

## New York Court Sides With Masons In Property Exemption Suit

by Christopher Jardine

A vacant Freemason property in upstate New York is entitled to tax-exempt status pending development, according to a state trial court.

In an April 27 decision in *Trustees of the Masonic Hall & Asylum Fund v. Assessor for the Town of Henrietta*, the New York Supreme Court, Monroe County, determined that the Trustees of the Masonic Hall and Asylum Fund was improperly denied a tax exemption for vacant property in Henrietta on which the group planned to build a community center, lodge, veterans memorial, and community center. The court found that the group was entitled to the exemption because the land was owned by a charitable organization and it established that it was proceeding with the construction in good faith.

The Trustees of the Masonic Hall was established by the New York State Legislature in 1864 as a charitable organization. The group's articles of incorporation provide that its charitable object is to build and maintain masonic lodges in New York, as well as venues providing community services like asylums, homes, hospital accommodations, and schools for the "support and care of worthy and indigent masons, and worthy and indigent wives, widows and orphans of masons and for the free education of children of masons."

The group acquired the property for the purpose of building Masonic Care-Henrietta, which will include a lodge, a community center, housing and facilities for older adults, and a Masonic Park and Memorial honoring veterans. The group sought an exemption for the property beginning March 1, 2022, with its application stating that the first phase of the project — a sanitary pump — was to begin in spring 2022. The group also submitted schematic designs and plans for the project, and meeting minutes from August 2021, during which the group interviewed and hired contractors, sought administrative approval, and planned community information sessions.

The assessor denied the application, saying that the Trustees of the Masonic Hall had

presented the project multiple times over several years and the application was not in good faith. The group filed suit.

The court noted that Real Property Tax Law section 420-A "provides a mandatory exemption for real property taxation for certain vacant real property owned by a charitable organization" so long as the property is used toward the organization's charitable purpose, the organization does not derive revenue from the property, and the construction of buildings and improvements toward the charitable purpose is in progress or being planned in good faith.

The court said it is undisputed that the group is a charitable organization and "that the *intended* use of the property would satisfy the criteria for exemption" (emphasis in opinion). The court reasoned that the group was proceeding in good faith because it provided site plans for the sanitary pump station, meeting minutes with architectural discussions, updates on approvals from government agencies, and public information sessions.

The court also noted that since the petitioner filed suit, the town has granted the project a special use permit, and the organization has spent over \$7 million on the project.

Although the assessor argued that the petitioner was deriving revenue from the property because of a lease with Howlett Farms Inc. for the use of the land, the court noted that the lease expired in March 2021 and the group had not received revenue from Howlett Farms since September 2021.

"Therefore, Petitioner has established that it is entitled to the exemption," the court said.

The taxpayer in *Trustees of the Masonic Hall & Asylum Fund v. Assessor for the Town of Henrietta* (2023 NY Slip Op. No. 50387(U)) is represented by Henry Zomerfeld of Hodgson Russ LLP. ■