

REPRESENTATIVE FOR PETITIONER:

DeJuain Boyd, President, Brotherhood Athletic Education Association, Inc.

REPRESENTATIVE FOR RESPONDENT:

Kostas A. Poulakidas, Assistant Corporation Counsel, City of Indianapolis

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

BROTHERHOOD ATHLETIC EDUCATION ASSOCIATION, INC.,	)	
	)	Petition No.: See Attached List
	)	
Petitioner,	)	Marion County
	)	
v.	)	Center Township
	)	
MARION COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS,	)	Parcel No.: See Attached List
	)	
Respondent.	)	Assessment Year: 2001

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

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**May 17, 2006**

**FINAL DETERMINATION**

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

Although the record contains a multitude of disputed points, there is one fundamental issue.

Issue: Are the Petitioner's properties exempt under Ind. Code § 6-1.1-10-16(a), (c), or (d)?

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Procedural History

1. The Petitioner, Brotherhood Athletic Education Association, Inc. (BAEA), filed Form 136 exemption applications for the subject properties on or about November 1, 2000. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying exemption on April 26, 2002.
2. Pursuant to Ind. Code § 6-1.1-11-7, Mr. Dejuain Boyd, President of BAEA, filed numerous Petitions for Review of Exemption (Form 132) on May 24, 2002, seeking the Board's administrative review of that PTABOA action.
3. The Board scheduled a hearing for those petitions on March 13, 2003, but the Petitioner requested a continuance. In doing so, the Petitioner waived the Board's deadlines for holding a hearing and deciding this appeal. The Board granted that request. On May 9, 2003, the Respondent filed a Praecipe for Hearing.
4. The Board rescheduled the hearing and notice was mailed to the Petitioner at the address listed on the Form 132 petitions on October 3, 2003. This rescheduled hearing was set for December 11, 2003, before Brian McKinney, the Board's duly designated Administrative Law Judge (ALJ).
5. The Petitioner did not appear at this hearing. The Board issued an Order of Dismissal on January 21, 2004, and mailed it to the same address where the Board had mailed the notice of hearing. The Petitioner responded to the dismissal on January 30, 2004, claiming notice of the hearing was never received. On February 3, 2004, the Board vacated the dismissal and rescheduled a hearing.
6. The Board rescheduled a hearing for April 13, 2004. Both parties appeared on April 13, 2004. At this hearing, Mr. Joseph D. Geeslin, Jr. appeared as counsel for the Petitioner. This hearing was continued at the request of both parties. After the attempted hearing on

April 13, 2004, the Petitioner requested a copy of the tape recording of that proceeding. Due to an operator error, however, the full proceeding was not recorded.

7. The Board scheduled another hearing for June 22, 2004. The ALJ sent a letter to the Petitioner explaining the recording error and that the hearing scheduled for June 22, 2004, would be a full hearing. Furthermore, nothing that transpired on April 13, 2004, would be part of the record for the hearing. This letter explained “[s]ince the events of the 13<sup>th</sup> [of April] made it necessary, after discussion and agreement among the parties, to continue the proceedings, I would now consider what took place on the 13<sup>th</sup> [of April] the equivalent of a pre-hearing conference.”
8. As part of its order setting another hearing date for June 22, 2004, the Board ordered all parties to abide by the rules in 52 IAC 2-7-1. Specifically, the rules require the exchange of exhibit and witness lists at least fifteen days prior to the hearing and the exchange of exhibits and summaries of anticipated testimony at least five days before the hearing. The order also informed the parties that those deadlines would be strictly enforced and failure to abide by them would result in evidence not being admitted. The parties were reminded that a copy of all exhibits must be provided to the ALJ.
9. On April 30, 2004, the Respondent filed a motion requesting the Board set aside a specific time for a physical exchange of evidence. This motion was granted and the Board sent out an order to the parties ordering them to meet on June 15, 2004, in the office of the Board for a physical exchange of evidence.
10. On May 25, 2004, new counsel for the Respondent filed a notice of appearance. Shortly thereafter, on June 2, 2004, the Board received Respondent’s witness and exhibit lists. Respondent certified that a copy of the lists was sent to Petitioner’s counsel and to the Petitioner.
11. On June 14, 2004, the Petitioner filed an emergency motion to continue hearing due to Petitioner’s counsel withdrawing without notice. Petitioner stated that on Friday, June 11, 2004, Mr. Geeslin returned the BAEA’s file and informed Petitioner that he would no

longer be representing it in this matter. The Board subsequently received a letter from Mr. Geeslin stating that he was no longer representing the BAEA and withdrawing his appearance.

12. The Board continued the hearing scheduled for June 22, 2004, and physical exchange of evidence scheduled for June 15, 2004. The hearing was continued until November 18, 2004. The parties were again ordered to meet in the office of the Board on November 12, 2004, for a physical exchange of evidence. The order reminded the parties that the exchange of evidence rules apply.
13. On October 26, 2004, new counsel for the Respondent filed a notice of appearance. On November 1, 2004, the Board received a copy of the Respondent's witness and exhibit list. The Respondent certified that a copy of the lists was served via Federal Express overnight mail.
14. On November 12, 2004, the Respondent appeared for a physical exchange of evidence in compliance with the Board's order, but the Petitioner did not appear to exchange evidence. The Petitioner never contacted the Respondent or the Board in any attempt to reschedule the exchange of evidence.
15. On November 18, 2004, the hearing in this matter actually started. Brian McKinney was the presiding ALJ that day. Mr. Boyd, as President of the BAEA, was present to represent the Petitioner. The Respondent was represented by counsel. Due to a previous appointment of one of the Respondent's attorneys, the hearing could not be completed at that time. The parties agreed to continue the hearing until Monday, November 22, 2004.
16. At the hearing on November 18, 2004, the Petitioner attempted to submit numerous documents identified as Petitioner's Exhibits 1 through 15. Mr. Boyd stated that some of the documents were his only copy and indicated a desire to keep them. Therefore, the ALJ returned all the Petitioner's documents. They were not put into the record at this hearing. Mr. Boyd was instructed to make copies of those exhibits and offer them as evidence for the record at the next hearing.

