLUDING EVIDENCE THAT EACH AND EVERY RELIGIOUSLY-AFFILIATED, YMCA-AFFILIATED, AND GIRL AND BOY SCOUT-AFFILIATED SUMMER YOUTH CAMP IN NEW HAMPSHIRE HAS BEEN GRANTED A CHARITABLE TAX EXEMPTION, EXCEPT FOR CAMP MARIST.

MBNH proffered evidence showing that each and every one of the 26-religiously affiliated, 22 YMCA-affiliated, and 12 Girl and Boy Scout-affiliated summer youth camps in the State of New Hampshire, *except for the Catholic Camp Marist*, has been granted an exemption

from taxation by the State of New Hampshire, through its municipal subdivisions.¹⁰⁸ The Court erred in granting the Town's *motion in limine* to exclude this evidence as irrelevant.¹⁰⁹

The Town of Effingham, as a political subdivision of the State of New Hampshire, has a constitutional duty to avoid discrimination by treating similarly situated taxpayers in the same manner, and to adhere to the uniformity and equality that the State and Federal Constitutions require. *See* N.H. Const. pt. 2, art. 6; N.H. Const. pt. 1, art. 12; N.H. Const. pt. 2, art. 5; N.H. Const. pt. 1, art. 5; U.S. Const. amend. 1; *see, e.g., North Country Env't'l. Serv's. v. State of New Hampshire*, 157 N.H. 15, 19 (2008) ("Part II, Article 5 [of the New Hampshire Constitution . . . requires that all taxes be proportionate and reasonable, equal in valuation and uniform in rate, and just.") (quotation marks and citation omitted). The power to tax, and to grant exemptions therefrom, may be "based upon a classification of the property's kind or use, but not . . . upon a classification of its owner." *Smith v. New Hampshire Dep't of Revenue Admin.*, 141 N.H. 681, 686 (1997). Put differently, similarly situated taxpayers [must] be treated the same[.]" *Id.*

That Camp Marist stands alone in this State as the only religiously-affiliated summer youth camp required, according to the Superior Court, to pay property taxes reflects unconstitutional unequal treatment, and accordingly, is a relevant fact. The Superior Court's application of RSA 72:23, V, and RSA 72:23-1, must not give way to a violation of MBNH's constitutional right to equal tax treatment. *Cf. In re Opinion of Justices*, 162 N.H. 160, 164 (2011) ("When we interpret statutes already in effect, they are construed to avoid conflict with constitutional rights wherever reasonably possible."). It was error, therefore, to exclude evidence of the tax treatment received by *every other* religiously-affiliated, YMCA-affiliated, and Girl and Boy Scout-affiliated summer youth camp in this State.

¹⁰⁸ App. 85-95.

¹⁰⁹ Order dated Oct. 17, 2016.

CONCLUSION

MBNH has satisfied the requirements of RSA 72:23, V, and RSA 72:23-1, and the four *ElderTrust* factors. The Superior Court’s decision is not only legally erroneous, it also reflects the sort of “strained, over-technical and unnecessary construction” thwarting “[t]he legislative purpose to encourage charitable institutions” that this Court has warned of in so many cases. See, e.g., *Granite State Mgmt. & Res.*, 165 N.H. at 284; *Peterborough*, 157 N.H. at 5; *Young Women’s Christian Ass’n*, 89 N.H. at 42.

Accordingly, the Court should reverse the Order and hold that Camp Marist is exempt from property tax.

REQUEST FOR ORAL ARGUMENT

MBNH requests 15 minutes for oral argument, to be presented by Jonathan A. Block or Michele E. Kenney.


SUPREME COURT RULE 16(10) CERTIFICATION

The undersigned hereby certifies that on this 31st day of August, 2017, two copies of this Brief were sent by first class mail to counsel of record for the Town of Effingham.

Respectfully submitted,
The Marist Brothers of New Hampshire

By its attorneys,
PIERCE ATWOOD LLP

Dated: August 31, 2017

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THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT

The Marist Brothers of New Hampshire

v.

Town of Effingham

Docket No. 212-2015-CV-00161

ORDER

The plaintiff, The Marist Brother of New Hampshire (“plaintiff”), has filed a complaint against the defendant, the Town of Effingham (“Town”), appealing the Town’s denial of its request for a charitable tax exemption for real property located at 22 Abel Boulevard in Effingham, New Hampshire (the “Property”). (Court index #1.) The plaintiff operates a youth summer camp, Camp Marist, on the Property. The plaintiff contends that the Town erred when it denied the plaintiff’s request for tax-exempt status for the Property under RSA 72:23, V, which provides an exemption for “Charitable Organizations.” (See Compl. ¶¶ 7–11, 13.) The defendant now moves in limine to exclude from trial certain evidence related to the tax treatment of other New Hampshire youth camps. (Court index #17.) The plaintiff objects. (Court index #21.) The Court held a hearing on the matter on August 26, 2016. For the reasons set forth herein, the defendants’ motion in limine is GRANTED.

The motion in limine concerns the admissibility of a survey prepared by Kristina L. Knight, a paralegal employed by plaintiff’s counsel’s law firm, entitled “Survey of the Tax Treatment of Non-Profit Summer Youth Camps Licensed by the State of New Hampshire” (the “Survey”). The Survey purports to include information regarding the real estate tax treatment of

102 licensed New Hampshire non-profit camps. According to the plaintiff, the Survey discloses the following:

Affiliation	Number	Not Tax Exempted
Religious	26	1
Young Men's Christian Association	22	0
Girl Scouts	5	0
Boy Scouts	7	0
All Others	42	5

(Pl.'s Obj. Mot. Limine 2.) According to the plaintiff, the Survey was compiled based upon a review of State and municipal records, and information gleaned from the websites of the various camps including in the Survey. (*Id.* 6–7.) The plaintiff intends to use the Survey and/or the underlying data as evidence of the tax treatment of other religiously affiliated youth summer camps licensed by the State of New Hampshire. Specifically, the plaintiff contends that the Survey demonstrates that “each and every one of the 26 summer youth camps that are licensed by the State of New Hampshire and religiously affiliated, except for Camp Marist, has been granted an exemption from taxation.” (Pl.'s Obj. Mot. Limine ¶ 3.)

The Town argues that the Survey and underlying data should be excluded from trial because “[w]hether or not other organizations operating camps have been given certain tax treatment by other municipalities is not relevant to the instant proceedings.” (Town’s Mot. Limine ¶ 25.) The Town contends that “to the extent the [plaintiff] seek[s] to introduce evidence that other municipalities have affirmatively granted charitable exemptions to unrelated organizations, such evidence, even assuming its validity, does not make it any more or less probable that the [plaintiff] ha[s] proven that [it is] entitled to a charitable exemption.” (*Id.* ¶ 29.) Moreover, the Town asserts that if the plaintiff is permitted to use this evidence at trial, “it will almost certainly lead to a trial within a trial” because for each property “the court will need to

determine when the municipality granted the exemption, why the municipality granted the exemption, what evidence was presented by the property owner in support of the exemption, and whether the granted exemption was legally proper under the statute.” (Id. ¶ 33.) The Court agrees.

