

**STATE OF INDIANA
Board of Tax Review**

Pine Valley Community Association, Inc.,) On Appeal from the Allen
Petitioner,) County Property Tax Assessment
v.)) Board of Appeals
Allen County Property Tax Assessment))
Board of Appeals,)) Petition for Review of Exemption,
Respondent.)) Form 132
)) Petition No. 02-057-00-2-8-00017
)) Parcel No. 2436482277
))

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (STBC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, STBC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, on finds and concludes the following:

Issues

Whether the real property, owned by Pine Valley Community Association, Inc., qualifies for property tax exemption pursuant to Indiana Code § 6-1.1-10-16 under the classification of charitable.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

A. Background of Administrative Proceedings

2. Pursuant to Indiana Code § 6-1.1-11-3, Pine Valley Community Association, Inc. (Petitioner) filed an application for property tax exemption, Form 136, with the Allen County Auditor on May 15, 2000. The Allen County Property Tax Assessment Board of Appeals (PTABOA) denied the application on May 21, 2001.
3. Pursuant to Indiana Code § 6-1.1-11-7, on June 15, 2001, the Petitioner filed a Form 132 petition seeking a review of the PTABOA action by the State Board.
4. Pursuant to Indiana Code § 6-1.1-15-4, an administrative hearing was held before Administrative Law Judge Joseph Stanford. Testimony and exhibits were received into the record. Mr. Solomon L. Lowenstein, Jr., Attorney, and Ms. Megan Gaughan were present on behalf of the Petitioner. Mr. John Rogers, Attorney, Ms. Judith E.K. Dafforn, PTABOA Secretary, Mr. Mike Ternet, County Assessor, and Ms. Ashley Esther, Assessment Deputy-Auditor's Office, were present on behalf of the PTABOA. Ms. Angela Sorg, Perry Township Assessor, was present on behalf of Perry Township.
5. At the hearing, the subject Form 132 petition with attachments was made a part of the record and labeled as Board Exhibit A. The Notice of Hearing was labeled as Board Exhibit B and the signed Continuance Waiver is labeled as Board Exhibit C.
6. At the hearing, the following evidence was presented by the Petitioner:

Petitioner's Exhibit 1 – A Certificate of Incorporation and the Articles of Incorporation for Pine Valley Community Association, Inc.
Petitioner's Exhibit 2 – The By-laws for Pine Valley Community Association, Inc.

7. The subject property under review consists of the common areas of Pine Valley Subdivision, a residential development located in Perry Township, Allen County. The subject property consists of vacant land, tennis courts and a park area featuring three small lakes.

Whether the real property qualifies for property tax exemption pursuant to
Indiana Code § 6-1.1-10-16

8. The owner of the subject property is a tax exempt entity under the USC 501(c)(4) of the Internal Revenue Code. (Board Exhibit A, attachment Exhibit A).
9. The subject property is not large enough to support buildings or other improvements. The subject property is used as the common areas for the community. The common areas contain tennis courts, a park with three small lakes, and some vacant land. *Gaughan testimony.*
10. The subject property is for use by the residents of the community and their invited guests. Non-resident use of the subject property would most likely not be permitted. Members of Pine Valley Community Association, Inc. are assessed dues for the maintenance and upkeep of the subject property. Residents are not charged fees for the use of the subject property for themselves or their guests. The Petitioner does not gain or profit from the use of the subject property. *Gaughan testimony.*
11. The purpose of Pine Valley Community Association, Inc. is to develop the social, civic, and general welfare of all Pine Valley residents. Pet. Ex. 1 at 2. The subject property fulfills this purpose by providing an outlet for social gatherings by the residents. *Gaughan testimony.*

Conclusions of Law

1. The State is the proper body to hear an appeal of the action of the PTABOA pursuant to Indiana Code § 6-1.1-15-3.

A. Burden

2. The courts have long recognized that in the administrative review process, the State Board is clothed with quasi-judicial power and the actions of the State Board are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State Board has the ability to decide the administrative appeal based upon the evidence presented.
3. In reviewing the action of the PTABOA , the State Board is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995).
4. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency of relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Indiana Code § 4-21.5-2-4(a)(10)
5. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State Board can properly refuse to consider the evidence. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
6. If the taxpayer is not required to meet his burden of proof at the State administrative level, then the State Board would be forced to make a case for the

taxpayer. Requiring the State Board to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.

