

PT 08-3

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

In re	)	Docket Nos.	06-PT-0087
Property Tax	)		06-22-203
Exemption Application of	)	PIN	05-06-406-003
PLEASANT HILL	)	John E. White,	
COMMUNITY CHURCH	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: William Seitz, Fisk, Kart, Katz and Reagan, Ltd., appeared for Pleasant Hill Community Church; Marc Muchin, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after the Illinois Department of Revenue (Department) denied an application for a non-homestead property tax exemption for property that Pleasant Hill Community Church (the Church) owns, and which is situated in DuPage County, Illinois. The issue is whether the property was being used exclusively for religious purposes, and is entitled to the exemption authorized by § 15-40 of Illinois' Property Tax Code (PTC), for part of 2005 and all of 2006.

The hearing was held at the Department's offices in Chicago. I have reviewed the evidence offered at hearing, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the Church's exemption application be denied.

Findings of Fact:

1. The Church is organized and operated exclusively for religious purposes. Applicant Ex. 1-f (copy of June 6, 2003 letter from the Department to the Church granting the Church a tax exemption identification number pursuant to Illinois' Retailers' Occupation and Use Tax Acts); Applicant Ex. 2 (copy of Church's bylaws and Church's core beliefs and constitution).
2. Todd Haverstock (Haverstock) is a Church member and, from 2004 through 2006, he was a member of the Church's board of trustees. Hearing Transcript (Tr.) p. 48 (Haverstock); Department Ex. 1 (copy of the Church's completed form PTAX-300-R, Religious Application for Non-Homestead Property Tax Exemption — County Board of Appeals Statement of Facts), p. 2 (Parts 5-6).
3. In 2005, Larry Eskridge (Eskridge) was the chairman of the Church's board of elders. Tr. pp. 33-34 (Eskridge).
4. Scott Howington (Howington) is, and during 2005 was, the Church's senior pastor. Tr. pp. 70-75 (Howington).
5. The Church owns contiguous parcels of property that are situated in DuPage County, Illinois. Applicant Ex. 1-g (copy of warranty deed); Applicant Ex. 11 (copy of Google™ Maps satellite photos of Church's property); Tr. pp. 34-35 (Eskridge).
6. Only one parcel of the Church's property, which the Church refers to as the Annex, is the subject of the instant exemption application. Department Ex. 1; Applicant Ex. 11; Tr. pp. 34-35 (Eskridge).
7. The Annex property is improved with a one-story (with basement), single family residence with an attached garage. Department Ex. 1; Applicant Ex. 11.

8. The Church purchased the Annex property on September 8, 2005. Applicant Ex. 1-g; Tr. pp. 72-76 (Howington).
9. The Church learned about the availability of the property in 2005, when it was approached by the owners, and notified that they would be putting the property up for sale. Tr. pp. 34-35 (Eskridge), 72-73 (Howington); *see also* Applicant Ex. 10 (copy of statements on the Church's web site, <http://www.pleasanthillchurch.org>).
10. The Church purchased the property with the intent to use it for housing for missionaries and/or others. Applicant Ex. 10, p. 1; Tr. pp. 34-35 (Eskridge); 72-74 (Howington).
11. The Church provides financial support to certain missionaries. Tr. pp. 40 (Eskridge), 86 (Howington); *see also* Applicant Ex. 3 (copy of Pleasant Hill Community Church Missionary Residence Usage Policy).
12. The Church drafted a Missionary Residence Usage Policy describing, among other things, the persons that would be entitled to use the Annex property as a residence. Applicant Ex. 3. That policy provides:

**Pleasant Hill Community Church
Missionary Residence Usage Policy**

Our mission is that through the use of this facility, God will enable us to expand our effectiveness in ministry first to those who we have pledged to stand by in monthly support and then to our community as we seek to find ways to minister to them.

The Pleasant Hill Community Church Missionary Residence Annex ("Annex") located at 26 W 331 Geneva Road will be made available under the following guidelines:

Priority of usage

Priority will be given to requests for the Annex

in the following order:

- 1) Active Missionaries currently supported by Pleasant Hill Community Church
- 2) Active Missionaries who are not currently supported by Pleasant Hill Community Church
- 3) Christian workers in other ministries
- 4) Families from Pleasant Hill Community Church who are in transition
- 5) Families from the community who are in transition

Terms of usage

The Annex will be available on a first requested first served basis following the priority status list above.