Evidence which is not relevant is inadmissible at trial. N.H. R. Ev. 402. Rule 401 of the New Hampshire Rules of Evidence defines relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” “The determination of whether evidence is relevant is within the sound discretion of the trial court” State v. Smith, 135 N.H. 524, 525 (1992) (quotation omitted).

Here, the sole issue for trial is whether the plaintiff is entitled to a charitable tax exemption under RSA 72:23, V. RSA 72:23, V provides that the following property is exempt from taxation:

The buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in this state, owned, used and occupied by them directly for the purposes for which they are established, provided that none of the income or profits thereof is used for any other purpose than the purpose for which they are established.

RSA 72:23, V; see generally In re City of Concord, 161 N.H. 344, 348 (2011). The burden is on the taxpayer to prove the applicability of the charitable tax exemption. RSA 72:23-m.

The term “charitable” as used to describe a corporation, society or other organization within the scope of RSA 72:23 is defined as:

a corporation, society or organization established and administered for the purpose of performing, and obligated, by its charter or otherwise, to perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being of the general public or a substantial and indefinite segment of the general public that includes residents of the state of New Hampshire, with no pecuniary profit or benefit to its officers or members, or any

restrictions which confine its benefits or services to such officers or members, or those of any related organization. The fact that an organization's activities are not conducted for profit shall not in itself be sufficient to render the organization "charitable" for purposes of this chapter

RSA 72:23-1.

In ElderTrust of Florida, Inc. v. Town of Epsom, the New Hampshire Supreme Court set forth four factors that a property owner seeking a charitable tax exemption must satisfy; namely, whether:

(1) the institution or organization was established and is administered for a charitable purpose; (2) an obligation exists to perform the organization's stated purpose to the public rather than simply to members of the organization; (3) the land, in addition to being owned by the organization, is occupied by it and used directly for the stated charitable purposes; and (4) any of the organization's income or profits are used for any purpose other than the purpose for which the organization was established.

154 N.H. 693, 697-98 (2007); see also In re City of Concord, 161 N.H. at 348-49.

Under the statute and the relevant case law, therefore, the focus is on the specific organization seeking the exemption and the property it seeks to exempt. The tax treatment of other properties in the State is not a factor to be considered. Moreover, evidence that another municipality granted a religiously affiliated summer youth camp's application for a charitable tax exemption does not have any tendency to make it more probable or less probable that the plaintiff can meet its burden under ElderTrust. As the Town asserts,

the tax treatment of other properties does not make it any more or less probable that the Marist Brothers was established and administered for a charitable purpose, that the Marist Brothers have an obligation to perform the purposes to the public, that the Property is occupied by and used directly for the charitable purpose, and that the Marist Brothers' income or profits are only used for that purpose.

(Town's Mot. Limine ¶ 25.)

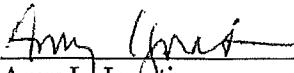
In essence, the plaintiff is asking the Court to use this evidence to find that the Town should have granted the plaintiff a tax exemption because every other religiously affiliated summer youth camp licensed by the State of New Hampshire has been granted a tax exemption. Additionally, the plaintiff's position is that, in doing so, the Court need not consider the facts and circumstances surrounding the tax exemption determinations in these other cases. However, this is not what the statute or the case law demands. Rather, the Court must inquire into the purpose of the specific organization seeking the exemption and the use of the specific property it seeks to exempt from taxation. See 154 N.H. 693, 697–98. Thus, the Court finds that the Survey and underlying data are not relevant.

To the extent the plaintiff argues that the Survey and underlying data are relevant to its claim that the plaintiff's equal protection rights have been violated, such a claim has not been properly pled. See Morancy v. Morancy, 134 N.H. 493, 497 (1991); Morency v. Plourde, 96 N.H. 344, 345–46 (1950). The Court will, therefore, not consider the plaintiff's equal protection argument.¹

For the foregoing reasons, the Court GRANTS the defendant's motion in limine.²

So ordered.

Date: October 17, 2016



Amy L. Ignatius,
Presiding Justice

¹ The Court notes that the plaintiff's equal protection argument is substantively flawed as well. For example, the plaintiff has not alleged that the Town of Effingham has granted tax exemptions to similarly situated properties. The Town of Effingham has no control over the decisions of other municipalities. Thus, there is no basis to conclude that the tax treatment of other youth camps by other municipalities is somehow relevant to an equal protection claim against the Town. To the extent the plaintiff argues that each municipality acts as a subdivision of the State and, therefore, this evidence is relevant to proving that the State violated its equal protection rights, the State is not a party to this lawsuit.

² The Town also contends that the Survey should be excluded from evidence at trial because the plaintiff failed to produce the Survey and underlying data in a timely manner. Because the Court grants the Town's motion in limine on relevancy grounds, the Court does not consider the timeliness argument

THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT

The Marist Brothers of New Hampshire

v.

Town of Effingham

Docket No. 212-2015-CV-00161

ORDER

The plaintiff, The Marist Brother of New Hampshire (“MBNH”), has filed a complaint against the defendant, the Town of Effingham (“Town”), appealing the Town’s denial of its request for a charitable tax exemption for real property located at 22 Abel Boulevard in Effingham, New Hampshire (the “Property”). (Court index #1.) MBNH operates a religious, youth summer camp, Camp Marist, on the Property. MBNH contends that the Town erred when it denied MBNH’s request for tax-exempt status for the Property for the 2015 tax year under RSA 72:23, V (2012), which provides an exemption for “charitable organizations.” (See Compl. ¶ 7–11, 13.) The Court held a two-day bench trial on the matter on October 18, and October 19, 2016, at which the Court heard testimony from three witnesses and received numerous exhibits from the parties. Based on the evidence presented, the parties’ arguments, and the applicable law, the Court finds and rules as follows.

Factual and Procedural Background

The evidence introduced at trial, in conjunction with the parties’ joint factual stipulation, is essentially undisputed. MBNH is a New Hampshire non-profit corporation that is tax exempt under § 501(c)(3) of the Internal Revenue Code. MBNH is affiliated with The Marist Brothers of the Schools (*F.M.S. – Fratres Maristae a Scholis*), an international Catholic teaching Order, and,

in turn, with the Roman Catholic Church. (See Pl.'s Ex. 32 at 17–18.) The Marist Brothers of the Schools operates regionally through discrete provinces that cover specific geographical locations around the world. (Trial Tr. 88:21–89:19; Pl.'s Ex. 32 at 21.) The Order's U.S. Province covers the entire United States and operates a number of ministries throughout the United States, (Trial Tr. 89:1–90:3, 200:16–201:11, 209:20–210:59), all of which share the general mission of educating and spreading the gospel of Jesus Christ to youth (Id. 12:24–13:4,71:7–19; see Pl.'s Ex. 32 at 17–18, 70–80).

