REPRESENTATIVE FOR PETITIONER: J. F. Beatty, Kathryn Merritt-Thrasher, Landman Beatty, Lawyers

REPRESENTATIVE FOR RESPONDENT: Jess Reagan Gastineau, Office of Corporation Counsel

BEFORE THE INDIANA BOARD OF TAX REVIEW

Riley-Roberts Park, LP	)	Petitions: 49-101-10-2-8-03235
	)	49-101-11-3-4-82392-15
Petitioner	)	49-101-12-3-8-00998-17
	)	49-101-13-3-8-00997-17
	)	49-101-14-1-8-00952-18
	)	49-101-15-1-4-00402-20
	)	49-101-16-1-4-00480-20
	)	
	)	
v.	)	Parcel No.: 1027504
	)	
	)	
Marion County Assessor,	)	County: Marion
	)	
Respondent.	)	Assessment Years: 2010-2016

May 6, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DETERMINATION

FINAL DETERMINATION

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

I. INTRODUCTION

1. Riley-Roberts Park, LP (the "Partnership") appeals the denial of a charitable exemption by the Marion County Property Tax Assessment Board of Appeals' ("PTABOA") pertaining to its commercial-residential property in downtown Indianapolis known as the Davlan. The Partnership fails to establish that the PTABOA acted outside the scope of its

statutory authority in reviewing the Davlan's eligibility for a charitable exemption. The Board finds that the Partnership fails to meet its burden to establish that the Davlan is owned, occupied, and used for a charitable purpose.

II. PROCEDURAL HISTORY

2. The Partnership acquired the Davlan in 1999 and first sought an exemption in 2006. (*Pet. Ex.* at 497).[1] The PTABOA granted a partial exemption. In 2011, the PTABOA reviewed the Partnership's eligibility for the 2010 tax year and denied the exemption. The Partnership timely appealed to the Board through a Form 132 appeal for 2010, Form 133 appeals for 2011, 2012, and 2013, and Form 131 appeals for 2014, 2015, and 2016.[2]

3. The Partnership moved for summary judgment challenging the authority of the PTABOA and the Marion County Assessor (the "Assessor") to review the exemption. The Board denied the motion on January 17, 2014, and affirmed the denial after the Partnership's motion to reconsider filed on April 24, 2014.[3] The Partnership appealed the denial of summary judgment to the Tax Court. The Tax Court issued an opinion regarding this and several companion cases on January 20, 2015. It determined that the Partnership had failed to exhaust its administrative remedies before the Board, dismissed the appeal for lack of subject matter jurisdiction, and remanded the case to the Board for final determination of the substantive issues. *Riley-Roberts Park, LP v. O'Connor*, 2015 Ind. Tax LEXIS 2.

4. During the three years following remand, the Partnership failed to take any action to prosecute its appeal before the Board until the Board *sua sponte* set it for a status conference. The Partnership eventually filed another motion for summary judgment in 2019, restating its previous arguments. The Board denied the motion on May 15, 2019. Thereafter, the Partnership tendered its discovery requests.

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[1] Because the Partnership used a single Bates stamp sequence to number the entirety of its proposed exhibits, rather than numbering by exhibit, the Board cites generally to *Pet Ex.*

[2] The Partnership utilized the new Form 131 after the elimination of the Form 133.

[3] The Assessor failed to timely respond to the motion for summary judgment, and the Board did not consider the Assessor's response or arguments.

5. On September 28, 2020, our designated Administrative Law Judge ("ALJ"), David Smith, held a hearing on the petitions. Neither he nor the Board inspected the property.

6. Brian Murphy, Terri Skipper, and Joseph O'Connor[4] were sworn and testified for Riley. Gabe Deaton was sworn and testified for the Assessor.

7. The Partnership submitted the following exhibits: [5]

Exhibit P-1	(a)(i)	United States National Housing Act of 1937
	(a)(ii)	Housing and Urban Development Act of 1968
	(b)	Indiana Code § 5-20-1-1
	(c)(i)	*Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 909 N.E. 2d 1138, (Ind. Tax Ct. 2009)
	(c)(ii)	*Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, petitions 71-022-05-2-8-00030-31 (IBTR 1/7/2008)
	(c)(iii)	*Hebron Vision, LLC v. Porter Cty. Assessor*, 143 N.E.3d (1077 Ind. Tax Ct. 2019)
	(c)(iv)	*Coll. Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905 (Ind. Tax Ct. 2006)
Exhibit P-2	(a)(i)	Indiana Code § 6-1.1-10-16
	(a)(ii)	Indiana Code § 6-1.1-31-1
	(a)(iii)	Indiana Code § 6-1.1-11-3
	(a)(iv)	Indiana Code § 6-1.1-11-3.5
	(a)(v)	Form 136 Application for Property Tax Exemption
	(a)(vi)	Indiana Code § 6-1.1-11-4
	(a)(vii)	Form 136 (CO/U) Notice of Change of Ownership or Use of Exempt Property
	(a)(viii)	Indiana Code § 6-1.1-11-5
	(a)(ix)	Indiana Code § 6-1.1-11-6
	(a)(x)	Indiana Code § 6-1.1-11-7
	(a)(xi)	*Keith v. Town of Long Beach*, 536 N.E.2d 552, 555 (Ind. Ct. App. 1989)
	(a)(xii)	*Hutcherson v. Ward, Hamilton Cty. Assessor*, 2 N.E 3d 138 (Ind. Tax Ct. 2013)
	(a)(xiii)	*Hoang v. Jamestown Homes, Inc.*, 768 N.E.2d 1029 Ind. Ct. App 2002)
	(b)(i)	Indiana Code § 6-1.1-15-12 (2009)

[4] On September 24, 2020, the Board approved a "Joint Stipulation" which provided that Joseph O'Connor's testimony from a September 16, 2020 hearing would be adopted into the record in lieu of a repetition of his prior testimony.

[5] The Partnership did not submit exhibit 26.

(b)(ii)	Indiana Code § 6-1.1-15-1.1 (2015)
(c)(i)	Indiana Code § 6-1.5-4-1
(c)(ii)	*CVS Corp. v. Prince*, 149 N.E.3d 323 (Ind. Tax Ct. 2020)
Exhibit P-3	Application for Exemption (March 1, 2006 Assessment)
Exhibit P-4	Form 120 Notice of Action on Exemption Application (March 1, 2006 Assessment)
Exhibit P-5	Application for Exemption (March 1, 2008 Assessment)
Exhibit P-6	Form 120 Notice of Action on Exemption Application (March 1, 2008 Assessment)
Exhibit P-7	Letter from Marion County Assessor date January 31, 2011
Exhibit P-8	Form 120 Notice of Action on Exemption Application (March 1, 2010 Assessment)
Exhibit P-9 (a)	Riley-Roberts Park, LP-Amended and Restated Agreement of Limited Partnership
(b)	Riley Area Development Corporation-Articles of Incorporation and Articles of Amendment
(c)	Riley Area Development Corporation-Amended and Restated By-Laws
Exhibit P-10(a)	Riley-Roberts Park, LP website excerpt
(b)	Riley Area Development Area Corporation website excerpt
Exhibit P-11	Deed of Riley-Roberts Park, LP
Exhibit P-12(a)	Riley-Roberts Park 2009 rent roll
(b)	Riley-Roberts Park 2010 rent roll
(c)	Riley-Roberts Park 2011 rent roll
(d)	Riley-Roberts Park 2012 rent roll
(e)	Riley-Roberts Park 2013 rent roll
(f)	Riley-Roberts Park 2014 rent roll
(g)	Riley-Roberts Park 2015 rent roll
(h)	Riley-Roberts Park 2016 rent roll
Exhibit P-13(a)	2009 Housing and Urban Development ("HUD") Fair Market Rent Data
(b)	2009 HUD Area Median Income Data (Marion County)
(c)	2009 HUD Income Limits Documentation System
Exhibit P-14(a)	2010 HUD Fair Market Rent Data
(b)	2010 HUD Area Median Income Data (Marion County)
(c)	2010 HUD Income Limits Documentation System
Exhibit P-15(a)	2011 HUD Fair Market Rent Data
(b)	2011 HUD Area Median Income Data (Marion County)
(c)	2011 HUD Income Limits Documentation System
Exhibit P-16(a)	2012 HUD Fair Market Rent Data
(b)	2012 HUD Area Median Income Data (Marion County)
(c)	2012 HUD Income Limits Documentation System
Exhibit P-17(a)	2013 HUD Fair Market Rent Data
(b)	2013 HUD Area Median Income Data (Marion County)

