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West Beit Olam Cemetery Corp. v. Board of Assessors of Wayland

Appeals Court of Massachusetts, Suffolk - July 7, 2016 - N.E.3d - 2016 WL 3619357

Jewish nonprofit organization applied for tax abatement for lot under exemption from property tax applicable to land dedicated to burial of dead and buildings owned and used exclusively in administration of cemeteries, tombs, and rights of burial.

Town's board of assessors denied application, and nonprofit appealed. The Appellate Tax Board ruled that portion of lot improved with single family home was not eligible for exemption, and nonprofit appealed.

The Appeals Court held that:

- Portion of lot improved with single family home "was not dedicated to burial of dead," as required for nonprofit to claim exemption from property tax allowed to cemeteries, tombs, and rights of burial, and
- Single family home was not "used exclusively in administration of cemeteries, tombs, and rights of burial," as required to be eligible for exemption.

Portion of lot improved with single residence in which resident, under caretaker agreement, lived and was obligated to open and close gates of cemetery on daily basis, in exchange for rent, "was not dedicated to burial of dead," as required for Jewish nonprofit owner of land to claim exemption from property tax applicable to land owned by religious nonprofit corporation dedicated to cemeteries, tombs, and rights of burial. Disputed portion of lot was contractually dedicated to residential use, not burials or other cemetery-related activity, under caretaker agreement that established resident's continuous occupancy of property for "residential purposes," "with no interference" by owner except for reasonable inspection and precluded owner from actively developing that portion of lot for "cemetery purposes" during term of agreement, resident's contractual duties to open and close cemetery gates on daily basis were minimal, and she was in now way full-time cemetery caretaker.

Where no interments have taken place on the subject property, the taxpayer seeking to claim an exemption from property tax applicable to cemeteries, tombs, and rights of burial must demonstrate that the property has been dedicated for burial purposes through planning and substantial actual use of the land to prepare it for burials or other activities necessary for, administration and operation of the cemetery.

Land is not "dedicated to the burial of the dead," as required to claim the exemption from property tax applicable to cemeteries, tombs, and rights of burial by a mere dedication or appropriation on paper. Nor does minor use of the purchased land for activities incidental to a cemetery constitute dedication of such land for a burial place.

Single family home on lot owned by Jewish nonprofit in which resident lived rent free, under caretaker agreement with nonprofit, in exchange for resident's obligation to ensure that adjoining

cemetery gates were opened and closed on daily basis, was not “used exclusively in administration of cemeteries, tombs, and rights of burial,” as required for home to come under exemption from property tax applicable to buildings on cemetery property owned by religious nonprofit corporations, where home was used primarily for residential purposes and was restricted to such use during tax year in question.