

REPRESENTATIVES FOR PETITIONER:

Warren W. Byrd, Attorney-at-Law
Jeffrey T. Bennett, BINGHAM McHALE LLP
Bradley D. Hasler, BINGHAM McHALE LLP

REPRESENTATIVE FOR RESPONDENT:

Marilyn S. Meighen, MEIGHEN & ASSOCIATES, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

OAKEN BUCKET PARTNERS LLC,)	Petition No.: 29-006-04-2-8-00009
)	
Petitioner,)	Hamilton County
)	
v.)	Delaware Township
)	
HAMILTON COUNTY PROPERTY TAX)	Parcel No.: 15-14-12-00-03-010.000
ASSESSMENT BOARD OF APPEALS,)	
)	Assessment Year: 2004
Respondent.)	
)	

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

November 16, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of facts and conclusions of law on the following questions:

ISSUE 1: Does the subject property qualify for religious or charitable exemption under Ind. Code § 6-1.1-10-16?

ISSUE 2: Is denial of exemption consistent with constitutional requirements for uniform and equal treatment of similarly situated property owners?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. The Petitioner, Oaken Bucket Partners, LLC, filed a Form 136 exemption application for the subject property on Monday, May 17, 2004. The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) denied the exemption on June 22, 2004.
2. Pursuant to Ind. Code § 6-1.1-11-7, Corby D. Thompson, Manager, Oaken Bucket Partners LLC, filed a Form 132 Petition for Review of Exemption on July 21, 2004, claiming charitable and religious exemption under Ind. Code § 6-1.1-10-16 and seeking the Board's administrative review of the PTABOA's denial.

Hearing Facts and Other Matters of Record

3. Administrative Law Judge Brian McKinney held an administrative hearing in Noblesville on July 13, 2006. He did not conduct an on-site inspection of the property.
4. The following persons were present and sworn as witnesses at the hearing:
For the Petitioner – David Wilkinson, Treasurer, Heartland Church,
Warren W. Byrd, Member, Heartland Church,
For the Respondent – Debbie Folkerts, Hamilton County Assessor.
5. The parties presented the following exhibits:
Petitioner Exhibit 1 – Heartland lease for 15,000 square feet,
Petitioner Exhibit 2 – Heartland lease for an additional 13,000 square feet,
Petitioner Exhibit 3 – Articles of Incorporation for Heartland Church, Inc.
(Heartland),
Petitioner Exhibit 4 – Heartland Bylaws,
Petitioner Exhibit 5 – Correspondence verifying that Heartland is part of the Baptist General Conference and is a 501(c)(3) exempt entity,

Petitioner Exhibit 6 – Lease between A.G. Edwards & Sons, Inc., and Boomerang Investments, LLC,

Petitioner Exhibit 7 – Letter dated May 27, 2004, to Darryn Scheske from Corby Thompson regarding A.G. Edwards lease,

Petitioner Exhibit 8 – Lease between First Horizon Home Loan Corporation and Boomerang Investments, LLC,

Petitioner Exhibit 11 – Secretary of State website information about Cambridge Investment, Inc.,

Petitioner Exhibit 12 – Exemption application and PTABOA decision granting partial exemption for Cambridge Investment, Inc.,

Petitioner Exhibit 13 – Hamilton County Township Assessor’s office locations,

Petitioner Exhibit 14 – Property record card for parcel 09-09-01-00-00-021.402,

Petitioner Exhibit 15 – Exemption application for Professional Careers Institute, Inc. and decision from the Marion County PTABOA granting 100% exemption to the improvements,

Petitioner Exhibit 16 – Parcel information for Professional Careers Institute property,

Petitioner Exhibit 17 – Secretary of State website information about Professional Careers Institute,

Petitioner Exhibit 18 – Exemption application for ITT Educational Services, Inc., and decision from the Marion County PTABOA granting 100% exemption to the land and improvements,

Petitioner Exhibit 19 – Parcel information for ITT Educational Services, Inc. property,

Petitioner Exhibit 20 – Secretary of State website information about ITT Educational Services,

