

PT 10-09

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

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

v.

**IRSHAD LEARNING CENTER,
Applicant**

**Docket No: 09-PT-0056
(08-22-284)
Real Estate Tax Exemption
For 2008 Tax Year
PIN 08-29-202-006
DuPage County Parcels**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Paula Hunter on behalf of the Illinois Department of Revenue; Kathryn Vanden Berk of Law Offices of Kathryn Vanden Berk, PC, on behalf of the Irshad Learning Center.

Synopsis:

This case concerns whether property that is located in DuPage County and owned by the Irshad Learning Center (“applicant” or “ILC”) qualifies for a partial year property tax exemption for the period March 25, 2008 through December 31, 2008. The applicant alleges that the property qualifies for an exemption on the basis that it was used exclusively for religious purposes during the aforementioned period. The Department denied the exemption on the basis that the property was not in exempt use. The applicant timely protested this denial. In lieu of an evidentiary hearing, the parties have agreed to

have this matter determined based solely upon Stipulations of Fact agreed to by the parties and related exhibits, which the parties agree contain all of the evidence to be considered in this case. After reviewing this record, I have concluded that this matter should be resolved in favor of the Department.

Findings of Fact:

1. The Irshad Learning Center (“ILC”) is a duly organized nonprofit, non-stock corporation under the Illinois Not-For-Profit Corporation Act and it operates exclusively for charitable purposes. Stipulation (“Stip.”) 1.
2. The ILC’s Articles of Incorporation state that it is a “non-profit religious organization.” Stip. Exhibit (“Ex.”) 1, 2 (ILC Articles of Incorporation).

The ILC has no capital stock nor may its assets inure to the benefit of private interests. All funds supporting applicant’s religious programs are received from the gifts and contributions of its members, or are receipts from related charitable activities. All are held in trust exclusively for the organization’s exempt activities. Stip. 2.

The ILC is tax exempt under the Internal Revenue Code Sec.501(c) (3). Stip. 3.

The ILC files Form 990 Returns as required by federal law. Stip. 4.

The ILC has applied to the Illinois Department of Revenue for a sales tax exemption under the Illinois Retailers Occupation Tax Act. That application was granted December 12, 2008. Stip. 5.

On March 25, 2008 the ILC purchased property in Naperville, consisting of a building and a three acre parcel of land. The building was originally a private residence and had been converted to a private school. It is not yet in use for

gatherings. Stip. 6.

On December 8, 2008, the ILC applied for a property tax exemption for the Naperville property. The application stated that the property is to be used for worship and community gatherings for members of the Islamic faith, all of which is consistent with the provisions of the Illinois Revenue Act of 1939 under 35 ILCS 200/15-65 and 35 ILCS 200/15-40. Stip. 7.

On August 19, 2008 the ILC filed an application with the DuPage Zoning Board of Appeals (ZBA) for a special use permit, paying the application fee of \$1,500. The ILC sought approval of a parking lot for 27 cars, but asked for a variance to increase the number of parking spaces to 39. Stip. 8.

The ZBA scheduled a public hearing for November 20, 2008. However it was necessary to postpone the hearing because the ZBA erred in publishing notice of the public hearing by failing to identify ILC as the petitioner. Stip. 9.

On December 12, 2008, the ILC filed an amended application with the ZBA, along with an additional \$750 fee, in which the ILC was identified as a Religious Organization rather than as an Educational Institution. The new hearing date was scheduled for January 29, 2009. Stip. 10.

Before the January 29th hearing, the ZBA stated that it had made the same mistake in publishing notice by using the wrong name, so the ILC's attorney again requested a continuation of its first public hearing. The ZBA rescheduled the public hearing for a third time, for February 26, 2009. Stip. 11.

The hearing was held on February 26, 2009. At the hearing, neighbors of the ILC's property filed a three-page written objection to the permit. This objection

was signed by 36 persons. Stip. 12.

The ILC's attorney requested a continuance of the hearing so that the ILC would have time to examine and respond to the objections. The hearing was continued to March 12th. Stip. 13.

On March 11, 2009, the ILC filed a written response to the filed objections, in which it attempted to rebut each objection. Stip. 14.

3. At the March 12th hearing, the neighbors requested another continuance so they could respond to the ILC response. The ZBA continued the hearing until May 14th. At the May 14th hearing the matter was rescheduled to June 4th. Stip. 15.

