

REPRESENTATIVE FOR PETITIONER:

Randall Cole

REPRESENTATIVES FOR RESPONDENT:

Brian Cusimano, Marilyn Meighen, Heather Scheel, Attorneys

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MOZART INC.,	)	Petition Nos.:	62-007-13-2-8-00001
	)		62-007-13-2-8-00002
Petitioner,	)		62-007-13-2-8-00003
	)		62-007-13-2-8-00004
v.	)		62-007-13-2-8-00005
	)		62-007-13-2-8-00006
PERRY COUNTY ASSESSOR,)		
	)	Parcel Nos.:	62-13-34-549-151.001-007
Respondent.	)		62-13-34-549-151.003-007
	)		62-99-60-118-102.000-006
	)		62-99-60-118-100.000-006
	)		62-13-33-200-283.002-006
	)		62-13-33-540-279.003-007
)		
	)	County:	Perry
)		
	)	Township:	Troy
)		
	)	Assessment Year:	2013

Appeal from the Final Determinations of the
Perry County Property Tax Assessment Board of Appeals

April 28, 2016

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the evidence and arguments presented in this case, now enters findings of fact and conclusions of law.

INTRODUCTION

1. Mozart, Inc. bought a former junior high school with the intent of turning it into a community-use facility. To date, only the gym has been used and little has been done to make the necessary renovations for the envisioned charitable and educational uses of the rest of the facility. Because little time had passed between the date Mozart bought the property and when it first applied for an exemption, we find the admittedly minimal steps toward making the contemplated uses a reality were enough to support an exemption for 2013. We make no finding as to the property's continued eligibility for exemption in the future.

PROCEDURAL HISTORY

2. Mozart bought the property, which includes six tax parcels, at auction in September 2012. On April 23, 2013, it filed a Notice(s) of Change of Ownership or Use of Exempt Property with the Perry County Assessor. It also applied for a property tax exemption under Ind. Code § 6-1.1-1-0-16, claiming that the property was owned, occupied, and used for educational and charitable purposes. On December 23, 2013, the Perry County Tax Assessment Board of Appeals ("PTABOA") denied the exemption. Mozart responded by timely filing Form 132 petitions with the Board.
3. On November 19, 2015, our designated administrative law judge, Gary Ricks ("ALJ"), held a hearing on Mozart's petitions. Neither he nor the Board inspected the property.¹
4. Randall Cole, Mozart's secretary, testified under oath. Lisa Cole, Mozart's president, and Perry County Assessor, Mendy Lassaline, were sworn as witnesses but did not testify.
5. Mozart offered the following exhibits:

Petitioner Exhibit A: Certificate of Incorporation of Mozart Inc., Certificate of

¹ During the hearing, the ALJ's recording device abruptly switched off. He noticed it immediately, and no evidence was omitted from the recording.

- Amendment, Articles of Incorporation, profit and loss statement, expense by vendor summary, income by customer summary, balance sheet, Form 1023
Supplementary Information, December 19, 2012 letter to Mozart from the Internal Revenue Service, sales tax exemption certificate,
- Petitioner Exhibit B: Article from Perry County News regarding auction of the subject property,
- Petitioner Exhibit C: Appraisal of subject property by Charles R. Mills,
- Petitioner Exhibit D: Sales Disclosure Form,
- Petitioner Exhibit E: Quitclaim Deed,
- Petitioner Exhibit F: Floor plan of subject property,
- Petitioner Exhibit G: December 11, 2009 memorandum from Timothy J. Rushenberg, commissioner of the Department of Local Government Finance
- Petitioner Exhibit H: Notice(s) of Change of Ownership or Use of Exempt Property,
- Petitioner Exhibit J: List of supporting documents and related parcels listing,
- Petitioner Exhibit K: Form 136 applications,
- Petitioner Exhibit L: Form 120 notices,
- Petitioner Exhibit M: Form 132 petitions,
- Petitioner Exhibit N: Usage Log,
- Petitioner Exhibit O: Rental agreement,
- Petitioner Exhibit P: Invoice to Cannelton City School,
- Petitioner Exhibit Q: Letter to Randy Cole from soccer coach,
- Petitioner Exhibit R: Note from principal of William Tell Elementary School,
- Petitioner Exhibit S: Letter to Randy Cole regarding Tell City Panthers softball team,
- Petitioner Exhibit T: Letter to Randy Cole regarding Tell City H.S. cross country team,
- Petitioner Exhibit U: Affidavit of John Scioldo,
- Petitioner Exhibit V: Newspaper article regarding baseball draft,
- Petitioner Exhibit W: Lincoln Hills Development Corporation Annual Report,
- Petitioner Exhibit X: Newspaper article regarding Fulton Hill Community Center,
- Petitioner Exhibit Y: Article regarding possible sale of Fulton Hill Community Center,
- Petitioner Exhibit Z: July 8, 2014 article from DCB regarding Fulton Hill Community Center being offered for sale,
- Petitioner Exhibit AA: July 7, 2014 article regarding Fulton Hill Community Center being offered for sale,
- Petitioner Exhibit BB: Property record card for Lincoln Hills Development Corp.,
- Petitioner Exhibit CC: Article regarding Agape Community Church,
- Petitioner Exhibit DD: Property record card for Agape Fellowship Ministries,

