

REPRESENTATIVE FOR PETITIONER: Andrew M. Goeglein, Attorney at Law

REPRESENTATIVE FOR RESPONDENT: Kim Gephart, Noble County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

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|------------------------------|---|-----------------------------------|
| LUTHERAN HOMES, INC., d/b/a |) | |
| SHEPHERD OF THE HILL, |) | Petition No.: 57-019-04-2-8-00001 |
| |) | |
| Petitioner, |) | |
| |) | Noble County |
| v. |) | |
| |) | Wayne Township |
| NOBLE COUNTY PROPERTY TAX |) | |
| ASSESSMENT BOARD OF APPEALS, |) | Parcel No.: 08-102740-00 |
| |) | |
| Respondent. |) | |
| |) | Assessment Year: 2004 |
| |) | |
| |) | |

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

July 17, 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.

Issue 1: Is the portion of the building used as a child care and preschool facility exempt under Ind. Code § 6-1.1-10-16 because it is used for religious and charitable purposes?

Issue 2: Are all 20 acres of the land in the subject parcel exempt?

Procedural History

1. The Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on October 8, 2004. It granted 90% exemption for the improvements. It granted 75% exemption (15 acres of the Petitioner's 20 acres) for the land.
2. On November 3, 2004, Lutheran Homes, Inc., d/b/a Shepherd of the Hill (Petitioner), filed a Form 132 Petition for Review of Exemption (Form 132), seeking an administrative review of the PTABOA action.
3. The Petitioner disputes the PTABOA determination that 10% of the building used for child care and preschool is taxable. The Petitioner also disputes the determination that 25% (5 acres) of the land is taxable and contends there is no longer a statutory limitation on the amount of land that can be exempt for charitable or religious use.

Hearing Facts and Other Matters of Record

4. Patti Kindler, the Administrative Law Judge authorized by the Board, held the hearing in Albion on April 20, 2006.
5. The following persons were sworn as witnesses at the hearing:

For the Petitioner,

Joel E. Weerts, Controller, Lutheran Homes, Inc.,
Reverend Paul B. Griebel, Pastor, St. John Lutheran Church,
Suzzette White, Director, Early Adventures Child Care,
Kathleen Likeness, Director Child Care Services, Lutheran Social Services
of NE Indiana,

For the Respondent:

Kim Gephart, Noble County Assessor,
Mary Beth Lemings, PTABOA member,
Delbert W. Linn, PTABOA member,
George Clifford, PTABOA member.

6. The Petitioner presented the following exhibits:

Petitioner Exhibit A – Copy of Application for Property Tax Exemption with Articles of Incorporation, By-Laws, and Financial Statements attached,

Petitioner Exhibit B – Notice of Action on Exemption, Form 120,

Petitioner Exhibit C – Copy of Petition for Review of Exemption,

Petitioner Exhibit D – Financial records for Early Adventures Child Care from December 2000 through March 2006,

Petitioner Exhibit E – Document showing St. John Lutheran Church of Kendallville as a non-profit domestic corporation,

Petitioner Exhibit F – St. John Lutheran Church’s council meeting minutes,

Petitioner Exhibit G – Organizational documents for the child care committee formed to create the child care ministry,

Petitioner Exhibit H – List of current Board of Directors for Early Adventures,

Petitioner Exhibit I – Early Adventures governing board meeting minutes,

Petitioner Exhibit J – Early Adventures child care license from State of Indiana,

Petitioner Exhibit K– Information describing Early Adventures,

Petitioner Exhibit L– Excerpts from Early Adventure’s Parent Handbook describing the inter-generational child care ministry,

Petitioner Exhibit M – Minutes from Early Adventures Christian Mission Committee outlining ways to incorporate the Christian message at the child care center,

Petitioner Exhibit N – Summary of inter-generational child care ministry,

Petitioner Exhibit O – Copy of Ind. Code § 6-1.1-10-16,

Petitioner Exhibit P – Copy of *Sangralea Boys Fund, Inc., v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954 (Ind. Tax Ct. 1997).

7. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Copy of PTABOA minutes for September 2004,
 - Respondent Exhibit 2 – List of PTABOA members present at above meeting,
 - Respondent Exhibit 3 – Memorandum from the Department of Local Government Finance dated April 2004,
 - Respondent Exhibit 4 – Information from the DLGF regarding the New Castle Lodge exemption case,
 - Respondent Exhibit 5 – Statement regarding the definition of charity,
 - Respondent Exhibit 6 – Copy of Ind. Code § 6-1.1-10-36.3,
 - Respondent Exhibit 7 – Subject property record card.

