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Bryant Hammond



**Nome Common Council**  
Jerald Brown  
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**NOME BOARD OF EQUALIZATION**  
**MONDAY, MAY 23, 2022 at 6:30 PM**  
**COUNCIL CHAMBERS IN CITY HALL**

102 Division St. ▪ P.O. Box 281 ▪ Nome, Alaska 99762 ▪ Phone (907) 443-6663 ▪ Fax (907) 443-5345

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ROLL CALL

UNFINISHED BUSINESS

- [A.](#) Adoption of Findings of Fact and Conclusions of Law in NSHC Property Tax Appeals,

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ADJOURNMENT

IN THE MATTER OF

APPEALS FROM THE DECISIONS OF THE CITY OF NOME ASSESSOR DENYING  
APPLICATIONS FOR AN EXEMPTION FROM REAL PROPERTY TAX ON: 1) BLOCK  
91, LOTS 3 AND 4; 2) BLOCK 127, LOT 7A; 3) BLOCK 33, LOT 19; 4) BLOCK 116, LOT  
1A; 5) BLOCK 30, LOTS 66 & 67; AND 6) BLOCK 110, LOTS 1 & 2

Appellant: Norton Sound Health Corporation  
Appellant's Representative: Wendy Pearson; Steve Osborne

Appellee: City of Nome Tax Assessor  
Appellee's Representative: Bryant Hammond, City Clerk

Having sat to hear an appeal pursuant to Sections 17.20.050 and 17.20.060 of the Nome Code of Ordinances and held a properly noticed public hearing on the above-referenced appeals on May 4 and May 6, 2022, considered all the evidence in the record and all of the arguments made at the appeal hearing and having voted to affirm the decision of the City Assessor the Board of Equalization of the City of Nome adopts the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

**FINDINGS OF FACT**

1. The properties involved in this appeal are:
  - A. BLOCK 91, LOTS 3 AND 4 (Property 1)
  - B. BLOCK 127, LOT 7A (Property 2)
  - C. BLOCK 33, LOT 19 (Property 3)
  - D. BLOCK 116, LOT 1A (Property 4)
  - E. BLOCK 30, LOTS 66 & 67 (Property 5)
  - F. BLOCK 110, LOTS 1 & 2 (Property 6)

all of which are located within the boundaries of the City of Nome (collectively "the Property").

2. The Property is owned by the Norton Sound Health Corporation ("NSHC").
3. The Property has not been acquired by the United States in trust for NSHC.
4. NSHC is an Alaskan non-profit corporation.
5. NSHC is not included on the list of recognized tribal entities published in the Federal Register and does not have a constitution approved by the Bureau of Indian Affairs pursuant to the Indian Reorganization Act.
6. NSHC has been deemed a "tribal organization" for purposes of federal laws related to

eligibility to contract with the United States for the provision of health care to Alaskan Natives.

7. NSHC operates various health care facilities throughout the Bering Straits region including a hospital located within the City (“the Hospital”) and medical clinics located outside the City.

8. The expense of operating the Hospital and the medical clinics is funded in part by a contract between the United States and a number of villages in the Bering Strait region (“the Contract”).

9. NSHC is not a party to the Contract but is a signatory to the Contract.

10. The Contract indicates provision of staff housing, training of community health aides, emergency medical services training and provision of lodging for patients and their escorts or family members are within the scope of NSHC services eligible for funding under the Contract.

11. On or about January 31, 2022, NSHRC submitted six applications for an exemption from City of Nome real property tax assessed against each of the six properties (“the Applications”).

12. On or about March 25, 2022, the City Assessor issued assessment notices against each of the six properties (“the Notices”). The Notices acted as a denial of the Applications.

13. Property 1 contains seven dwelling units. As of January 1, 2022, the building on Property 1 was used to provide housing for both permanent and contract doctors and nurses who work at the hospital. Housing is provided at no charge to these persons. During 2% of the time Property 1 is used as temporary housing for newly hired “non-medical” support employees for a period of thirty (30) days after which support employees are charged nominal rent.

14. The assessed value of Property 1 is \$898,100. This valuation is not impacted by whether or not Property 1 is exempt from tax.

15. NSHC employees substantially more than 7 employees. Not all NSHC employees are provided free housing by NSHC. NSHC employees are not required to live in the dwelling units on Property 1.

