

PT 06-1

Tax Type: Property Tax

Issue: Educational Ownership/Use

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

**NATIONAL ASSOCIATION OF
BOARDS OF PHARMACY,
Applicant**

v.

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

No. 05 PT 0005
(03-16-1738)
PIN: 03-35-200-042-0000

**Mimi Brin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: John F. Atkinson, Dale J. Atkinson, Julia C. Works of Atkinson & Atkinson, on behalf of National Association of Boards of Pharmacy; Shepard Smith, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue; Anthony J. Jacob of Hinshaw & Culbertson, on behalf of River-Trails School District No. 26

Synopsis:

In October, 2004, the National Association of Boards of Pharmacy (hereinafter "NABP" or the "Applicant") filed an Application for Non-homestead Property Tax Exemption with the Illinois Department of Revenue (hereinafter "Department") for property located at 1600 Feehanville Drive, Mt. Prospect, Cook County, Illinois (hereinafter "subject property") for the tax year beginning December 30, 2003 (hereinafter "tax year"). The exemption request was made pursuant to §15-65 of the Property Tax Code, 35 ILCS 200/1 *et seq.* (hereinafter "Code"). The Cook County

Board of Review had previously recommended that the exemption be granted.¹ Subsequent to its review, the Department denied the exemption for the subject property for the tax period at issue. Department Ex. No. 1. NABP protested the Department's denial and the matter proceeded to the Office of Administrative Hearings. On May 4, 2005, River Trails School District No. 26 (hereinafter "District"), through its counsel, filed a Motion For Order Finding School District Is A Proper Party which was granted. Order, May 9, 2005. A hearing in this matter was held on August 15. The parties filed post-hearing briefs. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department and the District.

Finding of Fact:

1. On October 21, 2004, the Department denied NABP's Application for a Non-homestead Property Tax Exemption beginning on December 30 of the tax year 2003 for the property located at 1600 Feehanville Drive, Mt. Prospect, Illinois on the basis that the subject property was not in exempt use during that time. Department Ex. Nos. 1, 2
2. In addition to challenging the exempt use of the subject property, the District challenged the exempt status of the applicant, itself. Order, June 8, 2005
3. The subject property is a one (1) story building, with no basement, totaling 372,268 square feet of ground area. Department Ex. No. 2

¹ The Cook County Board granted the exemption for the full year applied for, 2003. Department Ex. No. 2, part 7. Legally, the grant of exemption can be, at best, only from the date of applicant's ownership in the subject property. 35 ILCS 200/9-185.

4. Between September 8 and September 29, 2003, employees of NABP went to view the subject property to consider its purchase as its new headquarters. Tr. pp. 194, 195-96 (testimony of Patricia Milazzo, NABP Human Resources and Facilities Senior Manager (hereinafter “Milazzo”))
5. At that time the subject property was primarily one large open space, as the previous owner had taken down all interior walls except for one room. Tr. pp. 195, 208 (Milazzo)
5. NABP sent a letter of intent to the property owner at the time with a purchase offer. Tr. p. 196 (Milazzo)
6. NABP received a contract for the purchase of the subject property on October 30. Tr. pp. 197-98 (Milazzo)
7. Sometime between mid-November and December 19, applicant used the services of a construction contractor to look at the building advising applicant on structural and use issues. Tr. p. 198 (Milazzo)
8. On December 19 applicant’s Human Resource department “received executive committee approval to move forward and to take this building seriously as our new headquarters.” Tr. p. 199 (Milazzo)
9. On December 19, NABP received a letter from an architectural firm expressing its interest in being applicant’s architect for the subject property. Tr. p. 199 (Milazzo)
10. December 24 was the last day that applicant had to complete its due diligence regarding its proposed purchase of the property. Id.

11. NABP obtained ownership of the subject property by means of a Special Warranty Deed on December 30, 2003. NABP Ex. No. 13 (Special Warranty Deed)
12. On December 31 applicant changed the locks on the building and checked to ascertain that the thermostats were working. Tr. pp. 199, 209 (Milazzo)
13. On January 9, 2004, employees from NABP met with the W.B. Olson Construction personnel and NABP's project manager "to kind of walk through, kind of to coach us, tell us exactly what steps we needed to take through the whole construction process and just like familiarize ourselves because this was all new to the [NABP] team." Tr. p. 200 (Milazzo)
14. On January 16, 2004, NABP met with different architects to go over their letters of interest. Id.
15. On January 23, NABP chose an architectural firm for purposes of making the subject property its national headquarters. Id.
16. After that date, the architects directed NABP to submit to it NABP's space and allocation needs so that the architects could prepare appropriate plans for consideration. Tr. p. 201 (Milazzo)
17. The architect's first draft was received on January 30, 2004. Id.
18. On March 9, work was done on the building's fire alarm system. Tr. p. 202 (Milazzo)
19. On March 31, NABP received evidence of liability insurance for the construction company, W.B. Olson, so that it could go forward with its work. Id.