The Annex will be made available. There is a suggested donation of \$25.00 per day or \$750.00 per month (gas & electric utilities included). A \$375.00 security deposit will be required for monthly usage. At the end of the contract this deposit will be refunded providing the Annex is found to be in good condition. The suggested donation amount will be adjusted or waived if applicant can demonstrate financial hardship through providing financial records including but not limited to last 12 months of pay stubs and / or last two years federal income tax returns.

The Annex will be available for up to 3 months for Missionaries and Christian workers. (This can be extended in unique circumstances.)

The Annex will be available for up to 3 months for transitional housing. (We will assess the situation at the end of three months to see if additional time is needed. The maximum stay for transitional housing will be 6 months.)

The Annex will be limited to a family of 6. (Some exceptions may be made on a case by case basis.)

The Annex is for one family only. There are no exceptions [to] this part of the policy. Violations of this aspect would result in immediate eviction, loss of security deposit and loss of that months rent.

Phone service will be the responsibility of those using the Annex.

An antenna is provided for TV.

While in the Annex it will be the responsibility of the occupant to keep the house clean and to report any damage or disrepair to the church office. The occupant will agree to pay for any damage that is due to their own neglect or irresponsibility.

The Annex is a non-smoking facility.

There will be no pets of any kind allowed in the [A]nnex.

Pleasant Hill Community Church rights and responsibilities

Pleasant Hill Community Church will provide a cleaning crew to make sure the Annex is prepared for occupancy.

Pleasant Hill Community Church will provide snow removal and basic lawn care.

Pleasant Hill Community Church will inspect the Annex following departure and reserves the right to not refund the security deposit for damages and disrepair deemed to be caused by the occupant.

Pleasant Hill Community Church reserves the right to refuse or limit use based on the priority status above.

Applicant Ex. 3.

13. After purchasing the property, Church volunteers worked from September through December 2005 to remodel the house on the property. Applicant Ex. 7 (copy of remodeling project summary, which summary includes lists of the volunteers, projects accomplished, and materials and supplies donated by Church members and friends); Tr. pp. 48-56 (Haverstock), 75-77 (Howington).

14. Bruce Love (Love) is the pastor of pastoral care at the Wheaton Evangelical Free

Church (WEFC). Tr. p. 24 (Love). The WEFC networks with the Church and other churches in DuPage County and surrounding area. Tr. pp. 24-25 (Love).

15. Through networking with other churches, Love learned about the Church's Annex property in late 2005. Tr. pp. 26-30 (Love), 77-78 (Howington); *see also* Applicant Ex. 3.

16. After learning that the Ochoas, a family attending the WEFC, were in the process of being evicted from their home, Love contacted the Church to see if the Ochoas might be able to reside at the Annex property. Tr. pp. 28-29 (Love).

17. The Church subsequently entered into two written leases with the Ochoas for the Annex property. Applicant Ex. 1-h; Tr. pp. 30 (Love), 79-80 (Howington).

18. The written leases conveyed possession of the Annex property to the Ochoas for use as a residence. Applicant Ex. 1-h. Under the written leases, the Church paid for the gas and electric services used on the property. *Id.*

19. The term of the first written lease began on December 29, 2005 and ran through March 31, 2006. Applicant Ex. 1-h. The term of the subsequent written lease began on April 1, 2006 and ran through April 30, 2006. *Id.*

20. After the second written lease term expired, the Church continued to lease the Annex house to the Ochoas, through the middle of July 2006, on an unwritten, month-to-month basis. Tr. pp. 101-03 (Howington).

21. The Ochoas paid the Church rent in the amount of \$750 per month regarding their occupancy of the Annex property, except for one month, for which they paid the Church \$600. Tr. pp. 103-04, 108 (Howington); Applicant Ex. 9 (copy of summary financial reports for 2005-2006) (showing total of \$4,350 in donations received for

Annex property).