Petitioner Exhibit 21 – Exemption application for Educational Management Corporation d/b/a Indiana Business College, and decision from the Marion County PTABOA granting 100% exemption to the land and improvements,

Petitioner Exhibit 22 – Parcel information for Educational Management Corporation property,

Petitioner Exhibit 23 – Secretary of State website information about Educational Management Corporation,

Petitioner Exhibit 24 – Aerial photo, spring tax report, and property record card for ITT Education Services located in Hamilton County,

Petitioner Exhibit 25 – Secretary of State website information about Blankenberger Brothers, Inc.,

Respondent Exhibit 1 – Pre-hearing brief,

Respondent Exhibit 2 – Property record card for subject property,

Respondent Exhibit 3 – Letter dated July 4, 2006, regarding market rental information,

Respondent Exhibit 4 – Copy of *Sangrlea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954 (Ind. Tax Ct. 1997),

Respondent Exhibit 5 – Copy of Board determination in *Troy Tornatta v. Vanderburgh County Property Tax Assessment Board of Appeals and Pigeon Township Assessor*,

Respondent Exhibit 6 – Copy of Board determination in *Brookschool, LLC v. Hamilton County Property Tax Assessment Board of Appeals*,

Respondent Exhibit 7 – Copy of redacted Board determination in *HCPI Indiana, LLC v. Hamilton County Property Tax Assessment Board of Appeals*,

Respondent Exhibit 8 – Copy of request for rehearing in the HCPI case.

6. The Board recognizes the following additional items as part of the record:

Board Exhibit A – Form 132 Petition,

Board Exhibit B – Notice of hearing,

Board Exhibit C – Hearing sign-in-sheet,

Board Exhibit D – Pre-hearing order dated May 30, 2006,

Board Exhibit E – Post-hearing order dated July 19, 2006.

7. The Respondent objected to the Petitioner's exhibits 14 through 25 because they relate to parcels located in Marion County.¹ The Respondent also objected because these exhibits are similar to ones presented in HCPI. In HCPI, the Board stated, “[a]n incorrect decision by a local assessing body does not bind this Board to that same incorrect decision.” On rehearing, HCPI sought removal of that statement from the determination because the records of the Marion County properties were not before the Board and the finding or conclusion regarding the Marion County PTABOA’s decision was unsupported by the evidence. Respondent contends the Petitioner should not present the exhibits to the Board and subsequently chastise the Board because it did not know the facts pertaining to them. The Board overrules the objection and admits exhibits 14 through 25. Nevertheless, the Petitioner bears the burden to establish how the exhibits support its exemption claim.
8. Both parties filed pre-hearing briefs and post-hearing briefs that are part of the record.
9. Evidence considered particularly relevant to this determination includes the following:
 - a. The subject property is a commercial building owned by the Petitioner. Heartland leases approximately 28,000 square feet and during the time in question, A.G. Edwards leased the remaining portion of the building.² A.G. Edwards moved out sometime after March 1, 2004, and First Horizon Home Loans signed a lease for that space on July 29, 2004.³
 - b. Heartland has been at its current location since 2001. It previously held services at the pastor’s home and at a Holiday Inn. *Byrd testimony*. Heartland was a start-up church that did not have funds to build or purchase its own building. *Id.*; *Wilkinson testimony*.

¹ Exhibits 15-23 relate to Marion County properties, but Exhibits 14, 24 and 25 relate to Hamilton County properties.

² Heartland signed one lease of 15,000 square feet and another lease of 13,000 square feet. A.G. Edwards & Sons leased 9,500 square feet. Thus, according to the leases Heartland has approximately 75% of the building.

³ The A.G. Edwards lease and the First Horizon Home Loans lease identify Boomerang Investments, LLC, as the landlord. Boomerang Investments and Oaken Bucket Partners have the same primary investor, Corby Thompson. *Byrd testimony*; *Folkerts testimony*.

