

ATTORNEY FOR PETITIONER: KRIEG DEVAULT LLP
Matthew S. Carr and Adam C. Shields

ATTORNEY FOR RESPONDENT: John C. Slatten

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

HERRICK INVESTMENTS, INC.,)	Petition No. 49-500-08-2-8-00001
)	Parcel No. 49-15-19-114-001.000-500
Petitioner,)	
)	
v.)	
)	Marion County
MARION COUNTY ASSESSOR,)	
)	2008 Assessment Year
Respondent.)	

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

January 4, 2012

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 the Petitioner's real property owned, occupied, and used for educational purposes so that it is exempt from property tax under Ind. Code § 6-1.1-10-16?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The parties filed a stipulation on September 12, 2011, providing that the real property identified as Parcel No. 49-15-19-114-001.000-500 (the “Property”) is occupied and used for educational purposes qualifying for exemption from property taxation based upon the occupancy and use of the Property by Artists in Motion, Inc. (“AIM”), an Indiana nonprofit, public benefit corporation that has been determined to be exempt from Federal income tax as a charitable and educational organization as described under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). The only remaining issue is whether the Petitioner satisfies the “ownership” requirement for property tax exemption for the Property.
2. The Petitioner filed an Application for Property Tax Exemption, Form 136, with the Marion County Assessor on May 15, 2008. It claimed 100% charitable and educational exemption pursuant to Ind. Code § 6-1.1-10-16. According to this application, the 2008 total assessed value of the real property is \$1,406,000.
3. On December 18, 2009, the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination that the real and personal property is 100% taxable.
4. On January 15, 2010, the Petitioner filed a Petition for Review of Exemption, Form 132, seeking the Board’s review of that determination.
5. The Board’s designated Administrative Law Judge, Ted Holaday, held the hearing on October 6, 2011. He did not conduct an on-site inspection of the property, nor did the Board.

6. The following persons testified for the Petitioner:
 - a) Lynn M. Herrick, shareholder of Herrick Investments, Inc.,
 - b) William D. Herrick, president, secretary, member of board of directors, and shareholder of Herrick Investments, Inc.,
 - c) Nick A. Tillema, MAI, SRA, CCIM,
 - d) Martin J. Armbruster, CPA,
 - e) Elizabeth O'Brien, head coach for Roncalli High School gymnastics,
 - f) Shellie Hartford, assistant principal for Roncalli High School,
 - g) Scott Bradford, Beech Grove High School music department chair,
 - h) Teri Dunbar, artistic director of theater department for Lutheran High School,
 - i) Rev. Jonathan P. Meyer, Catholic Archdiocese of Indianapolis.

7. Marion County Deputy Assessor Douglas Rogers testified for the Respondent.

8. The Petitioner presented the following exhibits:
 - a) Exhibit 1—Lease,
 - b) Exhibit 2—Market rent/contract rent analysis,
 - c) Exhibit 3—Artists In Motion Form 990 for 2009,
 - d) Exhibit 4—Artists In Motion Form 990 for 2008,
 - e) Exhibit 5—Artists In Motion Form 990 for 2007,
 - f) Exhibit 6—Herrick Investments Form 1120S for 2009
 - g) Exhibit 7—Herrick Investments Form 1120S for 2008,
 - h) Exhibit 8—Herrick Investments Form 1120S for 2007,
 - i) Exhibit 9—The Dance Refinery Form 1120S for 2009,
 - j) Exhibit 10—The Dance Refinery Form 1120S for 2008,
 - k) Exhibit 11—The Dance Refinery Form 1120S for 2007,
 - l) Exhibit 12—William D. and Lynn M. Herrick Form 1040 and Form 1040X
for 2009,
 - m) Exhibit 13—William D. and Lynn M. Herrick Form 1040 for 2008,
 - n) Exhibit 14—Removed,
 - o) Exhibit 15—Roncalli High School acknowledgment letters,

- p) Exhibit 16—Beech Grove High School acknowledgment letter,
- q) Exhibit 17—Acknowledgment letter from Teri Dunbar,
- r) Exhibit 18—Acknowledgment letter from Rev. Jonathan P. Meyer,
- s) Exhibit 19—Map of Facility,
- t) Exhibit 20—Application for Property Tax Exemption, Form 136, Herrick Investments, Inc.

