

## OHIO BOARD OF TAX APPEALS

Trinity Fellowship Church, Inc.,	)	CASE NO. 2007-H-566
	)	
Appellant,	)	(REAL PROPERTY TAX EXEMPTION)
	)	
vs.	)	DECISION AND ORDER
	)	
Richard A. Levin,	)	
Tax Commissioner of Ohio,	)	
	)	
Appellee.	)	

APPEARANCES:

For the Appellant - Rev. Don Scott Monaco  
Trinity Fellowship Church, Inc.  
4749 South Avenue  
Youngstown, Ohio 44512

For the Appellee - Richard Cordray  
Attorney General of Ohio  
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Entered June 23, 2009

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

Trinity Fellowship Church, Inc. (“Trinity”), appeals from a final determination of the Tax Commissioner, in which the commissioner partially denied and partially granted Trinity’s application for real property tax exemption for tax year 2004. On review, the commissioner’s determination is affirmed.

This matter is considered by the Board of Tax Appeals upon the notice of appeal and the statutory transcript (“S.T.”). Although a hearing was convened before this board, the property owner did not attend and the Tax Commissioner

presented no witnesses or additional exhibits, choosing to rely on the statutory transcript.

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

“The applicant, Trinity Fellowship Church, Inc., is requesting exemption for \*\*\* parcels [29-022-0-090.01-0 and 29-022-0-090.00-0] totaling 10.060 acres. The subject parcels are adjacent to 7.981 acres of property used as the applicant’s sanctuary, education wing, youth area, fellowship hall, and parking. \*\*\* [T]he applicant has provided a site map indicating that approximately two acres of the subject property are currently used for additional parking and that the balance of the property is the site of a “future dream center.” S.T. at 1, 11.

Consistent with the facts as stated by the commissioner, Trinity indicated that it was using part of the larger parcel for “spillover parking” while planning to build a resource or activity center in the future.<sup>1</sup> S.T. at 11, 13. Trinity also noted on its site map possible future “soccer and baseball fields with picnic pavilion” at the rear portion of this front parcel. *Id.* Trinity made no reference to any present or future use of the smaller rear parcel. *Id.*

In contrast to the facts presented to the commissioner through its exemption application, Trinity states in its July 2007 notice of appeal to this board:

“At the time of our initial communication, dated August 5, 2005, we had the full intention and purpose of heart to pursue our Dream Center. However, shortly after our request for the appeal letter, God began to move in our church, shifting our focus. We presently operate our Dream Center out of the existing property. God has led us

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<sup>1</sup> The map of the subject 10-acre, rectangular property shows two contiguous parcels, with the approximately nine-acre parcel fronting the street and the remaining approximately one-acre parcel landlocked at the rear of the property. S.T. at 11.

to place an outdoor prayer chapel amphitheater on that property. As of the time this letter has been written, clearing of the property has begun. We hope to have the project completed and dedicated in the summer of 2008. We estimate such a lengthy working period on this project on account of the fact that the work will be done voluntarily by the families and businesses of the church. We know that this chapel will be used for prayer meetings, worship services, outdoor celebrations and weddings.”

The record is unclear whether the new plan to construct an amphitheater alters the previous plan for possible “soccer and baseball fields with picnic pavilion.” As to the smaller rear parcel, Trinity again presents no information about its use, other than to state it believes the land has no value since it is landlocked. *Id.*

In reviewing Trinity’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.

The commissioner determined Trinity's exemption request 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 \*\*\*." The commissioner granted the application as to the two acres being used for parking and denied the application as to the remaining acreage, indicating that portion of the subject property was not currently or prospectively being used for public worship as of the relevant 2004 tax lien date. On appeal, Trinity argues the entire front parcel should qualify for exemption because it intends to eventually construct a new church facility, albeit a different type of structure than the one referenced in the exemption application.

The commissioner considered Trinity'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 Trinity had not begun to erect a new church facility in 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 Comms. 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.

We are unable to conclude from the limited record before us that Trinity was actively working toward an exempt use within a reasonable time of the exemption application. *Holy Trinity*, supra. In fact, Trinity asserts in its notice of appeal that it had changed its original plan to build a dream center and now intends to construct an amphitheater. As of 2007, Trinity states that “clearing of the property has begun” with the hope to complete its amphitheater in 2008 through the voluntary participation of church members. Trinity provided no evidence of finalized blueprints, building permits, or financing for any type of structure.

Thus, we find that Trinity has a desire 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.

Assuming Trinity still plans to use the rear portion of the front parcel for possible future soccer and baseball fields with a picnic pavilion, we find the commissioner correctly denied exemption for this proposed recreational use as merely

supportive of public worship. *Moraine Heights Baptist Church v. Kinney* (1984), 12 Ohio St.3d 134; *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432.

Finally, as to the rear parcel, Trinity has presented no evidence of any proposed use for this land, asserting the acre is landlocked and has no value. We conclude, therefore, Trinity has no use for this parcel that would facilitate public worship. *Faith Fellowship Ministries, Inc.*, supra. Consequently, we find Trinity has not met its burden to establish exemption as to this rear parcel.

In consideration 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 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 year 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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