20. In April, applicant reviewed contracts for landscaping and snow removal.
Id.
21. In May, applicant worked with the architects and the construction company to make sure that contract bids received met with applicant's budget. Tr. p. 203 (Milazzo)
22. There was a company barbecue on the property in May. Tr. p. 212 (Milazzo)
23. On June 2, the architects and contractor submitted paperwork for building permits. Tr. p. 204 (Milazzo)
24. On June 8, interior walls in the only room in the building were removed and on June 21, beam work began. Id., Tr. pp. 208, 210 (Milazzo)
25. Applicant began moving into the subject property on November 24, 2004 and on November 29 began operating from this site. Tr. p. 208 (Milazzo)
26. Applicant entered into a contract to sell its Park Ridge property, which was its headquarters prior to the subject property, in February 8, 2004 and the sale of that property was completed in December, 2004. Tr. pp. 177-78 (testimony of Carmen Catizone, NABP executive director (hereinafter "Catizone")); NABP Ex. No. 16, ¶15 (affidavit, January 24, 2005, Carmen Catizone)

Conclusions of Law:

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 its authority granted under the Constitutional, the General Assembly enacted specific exemptions to the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.* (hereinafter referred to as the “Code”). NABP claims exemption from property tax pursuant to section 15-65 of the Code, which states, in relevant part:

§ 15-65 Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

Thus, the statutory requirements for this exemption are that: (1) the property is owned by an entity that qualifies as an “institution of public charity” and, (2) the property is actually and exclusively used for charitable purposes. Id.; Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149, 156, 157 (1968); Weslin Properties, Inc. v. Illinois Department of Revenue, 157 Ill. App. 3d 580, 584 (2nd Dist. 1987). The statutory requirement that the property actually be used for charitable purposes presents a threshold issue in this case, as both the Department and the District argue that NABP did not actually use the subject property in any legally exempt manner from December 30 through December 31, 2003, and, therefore, applicant is not entitled to a property tax exemption for any part of 2003, the tax year at issue.

In addressing the requirement of actual use of property, the Illinois Supreme Court has stated that:

We have often held that property must be in actual use for the exempting purpose, to qualify for exemption. ‘[E]vidence that land was acquired for an exempt purpose does not eliminate the

need for proof of actual use for that purpose. Intention to use is not the equivalent of use.’

Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 64 (1971) (quoting Skil Corp. v. Korzen, 32 Ill. 2d 249, 252 (1965)). Since I conclude that applicant did not actually use the property in any legally sufficient manner to warrant an exemption for the last two days in 2003, even under the best of assumptions for the applicant, it is unnecessary to determine whether the applicant is an “institution of public charity” or whether it’s ultimate use of the property as its national headquarters is an exclusively charitable use.

A number of Illinois courts have addressed the issue of what constitutes actual use of property. The case most discussed, and indeed, primarily relied upon by the applicant for the proposition that property can qualify for a charitable exemption at the time that activities thereon constitute development and adaptation of the property for charitable use, is Weslin Properties v. Illinois Department of Revenue, *supra*. In that matter, the institution of public charity sought an exemption of acres of property that it purchased in 1983 for purposes of expanding its health care services, including the building of an urgent care center. Within days of the purchase, meetings were held with the architects, and continued over the next months, to review and refine the master site plan. In 1983, the design of the urgent care center was approved. Also in 1983 the physical adaptation of the land began with the construction of berms and landscaping. A construction contractor was hired in 1984, and groundbreaking for the center was in August, 1984.

NABP correctly advises that the Weslin court acknowledged that the construction of a modern medical campus is “complicated” (*id.* at 586) and recognized that “given the complexity of the architectural process of designing a site for a medical campus, and of designing the buildings to be located thereon, it seems virtually impossible to begin

construction immediately upon purchase of the land.” Id. However, the facts in this case are not akin to the Weslin facts and the differences mandate a different result.

To begin, the owner in Weslin purchased vacant acreage for purposes of an entire medical complex of more than a single building. The court granted the exemption for the tax year 1983 for the property of the urgent care center and its associated necessary roads and parking facilities. Id. at 587. In 1983, the development meetings with the architects began, therefore, it is reasonable to assume that the architects were hired, at the least, during the tax year at issue in that case. Also, in 1983, actual physical adaptation was begun on the property with landscaping and construction berms.

