

REPRESENTATIVE FOR PETITIONERS: Mary F. Burger, Senior Vice President and CFO

REPRESENTATIVE FOR RESPONDENT: Kevin Gardner, Vigo County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Historic Landmarks Foundation of Indiana,)	Petition No.: 84-002-20-2-8-00249-20
)	
Petitioner,)	
)	Parcel No.: 84-06-21-477-009.000-002
v.)	
)	
Vigo County Assessor,)	Assessment Year: 2020
)	
Respondent.)	

Date AUGUST 25, 2021

FINAL DETERMINATION

The Indiana Board of Tax Review, having reviewed the facts and evidence presented in the Parties' arguments, and having considered the issues, now finds and concludes the following:

Findings of Fact and Conclusions of Law

Introduction

1. The Indiana Tax Court has explained that efforts to preserve historic buildings and areas fulfill a charitable purpose within the meaning of our general exemption statute (Ind. Code § 6-1.1-10-16(a)), particularly where those areas have fallen into disrepair. Historic Landmarks Foundation of Indiana acquired the property under appeal to preserve and restore a deteriorating historic building. Since then, Landmarks has invested almost \$400,000 to stabilize the building so it can transfer the property subject to covenants requiring the building's historic integrity to be maintained. We therefore find that Landmarks owned, occupied, and used the property exclusively for charitable purposes and is entitled to a 100% exemption from taxation for the 2020 assessment date.

Procedural History

2. Landmarks applied for an exemption for the 2020 assessment date for its property at 643 Wabash Avenue, in Terre Haute. It sought exemption under Ind Code §§ 6-1.1-10-16 and § 6-1.1-10-18. The Vigo County Property Tax Assessment Board of Appeals (“PTABOA”) found that the property was 100% taxable. Landmarks disagreed and filed an appeal petition with the Board.

3. On June 3, 2021, Erik Jones, our designated administrative law judge (“ALJ”), held a telephonic hearing on the petition. Neither he nor the Board inspected the property. The following people were sworn as witnesses: Mary Burger, Landmarks’ senior vice president and chief financial officer; Tommy Kleckner, director of Landmarks’ western regional office; Vigo County Assessor Kevin Gardner; and Gardner’s reassessment supervisor, Michael West.

4. The parties offered the following exhibits:

Petitioner Exhibit 1	Form 136 application with proof of mailing,
Petitioner Exhibit 2	Form 120 notice of action on exemption application,
Petitioner Exhibit 3	Form 132 petition with proof of mailing,
Petitioner Exhibit 4	Photograph of building interior, dated June 2018,
Petitioner Exhibit 5a	Conditions Report,
Petitioner Exhibit 5b	Probable Cost Summary, dated January 2016,
Petitioner Exhibit 6	Board of Directors meeting minutes, dated June 17, 2017,
Petitioner Exhibit 7a	Press Release, dated June 15, 2018,
Petitioner Exhibit 7b	Excerpt from Indiana Landmarks website, posted June 20, 2018,
Petitioner Exhibit 7c	Sept.-Oct. 2018 edition of <i>Indiana Preservation</i> , p. 11,
Petitioner Exhibit 8	Conveyance and Donation Agreement,
Petitioner Exhibit 9	Report of expenditures for property restoration and copies of invoices for significant capital expenditures from January 2019 through March 2021.
Respondent Exhibit 1	USPAP & Level III Certifications,
Respondent Exhibit 2	2020 property record card,
Respondent Exhibit 3	GIS Image of subject property,
Respondent Exhibit 4	I.C. § 6-1.1-10.

5. The official record also includes the following: (1) all petitions and other documents filed in this appeal; (2) all notices and orders issued by the board or our ALJ; and (3) an audio recording of the hearing.

