

REPRESENTATIVE FOR PETITIONER: Jack C. Birch, Attorney

REPRESENTATIVE FOR RESPONDENT: Cathy Searcy, County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

OTIS R. BOWEN CENTER FOR)	
HUMAN SERVICES, INC.,)	Petition No. 20-011-08-2-8-00001
)	
Petitioner,)	Parcel No. 20-06-26-251-016.000-009
)	
v.)	Elkhart County
)	
ELKHART COUNTY ASSESSOR,)	Concord Township
)	
Respondent.)	2008 Assessment Year

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

January 11, 2011

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

The use of the subject property as a community mental health center was recognized as an exempt charitable use in prior years. Because of funding changes the Petitioner stopped seeing clients at this location in April 2007 and then the exemption was denied for 2008 because the application stated the property currently was not being used. Does the evidence establish that the subject property still qualifies for the charitable use exemption under Ind. Code § 6-1.1-10-16?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. On or about April 30, 2008, the Petitioner filed an Application for Property Tax Exemption (Form 136) based on Ind. Code § 6-1.1-10-16, claiming its real and personal property should be 100% exempt for 2008 because of charitable use. According to the Form 136, the assessed value of land is \$252,200 and the assessed value of improvements is \$305,600. In addition, the assessed value of personal property is \$14,770. This application described the property and its “normal use” as “[o]utpatient mental health offices.” It also stated that the exempt purpose and activities were “[o]peration of a community mental health center – not currently being used.”
2. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) denied this application based on the statement that the property was “not currently being used.” The page of Form 120 stating the reason for the denial is not in the record, but the Assessor provided that reasoning as follows: “The property does not meet the qualifications for exemption according to I.C. 6-1.1-10-16. *** The second page of the form—the part of the 136—the exempt purpose—it says this is the operation of a community health center, but it is currently *not being used*.” Although a Form 120 Notice dated February 3, 2009, states the subject property was determined to be 100% taxable by the PTABOA, at the hearing the Respondent admitted that notice was not received by the Petitioner (because the wrong address was on the notice and when the mailing came back, rather than correcting the address, correcting the notice date and mailing it again, someone merely “stuck it in the file”). The Respondent admitted the Petitioner did not know its exemption claim had been denied until the tax bill went out in November.
3. The Petitioner filed a Petition To The Indiana Board For Review Of Exemption (Form 132) on December 14, 2009. Because of the problems with mailing the notice of denial, the Respondent admitted the filing with the Indiana Board was timely from when the Petitioner first learned that its 2008 exemption claim had been denied.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Administrative Law Judge Ted Holaday held the hearing for the Indiana Board on October 26, 2010.
5. There was no on-site inspection in conjunction with this hearing; however, the subject property was described as a commercial brick building with 5,524 square feet and “plenty” of parking.
6. The following persons were sworn as witnesses at the hearing:
For the Petitioner – Jay M. Baumgartner,
For the Respondent – County Assessor Cathy Searcy.
7. The Petitioner submitted the following exhibits:
Petitioner Exhibit 1 – Application for Property Tax Exemption, Form 136,
Petitioner Exhibit 2 – Indiana Board decision, *Grandview Care, Inc. v. Perry County Assessor*, June 14, 2010,
Petitioner Exhibit 3 – Indiana Board decision, *Early Childhood Crime Prevention v. St. Joseph County Property Tax Assessment Board of Appeals*, January 29, 2010,
Petitioner Exhibit 4 – 2009 Reconciliation Bill,
Petitioner Exhibit 5 – Letter dated November 4, 2009, from Jay Baumgartner to Betty Warlick,
Petitioner Exhibit 6 – Facsimile copy of Form 120 bearing date of November 10, 2009,
Petitioner Exhibit 7 – Form 104 for 2007,
Petitioner Exhibit 8 – Form 104 for 2008,
Petitioner Exhibit 9 – Form 104 for 2009,
Petitioner Exhibit 10 – IRS § 501(c)(3) letter dated August 11, 1978, to The Otis R. Bowen Center for Human Services, Inc.,
Petitioner Exhibit 11 – Certificate of Incorporation,
Petitioner Exhibit 12 – Bylaws, Rules and Regulations,
Petitioner Exhibit 13 – Lease dated May 5, 2008, between Rock Harvest Ministries and The Otis R. Bowen Center for Human Services, Inc.
8. The Respondent submitted the following exhibits:
Respondent Exhibit 1 – Application for Property Tax Exemption, Form 136,

Respondent Exhibit 2 – Indiana Board decision, *Grandview Care, Inc. v. Perry County Assessor*, June 14, 2010,
Respondent Exhibit 3 – Indiana Board decision, *Early Childhood Crime Prevention v. St. Joseph County Property Tax Assessment Board of Appeals*, January 29, 2010,
Respondent Exhibit 4 – Copy of Ind. Code § 6-1.1-10-16.

