

REPRESENTATIVE FOR PETITIONER:  
Cornelius A. Van Milligen, Director, GO, Inc.

REPRESENTATIVE FOR RESPONDENT:  
Sara Arnold, Spencer County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

GO, Inc.,	)	Petition No.: 74-013-09-2-8-00001
	)	
Petitioner,	)	Parcel Nos.: 74-06-33-100-006.000-013
	)	
v.	)	
	)	County: Spencer
SPENCER COUNTY ASSESSOR,	)	
	)	Assessment Year: 2009
Respondent.	)	

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

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**January 20, 2011**

**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**

1. Did the subject property qualify as exempt under Indiana Code § 6-1.1-10-16?

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### PROCEDURAL HISTORY

2. On May 8, 2008, the Petitioner filed its Application for Property Tax Exemption (Form 136). On October 29, 2009, the Spencer County Property Tax Assessment Board of Appeals (“PTABOA”) denied the Petitioner’s application for the 2009 assessment year. The Petitioner then timely filed a Petition for Review of Exemption (Form 132) with the Board. The Board has jurisdiction over the Petitioner’s appeal.
3. On August 31, 2010, the Board held a hearing through its administrative law judge, Rick Barter (“ALJ”).
4. The following people were sworn as witnesses:  
For the Petitioner :  
Cornelius A. Van Milligen, Director, GO, Inc.,  
Ralph Ramirez  
  
For the Respondent:  
Sara Arnold, Spencer County Assessor.
5. The parties submitted the following exhibits:
  - a. Petitioner Exhibit 1 – Post-hearing statement of contentions,<sup>1</sup>
  - b. Respondent Exhibit 1 – Copy of Form 136 application,  
Respondent Exhibit 2 – Copy of minutes from September 25, 2009 PTABOA meeting,  
Respondent Exhibit 3 – *Fourth Freedom Forum, Inc. v. Elkhart Co. PTABOA*,  
Pet. nos. 20-005-04-2-8-0001 *etc.* (Ind. Bd. of Tax Rev.),  
Respondent Exhibit 4 – Copies of 12 photographs of the subject property,  
Respondent Exhibit 5 – October 21, 2009 letter from Deborah Steinkamp to GO, Inc. with copies of three photographs,  
Respondent Exhibit 6 – Copy of August 30, 2010 letter from Tom Utter to Sara Arnold.

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<sup>1</sup> The ALJ told the parties that they could offer additional documents if they filed those documents by September 20, 2010. On September 19, 2010, the ALJ received what has been marked as Petitioner’s Exhibit 1. The Respondent did not offer any post-hearing evidence.

6. The following additional items are recognized as part of the record of the proceedings:
- Board Exhibit A – Form 132 petition with attached GO, Inc. by-laws, Form 120 notice, and Form 136 application,<sup>2</sup>
  - Board Exhibit B – Hearing notice,
  - Board Exhibit C – Order on the Conduct of Exemption Hearing,
  - Board Exhibit D – Hearing sign-in sheet.
7. The Spencer County PTABOA determined that the Petitioner’s real property was 100% taxable. The Petitioner claims that the property was 100% exempt.

### FINDINGS OF FACT

8. The Petitioner is a not-for-profit corporation organized to “demonstrate, investigate, instruct, coach, advise, and research innovative activities for the benefit of rural and urban agriculture, farmers and farm groups, economic development and the environment.” *Board Ex. A (GO, Inc. ’s by-laws)*. The Petitioner owns the subject property, which consists of two buildings situated on approximately 40 acres of land. *See Board Ex. A. (Form 136 exemption application)*.
9. The Petitioner used the property for a number of activities at various times throughout 2009. Those activities included:
- Conducting experiments to determine the feasibility of energy projects using materials that are available in third-world countries;
  - Assisting in the design and demonstration of renewable energy systems of various types;
  - Demonstrating turf-establishment projects;
  - Conducting a seminar for landscaping and turf management companies to explore value-added uses for locally produced woody material as soil amendments;

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<sup>2</sup> Although the Petitioner did not separately label the attachments to the Form 132 petition as exhibits, Mr. Van Milligen indicated at the hearing that the Petitioner was relying on those documents. The Board therefore considers them as substantive evidence.

- Investigating the native Black Solider Fly population to determine whether the region is suitable for landfill diversion of organic material; and
- Conducting field trials using various chemical additives to determine the most effective and economical methods of inducing solids separation in a liquid waste stream.

*Van Milligen testimony; Pet'r Ex. 1.*

10. On October 21, 2009, Deborah Steinkamp, Director of the Spencer County Solid Waste Management District, sent a letter notifying the Petitioner that it was in violation of a local ordinance governing the accumulation of trash, junk, weeds, and vehicles. *Resp't Ex. 5.* The district wanted the Petitioner to mow the grass by the subject property's parking lot. *Van Milligen testimony.*
11. The Respondent has occasionally driven by the subject property over the past few years. In her view, the property looked abandoned. *Arnold testimony.* On August 23 and 25, 2010, the Respondent found the property gate padlocked and no signs of activity in or around the subject buildings. *Id.* Similarly, photographs taken on August 30, 2010, show weeds on and around the subject property. *See Resp't Ex. 4.* The buildings also appear to be deteriorated. *Id.*
12. On August 30, 2010, Tom Utter, Executive Director of Lincolnland Economic Development Corporation, sent the Respondent a letter indicating that the Spencer County Solid Waste Administrator had asked him about any known active projects at the subject property. *Resp't Ex. 6.* Mr. Utter did not know about any then-current projects or remediation activity at the property. *Id.*

