

REPRESENTATIVE FOR THE PETITIONER: Jeffery A. Lewellyn, Attorney at Law

REPRESENTATIVE FOR THE RESPONDENT: Kevin L. Gardner, Vigo County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Terre Haute Area Association, of Realtors, Inc.,)	Petition:	See Attached
)		
)	Parcel:	See Attached
Petitioner,)		
)	County:	Vigo
v.)		
)	Assessment Year:	2022
Vigo County Assessor,)		
)		
Respondent.)		

May 12, 2023

FINAL DETERMINATION

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

INTRODUCTION

1. The Terre Haute Association of Realtors, Inc. (the “Association”) applied for a 100% exemption for multiple parcels of vacant land under I.C. § 6-1.1-10-16. But the Association failed to properly apply for an exemption for nine of the parcels under appeal. For the remaining parcel, it failed to show that it was owned for an exempt purpose as of the assessment date, or that it was used for an exempt purpose in the year preceding the assessment date. For these reasons, we find the subject property to be 100% taxable.

PROCEDURAL HISTORY

2. On April 1, 2022, the Association filed one Form 136 application. The Association completed the Form 136 application for parcel 84-06-15-304-006.000-002 and used the additional space on the Form 136 application to list the remaining parcels.
3. On June 3, 2022, the Vigo County Property Tax Assessment Board of Appeals (the “PTABOA”) issued its Form 120 determination denying the exemptions. The PTABOA denied the exemption on parcel 84-06-15-304-006.000-002 on the grounds that it was not owned, occupied, or used for charitable purposes. The remaining parcels were denied exemptions for the same reason and because a Form 136 application was not filed for each individual parcel.
4. On February 21, 2023, Natasha Marie Ivancevich, the Board’s designated Administrative Law Judge (“ALJ”), held a telephonic hearing on the appeals. Neither she nor the Board inspected the subject properties.
5. Attorney Jeffrey Lewellen represented the Association. County Assessor Kevin Gardner represented himself. Kevin Gardner and Tracey Malooley were sworn and testified under oath.

RECORD

6. The Petitioner did not introduce any exhibits.
7. The Respondent did not introduce any exhibits.
8. The record also includes the following: (1) all pleadings and documents filed in this appeal, (2) all orders, and notices issued by the Board or ALJ; and (3) the digital recording of the hearing.

FINDINGS OF FACT

9. The parcels under appeal were donated to the Association in January of 2022 for the future development of a tiny home village that will be used to house veterans free of charge. *Malooley testimony.*

PETITIONER'S CONTENTIONS

10. The Association contended it is eligible for a 100% charitable purpose exemption under I.C. § 6-1.1-11-3(a); (b); (c); and (d) for all parcels because vacant land can be used for a charitable purpose and there is no requirement that a separate Form 136 application be filed for each individual parcel.

RESPONDENT'S CONTENTIONS

11. The Assessor argued the Association is not entitled to an exemption for parcel 84-06-15-304-006.000-002 because it is vacant land and is not owned, occupied, and used for charitable purposes.
12. Further, the Assessor contended the Association is not entitled to exemptions on the remaining parcels because the Association did not file individual Form 136 applications for each parcel.

ANALYSIS

A. The Association did not properly appeal nine of the parcels.

13. Before reaching the merits of these appeals, we must first determine what parcels are properly before us.
14. 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). Because exemptions relieve properties from bearing their share of the cost

of government services, they are strictly construed against taxpayers and in favor of the State. *Indianapolis Osteopathic Hosp, Inc. v. Dep't of Local Gov'r Fin*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). For a property to obtain an exemption, the *owner* must file a certified application for exemption. Ind. Code § 6-1.1-11-3(a) (emphasis added). If the owner does not comply with the statutory procedures for obtaining the exemption, the privilege of property tax exemption is waived, and the property is subject to taxation. Ind. Code § 6-1.1-11-1.

