

REPRESENTATIVE FOR PETITIONER: Jack C. Birch, Attorney

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

WARNER HISTORICAL FARM, INC.,)	Petition No.: 43-024-04-2-8-00002
)	
Petitioner,)	Kosciusko County
)	
v.)	Tippecanoe Township
)	
KOSCIUSKO COUNTY PROPERTY TAX)	Parcel No.: 24-723003-20-24-39-3
ASSESSMENT BOARD OF APPEALS,)	
)	Assessment Year: 2004
Respondent.)	

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

May 3, 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 the Petitioner's farm a historic site that qualifies for exemption from property tax under the terms of Ind. Code § 23-7-7-3?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. The Petitioner filed an exemption application for the subject property on April 27, 2004. The Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the property is 100 percent taxable on October 21, 2004.
2. On behalf of the Petitioner and pursuant to Ind. Code § 6-1.1-11-7, Jack Birch filed a Form 132 Petition for Review of Exemption on November 18, 2004.

Facts and Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Patti Kindler, the Board's duly designated Administrative Law Judge (ALJ), held an administrative hearing in Warsaw on February 1, 2006.
4. The following persons were present and sworn as witnesses at the hearing:
 - For the Petitioner – Jack C. Birch, attorney,
 - For the Respondent– Marilyn Meighen, attorney,
Laurie Renier, Kosciusko County Assessor,
Charles Ker,
Gerald Bitner,
Susan Myrick,
Richard Shipley.
5. The following exhibits were presented:
 - Petitioner Exhibit 1 – Affidavit of Stephen R. Snyder,
 - Petitioner Exhibit 2 – Articles of Incorporation for Warner Historical Farm, Inc.,
 - Petitioner Exhibit 3 – Certificate of Incorporator for Warner Historical Farm, Inc. with the Articles of Incorporation attached,
 - Petitioner Exhibit 4 – Uniform Land Acquisition Offer for the subject property,
 - Petitioner Exhibit 5 – Warranty deed for the subject property,
 - Petitioner Exhibit 6 – Copy of Ind. Code §23-7-7,
 - Respondent Exhibit A – Copy of Article 10, Section 1 of the Indiana Constitution,
 - Respondent Exhibit B – Copy of Ind. Code §23-7-7,
 - Respondent Exhibit C – Indiana Department of Natural Resources (DNR) website "National and State Registers",
 - Respondent Exhibit D – List of properties on the National Register of Historical Places in Kosciusko County,
 - Respondent Exhibit E – Copy of Ind. Code §14-21-1,
 - Respondent Exhibit F – Copy of Ind. Code §14-8-2-124, §14-8-2-125, and §14-8-2-126,
 - Respondent Exhibit G – Copy of 312 IAC 20-1-1,
 - Respondent Exhibit H – List of properties on the Indiana Register of Historic Sites and Structures as of January 2006,

Respondent Exhibit I – List of properties on the Indiana Register of Historic Sites and Structures as of August 2004,

Respondent Exhibit J – Indiana Department of Natural Resources website "Residential Historic Rehabilitation Credit",

Respondent Exhibit K – Subject property record card,

Respondent Exhibit L – Aerial plat map and photographs of the subject property.

6. The following additional items are officially recognized as part of the record:
 - Board Exhibit A – Form 132 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign-in Sheet.
7. The subject property is a 20.37-acre agricultural homestead with a residential dwelling, a detached garage, several barns and outbuildings located at 606 West Huntington Street in North Webster.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. The Petitioner contends the subject property (land and improvements) is exempt from property tax based on Ind. Code § 23-7-7-3, which provides "[p]roperty acquired under this chapter is exempt from taxation." The Petitioner contends the property meets that requirement and qualifies for exemption because it was acquired and held for historical purposes as described in Ind. Code § 23-7-7-2.
10. The Petitioner is an Indiana not-for-profit corporation "organized exclusively to acquire the Historic Warner Farm ... and to maintain or improve that historic site for historical purposes, all in accordance with Ind. Code § 23-7-7-2." *Pet'r Exhibits 2, 3*. The corporate officers were all family members at the time of incorporation. The Petitioner's witness was uncertain whether the officers continue to be only family members. *Birch testimony*.
11. The subject property is an old family farm that was in the same family for approximately 140 to 160 years. The improvements were built around 1900 and have not changed much since then. The Petitioner acquired the property from the White Family Revocable Trust in March 1999. *Birch testimony; Pet'r Exhibit 4*.
12. Photographs of the subject property show the dwelling and outbuildings are vacant and in deteriorating condition. *Resp't Exhibit L at 2, 3, 4, 5*. The photographs show the property is not being farmed. There also is a "Horse Stables for Lease" sign posted and several horses are at pasture. *Reiner testimony; Resp't Exhibit L at 7, 8, 9, 10*.
13. The Petitioner offered testimony that it was not unusual for a farm to lease horse pastures and stalls and that using the property to generate income is not prohibited by the historic site exemption. *Birch testimony*.

