

PT 02-50
Tax Type: Property Tax
Issue: Government Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

CITY OF CHICAGO
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

Nos: 01-PT-0046
(00-49-0485)
PINS: 10-34-300-002
10-34-300-003

RECOMMENDATION FOR DISPOSITION
PURSUANT TO INTERVENOR’S MOTION FOR SUMMARY JUDGMENT

APPEARANCES: Messrs. Brian P. Forde and Mark R. Davis of O’Keefe, Ashenden, Lyons & Ward on behalf of the applicant, City of Chicago (the “City” or the “Applicant”); Ms. Karen D. Fox, Assistant State’s Attorney for the County of Lake, on behalf of the Intervenor, the Lake County Board of Review (the “Board” or the “Intervenor”); Mr. Shepard Smith, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

SYNOPSIS: This matter comes to be considered pursuant to the Intervenor’s motion for summary judgment.¹ Intervenor filed this motion after the Department issued its initial determination in this matter on March 29, 2001. Said determination found that real estate identified by Lake County Parcel Index Numbers 10-34-300-002 and 10-34-300-003 (hereinafter collectively referred to as the “subject property”) qualified for exemption from 2000 real estate under Section 15-60 of the Property Tax Code, 35 ILCS 200/1-1 *et seq.*, 15-60.

Applicant, the Board and the Department have stipulated that the sole issue to be decided herein is whether the subject property was “used exclusively for municipal or public purposes,” as required by Section 15-60 of the Property Tax Code, 35 ILCS 200/15-60 during the 2000 assessment year. The underlying controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the Board on April 4, 2000. The Board reviewed this Application and recommended to the Department that the requested exemption be denied. The Department, however, rejected this recommendation by issuing a determination, dated March 29, 2001, which granted the requested exemption. Intervenor filed a timely appeal to the Department’s determination and subsequently reached agreement with Applicant and the Department on a Stipulation of Facts (“Stipulation”), which it filed with the Office of Administrative Hearings. Intervenor subsequently filed this motion for summary judgment (“Motion”), to which the Applicant filed a timely response and the Intervenor filed a timely reply. Following a careful review of the Stipulation, the Motion and all responsive filings thereto, I recommend that: (a) the intervenor’s motion for summary judgment be granted; and, (b) the Department’s initial determination in this matter be reversed.

FINDINGS OF FACT:

1. The Department’s jurisdiction over this matter and its position herein are established by the determination, issued by the Office of Local Government Services on March 29, 2001, which found that the subject property qualifies for exemption from 2000

1. The Intervenor actually entitled this filing as a “Brief in Support of the Lake County Board of Review’s Objection to Tax Exemption.” The substance of this filing is, however, in the nature of a motion for summary judgment. Therefore, I shall simply treat it as such.

real estate taxes under Section 15-60 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

2. Applicant, the Intervenor and the Department have stipulated to the following facts:
 - A. The subject property, commonly known as Gilmer Nursery, is located in Mundelein, IL and identified by Lake County Parcel Index Numbers 10-34-300-002 and 10-34-300-003;
 - B. The Application For Property Tax Exemption, filed with the Department on January 16, 2001, indicates that the subject property consists of “vacant land [that is] to be sold[;]”
 - C. The Applicant, the City of Chicago (the “City”), is a municipal home rule unit duly incorporated under the laws of the State of Illinois;
 - D. Applicant obtained ownership of the subject property by means of a quitclaim deed recorded in the Lake County Recorder of Deeds office on March 19, 1998;
 - E. Applicant owned the subject property throughout the 2000 assessment year;
 - F. Applicant’s grantor and predecessor in title, the Chicago Park District (the “District”), had operated the subject property as a horticultural nursery for many years prior to the date of conveyance;
 - G. The subject property was exempt from taxation throughout the time that the District maintained ownership and use thereof;
 - H. On September 10, 1997, the Chicago City Council passed an Ordinance authorizing the execution of an Intergovernmental Agreement (the “Agreement”) with the District pursuant to the Local Government Property Transfer Act, 50 **ILCS** 605/1 *et seq.*;