22. In January 2006, the Church prepared a form letter to be issued to missionaries it supported financially and to others, which included information regarding the Annex property. Applicant Ex. 4 (copy of Church's January 9, 2006 form letter). That letter provided:

January 9, 2006

Dear

I wanted to let you know that Pleasant Hill Community Church now has a Missionary Residence. We have purchased the home next door to the church, have done some rehab work and are now letting you as our current missionary know that you can schedule the use of this residence when you are in the area for an extended stay.

Attached to this letter are the parameters that we have set for the use of what we affectionately call "The Annex." It is our desire that through the use of this facility, God will enable us to expand our effectiveness in ministry first to you who we have pledged to stand by in monthly support and also to our community as we seek to find ways to minister to them.

At this point we have a family in the residence that has fallen on very difficult times. We are working alongside Wheaton Evangelical Free Church to help this family establish a pattern of good credit, have a place to live and eventually get out on their own. They are in the residence through March, with the option of a 30 day extension for each of the three months after that.

If you plan to be in Wheaton this summer or fall, please let us know. Our preference would be to use the residence for those of you who may be here one week or more, but we also want to be flexible in seeking to serve you.

Please pray with us that we can use this facility to the glory of God.

In His Service,

J. Scott Howington,
Pastor

Applicant Ex. 4.

23. After the Ochoas left, two other families resided within the Annex property for short periods. Applicant Ex. 6 (copy of document titled, Pleasant Hill Community Church Missionary Residence Occupancy and Use Examples), Tr. pp. 101-02, 109 (Howington). Those two families resided at the Annex property for a total of six days. Tr. p. 109 (Howington).
24. Keith Anderson (Anderson) is a Church member and was a member of its board of trustees in September 2005. Tr. pp. 110-11 (Anderson).
25. Anderson owns three rental properties in DuPage County. Tr. p. 111 (Anderson). One of Anderson's properties is one block away from the Church's Annex property, and the house on that property is smaller than the house on the Annex property. Tr. p. 111-12 (Anderson).
26. Anderson charges more rent for the smaller house than the Church charged the Ochoas. Tr. pp. 111-12 (Anderson). He also requires a substantial security deposit. *Id.*
27. Howard Fearon (Fearon) is a Church member and a real estate broker licensed in Illinois. Tr. p. 116 (Fearon).
28. In anticipation of hearing, Fearon compiled a market comparison of residential rental properties that he deemed comparable with the Annex property. Tr. pp. 116-122 (Fearon); Applicant Ex. 13 (copy of Fearon's compilation).
29. Based on his market comparison, Fearon estimated that, during 2006, the Church could have rented the Annex property for between \$1,300 to \$1,500 per month. Tr. pp. 121-22 (Fearon).

Conclusions of Law:

Arguments

At closing argument, counsel for the Applicant argued that the property was being used exclusively for religious purposes because it was being used as a mission that is related to the Church. Tr. pp. 124-25 (closing argument). Applicant also asserts that the evidence shows that the property was not being used with a view toward profit. *Id.* The Department contends that, during the period the property was being used, it was being used with a view to profit. Tr. pp. 126-27. I make no conclusion here on the Department's argument that the property was being used with a view to profit during the period at issue. Rather, I conclude that the evidence shows that the Church's use of the property did not satisfy the terms set forth in the second full paragraph of PTC § 15-40(b).

Analysis

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970). One class of property that the legislature may exempt from taxation is property used exclusively for religious purposes. Ill. Const. Art. IX, § 6 (1970).

Pursuant to the authority granted under the Illinois Constitution, the General Assembly enacted § 15-40 of the Property Tax Code (PTC), which provides — and, during the years at issue, provided — in relevant part:

§ 15-40. Religious purposes, orphanages, or school and religious purposes.

- (a) Property used exclusively for:
 - (1) religious purposes, or
 - (2) school and religious purposes, or
 - (3) orphanagesqualifies for exemption as long as it is not used with a view to profit.
 - (b) Property that is owned by
 - (1) churches or
 - (2) religious institutions or
 - (3) religious denominationsand that is used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, including the convents and monasteries where persons engaged in religious activities reside also qualifies for exemption.
- A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

35 ILCS 200/15-40.

Statutes granting tax exemptions must be construed strictly in favor of taxation, and the party claiming an exemption has the burden of proving clearly and conclusively that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547, 494 N.E.2d 485, 488 (1986); *see also* In the Matter of Jones, 285 Ill. App. 3d 8, 13, 673 N.E.2d 703, 706 (3rd Dist. 1996) (clear and convincing evidence 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.”).

