

REPRESENTATIVE FOR PETITIONERS:

Daniel Davisson, Attorney

REPRESENTATIVES FOR RESPONDENT:

Annamarie Ryan, Deputy Auditor

Patricia Dillon, County Auditor

Thomas Broderick, County Assessor

Cheryl Heath, Deputy Assessor

Dave Simmons, Property Tax Assessment Board of Appeals Advisor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MICHAEL D. and TAMRA NEAL,)	
)	
Petitioners,)	Petition for Review of Exemption,
)	Form 132
)	
)	Petition No: 48-033-01-2-8-00001
)	48-033-01-2-8-00002
v.)	
)	County: Madison
)	
MADISON COUNTY PROPERTY)	Township: Fall Creek
TAX ASSESSMENT BOARD)	
OF APPEALS,)	Parcel No: 0500051008
)	0500051032
Respondent.)	
)	Assessment Year: 2001

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

February 11, 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 non-residential portion of the real property qualifies for a property tax exemption pursuant to Indiana Code § 6-1.1-10-16 under the classification of religious/charitable purpose.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Daniel S. Davisson, Attorney filed a Form 132, Petition for Review of Exemption, on behalf of Michael D. and Tamra Neal (Petitioners) petitioning the Board to conduct an administrative review of the above petition. The Madison County Property Tax Assessment Board of Appeals (PTABOA) issued the Form 120 on March 31, 2003, denying the requested exemption. The Form 132 was filed on June 4, 2003.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was conducted on September 25, 2003, in Anderson, Indiana before Dalene McMillen, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:
For the Petitioners:

Michael D. Neal, property owner
Tamra Neal, property owner
Terrie Hay, witness
Daniel S. Davisson, Attorney for the Petitioners

For the Respondent:

Annamarie Ryan, Deputy Auditor
Patricia Dillon, County Auditor
Cheryl Heath, Deputy Assessor
Thomas Broderick, County Assessor
Dave Simmons, PTABOA Advisor

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioners:

Michael Neal
Tamra Neal
Terrie Hay

For the Respondent:

Patricia Dillon
Cheryl Heath
Thomas Broderick
Dave Simmons

6. The following exhibits were presented:

For the Petitioners:

Petitioner's Exhibit 1 – A copy of the Corporate Warranty Deed from Pilgrim Holiness Church to Michael D. and Tamra S. Neal, dated March 3, 2000.

Petitioner's Exhibit 2 – A copy of a plat map of the subject property area.

Petitioner's Exhibit 3 – A hand drawn map showing the location of the buildings on the subject property.

Petitioner's Exhibit 4 – The International Conservative Holiness Policy books for 1998 and 2002.

Petitioner's Exhibit 5 – The by-laws for the Mockingbird Hill Christian Retreat Center, dated March 12, 2003.

Petitioner's Exhibit 6 – A copy of the Application for Property Tax Exemption (Form 136) filed by Michael and Tamra Neal, dated May 15, 2001.

Petitioner's Exhibit 7 - A general report of maintenance and expenses of Mockingbird Hill Christian Retreat Center.

Petitioner's Exhibit 8 – Thirteen interior and exterior photographs of the subject property.
Petitioner's Exhibit 9 – A copy of the Application for Property Tax Exemption (Form 136) filed by the Pilgrim Holiness Church, Inc., dated February 22, 2000.

Petitioner's Exhibit 10 – A copy of the Petitioner's property record card for parcel #05-05-0005-1-032.

Petitioner's Exhibit 11 – A copy of the Petitioner's property record card for parcel #05-05-0005-1-008.

For the Respondent:

None

For the Board:

Board's Exhibit A – Form 132 petition, dated May 29, 2003.

Board's Exhibit B – Notice of Hearing on Petition (Form 117), dated July 29, 2003.

Board's Exhibit C – Copies of the Indiana Board of Tax Review administrative subpoenas served upon Patricia Dillon, Kim Wood, John Rigsby, and Thomas Broderick.