9. The Respondent presented the following exhibit:

- a) Exhibit 1—Market Rent Analysis.

10. The Form 132 Petition with all attachments and the Notice of Hearing also are recognized as part of the record.

Findings of Fact

11. William Herrick and Lynn Herrick (sometimes hereafter referred to collectively as the “Herricks”) formed and continue to be the sole shareholders of Herrick Investments, an Indiana corporation. *W. Herrick Testimony at 219; Armbruster Testimony at 146; Exhibits 6, 7.* Mr. Herrick served and continues to serve as a member of the Board of Directors and President of Herrick Investments. *W. Herrick Testimony at 219.* At the advice of prior legal counsel, Herrick Investments was formed for the sole and exclusive purposes of owning the real property and improvements associated with The Dance Refinery, a dance and gymnastics school operated by Ms. Herrick on the south side of Indianapolis. *W. Herrick Testimony at 213; L. Herrick Testimony at 89.* The Herricks have personally guaranteed the debt associated with the Property. *W. Herrick Testimony at 214.*

12. Ms. Herrick has a degree from Butler University in elementary education and has been in the dance education industry for over 30 years. *L. Herrick Testimony at 44.* Students of The Dance Refinery have pursued higher education in the arts and associated professional careers that would have not been possible without the opportunities provided by The Dance Refinery. *L. Herrick Testimony at 56-57.*

13. Herrick Investments previously owned and leased property to The Dance Refinery, Inc., an Indiana corporation, which previously operated The Dance Refinery. *W. Herrick Testimony at 213.* Ms. Herrick was and still is the sole shareholder, a member of the Board of Directors and President of The Dance Refinery, Inc. *L. Herrick Testimony at 62-63.* Mr. Herrick is a member of the Board of Directors and an officer of The Dance Refinery, Inc.
14. During the mid-1990s, The Dance Refinery, Inc. had experienced significant demand and growth for its top-level dance and gymnastics education and was looking to expand from its increasingly inadequate facility. *L. Herrick Testimony at 52-54; W. Herrick Testimony at 210.* Accordingly, Herrick Investments began the process of selling the prior facility. It also sought to purchase land and construct improvements designed specifically for a facility that met all of the unique needs of a dance and gymnastics school. *W. Herrick Testimony at 210-213.*
15. Herrick Investments purchased and constructed the Property at 8335 Shelby Street in Indianapolis. It is identified as Parcel No. 49-15-19-114-001.000-500. It consists of a building with 25,462 square feet specifically designed and constructed to meet the unique requirements of a dance and gymnastics school. *L. Herrick Testimony at 52-60; W. Herrick Testimony at 208, 210-212; Petitioner's Exhibits 2, 19.* The location was specifically chosen because of its proximity to the Marion County/Johnson County border—a central location for its student base. *W. Herrick Testimony at 211.*
16. The Property was completed in 1997. Herrick Investments leased the Property to The Dance Refinery, Inc. until December 31, 2007. *L. Herrick Testimony at 52; W. Herrick Testimony at 207.*
17. Dance and gymnastics education is a passion of Ms. Herrick. The Herricks have no profit motive associated with the operation. *L. Herrick Testimony at 45; W. Herrick Testimony at 205-206.*

