

**STATE OF INDIANA
Board of Tax Review**

Community Development Corporation,)	On Appeal from the Marion
)	County Property Tax Assessment
Petitioner,)	Board of Appeals
)	
v.)	Petition for Review of Exemption,
)	Form 132
Marion County Property Tax Assessment)	
Board of Appeals,)	Petition No. 49-800-00-2-8-10001
)	49-800-00-2-8-10004
Respondent.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (STBC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, on finds and concludes the following:

Issues

1. Whether the real property, owned by Community Development Corporation (Community Development) qualifies for property tax exemption pursuant to Indiana Code § 6-1.1-10-16 under the classifications of educational, charitable, and religious purposes.

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.

A. Background of Administrative Proceedings

2. Pursuant to Indiana Code § 6-1.1-11-3, Community Development filed an application for property tax exemption, Form 136, with the Marion County Auditor on May 18, 2000. The Marion County Property Tax Assessment Board of Appeals (PTABOA) denied the application on July 28, 2000.
3. Pursuant to Indiana Code § 6-1.1-11-7, on August 28, 2000, Community Development filed a Form 132 petition seeking a review of the PTABOA action by the State Board.
4. Pursuant to Indiana Code § 6-1.1-15-4, and with proper notice, Hearing Officer Jennifer Bippus held an administrative hearing on November 19, 2001. David B. Hughes, Attorney for the Petitioner, John E. Hamilton and Rufus C. Mills, were present on behalf of the Petitioner. Melissa Tetrick and Andrew P. Seiwert , were present on behalf of the PTABOA.
5. At the hearing, the subject Form 132 petition was made a part of the record and labeled as Board Exhibit A. The Notice of Hearing was labeled as Board Exhibit B and the Request for Additional Evidence is labeled as Board Exhibit C.
6. At the hearing, the following evidence was presented by the Petitioner:

Petitioner's Exhibit 1 - A copy of the Petition for Review of Exemption for Parcel No. 8048090.

Petitioner's Exhibit 2 - A copy of the Petition for Review of Exemption for Parcel

No. 8052688.

Petitioner's Exhibit 3 - A copy of the Petition for Review of Exemption for Parcel No. 8061066.

Petitioner's Exhibit 4 - A copy of the Petition for Review of Exemption for Parcel No. 8061067.

Petitioner's Exhibit 5 - The Power of Attorney for David B. Hughes.

Petitioner's Exhibit 6 - A copy of the property record card for Parcel No. 804890.

Petitioner's Exhibit 7 - A copy of the property record card for Parcel No. 8052688.

Petitioner's Exhibit 8 - A copy of the property record card for Parcel No. 8051066.

Petitioner's Exhibit 9 - A copy of the property record card for Parcel No. 8051067.

Petitioner's Exhibit 10 - Articles of Incorporation of Pentecostal Assemblies of the World.

Petitioner's Exhibit 11 - Articles of Amendment of the Articles of Incorporation of the Pentecostal Assemblies of the World, Inc. dated 1954.

Petitioner's Exhibit 12 - Articles of Amendment of the Articles of Incorporation of the Pentecostal Assemblies of the World, Inc. dated 1962.

Petitioner's Exhibit 13 - Articles of Reorganization of Pentecostal Assemblies of the World, Inc.

Petitioner's Exhibit 14 - Bylaws of Pentecostal Assemblies of the World, Inc.

Petitioner's Exhibit 15 - Internal Revenue Service Letter to Pentecostal Assemblies of the World, Inc. of section 501 (c) (3) exempt status.

Petitioner's Exhibit 16 - Letter from the Internal Revenue Service to Pentecostal Assemblies of the World, Inc. regarding its exempt status.

Petitioner's Exhibit 17 - Financial Statements of Pentecostal Assemblies of the World, Inc. for December 31, 1997 and December 31, 1998.

Petitioner's Exhibit 18 - Financial Statements of the Pentecostal Assemblies of the World, Inc. for December 31, 1999 (draft).

Petitioner's Exhibit 19 - Invoice from BKD, LLP regarding status of Financial

Statement of the Pentecostal Assemblies of the World,
Inc. for 1999.