The U.S. Province established MBNH in connection with the acquisition, development and operation of Camp Marist (the “Camp”). (See Pl.'s Ex. 28.) In 1949, MBNH purchased the Property—159 acres on the shores of Ossipee Lake in the Town of Effingham—and founded the Camp. (Pl.'s Exs. 41–43, 63.) The Property includes camper cabins, offices, a chapel, religious “mound,” dining hall, and health facility, as well as a number of recreational facilities, including but not limited to, an activity pavilion, archery and rifle ranges, an arts and crafts building, horse stables, and athletic fields. (Pl.'s Ex. 5 at 10–11; Pl.'s Ex. 51.) In addition, there is a “Log Cabin,” or “Retreat Center,” on the Property that can “accommodate over twenty people for meetings and retreats,” (Pl.'s Ex. 5 at 10), which MBNH uses as lodging for Camp staff during the summer camp season and rents to third parties during the off season (Trial Tr. 94:19–95:7, 99:13–100:25, 137:21–141:1; see Pl.'s Exs. 46–50). In 2015, the Property had an assessed value of \$4,710,000. (Def.'s Ex. F.)

The Camp is a residential, co-educational¹ summer camp that draws youth from the United States, including the State of New Hampshire, and around the world. (Trial Tr. 124:18–19, 126:14–127:18; see Pl.'s Ex. 33.) According to the Camp's roster, in 2015, 490 campers

¹ When the Camp began operating, it was an all-boys camp. (Pl.'s Ex. 5 at 6; Trial Tr. 147:14–20.) The Camp has been co-educational since 2003. (Pl.'s Ex. 5 at 6; Trial Tr. 147:14–20.)

attended the Camp. (Pl.'s Ex. 33; see also Trial Tr. 175:23–24.) Thirteen of these 490 campers came from New Hampshire. (See Pl.'s Ex. 33.) The remaining campers came from a variety of places, including other states throughout the United States, Canada, Mexico, China, France, and Spain. (See id.) Addressing the international diversity of the campers, the Camp's executive director, Joseph Bouchard, testified,

[T]he parents remark about the diversity that we have here at camp and they really appreciate . . . the fact that different cultures come together and experience each other. . . . [The campers] get a sense of community . . . living together in a cabin. . . . They share the activities that they are participating in. And they're teaching each other . . . different aspects of their culture as the day goes on.

(Trial Tr. 125:2–14.)

In its early days, the Camp was staffed almost exclusively by Marist Brothers who worked without compensation. (Trial Tr. 114:18–115:9, 146:6–11; see Pl.'s Exs. 65, 66.) Today, the staff consists of Marist Brothers, who receive no compensation aside from room and board, and paid staff from the United States and around the world. (Trial Tr. 41:13–42:18, 87:13–19, 146:12–147:10; Pl.'s Ex. 6.)

The MBNH by-laws provide that the members of the corporation “shall be the Major Superior (Reverend Brother Provincial), and Provincial Council of the United States Province of the Religious Institute of the Marist Brothers of the Schools.” (Pl.'s Ex. 1.) The members are responsible for appointing an Executive Director, Camp Director, and the Board of Directors. (Id.) The by-laws further provide that “no Director or Member of the Corporation shall receive compensation as a Director or Member.” (Id.; see also Trial Tr. 135:9–20.) The Board of Directors is responsible for managing the corporation and “shall consist of no more than twelve (12) directors, at least two (2) of whom shall be Marist Brothers in good standing.” (Pl.'s Ex. 1.)

The current Board of Directors consists of ten directors, including Monsignor Brennan and four Marist Brothers. (Pl.'s Ex. 39.)

The mission of MBNH is set forth in its Articles of Agreement, as amended in 1990, which provide:

The object for which this Corporation is established is to offer recreational and educational services to persons of whatever race, nationality, ethnic background, state or nation of residence. The corporation recognizes and affirms its traditional affiliation and faith in the Roman Catholic Church. In furtherance of the object, this corporation shall provide opportunities to meet primarily the spiritual, cultural and physical needs of youth.

(Pl.'s Ex. 29.) MBNH's by-laws similarly provide:

The object for which this Corporation is established is to offer religious and educational and charitable services to persons of whatever race, nationality, ethnic background, state or nation of residence. The Corporation recognizes and affirms its traditional affiliation with a faith in the Roman Catholic Church. In furtherance of the object, this corporation shall provide opportunities to meet primarily the spiritual, cultural, and physical needs of youth.

(Pl.'s Ex. 1.)

The Camp's Director of Mission, Brother James Halliday ("Brother Jim"), testified that the mission of the Camp is to "work with youth to spread the gospel message to youth." (Trial Tr. 12:24–13:3; see also id. 71:7–19.) As Director of Mission, Brother Jim is responsible for ensuring that the Camp "stays on target" with its mission. (Id. 12:9–21; 93:11–19.)

Approximately twelve to fifteen years ago, Brother Jim hung a parchment in the main office of the Camp because he believed it "expressed well" the mission of the Camp. (Id. 44:7–14; see also id. 48:17–21, 76:13–77:20.) The parchment reads: "Let it be known to all who enter here that Jesus Christ is the reason for this camp, the unseen but ever-present teacher in all its activities, the model for its staff, and the inspiration for its campers." (Pl.'s Ex. 40 at 1–2.)

Brother Jim testified that the Camp tries to instill this message—that Jesus Christ is the reason for the Camp—in its campers and staff throughout the camp season. (See Trial Tr. 75:24–77:20.)

The Camp, therefore, incorporates religious rituals and activities into the camp experience. For example, the Camp begins each day with a prayer and the lighting of a religiously symbolic lantern. (Trial Tr. 45:4–48:3.) Each day also ends with a prayer. (Id. 48:4–24.) At the center of the Camp is the Our Lady of Fatima Chapel, where Eucharist services are available to campers and staff each weekday and on Sunday evening. (Id. 49:20–22, 51:5–7, 52:22–53:4.) There is a priest on campus throughout the summer camp season, as “only a priest can celebrate all the sacraments, including the mass.” (Id. 52:9–20.) In addition to the chapel, most Camp buildings contain one or more references to the Catholic faith, such as crosses, depictions of the Virgin Mary, posters with religious messages, and depictions of the founder of the Marist Brothers, Saint Marcellin Champagnat.² (See Pl.’s Ex. 73.) The Camp also offers two Eucharist services each week (one on Saturday night and one on Sunday morning) that are open to the general public. (Trial Tr. 52:22–53:4, 54:15–18; Pl.’s Ex. 5 at 28.) Aside from these two public Eucharist services, however, neither the Camp nor the campers provide any services to the surrounding community. (Trial Tr. 80:20–81:14.)

Although the Camp is a Catholic camp, (Pl.’s Ex. 34 at 3; see Pl.’s Ex. 29), there are no religious qualifications for attendance at the Camp (Trial Tr. 126:25–126:7). Moreover, much of the activities offered to campers are typical of any summer camp—religious or secular—such as archery, arts and crafts, baseball, fishing, riflery, soccer, and horseback riding. (Pl.’s Ex. 5 at 63–64; Trial Tr. 83:22–84:10.) In addition to recreational activities, the Camp offers some academic programs: special tutoring, remedial math, digital photo and media, and English as a second language (“ESL”). (Pl.’s Ex. 5 at 63–64; Trial Tr. 155:11–157:11.)