18. Over the years The Dance Refinery, Inc. received financial assistance requests and made its best efforts to always accommodate financial needs of its students to permit the students to continue with dance and gymnastics education, including permitting some students to continue their education without any payment. *L. Herrick Testimony at 66-67*. In the mid-2000s, The Dance Refinery, Inc. started to experience a dramatic increase in the number of requests for financial and fundraising assistance. *W. Herrick Testimony at 222-223*. The for-profit entity status of The Dance Refinery, Inc. severely limited its ability to raise funds to provide increased financial assistance for students. *L. Herrick Testimony at 105-106; W. Herrick Testimony at 222-224*.
19. Ultimately AIM, an Indiana nonprofit, public benefit corporation, was formed as a charitable and educational organization. *Petitioner's Exhibit 20 – Exhibit 7*. AIM was organized on November 30, 2006. The Internal Revenue Service has determined AIM is exempt from Federal income tax as a charitable and educational organization under Code Section 501(c)(3). *L. Herrick Testimony at 112-113, 116-117; Petitioner's Exhibit 20 – Exhibits 7, 12*.
20. Ms. Herrick is a member of the Board of Directors and President of AIM. *L. Herrick Testimony at 69*. She also serves as Executive Director of The Dance Refinery school operated by AIM. *L. Herrick Testimony at 69*. Mr. Herrick is a member of the Board of Directors and Treasurer of AIM. *W. Herrick Testimony at 209*.
21. On December 31, 2007, The Dance Refinery, Inc. donated at no charge all of its personal property (dance and gymnastics equipment, audio equipment, flooring, office supplies and other equipment) to AIM, including the ability to use the trade name The Dance Refinery. *L. Herrick Testimony at 115-116; Petitioner's Exhibit 20 – Exhibit 8*. The decision to continue using the same name was based on the positive reputation associated with that name in the community. *L. Herrick Testimony at 70-71*.

22. Herrick Investments also considered transferring the Property to AIM in late 2007. But at that time recent economic and financial industry issues had already started. Based on Mr. Herrick's 30 years of professional banking experience and discussions with the bank holding the mortgage for the Property, there was concern that the Property could not be transferred from Herrick Investments to AIM because the debt on the Property could not be assigned to AIM and it would be difficult for AIM to get its own financing. *W. Herrick Testimony at 214-216.* Accordingly, Herrick Investments retained title to the Property and leased it to AIM. *W. Herrick Testimony at 242-243.*
23. Herrick Investments entered into the Agreement of Lease with AIM dated January 1, 2008 (the "Lease"), for purposes of providing the Property for use as a dance and gymnastics school. *Petitioner's Exhibit 1.* Herrick Investments continues to lease the Property to AIM.
24. The Lease provides for total annual rent of \$164,600 payable in monthly installments that is lowered during the summer when revenue is lower. The average annual rent is \$6.46 per square foot. *Tillema Testimony at 181; Petitioner's Exhibit 2.*
25. The Lease requires AIM to use and occupy the Property exclusively as a nonprofit school for dance and gymnastics education. *Petitioner's Exhibit 1.* The Lease does not permit AIM to assign, sublet or grant any concession or license to use the Property without the prior written consent of Herrick Investments. *L. Herrick Testimony at 72-73; W. Herrick Testimony at 219; Petitioner's Exhibit 1.*
26. Herrick Investments has no intent to generate a profit from the Lease. The payments are designed to get enough rent to pay the debt associated with the Property. *L. Herrick Testimony at 89, W. Herrick Testimony at 216-218, 230-232, 236-237.* While Herrick Investments has some equity associated with the Property, it will eventually most likely make either a partial donation (less than the cost of the Property) or donate the Property to AIM to ensure that AIM can continue to operate at the Property. *W. Herrick Testimony at 241-242.*