Petitioner's Exhibit 20 - Articles of Incorporation of Aenon Bible College, Inc.

Petitioner's Exhibit 21 - Code of Bylaws of Aenon Bible College, Inc.

Petitioner's Exhibit 22 - Articles of Incorporation of Community Development
Corporation.

Petitioner's Exhibit 23 - Articles of Amendment of the Articles of Incorporation of
Community Development Corporation.

Petitioner's Exhibit 24 - Bylaws of Community Development Corporation.

Petitioner's Exhibit 25 - Deed of Oxford Development Corporation to Pentecostal
Assemblies of the World, Inc. (1979).

Petitioner's Exhibit 26 - Corporate Warranty Deed of Oxford Development
Corporation to the Pentecostal Assemblies of the World,
Inc. (1982).

Petitioner's Exhibit 27 - Deed of Pentecostal Assemblies of the World, Inc. to
Community Development Corporation.

Petitioner's Exhibit 28 - Survey of the PAW Headquarters Building at 3939
Meadows Drive.

Petitioner's Exhibit 29 - Survey of the PAW/Aenon Bible College, Inc. building at
3919 Meadows Drive, Indianapolis, Indiana.

Petitioner's Exhibit 30 - Project Agreement (exchange of property for
redevelopment) between Metropolitan Development
Commission and Community Development Corporation.

Petitioner's Exhibit 31 - Limited Warranty Deed of City of Indianapolis,
Department of Metropolitan Development to Community
Development Corporation.

Petitioner's Exhibit 32 - Survey of Parcel conveyed to Community Development
Corporation by City of Indianapolis.

Petitioner's Exhibit 33 - Parking Easement Agreement (1996).

Petitioner's Exhibit 34 - Survey of Easement Parking Lot Area (1996).

Petitioner's Exhibit 35 - Affidavit of Scrivener's Error (1996).

Petitioner's Exhibit 36 - Standard Form of Agreement between Owner and

Contractor (1995).

Petitioner's Exhibit 37 - Plot Plan of Improvement of tract conveyed by City of Indianapolis to CDC (1996).

Petitioner's Exhibit 38 - Rendering of Pentecostal Assemblies of the World, Inc. International Headquarters Building.

Petitioner's Exhibit 39 - Photograph of Pentecostal Assemblies of the World, Inc. Headquarters Building.

Petitioner's Exhibit 40 - Photograph of Aeon Bible College Building

Petitioner's Exhibit 41 - 1997 Minute Book of Pentecostal Assemblies of the World, Inc.

Petitioner's Exhibit 42 - 1999 Organizational Manual of The Pentecostal Assemblies of the World, Inc.

Petitioner's Exhibit 43 - 2000 Organizational Manual of The Pentecostal Assemblies of the World, Inc.

Petitioner's Exhibit 44 - Article from *Indianapolis Business Journal* regarding Ozell Sander's Property (11/14/01).

Petitioner's Exhibit 45 - Current copy of *The Christian Outlook*.

Petitioner's Exhibit 46 - Plot Aerial Photograph of Subject Real Estate.

Petitioner's Exhibit 47 - Photograph of a proposed project of The Pentecostal Assemblies of the World, Inc. for the subject site.

Petitioner's Exhibit 48 - A folder containing plat maps and the following books for The Pentecostal Assemblies of the World, Inc.:

1998 Minute Book, 1999 Organizational Manual, 2000 Organizational Manual.

7. At the hearing, the following evidence was presented by the Respondent:

Respondent's Exhibit A - A copy of the case *Foursquare Tabernacle Church of God In Christ v. State Board of Tax Commissioners*.

Respondent's Exhibit B - A copy of the Indiana Code § 6-1.1-10-16.

