

REPRESENTATIVE FOR PETITIONER:

Stephen G. Outlaw Jr., Co-pastor and Director of Operations for Living Water Fellowship Church, LLC

REPRESENTATIVE FOR RESPONDENT:

John Slatten, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

AVONLEA PROPERTIES, LLC,)	Petition Nos.: 49-801-12-2-8-00375
)	49-801-12-2-8-00226
Petitioner,)	49-801-12-2-8-02627
)	
)	Parcel Nos.: 8007790
v.)	8050249
)	8008138
)	
MARION COUNTY ASSESSOR,)	Marion County
)	Washington Township
Respondent.)	
)	Assessment Year: 2012

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

April 17, 2014

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. Living Water Fellowship Church, LLC leased the subject properties from Avonlea, Inc. under what appears to be a standard commercial ground lease. Although Living Water may have used the properties for parking and other church-related activities for part of

the year leading up to the assessment date, there is nothing other than the lease to show the purposes for which Avonlea owned the properties. Did Living Water prove that the properties were owned for an exempt purpose as required by Ind. Code § 6-1.1-10-16(a)?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

2. The subject properties consist of three vacant lots located at 4601 Allisonville Road, 4609 Allisonville Road, and 2902 East 46th Street in Indianapolis.
3. On February 22, 2012, Living Water filed Form 136 applications seeking to exempt the properties from taxation under Ind. Code § 6-1.1-10-16 on grounds that they were used for religious purposes. On December 21, 2012, the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations finding that the properties were 100% taxable. Avonlea responded by filing Form 132 petitions with the Board, again claiming a religious-purposes exemption under Ind. Code § 6-1.1-10-16.¹

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The Board’s administrative law judge, Jaime S. Harris, held a hearing on February 12, 2014. Neither she nor the Board inspected the properties.
5. Living Water’s pastor, Stephen G. Outlaw, was sworn as a witness.
6. Living Water presented the following exhibit:
Petitioner’s Exhibit 1 – Ground Lease with Option to Purchase.
7. The following additional items are recognized as part of the record:
Board Exhibit A –Hearing notice,
Board Exhibit B – Form 132 petitions,

¹Avonlea, rather than Living Water, filed the Form 132 petitions. Nobody from Avonlea appeared at the Board’s hearing. The Assessor contends that Living Water’s pastor, who did appear, could not represent Avonlea. As explained below, the ground lease between Avonlea and Living Water makes Living Water responsible for property taxes. Thus, it appears that Living Water might have been able to appear in the appeal on its own behalf. *See* 52 IAC 2-2-13 (defining “party” in a Board proceeding to include “[t]he taxpayer responsible for the property taxes payable on the subject property. . .”). In any case, the Board need not address the Assessor’s claim that Living Water or its pastor lacked standing because it denies the claimed exemption on other grounds.

SUMMARY OF LIVING WATER’S CASE

8. The subject properties are adjacent to Living Water’s church. Living Water wanted to buy them at the same time it bought the church, but it could not do so. Avonlea therefore gave Living Water a right of first refusal, meaning that if anyone expressed interest in the properties, Avonlea would first offer them to Living Water. It appears that Avonlea later offered the properties to Living Water under that right of first refusal, although Reverend Outlaw’s testimony on that point is unclear. *See Outlaw testimony.*

9. In any case, Living Water could not obtain financing to buy the properties. It and Avonlea therefore entered into a Ground Lease with Option to Purchase. The lease runs from June 20, 2011, to June 19, 2014, and calls for Living Water to pay rent totaling \$66,000 over that three-year term. The lease is intended to be “triple net,” and it makes Living Water responsible for paying various expenses associated with the properties, including property taxes. The lease also gives Living Water an option to buy the properties. The purchase price under the option is \$323,520.95, which includes the principal amount of \$300,000 plus 3% interest calculated from June 11, 2011, using a ten-year amortization schedule. That amount may be reduced by Living Water’s security deposit as well as by rent that Living Water paid during the lease term. *Outlaw testimony; Pet. Ex. 1.*

