

COUNSEL FOR PETITIONER:
Jessica Reiss

COUNSEL FOR RESPONDENT:
Emily A. Shrock

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

SPEEDWAY TRAILS ASSOCIATION)	Petition Nos.: 49-914-15-2-8-00081-16
)	49-914-15-2-8-00082-16
Petitioner,)	
)	Parcel Nos.: 9048334
)	9048764
v.)	
)	County: Marion
)	
MARION COUNTY ASSESSOR,)	Township: Wayne
)	
Respondent.)	Assessment Year: 2015

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

April 5, 2017

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Speedway Trails Association sought a property tax exemption for two parcels under Indiana Code § 6-1.1-10-16(c)(3), which exempts land owned by a nonprofit entity

established for the purpose of retaining and preserving land and water for their natural characteristics. Exemption is a privilege, and the Association waived that privilege by failing to apply for an exemption within the statutory timeframe for doing so. We therefore deny its claim.

PROCEDURAL HISTORY

2. The Association filed Form 132 petitions with the Board after the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) denied its exemption application as untimely.
3. On January 12, 2017, our designated administrative law judge, Jacob Robinson (“ALJ”), held a hearing on the petitions. Neither he nor the Board inspected the parcels.
4. Beverly Katterhenry, the Association’s president, and Nicole Webb, an exemption analyst for the Marion County Assessor’s office, testified under oath.
5. The Assessor moved for summary judgment both at the outset of the hearing and at the close of evidence. The ALJ took the motion under advisement.
6. The Association offered the following exhibits:
 - Exhibit 1: Speedway Trails Association, by-laws (Sept. 26, 2007)
 - Exhibit 2: Form 120 Notices of Action on Exemption Application for subject parcels for 2016 tax year (Jan. 29, 2016)
 - Exhibit 3: Tax statements for subject parcels for 2015 tax year (Apr. 7, 2016)
 - Exhibit 4: Speedway Trails Association, Trail Plan Maps
 - Exhibit 5: Bicentennial Nature Trust Application #117 award letter (Dec. 22, 2014)
 - Exhibit 6: Printout from Bicentennial Nature Trust website, <http://www.in.gov/dnr/heritage/7309.htm>, last visited Dec. 23, 2016
 - Exhibit 7: Cover pages for two appraisal reports, letters from the appraisers, and aerial photographs for 2302 Cunningham Road and 2148 Augusta Drive

- Exhibit 8: Statement of Just Compensation and Offer to Purchase for subject parcels (Oct. 25 and 26, 2016)
- Exhibit 9: Speedway Trails Association demonstrative financial information.

7. The Assessor offered the following exhibits:

- Exhibit 1: Form 132 petition and attachments (39 pages)
- Exhibit 2: Sales Disclosure Form for parcel 49-06-31-126-003.000-194
- Exhibit 3: Email Correspondence between Beverly Katterhenry and Nicole Webb (Oct. 14 and 15, 2015)
- Exhibit 4: 2015 pay 2016 tax statements for subject parcels
- Exhibit 5: Form 136 Application for Property Tax Exemption for March 1, 2015 assessment date for subject parcels
- Exhibit 6: Form 120 notices for subject parcels
- Exhibit 7: Property record cards for subject parcels
- Exhibit 8: Aerial photographs of subject parcels

8. The record also includes all filings by the parties, such as their Joint Stipulation of Facts and Exhibits, and all orders and notices issued by the Board or the ALJ.

FINDINGS OF FACT

9. The Association is an all-volunteer group whose goal is to build a five-mile recreational trail in Speedway. It is “associated exclusively for charitable and educational purposes.”

Its by-laws identify the following specific purposes:

- a. To promote the purchase, growth, and development of rail corridors within and adjacent to, Speedway, Indiana.
- b. To provide a forum for the public to discussion [sic] matters of rail corridors and economic development.
- c. In addition, this association is formed for the purposes of performing all things incidental to, or appropriate in, the achievement of the foregoing specific and primary purposes. However, the association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of its specific and primary purposes.

Pet’r Exs. 1, 4; Joint Stipulation; Katterhenry testimony.