8. Additional evidence was provided by the Petitioner in a timely manner after the

hearing and is labeled as Petitioner's Exhibit 49. The evidence consisted of the following: (1) The Deed from Pentecostal Assemblies of the World, Inc. to Community Development Corporation of all of the real estate in issue in this proceeding located on the west side of Meadows Drive; (2) Marion County Assessor's Appeals Database as to Parcel No. 8044013 for the assessment date of March 1, 2000, showing the property 100% exempt from taxation that is owned by PAW and its attached property record card; (3) Marion County Assessor's Appeals Database as to Parcel No. 8036493 for the assessment date of March 1, 2000, showing the property 100% exempt from taxation that is owned by the Pentecostal Assemblies of the World, Inc., and its attached property record card; (4) Marion County Assessor's Appeals Database as to Parcel No. 8045434 for the assessment date of March 1, 2000, showing the property 100% exempt from taxation that is owned by the Pentecostal Assemblies of the World, Inc., and its attached property card.

9. The subject properties are located at 3200 East 39th Street, Indianapolis, Washington Township, Marion County.
10. The Hearing Officer did not view the properties.

**Whether the real property qualifies for property tax exemption pursuant to
Indiana Code § 6-1.1-10-16**

11. The subject land in the name of Community Development is contiguous with the Pentecostal Assemblies of the World, Inc. (PAW) and the Aenon Bible College (Aenon). The PAW is one-hundred percent (100%) exempt from property taxes and Aenon is ninety percent (90%) exempt. Ten percent (10%) of Aenon is non-exempt and used as leased space. Community Development and Aenon are subsidiaries of PAW. Community Development has separate By-laws and Articles of Incorporation, but all of the finances of the three entities are incorporated. The membership of Community Development is identical to the executive committee of the PAW. All three entities are exempt from federal taxes

under the PAW. The function of Community Development is to hold real estate for the church. *Hughes Testimony.*

12. Aenon and PAW own several buildings that sit on less than one acre of land respectively and are exempt from property taxation. The subject land and some buildings were acquired by the PAW and listed under the Community Development in November of 1997. The city demolished some of the buildings as part of the agreement. Most of the buildings were vacant at the time, but three buildings were left standing. The PAW wanted to develop one building as a dormitory for Aenon, and the other two buildings would be developed for senior citizen housing. *Hampton Testimony.*
13. The above stated plans have been in place since 1996, but the plan has not been able to be accomplished due to financial restrictions. The only thing done to the three existing buildings that are being saved for renovation is the environmental clean-up. The only entrance to the subject site, once improvements are accomplished, will be from the Meadows Drive side of the property. For security purposes the entrance would be between the PAW and Aenon. *Hampton Testimony.*
14. Other plans for the subject area have been a high-rise through an application to HUD and an application for a nursing facility. Both of these have not been approved at the time of the exemption application. *Hampton Testimony.*
15. Financial statements for 1997, 1998, 1999, and 2000 are still under completion. There was a change in personnel and the audit has been difficult to complete. *Hampton Testimony.*
16. The property tax exemption was filed in May 2000. Section 1, answer 5, of the exemption form states that at the time of filing none of the structures are being used. Section 2, under exempt purpose, of the exemption form states that the organization was not able to obtain financing for the project as of the date of

filing. Section 2, question 3, of the exemption form shows that no rooms or areas are under development at this time. At the time of the exemption filing there were no building permits filed for improvements. *Seiwert Testimony*.

17. The County denied the exemption because the property is not being used. The only information provided to the County at the time of the exemption filing was a letter from the CPA, the By-laws, and financial statements for 1999. The By-laws reviewed for this exemption application were for Community Development only, not the PAW or Aenon. *Tetrick Testimony*.

Conclusions of Law

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

Burden

2. In reviewing the actions of the County Board (or PTABOA), the State 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). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
3. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

4. 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).

Constitutional and Statutory Basis for Exemption

5. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
6. Article 10, Section 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. In this appeal, the Petitioner seeks exemption under Ind. Code § 6-1.1-10-16, which provides that property is exempt from property taxation if it is owned, used, and occupied for educational, literary, scientific, religious, or charitable purposes.
7. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemption. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how the property is used but on how much money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996)(501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominately used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

8. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.

9. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).
10. Strict construction construes exemption from the concept of the taxpayer citizen. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always 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. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners (NAME)*, 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt would otherwise have paid, and this should never be seen as an inconsequential shift.
11. This is why worthwhile activities or noble purpose is not enough to justify tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *NAME*, 671 N.E. 2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).
12. 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 the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).