7. The subject property is located at 4038 Ridgeview Road, Anderson, Fall Creek Township, Madison County, Indiana.
8. The Madison County PTABOA denied an exemption for the subject property for the March 1, 2001, assessment.
9. On September 17, 2003, the Board issued administrative subpoenas to Patricia Dillon, County Auditor; Kim Wood, PTABOA member; John Rigsby, PTABOA member; and Thomas Broderick, County Assessor. The administrative subpoenas were requested and personally served by Daniel S. Davisson, Attorney for the Petitioners, on September 18, 2003.
10. The administrative subpoenas were issued requesting the records of the County Auditor and Assessor regarding the tax assessment and exemption request of the Petitioners and the prior owner, Pilgrim Holiness Church. Mr. Wood and Mr. Rigsby were subpoenaed to testify concerning the exemption request of the Petitioners.

11. Mr. Wood and Mr. Rigsby did not appear at the Board's hearing, thereby failing to comply with the administrative subpoenas. Mr. Davisson indicated that the Petitioners wished to proceed with the Board hearing and that their case was not jeopardized by the failure of Mr. Wood and Mr. Rigsby to comply with the subpoenas.

Jurisdictional Framework

12. This matter is governed by the provisions of Ind. Code §§ 6-1.1, 6-1.5, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
13. The Board is authorized to issue this final determination, findings of fact and conclusions of law pursuant to Indiana Code § 6-1.5-5-5.

State Review and Petitioner's Burden

14. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board bases its decision upon the evidence presented and the issues raised during the hearing. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax Ct. 1998).
15. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products*, 704 N.E.2d at 1119; *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
['Probative evidence' is evidence that serves to prove or disprove a fact.]
16. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. *See Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1024-1025 (Ind. Tax Ct. 1999). ['De minimis' means only a minimal amount.]

17. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

18. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the Board (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Property Tax Exemption

19. 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.*

20. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Indiana Constitution, Article 10, § 1.

21. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the 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.
22. The justification for tax exemption is the public benefit. *State Bd. of Tax Comm'rs v. Wright*, 215 N.E.2d 57 (1966). 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.*
23. 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 Ct. 1996).
24. 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 that 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 Ct. 1990).
25. 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 exemption is being claimed. *Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 611

N.E.2d 708, 713 (Ind. Tax Ct. 1993); *Indiana Assoc. of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Discussion of Issue

Whether the non-residential portion of the real property qualifies for a property tax exemption pursuant to Indiana Code § 6-1.1-10-16 under the classification of religious or charitable purpose.

26. The Petitioners contend the non-residential portion of the real property should be exempt from property taxation. The Petitioners are not seeking an exemption for the portion of the parcel containing their personal residence and the adjoining two acres. *M. Neal testimony.*

27. The Notice of Action on Exemption Application, Form 120, indicates the PTABOA denied the exemption for four reasons:
 - (1) “The Petitioner stated on their petition that they were incorporated as a charitable organization. When the Board requested documentation Petitioner could not produce any documentation.”
 - (2) “Petitioner stated the property was used by the church on a limited basis, however could produce no lease on the property.”
 - (3) “Petitioner stated the property is in the name of unincorporated private entity and the residence is used as a personal residence and the grounds are used on occasion by private individuals.”
 - (4) “Upon a site visit by the Board it could not be determined that the current use of the property is charitable.” *Board’s Ex. A.*

28. The Respondent contends that the subject property should be 100% taxable because individuals, rather than a charitable organization, own it. The Respondent further asserts that the Petitioners failed to provide evidence that they are incorporated as a charitable

organization or that the property is predominantly used for a charitable purpose. The Respondent argues that the property therefore fails to meet the criteria of owned, occupied, and used for religious/charitable purposes.

29. The applicable rules governing this issue are:

IC 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.

IC 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.