- I. The Official Journal of the City Council of Chicago reflects that an unexecuted copy of the Agreement was included as an exhibit to the Ordinance;
- J. The Agreement provides, in substance, that the District shall convey the subject property to the City under certain terms and conditions enumerated therein;²
- K. The City has regarded all of the terms and conditions set forth in the Agreement, as well as the provisions of the Ordinance, to be binding on it as a matter of law;
- L. The City, however, has no record of the execution of the formal license agreement called for in Section 10(b) of the Agreement, which license agreement was to have permitted the District to enter onto the subject property for maintenance and upkeep purposes on or after the date of the transfer;
- M. Despite this, “the City has held the property available to the District, upon the District’s request, to harvest and/or remove trees until such time as the City is prepared to sell the [subject] Property[;]”

2. The parties did not stipulate as to the exact terms and conditions of the Agreement. They did, however, include true and correct copies of those pages of the Official Journal of the City of Chicago (the “Journal”) for September 10, 1997 that contain the authorizing Ordinance and the unexecuted Agreement, as exhibits to the Stipulation.

After carefully reviewing those pages of the Journal, I take Administrative Notice that: (a) the Ordinance specifically provides that it will become effective immediately upon its passage; (b) the Agreement specifically names the District as transferor and the City as transferee; (c) Section One of the Agreement contains specific agreements: (i) that the District will convey to the City, and the City will accept from the District, fee simple title to the subject property, together with all rights, privileges, easements and appurtenances, if any, belonging thereto; but, (ii) that all furnishings, fixtures and equipment owned by the District and used in connection with the operation “at the [subject] Property of a tree nursery,” shall be specifically excluded from the transfer and remain property of the District[;]” and, (d) Section 10(b) of the Agreement specifically provides that, at closing, the City shall, if the District requests, execute and deliver to the District a license agreement that authorizes the District to enter onto the subject property so that the District’s personnel can maintain, harvest and remove trees from the subject property “from and after the Closing Date.” Administrative Notice of Contents of the Official Journal of the City of Chicago for September 10, 1997, found at pages 51058 through 51077 thereof.

N. The City has not to the present time, taken any steps to prevent the Park District, at the District's option, from harvesting trees or cultivating plants from the subject property.

Stipulation, pp. 1-4.

3. There is no evidence of record that the District harvested trees or cultivated plants from the subject property in 2000.

CONCLUSIONS OF LAW:

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). The adversarial parties whose pecuniary interests are impacted by the outcome herein have entered into a Stipulation that removes all genuine issues of material fact from this case. Therefore, the issue for decision herein necessarily becomes one of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2nd Dist. 1987). That issue is, by agreement of the parties, whether the subject property was “used exclusively for municipal or public purposes,” as required by Section 15-60 of the Property Tax Code, 35 ILCS 200/1-1, 15-60, during the 2000 assessment year. For the following reasons, I conclude it was not:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-60, the Property Tax Code, 35 ILCS 200/1-1 *et seq.*, which provides, in relevant part, for exemption of “[a]ll property owned by any municipality outside of its corporate limits, if used exclusively for municipal or public purposes.” 35 ILCS 200/15-60.

The subject property is located in Lake County. As such, I take Administrative Notice that the subject property is located outside of applicant's corporate limits. Furthermore, the parties have stipulated that applicant, a duly incorporated municipality, owned the subject property throughout the 2000 assessment year. Therefore, the only remaining issue is whether the subject property was "used exclusively for municipal or public purposes" during that tax year.

Property will be deemed to be exclusively used for public purposes when the primary use of the property is for public purposes³ and any private use of the property is merely incidental. Metropolitan Water Reclamation District of Greater Chicago v. Illinois Department of Revenue, 313 Ill. App.3d 469, 475 (1st Dist. 2000). Furthermore:

A municipal corporation seeking a tax exemption on its property cannot meet its burden of demonstrating that its property is in exempt use merely by presenting evidence that it intends to use that property for tax exempt public purposes in the future; rather, it must demonstrate that it actually used the property primarily for public purposes during the tax year in question.

Id. at 475-476 (Citations omitted).

Here, applicant proposes to demonstrate the requisite exempt use by arguing that "at all times since the conveyance of the [subject] Property from the Park District to the City, the City has held the property available to the Park District, upon the Park District's request, to harvest and/or remove trees until such time as the City is prepared to sell the

3. "Public purposes" are those associated with the following:

... public markets and public squares are for the use of the public, - of all persons who, in the pursuit of business or pleasure, may have occasion to resort thereto, subject, of course, to whatever municipal regulations may be in force regulating the use of same. They are in this respect similar in their use to streets and alleys. The "public grounds" exempt from taxation referred to in this paragraph would therefore, under this rule of construction, be construed to be grounds which are open for the designated use to the public generally, and this view would seem to be emphasized by the qualifying clause, "used exclusively for public purposes."