27. AIM is responsible for any property taxes on the Property. *Petitioner's Exhibit 1*. Nevertheless, Herrick Investments paid the 2008 Pay 2009 and 2009 Pay 2010 property taxes. *Armbruster Testimony at 147; Petitioner's Exhibits 6, 7*.
28. Over the last few years, many public schools in Indiana have cut programs associated with the arts, including music, dance, and other extracurricular activities such as gymnastics. *W. Herrick Testimony at 210, 224*.
29. During 2008 and 2009 (and continuing today), AIM was able to provide dance and gymnastics education at the Property to approximately 700 students in accordance with its charitable and educational purposes. *L. Herrick Testimony at 48; W. Herrick Testimony at 216*.
30. A de minimus portion of the Property, approximately 1,500 square feet, is used by AIM to provide a dance supply store called The Dance Depot, which provides dance supplies at discounted prices for the convenience of AIM's students and the general public. *L. Herrick Testimony at 63-65, W. Herrick Testimony at 206, 208-209*. The Dance Depot provides some positive cash flow for AIM to use for its educational purposes. *W. Herrick Testimony at 207*.
31. The Herricks and the community at large view the Herricks, Herrick Investments, Artists in Motion and The Dance Refinery as one for purposes of providing top-level dance and gymnastics education as well as assisting other nonprofit/tax-exempt organizations with related projects. *L. Herrick Testimony at 73, 77-78, 93-94; W. Herrick Testimony at 216, 239-240; Meyer Testimony at 126-127, 130; O'Brien Testimony at 136*. Without Herrick Investments ownership of the Property, including the personal guarantee of the debt by the Herricks, and the charitable contributions to AIM to help it pay its expenses, AIM would not have been able to provide its dance and gymnastics education. Furthermore, there would no facility for other nonprofit/tax-exempt organizations to use at no charge for related activities. *W. Herrick Testimony at 222, 241*.

32. Herrick Investments is an S corporation that reports its income on Form 1120S, U.S. Income Tax Return for an S Corporation (“Form 1120S”), with the income and expenses subsequently flowing through to the Herricks’ personal tax returns. During 2008 and 2009, Herrick Investments had minimal net rental income associated with the Property, which is its only rental property and business activity. *Armbruster Testimony at 146, 149; Petitioner’s Exhibits 6, 7.* The rent received was used to make the debt payments associated with the Property. *Armbruster Testimony at 148-149; Petitioner’s Exhibits 6, 7.*
33. The Herricks did not receive compensation or take cash distributions from Herrick Investments during 2008 and 2009, despite the fact they are required to pay Federal income taxes on the net rental income that is allocated to them as the sole shareholders of Herrick Investments. *L. Herrick Testimony at 118-119; W. Herrick Testimony at 218, 231; Armbruster Testimony at 147-148; Petitioner’s Exhibits 6, 7.*
34. Ms. Herrick received minimal compensation from AIM for her services as Executive Director in 2008 and 2009, which typically involves 50 to 60 hours (or more) of work per week. *L. Herrick Testimony at 118; W. Herrick Testimony at 226-227; Armbruster Testimony at 144; Petitioner’s Exhibits 3, 4.* Mr. Herrick did not receive any compensation for his services as a member of the Board of Directors and Treasurer. *Armbruster Testimony at 144; Petitioner’s Exhibits 3, 4.*
35. Certain payments were made by AIM to The Dance Refinery, Inc. during 2008 and 2009 that were associated with the following: (i) the payroll processing company inadvertently failed to switch the employment tax and withholding reporting to AIM for 2008, which meant that The Dance Refinery, Inc. paid the applicable employment taxes in 2008 and had to be fully reimbursed by AIM; and (ii) a “management fee” that covered the payment by The Dance Refinery, Inc. of certain liabilities that could not be transferred when the associated personal property was transferred to AIM. *Armbruster Testimony at 149-151; W. Herrick Testimony at 203-204.* Once these liabilities are satisfied in

approximately 2½ years the Herricks intend to dissolve The Dance Refinery, Inc. *W. Herrick Testimony at 203-204*. The Herricks did not otherwise receive any compensation, dividends or other distributions from The Dance Refinery, Inc. during 2008 and 2009. *Petitioner's Exhibits 9, 10*.

