

REPRESENTATIVES FOR PETITIONER:
Earle F. Hites, Attorney, Hodges & Davis;
David H. Kreider, Attorney, Hodges & Davis

REPRESENTATIVES FOR RESPONDENT:
Dock McDowell, Jr., Attorney, Dock McDowell Law Firm

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

THE METHODIST)	Petition No.: 45-003-00-2-8-00002
HOSPITALS, INC.,)	Parcel: 25-44-0169-0014
)	
Petitioner,)	
)	
v.)	
)	County: Lake
LAKE COUNTY)	
PROPERTY TAX ASSESSMENT)	Township: Calumet
BOARD OF APPEALS,)	
)	Assessment Year: 2000
Respondent.)	

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

September 21, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (the "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 was:

Whether the property located at 650 Grant Street should be partially tax-exempt.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-11-7, The Methodist Hospitals, Inc., (the “Petitioner”) filed Form 132 Petitions for Review of Exemption, petitioning the Board to conduct an administrative review of the above petitions. The underlying Form 136 Applications for Property Tax Exemption (Form 136 application) were filed on May 10, 2000. The Lake County Property Tax Assessment Board of Appeals (PTABOA) denied the application and sent notice on December 31, 2002. The Form 132 petitions were filed on January 27, 2002.

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 November 5, 2003, in Crown Point, Indiana before Ellen Yuhan, the duly designated Administrative Law Judge (the “ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3. Due to the length of the hearing, a continuance was scheduled. The hearing resumed on April 19, 2004, and again was continued. The matter was concluded on April 28, 2004.
4. The following persons were sworn in as witnesses and presented testimony at the April 19 and 28 hearings:

For the Petitioner:

Verna Meacham, Vice-President, Methodist Hospital

For the Respondent:

Carol-Ann Seaton, Lake County PTABOA member (Ms. Seaton was not present at the April 28, 2004 hearing)

Betty Wilusz, Deputy Assessor, Lake County

Sharon Fleming, Deputy Assessor, Lake County

Danny Cruz, Assistant Supervisor, Calumet Township Assessor’s office

5. The parties requested that all the evidence submitted at the November 5, 2003, hearing be considered for the remaining petitions. The following exhibits were presented at the November 5, 2003, hearing:

Petitioner's Exhibit A – Articles of Incorporation
Petitioner's Exhibit B – Articles of Amendment
Petitioner's Exhibit C – By-laws, amended May 3, 1999
Petitioner's Exhibit D – By-laws, amended June 3, 2002
Petitioner's Exhibit E – Internal Revenue 501(c)(3) letter

Respondent's Exhibit 1 – Photographs of 1212 N. Broad, Griffith, IN
Respondent's Exhibit 2 – Photographs of 8777 Broadway, Merrillville, IN
Respondent's Exhibit 3 – Professional Services Employment Agreement
Respondent's Exhibit 4A – PTABOA minutes for December 12, 2002
Respondent's Exhibit 4B – PTABOA agenda for April 4, 2003
Respondent's Exhibit 5 – Copies of W-2 forms
Respondent's Exhibit 6 – Letter to Mr. Kreider from Terrance Bronowski dated
September 5, 2002
Respondent's Exhibit 7 – Letter to Mr. Kreider from Terrance Bronowski dated
September 20, 2002
Respondent's Exhibit 8 – Letter to Terrance Bronowski from John Diehl dated
October 11, 2002
Respondent's Exhibit 9 – Letter to John Diehl from Terrance Bronowski, dated
November 22, 2002, regarding 3717 Grant Street
Respondent's Exhibit 10 – Letter to John Diehl from Terrance Bronowski, dated
November 22, 2002, regarding 650 Grant Street
Respondent's Exhibit 11 – Letter indicating that the staff of the PTABOA was
recommending denial of an exemption for parcel 25-45-
0124-0022 (not the subject of these appeals)
Respondent's Exhibit 12 – Letter indicating that the staff of the PTABOA was
recommending denial of exemptions for five parcels,
1212 N. Broad Street, 120 East 89th Street, 8899

Broadway, 8777 Broadway and 1619-1635 West 5th
Avenue

Respondent's Exhibit 13 – Letter indicating that the staff of the PTABOA was recommending denial of exemptions for 1619-1635 West 5th Avenue, 3717 Grant Street, 3769-3793 Grant Street, and 3777-3779 Grant Street

6. The following exhibit was presented at the April 19, 2004 hearing:

Respondent's Exhibit 14 – Photographs of the Home Health Care building at 3717 Grant Street

