

REPRESENTATIVE FOR PETITIONER:

Ira Toran, Owner

REPRESENTATIVE FOR RESPONDENT:

Gabe Deaton, Director of Assessment

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

IRA TORAN,	)	Petition No.:	49-401-11-2-8-01302
	)		
Petitioner,	)	Parcel No.:	4000477
	)		
v.	)	County:	Marion
	)		
MARION COUNTY ASSESSOR,	)	Township:	Lawrence
	)		
Respondent.	)	Assessment Year:	2011

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

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**January 27, 2016**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

**Issue**

1. Was the property under appeal exempt from property taxation for 2011 pursuant to Ind. Code § 6-1.1-10-16?

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **PROCEDURAL HISTORY**

2. The subject property is a lot owned by Ira Toran (“Petitioner”) located at 3828 North Elizabeth Street in Indianapolis.
3. On April 30, 2012, the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 120 Notice of Action on Exemption Application (“Form 120”) finding the subject property to be 100% taxable for 2011. On May 29, 2012, Petitioner filed its Form 132 Petition for Review of Exemption (“Form 132”) with the Board.<sup>1</sup>

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. On October 29, 2015, the Board’s Administrative Law Judge, Gary Ricks (“ALJ”), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.
5. Petitioner was sworn and testified. Gabe Deaton, Director of Assessment for the Marion County Assessor’s office, and Nicole Webb, Exemption Analyst for the Marion County Assessor’s Office, were sworn and testified for Respondent.
6. Petitioner presented the following exhibits:
  - Petitioner Exhibit 1 – Form 136 (2007)
  - Petitioner Exhibit 2 – Form 120 (2007)
  - Petitioner Exhibit 3 – Form 115 Notice of Final Assessment Determination (2006)
  - Petitioner Exhibit 4 – Form 120 (2011)
  - Petitioner Exhibit 5 – 38<sup>th</sup> and Shadeland Area Plan
  - Petitioner Exhibit 6 – IRS notice of tax exempt status
  - Petitioner Exhibit 7 – 2010 Grant Application
  - Petitioner Exhibit 8 – Rendering of subject property
  - Petitioner Exhibit 9 – Evans, Mechwart, Hambleton & Tilton proposal

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<sup>1</sup> For unclear reasons, the Form 136 Application for Property Tax Exemption (“Form 136”) attached to the Form 132 filed with the Board was for an assessment date of March 1, 2007.

Petitioner Exhibit 10 – Final construction plans  
Petitioner Exhibit 11 – AIA standard form of agreement  
Petitioner Exhibit 12 – Petitioner cover sheet.

7. Respondent presented no exhibits.
8. The following items are also recognized as part of the record:
  - Board Exhibit 1 – Form 132 with attachments
  - Board Exhibit 2 – Notice of hearing
  - Board Exhibit 3 – Hearing sign-in sheet.

#### **SUMMARY OF PETITIONER’S CASE**

9. The subject property is a grassy vacant lot that was originally purchased by Petitioner in 2007 as a space for a playground, basketball courts, and various other charitable activities. At the time of purchase, the neighborhood in which the property is situated was essentially a dumping area and was otherwise “trashed.” *Toran testimony.*
10. Petitioner originally filed an application with Marion County on August 3, 2007 to initiate the exemption process. On August 24, 2007, the PTABOA issued a determination pursuant to Ind. Code § 6-1.1-10-16 exempting 100% of the property. *Toran testimony; Pet’r Exs. 1 and 2; Board Ex. 1.*
11. Petitioner obtained construction plans and had contracts that were “ready to sign.” While they had received commitments for funding, they had not received any actual funding. In 2008, prospective donors eventually said they were “not sure” and that they had better “hold off.” Consequently, everything was put on the “back burner.” On April 30, 2012, the PTABOA issued a determination indicating that the property was 100% taxable.<sup>2</sup> *Toran testimony; Pet’r Ex. 4; Board Ex. 1.*

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<sup>2</sup> The Form 120 denying exemption for 2011 presented as Petitioner Exhibit 4 and as part of Board Exhibit 1 is dated April 30, 2012. However, Petitioner testified that the PTABOA issued a determination “denying relief” on August 30, 2012.

12. Activities originally planned for the property included outdoor basketball tournaments, camps, and clinics. During 2008 and 2009, Petitioner received construction plans and a proposal for the construction and permitting of a playground and four basketball courts, among other items.<sup>3</sup> Petitioner also received a 2010 IRS determination letter addressed to “Streetball Center Dustbowl Tournaments, Inc.” indicating tax exempt status for federal income tax purposes. An artist’s rendering for the “Streetball Center” depicts what the project will look like when it is complete. *Toran testimony; Pet’r Exs. 1, 6, 8, and 9.*
13. Petitioner contends that even though the property has essentially consisted of just a grassy area since the time the exemption was denied, it is still being used in a manner that serves the community and that they have continually been “making progress.” For example, children come to the property to engage in activities such as cutting grass, planting trees, and performing neighborhood cleanups. Some children engage in these activities as part of their community service as required by the “juvenile system.” *Toran testimony.*
14. The property also serves as an area to provide family focus programs and activities to combat crime, drugs, and obesity among youth. All of these activities serve to enhance proficiency in behavior management, character development, community integration, socialization and communication skills, and creativity among the participants. Petitioner contends that they are still in the process of generating revenue, that activities are still ongoing, that they “have broke ground,” and that they are still moving forward with the project. *Toran testimony.*

#### **SUMMARY OF RESPONDENT’S CASE**

15. To show that a tract of land is exempt from property tax, a party has to show that it is purchased for the purpose of erecting a building that is to be owned, occupied, or used in

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<sup>3</sup> The portion of the proposal and construction plans offered as Petitioner Exhibits 9 and 10 respectively describe proposed construction at 6680 East 38th Street which does not correspond to the subject property’s address.

such a manner that the building would be exempt under Ind. Code § 1-1.1-10-16. Further, not more than four years after the property is purchased, the owner must demonstrate substantial progress and active pursuit toward the erection of the intended building and use. *Deaton testimony*.