In the instant matter, the subject property is a single story building, which for all intents and purposes was an empty shell ready for applicant’s development on the date of NABP’s ownership, as almost every wall therein had been knocked down by the previous owner prior to the purchase. The record does not support any finding that development of the property was at all complex-the subject property’s development and physical adaptation was an internal build-out of the space for offices, storage and similar corporate uses. This could not even begin until 2004 when NABP hired an architect and submitted its space requirements to him. The only physical act taken by the applicant regarding its ownership of the subject property was to change the locks on December 31, which I am comfortable in noting, is an action that is not so unlikely of any owner of any just-acquired improved property. Whereas the Weslin applicant not only acquired the land in the tax year at issue therein, it began physically improving it according to its master plan also developed in that tax year. In contrast, the plan for the actual development and adaptation of the subject property was not begun until after an architect was hired and

NABP's space needs were submitted to him in 2004. In short, there was no development or adaptation of the subject property until 2004.

Nor have I found any other legal precedent for a finding that applicant's actions with regard to the subject property in 2003 equates as actual use. NABP also cites Norwegian American Hospital, Inc. v. Department of Revenue, 210 Ill. App. 3d 318 (1st Dist. 1991) and Lutheran Church of the Good Shepherd of Bourbonnais v. Department of Revenue, 316 Ill. App. 3d 828 (3rd Dist. 2000) to support its position. Again, these cases are distinguishable on significant facts.

Norwegian American Hospital filed applications for tax exemption for 68 parcels of property for the tax year 1986. Norwegian American Hospital, Inc. v. Department of Revenue, *supra* at 319. Of those 68 parcels, 25 remained as non-exempt following proceedings in administrative hearings and circuit court review. *Id.* at 319-20. The hospital sat in the center of these properties which extended out in a ¼ mile area. *Id.* at 320. The properties that remained at issue for appellate review were vacant, non-contiguous and scattered amongst private residences *Id.* at 322.

Beginning in the late 1970's, the hospital's administration became concerned about the deteriorating physical condition of the properties surrounding the hospital, of the dangers associated with these conditions and the impact these factors had on attracting hospital personnel and patients. *Id.* at 320. In 1982, a comprehensive plan was developed by the hospital for a "green" or campus-type environment in the area. *Id.* at 321. Targeted properties were purchased, dilapidated buildings were razed, properties were seeded or landscaped, and pedestrian walkways, benches, food service and picnic

areas were installed. Id. A 1984 study conducted by the hospital indicated that the improvements made to the surrounding area were effective for hospital purposes. Id.

In the Norwegian American Hospital case, the Department argued, *inter alia*, that in the year at issue, 1986, the 25 parcels at issue were vacant, did not carry any facility or signage and therefore, no charitable use could be attributed to them. Id. at 322. In granting the exemption to these parcels, the court stated that the property was “reasonably necessary to the continued survival and efficient administration” of the hospital as a charitable institution. Id. It further determined that “the survival of the hospital as a nonprofit care-giving organization was threatened by the dilapidated and dangerous environment surrounding the hospital.” Id. at 323.

The court recognized that the intention to use property is not the equivalent of actual use and cited Weslin for the legal proposition that “where actual development or adaptation has taken place, exemptions have been allowed.” Id. Specifically the court stated that:

In the present case, we believe that the very fact that the parcels in question have been rendered vacant through the razing of abandoned structures supports the hospital’s argument that the properties have been adapted to use.

The hospital embarked on a comprehensive plan to alleviate the blight affecting its survival and administration. The parcels under review were developed in a manner consistent with the articulated plan: abandoned buildings were demolished, and the land as either seeded or more extensively landscaped. Id. at 323-24.

In contrast, NABP changed the locks on the subject property on December 31, 2003. It did not need to demolish any walls in 2003, as that was already done by the previous owner prior to the sale. There’s no evidence that any necessary repairs were

done until 2004. Unlike Norwegian American Hospital whose comprehensive plan for the development of the property was clearly and necessarily articulated years before the date of the exemption request, applicant's plan began with its decision that it needed more space to house its headquarters which meant looking for a single building.

Nor can it be said that the purchase of the subject property was critical to applicant's existence as was the property in Norwegian American Hospital. NABP did not enter into a contract to sell its operating headquarters until 2004 and it did not complete the transfer of its ownership in that building until after it began operating out of the subject property in late 2004. The record does not provide that operating out of its prior headquarters awaiting a move to the larger property damaged applicant's corporate operations.