7. The following exhibits were presented at the April 28, 2004 hearing:

Respondent's Exhibit 15 – Letter to Mr. Kreider from Terrance Bronowski dated September 5, 2002 (Same as Ex. 6)

Respondent's Exhibit 16 – Form 136 for 3777-3779 Grant St. with attachments

Respondent's Exhibit 17 – Form 136 for 3769-3775 Grant St. with attachments

Respondent's Exhibit 18 – Form 136 for 3717 Grant St. with attachments

Respondent's Exhibit 19 – Letter to John Diehl from Terrance Bronowski, dated November 22, 2002 (Same as Ex. 10)

Respondent's Exhibit 20 – Letter from Terrance Bronowski to the Lake County PTABOA dated June 19, 2002

Respondent's Exhibit 21 – Floor plan of 650 Grant St.

Respondent's Exhibit 21A – Floor plan of 650 Grant St. with the common areas highlighted

Respondent's Exhibit 22 – 650 Grant St. occupancy list

Respondent's Exhibit 23 – Photographs of the exterior of 650 Grant St.

Respondent's Exhibit 24 – Form 136 for 650 Grant St. with attachments

Respondent's Exhibit 25 – Lease between Methodist Hospital and Dr. David Ross

Respondent's Exhibit 26 – Information about Methodist Hospital and the Tatum Family Health Center

Respondent's Exhibit 27 – Form 136 for 1619-1635 West 5th Ave. w/ attachments

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board exhibits:
 - A. Copy of the Form 132 petition with attachments
 - B. Notices of Hearing – various dates due to rescheduling
 - C. Letter from the Lake County PTABOA dated May 19, 2003
 - D. Board response to Lake County PTABOA letter dated May 27, 2003
9. The subject property is located at 650 Grant Street, Gary, Indiana. It houses a combination of hospital programs and private physicians.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. The Lake County PTABOA determined the land and improvements to be 100% taxable for 2000.
12. The Petitioner contends the land and improvements should be 60% tax exempt for 2000. The Petitioner is claiming exemption on the portion of the subject property used for its programs.

OBJECTIONS

New Evidence and Testimony

13. Respondent objected to Petitioner’s presentation of several items of testimony and evidence on the grounds that it had not been previously presented to the PTABOA. *McDowell argument*. Counsel for the Respondent suggested that it was unfair and inappropriate for the Board to consider evidence that was not before the PTABOA. *McDowell argument*.
14. Respondent misunderstands the nature of proceedings before the Board. Ind. Code § 6-1.1-15-4(k) states: “[a] person participating in the hearing required under subsection (a) is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county

property tax assessment board of appeals.” *Id.* The Board’s proceedings are *de novo* unless all parties agree to limit the scope of the appeal to the issues raised before the PTABOA. Ind. Code § 6-1.1-15-4(k). Even then, new and different evidence can be presented to the Board.

15. The Board finds no indication in the record that the parties agreed to any limitation on issues or evidence to be presented to the Board. Petitioner was well within its rights to present evidence that was not before the PTABOA. Respondent’s objection is overruled.

Impartiality of the Administrative Law Judge

16. Respondent objected several times to Administrative Law Judge Ellen Yuhan hearing the case.

- (a) In a letter dated May 19, 2003, Sharon Fleming of the PTABOA asked that a person who is not from Lake County be assigned to the case. *See Board Exhibit*

- C. The Board responded with a May 27, 2003, letter that explained:

- [b]ecause we are a small agency with limited staff, it is our practice to assign cases to the nearest field personnel. If you believe that it is inappropriate for Ms. Yuhan to conduct the hearing, please convey your specific reasons in writing to the Indiana Board of Tax Review. Unless you show good cause for the change of ALJ in this case, Ms. Yuhan will conduct the hearing.

See Board Exhibit D. The Board did not receive a response to that letter. As Respondent did not respond with specific reasons behind its motion, the Board finds no reason to reverse this decision.

- (b) On November 5, 2003, at the hearing, counsel for the Respondent, Dock McDowell, moved for “withdrawal of the submission of the matter to [ALJ Yuhan]. It strikes me and my clients that [ALJ Yuhan] may have a predisposition to prejudge this matter or bias towards our clients, if you won’t try and let us present our case.” *McDowell argument.* McDowell further stated “I move for the withdrawal of the submission of the matter to the hearing officer for perceived biasness [sic]” and explained that he felt he had been interrupted needlessly and

that ALJ Yuhan had indicated disinterest in continuing with the proceedings. *McDowell argument.* ALJ Yuhan recessed the hearing and telephoned Board member Betsy Brand to discuss the motion. After discussion of the motion, ALJ Yuhan returned on the record, noted that the matter had been discussed and that she had been instructed to proceed with the hearing, and denied the motion.