14. Indiana Code § 23-7-7 contains no criteria to assist in the determination of how a property becomes a historic property or who has the power to determine what is considered historic. The criteria for a historical property, site, or structure in Ind. Code §14-8-2-124, §14-8-2-125, and §14-8-2-126 does not state that the property must be on a historic register to be viewed as historical, but rather the property must be important to the general, archeological, agricultural, economic, social, political, architectural, industrial, or cultural history of Indiana. The Petitioner claims that the Hall Farm listing on the historic registry indicates the subject property would qualify for the historic registers.¹ *Birch testimony.*
15. The Respondent contends the subject property is not exempt from property tax based on Ind. Code § 23-7-7-3, primarily because the property is not "historic" and it does not benefit the community. *Meighen testimony; Renier testimony.*
16. The DNR National Registry for Historic Places lists eligibility requirements for registering properties in the historic registry. *Resp't Exhibit C at 2.* These eligibility requirements state that "not every old building is eligible for the National Register." A property should be at least fifty years old, maintain a certain degree of architectural integrity and have significance in one of the following categories: (1) events; (2) persons; (3) architecture/design; and (4) information about our prehistory or history. *Meighen testimony; Resp't Exhibit C at 2.*
17. The national historic register demonstrates that there are agencies responsible for determining whether a property is historic. The list shows the Kosciusko County properties registered as historic sites. The subject property is not included in the historic register. The Hall Farm located in Kosciusko County is listed on the National Register, but it does not have a tax exemption. *Meighen testimony; Resp't Exhibit D.*
18. The DNR website regarding the Residential Historic Rehabilitation Credit shows factors considered in getting an Indiana tax credit. *Resp't Ex. J.* To receive the rehabilitation credit, a property must be listed on the Indiana Historic Register of Historic Sites. *Meighen argument; Resp't Exhibit J at 1.*
19. The subject property is not listed on the national registry or state historic registry. A board of professionals to ascertain its historical value did not review it. It is not a municipal property. The Petitioner did not show that the property serves any particular purpose other than simply being a one hundred year old farm. *Meighen testimony; Resp't Exhibits D, H, I.* Although Ind. Code §14-8-2-125 and §14-8-2-126 do not require a property to be listed on a national or state register, they do require that a property be important to the history of Indiana. The Respondent argues that the Petitioner has not shown why the subject property is a historic site. *Meighen testimony; Resp't Exhibit F.*

¹ The Hall Farm purportedly is a similar historical farm in Kosciusko County with rural agricultural outbuildings and an older dwelling.

Jurisdiction

20. The Indiana Board conducts an impartial review of all appeals concerning the assessed valuation 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

21. 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, however, is not self-enacting. The General Assembly must enact legislation granting an exemption.
22. 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 taxable properties 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 1990).
23. 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.” *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218, 221 (Ind. Tax Ct. 1996) (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 1991)); *Indianapolis Osteopathic Hospital v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004).
24. 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 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).
25. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. 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 property is used, but on how money is spent. *See Raintree Friends Housing, Inc. v. Indiana Dep't of Rev.*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996) (non-profit status by itself does not entitle a taxpayer to tax exemption).

Analysis

26. The most applicable statutes governing this exemption claim are:

Ind. Code § 23-7-7-1

This chapter applies to all cities, all towns, and all corporations formed under IC 23-7-1.1 (before its repeal on August 1, 1991) or IC 23-17.

Ind. Code §23-7-7-2

Each corporation to which this chapter applies may acquire and hold battlegrounds or other historic sites for the purpose of maintaining or improving them for historical purposes. The acquisition of property under this section is for a public use, and title may be taken under the power of eminent domain.

Ind. Code §23-7-7-3

Property acquired under this chapter is exempt from taxation.

27. The record reflects (and the parties do not appear to dispute) the fact that the Petitioner is a nonprofit corporation formed under Ind. Code § 23-17. The Articles of Incorporation were approved by the Indiana Secretary of State on March 12, 1999.² *Pet'r Exhibits 2, 3.* On that basis, the Petitioner comes within the terms of Ind. Code § 23-7-7-1.
28. The record also reflects (and the parties do not appear to dispute) the fact that on March 12, 1999, the Petitioner extended its "Uniform Land Acquisition Offer" to purchase the property for \$65,000 to Katharine H. White as Trustee for the owner of the property. The offer was accepted, and Katherine H. White, Trustee of the White Family Revocable Trust, executed a warranty deed dated March 12, 1999, conveying the property to the Petitioner. *Pet'r Exhibits 4, 5.*
29. The Petitioner established two of the required steps toward this particular exemption, but it requires more. The statute specifically applies to battlegrounds or historic sites maintained for historical purposes. Accordingly, the Petitioner must offer probative evidence in support of the historic nature of the property. The "historic" requirement appears to be at the heart of the legislative enactment and the main way the statute ensures a public use and benefit that justifies the loss of tax revenue from allowing an exemption.
30. It is not enough merely to claim a property is historical. To be historic, a property must be something more than simply old.
31. The Petitioner's stated purpose is "to acquire the Historic Warner Farm ... and to maintain or improve that historic site for historic purposes" *Pet'r Exhibit 2.* The Petitioner's acquisition offer also characterized the property as historic because it is "one of the oldest farms in continuous ownership in the State of Indiana." *Pet'r Exhibit 4.*

² The initial board of directors was Katharine H. White, Thomas White, and Richard White.