17. The hearing reconvened on November 22, 2004. Again, Brian McKinney was the presiding ALJ. On this day, Mr. Boyd represented the Petitioner. The Respondent was represented by counsel. At this proceeding, Mr. Boyd provided the previously identified Petitioner's Exhibits 1, 2, 3, 4, 5, 6, 14, and 15. He did not provide Exhibits 7, 8, 9, 10, 11, 12, or 13. Due to a reported illness of Mr. Boyd's wife, the hearing had to be continued before it could be completed. On November 24, 2004, the Board issued an order setting the matter for December 15, 2004. The order emphasized the exchange of evidence rules and reminded parties to present a copy of all exhibits to the Board.
18. On December 7, 2004, the Petitioner filed a motion for continuance. The Petitioner stated that a new attorney has agreed to provide representation. On December 9, 2004, the Board held a telephonic conference to hear arguments on the motion for continuance. The Petitioner was given until close of business on December 10, 2004, to have a notice of appearance and a motion for continuance from counsel on file.
19. On December 9, 2004, the Petitioner requested a copy of that conference call. On December 10, 2004, a letter informed the Petitioner that the telephonic conference was not recorded and no such transcript exists.
20. On December 10, 2004, Joseph Calderon of Ice Miller contacted Ted Holaday, Senior Administrative Law Judge, and stated that he would be representing the Petitioner. Mr. Calderon requested a couple days to present his appearance and motion for continuance. That request was granted. On December 14, 2004, the Board received the notice of appearance and motion for continuance.
21. The Board granted Mr. Calderon's motion for continuance and continued the hearing to February 2, 2005.
22. On January 25, 2005, the Board received a substitute appearance for new counsel representing the Respondent.

23. On February 2, 2005, the hearing resumed. At this time, Ted Holaday was the presiding ALJ. The testimony and evidence introduced in previous hearings were recognized as part of the official record. Nevertheless, the ALJ requested counsel to present their cases from the beginning because there had been so many interruptions and personnel changes. The Petitioner had the opportunity to present all documents that were discussed, but kept by Mr. Boyd after the hearing on November 18, 2004, and not supplied on November 22, 2004. Specifically, those items still not in the record were Petitioner's Exhibits 7, 8, 9, 10, 11, 12, and 13. When questioned about each of those exhibits, Mr. Boyd indicated that he already provided the Board with a copy, or that he did not wish to introduce the exhibit. Each time, the ALJ informed Mr. Boyd that his exhibits were not in the record. Therefore, failure to present the exhibit at this hearing would keep the Board from considering an exhibit and keep that exhibit from becoming part of the official record, should either party file an appeal to the Tax Court. Nevertheless, Petitioner did not introduce those exhibits for the record.
24. The Petitioner and the Respondent both concluded the presentation of their cases at the hearing on February 2, 2005. At that time, the ALJ permitted the parties to submit briefs and proposed findings by March 4, 2005.
25. On March 4, 2005, the Respondent filed proposed findings. On March 4, 2005, the Petitioner (by different counsel, Sandra K. Bickel) requested additional time to submit a brief for the Petitioner because Petitioner's attorney recently left the law firm and the case had been assigned to new counsel. The Board granted the extension of time and permitted the Petitioner to file its brief and proposed findings by March 18, 2005.
26. On March 18, 2005, the Board received another request for additional time from Mr. Boyd, who indicated the Petitioner was not happy with its most recent new attorney and as a result, he stated the Petitioner was no longer represented by counsel. The Board gave the Petitioner until April 1, 2005, to file a brief and proposed findings.
27. On March 31, 2005, the Board received another motion from Mr. Boyd for the Petitioner stating a complaint had been filed with the Indiana Civil Rights Commission (ICRC) and

requested the Board stay these proceedings to allow the ICRC to investigate the complaint. He also stated the Petitioner was attempting to hire another attorney. Finally, he claimed the Petitioner lacked sufficient time to file a brief by April 1, 2005.

28. On April 1, 2005, the Board denied the Petitioner's request for additional time. On April 8, 2005, the Petitioner submitted a Request for Reconsideration, which the Board denied on April 13, 2005.
29. On April 19, 2005, the Board received another appearance for a new counsel, Kostas A. Poulakidas, representing the Respondent.

### **Hearing Facts and Other Matters of Record**

30. The following persons were present at the hearings:

For the Petitioner: Joseph D. Calderon, Attorney, ICE MILLER,<sup>1</sup>  
Dejuain Boyd, President, BAEA,  
Jesse Tucker, Sr., Director of BAEA,<sup>2</sup>

For the Respondent: Paul T. Belch, Assistant Corporation Counsel,  
Joseph Bowman, Assistant Corporation Counsel,  
Mark J. Crandley, Assistant Corporation Counsel,  
Melissa Tetrick, Exemption Deputy, Marion County,  
Patsy Sharpe, Chief Deputy, Marion County.

