

REPRESENTATIVE FOR PETITIONER:

Bradley Hasler, Attorney

REPRESENTATIVE FOR RESPONDENT:

Marilyn S. Meighen, Attorney

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Charles Duke,	)	Petition Nos.: 29-014-08-2-8-00003
	)	29-015-10-2-8-00006
Petitioner,	)	29-015-11-2-8-00003
	)	
	)	
v.	)	Parcel No.: 29-09-13-000-012.027-015
	)	
	)	
Hamilton County Assessor,	)	County: Hamilton
	)	
Respondent.	)	Assessment Years: 2009, 2010, and 2011

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

**August 9, 2013**

**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 fact and conclusions of law.

## ISSUE

Is 84% of the subject property owned, occupied and used for educational and/or religious purposes so that this percentage is exempt from property tax under Ind. Code § 6-1.1-10-16?

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### PROCEDURAL HISTORY

1. On May 15, 2009, Charles Duke, (Petitioner), filed a Form 136, Application for Property Tax Exemption, seeking an exemption for his real and personal property for the 2009 assessment year.<sup>1</sup> The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on September 9, 2009, finding the Petitioner's real and personal property to be 100% taxable. On October 13, 2009, pursuant to Indiana Code § 6-1.1-11-7, the Petitioner filed a Form 132, Petition to the Indiana Board of Tax Review for Review of Exemption, requesting that the Board conduct an administrative review of the property's 2009 exemption request.
2. On May 13, 2010, the Petitioner filed a Form 136 seeking an exemption for his real and personal property for the 2010 assessment year. The Hamilton County PTABOA issued its determination on November 4, 2010, finding the Petitioner's property to be 100% taxable. On December 14, 2010, the Petitioner filed a Form 132 requesting the Board conduct an administrative review of the property's 2010 exemption request.
3. On May 16, 2011, the Petitioner filed a Form 136 seeking an exemption for his real and personal property for the 2011 assessment year.<sup>2</sup> The Hamilton County PTABOA issued

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<sup>1</sup> The Petitioner's Form 136 states that 2009 is the assessment year under appeal. However, both the Form 120 and Form 132 indicate that 2008 is the assessment year under appeal. At the hearing the Petitioner indicated that the correct years under appeal were 2009, 2010, and 2011. Further, the Petitioner indicated that he would not be appealing the personal property at this hearing.

<sup>2</sup> The Petitioner's Form 136 states that 2010 is the assessment year under appeal as does the Form 120. It appears that these forms should have both been dated for the 2011 assessment year.

its determination on August 29, 2011, finding the Petitioner's property to be 100% taxable. On September 23, 2011, the Petitioner filed a Form 132 requesting the Board conduct an administrative review of the property's 2011 exemption request.

#### **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. The duly designated Administrative Law Judge (ALJ), Tom Martindale, held a hearing on May 20, 2013.

5. The following persons were witnesses at the hearing:

For the Petitioner:

Charles E. Duke, Owner  
Debora A. Duke, Owner  
Sherry Banks, Director  
Pamela A. Fox, Teacher

For the Respondent:

Robin Ward, Hamilton County Assessor  
Mike Reuter, CFO of Hamilton Southeastern Schools

6. The Petitioner presented the following exhibits:<sup>3</sup>

Petitioner Exhibit P1 –	Little Lamb Daycare “Childcare from a Christian Perspective” tour video,
Petitioner Exhibit P2 –	Map and measurements of the subject property,
Petitioner Exhibit P3 –	Property Record Card for the subject property,
Petitioner Exhibit P4 –	A-Beka Curriculum,
Petitioner Exhibit P5 –	List of subjects taught at Little Lamb Daycare,
Petitioner Exhibit P6 –	Little Lamb Daycare handout “Character Training in the Christian School,”
Petitioner Exhibit P7 –	“Our Teachers Share their Vision,”
Petitioner Exhibit P8 –	Little Lamb Daycare Parent’s Handbook,
Petitioner Exhibit P9 –	A-Beka advanced five year old kindergarten curriculum, daily teaching plans,
Petitioner Exhibit P10 –	University of Notre Dame Mission Statement,
Petitioner Exhibit P11 –	Paths to Quality Level II status certificate,
Petitioner Exhibit P12 –	Paths to Quality information sheet,

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<sup>3</sup> The Petitioner did not introduce the following exhibits: P14-P15, P47-P54; P57; and P61-P74.

