

PT 05-31
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

**AUSTIN SPANISH CONGREGATION
OF JEHOVAH'S WITNESSES,**

APPLICANT

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

Docket No: 04-PT-0036

Real Estate Exemption

**For 2002 Tax Year
P.I.N. 13-28-316-001-0000 and
13-28-316-002-0000
Cook County Parcels**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Gary Wigoda, Wigoda & Wigoda, on behalf of Austin Spanish Congregation of Jehovah's Witnesses; Mr. Shepard Smith, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether real estate identified by Cook County Parcel Index Numbers 13-28-316-001-0000 and 13-28-316-002-0000 (hereinafter the "subject property") qualifies for exemption from 2002 real estate taxes under 35 ILCS 200/15-40, wherein "[a]ll property used exclusively for religious purposes" is exempted from real estate taxation.

The controversy arises as follows: On February 20, 2003, Austin Spanish Congregation of Jehovah's Witnesses (hereinafter "Austin" or the "applicant") filed an Application for Property Tax Exemption with the Cook County Board of Review (hereinafter the "Board"). The Board reviewed Austin's application and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the exemption be denied. Dept. Ex. No. 2. The Department accepted the Board's recommendation in a determination dated March 15, 2004, finding that the subject property was not in exempt use in 2002. Dept. Ex. No. 1. On May 3, 2004, Austin filed a request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on May 18, 2005, with Mr. Nikolaus Neu, a member of the Jehovah's Witnesses and Recording Secretary of the Illinois Regional Building Committee (hereinafter "IRBC") testifying. Following submission of all evidence and a careful review of the record, it is recommended that the Department's determination be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. Nos. 1 and 2 establish the Department's jurisdiction over this matter and its position that the subject property was not in exempt use, or being prepared for exempt use, in 2002. Tr. pp. 9-10; Dept. Ex. Nos. 1 and 2.
2. Austin was incorporated under the Illinois Not For Profit Corporation Act on April 28, 2001 and is organized primarily for religious purposes. There are approximately three million Jehovah's Witnesses throughout the world and the organization is active in every country. The focus of their work is Bible education. Tr. pp. 53-54; App. Ex. No. 23.

3. Jehovah's Witnesses call their places of worship "kingdom halls." Services in the hall include Bible education, lectures, question and answer sessions about the Bible and discussions. Jehovah's Witnesses meet three times a week, two times in the kingdom halls and once in private homes for a smaller Bible study. Tr. pp. 16, 58.
4. The IRBC is a group of Jehovah's Witnesses including tradesmen and people with different professional skills. The IRBC directs the development of the kingdom halls by assisting local congregations. Tr. pp. 13-14, 19-21.
5. The Austin Spanish Congregation of Jehovah's Witnesses had been meeting at different locations, but they had outgrown some of the sites and needed a larger facility. In late 2001, the IRBC looked at the subject property located at 2555 North Central Avenue in Chicago. There was a building on the property with a surrounding parking lot. Meetings were held with the local congregations to discuss the feasibility of the property being made into a kingdom hall and to determine what use could be made of the two floors of the existing building. Tr. pp. 14-15, 18-19, 45-46.
6. The congregations that would occupy the kingdom hall on the subject property formed a "Local Building Committee," consisting of six members, to work with the IRBC. On May 4, 2002, the Local Building Committee, the IRBC, tradesmen and the design team met on the subject property. The IRBC described the planned renovation to the tradesmen. There was then a one-hour walk through of the property, after which the tradesmen discussed problems, necessary modifications and made recommendations regarding the renovations. The recommendations were passed on to the design team. Tr. pp. 20, 24-25.

7. A prior prospective buyer of the subject property, “New Horizon Temple of Chicago,” had received a special use zoning permit that expired in February, 2002. On May 17, 2002, Austin received an extension of the special use permit with the intention of using the property in a manner consistent with the prior approval of the Zoning Board. The extension for special use was granted to February 16, 2003. On July 16, 2004, a new special use permit was granted to Austin for the building of a place of worship on the subject property. Tr. pp. 21-24, 41-44, 55; App. Ex. Nos. 3, 4 and 19.
8. Funding for the subject property came from Watchtower Bible and Tract Society of Pennsylvania. Local congregations contribute money to a building fund maintained by Watchtower and these funds are made available to congregations who need money to build. Funding was made available for both the purchase and renovation of the subject property, although only the funding for the purchase was used with the balance being held for construction. Watchtower placed a mortgage on the property. The funding was approved on February 11, 2002. Tr. pp. 26-28; App. Ex. No. 6.
9. Austin obtained ownership of the subject property via warranty deed dated July 5, 2002. Tr. pp. 16-17; Applicant’s Ex. No. 1.
10. On July 29, 2002, the IRBC met to discuss the subject property, specifically insurance issues, extending the special use permit, and a construction schedule. The minutes for this meeting state that “Brother Santiago reports that individuals have been seen entering the building [on the subject property] after the closing. IRBC will recommend that locks be changed immediately.” Tr. pp. 29-32; App. Ex. No. 7.