31. Dejuain Boyd, President, BAEA, and Melissa Tetrick, Marion County Exemption Deputy, were sworn as witnesses and presented testimony.

32. The following items were presented:

Petitioner's Exhibit A – Letter to Mr. Boyd from Melissa Tetrick dated August 20, 2001,

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<sup>1</sup> Only present at the hearing on February 2, 2005. On March 18, 2005, the Petitioner indicated it was not happy with the representation and had ended it. According to Mr. Boyd, the BAEA has had approximately 67 different attorneys.

<sup>2</sup> Present on November 22, 2004, but did not present any testimony.

Petitioner's Exhibit B – Letter to Mr. Boyd from Joanna Walker dated May 8, 2000,

Petitioner's Exhibit C – Letter to Mr. White from Sheryl M. Sharpe dated February 13, 2001,

Petitioner's Exhibit D – Letter to Mr. Boyd from Wendy C. Landes dated December 21, 2001,

Petitioner's Exhibit 1 – Duplicate of Petitioner's Exhibit B,

Petitioner's Exhibit 2 – Manila folder titled CB Richard Ellis 3-10-03,

Petitioner's Exhibit 3 – Folder titled Smoot, Columbus, Indianapolis, Washington,

Petitioner's Exhibit 4 – Winthrop Gardens Preliminary Site Plan, March 23, 2000,

Petitioner's Exhibit 5 – Letter to Mr. Boyd from Maury Plambeck dated April 23, 2002,

Petitioner's Exhibit 6 – Packet of information with cover page from Davis Homes regarding Winthrop Gardens dated March 21, 2000,

Petitioner's Exhibit 7 – MPC Real Development LLC information,\*

Petitioner's Exhibit 8 – Logan Architects information,\*

Petitioner's Exhibit 9 – Smoot construction letter dated February 26, 2002,\*

Petitioner's Exhibit 10 – Diamon Co. dated February 15, 2002,\*

Petitioner's Exhibit 11 – CB Richard Ellis, dated March 10, 2003,\*

Petitioner's Exhibit 12 – IHFA Letter dated February 13, 2001,

Petitioner's Exhibit 13 – Mansur information, dated May 3, 2002,\*

Petitioner's Exhibit 14 – Letter dated January 26, 2001 regarding zoning appeals,<sup>3</sup>

Petitioner's Exhibit 15 – Public Records Request form from Dejuain Boyd received by Marion County Assessor May 9, 2002,

Petitioner's Exhibit 16 – Order from Marion County Circuit Court dated November 4, 2002,

Petitioner's Exhibit 17 – Memorandum Decision of the Court of Appeals of Indiana dated December 15, 2003,

Petitioner's Exhibit 18 – Letter dated March 8, 1999, from Marion County PTABOA to BAEA requesting information,

Petitioner's Exhibit 19 – Handwritten "Progress" page,

Respondent's Exhibit 15 – Nine-page packet of photographs,

Board Exhibit A – Form 132 Petition for Review of Exemption,

Board Exhibit B – Notice of Hearing.

33. Petitioner's Exhibits A, B, C, and D, as well as Petitioner's Exhibits 2 and 15 were admitted without objection. Furthermore, Petitioner's Exhibit 14 was withdrawn. No ruling is required regarding these exhibits.

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\* The Petitioner attempted to present these exhibits at the initial hearing, but Mr. Boyd indicated that some items were his only copy and indicated a desire to keep those items. Therefore, the ALJ gave exhibits 1-15 back to permit Mr. Boyd to make copies and present the exhibits when the hearing reconvened. The Petitioner subsequently failed to provide these exhibits for the record.

<sup>3</sup> The Petitioner withdrew this exhibit during the hearing on February 2, 2005.



34. The Respondent objected to Petitioner's Exhibits 1, 3 through 14, and 16-19 because they were not disclosed or exchanged as required by applicable rules and specific order of the Board. The Petitioner never appeared to exchange exhibits, nor did the Petitioner provide the Respondent with a list of exhibits or summary of witness testimony. The Petitioner's responses to these objections were all either "they already have it," or "they have seen it," or "I object to his objection." Petitioner never contended he had not received the Board's order to meet for a physical exchange of evidence. The Petitioner never explained the reason he did not appear for the physical exchange of evidence on November 12, 2004.
35. Petitioner's Exhibit 1 is admitted because it is an identical copy of Petitioner's Exhibit B, to which the Respondent did not object. Although the Petitioner failed to supply a copy of its Exhibit 12 for the record, a copy of this letter is attached to the Form 132 and on that basis this IHFA letter can be considered part of the evidence the Board considered in this case. Petitioner's Exhibit 16 and 17 are admitted over Respondent's objections because they are Court orders and a matter of public record.
36. The Petitioner's failure to supply copies of its Exhibits 7, 8, 9, 10, 11, and 13 has effectively disposed of any question concerning their admissibility. Nevertheless, the Respondent's objections to those exhibits also are sustained because the Petitioner failed to satisfy applicable requirements for pre-hearing exchange of evidence. In addition, the Respondent's objections to Petitioner's Exhibits 3, 4, 5, 6, 18, and 19 also are sustained. The Board will not consider those exhibits any further in reaching a final determination about the Petitioner's exemption claim.<sup>4</sup> The Petitioner was informed many times that the exchange of evidence rules would be enforced, but the Petitioner failed to conform to those requirements. Therefore, the exclusion of the exhibits that were not exchanged as required is an appropriate sanction.

