

REPRESENTATIVE FOR PETITIONER: Larry Meteiver, Attorney

REPRESENTATIVE FOR RESPONDENT: Cathy Searcy, County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

ELKHART URBAN ENTERPRISE)	Petitions: 20-012-06-2-8-00002
ASSOCIATION,)	20-012-06-2-8-00002A
)	20-012-06-2-8-00003
)	20-012-06-2-8-00003A
Petitioner,)	20-012-06-2-8-00004
)	
)	Elkhart County
v.)	
)	Concord Township
)	
ELKHART COUNTY PROPERTY)	Parcel: 20-06-05-482-004.000-012
TAX ASSESSMENT BOARD OF)	20-06-05-482-003.000-012
APPEALS,)	20-06-08-328-014.000-012
)	20-06-08-328-022.000-012
)	20-06-05-330-007.000-012
)	
Respondent.)	Assessment Year: 2006

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

August 2, 2007

FINAL DETERMINATION

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

Issue: Do the subject real property parcels qualify for the charitable use exemption under Ind. Code § 6-1.1-10-16?

Elkhart Urban Enterprise Association
Findings and Conclusions
Page 1 of 5

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. Elkhart Urban Enterprise Association (EUEA) filed five Applications for Property Tax Exemption (Form 136) for the 2006 assessment on April 25, 2006. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the exemptions and finding the properties 100% taxable on August 14, 2006.
2. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed the Petitions for Review of Exemption (Form 132) on August 31, 2006, seeking administrative review of the PTABOA determinations.

Hearing Facts and Other Matters of Record

3. Patti Kindler, the designated Administrative Law Judge, held a consolidated hearing on the five appeals in Goshen on June 20, 2007.
4. The following persons were sworn as witnesses and presented testimony at the hearing:
Larry Meteiver, Elkhart City Attorney,
Cathy Searcy, Elkhart County Assessor and PTABOA member.
5. The Petitioner presented no exhibits. The Respondent presented the following exhibit:
Respondent Exhibit 1 – *LaCasa of Goshen v. Elkhart Co. Property Tax Assessment Bd. of Appeals*, (December 11, 2006).
6. The following additional items are part of the record of proceedings:
Board Exhibit A – Form 132 Petitions with attachments,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Pre-hearing Exemption Order.

7. The real property in question consists of three residential properties situated on five lots in Elkhart. Parcels 20-06-05-482-004.000-012 and 20-06-05-482-003.000-012 are located at 211 Division Street. Parcels 20-06-08-328-014.000-012 and 20-06-08-328-022.000-012 are located at 624 West Garfield Street. Parcel 20-06-05-330-007.000-012 is located at 111 Brady Street.
8. The Administrative Law Judge did not conduct an on-site inspection of the properties.
9. The Petitioner claims all five parcels qualify for exemption under Ind. Code § 6-1.1-10-16(a) because EUEA, a nonprofit organization, owns, occupies, and uses them for charitable purposes to benefit the community. EUEA's Bylaws and Articles of Incorporation provide that its charitable mission is to improve the quality of life within the city of Elkhart. One of the programs initiated by EUEA as part of its Safe Neighborhood Initiative is the "Officer Next Door" Program. This program fosters the presence of police in certain neighborhoods by providing free housing to police officers for up to three years. In exchange for the free housing, the officer has a duty to live in the house and perform minor maintenance while providing a police presence and establishing neighborhood organizational meetings. EUEA uses the five parcels under appeal exclusively for this program. *Meteiver testimony.*
10. The Respondent did not dispute EUEA's charitable purpose and agreed that the subject parcels should be 100% exempt based on the Board Final Determination for *LaCasa of Goshen v. Elkhart Co. Property Tax Assessment Bd. of Appeals*. The Board issued *LaCasa* on December 11, 2006, which was after the PTABOA denial for the subject properties. The *LaCasa* determination allowed exemption for property used in a similar police neighborhood program. *Searcy testimony; Resp't Ex. 1.*

Basis for Exemption

11. All property generally is subject to property taxation. Ind. Code § 6-1.1-2-1. The General Assembly may exempt any 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 the exemption.

12. All property receives protection, security, and services from the government such as fire protection, security from the police, and public education. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels. *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996). The transfer of this obligation to non-exempt properties is not an inconsequential shift. Therefore, worthwhile activities or noble purposes alone are not sufficient to qualify for tax exemption. The taxpayer must demonstrate that it provides “a present benefit to the general public ... sufficient to justify the loss of tax revenue.” *Miniature Enthusiasts*, 671 N.E.2d at 221 (quoting *St. Mary's Medical Center of Evansville, Inc. v. State Bd. of Tax Comm'rs*, 534 N.E.2d 277, 279 (Ind. Tax Ct. 1989); *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004).

13. In Indiana, use of property by a nonprofit entity 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. *See Raintree Friends Housing, Inc. v. Indiana Dep't of Revenue*, 667 N.E.2d 810, 816 n.8 (Ind. Tax Ct. 1996) (non-profit status does not necessarily entitle a taxpayer to tax exemption).

Analysis

14. Property that is owned, occupied, and used for educational, literary, scientific, religious, or charitable purposes can be exempt from property taxation. Ind. Code § 6-1.1-10-16.
15. The Respondent agreed that the real property should be 100% exempt.
16. The Board accepts the agreement of the parties.

SUMMARY OF FINAL DETERMINATION

17. These five parcels are 100% exempt.

The Indiana Board of Tax Review issues this Final Determination on the date first written above.

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, 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>