² In 1999, the Vatican proclaimed Marcellin Champagnat a saint. (Trial Tr. 57:15–19.)

The Camp operates for a total of seven weeks from late June to mid-August, offering two two-week sessions and one three-week session. (Trial Tr. 158:4–6; Pl.’s Ex. 6.) Staff and lifeguards arrive on the Property approximately one to two weeks prior to the start of the first session. (Trial Tr. 158:4–13.) Campers may stay for more than one session, or for the full seven-week season. (Pl.’s Ex. 6.) The dates and rates for the 2016 season³ were as follows:

Session 1: 2 weeks	\$1,900	June 26 to July 9
Session 2: 2 weeks	\$2,050	July 10 to July 23
Session 3: 3 weeks	\$2,850	July 24 to August 13
Sessions 1 & 2: 4 weeks	\$3,650	June 26 to July 23
Sessions 2 & 3: 5 weeks	\$4,500	July 10 to August 13
Full Season: 7 weeks	\$5,900	June 26 to August 13

(Id.; see also Pl.’s Ex. 5 at 31; Trial Tr. 150:16–19.) Thus, the camp tuition ranges from approximately \$1,900 to \$5,900. (See Pl.’s Ex. 5 at 31; Pl.’s Ex. 6.)

In addition to tuition, every camper must pay a registration fee of \$175. (Pl.’s Ex. 6; Trial Tr. 151:1–9; see also Pl.’s Ex. 5 at 31.) This fee is non-refundable and is not credited against tuition. (Pl.’s Ex. 6; Trial Tr. 151:1–18; see also Pl.’s Ex. 5 at 31.) Additionally, many of the activities offered, such as archery, riflery, fishing, and horseback riding, are not included in the tuition but carry an additional fee of either \$50 or \$100 per session. (Pl.’s Ex. 5 at 63–64; Trial Tr. 155:1–157:17.) Moreover, all of the academic programs offered carry an additional fee: digital photo and media, remedial math, and special tutoring each cost \$50 per session, while ESL costs \$100 per session. (Pl.’s Ex. 5 at 63–64; Trial Tr. 155:1–157:17.) Campers can also pay additional fees to go on various day trips, such as Deep Sea Fishing (\$125); Sea Dogs Party Day (\$65); White Water Rafting (\$300); “The Blast” (\$100); Ice Skating (\$35); Day in Boston

³ Although the relevant time period for the purposes of this decision is 2015, the parties provided the Court with the rates for the 2016 season only. (See Pl.’s Ex. 6; Pl.’s Ex. 5 at 31.) Mr. Bouchard testified that he believed the rates increased from 2015 to 2016, and are expected to increase for the 2017 season by approximately \$50 per week. (Trial Tr. 150:20–25.)

(\$200); Zip Line Tour (\$200); and Indoor Rock Climbing (\$95).⁴ (Pl.’s Ex. 5 at 73–74; Trial Tr. 85:21–86:9, 178:24–179:8.)

In 2015, MBNH earned \$1,363,200 in total revenues, which included \$1,239,565 in revenues for tuition and fees.⁵ (Def.’s Ex. J; Trial Tr. 238:4–10.) MBNH’s total expenses for 2015 were \$1,255,313. (Def.’s Ex. J; Trial Tr. 240:9–12.) MBNH’s revenues, thus, exceeded expenses by \$107,907 in 2015. (See Def.’s Ex. J.)

In 2015, the Camp granted 47 full or partial scholarships to campers, totaling \$108,739.00. (Pl.’s Ex. 17.) Thus, out of the 490 campers who attended the Camp in 2015, fewer than 10% received scholarships. (See Pl.’s Exs. 17, 33.) The vast majority of campers, therefore, pay to attend. (See Trial Tr. 83:8–11.) Moreover, the Camp is not obligated under its by-laws to provide scholarships, (see Pl.’s Ex. 1), and does not advertise the availability of scholarships in its brochure, although scholarship information is available on its website (see Pl.’s Ex. 6; Pl.’s Ex. 5 at 82; Trial Tr. 153:15–23).

Of the 47 full or partial scholarships that the Camp granted in 2015, 14 were “general” scholarships, (Pl.’s Ex. 17; see Trial Tr. 189:9–190:5), meaning they were granted to campers whose parents had applied for scholarship aid using the Camp’s Scholarship Application (see Trial Tr. 133:14–134:10, 189:3–15; Pl.’s Ex. 44; Def.’s Ex. H). Parents may apply for full or partial scholarship and must “show economic need” to receive scholarship aid. (Def.’s Ex. H; see Trial Tr. 133:14–134:17.) In addition, MBNH works with and grants scholarships through various organizations that serve families in need, including the Boys and Girls Club of

⁴ These prices are from the Camp’s website as of July 14, 2016. (See Pl.’s Ex. 5 at 73–74.) The Court heard no evidence as to the precise fees charged for these trips during the 2015 season. However, both Brother Jim and Mr. Bouchard testified that these trips carry additional fees. (Trial Tr. 85:21–86:9, 178:24–179:8.)

⁵ In 2014, MBNH earned \$1,408,382 in total revenues, of which \$1,266,142 was from tuition and fees. (Def.’s Ex. L.)

Lawrence, Massachusetts and the Guadalupe School in Brownsville, Texas.⁶ (See Pl.'s Ex. 17; Trial Tr. 133:9–16, 179:11–180:6.)

The Camp's scholarship application provides that scholarships are for the first session only. (Def.'s Ex. H.) Mr. Bouchard testified that the Camp does make exceptions to this rule, but that the majority of campers who receive scholarships, including the children from the Boys and Girls Club and the Gaudalupe School, attend during the first session. (Trial Tr. 173:20–174:10.) He also testified that the first session is the least expensive session to attend because the Camp's lowest enrollment tends to be during the first session, as the session usually occurs while some children are still in school. (Id. 149:7–24.)

Each camper who receives a scholarship is entitled to two free activities, meaning he or she can enroll in two of the activities not normally included in the price of tuition for no additional cost. (Trial Tr. 178:14–18.) If a scholarship camper wishes to participate in more than two of these activities, however, the camper is required to pay the \$50 or \$100 fee for each additional activity. (Id. 178:14–23.) Similarly, if a scholarship camper wishes to participate in one of the day trips, the camper must pay the required fee. (Id. 178:24–179:8.) Furthermore, all scholarship applicants must pay the \$175 non-refundable registration fee. (Id. 178:9–13; see Def.'s Ex. H.)

MBNH also allows relatives of Camp staff or of the Marist Brothers to attend the Camp for free without regard to financial need.⁷ (Trial Tr. 174:14–24, 184:22–25.) As many as fifty to sixty relatives attend the Camp for free each year. (Id. 191:4–23.)

⁶ The Guadalupe School is a "poverty school" that receives no federal or state funds and operates "primarily on donations." (Trial Tr. 179:11–14.) The Marist Brothers and "one or two other religious groups are involved in maintaining [the] school." (Trial Tr. 179:14–16.)

⁷ If a staff member's relative attends the Camp for free, the staff member is still paid his or her full salary. (Trial Tr. 174:14–24.)

