

KING' S CONTRIVANCE INTERFAITH
CAMPUS, INC.

vs.

STATE DEPT. OF ASSESSMENTS
AND TAXATION

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IN THE
MARYLAND TAX COURT

M.T.C. No. 01-MI-HO-0601

MEMORANDUM OF GROUNDS FOR DECISION

The issue presented by this appeal is whether the State of Maryland erred when it denied a religious property tax exemption for vacant church property being developed. The land is intended to be used for two churches, and while significant pre-construction development and planning activities have occurred, the exemption is being sought prior to actual construction. Property tax exemptions related to religious worship are prescribed by Maryland Code (1985, 1994 Repl. Vol., 2000 Supp.) §7-204 of the Tax Property Article.¹ King's Contrivance Interfaith Campus, Inc., (hereinafter KCIC), Petitioner, has appealed a denial by the Supervisor of Assessments, Respondent, of its petition for exemption from property tax for property used for public religious worship.

As will be more fully described later in this opinion, the property in question is being developed for use as two churches. Although significant pre-construction planning and development activities had taken place during the tax year that is the subject of this appeal, year

¹ Section 7-204, captioned "*Religious groups or organizations*" provides:

Property that is owned by a religious group or organization is not subject to property tax if the property is actually used exclusively for:

- (1) public religious worship;
- (2) a parsonage or convent; or
- (3) educational purposes.

2001-2002, no construction permits had yet been issued and no groundbreaking had commenced. Petitioner argues that most if not all of the church site development process, and the activities attendant thereto, constitute bona fide necessary steps to improve the property in preparation for church operations. As such, it should qualify for a property tax exemption since the site is being prepared for exclusive religious worship.

Respondent asserts that many well-intentioned development projects never come to fruition, and exemption from tax may only be granted when the property is actually used for religious worship. Pursuant to internal departmental policy, respondents have equated “actual use” with the granting of construction permits and groundbreaking. Respondent’s primary argument is that until permits are issued and groundbreaking commences, the project is still speculative and no actual religious use exists.

This Court must decide whether the pre-construction activities as presented by Petitioner in this case are sufficient to constitute “actual and exclusive use” for religious worship under the statute. KCIC is a Maryland non-profit 501(c)(3) corporation formed to facilitate land purchase, development and construction of an Interfaith Center in Columbia, Maryland. The planned Interfaith Center will be a religious facility for use by two individual faith communities, the Orthodox Church of Saint Matthew and the Cornerstone Community Church of God. The Center will consist of two separate church buildings connected by a passageway. Once fully developed, ownership of the property will pass from KCIC to the two individual churches, and each will conduct its respective religious services within their portion of the Interfaith Center. Although KCIC itself is not a church, it is comprised of members from the two congregations, and exists solely to facilitate the development and construction of the Interfaith Center.

There is no dispute that KCIC intends that the property in question be used for religious purposes. Per testimony by KCIC's two witnesses, Father Valencia and Pastor Ware, the joining of these two churches in a cooperative joint religious endeavor comports with special covenants existing in the City of Columbia's "Town Center" zoning. That particular zoning prohibits construction of individual churches, in favor of the Interfaith Center concept involving two or more churches operating in cooperation with one another. The purpose of this zoning regulation is to promote understanding and cooperation among diverse religious groups. In addition to these special zoning conditions, a separate but related condition of the purchase deed received by KCIC for the property states "that the property herein conveyed shall be used solely for construction of religious facilities or church-educational facilities." KCIC was formed to ensure compliance with both the Town Center zoning requirements and with the deed covenants. Although Respondent raised some question of whether a corporation such as KCIC would qualify for exemption under the statute, even if all other conditions for exemption were met, this Court has no difficulty concluding that KCIC was formed to facilitate compliance with local zoning requirements, and its corporate existence does in no way diminish its religious purpose.

Both witnesses for KCIC described the substantial time, money and effort expended by themselves and other church members to move toward realizing their goal of a fully functional Interfaith Center. At the time of this appeal, however, actual church construction had not yet commenced. Testimony established that early in the development process, KCIC had engaged an architect and gone through multiple iterations of construction drawings, as well as hiring the services of other construction professionals including a civil engineer, a traffic study expert, soil experts and so forth, all for the purpose of preparing a Site Development Plan that would meet with approval by the County. Pre-construction development planning by KCIC had

commenced even prior to actual purchase of the property, and continued throughout the first year of ownership.