IC 6-1.1-10-36.3(b)

If a section of this chapter states one (1) or more purposes for which property must be used or occupied in order to qualify for an exemption, then the exemption applies as follows:

- (1) Property that is exclusively used or occupied for one (1) or more of the stated purposes is totally exempt under that section.
- (2) Property that is predominantly used or occupied for one (1) or more of the stated purposes by a church, religious society, or not-for-profit school is totally exempt under that section.
- (3) Property that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.
- (4) Property that is predominantly used or occupied for a purpose other than one (1) of the stated purposes is not exempt from any part of the property tax.

30. Evidence and testimony considered particularly relevant to this determination include the following:
- a. Michael and Tamra Neal, husband and wife, purchased the subject property on March 3, 2000, from the Pilgrim Holiness Church. *Petitioner's Ex. 1.*
 - b. The Petitioners testified that the word "person" is defined in Ind. Code § 6-1.1-1-10: "'Person' includes a sole proprietorship, partnership, association, corporation, limited liability company, fiduciary, or individual." *Board's Ex. A and M. Neal testimony.*
 - c. The Petitioners testified the Grace Holiness Church and the Anderson Covenant Academy use the Tabernacle and dining hall periodically. The Petitioners also testified the buildings do not contain furnaces and are not usable in the winter. *Petitioner's Ex. 6 and M. Neal, Hay, & T. Neal testimony.*
 - d. The Petitioners testified they personally have used the subject property in an extremely limited manner. The shelter house is occupied by Pastor Terrie Hay, who assists with mowing, building repairs, and security. *M. Neal and Hay testimony.*
 - e. The Petitioners testified the only fee paid to them by the Grace Holiness Church is for the utilities of the shelter house. *M. Neal testimony.*
 - f. The Form 136 filed by the Petitioners indicates that fees are charged for general upkeep and expenses at the property. *Board's Ex. A and Petitioner's Ex. 6.*
 - g. The Petitioners requested that all land and buildings east of the creek should be exempt from taxation. *M. Neal testimony.*
 - h. The Respondent argued the tax exemption request made by the Petitioners must be denied as there was no documentation or evidence showing the property is leased to the Grace Holiness Church and/or the Anderson Covenant Academy, or that the property is predominantly occupied and used by those entities. *Board's Ex. A and Simmons & Broderick testimony.*
 - i. The Respondent contended that the subject property is 100% taxable because: (1) it is owned by individuals, rather than a charitable organization; (2) the Petitioners failed to provide evidence that they are incorporated as a charitable organization;

and (3) the Petitioners failed to establish that the property is predominantly occupied or used for a charitable purpose. The property therefore fails to meet the exempt property criteria of owned, occupied and used for charitable purposes. *Board's Ex. A and Simmons testimony.*

Analysis of the Issue

31. To prevail in this appeal, the Petitioners must establish that their property is: (1) owned; (2) occupied; and (3) used for religious or charitable purposes. IC § 6-1.1-10-16(a). Further, to qualify for an exemption, the predominant use of the property must be for religious/charitable purposes. IC § 6-1.1-10-36.3(a). *See also New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Bd. of Tax Comm'rs*, 733 N.E.2d 36 (Ind. Tax 2000) (“building’s exempt status turns on whether the property is predominately used for [charitable] purposes more than 50% of the time.”).
32. The property is titled in the name of the Petitioners as husband and wife. The property is not owned by a church, religious society, or school.
33. Petitioners relied primarily upon the testimony of Mr. and Mrs. Neal and Pastor Hay to explain the use of the property.
34. Mr. Neal testified that the cottage and three open frame concessions buildings “are not really used” because he has never found a use for them. The Petitioner has therefore failed to establish that these buildings are predominately used for any religious/charitable purpose.
35. The Petitioners also seek an exemption for the building referred to as “the shelter house.” The shelter house is occupied by Pastor Terrie Hay, who is Pastor of Grace Holiness Church and administrator of the Anderson Covenant Academy. Neither of these

institutions is located on the Petitioners' property. Testimony indicated that Pastor Hay assists with mowing, building repair, and security at the Petitioners' property.

