

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

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

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

THE METHODIST)	Petition No.: 45-003-00-2-8-00004
HOSPITALS, INC.,)	Parcel: 25-47-0290-0029
)	
Petitioner,)	Petition No.: 45-003-00-2-8-00005
)	Parcel: 25-47-0290-0030
)	
v.)	Petition No.: 45-003-00-2-8-00006
)	Parcel: 25-47-0290-0032
)	
LAKE COUNTY)	County: Lake
PROPERTY TAX ASSESSMENT)	
BOARD OF APPEALS,)	Township: Calumet
)	
Respondent.)	Assessment Year: 2000

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 3777-79 Grant Street should be 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 E. 89th Street, 8899 Broadway, 8777 Broadway and 1619-1635
W. 5th Avenue

Respondent's Exhibit 13 – Letter indicating that the staff of the PTABOA was recommending denial of exemptions for 1619-1635 W. 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 W. 5th Ave. with 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. Notice of Hearing dated February 6, 2004
 - 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 an office building and parking lots located at 3777-79 Grant Street, Gary, IN. On the assessment date in question, the Petitioner used 55% of the property for the Healthy Start program and leased 45% of the property to the City of Gary for the Project Precinct program. The subject property currently houses the Home & Hospice Center.
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 100% tax exempt for 2000.

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 reply 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 Dep't 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 3777-79 Grant Street should be tax-exempt.

32. The Petitioner contends that the subject property should be 100% tax-exempt. In 2000 the Petitioner used a portion of the building to provide Healthy Start services while the remaining area was leased to the City of Gary for Project Precinct.
33. The Respondent contends that the property was not supportive of the hospital.
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 predominately 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

Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs, 686 N.E.2d 954 (Ind. Tax 1997)

Property must be owned for a tax-exempt purpose; property must be occupied for a tax-exempt purpose; property must be used for a tax-exempt purpose. Once these three elements are met, regardless of by whom, the property can be exempt from taxation.

35. The Petitioner presented the following evidence and testimony in regard to this issue:
- A. The Petitioner occupied approximately 55% of the subject property for the Healthy Start program. The remaining 45% was leased to the City of Gary. Some areas were shared, such as conference room space, waiting areas, and employee lounge facilities.
 - B. Healthy Start was an area-wide initiative that focused on trying to improve prenatal care and reduce infant mortality. The services were covered by a federal grant.
Meacham testimony.
 - C. Healthy Start provided educational information to individuals who were pregnant. Information about health care, what to expect during pregnancy, and the various stages of pregnancy to ensure that there would be a healthy outcome for the pregnancy. There were counselors who worked with these individuals to make sure they had access to resources that would allow a healthy outcome to the pregnancy.
Meacham testimony.
 - D. Methodist has not offered the same services as Healthy Start. Classes at Methodist are basically childbirth classes. Healthy Start was a focused initiative on infant mortality countywide. *Meacham testimony.*
 - E. The other portion of the building, approximately 45% was leased to the City of Gary Health Department. The City of Gary used the area for Project Precinct, a program that provided prenatal care, immunizations for young children, physicals, and lab services. *Meacham testimony.*
 - F. Meacham arrived at the allocation of percentages by looking at the program itself, the offices, and the area that was shared. Meacham was in the building during the time they operated, so that estimate is a good approximation. *Meacham testimony.*
Attachment to Board Exhibit A.
 - G. The lease between Methodist and the City of Gary began on March 4, 1998.
Attachment to Board Exhibit A, Section B, at 1. The lease shows that Methodist was a contractor for the Northwest Indiana Health Department Cooperative, Inc., at that

time and the building was dedicated for operation of the Healthy Start Program.
Attachment to Board Exhibit A, Section B, at 1.

36. The Respondent presented the following evidence and testimony in regard to this issue:
- A. A site inspection was done on December 10, 2001 and photographs were taken. The PTABOA was unable to get accurate information about the property. *Fleming testimony; Respondent's Exhibit 14.*
 - B. It was the PTABOA's understanding that there was a physician there and the services were normal private physician services. *Fleming testimony.*
 - C. The PTABOA was told that for 2000 that it was Healthy Start, apparently an educational program for pregnant mothers, and that the space was shared with Project Precinct. *Fleming testimony; Respondent's Exhibit 18.*

Analysis of Issue

37. Ind. Code § 6-1.1-10-16 exempts all or part of a building from property taxation if it is owned, occupied, and used for educational, literary, scientific, religious, or charitable purposes.
38. 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).
39. 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 non-exempt purposes is not exempt from any part of the property tax. *Id.*

40. Petitioner presented evidence and the testimony of Ms. Meacham. Most of the testimony and evidence related to the 2000 year. *See generally, Meacham testimony.* However, based on the lease, it is clear that the situation that existed in 2000 also existed as early as 1998. *Attachment to Board Exhibit A, Section B.*
41. The testimony included the fact that Ms. Meacham visited the subject in 2000. Healthy Start and Project Precinct were both in operation at that time. *Meacham testimony.* The City of Gary (Project Precinct) occupied approximately 45% of the space.
42. The Petitioner was and is the owner of the subject property. The Petitioner was a subcontractor for the Healthy Start program which was subsidized under a federal grant. *Meacham testimony.*
43. The Petitioner entered into a contract with the City of Gary in 1998 to lease space for Project Precinct, a Prenatal and Well Child program. *Attachment to Board Exhibit A, Section B.* At that time, Petitioner was a contractor for the Northwest Indiana Health Department Cooperative, Inc., and the subject property was dedicated for operation of the Healthy Start Program. *Id.*
44. Respondent offered evidence and testimony that verified that Healthy Start and Project Precinct used the premises before the Home & Hospice Care Center was opened at the location. This information was included on several of the site inspection reports attached to Respondent's Exhibit 18.
45. In summary, the subject property was owned by a tax-exempt entity [Methodist Hospital], used for charitable and educational purposes by Methodist Hospital [65%] and the City of Gary [45%], and occupied for charitable and educational purpose by both Methodist Hospital [65%] and the City of Gary [45%]. The Petitioner has shown that the subject property is owned, occupied, and used for a tax-exempt purpose.

SUMMARY OF FINAL DETERMINATION

46. The Petitioner presented evidence and testimony indicating the property was predominantly used for educational and charitable purposes. The subject property qualifies for exemption pursuant to Ind. Code § 6-1.1-10-16 and is entitled to 100% tax exemption.

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.