

REPRESENTATIVE FOR PETITIONER:
Rev. Sylvester Williams, Jr., Minister

REPRESENTATIVE FOR RESPONDENT:
Frank Agostino, St. Joseph County Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

INTERFAITH CHRISTIAN)	Petition No.: 71-003-07-2-8-00001
UNION, INC.)	
)	
Petitioner,)	Parcel No.: 02102061225
)	
v.)	County: St. Joseph
)	
ST. JOSEPH COUNTY)	
PROPERTY TAX)	Township: Clay
ASSESSMENT BOARD)	
OF APPEALS,)	Assessment Year: 2007
)	
Respondent.)	
)	

Appeal from the Final Determination of
St. Joseph County Property Tax Assessment Board of Appeals

October 19, 2009

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. Interfaith Christian Union, Inc. sought an exemption for a parcel containing what Interfaith's minister described as a "meditation garden." Except in narrow circumstances that are inapplicable here, Ind. Code § 6-1.1-10-16 does not provide an exemption for vacant land. And Interfaith offered only vague evidence about how, and how often, various people used the property. Interfaith therefore failed to prove that its property qualified for an exemption.

Background and Procedural History

2. On December 27, 2006, Interfaith applied to exempt the subject property from taxation. On June 11, 2007, the St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") issued a determination finding that the property was 100% taxable. As a result, on July 13, 2007, Interfaith filed a Form 132 petition asking the Board to review Interfaith's exemption request. The Board has jurisdiction over Interfaith's appeal under Ind. Code §§ 6-1.5 4-1 and 6-1.1-15-3.
3. On June 18, 2009, Jennifer Bippus, the Board's designated Administrative Law Judge, held a hearing on Interfaith's appeal. She did not inspect the subject property.
4. The following people were sworn-in at the hearing:
 - For Interfaith:
 - Rev. Sylvester Williams, Jr.
 - For the St. Joseph County Assessor:
 - David Wesolowski, St. Joseph County Assessor,
 - Kevin Klaybor, PTABOA member,
 - Ross Portolese, PTABOA member,
 - Ralph Wolfe, PTABOA member
5. Interfaith did not offer any exhibits at the hearing.

6. The Assessor offered the following exhibits:
- Respondent Exhibit 1 – Form 132 petition,
 - Respondent Exhibit 2 – Form 136 petition,
 - Respondent Exhibit 3 – The PTABOA’s determination,
 - Respondent Exhibit 4 – The PTABOA’s determination (incorrect key),
 - Respondent Exhibit 5 – Warranty Deed from Toepps to Interfaith, dated November 3, 2006,
 - Respondent Exhibit 6 – Interfaith’s articles of incorporation, dated March 20, 1981.
 - Respondent Exhibit 7 – Interfaith’s by-laws,
 - Respondent Exhibit 8 – Property record card for the subject property,
 - Respondent Exhibit 9 – February 2, 2005, letter from Internal Revenue Service to Interfaith.
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
- Board Exhibit A - Form 132 petition,
 - Board Exhibit B - Notice of hearing, dated January 16, 2009,
 - Board Exhibit C - Exemption Hearing Order,
 - Board Exhibit D - Hearing sign-in sheet.
8. The PTABOA denied Interfaith’s request for an exemption and found that the subject property was 100% taxable for 2007. Interfaith requests a 100% exemption.

Findings of Fact

9. Interfaith is a not-for-profit corporation that serves the community’s needs through religious services and charitable activities. *Williams testimony; Resp’t Ex. 6.* Interfaith is exempt from federal income tax under Internal Revenue Code § 501(c)(3). *Williams testimony; Resp’t Ex. 9.*
10. The subject property is a wooded lot located next to Interfaith’s parsonage at 52762 Brookdale in South Bend. Interfaith’s minister, Rev. Sylvester Williams, Jr., lives in the parsonage, which has been granted an exemption. *Williams testimony.* The subject property contains gardens. It also has a moveable gazebo, but it does not have any other structures. *Id.* The property is not assessed as having any improvements. *Resp’t Ex. 8.*

11. Interfaith bought the subject property from Dr. Toepp and his wife to use as a “meditation garden” for members of its congregation. *Williams testimony*. Interfaith holds the property open for congregation members to walk around and meditate. *Id.* Rev. Williams also uses the property, although he did not say how often or for what purposes. *See id.* Interfaith does not keep records of who uses the subject property or when they use it. But typically, no congregation members use the property during the fall and winter. In the spring, about six people use it, and in the summer, about 12 people use it. *Id.* People visiting the subject property park in the parsonage’s driveway. *Id.*

