

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>BOYS HOPE GIRLS HOPE OF COLORADO, INC.,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINISTRATOR.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Felicity Tompkins, Esq. Address: Dill Dill Carr Stonbraker & Hutchings 455 Sherman Street, Suite 300 Denver, Colorado 80203 Phone Number: (303) 777-3737 E-mail: Attorney Reg. No.: 31652</p>	<p>Docket Number: 38019</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 27, 2002, Debra A. Baumbach and Karen E. Hart presiding. Petitioner was represented by Felicity Tompkins, Esq. Respondent was represented by Larry A. Williams, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**App No. 00-475, File No. 30-01982-01,
(Jefferson County Parcel 5122200002)**

Petitioner is protesting the property tax exemption denial issued by Respondent for tax years 1999, 2000, and 2001 for the subject property, a 60-acre tract of vacant land located near Evergreen, Colorado.

ISSUES:

Petitioner:

Petitioner contends that they are a not-for-profit organization that aids at-risk children. They were deeded the subject property in 1999 and applied for an exemption. The exemption was denied due to two primary issues 1) non-ownership of the property, and 2) lack of actual use of the property. Petitioner contends that when property is deeded reserving a life estate, the property is owned by the grantee, regardless of the life estate. The life estate retains control, but the actual ownership is to the Petitioner. They admit that there are no improvements affixed to the property, but they intent to add improvements at a future date, as funding allows. Limited funding should not be an impediment to the exemption; there will be future outdoor activities.

Respondent:

Respondent contends that Petitioner does not own the subject property, only a residual interest. The county records say the life estate is the owner. Additionally, Petitioner has not used the property. There is no evidence that Petitioner has taken control of the property; there are no signs and no evidence of use. Exemptions cannot be granted under the charitable purposes statute without actual use; an intended future use does not qualify for an exemption.

FINDINGS OF FACT:

1. Petitioner's witness, Ms. Deborah O'Dwier, testified that Petitioner was given a deed to the subject property in January of 1999. They applied for a tax exemption in August of 2000. The request for exemption was denied.
2. Ms. O'Dwier testified that there is no structure affixed to or built upon the property. Petitioner had a structure designed by an architect, but the cost was beyond their budgetary means. They would like to erect a structure where the children could stay for up to a week and use it for a recreational purpose. They want to make the subject property available for hiking and other outdoor activities.
3. In cross-examination, Ms. O'Dwier testified that Petitioner has access to the property today. She admitted that they cannot mortgage or sell the property. Architectural plans were submitted in June of 2001, which was subsequent to their exemption application. There is no building on the property now and no present intent to start construction. The property is located in Evergreen. She has not been to the property.
4. In redirect, Ms. O'Dwier testified that there was an agreement for a charitable transfer entered into at the time of the deed. The grantor, Mr. Weiland, imposed some restrictions at that time. He wanted the subject property used for disadvantaged children under the age of 19. He also wanted some construction for children activities and retreats. She pointed out that they do not have to wait for Mr. Weiland's death to build improvements.

5. In recross, Ms. O'Dwier admitted that they have not implemented Mr. Weiland's requests due to budget problems. She admitted that there are restrictions as to which children may use the property; it will not be used for rehabilitation of youths having juvenile convictions of offenses, which would be felonies if they were adults.

6. Petitioner is requesting a property tax exemption for the subject property for tax years 1999, 2000, and 2001.

7. Respondent's witness, Ms. Karen Dvorak, an examiner for the Exemptions Section of the Division of Property Taxation, testified that she is familiar with the subject property. They received the exemption application on September 15, 2000. The application was applied for under Colorado Revised Statutes 39-3-108(1)(a).

8. Ms. Dvorak testified that she has twice visited the subject property. It is a 60-acre tract located south of Evergreen. It is mountainous, forested terrain; it is not easy to access. The only road to access the subject property is a gated private road, which leads to another parcel. She has visited the property twice; there was no evidence of use, no construction, and no apparent use of paths. She found that none of Mr. Weiland's wishes as shown in Exhibit 4 were implemented. There has been no documentation of present use. Exemptions are granted based on present use, not some future use.

9. Ms. Dvorak testified that she reviewed county records, which stated the owner is the Herbert Weiland Life Estate, as of August of this year. She believes a life estate reserves the ownership of the property. The Herbert Weiland Life Estate is responsible for the taxes.

10. She recommended the application be denied as the property is neither owned by the applicant nor is it used.

11. In cross-examination, Ms. Dvorak, testified that the owner of the property usually pays the taxes. She agrees that a quitclaim deed does transfer ownership. She believes that the Petitioner has a remainder interest.

12. Ms. Dvorak testified that the first qualifier for ownership is that the county assessor's office must show that the Petitioner is the owner. If a deed is supplied with the application, they will look at it, as it was in this case.

13. Ms. Dvorak testified that there is a difference in the use definition of a property exempted for charitable purposes versus an exemption for religious purposes. Religious properties can be used as little as once a year. The charitable non-residential statute requires that an exemption will not be granted until there is sufficient use of the property or construction has begun. For these reasons, she does not believe the **Pilgrim Rest Baptist Church, Inc. v. Property Tax Adm'r, 971 P.2d 270 (Colo. App. 1998)** case quoted by Petitioner's counsel applies.

14. In redirect, Ms. Dvorak testified that there must be evidence that there is a gift provided to the general public. They rely on the assessor's records to determine who owns the property.

15. Upon questioning by the Board, Ms. Dvorak testified that there is no evidence that there were any trails or footpaths on the subject property, and it is difficult to get to. There is no use of the property at all. Regardless of the ownership issue, there must be use for the property to be exempted.

16. Respondent denied the exemption application, based on non-ownership and lack of use.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property does not qualify for an exemption under the applicable statute 39-3-108(1)(a), for tax years 1999, 2000, and 2001.

2. The Board was convinced that the subject property is owned by Petitioner. The subject property was deeded to Petitioner by Quit Claim deed, although restrictions of its use do apply, and a life-estate encumbers the property.

3. However, Petitioner, through admissions of its own witness, is not using the property. The Board understands that Petitioner has budgetary restrictions that have prevented the erection of structures upon the subject, and that Petitioner intends to use the subject property in the future. However, according to 39-3-108(1)(a) C.R.S., some type of use must occur; an intended future use is not sufficient. This requirement of use is also listed on the Application For Exemption form in Section 11E, which clearly states “(NOTE: Unused property CANNOT be granted exemption).” The Board concurs with the Property Tax Administrator’s use requirement interpretation.

4. The Board was not convinced that the application of **Pilgrim Rest Baptist Church, Inc. v. Property Tax Adm’r, 971 P.2d 270 (Colo. App. 1998)** should be applied to this case. The religious exemption statute has different qualifiers than the charitable exemption statute.

5. After careful consideration of all the testimony and evidence presented, the Board affirms the Property Tax Administrator’s denial of property tax exemption.

ORDER:

The petition is denied.

APPEAL:

This order may be subject to appeal as provided in 39-4-109(1) C.R.S. to the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 4th day of October, 2002.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

Karen E. Hart
Karen E. Hart

This decision was put on the record

OCT 03 2002

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Penny S. Bunnell
Penny S. Bunnell