11. On August 5, 2002, the IRBC met by conference call. The minutes of this meeting state that the locks are being changed, and that the previous owner had left behind an x-ray machine on the property and had been contacted to remove it. Tr. pp. 32-34; App. Ex. No. 8.
12. On December 23, 2002, the IRBC met by conference call. The minutes of this meeting state that four design volunteers were working on a set of drawings of the existing building which should be ready for an IRBC meeting on January 18, 2003. Tr. pp. 34-37; App. Ex. No. 9.
13. On January 17, 2003, the IRBC met to discuss several matters. The minutes of this meeting state that the IRBC anticipated filing for permits for the subject property on October 1, 2003 with the project expected to start in the first half of 2004. This schedule was not met. Tr. pp. 37-38, 55-56; App. Ex. No. 10.

CONCLUSIONS OF LAW:

An examination of the record establishes that Austin has not demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption of the subject property for the 2002 tax year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation 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.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983). In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which exempts “[a]ll property used exclusively for religious purposes...” 35 ILCS 200/15-40 (1996). The Illinois Supreme Court defined the term “religious use” as follows:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911), (hereinafter “McCullough”). The word “exclusively” when used in section 200/15-40 and other exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1933).

Applicant’s actual use determines whether the property in question is used for an exempt purpose. “Intention to use is not the equivalent of use.” Skil Corp v. Korzen, 32 Ill. 2d 249, 252 (1965). However, exemptions have been allowed where property is in

the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11 (1924). Adapting and developing a property for an eventual exempt use can be sufficient to satisfy the actual use requirement. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987).

The Department's March 15, 2004, determination denying the instant exemption request was based solely on the Department's conclusion that the subject property was not in exempt use in 2002. Because the Department denied the exemption solely on lack of exempt use, it is implicit that the Department determined that Austin owned the subject property and qualified as a "religion." These conclusions were unchallenged in the instant proceeding: Austin was incorporated under the Illinois Not For Profit Corporation Act on April 28, 2001 and is organized primarily for religious purposes. There are approximately three million Jehovah's Witnesses throughout the world and the focus of their work is Bible education. Tr. pp. 53-54; App. Ex. No. 23. Austin obtained ownership of the subject property via warranty deed dated July 5, 2002. Tr. pp. 16-17; Applicant's Ex. No. 1. Accordingly, the only real issue is whether the subject property was actually and exclusively used for exempt purposes after July 5, 2002.

The evidence presented at the hearing shows that several activities occurred prior to the purchase of the property on July 5, 2002. In late 2001, the IRBC looked at the subject property and held meetings with local congregations to discuss the feasibility of the subject property being made into a kingdom hall. Tr. pp. 14-15. The IRBC met with the local congregations to determine what use could be made of the two floors of the existing building. Tr. pp. 18-19, 45-46. Funding for the purchase of the subject property

was approved by Watchtower on February 11, 2002. Tr. pp. 26-28; App. Ex. No. 6. The congregations that would occupy the kingdom hall on the subject property formed a “Local Building Committee” consisting of six members, to work with the IRBC. Tr. pp. 20, 24-25.

On May 4, 2002, which was two months prior to the purchase of the property, the Local Building Committee, the IRBC, tradesmen and the design team met on the subject property. The IRBC described the planned renovation to the tradesmen. There was then a one-hour walk through of the property, after which the tradesmen discussed problems, necessary modifications and made recommendations regarding the renovations. The recommendations were passed on to the design team. Tr. pp. 20, 24-25. On May 17, 2002, Austin received an extension of the special use permit that a prior prospective purchaser of the subject property had received. Tr. pp. 21-24. The application for the extension of the special use permit, the approval of Austin’s request for funding and the meetings of the IRBC and Local Building Committee on the subject property were obviously necessary for the development and adaptation of the site. However, these activities were completed prior to the applicant’s ownership of the property on July 5, 2002 and they indicate an intention to use the property in an exempt manner, but not an actual exempt use.

