ATTORNEY FOR PETITIONER:
MARILYN S. MEIGHEN
MEIGHEN & ASSOCIATES, PC
Carmel, IN

AGENT FOR RESPONDENT:
DAVID W. BERGER
North Webster, IN

IN THE
INDIANA TAX COURT

KOSCIUSKO COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS,	)	
Petitioner,	)	
v.	)	Cause No. 49T10-0605-TA-50
HIME'S – MILLER'S & STROMBECK'S 3RD ADDITIONS, INC.,	)	
Respondent.	)	

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

NOT FOR PUBLICATION
June 26, 2007

FISHER, J.

The Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) appeals the final determination of the Indiana Board of Tax Review (Indiana Board) granting a property tax exemption to Hime's – Miller's & Strombeck's 3rd Additions, Inc. (HMS) for the 2004 tax year (the year at issue). The issue before this Court is whether the Indiana Board's final determination was erroneous.

FACTS AND PROCEDURAL HISTORY

HMS owns a parcel of land consisting of three non-contiguous lots totaling less than one acre in North Webster, Indiana. Each lot is an easement that allows access to Webster Lake. For the year at issue, the subject property was valued at $80,500. HMS filed an application with the PTABOA on May 7, 2004, seeking a 100% property tax exemption for its land. On September 24, 2004, the PTABOA issued a determination denying HMS's request for an exemption.

On October 25, 2004, HMS appealed the PTABOA's determination to the Indiana Board. On April 11, 2006, after conducting an administrative hearing, the Indiana Board issued a final determination granting the exemption to HMS.

On May 23, 2006, the PTABOA initiated an original tax appeal. The parties have waived oral argument on the matter. Additional facts will be supplied as necessary.

ANALYSIS AND OPINION

Standard of Review

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. *Wittenberg Lutheran Vill. Endowment Corp. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 486 (Ind. Tax Ct. 2003), *review denied*. Consequently, the Court will reverse a final determination of the Indiana Board only if it is:

> (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
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> (2) contrary to constitutional right, power, privilege, or immunity;
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> (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;

(4) without observance of procedure required by law; or

(5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1)-(5) (West 2007). The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Osolo Twp. Assessor v. Elkhart Maple Lane Assocs.,* 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003).

Discussion

In Indiana, all tangible property is subject to taxation. *See* IND. CODE ANN. § 6-1.1-2-1 (West 2004). Nevertheless, the Indiana Constitution provides "[t]he General Assembly may exempt from property taxation any property . . . being used for municipal, educational, literary, scientific, religious, or charitable purposes." IND. CONST. art. X, § 1(a)(1). Pursuant to this grant of authority, the legislature enacted Indiana Code § 6-1.1-10-16, which states in pertinent part:

> (a) All 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.
> (b) A building is exempt from property taxation if it is owned, occupied, and used by a town, city, township, or county for educational, literary, scientific, fraternal, or charitable purposes.
> (c) A tract of land . . . is exempt from property taxation if:
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> (1) a building that is exempt under subsection (a) or (b) is situated on it;
>
> (2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it; or
>
> (3) the tract:
>
> (A) is owned by a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics;
>
> (B) does not exceed five hundred (500) acres; and
>
> (C) is not used by the nonprofit entity to make a profit.

IND. CODE ANN. § 6-1.1-10-16(a)-(c) (West 2004) (amended 2005).

During the administrative hearing process, HMS claimed that, pursuant to Indiana Code § 6-1.1-10-16(c)(3), its land was exempt because: (1) HMS is a nonprofit corporation established for the purpose of "aid[ing] in and protect[ing] in any way possible the environment and ecology of Webster Lake" and "to develop, protect and improve the easement to Webster Lake dedicated to the lot owners" of HMS; (2) the parcel was less than one acre; and (3) it did not use the land to make a profit. (*See* Cert. Admin. R. at 3-10, 13, 119.) HMS's resident agent, Mr. David Berger, also testified that HMS allows the public to use the property/easements for fishing or docking boats at no cost, and the local fire department uses one of the easements to get water from the lake. (*See* Cert. Admin. R. at 124, 126-28.) Based on that evidence, the Indiana Board concluded that HMS met the requirements of Indiana Code § 6-1.1-10-16(c)(3) and was, therefore, entitled to an exemption. (*See* Cert. Admin. R. at 28-29.)