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<sup>4</sup> Even if these exhibits were admitted, the Petitioner did not establish how they supported its case. In most instances, Mr. Boyd merely identified the exhibit, read a portion of it and then moved on to the next exhibit. It is the taxpayer's duty to walk the Indiana Board and [the Tax] Court through every element of its analysis. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) citing *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n.4 (Ind. Tax Ct. 2002).

37. The Petitioner objected to Respondent's Exhibit 15 both generally and then specifically regarding certain photographs contained therein. Based on discussion and agreement during the hearing on February 2, 2005, the exhibit itself is marked with "in" and "out" on individual photographs. Those marked as "in" are admitted and those marked as "out" have not been considered by the Board in this appeal. No other ruling by the Board is required regarding Respondent's Exhibit 15.
38. All parcels covered by this appeal (except the property located at 2701 Winthrop) are located in the same block and are contiguous to each other. They are identified collectively as the 2400 block property. The 2701 Winthrop parcel is also part of this appeal. During the course of the hearing, the Petitioner often referred to property that the BAEA owns at 1720 and 1722 E. 38<sup>th</sup> Street and property located in the 2600 block of Winthrop Ave. They are not part of this appeal.
39. The properties were all donated to the BAEA in 1997. *Boyd testimony.*
40. For tax years 1998, 1999, and 2000 the properties were exempted by the PTABOA as a future building site under Ind. Code § 6-1.1-10-16(d). *Tetrick testimony; Calderon argument; Pet'r Ex. A.* The Petitioner is planning to build a 64-unit low-income housing apartment complex in the 2400 block of Winthrop Avenue. *Boyd testimony.* The estimated cost of the entire project is in excess of \$6,000,000. *Id.*
41. In May of 2000, the zoning board granted a variance to the 2400 block of Winthrop to allow multi-family residential property to be built.<sup>5</sup> *Pet'r Ex. B; Calderon argument.* The Petitioner had to submit petition, papers, and a site plan, professionally drawn to scale, to receive the zoning variance. *Boyd testimony.* Davis Homes developed the site plan and also did an environmental study on the property around the same time. *Id.*
42. The Indiana Housing Finance Authority (IHFA) classified the properties as a Community Housing Development Organization (CHDO) in 2001. *Pet'r. Ex. C.* The Petitioner was awarded a \$50,000 CHDO pre-development loan from the IHFA in December of 2001.

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<sup>5</sup> These properties had previously been zoned as I-4 industrial properties.

*Pet'r Ex. D.* Construction on the planned development had not begun as of the date of these hearings. *Tetrick testimony.*

### **Jurisdiction**

43. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

### **Administrative Review and the Petitioner's Burden**

44. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect. *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).
45. 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”).
46. 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.

## Basis of Exemption and Burden

47. According to the general rule in Indiana, all property that is located in this state on the assessment date is subject to property taxation. Ind. Code § 6-1.1-2-1. All property receives protection, security, and services from the government, e.g., fire and police protection, and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218, 220 (Ind. Tax Ct. 1996).
48. The General Assembly may exempt from property taxation any property that is used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.
49. The transfer of tax obligations to non-exempt properties is not an inconsequential shift. Therefore, worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is justified and upheld on the basis of accomplishment of public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
50. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. 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 Dep't of Revenue*, 667 N.E.2d 810, 816 n.8 (Ind. Tax Ct. 1996) (nonprofit status does not entitle a taxpayer to tax exemption).
51. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Indianapolis Osteopathic Hospital, Inc. v. Dep't*

*of Local Gov't Fin.*, 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).

52. 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*, 818 N.E.2d at 1014.
53. The property must be predominantly used for exempt purposes to qualify for exemption. Ind. Code § 6-1.1-10-36.3.
54. During portions of these proceedings, the Petitioner "objected" to having the burden of proof and claimed the Respondent should have the burden to establish reasons for denying its exemption. The Petitioner failed to provide substantial support for its position, which conflicts with the vast body of law as summarized in the preceding paragraphs. The Petitioner's bald assertions and objection regarding the burden of proof for an exemption lack any merit, and therefore, the Board must reject them.

### **Analysis**

55. The Petitioner contends that the properties are exempt under Ind. Code § 6-1.1-10-16(a) or (c). The Petitioner further claims that subsection (d) does not apply because the properties in question were donated to the Petitioner and not purchased by the Petitioner. In the alternative, the Petitioner contends there was activity that would qualify as substantial progress during 2000 and 2001.
56. The Respondent contends the properties are not exempt under Ind. Code § 6-1.1-10-16(a) or (c) because there is no building on the subject properties. The Respondent also

contends the Petitioner has not shown substantial progress as required by Ind. Code § 6-1.1-10-16 (d).

57. The most applicable governing law is:

- (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.

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- (c) A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if:

- (1) a building which is exempt under subsection (a) or (b) is situated on it; and

- (2) the tract does not exceed:

- (A) fifty (50) acres in the case of:

- (i) an educational institution; or

- (ii) a tract that was exempt under this subsection on March 1, 1987; or

- (B) two hundred (200) acres in the case of a local association formed for the purpose of promoting 4-H programs; or

- (C) fifteen (15) acres in all other cases.

