

REPRESENTATIVE FOR PETITIONER:

Mary Burger, Vice President and CFO, Historic Landmarks Foundation of Indiana, Inc.

REPRESENTATIVE FOR RESPONDENT:

Gabe Deaton, Director of Assessments, Marion County Assessor’s Office

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Historic Landmarks Foundation of	)	Petition Nos.: 49-101-13-2-8-00332
Indiana, Inc.	)	49-101-13-2-8-00907
	)	
Petitioner,	)	Parcel Nos.: 1105102
	)	1105103
v.	)	
	)	County: Marion
Marion County Assessor,	)	
	)	Township: Center
Respondent.	)	
	)	Assessment Year: 2013

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

**MARCH 30, 2016**

**FINAL DETERMINATION**

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

**Issue**

1. Was the property under appeal exempt from property taxation for 2013?

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### PROCEDURAL HISTORY

2. The subject property consists of two vacant lots owned by Historic Landmarks Foundation of Indiana, Inc. (“Petitioner”) located at 1510 Stadium Way in Indianapolis.<sup>1</sup>
3. On December 20, 2013, the Marion County Property Tax Assessment Board of Appeals issued Form 120 Notices of Action on Exemption Application finding the subject property to be 100% taxable for 2013. On January 31, 2014, Petitioner filed its Form 132 Petitions for Review of Exemption (“Forms 132”) with the Board.

### HEARING FACTS AND OTHER MATTERS OF RECORD

4. On January 7, 2016, the Board’s Administrative Law Judge, Dalene McMillen (“ALJ”), held a hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.
5. Mary Burger, Petitioner’s Vice President and CFO, was sworn and testified. Gabe Deaton, Director of Assessment for the Marion County Assessor’s Office was sworn and testified on behalf of the Marion County Assessor (“Respondent”).<sup>2</sup>
6. Petitioner presented the following exhibits:

Petitioner Exhibit A – Four articles from *Indiana Preservationist* dated May/June 2008, May 2010, January 2012, and January 2013  
Petitioner Exhibit B – Aerial map of the subject property  
Petitioner Exhibit C – Google map of the subject property.

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<sup>1</sup> Petitioner also initially appealed parcel number 1105101 located at 1415 Stadium Way, but that petition was withdrawn at the hearing.

<sup>2</sup> Nicole Webb, Exemption Analyst for the Marion County Assessor’s office was sworn but did not testify.

7. Respondent presented the following exhibits:
  - Respondent Exhibit A – Transfer history for parcel 1105100 (i.e. Bush Stadium)
  - Respondent Exhibit B – Aerial map of the subject property.
8. The following additional items are also recognized as part of the record:
  - Board Exhibit A – Form 132 petitions with attachments
  - Board Exhibit B – Notices of Hearing on Petitions
  - Board Exhibit C – Order Regarding Conduct of Exemption Hearing
  - Board Exhibit D – Hearing sign-in sheet.

### **SUMMARY OF PETITIONER’S CASE**

9. Petitioner is a not-for-profit corporation organized solely for:
  - “educational and charitable purposes including the advancement of knowledge in the State of Indiana pertaining to historical and architecturally significant sites and structures and in furtherance of such educational and charitable purposes to preserve, redevelop, improve, renovate and maintain sites and structures of historical, architectural, educational and cultural significance within the State of Indiana....”

*Burger testimony; Board Ex. A.*
10. Petitioner contends the subject property should be exempt under Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-18. The first section provides for exemption for educational, literary, scientific, religious, or charitable purposes. The second section provides for exemption for the promotion of the fine arts, including architecture. *Burger testimony.*
11. Each year Petitioner develops a list of endangered landmarks. Bush Stadium is a property that has appeared on that list at various times since 1995. The Bush Stadium property originally consisted of four parcels including the two parcels constituting the subject property. *Burger testimony; Pet’r Ex. A.*
12. In the late 2000s, Petitioner became aware that the site had been targeted for demolition in connection with a 16th Street corridor initiative. Petitioner contends that the City of

Indianapolis was in need of a non-profit organization to which it could convey the Bush Stadium property and which could facilitate the use of various grant funds related to the project. Because of Petitioner's mission of historic preservation and its long-term interest in the preservation and redevelopment of Bush Stadium, it was asked to serve in that role. *Burger testimony.*

13. In 2011, Petitioner entered an agreement with the City of Indianapolis under which it took possession of the four parcels making up the Bush Stadium property. It eventually conveyed each of the two parcels not under appeal to two development corporations known as Stadium Lofts LLC and Stadium Flats LLC respectively. Petitioner retained the two parcels under appeal. *Burger testimony.*
14. Petitioner contends that its objective was not to retain the subject property on a long-term basis, but rather until a development opportunity presented itself. Furthermore, the development of the subject property was contingent upon the success of the Stadium Lofts and Stadium Flats projects. The two parcels constituting the subject property were eventually conveyed to Stadium Renaissance LLC in 2015.<sup>3</sup> *Burger testimony.*

#### **SUMMARY OF RESPONDENT'S CASE**

15. Respondent contends that the two parcels constituting the subject property were merely vacant lots not being used as of the assessment date. *Deaton testimony.*
16. Petitioner's applications for exemption state that the two properties under appeal were "specifically being held to support the redevelopment of the historic Bush Stadium." Respondent contends that they ceased to be used for an exempt purpose once the stadium parcel not under appeal was transferred. *Deaton testimony; Board Ex. A.*

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<sup>3</sup> Petitioner indicated that Stadium Renaissance LLC is the same entity that owns Stadium Lofts LLC and Stadium Flats LLC.