(c) On April 28, 2004, at the third convening of the hearing, McDowell again objected to ALJ Yuhan's handling of the case after she had warned counsel for both parties to refrain from insulting each other and the witnesses. McDowell said "[w]e now ask for the withdrawal of submission of this case to you . . . [b]ecause you have interjected your bias and your prejudice into this case, by suggesting and characterizing the commentary of counsel as being insulting." *McDowell argument.* ALJ Yuhan noted the motion for the record and denied the motion as having been ruled on twice previously.

17. Ind. Code § 4-21.5-3-10 provides guidance on the disqualification of an administrative law judge, allowing disqualification for "(1) bias, prejudice, or interest in the outcome of the proceeding; (2) failure to dispose of the subject of a proceeding in an orderly and reasonably prompt manner after a written request by a party; or (3) any cause for which a judge of a court may be disqualified." *Id.*
18. The Board has thoroughly examined the record in light of the allegations against ALJ Yuhan. The Board finds no evidence that ALJ Yuhan's actions presented bias or prejudice against either party. Respondent failed to give specific reasons at the hearing to support his allegations. The Board finds no evidence that ALJ Yuhan has any pecuniary or other interest in the outcome of the proceeding.
19. The Board further finds that ALJ Yuhan disposed of the subject proceedings in an orderly and reasonably prompt manner – even though no written request was made by either party. Review of the record shows that ALJ Yuhan remained patient and level-headed throughout the rather lengthy and heated proceedings. The hearing was delayed in that

the parties were forced to reconvene twice in order to conclude their cases, but such delay was directly attributed to the actions of counsel, not ALJ Yuhan.

20. The Board finds no conflicts or grounds for disqualification under the rules of court to disqualify ALJ Yuhan. The record does not support Mr. McDowell's allegations, and the motion to remove ALJ Yuhan from the proceedings is denied.

JURISDICTIONAL FRAMEWORK

21. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) 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 THE PETITIONER'S BURDEN

22. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *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).
23. 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. Wash. 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”).
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*, 805 N.E.2d at 479.

CONSTITUTIONAL AND STATUTORY BASIS FOR EXEMPTION

25. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1.
26. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
27. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. 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. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E.2d 810 (Ind. Tax 1996) (non-profit status does not entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. of Tax Comm'rs v. Fort Wayne Sport Club*, 258 N.E.2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

BASIS OF EXEMPTION AND BURDEN

28. In Indiana, the general rule is that all property in the State is subject to property taxation. *See* Ind. Code § 6-1.1-2-1.
29. 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 – taxation. When property is exempted 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 1996).

30. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. This is why worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is granted when there is an expectation that a benefit will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax 1990).
31. 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 statute under which the exemption is being claimed. *Monarch Steel v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax 1993); *Indiana Assoc. of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax 1987).

ANALYSIS

Whether the property located at 650 Grant Street should be partially tax-exempt.

32. The Petitioner contends that 60% of the subject property should be exempt from property taxation. The Petitioner is claiming exemption on the portion of the subject property used for hospital programs. The Petitioner is not claiming exemption on the portion of the subject property that is leased to physicians in private practice.
33. The Respondent contends that the subject property is a medical center with offices of physicians engaged in private practice – it is not necessary to the hospital's function and that the percent of use alleged is incorrect.
34. The applicable rules and case law governing this issue are:

Ind. Code § 6-1.1-10-16

(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.

Ind. Code § 6-1.1-10-36.3

(a) Property is predominantly used or occupied for one of the stated purposes if it is used or occupied for one or more of those purposes during more than 50% of the time that it is used or occupied in the year that ends on the assessment date of the property.

