

PT 11-05

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

**ANOINTED WORD
INTERNATIONAL MINISTRIES,**

APPLICANT

v.

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

Docket No: 10-PT-0024

Real Estate Exemption

**For 2008 Tax Year
P.I.N. 29-14-402-009-0000**

Cook County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Richard C. Baker, Mauck & Baker, LLC., on behalf of Anointed Word International Ministries; Mr. Timothy C. Lapp, Hiskes, Dillner, O'Donnell, Marovich & Lapp, Ltd., on behalf of Intervenor, the Village of South Holland; Ms. Paula Hunter, 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 Number 29-14-402-009-0000 (hereinafter the "subject property"), qualifies for exemption from 2008 real estate taxes under 35 ILCS 200/15-40, wherein all property used exclusively for religious purposes is exempted from real estate taxation.

The controversy arises as follows: On October 15, 2009, Anointed Word International Ministries (hereinafter "Anointed Word") filed an Application for Property Tax Exemption with the Cook County Board of Review (hereinafter the "Board"). The

Board reviewed Anointed Word's application and recommended to the Illinois Department of Revenue (hereinafter the "Department") that "no action" be taken until a zoning dispute between Anointed Word and the Village of South Holland was settled. On December 10, 2009 the Department denied the exemption, finding that the subject property was not in exempt use in 2008. Dept. Ex. No. 1. On January 28, 2010, Anointed Word filed a request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on December 1, 2010, with Dr. Jacqueline Anderson, Founder, CEO and Pastor, testifying for Anointed Word and Ms. Pat Mahon, Deputy Village Administrator, testifying for the Village of South Holland. Following submission of all evidence and a careful review of the record, it is recommended that the Department's exemption denial be affirmed.

FINDING OF FACT:

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the subject property was not in exempt use in 2008. Tr. pp. 18-19; Dept. Ex. No. 1.
2. Anointed Word was incorporated on September 14, 1995. Its purpose is to "disseminate the word of God in a teaching and preaching setting to reveal to people everywhere the way to live in accordance with the principles of Godly living in such a way that the example of Godly love, and compassion for all brethren (male and female) will be effectively demonstrated globally." Anointed Word is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code and exempt from sales tax in the State of Illinois Tr. pp. 23-24, 27; App. Ex. Nos. 1, 3 and 4.

3. Anointed Word purchased the subject property, approximately 26 acres, located at 159th Street and Interstate I-94 in South Holland, on October 31, 2007. Tr. pp. 24-27; App. Ex. No. 2.
4. The entire subject property is located in “Zone A” of South Holland’s “Interstate Zoning District.” This District is flanked by Interstate I-94 and is designated as an area for commercial development. “Permitted Uses” in Zone A are “banquet/conference facilities, hotels/motels, restaurants (not including drive-up establishments), department stores, grocery stores, home improvement stores, wholesale membership stores and automobile service stations (as an accessory to the primary use only).” Churches are not a “permitted use” in Zone A. The ordinance setting up the Interstate Zoning District, *inter alia*, was adopted by the Village on May 7, 2007, after a year of meetings, including a public hearing, after notice, before the Planning and Development Commission. Tr. pp. 165-167.

CONCLUSIONS OF LAW:

An examination of the record establishes that Anointed Word has not demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption of the subject property for the 2008 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 property used exclusively for religious purposes. 35 ILCS 200/15-40.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof upon the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994). Anointed Word has failed to prove that it falls within the appropriate statutory exemption.

Anointed Word purchased the subject property, approximately 26 acres, located at 159th Street and Interstate I-94 in South Holland, on October 31, 2007. Tr. pp. 24-27; App. Ex. No. 2. The subject property was “vacant” in 2008, the year at issue in these

proceedings. In his opening statement, Counsel for Anointed Word argued that the Applicant is seeking a property tax exemption, under 35 ILCS 200/15-40, for the year 2008, “for the use of its vacant property.” Tr. p. 8. The Department argued, on the other hand, that “Illinois law permits exemption for vacant property only when that property is being adapted for exempt use.” Tr. p. 16. According to Counsel for the Applicant, “we’re not coming in on a Westland case, we’re not coming in on a development case, we’re coming in on an actual use case.” Tr. p. 196. “Westland is adaptation. We are not arguing adaptation in this case. We are only arguing actual use.”¹ Tr. p. 122.