- Petitioner Exhibit P13 – Paths to Quality checklist indicating all level II standards met,
- Petitioner Exhibit P16 – Supply and price list by class for 2012-2013 for Little Lamb Daycare,
- Petitioner Exhibit P17 – Excerpt from A-Beka book “Learning Numbers with Button Bear,”
- Petitioner Exhibit P18 – Excerpt from A-Beka book “Child Art for 2s,”
- Petitioner Exhibit P19 – Excerpt from A-Beka book “Numbers and Skills with Button Bear,”
- Petitioner Exhibit P20 – Bible time schedule,
- Petitioner Exhibit P21 – Excerpt from A-Beka book “Letters and Sounds for 3s,”
- Petitioner Exhibit P22 – Excerpt from A-Beka book “Growing-up with Amber Lamb,”
- Petitioner Exhibit P23 – Excerpt from A-Beka book “ABC-123 K4 Phonics and Numbers,”
- Petitioner Exhibit P24 – Excerpt from A-Beka book “Fun Poems and Finger Plays,”
- Petitioner Exhibit P25 – Excerpt from A-Beka book “Art Projects K4,”
- Petitioner Exhibit P26 – Bible memory picture cards,
- Petitioner Exhibit P27 – Excerpt from A-Beka book “K4 Bible Activity,”
- Petitioner Exhibit P28 – Excerpt from A-Beka reading book,
- Petitioner Exhibit P29 – Excerpt from A-Beka book “Summer Fun with Amber Lamb,”
- Petitioner Exhibit P30 – Summer preschool curriculum,
- Petitioner Exhibit P31 – Excerpt from A-Beka book “God’s World,”
- Petitioner Exhibit P32 – Kindergarten bible daily plans,
- Petitioner Exhibit P33 – Excerpt from A-Beka book “Numbers Skills K Arithmetic,”
- Petitioner Exhibit P34 – Excerpt from kindergarten reading book,
- Petitioner Exhibit P35 – Excerpt from A-Beka book “Letters and Sounds K,”
- Petitioner Exhibit P36 – Preschool Bible studies table of contents and four Bible cards,
- Petitioner Exhibit P37 – Excerpt from A-Beka book “I Learn to Read,”
- Petitioner Exhibit P38 – Excerpt from A-Beka book “Social Studies K,”
- Petitioner Exhibit P39 – Excerpt from A-Beka book “Readiness Skills K,”
- Petitioner Exhibit P40 – Excerpt from A-Beka book “Manuscript ABC Writing Tablet,”
- Petitioner Exhibit P41 – Bible time songs,
- Petitioner Exhibit P42 – Little Lamb Daycare prayers for snack and lunch time,
- Petitioner Exhibit P43 – 2013-2014 weekly themes for Little Lamb Daycare,
- Petitioner Exhibit P44 – Example of a weekly lesson plan at Little Lamb Daycare,
- Petitioner Exhibit P45 – Little Lamb Daycare kindergarten academic standards,

Petitioner Exhibit P46 – Little Lamb Daycare kindergarten progress report,  
Petitioner Exhibit P55 – Little Lamb Daycare certified teachers,  
Petitioner Exhibit P56 – Excerpt from the Bible, Ecclesiastes 8,  
Petitioner Exhibit P58 – Excerpt from the Bible, 1 Corinthians 15,  
Petitioner Exhibit P59 – Excerpt from the Bible, Proverbs 25,  
Petitioner Exhibit P60 – Excerpt from the Bible, Jeremiah 16,  
Petitioner Exhibit P75 – Property record card for Grace Community Church,

7. The Respondent presented the following exhibits:

Respondent Exhibit A1 – Certificate of Incorporation for Little Lamb Daycare, Inc.,  
Respondent Exhibit A2 – Articles of Incorporation for Little Lamb Daycare, Inc.,  
Respondent Exhibit A3 – By-laws for Little Lamb Daycare, Inc.,  
Respondent Exhibit B – Weekly tuition schedule for Little Lamb Daycare, Inc.,  
Respondent Exhibit C – Assessed values and supporting property record cards for local daycares,  
Respondent Exhibit D – Information regarding attendance at Little Lamb Daycare, Inc., and accompanying spreadsheet,  
Respondent Exhibit E – Analysis of percent change in student enrollment compared to assessed value for Hamilton County Schools.

8. The following additional items are officially recognized as part of the record of proceedings:

Board Exhibit A – Form 132 Petitions with attachments,  
Board Exhibit B – Notices of Re-Scheduled Hearing, dated April 25, 2013,  
Board Exhibit C – Hearing sign-in sheet.

9. The Respondent submitted her post-hearing brief on June 28, 2013, (Respondent's brief). The Respondent submitted her post-hearing response brief on July 15, 2013, (Respondent's response brief). The Petitioner submitted his post-hearing brief on June 28, 2013, (Petitioner's brief). The Petitioner submitted his post-hearing response brief on July 15, 2013, (Petitioner's response brief).

10. The property at issue is a 5,298 square foot daycare facility commonly known as The Little Lamb Daycare, Inc., (Little Lamb) located at 1609 Greyhound Pass in Carmel.