7. To meet his burden, the taxpayer must present probative evidence in order to make a *prima facie* case. In order to establish a *prima facie* case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
8. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence.
9. If the taxpayer fails to meet his burden of proof at the administrative level, the State Board does not have to support his decision with substantial evidence if that decision is challenged in court. *Whitley*, 704 N.E. at 1116-21.

B. Constitutional and Statutory Basis for Exemption

10. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
11. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, the Petitioner claims exemption under Ind. Code § 6-1.1-10-16 which provides that all or part of a building is exempt from property taxes if it is owned, occupied, and used for charitable purposes.
12. In Indiana, the fact that a nonprofit entity owns the property under examination does not establish any inherent right to exemption. The grant of federal or state

income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 81 - (Ind. Tax 1996)(501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

C. Basis of Exemption and Burden

13. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
14. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).
15. Strict construction construes exemption from the concept of the taxpayer citizen. All property receives protection, security and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support-taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E. 2d 218 (Ind. Tax 1996)(NAME). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
16. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *Name*, 671 N.E. 2d at 220 (citing

Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).

17. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).
18. As a condition precedent to being granted an exemption under the charitable or educational purpose clause of the statute, the taxpayer must demonstrate that it provides "a present benefit to the general public . . . sufficient to justify the loss of tax revenue." *Name*, 671 N.E. 2d at 221 (quoting *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 279 (Ind. Tax 1989), *aff'd* 571 N.E. 2d 1247 (Ind. 1991)).

D. Conclusions Regarding the Exemption Claim

19. The Petitioner argues that the subject property serves a public benefit because it promotes the social welfare of the residents of Pine Valley Country Club. The Petitioner maintains that the public benefit provided through the use of the subject property satisfies one of the Petitioner's charitable purposes. The Petitioner reasons that, because of the benefit provided to its residents, the subject property is entitled to property tax exemption under a claim of charitable purposes.
20. The PTABOA argues that the subject property is not entitled to exemption because the benefit provided through the use of the subject property is exclusively for the residents of Pine Valley Country Club rather than the public in general.

21. Public policy supports a broad interpretation of charity and the Indiana courts have broadly construed the term “charity”. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810, 814 (Ind. Tax 1996); *State Board of Tax Commissioners v. Wright*, 139 Ind. App. 370, 374, 215 N.E. 2d 57, 60 (1966); *City of Indianapolis v. Grand Master, etc., of the Grand Lodge of Indiana*, 25 Ind. 518, 522-23 (1865).
22. Because the term “charity” is not defined within statute, the “plain, ordinary, and usual meaning” of “charity” must be applied in this matter. *Raintree, supra.*; *Knauf Fiber Glass, GmbH v. State Board of Tax Commissioners*, 629 N.E. 2d 959 (Ind. Tax 1994); *Town of St. John v. State Board of Tax Commissioners*, 665 N.E. 2d 965, or *remand* 690 N.E. 2d 370, *opinion supplemented* 691 N.E. 2d 1387 (Ind. Tax 1996).
23. In *Raintree*, the Tax Court turned to *Black’s Law Dictionary, Fifth Edition*, for the definition of “charity”. “Charity” is defined in *Black’s* as “[a]n institution engaged in, public benevolent purposes...[t]o attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without hope or expectation,...of gain or profit by [the] donor...” In other words, charitable purposes are those providing a public benefit through acts intended for the betterment of mankind, especially those in need, without thought of financial gain. Therefore, the Petitioner must show that the subject property is used to benefit or advance others, particularly those less fortunate
24. The Petitioner presented its articles of incorporation and by-laws in support of its claim. This evidence does not substantiate the Petitioner’s claim of public benefit. Rather, the evidence clearly shows that the subject property is used exclusively for the benefit of the residents and members of Pine Valley Subdivision. In fact, there is nothing in the record that gives any reason to believe that the use of the subject property is used to benefit or advance of

persons in need. The only people who benefit from the use of the property are those who reside in Pine Valley Subdivision.

25. To prevail, the Petitioner had the burden of showing, through the presentation of probative evidence, that the subject property was used in such a manner that it benefited or advanced mankind, in particular those who are disadvantaged economically, socially, intellectually, spiritually, or physically.
26. For all of the above reasons, the Petitioner has failed to present probative evidence demonstrating that the subject property is used for charitable purposes. As such, the Petitioner has failed to meet its burden regarding its exemption claim and the subject property is subject to 100% property taxation.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this _____ day of _____, 2002.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.