

OHIO BOARD OF TAX APPEALS

Mt. Olive Community Development Corporation,)
)
) (REAL PROPERTY TAX EXEMPTION)
 Appellant,)
)
) DECISION AND ORDER
 vs.)
)
)
 William W. Wilkins,)
 Tax Commissioner of Ohio,)
)
)
 Appellee.)

APPEARANCES:

For the Appellant - Carolyn Watts Allen, Esq.
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For the Appellee - Richard Cordray
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Entered May 19, 2009

Ms. Margulies, Mr. Johrendt, and Mr. Dunlap concur.

Mt. Olive Community Development Corporation (“Mt. Olive”) appeals from a final determination of the Tax Commissioner, in which the commissioner denied Mt. Olive’s application for real property tax exemption for tax year 2004, and remission of taxes and penalties for 2001, 2002, and 2003. On review, the commissioner’s determination is affirmed.

This matter is considered by the Board of Tax Appeals upon the notice of appeal, the statutory transcript (“S.T.”), and the record of the evidentiary hearing (“H.R.”) held in this matter, which includes two exhibits and the testimony of

Reverend Larry Harris, the pastor of Mt. Olive Missionary Baptist Church (“church”), and Jacqueline Corbin, appellant’s executive director. The Tax Commissioner presented no witnesses or additional exhibits, choosing to rely on the statutory transcript. The parties also provided legal arguments through briefs filed with the board.

In his final determination, the Tax Commissioner summarized the facts as follows:

“Applicant, Mt. Olive Community Development Corporation, is requesting exemption for property to be used for various charitable, public and religious purposes, including public worship, summer youth programs, tutorial programs, computer labs, senior citizen programs, community economic development and housing services, and recreation. The property is currently improved with an abandoned school building, which the applicant intends to raze to permit construction of a new facility to carry out its mission to address the basic educational, spiritual, and physical human needs of the local community.

“The property was purchased by the Mt. Olive Missionary Baptist Church from the Cleveland Board of Education. It was then acquired by the Mt. Olive Community Development Corporation on July 31, 2001. At the time the exemption application was filed [on March 31, 2004], programming services and activities were intended to be in place by January 2005, but have not materialized. According to applicant, this building has numerous code and environmental violations which have prevented the applicant from moving forward with its plan to develop the property.” S.T. at 1, 75.

Consistent with the facts as stated by the commissioner, Harris testified that after acquiring the abandoned school property in 2000, the church transferred the subject property in July 2001 to Mt. Olive, the non-profit community development corporation

formed and controlled by the church. H.R. at 28-29, 34; S.T. at 11, 80, 87. In early 2003, Mt. Olive received a grant and conducted a survey to obtain the community's input as to potential future uses for the subject. Based on this survey, the church planned for demolition of the existing school building and development of a new facility to house the church as well as an arts and development center and gymnasium. H.R. at 87, 103; S.T. at 58-60. To that end, in April 2003, Mt. Olive retained an architect to prepare renderings of the proposed new facility, which would include approximately 78,000 square feet of useable space and cost between nine and 12 million dollars to complete. *Id.*; H.R. at 82, 87.

Harris further testified that after acquiring the subject property for \$30,000, the property remained vacant while the church assumed the funding for various ongoing maintenance expenses between 2001 and July 2008, such as landscaping, garbage clean-up, and keeping the building boarded-up to discourage vandalism. Appellant's Ex. 1; H.R. at 84. As a necessary step prior to demolition, the church also funded the removal of asbestos from the school building, which was completed in early 2007. *Id.*

After spending a total of almost \$285,000, Harris testified that the church had exhausted its own funds and, in 2008, reached a tentative agreement with the city of Cleveland for a loan to cover the additional \$240,000 needed to pay for demolition of the existing structure. H.R. at 55-56, 84, 92-95. Harris estimated the church's assets total approximately \$1.1 million and that the church had no more than \$10,000 set aside for future construction costs of the new facility. H.R. at 114, 118. After

demolition is completed, Harris said a capital fund drive will be started to build the new facility. H.R. at 83, 124. Corbin testified that plans on how Mt. Olive and the church would raise at least \$9 million in construction funds had not yet been finalized. H.R. at 155-156. Corbin also testified that, due to health reasons, she was not involved with Mt. Olive from 2002 to 2004. H.R. at 146.