36. Due to the fact that AIM did not generate sufficient revenue to offset its expenses, the Herricks made significant contributions to AIM in 2008 and 2009 to assist with expenses including payment of the rent for the Property. *W. Herrick Testimony at 218, 227-228; Armbruster Testimony at 145, 151-152; Petitioner's Exhibits 4, 5*. The contributions by the Herricks to AIM totaled \$106,000 for 2008 and \$78,170 for 2009. These contributions exceeded Ms. Herrick's minimal compensation for her services as Executive Director of The Dance Refinery. *W. Herrick Testimony at 227-230; Armbruster Testimony at 151-152, 168; Petitioner's Exhibits 4, 5, 12, 13*.
37. An Indiana Certified Appraiser, Nick A. Tillema, was engaged on a fixed fee basis to provide an independent market rent analysis of the Property and prepare a report compliant with the *Uniform Standards of Professional Appraisal Practice ("USPAP")*. *Tillema Testimony at 172, 193-194*. He prepared the Summary Report of an Appraisal Analysis dated September 21, 2011, a USPAP compliant report, with effective dates of value of March 1, 2008, and March 1, 2009. It compared the Property to several other comparable properties, including other sports-type use properties. It determined that the market rent for the Property was \$7.36 per square foot as of March 1, 2008 and 2009. *Tillema Testimony at 172-179; Exhibit 2*.
38. Based on the market rental rate conclusion of \$7.36 per square foot, Mr. Tillema concluded that the rental rate of \$6.46 per square foot paid by AIM under the Lease was below market rent. *Tillema Testimony at 180-181; Exhibit 2*. Mr. Tillema specifically indicated that the market rental rate determination would not be altered by the fact that Herrick Investments allowed others to use the Property if it did not conflict with or impact AIM's use of the Property. *Tillema Testimony at 195-196*.

39. Herrick Investments allowed other nonprofit/tax-exempt organizations to use the Property. *L. Herrick Testimony at 73-86; W. Herrick Testimony at 220-221*. It permitted several other nonprofit/tax-exempt organizations to use the Property at no charge. They included Roncalli High School, Beech Grove City Schools, Center Stage Productions and the Archdiocese of Indianapolis. *L. Herrick Testimony at 73-86*.
40. Both the Roncalli High School Dance Team and Gymnastics Teams used the Property at no charge for over 200 hours each year. *Hartford Testimony at 34-37; O'Brien Testimony at 133-134; Exhibit 15*. The Roncalli High School Dance Team used the Property twice a week, for almost two hours each session, from early September until late February in 2008 and 2009. *Hartford Testimony at 34-37; Exhibit 15*. The Roncalli High School Gymnastics Team used the Property twice a week for three hours each session from early November until the middle of March. *O'Brien Testimony at 133-134*. The Property provided space and facilities that were otherwise not available at Roncalli. *Hartford Testimony at 36-38*. AIM got some compensation for coaching/choreographer services in an amount similar to the compensation of other coaches at Roncalli, but it did not cover all of AIM's employee costs for those services. And that compensation was not for the use of the Property. *Hartford Testimony at 41; L. Herrick Testimony at 74-75*.
41. Students from Beech Grove City School's music department used the Property at no-charge for over 15 years including 2008 and 2009. *Bradford Testimony at 26-33; L. Herrick Testimony at 79-80; Exhibit 16*. As examples, the music students used the Property to prepare/rehearse for concerts, show choir competitions, and the annual performance of the Holiday Nutcracker. *Bradford Testimony at 27-29; L. Herrick Testimony at 79-80; Exhibit 16*.
42. Center Stage Productions, a ministry of Southport Presbyterian Church, was also used the Property at no charge in 2008 and 2009. *Dunbar Testimony at 139-142; Exhibit 17*. Its actors rehearse and trained at the Property as needed. The Property was used by Center Stage Productions for several hours each year. *Dunbar Testimony at 141*. The actors

also received choreography assistance/dance training from the staff of AIM. *Dunbar Testimony at 139-140.*

