

REPRESENTATIVES FOR PETITIONERS: Jimmy R. Snider, Taxpayer
Linda S. Snider, Taxpayer

REPRESENTATIVES FOR RESPONDENT: Patricia Richey, Clinton Twp. Assessor
Karen Johnson, Vermillion County Deputy

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

JIMMY R. and LISA)	
S. SNIDER)	Petition No.: 83-002-03-2-8-00001
)	
Petitioners)	County: Vermillion
)	
v.)	Township: Clinton
)	
VERMILLION COUNTY)	Parcel No.: 002-008-0171-00
PROPERTY TAX ASSESSMENT)	
BOARD OF APPEALS,)	
)	Assessment Year: 2003
Respondent)	

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

March 21, 2006

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

ISSUES

1. The parties presented the following restated issue to the Board:

Is the subject property exempt from taxation based upon a charitable, religious or educational use where Normandy Prayer Ministries/Hillcrest Community Center used an unspecified portion of the improvements to run various programs for children?

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-11-7, Petitioners, Jimmy R. and Linda S. Snider (Petitioners), filed a Form 132 Petition to the Indiana Board of Tax Review for Review of Exemption (Form 132 Petition), petitioning the Board to conduct an administrative review of the Vermillion County Property Tax Assessment Board of Appeal's denial of an exemption for the subject property. The Petitioners filed their Form 136 Application for Property Tax Exemption on May 6, 2003. The Vermillion County Property Tax Assessment Board of Appeals (PTABOA) issued its decision on September 30, 2004. The Petitioners filed their Form 132 Petition on October 18, 2004.

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 September 14, 2005, in Newport, Indiana before Joan Rennick, the duly designated Administrative Law Judge (the "ALJ") authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

Jimmy R. Snider, Taxpayer
Linda S. Snider, Taxpayer

For the Respondent:

Patricia Richey, Clinton Township Assessor
Karen Johnson, Vermillion County Deputy Assessor

5. The following exhibits were presented for the Petitioners:
 - Petitioners' Exhibit 1 – Hillcrest Community Center Mission Statement
 - Petitioners' Exhibit 2 – 2003 & 2004 Account Transactions
6. The following exhibits were presented for the Respondent:
 - Respondent's Exhibit 1 – Property Record Card for Subject
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Form 132 Petition
 - Board Exhibit B – Notice of Hearing dated August 11, 2005
 - Board Exhibit C – Hearing Sign In Sheet
8. The subject property contains a commercial structure valued as a general office and theatre. The subject property is located at 503 N. 8th Street Clinton in Clinton Township, Clinton, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2003, the PTABOA determined the subject parcel to be 100% taxable.
11. The Petitioners did not specify the portion of the subject land and improvements for which they claim an exemption. On their Form 136 application, the Petitioners requested a 100% exemption for the subject land, but did not specify the percentage of the improvements for which they claimed and exemption. *See Board Ex. A.* Similarly, on their Form 132 petition, the Petitioners claimed that “part of the building known as Hillcrest Community Center is being used [for] educational, religious and charitable purposes.” *Id.* The Petitioners did not explicitly claim an exemption for personal property on either their Form 136 application or their Form 132 petition.

JURISDICTIONAL FRAMEWORK

12. 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.

ANALYSIS

Parties' Contentions

13. The Petitioners presented the following evidence and argument in support of their position:
- A. On the date of the assessment, the Petitioners owned the subject property. *J. Snider testimony*.¹ The Petitioners “went into” the building as Normandy Prayer Ministry, Inc. (Normandy Prayer Ministry). *Id.* Normandy Prayer Ministry was a “covering” for Hillcrest Community Center. *Id.* At all times relevant to this appeal, Normandy Prayer Ministry/Hillcrest Community Center used portions of the subject building for religious, educational and charitable causes. *Id.*
- B. Normandy Prayer Ministry/Hillcrest Community Center paid monthly rent of \$120 to cover the cost of insurance for the subject property. *J. Snider testimony; L. Snider testimony*. The subject building also contains two apartments. *Id.* The Petitioners

¹ Ms. Snider testified that approximately one month before the hearing the Petitioners “turned everything over to Normandy Prayer Ministry.” It is unclear whether the Petitioners transferred ownership of the subject property to Normandy Prayer Ministry.

- rent those apartments to other tenants. *Id.* The apartment tenants park along the street and the parking lot is used for the community center. *Id.*
- C. The Petitioners saw a need in the community to keep children off the street. *Id.* Operating the community center allows the Petitioners to meet that need through various programs. *Id.* Normandy Prayer Ministry/Hillcrest Community Center uses portions of the subject building to house clothing and school supplies for not-for-profit organizations such as Kids Care, free of charge. *Id.* Once a month, the community center has a free lunch program for anyone who wants to come and eat. *Id.* The community center houses a “clothes closet” where people donate clothing for distribution to the needy. *Id.* The community center also houses Bible study programs and a prayer ministry. *Id.*
- D. The Petitioners request a property tax exemption for the portions of the subject building containing the gymnasium, sanctuary and basement. *Id.* The Petitioners also request an exemption for the parking lot. *Id.*
14. The Respondent presented the following evidence and argument in support of its position:
- A. Ownership of the subject property is vested in Jimmy R. and Linda S. Snider rather than in Normandy Prayer Ministry/Hillcrest Community Center. The subject property therefore does not meet the requirements of IC 6-1.1-10-16. *Richey testimony.*
- B. The Petitioners did not provide any measurements of the portions of the subject building for which they claim an exemption. *Id.*

Administrative Review and the Petitioners' Burden

15. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving 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).