In its appeal to this Court, the PTABOA claims that the Indiana Board's determination is erroneous because it applied the requirements of Indiana Code § 6-1.1-10-16(c)(3) without consideration of the constitutional requirement that the property must be used for an exempt purpose (i.e., a municipal, educational, literary, scientific, religious, or charitable purpose). (*See* Pet'r Br. at 1, 5.) Stated differently, the PTABOA argues that Indiana Code § 6-1.1-10-16(c)(3) is unconstitutional unless a use (for an exempt purpose) requirement is read into the statute upon application. (*See* Pet'r Br. at 7 (stating that "without the required use, taxpayers could write some 'buzz words' into

their articles of incorporation and receive [an] exemption while using property for purposes outside those set forth in the Constitution").)[1]

"A statute is presumed constitutional until the party challenging its constitutionality clearly overcomes the presumption by a contrary showing." *Sims v. U.S. Fid. & Guar. Co.*, 782 N.E.2d 345, 349 (Ind. 2003). Thus, as the party challenging the propriety of an Indiana Board final determination, the PTABOA bears the burden of demonstrating the statute's unconstitutionality. *See French Lick Twp. Tr. Assessor v. Kimball Int'l, Inc.*, 865 N.E.2d 732, 739 (Ind. Tax Ct. 2007). The PTABOA has failed to meet its burden.

At the outset, the PTABOA has not made any assertions or arguments as to why the preservation of land or water does not qualify as an exempt purpose. Rather, the PTABOA argues that neither HMS nor the Indiana Board explained how or why property used to retain and preserve the natural characteristics of land or water does qualify as a municipal, educational, literary, scientific, religious, or charitable purpose.[2] (*See* Pet'r Br. at 7 (footnote added).) The PTABOA misunderstands its burden; it was required to demonstrate why the statute, or the application thereof, was unconstitutional. The PTABOA's failure to do so is, alone, enough to resolve the case in favor of HMS. *See Kimball Int'l, Inc.*, 865 N.E.2d at 739.

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[1] To support its position, the PTABOA relies on an Indiana Court of Appeals decision that construed two separate exemption statutes together in order to retain a constitutional interpretation. (*See* Pet'r Br. at 5-7 (*citing Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm'rs*, 251 N.E.2d 673, 680-681 (Ind. Ct. App. 1969) (where one statute required a showing of use for an exempt purpose and the other statute required a showing that the property was regularly occupied and used for a fraternal organization's benefit)).)

[2] In other words, the PTABOA challenges the Indiana Board's final determination because the Indiana Board did not explain why the statute was constitutional.

The PTABOA's argument fails for yet another reason: it assumes that (1) the legislature did not consider the retaining and preservation of land and water for their natural characteristics to be a municipal, educational, literary, scientific, religious, or charitable purpose, and (2) that subsection (c)(3) does not contain any use requirement whatsoever. The Court, however, does not make the same assumptions. Indeed "[i]f a statute has two reasonable interpretations, one constitutional and the other not, [the Court] will choose the interpretation that will uphold the constitutionality of the statute." *Sims*, 782 N.E.2d at 349.

As to the PTABOA's first assumption, while the language of Indiana Code § 6-1.1-10-16(c)(3) does not specifically state that retaining or preserving land and water for its natural characteristics is a municipal, educational, literary, scientific, religious, or charitable purpose, it does not mean that the legislature did not intend such a result. In fact, a general reading of the statute leads to the opposite conclusion.