### CONCLUSIONS OF LAW AND ANALYSIS

13. Generally, all tangible property in Indiana is taxable. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004); I.C. § 6-1.1-2-1. The legislature, however, has exercised its constitutional authority to exempt certain types of property. Thus, among other statutes, the legislature enacted Ind. Code § 6-1.1-10-16(a). When read together with Ind. Code § 6-1.1-10-36.3, that statute exempts

all or part of a building that is owned, occupied, and predominately used for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3(c). That exemption also generally extends to the land on which an exempt building sits and personal property contained therein. *See* I.C. 6-1.1-10-16(c)-(d); *Indianapolis Osteopathic Hospital*, 818 N.E.2d at 1015. Regardless of the type of property at issue, a taxpayer bears the burden of proving that its property is exempt. *Id.*

14. The exact meaning of Ind. Code § 6-1.1-16-1(a) and its predecessors has spawned much litigation. Broadly speaking, courts have linked exemptions to a property being used to provide a public benefit. *See, e.g., Fort Wayne Sports Club, Inc. v. State Bd. of Tax Comm'rs*, 147 Ind. App. 129, 258 N.E.2d 874, 881(1970) (“In our view, the well-established and obvious purpose for legislative conferral of tax exemptions requires a showing of some public benefit as a condition precedent to the granting of such exemption.”). Thus, for example, an educational-purposes exemption will be available where a property is used to provide education that is the “substantial equivalent” of instruction offered by Indiana’s tax-supported institutions. *Dep’t of Local Gov’t Fin. v. Roller Skating Rink Operators Ass’n*, 853 N.E.2d 1262, 1226 (Ind. 2006). Similarly, “a charitable purpose generally will be found to exist if: 1) there is ‘evidence of relief of human want...manifested by obviously charitable acts different from the everyday purpose and activities of man in general’; and 2) there is an expectation of a benefit that will inure to the public by the accomplishment of such acts.” *Knox County Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005)(quoting *Indianapolis Elks Bldg. v. State Bd. of Tax Comm'rs*, 145 Ind. App. 522, 251 N.E.2d 673, 683 (1969)).
15. Here, the Petitioner’s bylaws show that the Petitioner exists to provide a public benefit. And the Petitioner used the subject property to further the purposes listed in those by-laws. Although the activities at the subject property arguably may not have been the substantial equivalent of instruction provided in Indiana’s public schools, many of those activities had an educational component. Similarly, the field trials and experiments were scientific. And all of the Petitioner’s activities were designed to relieve human want and

differed from the ordinary activities of man. Thus, the Petitioner proved that it owned, occupied, and used the subject property exclusively for exempt purposes.

16. The Respondent did not really dispute that when the Petitioner used the subject property, it did so for exempt purposes.<sup>3</sup> Indeed, the PTABOA had previously granted the property an exemption. Instead, the Respondent focused on what she perceived as the more-recent lack of activity at the subject property. But the Board credits the Petitioner's evidence about the various activities that occurred throughout 2009, and infers that those activities were consistent with how the Petitioner used the subject property during the year leading up to the March 1, 2009 assessment date.
17. Indeed, the facts that the subject property appeared to be somewhat unkempt and deteriorated and that the Respondent did not observe any activity at the property on a few days in August 2010 do little to negate that the Petitioner owned, occupied, and used the subject property for exempt purposes at the times relevant to this appeal. The same is true regarding both Ms. Steinkamp's letter citing the Petitioner for an ordinance violation and Mr. Utter's letter saying that he was unaware of any production or remediation projects at the subject property. In fact, the Respondent did not explain why Mr. Utter would even know about what happened at the subject property.
18. In any event, a property need not be occupied or used every day in order to qualify for an exemption. See *Trinity Episcopal Church v. State Bd. of Tax Comm'rs*, 694 N.E.2d 816, 819 (Ind. Tax Ct. 1998)(holding that a building's vacancy on the assessment date did not obviate the exempt purposes for which the taxpayer owned, occupied, and used the building). To the contrary, the predominant-use test compares the time that a property is occupied or used for an exempt purpose to the total time that the property is occupied or used during the year leading up to the assessment date. I.C. § 6-1.1-10-36.3(c). Non-exempt uses matter; periods of disuse do not count either way. As explained above, the Board finds that the Petitioner used the subject property exclusively for exempt purposes. The property was therefore exempt.

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<sup>3</sup> In her opening statement, the Respondent said that the Board had further clarified the definitions of educational and scientific activities in *Fourth Freedom Forum, Inc. v. Elkhart Co. PTABOA*, pet. nos. 20-005-04-2-8-0001 *etc.* (Ind. Bd. of Tax Rev.). She, however, did not explain how that decision applied to the facts in this appeal.

## SUMMARY OF FINAL DETERMINATION

19. Because the Petitioner showed that it owned, occupied and used the subject property exclusively for exempt purposes, it was exempt from taxation. The Board therefore finds for the Petitioner and orders that the subject property be granted a 100% exemption.

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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>.