43. Youth and young adults involved with the activities of the Office of Youth and Young Adult Ministry of the Archdiocese of Indianapolis, a division of the Roman Catholic Church in the United States, were also permitted to use the Property at no charge in 2008 and 2009. *Meyer Testimony at 121-125; Exhibit 25.* They used the Property to prepare dance numbers for an annual Youth Rally. *Meyer Testimony at 124.* It is estimated that the Property was used approximately 90 hours each year for the Youth Rally. AIM staff provided choreography assistance and training. *Meyer Testimony at 124-125, Exhibit 25.*
44. The Respondent provided a one page spreadsheet and testimony from Douglas Rogers concluding that the rent for the Property is within market value range. Mr. Rogers is employed by the Respondent, but previously he worked as an appraiser for 23 years. He is a licensed general certified appraiser. Mr. Rogers admitted using comparables that were more industrial-type buildings, not commercial buildings used for dance, gymnastics or other indoor sports. Mr. Rogers did not personally visit the Property or his comparable properties. Mr. Rogers made no adjustment or analysis of unique features of the Property, the ideal location of the Property for a dance and gymnastics school, or the demographics of the area surrounding the Property. *Rogers Testimony at 245-259.*

Conclusions of Law

45. Ind. Code § 6-1.1-1-10-16 exempts property that is owned, occupied, and used for educational, literary, scientific, religious, or charitable purposes.
46. The taxpayer bears the burden of proving that the property was owned, occupied, and predominately used for one of the exempt purposes listed in that statute.
47. Once the Petitioner establishes a prima facie case, the burden shifts to the Respondent to offer evidence that impeaches or rebuts the Petitioner's evidence.

48. The evaluation of whether property is owned, occupied and predominately used for an exempt purpose is a fact sensitive inquiry. There are no bright-line tests.
49. A unity of ownership, occupancy, and use is not required. *See Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 955 (Ind. Tax Ct. 1997). “Once these three elements have been met, *regardless of by whom*, the property can be exempt from taxation.” *Id.* at 959 (emphasis added). In order to qualify for an exemption, the owner of a leased property must possess an exempt purpose separate and distinct from the exempt purpose of its lessee. *Hamilton Co. Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners*, 938 N.E.2d 654, 659 (Ind. 2010).
50. While the existence of a profit motive may be germane, for-profit corporate status does not preclude exemption. *College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 911 (Ind. Tax Ct. 2006).
51. “Education,” as that term is broadly understood, can occur anywhere, including private homes. *Fort Wayne Sports Club, Inc. v. State Bd. or Tax Comm'rs*, 147 Ind. App. 129, 139, 258 N.E.2d 874, 881(1970). To avoid irrationally interpreting the exemption statute, Indiana courts have required a taxpayer seeking an educational-purposes exemption to show that its property is used to provide a public benefit justifying the loss of tax revenue. *See Dep't of Local Gov't Fin. v. Roller Skating Rink Operators Ass'n*, 853 N.E.2d 1262, 1266 (Ind. 2006). Thus, a taxpayer must show that it provides education that is the “substantial equivalent” of instruction offered in Indiana’s tax-supported institutions. *See id.* at 1266. The closer the taxpayer’s activity is to traditional educational programs offered in public schools, the more obvious the public benefit. But a taxpayer need not offer courses that are direct analogues of courses taught in public schools; rather, the taxpayer’s courses only need to relate to public-school offerings. *Trinity Sch. of Natural Health v. Kosciusko Co. Prop. Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003). The taxpayer need only relieve the State’s burden of providing public education to “some limited extent.” *Id.*