From 1988–2014, MBNH allowed up to thirty children from the Town of Effingham to attend the Camp for free as the result of an out-of-court settlement between MBNH and the Town. (Def.’s Ex. B; Trial Tr. 130:22–131:4, 132:18–22, 167:1–22.) Although the settlement agreement provided that the Effingham children would attend the Camp only during the day, MBNH eventually converted the program to a full overnight summer camp session. (Trial Tr. 131:5–21, 167:23–169:18.) The agreement ended in 2014, however, and as of 2015, Effingham children were no longer allowed to attend the Camp for free unless they applied for and received a scholarship. (Id. 169:19–24.) While twenty-five Effingham children attended the Camp in 2014, zero attended the Camp in 2015.

When the Camp is not in session, MBNH rents the Property to various organizations and groups for different uses, including Central Catholic High School’s leadership program, St. Bernard High School’s football camp, St. Mary High School’s annual freshmen orientation, and a dog training group. (See Pl.’s Exs. 46–50; Trial Tr. 137:21–140:21, 159:14–165:25.) Some of these groups rent out and use only the Log Cabin, while others rent out and use the entire Property. (See Trial Tr. 137:21–140:21.) Mr. Bouchard testified that there are “not really” any restrictions on who can rent the Property, nor are there restrictions on how these organizations and groups use the Property (Id. 159:18–22, 160:11–23). In 2015, MBNH earned \$92,854 in revenue from renting the Property.⁸ (Def.’s Ex. J; see also Trial Tr. 154:16–166:1.) Mr. Bouchard testified that the proceeds from these rentals “either go into the . . . regular Camp fund, the running of the Camp, or [MBNH] attribute[s] it to some of [its] scholarships.” (Trial Tr. 140:22–141:1.)

Each year, MBNH is required, pursuant to its by-laws, to pay the U.S. Province an assessment “to provide support to the religious works and health and well-being of the Marist

⁸ In 2014, MBNH earned \$92,854 in revenue from renting the Property. (Def.’s Ex. L.)

Brothers who have founded and assisted the Corporation in meeting the spiritual, cultural and physical needs of the youth served.” (Def.’s Ex. D; see also Trial Tr. 248:1–249:20.) In 2013, the Camp was assessed \$100,000. (Trial Tr. 243:20–22.) That amount has increased by \$3,000 each subsequent year. (See Trial Tr. 243:7–244:7.) Accordingly, MBNH paid the U.S. Province \$106,000 in 2015 and \$109,000 in 2016. (Trial Tr. 244:1–7; see also Def.’s Ex. L.) Frank Pellegrino, Chief Financial Officer (“CFO”) for the U.S. Province, testified that he and the finance committee of the Marist Brothers calculate this assessment on a yearly basis. (Trial Tr. 205:22–206:8, 217:2–11.) He explained that he arrives at the amount for the assessment: “[by] sit[ting] down with the executive director of the Camp . . . , and go[ing] over line by line the[] expenses and his projected income. And with that then we see how much these the [sic] assessments can be for Camp Marist.” (Id. 205:22–206:8, 217:2–11.)

There is a similar assessment for each of the U.S. Province’s other ministries, with the exception of the retreat house in Esopus, New York.⁹ (Trial Tr. 200:16–201:18, 205:4–9.) Mr. Pellegrino testified that the money from these assessments is deposited in the U.S. Province’s general operating fund, along with the U.S. Province’s other revenue. (Id. 218:8–219:1.) Mr. Pellegrino explained that the money in this general operating fund is used for the following purpose:

We have several ministries of the Marist Brothers that need assistance, and one of the big ones is in Esopus, where we have these camps for the young that have AIDS and cancer, and they are deaf, and special needs. And the Province has given them a subsidy of over \$350,000; besides that, we have two high schools that the students cannot afford a Catholic education, so we try to help those high schools to assist those students to attend those two Catholic high schools \$100,000.

⁹ In addition to Camp Marist, the U.S. Province has seven high schools and a retreat house in Esopus, New York, which is used for weekend retreats in the winter and as a camp for children that are deaf, or have cancer, AIDS, or special needs in the summer. (Trial Tr. 200:21–201:11.)

(Id. 209:20–210:2.) He further explained that if the Camp were to have “some shortfall,” as it did in 2008 when several buildings were destroyed during a snowstorm, the U.S. Province would help the Camp financially. (Id. 210:9–18; see also id. 218:8–219:4.) The U.S. Province also uses the money in its general operating account to provide health insurance for the Brothers, both active and retired, and to support the living expenses of retired Brothers (Id. 219:5–220:17.) Additionally, the U.S. Province purchases group property insurance and auto insurance for its ministries, which the ministries then pay for, allowing each ministry to pay less for insurance than it would if it purchased insurance on its own. (Id. 207:4–209:10, 222:7–13.)

On or about March 23, 2015, MBNH presented a claim for exemption from real estate taxation for the Property to the Town, seeking a charitable exemption under RSA 72:23, V. (See Def.’s Ex. D.) By letter dated July 28, 2015, the Town denied MBNH’s request for a charitable tax exemption.¹⁰ (See Def.’s Ex. E.) MBNH now appeals the Town’s denial of its claim for a charitable tax exemption under RSA 72:23, V. See RSA 72:34-a.

Standard of Review

To resolve this appeal the Court must consider the interpretation and application of RSA 72:23, V and RSA 72:23-*l*. See Eldertrust of Florida v. Town of Epsom, 154 N.H. 693, 696 (2007) (citing E. Coast Conf. of the Evangelical Covenant Church of America v. Town of

¹⁰ The Town explained that the Camp’s “purpose is extremely broad in scope, and a consideration of the Camp’s programs (including its amenities, activities and tuition charges) fails to distinguish this camp from other private commercial summer camps.” (Id. at 1.) The Town continued

The principal fact that you cite as manifesting the Camp’s charitable nature is that the Camp provides financial assistance, through scholarships, to a limited number of campers. While the evidence submitted does reflect that some limited scholarships are given to campers, those scholarships represent a small fraction of the overall tuition earned by the operation. . . . Moreover, any scholarships given are provided for the first session of camp only. As a result, the tuition breaks are not as large as suggested. Given the absence of any further evidence in support of your exemption claim, the Board concludes that the Camp’s primary activities are not charitable in nature and hence the land owned by the Marist Brothers is not being used and occupied directly for the stated charitable purposes.

(Id. at 1–2.)

Swanzey, 146 N.H. 658, 661 (2001)). “The interpretation and application of statutes presents questions of law, which [the Court] review[s] de novo.” Id.

Analysis

The general rule in New Hampshire is that “[a]ll real estate, whether improved or unimproved, shall be taxed except as otherwise provided.” RSA 72:6 (2012). RSA 72:23 identifies numerous types of property exempted from taxation, including:

The buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in this state, owned, used and occupied by them directly for the purposes for which they are established, provided that none of the income or profits thereof is used for any other purpose than the purpose for which they are established.

