

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

SUMMIT VIEW EVANGELICAL COVENANT)	
CHURCH, an Oregon Nonprofit Corporation,)	
)	
Plaintiff,)	TC-MD 041045A
)	
v.)	
)	
WASHINGTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff has appealed the denial of property, identified by Account R2046300, to qualify for tax exemption for the 2004-05 tax year. Counsel for Plaintiff and Defendant were respectively Robert F. Blackmore and Jacquilyn Saito-Moore. The case was decided on cross motions for summary judgment.

The issue in this appeal is the point at which a religious organization's use of a property qualifies it for tax exemption under ORS 307.140. The specific focus is whether the entity's commitment of substantial resources to convert the property to a religious use, which was not apparent on visual inspection of the premises on July 1, removes the property from taxation.

I. STATEMENT OF FACTS

The property at issue is a building at 15900 SW Regatta Lane in Beaverton. On November 1, 2003, the North Pacific Conference of the Evangelical Covenant Church (Conference), entered into an earnest money agreement to purchase the subject property. Both Plaintiff and the Conference are nonprofit corporations and subordinates of The Evangelical Covenant Church of America. Closing was to occur not later than June 15, 2004, or 15 days after waiver of the conditions. Those conditions included approval of the transaction by both the Conference's executive board and Plaintiff, and securing the necessary approvals from the City

of Beaverton for the property's intended use as a church. At the time of the earnest money agreement, the property was being used as a gymnastic and play center, with a zoning of "office commercial."

Immediately after the signing of the earnest money agreement, a space planner, general contractor, land use attorney, land use planner, and a traffic engineer were retained to evaluate the potential of the building as a house of religious worship and to secure the necessary change of zoning from "office commercial" to "community service." In November 2003, Plaintiff initiated the process for a zone change by filing a Request for a Pre-Application Conference Meeting with the City of Beaverton. Following the pre-application conference, Plaintiff's consultants worked on the application for a change in zoning, and filed its application for a Zoning Map Amendment on March 10, 2004.

Meetings with the neighborhood association and Beaverton's Facilities Review Committee followed, with a hearing before the Planning Commission on May 19, 2004. On May 27, 2004, the Planning Commission approved Plaintiff's application for a Zoning Map Amendment. At that point, Plaintiff had invested some \$37,416 in its application for a zone change. The decision amending the subject property's zoning designation became final on June 9, 2004.

By May 2004, Plaintiff had issued requests for proposals for architectural services and began its fund-raising campaign. Following the change in zoning, Plaintiff formed a building committee and, on June 15, 2004, hired its architect. With those events, on June 30, 2004, the Conference took title to the property and leased the property to Plaintiff. Plaintiff took physical possession of the property on June 30, 2004, changed the locks, and placed signage. The previous tenant's equipment was removed by July 24, 2004.

Plaintiff's congregation began participating in activities on the premises on July 4, 2004, and held its first annual congregational meeting on July 25, 2004. The application for a building permit was filed on September 13, 2004. On September 20, 2004, Plaintiff chose H&A Construction as its general contractor. The building permit issued on February 16, 2005.

Plaintiff, as an Oregon nonprofit corporation, filed its application to exempt the premises for the 2004-05 tax year under ORS 307.140¹ on June 30, 2004. Defendant visited the site during business hours on July 8, 2004. Seeing that the property had no visible signs of being converted to a church, was still prominently identified as a sports academy, and still had gym equipment in place, Defendant denied the application on July 16, 2004.

II. ANALYSIS

The relevant statute is ORS 307.140 that permits the exemption of the property of religious organizations. The exemption specifically runs to "houses of public worship and other additional buildings and property [owned or being purchased by religious organizations] used solely for administration, education, literary, benevolent, charitable, entertainment and recreational purposes." The rule when applying the statute is that tax exemption statutes are to be strictly, but reasonably, construed. *Eman. Luth. Char. Bd. v. Dept. of Rev.*, 263 Or 287, 291, 502 P2d 251 (1972).

There is no doubt that Plaintiff expended significant resources to commit the property to a religious use. Professionals as diverse as space planners and land use attorneys were retained to convert the building from a gymnasium to a church. Particularly indicative is the change in zoning Plaintiff secured for the property, changing its permitted uses from "office commercial" to "community service."

¹ References to the Oregon Revised Statutes (ORS) are to 2003.

However, while the property was being transformed into a house of public worship, the court does not agree that the property was used solely for an exempt purpose on or about the critical date of July 1. No religious services were held until after July 1. Although ORS 307.140 does not define “use,” precedent under a companion exemption statute, ORS 307.130, serves as a guide. *German Apost. Christ. Church v. Dept. of Rev.*, 279 Or 637, 639-41, 569 P2d 596 (1977). Although the cases under ORS 307.140 apparently set a liberal standard, Plaintiff’s use of its premises falls short of exemption.

An example is *Soc. St. Vin. DePaul v. Dept. of Rev.*, 272 Or 360, 537 P2d 69 (1975). In that case, a sufficient use of the property to support exemption was found in the fact that a desk and chair were being refinished on the premises, a telephone had been installed, some equipment was on site, and a preliminary attempt had been made to clean the premises. In Plaintiff’s instance, rather than religious property being moved into the building, gymnastic equipment was being moved out. Similarly, in *Willamette Univ. v. Tax Com.*, 245 Or 342, 422 P2d 260 (1966), a sufficient use to exempt a property was found in the fact that on July 1 construction had begun on the property. However, in Plaintiff’s case, construction had not yet begun.

Plaintiff makes the point that, in terms of committing resources to create a house of religious worship, the money and effort expended by Plaintiff probably exceeded that of the institution in *St. Vincent* and were on the order of *Willamette University*. Accepting that argument as presented does not change the point that Plaintiff’s operations were on the order of preparing the property for the demolition and construction that is required to become a house of religious worship. The building permit for the property did not issue until September, some two months after the events at issue here.

In that respect, Plaintiff makes the point that it could have applied for exemption later, at a time when a degree of religious activities were carried out on the property. Certainly,

ORS 307.162 permits an application to be filed later than the date chosen by Plaintiff. However, the perspective to be applied does not depend upon the date of application. The test remains the character and use of the property on July 1 of the tax year in question.

The year in question is an important point in this decision. Each tax year stands on its own. Plaintiff signed the lease and became entitled to possession of what had been a gymnastic center on June 30. The court does not think that by the next day, despite its extensive earlier efforts, Plaintiff had transformed the property into a house of worship. However, the court is confident that, assuming Plaintiff's efforts continued in the same manner as described in this record, the property will be exempted for subsequent tax years. Denying this appeal does not have a preclusive effect on the subsequent treatment of the property.

III. CONCLUSION

The court is satisfied Plaintiff, a religious organization, acquired the property for an exempt purpose, and was well into the process of converting the subject property to a house of religious worship. However, for tax year 2004-05, the property was not used to a degree sufficient to exempt the property. Now, therefore,

IT IS THE DECISION OF THIS COURT that this appeal is denied.

Dated this _____ day of October 2005.

SCOT A. SIDERAS
MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

***This document was signed by Magistrate Scot A. Sideras on October 4, 2005 .
The Court filed this document on October 4, 2005.***