9. The Form 132, the Notice of Hearing, and the Hearing sign-in sheet also are recognized as part of the record.

SUMMARY OF PETITIONER’S CASE

10. The IRS has recognized the Petitioner and its predecessor as a tax exempt organization since 1962. In 1978 it got a letter recognizing continued 501 (c)(3) status after the name was changed from The Five-County Mental Health Clinic, Inc. to The Otis R. Bowen Center for Human Services, Inc. *Baumgartner testimony; Pet. Ex. 10.*
11. The Petitioner was originally organized in 1960 as a non-profit corporation, The Four-County Mental Health Clinic, Inc. The articles, bylaws and operations of this corporation have always maintained its non-profit, tax exempt status since that time. Specifically, in 2006-2008 the Petitioner operated as a non-profit, tax exempt, charitable entity. *Baumgartner testimony; Pet. Ex. 11, 12.*
12. The Petitioner is a community mental health center that provides behavioral health services, mental health, and substance abuse counseling to several Indiana communities. The Petitioner serves mostly a lower income clientele. The majority of clients are self-pay or funded by Medicaid. The Petitioner serves 12,000 to 13,000 patients each year. *Baumgartner testimony.*
13. The Petitioner loses \$3 to \$4 million per year from operations serving clients who do not have the ability to pay for services. The Petitioner relies on support/funding from federal, state and local sources. Without subsidies, the Petitioner could not afford to continue to operate. *Baumgartner testimony.*

14. In prior years, the State encouraged mental health centers such as the Petitioner to expand operations into additional areas with their method of allocating funds. The Petitioner's expansion into Elkhart County was a result. It would be very difficult to operate this kind of facility without the funding provided by the State. When the Petitioner first began operations in Elkhart County (approximately July 2004), it rented an office. In March 2005 the Petitioner purchased the subject property. At that time it appeared demand and funding would be there for this operation. *Baumgartner testimony.*
15. Upon purchasing the subject property, the Petitioner began using it for the mental health operations. The Petitioner filed for a property tax exemption, which was granted starting with 2005. The exemption also was allowed for 2006 and 2007. During that time the Petitioner operated a mental health facility in the subject property. *Baumgartner testimony.*
16. The Petitioner's operations at this location had been close to breaking even. But in January or February 2007, the State announced funding changes that froze current funding levels. Lack of sufficient funding forced the Petitioner to close its operations at the subject property in Elkhart County and at an office in St. Joseph County, although its community mental health centers in other locations continued operating. *Baumgartner testimony.*
17. Around April 2007, daily office hours and seeing patients stopped at this location, although a few (2 or 3) of the case managers continued to use these offices until late 2007 or early 2008. Those people would have been pulled out by the time the exemption application form was filed on April 25, 2008. For a little while this location was only used for storage. If sufficient funding had been found, operations at this location would have resumed—the desks, chairs, a copier and the basics for operating the office were stored there. But such funding did not materialize. *Baumgartner testimony.*

18. It was necessary to find another occupant for the building to help cover the mortgage payments. In May 2008, a church, Rock Harvest Ministries, agreed to a 2-year lease that started June 1, 2008. Based on the assumption the property would continue to be tax exempt when the church used it, the total rent was \$18,000 per year. After that lease period, the church was financially unable to continue the lease. But in late 2010 the Y.W.C.A. leased the property to use for domestic violence offices. *Baumgartner testimony; Pet. Ex. 13.*
19. There is no evidence that the subject property was used for any non-charitable purpose. The Petitioner's use of the subject property and the subsequent use by the church never abandoned exempt purposes. The interval between one use and the other does not justify denial of exemption. *Birch argument.*

SUMMARY OF RESPONDENT'S CASE

20. The PTABOA previously granted an exemption for this property. But it denied the exemption claim for 2008 because that application stated the subject property was "not currently being used." *Searcy testimony; Resp. Ex. 1.*
21. To get an exemption, the property must be used for an exempt purpose during the relevant year, which was March 1, 2008. The Petitioner, however, stated that the property was not being used at that time. Furthermore, the PTABOA had no evidence the subject property was used for an exempt purpose in 2008. *Searcy testimony; Resp. Ex. 1.*
22. The Petitioner has the burden to prove its claim that this property qualifies for an exemption, but it has not done so in this case. Among other things, Indiana Code § 6-1.1-10-16 requires *use* for exempt purposes. *Searcy argument; Resp. Ex. 4.*
23. The Indiana Board's determinations in *Grandview Care* and *Early Childhood Crime Prevention* also state that an exempt use is required in order to qualify for exemption. *Searcy argument; Resp. Ex. 2, 3.*