16. Nicole Webb visited the subject property in the year the exemption was denied. The property was not being used for anything and consisted of just a grassy lot with a sign indicating it was the future location for the “Streetball Center.” *Webb testimony; Board Ex. 1*.
17. Petitioner has made no substantial progress in furtherance of the project. *Deaton testimony*.

#### ANALYSIS

18. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
19. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property owner would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
20. The taxpayer seeking an exemption bears the burden of proving the property is entitled to exemption by showing that the property falls specifically within the statutory authority

for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

21. The most applicable statutory provisions governing this exemption claim are:

- (a) All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.

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- (c) A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if a building that is exempt under subsection (a) . . . is situated on it.

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- (d) 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) . . . ; and
  - (2) 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 use of the tract for an exempt purpose.

Ind. Code § 6-1.1-10-16.

22. Both Ind. Code § 6-1.1-10-16(a) and (c) contain clear, specific language that requires a building that is being used for one or more of the exempt purposes: educational, literary, scientific, religious, or charitable. Subsection (a) provides for exemption of a qualified building itself, and subsection (c) provides for exemption of a tract of land if there is an exempt building on it.

23. Petitioner did not present probative evidence that at any relevant time there was a

building on the subject property. Furthermore, even if one or more buildings were present, Petitioner presented little probative evidence regarding the use of the property for exempt purposes.

24. Petitioner indicated that children come to the property to cut grass, plant trees, perform neighborhood cleanups, and engage in community service. He also indicated that the property serves as an area to provide family focus programs and activities to combat crime, drugs, and obesity among youth. He contends that such activities serve to enhance proficiency in behavior management, character development, community integration, socialization and communication skills, and creativity among participants.
25. While these activities are commendable, Petitioner described them only in vague terms. He did not provide any specificity with regard to who participates in such activities, nor did he provide any information with regard to when or how frequently such activities might occur. Petitioner is reminded that every exemption case “stand[s] on its own facts” and on how the parties present those facts. *See Indianapolis Osteopathic Hospital., Inc.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).
26. Ind. Code § 6-1.1-10-16(d)(2) provides that to establish substantial progress and active pursuit towards the erection of the intended building and use of the tract for an exempt purpose, the owner must prove the existence of factors such as the following:
  - A. Organization of and activity by a building committee or other oversight group.
  - B. Completion and filing of building plans with the appropriate local government authority.
  - C. Cash reserves dedicated to the project of a sufficient amount to lead a reasonable

individual to believe the actual construction can and will begin within four (4) years.

- D. The breaking of ground and the beginning of actual construction.
  - E. Any other factor that would lead a reasonable individual to believe that construction of the building is an active plan and that the building is capable of being completed within eight (8) years considering the circumstances of the owner.
27. Petitioner did not provide any probative evidence regarding the organization of, and activity by, a building committee or other oversight group. The evidence contains several items bearing the names of either Mr. Toran or Streetball Center in one form or another. Petitioner failed, however, to establish how this evidence might prove the existence of a committee or group that is relevant to moving the project forward.
28. Petitioner provided a portion of a proposal letter as well as a detailed set of plans regarding the project. Both the portion of the proposal letter and the detailed set of plans indicate an address not consistent with the subject property. Furthermore, Petitioner did not provide evidence that he filed any building plans with an appropriate local government authority, nor did he prove any permits for construction were sought or granted.
29. While Petitioner had received commitments for funding, he had not received any actual funding. Furthermore, in 2008, prospective donors eventually said they were “not sure,” that they had better “hold off,” and that everything was eventually put on the “back burner.” Furthermore, Petitioner did not present any additional probative evidence regarding cash reserves dedicated to the project of a sufficient amount to lead a reasonable individual to believe that actual construction would begin in the foreseeable future.

30. The hearing took place in 2015. At that time, Mr. Toran testified that they had “broke ground.” But Respondent testified that at the time the exemption was denied, the subject property was merely a grassy lot with a sign indicating it was the future site of the “Streetball Center.” Furthermore, Petitioner provided no other evidence that construction had actually begun.
31. In addition, pursuant to Ind. Code § 6-1.1-10-16(d)(2)(E), the Board will consider “[any] other factor that would lead a reasonable individual to believe that construction . . . is an active plan and that the [project] is capable of being completed within eight (8) years considering the circumstances of the owner.” In this case, however, Petitioner failed to offer substantial evidence or argument for anything else that should be considered.
32. Petitioner failed to establish a prima facie case that it is entitled to an exemption under Ind. Code § 6-1.1-10-16. Consequently, Respondent’s burden to support the denial of the exemption was not triggered. *See generally, Lacy Diversified, 799 N.E.2d at 1221-1222* (stating that where a petitioner fails to present probative evidence in support of a claim, the assessing official’s duty to support a determination is not triggered).

### CONCLUSION

33. The Board finds in favor of Respondent and holds the subject property is 100% taxable for the 2011 assessment year.

This Final Determination of the above captioned matter is issued on the date first written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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 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>.