
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Fellowship Bible Church)	Petition No.: 57-007-07-2-8-00001
)	
Petitioner,)	Parcel: 57-07-35-400-184-000-020
)	
v.)	County: Noble
)	Township: Wayne
Noble County Assessor)	
)	Assessment Year: 2007
Respondent.)	

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

July 29, 2008

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 subject property qualifies for a religious purpose exemption under Ind. Code § 6-1.1-10-16.

Procedural History

- Pursuant to Indiana Code § 6-1.1-11-7, on February 7, 2008, the Petitioner, Fellowship Bible Church (Petitioner) filed a Form 132 Petition for Review of Exemption (Form 132 Petition), petitioning the Board to conduct an administrative review of the denial of the Petitioner's application for exemption.¹

Hearing Facts and Other Matters of Record

- 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 April 24, 2008, in Albion, Indiana.
- The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Thomas Dyson, pastor, Fellowship Bible Church
Rick Kiersey, treasurer, Fellowship Bible Church
Henry Vosburgh, executive director, Midwest Church Extension

For the Respondent:

Kim Gephart, Noble County Assessor
George Clifford, PTABOA member

- The Petitioner submitted the following exhibits:²

¹ The Notice of Action on Exemption Application – Form 120 (Form 120) issued by the Noble County Property Tax Assessment Board of Appeals (PTABOA) was not properly executed with a date and signature. *Board Exhibit A*. Ms. Gephart testified the PTABOA issued its Form 120 determination to the Petitioner in July 2007, but provided no evidence to establish the date the Form 120 was issued to the Petitioner. *Gephart testimony*. Therefore, because the Respondent did not object to the filing of the Form 132 as untimely, the Board will review this case on its merits.

² While the Petitioner's exhibit list identifies Petitioner Exhibit 8 as a copy of an article from *Voice Magazine* regarding the property, the Petitioner failed to submit any such exhibit at the hearing.

- Petitioner Exhibit 1 – Constitution of Fellowship Bible Church of Kendallville, Indiana,
- Petitioner Exhibit 2 – Letter of intent from the Fellowship Bible Church Steering Committee, dated April 4, 2008,
- Petitioner Exhibit 3 – Letter from Fellowship Bible Church regarding its relationship to Midwest Church Extension, dated April 18, 2008,
- Petitioner Exhibit 4 – Midwest Church Extension Constitution,
- Petitioner Exhibit 5 – The Mission Plant Covenant for Midwest Church Extension,
- Petitioner Exhibit 6 – Letter from Henry Vosburgh, Executive Director, Midwest Church Extension, dated April 18, 2008,
- Petitioner Exhibit 7 – Midwest Church Extension’s *Harvest Seeds* newsletter,
- Petitioner Exhibit 9 – Tax deed from Noble County Auditor to Fellowship Bible Church, dated December 29, 2006,
- Petitioner Exhibit 10 – Letter from attorney, Max W. Garwood, to Fellowship Bible Church, dated March 26, 2007,
- Petitioner Exhibit 11 – Certificate of Occupancy issued to Diamond Street Baptist Church, dated July 17, 1979,
- Petitioner Exhibit 12 – Improvement location permit issued by the City of Kendallville to Fellowship Bible Church, dated January 17, 2008,
- Petitioner Exhibit 13 – Receipts from various vendors for permits and building materials,
- Petitioner Exhibit 14 – Copy of the 2007 payable receipts for real estate taxes, dated November 9, 2007,
- Petitioner Exhibit 15 – Letter regarding the work required on the building, dated April 18, 2008,
- Petitioner Exhibit 16 – Photographs of the interior and exterior of the subject building,
- Petitioner Exhibit 17 – Cover letter and list of witnesses and testimony submitted by Fellowship Bible Church, dated April 18, 2008,
- Petitioner Exhibit 18 – Floor plans of the building,
- Petitioner Exhibit 19 – *Trinity Episcopal Church, Health and Hospital Corp. of Marion County v. State Board of Tax Commissioners*, 694 N.E.2d 816 (Ind. Tax 1998),
- Petitioner Exhibit 20 – Letter from Calvary Baptist Church to Fellowship Bible Church, dated January 30, 2007.