(c)	2013 HUD Income Limits Documentation System
Exhibit P-18(a)	2014 HUD Fair Market Rent Data
(b)	2014 HUD Area Median Income Data (Marion County)
(c)	2014 HUD Income Limits Documentation System
Exhibit P-19(a)	2015 HUD Fair Market Rent Data
(b)	2015 HUD Area Median Income Data (Marion County)
(c)	2015 HUD Income Limits Documentation System
Exhibit P-20(a)	2016 HUD Fair Market Rent Data
(b)	2016 HUD Area Median Income Data (Marion County)
(c)	2016 HUD Income Limits Documentation System
Exhibit P-21	Riley Tenant's Guide to Low-Income Housing
Exhibit P-22	Riley-Roberts Park, LP Unit Income Set Aside Mix
Exhibit P-23	Low-Income Housing Tax Credit Program Income Limit Data
Exhibit P-24	Eviction Data (March 1, 2009 through January 1, 2016)
Exhibit P-25	Owned, Occupied and Used Charitable Checklist
Exhibit P-27	August 18, 2020 Indianapolis Star article: "Indianapolis Council approves roughly $24 million in tax abatements for Lilly"
Exhibit P-28(a)	Indianapolis Housing & Community Development Authority ("IHCDA")
(b)	Home Investment Partnership Program ("HOME")
Exhibit P-29(a)	Section 42 Tax Credit program documentation
(b)	Indiana Housing Finance Authority Low-Income Housing Tax Credit Program
(c)	HUD Housing Choice Voucher program documentation
Exhibit P-30(a)	Respondent's Answers to Petitioner's First Set of Requests for Admissions
(b)	Respondent's Answers to Petitioner's First Set of Interrogatories
(c)	Respondent's Answers to Petitioner's First Set of Requests for Production
Exhibit P-31(a)	Riley-Roberts Answers to Respondent's Requests for Admission
(b)	Riley-Roberts Answers to Respondent's Interrogatories
(c)	Riley-Roberts Answers to Respondent's Request for Production
Exhibit P-32	Exhibits identified on the Respondent's witness list
Exhibit P-33	All pleadings in this case and any exhibits thereto
Exhibit P-34	All petitions in this case and any exhibits thereto
Exhibit P-35	Demonstrative exhibits, including summaries
Exhibit P-36	Any other exhibit needed for the purposes of rebuttal or impeachment
Exhibit P-37	Summary of Petitioner's property

Exhibit P-38	Marion County Landlord Funding Agreement
Exhibit P-39	Images of Riley-Roberts' Green space/park
Exhibit P-40	*Bartholomew Cty. Assessor v. Hous. Partnerships, Inc*
Exhibit P-41	*Bartholomew Cty. Assessor v. Hous. Partnerships, Inc*, (IBTR July 19, 2018)
Exhibit P-42	*Town of St. John v. State Bd. Of Tax Comm'rs*, 691 N.E.2d 1387 (Ind. Tax Ct.) *order clarified* 698 N.E.2d 399 (Ind. Tax Ct. 1998), and *aff'd in part, rev'd in pa*rt, 702 N.E.2d 1034 (Ind. 1998)
Exhibit P-43	*Bros. of Holy Cross, Inc. v. St. Joseph Cty. Prop. Tax Bd. Of Appeals*, 878 N.E.2d 548 (Ind. Tax Ct. 2007)
Exhibit P-44	United States Constitution Amendment 14
Exhibit P-45	Exhibits identified on the Respondent's Rebuttal Exhibit List[6]

8. The Assessor submitted the following exhibits:[7]

Exhibit R-5	October 29, 2009 Grandville Coop. letter
Exhibit R-6	January 11, 2011 letter from Marion County Assessor
Exhibit R-7	February 25, 2011 PTABOA Meeting Minutes
Exhibit R-A	Teresa Skipper Deposition
Exhibit R-B	Brian Murphy Deposition

9. The Assessor objected to Exhibits P-1 through P-2; P-13 through P-20; P-25; P-27; P-28 through P-29; and P-40 through P-44.

10. As for Exhibits P-1, P-2, and P-40 through P-44, the Assessor objected on the grounds that they are not factual evidence, but copies of statutes and case law. The Assessor is correct, and the Board will not admit them as exhibits.[8]

11. The Board overrules the Assessor's relevance objection to Exhibits P-13 through P-20, as the HUD eligibility guidelines tend to corroborate the testimony regarding the provision of low-income housing. As for hearsay, the Board declines to exclude these exhibits as they do not form the sole basis of the Board's decision. The Board finds that Exhibit P-25 is merely demonstrative: a summation of what the Partnership intends to elicit from

[6] The Parties stipulated to the inclusion in the record of a statement by counsel for the Partnership, J.F. Beatty, a single sentence summarizing his recollection of the events at the PTABOA meeting.
[7] The Assessor did not introduce exhibits 1 through 4.
[8] The Partnership is instructed not to burden the record with unnecessary copies of statutes and case law, nor to include duplicate copies of filings and preliminary orders that are already within the Board's record.

testimony and other admitted evidence and, thus, holds that the exhibit is admissible but not probative evidence in and of itself.

12. The Board finds no relevance as to Exhibit P-27, a newspaper article relating to an abatement for a pharmaceutical company, and the Assessor's objection is sustained.

13. As for the Assessor's hearsay objections to Exhibits P-28 and P-29, the Board finds that the Partnership has done little to establish who created the bulk of the exhibits, particularly in regard to Ex. P-29(A)(iii), or their relevance, but the Board finds they meet the low burden of relevance and overrules the Assessor as they do not affect the final determination.

14. All remaining exhibits are admitted into evidence.

15. The official record for this matter also includes the following: (1) all petitions, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) a transcript of the hearing.

III. FINDINGS OF FACT

a. THE OWNERSHIP OF THE PARTNERSHIP

16. The Partnership is a for-profit limited partnership created for the purpose of acquiring the Davlan in 1999. (*Tr.* at 85; *Pet'r. Ex.* 497). The City of Indianapolis previously owned the Davlan, located downtown on Massachusetts Avenue, and sought redevelopment proposals from private entities. (*Tr.* at 85). The City deeded the property to the Riley Area Development Corp., which later deeded it to the Partnership in 1999. *Id.* The Partnership has no other assets or enterprises.

17. Since 2000, the Partnership has consisted of three general partners: Riley-Roberts Park, Inc., Homeowners, Inc., and Safe-Shelter Housing, Inc.; and, in addition, it has two limited partners: Alliant Tax Credit IX, Inc. (referenced in the Partnership Agreement as the Administrative Limited Partner) and Alliant Tax Credit Fund IX, Ltd (referenced in

the Partnership Agreement as the Invested Limited Partner).[9] (*Pet'r. Ex.* at 262, 383).

18. The purpose of the partnership is "investment in real property and the provision of low income housing through the construction, renovation, rehabilitation, operation (including conversion to cooperative or condominium form of ownership and sale of the apartment units, if permitted) and leasing of the Apartment Complex and any commercial space located therein . . . ." (*Pet'r. Ex.* at 294). The "Purpose" section of the Partnership Agreement expressly anticipates collecting rents from its residential and commercial units and distributing "the net proceeds to the partners," but it includes no charitable aspirations. *Id.* Likewise, the duties of the general partners are focused on complying with obligations for tax credit eligibility rather than charitable endeavors. *Id.* at 311-13. The Board finds that the Partnership Agreement establishes a for-profit enterprise created for the purpose of obtaining and maintaining Section 42 tax credits.

19. Each of the five partners is entitled to a capital account and a distributive share of profits, including income or gain. (*Pet'r. Ex.* at 273). Profits are to be distributed 99.98% to Alliant, Ltd., 0.01% to Alliant, Inc., 0.0051% to Riley-Roberts Park, Inc., 0.00245% to Homeowners, Inc., and 0.00245% to Safe-Shelter Housing, Inc.[10] *Id.* at 343. Thus, the limited partners own 99.99% of the Davlan, and the general partners split the remaining 0.01%.

20. Alliant, Ltd., invested approximately $4M in the Partnership, nearly all of which the Partnership recouped through grants and credits.[11] (*Pet'r. Ex.* at 383; *Tr.* at 75). The general partners were responsible for acquiring the property and contributing a development fee in the amount of $550,000. (*Pet'r. Ex.* at 295, 385). In addition to its share of profits, the Partnership Agreement granted to Alliant, Ltd., an annual payment of

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[9] Riley Area Development Corp. withdrew as a limited partner. (*Pet'r. Ex.* at 262, 268). While Alliant, Ltd., was the only remaining limited partner at the time of the amendment to the Partnership Agreement, Alliant, Inc., was added as of the closing. *Id.* at 288, 295.

[10] Tax credits and losses are also distributable in the same percentages. (*Pet. Ex.* at 350). Profits from the sale of the property are shared in the same manner. *Id.* at 351-52.

[11] Pursuant to the partnership agreement, Alliant Ltd.'s initial capital contribution was $3,908,173 and the other partners each contributed $100 for a total of $400. (*Pet. Ex.* at 383). The partnership agreement anticipated $1,136,830 in historic tax credits and $2,851,500 in Section 42 tax credits, totaling $3,988,330. *Id.* at 386.

$5,000. *Id.* at 367. The general partners must pay into the partnership any lost profits if the commercial space becomes vacant. *Id.* at 323. The Partnership admitted that if the Davlan were sold, there are no limits on the distribution of profits arising out of the sale. (*Id.* at 1126).