In fact, Anointed Word is foreclosed from arguing that the subject property is being adapted and developed for eventual religious use. The entire subject property is located in “Zone A” of South Holland’s “Interstate Zoning District.” This District is flanked by Interstate I-94 and is designated as an area for commercial development. “Permitted Uses” in Zone A are “banquet/conference facilities, hotels/motels, restaurants (not including drive-up establishments), department stores, grocery stores, home improvement stores, wholesale membership stores and automobile service stations (as an accessory to the primary use only).” According to the testimony, churches are not a “permitted use” in Zone A. Tr. pp. 165-167. The ordinance setting up the Interstate Zoning District, *inter alia*, was adopted by the Village on May 7, 2007, after a year of meetings, including a public hearing, after notice, before the Planning and Development Commission. Anointed Word purchased the subject property on October 31, 2007, and I

¹ Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2d Dist. 1987) held that adapting and developing a property for an eventual exempt use may, under certain circumstances, be sufficient to satisfy the actual use requirement of the Property Tax Code. Although Counsel argues that the instant case is not about development and adaptation, Pastor Anderson testified that while walking the subject property, “we discussed our plans.” “We would even stand back and talk about when we put the building up, we’re going to meet in this part. The bathrooms are going to be here. We were dreaming, visionary.” Tr. p. 68.

must conclude that they were aware of the zoning restrictions adopted by the Village on May 7, 2007. Tr. pp. 24-27; App. Ex. No. 2.

In effect, Anointed Word is arguing that it actually uses the vacant property for religious purposes although these activities are not performed and cannot be performed within the confines of a church building. "... [T]he religious activities that are at issue here did not take place within the four walls of a church, but on the open land owned by the church throughout 2008." Tr. pp. 9-10. "Religious" activities performed on the subject property include prayer, Bible class, health walks, board and other various ministry meetings including usher's meetings, dance, food pantry, prison ministry, church gatherings, summer picnics, "all in a quiet outdoor atmosphere." Tr. pp. 10-12.

Based on the evidence and testimony offered at the hearing, I am unable to conclude that the "actual use" of the subject property in 2008 constitutes religious use. It must be noted again that this is a 26 acre vacant tract of land. And it appears from the record of this case that all activities on the property were performed on the property, not necessarily for religious purposes, but in order to secure a tax exemption. On January 3, 2008, Pastor Anderson announced that "effective immediately, all rehearsals, drills, practices and meetings for your Ministry groups are to be held on our South Holland property." Anointed Word's "Board Meeting Agenda" for February 3, 2008, opened "with a discussion concerning how we are working on the tax exemption for the South Holland property by making sure that we perform some type of activity on the land every week." App. Ex. No. 102(b). When asked about this statement at the hearing, Pastor Anderson testified that she "wanted to ensure that we were on the land regularly, because I knew if we are going to say we are using it for tax exempt purpose, we had to be there."

However, “the ultimate goal was to do what we do, to use the land to expand our capability of doing what we do without restriction.” Tr. pp. 114-115.

The problem with this argument is that Anointed Word has an existing church, located in Markham at 3434 West 159th Street. Tr. p. 146. The building used to be “Coco Taylor’s Banquet Hall,” and Anointed Word “beautified it on the inside and we put carpet in it and built it inside to meet what we needed.” “And we beautified it and we meet in that building for our religious activities.” Tr. pp. 140-141. Pastor Anderson’s testimony is that the existing church was built to “meet what we needed” and that the existing church is used for religious activities. It is unclear from the record why Anointed Word now needs an additional 26 acres to expand their “capability” and do what they do “without restriction.” I am unable to conclude from the record of this case that Anointed Word acquired this 26 acre tract for purposes which were reasonably necessary for the accomplishment and fulfillment of the religious objectives of their ministry. DuPage County Board of Review v. Department of Revenue, et al. 339 Ill. App. 3d 230 (2d Dist. 2003).

Anointed Word was incorporated on September 14, 1995. Its purpose is to “disseminate the word of God in a teaching and preaching setting...” App. Ex. No. 1. It would be absurd for me to conclude that the 26 acre vacant tract bordering the Interstate provides Anointed Word with the requisite “teaching and preaching setting” to disseminate the word of God.² In fact, Pastor Anderson testified that in discussing the

² The Applicant caused to be admitted into evidence a packet for each month of 2008 showing the activities that took place on the property in each month. In the January, 2008, packet, it shows that there was a “Health Walk/Seminar” on January 19, 2008, beginning at 1:30 p.m. and ending at 2:45 p.m. The description of the event states that “the temperature for the day was 5 degrees below zero, with a wind chill index of -14.” App. Ex. No. 101(e). This would be the “teaching and preaching setting” described in Anointed Word’s purpose.