17. Furthermore, Respondent contends that the building plans, restrictions, and covenants for the stadium parcel not under appeal were approved, and that construction on that parcel began, prior to the assessment date. *Deaton testimony; Resp. Ex. A.*

#### ANALYSIS

18. 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.
19. 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 a property owner 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).
20. The taxpayer seeking an exemption bears the burden of proving the property is entitled to 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).
21. The initial applicable statutory provision governing this exemption claim includes the following:

- (a) All 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.

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- (c) A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if a building that is exempt under subsection (a) . . . is situated on it.

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- (d) A tract of land is exempt from property taxation if:
  - (1) it is purchased for the purpose of erecting a building that is to be owned, occupied, and used in such a manner that the building will be exempt under subsection (a) . . . ; and
  - (2) not more than four (4) years after the property is purchased, and for each year after the four (4) year period, the owner demonstrates substantial progress and active pursuit towards the erection of the intended building and use of the tract for an exempt purpose.

Ind. Code § 6-1.1-10-16.

- 22. Both Ind. Code § 6-1.1-10-16(a) and (c) contain clear, specific language that requires a building that is being used for one or more of the exempt purposes: educational, literary, scientific, religious, or charitable. Subsection (a) provides for exemption of a qualified building itself, and subsection (c) provides for exemption of a tract of land if there is an exempt building on it.
- 23. Petitioner did not present probative evidence that at any relevant time there was a building on the subject property. Furthermore, even if one or more buildings were present, Petitioner presented little probative evidence regarding the use of the property for exempt purposes.
- 24. Petitioner contends that the retention of the parcels under appeal was to support the further development of the stadium lot not under appeal. That support, however, was only described in vague terms. Petitioner did not point to anything specific to demonstrate such support. Petitioner is reminded that every exemption case “stand[s] on

its own facts” and on how the parties present those facts. *See Indianapolis Osteopathic Hospital., Inc.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).

25. Ind. Code § 6-1.1-10-16(d)(2) provides that to establish substantial progress and active pursuit towards the erection of the intended building and use of the tract for an exempt purpose, the owner must prove the existence of factors such as the following:
  - a. Organization of and activity by a building committee or other oversight group.
  - b. Completion and filing of building plans with the appropriate local government authority.
  - c. Cash reserves dedicated to the project of a sufficient amount to lead a reasonable individual to believe the actual construction can and will begin within four (4) years.
  - d. The breaking of ground and the beginning of actual construction.
  - e. Any other factor that would lead a reasonable individual to believe that construction of the building is an active plan and that the building is capable of being completed within eight (8) years considering the circumstances of the owner.
26. Petitioner did not provide any probative evidence regarding the organization of, and activity by, a building committee or other oversight group.
27. Petitioner did not provide evidence that any building plans were filed with an appropriate local government authority, nor were any permits for construction sought or granted.
28. Petitioner did not present any additional probative evidence regarding cash reserves dedicated to the project of a sufficient amount to lead a reasonable individual to believe that actual construction would begin in the foreseeable future.

29. Petitioner provided no other evidence that construction had actually begun.
30. In addition, pursuant to Ind. Code § 6-1.1-10-16(d)(2)(E), the Board will consider “[any] other factor that would lead a reasonable individual to believe that construction . . . is an active plan and that the [project] is capable of being completed within eight (8) years considering the circumstances of the owner.” In this case, however, Petitioner failed to offer substantial evidence or argument for anything else that should be considered.
31. The other applicable statutory provision governing this exemption claim includes the following:
- (a) Tangible property is exempt from property taxation if it is owned by an Indiana not-for-profit corporation which is organized and operated for the primary purpose of coordinating, promoting, encouraging, housing, or providing financial support to activities in the field of fine arts.
  - (b) For purposes of this section, the field of fine arts includes, but is not limited to, the following art forms:
    - (1) Classical, semi-classical, or modern instrumental and vocal music;
    - (2) Classical dance, including ballet, modern adaptations of formal dance, and ethnic dance;
    - (3) Painting, drawing, and the graphic arts;
    - (4) Sculpture;
    - (5) Architecture;
    - (6) Drama and musical theater.

Ind. Code. § 6-1.1-10-18.

32. In this instance, Petitioner pointed to architecture as the form of fine art on which it bases its exemption. However, there were no structural improvements on the parcels at issue as of the assessment date and Petitioner did not provide any probative evidence to demonstrate how the vacant lots serve or support activities in the field of architecture.
33. Petitioner failed to establish a prima facie case that it is entitled to an exemption under Ind. Code § 6-1.1-10-16 or Ind. Code § 6-1.1-10-18. Consequently, Respondent’s burden



to support the denial of the exemption was not triggered. See *generally, Lacy Diversified v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (stating that where a petitioner fails to present probative evidence in support of a claim, the assessing official's duty to support a determination is not triggered).

### CONCLUSION

34. The Board finds in favor of Respondent and holds the parcels constituting the subject property are 100% taxable for the 2013 assessment year.

The Final Determination of the above captioned matter is issued on the date first written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.