- c. Heartland is a traditional church with two worship services on Sunday mornings. *Byrd testimony*. Monday through Friday a day care ministry operates there. *Id.* Numerous meetings take place during the week including youth group ministry, men's and women's bible study groups, fellowship dinners, and classes to help people become familiar with Heartland. *Id.* Heartland has approximately 500 members. *Wilkinson testimony*. The day care has approximately 100 children. *Byrd testimony*.
- d. On June 22, 2001, Heartland signed a 5-year lease agreeing to pay \$8.00 per square foot for 15,000 square feet. On March 7, 2003, Heartland signed a separate 5-year lease agreeing to pay \$6.00 for an additional 13,000 square feet. *Pet'r Ex. 1 at 1; Pet'r Ex. 2 at 2*. The lease requires Heartland to pay \$1,250 per month into escrow in the event the real estate is taxed. *Id. Pet'r Ex. 1 rider at 2*.
- e. On November 2, 1999, A.G. Edwards signed a 10-year lease agreeing to pay \$15.50 per square feet for approximately 9,500 square feet in the same building. A.G. Edwards moved out prior to the expiration of its 10-year lease. On July 29, 2004, First Horizon Home Loan Corporation signed a 6-year lease agreeing to pay \$15.00 per square foot for approximately 10,421 square feet.⁴ *Pet'r Ex. 6 at 1; Pet'r Ex. 8 at 2*.
- f. Mr. David Wilkinson is the treasurer for Heartland Church. *Wilkinson Testimony*. It's an unpaid position that is responsible for numerous accounting duties. *Id.* Mr. Wilkinson is a Certified Public Account and has been a controller for a company for the past 5 years. *Id.* The company recently moved, and Mr. Wilkinson helped shop for new space. Based on this experience, Mr. Wilkinson testified that the market rate for the area around the subject property was \$15.00 per square foot. *Wilkinson testimony*.

⁴ There was no explanation about the difference between the A.G. Edwards space and the First Horizon Home Loan Corporation space. A.G. Edwards paid \$147,240 annually. *Pet'r Ex. 6 at 1*. First Horizon Home Loan Corporation paid \$156,315 annually. *Pet'r Ex. 8 at 2*.

- g. A letter from Mr. Timothy VanKirk, MAI, President, Assessment Advisors, Inc. states, "I have concluded a range in market rental expressed on a 'triple net' basis of \$8.00 to \$10.00 per square foot of building area." *Resp't Ex. 3*. Mr. VanKirk based his opinion on an interior inspection of the subject property, the property record card, and rental comparables relevant to the property's location and physical attributes. *Id.*
- h. The space used by A.G. Edwards had a substantial number of offices or cubicles. The Heartland space was more open. The types of interior improvements would affect the rate. *Folkerts testimony*. Improving the upstairs area of the Heartland space it cost between \$200,000 and \$300,000. *Wilkinson testimony*.
- i. The landlord was responsible for paying for the interior improvements in the A.G. Edwards space. *Pet'r Ex. 6 at 1*. The initial lease signed by Heartland required the landlord to pay 50% of sound proofing costs and additionally pay Heartland \$50,000 towards demolition and construction costs. If the cost of the demolition and soundproofing walls exceeded \$50,000, the landlord was responsible for that amount. *Pet'r Ex. 1 rider at 6*. With respect to the lease for 13,000 square feet, the landlord agreed to reimburse Heartland for improvements made to the building up to \$149,000. *Pet'r Ex. 2 at exhibit B*.
- j. The Respondent granted an exemption to commercial space owned by Cambridge Investments that a township assessor occupies. *Pet'r Ex. 12; Byrd argument*. Several properties in Marion County occupied by non-profit or governmental agencies have exemptions even though they are leased from for-profit entities. *Byrd argument*.
- k. Cambridge Investments was granted an exemption under Ind. Code § 36-1-10-18, which provides an exemption for property leased to municipal offices and agencies. *Folkerts testimony*. Respondent has no knowledge of the Marion County exemptions or why they were granted. *Id.*

Jurisdiction

10. The Board conducts an impartial review of appeals concerning assessed valuation of tangible property, property tax deductions, and property tax exemptions from a determination by an assessing official or a county property tax assessment board of appeals under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

Basis of Exemption and Burden

11. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case that the current assessment is incorrect and specifically what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
12. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
13. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
14. All property generally is subject to property taxation. Ind. Code § 6-1.1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. IND. CONST. Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.