Petitioner Exhibit EE: Perry County News article regarding possible sale of Coleman generating plant,
Petitioner Exhibit FF: Property record card for Perry County Port Authority,
Petitioner Exhibit GG: Photograph of softball facility in Main Street Warehouse,
Petitioner Exhibit HH: Article about property tax for the subject property.

6. The Assessor offered the following exhibits:

Respondent Exhibit A: Photograph of subject property,
Respondent Exhibit C: Information regarding mission of Mozart, Inc.,
Respondent Exhibit D: Floor plan of subject property,
Respondent Exhibit F: LoopNet property records regarding listing history for the subject property and sheet entitled “Office Property - Off Market” with map,
Respondent Exhibit G: Listing information for the subject property from F.C. Tucker,
Respondent Exhibit H: Balance sheet, profit and loss statement, income by customer summary, expense by vendor summary, (Confidential).

7. The following items are also recognized as part of the record:

Board Exhibit 1: Form 132 petition,
Board Exhibit 2: Hearing notice,
Board Exhibit 3: Hearing sign-in sheet,
Board Exhibit 4: Notice of Appearance by Marilyn S. Meighen, Brian A. Cusimano, and Heather A. Scheel,
Board Exhibit 5: February 12, 2015 Orders for Extension of Time.

OBJECTIONS

8. The Assessor first objected to Petitioner’s Exhibit C—an appraisal of the subject property—as hearsay. The ALJ took the objection under advisement. We may not exclude appraisal reports solely on the basis of a hearsay objection:

(p) At a hearing under this section, the Indiana board shall admit into evidence an appraisal report, prepared by an appraiser, unless the appraisal report is ruled inadmissible on grounds besides a hearsay objection. This exception to the hearsay rule shall not be construed to limit the discretion of the Indiana board, as trier of fact, to review the probative value of an appraisal report.

I.C. § 6-1.1-15-4(p). For that reason, we overrule the Assessor’s objection and admit Petitioner’s Exhibit C.

9. The Assessor also objected to Petitioner’s Exhibits W and Y—an annual report for Lincoln Hills Development Corporation (Ex. W) and an article about the possible sale of Fulton Hill Community Center (Ex. Y)—as irrelevant. The ALJ took the matter under advisement.
10. We overrule the objection. The exhibits relate to Mozart’s claim that similarly situated taxpayers were treated more favorably than Mozart. Thus, their relevance depends on whether disparate treatment, if proven, would entitle Mozart to relief. The Assessor argues otherwise, and Mozart did nothing to develop the underlying legal basis for such a claim. The appeals do not turn on that claim, and we see no reason to address the issue simply to determine the admissibility of evidence that we ultimately do not rely on in our determination.

SUMMARY OF MOZART’S CASE

11. The subject property is entitled to a 100% percent exemption because it was owned, occupied, and used for charitable and educational purposes. The property contains what was formerly a junior high school, a parking lot, and vacant land. The school system vacated the property and eventually offered it for sale at auction in September 2012. In a pre-auction appraisal report, Charles R. Mills, Jr. found that the property’s highest and best use as improved was to sell it for \$10,000 or to donate it to a “501(c)(3) charitable organization.” *Cole testimony; Pet’r Ex. C.*
12. Randall Cole formed Mozart, which has been granted a tax exemption under section 501(c)(3) of the Internal Revenue Code, to buy the property and develop it into a community-use facility. In supplementary materials it gave to the Internal Revenue Service, Mozart explained that programs at the property would be subsidized and possibly free. There would be a mechanism for children to participate without paying.