35. The Petitioner presented the following evidence and testimony in regard to this issue:
- A. The building is a combination of office space and Methodist Hospital programs. In 2000, there were three physicians' offices located in the building, as well as a physician's organization called Well Med. The hospital programs were the Children's Developmental Center, the Cardio-Pulmonary Rehabilitation Center, and the Regional Coordination Center for Emergency Medical Services. The services provided at 650 Grant were not provided at the hospital, but are related services. *Meacham testimony.*
 - B. Children's Development Center is a service offered by the hospital where children who may have developmental delays in schoolwork can be evaluated. Regional Coordination Center for Emergency Medical Services provides education for individuals training to become paramedics throughout a seven county area. Cardio-Pulmonary Rehabilitation Center is designed for exercise, nutrition counseling, fitness counseling, and cardiac issues. *Meacham testimony.*
 - C. The occupancy list shows the square footage and the percentage of the total square footage that each entity occupied for the years 2000, 2001 and 2002. *Meacham testimony. Respondent's Exhibit 22. Attachment to Board Exhibit A.*
 - D. The common areas were probably not included in the 40% allocated to the leased portion of the property; that may have included only the suites. The common areas are the corridor and the utility areas, which has the heating, cooling, electrical and supplies for housekeeping. *Meacham testimony. Respondent's Exhibit 21A.*
36. The Respondent presented the following evidence and testimony in regard to this issue:
- A. The PTABOA conducted a site inspection on December 10, 2001, and photographs were taken at that time. *Fleming testimony.* The PTABOA observed that there were private physicians' offices in the building and that a portion of the building was for lease. *Fleming testimony. Respondent's Exhibit 23.*

- B. The PTABOA is not satisfied that the property is predominantly used for an exempt purpose or supportive of the hospital's needs. If this building weren't there, the hospital would still function. *Fleming testimony*.

Analysis of Issue

37. In order to be exempt in whole or part from property taxation, the Petitioner must meet one or more of the following standards or tests:
- a. The "reasonably necessary" test as applied in *LeSea Broadcasting Corp. v. State Bd. of Tax Comm'rs*, 535 N.E.2d 637 (Ind. Tax 1988).
 - b. The "predominant use" standard as set forth in Ind. Code § 6-1.1-10-36-3.

Reasonably Necessary

38. The "reasonably necessary" test, applied by the Tax Court in *LeSea Broadcasting Corp. v. State Board of Tax Commissioners*, 535 N.E.2d 637 (Ind. Tax 1988), held that property is exempt if its ownership, use, and occupancy are reasonably necessary to further the exempt purpose.
39. The Petitioner must show that the ownership, use, and occupancy of the subject property are reasonably necessary to further the exempt purpose of the hospital. *Id.* The Petitioner owns the subject property. The Petitioner occupies the portion of the subject property on which the exemption is claimed. The question becomes whether the subject property is predominantly used to further the exempt purpose of the hospital.
40. Petitioner uses approximately 60% of the subject property to operate three programs, Children's Developmental Center, the Cardio-Pulmonary Rehabilitation Center, and the Regional Coordination Center for Emergency Medical Services.
41. Petitioner provided testimony to say that these programs provided services that were related to the hospital. However, the Petitioner did not provide evidence or explain how this property and the programs conducted therein are reasonably necessary to further the

exempt purpose of the hospital. The Petitioner failed to show that the ownership, use, and occupancy of the subject property is reasonably necessary to further the exempt purpose of the hospital.

Predominant Use

42. A "predominant use" test was adopted for determining whether property qualifies for exemption under Ind. Code § 6-1.1-10. "Although charitable giving might serve as evidence to support claimed charitable use of the facility, the statutory test since 1983 has been predominant use of the facility, not distribution of income for charitable purposes." *State Bd. of Tax Comm'rs v. New Castle Lodge #147*, 765 N.E.2d 1257, 1263 (Ind. 2002).
43. Pursuant to Ind. Code § 6-1.1-10-36.3, property is predominantly used or occupied for one or more stated purposes if it is used or occupied for one or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property. Property that is predominantly used or occupied for a non-exempt purpose is not exempt from property taxes. *Id.*
44. The Petitioner presented evidence and the testimony of Ms. Meacham regarding the use and occupancy of the subject property. However, the evidence and testimony is insufficient to show that the Petitioner's use of the subject property was for an exempt purpose.
45. Assuming, *arguendo*, that the contended use and occupancy would be found to qualify for exemption, the calculation of the desired percentage of exemption is unclear. The Petitioner failed to explain whether the common areas, such as the utility area and corridors, were included in the calculation. The Petitioner has not sufficiently proven what portion of the building, if any, would have been exempt for the year ending March 1, 2000.
46. The Petitioner did not present evidence and testimony indicating the property was predominantly used for exempt purposes.

SUMMARY OF FINAL DETERMINATION

47. The property in question does not qualify for exemption pursuant to Ind. Code § 6-1.1-10-16. Petitioner did not provide evidence to show that the property in question was reasonably necessary or predominantly used to further the exempt purpose of the hospital. Accordingly, the decision of the Lake County PTABOA is upheld and the property remains 100% taxable.

This Final Determination of the above captioned matter is issued this 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.