

PT 04-13

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

**THE EVANGELICAL FREE CHURCH
OF CRYSTAL LAKE,
APPLICANT**

No. 03 PT 0041

Real Estate Exemption

**For 2002 Tax Year
P.I.N. 19-04-276-018-0050**

v.

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

**McHenry County Parcel
Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Lisa M. Waggoner on behalf of Evangelical Free Church of Crystal Lake; Mr. Gary Stutland, 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 McHenry County Parcel Index Number 19-04-276-018-0050 (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 January 15, 2003, The Evangelical Free Church of Crystal Lake (hereinafter “Evangelical” or the “applicant”) filed an Application for Property Tax Exemption for tax year 2002 with the McHenry County

Board of Review (hereinafter the “Board”). Dept. Ex. No. 1. The Board reviewed the application and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the applicant be granted a full year exemption. The Department rejected the Board’s recommendation in a determination dated April 10, 2003, finding that the property was not in exempt use in 2002. Dept. Ex. No. 1. On June 9, 2003, applicant filed a request for a hearing as to the denial. On March 23, 2004, a formal administrative hearing was held with Scott Strickfaden, Chairman of the Stewardship Board, presenting oral testimony. Following submission of all evidence and a careful review of the record, it is recommended that the subject property be granted an exemption from real estate taxes for 55% of the 2002 tax year.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the property was not in exempt use in 2002.
2. Scott Strickfaden has been a member of Evangelical since 1990 and Chairman of the Stewardship Board since 2002. This Board is a governing body charged with maintaining the building and grounds as well as all financial aspects of the church. Tr. pp. 9-10.
3. Evangelical’s doctrine is to change people and impact their world through Christ. The bible is preached on Sunday morning and meetings are held on Wednesday evenings. Congregational membership is approximately 375 people and regular attendance at Sunday services is between 900 and 1000 people. Tr. pp. 46-47.

4. The subject property consists of 7.75 acres adjacent to Evangelical's existing 10.4 acre campus. Evangelical plans to construct parking lots and a baseball and soccer field on the property. Tr. pp. 11-12, 33-34.
5. In 1998, Evangelical entered into a contract to purchase the subject property. On April 5, 1999, Evangelical entered into a contract with Land Consultants, Inc. for planning services for the expansion of the church facility onto the subject property. On April 7, 1999, Evangelical entered into a contract with Pearson Brown Associates, Inc. for engineering services related to the expansion of the church facility. In late 1999 and early 2000, church officials and committees discussed expansion plans and interviewed consultants for the expansion project. Tr. pp. 12-14; Applicant's Ex. No. 2.
6. On November 21, 2000, Evangelical entered into an agreement with Brown Construction, Inc. ("Brown") for preliminary design and budgeting of Evangelical's expansion. On March 12, 2001, Brown developed a "Masterplan" for the total acreage. Tr. pp. 11-12, 17; Applicant's Ex. Nos. 1, 2, 6 and 7.
7. On September 18, 2001, Evangelical and Brown entered into an agreement for construction of an addition to the existing church facility consisting of a new sanctuary to seat 1000 people. Construction began on November 15, 2001 and was completed in the fall of 2002. The agreement shows three costs related to the subject property: construction of a new south parking lot (\$97,000); new south parking lot lighting (\$6,000); new storm sewers for the south parking lot (\$10,000). Tr. pp. 18-21; Applicant's Ex. Nos. 2 and 8.