15. All property receives protection, security, and services from the government such as fire protection, security from the police, and public education. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels. *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996). The transfer of this obligation to non-exempt properties is not an inconsequential shift. Therefore, worthwhile activities or noble purposes alone are not sufficient to qualify for tax exemption. The taxpayer must demonstrate that it provides “a present benefit to the general public ... sufficient to justify the loss of tax revenue.” *Miniature Enthusiasts*, 671 N.E.2d at 221 (quoting *St. Mary's Medical Center of Evansville, Inc. v. State Bd. of Tax Comm'rs*, 534 N.E.2d 277, 279 (Ind. Tax Ct. 1989); *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004).
16. In seeking an exemption, a taxpayer must prove that all statutory requirements for that exemption are met. *Indianapolis Osteopathic Hospital*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel Co, Inc. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Ass'n of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).
17. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemption. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E.2d 810, 816 n.8 (Ind. Tax Ct. 1996) (non-profit status does not necessarily entitle a taxpayer to tax exemption).

Analysis of Issue 1

Does the subject property qualify for religious or charitable exemption?

18. The exemption in question states:
- (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.

Ind. Code § 6-1.1-10-16.

19. Additional relevant statutory language provides as follows:
- (a) For purposes of this section, property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.
 - (b) The determination under subsection (c) of:
 - (1) the use or occupation of the property; and
 - (2) the application of an exemption;applies separately to each part of the property identified under IC 6-1.1-11-3(c)(5).
 - (c) If a section of this chapter states one (1) or more purposes for which property must be used or occupied in order to qualify for an exemption, then the exemption applies as follows:
 - (1) Property that is exclusively used or occupied for one (1) or more of the stated purposes is totally exempt under that section.
 - (2) Property that is predominantly used or occupied for one (1) or more of the stated purposes by a church, religious society, or not-for-profit school is totally exempt under that section.
 - (3) Property that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.

- (4) Property that is predominantly used or occupied for a purpose other than one (1) of the stated purposes is not exempt from any part of the property tax.
- (d) Property is not used or occupied for one (1) or more of the stated purposes during the time that a predominant part of the property is used or occupied in connection with a trade or business that is not substantially related to the exercise or performance of one (1) or more of the stated purposes.

Ind. Code § 6-1.1-10-36.3.

- 20. The exemption requires probative evidence that the property is owned, used, and occupied for an exempt purpose. While the words "owned, used and occupied" restrict the activities that may be conducted on the property that can qualify for exemption, they do not require a single entity to achieve a unity of ownership, use and occupancy. Rather, these words are there to ensure that the particular arrangement involved is not driven by a profit motive. Once these three elements are met, the property can be exempt from property taxation. *Knox Co. Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005).
- 21. The Respondent conceded that the Heartland space was occupied for religious purposes, but it denied exemption because the property was not owned and used for any exempt purpose. Accordingly, analysis of this issue must focus on the disputed elements of ownership and use.
- 22. Heartland has a leasehold interest in the property. The Petitioner argues that an interest of less than fee simple can satisfy the ownership requirement, citing *Word of His Grace Fellowship v. State Bd. of Tax Comm'rs*, 711 N.E.2d 875, 877 (Ind. Tax Ct. 1999). Petitioner's reliance is misplaced. The issue in *Word of His Grace* was not ownership of the property, but whether Word had authority to file an exemption application. The State Board of Tax Commissioners conceded that the property was owned, used, and occupied for exempt purposes. *Id.* The State Board of Tax Commissioners argued that Word did not have authority to file an exemption application because it was not the owner of the property. The Tax Court held that argument was a post hoc rationalization and it could not be raised for the first time in the Tax Court. Because the State Board of Tax

Commissioners conceded the property was owned, occupied, and used for exempt purposes, it effectively conceded the property was entitled to an exemption. The Petitioner's case is much different because the Respondent has not made similar concessions and the Board is not engaged in post hoc rationalization.