RSA 72:23, V; see generally In re City of Concord, 161 N.H. 344, 348 (2011). The burden is on the taxpayer to prove that it is entitled to a charitable tax exemption under the statute. RSA 72:23-m.

The term “charitable” as used to describe a corporation, society or other organization within the scope of RSA 72:23 is defined as:

a corporation, society or organization established and administered for the purpose of performing, and obligated, by its charter or otherwise, to perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being of the general public or a substantial and indefinite segment of the general public that includes residents of the state of New Hampshire, with no pecuniary profit or benefit to its officers or members, or any restrictions which confine its benefits or services to such officers or members, or those of any related organization. The fact that an organization's activities are not conducted for profit shall not in itself be sufficient to render the organization “charitable” for purposes of this chapter, nor shall the organization’s treatment under the United States Internal Revenue Code of 1986, as amended.

RSA 72:23-l. RSA 72:23-l “is not intended to abrogate the meaning of ‘charitable’ under the common law of New Hampshire.” Id.; see also Housing P’ship v. Town of Rollinsford, 141 N.H.

239, 241 (1996) (“[RSA 72:23-7] is consistent with the common law definition of charitable organization.”).

In ElderTrust, the New Hampshire Supreme Court set forth four factors that a property owner seeking a charitable tax exemption must satisfy; namely, whether:

(1) the institution or organization was established and is administered for a charitable purpose; (2) an obligation exists to perform the organization’s stated purpose to the public rather than simply to members of the organization; (3) the land, in addition to being owned by the organization, is occupied by it and used directly for the stated charitable purposes; and (4) any of the organization’s income or profits are used for any purpose other than the purpose for which the organization was established. Under the fourth factor, the organization’s officers or members may not derive any pecuniary profit or benefit.

154 N.H. 693, 697–98 (2007); see also In re City of Concord, 161 N.H. at 348–49. The ElderTrust Court also noted that “[a]lthough these four factors are anchored in the plain language of the statutes, they also have firm moorings in our case law.” ElderTrust, 154 N.H. at 698 (citations omitted).

MBNH appears to contend that because the Camp “serves the twin charitable purposes of ‘advancing education’ and ‘aiding religion,’” (MBNH’s Request Findings & Rulings ¶¶ 14, 66–67), it satisfies the first two ElderTrust factors. The Town counters that merely advancing education and aiding religion is insufficient to meet the established and administered requirement. The Town argues that while “MBNH offers recreational and educational services to its paying campers, it does not generally offer those services in a charitable manner,” as it does not “provid[e] for the general public good and/or welfare.” (Id. at 12.) The Town makes a similar argument with respect to the second ElderTrust factor, asserting that “[a]s MBNH is under no obligation to provide any service to the public, it has failed to meet its burden on the second factor.” (Town’s Trial Mem. at 15.)

The Court addresses the first two ElderTrust factors together as the arguments and considerations in this case are interrelated and ultimately urge a single conclusion; namely, that MBNH primarily benefits a limited class of persons, rather than the general public or an indefinite segment thereof. See In re City of Concord, 161 N.H. at 349–50.

For an organization “to meet the requirement that it was ‘established and is administered for a charitable purpose,’ that charitable mission must be its dominant or primary purpose.” In re City of Concord, 161 N.H. at 352 (quoting ElderTrust, 154 N.H. at 697). If the dominant purpose of the organization’s work “‘is to benefit its members or a limited class of persons,’ the organization will not meet this requirement ‘even though the public will derive an incidental benefit from such work.’” Id. (quoting Mass. Med. Soc’y, 164 N.E.2d 325, 328 (1960)). When determining whether an organization meets the first ElderTrust factor, the Court “look[s] to both its charter or organizational statements and its actions taken pursuant to those statements.” Id. (emphasis added) (quotation omitted). “Thus, notwithstanding that an organization’s stated purpose is to primarily benefit the public, if the organization is actually administered so that any public benefit is slight, negligible or insignificant when compared to the benefit derived by the organization’s members [or a limited class of persons], the organization is not entitled to a charitable tax exemption.” Id. (quotation and internal quotation marks omitted).

Under the second ElderTrust factor, a taxpayer seeking a charitable exemption bears the burden of proving that it is obligated “to perform [its] stated purpose to the public, rather than simply to members of the organization.” Housing P’ship, 141 N.H. at 241 (brackets omitted) (quoting In re City of Franklin, 137 N.H. 622, 625 (1993)); see also E. Coast Conf., 146 N.H. at 622 (stating taxpayer bears burden of proving “it is obligated to be ‘a public charity, that is, that the general public, or a substantial portion of it, were the beneficiaries of its uses’” (quoting

Nature Conservancy v. Nelson, 107 N.H. 316, 319 (1966)); Soc’y of Cincinnati v. Exeter, 92 N.H. 348, 352–54 (1943) (interpreting prior statute).

With respect to the “obligation” requirement, the New Hampshire Supreme Court has held:

The public service which the applicant is to render must be obligatory so as to enable the Attorney General or other public officer to enforce this right against it if the service is not performed. It follows that if the public benefit is limited to that which the plaintiff sees fits to provide at its option or in its uncontrolled discretion the requirements of RSA 72:23 V are not satisfied.

ElderTrust, 154 N.H. at 699 (brackets omitted) (quoting In re City of Franklin, 137 N.H. at 625).

The purpose of this requirement “is to prevent organizations, even if they operate for charitable purposes, from obtaining the benefits of a tax exemption without providing some service of public good.” ElderTrust, 154 N.H. at 699 (citing In re City of Franklin, 137 N.H. at 626). As with the established and administered requirement, “[i]n determining whether an organization has an enforceable obligation to perform a charitable service, ‘[the Court] look[s] to both its charter or organization statements and its actions taken pursuant to those statements.’” Town of Peterborough v. MacDowell Colony, Inc., 157 N.H. 1, 7 (2008) (quoting E. Coast Conf., 146 N.H. at 662).

Here, MBNH’s Articles of Agreement, as amended in 1990, provide:

The object for which this Corporation is established is to offer recreational and educational services to persons of whatever race, nationality, ethnic background, state or nation of residence. The corporation recognizes and affirms its traditional affiliation and faith in the Roman Catholic Church. In furtherance of the object, this corporation shall provide opportunities to meet primarily the spiritual, cultural and physical needs of youth.

(Pl.’s Ex. 29.) MBNH’s by-laws express a similar purpose: “to offer religious and educational and charitable services to persons of whatever race, nationality, ethnic background, state or nation of residence.” (Pl.’s Ex. 1.) While MBNH’s stated purpose of offering religious,

educational, and recreational services to “persons of whatever race, nationality, ethnic background, state or nation of residence” and the obligation to “provide opportunities to meet primarily the spiritual, cultural and physical needs of youth” are arguably public charitable purposes, see Granite State Mgmt. & Res. v. City of Concord, 165 N.H. 277, 284 (2013), and while there is no dispute that MBNH offers religious, educational, and recreational services to its youth campers, (see Town’s Trial Mem. at 12), that is not the end of the inquiry. MBNH must, in fact, benefit the general public. See In re City of Concord, 161 N.H. at 352.