In reviewing Mt. Olive's appeal, we recognize the presumption that the findings of the Tax Commissioner are valid. See *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121, 123. It is therefore incumbent upon a taxpayer challenging a finding of the commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135, 143; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138, 142. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213, 215.

In Ohio, all real property is subject to taxation. R.C. 5709.01. Exemption from taxation is the exception to the rule. *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186. Statutes granting exemptions from taxation must be strictly construed and the burden of establishing exemption is on the taxpayer. *Id.*; *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 407, at paragraph two of the syllabus; *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 201; *Am. Soc. for Metals v. Limbach* (1991), 59 Ohio St.3d 38, 40. See, also, *Willys-Overland*

Motors, Inc. v. Evatt (1943), 141 Ohio St. 402; and *Goldman v. Robert E. Bentley Post* (1952), 158 Ohio St. 205.

Mt. Olive requested and the commissioner determined exemption under R.C. 5709.07(A)(2), which exempts from taxation “[h]ouses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper occupancy, use, and enjoyment ***.”¹ The commissioner denied the application, indicating that the subject property was not currently or prospectively being used for public worship as of the relevant 2004 tax lien date. On appeal, Mt. Olive argues that the property qualifies for exemption because in 2004 it had in place plans to develop the subject and construct a new church facility.²

Although R.C. 5709.07 requires that the property be used exclusively for public worship, the Ohio Supreme Court has adopted a primary use test, which requires more than merely calculating the amount of time that the property is used in a

¹ Although appellant originally sought exemption for the subject property pursuant to R.C. 5709.07 (religious-use exemption) and R.C. 5709.12 (charitable-use exemption), Mt. Olive moved this board at hearing to amend its exemption application to also include review under R.C. 5709.121. H.R. at 156-158; notice of appeal at error 3. However, appellant did not raise or argue before the Tax Commissioner that the subject property would be entitled to exemption under R.C. 5709.121. S.T. at 75. The commissioner’s final determination does not consider this statute. S.T. at 1-2. Thus, appellant’s motion to amend its application is denied and this board’s review will be jurisdictionally limited to the Tax Commissioner’s final determination, in which he considered the applicability of R.C. 5709.07 and R.C. 5709.12. *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134; *CNG Development Co. v. Limbach* (1992), 63 Ohio St.3d 28. See, also, *Ellwood Engineered Castings Co. v. Zaino*, 98 Ohio St.3d 424, 2003-Ohio-1812. See, also, *Gen. Motors Corp. v. Wilkins*, 102 Ohio St.3d 33, 2004-Ohio-1869; *Cousino Construction Co. v. Wilkins*, 108 Ohio St.3d 90, 2006-Ohio-162.

² The commissioner also denied remission of taxes paid in 2001 because Mt. Olive did not own the subject parcel on January 1, 2001. We find that since title to the subject was transferred to Mt. Olive in July 2001, exemption was jurisdictionally barred for 2001. *Sylvania Church of God v. Levin*, 118 Ohio St.3d 260, 2008-Ohio-2448 at ¶9 (Tax Commissioner may not exempt property from taxation unless the exempt use began by the tax lien date of the year for which the exemption is sought).

taxable as opposed to a nontaxable manner. Instead, a determination as to taxable status must include an examination of both the quantity and quality of the use for which the property is utilized. “To qualify for an exemption from real property taxation as a house used exclusively for public worship under R.C. 5709.07, such property must be used in a principal, primary, and essential way to facilitate public worship.” *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432, at paragraph two of the syllabus.

The court reaffirmed the use of the “primary use” test in determining qualification for exemption pursuant to R.C. 5709.07 in *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St.3d 117, holding, “The General Assembly has used the phrase ‘used exclusively’ as a limitation in both R.C. 5709.07 (houses used exclusively for public worship) and R.C. 5709.12 (property used exclusively for charitable purposes). In *Moraine Hts. Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134, 135, ***, this Court held that for purposes of R.C. 5709.07, the phrase ‘used exclusively for public worship’ was equivalent to ‘primary use.’” *Id.* at 120.