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

9. The subject property consists of a building situated on 20 acres of land located at 351 North Allen Chapel Road in Kendallville.

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

11. The PTABOA determination for 2004:

| | | |
|--------------|------------|--------------|
| Land | 75% exempt | 25% taxable, |
| Improvements | 90% exempt | 10% taxable. |

12. The Petitioner seeks 100% exemption for the land and improvements.

13. The Petitioner presented the following evidence and argument in support of its position:
- a. The property owned by the Petitioner and utilized jointly with St. John Lutheran Church for the Early Adventures Day Care (Early Adventures) is used for an early childhood ministry. It should be exempt under Ind. Code § 6-1.1-10-16 because this use is religious and charitable. *Goeglein argument.*
 - b. Early Adventures provides quality child care in a safe and caring intergenerational environment, sharing Christ's love with children, parents, and the residents of Shepherd of the Hill. *Griable testimony; Pet'r Ex. G.* Early Adventures is a joint intergenerational ministry between the Petitioner and St. John's Church. *Weertz testimony; Griable testimony.*
 - c. Early Adventures is not incorporated and has no separate legal identity of its own. *Likeness testimony.* Lutheran Homes provides space, executive staff, and financial contributions. St. John's Church provides instructional staff. *Weertz testimony; White testimony.* The licensee of Early Adventures is St. John's Lutheran Church and School. *White testimony.* Early Adventures is a natural extension of St. John's educational program. *Griable testimony.* The curriculum covers both Christian education and standard education. *White testimony.*
 - d. Early Adventures serves to prepare children for learning in both an academic setting and a religious setting. *Likeness testimony.* The intergenerational ministry benefits both the children enrolled in Early Adventures and the residents of Shepherd of the Hill. *Likeness testimony.* The intergenerational ministry benefits the children by providing the atmosphere of learning from caring, older adults through daily interactions such as reading. *Likeness testimony.* The residents of Shepherd of the Hill benefit through this daily interaction because it provides a sense of purpose or meaning to life. *Likeness testimony.*

- e. St. John's Church agreed to pay a \$1,000 monthly rent, but is not currently doing so. The rent has not been paid during much of the time Early Adventures has been in operation. *Likeness testimony; Griebel testimony; Pet'r Ex. D.* The fees charged for Early Adventures, \$110 for infants and \$83 for toddlers and older children, do not cover the operational expenses such as rent and teacher salaries. *White testimony.* The Petitioner does not profit from the arrangement with St. John's Church to operate Early Adventures. *Weertz testimony; Griebel testimony.*
 - f. All 20 acres qualify for property tax exemption under Ind. Code § 6-1.1-10-16. The PTABOA determination limiting the exemption to 15 acres (75%) is incorrect because there is no longer a limitation on the number of acres eligible for this exemption in 2004. *Goeglein argument; Pet'r Ex. O.*
14. The Respondent presented the following evidence and argument in support of the assessment:
- a. The PTABOA was unable to make the determination that Early Adventures is a not-for-profit organization because "501(c)(3) status does not make someone exempt." *Gephart testimony.* Based on financial information, the PTABOA determined that 10% of the Petitioner's building was used by Early Adventures to make a profit and did not qualify for property tax exemption. *Gephart testimony.*
 - b. Prior to the Department of Local Government Finance memorandum issued in April 2004, the maximum acreage allowed for exemption for a charitable property according to statute was 15 acres. *Gephart testimony; Resp't Ex. 3.* This parcel has 20 acres. Therefore, the PTABOA determined the land was 25% taxable because there were 5 additional acres on the parcel. *Id.*

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.

Administrative Review and Burden

16. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case supporting the claim for exemption. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
17. In making its case, the taxpayer must explain how each piece of evidence is relevant. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
18. 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*, 805 N.E.2d at 479.