Despite these efforts, KCIC's petition for a property tax exemption was denied. Testimony from Mr. Young, Respondent's witness who testified that he was in charge of the State's exemption approval process, indicated that KCIC's application was denied because actual construction permits had not yet been issued, and actual construction had not yet commenced. This witness further stated that even at the time of the current Tax Court hearing, actual construction still had not begun. Mr. Young further opined that it would likely not be until 2003 before Petitioner received a construction permit due to the complexity of the permitting process and other factors. Much of this witness's testimony concerned the State's perception that KCIC had inadequate funding for a project of this magnitude, and he testified that this perceived lack of funding also played a role in denying the application for tax exemption. Later in the hearing, both KCIC witnesses strongly disputed any lack of funding, citing existing funding commitments from financial institutions, as well as funds to be provided from within each church congregation as soon as the funds became necessary.

This Court is not persuaded that any perceived lack of funding is relevant to the question of eligibility under the statute for a religious property tax exemption. Despite the State's concerns regarding funding, no evidence was presented to suggest that either church had ever failed to timely pay for any step in the development process. To the contrary, KCIC's witnesses testified that significant funds had already been committed, and spent, in reaching the current state of development readiness. KCIC further contended that money would be drawn down as soon as needed, but that there was no reason to tap into their remaining finances until construction permits were issued and construction could commence. Finally, with respect to

this particular funding issue, neither funding nor the lack thereof is mentioned in the statute as a pre-requisite for a religious property tax exemption. Actual and exclusive use for religious worship is what matters. Fortunately, religious prayer or other forms of religious worship typically do not require any price of admission.

A great deal of testimony concerned the County's difficult, time-consuming and delay-prone approval process for gaining construction permits. KCIC testified that construction on the two churches would already have been well underway, or possibly even been completed, but for the tedious and time-consuming County approval process for its Site Development Plan. KCIC cited the fact that it was required to re-submit its Site Development Plan five times before it was eventually approved. Per testimony from KCIC's witnesses, these resubmissions were unrelated to anything KCIC had neglected to do, or because of any deficiency in the KCIC application, but were caused by a change in County wastewater management policies midway through the approval process. They described a bureaucratic approval process that takes many months to complete, even under normal circumstances. KCIC testified that the County's mid-stream policy changes merely served to exacerbate an already tedious system.

KCIC asserts that the property should be exempt from property tax under §7-204 due to the extensive time, effort and money already expended in site planning and development. KCIC cites the tangible pre-construction activities that had commenced on its part even before the original property purchase, and which continued consistently thereafter. KCIC argues that it should not be penalized for County policy changes not under its control, and that it has complied in good faith with every County policy change and every County permit requirement. KCIC contends that it has taken every active development measure and performed virtually every task required of it to comply with the bureaucratic County site development approval process. To

support its eligibility for the exemption, KCIC cites *Montgomery County v. Meany*, 34 Md. App. 647, 368 A.2d. 1107 (1977). Quoting from *Meany* in a Post Trial Memorandum requested by the Court, KCIC asserts, “the test [for eligibility for tax exemption] seems to be whether the institution is in the process of bona fide necessary preparation for its operations through the repair and improvement of the property.”

The taxpayer in *Meany* was an educational institution that had purchased existing facilities and was remodeling them for its own uses. Although the taxpayer did not conduct educational activities during the tax year in question, the court upheld the educational exemption for the property. In so doing, the Court stated:

It is evident that the appellees were not required to be conducting classes on the determinative day of the taxable year. The test seems to be whether the institution is in the process of bona fide necessary preparation for its operations through the repair and improvement of the property.
Meany, 368 A.2d 1107 at 1110.

KCIC argues that its extensive development efforts and expenditures, all made in good faith and all made for an exclusive religious purpose, constitute tangible improvements to the property and meet the *Meany* standard, thus qualifying KCIC for the exemption. KCIC testified that it purchased the subject property in March 2001, and has been engaged since in continuous preparation of the property for its use as an interfaith worship center. KCIC purchased title and liability insurance for the property, had soil tests and traffic analysis studies conducted, applied for building permits, and submitted fire hydrant placement, wetlands certificates, and a Site Development Plan to the Howard County Department of Planning and Zoning. KCIC cannot begin excavation or construction until all the requisite county permits have been obtained. Therefore, KCIC argues that consistent with the *Meany* standard, it is

making the bona fide necessary preparations for its operations, thus satisfying the legislative intent to promote religious use through exemption from property taxation.

Respondent, in its Post Trial Memorandum, argues that under the *Meany* test, as now applied under the current more restrictive statute for religious organizations, Tax Property Article §7-204,² KCIC does not merit any exemption. The operative statute under which *Meany* was decided was Article 81, Section 9(8), the educational and charitable exemption statute, which provided as follows:

Educational and literary institutions. – Buildings, furniture, equipment and libraries owned and used exclusively by educational or literary institutions, no part of the net income of which inures to the benefit of any private shareholder or individual and the ground not exceeding (outside of any city) 100 acres in area, appurtenant thereto, and necessary for the respective uses thereof.