21. The record contains no documents regarding the corporate structure or ownership of Riley-Roberts Park, Inc. Testimony established that Riley Area Development Corp. controls Riley-Roberts Park, Inc. Brian Murphy and Teresa Skipper[12] both claimed that Riley-Roberts Park, Inc., is the 51% general partner of the Partnership and the "controlling general partner in the decision-making in regard to the partnership." (*Tr.* at 43-45, 98-99). The Board finds this testimony is in direct conflict with the Partnership Agreement, which makes clear that the two Alliants own 99.99% of the partnership, and Riley-Roberts Park, Inc., has a 0.0051% interest.[13] The record is silent on the voting rights among the partners, but as detailed below, Alliant, Inc., maintains substantial control over certain major decisions of the Partnership. The Board finds that Riley Area Development Corp. has a 0.0051% interest in the partnership, and its control as a majority general partner is substantially limited by the Partnership Agreement.

22. Riley Area Development Corp. "operates over 350 units of affordable housing" through relationships with its "private and non-profit development partners." (*Pet'r. Ex.* at 490). Its governing documents establish its charitable purposes in regard to community development and affordable housing. It leases office space as a tenant at the Davlan.

23. Homeowners, Inc., is a company owned and controlled by Murphy, a real estate developer. (*Tr.* at 34). Murphy also owns Monument Management Corporation, which is the Davlan's property manager. *Id.* at 35. Murphy also rents office space from the Partnership for his companies. *Id.*

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[12] Teresa Skipper is the executive director of Riley Area Development Corp. Her involvement with any of the partners began in 2019. (*Tr.* at 92.)

[13] In deposition testimony that was admitted into evidence, Murphy stated that "Alliant Capital" had "recently exited the partnership." (*Ex. R-B* at 6). But the record is silent as to when that occurred, and the Board must find that the Partnership Agreement is the most persuasive evidence of the ownership and structure of the Partnership during the tax years on appeal.

24. The record is silent on the corporate structure, ownership, or purpose of Safe-Shelter Housing, Inc.

25. Alliant, Ltd., is a Florida limited partnership organized for the purpose of acquiring interests in low-income housing projects that qualify for tax credits. (*Pet'r. Ex.* at 412). After the initial compliance period, Alliant Inc. retains the right to acquire the partnership's interest in the "low-income portion of the Apartment Complex" or force the partnership to sell the entire property for the "most favorable terms then available." *Id.* at 314-15. Alliant, Inc., has control over the selection of the management company. *Id.* at 284, 317). It has the ability to control any litigation regarding the partnership's tax matters. *Id.* at 313. The general partners must first acquire Alliant, Inc.'s consent to adopt an annual budget, expend in excess of $25,000 on capital improvements, or make certain changes to the standard lease form. *Id.* at 317-18.

b. THE DAVLAN

26. In 1999, the Davlan was rundown, vacant, and in need of renovation. (*Tr.* at 50-54.) Murphy opined that the renovations, completed in 2004, contributed to a stabilization and "trickle down" revitalization of the neighborhood. *Id.* The Partnership paid for the renovations through historic and low-income tax credits under Section 42. *Id.* at 75-76. The federal Section 42 program requires the Partnership to enter into "a 30 year commitment to provide affordable housing."[14] *Id.*

27. The Davlan consists of a mixture of residential, low-income residential, and commercial space. The commercial space is leased by a national chain coffee-shop, a jewelry store, restaurants, and offices. Its common area includes a park-like greenspace, or pocket-park, that benefits residents and businesses of the Davlan as well as the public. (*Tr.* at 54.) It has been used by art galleries and the Criterium bike race. *Id.* The Partnership, or Riley Area Development Corp., receives funding from other sources for the "head"

[14] The tax credits must be used within ten years, but eligibility for the credits requires an "initial 15-year period of compliance" and an "extended period of an additional 15 years." *Tr.* at 75. While some testimony called into question whether the Partnership entered into an extended agreement, the Board credits the unequivocal statement that the Partnership has a 30-year obligation to provide low-income housing under Section 42.

artwork in the park. *Id.* at 111. The Partnership makes the community room available for local organizations at no charge, and it supports a local merchant's association. *Id.* at 87, 105-107.

28. The Davlan has 50 residential units. The Partnership Agreement expressly limits the number of low-income units to 36, which results in a claim of 72% under Section 42(c)(1)(b). (*Pet'r. Ex.* at 292). At all relevant times, the Davlan has reserved 12 units for tenants whose income does not exceed 60% of median income, 16 units for tenants at 50% of median income, and 8 tenants at 40% of median income. *Id.* at 307. The record contains no evidence that the low-income units are limited to occupancy by senior citizens. The Partnership is prohibited from renting units at less than 90% of the maximum rent chargeable under Section 42(g)(2). *Id.* at 285.

29. The record lacks probative evidence as to what percentage of the Davlan, as a measure of square footage, is devoted to low-income housing. (*Tr.* at 88). While the number of low-income units has remained constant, the actual physical units leased to low-income tenants is subject to change.[15] (*Ex. R-B* at 12). All of the units are finished the same, whether market or low-income, and they are similar to "non-updated market rate units in the downtown submarket." (*Ex. R-B* at 19). Other rental units along Massachusetts Avenue would not be comparable because they are mostly new or renovated. *Id.* at 19.

30. The Partnership introduced HUD schedules of income guidelines, maximum rents, and the ranges applicable to the three classes of Section 42 units at the Davlan for 2009-2016. (*Pet'r. Ex.* at 686). The Partnership provided rent rolls for 2006 and 2009-2016. *Id.* at 180, 502-15. The HUD "fair market rents" for 1- and 2-bedroom units are based on data for the entire metropolitan statistical area, and without regard to square footage, quality, or amenities. *Id.* at 516-671.

31. The Partnership evicts tenants from one or two low-income units each year. (*Pet'r. Ex.* at

[15] Murphy stated at his deposition that the market and low-income units were filled interchangeably, meaning "rather than being locked into, like, fourteen specific units that are always at market rate, all of the units float." (*Ex. R-B* at 12).

684.) The Partnership attempts to work with tenants who suffer an interruption in income or other disruption to avoid eviction and work out non-eviction solutions. (*Tr.* at 68-69.) The Indiana Housing and Community Development Agency certifies the Partnership's compliance with its Section 42 obligations annually, but the Partnership does not participate in any other IHCDA programs. (*Tr.* at 70-71; *Pet'r. Ex.* 1114.)

c. THE EXEMPTION APPLICATIONS

32. In 2006, the Partnership filed an application seeking a 100% charitable exemption. The application repeatedly described the property as a "50 unit Apartment building utilized as dwellings." (*Pet'r. Ex.* at 170). It claimed that the "50 low income rental units," were occupied by "Low income residents qualified under Section 42 guidelines." *Id.* at 170-72. The application represented that all of the rooms and areas were used by individuals and groups for exempt purposes. *Id.* at 171. Despite charging rent to residential and commercial tenants, the Partnership represented that no fees were "ever charged to make use of rooms or areas." *Id.* at 172. The Partnership denied that any rooms were used for "income generating activity." *Id.* The application also represented that it provided "housing to low-income senior citizens." *Id.*

33. The PTABOA granted a partial exemption of 54%, with notes indicating that "Low income housing 14 units are rented out at market rate and space is leased for for-profit businesses." (*Pet'r. Ex.* at 206-207). The Partnership did not appeal the denial of the remaining 46% of the Davlan. The exemption was granted pursuant to I.C. §6-1.1-10-16(i), a statute granting an exemption for the renovation and transfer of single-family residences to low-income individuals. *Id.* at 1112.

34. In 2008, the Partnership filed an application again requesting a 100% charitable exemption on the same grounds and making the same representations as in its 2006 application. (*Pet's Ex.* at 208-210). The PTABOA granted an exemption of 54%, with notes indicating that "Low income housing 14 units are rented out at market rate and space is leased for for-profit businesses." *Id.* The Partnership did not appeal the partial denial.

35. For both 2006 and 2008, the same rent roll dated April 15, 2006, was included with the exemption application. (*Pet'r. Ex.* at 201-2, 245-46). Neither application disclosed the commercial spaces within the property, or that any of the residential units were rented at market values. They both indicated that the charitable use consisted of historic preservation, neighborhood revitalization, and housing to low-income senior citizens. While the 2006 application listed "Riley Area Development Corp." as the entity that "carries out the exempt activities," the 2008 application listed "Westside Community Development Corp." (*Pet'r. Ex.* at 171, 209).

36. In January of 2011, the exemption deputy for the Assessor mailed a notice, on behalf of the PTABOA, to the Partnership requesting information that would confirm its tax-exempt status.[16] (*Pet'r. Ex.* at 252). The letter referenced an opportunity to present further information at a PTABOA meeting set about 3 weeks later. *Id.* Counsel appeared on behalf of the Partnership at the PTABOA meeting. (*Ex. R-7* at 1.) It does not appear that the Partnership requested a continuance or extension to respond with further evidence. The PTABOA voted 3-2 to disallow the exemption at the meeting, finding the Davlan 0% exempt because it was "rented out at market rate" and "leased to for profit businesses." (*Pet'r. Ex.* at 260).

