

REPRESENTATIVES FOR PETITIONER:
Brad Hasler, Bingham McHale, LLC
Matthew M. Price, Bingham McHale, LLC

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Avon Real Estate, LLC,	)	Petition No.:	32-022-07-2-8-00001
)		
Petitioner,	)	Parcel:	23-1-01-51E-400-003
)		
v.	)	County:	Hendricks
	)	Township:	Washington
Hendricks County Property Tax)		
Assessment Board of Appeals,)		
	)	Assessment Year:	2007
Respondent.)		

Appeal from the Final Determination of
Hendricks Property Tax Assessment Board of Appeals

January 6, 2009

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board is whether the property qualifies for a religious purposes exemption under Ind. Code § 6-1.1-10-16.¹

Procedural History

2. Bradley Hasler, Bingham McHale, LLP, on behalf of Avon Real Estate, LLC, (Avon Real Estate) filed a Form 136 Application for Property Tax Exemption with the Hendricks County Property Tax Assessment Board of Appeals (PTABOA) on May 15, 2007. The Hendricks County PTABOA issued its determination denying the exemptions on June 29, 2007. On July 27, 2007, Mr. Hasler filed a Form 132 Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition.

Hearing Facts and Other Matters of Record

3. Pursuant to Indiana Code § 6-1.1-15-4, Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on October 2, 2008, in Danville, Indiana.
4. The following persons were sworn as witnesses at the hearing:²

¹ The Petitioner's application for exemption sought an exemption pursuant to Ind. Code § 6-1.1-10-16 for educational and charitable purposes. At hearing, the Petitioner chose to only pursue its claim for exemption for the property's religious use.

² Mr. Sanjiv Patel and Mr. M. Allen Parsons, Jr. were also in attendance for the Petitioner and Respondent respectively but were not sworn in as witnesses to give testimony for their parties.

For the Petitioner:

Pradip Patel, Avon Real Estate and BAPS Midwest, Inc.

For the Respondent:

Gail Brown, Hendricks County Assessor
Lester Need, PTABOA member
Ronald L. Faulkner, PTABOA member
Gordon E. McIntyre, PTABOA member
Harold E. Hiser, Washington Township Assessor

5. At hearing, the Petitioner filed its *Petitioner's Brief in Support of Exemption*. The Petitioner also submitted the following exhibits:

Petitioner Exhibit P-1 – Land title survey map, dated March 23, 2005,
Petitioner Exhibit P-3 – Indiana Certificate of Authority for Bochasanwasi
Shree Akshar Purushottam Swaminarayan Sanstha
– Midwest, Inc., dated May 1, 2006,
Petitioner Exhibit P-4 – Website printout regarding BAPS Swaminarayan
Sanstha, dated May 15, 2007,
Petitioner Exhibit P-5 – Lease agreement between Avon Real Estate and
BAPS Midwest, Inc., dated April 22, 2005,
Petitioner Exhibit P-8 – Tax system information for parcel 23-1-01-51E-
400-003,
Petitioner Exhibit 9 – Operating agreement of Avon Real Estate, dated
March 4, 2005,

6. The Respondent submitted the following exhibits:

Respondent Exhibit 1 – Application for Property Tax Exemption – Form
136 with attachments,
Respondent Exhibit 2 – Notice of Action on Exemption Application –
Form 120,
Respondent Exhibit 3 – Copy of Indiana Code § 6-1.1-10-16,
Respondent Exhibit 4 – Copy of Indiana Code § 6-1.1-10-21,
Respondent Exhibit 5 – Avon Real Estate property record card,
Respondent Exhibit 6 – Notice of Assessment by Assessing Officer –
Form 113,

- Respondent Exhibit 7 – Business Tangible Personal Property Return – Form 104,³
- Respondent Exhibit 8 – Indiana Board of Tax Review Final Determination in *T & T Enterprises LLC v. Hamilton County Property Tax Assessment Board of Appeals*, Petition No. 29-013-03-2-8-00001, dated February 6, 2004,
- Respondent Exhibit 9 – Hendricks County Assessor’s Position regarding the State Appeal on Avon Real Estate,⁴
- Respondent Exhibit 10 – Hendricks County Assessor’s Position regarding the State Appeal on Avon Real Estate,
- Respondent Exhibit 12 – Presentation on *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905 (Ind. Tax Ct. 2006).

7. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:

- Board Exhibit A – Form 132 Petition with attachments,
- Board Exhibit B – Notice of Hearing on Petition,
- Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
- Board Exhibit D – Hearing sign-in sheet.

8. The property at issue is a 10,800 square foot church on a 8.34 acre lot, located at 350 North County Road 900 East, Avon, in Washington Township, Hendricks County.

³ Prior to the hearing, the Petitioner’s counsel Mr. Hasler withdrew Petition No. 32-022-07-2-8-00002, requesting an exemption on the personal property owned by Avon Real Estate. As a result of the withdrawal of this petition, the Respondent’s witness, Mr. Lester Need, stated that Respondent’s Exhibits 6, 7 and pages 13, 32-36 of Exhibit 9 should be disregarded because the evidence pertained to the personal property exemption request.

⁴ Mr. Hasler objected to pages 28 – 30 of Respondent’s Exhibit 9 and pages 6, 8 and 9 of Respondent’s Exhibit 10, regarding conversations between the county and Mr. Hasler and Mr. Price under Rule 408. Indiana Rules of Evidence, Rule 408 states that “Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount.” The Respondent is barred from presenting evidence regarding previous conversations with Mr. Hasler or Mr. Price concerning compromising, furnishing evidence or the settlement of Avon Real Estate’s exemption appeal. The Petitioner’s objection is sustained and the Board will take no notice of the above cited pages.

9. The ALJ did not conduct an on-site inspection of the property.
10. For 2007, the PTABOA determined the real property to be 100% taxable.
11. For 2007, the Petitioner contends that the real property should be 100% tax-exempt.

Jurisdictional Framework

12. The Indiana Board of Tax Review 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. *See* Ind. Code § 6-1.5-4-1 (b); Ind. Code § 6-1.1-15-4.

Administrative Review and Petitioner's Burden

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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").

15. 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 of Exemption and Burden

16. 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.
17. 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, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
18. 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 at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).

19. 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. 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).

Petitioner's Contentions

20. The Petitioner contends the land and improvements at issue should be 100% exempt from property taxation under Ind. Code § 6-1.1-10-16. *Petitioner Exhibit 10; Hasler argument.*⁵ According to the Petitioner, the property is owned, occupied and used for the purpose of conducting religious services and promoting religious education. *Id.*
21. According to the Petitioner's witness, it was always the sole intention of the members of Bochasanwasi Shree Akshar Purushottam Swaminarayan Sanstha (BAPS) to purchase a property for worship. *P. Patel testimony.* However, because the temple and its congregation was so small, it could not raise enough money to purchase a suitable property. *Id.* To solve this problem, in March 2005, certain members of BAPS formed Avon Real Estate, LLC. *Petitioner Exhibits 9-10; P. Patel testimony; Hasler argument.* Avon Real Estate's operating agreement states: "The purpose of the Company is to hold the property located at 350 West County Road 900 East, Avon, Hendricks County, Indiana, which property is used for religious purposes." *Hasler argument; Petitioner Exhibit 9.* Subsequent to, but during the same month that Avon Real Estate was formed, it

⁵ Mr. Hasler argued that the Petitioner was not seeking an exemption under Ind. Code § 6-1.1-10-21.