Contentions

A. Landmarks' Contentions

6. Landmarks is a non-profit, statewide organization founded in 1960 that advocates for the preservation of historically significant structures in Indiana. It supports “the preservation, redevelopment, improvement, renovation, and maintenance” of these structures. Landmarks also provides information, education, and technical assistance for preserving and rehabilitating historic structures. *Burger testimony; Pet'r Exs. 1-3.*
7. Since 1968, Landmarks has operated a program to acquire severely deteriorated or endangered historic properties. Once acquired, Landmarks immediately works to stabilize the properties. It then markets them to buyers who will complete the restoration. *Burger testimony; Pet'r Exs. 1-3.*
8. Landmarks acquired the subject property through this program . The building was originally designed by architect Solon Beman and built in 1903. During the 1920s, a local firm renovated the building in a neo-classical style. The renovation included reconstructing the building's limestone façade and constructing a three-story banking hall. The banking hall was decorated with marble floors, walnut woodwork, and the only murals by artist Vicente Aderente in Indiana. The building has remained vacant since 2008. As a result, water has infiltrated the structure, seriously damaging the murals and the building generally. Further issues put the building at imminent risk. *Burger testimony; Pet'r Exs. 4-5, 9.*
9. Landmarks had long been concerned with the state of the building after it became evident that the owner, Terre Haute First National Bank f/k/a First Financial Bank, was not investing in its upkeep. In the mid-2010s, Landmarks confirmed that First Financial

intended to demolish the building. Around that time, a non-profit Holocaust survivors' organization, Children of Auschwitz Nazi Deadly Lab Experiments Survivors ("CANDLES"), was exploring locations to expand its museum. Because Landmarks works with communities to discover potential re-uses for historic buildings, it discussed with CANDLES the possibility of CANDLES using the subject property to house its museum. In 2016, CANDLES commissioned a report to assess the building's condition. The report estimated that addressing the water intrusion alone would cost over \$300,000 and that completing the rehabilitation would require an additional \$2,763,671. CANDLES lacked the resources to take on the project and began to seek funding. *Burger testimony; Pet'r Exs. 5a-5b, 6.*

10. While CANDLES sought funding, Landmarks worked to stabilize the building and prevent further damage. In 2018, Landmarks reached a deal for First Financial to donate the property to Landmarks under several conditions, among them that Landmarks would immediately begin stabilizing the property and then restore it in compliance with federal guidelines for rehabilitating historic buildings as well as with other applicable laws and regulations. *Burger testimony; Pet'r Ex. 8.*
11. Landmarks invested nearly \$400,000 to completely restore the roof and make substantial repairs to the damaged limestone facades. Work was also set to begin on the building's front window system. Once restoration is complete, Landmarks plans to transfer the property to CANDLES subject to protective covenants to ensure the building's historic integrity in perpetuity. Should CANDLES fail to secure the necessary funding, Landmarks will keep the property and use it as office space for its western district office. *Burger testimony; Pet'r Exs. 6, 8-9.*
12. Landmarks disagrees with the Assessor's position that its use of the building provides no benefit to the local community because the building is vacant. According to Landmarks, the building's very existence—even while vacant—enhances the historic character of the

local streetscape and community. Regardless, Landmarks has already undertaken extensive restoration. *Kleckner testimony.*

13. Landmarks has used the property for exempt purposes by (1) acquiring this at-risk historic building, (2) investing substantial resources in restoring the building and ensuring the integrity of its historic and architectural features, and (3) preparing to transfer the property subject to covenants preserving its historic integrity. It is therefore entitled to a 100% exemption. *Burger argument.*

B. Assessor's Contentions

14. The Assessor believes that a statute (for which he did not provide a citation) requires an exempt organization to begin using a property for its exempt purpose within one year of buying it. Based on the facts before it, the PTABOA determined that the subject property was simply standing idle and was therefore ineligible for an exemption. *Gardner testimony and argument.*
15. Regardless, an exemption is a privilege granted to a taxpayer whose use of a property provides a benefit at least as great as the tax revenue lost through the exemption. The Assessor concedes that Landmarks' goals are noble. But Ind. Code § 6-1.1-11-3(d) places the burden on an applicant to show that the principal part of the property is substantially related to the applicant's exempt purpose. Here, the building was vacant and therefore did not offer a societal benefit that would offset the tax revenue lost through exemption.