- (d) A tract of land is exempt from property taxation if:

- (1) it is purchased for the purpose of erecting a building which is to be owned, occupied, and used in such a manner that the building will be exempt under subsection (a) or (b);

- (2) the tract does not exceed:

- (A) fifty (50) acres in the case of:

- (i) an educational institution; or

- (ii) a tract that was exempt under this subsection on March 1, 1987;

- (B) two hundred (200) acres in the case of a local association formed for the purpose of promoting 4-H programs; or

- (C) fifteen (15) acres in all other cases; and

- (3) not more than three (3) years after the property is purchased, and for each year after the three (3) year period, the owner demonstrates substantial progress towards the erection of the intended building and use of the tract for the exempt purpose. To establish that substantial progress is being made, the owner must prove the existence of factors such as the following:

- (A) Organization of and activity by a building committee or other oversight group.

- (B) Completion and filing of building plans with the appropriate local government authority.

- (C) Cash reserves dedicated to the project of a sufficient amount to lead a reasonable individual to believe the actual construction can and will begin within three (3) years.
- (D) The breaking of ground and the beginning of actual construction.
- (E) Any other factor that would lead a reasonable individual to believe that construction of the building is an active plan and that the building is capable of being completed within six (6) years considering the circumstances of the owner.

Ind. Code §6-1.1-10-16 (a); (c); and (d) (2000).<sup>6</sup>

### *The Parcels and Tax Year Under Appeal*

58. An exemption is a privilege. If the owner of the property does not follow the procedure to apply for an exemption, it is waived. If the exemption is waived, the property remains taxable. *See* Ind. Code § 6-1.1-11-1; *Kentron, Inc. v. State Bd. of Tax Comm'rs*, 572 N.E.2d 1366 (Ind. Tax Ct. 1991); *Dav-Con, Inc. v. State Bd. of Tax Comm'rs*, 644 N.E.2d 192 (Ind. Tax Ct. 1994).
59. The attachment at the end of this determination lists the thirteen specific parcels and petitions. The Petitioner contends that other years are at issue and that other parcels should have been included in the appeal. The Petitioner had the opportunity to present evidence supporting his position, but the Petitioner failed to prove the Board had jurisdiction over other years or parcels. For example, the Petitioner never provided copies of exemption applications for other parcels or other years or copies of PTABOA determinations for other parcels or other years. Although it could have made such a request, the Petitioner failed to make a proper and timely request to consolidate any other cases with this proceeding. The Petitioner also failed to provide the kind of specific facts that might support such action.

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<sup>6</sup> Indiana Code § 6-1.1-1-16 has been amended many times. This version is the one that was in effect for assessments as of March 1, 2001. The legislative amendments in 2001 (Public Law 198-2001, § 123) took effect on July 1, 2001. Furthermore, those amendments do not appear to have any effect on the Petitioner's claim in this case.

60. Furthermore, the Petitioner failed to establish how exemption claims for its other properties and for other tax years has relevance to the question of whether or not the thirteen parcels in this case are entitled to exemption.
61. The Board is not convinced that the Petitioner currently has any other exemption claims pending before it. More importantly, however, that point is not significant to the outcome of this case. If the Petitioner has other exemption claims that are validly pending, those claims can be determined in separate proceedings. While it might have been more efficient to hear all similar claims at the same time (if there are any others), the Petitioner failed to sufficiently present any such additional claims for consideration in this matter. Therefore, this decision is only for the thirteen parcels on the attached list, also identified as the 2701 Winthrop property and the 2400 block property.
62. As to the dispute about the assessment year or years involved, the record is clear that the exemption applications for the subject properties were all filed on or about November 1, 2000. Thus, even though the Petitioner's applications requested exemption for 2000, they were filed too late to be effective for the assessment as of March 1, 2000. Ind. Code § 6-1.1-11-3. The PTABOA's action on those petitions was a determination for the 2001 assessment. The petitions to the Board seek review for the 2001 assessment. Consequently, that is the only year the Board will decide at this time.

#### *Constitutionality*

63. The Petitioner contends the law is unconstitutional. It is assumed the Petitioner is referring to Ind. Code § 6-1.1-10-16, however, the Petitioner was not sufficiently specific. Mr. Boyd stated that the legislature probably did not consult the people when this law was written, and it was made for the benefit of the assessor's office. Mr. Boyd stated this law does not benefit any property holder and is therefore, unconstitutional. The Petitioner did not cite to any authority supporting the constitutional claims. The Petitioner offered conclusory statements arguing that taking a property for failure to pay taxes is a violation of the takings clause of the United States Constitution. Such statements are not probative and they are not substantial evidence. *Whitley Products v.*



*State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Lacy Diversified v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003).

64. The alleged taking of a property and selling it at tax sale for failure to pay taxes is not something within the purview of this Board. While the Petitioner must raise any constitutional claims during this stage of the proceedings, the Board does not have authority to decide constitutional matters. *State v. Sproles*, 672 N.E.2d 1353, 1360 (Ind. 1996). The Board has no authority to rule a statute unconstitutional and will not do so.
65. Furthermore, the Petitioner failed to establish how the purported invalidity of authority regarding tax sales has any relevance to its qualification for property tax exemption. Accordingly, the Board will not rule on the Petitioner's constitutional claim.