11. The ALJ did not conduct an on-site inspection of the subject property.
12. For 2009, 2010, and 2011, the Hamilton County PTABOA determined the Petitioner's real property is 100% taxable.
13. The Petitioner contends the real property is entitled to an 84% exemption in 2009, 2010, and 2011.<sup>4</sup>

### **JURISDICTIONAL FRAMEWORK**

14. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits, that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### **SUMMARY OF PETITIONER'S CASE**

15. The subject property is owned by Charles Duke, but it has been used by the Little Lamb Daycare, Inc., (Little Lamb) since it began operations in 1987. Mr. Duke allows Little Lamb to operate without charging any rent. The subject property is occupied and used exclusively for the operation of Little Lamb. Little Lamb provides programs for children from six weeks of age through their private kindergarten. Little Lamb also provides before and after programs and a summer program for children up to ten years of age. The building contains several different rooms, each of which is dedicated to a particular age group of children. An exemption is not being requested for the rooms dedicated to caring for the infants through one-year-olds, which is 16% of the building's square footage. The

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<sup>4</sup> On the Petitioner's Form 132s an 85% exemption was requested. At the hearing, however, the Petitioner requested an 84% exemption for its real property only for the 2009, 2010, 2011, assessment years.

Petitioner is only requesting an exemption on the remaining 84% of the land and improvements. *Hasler argument; C. Duke testimony; Pet'r Brief; Pet'r Ex. P2, P8.*

16. Little Lamb was founded on the religious beliefs of Mr. Charles and Mrs. Debbie Duke. Mrs. Duke wanted to establish Little Lamb specifically to have a “spiritual influence – one that influences children with the love of Christ and Christian character training as established by the Bible.” Both Mr. and Mrs. Duke lead a Christian life, and they named the facility after a story in the Bible, reflecting the religious attributes of the subject property. Advertisements placed by Little Lamb emphasize “the eternal value of God’s word and God’s people, and invited those interested to join Little Lamb in teaching children in those religious principles.” Little Lamb’s promotional material describes the facility as a “learning center,” a “faith-based school,” and a “Christian Preschool and Private Kindergarten.” Parents of children who attend Little Lamb receive notice of the biblical basis, and Little Lamb does not allow the students to “opt out” of the school’s religious purpose. *Hasler argument; C. Duke testimony; D. Duke testimony; Pet'r Brief; Pet'r Ex. P1, P8, P9.*
  
17. The religious training offered at Little Lamb is intended to mirror and supplement religious instruction typically offered during weekend church services and Sunday school classes. The curriculum at Little Lamb intentionally infuses Christian character training and biblical references throughout the materials. “Similar to the University of Notre Dame, for example, Little Lamb draws its inspiration for its educational mission from Jesus Christ.” In addition to the religious training, the Little Lamb also offers character training for the children, encouraging them to, among other things, respect authority, obey willingly, learn to work hard and develop habits of honesty. *D. Duke testimony; Hasler argument; Pet'r Brief; Pet'r Ex. P6, P9.*
  
18. Teachers at the Little Lamb are attracted to the facility because of the emphasis placed on the Christian faith. Teachers explain to the children at the Little Lamb the central teachings of Christianity. On a daily basis, there is prayer, Bible teaching, and worship through spiritual songs. Each day includes two times dedicated to Bible instruction.

There is prayer before snack times and before lunch. Biblical principles and Christian character traits are taught in the context of academic subjects, such as mathematics and science. For example, science lessons “show the children how to discover the orderliness of a world created by God.” Little Lamb also has “Child Evangelism Fellowship” visit the facility at Christmas and Easter time to give the children a different viewpoint to reinforce the importance of Jesus. Since the religious purposes at Little Lamb are “sincere, active, overt and intentional,” the Petitioner should be granted a religious exemption. *D. Duke testimony; Pet’r Brief; Pet’r Ex. P6, P7, P9, P20, P33, P41, P42, P56, P59.*

19. The Little Lamb utilizes the A-Beka curriculum, which “is widely applied among Christian schools, including Heritage Christian School located in Indianapolis.” The A-Beka textbooks correspond to the students’ age group, the students are not allowed to “opt-out” of the planned educational curriculum, and it is mandatory that the students purchase these textbooks. The academic standards at Little Lamb are substantially similar to the academic standards at public schools. Students at Little Lamb are also taught the same academic subjects as students in public schools including reading, writing, math, science, history, physical education, language arts, social studies, music and art. By mirroring the academic standards of local schools, Little Lamb is creating an environment where children can succeed upon entering the public school system. Both parents and public school teachers have commented that children who have attended Little Lamb are academically prepared for school. *D. Duke testimony; Pet’r Brief; Pet’r Ex. P9, P16-P25, P27-P29, P31-P40, P44, P45, P55.*
20. The lead teachers at Little Lamb all have post-secondary education, with “virtually all of them having degrees in elementary education or childhood development.” Assistant teachers at Little Lamb are also required to have continuing education units to assist the lead teachers. The staff at Little Lamb also receives training on certain age appropriate educational objectives. Teachers at Little Lamb prepare detailed lesson plans for the week ahead, both throughout the traditional school year and during the summer months.



