

REPRESENTATIVE FOR PETITIONER:

Thomas V. Barnes, Attorney

REPRESENTATIVES FOR RESPONDENT:

Carol-Ann Seaton, Member, Lake County Property Tax Assessment Board of Appeals

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

BROTHERS' KEEPER, INC.)	Petition Nos.: 45-004-00-2-8-00002
)	45-004-00-2-8-00003
Petitioner,)	Parcel Nos.: 25-43-396-08
)	25-43-396-06
)	
v.)	
)	County: Lake
LAKE COUNTY)	Township: Calumet
PROPERTY TAX ASSESSMENT)	
BOARD OF APPEALS,)	
)	Assessment Year: 2000
Respondent.)	

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

January 23, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The parties raise two issues, which the Board restates as:

(1) Whether the subject property qualifies for a charitable use exemption under Ind. Code § 6-1.1-10-16(a) and (c); and

(2) Whether the subject property qualifies for a charitable use exemption under Ind. Code § 6-1.1-10-16(d).

Procedural History

2. The Lake County Property tax Assessment Board of Appeals (PTABOA) issued determinations denying the Petitioner an exemption with regard to the above referenced parcels on June 7, 2005. The Board shall refer to those parcels collectively as the “subject property” unless otherwise indicated. On July 6, 2005, pursuant to Ind. Code § 6-1.1-11-7, the Petitioner, Brother’s Keeper, Inc., filed Form 132 petitions for Review of Exemptions (Form 132) petitioning the Board to conduct administrative review of the PTABOA’s determinations.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on October 24, 2006, in Crown Point, Indiana before Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2.
4. Persons sworn in and present at the hearing:

For the Petitioner:

Thomas V. Barnes, Attorney

Mary M. Edwards, Executive Director, Brothers’ Keeper, Inc.

Mary Pauline Anderson, Fiscal Manager, Brothers' Keeper, Inc.
Michael Blaize, Client of Brothers' Keeper, Inc.
Robert Estrada, Client of Brothers' Keeper, Inc.
Jeff Newland, Client of Brothers' Keeper, Inc.

For the Respondent:

Sharon Fleming, Director, Non-Profit Division, Lake County Assessor
Deborah Smith, Staff Member, Lake County Assessor
Carol-Ann Seaton, Member, Lake County PTABOA
Mary Shaw, Deputy, Calumet Township Assessor

5. The Petitioner submitted the following evidence:

Petitioner Exhibit AA – Flea market flyer, sponsored by Brother's Keeper
Petitioner Exhibit A – Common Policy Declaration from Scottsdale Insurance
Company, dated February 28, 2002, NIPSCO electric bill,
dated July 24, 2006, AT&T bill, dated August 19, 2006,
Petitioner Exhibit B – Four interior photographs of the subject property,
Petitioner Exhibit C – Brothers' Keeper Custom Summary Report for January 1
through October 13, 2006

6. The Respondent submitted the following evidence:

Respondent Exhibit 1 – Letter from Sharon Fleming to Thomas V. Barnes,
Esquire, dated October 18, 2006

7. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:

Board Exhibit A – Form 132 petitions with attachments,

Board Exhibit B – Notices of Hearing on Petition,
Board Exhibit C – Orders Regarding Conduct of Exemption Hearing,
Board Exhibit D – Hearing sign-in sheets.

8. The subject property consists of a two-story brick building situated on two parcels of land located at 200 – 226 East 21st Avenue, Gary, Calumet Township, in Lake County.
9. The ALJ did not conduct an on-site visit of the property.
10. For 2000, the PTABOA determined the subject property to be 100% taxable.
11. For 2000, the Petitioner contends that the subject property should be 100% tax-exempt.

Jurisdictional Framework

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

Objections

13. At the hearing, the Petitioner objected to Ms. Seaton's testimony concerning a newspaper article purportedly stating that the Petitioner was not paying its staff. *See Barnes objection; Seaton testimony.* Although the Petitioner did not explicitly phrase its objection in those terms, the Board understands the grounds for that objection to be that Ms. Seaton's testimony constitutes hearsay.

14. The Board's procedural rules provide the following with regard to the admissibility of hearsay:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), *may be admitted*. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

IND. ADMIN. CODE, tit. 52, r. 2-7-3 (2004) (emphasis added). Thus, the Board may admit hearsay, but it is not required to do so. In exercising its discretion regarding the admission of hearsay, the Board considers whether the evidence carries with it any objective indicia of reliability.