15. The Assessor argued the Association needed to file separate Form 136 applications for each parcel and that their failure to do so was fatal to their claims. The Association argued that the Assessor's argument elevates form over substance and no law requires a separate Form 136 application for each parcel a party seeks to exempt.
16. The Association is correct that the law does not specifically require a separate exemption application for each parcel. But it does require that specific information be submitted for each parcel for which an exemption is sought. This includes:
 - (1) A description of the property claimed to be exempt in sufficient detail to afford identification.
 - (2) A statement showing the ownership, possession, and use of the property.
 - (3) The grounds for claiming the exemption.
 - (4) The full name and address of the applicant.
 - (5) For the year that ends on the assessment date of the property, identification of:
 - (A) Each part of the property used or occupied; and
 - (B) Each part of the property not used or occupied for; 1 (one) or more exempt purposes under I.C. § 6-1.1-10 during the time the property is used or occupied.
 - (6) Any additional information which the department of local government finance may require.

I.C. § 6-1.1-11-3.

17. Further, I.C. § 6-1.1-11-3(d) requires the person signing an exemption application to attest in writing and under the penalties of perjury that a predominant part of the property claimed to be exempt is not being used or occupied in connection with a trade or business

that is not substantially related to the organization's exempt purpose. I.C. § 6-1.1-11-3(d).

18. Here, the Association filed a single Form 136 application that was filled out for parcel 84-06-15-304-006.000-002. The remaining parcel numbers were listed on the third page of that application in a section that stated “[u]se this area if additional space is needed for answers or if you wish to provide additional information[.]” In that section, the Association included a list of parcels it titled “Additional Parcels Numbers of adjoining and neighboring lands.” This list included parcel numbers, lot numbers, names,¹ addresses, and assessments. Nothing included in that section indicates the Association was seeking an exemption on those parcels.

19. We find the Association failed to include at least three of the required elements for an exemption application. These are:

- (1) There is no statement showing the ownership, possession, and use of the parcels,
- (2) There is no attestation under the penalties of perjury that those parcels are not predominantly used in connection with a trade or business that is not substantially related to the organization's exempt purpose, and
- (3) There is no clear indication that an exemption is even being sought on those parcels.

As discussed above, exemptions are strictly construed against taxpayers. In addition, if a taxpayer fails to comply with the statutory procedures to obtain an exemption, that exemption is waived. In this case, we find the Association has waived the privilege of exemption for the nine parcels that they did not file a separate application for because the information they put on the Form 136 failed to meet the statutory requirements for an exemption application.

¹ It is unclear what the significance of the names was.

B. The Association has not shown that parcel 84-06-15-304-006.000-002 should be exempt for 2022 assessment year.

20. We now turn to the merits of the one parcel that was properly filed. The Association claims it is entitled to an exemption under I.C. § 6-1.1-10-16(a); (b);² (d); and (i).³ The Assessor argued the subject parcel is not exempt because it is vacant land and the parcel is not owned, occupied, and used for a charitable purpose.
21. While all tangible property is generally subject to taxation, the legislature may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes. Ind. Cost., Art. 10 § 1. A taxpayer bears the burden of proving 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). Every exemption appeal “stand[s] on its own facts” and it is the taxpayer’s duty to walk us through the analysis. *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cnty. Ass’r*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009).
22. Subsection (a) provides an exemption for all or part of a building that is owned and is exclusively or predominantly occupied and used for education, literary, scientific, religious, or charitable purposes. Ind. Code § 6-1.1-10-16(a); Ind. Code § 6-1.1-10-36.3(c). “Accordingly, a taxpayer who seeks a charitable exemption pursuant to Indiana Code § 6-1.1-10-16(a) must demonstrate that its property was owned, occupied, and predominately used for a charitable purpose during the relevant tax year (i.e., ‘the year that ends on the assessment date of the property’”). *Bros. of Holy Cross, Inc. v. St. Joseph County Prop. Tax Assessment Bd. of Appeals*, 878 N.E.2d 548, 550. *See also*

² The Association claims it is entitled to an exemption under I.C. § 6-1.1-10-16(b). However, subsection (b) provides a *building* is exempt from property taxation if it is owned, occupied, and used by a *town, city, township, or county*, for education, literary, scientific, fraternal, or charitable purposes. I.C. § 6-1.1-10-16(b) (emphasis added). The Association applied for an exemption for a tract of land, not buildings, and the Association is not a town, city, township, or county.