These lesson plans identify the learning objectives to be achieved throughout the day. *D. Duke testimony; Banks testimony; Pet'r Brief; Pet'r Ex. P13, P44, P55.*

21. The teachers at Little Lamb evaluate their students based on academic progress, and parents are informed of that progress through progress reports and parent-teacher conferences. This type of evaluation reflects what also occurs in the public school systems. *Fox testimony; Pet'r Brief; Pet'r Ex. P46.*
22. Little Lamb participates in Paths to Quality, having achieved a Level II certification. The Paths to Quality program is accredited by the Indiana Department of Education. It acknowledges the public benefits of early childhood education from birth to age five in preparing for the future successes of children in school. Little Lamb's educational activities, as described above, were designed to prepare pre-school children for school by mirroring programs taught in several local, public schools. As a result, an educational exemption should be granted for the Petitioner. *Banks testimony; Pet'r Brief; Pet'r Ex. P11, P12, P13.*

#### **SUMMARY OF RESPONDENT'S CASE**

23. Little Lamb is a child care facility that maintains a license to operate as a daycare center and to provide care for young children. Little Lamb charges a fee for the daycare services they provide, proving the commercial nature of the subject property. Little Lamb is open 11.5 hours a day and offers a variety of schedules to accommodate the needs of the families whose children attend the facility. Daycare is equivalent to custodial care. The custodial care of the children is the primary and predominant component of Little Lamb, thus the exemption should be denied. *Meighen argument; Resp. Brief.*
24. The Petitioner presented numerous exhibits in an attempt to display that both educational and religious items were taught at the facility. These exhibits, however, failed to prove that the primary and predominate use of the facility was educational or religious. At a

maximum, only 3.5 hours out of the 11.5 hour day is devoted to religious and or educational components. This is not “predominant use.” *Meighen argument; D. Duke testimony; Resp. Brief; Resp. Ex. A1, A2, A3; Pet’r Ex. P17-P40.*

25. When questioned about the A-Beka books used at the Little Lamb, the Petitioner’s witness did not know if A-Beka was accredited. The Little Lamb is not licensed by the Indiana Department of Education. However, the Little Lamb is licensed by the State Board of Health for health related reasons. Any state licensed center has to meet this standard, even someone taking care of four children in a home. *Meighen argument; D. Duke testimony.*
26. Attendance at the Little Lamb is sporadic. Some children attend on a regular basis and others only a few days each year. For schools in Indiana, under Ind. Code § 20-30-2-3 children are required to attend school 180 days a year. Further, less than twelve children attended the kindergarten class during the years at issue. *Meighen argument; Resp. Brief; Resp. Ex. D.*
27. As is the case with charitable purpose exemptions, a more restrictive definition of charitable purpose is required to find a property is charitable. That is also the case when an educational exemption is sought. Education in its broadest sense means the acquisition of knowledge that can occur anywhere. Thus, a more restrictive definition of educational purpose applies. When that restrictive definition of education is applied in this case, the Petitioner’s educational activities fall short. *Resp. Brief.*
28. The activities that occur at Little Lamb, be it educational activities such as learning numbers or religious activities such as prayer before meal time, occur in homes across Hamilton County. Parents and grandparents alike spend time teaching their children how to read, write, play games, color, how to be respectful, and they also teach quality character traits. These parents and grandparents are not entitled to a property tax exemption. Thus, Little Lamb should not be entitled to an exemption either. *Meighen argument; Ward testimony; Resp. Brief.*

29. The grant of an educational exemption is justified when the public benefits. The exemption statute balances the public benefits of the Little Lamb’s services against the purpose of the property tax, which is used to fund local government. The loss of assessed value from Little Lamb for the tax years in question is \$1,511,045. In Hamilton County the amount of students enrolling in school is climbing, while the assessed value of properties is declining. This situation creates an economic problem for the school system. Further, “116 other appeals are pending regards [sic] to Hamilton County daycare facilities, with a potential loss of \$179,141,200 in real property assessed value.” The activities that take place at Little Lamb do not relieve Hamilton County schools nor do they bestow a public benefit sufficient enough to warrant an exemption. In fact, granting an exemption to Little Lamb would actually harm the school district by taking away tax revenue. *Meighen argument; Reuter testimony; Resp. Brief; Resp. Ex. E.*
30. A more restrictive view of religion should be used as well. “Religious [sic] is a broad term too, generally referring to a belief in a supernatural or superhuman being that exercises power over human beings by imposing rules of conduct with future rewards and punishments.” The existence of religious beliefs does not mean that the religious purpose exemption should cover them. If this were true “then exemption would be available to organizations such as Chick-fil-A with a corporate culture heavily influenced by the founder’s evangelical beliefs.” Furthermore, any household that prayed before any meal would be qualified for a religious exemption if a less restrictive view was applied. This simply is not the correct way to apply a religious exemption. Little Lamb should not qualify based on this proper more restrictive view. *Meighen argument; Resp. Brief.*

#### **BASIS OF EXEMPTION AND BURDEN**

31. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt 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 an exemption.
  
32. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property owner would have paid to other parcels that are not exempt. *See generally, Nat'l Ass'n of Miniature Enthusiasts v. St. Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
  
33. Worthwhile activity or noble purpose alone is not enough to qualify for an exemption. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. St. Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
  
34. The taxpayer seeking exemption bears the burden of proving that the property is entitled to exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hosp., Inc. v. Department of Local Gov't Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. St. Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Ind. Ass'n of Seventh Day Adventists v. St. Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

#### ANALYSIS

35. Indiana Code § 6-1.1-10-16(a) provides that “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.” Further, “a tract of land ... is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it.” Ind. Code § 6-1.1-10-16(a). An exemption requires probative evidence that a property is owned, occupied, and used for an exempt purpose. *Knox County*

*Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005). Once these three elements are met, the property can be exempt from property taxation. *Id.*

36. Exemption statutes are strictly construed against the taxpayer. *See New Castle Lodge #147, Loyal Order of Moose, Inc. v. St. Bd. of Tax Comm'rs*, 733 N.E.2d 36,38 (Ind. Tax Ct. 2000). The taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *Id.*
  
37. The test used to determine whether all or a portion of a subject property qualifies for an exemption is the “predominant use” test. *New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Pursuant to Ind. Code § 6-1.1-10-36.3, “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.” Ind. Code § 6-1.1-10-36.3(a). Further, “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.” Ind. Code § 6-1.1-10-36.3(c).
  
38. “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose,” however, “is a fact sensitive inquiry; there are no bright-line tests.” *Jamestown Homes of Mishawaka, Inc.*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009). Thus, every exemption case “stand[s] on its own facts” and on how the parties present those facts. *See Indianapolis Osteopathic Hosp., Inc.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005)

(explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis and cannot assume the evidence speaks for itself).

39. Here, the Petitioner is an individual and Little Lamb is a for-profit entity. Nevertheless, the involvement of a for-profit entity does not necessarily preclude this exemption. *See College Corner v. Dep't of Local Gov't Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006). “As early as 1879, the Indiana Supreme Court scrutinized our Constitution and its focus with respect to tax exemption statutes. The Court said our Constitution, ‘contemplates the character and purpose of the property that may be exempted from taxation, not the character and purpose of the owner of the property.’” *Sangralea Boys Fund, Inc. v. St. Bd. of Tax Comm'rs*, 686 N.E.2d 954, 956 n.2 (Ind. Tax Ct. 1997) (quoting *St. ex rel. Tieman v. City of Indianapolis*, 69 Ind. 375, 377 (1879)).
40. The evidence indicates that Mr. Duke owned the subject property while Little Lamb occupied and used it. Being owned, occupied, and used by a single entity, however, is not a requirement for exemption. The Indiana General Assembly did not intend to require that a single entity “achieve a unity of ownership, occupation, and use.” *Sangralea*, 686 N.E.2d at 958. “Importantly however, ‘when a unity of ownership, occupancy, and use is lacking (as is the case here), both entities must demonstrate that they possess their own exempt purposes....’” *Hamilton Co. Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners*, 938 N.E.2d 654, 657 (Ind. 2010).
41. According to the evidence, Mr. Duke acquired the subject property for the specific purpose of operating a “faith-based early learning center.” The Little Lamb facility was constructed pursuant to the plans approved by Debbie Duke, President of Little Lamb, specifically for the purpose of facilitating Little Lamb’s early learning programs. Further, Mr. Duke does not charge rent to Little Lamb. Under these circumstances, the use by Mr. Duke and Little Lamb is indistinguishable for purposes of Ind. Code § 6-1.1-10-16.