15. Ms. Seaton's testimony clearly amounts to hearsay. *See* Indiana Evid. R. 801 ("Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."). Moreover, Ms. Seaton provided only vague testimony regarding the content of an article from an unnamed newspaper. Thus, Ms. Seaton's testimony does not carry any objective indicia of reliability. The Board therefore sustains the Petitioner's objection and does not consider Ms. Seaton's testimony in reaching its determination.
16. The Respondent objected to the admission into evidence of any documents not submitted to the PTABOA at its hearing on the Petitioner's exemption applications. *Seaton objection*. Pursuant to Ind. Code § 6-1.1-15-4(m), the Board may not refuse to consider evidence on grounds that it was not submitted at the PTABOA hearing unless the parties agree to such a limitation. The Petitioner did not agree to such a limitation. The Board therefore adopts the ALJ's ruling overruling the Respondent's objection.

Findings of Fact

17. The Board finds the following facts:

- a) The Petitioner is a not for profit corporation organized in 1986. *Barnes testimony*. Its overriding purpose is to meet the needs of homeless men. *Id.* One of the primary needs of such men is to have shelter. *Id.* The Petitioner does not restrict its services other than to assure that its clients have a need that it can meet. *Id.*
- b) The Petitioner operates a recycling component, a resale shop, a dormitory, a kitchen and a dayroom. *Barnes testimony*. The Petitioner conducts those operations at its main location on 2120 Broadway. *Id.*
- c) Mr. Oscar Rosen donated the subject property to the Petitioner in 1999. *Edwards testimony*. The Petitioner originally intended to rehabilitate the subject building to use as a fitness center and dormitory. *See Edwards testimony*. The Petitioner had approximately \$200,000 in Build Indiana funds that it intended to use, in part, to rehabilitate the subject building, although those funds were not dedicated solely for use in rehabilitating the subject building. *Anderson testimony*.
- d) The Petitioner also planned to use grant money for the renovation, although there is no evidence to show that any grants funds were specifically designated for that purpose. *See Anderson testimony*. In 2003, however, the Petitioner lost approximately \$600,000 in funds from a grant by the Department of Housing and Urban Development because the “local match did not come through.” *Id.* The Petitioner had paid an architectural firm approximately \$30,000 for drawings, which indicated that the planned rehabilitation of the subject building was going to be expensive. *Id.* Around that same time, the Petitioner’s lease with a church expired. *Edwards testimony*. Based on those events, and upon its increasing needs for storage space, the Petitioner decided to pursue new construction of a

residential facility and abandoned its plan to rehabilitate the subject building. *See id.*

- e) The Petitioner currently stores donated items, such as food, in the subject building. *Edwards testimony.* The Petitioner then distributes the stored items to the community. *Id.* The Petitioner does not charge for the food it distributes. *Id.* The Petitioner occasionally re-sells donated goods in order to raise funds to pay its bills. *Id.* The Petitioner also uses the building to shelter a large truck that the Petitioner uses to transport donated items. *Id.*

- f) The Parties dispute whether the Petitioner used the subject building to store donated items in 2000. Both Ms. Edwards and Ms. Anderson testified that the Petitioner has used the subject building to store donated items since the date it acquired the building. *Edwards testimony; Anderson testimony.* Neither Ms. Anderson nor Ms. Edwards, however, testified as to the extent to which the Petitioner did so, and Ms. Edwards acknowledged that the Petitioner has increased its use of the building over the years. *See Edwards testimony.* Moreover, in completing the Petitioner's application for exemption, Ms. Edwards described the subject property as "vacant." *Edwards testimony; Board Ex. A.* Ms. Edwards testified that she used that term to refer to the fact that the building did not contain a fitness center, which was the Petitioner's ultimate intended use of the property. *Edwards testimony.* The Board, however, notes that the insurance policy declarations for the subject building for the policy period from February 28, 2002 to February 28, 2003, also list "vacant building" in the space provided for "business description." *See Pet'r Ex. A.* Ms. Seaton testified that, in 2000, the PTABOA's inspectors believed that the Petitioner was using something like twenty-five percent (25%) of the building for storage. *Seaton testimony.*

- g) The Board finds that, although the Petitioner likely stored some items in the subject building in 2000, its use of the subject building for storage was incidental,

at best. Instead, the Petitioner was holding the building in hopes of rehabilitating it for use as a fitness center and dormitory for its clients. The Petitioner did not begin to use the subject building for anything other than incidental storage until approximately 2003, when the Petitioner abandoned its plans to rehabilitate the building for use as a fitness center and dormitory.

Issue I

Whether the subject property qualifies for a charitable use exemption under Ind. Code § 6-1.1-10-16(a) and (c).

18. In Indiana, the general rule is that all property in the State is subject to property taxation. *See* Ind. Code § 6-1.1-2-1. Nonetheless, the Indiana Constitution provides that the General Assembly may exempt from taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND CONST. Art. 10, § 1. This provision is not self-enacting; the General Assembly must enact legislation to create exemptions within the scope of the constitutional authority provided to it. The Indiana General Assembly has exercised that authority by enacting various statutes providing for property tax exemptions, including Ind. § 6-1.1-10-16. Ind. Code § 6-1.1-10-16(a) provides that “[a]ll or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.” Ind. Code § 6-1.1-10-16(a). Similarly, Ind. Code § 6-1.1-10-16(c) provides that a tract of land is exempt if “a building that is exempt under subsection (a) or (b) is situated on it. ...”