IV. CONCLUSIONS OF LAW

a. BURDEN OF PROOF

37. The Indiana Supreme Court has established that the taxpayer "bears the burden of proving it is entitled to an exemption." *Hamilton County Prop. Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 656-657 (Ind. 2010). A claim for an exemption is "strictly construed against the taxpayer." *Id.* This is because "an exemption releases property from the obligation of bearing its share of the cost of government and serves to disturb the equality and distribution of the common burden of government upon all property." *Id.* Pursuant to I.C. § 6-1.1-11-1, "an exemption is a privilege," and if "the owner does not comply with the statutory procedures for obtaining

[16] It included a worksheet and indicated that the PTABOA would review the response. (*Pet'r. Ex.* at 252).

an exemption, he waives the exemption." Once waived, "the property is subject to taxation." *Id.*

b. THE PARTNERSHIP FAILED TO COMPLY WITH THE EXEMPTION APPLICATION STATUTES

i. THE PARTNERSHIP'S EXEMPTION APPLICATIONS WERE MATERIALLY FALSE

38. The Board concludes that the Partnership made material misrepresentations in its 2006 and 2008 exemption applications. These misrepresentations, made under oath, include:

a. The description of the Davlan as residential apartments without disclosing the commercial space.

b. The description of 50 low-income residential units when only 36 units were set aside for low-income tenants.

c. The denial of income-generating activities at the Davlan when it collected residential and commercial income.

d. The claim that the Davlan provided low-income housing to senior citizens, implying an age-eligibility standard that did not exist.

e. The statement that there were no charges for the charitable services when the low-income tenants were charged rent.

f. The statement that Riley Area Development Corporation or Westside Community Development Corporation provided the charitable services "as a partner," when neither was a partner nor the provider of low-income housing at the Davlan.

These material misrepresentations of fact were made before the PTABOA in an effort to obtain a 100% charitable tax exemption based on the provision of *low-income housing* without disclosing the other *commercial* and *market residential* uses of the property. The Partnership submitted an application that would lead anyone to believe that a community development corporation (Riley or Westside) used the Partnership's building for the sole purpose of providing low-income housing to senior citizens. The Partnership has never submitted an exemption application that accurately reflects the use of the Davlan.

39. Exemption applications must be submitted under oath, and an owner is expressly prohibited from delegating its authority to sign the application. I.C. § 6-1.1-11-3(b); (e). A false representation under oath may amount to perjury,[17] but the record is silent regarding the knowledge of the person who signed the application on behalf of the Partnership. Nonetheless, the Board must conclude that the Partnership submitted materially false applications in 2006 and 2008 and failed to subsequently file amended or new applications in order to correct those misrepresentations. Thus, the Partnership has placed itself in the untenable position of requesting the Board to "reinstate" an exemption that was procured through false representations. While the Board might conclude the Partnership has waived its entitlement to an exemption under these circumstances, it declines to do so.

ii. THE PARTNERSHIP WAS REQUIRED TO FILE ANNUAL EXEMPTION APPLICATIONS

40. Because the Partnership does not qualify for biannual filing as a nonprofit, it was required to file an exemption application for 2010.

41. The Legislature has enacted three separate procedures for claiming and maintaining an exemption for a particular tax year: I.C. § 6-1.1-11-3, I.C. § 6-1.1-11-3.5, and I.C. § 6-1.1-11-4. The first procedure, I.C. § 6-1.1-11-3, applies generally to all owners seeking an exemption, and the exemption application must be filed annually. *Id.* The second procedure, I.C. § 6-1.1-11-3.5, permits "not-for-profit organizations," to file applications in even-numbered years rather than every year. I.C. § 6-1.1-11-3.5(a). The third procedure, I.C. § 6-1.1-11-4, originally limited to a property used for religious purposes, allows an owner to avoid filing annual applications once an exemption is granted. In

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[17] As recently noted by the Tax Court:

> One commits perjury by making "a false, material statement under oath or affirmation, knowing the statement to be false or not believing it to be true[.]" To support a finding of perjury, the evidence must show that the false statement attested to is material to the outcome of the case.

Sahara Mart, Inc. v. Ind. Dep't of State Revenue, 114 N.E.3d 36, 48-49 (Ind. Tax Ct. 2018) (internal citations omitted). These false statements were certainly material to the issue of the Partnership's eligibility for an exemption.

2009, the Legislature expanded I.C. § 6-1.1-11-4 beyond religious purposes and included charitable uses.[18]

42. The Partnership filed exemption applications in 2006 and 2008 and presumably relied on I.C. § 6-1.1-11-3.5 for 2007 and 2009. The Partnership did not file an exemption application in 2010, presumably based on the newly amended I.C. § 6-1.1-11-4. After the PTABOA denied the exemption, the Partnership chose not to file exemption applications for the years 2011-2016, again relying on I.C. § 6-1.1-11-4 to claim the exemption.

43. The Board notes that the Partnership is a for-profit partnership, and it could not have availed itself of the biannual filing as a not-for-profit corporation under I.C. § 6-1.1-11-3.5. Accordingly, the Partnership was required to file annual exemption applications under I.C. § 6-1.1-11-3 for 2007 and 2009, and it failed to do so. Because the Partnership did not file for an exemption in 2009, the provisions of I.C. § 6-1.1-11-4 could not relieve the Partnership of its obligation to file an annual exemption application for 2010. In other words, after 2008, the Partnership no longer had a valid exemption on which it could use I.C. § 6-1.1-11-4 to claim an exemption for 2010. Accordingly, the Partnership requests the Board to reinstate an exemption for which it failed to file an annual application. Generally the failure to properly file an application waives the exemption, but the Board declines to decide the matter on this issue, which neither party addressed.

c. THE PTABOA HAD AUTHORITY TO REVIEW THE PARTNERSHIP'S ELIGIBILITY FOR A CHARITABLE EXEMPTION

44. The Board now turns to the Partnership's primary argument in this matter: its claim that I.C. § 6-1.1-11-4 prohibits the PTABOA from denying an exemption if an application has been granted in a prior year. The Board has issued three preliminary orders rejecting the Partnership's interpretation of the law. The Partnership's repeated rhetoric suggesting that the Board made arguments on the Assessor's behalf are specious and display a willful ignorance of the law. As the Board's original order summarized:

[18] P.L.182-2009(ss), § 107, emergency eff. June 30, 2009.

> Summary judgment shall not be granted as of course because the opposing party fails to offer opposing affidavits or evidence, but the court shall make its determination from the evidentiary matter designated to the court." T.R. 56(C). "A trial court is not required to grant an unopposed motion for summary judgment." *Murphy v. Curtis*, 930 N.E.2d 1228, 1233 (Ind. Ct. App. 2010) (*citing Parks v. State*, 789 N.E.2d 40, 48 (Ind. Ct. App. 2003), trans. denied). "Summary judgment is awarded on the merits of the motion, not on technicalities." *Id.* at 1233-34. In fact, "even a party who failed to respond to a motion for summary judgment could have summary judgment entered in his favor." *Id.* at 1233.

(*Order on Pet'r's. M. for S.J.* at 5.) Undeniably, the Board has no obligation to adopt a party's poorly reasoned and unpersuasive legal arguments, even in the absence of an opposing brief. The Board does not become an advocate merely because it considers all of the relevant provisions of the Indiana Code and the Indiana Constitution and, after due deliberation, declines to swallow the Partnership's argument hook, line, and sinker. The very purpose of this specialized administrative agency is to faithfully and impartially apply the property tax laws to the controversies before it, and the Board will not shrink from its duty.

45. As set forth below, the Board concludes that the Legislature has granted PTABOAs the statutory authority to review the eligibility of property exemptions, and the 2009 amendments to IC § 6-1.1-11-4 did not alter that authority. Necessarily, the legal analysis in this Final Determination constitutes the Board's final ruling on this issue and supplants any prior analysis in the orders denying summary judgment.

i. THE PTABOA HAS STATUTORY AUTHORITY TO REVIEW EXEMPTIONS FOR ELIGIBILITY

46. It is well settled that "exemption applications are approved or disapproved by the county [PTABOA]." *Marion County Auditor v. Revival Temple Apostolic Church*, 898 N.E.2d 437, 447 (Ind. Ct. App. 2008); *see also, Alpha PSI Chptr. v. Auditor*, 849 N.E.2d 1131, 1133 n.3 (Ind. 2006) (noting that the PTABOA is "the entity usually charged with approving or disapproving exemptions"). The statutory authority of the PTABOA to grant or deny an exemption is found in I.C. § 6-1.1-11-7(a):

> The [PTABOA], after careful examination, shall approve or disapprove each exemption application and shall note its action on the application."

The PTABOA is statutorily obligated to investigate, through "careful examination," the eligibility of an exemption. The ongoing authority of the PTABPOA to consider whether a property "is no longer eligible for the exemption" in a year in which no application is required is expressly referenced in I.C. § 6-1.1-11-3.5(d).[19]

47. The PTABOA also has the statutory authority to review whether omitted or underassessed property should be returned to the tax rolls:

> A [PTABOA] shall, on its own motion or on sufficient cause shown by any person, add to the assessment lists the names of persons, the correct assessed value of undervalued or omitted personal property, and the description and correct assessed value of real property undervalued on or omitted from the lists.

I.C. § 6-1.1-13-3. The assessor is obligated to "make recommendations to the [PTABOA] for corrections and changes in the returns and assessments." I.C. § 6-1.1-13-2. The statute clearly contemplates a process by which an assessor recommends that the PTABOA consider whether property has been erroneously omitted from the tax rolls. No language in this chapter would preclude a PTABOA from reviewing exemptions to determine if property has been omitted from the rolls, and the Board can find no logical reason why it should.