42. Is the use of the subject property predominantly (or 84% as claimed by the Petitioner) religious? The Board must look to the “predominate use” test as outlined in Ind. Code § 6-1.1-10-36.3(a). In order to meet the “predominate use” requirements, the facility must be used for the stated purpose “more than fifty percent (50%) of the time.” While it is true that the mission behind the Little Lamb facility is that of a religious nature, the “predominate use” of the facility is not religious. On average, at most only 3.5 hours per day involve programs and materials that could be considered religious. *Pet’r Ex. P8*. While the hours of operation for the Little Lamb are 11.5 hours per day. *Id.*
43. The Petitioner attempts to draw the Board’s attention to a Supreme Court case where the Court held “[w]e simply recognize that a dedicated religious person, teaching in a school affiliated with his or her faith and operated to inculcate its tenets, will inevitably experience great difficulty in remaining religiously neutral.” *Pet’r Reply Brief*; citing *Lemon v. Kurtzman*, 403 U.S. 602, 618 (1971). The Petitioner goes on to argue that “education can and does have a religious purpose when it is conducted by religious persons with a religious purpose.” *Pet’r Reply Brief*. The problem that the Board finds with this argument is that in *Lemon* the Court addressed parochial schools taught by nuns, and some lay teachers, but were operating within the hierarchy of the Catholic Church. When looking at the *Lemon* decision, the teachers were employed by the Catholic Church, subject to the direction and discipline of religious authorities, and working in a system dedicated to rearing children in the Catholic faith. *Lemon*, 403 U.S. at 618. Little Lamb however is not directly affiliated with any church, further the evidence does not establish Little Lamb is subject to the direction and discipline of religious authorities. Little Lamb consists of Christian individuals integrating Christian beliefs into activities at the facility. This comparison presented by the Petitioner falls short.
44. The Petitioner also attempts to persuade the Board that it is entitled to a religious exemption by drawing a comparison to a Colorado Supreme Court decision. *Maurer v. Young Life*, 779 P.2d 1317 (Colo. 1989). The *Maurer* decision involved a non-profit corporation seeking a religious exemption based on “camping programs during which Christian teachings are related to camping experiences in a low-key, informal manner.”

*Maurer*, 779 P.2d at 1319. The decision from Colorado, while it may be persuasive, is not controlling. Further, the requirements for a religious exemption could be drastically different in Colorado than they are in Indiana. The Board cannot draw conclusions from this Colorado case to find that the Petitioner is entitled to a religious exemption.

45. The Board must also look to the “reasonably necessary” standard when deciding if a property is used for a religious purpose. *LeSea Broadcasting Corp. v. St. Bd. of Tax Comm’rs*, 525 N.E.2d 637, 639 (Ind. Tax Ct. 1988) (citing *State Bd. of Tax Comm’rs v. Wright*, 139 Ind. App. 370 (Ind. App. 1966) (finding “cabins were necessary and were used exclusively to effectuate the religious purpose and activities of the Church.”)). The use of the subject property does not “effectuate the religious purpose” of any Church. Even though religious themes are present and the subjects taught at the facility have religious connotations, the use of the facility is not elevated to one that should be granted a religious exemption. Further, the petitioner must show a public benefit sufficient enough to warrant an exemption. *Foursquare Tabernacle Church of God in Christ*, 550 N.E.2d 850, at 854. From the evidence presented, the Petitioner failed to meet this burden.
46. The existence of religious beliefs is not enough to qualify for a religious exemption. The activities must be different from the everyday purpose of man in general. If the existence of a religious belief was enough to qualify, every taxpayer that had any religious belief would qualify for an exemption. Religious exemptions should be restricted to those facilities that meet the requirements as outlined in Ind. Code §6-1.1-10-36.3(a). The Little Lamb facility is not directly associated with any religious organization. The only religious affiliation is that the owners are Christians and that the lessons taught at Little Lamb have a religious connotation. The Little Lamb does not meet the requirements necessary for a religious exemption. Similar to the holding in *National Association of Miniature Enthusiasts*, by Little Lamb simply declaring itself religious does not make its activities and endeavors the sort that the law recognizes as religious and therefore entitled to tax exemption. See *Nat’l Ass’n of Miniature Enthusiasts*, 671 N.E.2d 218 (stating that “[y]et declaring itself a charity does not make NAME’s activities and endeavors the sort



the law recognizes as charitable and therefore entitled to tax exemption” citing *Indianapolis Elks Bldg. Corp. v. St. Bd. of Tax Comm’rs*, 145 Ind. App. at 539, 251 N.E.2d at 683 (Ind. App. 1969)). The Petitioner failed to prove that it is entitled to a religious exemption.

47. Is the use predominantly (or 84%) educational? As the term is broadly understood, “education” can occur anywhere, including private homes, but a more restrictive definition is required to avoid irrationally applying the exemption. See *Fort Wayne Sports Club, Inc. v. St. Bd. of Tax Comm’rs*, 258 N.E.2d 874, 881 (Ind. App. 1970).
  
48. Exemptions from property tax are generally granted based on the expectation that the public will derive a corresponding benefit that justifies the loss of tax revenue. Accordingly, applicants for the educational exemption must show their use of the property provides some public benefit. See *Oaken Bucket*, 938 N.E.2d at 657; *Dep’t of Local Gov’t Finance v. Roller Skating Rink Operators Ass’n*, 853 N.E.2d 1262, 1266 (Ind. 2006); *Indianapolis Osteopathic Hospital, Inc.*, 818 N.E.2d at 1014; *Foursquare Tabernacle Church of God in Christ*, 550 N.E.2d 850, at 854; *Ft. Wayne Sports Club*, 258 N.E.2d at 881. Examining “the public benefits that accrue from a property’s use [is] a method of determining whether the predominant use of a property is educational.” *Trinity School of Natural Health, Inc. v. Kosciusko Co. Property Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234, 1237 (Ind. Tax Ct. 2003). “If a property owner’s use of property does not serve the public good, the property is taxable.” *Roller Skating Rink Operators Ass’n*, 853 N.E.2d at 1265 (citing *Travelers’ Ins. Co. v. Kent*, 50 N.E. 562, 564 (Ind. 1898)).
  