10. The Association bought the two parcels at issue in April 2014, using a grant from the State of Indiana’s Bicentennial Nature Trust. The Association received a second grant of \$130,000 in matching funds from the Trust. It intends to use that second grant to buy additional property to finish the five-mile loop. Property acquired through the grant “will become part of the public trust to ensure that the land is protected for future generations of Hoosiers to use and enjoy.” *Katterhenry testimony; Resp’t Exs. 2, 5-7.*
11. On December 8, 2015, the Association filed its Form 136 Application for Property Tax Exemption for the 2015 assessment year. It sought an exemption under Ind. Code § 6-1.1-10-16(c)(3), which exempts tracts of land up to 500 acres that are owned by non-profit entities “established for the purpose of retaining and preserving land and water for their natural characteristics.” On December 18, 2015, the PTABOA issued notice denying the Association’s application as untimely pursuant to Ind. Code § 6-1.1-11-3. *Resp’t Exs. 5-6; Joint Stipulation; Webb testimony.*
12. The parties agree that the Association filed its application past the statutory deadline. The delay was unintentional; its president, Beverly Katterhenry, did not know when the application was due. The Association paid the taxes on its 2015 assessment with money that it originally intended to use to finish paving the trail and that it would now use to buy the additional parcels needed to close the five-mile loop. *Pet’r Ex. 3; Katterhenry testimony; see also, Joint Stipulation at ¶¶ 4, 6.*

CONCLUSIONS OF LAW

A. Objection

13. The Assessor objected to Katterhenry testifying that the Association successfully applied for an exemption in 2016, arguing that the testimony was irrelevant. The ALJ took the objection under advisement.

14. We overrule the objection. The door had already been opened to evidence about the 2016 exemption. The parties stipulated that the PTABOA approved the Association's timely filed exemption application for 2016. The Assessor also stipulated to the admission of all nine of the Association's exhibits, including Exhibit 2, which contains Form 120 notices from the PTABOA approving the application for 2016. In any case, we do not rely on Katterhenry's testimony, or any of the evidence about the 2016 exemption, in deciding these appeals.

B. Discussion

15. The Assessor apparently does not dispute that the parcels qualify for exemption under Ind. Code § 6-1.1-10-16(c)(3). He instead argues that the Association failed to file its exemption application by May 15, 2015, as required by Ind. Code § 6-1.1-11-3(a)(1). There are statutory exceptions to that filing requirement,¹ but the Association does not claim that any of them apply. Rather, it argues that its failure to timely file its application was due to Katterhenry's honest mistake and that denying the exemption means it has to spend money on taxes that it would otherwise spend to fulfill its mission.
16. While we sympathize with the Association's plight, we must deny its appeal. An exemption is a privilege. I.C. § 6-1.1-11-1. If a property owner "does not comply with the statutory procedures for obtaining an exemption, he waives the exemption." *Id.* The Association did not come close to complying with the relevant procedures for claiming an exemption—it filed its application almost seven months past the statutory deadline. The effect of the resulting tax liability on the Association's ability to fulfill its mission, while unfortunate, does not obviate its waiver. We therefore find that the Association is not entitled to an exemption for 2015. Our conclusion, which we base on the evidence

¹ For example, if a not-for-profit corporation properly files an initial application for property that qualifies for exemption under various provisions of Ind. Code § 6-1.1-10-16, it need not file applications annually or biannually going forward as long as the property continues to meet the requirements for exemption. *See* I.C. § 6-1.1-11-4(d).

and argument offered at the hearing on the merits, moots the Assessor's oral motion for summary judgment.²

CONCLUSION

17. The Association waived an exemption for 2015 by failing to timely apply for it. The subject parcels are 100% taxable for that assessment year.

This Final Determination of the above captioned matter is issued by the Board on the date first 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 after 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>>.

² We therefore need not decide whether the Assessor's oral motion for summary judgment made at a hearing on the merits complies with our procedural rules or the Indiana Rules of Trial Procedure. *See, e.g.*, 52 IAC 2-6-8 ("A party may *prior to the hearing*, move for: (1) summary judgment . . . pursuant to the Indiana Rules of Trial Procedure.") (emphasis added); *see also*, Ind. Trial Rule 56(C) (giving adverse party 30 days to file a response to a motion for summary judgment and opposing affidavits).