

STATE OF INDIANA
Board of Tax Commissioners
Appeals Division

WATERSWOLDE COMMUNITY ASSOCIATION)	On Appeal from the Allen County Property Tax Assessment Board of Appeals
)	
Petitioner,)	
)	Petition for Review of Exemption, Form 132
v.)	Petition Nos. 02-066-00-2-8-00001;
)	02-066-00-2-8-00002; 02-066-00-2-8-00003
ALLEN COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS)	
)	Parcel Nos. 87-4197-2055; 87-4197-2044;
)	87-4197-2054
Respondent .)	

Findings of Fact and Conclusions of Law

The Appeals Division (Appeals Division) of the State Board of Tax Commissioners (State Board), having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issue

Whether the real property owned by Waterswolde Community Association qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-23.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-11-3, Waterswolde Community Association (Waterswolde) filed an application for exemption, Form 136, with the Allen

County Auditor's office on April 13, 2000. The Allen County Property Tax Assessment Board of Appeals (PTABOA) denied the application on May 21, 2001 and gave Waterswolde notice of the denial.

3. Pursuant to Ind. Code § 6-1.1-11-7, Waterswolde filed a petition for review of exemption, Form 132, with the State Board seeking a review of the PTABOA action. The Form 132 petition was filed on June 1, 2001.
4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was originally scheduled for November 20, 2001, but was continued because Allen County did not receive proper notice. The hearing was rescheduled and held on December 5, 2001, before Hearing Officer Joseph Stanford. Testimony and exhibits were received into evidence. Roland Waters and Vicki Hoffman represented the Petitioner. Judith E.K. Dafforn, Mike Ternet, and F. John Rogers, attorney, represented the PTABOA.
5. At the hearing, the Form 132 was made part of the record and labeled as Appeals Division Exhibit A. The Notice of Hearing was labeled as Appeals Division Exhibit B. In addition, the following items were entered as evidence:
Petitioner's Ex. 1 – Waterswolde's 1999 and 2000 Treasurer's Report and Budget.
Petitioner's Ex. 2 – Waterswolde's Articles of Incorporation.
Petitioner's Ex. 3 – Waterswolde's By-Laws.
6. The property at issue consists of commons area land that is used as a park. The property is located in Washington Township, Allen County. The Hearing Officer did not view the property. The PTABOA determined that all three parcels in question are 100% taxable.
7. Waterswolde contends that its property should be considered exempt from property tax, pursuant to Ind. Code § 6-1.1-10-23 for fraternal benefit associations.

8. The purpose of the neighborhood association is to develop the social, civic, and general welfare of the owners of the lots in Waterswolde. *Waters testimony, Pet. Ex. 2.*
9. Homeowner assessment dues allow the neighborhood association to care for the subdivision, and pay for things such as snow plowing. Waterswolde is a not-for-profit association. *Waters testimony.*
10. The park in question is used by association members and guests. It is occasionally used by Northrop High School's cross-country team. There are no posted signs of either "no trespassing" or "open to the public." Waterswolde has denied use of motorcycles or snowmobiles in the park. *Waters and Hoffman testimony.*
11. Mr. Waters contends that Waterswolde is a quazi-governmental association, and that the parkland in question should not be taxed.
12. The PTABOA argues that Waterswolde must meet the "charitable purpose" test to qualify for exemption, and it did not meet that test. The PTABOA cites *New Castle Lodge Order of Moose v. State Board of Tax Commissioners*, 733 N.E. 2d 36 (Ind. Tax 2000) and *Plainfield Elks Lodge*, 733 N.E. 2d 32 (Ind. Tax 2000) in support of its position.
13. The PTABOA contends that the association's covenants were restrictive on its face.

Conclusions of Law

1. The State Board is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Burden

2. The courts have long recognized that in the administrative review process, the State Board is clothed with quasi-judicial power and the actions of the State Board are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State Board has the ability to decide the administrative appeal based upon the evidence presented.
3. In reviewing the actions of the County Board (or PTABOA), the State Board is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816,820 (Ind. Tax 1995).
4. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State Board is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
5. If the taxpayer were not required to meet his burden of proof at the State administrative level, then the State Board would be forced to make a case for the taxpayer. Requiring the State Board to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
6. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not

contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

7. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.
8. If the taxpayer fails to meet his burden of proof at the administrative level, the State Board does not have to support its decision with substantial evidence if that decision is challenged in court. *Whitley*, 704 N.E. 2d at 1116-21.
9. In *Orr v. Baker* (1853) 4 Ind. 86, 88, the Indiana Supreme Court found that tax exemption for one class of persons puts an additional burden upon other classes of property. Hence, the courts do not favor exemptions. Statutes that exempt property from taxation must be strictly construed.
10. “Because an exemption releases property from the obligation of bearing its share of the cost of government and serves to disturb the equality and distribution of the common burden of government upon all property, an exemption from taxation is strictly construed” against the taxpayer and in favor of the State. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E. 2d 218, 220 & 221(citing *St. Mary’s Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 280 (Ind. Tax 1989), *aff’d* 571 N.E. 2d 1247 (Ind. 1991))
11. In property tax exemption claims, the taxpayer bears the burden of proving that the property is entitled to an exemption. *Monarch Steel Co., Inc v. State Board of Tax Commissioners*, 611 N.E. 2d 708, 714 (Ind. Tax 1993). In determining whether the property qualifies for an exemption, the dominant use of the property by an organization must be “predominately and primarily educational, literary, scientific, religious or charitable within the broad constitutional definition of those words.” *Indianapolis Elks Building Corp. v. State Board of Tax Commissioners*,