Bible on the subject property, she would tell the congregants “anything you don’t understand, bring it to Bible study on Monday night [apparently held in Anointed Word’s existing church building] because sometimes in talking, when it’s cold, you know, you can’t be out there freezing.” Tr. p. 68. There is no logical reason for Anointed Word to have Board meetings and Bible study on a 26 acre tract of land in the middle of winter, when they have an existing church building, other than to secure a religious exemption for use of the property. I simply cannot conclude from the record of this case that the subject property is reasonably necessary for the accomplishment of Anointed Word’s objectives.

Approximately 8 blocks from Anointed Word’s existing church is a forest preserve. Tr. pp. 141-142. Pastor Anderson was asked on cross-examination why she didn’t use the forest preserve for the activities that were performed on the vacant land in 2008. She testified that people have been murdered in the forest preserve, deer have come out and scared people and “bust up their cars.” She feels it is her “ministerial responsibility” to her Congregation that her parishioners’ prayer walks are “in a protected, prayed-over area, where the protection of God was asked and granted, and we knew that we were in a place that God had given to us.” Tr. pp. 154-155.

However, the testimony at the hearing indicated that the subject property possesses many of the characteristics of a forest preserve. The subject property has a “big tree-lined area that’s on the outskirts.” In walking the land, “we even went down into the areas where it’s very wooded, because the little Calumet River border lines (sic) the land and the golf course, Calumet City Golf Course, borders the other side.” “... [W]e would envision inviting the people from the golf course to come and fellowship with us out in

the open air.” Tr. pp. 156-158. Pastor Anderson apparently has no safety concerns about walking on this 26 acre tract, with a tree-lined area on the outskirts, and a “very wooded” area near the river, bordering an Interstate, that is at issue in these proceedings.

Furthermore, I am unable to conclude that the activities that occur on the subject property constitute religious use. The most frequent activity on the subject property appears to be “health walks.” At the “health ministry” held on the subject property on January 19, 2008, “proper breathing techniques were discussed, demonstrated and practiced. This rids the body of toxins and produces a healthier individual.” App. Ex. No. 101(e). Another “health walk/seminar” was held on January 26, 2008. “The depth of the snow proved to be very beneficial to the participants rather than detrimental, in that the resistance that it created caused each walker to work harder, therefore increasing the blood flow to the lungs, as well as greatly increasing our breathing capacity.” “[W]e were burning more calories so that no matter what we ate subsequent to the walk, we were able to burn up calories, and stored fats were also beneficially affected.” App. Ex. No. 101(h)(j). An announcement for the February 9, 2008 “Taking Control of Your Health” seminar held on the subject property states that the guest speaker “will be providing a wealth of information to help you transition into a healthier individual in 2008.” App. Ex. No. 102(c).

The “religious purposes” contemplated by the Property Tax Code involve the use of property “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). In Provena Covenant Medical Center v. Department of

Revenue, 384 Ill. App. 3d 734, 767 (4th Dist. 2008), aff'd, 236 Ill. 2d 368 (2010), where Provena Covenant was seeking a religious exemption for Provena Hospital, the Court noted that if public worship, Sunday schools and religious instruction are illustrative of the nature of religious use, “it must follow that ‘religious use’ has a determinable nature and that to be a religious use, the activity must somehow resemble the activities listed in McCullough.” “We do not see how medical care resembles public worship, Sunday schools, or religious instruction.”

Similarly, I do not see how health walking, health ministry, instruction in proper breathing techniques, burning calories and taking control of your health resemble public worship, Sunday schools or religious instruction. My research does not indicate any case where these activities were found to constitute “public worship, Sunday school or religious instruction.” Further, Anointed Word’s purpose, as indicated in the Articles of Incorporation, has no mention of a health ministry. App. Ex. No. 1. Nor is there any testimony or evidence in the record that Anointed Word participated in a health ministry at their existing church, before purchasing the subject property. Healthy walking with prayer and calorie burning could presumably be accomplished by walking around the block of the existing exempt church. The 26 acre tract, which is the subject of this evidentiary hearing, is not reasonably necessary for the accomplishment and fulfillment of the religious objectives of Anointed Word’s ministry. If encouragement of healthy living, proper breathing techniques and calorie burning were truly “religious activities,” we could exempt health clubs and weight management organizations.

In Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 410 (2010), where the Supreme Court affirmed the denial of a religious exemption to

Provena Hospital, the Court noted that the provision of medical care in the Hospital may have provided an opportunity for various individuals to express and share their religious principles and beliefs. The Court noted, however, that medical care “is not intrinsically, necessarily, or even normally religious in nature.”