Conclusions Regarding the Exemption Claim

13. Indiana Code § 6-1.1-10-16 provides exemptions for buildings and land used for certain educational, literary, scientific, religious, or charitable purposes. Land is

also exempt if a building that is being used for exempt purposes is situated on it. Indiana Code § 6-1.1-10-16 (b). Generally, exempt land is limited to fifteen acres. *Id.*

14. Subject to the requirements set forth in Indiana Code § 6-1.1-10-16 (a), the property seeking exemption must be owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.
15. The Petitioner requests that the subject properties be exempt from taxation because it is contiguous to Aenon and PAW and is part of both of these entities, even though it falls under the name of Community Development. Aenon and PAW are exempt properties. All of the finances of the three entities are incorporated and the executive committee of Community Development is identical to the executive committee of the PAW. Further, all three entities are exempt from federal taxes under the PAW.
16. The Petitioner states that the subject properties have been owned since 1997 and there are plans in place to renovate the properties, although the funding has not been established at the time of the exemption filing.
17. As a result of the property's vacant status on March 1, 2000 assessment date, the crux of this appeal is whether the subject property meets the requirements of occupancy and use set forth in Indiana Code § 6-1.1-10-16. Although the Petitioner claims it has plans for the subject property, the property was not occupied or used in March 1, 2000, when the exemption application was filed. *See Form 136, Application for Property Tax Exemption.*
18. Therefore, due to its vacant status, the question is "whether preparing the building for future use in furtherance of exempt purposes qualifies the building for exemption." *Trinity Episcopal Church v. State Board of Tax Commissioners*, 694 N.E. 2d 816 (Ind. Tax 1998).

19. Further, the intent to use the property for an exempt purpose must be more than a "mere dream". *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850 (Ind. Tax 1990), and *Trinity Episcopal Church v. State Board of Tax Commissioners*, 694 N.E. 2d 816 (Ind. Tax 1998).
20. Indiana Code § 6-1.1-10-16 (d)(3) provides exemptions for land set aside for proposed construction if the charitable group seeking the exemption meets certain indicators of progress towards timely completion of the construction.
21. Indiana Code § 6-1.1-10-16 (d)(3) states in pertinent part that a tract of land is exempt from property taxation if:
 - (3) not more than three (3) years after the property is purchased, and for each year after the three (3) year period, the owner demonstrates substantial progress towards the erection of the intended building and use of the tract for the exempt purpose. To establish that substantial progress is being made, the owner must prove the existence of factors such as the following:
 - (A) Organization of and activity by a building committee or other oversight group.
 - (B) Completion and filing of building plans with the appropriate local government authority.
 - (C) Cash reserves dedicated to the project of a sufficient amount to lead a reasonable individual to believe the actual construction can and will begin within three (3) years.
 - (D) The breaking of ground and the beginning of actual construction.
 - (E) Any other factor that would lead a reasonable individual to believe that construction of the building is an active plan and that the building is capable of being completed within six (6) years considering the circumstances of the owner.

22. Although Indiana Code § 6-1.1-10-16(d)(3) pertains only to land, the factors listed can provide guidance to help determine whether Community Development's plan is more than a mere dream. The question arises as to whether Community Development has submitted objective evidence to support the contention that the building is held with the intention to use the building in the future for exempt purposes. *Trinity Episcopal Church v. State Board of Tax Commissioners*, 694 N.E. 2d 816 (Ind. Tax 1998).
23. In the evidence and testimony presented by the Petitioner, Community Development has been planning for the renovation since 1996, but there has been no financial backing and there is a lack of finances to start the project.
24. In a nutshell, Community Development has failed to submit sufficient evidence that their plan is more than a "mere dream". See Conclusion ¶¶ 25. The record is devoid of probative evidence of an organized viable short or long-term plan for renovation, including a proposed completion date. In addition, the record is silent as to an estimate of the amount of funds necessary to complete the renovation, or of the amount of funds currently escrowed solely for the subject renovation.
25. For all the reasons stated above, the State finds Community Development is not entitled to the exemption claimed.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review