16. Property 2 contains a building. As of January 1, 2022, Property 2 was being used for storage of NSHC records, as a garage for storage and maintenance of NSHC vehicles and as a site for providing training to NSHC non-medical support staff.

17. The assessed value of Property 2 is \$1,493,000. This valuation is not impacted by whether or not Property 2 is exempt from tax.

18. Property 3 contains a building. As of January 1, 2022, Property 3 was being used to provide temporary housing to persons who work at NSHC facilities other than the hospital and

are in Nome to receive training. The training is to allow these persons to provide medical and EMT services to persons in communities that contain a health clinic operated by NSHC. This housing is provided without charge. The trainees are not required to stay at Property 3.

19. The deed for Property 3 contains a restrictive covenant requiring Property 3 to be used for “health purposes”.

20. The assessed value of Property 3 is \$452,300. This valuation is not impacted by whether or not Property 3 is exempt from tax.

21. Property 4 contains a building. As of January 1, 2022, a portion of the building on Property 4 was being used to provide housing for persons and their family members traveling to Nome to receive medical services at the Hospital. Other portions of the building on Property 4 have been determined to be exempt from property tax.

22. The assessed value of of Property 4 is \$2,823,900. This valuation is not impacted by whether or not Property 4 is exempt from tax.

23. Property 5 contains a building. As of January 1, 2022 the building on Property 5 was not being used.

24. The assessed value of Property 5 is \$455,500. This valuation is not impacted by whether or not Property 5 is exempt from tax.

25. Property 6 contains a building. As of January 1, 2022, the building on Property 6 was not being used.

26. The assessed value of Property 6 is \$1,904,900. This valuation is not impacted by whether or not Property 6 is exempt from tax.

27. Nome has a substantial interest in collecting property tax on the Property. Nome uses property tax to fund K-12 education provided by the Nome Public Schools (and in fact is required to do so by state law), street maintenance of roads used to go to and from the Property and fire and police protection of the Property amongst other city services. The availability of and provision of these services benefit NSHC.

28. Timely appeals from the Notices were filed by NSHC on or about April 21, 2022 (“the Appeals”). NSHRC also appealed the assessed valuation of the Properties claiming each of the Properties should have been assessed as having no value.

29. On May 4 and May 6, 2022, the Board of Equalization held a public hearing on the Application. During the public hearing, the Commission heard arguments from NSHC and the City Assessor’s representatives. The Board deliberated the matter in executive session. On May 10 the Board voted to deny the Appeals.

## CONCLUSIONS OF LAW

1. The assessment and collection of property tax is an in rem proceeding against specifically identified parcels of property not an in personam proceeding against the property owner. AS 29.45.320 et seq.

2. Whether NSHC is the legal equivalent of an Indian tribe and entitled to sovereign immunity is not relevant to the question of whether any of the Properties are exempt from real property taxation by the City of Nome. Board of Equalization v. Alaska Native Brotherhood, 666 P.2d 1015, 1021 (Alaska 1983); citing, Mescalero Apache Tribe v. Jones, 411 US at 149 ("Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State... . That principle is as relevant to a State's tax laws as it is to state criminal laws... .").

3. Section 17.20.120(a)(1) of the Nome Code of Ordinances requires the City to exempt from property taxation "[a]ll property required to be exempted by state and federal law".

4. The property owner bears the burden of proving eligibility for a property tax exemption.

5. Exemptions from property tax must be narrowly construed.

6. AS 29.45.030(a)(3) exempts property "used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes".

7. "Hospital purposes" is to be narrowly construed.

8. "Hospital" is not defined in Title 29. The ordinary meaning of "hospital" is an institution providing medical and surgical treatment and nursing care for sick or injured people.

9. None of the Properties are used exclusively to provide medical treatment to sick or injured people.

10. A narrow exception to the exclusive use requirement contained in AS 29.45.030(a)(3) was adopted by the Alaska Supreme Court in the case of City of Nome v. Catholic Bishop of Northern Alaska, 707 P.2d. 870 (Alaska 1985). The court found in that case that support property may also be exempt from property tax if its use is both "directly incidental to and vitally necessary" for the use of exempt property. 707 P.2d at 874.