8. Construction of the south parking on the subject property was not begun in 2002 and has not yet commenced. There is a school adjacent to the subject property that has several parking lots. Evangelical entered into an agreement in 2001 with the school to let the school use Evangelical's existing parking lots on certain days with Evangelical using the school's lots on Sundays. The agreement was in effect in 2002, 2003 and 2004. In 2002, Evangelical had a building fund drive but did not raise enough funds for the church addition and the parking lot. Evangelical is raising funds in 2004 to construct the south parking lots. Tr. pp. 25, 32-33, 39.
9. During the course of construction of the church addition, the subject property was used for storage of construction equipment and supplies and for stockpiling of dirt excavated from the construction of the church addition. The dirt was stored on the subject property until 2003 when it was used for backfill and landscaping purposes and the excess was removed. Tr. pp. 21, 34-36, 45; Applicant's Ex. No. 9.
10. In 2002, there were "prayer walks" on the subject property, in which individuals would pray that the construction would be completed in a timely manner, for safety of the crew members, and for the church body. Tr. pp. 22, 38-39, 40-41.
11. The following activities, sponsored by Evangelical's Student Ministries Department took place on the subject property in 2002: June 16, "Dynamite Day for Dads," youth student ministry brought their fathers to a barbecue on the subject property; July 14, "Night Games," a student ministries event where the youth played games in the dark; August 4, "All Church Road Rally," a road rally that ended with a time of fellowship around a bonfire on the subject property; September 11, "Fall Kick-Off," a student ministries event to kick off the new school year with a bonfire and hay ride on the

subject property; October 27, "Maze of Madness," an outreach event for students to bring their friends to an alternative to the traditional Halloween including games and a bonfire on the subject property; November 16, "Junkyard Wars," the subject property was used as an area to build junkyard cars using scrap metal with the winning teams given a prize. These activities would start with a prayer service or bible study fellowship in the Youth Building. The activities were designed to promote fellowship and togetherness of Evangelical's youth ministries and to expose the participants to church doctrine and the Bible in a friendly setting. The pastor of the youth ministries and chaperones were present. Tr. pp. 23-24, 37-38, 41-45; Applicant's Ex. No. 9.

CONCLUSIONS OF LAW:

An examination of the record establishes that Evangelical has demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption of the subject property for 55% of 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 determination of April 10, 2003 denying the exemption request was based solely on the Department's conclusion that the 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 applicant owned the subject property and qualified as a "religion." These conclusions were unchallenged in the instant proceeding. Evangelical's doctrine is to change people and impact their world through Christ. The bible is preached on Sunday morning and meetings are held on Wednesday evenings. Congregational membership is approximately 375 people and regular attendance at Sunday services is between 900 and 1000 people. Tr. pp. 46-47. Accordingly, the only real issue is whether the subject property was actually and exclusively used for religious purposes in 2002.

The "Masterplan" developed by Brown Design Associates for the subject property shows that baseball and soccer fields, parking lots and a road were planned for the 7.75 acres. Tr. p. 34; Applicant's Ex. No. 1. There was no testimony at the evidentiary hearing that there was any development or adaptation work for the athletic fields or the road during tax year 2002. With regard to the parking lots planned for the property, Mr. Strickfaden testified that Evangelical did not raise sufficient funds to begin construction of the lots in 2002. Tr. p. 39. In fact, construction of the parking lots had not begun as of the date of the evidentiary hearing. Mr. Strickfaden testified that it

“is actually in our plans right now for [year 2004] to raise funds to put that south parking lot in.” Tr. p. 25.

In tax year 2002, the subject property was used for storage of construction equipment and supplies and for stockpiling of dirt excavated from the construction of the church addition. The dirt was stored on the subject property until 2003 when it was used for backfill and landscaping purposes. Tr. pp. 21, 45. Mr. Strickfaden testified specifically that there were “two large dirt piles” on the subject property in 2002. Tr. p. 35.

Based on the record from the evidentiary hearing, I am unable to conclude that the subject property was in the “actual process of development and adaptation for exempt use” in 2002. Although Brown Design Associates had developed a “Masterplan” on March 12, 2001 for the entire church complex, this plan reflects a “mere intention to convert the property for an exempt use.” Weslin Properties, *supra*, at 586. “Intention to use is not the equivalent of use.” Skil Corp, *supra*, at 252. Furthermore, the fact that Evangelical did not yet raise funds to build the parking lot, and presumably has not begun raising funds for the construction of the athletic fields and road on the subject property, indicates that plans for use of the subject property were speculative, at best, in tax year 2002. I am also unable to conclude that the storage of “two large dirt piles” and construction equipment on the 7.75 acre parcel constituted development and adaptation of the subject property for religious purposes. The area taken up by the dirt piles and equipment is so small in relation to the total 7.75 acres of the subject property that use of the property for storage purposes as described by Mr. Strickfaden must be considered secondary and incidental.