49. Educational use does not require providing educational programs or classes that are identical to those of tax-supported institutions. The public benefit test can be met by providing courses found in tax-supported institutions, but it also can be met by providing “related” programs and courses. Accordingly, “a taxpayer need only relieve the State’s burden ‘to some limited extent’ with programs and courses merely ‘related’ to those found in tax-supported schools.” *Trinity School*, 799 N.E.2d at 1238 (italics in original);

see also *Roller Skating Rink Operators Ass'n*, 853 N.E.2d at 1266 (stating that “educational” programs need not be the same as offerings of public schools).

50. The educational use must confer a public benefit. The closer the activity is to traditional educational programs offered in public schools, the more obvious is the public benefit. *Prof'l Photographers of Am., Inc., v. St. Bd. of Tax Comm'rs*, 148 Ind. App. at 601, 268 N.E.2d 617 (1971); *Ft. Wayne Sport Club*, 258 N.E.2d at 874. “An educational exemption is available to taxpayers who provide instruction and training equivalent to that provided by tax supported institutions of higher learning and public schools because to the extent such offerings are utilized, the state is relieved of its financial obligation to furnish such instruction.” *Miniature Enthusiasts*, 671 N.E.2d at 221 (quoting *Ft. Wayne Sport Club*, 258 N.E.2d 874, 881-882).
  
51. The Board has made several prior determinations with similar facts that provide particularly strong guidance for the issue presented in this particular case. In *Richmond Day Nursery* (March 2004) the Board held that Richmond Day Nursery was entitled to an exemption in connection with its operation of a daycare and pre-school facility. In that case, the Board relied on evidence that Richmond Day Nursery provided scheduled educational training, employed teachers with educational degrees, offered educational opportunities to children from lower income families who attended the daycare on a government voucher program, and provided a program similar to the government sponsored Head Start program. Approximately five to six hours each school day were devoted to age-related education for children enrolled at Richmond Day Nursery, where a program similar to typical preschool education was provided. The Board concluded that Richmond Day Nursery “demonstrated that their educational activities and curriculum confer a benefit to the general public, (e.g. families, children, public schools, community) similar to the government based Head Start program, but with the added bonus of onsite training in conjunction with the child’s full time day care.” As a result, Richmond Day Nursery’s property was determined to be 100% exempt.

52. Another Board decision involving similar facts was *KC Propco LLC, d/b/a KinderCare Learning Center* (November 2011). In *KC Propco LLC*, the Board held that the facility was entitled to an exemption based on the educational use of the property. The Board found that the use of the subject property was substantially related to the programs and courses public schools provide. The Board also noted that the Petitioner employed teachers with educational degrees, scheduled educational training, and offered educational opportunities to children from lower income families who attended the early learning center on the government voucher program. The Petitioner also was able to show that at least to “some limited extent” the curriculum, goals, and educational and physical activities provided a benefit to the public. Thus, the Board found *KinderCare Learning Center* to be 100% exempt.
53. Little Lamb provides scheduled educational learning. Teachers prepare detailed lesson plans to guide the children’s learning. The lead teachers have post secondary education. The A-Beka curriculum is widely applied among Christian schools and is similar to the academic standards used by public schools. The Little Lamb has a Level II certification with Paths to Quality. The subjects taught at Little Lamb mirror those that are taught at public schools, including: reading, writing, math, science, history, physical education, language arts, social studies, music and art. Teachers evaluate their students based on academic progress and then inform the parents of that progress through progress reports and parent-teacher conferences. The atmosphere at Little Lamb is one of education, where children are learning throughout the day. All of the programs at Little Lamb are a complement to and prepare children for enrollment in school by providing the foundational elements children need to thrive in more advanced programs.
54. The Petitioner has shown that the use of the subject property is substantially related to the programs and courses public schools provide. The Petitioner has also shown that at least to “some limited extent” its curriculum, goals, and educational activities provide a benefit to the public.

