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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. GEOFFREY J. O'CONNELL

Justice

TRIAL/IAS, PART 10
NASSAU COUNTY

BETHEL UNITED PENTECOSTAL CHURCH, INC.,

Plaintiff(s),

-against-

INDEX No. 11433/00

MOTION DATE: N/A

WESTBURY 55 REALTY CORP., INTERAMERICAN
MORTGAGE CORP., COUNTY OF NASSAU,
WESTBURY SCHOOL DISTRICT, INCORPORATED
VILLAGE OF OLD WESTBURY,

Defendant(s).

PETER ZAHAKOS, AS ESCROW AGENT,

Nominal Defendant(s).

WESTBURY 55 REALTY CORP.,
INTERAMERICAN MORTGAGE CORP. and
PETER ZAHAKOS, ESQ., as Escrow Agent,

Plaintiff in Counterclaim and
Cross-Claim,

-against-

BETHEL UNITED PENTECOSTAL CHURCH, INC.,

Defendant in Counterclaim,

COUNTY OF NASSAU, WESTBURY SCHOOL
DISTRICT and INCORPORATED VILLAGE OF
OLD WESTBURY,

Defendant in Cross-Claim,

-against-

NEW YORK STATE BOARD OF EQUALIZATION
AND ASSESSMENT,

Additional Defendant in
Counterclaim and Cross-Claim.

This matter involves a reduced assessment for agricultural uses upon the subject property pursuant to Article 25-AA of the Agricultural and Markets Law. In a prior decision (*Bethel United Pentecostal Church v Westbury 55 Realty*, Index No. 11433/00, dec. Oct. 17, 2001) and order this Court found that it was unable to determine when the property had been converted to a non-agricultural use and invited further submissions to permit it to reach a conclusion.

Factual Background

The underlying facts were fully set forth in the prior decision. For present purposes it suffices to note that the last commitment to continue agricultural production on the property for an eight year period was filed in 1994. The agricultural use had been as an equestrian facility for which a barn and paddocks had been utilized.

The parties have identified three dates as having potential significance with respect to when the conversion from an agricultural use took place. A letter dated April 16, 1997 from Thomas T. Kontogiannis was received by the Nassau County Department of Assessment on April 18, 1997. The letter states in pertinent part: "Please be advised that the property on Tax Map Sec. 17, Block 16, Lot 9 formerly used as a commercial horse farm is now a privately owned single family residence with attached stables on approximately 14 acres." At the time Thomas T. Kontogiannis was President of Westbury 55 Realty Corp. which held title to the premises.

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On June 25, 1999, Bethel United Pentecostal Church acquired the property. Nassau County terminated the agricultural exemption effective for the 1999 County Tax Year and the Westbury School District terminated it for the 1999/2000 school tax year. The second significant date occurred in or about November of 2000 when the Bethel United Pentecostal Church applied for a building permit. The application was approved on Nov. 15, 2000.

Finally, on Jan. 23, 2001, an inspector for the Board of Fire Underwriters inspected the premises and issued a certificate with respect to wiring that had been done. This work was done in relation to the renovation of the stable and barn for use as a church.

Applicable Law

Subdivision 2(a)(i) of § 306 of the Agriculture and Markets Law provides that if land which received an agricultural assessment is converted “at any time with eight years from the time of an agricultural assessment was last received, such conversion shall subject the land so converted to payments in compensation.” The amount of the payments is five times the taxes saved “in the year in which the land benefitted from an agricultural assessment, plus interest of six percent per year compounded annually for each year in which an agricultural assessment was granted, not exceeding five years.” It appears undisputed that the agricultural assessment was last received for Nassau County tax year 1998 and for School District tax year 1998/1999. Accordingly, whether the conversion is deemed to have occurred on about April of 1997 when the Kontogiannis letter was written, or in November of 2000 when the Church applied for the building permit, or January 23, 2001 when the new wiring was in place, the “conversion” was within five years of the receipt of the last agricultural assessment. (*Matter of Pezzo v Mazzett*, 202 AD2d 935 [3d Dept, 1994]; *Matter of Karlin Farms*, 197 AD2d 32 [2d Dept, 933]; 8 Op. Counsel SBEA (State Board of Equalization Assessment) No. 67). In its prior decision this Court was under the misapprehension that the date of the conversion had significance in calculating the amount due, but a closer review of the statute reveals that it does not.

It is argued on behalf of Petitioner, however, that only 35% of the property has been converted so that the amount due, which apparently is agreed to total \$819,278.82, should be reduced to \$286,747.60. This argument is based on Agriculture and Markets Law § 306(2)(a)(ii). Unlike the farm in *Matter of Karlin Farms* (197 AD2d 32 [2d Dept, 933]), the parcel here at issue has not been subdivided and must be viewed as a whole.

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The Master Plan submitted by Petitioner indicates that the Church contemplates further development of the property which its pastor acknowledged in an affidavit of July 11, 2001. Thus, the entire parcel has been devoted to use as a church, a nonagricultural use. Those portions of the property which are not currently being used as a house of worship are used for ancillary church-related purposes including being held for future expansion. Were the Court to accept Petitioner's argument, then not only might a developer of a tract converted from a farm argue that undeveloped lots had not been "converted", but each homeowner might argue that only the portion of the lot actually occupied by the house had been converted and not the front and back lawns.

The Court finds that the property was converted to a nonagricultural use no later than January 23, 2001.

The Petition is denied.

It is, SO ORDERED.

Dated:

Jan 23, 2002



HON. GEOFFREY J. O'CONNELL, J.S.C.

ENTERED

JAN 30 2002

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**