Participation in healthy living activities on the subject property may also have provided an opportunity for individuals to express and share their religious beliefs. And the encouragement of healthy living is obviously beneficial to the individuals participating. But similar to Provena, the encouragement of healthy living and participation in these activities is not intrinsically, necessarily or even normally religious. Health-walking is the most frequent activity performed on the subject property, but it does not provide Anointed Word with a basis for exemption.

Other activities described as taking place on the subject property also do not provide a basis for exemption. For example, Pastor Anderson testified that when Anointed Word’s “men’s ministry” would cut the grass on the subject property, “they would talk about the Bible.” Tr. p. 156. How can it be proven, to the level of clear and convincing evidence, that men cutting grass are talking about the Bible? Who is leading this religious activity? What part of the Bible is being talked about? There is no exemption in the Property Tax Code for cutting grass. If cutting grass while praying was an exemptible activity, we could exempt residential back yards when owners mowed and prayed. This activity does not provide Anointed Word with a basis for exemption.

Pastor Anderson attempted to document the activities that took place on the subject property by causing to be admitted into evidence photographs of people and

activities which purportedly took place on the subject property.³ For example, App. Ex. No. 101(k) is labeled “Prison Ministry” and “Health Walk and Prayer Walk.” Pastor Anderson testified that she took this photograph “to make sure that we memorialized prison ministry.” Tr. p. 71. The photograph shows three men dressed in winter coats, walking on the subject property, with the property covered in snow. This photograph does not clearly and convincingly prove that these men are ministering to a prison, healthy-walking or prayer-walking. App. Ex. No. 101(l) is undated and labeled “Health Walk after Regular Board Meeting.” The photograph shows three people walking in one photograph and 5 people standing and posing for the photographer in another photograph. These photographs do not prove that there was a Board meeting or a health-walk on the subject property on whatever date this photograph was taken.

App. Ex. No. 101(f), undated, labeled “Walking Bible Study/Prayer Walk,” and “Intercessory Prayer Meeting,” shows two men, apparently play fighting, and six women walking in the snow. Pastor Anderson testified that this picture showed a “walking Bible study, prayer walk, exercise and finding the Lord out in the snow.” Tr. p. 66. App. Ex. No. 102(f) consists of two photographs labeled “Intercessory Prayer Walk (After Snow Plowing).” One photograph shows two people talking to a man in a snow plow. The other photograph shows one man approximately 6 feet from the snow plow. No one in the photographs is walking, although this is an “intercessory prayer walk.” If the people in the photographs were walking, how could I conclude that they were praying? I cannot ascertain from the photographs that religious activity is occurring. There is no exemption in the Property Tax Code for snow plowing. The photographs do not rise to the level of

³ For purposes of this Recommendation, I’ll assume that the activities in the photographs took place on the subject property, but frankly, the photographs could be of any vacant lot.

“clear and convincing evidence” that is necessary to prove entitlement to a property tax exemption for religious purposes.

35 ILCS 200/15-40 exempts property used for religious purposes “as long as it is not used with a view to profit.” Pastor Anderson testified that she purchased the subject property for \$3.7 million. She believed that “God was going to increase our net worth for Anointed Word from its present ownership, which kept – left us less than a million, and he was going to make us a millionaire church in purchasing the land, which was \$3.7 million. I was telling – letting them know how easy it is for God to make his people a millionaire.” Tr. pp. 149-150. Pastor Anderson testified on cross-examination that she received an offer to purchase the property for \$4.2 million. “We felt it was a joke...” Tr. p. 139. She testified that she countered this offer at \$9.9 million. Tr. p. 140. Apparently the counter-offer was not accepted. This testimony, and the fact that the zoning regulations prohibit Anointed Word from building a church on the subject property, force me to conclude that the subject property is being used with a view to profit, a use proscribed by 35 ILCS 200/15-40.

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt so that only the limited class of properties meant to be exempt actually receives the exempt status that the Legislature intended to confer. Otherwise, any

increases in lost revenue costs attributable to unwarranted application of the religious exemption will cause damage to public treasuries and the overall tax base. In this case, the Applicant has failed to prove that the subject property falls within the limited class of properties meant to be exempt for religious purposes. Anointed Word is clearly a religious organization. However, there was insufficient documentary evidence in the record for me to conclude that the subject property was being exclusively used for religious purposes, and without a view to profit, in 2008.

WHEREFORE, for the reasons stated above, it is recommended that the Department's determination which denied the exemption from 2008 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. 29-14-402-009-0000 should not be exempt from property taxes in 2008.

ENTER:

March 7, 2011

Kenneth J. Galvin
Administrative Law Judge