23. A church that purchased property under a land contract does not qualify as the owner of property. *Community Christian Church, Inc. v. State Bd. of Tax Comm'rs*, 523 N.E.2d 462, 465 (Ind. Tax Ct. 1998); *see also* Ind. Code § 6-1.1-1-9. "The vendor, who holds legal title to the property, is the owner under IC 6-1.1-10-16(a)." *Id.* Similarly, Heartland is not the owner within the meaning of Ind. Code § 6-1.1-10-16. Petitioner has legal title to the property and is the owner. Petitioner claimed an exemption under Ind. Code § 6-1.1-10-16 for charitable and religious purposes. Therefore, Petitioner bears the burden of providing probative evidence that it owns the property for exempt purposes.
24. Exemption statutes are "decidedly aimed at fostering the operations of charitable enterprises by allowing a tax exemption for engaging in conduct beneficial to the general public." *Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 959 (Ind. Tax Ct. 1997). The Petitioner agreed to Heartland's use and occupancy via the leases. The Petitioner argues that the public benefit is Heartland's religious use. The Petitioner also argues, "neither the identity of the owner nor the owner's profit motive (or lack thereof) is relevant in determining whether the Heartland Space qualifies for an exemption." *Petitioner's Post Hearing Brief* at 8.
25. To construe the ownership aspect as Petitioner argues, however, would nullify the clear language in Ind. Code § 6-1.1-10-16. The exemption statute "contains specific limits of ownership, occupation, and use in furtherance of [exempt] goals. These limits prevent an entity from leasing property to another, for either party's profit and claiming an exemption." *Sangralea*, 686 N.E.2d at 959. In that case, Sangralea owned the property in question and actually engaged in exempt activities. Sangralea leased out a portion of its building (rent free) to other entities engaging in exempt activities. The Tax Court held:

Because a property's exempt status is tied to its use, it is clear that Sangralea is entitled to an exemption. Sangralea owned the property and ensured it was used in charitable work. *Sangralea does not own the property as investment property or with a motive of profit. The use and occupation of the property by the Lessees is in furtherance of Sangralea's exempt purposes. Sangralea contracted with Lessees to operate the property in a manner consistent with Sangralea's charitable purpose.* Lessees and Sangralea have simply come to an agreement as to the method of producing public benefit from the property. No profit is made on the venture, and noble goals are accomplished. Therefore, the property is owned, occupied, and used for charitable purposes.

Sangralea, 686 N.E.2d at 959 (emphasis added). Sangralea excludes investment and profit motives from exemption.

26. Nevertheless, citing *Grandview*, the Petitioner argues that exempt status is tied to use and not ownership of the property. In *Grandview*, the owner of a property contracted with a for-profit management firm to run a home for the elderly. The Tax Court stated that “the PTABOA has presented no evidence that the fees charged by Grandview are more than sufficient to pay its expenses. Likewise, the PTABOA has presented no evidence that Grandview is deriving a profit from the operation of [the property].” *Grandview*, 826 N.E.2d at 184.⁵ While the Tax Court affirmed that Grandview's property was exempt, the decision does not support the Petitioner's broad claim that the identity of the owner, the user, and the occupier are irrelevant.
27. The language of Ind. Code § 6-1.1-10-16 does not differentiate between entities that are not-for-profit and those that are for-profit. *College Corner, LP, v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 911 (Ind. Tax Ct. 2006). College Corner was a limited partnership organized to revitalize an historic area of Indianapolis. Its goal was to rebuild the area's infrastructure, renovate the existing homes, and build new homes that would reflect the historic character of the neighborhood. The general partner was an Indiana not-for-profit corporation with a 501(c)(3) designation. The sole limited partner was an Ohio for-profit corporation. The limited partner provided equity and got a fixed return on its investment. As part of its activities in renovating the neighborhood, College Corner rebuilt and added infrastructure such as sidewalks and alleys. The Tax Court held:

⁵ In *Grandview*, the local assessor was the challenging party with the initial burden. In the present case, Oaken Bucket Partners has that burden.

When a private organization takes on a task that would otherwise fall to the government, this provides a benefit to the community as a whole because it allows the government to direct its funds and attention to other community needs. Therefore, the Court agrees that restoration of College Corner's infrastructure lessens the burden of government and thus constitutes a charitable purpose.

Id. at 910.