There was testimony at the evidentiary hearing that the subject property was used for religious purposes in 2002. Mr. Strickfaden testified that in tax year 2002 there were prayer walks on the subject property. Groups of individuals would go to various places on the land and pray. They would “[P]ray for the construction to be done in a timely manner, pray for safety of the crew members that were there, and just in general pray for the church body.” Tr. pp. 22, 39. There was no testimony as to how often the prayer walks took place. Mr. Strickfaden testified that “groups of individuals” were involved in the prayer walks, but no other testimony was offered as to precisely how many people were involved. Tr. p. 22. There was no testimony as to exactly what space in the 7.75 acres of the subject property was used for the prayer walks. Without more concise testimony as to the prayer walks and recognizing that walks of any kind in the winter months would be limited by the weather, I must conclude that the prayer walks constituted an incidental use of the subject property in tax year 2002.

Mr. Strickfaden also testified that on Friday nights in 2002, Evangelical’s pastor invited the church youth members and their friends to play games inside Evangelical’s youth building which borders the subject property. The children would then be allowed to use the subject property for games or a barbecue. Tr. pp. 16, 37-38. There was no testimony as to the number of youths involved in the Friday night activities and no testimony as to what space on the subject property was used for these activities. It appears reasonable to conclude again that the weather in the winter months would limit extensive outdoor activity.

Mr. Strickfaden testified that, in addition to the prayer walks and Friday night games and barbecue, several other religious activities took place on the subject property

in 2002. Youth in Evangelical's student ministry brought their fathers to a barbecue on the subject property on June 16. On July 14, there was a student ministry event where the youth played games in the dark on the subject property. On August 4, there was an "All Church Road Rally" that ended with a time of fellowship around a bonfire on the subject property. There was a bonfire and hayride on the subject property sponsored by student ministries on September 11 to kick off the new school year. On October 27, there was an outreach event for students to bring their friends to an alternative to the traditional Halloween including games and a bonfire on the subject property. On November 16, the subject property was used as an area to build junkyard cars using scrap metal with the winning team given a prize. Tr. pp. 23-24, 37-28, 41-45; Applicant's Ex. No. 9. The pastor or associate pastor of youth ministries as well as other church members acting as chaperones would attend these activities. Tr. p. 44.

Mr. Strickfaden testified that because Evangelical is a fairly large church, "we try to have small group events to promote fellowship between the congregational members." "And most of the [above activities] are in that line of thought with our adult bible fellowships where these are smaller events, not completely all-church events but smaller events where certain groups in the church would have fellowship together." Tr. p. 42. The activities would start with a "prayer time or bible study fellowship in the [youth] building and then they would conclude with this fun event afterwards." "It was kind of a way to promote the youth to bring their friends in and they could be exposed to the church's doctrine and the bible in a friendly setting." Tr. pp. 44-45. Mr. Strickfaden testified that the activities described above which began on June 16, 2002, are "all related to the principles of the church and the religious teachings of the church." Tr. p. 24.

Based on the testimony presented at the evidentiary hearing, I have concluded that the subject property was exclusively used for religious activities beginning on June 16, 2002, which is the date that youth from Evangelical's student ministry brought their fathers to a barbecue on the subject property. From that date and throughout the remainder of 2002, there were organized outdoor activities on the subject property. The nature of the activities required that a significant portion of the acreage of the subject property would be used. The activities did not require a paved area and could be conducted on the subject property. It is reasonable to conclude that after June 16, 2002, the activities scheduled would not be limited by the weather in the months in which they were held. According to Mr. Strickfaden's testimony, these monthly activities were related to the religious principles and teaching of the church.

WHEREFORE, for the reasons stated above, it is recommended that the subject property identified as McHenry County P.I.N. 19-04-276-018-0050 be granted an exemption from property tax beginning June 16, 2002, which represents 55% of the 2002 tax year, during which time the subject property was exclusively used for religious purposes.

April 19, 2004

Kenneth J. Galvin
Administrative Law Judge