It is also very clear that the appellate court placed great significance on the fact that in the year the exemptions were sought in Norwegian American Hospital, actual physical development and adaptation of the property was made by the hospital in furtherance of its specific comprehensive plan-abandoned buildings on the properties at issue had been demolished and the parcels were seeded or landscaped. Id. at 323. I cannot conclude that the changing of the locks by a new owner on an otherwise empty shell of a building equates to the real physical development and adaptation relied upon by the appellate court in a finding of actual use statutorily necessary for a finding of tax exemption.

The same is true in the case of Lutheran Church of the Good Shepherd of Bourbonnais v. Department of Revenue, 316 Ill. App. 3d 828 (3rd Dist. 2000). In that matter, the church applied for property exemptions for the tax year 1997 for two parcels

of property adjoining its worship facility. It had purchased the land in 1996 with the intention of using the parcels as extensions of its yard area to be used for playground, picnic or recreational use. Id. at 829. At the time of purchase, crops were growing on the land. Id. Toward its intended use, no crops were planted after the harvest in late 1996. From August, 1997, weeds were removed and the property was tilled in preparation for seeding for grass. Id. at 829-30. In granting the exemption for 1997, the court applied Weslin and said that by not planting crops and mowing and tilling the land, the property was being converted from its natural, raw state, to one that was appropriate for the intended exempt use. Specifically, the court advised that “[M]owing and tilling in 1997 were part of this process, as was the decision to and the affirmative act of not planting crops. This activity was more than mere planning and constituted actual physical use of the property.” Id. at 833, 834; see People ex rel Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924) (exemption not allowed for grounds owned by seminary and intended for exempt recreational purposes because during the tax year at issue property remained in its natural state).

In the instant cause, the applicant intended to use the subject property as its national headquarters. Even assuming that such a use qualifies as exclusively charitable, the only affirmative action taken by this applicant during the tax year at issue was to change the locks on the building. The building was vacant before the applicant acquired title as its walls had been taken down by the previous owner before applicant became interested in pursuing its purchase. The only decisions that NABP had to make regarding its use of the subject property was how to allocate the space therein, and that was not done beyond speculation until after it hired an architect in 2004. In essence, the subject

property remained in its natural state during the tax year at issue, and there is no legal authority for a grant of tax exemption on these facts.

Each individual claim for exemption must be determined from the facts presented. Coyne Electrical School v. Paschen, 12. Ill. 2d 387, 394 (1957). In this matter applicant wanted a national headquarters building large enough for its needs. It had employees seeking such a property and it purchased it on December 30, 2003. It changed the locks on December 31. These are the activities applicant offers as evidence that the subject property was in actual use, *i.e.* adaptation and development, for the last two days of the tax year, 2003. These activities, however, are basic to the purchase of any improved property, even if the entity has asked a contractor to assist in ascertaining whether the property was appropriate for the buyer's needs-you decide you need/want a property, you look for it and you buy it. This is just ordinary practice and contractual due diligence. These actions, themselves, are unremarkable and I cannot find that changing locks by a new owner amounts to the beginning of the development or adaptation of property. To find that NABP's activities rise to the level of adaptation or development necessary by the statute to qualify as tax exempt actual use would make the statutory requirement of actual use and the courts' interpretations of this requirement meaningless.

The Department denied the exemption application of NABP based upon lack of exempt use. The District also challenged the exemption application on the same ground. Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. It is well-settled in Illinois that 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 exempting

property from taxation must be strictly construed in favor of taxation. People ex. rel. Nordland v. Association of the Winnebago Home for the Aged, 40 Ill. 2d 91 (1968). Further, the party claiming an exemption has the burden to prove clearly and conclusively that it is entitled to exemption (Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 434 (1st Dist. 1987)) with the clear and convincing evidentiary standard “defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.” In the Matter of Jones, 285 Ill. App. 3d 8, 13 (3rd Dist. 1996). I conclude, based upon the facts as presented by this record, that NABP has not met its burden to prove clearly and convincingly that it actually used the subject property in 2003 in any manner to allow a grant of property tax exemption for that year. This conclusion would be the same even if NABP was an institution of public charity and it ultimately used the property exclusively for charitable purposes. Thus, it is not necessary to ascertain for the tax year at issue, 2003, these two statutory and constitutional requirements. See Edens Retirement Center, Inc. v. Illinois Department of Revenue, 213 Ill. 2d 273 (2004).

WHEREFORE, for the reasons stated above, it is recommended that the Cook County property of the National Association of Boards of Pharmacy, identified with PIN 03-35-200-042-0000, not be exempt from the real estate taxes for the last two days of the tax year 2003.

January 18, 2006

Mimi Brin
Administrative Law Judge