

REPRESENTATIVE FOR PETITIONER:

James Starks, Chairman Trustee

REPRESENTATIVE FOR RESPONDENT:

Nicole Webb, Exemption Analyst, Marion County Assessor’s Office

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

LITTLE BETHEL MISSIONARY)	Petition No.: 49-101-14-2-8-00035
BAPTIST CHURCH,)	
)	Parcel No.: 1006388
Petitioner,)	
)	County: Marion
v.)	
)	
MARION COUNTY ASSESSOR,)	Assessment Year: 2014
)	
Respondent.)	

Appeal from the Final Determination of the
Marion County Property Tax Assessment Board of Appeals

August 18, 2016

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

ISSUE

1. Is the subject property owned, occupied, and predominantly used for religious and charitable purposes so that it is exempt from property tax under Ind. Code § 6-1.1-10-16?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

2. On September 25, 2013, Petitioner, the Little Bethel Missionary Baptist Church, applied for an exemption. On July 2, 2014, the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) sent the Petitioner notice of its determination denying the requested exemption and finding the land and improvements 100% taxable. The Petitioner then timely filed a Form 132 petition with the Board.
3. On May 25, 2016, our designated administrative law judge, Gary Ricks, held a hearing on the petition. Neither he nor the Board inspected the property.
4. James Starks, the Petitioner’s “chairman trustee”, and Nicole Webb, an exemption analyst for the Respondent, Marion County Assessor, were sworn as witnesses and testified. The parties offered no exhibits.
5. The following items are recognized as part of the record:
 - Board Exhibit 1 – Form 132 petition with attachments,
 - Board Exhibit 2 – Hearing notice,
 - Board Exhibit 3 – Hearing sign-in sheet.

SUMMARY OF PETITIONER’S CASE

6. The subject property is entitled to exemption based on its charitable and religious use. A person gave the Petitioner the property in exchange for the Petitioner agreeing to pay the property taxes. Although the property is currently unused and unoccupied, the Petitioner originally planned to remodel the existing building¹ and use it as a food pantry and mission house. Because of high financing costs, the Petitioner cannot remodel the building in the near future. It therefore plans to demolish the building in 2017 and put in

¹ In its exemption application, the Petitioner alternately indicated that the property did not have a building and that it was claiming a 100% exemption for improvements as well as for land and personal property. Starks, however, testified that the property has a building. *See Bd. Ex. 1; Starks testimony.*

a gravel parking lot for “the fundamentalists”² to park so they don’t have to park on Sutherland. The Petitioner needs more parking. *Starks testimony.*

SUMMARY OF RESPONDENT’S CASE

7. To qualify for an exemption under Ind. Code § 6-1.1-10-16, a building must be owned, occupied, and used for educational, literary, scientific, religious, or charitable purposes. The PTABOA denied the application because the Petitioner indicated that the property was unoccupied and unused, and it did not specify any future use. *Webb testimony.*

BASIS FOR EXEMPTION

8. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton County Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). A taxpayer bears the burden of proving it is entitled to an exemption. *Oaken Bucket*, 938 N.E.2d at 657.
9. All or part of a building that is owned, occupied, and predominantly used for educational, literary, scientific, religious, or charitable purposes is exempt from taxation. *See* I.C. §6-1.1-10-16(a); I.C. §6-1.1-10-36; *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Ass’r*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct. 2009) *reh’g den.* 914 N.E.2d 13 (Ind. Tax Ct. 2009). That exemption extends, among other things, to the land on which the building sits and to a parking lot or structure that serves such a building. I.C. § 6-1.1-10-16(c)(1) and (2). It also extends to tracts of land bought for purposes of erecting such a building, provided “not more than four (4) years after the property is purchased, and for each year after the four (4) year period, the owner demonstrates substantial progress and active pursuit towards the erection of the intended building and the use of the tract for exempt purposes.” I.C. § 6-1.1-10-16(d).

² The digital recording of the hearing does not clearly reproduce what Starks said when he described who would use the parking lot, but sounds like he said “the fundamentalists.”

10. Because exemption statutes release properties from bearing their fair share of the cost of government and disturb the equality and distribution of the common burden of government, they are strictly construed against the taxpayer. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). But the listed purposes must be construed broadly and in accordance with their constitutional meaning. *Trinity Episcopal Church, v. State Bd. of Tax Comm'rs*, 694 N.E.2d 816, 818 (Ind. Tax Ct. 1998). In deciding whether a given use qualifies as exempt, we focus on whether there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *Knox County Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005).
11. The Petitioner seeks an exemption on grounds that the subject property was owned, occupied, and used for charitable and religious purposes. Although the Petitioner gave few details, there appears to be no dispute that its original intended use of the property as a food pantry and mission house would qualify. But the Petitioner did not use the property for those purposes, or for any other purpose, on March 1, 2014 or anytime thereafter.
12. The public does not derive any benefit from property that is not being used or taxed. *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 853-54 (Ind. Tax Ct. 1990). Thus, ownership alone does not qualify a property for exemption; a taxpayer's intention to use the property for an exempt purpose must be more than just a dream. *See id.*; *see also, Trinity Episcopal Church*, 694 N.E.2d at 818-19. In *Foursquare Tabernacle*, a church claimed an exemption for property consisting of several parcels of land on which it planned to build a world-class tabernacle. *Foursquare Tabernacle*, 550 N.E.2d at 851. The church brought in approximately \$10,000 annually, and the expected cost was up to \$5 million. Yet the church had not designated any savings for the project. It also needed additional properties, which might never be available, to accommodate the construction. *Id.* The

church had not taken steps to obtain proper zoning. Indeed, its lone step toward realizing its goal was to contact a builder who merely provided some standard information. *Id.*

