

REPRESENTATIVE FOR PETITIONER: Mary F. Burger, Vice President

REPRESENTATIVE FOR RESPONDENT: Deborah J. Lewis, Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

HISTORIC LANDMARKS)	Petition: 84-002-11-2-8-02178
FOUNDATION OF INDIANA INC.,)	
)	Parcel: 84-06-21-479-033.000-002
Petitioner,)	
v.)	County: Vigo
)	
)	Township: Harrison
VIGO COUNTY ASSESSOR,)	
)	2011 Assessment Year
Respondent.)	

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

June 10, 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. A property that is vacant on an assessment date may still qualify for an exemption if an entity intends to use it for exempt purposes and is taking concrete steps to further its intent. Historic Landmarks Foundation of Indiana, Inc. (Landmarks”), which was organized for exempt purposes, was in the process of moving its regional office to the subject property on the assessment date. Did the property qualify for exemption?

FINDINGS OF FACT AND CONCLUSIONS OF LAW
HEARING FACTS AND OTHER MATTERS OF RECORD

2. The subject property consists of a one-story building and accompanying land located at 669 Ohio Street in Terre Haute.
3. Landmarks filed an application with the Vigo County Assessor claiming that the property should be 100% exempt for 2011. The Vigo County Property Tax Assessment Board of Appeals (“PTABOA”) denied Landmarks’ application and found that the property was 100% taxable.¹ Landmarks responded by timely filing a petition for review with the Board.
4. The Board’s designated administrative law judge, Jaime S. Harris, held a hearing on March 13, 2014. Neither she nor the Board inspected the property.
5. The following people were sworn as witnesses: Mary F. Burger, Vice President and CFO of Landmarks; Tommy Kleckner, Director of Landmarks’ western regional office; Vigo County Assessor Deborah J. Lewis; and Lewis’s chief deputy, Susan McCarty.
6. Landmarks presented the following exhibits:
 - Petitioner Exhibit A: February 15, 2011 printout from Beacon website pertaining to the subject property,
 - Petitioner Exhibit B: Duke Energy bill for subject property for February 18, 2011 through March 17, 2011,
 - Petitioner Exhibit C: February 21, 2011 letter from Lee Stakes to Tommy Kleckner,
 - Petitioner Exhibit D: Invoice from Sappington & Sons,
 - Petitioner Exhibit E: March 18, 2011 press release from Landmarks.

¹ Landmarks actually filed two applications. The Assessor returned the first application for Landmarks to correct references to the parcel number. Landmarks then filed a corrected application.

7. The Assessor presented the following exhibits:

- Respondent Exhibit 1: May 4, 2011 Form 136 Application for Property Tax Exemption,
- Respondent Exhibit 2: August 16, 2011 letter from PTABOA to Indiana Landmarks,
- Respondent Exhibit 3: August 25, 2011 Form 136 Application for Property Tax Exemption,
- Respondent Exhibit 4: Form 120 Notice of Action on Exemption Application,
- Respondent Exhibit 5: PTABOA Request for Additional Evidence,
- Respondent Exhibit 6: Copy of Ind. Code § 6-1.1-10-16,
- Respondent Exhibit 7: March 18, 2011 press release from Landmarks.

8. The following additional items are part of the record:

- Board Exhibit A: Form 131 petition,
- Board Exhibit B: Hearing notices,
- Board Exhibit C: Hearing sign-in sheet

SUMMARY OF PARTIES' CONTENTIONS

A. Landmarks' case

9. Indiana Code § 6-1.1-10-18 allows for an exemption for tangible property owned by an Indiana not-for-profit corporation that is organized and operated for the primary purpose of coordinating, promoting, encouraging, housing, or providing financial support to activities in the field of fine arts. The statute defines fine arts as including architecture. *Burger argument.*

10. Landmarks is a statewide, not-for-profit organization whose mission is to save and protect historic structures in Indiana. It was organized

To employ the corporate organization the Foundation solely for educational and charitable purposes including the advancement of knowledge in the State of Indiana pertaining to historical and architecturally significant sites and structures and in furtherance of such educational and charitable purposes to preserve, redevelop, improve, renovate and maintain sites and structures of historical, architectural, educational and cultural significance within the State of Indiana

Resp't Ex. 1; see also, Burger testimony.