Based on the evidence, the Court finds that the Camp is actually administered, mostly, if not entirely, for the benefit of a limited group of children, rather than for the benefit of the general public or an indefinite segment thereof. In 2015, approximately 490 children attended the Camp. (Pl.’s Ex. 33.) Of those 490 campers, less than 10% received full or partial financial scholarships. (See Pl.’s Ex. 17.) Thus, the vast majority of campers in attendance in 2015 paid to attend the Camp. (See Trial Tr. 83:8–11.) While the fact that an organization charges entrance or admission fees does not necessarily preclude a finding that it is administered for a charitable purpose, see Portsmouth Historical Soc’y v. City of Portsmouth, 89 N.H. 283, 285 (1938), in this case, the cost to attend the Camp is not insignificant. The cost for attendance in 2016 ranged from \$1,900 to as much as \$5,900. (See Pl.’s Ex. 5 at 31; Pl.’s Ex. 6.) All campers, including those who have received a full or partial scholarship, are also required to pay a non-refundable \$175 registration fee, which is not credited against tuition. (Pl.’s Ex. 6; Trial Tr. 151:1–18; see also Pl.’s Ex. 5 at 31.) Moreover, if a camper wants to participate in certain activities or attend any day trips, the camper is required to pay additional fees. (Pl.’s Ex. 5 at 63–64, 73–74; Trial Tr. 85:21–86:9, 155:1–157:17, 178:24–179:8.) Notably, while MBNH asserts that it serves the charitable purpose of “advancing education,” all of the academic programs offered at the Camp

carry additional charges of either \$50 or \$100 per session. (Pl.'s Ex. 5 at 63–64; Trial Tr. 155:1–157:17.)

MBNH argues that there is no requirement under the statute or the case law that an organization provide scholarships and that “‘relieving poverty’ is a discrete ‘charitable purpose,’ separate and apart from those five (5) other ‘categories’ identified in Granite State Management and drawn from the law of charitable uses and trust.” (MBNH’s Request Findings & Rulings ¶¶ 68–69. MBNH contends that although it is not required to do so, it nevertheless “does indeed provide full and partial scholarship to those in need.” (Id. at ¶ 70.)

The evidence regarding scholarships actually provided, however, does not demonstrate a significant charitable effort. While MBNH does provide some full and partial scholarships, it granted a relatively small number of such scholarships in 2015. As mentioned above, less than 10% of the campers in attendance received scholarships. (See Pl.’s Exs. 17, 33.) The majority of these scholarships were for the first session only, which is the least expensive session and the session with the lowest attendance. (Trial Tr. 149:7–24, 173:20–174:10; see also Def.’s Ex. H.) Moreover, the Camp is not obligated under its by-laws to provide scholarships, (see Pl.’s Ex. 1), and does not advertise the availability of scholarships in its brochure (see Pl.’s Ex. 6; Trial Tr. 153:15–23). “[A]n organization does not necessarily have to serve the poor or the needy in order to qualify for the charitable exemption.” ElderTrust, 154 N.H. at 700 (quoting W. Mass. Lifecare v. Bd. of Assessors, 747 N.E.2d 97, 104 (2001)). However, its services must “be accessible to a sufficiently large and indefinite class of beneficiaries in order to be treated as a charitable organization. An organization that has expressly limited its services to those who are financially well off does not meet this test.” W. Mass. Lifecare, 747 N.E.2d at 105; see also Cape Retirement Cmty., Inc. v. Kuehle, 798 S.W.2d 201, 203–04 (Mo. Ct. App. 1990) (finding

retirement home “not equally available to both rich and poor” not entitled to charitable exemption because it “screen[ed] out low income elderly . . . unable to meet the present and future costs of its services” thereby failing to “benefit society generally”). In light of the Camp’s significant tuition and fees and the de minimis amount of scholarships it granted in 2015, the Court finds that MBNH is actually administered so as to benefit a financially limited class of youth, rather than youth in general, the general public, or “a substantial and indefinite segment of the general public that includes residents of the state of New Hampshire.” RSA 72:23-1.

Furthermore, with the exception of the two public Eucharist services offered each week, neither MBNH nor its campers provide any services for the surrounding community or the general public. (Trial Tr. 80:20–81:14.) Finally, MBNH does not argue that in serving this limited class of youth it somehow provides an indirect benefit to the general public, nor did it introduce any evidence to support such a claim. See MacDowell, 157 N.H. at 6. The Court, therefore, concludes that MBNH has not met its burden of proving that it is “a public charity, that is, that the general public, or a substantial portion of it” benefitted from the use of its property. E. Coast. Conf., 146 N.H. at 662 (quoting Nature Conservancy, 107 N.H. at 319).

Even assuming MBNH had met the first two ElderTrust factors, the Court nevertheless finds that it has failed to meet its burden with respect to the third and fourth factors and is, therefore, not entitled to an exemption under RSA 72:23, V. With respect to third ElderTrust factor, “in order ‘to qualify for an exemption, the land, in addition to being owned by the association, would have to be occupied by the association and used directly by the association for its charitable purposes.’” ElderTrust, 154 N.H. at 701 (brackets omitted) (quoting Housing P’ship, 141 N.H. at 242). “Only that part of the property which is used directly for charitable purposes is exempt from property tax.” Housing P’ship, 141 N.H. at 242 (quoting Appeal of C.H.R.I.S.T.,

Inc., 122 N.H. 982, 984 (1982)). To satisfy the third ElderTrust requirement, the occupancy of the property must be reasonably necessary for the charitable organization to carry out its mission. When the use is slight, negligible or insignificant, or not in the performance of the public purpose, the applicant is not entitled to a tax exemption.” ElderTrust, 154 N.H. at 701 (citations omitted).

The Town argues that MBNH has not met the third factor because the Camp operates for only seven weeks out of the year and when the Camp is not in session MBNH rents all or portions of the Property to other organizations for private use. Simply renting out its property, however, “does not prevent [a charitable organization’s] property from being tax-exempt.” Housing P’ship, 141 N.H. at 242. “[I]f the rentals directly fulfill an organization’s charitable purpose, or are [reasonably] necessary for the organization to accomplish its purpose, an exemption will be allowed.” In re Kiwanis Club of Hudson, Inc., 140 N.H. 92, 94 (1995) (quoting Senior Citizens Housing Dev. Corp. v. City of Claremont, 122 N.H. 1104, 1108 (1982)); see also Housing P’ship, 141 N.H. at 242–43.

