

REPRESENTATIVE FOR THE PETITIONER: Clara Jeanette Turner, President

REPRESENTATIVE FOR THE RESPONDENT: Ayn K. Engle, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

C.J. Turner Singers and Ministry, Inc.,)	Petition Nos.: 45-001-23-2-8-00079-24
)	45-001-23-2-8-00078-24
Petitioner,)	
)	Parcel Nos.: 45-08-31-127-009.000-001
v.)	45-08-31-127-006.000-001
)	
Lake County Assessor,)	County: Lake
)	
Respondent.)	Assessment Year: 2023

September 25, 2024

FINAL DETERMINATION

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

INTRODUCTION

1. C.J. Turner Singers and Ministry, Inc. (“CJ”) sought a 100% religious exemption for two parcels of land in Gary. CJ argued the land should be exempt because it is pursuing a building project. But Indiana Code § 6-1.1-10-16(d), the statute that provides an exemption for land purchased for a future exempt use, requires a showing of substantial progress toward the completion of the building. CJ did not establish that it was making substantial progress. Thus, we find the subject property is 100% taxable for the 2023 assessment year.

PROCEDURAL HISTORY

2. On April 3, 2023, CJ applied for a 100% exemption for the 2023 assessment year for two parcels located at approximately 4700 Whitcomb and 4001 West 46th Avenue in Gary.

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On December 13, 2023, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its decision finding the properties to be 100% taxable.

3. On January 26, 2024, CJ appealed to the Board. On June 27, 2024, Natasha Marie Ivancevich, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the subject property. Clara Jeanette Turner, Brandon Becerra, and Donna Melyon testified under oath.
4. CJ offered the following exhibits:

Petitioner Ex. 1:	Winston Builders Correspondence
Petitioner Ex. 2:	Photos
Petitioner Ex. 3:	Site Plan
Petitioner Ex. 4:	Zoning Exemption Approval
5. The Assessor offered the following exhibits:¹

Respondent Ex. 1:	Form 136
Respondent Ex. 2:	Property Record Cards
Respondent Ex. 3:	October 2019 Taxpayer Letter
Respondent Ex. 4:	Lake County Site Inspection
Respondent Ex. 5:	GIS Satellite Imagery
Respondent Ex. 6:	Google Earth Imagery
Respondent Ex. 10:	E-mails between Assessor’s office and Petitioner
6. The record also includes the following: (1) all pleadings, briefs, and documents filed in these appeals, (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

OBJECTIONS

7. The Assessor objected to all of CJ’s exhibits on the grounds that they were not timely exchanged. The ALJ took the objections under advisement. Our procedural rules require parties to exchange copies of their documentary evidence at least five business days before a hearing. 52 IAC 4-8-1(b)(1). For the June 27, 2024, hearing deadline, the exchange deadline was June 20, 2024. CJ exchanged its exhibits on June 26, 2024, the day before the hearing. Failure to comply with the exchange rule may serve as grounds

¹ The Assessor did not offer exhibits 7-9.

to exclude the evidence. 52 IAC 4-8-1(f). Because CJ failed to timely exchange its exhibits, we sustain the Assessor's objections and exclude the exhibits.²

8. The Assessor also objected to the testimony of one of CJ's witnesses, Brandon Becerra, because CJ did not timely exchange its witness list. The ALJ took the objection under advisement. Our procedural rules require parties to exchange copies of witnesses and exhibits at least 15 business days before a hearing. 52 IAC 4-8-1(b)(2). For the June 27, 2024, hearing the exchange deadline was June 6, 2024. CJ did not exchange its witness list until June 24, 2024. Failure to comply with the exchange rule may serve as grounds to exclude the testimony. 52 IAC 4-8-1(f). Because CJ failed to timely exchange its witness list, we sustain the Assessor's objections and exclude the testimony of Brandon Becerra.³

FINDINGS OF FACT

9. CJ is a church operating in Hammond. It purchased the subject property, consisting of two parcels, in 2008. Both parcels received 100% exemptions from 2011 through 2022. *Respondent Exs. 2-3; Melyon testimony.*
10. Originally, a building was situated on the subject property, which is approximately 5.5 acres. The building had a fire in 2012 and was demolished in 2015. Some plans were made to put a modular building on the subject property to use as a church or church office, but it is unclear from the record whether that ever happened. As of the January 1, 2023, assessment date there was no building on the property. In January of 2024, CJ contracted with a builder for construction of a building.⁴ CJ is working to raise funds for that building. As of the hearing date, construction had not begun. The project has been "put back to square one" because of an issue getting approval from the local building plan commission. The subject property has been used for parking and other activities, as

² We note that CJ's representative, Clara Turner, offered testimony regarding much of the content of the exhibits and her testimony was not objected to. Thus, the exclusion of this evidence does not affect our conclusion.

³ Mr. Becerra did not offer any substantive testimony regarding the underlying merits of this appeal. Thus, the exclusion of his testimony does not affect our conclusion.

⁴ It is unclear from the evidence what precisely the building will be used for, but it appears CJ intends to use it as a church or for other religious use.

well as a location for a food truck to pass out Thanksgiving meals in 2023. *Turner testimony*; *Melyon testimony*.