28. While the Petitioner's status as a for-profit entity is not a determining factor, the manner in which *the owner* uses the property is relevant. The Petitioner leased the property to Heartland in what appears to be a standard business arrangement. The Petitioner charged Heartland \$8.00 per square foot for 15,000 square feet and \$6.00 per square foot for an additional 13,000 square feet.⁶ The Petitioner leased another 9,500 square feet of space in the same building to A.G. Edwards for \$15.50 per square foot.⁷ Mr. Wilkinson testified that based on his experience and knowledge of the market in the area, that \$15.00 per square foot was the going rate. The Respondent presented a letter signed by an MAI appraiser stating his opinion that a market range for a triple net rate would be between \$8.00 and \$10.00 per square foot. Thus, while there is a little evidence that Heartland pays less than market price for its leases, there is also a little evidence that Heartland pays something close to market price. Significantly, there is no probative evidence from Oaken Bucket Partners itself about how Heartland's rates were set, about expenses associated with the property, or about the owner's motivation and intent in entering the Heartland leases.⁸ The totality of this evidence does not convince the Board that Heartland pays significantly less than market rate for its two areas. Nor does it prove that charitable or religious reasons motivated the Petitioner. Thus, the Petitioner failed to prove that its ownership and use of this property is devoted to an exempt purpose.

29. Furthermore, the Petitioner failed to provide probative evidence to show how the public benefited by its leases with Heartland. No probative evidence was presented to show

⁶ Therefore, the total payment for both Heartland leases would be \$198,000 per year.

⁷ The two Heartland leases and the A.G. Edwards lease collectively apply to 37,500 square feet. The property record card lists several thousand square feet less for the same building. This discrepancy was not explained or addressed by either party.

⁸ For example, what marketing efforts took place regarding this property? Was leasing to Heartland simply preferable to having a vacancy?

how the Petitioner owned or used the property for anything other than an investment. The record does not indicate the lease requires Heartland to use the property for charitable or religious purposes. The record does not indicate Petitioner put any type of limitation on how Heartland uses the property.

30. The Petitioner failed to prove how it uses the property in an exempt manner.

Analysis of Issue 2

Is denial of exemption consistent with constitutional requirements for uniform and equal treatment of similarly situated property owners?

31. The Petitioner argues that Respondent wrongfully denied exemption because it is a for-profit corporation. Petitioner relies on an Indiana Supreme Court case that held an exemption must be based on use of property and cannot be denied simply because the owner belongs to a certain class of persons (such as for-profit corporations). The Petitioner is correct that a charitable or educational exemption cannot be denied because the owner of the property is a for-profit corporation. The charitable and educational exemption statute, Ind. Code § 6-1.1-10-16, makes no such distinction. *College Corner*, 840 N.E.2d 905.
32. Even if Respondent denied the exemption for invalid reasons at the PTABOA level, that fact does not establish that Petitioner qualifies for any particular exemption.
33. The Petitioner's burden is to present probative evidence that it qualifies for an exemption. The Board's hearing is de novo. Consequently, a de novo hearing cures any alleged constitutional violation by the Respondent in denying the exemption. The alleged constitutional violations in the PTABOA decision, whether they actually existed or not, are moot.
34. The Petitioner presented evidence indicating certain for-profit entities in Marion County were granted exemption. There is no evidence establishing that the facts and situations are similar to this case. Furthermore, each petitioner has the burden to provide probative

evidence indicating the subject property is owned, occupied, and used for an exempt purpose. The Board is not bound to reach the same conclusion as a local assessing board. These exhibits are of no probative or persuasive value.

35. The Petitioner's constitutional arguments regarding the charitable and religious exemption are based on a faulty premise because the Board does not consider the for-profit status of Petitioner to be a determinative test. There will be no change to allow the exemption as a result of the Petitioner's constitutional arguments.

Summary of Final Determination

36. The Petitioner failed to prove that it owns and uses this property in a predominantly exempt (religious or charitable) manner. The exemption claim is denied.
37. The Petitioner failed to establish a prima facie case that denial of its exemption claim creates any state or federal constitutional violation. The Board finds for the Respondent on this issue.

The Indiana Board of Tax Review hereby issues its final determination on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.