251 N.E. 673, 679 (Ind. App. 1969). Furthermore, Ind. Code § 6-1.1-10-36.3 provides that “property is predominately used or occupied for one or more stated purposes if it is used or occupied for one of more of those purposes during more than fifty percent (50%) of the time that is used or occupied in the year that ends on the assessment date of the property.”

B. Property Tax Exemption

12. Article 10, § 1 of the Indiana Constitution reads:

(a) The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property real and personal. The General Assembly may exempt from property taxation any property in the following classes:

(1) Property being used for municipal, educational, literary, scientific, religious, or charitable purposes.

13. Article 10, § 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. Ind. Code § 6-1.1-10-16 is the provision enacted by the General Assembly for the exemption of property owned, occupied and used for the above stated purposes in general. It reads in pertinent part:

(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, or charitable purposes.

(b) A tract of land, including the campus or athletic grounds of an educational institution, is exempt from property taxation if:

- (1) A building which is exempt under subsection (a) or (b) is situated on it;
and
- (2) The tract does not exceed:

(B) fifteen (15) acres in all other cases.

14. The justification for tax exemption is the public benefit. *State Board of Tax Commissioners v. Wright* (1966), 139 Ind. App. 370, 215 N. E. 2d 57. The purpose of tax exemption, whether for religious or other classification, is to insure that the property and funds devoted to one public benefit are not diminished by being diverted through taxation for another public benefit. *Id.*
15. The character and purpose of the owner of the property claiming exemption is not to be examined in property tax exemption claims, rather it is the character and purpose of the property itself that must be considered. As such, it is the use of the property that permits the exemption from property. *State ex. rel Tieman v. City of Indianapolis* (1879), 69 Ind. 375, 377.
16. The use of property in furtherance of an exempt purpose is the minimal limitation required for exemption given within the Indiana Constitution. This minimal limitation must be included in any legislation granting property tax exemption. However, legislature may add other requirements when enacting exemption statutes. *Sangralea Boys Fund, Inc. State Board of Tax Commissioners*, 686 N.E. 2d 954, n.2 (Ind. Tax 1997).

C. Conclusions Regarding the Exemption Claim

17. Waterswolde is seeking exemption under Ind. Code § 6-1.1-10-23. According to the applicable statute, the Petitioner must be a fraternal beneficiary association which is incorporated, organized, or licensed under Indiana law. A fraternal beneficiary association is an association that provides a public benefit, or charity.

The property in question must be actually occupied and used by the association in carrying out the purpose for which it was incorporated, organized, or licensed.

18. The Petitioner does not use the land in a manner dictated by the statute. The property is used purely for recreational purposes. Furthermore, the Articles of Incorporation state that the purpose of the association is to develop the social, civic, and general welfare of the owners of the lots in Waterswolde. *Pet. Ex. 2*. Therefore, the association does not exist, and the property is not used, for the benefit of the entire public.
19. At no time during the hearing was evidence presented which demonstrated a charitable use for the property. Nor was evidence presented which depicted Waterswolde as a charitable organization. Thus, the homeowners did not satisfy the statutory requirement to qualify for an exemption.
20. The taxpayer bears the responsibility to present evidence showing the property falls specifically within the exemption statute. The Petitioner did not present any evidence or testimony showing specifically how or why the subject should qualify for an exemption under Ind. Code § 6-1.1-10-23.
21. Waterswolde did not meet the heavy burden which is required of petitions for exemptions. In *Greensburg Motel Association, LP v. State Board of Tax Commissioners*, 629 N.E.2d 1302, the court stated that tax exemptions are strictly construed in favor of the state. Thus the burden is on the Petitioner. Likewise, the court in *Indiana Department of State Revenue v. The Boswell Oil Co.* (1971) 268 N.E.2d 303 stated “exemptions from taxation are not favored by the law, and that the tax statutes are therefore strictly construed against the party claiming an exemption thereunder.”
22. Property tax exemption statutes are to be construed strictly in favor of the tax and the burden is squarely upon the taxpayer to show, with factual evidence, that the property claiming exemption falls within the exemption statute. For all the above

reasons, the taxpayer has failed to meet this burden. Therefore the subject property is not entitled to property tax exemption pursuant to Ind. Code § 6-1.1-10-23. The subject property is wholly subject to property taxation.