16. A taxpayer seeking an exemption bears the burden of showing that the subject property falls specifically within the statute under which the exemption is being claimed. *Indianapolis Osteopathic Hospital, Inc. v Dep't of Local Gov't Fin.* 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel Co., Inc. v State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Ass'n of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936,938 (Ind. Tax Ct. 1987).

17. 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. Washington 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”).

18. 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 Claimed Exemption

19. 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. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.

19. 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 that parcel would have paid to other parcels that are not exempt. *National Ass’n of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E.2d 218, 220-21 (Ind. Tax Ct. 1996). The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. Therefore, worthwhile activities or noble purposes are not enough for tax exemption. Exemption is justified and upheld based upon the accomplishment of a public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm’rs*, 550 N.E.2d 850,854 (Ind. Tax Ct. 1990)).

20. The Petitioners base their claim for exemption on Ind. Code § 6-1.1-10-16. That statute provides, in relevant 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, religious, or charitable purposes.

* * * * *

(c) A tract of land . . . is exempt from property taxation if:

- (1) a building that is exempt under subsection (a) or (b) is situated on it; [or]
- (2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it. . . .

Ind. Code § 6-1.1-10-16.

21. The Indiana General Assembly has adopted a “predominant use” test for determining whether an exemption under Ind. Code § 6-1.1-10-16(a) applies. *State Bd. of Tax*

Comm'rs v. New Castle Lodge # 147 Loyal Order of Moose, 765 N.E.2d 1257, 1259 (Ind. 2002). Thus, Ind. Code § 6-1.1-10-36.3 provides:

(a) For purposes of this section, property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) 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 in the assessment date of the property.

(b) *The determination under subsection (c) of:*
(1) the use or occupation of the property; and
(2) the application of an exemption;
applies separately to each part of the property identified under IC 6-1.1-11-3(c)(5).

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

* * * * *

- (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.

Ind. Code § 6-1.1-10-36.3 (emphasis added).

22. Indiana Code § 6-1.1-11-3(c)(5) provides that, when applying for an exemption, a taxpayer must identify each part of the property that is used or occupied for one (1) or more exempt purposes and each part of the property that is not so used or occupied.

23. Read as a whole, the above-referenced statutes require a party seeking an exemption for a charitable, religious or educational use to do the following: (1) identify each portion of the property that was used or occupied for a charitable, religious or educational purpose; and (2) show that each identified portion of the property was used for a charitable, religious or educational purposes at least 50% of the time that it was in use.

Discussion

24. Mr. Snider testified regarding numerous ways in which portions of the subject were owned, occupied and used for charitable purposes. For example, Normandy Prayer Ministries used portions of the subject building to house clothing and school supplies for needy children and to provide a free lunch program. *J. Snider testimony*. Normandy Prayer Ministries also used portions of the building as a gathering place for children to keep them off the street. *Id.* These are precisely the types of public purposes contemplated by the charitable use exemption.² See *Knox County Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005) (“[a] charitable purpose will generally be found to exist if: 1) there is ‘evidence of relief of human want . . . manifested by obviously charitable acts different from the everyday purposes and activities of man in general’; and 2) there is an expectation of a benefit that will inure to the public by the accomplishment of such acts.”) (quoting *Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm’rs*, 145 Ind. App. 522, 251 N.E.2d 673, 683 (1969)).
25. Nonetheless, the Petitioners admitted that only a portion of the subject building was devoted to the above-described charitable uses. The subject building also contains apartments. *J. Snider testimony*. Although there is no evidence regarding the terms under which the Petitioners leased those apartments, the Petitioners do not claim that

² Because the Board finds that the uses described by the Petitioners were charitable, it need not address whether they also qualified as religious or educational.

the apartments were owned, occupied and used for an exempt purpose. *See J. Snider testimony.*

26. Thus, the Petitioners bore the burden of identifying which portions of the subject building were occupied and used for charitable purposes and which portions of the building were not so used and occupied. While Mr. Snider generally testified that all of the building other than the apartments was devoted to the above-described charitable uses, there is nothing in the record from which to determine what percentage of the subject building is occupied by those apartments. The property record card does not reference the apartments. *Resp't Ex. 1.* The Petitioners did not provide any sketches or measurements independent of the property record card. At most, Ms. Snider testified that he talked to "someone," presumably from the offices of the township or county assessor, who said that "they" would have to measure the building for tax purposes. *L. Snider testimony.* As explained above, however, it was the Petitioners' burden – not the Respondent's – to identify the portions of the subject building entitled to an exemption.
27. The Petitioners therefore failed to establish a prima facie case of entitlement to an exemption for any portion of the subject building. Moreover, the Petitioners did not assert an entitlement to an exemption for the subject land separate and apart from their claim that portions of the subject building were entitled to a charitable use exemption. Consequently, the Petitioners' failure to establish a prima facie case of entitlement on an exemption for the subject building necessarily deprives them of entitlement to an exemption for the subject land.³

SUMMARY OF FINAL DETERMINATION

28. The Petitioners failed to establish a prima facie case of entitlement to an exemption. The Board finds for the Respondent.

³ As noted above, the Petitioners did not claim an exemption for personal property.

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.