11. The use of Property 1 for residential housing is not "vitally necessary" to provision of medical services. Only a small number of NSHC employees reside there. NSHC provided medical services for years without the use of Property 1. If the Alaska legislature had intended to exempt staff housing for hospital staff from property tax specific provisions doing so would have been included in AS 29.45.030(a) for hospitals as they were for religious uses in AS

29.45.030(b).

12. The use of Property 2 for records storage, vehicle maintenance services and training of hospital support staff is not “vitally necessary” to provision of medical services.

13. The use of Property 3 for temporary housing for persons traveling to Nome to receive training in order to provide medical services in other cities and villages as health aides or EMT’s is not “vitally necessary” to provision of medical services at the hospital in Nome. The use of Property 3 may be for a “health purpose” but not all health purposes are hospital purposes and no health services are provided to patients on Property 3. Multiple alternatives for provision of housing to persons traveling to Nome for training exist.

14. The use of a portion of Property 4 for patient housing is not “vitally necessary” to provision of medical services. No health services are provided to patients on Property 4. Multiple alternatives for provision of housing to persons traveling to Nome to receive medical treatment exist.

15. Property 5 is not being used. At the hearing NSHC conceded Property 5 does not qualify for an exemption from property tax under AS 29.45.030(a)(3).

16. Property 6 is not being used. At the hearing NSHC conceded Property 6 does not qualify for an exemption from property tax under AS 29.45.030(a)(3).

17. The Indian Reorganization Act does not prohibit the City of Nome from levying property tax on real property owned by NSHC.

18. The Indian Reorganization Act does not prohibit the City of Nome from collecting real property tax assessed against real property owned by NSHC in an in rem proceeding.

19. There is no specific federal law prohibiting the City of Nome from levying and collecting real property tax on property owned by an entity that is a signatory but not a party to a contract with the United States for provision of health care services to Alaska Natives.

20. A doctrine was earlier adopted under federal law which prohibits state governments from levying and collecting taxes from an “instrumentality” of the United States which is “so closely connected with the government that the two cannot be realistically viewed as separate entities at least insofar as the activity being taxed is concerned”.

21. This “federal instrumentality” doctrine has been “consistently rejected in modern times” and has been “effectively eliminated . . . as a basis for immunizing Indians from state taxation”. Board of Equalization v. Alaska Native Brotherhood, 666 P.2d 1015, 1023(Alaska 1983), citing ; Mescalero Apache Tribe v. Jones, 411 US at 150-154 and Moe v. Confederated Salish and Kootenai Tribes 425 US at 474 n.13(1976). The Board declines to apply this doctrine to the Property.

22. A portion of a building owned by The Ketchikan Indian Corporation that was vacant

was determined to be subject to municipal property tax by the Alaska Supreme Court in Ketchikan Gateway Borough v. Ketchikan Indian Corporation, 75 P3d. 1042 (Alaska 2003). In that case the Alaska Supreme Court rejected the claim the vacant space was exempt under the “federal instrumentality” doctrine.

23. Even if the federal instrumentality doctrine remained a viable defense to local taxation of the Property for the theory to apply Nome must have a relatively inconsequential interest in collection of property tax on the Property in order for taxation to be precluded under the federal instrumentality doctrine. That is not the case here.

Wherefore, having set forth findings of fact and conclusions of law, the Board of Equalization sitting under NCO 17.20.060 hereby affirms the decisions of the city assessor as follows:

1. The denial of the application for an exemption from real property tax for Property 1 is AFFIRMED.

2. The denial of the application for an exemption from real property tax for Property 2 is AFFIRMED.

3. The denial of the application for an exemption from real property tax for Property 3 is AFFIRMED.

4. The denial of the application for an exemption from real property tax for Property 4 is AFFIRMED.

5. The denial of the application for an exemption from real property tax for Property 5 is AFFIRMED.

6. The denial of the application for an exemption from real property tax for Property 6 is AFFIRMED.

7. To the extent the Appeals disputed the valuation of all the Properties, the assessor’s valuations are AFFIRMED.

Tax bills shall be issued in accordance with this decision applying spatial apportionment of exempt and taxable uses of Property 4.

This is the final administrative action of the City of Nome on these appeals. This action may be appealed to Superior Court. Any such appeal must be filed within thirty (30) days from the date these Findings of Fact and Conclusions of Law are adopted.

Duly adopted this \_\_\_<sup>th</sup> day of May, 2022

Hon. John Handeland  
Chair  
City of Nome Board of Equalization