ANALYSIS

24. As a general proposition, all tangible property in Indiana is subject to property taxation. Ind. Code § 6-1-1-2-1. Nevertheless, property that is owned, occupied, and used for educational, literary, scientific, religious, or charitable purposes is allowed an exemption from property taxation by Ind. Code § 6-1.1-10-16. To qualify for this exemption, the property must be predominantly used or occupied for one or more of the listed purposes. Ind. Code § 6-1.1-10-36.3.
25. Tax exemption statutes are strictly construed against the person claiming the exemption. *Trinity Episcopal Church v. State Bd. of Tax Comm'rs*, 694 N.E.2d 816, 818 (Ind. Tax Ct. 1998); *Sangrilea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 956 (Ind. Tax Ct. 1997). But those provisions are not to be construed so narrowly that the legislature's purpose is defeated or frustrated. *See id.* Furthermore, the listed exempt purposes are to be construed broadly and in accordance with their constitutional meaning. *Trinity Church*, 694 N.E.2d at 818. "[T]he proper focus of any inquiry into the propriety of an exemption is whether the use of the property furthers exempt purposes." *Trinity Church*, 694 N.E.2d at 818 (citing *Sangrilea*, 686 N.E.2d at 957).
26. A taxpayer seeking exemption bears the burden of proving that the requirements for exemption are satisfied. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004); *Monarch Steel 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).
27. There was no dispute about the fact that the subject property qualified for a charitable use exemption in prior years when the Petitioner was using the subject property as a community mental health center. And nothing in the record indicates the Petitioner's status as a non-profit corporation or the overall purpose and motives of the Petitioner's general operations have changed. The undisputed evidence establishes the Petitioner continues to provide community mental health centers at several other locations, even

though it closed the center that had operated in Elkhart County. The undisputed evidence also establishes that closing this particular center in 2007 was dictated by financial problems, rather than any change in the Petitioner's motives or purposes. The funding that had helped subsidize operations at this location was not sufficient.

28. The record contains absolutely no evidence that the subject property was used for any non-exempt purpose during the time that would be relevant to this case.
29. The Respondent attempted to support denial of the exemption simply because the Petitioner stated the subject property was not being used. The evidence indicates that in March and April 2008 this statement basically was accurate—patients were not being seen, the few case workers who had continued using the offices for a while had stopped doing so and this office was closed. At that time the property was used to store the office equipment that remained from the mental health center. Such a narrow focus, however, is not determinative.
30. A broader range of occurrences is relevant and material because it demonstrates the Petitioner's motives and purposes regarding the subject property. *See Trinity Church*, 694 N.E.2d at 819. For example, Trinity Church purchased a building and parking lot on August 10, 1994. Sometime later, it started extensive, costly renovations to the building so that it could be used as a community mental health center. The renovations were in progress on the March 1, 1995. On July 12, 1995, after the renovations were complete, Trinity leased the property to Midtown, who used it as a community mental health center. In determining that the exemption should have been allowed, the Tax Court stated:

it is apparent that, *on the assessment date*, Trinity's intent to use the building in furtherance of exempt purposes was more than a dream, and that it did more than merely own the building. Trinity had taken concrete steps at great expense to prepare the building for use as a community mental health center. This is more than enough objective evidence to support Trinity's contention that, *as of the assessment date*, it held the building with an intention to use the building in the future for exempt purposes.

Id. at 818 (emphasis added).

31. In this case, the Petitioner's intent and motives are demonstrated by the circumstances that caused its offices at this location to be closed and the subsequent decision to rent the property to a church and then to a Y.W.C.A. The Petitioner presented credible evidence and argument that when it became impossible to continue the operation of the community mental health center it acted to maintain the use of the property in an exempt manner to benefit the community. The Respondent, on the other hand, offered no substantial evidence or argument to the contrary.
32. The recent decision in *Hamilton Co. Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners*, 2010 Ind. Lexis 795 (Ind. Dec. 15, 2010) explains that in determining an exemption claim it is appropriate to examine an owner's motives: Does the owner hold the subject property for its own benefit or for the benefit of the public? See *Indianapolis Osteopathic Hospital*, 818 N.E.2d at 1014; *Foursquare Tabernacle Church v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990).
33. The evidence clearly demonstrates that the Petitioner is a non-profit corporation that operates to benefit various local communities. When it was financially forced to close this particular community mental health center, the Petitioner maintained similar uses with successive occupants.
34. In addition, the subject property was not put to any kind of non-exempt use. There was a temporary period of transition from one exempt use to another. And for a few months, the property was closed. The assessment date, March 1, 2008, falls in the middle of that transition period when little or no use was being made of the subject property. That temporary situation, however, does not govern the outcome of this case. The predominant use test in Ind. Code § 6-1.1-10-36.3(c) compares the time property is used for an exempt purpose with the total amount of time it is used during the year that ends on the assessment date. *It does not consider periods of non-use one way or the other.* Thus, during the year leading up to March 1, 2008, where the only uses of the subject property were exempt uses, the predominant use test results in 100% exemption.

Summary of Final Determination

35. The Petitioner made a case that the subject property is exempt. The Respondent failed to rebut that case. Therefore, the Board finds in favor of the Petitioner and holds that the subject property, both real and personal, is 100% exempt.

The Final Determination of the above captioned matter is issued on the date written above.

Commissioner,
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 pursuant to the provisions of Indiana Code § 6-1.1-15-5 as amended effective July 1, 2007, by P.L. 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 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/bills/2007/SE0287.1.html>.