In 2015, MBNH earned a total of \$92,854 in revenues from renting all or portions of the Property to various organizations and groups for different uses. (See Pl.’s Exs. 46–50; Def.’s Ex. J; Trial Tr. 137:21–140:21, 159:14–166:1.) While the Court notes that this is not a significant source of revenue for MBNH, the relevant inquiry is whether the rentals “directly fulfill [MBNH’s] charitable purpose, or are [reasonably] necessary for [MBNH] to accomplish its purpose.” Kiwanis Club, 140 N.H. at 94 (quoting Senior Citizens Housing Dev. Corp., 122 N.H. at 1108). Mr. Bouchard testified that there are “not really” any restrictions on who can rent the Property (Trial Tr. 159:18–22), nor are there restrictions on how these groups and organizations use the Property (Trial Tr. 160:11–23). Thus, MBNH is not required to rent the Property only to

organizations with similar charitable missions, nor are the groups and organizations renting the Property required to use it for the purpose of “advancing education” or “aiding religion.” Additionally, MBNH did not present any evidence that the use of the Property by these organizations directly fulfills its asserted goal of “advancing education” or “aiding religion.” See Kiwanis Club, 140 N.H. at 94–95 (concluding renting of function hall to other charitable organization for fund-raising purposes “‘directly fulfill[ed] the organization’s charitable purpose’ of bettering the community”). Moreover, although Mr. Bouchard testified that the proceeds from these rentals “either go into the . . . regular Camp fund, the running of the Camp, or [MBNH] attribute[s] it to some of [its] scholarships,” (Trial Tr. 140:22–141:1), the Court heard no testimony that the rental fees are “limited to the direct expenses of operating the [Camp],” or are otherwise necessary for MBNH to carry out its alleged charitable mission. See Kiwanis Club, 140 N.H. at 94. Accordingly, the Court finds that MBNH has failed to establish that it meets the third ElderTrust factor.

Finally, under the fourth factor, “it must be determined whether the organization’s income or profits are used for any purpose other than the purpose for which the organization was established.” ElderTrust, 154 N.H. at 703. As part of this inquiry, the Court also considers whether the organization “offers a ‘pecuniary profit or benefit to its officer or members, or any restrictions which confine its benefits or services to such officers or members, or those of any related organization.’” Id. (quoting RSA 72:23-1).

The Town contends that MBNH fails to meet the fourth ElderTrust requirement because it uses a portion of “its income and profits for purposes outside the scope for which MBNH was established.” (Town’s Trial Mem. at 19.) Specifically, the Town asserts that MBNH “divert[s]

pecuniary profit and benefit to its ‘officers or members’ via the mandatory tax or assessment levied by the U.S. Province.” (Id.)

In response, MBNH argues

putting aside (a) the annual assessment as a means of stabilization or, put differently, as a premium for insurance against hard times, and (b) the uncompensated service of those who acquired, established, built, and have since managed and staffed Camp Marist, the U.S. Province provides substantial additional financial benefits to [MBNH]

(MBNH’s Request Findings & Rulings ¶ 79). These benefits include providing health insurance for the Marist Brothers who work at the Camp and saving MBNH money on property and automobile insurance by purchasing group insurance for all of the U.S. Province’s ministries.

(See id.) MBNH maintains that “impermissible ‘self-interest’ such as that which would disqualify an applicant for a charitable exemption, ‘is not evidenced merely by the payment of reasonable compensation or, as here, substantially less than that to members or affiliates for their service in the maintenance and conduct of the exempt organization’s affairs.” (Id. ¶ 81 (brackets and ellipsis omitted) (quoting Young Women’s Christian Ass’n v. Portsmouth, 89 N.H. 40, 44 (1937).)

MBNH is correct that merely paying “reasonable compensation to [its] members for their service” does not cause an otherwise charitable organization to lose its tax exempt status. See Young Women’s Christian Ass’n, 89 N.H. at 44. Similarly, paying a fee to another entity for its services when that entity “happen[s] to have links or connections with members of the charitable organization’s board” does not automatically preclude a charitable tax exemption. ElderTrust, 154 N.H. at 706. However, the evidence regarding how the assessment is calculated and used was murky at best. Although MBNH offered general testimony regarding “stabilization” and the benefits it receives as the result of its affiliation with the U.S. Province, it does not appear that

the amount of the assessment is directly tied to the value of these benefits, but is instead, according to Mr. Pellegrino's testimony, is determined based upon the financial health of MBNH. Mr. Pellegrino testified that he calculates the amount of the assessment on a yearly basis by reviewing the Camp's expenses and projected income with the Camp's executive director and then they "see how much these the [sic] assessments can be for Camp Marist." (Trial Tr. 205:22–206:8, Trial Tr. 217:2–11.) The Court notes that, in recent years, the assessment has been \$100,000 escalated by \$3,000 each year, thus undercutting Mr. Pellegrino's testimony that the assessment is calculated based on the particular revenues and expenses of the Camp. (Trial Tr. 243:7–244:7; see also Def.'s Ex. L.) The Court heard no evidence to support a finding that the amount of the assessment is related to the value of the benefit MBNH receives as a result of its affiliation with the U.S. Province.

Additionally, the Court heard no testimony that the U.S. Province uses the money from the assessment to advance MBNH's mission of "advancing education" and "aiding religion." Mr. Pellegrino testified that the money from the assessment is deposited in the U.S. Province's general operating fund, along with the U.S. Province's other revenue. (Trial Tr. 218:8–219:1.) He explained that this money is used, generally, to support all of the U.S. Marist ministries when needed; to provide health insurance for the Brothers, both active and retired; and to support the living expenses of retired Brothers. (Id. 209:20–210:18, 218:8–220:17.) While this support may be admirable, it does little to aid the stated purpose of MBNH. The Court finds that this is insufficient evidence to support a finding that the assessment is used for the purposes for which MBNH was established, namely "advancing education" and "aiding religion." Thus, the Court concludes that MBNH has failed to establish that its income or profits are not "used for any

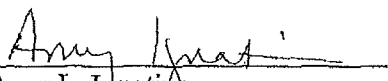
purpose other than the purpose for which [MBNH] was established.” See ElderTrust, 154 N.H. at 703. Accordingly, the Court finds that MBNH has failed to satisfy the fourth ElderTrust factor.

Conclusion

For the foregoing reasons, the Court finds that MBNH has failed to meet its burden with respect to each of the four ElderTrust factors. Accordingly, the Court finds that MBNH is not entitled to a charitable tax exemption pursuant to RSA 72:23, V and 72:23-1 for the 2015 tax year.

So ordered.

Date: January 30, 2017


Amy L. Ignatius,
Presiding Justice

THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT

The Marist Brothers of New Hampshire

v.

Town of Effingham

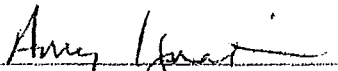
Docket No. 212-2015-CV-00161

ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION

The plaintiff, The Marist Brothers of New Hampshire ("MBNH"), has moved for this Court to reconsider its January 30, 2017 Order on the merits finding that MBNH is not entitled to a charitable tax exemption under RSA 72:23, V and 72:23-I for the 2015 tax year. The defendant, the Town of Effingham ("Town") objects. Motions to reconsider must "state, with particular clarity, points of law or fact that the court has overlooked or misapprehended." Super. Ct. Civ. R. 12(e); see also Barrows v. Boles, 141 N.H. 382, 397 (1996). Upon review, the Court concludes that MBNH has not identified any facts or law that the Court overlooked in its previous order. Rather, the plaintiff has reargued points already addressed in the previous order, or taken issue with the Court's interpretation of controlling cases. Accordingly, MBNH's motion for reconsideration is DENIED.

So ordered.

Date: March 7, 2017



Amy L. Ighatius
Presiding Justice