48. Additionally, "the [PTABOA] shall do whatever else may be necessary to make the assessment lists and returns comply with the provisions of this *article* and the rules and regulations of the department of local government finance." I.C. § 6-1.1-13-4 (emphasis added). Even after the PTABOA "issues a final determination on an assessment, it can make changes in that assessment." *Mills v. State Bd. of Tax Comm'rs*, 639 N.E.2d 698,

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[19] The Board notes that the language of I.C. § 6-1.1-11-3.5(d) does not create a power for the PTABOA, but rather references the power's existence:

> The auditor of each county shall apply an exemption provided under IC 6-1.1-10 to the tangible property owned by a not-for-profit corporation that received the exemption in the preceding year unless the [PTABOA] determines that the not-for-profit corporation is no longer eligible for the exemption.

701 (Ind. Tax Ct. 1994). These several statutes affirm a broad power invested in the PTABOA to ensure that all taxable property should be taxed. The Partnership fails to cite to any case law that supports the proposition that the PTABOA lacks the authority to deny an ineligible exemption for a subsequent year.

ii. Only Eligible Properties Are Entitled to an Exemption in the Years Following the PTABOA's Approval of an Application

49. While the application processes may vary, eligibility for an exemption is always determined by the use of the property in the prior year:

> A taxpayer who seeks a charitable purposes exemption pursuant to Indiana Code § 6-1.1-10-16(a) must demonstrate that its property was owned, occupied, and predominately used for a charitable purpose during the relevant tax year (i.e., "the year that ends on the assessment date of the property").

Bros. of Holy Cross, Inc. v. St. Joseph County Prop. Tax Assessment Bd. of Appeals, 878 N.E.2d 548, 550 (Ind. Tax Ct. 2007). Accordingly, if a property ceases to be owned, occupied or predominantly used for a charitable purpose, it loses its eligibility in the following year. All of the application procedures expressly require continued eligibility. The right to file biannually hinges on whether the property remains "eligible for the exemption." I.C. § 6-1.1-11-3.5(b); (d). The right to avoid filing annual applications is based on the condition precedent that the "property continues to meet the requirements for an exemption." I.C. § 6-1.1-11-4(d)(3).

50. The Tax Court has rejected the suggestion that equitable grounds should prevent a PTABOA from denying an application for a previously exempt property. *Izaak Walton League of Am. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 881 N.E.2d 737, 742, (Ind. Tax Ct. 2008) (rejecting the claim that the "subject property is entitled to the exemption on equitable grounds" in 2000 merely because the "subject property actually received an exemption from 1990 through 1999.")

51. The Board must conclude that after an exemption application has been approved, the property is entitled to the exemption in subsequent years only if it remains eligible. The

Partnership does not dispute this, only the authority of the PTABOA to enforce eligibility.

iii. THE 2009 AMENDMENTS TO I.C. § 6-1.1-11-4 NEITHER GRANDFATHERED INELIGIBLE EXEMPTIONS NOR CREATED AN HONOR SYSTEM

52. When the Legislature, in 2009, increased the scope of I.C. § 6-1.1-11-4 beyond religious exemptions to include "educational, literary, scientific, religious, or charitable purposes," it added additional obligations on the owners and granted new summary powers to the assessors:

> A change in ownership of property does not terminate an exemption of the property if after the change in ownership the property continues to meet the requirements for an exemption under IC 6-1.1-10-16 or IC 6-1.1-10-21. However, if title to any of the real property subject to the exemption changes or any of the tangible property subject to the exemption is used for a nonexempt purpose after the date of the last properly filed exemption application, the person that obtained the exemption or the current owner of the property shall notify the county assessor for the county where the tangible property is located of the change in the year that the change occurs. The notice must be in the form prescribed by the department of local government finance. If the county assessor discovers that title to property granted an exemption described in IC 6-1.1-10-16 or IC 6-1.1-10-21 has changed, the county assessor shall notify the persons entitled to a tax statement under IC 6-1.1-22-8.1 for the property of the change in title and indicate that the county auditor will suspend the exemption for the property until the persons provide the county assessor with an affidavit, signed under penalties of perjury, that identifies the new owners of the property and indicates that the property continues to meet the requirements for an exemption under IC 6-1.1-10-21 or IC 6-1.1-10-16. Upon receipt of the affidavit, the county assessor shall reinstate the exemption for the years for which the exemption was suspended and each year thereafter that the property continues to meet the requirements for an exemption under IC 6-1.1-10-21 or IC 6-1.1-10-16.

I.C. § 6-1.1-11-4(d) (2009). The operative language in the 2009 Amendment granted the assessor the right to direct the auditor to suspend an exemption in the event of a change in ownership. It also obligated the taxpayer to notify the assessor regarding a change in title

or use in the year that the change occurs. Later, the 2014 Amendment moved the language to subsections I.C. § 6-1.1-11-4(e) and (f) and added a change in "use" to the assessor's suspension powers.[20] Under both versions, the assessor could reinstate the exemption if the taxpayer submitted an affidavit that "indicates that the property continues to meet the requirements for an exemption."

53. The Board notes that language of the 2009 version of this statute has no *express* application to the facts here. The facts establish that the PTABOA denied the exemption. Had the Assessor suspended the exemption, then I.C. § 6-1.1-11-4 would control whether such authority was exercised in conformity with the law. Thus, the Partnership argues that the 2009 Amendments *implicitly* stripped the PTABOA of any authority to review an exemption once applied pursuant to I.C. § 6-1.1-11-4. It advocates an interpretation that would grandfather all exemptions except in the event of a change in title and create an "honor system" where taxing officials could act only in the event a taxpayer self-reports a change in use or ownership.[21] Facially, this interpretation cannot stand because the 2009 version limited the assessor's suspension powers to changes in title. Neither the assessor nor the PTABOA could deny an exemption based on a change in use. In any event, such a strained interpretation must fail for several reasons.

54. The obvious purpose of I.C. § 6-1.1-11-4 is to remove the burden of filing exemption applications annually or biannually. But it also creates additional provisions for policing the eligibility of an exemption "after the date of the last properly filed exemption application."[22] No language within the statute expressly restricts the general authority of the PTABOA to review a taxpayer's actual use of a property. "When construing a statute, it is equally important to recognize what the statute does not say as what it does say." *Whetzel v. Dep't. of Local Gov't. Finance*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002) *citing City of Evansville v. Zirkelbach*, 662 N.E.2d 651, 654 (Ind. Ct App. 1996)

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[20] P.L.183-2014, § 6, emergency eff. July 1, 2014

[21] The Partnership argues that an exemption, once approved, "may only be terminated or suspended if the taxpayer informs the assessor the property is no longer eligible or there has been a change in title." (*Pet'r's Memo. in Support of S.J.* p 4).

[22] I.C. § 6-1.1-11-4(d) (2014)

trans. denied. The Partnership construes I.C. § 6-1.1-11-4 to limit the PTABOA's authority to deny exemptions under I.C. § 6-1.1-11-7 and its power to review omitted or undervalued property under I.C. § 6-1.1-13-3. But the Board cannot "select one provision from a statute for incorporation into another statute without the express direction of a statute or other authority." *Hutcherson v. Ward*, 2 N.E.3d 138, 144 (Ind. Tax Ct. 2013). Had the Legislature intended to modify the general authority of the PTABOA to review exemptions, it would have done so by modifying those specific statutes. Accordingly, the Board concludes that the PTABOA's authority under I.C. § 6-1.1-11-7 and I.C. § 6-1.1-13-3 was in no way affected by the 2009 amendment to I.C. § 6-1.1-11-4.

55. The property tax statutes contemplate multiple layers of review for an exemption. Every exemption granted by the PTABOA may be denied after an independent review before the Department of Local Government Finance. I.C. § 6-1.1-11-8. The tandem authority of the assessor and the PTABOA to review eligibility is entirely consistent with the authority granted the assessor to refer omitted or undervalued property to the PTABOA under I.C. § 6-1.1-13-2. The assessor's power to suspend does not necessarily restrict the PTABOA's power to deny, and the general statutory structure compels the opposite conclusion.

56. Overall, the Partnership's construction of I.C. § 6-1.1-11-4 is inconsistent with the purposes of the 2009 amendment's suspension and notification procedures. It defies logic to construe language that is intended to prevent ineligible properties from receiving exemptions as a "get out of jail free" card for properties put to nonexempt uses.

57. The facts of this case perfectly illustrate why the Partnership's interpretation is absurd. The Partnership's two applications contained critical misrepresentations regarding the actual use of the property. Fifteen years ago, it received a 54% exemption: a number neither party can justify nor even calculate. The Partnership's contrived interpretation of I.C. § 6-1.1-11-4 would allow it to claim its imaginary 54% exemption in perpetuity. Such a result is neither logically sound nor constitutionally permissible.