CONCLUSIONS OF LAW AND ANALYSIS

11. Although tangible property in Indiana is generally taxable, the Legislature has exercised its constitutional power to exempt certain types of property. *Hamilton Cnty. Prop. Tax Assessment Bd. of App. v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). A taxpayer bears the burden of proving it is entitled to an exemption. *State Bd. of Tax Comm'rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Every exemption appeal “stand[s] on its own facts,” and it is the taxpayer’s duty to walk us through the analysis. *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cty. Ass’r*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009).
12. All or part of a building is exempt from taxation if it is owned, and exclusively or predominantly used or occupied for education, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(c)(1)-(2). A property need not be owned, occupied, or used by the same entity to be exempt, but where the owner and the occupant or user are different entities, each must possess its own exempt purpose. *Oaken Bucket*, 938 N.E.2d at 659. Because exemptions relieve properties from bearing their fair share of the cost of government services, they are strictly construed against the taxpayer. *Id.* at 657.
13. In addition, I.C. § 6-1.1-10-16(d) provides an exemption for vacant land that is acquired to build improvements that would be exempt once they are completed. Specifically, it says that 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 subsection (a) or (b); and not more than four (4) years after the property is purchased, and for each year after the four (4) 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.

I.C. § 6-1.1-10-16(d).

14. The Indiana Tax Court interpreted a prior version of this statute in *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 851 (Ind. Tax Ct. 1990). In that case, a church claimed an exemption for property consisting of several parcels of land where it planned to build a tabernacle. The church brought in approximately \$10,000 annually, and the expected cost was up to \$5 million. Yet the church had not designated any savings for the project. It also needed additional properties, which might never be available, to accommodate the construction. *Id.* It had not taken steps to obtain proper zoning. Indeed, the only step was to contact a builder that merely provided some standard information. *Id.*

15. The church claimed an exemption under I.C. § 6-1.1-10-16(d), which at the time provided for exempting a tract of land up to 40 acres if it was bought for purposes of erecting a building that would be exempt under Ind. Code § 6-1.1-10-16(a) or (b). *Id.* at 853. The church moved for summary judgment, arguing that it needed only state its intention to use the property for exempt purposes without any other evidence. The court disagreed, quoting with approval the following language from the Ohio Supreme Court:

The intent to use such property for an exempt purpose must be one of substance and not a mere dream that sometime in the future, if funds can be obtained, the entity would so use such property. In other words, it must be shown that the entity, at the time the application for exemption is made, is actively working toward the actual use for the public benefit. Evidence that surveys have been made and plans drawn or that active fund-raising campaigns are being carried on is indicative that the exempting use will be made of the property within a reasonable time.

Id. at 854 (quoting *Holy Trinity Protestant Episcopal Church v. Bowers*, 172 Ohio St. 103, 173 N.E.2d 682, 685 (1961)). Applying that standard in *Foursquare*, the Tax Court found there was a lack of objective evidence to support the church's entitlement to an exemption and held that a material question of fact existed about future use. *Id.* at 854-55. The minister's good intentions were not sufficient. *Id.*

16. Since *Foursquare*, the Indiana General Assembly amended I.C. § 6-1.1-10-16(d) to lay out specific factors an owner must show in order to establish substantial progress and active pursuit of the building project. These are:

- (A) Organization of and activity by a building committee or other oversight group; completion and filing of building plans with the appropriate local government authority.
- (B) Cash reserves dedicated to the project of a sufficient amount to lead a reasonable individual to believe the actual construction can and will begin within four (4) years.
- (C) The breaking of ground and the beginning of active construction.
- (D) 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 (8) years considering the circumstances of the owner.

I.C. § 6-1.1-10-16(d)(3).

17. In this case, CJ has demonstrated more than the church in *Foursquare*. It has conducted fundraising, and it has submitted building plans, neither of which had happened in that case. But CJ has shown only one of the four factors from the current statute, namely work by a building committee or other oversight group and the filing of plans (and most of that after the assessment date). CJ has not demonstrated that it has cash reserves sufficient to begin the project in four years, it has not broken ground or begun construction, nor has it shown that the building is capable of being completed within eight years.⁵
18. In addition, we note that I.C. § 6-1.1-10-16(d)(1) requires a demonstration of substantial progress in every year beginning in the fifth year after the property was purchased. It is clear from the record that there were many years between 2013 (four years after the purchase) and 2023 in which CJ did not make any substantial progress toward the completion of the building. CJ argues that it experienced delays due to the COVID-19 pandemic, but this was only a small portion of the time since the subject property was purchased. Like the Court in *Foursquare* we do not doubt CJ's intention to build on the subject property, and we note that it received the benefit of an exemption for over a decade. But the statute requires a showing of objective evidence of substantial progress, and we cannot find that CJ made such a showing for the 2023 assessment year. Thus, we

⁵ It is somewhat ambiguous whether the statute is referring to eight years from the original purchase or eight years from the assessment date. In this case, CJ has not demonstrated that it will complete construction under either of those timelines.

find the subject property does not qualify for an exemption under I.C. § 6-1.1-10-16(d).

CONCLUSION

19. For the reasons discussed above, we find the parcels under appeal are 100% taxable for the 2023 assessment year.

The Final Determination of the above captioned matter is issued 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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.