The *Meany* court made reference to the more liberal scope of Section 9(8) in footnote 4 of its opinion:

Although the statute does not seem to require actual use for educational purposes a prior less restrictive statute was so construed by the Court of Appeals in *Md. State Fair v. Supervisor*, 225 Md. 574, 172 A.2d 132 (1961). We will so construe the statute under consideration. For a subsequent change, see Md. Code Article 81, Section 9(e). *Meany*, 647 Md. at 651

The new educational/charitable exemption statute, Article 81, Section 9(e) (now Tax-Property Article, Section 7-202), as enacted after the *Meany* decision by 1972 Md.Laws ch. 350³ at p.1138, provided as follows:

² *Meany* was decided under former Article 81, §9(8) the educational and charitable exemption statute which Respondent contends was less restrictive than the current educational and charitable exemption statute, Tax-Property Article, §7-202.

³ This enactment completely revamped property tax exemptions and narrowed the range of exempt property. See *Supervisor v. Trustees, Bosley Methodist Church*, 293 Md. 208, 213 ff. (1982).

Article 81, Section 9(e) - *Charitable, Benevolent, and Educational Property* - Property [is eligible for an exemption when it is] owned by any nonprofit charitable, fraternal, benevolent, educational, or literary institutions or organizations. . . when any of such property described above is actually used exclusively for and necessary for charitable, benevolent, or educational purposes (including athletic programs and activities of an educational institution) in the promotion of the general public welfare of the people of the State. . . . This exemption shall also extend to any property used for the purposes set out in this subsection, which is held by a corporation or association or by trustees for the sole benefit of any of the above organizations.

This section was recodified in 1985 as Tax-Property Article, § 7-202(b), without substantive change, and remains substantively the same today.

As pointed out in Respondent's Post Trial Memorandum, the religious exemption statute was also a more liberal statute during the *Meany* time frame until it was narrowed by 1972 Md.Laws ch. 350. That statute, former Article 81, Section 9(4), the religious property exemption statute, provided that the following property was exempt:

Houses and buildings used exclusively for public worship, and the furniture contained therein, and any parsonage used in connection therewith, and the grounds appurtenant to such houses, buildings and parsonages and necessary for the respective uses thereof.

The new, more narrowly drawn statute, Article 81, Section 9(c) provided as follows:

Churches - Property owned by a religious group or organization and actually used exclusively for public religious worship, including parsonages and convents, and property owned by any such group or organization and actually used exclusively for educational purposes.

This major statutory change was discussed by the Court of Appeals in *Supervisor v. Trustees, Bosley Methodist Church*, 293 Md. 208 (1982). The Court noted that the new law for church exemptions, Art. 81, Section 9(c), was "tightly drawn". *Bosley*, 293 Md. at 214. The Court set forth the four requirements that must be met.

'First, the property must be owned by a religious group or organization;' second, the property must be used for 'public religious worship;' third, the exempt use must be 'actual;' and fourth, the exempt must be 'exclusive.'

One important change mentioned by the Court was the insertion of the word "actually used" into the statute. The Court discussed the importance of this language by quoting with approval from *State v. Ritschel*, 20.N.W.2d at 673, 677-78 (Minn. 1945):

[t]he plain inference is that the words 'actually used' were inserted ... to make plain that use in fact for [exempt] purposes was essential for exemption. Of course, in a philosophical sense the word actually added nothing; a thing is actually used and occupied or it is not used and occupied at all. But the word was used with some meaning, and that meaning, if it can be discovered, must be given to it. This we think can be done. 'Actually' is often used with other words as opposed to 'constructive' and means 'an actual or existing fact,' 'really,' 'in fact,' and the like. 2 Words and Phrases, Perm. Ed., pp. 257-258. Where a statute granting exemption from taxation of property used for certain purposes is amended by providing that the exemption shall apply to property 'actually used' for those purposes, the insertion of the word 'actually' before the word 'used' evinces an intention that the use must be actual and present. *Bosley*, 293 Md. at 216.

Respondent argues that, with reference to the facts of this case, KCIC's property was vacant land and was not actually used for public religious worship, or for any use other than for future use for religious purposes, during the tax year July 1, 2001 through June 30, 2002.

