

REPRESENTATIVE FOR PETITIONER: William E. Jenner, Attorney

REPRESENTATIVE FOR RESPONDENT: Alison Frazier, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

RICH DAVIDSON,)	
d/b/a LEE BOTTOM AIRPORT	)	Petition Nos.: 39-012-05-2-8-00001
	)	39-012-05-2-8-00002
	)	39-012-05-2-8-00003
	)	39-012-05-2-8-00004
Petitioner,	)	39-012-05-2-8-00005
	)	39-012-05-2-8-00006
	)	39-012-05-2-8-00007
)	
	)	Jefferson County
)	
v.	)	Saluda Township
)	
	)	Parcel Nos.: 008-00576-00
JEFFERSON COUNTY	)	008-00867-00
PROPERTY TAX BOARD	)	008-00866-00
OF APPEALS,	)	008-00865-00
	)	008-00575-11
	)	008-00576-01
	)	008-00556-00
)	
Respondent.	)	Assessment Year: 2005

Appeal from the Final Determination of
Jefferson County Board of Review

August 28, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law.

Issue: Is all of the subject property reasonably necessary to and used for public airport purposes qualifying it for 100% property tax exemption?

Procedural History

1. Based on Ind. Code § 6-1.1-10-15, the Petitioner filed exemption applications for the property with the county assessor.
2. On June 20, 2005, the Jefferson County Property Tax Board of Appeals (PTABOA) issued its determination that Parcel 008-00865-00 was partially exempt and the remaining six parcels were not exempt.
3. The Petitioner filed a Form 132 Petition for Review of Exemption for each parcel on July 19, 2005.

Facts and Matters of Record

4. Kay Schwade, the Board's designated Administrative Law Judge (ALJ), held an administrative hearing in Madison on May 31, 2006.
5. The following persons were sworn as witnesses at the hearing:
 - For the Petitioner – Rich Davidson, property owner,
 - Ginger Davidson, property owner,
 - For the Respondent – George Thomas, PTABOA member,
 - Elbert Hines, PTABOA member,
 - Linda Greene, PTABOA member,
 - Margaret Hoffman, County Assessor.
6. The record includes the following exhibits:
 - Petitioner Exhibit A – Representation of the property with sections identified as A, A-1, B, C, and D through G,
 - Petitioner Exhibit B – Aerial photograph of the property,

Respondent Exhibit 1 – Copy of a letter from the Federal Aviation Authority regarding the runway extension determination for Lee Bottom Airport,

Respondent Exhibit 2 – Calculations used by the PTABOA to determine the partial exemption allowed for Parcel 008-00865-00,

Respondent Exhibit 3 – Real Property Maintenance Report,

Respondent Exhibit 4 – Copy of 50 IAC 1-3-2, Exemption of Public Airports,¹

Respondent Exhibit 5 – Property record card.

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

Board Exhibit A – Form 132 petition for each parcel with attachments,

Board Exhibit B – Notice of Hearing for each parcel,

Board Exhibit C – Hearing sign in sheet,

Board Exhibit D – Order Regarding Conduct of Exemption Hearing.

8. The Board issued a Pre-hearing Order to the parties on April 28, 2006, regarding the hearing and requesting the parties to submit pre-hearing briefs on or before May 22, 2006. The Board received the requested briefs from both parties. These briefs are part of the record of the proceedings.

9. During the hearing, the Board ordered the parties to confer and attempt to stipulate to the proper identification of the separate parcels in relationship to the labeled sections in Petitioner Exhibit A. The ALJ requested the parties to submit this stipulation on or before June 9, 2006. The parties timely submitted the stipulation, which also is part of the record or proceedings. It specifies that the sections and corresponding parcels are as follows:

Section A and Section A-1 are Parcel 008-00865-00,

Section B is Parcel 008-00556-00,

Section C is Parcel 008-00575-11,

Section D is Parcel 008-00576-01,

¹ The admissibility of Respondent Exhibit 4 was taken under advisement at the hearing. Although the Board notes that it is not necessary for either party to provide a copy or otherwise prove this rule, it hereby admits the exhibit.

Section E is Parcel 008-00866-00,
Section F is Parcel 008-00867-00,
Section G is Parcel 008-00576-00.