This matter provides a good opportunity to review Illinois case law interpreting PTC § 15-40, at least as it pertains to property owned by an exclusively religious organization and used for residential purposes. I begin with McKenzie v. Johnson, 98 Ill. 2d 87, 456 N.E.2d 73 (1983).

In McKenzie, a property taxpayer in Champaign County sought to have sections of Illinois' PTC that authorized certain property tax exemptions declared unconstitutional, and also sought an injunction prohibiting the Department from granting or approving any such exemptions in prospective tax years. McKenzie, 98 Ill. 2d at 91, 456 N.E.2d at 75. The first section the McKenzie court addressed was § 19.2, the statutory predecessor to current § 15-40. McKenzie contended that the legislature's 1957 amendment authorizing an exemption for parsonages should be declared unconstitutional because parsonages are used primarily for residential purposes and, therefore, could not be used exclusively for religious purposes as required by article IX, section 6, of the Constitution. *Id.* at 97-98, 456 N.E.2d at 76-77 ("In essence McKenzie argues that our cases hold that a parsonage, by its very nature, can never be used exclusively for religious purposes because in every case its residential character must predominate over any other religious uses of the property.").

As the court indicated, McKenzie supported his argument using the court's own, prior interpretation of an earlier version of Illinois' statutory exemption for parsonages, under Illinois' 1870 Constitution. In ultimately rejecting McKenzie's argument, the court distinguished the text of the earlier statute with the text of the 1981 version of § 19.2. Specifically, the court noted that:

The 1905 parsonage exemption declared unconstitutional in *People ex rel. Thompson v. First*

Congregational Church authorized an exemption for “[a]ll church property *** exclusively used for public worship and all parsonages or residences *** used by persons devoting their entire time to church work.” (Emphasis added.) (232 Ill. 158, 161, 83 N.E. 536.) That parsonage exemption is fundamentally different from the exemption provided by section 19.2, the statute involved in this case. In providing an exemption for parsonages whether or not they were used exclusively for religious purposes, the 1905 exemption violated the venerable principle that a property tax exemption created by “statute cannot be made broader than the provisions of the constitution and no property except that mentioned in [the exemption] section [of the Constitution] can be exempted by any law passed by the legislature.” ***

The language of the current parsonage exemption, on the other hand, refers to “all *such* property owned by churches or religious institutions *** and used *** as parsonages ***.” (Emphasis added.) (Ill.Rev.Stat.1981, ch. 120, par. 500.2.) The word “such” refers to the preceding language which allows an exemption only for “property used exclusively for religious purposes.” (Ill.Rev.Stat.1981, ch. 120, par. 500.2.) The current parsonage exemption only lists parsonages to illustrate or describe one type of property that, under appropriate circumstances, may qualify for the general religious property exemption which tracks the language of article IX, section 6, of the Constitution. Unlike the 1905 parsonage exemption the current parsonage exemption is subject to the exclusive-religious-use requirements of the Constitution and does not unlawfully enlarge the area of allowable exemptions.

McKenzie, 98 Ill. 2d at 95-96, 456 N.E.2d at 77.

The McKenzie court also contrasted what it called the “extremely narrow construction of primary religious use” that was embraced within the cases cited by McKenzie, with more recent Illinois authority on tax exemptions, and noted that those more recent cases “do not establish that parsonages may never be used exclusively — that is primarily — for religious purposes.” McKenzie, 98 Ill. 2d at 98-99, 456 N.E.2d at

79. Perhaps the most important point to take from McKenzie is to carefully consider the court's actual holding:

*** Given that residence facilities have, on occasion, qualified for exemption from taxation under the school exemption [citations omitted] and for campus dormitories ..., we cannot say that a parsonage could never qualify for exemption as property used exclusively for religious purposes solely because it is also used for residential purposes. ... Whether a particular parsonage may be entitled to exemption turns on the evidence showing how the parsonage is being used, but the language exempting parsonages in section 19.2 is not unconstitutional on its face.