On June 4th, the ZBA unanimously recommended denial of the permit. Stip. 16.

The permit application was then scheduled to be heard by the DuPage County Development Commission (CDC) on June 16, 2009. On June 12th, the President of the ZBA sent a letter to CDC Chair Kyle Gilgis. Stip. 17. The letter outlined the ILC's objections to the ZBA's recommendation. Stip. Ex. 13.

On June 16, 2009, the CDC continued the matter to its next meeting, scheduled for July 7, 2009. At that meeting, the CDC recommended that the application be returned to the ZBA at its August 6th meeting in order to address the ILC's concerns. Stip. 18.

On August 4, 2009 the ILC's attorney Scott Day sent a letter to the DuPage County Zoning Board of Appeals and Development Committee outlining legal and factual considerations supporting the ILC's request for a zoning variance. Stip. Ex. 19; Stip. Ex. 14. The letter states that the use of the subject property would be limited to a maximum of 100 worshipers and 85 students and that the subject property

would not be used after 10:30 p.m. Stip. Ex. 14.

At its August 6, 2009 meeting, the ZBA continued the matter until the September 10th meeting of the Board. Stip. 20.

On September 10, 2009, the ZBA adopted a recommendation that the permit be denied. In making that recommendation it adopted findings contending that the ILC's actual use would exceed the use requested in the application. It found that 250 people might attend meetings at the Center, rather than 100 people as set forth in the application. Stip. 21.

On October 20, 2009, the CDC voted to amend the ILC's application and recommended approval of the application as a conditional use permit. Stip. 22.

On November 10, 2009, the DuPage County Board considered the petition and remanded the case back to the ZBA. Stip. 23.

On December 7, 2009, the ZBA held a public hearing and voted to deny the ILC's application as amended. Stip. 24.

On December 15, the CDC voted to approve a conditional use permit for the ILC. Stip. 25.

On January 12, 2010, the DuPage County Board voted to deny the conditional use permit. Stip. 26.

As of March 2010, the ILC has not been able to make use of the property that it purchased in March 2008. Stip. 27; Stip. Ex. 15 (Affidavit of Mahmood Ghassemi).

As of March 19, 2010, the ILC has spent almost \$110,000 on legal fees and between \$10,000 and \$15,000 to maintain the subject property. Stip. 15 (Affidavit of

Mahmood Ghassemi).

Conclusions of Law:

ISSUES:

The Irshad Learning Center (“applicant” or “ILC”) seeks to obtain a partial year exemption from DuPage County real estate taxes for property the applicant claims was in exempt use exclusively for religious purposes during a portion of the 2008 assessment year. Specifically, the applicant contends that the property at issue was being adapted for religious use during the period commencing March 25, 2008 and ending December 31, 2008. The applicant, in its brief, concedes that it made no exempt use of the property at issue in 2008. However, the Illinois courts have held property that is not actually being used for exempt purposes to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaption for exempt use. Weslin Properties, Inc. v. Department of Revenue, 157 Ill. App. 3d 580 (2d Dist. 1987).

The pre-trial order entered in this case enumerates the issue to be decided in this case as follows: “[W]hether the Applicant’s property was being prepared for use during 2008 and was, therefore, entitled to exemption for that year[.]”. Accordingly, the issue to be determined in this matter is whether the applicant was in the process of adapting the parcel of property at issue in this case for religious use during the period from March 25, 2008 through December 31, 2008.

In lieu of a hearing, the applicant and the Department have jointly submitted Stipulations of Fact and attached exhibits and have agreed to have this matter determined

based upon the evidence contained therein. Accordingly, both parties agree that these facts and exhibits should be the sole evidence to be considered in this case.

I. Constitutional and Statutory Considerations

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.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. 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, Inc. v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill. 2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In furtherance of its Constitutional mandate, the General Assembly has enacted section 200/15-40 of the Property Tax Code (“section 15-40”) which exempts “[a]ll property used exclusively for religious purposes ... [.]” 35 ILCS 200/15-40. Pursuant

to the foregoing, tax exemption is ordinarily available to property used exclusively for religious purposes. The term “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, 190 (4th Dist. 1993).