58. The Indiana Constitution authorizes the Legislature to exempt property *used for charitable purposes*. "Article X, section 1 of the Indiana Constitution operates as a limitation on the legislature's power to grant exemptions insofar as it may exempt only those kinds of property enumerated therein." *Indiana University Foundation v. State Bd. of Tax Comm'rs,* 527 N.E.2d 1166, 1168 (Ind. Tax Ct. 1988). A statute that grants a charitable exemption for a tax year by "default" or "grandfathering," rather than its ac*tual use* would violate the Indiana Constitution. In effect, the Partnership would hold that I.C. § 6-1.1-11-4 amended the Indiana Constitution such that property once eligible is always eligible. The Board must interpret statutes in a manner consistent with the Indiana Constitution, and accordingly the Board must reject the Partnership's arguments.

59. The only relief contemplated in the 2009 amendments to I.C. § 6-1.1-11-4 is the right of owners of exempt properties to avoid filing annual applications. The Legislature made no other changes to the role of the PTABOA. Accordingly, the Board rejects the Partnership's claims that the PTABOA lacked the authority to review or deny its exemption.

iv. THE TIMELINESS OF THE PTABOA'S DENIAL

60. Petitioner next relies on I.C. § 6-1.1-11-5 to claim that the PTABOA's review of the subject property's exemption was untimely. Subsection 5(a) provides statutory deadlines for the *auditor* and *assessor* to exchange updated lists of exempt property. The duty of the assessor is to return a list of exempt properties with "a notation of any action of the [PTABOA] on that year's exemption of each listed property" before July 1st of an even-numbered year. I.C § 6-1.1-11-5(a).

61. The duties of an assessor following the PTABOA's decision on an exemption application are found in I.C. § 6-1.1-11-7(b) and 7(c). If the PTABOA "approves the exemption, in whole or part," the assessor notifies the auditor, and the auditor "notes the board's action on the tax duplicate." I.C. § 6-1.1-11-7(b). If the exemption is denied, the notice goes only to the taxpayer. I.C. § 6-1.1-11-7(c).

62. The Partnership argues that "the dates set forth in the statute not only limit the power the PTABOA has in regard to exemptions, but also sets forth the mandatory time limit." (*Pet'rs. Memo. in Support of S.J.* at 7). But the notice provisions of I.C. § 6-1.1-11-7(b) and I.C. § 6-1.1-11-5(a) create duties between the *assessor* and the *auditor* and make no reference to the PTABOA. The Partnership provides no cogent argument as to why the deadline for the assessor to provide an update to the auditor should be interpreted to create a limitation on the authority of the PTABOA, and this claim must be rejected.

v. THE PARTNERSHIP'S CONSTITUTIONAL CLAIMS

63. The Partnership strenuously alleges that the Assessor and the PTABOA violated the Partnership's equal protection and due process rights by reviewing the use of the Davlan. The Board has already concluded that the Assessor and the PTABOA acted within their statutory authority, and the Partnership has failed to introduce any evidence of a malicious or officious abuse of office. An exemption is a privilege, and it is no injustice to require a taxpayer who filed a patently false exemption application to produce evidence as to the charitable use of its property.

64. Starting with the equal protection claim, the Board agrees with the Assessor's argument that the Partnership merely references the Indiana Constitution while failing to cite to relevant case law, and accordingly, the Partnership has waived its claim. (*Pet'r. 's Post-Trial Br.* at 9-10; *Pet'r. 's Reply Br.* at 5-6). The Board finds no evidence of bad faith, bias, or discriminatory intent on the part of the taxing officials for scrutinizing low-income housing exemptions, an area of property tax law that is intensely fact-sensitive and eschews bright-line precedent.

65. Turning to the due process claims, the Partnership focuses on a perceived injustice in a deputy assessor's manner of reviewing low-income housing exemptions rather than outlining what due process required. (*Pet'r. 's Post-Hearing Br.* at 6; *Pet'r. 's Reply Br.* at 5-6). While the Partnership cites to relevant case law, it fails to compare any of the facts of those cases to the matter at hand. The Board agrees with the Assessor that the Partnership has waived its constitutional claims due to its failure to develop a cogent

argument.

66. Waiver aside, the Indiana Supreme Court has held that a taxpayer is not entitled to a hearing prior to *any* adverse action by a taxing official. Rather, a statutory procedure that "does not deny, but merely postpones, due process opportunities by providing a full and fair opportunity to be heard post-deprivation when the taxpayer protests his assessment" is sufficient. *Clifft v. Ind. Dept. of State Revenue*, 660 N.E.2d 310, 318 (Ind. 1995). The Court has applied the same standard in regard to property taxes. *See State Bd. of Tax Comm'rs v. Mixmill Mfg. Co.*, 702 N.E.2d 701, 705, (Ind. 1998) (holding that "[w]here property rights are involved, mere postponement of the opportunity to be heard is not a denial of due process if the opportunity ultimately given is adequate.")

67. The Indiana Tax Court has recently rejected due process claims like those claimed by the Partnership:

> [The Taxpayer] has not only filed an appeal with this Court challenging the 2010 Proposed Assessment, but also received another opportunity to present the Department with evidence related thereto during the second supplemental audit. Due process requires no more.

Thermo-Cycler Indus. v. Ind. Dep't of State Revenue, 78 N.E.3d 30, 36 (Ind. Tax Ct. 2017) (internal citation omitted). To the extent the PTABOA hearing may or may not have comported with due process, the Partnership's rights were merely postponed until its appeal here before the Board.

d. THE PARTNERSHIP HAS FAILED TO ESTABLISH THE DAVLAN IS OWNED, OCCUPIED, AND USED FOR CHARITABLE PURPOSES

68. Now that the Board has determined that the PTABOA acted within its statutory authority to deny the exemption, the Board turns to whether the Partnership has presented evidence establishing its eligibility for a charitable exemption.

69. In order to qualify for an exemption, the taxpayer must demonstrate that its property is owned for exempt purposes, occupied for exempt purposes, and predominantly used for exempt purposes. *Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d

954, 959 (Ind. Tax Ct. 1997). "Once these three elements have been met, regardless of by whom, the property can be exempt from taxation." *Id.* A party seeking an exemption must present "evidence that meets every element of that exemption" and also walk the Board "through every element of its analysis." *St. Mary's Bldg. Corp. v. Redman*, 135 N.E.3d 681, 690 (Ind. Tax Ct. 2019).

70. As the Indiana Supreme Court remarked over a century ago, a statute "ought not to be so strictly construed as to defeat its purpose, yet it must still be remembered that it is not to be extended beyond its evident purpose." *Sandy v. Board of Comm'rs*, 171 Ind. 674, 676, 87 N.E. 131, 132 (Ind. 1909). For the reasons established below, the Board easily concludes that the Partnership seeks to stretch a charitable exemption far beyond its evident purpose.

i. THE PARTNERSHIP HAS FAILED TO ESTABLISH THAT THE DAVLAN IS OWNED FOR CHARITABLE PURPOSES

71. In *Oaken Bucket*, the Indiana Supreme Court held that "unity of ownership, occupancy, and use by a single entity is not required," however, in circumstances where multiple entities are involved, each "must demonstrate that they possess their own exempt purposes." *Oaken Bucket*, 938 N.E.2d at 657 (Ind. 2010). It is proper to look to both the exempt purposes of the partnership and its partners.[23] *Id.* at 658.

72. The Board has found that the Partnership Agreement contemplates the provision of low-income housing, but its terms solely relate to a business venture rather than a charitable enterprise. The Partnership Agreement is mostly concerned with the collection and distribution of rents and profits, and the proceeds upon the sale of the Davlan. The Board finds *Hebron Vision* instructive as to the type of language that might establish that a

[23] The Indiana Supreme Court's analysis of *College Corner, L.P. v. Dep't. of Local Gov't. Fin.*, 840 N.E.2d 905 (Ind. Tax Ct. 2006) noted that "a for profit corporation — National City Community Development Corporation ("NCCDC"), and a not-for-profit corporation — Old Northside Foundation, Inc., ("ONF") formed a limited partnership — College Corner L.P. ("CCLP") to revitalize a historic area of the City of Indianapolis." *Oaken Bucket*, 938 N.E.2d at 658. The Supreme Court favorably cited *College Corner*'s conclusion that the NCCDC's Articles of Incorporation established a charitable purpose, particularly in light of the "inconsequential" profits it received under the partnership. *Id.* Because both partners demonstrated a charitable purpose, CCLP was entitled to an exemption. *Id.* Thus, it is appropriate to consider the purposes of each partner.

property is owned for a charitable purpose. Its articles of organization recited several charitable purposes:

> (a) To expand opportunities available to disadvantaged residents to obtain adequate affordable housing accommodations by constructing, rehabilitating, operating and providing decent, safe and sanitary housing for said residents who otherwise would not be able to find or afford a suitable place to live;
> (b) To help relieve the poor, distresse[d], underprivileged and indigent by enabling them to secure the basic human needs of decent shelter and to thus lessen the burdens of government and promote the social welfare;
> (c) To provide such housing through rehabilitation of existing substandard buildings and construction of new facilities in the place of blighted structures or blighted adjacent vacant sites for the purpose of combating the deterioration of the community and contributing to its physical improvement; and
> (d) In furtherance of the aforesaid purposes to conduct any and all lawful business and activities for which limited liability companies may be organized under the [Indiana Business Flexibility] Act, provided such business or activity is not inconsistent with the charitable purposes or status of [Hebron-Vision's] sole member, [Vision Communities].