19. 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 – taxation. *Id.* When property is exempted from taxation, the effect is to shift the amount of taxes that parcel would have paid to other parcels that are not exempt. *National Ass’n of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E.2d 218, 220-21 (Ind. Tax Ct. 1996). The transfer of

this obligation to non-exempt properties is not an inconsequential shift. For this reason, an exemption from taxation is strictly construed against the taxpayer. *Id.* (citing *St. Mary's Medical Center of Evansville, Inc. v. State Bd. of Tax Comm'rs*, 534 N.E.2d 277, 280 (Ind. Tax Ct. 1989)). Thus, the taxpayer must demonstrate that it provides a “present benefit to the general public . . . sufficient to justify the loss of tax revenue.” *Id.* (quoting *St. Mary's Medical Center*, 534 N.E.2d at 279).

21. The Petitioner contends that the subject property should be one hundred percent (100%) exempt from property taxation under Ind. Code § 6-1.1-10-16(a) and (c), because it conducted activities on the subject property that were designed to meet the needs of indigent men. *Barnes argument*. Specifically, the Petitioner contends that it used the subject building to store donated items that it subsequently distributed to the community or re-sold in order to finance its sheltering and other charitable operations.

22. As indicated *supra*, the Board finds that, although the Petitioner might have occasionally stored items in the subject building in 2000, it used the subject building as a storage facility only incidentally. Instead, the petitioner held the building vacant in hopes of rehabilitating it for use as fitness center and dormitory for homeless men. Ind. Code § 6-1.1-10-16(a), however, exempts only buildings or portions thereof that are actually used for exempt purposes, and an exempt use will not be imputed to vacant space. *See Indianapolis Osteopathic Hospital, Inc., v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1019 n. 13.

23. The Board therefore finds that the subject property is not entitled to a charitable use exemption under Ind. Code § 6-1.1-10-16(a) and (c).

Issue II

*Whether the subject property qualifies for a charitable use exemption under
Ind. Code § 6-1.1-10-16(d)*

24. The Petitioner also contends that the subject property is entitled to an exemption pursuant to Ind. Code § 6-1.1-10-16(d) because it purchased the property intending to rehabilitate the subject building for use as a fitness facility and dormitory for homeless men. *See Edwards testimony, Anderson testimony; Barnes argument.*
25. Ind. Code § 6-1.1-10-16(d) provides,
- (d) A *tract of land* is exempt from property taxation if:
- (1) it is purchased *for the purpose of erecting a building* that is to be owned, occupied, and used in such a manner that the building will be exempt under [Ind. Code § 6-1.1-10-16(a) or (b)]; and
- (2) not more than three years after the property is purchased, and for each year after the three (3) year period, the owner demonstrates substantial progress and active pursuit towards the erection of the intended building and use of the tract for the exempt purpose. To establish substantial progress and active pursuit under this subdivision, 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) Case 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.

Ind. Code § 6-1.1-10-16(d) (emphasis added).

26. Ind. Code § 6-1.1-10-16(d) refers to purchasing a tract of land for the purpose of “erecting” a building. The statute does not define the term “erecting.” While an intention to perform significant alterations to an existing building might fall within the contemplation of that language, the Petitioner provided scant information regarding the scope of its intended “rehabilitation” of the subject building. Ms. Edwards did refer to architectural “renderings” that Campbell & Campbell had prepared at a cost of \$30,000, but she did not attempt to describe the content of those renderings and the Petitioner did not submit those renderings as evidence. *See Edwards testimony.* Consequently, the Board finds that the Petitioner did not present sufficient evidence to demonstrate that the subject land is entitled to an exemption under Ind. Code § 6-1.1-10-16(d).
27. Moreover, the Board notes that the Petitioner seeks a 100% exemption for both land and improvements. *See Board Ex. A.* Ind. Code § 6-1.1-10-16(d), however, explicitly refers solely to an exemption for a tract of land. *Id.* Consequently, even if the Petitioner was entitled to an exemption under Ind. Code § 6-1.1-10-16(d), that exemption would be for the land portion of the subject property’s assessment only.

Summary of Final Determination

28. The Petitioner failed to prove that the subject property is entitled to an exemption pursuant to Ind. Code Ind. Code § 6-1.1-10-16 (a) or (c) or that the subject land is entitled to an exemption pursuant to Ind. Code § 6-1.1-10-16(d). The Board finds in favor of the Respondent.

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