McKenzie, 98 Ill. 2d at 99-100, 456 N.E.2d at 79.

Shortly after McKenzie was decided, the appellate court issued its decision in Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App. 3d 431, 517 N.E.2d 1178 (2d Dist. 1987). In that case, the Department denied separate applications for property tax exemptions filed by the Evangelical Alliance Mission (TEAM) for 1982 and 1983. Evangelical Alliance Mission v. Department of Revenue (hereinafter, TEAM), 164 Ill. App. 3d at 432, 517 N.E.2d at 1179.¹ The TEAM decision is helpful when resolving this dispute because the facts upon which the court based its decision are readily distinguishable from the facts in this matter, because of the TEAM court's reasoning when ruling upon one particular argument advanced by the Department in that case, and because of the legislature's amendment to PTC § 15-40, after the years at issue in TEAM.

Taking the last two points first, in 1982, the statute authorizing the exemption for

¹ While TEAM filed exemption applications for both 1982 and 1983, the court held that it lacked jurisdiction over the 1983 dispute. TEAM, 164 Ill. App. 3d at 438-39, 517 N.E.2d at 1182-83.

property used exclusively for religious purposes had remained unchanged since 1976, and that statute was the same one the Illinois Supreme Court interpreted in McKenzie. Ill.Rev.Stat. ch. 120, ¶ 500.2 (West) (1983); *compare also* McKenzie, 98 Ill. 2d at 96, 456 N.E.2d at 77 with TEAM, 164 Ill. App. 3d at 440, 517 N.E.2d at 1184. In 1984, however, the Illinois General Assembly amended PTC § 19.2, and, for the first time, expressly articulated when “property owned by churches or religious institutions or denominations and used in conjunction therewith as parsonages or other housing facilities provided for ministers (including bishops, district superintendent and similar church officials whose ministerial duties are not limited to a single congregation) ... shall be considered to be exclusively used for religious purposes” It did so by adding the following text, in a newly drafted second paragraph to § 19.2:

A parsonage, convent or monastery shall be considered for purposes of this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the listed persons who perform religious related activities shall, as a condition of their employment or association, reside in such parsonage, convent or monastery.

P.A. 84-1250, Art. II, § 1, eff. August 4, 1984. By 2005, the legislature had amended the text of that specific paragraph to include and apply to not only parsonages, convents or monasteries, but to any “housing facility” owned by any church or by any religious institution or denomination. 35 **ILCS** 200/15-40 (quoted *supra*, on page 9 of this recommendation).

The 1984 legislative amendment to former § 19.2 substantively changed the statute that had been in effect in 1982 and that was interpreted in TEAM and McKenzie. The substantive difference between the 1976 and 1984 versions of the religious exemption statute is made apparent by the TEAM court’s rejection of an argument

presented by the Department:

... [T]he Department contends that the exemption applies to housing of ministers “who are required by their duties to live there.” This misstates the test set forth in *McKenzie v. Johnson* (1983), 98 Ill. 2d 87, 74 Ill.Dec. 571, 456 N.E.2d 73.

This contention of the Department’s goes to the core question in this case of whether the apartment building parcel was primarily used for religious purposes. In *McKenzie v. Johnson* our supreme court said:

“[A] parsonage qualifies for an exemption [under Ill.Rev.Stat.1981, ch. 120, par. 500.2] if it reasonably and substantially facilitates the aims of religious worship or religious instruction because the pastor’s religious duties require him to live in close proximity to the church or because the parsonage has unique facilities for religious worship and instruction or is primarily used for such purposes.” (Emphasis added.) (McKenzie v. Johnson (1983), 98 Ill. 2d 87, 99, 74 Ill.Dec. 571, 577, 456 N.E.2d 73, 79.)