10. The property consists of seven parcels totaling 85.43 acres with two dwellings and other outbuildings located at 7296 S. River Bottom Road in Hanover.
11. The ALJ did not conduct an on-site inspection of the property.
12. The Petitioner contends the property (land and improvements) is exempt from property taxation based on Ind. Code § 6-1.1-10-15, which provides “[t]he owner of any airport located in this state, who holds a valid and current public airport certificate issued by the Indiana department of transportation, may claim an exemption only for so much of the land as is reasonably necessary to and used for public airport purposes.”
13. The Petitioner holds a current and valid public airport certificate issued by the Indiana department of transportation and has held such certification for 15 years. *R. Davidson testimony.*
14. The Petitioner offered testimony that it uses all of the property for public airport purposes and that all of the land is necessary to meet the requirements of the aviation code. *R. Davidson testimony.*
15. Section A is the core piece of the original airport. *R. Davidson testimony.* Section A is shown on the aerial photograph as the area outlined with a solid black line. *R. Davidson testimony; Pet’r Ex. A.* Section A contains the land used for the runway, taxiways, safety, or clear, zones, and aircraft parking. All the runway, taxiway and aircraft parking areas have a grass surface. *R. Davidson testimony.* Section A also contains the buildings for the airport restroom facilities, hangars, airport manager residence, business office, and housing for a wireless weather station and radio equipment. *R. Davidson testimony.* It is routine for small airports to provide housing for the airport manager because the small airports require constant supervision and daily inspections. *R. Davidson testimony.*

16. Section A-1 primarily serves as the required segmented circle of clear land used to indicate wind direction, which is critical to airport safety. *R. Davidson testimony.* Section A-1 also provides proper drainage for the runway and a location for the wireless feed for the airport's weather station. *R. Davidson testimony.*
17. Section B, which is the new part of the airport, was purchased for the purpose of extending the runway to improve airport safety. *R. Davidson testimony.* Runway length is critical to airport safety. *R. Davidson testimony.* While the runway extension is complete, it could not be used as a runway until the grass is sufficiently established. *R. Davidson testimony.* The runway extension is shown as the brownish area in the color photograph of the airport. *R. Davidson testimony; Pet'r Ex. B.* Section B also contains the groundskeeper residence and the buildings used to store the equipment used in the day to day operation of the airport. *R. Davidson testimony.* Section B is marked with dashed line on Exhibit A. *R. Davidson testimony.*
18. Section C is an access road to the river. *R. Davidson testimony.* Section C was purchased for the purpose of expanding and improving the airport to facilitate the use of the airport by seaplanes. *R. Davidson testimony.* Currently, pilots can dock their seaplanes on the river and use Section C to gain access to the airport facilities. *R. Davidson testimony.* The future plans are to develop Section C as a taxiway to and from the river allowing seaplanes access to the airport. *R. Davidson testimony.*
19. A public airport is required, by aviation code, to have suitable parking for automobiles either marked or fenced off for safety purposes. *R. Davidson testimony.* The automobile parking is located within Sections D, E, F, and G. *R. Davidson testimony.* This area is marked on the aerial photograph of the property with a cross that marking. *R. Davidson testimony; Pet'r Ex. A.*
20. The Respondent contends that only the portion of the property actually used for airport purposes at the time of the exemption application is entitled to property tax exemption. The Respondent contends that the remaining portion of the property is not entitled to

exemption because it was either not necessary to the daily operation of the airport or because it was not in actual use at the time of the application. The Respondent also contends that the portion of the dwelling on Section A used for residential purposes and the land assessed as classified forest on Section B would not qualify for the exemption provided under Ind. Code § 6-1.1-10-15 because the exemption applies only to land that would not otherwise be exempt.

21. The PTABOA conducted a site inspection as part of the exemption application review. *Hoffman testimony.* The inspection revealed that the property was being used as an airport. *Hoffman testimony.* The PTABOA approved exemption for the land it believed was suitable for an airstrip, office facilities, and other necessary land. *Hoffman testimony.*
22. The PTABOA based its calculations for the exemption on the letter from the FAA approving the extension of the airport runway. *Hoffman testimony; Resp't Ex. 1.* The calculations used the runway dimensions provided in the approval letter. *Hoffman testimony; Resp't Ex. 2.*
23. For Section A, the PTABOA calculations indicated a 57% exemption for the land used for runway and other necessary land. *Hoffman testimony; Resp't 2.* The PTABOA allowed a 25% exemption for the building housing the airport offices, weather station, radio equipment, and the airport manager's residence because the PTABOA felt that 75% of the building was primarily used for residential purposes. *Hoffman testimony.* The homestead deduction applied to the building indicates that it is used as a primary residence. *Hoffman testimony; Resp't Ex. 3.* Land for taxiways, safety zones, and drainage are important to airport operations, but those areas were not included when the PTABOA calculated the amount of land eligible for exemption. *Hoffman testimony.*
24. Section B was only proposed to be an extension of the runway and was not actually in use when the application for exemption was filed. *Hoffman testimony.* The building on Section B is not used and is not entitled to an exemption. *Hoffman testimony.* Section B has seventeen acres assessed as classified forest. *Hoffman testimony; Resp't Ex. 5.*

25. Section D, E, F, and G represent four separate parcels. *Hoffman testimony*. The PTABOA denied the exemption for these parcels because the area for parking was not listed on the certificate as part of the airport. *Hoffman testimony*.
26. Section C was not discussed by the PTABOA when considering the exemption application. *Hoffman testimony*.