Analysis

16. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton Cnty. Prop. Tax Assessment Bd. of App. v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). Because exemptions relieve properties from bearing their share of the cost of government services, we strictly construe them against taxpayers and in favor of the State. A

taxpayer therefore bears the burden of proving that its property qualifies for an exemption. *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004).

17. Indiana Code § 6-1.1-10-16 exempts all or part of a building (and generally, the land on which it sits) that is owned and exclusively or predominantly used or occupied for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a), (c); I.C. § 6-1.1-10-36.3(a).

18. We view the term “charitable” in its broadest constitutional sense. *College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 909-10 (Ind. Tax Ct. 2006). A charitable purpose will generally exist if:

(1) there is “evidence of relief of human want . . . manifested by obviously charitable acts different from the everyday purposes and activities of man in general[;]” and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue.

Id. at 908 (quoting *Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm'rs*, 251 N.E.2d 673,684 (Ind. Ct. App. 1969).

19. The Assessor argues that Landmarks’ use of the building does not provide a sufficient community benefit to justify the tax revenue that would be lost by granting it an exemption. As both our Tax Court and courts from other jurisdictions have recognized, however, “there is an inherent benefit to the community in preserving historic buildings and areas.” *College Corner*, 840 N.E.2d at 910 (citing, e.g., *City of Houston v. River Oaks Garden Club*, 360 S.W.2d 855, 857 (Tex. Civ. App. 1962).

20. In *College Corner*, two entities formed a limited partnership to revitalize the College Corner area of Indianapolis’ historic Old Northside. *Id.* at 906-07. The partnership’s goal was to rebuild the area's deteriorating infrastructure, renovate existing homes, and build new homes that would reflect the neighborhood’s historic character. Architectural and design standards were established to ensure that the homes would be built in an

appropriate historical context and with approval from the Indianapolis Historic Preservation Commission. *Id.* at 910. The partnership secured mortgages to buy properties and redevelop them, and it sold the properties when it was finished. The partnership sought an exemption only for the period during which it owned, occupied, and used the parcels. *Id.* at 907.

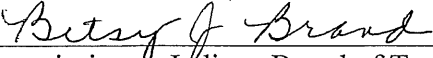
21. The Tax Court rejected the Department of Local Government Finance's argument that the partnership did not relieve human want, explaining that relieving human want encompasses more than simply providing relief to the needy. Bearing that in mind, the Court found that partnership provided a general benefit to the community that was charitable in nature. *Id.* at 909. It relieved government burdens by providing sidewalks and alleys to the area it was restoring. *Id.* at 910-11. But the partnership's efforts to preserve historic buildings and areas also provided a community benefit. The benefit was even greater because the partnership was restoring areas that had fallen into disrepair. *Id.* at 909-10. Consequently, the Court agreed that the partnership's efforts to preserve the area's historic character fulfilled a charitable purpose. *Id.* at 910.
22. *College Corner* is directly on point. Landmarks' charitable purpose—preserving the historic character of the local Terre Haute streetscape by restoring the subject building—mirrors the charitable purpose of the taxpayer in *College Corner*. Landmarks owned and used the property to further that charitable purpose. It has already spent nearly \$400,000 to stabilize and restore the building since January 2019, with more to come. It has also engaged in extensive negotiations with a likely buyer to sell the property subject to covenants preserving the building's historic integrity.
23. The Assessor argues that the property is not entitled to an exemption because Landmarks let it sit vacant after buying it. But Landmarks used and constructively occupied the subject property both on the assessment date and throughout the year leading up to that date as it worked to stabilize and restore the historic building. And that use and occupancy furthered Landmarks' charitable purpose. Landmarks has shown that it

owned, occupied, and used the property exclusively for a charitable purpose. It is therefore entitled to a 100% exemption.

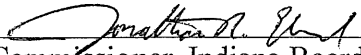
Conclusion

24. We find that the subject property qualifies for a 100% charitable-purpose exemption for the 2020 assessment date.

Chairman, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review

- 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 not later than 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>.