Indiana Code § 6-1.1-10-16(c)(1) and (2) provide an exemption for land that has improvements attached to it – either a building or a parking lot that serves a building. Those subsections require use of the *building* to be for an exempt purpose. Subdivision (c)(3), however, governs exemptions for land that does not (and will not) contain an improvement. *Cf. with* A.I.C. § 6-1.1-10-16(d), (i) (granting exemptions where a tract of land is purchased for the purpose of erecting a building that will be used for an exempt purpose). Consequently, it is a reasonable conclusion that the legislature intended the requirements of subdivision (c)(3), which are applied to undeveloped land, to mirror similar requirements for developed land. *Cf*. *with id.* at (h) (exempting property that meets requirements the legislature deems as evidence of an exempt purpose, even

though the language does not reference or list the exempt purposes). Such a reading is further supported by the fact that the title of Indiana Code § 6-1.1-10-16 is "[b]uildings and land used for educational, literary, scientific, religious, or charitable purposes[.]" *Id*. *See also State ex. Rel. W. Constr. Co. v. Bd. of Comm'rs of Clinton County*, 76 N.E. 986, 996 (Ind. 1906) (explaining that when the title of a statute is expansive enough to include different matters, which may be the means to the end expressed in the title, courts will resolve any doubts in favor of the validity of the statute).[3]

Furthermore, the PTABOA's second assumption, that the statute's requirement that the land not be used by the nonprofit entity to make a profit is not a requirement of use at all, simply defies logic. Subsection (c)(3) requires a taxpayer entity to be *established* for the purpose of retaining and preserving land and water for their natural characteristics and to use its land in a manner that does not produce a profit. *See* A.I.C. § 6-1.1-10-16(c)(3)(A), (C). Thus, when interpreting or applying subsection (c)(3), logic dictates that if a taxpayer used the property in a manner inconsistent with its stated purpose for existence (such as making a profit), the exemption does not apply. To conclude otherwise would render the requirement that the nonprofit entity be established for the aforementioned purpose meaningless. *See City of N. Vernon v. Jennings Nw. Reg'l Utilities*, 829 N.E.2d 1, 4-5 (Ind. 2005) (explaining that the Court will

[3] *See also Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm'rs*, 251 N.E.2d 673, 679 (Ind. Ct. App. 1969) (explaining that the terms "educational, literary, scientific, religious and charitable purposes," are to be defined and understood in their broadest constitutional sense); *College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905 (Ind. Tax Ct. 2006) (finding a that a for-profit corporation's historic preservation of a neighborhood constituted a charitable purpose).

avoid interpretations that render part of a statute meaningless, bring about an absurd result, or create an illogical application).

CONCLUSION

The PTABOA has not overcome the presumption of Indiana Code § 6-1.1-10-16(c)(3)'s constitutionality, nor has it demonstrated that the Indiana Board's application of that statute was erroneous.[4] Thus, the Court AFFIRMS the Indiana Board's final determination.

[4] The Court notes that the PTABOA also argues that HMS has not shown how its use of the land constitutes retaining and preserving land and water for its natural characteristics. Nevertheless, at this level of the appellate process, the burden rests with the PTABOA to show that the Indiana Board's final determination was erroneous. *See French Lick Twp. Tr. Assessor v. Kimball Int'l, Inc.*, 865 N.E.2d 732, 739 (Ind. Tax Ct. 2007). To the extent the PTABOA has merely asked open-ended rhetorical questions like "[e]xactly how is Webster Lake preserved for its natural characteristics by allowing the public to fish from the easement parcel?[,]" it has not demonstrated any error by the Indiana Board. (*See* Pet'r Br. at 9.) *See also* Ind. Appellate R. 46 (A)(8)(a) (stating that an appellant's brief shall state its contentions why the administrative agency committed reversible error and support those contentions with cogent reasoning and citations to authorities and statutes); *U.S. Fid. & Guar. Ins. Co. v. Hartson-Kentucky Cabinet Top Co.*, 857 N.E.2d 1033, 1038 (Ind. Ct. App. 2006) (stating that where a party presented no cogent argument to support its assertion, the assertion was waived). Furthermore, this Court has recently held that where the Indiana Board understands a taxpayer's evidence and assigns probative value to that evidence, the Court will not overturn the Indiana Board's determination, absent an abuse of discretion. *See Kimball Int'l, Inc.*, 865 N.E.2d at 739. In this case, no such abuse has been shown.