Jurisdiction

27. The Indiana Board conducts an impartial review of all appeals concerning the assessed value of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

Basis of Exemption and Burden

28. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. IND. CONST., Art. 10 § 1. This provision, however, is not self-enacting. The General Assembly must enact legislation granting an exemption.
29. 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 in the form of taxation. When property is exempt 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, 220-221 (Ind. Tax Ct. 1996). The transfer of this obligation to other parcels by granting an exemption is not inconsequential. An exemption is granted when there is an expectation that a benefit will inure to the public

because 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).

30. As a condition precedent to being granted an exemption, the taxpayer must demonstrate that it provides “a present benefit to the general public...sufficient to justify the loss of tax revenue.” *Miniature Enthusiasts*, 671 N.E.2d at 221 (quoting *St. Mary's Medical Center of Evansville, Inc. v. State Bd. of Tax Comm'rs*, 534 N.E.2d 277, 279 (Ind. Tax Ct. 1989), *aff'd* 571 N.E.2d (Ind. Tax Ct. 1991)); *Indianapolis Osteopathic Hospital v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004).
31. A taxpayer seeking exemption bears the burden of proving the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. See *Monarch Steel v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (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).

Analysis

32. The most applicable statute governing this case is Ind. Code § 6-1.1-10-15, which provides:

(a) The acquisition and improvement of land for use by the public as an airport ... is a municipal purpose The owner of any airport located in this state, who holds a valid and current public airport certificate issued by the Indiana department of transportation, may claim an exemption for only so much of the land as is reasonably necessary to and used for public airport purposes.

(c) As used in this section, "land used for public airport purposes" includes the following:

(1) That part of airport land used for the taking off or landing of aircraft, taxiways, runway and taxiway lighting, access roads, auto and aircraft parking areas, and all buildings providing basic facilities for the traveling public.

(2) Real property owned by the airport owner and used directly for airport operation and maintenance purposes.

(3) Real property used in providing shelter, storage, or care of aircraft, including hangars.

(4) Housing for weather and signaling equipment, navigational aids, radios, or other electronic equipment.

The term does not include land areas used solely for purposes unrelated to aviation.

33. The record reflects (and the parties do not appear to dispute) the fact that the Lee Bottom Airport is a public use airport with a current and valid certification from the Indiana Department of Transportation as described in Ind. Code § 6-1.1-10-15(a). Parts of the property clearly are exempt. The dispute centers on what specific parts of the property the Petitioner proved to qualify in this case.
34. The evidence establishes that Section A is the major portion of the airport and contains a dwelling used for radio equipment, office areas used for pilot flight planning, weather equipment, airport manager's office, sleeping areas for travelers, the airport manager's home, the runway, taxiways, safety zone, hangars, and aircraft parking. *R. Davidson testimony; Hoffman testimony.* The vast majority of these uses clearly meet the descriptions of land and property used for public airport purposes. Ind. Code § 6-1.1-10-15(c). The manager's home, however, is somewhat problematic. Nevertheless, the airport must remain open at all times and must have constant supervision. Therefore, the evidence presented in this case establishes that providing living quarters for the airport manager is a reasonably necessary use.
35. In this case, the evidence also establishes that the use of Section A-1 falls specifically within the uses described as public airport purposes because it is used for determining wind direction, runway drainage, and housing the feed for the airport's wireless weather station. *R. Davidson testimony.* Given the undisputed uses, this area is reasonably necessary and used for airport purposes. The evidence is sufficient to make a prima facie case regarding all of Section A and A-1.
36. The evidence establishes that most of Section B was acquired and in the process of being improved for an extension of the existing runway. *R. Davidson testimony.* Although the

extension was not yet in full use at the time of the application because the grass had not developed sufficiently, the runway extension meets the description of land used for public airport purposes. The statute does not require that the land actually be in use to qualify for the exemption, but only that it be acquired and improved for the use as a public airport. The Petitioner established a prima facie case for the runway expansion area. Section B also contains the groundskeeper residence and buildings used to store the equipment used in the day-to-day operation of the airport. While the evidence establishes that the other buildings are reasonably necessary and used for airport purposes, it does not do so for the dwelling. The Petitioner failed to establish a basis for exemption regarding the dwelling and the 1-acre homesite listed on the property record card for parcel 008-00556-00, Section B. Similarly, the evidence establishes that seventeen acres in Section B are a forest area, which is not part of the runway extension. The evidence fails to establish any basis for inclusion of those seventeen acres in the airport exemption.²