#### *Objection to the Law*

66. While acting as the Petitioner's representative, Mr. Boyd objected to "the law" numerous times, but offered no meaningful, legal reasons for such an objection. He objected to Ind. Code § 6-1.1-10-16 (d) because it did not benefit the people of Indiana. He did not present any evidence or legal argument supporting those objections. Furthermore, he rarely specified the reasons for his objections, instead making blanket statements such as "I object to everything he said," or "I object to the law."
67. Objections and the reasons for them must be specific. These are not. Furthermore, the tax laws as enacted by the Legislature are not subject to objection, even if a taxpayer disagrees with them. Consequently, all such objections made by Mr. Boyd on this basis are overruled.

#### *Bias*

68. The Petitioner argued that the assessor, auditor, and the PTABOA are biased against the BAEA. First and foremost, the Board concludes that there is no probative evidence to

support the conclusory statements that bias existed during these proceedings or resulted in denying the Petitioner's exemption claim at the local level.

69. In this proceeding, the Petitioner has the burden to prove the Respondent's decision is incorrect and that the property actually is entitled to the exemption. The hearing before the Board is *de novo*. The decision of the PTABOA is not binding on the Board. The Petitioner had the opportunity to present whatever evidence and argument it determined to be appropriate to support of its position. The Petitioner failed to establish any purported bias might be relevant in this *de novo* hearing.
70. The Petitioner's burden is the same, regardless of how the local officials reached their decision. Therefore, the Petitioner must establish a prima facie case that it qualifies for the exemption. Assuming, *arguendo*, that the Respondent has some sort of bias, the Petitioner would still be required to prove the property is entitled to the exemption. That fact alone would not be a reason to allow an exemption for property that did not otherwise qualify.

#### The 2400 Block Property

##### *Ind. Code § 6-1.1-10-16(a) and (c)*

71. The Respondent correctly points out that both 16 (a) and (c) contain clear, specific language that requires a building that is being used for one or more of the exempt purposes: educational, literary, scientific, religious, or charitable. Subsection (a) provides for exemption of a qualified building itself, and subsection (c) provides for exemption of a tract of land if there is an exempt building on it.
72. The Petitioner did not present probative evidence that at any relevant time there was a building on any of the parcels constituting this property. Furthermore, even if one or more buildings were present, the Petitioner presented no probative evidence regarding the use of the property for exempt purposes.

73. The Petitioner presented evidence and testimony about a building located in the 2600 block of Winthrop Avenue. That property, however, is not the subject of this appeal. The Petitioner failed to establish how that evidence might be relevant. Furthermore, even if that property were a part of this proceeding, the Petitioner did not provide evidence about its actual use, which would be essential to proving exemption.
74. The Petitioner also points out that the federal government recognized the BAEA as a tax-exempt entity. In Indiana, however, use by a nonprofit entity does not establish any inherent right to exemption from property taxes. 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 the property is used. *Raintree Friends Housing*, 667 N.E. 2d at 810. Section 501(c)(3) status does not necessarily entitle a taxpayer to property tax exemption. *Id.* To qualify for a charitable property tax exemption, the property must be predominately used or occupied for a charitable purpose. Ind. Code § 6-1.1-10-36.3; *see New Castle Lodge #147*, 765 N.E.2d 1267. The fact that BAEA has an income tax exemption does not prove that the use of the property qualifies it for property tax exemption.
75. The Petitioner did not establish that any of these properties qualify for an exemption based on current use. Furthermore, the Petitioner did not establish any benefit to the public that would justify the loss of tax support this property should provide. The Petitioner failed to prove any exemption under Ind. Code § 6-1.1-10-16 (a) or (c).

*Ind. Code §6-1.1-10-16(d)*

76. The exemption statute also contains a specific, but limited, provision for planned future building sites. Ind. Code § 6-1.1-10-16(d) requires that the property be “purchased for the purpose of erecting a building which is to be owned, occupied, and used [for charitable purposes].” A “purchase” is not defined.
77. The Petitioner claims that Ind. Code §6-1.1-10-16(d) does not apply because the properties were donated to BAEA. Accepting the Petitioner's interpretation on that point

would simply mean that there is no provision in this exemption statute that applies in this case. If the analysis stopped at that point, the property would remain taxable, which is clearly not the result the Petitioner seeks. The Respondent suggests a broader application of the statute by recognizing that property acquired for future building plans through donation can be considered under 10-16(d) because it appears to be the only part of the statute that the Petitioner might satisfy.

