

REPRESENTATIVES FOR PETITIONER: Kenneth W. Keilman, President
Cindy L. Keilman, Treasurer
Sherri L. Rinderer, Secretary
Robert W. Cashman, Vice-President
Melvin E. Strange, Board Member
Frank Wolfe, Board Member

REPRESENTATIVES FOR RESPONDENT: Betty Wilusz, Deputy Assessor, Lake County
Sharon Fleming, Deputy Assessor, Lake County

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

WHITE OAK ASSOCIATION,)	Petition: 45-027-00-2-8-00002
)	Parcel: 18-28-0117-0003
)	
Petitioner,)	
)	
v.)	
)	
LAKE COUNTY PROPERTY TAX)	County: Lake
ASSESSMENT BOARD OF APPEALS,)	Township: North
)	Assessment Year: 2000
Respondent.)	

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

September 24, 2004

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 was:

Whether the real property owned by White Oak Association qualifies for 100% property tax exemption pursuant to Indiana Code §6-1.1-10-16 under the classifications of charitable and educational purposes.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Sherri Rinderer, Secretary, filed a Form 132, Petition for Review of Exemption, on behalf of White Oak Association (White Oak) petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on January 23, 2004. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued the Form 120 on January 9, 2004, determining that the real property is 100% taxable.

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 conducted on June 23, 2004, in Crown Point, Indiana before Ellen Yuhan, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were present at the hearing and sworn in as witnesses:

For the Petitioner: Kenneth W. Keilman, President
Cindy L. Keilman, Treasurer
Sherri L. Rinderer, Secretary
Robert W. Cashman, Vice-President
Melvin E. Strange, Board Member
Frank Wolfe, Board Member

For the Respondent: Betty Wilusz, Deputy Assessor, Lake County
Sharon Fleming, Deputy Assessor, Lake County

5. The following exhibits were for the Petitioner:
Petitioner's Exhibit 1 – Financial Data Expense Schedule
Petitioner's Exhibit 2 – Form 136 for 2000 faxed to Sharon Fleming on March 9, 2004.
6. The following exhibits were for the Respondent:
Respondent's Exhibit 1 – Business Entity Search Results
Respondent's Exhibit 2 – Letter requesting information, dated February 19, 2003.
7. The following items are officially recognized as part of the record of proceedings:
Board Exhibit A – Form 132 petition and related attachments
Board Exhibit B – Notice of Hearing on Petition dated February 9, 2004.
8. The subject property is a community club located at 8921 White Oak Avenue, Munster.
9. The Administrative Law Judge did not conduct an onsite inspection of the property.

Jurisdictional Framework

10. 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

11. 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).

12. 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”).
13. 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.

Analysis

Whether the real property owned by White Oak qualifies for 100% property tax exemption pursuant to Indiana Code §6-1.1-10-16 under the classifications of charitable and educational purposes.

14. The Petitioner contends that the purposes of the organization are social, civil, educational, charitable, and political, and that it promotes causes beneficial to the community; therefore, the property should be tax-exempt.
15. The Respondent contends the Petitioner did not provide sufficient documentation to meet their burden of proof. Further, the Respondent claims the organization is not a 501(c)(3) entity, nor is it shown as an active business entity in the State of Indiana.
16. The Petitioner presented the following evidence and testimony:
 - a. White Oak has been in existence since 1940. It is a neighborhood association that donates the use of the building to non-profit organizations, donates to various

charities, such as Haven House, St. Joseph's Soup Kitchen, and the Riley Food Pantry. White Oak also sponsors a children's parade in July, \$500 in scholarships, and donates Christmas baskets and toys. *Rinderer testimony. Strange testimony. Keilman testimony. Petitioner's Exhibit 1.*

- b. White Oak filed the application for exemption on May 10, 2000. Information was requested several times, and White Oak sent the information to the county. White Oak assumed everything was in order. On October 20, 2003, the county informed White Oak that the application was being recommended for denial. The letter includes the comment "Not 501(c) with the Federal Government." *C. Keilman testimony. Rinderer testimony. Board Exhibit A.*
 - c. The county informed the Petitioner that it needed an EIN, a 501(c)(3) Designation, from the IRS, and that White Oak is required to file a Business Entity Report with the State. White Oak never filed tax returns with the IRS and had never before been asked for 501(c)(3) documentation. *C. Keilman testimony. Board Exhibit A.*
17. The Respondent presented the following evidence and testimony:
- a. The PTABOA requested documentation to prove White Oak's not-for-profit status and their 501(c)(3) status. White Oak did not have a 501(c)(3) designation from the Federal Government and State records show the entity inactive as of January 1970. *Wilusz testimony. Fleming testimony. Respondent's Exhibit 1.*
 - b. The PTABOA reviewed the application and denied the application because of deficiencies in the documentation. *Wilusz testimony. Fleming testimony.*
18. Respondent places their emphasis solely upon the possession of a 501(c)(3) designation by White Oak. While such consideration is certainly relevant to the determination, the actual use of the property must also be examined. It is well settled that under Indiana law, the grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption. *See Raintree Friends Housing, Inc. v. Indiana Dep't of Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996) (not-for-profit corporation status does not automatically entitle a taxpayer to tax exemption). This is because income tax exemption

does not depend so much on how property is used, but on how money is spent. 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.

19. Indiana Code requires that the property be used more than 50% of the time for the exempt purpose in order to qualify for exemption. 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 (“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.”).
20. Petitioner offered testimony that the property was used by Boy Scouts on Wednesdays during the summer; used by a neighboring church on Wednesdays during the fall, winter, and spring; and that other charitable activities take place at the property. *K. Keilman testimony*. It is clear that the organization is engaged in charitable activities. However, based on the record, the Board cannot determine whether the property was *predominantly* used for charitable purposes. The property is obviously donated for charitable causes on an undetermined number of Wednesdays during the year and used for other events “periodically,” but this alone does not establish its predominant use. *K. Keilman testimony*. Petitioner should have presented evidence of how often the property is used for any purpose, as well as evidence of how much of that use is for charitable purposes. The Petitioner has failed to show that the property meets the predominant use test.
21. Accordingly, for all reasons set forth above, White Oak has not met their burden showing they qualify for an exemption according to Ind. Code § 6-1.1-10-16. White Oak’s land and improvements are determined to be 100% taxable.

Summary of Final Determination

22. It is determined the property owned by White Oak does not qualify for property tax exemption. Therefore the decision of the PTABOA that the real property is 100% taxable is hereby sustained.

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