37. The evidence establishes that Section C is used as an access from the river to the airport facilities by pilots of seaplanes. *R. Davidson testimony*. Additionally, future plans for Section C involve making this area a taxiway to allow seaplanes to have access to the airport facilities. *R. Davidson testimony*. "Access roads" are specifically listed in the description of land used for public airport purposes. Thus, the Petitioner made a prima facie case regarding Section C.
38. The evidence establishes that Sections D, E, F, and G are used for required automobile parking. *R. Davidson testimony*. This use falls within the specific statutory description of land and property used for public airport purposes.
39. The Petitioner established a prima facie case that all of the property except the forest, the dwelling and a 1-acre homesite on Section B (parcel 008-00556-00) qualifies for exemption under Ind. Code § 6-1.1-10-15. The burden shifted to the Respondent to rebut or impeach the Petitioner's case.

² Although the forest part of Section B does not qualify for the exemption as claimed, the Board notes that the property record card for parcel 008-00556-00 shows the classification is forest land with -100% influence factor. Thus, it has no assessed value. There should be no change regarding that portion of the property.

40. "Land used for public airport purposes ... does not include land areas used for crop production or other portions of the airport complex from which income is derived. *** Income producing property will be considered as non-exempt. Examples include hanger space and tie-down areas which may be rented, and land used for growing crops." Ind. Admin. Code tit. 50, r. 1-3-2. Although the Respondent made general reference to this rule, no probative evidence was introduced that indicated any part of the subject property was used for growing crops or other types of income production. Similarly, the Respondent failed to explain how those limitations might apply in this case.
41. The Respondent attempted to rebut the Petitioner's evidence by explaining that the amount of exemption allowed for Section A was calculated based on the runway dimensions cited in the runway extension approval letter from the FAA. *Hoffman testimony; Resp't 1*. The Respondent's interpretation of Ind. Code § 6-1.1-10-15 and 50 IAC 1-3-2, however, is overly restrictive and not supported by the language contained therein. The Respondent did not include the land used for taxiways, safety zones, and aircraft parking. Because taxiways, land used for taking off and landing (which would include the required safety zones) and aircraft parking are specified as uses for public airport purposes, the Respondent clearly failed to allow all of the land used for public airport purposes in its calculations. The Respondent failed to prove that any of the land in Section A is not used for public airport purposes.
42. The Respondent did not include the land used for runway drainage in Section A-1 when calculating the amount of property tax exemption for Section A. *Hoffman testimony*. The Respondent did not offer any evidence that the uses of Section A-1 (drainage, weather station, and wind direction indication) are not public airport uses.
43. The Respondent maintained that because Section B was not actually in use at the time of the application the area was not entitled to the exemption. *Hoffman testimony*. The Respondent did not establish that the property must be in actual use to qualify for the exemption, nor did the Respondent offer probative evidence that the land was not used to extend the existing runway. The fact that the runway extension was in the process of

being completed is sufficient to qualify that portion of the property for exemption under Ind. Code § 6-1.1-10-15(c).

44. The Respondent offered no evidence regarding Section C. The Respondent simply admitted that Section C was not considered during the review of the exemption application. *Hoffman testimony.*
45. The Respondent attempted to rebut the Petitioner's evidence regarding Sections D, E, F, and G by claiming that this area does not qualify for exemption because these parcels were not listed as part of the airport in the airport certification. Automobile parking, however, is specifically listed as a public airport use. Ind. Code § 6-1.1-10-15(c). The Respondent did not dispute that Sections D, E, F, and G are used for the airport's automobile parking. That fact is sufficient to satisfy the exemption, regardless of the certification.

Summary of Final Determination

46. The Petitioner made a prima facie case to support its exemption claim for all the property except the forest, the dwelling and a 1-acre homesite on Section B (parcel 008-00556-00). The Respondent failed to rebut the Petitioner's case. The Board now finds in favor of the Petitioners.

ISSUED: August 28, 2006

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>>.