78. A fundamental rule of statutory construction requires that the legislative intent behind a statute that governs, rather than its precise language. *See Zoercher v. Indiana Associated Tel. Corp.* 7 N.E.2d 282, 284 (Ind. 1937). To satisfy that intent, the Board must give statutory words and phrases their plain, ordinary, and usual meaning, but the Board also must read a statute as a whole, and not consider sections or parts of a statute in a piecemeal fashion. *Roehl Transp., Inc. v. Indiana Dep't of Revenue*, 653 N.E.2d 539, 542 (Ind. Tax Ct. 1995) (citations omitted). A statute is subject to construction only when the language is reasonably susceptible to more than one meaning. *See Evansville Concrete Supply Co. v. Indiana Dep't of State Revenue*, 571 N.E.2d 1350, 1353 (Ind. Tax Ct. 1991) (internal citation omitted). Accordingly, the critical inquiry is whether Ind. Code. § 6-1.1-10-16(d) was intended to be applied to donated land.
79. "In the ordinary and popular acceptance, 'purchase' is the transfer or transmission of property from one person to another by voluntary act and agreement, founded on a valuable consideration...." 73B C.J.S. Purchase (1983). To "purchase" also commonly means "to own by paying or by promising to pay an agreed price which is enforceable at law." *Id.*; *First Nat'l Bank & Trust Co. v. United States*, 462 F.2d 908, 910 (10<sup>th</sup> Cir. 1972) ("Purchase" occurred when taxpayer-purchaser and vendor entered land sale contract, not when possession and deed to property were later transferred).
80. The statutes have not defined 'donate' for property tax exemption purposes, but the meaning is addressed in other areas such as Ind. Code § 9-22-1.5-5, which deals with the auction of mobile homes. Subsection (c) states: "If the property owner wishes to donate the mobile home to any willing donee, a property owner who has obtained ownership of a mobile home under this section may transfer ownership to a willing donee by listing the

donee as the purchaser on the affidavit of sale or disposal.” Similarly, BAEA would be the purchaser for the property donated to them if ‘donate’ was given the same meaning.

81. Another provision that provides guidance regarding the relationship between donate and purchase is Ind. Code § 15-2.1-2-47(a).<sup>7</sup> This section defines a sale, lease, donation, trade, barter, or exchange in any manner as equivalent terms. A donation of property is, under this section, a sale of the property. Under this definition, donation would be the same as selling the property.

82. The intent of the legislature in 10-16(d) does not appear to have been a restricted, rigid definition of purchase, but to a more general transfer of property. The apparent intent of the legislature was to allow exempt entities time to gather resources, plan, and erect a building that would be put to an exempt use without incurring property tax liability during reasonable planning and preparation phases. There appears to be no reason that the legislature would have intended to allow an exemption if property was bought for future exempt use, but deny an exemption if property was donated for the same purpose. Accordingly, the Board finds that Ind. Code § 6-1.1-10-16(d) can apply to donated property.

83. The fact that the subject property *might* qualify for exemption under Ind. Code § 6-1.1-10-16(d), however, is not the end of the story because if the Petitioner is to prevail, the evidence must establish that those specific statutory requirements for exemption are satisfied. The Petitioner is planning a low-income housing complex. The Petitioner claims it demonstrated substantial progress on the housing project that would constitute an exempt use. The Respondent argues just the opposite. Thus, two main questions remain in this case:

- **Would the housing project be exempt when it is completed?**
- **Has the Petitioner made substantial progress toward the intended use?**

84. The Petitioner must show the planned building would be owned, occupied, and used for an exempt purpose. A property's exempt status is tied to its use, not to its owner. *State*

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<sup>7</sup> Title 15 concerns agriculture and animals. Section 2.1 deals with animal health.

*ex rel. Tieman v. City of Indianapolis*, 69 Ind. 375, 376 (1879); *Knox Co. Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177 (Ind. Tax Ct. 2005). Furthermore, the "predominant use test" must be applied to determine whether a property is exempt. *Knox Co. v. Grandview*, 826 N.E.2d at 181; *Indianapolis Osteopathic*, 818 N.E.2d at 1014-19; *Lincoln Hills Dev. Corp. v. State Bd. of Tax Comm'rs*, 521 N.E.2d 1360, 1361 (Ind. Tax Ct. 1988) (holding that a corporation's not-for-profit status does not automatically qualify it for an exemption under Ind. Code § 6-1.1-10-16; rather, the corporation must show that the property was used for one of the listed exempt purposes).

85. As used in the exemption statutes, the words "educational, religious or charitable purposes" must be interpreted in their broadest constitutional sense. *See Indianapolis Osteopathic*, 818 N.E.2d at 1014.
86. The Marion County Zoning Board re-zoned the property to multifamily residential. *Pet'r Ex. B.* The Petitioner's development plan was recognized as a CHDO<sup>8</sup> by the IHFA<sup>9</sup>. *Pet'r Ex. C.* These facts help to establish the planned use of the building. Furthermore, the Respondent offered nothing substantial to challenge BAEA's evidence that it plans to develop the property into a low-income housing project. Accordingly, for the purposes of this determination, the Board finds that the planned use of the property is for low-income housing.
87. Providing low cost housing to those in need may be a noble purpose, but merely stating the property will be used as low-income housing is not sufficient to establish an exempt use. The Petitioner did not go into detail regarding the plans for the building or its operations. The Petitioner did not establish what the income limits (if any) would be for individuals who would qualify to live there. Similarly, the Petitioner submitted no substantial, probative evidence about the financial arrangements for the proposed project. Therefore, in this case the Board cannot determine that the planned project would be exempt based on charitable use or any other use recognized in the exemption statute. The exemption must be denied because the Petitioner failed to make a prima facie case that its

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<sup>8</sup> Community Housing Development Organization

<sup>9</sup> Indiana Housing Finance Authority

building would be predominantly used for educational, literary, scientific, religious or charitable purposes if and when it is built.

88. The substantial progress requirement is another hurdle in the Petitioner's path to exemption. The Petitioner acquired these properties through donation in 1997. Therefore, the Petitioner must prove there has been substantial progress during 1998, 1999, and 2000. Indiana Code § 6-1.1-10-16(d) lists five potential factors to consider when determining whether or not there has been substantial progress toward the completion of an exempt structure.