Under the primary use test, the court has recognized that those uses of property sought to be exempted that are merely supportive are not entitled to exemption under R.C. 5709.07. See *Bishop v. Kinney* (1982), 2 Ohio St.3d 52; *Summit United Methodist Church v. Kinney* (1983), 7 Ohio St.3d 13 (denying exemption for the educational wing of a parish center that was used for Sunday school but leased to the Ohio State University as a day care center on weekdays); *Faith Fellowship Ministries, Inc.*, *supra*.

Applying this test to the record, we find Mt.Olive’s use of the subject property as of the relevant January 1, 2004 tax lien date does not qualify for exemption. The evidence demonstrates that the abandoned school building had been boarded up and not used for any purpose. Nothing in the record would support a finding that the primary use of the property was for public worship. *Summit United Methodist Church*, supra; *Faith Fellowship Ministries, Inc.*, supra. Thus, we find Mt. Olive has not met its burden to establish exemption as a house used exclusively for public worship based on the primary use test. *Id.* at 437.

Alternatively, the commissioner considered Mt. Olive’s exemption request under the prospective-use doctrine, which provides as follows:

“Where an entity, which under the law is entitled to have its property exempted from taxation, acquires real property with the intention of devoting it to a use exempting it from taxation, such property is entitled to be exempted from taxation, as long as it is not devoted to a nonexempt or commercial use, even though actual physical use of the property for the exempt purpose has not yet begun.” *Carney v. Cleveland City School Dist. Public Library* (1959), 169 Ohio St. 65, paragraph one of the syllabus.

It is undisputed that Mt. Olive had not begun to erect a new church facility by 2004. Despite this, the Ohio Supreme Court has held that an owner can obtain a tax exemption for its property if that owner intends to use the property in an exempt manner within a reasonable time and provides tangible evidence that the property would be so used. *Carney*, supra; *Lake Cty. Bd. of Commrs. v. Supanick* (1972), 32 Ohio St.2d 45; *Ohio Operating Engrs. Apprenticeship Fund v. Kinney* (1980), 61 Ohio

St.2d 359, at 362; *Episcopal School of Cincinnati v. Levin*, 117 Ohio St.3d 412, 2008-Ohio-939.

In *Holy Trinity Protestant Episcopal Church of Kenwood v. Bowers* (1961), 172 Ohio St. 103, the taxpayer had purchased property in 1956 with the intent to erect a house of worship. Actual construction of the new church did not begin until 1959. The taxpayer filed an application for remission of taxes for 1958 and 1959 and for exemption for 1960. In considering the application, the court held:

“A religious institution which purchases vacant land for the purpose of erecting a house of worship thereon is entitled to have such land exempted from taxation, where such institution is actively working toward use of such land for the public benefit; and the intent to make such a use of the land may be evidenced by a showing that plans had been prepared and funds were available, or were to be available, to effectuate actual construction of such house of worship within a reasonable time from the filing of the application for exemption.” *Id.* at the syllabus.

As provided by *Holy Trinity*, an applicant for exemption must be “actively working” toward an actual exempt use within a reasonable period of time. As a result, an applicant that demonstrates only hopes and expectations of improving real property for an exempt use at some unspecified time in the future is not entitled to the exemption. *Welch Ave. Freewill Baptist Church v. Kinney* (1983), 10 Ohio App.3d 196, at 197.

While Mt. Olive argues that exemption is warranted because its intent was manifested by its ongoing maintenance efforts and progress in working toward demolition of the old school building, we are unable to conclude from the record before us that Mt. Olive was actively working toward an exempt use within a

reasonable time. *Holy Trinity*, supra. At best, as of the January 1, 2004 tax lien date, architectural renderings that portray designs for a new facility had been prepared. However, Mt. Olive provided no evidence of finalized blueprints or building permits.

More importantly, Mt. Olive had insufficient funds available in 2004 to demolish the existing school building, let alone to commence construction within a reasonable time of a new multi-million dollar facility. Harris testified that after demolition is completed, a capital fund drive will be started to build the new facility. H.R. at 83, 124. Thus, Mt. Olive has demonstrated only that it has a desire for and expectation of improving the subject property for an exempt use at some unspecified time in the future. As such, this land could potentially qualify in the future for exemption, but only when it can be demonstrated that concrete plans had been made and action had been taken toward the implementation of such plans, including the raising of funds for the development. See *Holy Trinity Protestant Episcopal Church of Kenwood*, supra; *Episcopal School of Cincinnati*, supra.