With respect to the instant case, this Court also finds significance in the *Bosley* discussion concerning the Legislature's insertion of "actually used" in the newer statute. Despite the Petitioner's poignant description of the challenges it had to overcome while contending with the tedious County approval process, and the costs incurred therein, this Court must agree with Respondent. The plain language of Tax-Property Article §7-204 requires exclusive and *actual use* for public religious worship [emphasis supplied]. The Petitioner has presented substantial evidence of its unrelenting efforts to prepare the property for such use, but no actual religious

activity had yet taken place during the requisite tax year. Pre-construction planning alone, without at least some action taken on the property itself such as grading or other form of groundbreaking, cannot constitute actual religious use. This Court does not question the dedication and commitment to a religious purpose that has been amply and factually demonstrated by KCIC in pursuing its goal of an Interfaith Center for religious worship. The Court cannot, however, ignore the express action taken by the Legislature in 1972 by amending prior law to introduce a requirement for actual use, not contemplated use.

It is well settled that the tax-exemption statutes are to be strictly construed in favor of the taxing authority. In *Supervisor of Assessments v. Keeler*, 362 Md. 198, 209, citing *Chesapeake and Potomac Telephone Company of Maryland v. Comptroller of the Treasury, Retail Sales Tax Division*, 317 Md. 3, 11, 561 A.2d 1034, (1989) (quoting *Xerox Corp. v. Comptroller*, 290 Md. 126, 137, 428 A.2d 1208, 1214-15 (1981)), the Maryland Court of Appeals stated:

It is fundamental that statutory tax exemptions are strictly construed in favor of the taxing authority and if any real doubt exists as to the propriety of an exemption that doubt must be resolved in favor of the State. In other words, ‘to doubt an exemption is to deny it’ [T]he State’s taxing prerogative is never presumed to be relinquished and the abandonment of this power must be proved by the party asserting the exemption.

The Court went on to state that, on the other hand,

[A] strict construction does not preclude a fair one, *Maryland State Fair v. Supervisor*, 225 Md. 574, 588, 172 A.2d 132, 139 (1961). Rather it still contemplates a construction that effectuates the legislative intent and objectives; ‘it does not require that an unusual or unreasonable meaning be given to the words used in an exemption statute.’ *Id.*; *Standard Oil Co.*, 181 Md. at 640, 31 A.2d at 622-623; *Whitehall*, 214 Md. at 320, 135 A.2d [at] 300. In other words, the rule of strict construction of tax exemptions does not call for strained or unreasonable construction to the extent of being adverse to the real legislative intention, for the judicial interpretation

must always be in accordance with the actual meaning of the lawmaking power.

In *Keeler*, the Court granted an exemption for 16.5 acres of undeveloped land situated adjacent to the primary church site. It is important to note that an active church already existed, and the adjacent land was considered by the court to be an extension of that church site.

The Court stated:

What is disputed is whether these 16.5 acres are used, actually and exclusively, for religious worship, whether their being a part of the church site – the lot on which the church is built, if you will – constitutes a sufficient use to justify the application of the exemption to them.

Keeler at 213.

Selected additional discussion in *Keeler* supports the need for there to be an active religious activity or “actual” use in order to extend the benefits of tax exemption to adjacent undeveloped church property. The Court said:

We believe that the determination of whether a parcel of land is tax exempt does not turn on the property’s level of development. Rather, under §7-204 the exemption depends on the actual use of the property and whether that religious worship use is exclusive. In the present case, it does not follow that, merely because the appellee has been required, or decided, to leave a large portion of the church property undeveloped, the property is not being used – it clearly is as the site of the church – or that the congregation will not use the property in its natural state to enrich its worship experience.

Keeler at 220.

Keeler can be distinguished from the case at bar where no church yet exists on the KCIC property. The existence of an active church in *Keeler* triggered the necessary actual use from which the Court extended the tax exemption to the surrounding undeveloped property. In the present case, there is no active church. Further, no evidence was presented to suggest that any religious prayer, meditation or other spiritual manifestation has yet commenced on the development site. Thus, there is simply no actual religious worship yet in existence to permit

granting of the religious tax exemption. Even given the leeway expressed by the Court of Appeals that an exemption “does not turn on the property’s level of development,” it is clear to this Court that exclusive and actual use for religious worship of at least some portion of the land (i.e., a church or its religious counterpart, or other active manifestation of religious worship such as prayer or religious meditation) is required. Indeed, despite the delays that were largely not the fault of KCIC, the church development site has yet to break ground. Arguably, one might conclude that even groundbreaking alone would not meet the test of “actual use” for religious worship. The State, however, has seen fit to use groundbreaking as its measure of “actual use,” and it is unnecessary for this Court to consider that question.

Accordingly, the Court will pass an Order affirming the decision of the Respondent to deny the exemption.