³ The Association claims it is entitled to an exemption under I.C. § 6-1.1-10-16(i). However, subsection (i) pertains to a tract of land (or the tract plus all or part of a structure), not exceeding 3 acres, that is not used for profit while exempt under I.C. § 6-1.1-10-16, which is used for erecting, renovating, or improving a single-family residential structure *that is to be given away or sold* in a charitable manner by a nonprofit organization to low income individuals who will use the land as a family residence and do not have an exemption under I.C. § 6-1.1-10-16. I.C. § 6-1.1-10-16(i). (emphasis added). There is nothing in the evidence that indicates the Association is intending to give away or sell the residential structures for charitable purposes.

State Bd. of Tax Comm'rs v. New Castle Lodge # 147, Loyal Order of Moose, Inc., 765 N.E.2d 1257, 1263 (Ind. 2002); *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004), review denied.

23. Ind. Code § 6-1.1-10-16(d) provides an exemption for vacant land that is acquired to build improvements that would be exempt once they are completed. In particular, it says that a tract of land is exempt from property taxation if:

(1) it is purchased for the purpose of erecting a building that is to be owned, occupied, and used in such a manner that the building will be exempt under subsection (a) or (b)

It also contains additional requirements for maintaining that exemption after the initial purchase, but prior to the completion of the building.

24. In addition, I.C. § 6-1.1-10-36.3, the predominant use statute, requires that a taxpayer must use or occupy a property for exempt purposes during more than 50% of the time it is used or occupied in the year that ends on the assessment date. Where a property is not used exclusively for exempt purposes, a taxpayer must offer evidence comparing the relative distribution of time between exempt and non-exempt uses. *See Hamilton Cty. Ass'r v. Duke*, 69 N.E.3d 567, 572 (Ind. Tax Ct. 2017) (“[F]ailure to provide the Indiana Board with a comparison of the relative amounts of time that a property was used for exempt and non-exempt purposes is fatal to a claim of exemption under I.C. § 6-1.1-10-36.3.”)

25. In this case, the record is somewhat ambiguous as to when the Association acquired the subject property. The testimony indicates they received it as a gift in January of 2022, but no exact date was provided. There is no evidence specifically showing that the Association owned the subject property on the assessment date of January 1, 2022. Nor is there any evidence whatsoever regarding the use and ownership of the subject property in the year prior to the assessment date. We cannot conclude that the subject property was owned for an exempt purpose as of the assessment date, nor can we find the subject property was predominantly used for an exempt purpose in the year prior to the assessment date. Each of these are required elements for an exemption claim. For these

reasons, we find the Association has failed to show they are entitled to an exemption for parcel 84-06-15-304-006.000-002 for the 2022 assessment year.⁴

CONCLUSION

26. For the reasons discussed above, we find the parcels under appeal are 100% taxable for the 2022 assessment year.



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 after 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>>.

⁴ If we did reach the merits on the remaining nine parcels, we would come to the same conclusions for the same reasons.

Attachment

Petition Number	Parcel Number
84-002-22-2-8-00587-22	84-06-15-304-006.000-002
84-002-22-2-8-00588-22	84-06-15-305-008.000-002
84-002-22-2-8-00589-22	84-06-15-305-007.000-002
84-002-22-2-8-00590-22	84-06-15-305-006.000-002
84-002-22-2-8-00591-22	84-06-15-305-005.000-002
84-002-22-2-8-00592-22	84-06-15-305-003.000-002
84-002-22-2-8-00593-22	84-06-15-305-002.000-002
84-002-22-2-8-00594-22	84-06-15-305-001.000-002
84-002-22-2-8-00595-22	84-06-15-303-001.000-002
84-002-22-2-8-00596-22	84-06-15-304-007.000-002