We note the commissioner's final determination apparently denies exemption based only on the religious-use provisions of R.C. 5709.07, even though Mt. Olive alternately requested exemption under the charitable-use provisions of R.C. 5709.12.³ S.T. at 75. Thus, we will review whether the commissioner erred in failing to grant exemption under the charitable-use statute.

³ Having determined that the property was not in a condition to be used, the commissioner simply states "[t]he property consists of an abandoned school which is currently not used for any public worship or charitable purpose, and, therefore, fails to qualify for real property tax exemption." S.T. at 2.

R.C. 5709.12(B) specifically provides that “[r]eal *** property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation.” In *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St.3d 405, the court set forth the requirements imposed by R.C. 5709.12 for obtaining exemption:

“[T]o grant exemption under R.C. 5709.12, the arbiter must determine that (1) the property belongs to an institution,⁴ and (2) the property is being used exclusively for charitable purposes. We have held that a private profit-making venture does not use property exclusively for charitable purposes. *Cullitan v. Cunningham Sanitarium* (1938), 134 Ohio St. 99 ***; *Cleveland Osteopathic Hosp. v. Zangerle* (1950), 153 Ohio St. 222 ***; *Lincoln Mem. Hosp., Inc. v. Warren* (1968), 13 Ohio St.2d 109 ***. Nevertheless, “any institution, irrespective of its charitable or non-charitable character, may take advantage of a tax exemption if it is making exclusive charitable use of its property.” *Episcopal Parish v. Kinney*, supra, 58 Ohio St.2d at 201 ***. As the BTA concluded, the applicant for exemption under R.C. 5709.12 need not be a charitable institution, but simply an institution.” *Id.* at 406-407. (Parallel citations omitted and emphasis sic.)

In addition, to qualify for exemption under the above statute, real property must not be used with a view to profit. See *Girl Scouts-Great Trail Council v. Levin*, 113 Ohio St.3d 24, 2007-Ohio-972; *Am. Soc. for Metals*, supra; *Lutheran Book Shop v. Bowers* (1955), 164 Ohio St. 359. See, also, *Seven Hills Schools*, supra; *Seven Hills Schools v. Tracy* (June 11, 1999), BTA No. 1997-M-1572, unreported; *Youngstown Area Jewish Fedn. v. Limbach* (June 30, 1992), BTA No. 1988-G-117, unreported; *Jewish*

⁴ In *Highland Park Owners*, supra, at 407, the term “institution” was defined as “An establishment, especially one of eleemosynary or public character or one affecting a community. An established or organized society or corporation. It may be private in its character, designed for profit to those composing the organization, or public and charitable in its purposes, or educational (e.g. college or university).*** ”

Community Ctr. of Cleveland v. Limbach (June 30, 1992), BTA No. 1988-A-124, unreported; and *Dayton Art Inst. v. Limbach* (June 19, 1992), BTA No. 1986-A-521, unreported.

As we previously found, the evidence demonstrates that the abandoned school building had been boarded up and the land had not been used for any purpose other than occasional overflow parking since Mt. Olive acquired the property. Thus, even if we find Mt. Olive to be an institution, nothing in the record supports a finding that the property was being used exclusively for charitable purposes. Whereas Mt. Olive's intent is admirable, review of the record in this case and the applicable law demonstrates that Mt. Olive's primary use of the property fails to meet the second prong of the test set forth in *Highland Park Owners, Inc.*, supra, and thus the subject property is not entitled to exemption from taxation.

Therefore, in consideration of all of the foregoing, this board finds that appellant has not overcome the presumption of validity of the Tax Commissioner's determination. See *Hatchadorian v. Lindley* (1986), 21 Ohio St.3d 66. We are constrained to find that appellant has not met its burden of proof as it did not offer sufficient, credible, or probative evidence that the subject property qualified for exemption during the tax years in question. Thus, this board finds that the Tax Commissioner's findings were not unreasonable and unlawful. It is the decision and order of the Board of Tax Appeals that the Tax Commissioner's final determination must be, and is, affirmed.

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