- purchased the subject property at 900 East. *P. Patel testimony*. Mr. Patel testified that this is the only property owned by Avon Real Estate. *Id.* Further Mr. Patel testified Avon Real Estate does not engage in any other business than owning and leasing the BAPS Temple to BAPS Midwest. *Id.*
22. The Petitioner argues that it does not own the property for purposes of profit. *Hasler argument*. According to the Petitioner's operating agreement, the members' contributions to the Avon Real Estate LLC were "charitable contributions." *Petitioner Exhibit 9*. Mr. Patel testified that he did not expect to earn any return on his investment. *P. Patel testimony*. Further the agreement states that "it is expressly understood and agreed that each Member's respective Charitable Contribution was made as a charitable donation, and as such, shall not be returned." *Petitioner Exhibit 9*. Upon dissolution of the Petitioner, "any assets remaining after payment of all debts of the Company shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code." *Id.*
23. The Petitioner argues that the property is leased exclusively to BAPS Midwest Inc., an Indiana Non-Profit Corporation. *P. Patel testimony; Petitioner Exhibit P3*. No other tenant or subtenants lease or occupy the property. *Petitioner's Brief in Support of Exemption (the Petitioner's Brief) at 4; P. Patel testimony*. According to Mr. Patel, the Petitioner has a fifteen year standard lease with BAPS that states "the parties desire that the building be used for religious worship only." *Petitioner Exhibit P5; P. Patel testimony*. Mr. Patel testified that BAPS pays \$8,000 per month or \$96,000 per year rent for the property. *Id.* BAPS also pays all costs and expenses incurred by the landlord such as interest expense on loans, taxes, cost of repairs, cost of dues and assessments and maintenance to the building as additional rent. *Petitioner Exhibit P5, Petitioner's Brief at 3*. The Petitioner argues that if the real estate taxes are reduced, BAPS is the party that benefits. *Petitioner's Brief at 3; Hasler argument*.

24. Further, the Petitioner argues, the property is occupied and used for religious purposes. *Hasler argument*. BAPS is a religious organization established in 1907 by Shastriji Maharaj. *P. Patel testimony*. According to the Petitioner's witness, BAPS is open to persons of any race or nationality who wish to enrich themselves spiritually, morally and socially. *Petitioner Exhibit 10; P. Patel testimony*. Mr. Patel testified that religious ceremonies are performed daily at the Temple in the morning and evening. *P. Patel testimony*. In addition, religious study groups meet at the Temple and a spiritual leader lives on site to provide spiritual guidance and instruction. *Id.*
25. In its brief, the Petitioner argued that "a property's exempt status is 'tied to its use, and not to its owner.'" *Petitioner's Brief at 6; citing Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 181 (Ind. Tax Ct. 2005). According to the Petitioner, "the relevant consideration [is] whether the property [is] 'dedicated to furthering [exempt] purposes.'" *Id. at 7*. The Petitioner argues that here the property is owned for a religious purposes because of the Petitioner's written consent to BAPS Midwest's operation under the lease. *Id.* Further, the Petitioner contends, the lease restricts the property to religious uses. *Id. at 8*. The Petitioner also contends that it "demonstrated that it owns the Real Estate for exempt purposes by applying for a real property tax exemption for the ultimate benefit of BAPS Midwest." *Id. at 9*.
26. The Petitioner further argues that the Indiana Tax Court, in *Sangralea Boys Fund, Inc.*, 686 N.E.2d 954, 956-959 (Ind. Tax Ct. 1997) and *College Corner, L.P.*, 840 N.E.2d 905 (Ind. Tax 2006), held that Indiana Code § 6-1.1-10-16 does not differentiate between not-for-profit organizations and for-profit organizations in determining an exemption. *Petitioner's Brief at 16*. Finally, the Petitioner argues that its subjective motives in owning the subject property are irrelevant because "the reduction in property tax liability flowing from an exemption would pass through to directly benefit BAPS Midwest and not [the] Petitioner." *Id.*

Even if the Petitioner's subjective intent is considered, the Petitioner argues, it has shown that it owns the property for religious purposes. *Id. at 17.*