It is noteworthy that under *McKenzie v. Johnson* it is not necessary that a minister’s duties require him or her to live in the parsonage; rather the exemption is applicable if “the pastor’s religious duties require him to live in close proximity to the church.” (Emphasis added.) (*McKenzie v. Johnson* (1983), 98 Ill. 2d 87, 99, 74 Ill.Dec. 571, 577, 456 N.E.2d 73, 79. *Contra Lutheran Child & Family Services v. Department of Revenue* (1987), 160 Ill. App. 3d 420, 425, 112 Ill.Dec. 173, 177, 513 N.E.2d 587, 591.) Because the religious aims of TEAM as a missionary agency differ from the religious aims of a local church, the *McKenzie v. Johnson* test for the applicability of the exemption to a parsonage provided for the pastor of a local church does not directly apply in the case at bar. However, it does guide our analysis of the issue.

TEAM, 164 Ill. App. 3d at 443-44, 517 N.E.2d at 1186.

There can be no doubt that the TEAM court analyzed the statute that was in effect in 1982. TEAM, 164 Ill. App. 3d at 443-44, 517 N.E.2d at 1186. Thus, the TEAM court’s rejection of the Department’s argument that the statutory exemption for

parsonages should be limited to property used to house persons who are required by their religious duties to live on the property, cannot be considered an interpretation of the legislature's 1984 amendment to PTC § 19.2. Nor can there be any dispute that, after 1984, the Illinois General Assembly essentially agreed with the argument that the TEAM court rejected — that property owned by a religious organization and used as a residence should be considered to be used exclusively for religious purposes when “the ... persons who perform religious related activities shall, as a condition of their employment or association, reside in such [facilities].” P.A. 84-1250, Art. II, § 1, eff. August 4, 1984. The plain text of the statute in effect in 2005 makes clear that, at least for property used as “[a] parsonage, convent or monastery or other housing facility,” the legislature intended the scope of the exemption described in § 15-40(b) to be limited to property that is primarily used by “persons who perform religious related activities” and when such persons “shall, as a condition of their employment or association, reside in the facility.” 35 ILCS 200/15-40(b); see also Chicago Bar Ass’n. v. Department of Revenue, 163 Ill. 2d 290, 301, 644 N.E.2d 1166, 1171-72 (1994) (“[T]axation is the rule. Tax exemption is the exception. Article IX, section 6 (Ill. Const.1970, art. IX, § 6), and any statutes enacted under its provisions must be resolved in favor of taxation.”).

The evidence admitted at hearing shows that the Annex property was not used by any person fitting the legislature's express condition for property to be considered to be used exclusively for religious purposes. The Ochoa family, the persons residing at the Annex property for the longest period during 2006, had no association with the Church, other than as lessees. They were not members of the Church, and they did not attend the Church. Tr. pp. 26-30 (Love). Instead, they attended another church that networked with

the Church. *Id.* Since the Ochoas had no association with the Church, it is not surprising that no member of the Ochoa family was required to reside in the Annex property as a condition of their employment or association with the Church. The association that existed between the Ochoas and the Church was that the Ochoas needed a place to live, and the Church rented the house on the Annex property to them. For purposes of PTC § 15-40(b), it simply does not matter that the Church might have done so for benevolent reasons, or under favorable terms. See Tr. pp. 111-12 (Anderson), 121-22 (Fearon); see also FairviewHaven v. Department of Revenue, 153 Ill. App. 3d 763, 506 N.E.2d 341 (4th Dist. 1987) (“the practice of charity, kindness to other persons and ... the practice of all virtues are encouraged by religious organizations; however, it cannot be stated that they are religious purposes within commonly accepted definitions of the word.”) (*construing Yakima First Baptist Homes, Inc. v. Gray*, 82 Wash. 2d 295, 510 P.2d 243 (1973)). During the six-month lease period, the Ochoas used the property primarily for residential purposes. See Applicant Ex. 1-h. There was no evidence that the property was used for religious purposes at all during that six-month period. In sum, the Ochoas’ use of the property for residential purposes predominated over any claimed, yet unproven, religious use of the property. See McKenzie, 98 Ill. 2d at 99-100, 456 N.E.2d at 79.