11. The subject property contains an historic building designed by a prominent Terre Haute architectural firm in 1941. On February 11, 2011, Landmarks bought the property with the intention of preserving, protecting, and promoting the building while using the property as its western regional office. It took possession immediately and began the process of moving files from its existing office to the property. It also immediately transferred utilities at the property into its name and started to prepare the property for occupancy. For example, Landmarks got an estimate from Lee Stokes to paint and plaster the office's interior. It also hired Sappington & Sons to move some of the heavier items, such as office equipment and furniture, from its old office. A March 18, 2011 press release announcing Landmarks' purchase of the subject property further shows its intent to use the property for charitable and educational purposes. *Burger testimony; Pet'r Exs. B-D.*

B. The Assessor's case

12. The exemption statutes require a property to be occupied and used on the assessment date. The Assessor agrees that Landmarks owned the subject property on March 1, 2011. But the property was vacant until a few weeks later.
13. While Landmarks offered a bill from Duke Energy for February 18, 2011 to March 17, 2011, that bill was only \$22.37. That amount is consistent with a charge for basic service rather than with any use of electricity. Similarly, while Landmarks offered an estimate from a painter dated February 21, 2011, Landmarks did not sign and accept that estimate until March 29. And the invoice from the movers is dated March 31. Landmarks did not issue its press release until March 18, and it did not have an open house until August 20. *Lewis testimony.*

ANALYSIS

14. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *See Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004) (*Citing* I. C. § 6-1.1-2-1). A taxpayer bears the burden of proving that its property qualifies for an exemption. *Id.*
15. Landmarks claims an exemption under two statutes: Ind. Code I.C. § 6-1.1-10-16(a) and Ind. Code § 6-1.1-10-18(a). The first exempts all or part of a building that is owned, occupied, and predominantly used for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3. That exemption extends to the land on which the building is situated. I.C. § 6-1.1-10-16(c). The second statute exempts tangible property “if it is owned by an Indiana not-for-profit corporation which is organized and operated for the primary purpose of coordinating, promoting, encouraging, housing, or providing financial support to activities in the field of fine arts.” I.C. § 6-1.1-10-18(a). The field of fine arts includes architecture. *See* I.C. 6-1.1-10-18(b).
16. Exemption statutes are strictly construed against the person claiming the exemption. *See Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 956 (Ind. Tax Ct. 1997). But they are not to be construed so narrowly as to frustrate the legislature’s purpose. *Id.*; *see also, Trinity Episcopal Church v. State Bd. of Tax Comm'rs*, 694 N.E.2d 816, 818 (Ind. Tax Ct. 1998).
17. Landmarks was organized for exempt purposes—to promote architecturally significant sites and structures. And it bought the subject property to further those purposes. The Assessor does not really dispute those facts. Instead, she argues that because Landmarks had not yet moved its offices to the property on the assessment date, the property was not occupied and used for exempt purposes as required by Ind. Code § 6-1.1-10-16(a).

18. The Assessor apparently ignores Ind. Code § 6-1.1-10-18, which unlike Ind. Code § 6-1.1-10-16(a), says nothing about occupancy. Regardless, the fact that Landmarks had not finished moving its offices to the subject property as of the assessment date, by itself, would not defeat Landmarks' exemption claim.
19. In *Trinity Episcopal Church*, the taxpayer claimed an exemption under Ind. Code § 6-1.1-10-16(a) for a building that it was renovating to lease for use as a community mental health center. The State Board of Tax Commissioners denied the exemption because it determined that the building was vacant on the assessment date. *Trinity Episcopal Church*, 694 N.E.2d at 817.
20. The Indiana Tax Court reversed, holding that a taxpayer's actions in preparing a building to be used for exempt purposes in the future may qualify the building for property tax exemption under Ind. Code § 6-1.1-10-16(a). *Id.* at 818. But as the court explained, ownership alone does not suffice; the intent to use a property for an exempt purpose must be "more than a mere dream." *Id.* (quoting *Foursquare Tabernacle Church of God in Christ v. Sate Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)). The intent of the taxpayer in *Trinity Episcopal Church* was not a mere dream; instead, it had taken concrete steps at great expense to prepare its building for use as a mental health center. The building qualified for an exemption because, as of the assessment date, the taxpayer held the building with the intent to use it for exempt purposes in the future. *Id.* at 818-19.
21. Like the taxpayer in *Trinity Episcopal Church*, Landmarks bought the subject property intending to use it for an exempt purpose and took concrete steps toward that use, even if it did not fully occupy the property on March 1. Landmarks transferred the building's utilities to its name and began moving files to the building immediately after buying it. Landmarks similarly arranged to have the building painted and plastered before attempting to move furniture and equipment from its existing office.

22. The Board therefore finds that the subject property was exempt for the March 1, 2011 assessment date.

SUMMARY OF FINAL DETERMINATION

23. Landmarks proved that 100% of the subject property's land and improvements qualified for an exemption. The Board finds in favor of Landmarks and orders that a 100% exemption be applied to the property for 2011.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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, as amended effective July 1, 2007, by P.S. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the internet at <<http://www.in.gov/legislative/ic/code.P.L.219-2007>> (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.