The term “religion” has been defined by the Illinois Supreme Court as follows: “[w]hile religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet the common understanding and in its application to the people of this State it means the formal recognition of God as members of societies and associations.” People ex rel. McCullough v. Deutsche Evangelisch Lutherische Jehovah Gemeinde Ungeanderter Augsburgische Confession, 249 Ill. 132, 136 (1911). The term “religious purpose” has been defined by the Illinois Supreme Court 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 of worship, Sunday schools and religious instruction.” McCullough at 136-137.

The Department’s determination denying the taxpayer’s exemption request, which is the subject of this case, was based solely upon the Department’s conclusion that the property at issue in this case was not in exempt use during the tax year 2008. See Department’s Denial of Non-homestead Property Tax Exemption dated May 7, 2009.¹ Because the Department denied the exemption solely upon the lack of exempt use, it is

¹ I take administrative notice of the Department’s determination denying the taxpayer’s exemption claim *sua sponte* in accordance with People v. Speight, 222 Ill. App. 3d 766 (1st Dist. 1991).

implicit that the Department determined that the taxpayer qualified as a “religion.” This conclusion is unchallenged in the instant proceeding. See Stipulations of Fact at Stip. 7 (which acknowledges that the ILC is affiliated with the Islamic faith); see also Stip. Ex.1, 2 (ILC Articles of Incorporation) (which state that ILC is organized to be a “non-profit religious organization.”) Accordingly, the sole question presented in this case is whether the applicant used the subject property “exclusively” (i.e. primarily) for purposes that qualify as “religious” (i.e. as a stated place of worship, for Sunday schools or for religious instruction) within the meaning of section 15-40 during the 2008 assessment year.

II. The Burden of Proof and Related Considerations

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex. Rel. Nordlund v. Home for the Aged, 40 Ill. 2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987); Coyne Electrical School v. Paschen, 12 Ill. 2d 387 (1957); Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994); Victory Christian Church v. Department of Revenue, 264 Ill. App. 3d 919 (1st Dist. 1994). Each individual claim of exemption must be determined from the facts presented and the party claiming the exemption has the burden of proving that the property is used for religious purposes. Lutheran Church of the Good Shepard of Bourbonnais v. Department of Revenue, 316 Ill. App. 3d 828 (3d Dist. 2000); Mount Calvary Baptist Church, Inc. v. Zehnder, 302 Ill. App. 3d 661 (1st Dist. 1998). Based on these rules of construction, the Illinois courts have placed the burden of proof

on the party seeking exemption, and have required such party to prove, by clear and conclusive evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield, *supra*.

III. Analysis

As noted above, the issue presented in this case is whether the subject property was being adapted and developed by the applicant for exempt use during the period from March 25, 2008 through December 31, 2008. In support of their respective positions on this issue, both the Department and the applicant seek to rely upon the Appellate Court's ruling in Weslin Properties, *supra*. In Weslin, the applicant sought to exempt a 24.309 acre tract of land it acquired to build an Urgent Care Center from 1983 real estate taxes. Although it purchased the property on May 26, 1983, the applicant in that case did not break ground on the portion devoted to an Urgent Care Center until August 1994. However, it did develop a master plan and schematic drawings for the Urgent Care Center, as well as approve a plan for that facility, in 1983. It also began physical adaptation of that portion of the tract devoted to the Urgent Care facility through landscaping and construction of berms (dirt shoulders alongside the roads) during the same year.

The applicant in Weslin sought exemption of the entire tract. However, the court held that only those portions of "the land necessary for the Urgent Care Center and necessary roads and parking facilities qualified for exemption in 1983." Weslin at 587. In arriving at its holding, the court distinguished between cases such as Skil Corporation v. Korzen, 32 Ill. 2d 249 (1965) where exemptions were denied because appellant's intent

to use the property for exempt purposes did not alleviate the requirement for actual use, and Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971) where exemptions were granted as to those portions of the properties which appellants actually adapted and developed for exempt use.

The Weslin Properties court began analyzing this distinction by reference to “the realities of modern construction practice.” Weslin at 586. Specifically, the court took note of “the complexity of the architectural process of designing a site for a medical campus and of designing the buildings to be located thereon.” *Id.* Accordingly, the court concluded that the series of steps which the applicant took with respect to the Urgent Care Center in 1983 transcended the realm of mere intent into that of exempt adaptation and development.