Hebron-Vision, LLC v. Porter Cty. Assessor, 134 N.E.3d 1077, 1080-1081 (Ind. Tax Ct. 2019). The Partnership cites to no language in the Partnership Agreement, and the Board finds none, that is analogous to the language in *Hebron Vision*. The record does not establish that the Partnership owns the Davlan for a charitable purpose.

73. The Board now turns to the charitable purposes of the partners. The Partnership has failed to include the corporate documents that govern Riley-Roberts Park, Inc. The record is bereft of evidence regarding the ownership, purpose, or structure of Riley-Roberts Park, Inc. Instead, the Partnership directs the Board to the corporate documents for Riley Area Development Corp. and its ownership of Riley-Roberts Park, Inc. The Board may not ignore "individual corporate identities and conclude[] for purposes of property taxation that they [are] essentially 'one in the same.'" *St. Mary's Bldg. Corp.*, 135 N.E.3d at 688. The Board concludes that the Partnership cannot rely on the charitable purposes of Riley Area Development Corp. to meet its burden. The Partnership has failed to meet its burden to show that Riley-Roberts Park, Inc., possesses

its own charitable purpose.

74. The Partnership has failed to include the corporate documents that govern Homeowners, Inc. The testimony established that Homeowners, Inc., is Murphy's real estate development company and perhaps a family business. Murphy also leases office space at the Partnership, and another company he owns manages the Davlan. This merely reveals a for-profit business and not a charitable intent by Homeowners, Inc. The Partnership has failed to meet its burden to show that Homeowners, Inc., possesses its own charitable purpose.

75. The Partnership has failed to include the corporate documents that govern Safe-Shelter Housing, Inc., and offered no evidence of its own charitable purpose. The record is bereft of evidence regarding the ownership, purpose, or operations of Safe-Shelter Housing, Inc. The Partnership has failed to meet its burden to show that Safe-Shelter Housing, Inc., possesses its own charitable purpose.

76. The Partnership has failed to include the corporate documents that govern Alliant, Inc., and offered no evidence of its own charitable purpose. The record is bereft of evidence regarding the ownership, purpose, or operations of Alliant, Inc. The Partnership has failed to meet its burden to show that Alliant, Inc., possesses its own charitable purpose.

77. The Partnership has failed to include the corporate documents that govern Alliant, Ltd., and offered no evidence of its own charitable purpose. The record is bereft of evidence regarding the ownership, purpose or operations of Alliant Ltd. The Partnership has failed to meet its burden to show that Alliant, Ltd., possesses its own charitable purpose.

78. Additionally, the Board notes that, unlike *College Corners*, the vast majority of profits—more than 99.99%--go to the Partnership's for-profit partners. Under these circumstances, the Board finds that the Partnership is not owned for a charitable purpose, and consequently, the exemption must be denied.

ii. THE PARTNERSHIP HAS FAILED TO ESTABLISH THAT THE DAVLAN IS OCCUPIED FOR CHARITABLE PURPOSES

79. Because the Partnership admits the Davlan is partially used for non-exempt purposes, it must present evidence establishing the proportion of the Davlan that is occupied for the purposes it claims are charitable. *See* IC § 6-1.1-10-36.3; *McClain Museum, Inc. v. Madison Cty. Assessor*, 134 N.E.3d 1096, 1104 (Ind. Tax Ct. 2019).

80. The Partnership seeks a reinstatement of its 54% charitable exemption. (*Pet'r. 's Reply Br.* at 13.) In a footnote in its reply brief, the Partnership asserts that the 54% charitable exemption is based on the total square footage of the Davlan divided by the total square footage of its low-income units. *Id.* at n. 17. In support of that claim, the Partnership cites to Murphy's testimony at page 88 of the transcript and its Exhibits P-4, P-6, and P-22. The Partnership's assertion regarding the origin of the 54% is not supported by the evidence.

81. Exhibits P-4 and P-6 are the PTABOA's notices of action on the 2006 and 2008 applications. (*Pet'r. Ex.* at 206, 250). Neither contains evidence of the total square footage of the Davlan nor the corresponding square footage of the low-income units. Exhibit P-22 is merely a chart listing the number of low-income units according to their level of income eligibility. *Id.* at 679. Murphy's testimony is as follows:

> Q. Do you recall telling me in your deposition that you could not recall where the 54 percent charitable deduction came from, the 54 percent charitable deduction that Riley-Roberts is seeking?
> A. My recollection is that I could not specifically recall, but I also recalled testifying that it was probably based on square footage of a ratio of the affordable permits to the overall square footage.
> Q. Do you remember telling me that you were speculating and you had to assume?
> A. Yes. That's something I had not revisited for a number of years.

Tr. at 88. Clearly, Murphy admits that he "could not specifically recall" where the 54% charitable deduction came from and could only speculate and assume the source of the

figure. Accordingly, none of the Partnership's citations to the record constitute probative evidence as to the percentage of the Davlan that was occupied for charitable purposes during the relevant time periods.[24]

82. Because the Partnership has failed to establish that the low-income units make up 54% of the Davlan, the Board must conclude that the Partnership has failed to show the degree to which the Davlan is occupied for its claimed charitable purposes.

iii. THE PARTNERSHIP HAS FAILED TO ESTABLISH THAT THE DAVLAN IS USED FOR CHARITABLE PURPOSES

83. A charitable use will be found if a taxpayer shows (1) there is evidence of relief from human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general, and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *Knox Cty. Prop. Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005).

84. When the Indiana Tax Court first considered an exemption claimed on the basis of low-income housing, it adopted the reasoning found in a New Mexico case rejecting a charitable exemption:

> Here, we have an enterprise to furnish low-cost housing to a certain segment of our population. It was intended to be self-supporting, without any thought that gifts or charity were involved. The tenants are required to pay for the premises occupied by them with the rentals being fixed so as to return the amount estimated as being necessary to pay out the project. It is competitive with landlords offering other residential property for rent and on which taxes must be paid.

Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor, 909 N.E.2d 1138, 1144, (Ind. Tax Ct. 2009) (*citing Mountain View Homes, Inc. v. State Tax Comm'n*, 77

[24] The Board notes that the Davlan's low-income units are "floating," meaning that they do not correspond to specific units within the complex. Since the rent rolls show 1- and 2-bedroom apartments of varying square footage, it is likely that the total square footage of low-income residences varied from year to year. Under these circumstances it is all the more imperative that the Partnership provide detailed information regarding the occupancy of the Davlan for each of the relevant time periods on appeal.

N.M. 649, 655, 427 P.2d 13, 17 (N.M. 1967)). On rehearing, the Tax Court reiterated that a charitable exemption requires more than the provision of "safe, clean, and affordable housing to low-income persons at below-market rents" in compliance with the "numerous regulations prescribed by HUD." *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13, 16, (Ind. Tax Ct. 2009).

85. In *Housing Partnerships I*, the Tax Court noted that the nonprofit claimed several charitable acts beyond the mere provision of low-income housing:

> 1) its building and rehabilitation efforts were directed to the distressed areas in Bartholomew County, relieving the government of its burden to revitalize those areas;
> 2) it helped people "from falling through the cracks," relieving human want and therefore doing something the government otherwise would have had to do;
> 3) its rental rates were lower than other housing units, relieving the government (i.e., HUD) of its obligation to subsidize a greater portion of the rents paid by Housing Partnerships' Section 8 tenants;
> 4) it helped its tenants to become more financially self-sufficient, relieving the government of its burden to support them

Hous. P'ships v. Owens, 10 N.E.3d 1057,1062 (Ind. Tax Ct. 2014). These were insufficient for a charitable exemption.

86. In *Hebron Vision*, the Tax Court noted that a low-income apartment complex provided residents with:

> Access to free tax preparation services and blood pressure screenings; monthly meetings on topics that included self-defense, senior scams, and nutrition; on-site community book and video libraries; holiday/special event parties and contests; and referral information for rent, food, utility, and transportation assistance. Additionally, the residents had access to a business center where they received help with their resumés, completing online applications, and performing online research for jobs. The evidence also shows that Hebron-Vision worked with its tenants to keep evictions at a minimum, as evidenced by the fact that only six tenants were evicted over the four year period at issue.

Hebron Vision, 134 N.E.3d. at 1094. This opinion by Senior Judge Fisher, which contained no comparison of its facts to the those in *Jamestown* or *Housing Partnerships*

I, found that the apartment complex, owned by an LLC controlled by a developer, was entitled to a charitable exemption.

87. Soon after, the Tax Court held in *Housing Partnerships II* that low-income housing is eligible when it provides evidence that it:

> 1) the government had assumed the burden of providing affordable housing to low-income persons and families;
> 2) it rehabilitated residences in blighted areas and rented housing at below-market rents to people living at or below 60% of the area median income;
> 3) it maintained below-market rents after it was no longer obligated to do so;
> 4) it helped its low-income tenants become financially independent and provided them with access to credit counseling, childcare referrals, and food, clothing, and utility assistance;
> 5) it provided tenants with rent concessions rather than evicting them for non-payment of rent and rented to tenants with poor credit histories, non-violent criminal offenses, and prior evictions even though other landlords declined to do so;
> 6) it used its own funds (secured from private donations, grants, the value of volunteer time, and the sale of certain homes) to operate its home rental program; and
> 7) its annual audits indicated that there was no private inurement.