The Church also introduced evidence that the Annex property was used for housing two other times during 2006. Once was by a missionary (and his family) who was not supported by the Church, and who stayed at the Annex property for one weekend. Applicant Ex. 6; Tr. p. 101 (Howington). The other time the Annex was used for housing was for one week by a similarly situated family. Applicant Ex. 6; Tr. p. 101 (Howington). But again, in each case, there is no evidence that either of the families

using the property as housing had any specific association with the Church, let alone any evidence that any member of each family was required, as a condition of his association with the Church, to reside at the Annex property. Applicant Ex. 6; 35 ILCS 200/15-40(b).

In addition to the legislature's clear intent to limit the scope of the exemption for property owned by a religious organization and used for residential purposes, the facts of this case are not like the facts involved in the TEAM decision. There, the court summarized the facts regarding the applicant's purpose and those regarding the relationship between the applicant and the persons using the property as a temporary residence:

TEAM's fundamental religious aim is to carry on its missionary ministry in other countries. Similarly, the ministers who are TEAM's missionaries have fundamental religious duties concerning that missionary ministry. The missionaries' duties are cyclical, alternating between those they have during their periods of service in the field and those they have during their periods of furlough. During their furloughs they prepare themselves physically, psychologically, educationally, and financially for service in the field. The furloughs are necessary to the missionary ministry and are therefore mandatory. During the furloughs, TEAM requires all of the missionaries to come to its Carol Stream headquarters for debriefing and other furlough-related activities at least once, and preferably twice. The apartment building, which is next door to the headquarters building, reasonably and substantially facilitates TEAM's aim of religious missionary activity because the missionaries' religious duties to prepare to return to the field require that, for part of their furloughs, they live in close proximity to the headquarters building. The apartment building, which many of the missionaries used during their time in the area of the headquarters building, was, therefore, used primarily for religious purposes and so was tax exempt in 1982.

TEAM, 164 Ill. App. 3d at 444, 517 N.E.2d at 1186.

No similar facts exist here. Here, the Church is a church, not an organization whose fundamental purpose is to send out missionaries to proselytize or to foster some religious purpose. *Compare* Applicant Ex. 2 (statement of purpose in Church's core beliefs and constitution) with TEAM, 164 Ill. App. 3d at 443-44, 517 N.E.2d at 1186 ("Because the religious aims of TEAM as a missionary agency differ from the religious aims of a local church, the *McKenzie v. Johnson* test for the applicability of the exemption to a parsonage provided for the pastor of a local church does not directly apply in the case at bar."). Further, in TEAM, the missionaries residing on TEAM's property during furloughs were TEAM's own missionaries, not just missionaries to whom TEAM provided some financial support. TEAM, 164 Ill. App. 3d at 434, 443-44, 517 N.E.2d at 1180, 1186. In other words, in TEAM, the association that existed between the property owner and the persons actually residing on the property was significant, not incidental or attenuated, as is the case here. *See* Applicant Ex. 6; Tr. pp. 26-30 (Love), 101-02 (Howington).

And while the Church offered evidence that it provided financial support to certain missionaries (Applicant Ex. 3; Tr. pp. 40 (Eskridge), 86 (Howington)), it was not those missionaries that actually resided on the Annex property during 2006. *See* Applicant Ex. 6; Tr. pp. 101-02 (Howington). Moreover, the missionaries that actually resided at the Annex did so for a total of six days during the whole of 2006. Tr. p. 109 (Howington). Here, the Church has simply not shown that the property was primarily used as a housing facility for persons who were required, as a condition of their employment or association with it, to reside on the Annex property. 35 ILCS 200/15-40(b).

Finally, the Church asserts that the property should be granted an exemption for the time during which it was owned by it, and being prepared for its anticipated exempt use. See Weslin Properties, Inc. v. Illinois Department of Revenue, 157 Ill. App. 3d 580, 510 N.E.2d 564 (2d Dist. 1987). But since the property was not, in fact, actually used primarily for religious purposes in 2006, the property was not in exempt use during 2005, when the property was being renovated by Church members and volunteers.

Conclusion:

I conclude that the Church has not satisfied its burden to show that the property was actually being used primarily for religious purposes during 2005 and 2006. Therefore, I recommend that the Director finalize the Department's tentative denial of the Church's application for a property tax exemption, and that the property remain taxable for 2005 and 2006.

January 3, 2008
Date

John E. White, Administrative Law Judge