Beyond those statements, the evidence about the historic nature of the property is nothing more than a few conclusory statements in Mr. Birch's testimony. Such conclusory bits of evidence are not probative evidence in support of the Petitioner's claim. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind Tax Ct. 1998).

32. The Respondent contends that simply by claiming that the subject property is historical is not enough to achieve the exemption under Ind. Code §23-7-7. The Respondent is correct. It is not enough to claim that the property is a historical site. The mere fact that the articles of incorporation state the subject property is historical does not prove that it is. *Miniature Enthusiasts*, 671 N.E.2d 218.
33. While Ind. Code §23-7-7 does not define the term "historic", definitions of "historic property," "historical site," and "historic structure are provided in Ind. Code §14-8-2-124, -125, and -126. They relate to property that is important to the general archaeological, agricultural, economic, social, political, architectural, industrial, or cultural history of the state of Indiana. These code sections apply to Ind. Code §14-20-1 and §14-21-1, the provisions addressing historic sites and preservation, but there is no contradiction of this definition and it appears to be the best indication of what the legislature intended in reference to the tax exemption language in question. Furthermore, Ind. Code §14-20-1 and §14-21-1 are code sections specifically addressing the preservation of historical sites and Ind. Code §23-7-7 provides property tax exemption to corporations that preserve historical sites. The subject matter of both statutes is related. Thus, it is appropriate to use the statutory definition of a word as the definition for that word used in another statute. *UACC Midwest v. Indiana Dep't of Revenue*, 667 N.E.2d 232 (Ind. Tax Ct. 1996); *Kimco Leasing v. State Bd. of Tax Comm'rs.*, 656 N.E.2d 1208 (Ind. Tax Ct. 1995); *Mechanics Laundry & Supply v. Indiana Dep't of Revenue*, 650 N.E.2d 1223 (Ind. Tax Ct. 1995).
34. The national and state registry as well as the national registry for Kosciusko County does not include the subject property as a historic site within Indiana or Kosciusko County. The subject property has not been determined to be a historic site under the criteria established for historic registration. There are criteria for registration on the national and state registries. There are statutory provisions establishing a board to oversee the registration of historic sites. There are criteria for obtaining an Indiana tax credit for historic properties. Clearly, age alone does not make a property historic. The Petitioner failed to prove that the subject property has historical significance in any recognized area. Furthermore, the Petitioner failed to establish how the recognition of another, purportedly similar property (the Hall Farm) as historic in any way proves that the subject property is historic or exempt from property tax. Conclusory testimony that a property is similar or the same is not probative evidence. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005).
35. The evidence does not establish that anyone qualified to make such a judgment has reviewed and determined the subject property is historic. The evidence fails to establish that national or state historic registers list this property. The evidence fails to show a

relationship to a significant historical event or person, high artistic value, architectural importance, or the embodiment of distinctive characteristics. To summarize, the Petitioner failed to prove that the property is a historic site with any kind of substantial, probative evidence. This reason alone is sufficient to deny exemption.

36. The case that the Petitioner presented, however, is lacking in another independent respect. There is no probative evidence that this old farm is used for any public purpose or provides any substantial benefit to the community justifying relief from its fair share of the overall tax burden. *See Knox Co. Property Tax Assessment Bd. of Appeals v. Grandview Care*, 826 N.E.2d 177, 182 n. 4 (Ind. Tax Ct. 2005); *Indianapolis Osteopathic*, 818 N.E.2d at 1014; *Alte Salems Kirche v. State Bd. of Tax Comm'rs*, 733 N.E.2d 40, 44 (Ind. Tax Ct. 2000); *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990).
37. In fact, the only specific use that either party established for this property involves leasing horse stables and a tack room. The Respondent offered some photographs and testimony about the operation that Petitioner did not dispute. In fact, the Petitioner appeared to confirm the use by offering testimony that leasing horse pasture and stalls was consistent with how old farms had operated. Again, the Petitioner failed to prove that its property and operations have historic significance or provide a benefit to the public that would justify a tax exemption.

Summary of Final Determination

38. The Petitioner failed to present a prima facie case to support its exemption claim. The Board finds in favor of the Respondent.

This Final Determination 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>.