89. The owner must demonstrate substantial progress toward the erection of the intended building and use of the property within three years after it is acquired and each year afterwards.

To establish that substantial progress is being made, the owner must prove the existence of factors such as the following:

- (A) Organization of and activity by a building committee or other oversight group.
- (B) Completion and filing of building plans with the appropriate local government authority.
- (C) Cash reserves dedicated to the project of a sufficient amount to lead a reasonable individual to believe the actual construction can and will begin within three (3) years.
- (D) The breaking of ground and the beginning of actual construction.
- (E) Any other factor that would lead a reasonable individual to believe that construction of the building is an active plan and that the building is capable of being completed within six (6) years considering the circumstances of the owner.

Ind. Code § 6-1.1-10-16(d)(3).

90. The Petitioner did not provide any probative evidence regarding organization of and activity by a building committee or other oversight group. The evidence contains several miscellaneous letters about the project and unexecuted "Co-Development Agreements" dated February 27, 2003. A letter dated April 7, 2003, from one of the purported co-

developers, CB Richard Ellis, Inc., specifically declines to move forward with the agreement. The Petitioner failed, however, to establish how this evidence helps to prove organization or meaningful activity of a committee or group that is relevant to moving the project forward.

91. The Petitioner did not provide probative evidence about the completion and filing of building plans with the appropriate local government authority. The Petitioner testified, and Petitioner's Exhibit B shows that plans were filed with the zoning board to get the zoning changed, but the Petitioner failed to prove any finalized plans have been filed. Similarly, the Petitioner failed to prove permits for construction were sought or granted.
92. The Petitioner did not present any probative evidence regarding cash reserves dedicated to the project of a sufficient amount to lead a reasonable individual to believe the actual construction can and will begin in the allotted time. In fact, the only evidence regarding available funds is the \$50,000 pre-development loan awarded by the IHFA. The Petitioner did not present any other probative evidence about funding. The Petitioner testified the cost of the project is expected to be \$6,000,000 or more. The \$50,000 loan is less than 1% of the total planned cost. The financial evidence does not lead the Board to believe that construction could begin within three years, or be completed within six years.
93. The hearing took place in late 2004 and early 2005. At that time, Ms. Tetrick testified that no ground breaking had taken place. Construction had not started at a time well beyond the three years permitted by statute. The Petitioner did not establish when the groundbreaking would occur or when actual construction would begin. The Petitioner failed to establish substantial progress based on this factor.
94. In addition, the Board will consider "[a]ny other factor that would lead a reasonable individual to believe that construction of the building is an active plan and that the building is capable of being completed within six (6) years considering the circumstances of the owner." Ind. Code § 6-1.1-10-16(d)(3)(E). In this case, however, the Petitioner has failed to offer substantial evidence or argument for anything else that should be considered.



95. Certainly achieving a zoning variance and a \$50,000 pre-development loan are steps in the right direction. That very limited evidence, however, is not sufficient to convince the Board that “substantial” progress on the project has been achieved within the allotted time. The evidence fails to convince the Board that it is likely the project could be completed within the time allowed by the statute.
96. The Petitioner asked if the Respondent took the BAEA’s circumstances into consideration. While they might be important, the record contains no probative evidence about those circumstances that would support the exemption claim.
97. The Petitioner has not provided probative evidence that their plan can reasonably be expected to come to fruition. The Petitioner failed to show it made substantial progress toward an exempt use. For all these reasons, the Board finds for the Respondent.

2701 Winthrop Avenue

98. There is no evidence that the parcel at 2701 Winthrop was part of the planned low-income housing development. The Petitioner did not provide any evidence relating to this specific parcel. The Petitioner did not prove any current or future planned use of this parcel that would qualify it for any exemption under Ind. Code § 6-1.1-10-16. Accordingly, it is not exempt.

**Summary of Final Determination**

99. The Petitioner did not present probative evidence that the 2400 block property qualifies for property tax exemption. The Petitioner did not present probative evidence that the property located at 2701 Winthrop Avenue qualifies for exemption. Accordingly, all those properties are 100% taxable for tax year 2001.

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

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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](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>.**

## Attachment

<b>Petition Number</b>	<b>Parcel Number</b>	<b>Address</b>
49-101-01-2-8-06050	1060810	2431 Winthrop Ave
49-101-01-2-8-06051	1082837	2457 Winthrop Ave
49-101-01-2-8-06052	1082812	2465 Winthrop Ave
49-101-01-2-8-06053	1082815	2465 Winthrop Ave
49-101-01-2-8-06054	1082816	2471 Winthrop Ave
49-101-01-2-8-06055	1082817	2475 Winthrop Ave
49-101-01-2-8-06036	1042847	2701 Winthrop Ave
49-101-01-2-8-06033	1100284	1123 E 25 <sup>th</sup> St
49-101-01-2-8-06045	1060805	2409 Winthrop Ave
49-101-01-2-8-06047	1060807	2419 Winthrop Ave
49-101-01-2-8-06048	1060808	2421 Winthrop Ave
49-101-01-2-8-06049	1060809	2425 Winthrop Ave
49-101-01-2-8-06044	1060798	2405 Winthrop Ave <sup>10</sup>

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<sup>10</sup> This petition was mistakenly left off some of the Board's orders. The Notices of Hearing sent on December 15, 2004, however, identified the parcel as part of this group.