55. The Board now turns its attention to the arguments made by the Respondent. The Respondent argues that the “predominate use” of the facility is not educational since it is open 11.5 hours a day, but only 3.5 hours a day are focused on education. The Respondent also argues that Little Lamb “does not fit into the general scheme of education provided by the State, and does not relieve the government of its burden of providing public education in any significant way.” *Resp. Reply Brief*. The evidence proves that the subjects taught at Little Lamb are similar to those taught in public schools. Further, the Petitioner was able to prove that at least to “some limited extent” its curriculum, goals, and educational activities provide a benefit to the public, relieving a burden on the government by preparing these children for the rigors of public school. The Respondent fails to take into account that the teachers at Little Lamb also spend additional time preparing for the daily curriculum. The evidence proves that education is the “predominate use” of the facility.
56. The Respondent argues that the activities taking place are the same learning activities that are taught by parents and grandparents in their homes. While it is true that parents and grandparents can teach their children to read and to write or to play games with them, the evidence shows that the A-Beka program, which is used at Little Lamb, equips children to engage in substantially similar educational activities offered in public schools. Little Lamb educates the students at its facility with many of the same academic skills otherwise taught in public schools. Further, Little Lamb provides a structured learning program where teachers have set lesson plans and they evaluate their students based on academic progress and inform the parents of their child’s progress through progress reports and parent-teacher conferences, mirroring what is seen in public schools.
57. The Respondent presented evidence showing the attendance for numerous students at Little Lamb. The Respondent argued that the attendance records show sporadic attendance patterns for the children. Nowhere in Ind. Code §6-1.1-10-16 does it state how many days individuals must attend in order for a facility to be found educationally exempt. The Respondent failed to explain how the Board was to draw a conclusion from

hundreds of pages of attendance records that Little Lamb was not deserving of an educational exemption.

58. The Respondent insinuates that since a fee is charged by Little Lamb they are serving their own business interests. While it is true a fee is charged, even the Respondent admits that the fact that a fee is charged does not disqualify Little Lamb from property tax exemption. *Resp. Reply Brief*; citing *Roller Skating Rink Operators Ass’n*, 853 N.E.2d at 1266. The Board has found facilities tax exempt in the past even though a fee was charged for services provided. (See *KC Propco, LLC*. (November 2011)). The Board will not deny an educational exemption based on the fact a fee is charged.
59. The Respondent also argued that granting the Petitioner an exemption would in effect harm Hamilton County schools. The Respondent argued that assessed values in Hamilton County are decreasing while the student enrollments are increasing. The Respondent is attempting to persuade the Board to deny an exemption application because the school system will lose tax revenue. The Respondent is arguing that an educational exemption is granted when the government is relieved of a burden, and by granting an exemption here, that same governmental entity is actually being harmed.<sup>5</sup> The Respondent has not established that the Petitioner’s exemption should be denied based on this information.
60. The Respondent’s argument that the Board should decide this appeal based on other pending appeals does not hold any weight. The Board will not decide an exemption case on the argument that “currently 116 exemption appeals pending regards [sic] to Hamilton County daycare facilities for tax years 2008 – 2012, with a potential loss of approximately \$179,141,200 in real property assessed value.” *Resp. Reply Brief*. The Board has not, and will not, decide a case based on how many other appeals are pending.

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<sup>5</sup> The Respondent argues that the Board must “consider not only the objects and purpose of the educational purpose exemption, but also the effects and repercussions of its interpretation.” *Resp. Brief; Bushong v. Williamson*, 790 N.E.2d 467, 471 (Ind. 2003). The court in *Bushong* goes on to state that “[t]he legislative intent as ascertained from the provision as a whole prevails over the strict literal meaning of any word or term.” *Bushong*, 790 N.E.2d at 471; quoting *Shell Oil Co. v. Meyer*, 705 N.E.2d 962, 970 (Ind. 1998). Even if assessed values are decreasing while student enrollment is increasing, this does not prove whether Little Lamb is entitled to an exemption or not.

Each exemption case is based on its own facts, and not on how many appeals are pending. Here, the Respondent has simply not provided enough evidence to impeach or rebut the Petitioner's case.

61. After weighing all of the evidence presented by both parties, it is clear that both educational programs and child care activities take place at the Little Lamb daycare facility. From the Petitioner's point of view, the educational and religious programs are the focus and the facility provides an educational curriculum that prepares children for enrollment in school by providing foundational elements children need to thrive in more advanced programs. The Respondent, however, argues that the primary and predominate use of the facility is providing custodial care to very young children. Ultimately, in this case it is the Petitioner's point of view that is more persuasive. The weight of the evidence establishes that the use of the subject property is most accurately characterized as educational.
62. In making its determination, the Board is not ruling that every single daycare or early learning facility is entitled to an educational exemption. The Board continues to recognize the long standing principle that each exemption application must be examined on its own facts, as it was in this case.

#### **SUMMARY OF FINAL DETERMINATION**

63. The Petitioner failed to make a case that the subject property is entitled to a partial religious exemption; however, the Petitioner made a case that the subject property is entitled to a partial educational exemption. The Respondent provided some rebuttal evidence. The Board weighed the evidence and arguments presented by the Petitioner against the evidence and arguments presented by the Respondent. The Board is more persuaded by the Petitioner's evidence and arguments. Therefore, the Board finds in favor of the Petitioner and holds that the subject property is 84% exempt for the 2009, 2010, and 2011, assessment years.

The Final Determination of the above captioned matter is issued on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>