The record in the instant case indicates that the ILC purchased the property at issue on March 25, 2008. Stip. 7. While the property in controversy was previously used as a public school, the parties have stipulated that subsequent to its acquisition by the ILC, the property has never been used for public gatherings of any kind. *Id.* (“It is not yet in use for gatherings.”).

The record also indicates that the DuPage County Board and county zoning officials must authorize the use of the subject property for religious purposes before any such use can commence. Stip. 9, 27, 28. The record before me details the applicant’s efforts to obtain the required authorization to use the subject property for religious purposes. However, it clearly shows that, while this effort was underway, the property at issue was essentially vacant and unused. Stip. 7, 28. Accordingly, the record contains

absolutely no evidence that any actual use of the subject property for religious purposes has commenced.

As noted above, the Illinois courts have held property to be exempt from taxation even where ultimate exempt use has not commenced where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Weslin, *supra*. Although unable to show an actual religious use of the subject property, the ILC seeks to rely upon the court's holding in Weslin as a basis for its claim. It notes that, in Weslin, the court states the following:

This court will not ignore the realities of modern construction practice. 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 land. In this case, plaintiff proceeded quickly through the planning and design stages, expending large sums of money in the process. We conclude that the plaintiff's activities in 1983 were clearly beyond mere intention to convert the property for an exempt use, and actually constituted development and adaptation for such use. *Weslin*, *supra* at 586. (*emphasis added*).
Taxpayer's Brief pp. 5, 6.

The applicant avers that, like the applicant in Weslin, the ILC has expended "large sums of money" in its effort to obtain authorization to use the subject property and therefore "easily qualifies" for exemption pursuant to this case. *Id.* In support of this claim, the taxpayer cites the affidavit of Mahmood Ghassemi (Stip. Ex. 15) which states in part as follows:

To date, Irshad Learning Center has spent nearly \$110,000 on legal fees and expenses, about \$10,000 to \$15,000 to maintain the facility that we cannot use in the absence of a permit, and the property taxes that are the subject of this appeal, as well.²

However, as noted by the Department:

The expenditure of money has never been the basis for determining qualification for exemption. Under the Illinois Constitution and the statute, the only basis for exemption is and always has been the use of property for an exempt purpose. An exemption will not be granted absent exempt use or adaptation and development for use. Department Brief, p. 5.

Accordingly, proof of large expenditures with respect to the property at issue, without more, is insufficient to prove the applicant's contentions.

Even if the factual premises of the applicant's reliance upon Weslin were sufficiently probative, I do not find the applicant's attempt to rely upon Weslin in the instant case persuasive. In Weslin, the court found that "the complexity of the architectural process of designing a site for a medical campus, and of designing the buildings located thereon," rendered it "virtually impossible to begin construction immediately upon the purchase of the land." Weslin, *supra* at 586. Thus, "the realities of

² It must be noted that, while the record indicates large expenditures for legal fees, there is no indication of what portion, if any, of these legal fees were incurred for services performed in 2008. Although there were filings in DuPage County during this period (findings of fact 9, 11), there is no indication in the record that these were undertaken by the ILC's counsel rather than by the president of the ILC or another official of the applicant. With the exception of modest filing fees in 2008, there has been no breakdown of expenditures related to the subject property and, therefore, there is no way of knowing if any of these other expenditures pertained to 2008.

modern construction practice” dictated a finding of exempt use where the applicant: (a) proceeded quickly through the planning and design stages; (2) began the physical process of adaptation by performing some preliminary landscaping and constructing necessary berms; and, (c) expended “large” sums of money while undertaking these steps. Weslin, *supra* at 585-586. In Weslin, the court does not opine upon or discuss whether large expenditures for purposes unrelated to architectural planning and design or to actual physical adaptation and development of the subject property, such as charges to obtain zoning approvals, without more, constitute sufficient evidence of property use to warrant application of the religious use exemption. Consequently, Weslin is not precedential authority for the applicant’s claim that its expenditures to obtain authorization to occupy the subject property and use it for religious purposes constituted an actual religious use of this property.

The record in this case does indicate that the applicant made expenditures for some level of maintenance work at the subject property. Stip. Ex. 15 (“To date [the ILC] has spent ...about \$10,000 to \$15,000 to maintain the facility[.]”). However, there is no clear evidence that these maintenance expenses were for the planning and design or physical adaptation or development of the subject property for religious use. Weslin at 580, 585. Given the applicant’s failure to obtain authorization to use the subject property for religious purposes during or subsequent to the period at issue here, I conclude that the applicant’s maintenance work reflected only “a mere intention to convert the property” for religious use, rather than an actual use of the subject property for such purposes. *Id* at 586. Consequently, I find that the applicant’s efforts did not bring this case within Weslin or qualify the subject property for exemption based on religious use.