Respondent's Contentions

27. The Respondent argues that the Petitioner should be denied an exemption under Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-21 because Avon Real Estate has not shown it is a not-for-profit organization. *Brown argument; Need argument.* The Respondent contends that the Petitioner and BAPS are separate and distinct entities. *Respondent Exhibit 9; Need argument.* While BAPS is engaged in religious activities, Avon Real Estate is not. *Id.* Thus, even though the property is used and occupied for an exempt purpose, the Respondent argues, the exemption should be denied because the property must also be owned for an exempt purpose. *Id.*
28. The Respondent argues that property owned for income-producing purposes is not exempt. *Respondent Exhibit 9; Need argument.* According to the Respondent, Avon Real Estate's lease provisions, such as collecting taxes as additional rent, show that the Petitioner is a for-profit organization. *Id.* Moreover, rent charged at or below cost does not create a not-for-profit situation for property taxation. *Respondent Exhibits 8-9; Need testimony,* citing the Indiana Board of Tax Review in *T & T Enterprises, LLC*, Petition No. 29-013-03-2-8-00001. While the lease refers to the owners' contributions as "charitable contributions," the Respondent argues the contributions were to start the Petitioner's business. *Id.* Eventually the property will be paid off and the property would become an asset to the owner, not the charitable organization. *Id.*
29. Further, the Respondent contends that Avon Real Estate failed to provide any documentation to show it qualifies for exemption under Ind. Code § 6-1.1-10-16. *Need testimony.* Mr. Need testified that the Respondent never received financial

- data despite the fact that the Application for Property Tax Exemption requires balance sheets and a summary of income and expenditures for the previous three years. *Id.*; *Respondent Exhibit 9*. The Respondent argues that the Petitioner's failure to provide the documentation is grounds to deny the exemption. *Id.*
30. Finally, the Respondent contends that *College Corner, L.P.*, 840 N.E.2d 905 (Ind. Tax 2006) does not apply in the case at bar. *Need argument*. According to the Respondent, Avon Real Estate differs from *College Corner, L.P.* in three major ways. *Id.* First, in *College Corner*, the Old Northside Foundation was an Indiana not-for-profit organization with ownership in *College Corner, L.P.* *Id.* Second, the agency that provided the financing to purchase the deteriorated properties, National City Community Development Corporation, received no interest on its investment in a property until after it was renovated and sold, then the interest was a fixed 7% on the original purchase price. *Id.* Finally, *College Corner, L.P.* received no profit as a result of their reconstruction actions. *Id.* The Respondent argues that here, contrary to the facts of *College Corner*, Avon Real Estate is a for-profit organization. *Id.* In addition, Avon Real Estate failed to show it has not made a profit on the lease to BAPS. *Id.*

Analysis of the Issue

31. Avon Real Estate contends that its property should be exempt from taxation under Ind. Code § 6-1.1-10-16. Thus, it bears the burden of proving, by a preponderance of the evidence, that the subject property is owned, occupied, and predominately used for one of the exempt purposes in that statute. *See Indianapolis Osteopathic Hospital Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009, 1114 (Ind. Tax Ct. 2004). While Ind. Code § 6-1.1-10-16(a) lists a number of exempt purposes, the Petitioner claims only a religious exemption.

32. The exemption requires probative evidence that the property at issue is owned, occupied, and used for an exempt purpose. While the words “owned, occupied and used” restrict the activities that may be conducted on the property that can qualify for exemption, they do not require a single entity to achieve a unity of ownership, occupancy and use. Rather, these words are used to ensure that the particular arrangement involved is not driven by a profit motive. Once these three elements are met, the property can be exempt from property taxation. *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005).
33. While Ind. Code § 6-1.1-10-16 does not require a single entity to own, occupy and use a property for exempt purposes, the exemption statute “contains specific limits of ownership, occupation, and use in furtherance of [exempt] goals. These limits prevent an entity from leasing property to another, for either party’s profit and claiming an exemption.” *Sangrlea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954, (“Sangrlea does not own the property as investment property or with a motive of profit. The use and occupation of the property by the Lessees is in furtherance of Sangrlea’s exempt purposes.”). Thus, the Tax Court in *Sangrlea* excludes properties owned for investment or profit purposes from exemption.
34. Here, the subject property is owned by Avon Real Estate and occupied and used by BAPS. Avon Real Estate is a for-profit company that owns the subject property and leases it to BAPS. *P. Patel testimony*. BAPS is a religious organization established in 1907 by Shastriji Mahraraj open to persons of any race or nationality who wish to enrich themselves spiritually, morally and socially. *Petitioner Exhibit 10; P. Patel testimony*.
35. The language of Ind. Code § 6-1.1-10-16 does not differentiate between entities that are not-for-profit and those that are for-profit. *College Corner, L.P. v.*