Conclusions of Law and Analysis

12. A taxpayer bears the burden of proving that its property qualifies for exemption. *Indianapolis Osteopathic Hospital, Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). Here, Interfaith claimed that it was entitled to an exemption under Ind. Code § 6-1.1-10-16, although it alleged slightly different grounds at each stage of the appeal process. On its Form 136 exemption application, Interfaith claimed that it used the subject property for religious purposes, while on its Form 132 petition to the Board, it claimed charitable use. *Id.*
13. As a general proposition, all tangible property in Indiana is subject to property taxation. The General Assembly, however, has exercised its constitutionally granted power to enact statutes exempting various types of property from taxation. The broadest of those statutes, Ind. Code, § 6-1.1-10-16 exempts all or a portion of a building and land that it is situated on, if that building is owned, occupied, and predominately used for educational, literary, scientific, religious, or charitable purposes. Ind. Code § 6-1.1-10-16(a)-(c); Ind. Code § 6-1.1-10-36.3. Elsewhere, that same statute exempts: (1) a vacant tract of land purchased to erect a building that is to be owned, occupied, and predominately used for one or more of those exempt purposes, (2) certain land acquired by a non-profit organization for the purpose of building a house that is to be charitably transferred to a low-income individual, and (3) certain land owned by a nonprofit entity established to retain and preserve land and water for their natural characteristics. Ind. Code § 6-1.1-10-16(c)(3) -(d) -(i).

14. Thus, Ind. Code § 6-1.1-10-16 does not generally exempt vacant land, even if that land is used for charitable or religious purposes. Instead, Interfaith needed to show one of the following things: (1) that the subject property had a building that was predominately used for exempt purposes, (2) that Interfaith bought the property intending to construct such a building, (3) that Interfaith acquired the property for the purpose of building a house that is to be charitably transferred to a low-income individual, or (4) that Interfaith was established to retain and preserve land and water for their natural characteristics. Interfaith did none of those things. The only structure on the property was a movable gazebo that was not even included in the property's assessment. Similarly, Interfaith bought the property to use as a meditation garden rather than to build a house or exempt building on it. And nothing in Interfaith's articles of incorporation or by-laws indicates that it was formed for the purpose of retaining and preserving land and water for their natural characteristics.
15. Of course, the subject property is adjacent to a lot containing Interfaith's parsonage. To the extent that Interfaith used the two parcels as a single property to promote a common purpose, the parsonage might be viewed as being situated on the subject property. But Interfaith offered little evidence to show that it treated the parcels as one property. Interfaith bought the parcels separately. And while Rev. Williams testified that Interfaith bought the subject property as a meditation garden for congregation members to use, he said nothing about what Interfaith used the parsonage for, other than that he lived there. The only connection between the two properties was that congregation members parked in the parsonage's driveway when visiting the subject property.
16. Interfaith also failed to show that it predominately used the subject property for exempt purposes. To show that a property is predominately used for an exempt purpose, a taxpayer must show that the property is used for that purpose "during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date. . . ." Ind. Code § 6-1.1-10-36.3(a). That burden entails more than simply presenting vague anecdotal evidence. *See State Board of Tax Commissioners v. New Castle Lodge*, 765 N.E.2d 1257, 1264 (Ind. 2002) (finding that, had the Board not

misled the taxpayer into focusing on charitable giving rather than the property's use, the Board would have been fully justified in requiring the taxpayers to produce facility usage reports in greater detail and with better supporting documentation).

17. Rev. Williams testified that congregation members visited the subject property to meditate and reflect. And he vaguely testified to the number of congregation members who visited the property throughout the year, although he did not say how much time they spent there. But Rev. Williams also used the property for purposes that he did not disclose. Thus, Rev. Williams's vague and abbreviated testimony failed to show that the subject property was used for charitable or religious purposes more than 50% of the time that it was in use.
18. In reaching its conclusion, the Board emphasizes the dearth of evidence offered by Interfaith. Interfaith offered no exhibits. And Rev. Williams gave less than seven minutes of direct testimony, during which he focused largely on the fact that Interfaith was a religious organization that was exempt from income taxation under the Internal Revenue Code. But, as the Indiana Tax Court has repeatedly emphasized, Indiana's exemption statutes focus on the property's use rather than the owner's character. *E.g. Oaken Bucket Partners, LLC v. Hamilton County Property Tax Assessment Bd. of Appeals*, 909 N.E.2d 1129, 1136 (Ind. Tax Ct. 2009) (“[I]n Indiana, an exemption turns on the *character of the property, not the character of its owner.*”)(emphasis in original).
19. Indeed, almost all the facts that relate to the subject property's use came out when the Assessor cross-examined Rev. Williams. The Board does not mean to imply that Interfaith was precluded from relying on Rev. Williams's testimony simply because the Assessor elicited it; had that testimony been sufficient to make a case for exemption, the Board would have granted the exemption. But the fact that Rev. Williams only testified about the property's use on cross-examination illustrates how little Interfaith did to prove its case.

Summary of Final Determination

20. Because Interfaith did not prove that the subject property qualified for an exemption, the Board denies Interfaith's appeal and finds for the St. Joseph County Assessor. The subject property is 100% taxable.

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

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, 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 Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.