

REPRESENTATIVE FOR PETITIONER: David W. Berger, Resident Agent-Trustee, for
Hime's-Miller's & Strombeck's 3rd Additions, Inc.

REPRESENTATIVE FOR RESPONDENT: Laurie Renier,
Kosciusko County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

HIME'S-MILLER'S & STROMBECK'S)	
3RD ADDITIONS, INC.,)	Petition No.: 43-024-04-2-8-00001
)	
Petitioner,)	
)	Kosciusko County
v.)	
)	Tippecanoe Township
KOSCIUSKO COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS,)	Parcel No.: 024-057-144 ¹
)	
Respondent.)	Assessment Year: 2004
)	
)	

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

April 11, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue:

Is the Petitioner's land exempt under Ind. Code § 6-1.1-10-16(c)(3)?

¹ The Petition to the Indiana Board of Tax Review for Review of Exemption, Form 132, incorrectly identified the parcel number as 24-708-003-50. The property record card shows the parcel number is 024-057-144 and the Tax ID number is 24-708-003-50. Nevertheless, the petition also included the correct parcel number as part of the legal description of the property. Therefore, the petition substantially identified the parcel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. David W. Berger, resident agent and trustee of the Petitioner, Hime's-Miller's & Strombeck's 3rd Additions, Inc. (HMS), filed an Application for Property Tax Exemption (Form 136) for this parcel for the 2004 assessment year on May 11, 2003. The Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the property is 100 percent taxable on September 24, 2004.
2. Pursuant to Ind. Code § 6-1.1-11-7, David W. Berger, on behalf of HMS, filed a Petition to the Indiana Board of Tax Review for Review of Exemption (Form 132), seeking an administrative review. He filed the petition on October 25, 2004.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on February 8, 2006, in Warsaw, Indiana. Patti Kindler, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, presided at the hearing.
4. The following persons were sworn as witnesses at the hearing:
 - For the Petitioner – David W. Berger, resident agent-trustee, HMS,
 - For the Respondent – Laurie Renier, Kosciusko County Assessor,
 - Charles A. Ker, PTABOA member,
 - Gerald Bitner, PTABOA member,
 - Susan Myrick, PTABOA member,
 - Richard Shipley, PTABOA member.

5. The parties presented the following exhibits:
 - Petitioner Exhibit 1 – Petition to the Indiana Board of Tax Review for Review of Exemption (Form 132) with attached Notice of Hearing,
 - Petitioner Exhibit 2 – Certificate of Incorporation and Articles of Incorporation,
 - Petitioner Exhibit 3 – Ind. Code § 6-1.1-10-16 with pertinent parts underlined,
 - Petitioner Exhibit 4 – Plat map showing the location of the subject lots,
 - Respondent Exhibit 1 – Application for Property Tax Exemption (Form 136) with property record card attached,
 - Respondent Exhibit 2 – Ind. Code § 6-1.1-10,
 - Respondent Exhibit 3 – Petitioner’s Certificate of Incorporation and Articles of Incorporation,
 - Respondent Exhibit 4 – Notice of Action on Exemption (Form 120),
 - Respondent Exhibit 5 – Property record card and geographic information system (GIS) maps for the subject lots,
 - Respondent Exhibit 6 – Tax Sale Property Status Report.

6. The following additional items are officially recognized as part of the record of proceedings:
 - Board Exhibit A – Form 132 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.

7. The subject parcel consists of three non-contiguous lots for a combined total of .10 acre. Each individual lot is an easement allowing access to Webster Lake, which is located at North Webster, Indiana.

8. The Administrative Law Judge did not conduct an on-site inspection of the property.

9. The Petitioner contends the land should be entirely exempt under Ind. Code § 6-1.1-10-16(c)(3) because it is owned by a nonprofit entity established for the purpose of retaining

and preserving land and water for their natural characteristics, the land area does not exceed five hundred acres, and the tract is not used to make a profit. *Berger testimony.*