Department of Local Government Finance, 840 N.E.2d 905, 911 (Ind. Tax Ct. 2006). While the Petitioner’s status as a for-profit entity is not a determining factor, it must establish the property is owned for an exempt purpose. Here, the Petitioner’s witness testified that eight members of BAPS formed Avon Real Estate for the sole purpose of acquiring the subject property when the members of BAPS could not finance the purchase of a temple. *Petitioner Exhibits 9-10; P. Patel testimony*. Significantly, Avon Real Estate does not own or lease any other property. *P. Patel testimony*. Thus, Avon Real Estate’s sole business is to own the subject property to lease the property to the temple rather than owning multiple commercial properties leased to various commercial entities.

36. Further, each member of Avon Real Estate made his or her initial contribution as a charitable donation. *Petitioner Exhibit 9*. The operating agreement made clear that if Avon Real Estate is dissolved, the members’ contribution would not be returned. *Id.* Similarly, Mr. Patel testified that he has not received, nor did he expect to receive a profit from his investment. *P. Patel testimony*. In fact, upon dissolution of Avon Real Estate, the property must be distributed for “one or more exempt purposes with the meaning of section 501(c)(3) of the Internal Revenue Code ... or to a state or local government, for a public purpose.” *Petitioner Exhibit 9*.
37. Finally, the operating agreement of Avon Real Estate and the lease between the Petitioner and BAPS specifies that the property is to be used only for religious purposes. *Petitioner Exhibits P-5 and 9*. The Board finds that this is sufficient

evidence to raise a prima facie case that the subject property is owned, occupied and used for an exempt purpose.⁶

38. The Respondent argues that even though the property is occupied and used for an exempt purpose, the property does not qualify for exemption because it is not owned by a not-for-profit entity. *Brown and Need testimony*. The Respondent is incorrect. Nothing in Ind. Code § 6-1.1-10-16 limits exemption to not-for-profit organizations. Indeed, the statute does not differentiate between not-for-profit organizations and for-profit organizations. *College Corner, L.P.*, 840 N.E.2d 905, 911 (Ind. Tax Ct. 2006).
39. The Respondent further argues that the Petitioner failed to provide financial documentation showing it was a non-profit entity. *Need testimony*. As the Board found above, the Petitioner's status as a for-profit or not-for-profit entity is not determinative. To the extent that the Respondent believed that Avon Real Estate's financial documents would have rebutted the Petitioner's evidence that it owned the property for an exempt purpose, the Respondent could have requested such information in discovery pursuant to the Board's rules and presented it in hearing. This the Respondent did not do.

Summary of Final Determination

40. The Petitioner raised a prima facie case that it is entitled to 100% exemption of its real property. The Respondent failed to rebut the Petitioner's case. The Board finds in favor of the Petitioner and holds that the subject property is 100% exempt.

⁶ The Board notes that, contrary to the Petitioner's argument, it is not sufficient that Avon Real Estate leases property for an exempt use for its ownership to be for an exempt purpose. Nor is the Board persuaded by the circular argument that if a party asks for an exemption, it is therefore entitled to an exemption. Despite the Petitioner's argument a "character test" is a slippery slope, the Board holds that a property owner's subjective intent in owning the property is highly relevant to determining if the property is owned for an exempt purpose and the Board will review the circumstances of each exemption request in making its determination as to whether a property is owned for an exempt purpose.

The Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date written above.

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

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 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 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/bills/2007/SE0287.1.html>.