10. Living Water uses the properties for parking. One property is used every Sunday while the other two are used less frequently, depending on the weather and church attendance. Living Water also uses the properties to host various church events. Items such as jumping machines for children are sometimes placed on the properties in connection with those events. Living Water wants to buy the properties to prevent anyone from putting up an eyesore next to its church. *Outlaw testimony.*

SUMMARY OF THE ASSESSOR'S CASE

11. Simply leasing a property, even where the lease has a purchase option, does not make the lessee an owner of the property. Because Living Water does not own the properties, it cannot claim an exemption under Ind. Code § 6-1.1-10-16. *Slatten argument.*

ANALYSIS

12. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton County PTABOA v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 656-57 (Ind. 2010). Thus, all or part of a building that is owned, occupied, and predominantly used for educational, literary, scientific, religious, or charitable purposes is exempt from taxation. See I.C. §6-1.1-10-16(a); I.C. §6-1.1-10-36; *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct.2009). That exemption extends to the land on which the building is situated and to personal property contained therein. I.C. §6-1.1-10-16(c) and (e). A taxpayer, however, bears the burden of proving that it is entitled to an exemption. *Oaken Bucket*, 938 N.E.2d at 657.
13. While a taxpayer must show that its property is owned for exempt purposes, occupied for exempt purposes, and predominately used for exempt purposes, unity of ownership, occupancy, and use by a single entity is not required. *Id.*; see also, *Sangralea Boys Fund v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954 (Ind. Tax Ct. 1997). Where, as in this case, that unity is lacking, a taxpayer must show that each entity possesses its own exempt purpose. *Id.*
14. In *Oaken Bucket*, the Indiana Supreme Court addressed a taxpayer's claim that the portion of a building it leased to a church was exempt under Ind. Code § 6-1.1-10-16(a). The case turned on whether the taxpayer showed that it owned the property for a charitable or religious purpose. The Board found that the lease was a standard business arrangement and that the taxpayer failed to show that it owned the property for anything other than investment purposes. *Oaken Bucket*, 938 N.E.2d at 656.

15. The Tax Court reversed. The Supreme Court, however, ultimately agreed with the Board, explaining that exemptions are generally granted when there is an expectation that the public will benefit. *Id.* at 657. As the court explained, a property owner does not show that it owns property for public benefit—instead of for its own private benefit—simply by renting the property to a beneficent organization. *See id.* at 659-60 (*quoting Travelers’ Ins. Co. v. Kent*, 151 Ind. 349, 50 N.E. 562, 563-64 (1898) and *State ex. rel. Hammer v. MacGurn*, 187 Mo. 238, 86 S.W. 138, 139 (1905)). Instead, the owner must show an exempt purpose of its own separate and distinct from that of its lessee. *Id.* at 659. Thus, even if the property owner in *Oaken Bucket* had charged below-market rent—a contested point in the case—the owner did not demonstrate that it had an exempt purpose separate and distinct from the charitable and religious purposes of its lessee. *Id.* at 658-59.
16. Although Living Water offered very little evidence about itself, it appears to possess a religious purpose. It might even use the subject properties to further that purpose. The Board need not decide that question, however, because Avonlea—not Living Water—owns the properties. And there is no evidence that Avonlea owns them for an exempt purpose separate and distinct from Living Water’s religious purpose.
17. The only evidence that even suggests what Avonlea’s purpose in owning the properties might be is the ground lease. That lease appears to be a standard commercial arrangement under which Living Water pays substantial rent and may exercise an option to buy the properties for an even larger additional sum. If anything, the lease tends to show that Avonlea owned the property for investment purposes. It certainly does not support a finding that Avonlea owned the properties for an exempt purpose. This appeal therefore presents an even weaker case for exemption than *Oaken Bucket*, where there was at least some evidence that the owner had rented the property to a church at below-market rates.

CONCLUSION

18. Living Water failed to show that the subject properties were owned for an exempt purpose. The Board therefore finds in favor of the Assessor and holds that the properties were 100% taxable for the 2012 assessment year.

FINAL DETERMINATION

In accordance with these findings and conclusions, the claim for exemption is denied.

ISSUED: April 17, 2014

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>>.