6. The Respondent submitted the following exhibits:

Respondent Exhibit 1 – Indiana Board of Tax Review Order Regarding Conduct of Exemption Hearing, dated March 17, 2008,

Respondent Exhibit 2 – Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132,

Respondent Exhibit 3 – Application for Property Tax Exemption – Form 136, dated May 15, 2007,

Respondent Exhibit 4 – Aerial map of the area,

Respondent Exhibit 5 – Copy of Ind. Code § 6-1.1-10-16,

Respondent Exhibit 6 – Copy of Ind. Code § 6-1.1-10-21,

Respondent Exhibit 7 – Indiana Board of Tax Review Notice of Hearing on Petition, dated March 12, 2008.

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 church and storage building on five acres, located at 306 North Allen Chapel Road, Kendallville, in Wayne Township, Noble County.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2007, the PTABOA denied the Petitioner's request for an exemption and determined the property's land and improvements were 100% taxable.
11. For 2007, the Petitioner contends that the subject property should be 100% tax-exempt.

Jurisdictional Framework

12. 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. *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, because the

activities conducted directly or indirectly on the premises are done in order to conduct religious services and promote religious education. *Dyson testimony*. Mr. Dyson testified that Fellowship Bible Church purchased the subject property from a county tax sale conducted in 2005 for use as its church. *Dyson testimony*. According to the Petitioner, the church received a tax deed to the property from the Noble County Auditor on December 29, 2006. *Petitioner Exhibit 9; Dyson testimony*.

21. The Petitioner contends that the subject property was vacant for several years prior to the church taking possession in January of 2007. *Dyson testimony*. According to the Petitioner, an initial survey of the subject property found it was not suitable for use due to neglect and deterioration. *Id.* Mr. Dyson testified that the building needed repairs to the drywall, the bathrooms, the roof, the HVAC system, and to the exterior soffit and fascia. *Petitioner Exhibit 15; Dyson testimony*. In support of this contention, the Petitioner submitted photographs, various receipts for the purchase of building materials, and an improvement location permit. *Petitioner Exhibits 12, 13 and 16*.
22. Mr. Dyson testified that, although the Fellowship Church intended to begin the renovations on the property in January or February of 2007, much of the renovation work was delayed until August 2007, due to the threat of litigation from the Calvary Baptist Church, who believed it held the subject property in trust at the time of the tax sale. *Petitioner Exhibits 10 and 20; Dyson testimony*. The Petitioner contends, however, that the Fellowship Bible Church conducted a Thanksgiving and Dedication service at the subject property on April 29, 2007. *Dyson testimony*.
23. The Petitioner's witness, Mr. Henry Vosburgh, Executive Director for Midwest Church Extension testified that Fellowship Bible Church's actions and activities have shown its intent has always been to use the property for religious purposes.

*Vosburgh testimony.*³ According to Mr. Vosburgh, Midwest Church Extension was instrumental in arranging the finances prior to the purchase of the property and has pledged continued financial resources to assist the Fellowship Bible Church in maintaining the presence of a religious entity on the subject property. *Id.*

24. Further, the Petitioner's witness, Mr. Rick Kiersey testified the City of Kendallville has a zoning ordinance which requires a property to have a special exception in order to be used as a church. *Kiersey testimony.* According to Mr. Kiersey that special exception becomes null and void when the property is no longer being used as a church. *Id.* Mr. Kiersey contends the subject property was granted a special exception for use as a church twelve years ago and that special exception still remains in affect in 2007. *Id.*

25. Despite the fact that Fellowship Bible Church was not holding weekly services at the property in 2007, the Petitioner contends that the property was purchased to be used as its church when renovations were completed and that plan or purpose has not changed. *Dyson testimony.* According to the Petitioner, Indiana Code § 6-1.1-10-16 (d), should be read to exempt a structure that is in repair and being renovated when the existing structure is not suitable for use. *Dyson testimony.* Further, the Petitioner argues, the Tax Court in *Trinity Episcopal Church, Health and Hospital Corp. of Marion County v. State Board of Tax Commissioners*, 694 N.E.2d 816 (Ind. Tax 1998), held that "this Court made it clear that property acquired for future use in furtherance of exempt purposes may qualify for a property tax exemption under section 6-1.1-10-16." *Petitioner Exhibit 19; Dyson testimony.* Thus, the Petitioner concludes, the property should be granted a 100% exemption for 2007. *Dyson testimony.*

³ Midwest Church Extension is an organization that facilitates the planting of new churches and re-plants struggling churches. *Petitioner Exhibit 4.*