The IRBC held three meetings after July 5, 2002. The subject property was discussed at these meetings as were other building projects that the IRBC was supervising. On July 29, 2002, the IRBC discussed insurance issues, extending the special use permit, and a construction schedule for the subject property. The minutes of that meeting state that “Brother Santiago reports that individuals have been seen entering

the building [on the subject property] after the closing. IRBC will recommend that locks be changed immediately.” Tr. pp. 29-32; App. Ex. No. 7. On August 5, 2002, the IRBC met by conference call. The minutes of this meeting state that the locks are being changed, and that the previous owner had left behind an x-ray machine on the property and had been contacted to remove it. Tr. pp. 32-34; App. Ex. No. 8. On December 23, 2002, the IRBC again met by conference call. The minutes of this meeting state that four design volunteers were working on a set of drawings of the existing building on the subject property and the drawings should be ready for an IRBC meeting on January 18, 2003. Tr. pp. 34-37; App. Ex. No. 9.

As the above minutes indicate, the only actual work that took place on the subject property after its purchase was the changing of the locks. The changing of the locks does not indicate that development and adaptation of the subject property for exempt use had actually begun. Changing the locks would be a routine activity for any purchaser of an existing structure and would most likely be done before any significant work would be started. No documentary evidence was admitted regarding the changing of the locks. There was no testimony as to who changed them or the cost involved. No invoices or bills for the changing were admitted.

There was also testimony and the minutes of the August 5, 2002 meeting of the IRBC reflect that a previous owner of the subject property had left an x-ray machine on the property “so we discussed, called that to someone’s attention and had some discussion about what we might do to get that removed.” Tr. pp. 33-34; App. Ex. No. 8. There was no further testimony as to whether the x-ray machine was, in fact, removed. There was no testimony as to whether Austin paid for the removal, the cost of the

removal or whether the IRBC or the Local Building Committee participated in the removal. No invoices or bills related to the removal were admitted.

The minutes of the December 23, 2002 IRBC meeting state that “four people” were working on a set of drawings of the existing building and the drawings should be ready for meetings that were scheduled later. Tr. pp. 35; App. Ex. No. 9. There was no testimony as to whether these drawings constituted final plans for the development of the subject property and were later put to permit, whether the drawings were accepted by the IRBC and local congregations or whether the drawings were later revised. There was testimony that the drawings were “prepared by our volunteers.” Tr. pp. 17-18. No “volunteers” testified. No invoices for the drawings were admitted. The drawings were not admitted into evidence.

There was testimony by Mr. Neu that Jehovah’s Witnesses usually build kingdom halls “using volunteers, all the professionals that are trades people that work with the [IRBC] do so free of charge.” “They donate and volunteer their labor; the professionals who do the design work likewise, and so we accomplish most of what we do in that fashion in volunteer labor.” Tr. pp. 13-14. No documentary evidence of any kind was admitted to support this statement. No trades person or professional who was volunteering their time or services testified at the evidentiary hearing.

The IRBC meetings and the design drawings described above which took place after the purchase of the subject property constitute a series of very preliminary steps directed toward the development of the site. The activities reflect a “mere intention to convert the property for an exempt use.” Weslin Properties, *supra*, at 586. However, intention to use is not the equivalent of use. Skil Corp. v. Korzen, 32 Ill. 2d 249, 252

(1965). Based on the testimony and evidence admitted, I am unable to conclude that the subject property was in the process of actual development and adaptation for exempt use in tax year 2002.¹

WHEREFORE, for the reasons stated above, it is recommended that the Department's determination which denied the exemption from 2002 real estate taxes on the grounds that the subject property was not in exempt use should be affirmed and Cook County Parcel identified by P.I.N. 13-28-316-001-0000 and 13-28-316-002-0000 should not be exempt from property taxes in 2002.

Date: June 29, 2005

Kenneth J. Galvin
Administrative Law Judge

¹ Mr. Neu testified that Austin originally anticipated beginning construction in 2003. This schedule was not met. Austin now anticipates beginning construction in late 2005 or early 2006. Tr. pp. 55, 56.