As noted by the Department in its brief:

In Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971), the Illinois Supreme Court held that “the constitution and statute permit exemption only on the basis of a qualifying use.” The court added “[w]e have often held that property must be in actual use for the exempting purpose, to qualify for exemption. Evidence that the land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose.” (49 Ill. 2d at 64.) Intention to use is not the equivalent of use. (Skinner, 49 Ill. 2d at 64; Skil Corp. v. Korzen, 32 Ill. 2d 249 (1965); Faith Builders Church, Inc. v. Department of Revenue, 378 Ill. App. 3d 1037 (2008); Mount Calvary, 302 Ill. App. 3d 661, 668).

Department Brief p. 4.

Applicant’s actual, not intended, use of the subject property is decisive for present purposes. Skil Corporation, *supra*. See also Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App. 3d 37 (5th Dist. 1994). In analyzing whether or to what extent the applicant engaged in an actual rather than an intended use of the subject property for religious purposes, I am required to evaluate the efforts that the applicant made to develop the subject property during 2008 in light of the realities of modern construction and the applicant’s ultimate intended use. Westlin, *supra*. At the same time, however, public policy dictates that an administrative agency cannot fail to recognize or decline to enforce the otherwise valid legal constraints that govern all of the endeavors the applicant must undertake throughout the development process.

I take administrative notice that certain zoning-related provisions of the DuPage County Code (the “Code”) rendered it legally impossible for the applicant to use the subject property for “religious” purposes throughout 2008. The initial pertinent

provision, contained at section 37-701.1 of the Code, effectively restricted use of the subject property to family residential and related uses for which it was zoned throughout 2008.

The purpose for which the applicant intended to use the subject property, namely as a place of worship and as a religious education center, did not fall within any of the uses permitted by section 37-701.1 of the Code. A subsequent pertinent provision, section 37-701.2 of the Code, specifically deemed a religious use to be one falling within the special use provisions for which applicant was required to obtain appropriate approvals from DuPage County's zoning authorities.³ Accordingly, it was legally impossible for applicant to make any "religious" use of any part of the subject property unless and until it obtain such approvals.

Applicant did not obtain the necessary approvals during 2008, and has not obtained such approvals to date. Therefore, it remained legally impossible for the applicant to engage in anything other than preliminary planning and routine maintenance of the property throughout the tax year at issue. As a consequence, this case is clearly distinguishable from Weslin, *supra* in that the applicant in Weslin had: (a) ostensibly resolved any legal issues that impeded the progress of its project; (b) moved beyond the preliminary planning stages of this project, and, (c) began actual development of the property at issue in that case during the relevant tax year.

The Weslin court also was careful to exempt only that part of the property at issue that was actually undergoing active adaptation and development during the tax year at

³ Religious use is defined in section 37-701.2 of the Code to include uses of property for "Chapels, churches, synagogues, temples and other religious institutions including parsonages and rectories."

issue in that case. Weslin, *supra* at 587. Unlike the applicant in Weslin, the applicant in the instant case did not actually engage in active adaptation and development of any part of the subject property because, as a practical matter, it was prohibited from doing so by operation of the DuPage County zoning ordinances in effect during 2008. Therefore, the holding in Weslin does not apply here because the subject property remained undeveloped throughout the tax year.

In sum, section 15-40 of the Property Tax Code exempts only those properties that were actually and primarily used for “religious” purposes during the tax year in question. 35 ILCS 200/15-40; Pontiac Lodge, *supra*; Skil, *supra*. The applicable zoning ordinances rendered it legally impossible for the applicant to use the subject property for “religious” purposes throughout 2008. Therefore, the Department’s initial determination in this matter, finding that the subject property was not in exempt “religious” use during 2008, should be affirmed.

WHEREFORE, for the reasons stated above, it is my recommendation that real estate identified by DuPage County Parcel Index Number 08-29-202-006 not be exempt from 2008 real estate taxes.

Ted Sherrod
Administrative Law Judge

Date: June 14, 2010