Property.” Applicant’s Response to Intervenor’s Motion for Summary Judgment, p. 7. Accordingly, the City proposes that it put the subject property to exempt use throughout 2000 by fulfilling its legal obligation “to hold the property for the benefit of the Park District.” *Id.*

In substance, this argument posits that merely fulfilling a legal obligation to make the property *available* for exempt use relieves applicant of its burden of proving that it *actually put* the subject property to some specifically identifiable use during the tax year in question. However, simply making property available for exempt use at some unspecified point in the future, even if done pursuant to a legal obligation or right, is but a manifestation of intended use. Metropolitan Water Reclamation District of Greater Chicago v. Illinois Department of Revenue, *supra* at 478.

The facts in Metropolitan Water Reclamation District of Greater Chicago v. Illinois Department of Revenue, *supra*, are not dissimilar to those presented here. There, the appellee District, a municipal corporation, sought to exempt property that it leased to a commercial entity for use as a parking lot. The lease was long term (99 years) and contained numerous restrictions on the lessee’s use. *Id.* at 472-473. It also provided, *inter alia*, that the District reserved rights to: (a) construct, reconstruct, maintain and operate intercepting sewers, drain outlets and pipelines for electrical transmissions “as needed” for the District’s corporate purposes; (b) use, at any time, a certain portion of the demised premises as “a free means of access” for the District’s property lying north of the demised premises; (c) terminate the lease with respect to the same portion of the demised premises; and, (d) enjoy a right of access to the entire leasehold premises at all times. *Id.*

Sanitary District of Chicago v. Martin, 173 Ill. 243, 249-250 (1898).

The court acknowledged that these reservations and restrictions were indicative of the District's intention to use the subject property for exempt purposes at some unspecified point in time. *Id.* at 478. However, it specifically held that “[a]ny restrictions the District may have had regarding the property and any intentions the District may have had regarding the future use of the property did not relieve the District of its burden of clearly and convincingly demonstrating that ... the property was actually and primarily used for tax-exempt purposes” during the specific tax year in question. *Id.* As such, these restrictions and reservations “were no substitute for proof of the actual tax-exempt use of the property” during that tax year. *Id.*

This record does not contain a scintilla of evidence proving what, if any, tax exempt uses applicant *actually* made of the subject property during 2000. Rather, the most it establishes is that applicant abided by a legal obligation to make the subject property available to the Chicago Park District for use as a public tree nursery throughout that tax year. The speculation inherent in merely making real estate available for exempt use creates conjecture as to whether or when the property will in fact be placed into actual, exempt use. Accordingly, the evidentiary consequences of simply making real estate available for exempt use are, for present purposes, no different than those associated with reserving an unexercised right of access to real estate. Metropolitan Water Reclamation District of Greater Chicago v. Illinois Department of Revenue, *supra*. Therefore, the most applicant has proven is that it intended to make the subject property available for exempt use throughout 2000.

Such intention is legally insufficient to satisfy the statutory exempt use requirement, which, as noted above, mandates appropriate proof that the subject property

was actually used for exempt purposes during the relevant tax year. Metropolitan Water Reclamation District of Greater Chicago v. Illinois Department of Revenue, *supra*. See also, Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). While an exception to this rule exists where real estate is undergoing active adaptation and development for exempt use, (Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987); Lutheran Church of the Good Shepherd of Bourbonnais v. Illinois Department Of Revenue, 316 Ill. App.3d 828, 834 (3rd Dist., 2000)), this record contains no evidence that warrants applying this very limited exception herein. Indeed, this record, as stipulated to by all of the adversarial parties herein, including applicant, is completely devoid of any evidence that proves anything about how the subject property was actually used during 2000. Hence, pursuant to Metropolitan Water Reclamation District of Greater Chicago v. Illinois Department of Revenue, *supra*, I conclude that the Intervenor is entitled to judgement as a matter of law. Therefore, its motion for summary judgment, which seeks reversal of the Department's initial determination granting the subject property exemption from 2000 real estate taxes under 35 ILCS 200/15-60, should be granted.

WHEREFORE, for the reasons set forth above, I recommend that real estate identified by Lake County Parcel Index Numbers 10-34-300-002 and 10-34-300-003 not be exempt from 2000 real estate taxes under Section 15-60 of the Property Tax Code.

7/16/02
Date

Alan I. Marcus
Administrative Law Judge