Basis for Exemption

19. The general rule is that all property 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.

20. An exemption shifts the amount of taxes to other parcels that are not exempt. *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 enough for tax exemption. Exemption is justified and upheld on the basis of accomplishment of a public purpose. *Id.* at 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)).
21. Property that “is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes” is exempt from property taxation. Ind. Code § 6-1.1-10-16. For this exemption, the property must be predominantly used or occupied for one or more of the listed purposes. Indiana Code § 6-1.1-10-36.3 provides:
- For purposes of this section, property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more purposes during more than fifty (50%) of the time that it is used or occupied in the year that ends in the assessment date of the property.
- See State Bd. of Tax Comm'rs v. New Castle Lodge #147 Loyal Order of Moose*, 765 N.E.2d 1257, 1259 (Ind. 2002).
22. Federal income tax exemption or not-for-profit status is not determinative of a property tax exemption. *Raintree Friends Housing, Inc. v. Indiana Dep't of Revenue*, 667 N.E.2d 810, 816 n.8 (Ind. Tax Ct. 1996).

Analysis

The Building

23. Property qualifies for property tax exemption under Ind. Code § 6-1.1-10-16 if the property is owned to further an exempt purpose, occupied to further an exempt purpose, and used to further an exempt purpose. *Sangrilea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954 (Ind. Tax Ct. 1997).

24. The evidence establishes that the intergenerational ministry of the Petitioner and St. John's Church furthers the charitable purposes of caring for the aged. Providing a setting that gives the residents of Shepherd of the Hill a sense of life purpose and meaning meets the Petitioner's purpose of caring for the aged. Caring for the aged is not limited to tending to the physical needs. It includes tending to their mental and spiritual needs.
25. The evidence establishes that the intergenerational ministry furthers religious purposes. Providing children with Christian education as part of Early Adventures daily programming is reasonably necessary to St. John's Church's religious purposes. Property is exempt if it is reasonably necessary to the exempt purpose. *LeSea Broadcasting v. State Bd. of Tax Comm'rs*, 525 N.E.2d 637 (Ind. Tax Ct. 1988).
26. The Petitioner made a prima facie case regarding its claim that the portion of its building used for the operation of Early Adventures qualifies for property tax exemption. The Petitioner owns the building in the furtherance of an exempt purpose. Jointly, the building is occupied in the furtherance of an exempt purpose and used in the furtherance of an exempt purpose. The burden shifted to the assessing official to rebut the Petitioner's evidence.
27. The Respondent attempted to rebut the Petitioner's evidence by pointing to the fees charged for the use of that portion of the building and claiming that the fees profit the Petitioner. The fact that the Petitioner charges a fee does not disqualify the property from exemption. *State Bd. of Tax Comm'rs v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. App. 1968) (charging fees for the use of an institution alone does not disqualify the property from exemption when the fees are used to pay expenses and the proprietors of the institution do not profit from the fees). The evidence shows that the Petitioner does not make a profit from the child care program or from the rental fees it charges St. John's Church. The Respondent failed to rebut the Petitioner's prima facie case.
28. The Petitioner met its burden of showing that the portion of its building used to operate Early Adventures qualifies for property tax exemption.

The Land

29. 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.*

30. The specific statutory language in Ind. Code § 6-1.1-10-16(c)(1) states “land...is exempt from property taxation if...a building that is exempt under subsection (a) or (b) is situated on it...” This is the current language as amended by House Enrolled Act 2005 effective July 1, 2003. For the 2004 assessment, the only limitation on the amount of acreage eligible for exemption found in Ind. Code § 6-1.1-10-16(c).

31. The evidence establishes that the Petitioner’s building is located on 20 acres of land. The evidence established that the Petitioner’s building is exempt from taxation. Additionally, the statutory language in Ind. Code § 6-1.1-10-16 does not limit the amount of land eligible for this exemption. Therefore, the Petitioner made a prima facie case regarding its claim that its land is 100% exempt.

32. The Respondent attempted to rebut the Petitioner’s claim by presenting a memorandum issued by the DLGF discussing legislative changes. The Respondent relied on the date of the DLGF memorandum, April 2004, as the basis for its denial of exemption for 5 acres in this parcel. The Respondent’s reliance on that memorandum, however, is misplaced. The clear language of the memorandum states that it is a reminder about legislation enacted in 2003 with new procedures and requirements for exemptions beginning in 2004. Most importantly, the effective date for the legislation was July 1, 2003. The date of the DLGF memorandum is irrelevant. The elimination of the 15-acre limit was effective for the assessment date March 1, 2004. The Respondent failed to rebut or impeach the Petitioner’s evidence.

Summary of Final Determination

33. The Petitioner proved that it is entitled to 100% property tax exemption for its building and 100% property tax exemption for its land.

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>>.