10. The evidence establishes that HMS owns three separate lots that are combined as one parcel. They serve as easements to Webster Lake. The total size of the parcel is .10 acre. The property was never used to make a profit. The evidence establishes that HMS was incorporated as a not-for-profit corporation in 1989. The corporation was expressly established to “aid in and protect in any way possible the environment and ecology of Webster Lake” and “to develop, protect and improve the easement to Webster Lake dedicated to the lot owners” of HMS. *Berger testimony; Pet’r Ex. 2.* Therefore, HMS contends it has met all the criteria for exemption set forth in Ind. Code § 6-1.1-10-16(c)(3). *Id.*
11. HMS allows the public to use the easements for fishing or docking boats at no cost. One of the easements is shallow and needs to be dredged. It regularly is used by a member of HMS for a personal paddleboat. The local fire department has used one of the easements to get water from the lake. *Berger testimony.*
12. The Respondent did not rebut or impeach the above evidence, but rather, contends that the property must be owned, used, and occupied for educational, literary, scientific, religious, or charitable purposes. The Respondent argues that such required use is lacking. *Renier testimony; Resp’t Ex. 2.*
13. The Articles of Incorporation state that the Petitioner’s purpose is to develop, protect and improve the Webster Lake easement, but only for the benefit of “the lot owners of Hime’s-Miller’s & Strombeck’s 3rd Additions.” Thus, the Respondent contends the property does not provide any community benefit to anyone other than the residents of Hime’s-Miller’s & Strombeck’s 3rd Additions. *Renier testimony; Resp’t Ex. 3.*
14. The PTABOA determined the parcel is 100 percent taxable. The current total assessed value of the land is \$80,500.

Jurisdiction

15. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

Basis of Exemption and Burden

16. 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.
17. 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 Rev.*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996) (non-profit status does not automatically entitle a taxpayer to tax exemption).
18. 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 it would have paid to other parcels that are not exempt. *See generally, Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
19. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d

220 (citing *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990).

20. 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 statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Assoc. of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Analysis

21. The most applicable statutory provision governing this exemption claim is Ind. Code § 6-1.1-10-16 (c), which provides that:

A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if:

- (1) a building that is exempt under subsection (a) or (b) is situated on it;
- (2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it, or
- (3) the tract:
 - (A) is owned by a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics;
 - (B) does not exceed five hundred (500) acres; and
 - (C) is not used by the nonprofit entity to make a profit.

22. Clear and unambiguous statutory language is not subject to interpretation or construction. *Huntington Co. Comm. School Corp. v. State Bd. of Tax Comm'rs*, 757 N.E.2d 235, 240 (Ind. Tax Ct. 2001); *Zakutansky v. State Bd. of Tax Comm'rs*, 758 N.E.2d 103 (Ind. Tax Ct. 2001); *Joyce Sportswear Co. v. State Bd. of Tax Comm'rs*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997). Unambiguous language within a statute cannot be construed in a manner that expands or limits its function. *Id.*

23. The undisputed evidence proves that HMS owns the property and that HMS was incorporated as a not-for-profit corporation in 1989 to “aid in and protect in any way possible the environment and ecology of Webster Lake” and “to develop, protect and improve the easement to Webster Lake dedicated to the lot owners” of HMS. The Petitioner established that it is a nonprofit entity whose stated purpose is to retain and preserve land and water for their natural characteristics. Testimony regarding actual use of the property is consistent with both the stated purposes and the statutory requirement "of retaining and preserving land and water for their natural characteristics." The total size of the parcel is only .10 acre, which is well within the 500-acre limitation. Further, the evidence establishes that the land is not used to make a profit. Accordingly, HMS made a prima facie case that it meets all the criteria for exemption set forth in Ind. Code § 6-1.1-10-16(c)(3).
24. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003).
25. The Respondent argued that, in order to be eligible for an exemption under Ind. Code § 6-1.1-10-16, the property must be owned, used, and occupied for educational, literary, scientific, religious, or charitable purposes. If the Petitioner were making a claim based on subsection (a), that statement would be true. In this case, however, that subsection is not the basis for the claim and the Respondent's argument is misplaced. The Respondent has provided no substantial authority for applying the limitations in subsection (a) to the exemption provided by subsection (c). On the face of the statute, these provisions are separate and distinct requirements. In this case, the Petitioner is not required to prove educational, literary, scientific, religious or charitable purposes.
26. To qualify for exemption, the plain language of Ind. Code § 6-1.1-10-16(c)(3) requires only that the tract must be owned by a nonprofit entity established for the purpose of

preserving land and water for their natural characteristics, the tract must not exceed five hundred acres, and the tract must not be used to make a profit. The Respondent presented no evidence to establish the Petitioner does not meet these requirements. Therefore, the Respondent failed to rebut the Petitioner's prima facie case.

Summary of Final Determination

27. The Board finds for the Petitioner and determines the parcel is 100% exempt from property taxation.

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

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.