36. The proper inquiry is whether the use of the property as housing is "reasonably necessary" to accomplish the Petitioners' religious or charitable purposes. *LeSea Broadcasting Corp. v. State Bd. of Tax Comm'rs*, 525 N.E.2d 637, 639 (Ind. Tax 1988).
37. Testimony indicated that no rent is paid to the Petitioners in exchange for allowing Pastor Hay to reside on the premises. The Petitioners contend that permitting Pastor Hay to reside in the shelter building permits the Church parsonage, located elsewhere in the city, to be available for the housing of an assistant pastor.
38. No evidence was presented to establish that the Pastor's residence is used to conduct any religious or charitable activities. Instead, testimony indicated that Pastor Hay's primary duties at the Petitioners' facility are maintenance and security. The Petitioners failed to establish the manner in which these activities are reasonably necessary to further any religious or charitable purpose.
39. Further, although free housing may be a benefit to the Church, the Petitioners failed to demonstrate that this benefit is "reasonably necessary" to any religious or charitable objectives. For example, no evidence was presented to demonstrate the manner in which the Petitioners' religious or charitable aims would be frustrated or diminished if Pastor Hay lived in an apartment complex rather than at the shelter house. Similarly, no evidence was presented to demonstrate the manner in which the Petitioners' religious or charitable aims would be frustrated or diminished if a maintenance person or security guard, rather than Pastor Hay, lived at the shelter house.
40. The Petitioners have therefore failed to demonstrate that allowing Pastor Hay to reside at the retreat center is "reasonably necessary" to accomplish the Petitioners' religious or charitable objectives.

41. The Petitioners further testified the Tabernacle and dining hall located on the property are used periodically by the Grace Holiness Church and the Anderson Covenant Academy for meetings, gospel sings, and fundraisers for the school.
42. Additional testimony presented by, or on behalf of, the Petitioners indicated the following:
 - (a) Youth related activities occur “at least once or twice a month.”
 - (b) A get-together for the Church is held “once every fifth Sunday.”
 - (c) An auction is held “twice a year” at the site.
 - (d) The buildings are not usable during the winter months due to the lack of heat in the structures.
43. The testimony concerning only the intermittent use of the facility is insufficient to establish the property is predominately used for religious or charitable purposes.
44. Additionally, the Respondent attempted to confirm the claims of the Petitioners through a site inspection of the property. The site inspection, however, was unable to verify that the property was predominantly used for religious or charitable purposes.
45. Finally, the Petitioners are requesting that an area “east of the creek” should receive an exemption from taxation. However, the Petitioners failed to quantify the amount of land that should be considered for such exemption. For example, although the cottage and the small concessions outbuildings are located east of the creek, the Petitioners acknowledged that these structures were empty buildings that were not being put to any use.
46. The application is for two entire parcels. The Board is not in the position to consider exemption of a sub-part of the parcels. The predominant use test will be applied to the entirety of the parcels designated on the application.

47. For all the reasons above, the Petitioners have failed to establish that the subject property is predominately owned, occupied, and used for religious or charitable purposes. The Petitioners therefore did not meet their burden and establish that the subject property is eligible for a tax exemption under Ind. Code § 6-1.1-10-16(a). Accordingly, there is no change in the assessment as a result of this issue.

Summary of Final Determination

Whether the non-residential portion of the real property qualifies for a property tax exemption pursuant to Indiana Code § 6-1.1-10-16 under the classification of religious/charitable purpose.

48. The Petitioners failed to prove that the properties were predominantly used for religious or charitable activities. Petitioners' property is not entitled to an exemption. There is no change in the assessment as a result of this issue.

This Final Determination of the above captioned matter is issued 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.