Bartholomew County Assessor v. Hous. P'ships., 151 N.E.3d 821, 824 (Ind. Tax Ct. 2020).

88. The Partnership lists the following services that provide relief from want: not-for-profit, below-market rents, low income eligibility, minimal evictions, and services/programs. The Board concludes that the Partnership's activities in addition to the provision of low-income housing do not rise to the level of relief of human want found in *Hebron Vision* or *Housing Partnerships II.*

89. As for the claim of not-for-profit services, the Board has already determined that the Partnership is a for-profit enterprise and Riley Area Development Corp. is not a general

partner[25] and does not own 51% of the Partnership. The Board cannot impute nonprofit status to a partnership that is 98% owned by a private corporation with no charitable purpose. In any event, an organization's status as a nonprofit does not in itself relieve human want.

90. In regard to the provision of below-market rents, the Partnership directs us to no evidence as to what the Davlan's units could charge on the open market.[26] The Partnership instead provides the HUD guidelines that develop a metro-area market rent for 1- and 2-bedroom units, and a below-market rate ceiling for each income class. In any event, evidence of below-market rents, and low-income eligibility, merely proves that the Partnership provides low-income housing. Low-income housing is not presumptively a charitable use.

91. The Legislature has expressly addressed the assessment of low-income housing, including those subsidized through Section 42:

> (a) For purposes of this section, "low income rental property" means real property used to provide low income housing eligible for federal income tax credits awarded under Section 42 of the Internal Revenue Code, including during the time period during which the property is subject to an extended low income housing commitment under Section 42(h)(6)(B) of the Internal Revenue Code.
> (b) For assessment dates after February 28, 2006, the true tax value of low income rental property is the greater of the true tax value:
> (1) determined using the income capitalization approach; or
> (2) that results in a gross annual tax liability equal to five percent (5%) of the total gross rent received from the rental of all units in the property for the most recent taxpayer fiscal year that ends before the assessment date.
> (c) For assessment dates after December 31, 2017, the total true tax value of low income rental property that offers or is used to provide Medicaid

[25] The Partnership is cautioned against making misrepresentations of fact as to Riley Area Development Corp. being the general partner. (*See Pet'r's. Post-Hearing Br.* at 16 and *Pet'r. Ex.* at 685).
[26] The Partnership's rent rolls show the rent charged for the market units relative to the low-income units, which allows a degree of comparison. The Board notes that this data may cut against the Partnership's claims. Among the four 501 s/f units, the low-income unit (308A-50) is rented at $525 while the market units are rented $520 (408), $525 (508) and $535 (208). (*Pet'r. Ex.* at 502). Neither party flushed out this issue, but nonetheless it illustrates that compliance with HUD schedules does not necessarily prove that low-income tenants pay less than market-rate tenants for a unit of equal size.

> assisted living services is equal to the total true tax value that results in a gross annual tax liability equal to five percent (5%) of the total gross rent received from the rental of all living units in the property for the most recent taxpayer fiscal year that ends before the assessment date. The total true tax value shall not include the gross receipts from, or value of, any assisted living services provided.
> (d) The department of local government finance may adopt rules under IC 4-22-2 to implement this section.

IC § 6-1.1-4-41.[27] In light of this statute, the Board finds substantial support for the proposition that the Legislature generally expects low-income housing to be taxed. The Legislature has also created a vehicle specifically for Section 42 low-income housing that is not eligible under IC § 6-1.1-10-16 to seek an exemption through an agreement to make payments in lieu of taxes.[28] I.C. § 6-1.1-10-16.7.

92. These statutory provisions add substantial weight to the conclusion that *Hebron Vision* cannot be interpreted as an abrogation of the high bar established by *Jamestown* and *Housing Partnerships I.* Indeed, *Hebron Vision* barely mentions the two cases, let alone expressly departs from their precedent. After *Hebron Vision*, the Tax Court upheld the Board's conclusion that the grant of an exemption in *Housing Partnerships II* was a "close call." *Housing Partnerships II*, 151 N.E.3d at 828. The law remains absolutely clear that the provision of low-income housing, alone, is insufficient to prove a charitable use under IC § 6-1.1-10-16. Accordingly, the Partnership's 36 low-income units do not, in isolation, overcome the high bar for a charitable use through low-income housing.

93. The Partnership next points to its minimal evictions. First, the Board notes that the Partnership is confused in its brief regarding fractions and percentages.[29] Rounding up, the Partnership evicts 3%-6% of its low-income tenants every year. That seems high in contrast with *Hebron Vision* where the LLC evicted only 4 tenants over 6 years among its 80 units (a 0%-1% eviction rate). The Partnership Agreement prohibits charging rent at

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[27] *See also* IC § 6-1.1-4-40: "The value of federal income tax credits awarded under Section 42 of the Internal Revenue Code may not be considered in determining the assessed value of low income housing tax credit property."
[28] The Partnership does not seek an exemption pursuant to this statute.
[29] Under basic math, 1 divided by 36 is 0.028, or 2.8%, not 0.028%. (*Pet'r. 's Post-Hearing Br.* at 19.)

less than 90% of the HUD rent schedules, which would preclude the substantial "rent concessions" offered by the nonprofit in *Housing Partnerships II*. Regardless, without evidence of a market eviction rate, the Board cannot conclude that the Partnership acts more charitably than any other landlord in evicting tenants.

94. As for its services, programs, and fraternal activities, the Partnership describes a metaphorical "ladder of opportunity," where the Partnership hopes its low-income tenants might find employment at its commercial tenants and then might eventually rent market rate units. There is no evidence that the commercial businesses at the Davlan offer advancement opportunities different from any other restaurant or retailer along Massachusetts Avenue. The Board finds this testimony to be entirely conclusory in nature. Likewise, the Partnership has provided no support that its tenants provided a "stabilizing effect" on the neighborhood in 2009. Testimonial statements that are conclusory in nature do not constitute probative evidence. *St. Mary's Bldg. Corp.*, 135 N.E.3d at 690.

95. Next, the Partnership points to the pocket park as a place for art exhibits, community gatherings, and the Criterium bike race. The Partnership has not provided any evidence of what activities or gatherings occurred during the relevant time period. As such, the Board cannot credit this conclusory testimony. Likewise, the Board cannot credit the claims regarding the Davlan's community room. The Tax Court has long held that the "failure to provide the Indiana Board with a comparison of the relative amounts of time that a property was used for exempt and non-exempt purposes is fatal to a claim of exemption." *Hamilton Cnty. Assessor v. Duke*, 69 N.E.3d 567, 571 (Ind. Tax Ct. 2017).

96. The Partnership's blanket claim that it "works with various service providers and organizations" to provide the residents with "appropriate" resources is insufficiently detailed for the Board to credit them and conclusory in nature. Any cooperation with the Indiana Housing and Community Development Agency simply furthers the Partnership's effort to provide low-income housing, which is not sufficient to claim an exemption. Support of a local merchant's association is something any business would find to be in

its own self-interest.

97. Finally, the Partnership points to its redevelopment activities. That the renovation of the Davlan might have revitalized a blighted area in 1999 does not indicate the area remained blighted or in need of revitalization in 2009. Rather, the testimony is that all of the housing surrounding the Davlan is of higher quality and charges higher rents. The record contains no evidence of any action to revitalize the neighborhood in 2009. Because the Partnership only cites to its actions a decade earlier, the Board cannot find a relief of human want through revitalization.

98. From the above, the Board finds that the Partnership has failed to present evidence that its activities reach the level of relief necessary for a charitable exemption.

e. The Partnership Has Failed to Establish the Relief of a Government Burden

99. The Board has rejected the Partnership's claims that its provision of other services to its tenants sufficiently relieve human want in order to establish a charitable use. Likewise, its evidence of community stabilization and revitalization do not date to 2009. Accordingly, they provide no evidence of the relief of a government burden. The only relief of a government burden must come from the Partnership's provision of low-income housing.

100. The Partnership has admitted that its commitment to offer low-income housing is compelled by its acceptance of Section 42 tax credits. Before receiving the low-income and historical tax credits, the Partnership had a building of so little value the City of Indianapolis gave it away. The millions of dollars in tax credits, granted from the government, paid for the renovations that turned the Davlan into a desirable commercial-residential building located in one of the trendiest parts of the city (at least by 2009). There is no evidence that the Davlan operates at a loss, relies on charitable donations, or reinvests its profits into expanded charitable services. Thus the creation of the low-income housing units at the Davlan was a burden paid by the government. Likewise, the

30-year commitment to low-income housing reflects an amortization of the initial government expenditure. The fact the Partnership must forego higher rents in the 36 low-income units in return for the federal government's tax credits does not relieve a government burden.

FINAL DETERMINATION

The taxpayer has failed to prove that the subject property is predominantly owned, occupied, and used for a charitable purpose. Its claims for exemptions for the 2010-2016 tax years are denied.

ISSUED: 5-6-21

Ted J. Holaday
Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Jonathan G. Ulmer
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>.