52. Charging below market rent to an exempt organization may be some indication of beneficent motives, but more is required to show that an owner has its own exempt purposes. *Oaken Bucket*, 938 N.E.2d at 658.
53. The leasing of property to a for-profit dance school previously was determined to qualify for an educational purposes property tax exemption. *Shubert v. Elkart Co. Assessor*, Pet. No: 20-015-05-2-8-0002 (Dec. 18, 2006), Pet. No: 20-015-07-2-8-00037 (Nov. 24, 2008) and Pet. No: 20-015-08-2-8-00001 (Nov. 2, 2010). The *Shubert* cases had many facts that are similar to this case. The Shuberts, a husband and wife, were involved in the ownership of the property, which was purchased and designed for use by a dance school where the wife served as director. Rent was paid by the dance school for its use of the property. The dance school was the sole tenant of the property, although a nonprofit, tax-exempt dance school was also permitted to use the property at no charge. But unlike the nonprofit, tax-exempt status of AIM, in *Shubert* the primary tenant was a for-profit dance school.
54. Similar to the *Shubert* cases, Herrick Investments is owned and operated by the Herricks as the sole shareholders, officers, and directors. It was formed to purchase, construct and own a facility for dance and gymnastics education. It purchased and constructed the Property solely to provide such a facility where Ms. Herrick is Executive Director. Furthermore, the Herricks personally made substantial charitable contributions to AIM to cover its expenses, including the rent. The Herricks also personally guaranteed the debt associated with the Property.
55. The Board distinguished its 2006 *Shubert* determination in *Shubert Construction, Inc. v. St. Joseph Co. PTABOA*, Pet. No. 71-003-05-2-8-00001 (December 27, 2007). Herrick Investments case, however, is more comparable to the prior *Shubert* determination that granted exemption than to the *Shubert Construction* determination that denied exemption. First, the Property is the only real estate owned by Herrick Investments. There are no other tenants associated with the Property and the Herricks have no intent of profiting

from the ownership and leasing of the Property. Unlike Herrick Investments, Shubert Construction did not provide any evidence of its own exempt purposes. It should also be noted that the dance school tenant in *Shubert Construction* was a for-profit dance school, unlike AIM's status as nonprofit, tax-exempt organization. Finally, the *Shubert Construction* determination does not indicate that the owners of Shubert Construction made charitable contributions to the dance school or personally guaranteed the debt associated with the property such as the Herricks did for AIM.

56. AIM is not permitted to assign, sublet or grant any concession or license to use the Property without the prior written consent of Herrick Investments. But Herrick Investments has allowed several other nonprofit/tax-exempt organizations to use the Property at no charge, including Roncalli High School, Beech Grove City Schools, Center Stage Productions and the Archdiocese of Indianapolis. This kind of free use is charitable as well as educational and further supports a conclusion in favor of exemption.
57. All this evidence shows that Herrick Investments was created and exists as a vehicle to support the educational operations of AIM. Herrick Investments constructed and leased the Property for the sole and exclusive purpose to provide a facility for dance and gymnastics education. Herrick Investments paid the property taxes that AIM is required to pay under the Lease. The rent is below market rent. The below market rent charged by Herrick Investments, while not sufficient alone for property tax exemption according to *Oaken Bucket*, provides an indication of motive because it facilitated the educational activities and purposes of AIM. Unlike Oaken Bucket Partners, LLC, Herrick Investments did not lease property to any other tenants—it was formed for the sole purposes of owning the Property for a dance and gymnastics school. And the Herricks made significant charitable contributions to assist the AIM school and others. These facts indicate the charitable and educational purposes of Herrick Investments.
58. Herrick Investments presented substantial, probative evidence that the Property is owned for exempt purposes.

59. The Respondent's single exhibit and its one witness attempted to rebut whether the rent paid by AIM was below market rent, but this evidence has little credibility or weight. The one page spreadsheet lacks substantial explanation or analysis and it is not USPAP compliant. The testimony about how Mr. Rogers selected the rent comparables and the known facts related to them does almost nothing to support the reliability of his conclusions. Finally, Mr. Rogers admitted he was aware of sentiment in the Respondent's office (where he is employed) that this particular exemption claim should be denied. Ultimately, Mr. Roger's opinion that the contract rent for the Property is not significantly below market rent is simply not very credible. The evidence that the rent for the Property is something less than market is more credible, but that point is only part of what must be considered. And the Respondent offered virtually nothing to challenge anything else that the Petitioner presented.
60. The overwhelming weight of the evidence shows the Property was owned entirely for charitable, educational and religious purposes. The Parties previously stipulated that the Property is occupied and used by AIM for exempt educational purposes. Accordingly, the Property gets a 100% exemption.

SUMMARY OF FINAL DETERMINATION

61. The claim for 100% exemption must be granted.

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

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>