13. The church claimed an exemption under Ind. Code § 6-1.1-10-16(d), which at the time allowed an exemption for a tract of land up to 40 acres if it was bought for purposes of erecting a building that would be exempt under Ind. Code § 6-1.1-10-16(a) or (b). *Id.* at 853. The church moved for summary judgment, arguing that it needed only state its intention to use the property for exempt purposes without any other evidence. The court disagreed, quoting the following language from the Ohio Supreme Court with approval:

The intent to use such property for an exempt purpose must be one of substance and not a mere dream that sometime in the future, if funds can be obtained, the entity would so use such property. In other words, it must be shown that the entity, at the time the application for exemption is made, is actively working toward the actual use for the public benefit. Evidence that surveys have been made and plans drawn or that active fund-raising campaigns are being carried on is indicative that the exempting use will be made of the property within a reasonable time.

Id. at 854 (quoting *Holy Trinity Protestant Episcopal Church v. Bowers*, 172 Ohio St. 103, 173 N.E.2d 682, 685 (1961)). While the Tax Court did not doubt the minister's word, it found a lack of objective evidence to support the church's entitlement to an exemption and held that a material question of fact existed about the property's future use. *Id.* at 854-55.

14. Eight years later, the Tax Court decided *Trinity Episcopal Church*. In that case, the taxpayer claimed an exemption under Ind. Code § 6-1.1-10-16(a) for a building it was renovating and planned to lease to the Marion County Health and Hospital Corporation for use as a community mental health center. The renovations were costly and were in progress on the assessment date. They were completed a little over four months later, at which time the church leased the property as planned. *Trinity Episcopal Church*, 694 N.E.2d at 817. The State Board of Tax Commissioners denied the exemption because the building was vacant on the assessment date. *Id.* at 817.

15. The Tax Court reversed, holding that a taxpayer's actions in preparing a building to be used for exempt purposes in the future may qualify it for property tax exemption under Ind. Code § 6-1.1-10-16(a). *Id.* at 818. But as the court once again explained, ownership alone does not suffice; the intent to use a property for an exempt purpose must be "more than a mere dream." *Id.* (quoting *Foursquare Tabernacle*, 550 N.E.2d at 854). In the case before it, the court found that the taxpayer's intent was no mere dream; instead, the taxpayer had taken concrete steps at great expense to prepare its building for use as a mental health center. Thus, the building qualified for an exemption because, as of the assessment date, the taxpayer held the building with the intent to use it for exempt purposes in the future. *Id.* at 818-19.

16. We do not doubt the Petitioner's intention to one day use the subject property as a food pantry and mission house. But its actions are a far cry from the prompt, concrete steps taken by the taxpayer in *Trinity Episcopal Church*. Indeed, like the taxpayer in *Foursquare Tabernacle*, the Petitioner offered no objective evidence to show its intention was more than a mere dream.³ It did not point to any fundraising or other activities to indicate it would fulfill its plan within a reasonable time. To the contrary, it has abandoned that intention for the foreseeable future.

17. The Petitioner now apparently wants to demolish the existing building and use the property as a parking area beginning sometime in 2017. It is not clear whether the Petitioner formed that intention before or after the March 1, 2014 assessment date. In any case, the Petitioner failed to show it was actively working toward turning the property into a parking lot. The parking lot, if it ever materializes, might serve the

³Apparently in response to *Four Square Tabernacle*, the legislature provided additional guidance as to what a taxpayer must show in order to receive an exemption for land on which it intends to erect a building that will be used for exempt purposes. The current version of Ind. Code § 6-1.1-10-16(d) gives a taxpayer up to four years before it must demonstrate substantial progress toward erecting such a building. The Petitioner did not expressly claim an exemption under Ind. Code § 6-1.1-10-16(d). And there are no published cases interpreting whether that subsection applies to exemption claims like this, where a taxpayer intends to renovate or remodel an existing building rather than erect a new building. In any case, Starks did not say how long the Petitioner owned the property, so we would be unable to tell if the statute's four-year grace period had expired.

Petitioner's church building or some other exempt use.⁴ But the Petitioner offered no evidence that the property, as it currently exists, serves any exempt building or is otherwise reasonably necessary to an exempt purpose. *See Alte Salems Kirche, Inc. v. State Bd. of Tax Comm'rs*, 694 N.E.2d 810, 815 (Ind. Tax Ct. 1998) (holding that evidence showing a barn was necessary to store church's equipment and picnic tables and that mobile home played a large role in reducing vandalism of church building by maintaining a human presence could support finding that the structures were reasonably necessary to further an exempt purpose).

FINAL DETERMINATION

18. The Petitioner failed to show that it was actively working toward realizing its intent to use the property for exempt purposes. We therefore find for the Respondent.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

⁴ Stark testified only that "the fundamentalists" would be able to park there.

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.