Respondent's Contentions

26. The Respondent contends the Fellowship Bible Church has not shown the subject property was used for religious purposes. *Gephart testimony*. According to the Respondent, the property was vacant and not being used on March 1, 2007. *Id.* Thus, the Respondent argues, it does not meet the criteria for a religious purpose exemption as set forth in Ind. Codes § 6-1.1-10-16 and § 6-1.1-10-21. *Respondent Exhibits 5 and 6; Gephart testimony.*
27. Further, the Respondent contends that the subject property does not become eligible for an exemption until it actually started to “pound nails.” *Clifford testimony*. According to the Respondent, when the Petitioner was in the planning stages of its renovation, the church was a “mere dream.” *Id.*

Analysis of the Issue

28. The Petitioner contends that the subject property is entitled to an exemption because it is owned, occupied and used for religious purposes. *Dyson testimony*. According to the Petitioner, despite the fact that Fellowship Bible Church was not holding weekly services at the property in 2007, the property was purchased to be used as its church. *Id.* Further, the Petitioner argues, the church has continuously moved forward with its plans to renovate the church for its use since they purchased the property in 2006. *Id.*
29. The Indiana General Assembly provided that “[a]ll 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.” Ind. Code § 6-1.1-10-16(a). If the property had been used as a church at the time of the assessment, it would undoubtedly be exempt. The property, however, required extensive renovation prior to the Petitioner’s use of the property to hold services.

Thus, the question at issue is whether property intended for an exempt purpose in the future can be exempt under Indiana Code § 6-1.1-10-16.

30. This question has already been answered by the Indiana Tax Court in *Trinity Episcopal Church v. State Board of Tax Commissioners*, 694 N.E.2d 816 (Ind. Tax Ct. 1998). In that case, the Tax Court found that an exemption for a church was proper even though the building was vacant on the assessment date because the owner was renovating the building for its future use. The Court held that “[p]roperty acquired for future use in furtherance of exempt purposes may qualify for a property tax exemption under section 6-1.1-10-16.” *Trinity Episcopal*, 694 N.E.2d at 819 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850 (Ind. Tax Ct. 1990)).
31. The intent to use the property for an exempt purpose, however, must be “more than a dream.” *Trinity Episcopal*, 694 N.E.2d at 819. An entity must show that it is actively working towards using the property for exempt purposes. *Foursquare Tabernacle*, 550 N.E.2d 850. According to the Court, this may be evidenced by showing that plans have been prepared and that the entity has adequate funds available for construction. *Id.* The Tax Court held “[while] only those facts as they exist on the 1st day of March of each year are material to the determination of questions of assessment and valuation...and for exemption, ...[the] situation on the assessment date can be evidenced by occurrences outside that date.” *Trinity Episcopal Church*, 694 N.E.2d at 819.
32. Here, the evidence is clear that the Petitioner acquired the property for future use in furtherance of an exempt purpose. The Petitioner provided sufficient evidence that it took possession of the property on December 29, 2006, and made continuous progress toward the use of the property as a church. *See Petitioner Exhibits 9, 12, 13 and 15.* Although work on the subject property did not start until after the March 1, 2007, assessment date, the Petitioner testified that the list

of renovations was compiled in January and February 2007. *Dyson testimony*. Further, the Petitioner's witness testified that Petitioner had secured sufficient financing to fund the renovations and repairs prior to the March 1st assessment date. *Vosburgh testimony*. In addition, while awaiting the outcome of the litigation, the church conducted a Thanksgiving and Dedication service at the property on April 29, 2007. *Dyson testimony*. Despite the fact that actual work on the property did not start until August, 2007, because of pending litigation over the ownership of the subject property, the Petitioner has adequately shown that the Fellowship Bible Church continued to move forward with its plans of using the property for religious purposes. *Id.* On the basis of its evidence, the Petitioner raised a prima facie case that the property is entitled to an exemption.

33. 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). Here, the Respondent did not rebut or impeach any of the Petitioner's evidence. The Respondent merely alleged, without submitting probative evidence or citing to legal authority, that the Petitioner's plans for the subject property were a "mere dream" and that the property was not occupied on March 1, 2007. The Board is not persuaded that the fact alone is sufficient to bar the property from exemption. *See Plainfield Elks Lodge No. 2186 v. State Board of Tax Commissioners*, 733 N.E.2d 32, 34 (Ind. Tax Ct. 2000) (While exemption statutes are to be strictly construed against the taxpayer, "these provisions are not to be construed so narrowly that the legislature's purpose in enacting them is defeated or frustrated."). Therefore, the Respondent failed to rebut the Petitioner's prima facie case.

Summary of Final Determination

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

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

ISSUED: _____

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>.