For example, parents could provide services in lieu of payment, so nobody would get a free ride and the whole community could benefit from the facility. *Cole testimony; Pet'r Exs. A-B.*

13. Mozart bought the property for \$85,000 at the September 2012 auction, and it received a quitclaim deed in early October. Cole has explored various different community uses for the property. He reached out to Ivy Tech, which was contemplating leaving the community, and offered to allow it to use the facility free of charge. He actually went through the facility with the executive director of the Perry County Development Corporation and determined that Ivy Tech could use it with some modifications. The city eventually eliminated Ivy Tech's rent at its existing facility, so Ivy Tech stayed put. Cole also explored using the property as a business incubator program to encourage start-up businesses in the community. And he contemplated using the property for both live and electronically streamed educational classes and art exhibitions. In that regard, he spoke to people about displaying their collections of Native American and military artifacts. But renovations would be necessary before the artifacts could be safely and securely displayed. *Cole testimony; Pet'r Exs. D-E.*
14. In fact, all the contemplated uses would require renovating the facility. The building was a disaster when Mozart bought it. Neither its design (it is partitioned into classrooms), nor its condition was suitable for a community-use facility. Also, there is not enough parking available to host events. The vacant parcels need to be developed to provide additional parking, although Mozart has not gone through the design phase yet. *Cole testimony.*
15. Cole himself funded some initial repairs and renovations, such as securing the building and making it safe by fixing holes in the walls and removing some temporary partitions. Mozart had to change the zoning from residential to commercial so the property could be used for something other than single-family housing. But Mozart has not begun to raise funds for the more significant renovations. Cole believes that would be inappropriate

until Mozart secures an exemption; otherwise, the renovations would dramatically increase its tax bill. According to Cole, it would be unfair to ask for donations that will simply go to paying Mozart's property taxes. *Cole testimony.*

16. Although most of the facility must be renovated before it can be used, the gym was usable after only minor repairs. Thus, various sports teams and leagues have used the gym for practice and other events. Mozart prepared a usage log, which lists the following activities between December 3, 2012 and March 1, 2013:

- The Tell City Panthers, a junior high softball team, used the gym for practice 15 times. No schools in the region monetarily support junior high softball. The Panthers have to raise funds themselves to buy uniforms and pay other necessary expenses. The team is open to any student who wants to participate.
- A junior high soccer team used the gym for practice eight times.
- The Cannelton School Corporation used the gym for student basketball practice three times.

Cole testimony; Pet'r Ex. N.

17. Those same groups used the gym following March 1, 2013. Other groups used the gym during that period as well. Tell City School Corporation used it to store playground equipment. It also used the parking lot, grounds, and restrooms during cross country meets. Although the only entries on the usage log for cross country meets are from 2014, Cole testified that the property has been used for that purpose since 2012. There are also entries on the usage log for "Youth Girls Softball," and "Boys 7th Grade Basketball." A youth baseball league held tryouts and a draft in April 2014. Finally, in August 2013, a group used the cafeteria area to hold a class reunion. *Cole testimony; Pet'r Ex. N.*

18. Mozart charged schools \$60 to rent the gym for 1.5 hours, although a rental agreement with Cannelton City Schools lists an hourly rate of only \$20. Cole described the charge as a token payment to offset the cost of turning on the lights. Mozart charged \$100 for

the youth baseball tryouts and draft, which lasted all day, again in hopes of offsetting electricity costs. It charged the class reunion \$200. Mozart allowed Tell City Troy Township School Corporation² to store playground equipment free of charge. It similarly did not charge for the school corporation to use the parking lot, grounds, and restrooms during cross country meets. John Scioldo, superintendent for the school corporation, signed an affidavit attesting to the fact that the corporation used the gym repeatedly over the two years leading up to November 2014. He explained that if Mozart had not allowed the corporation to use the gym, the corporation either would have been unable to provide the education and training that occurred or would have had to use tax dollars or tax-supported facilities to do so. *Cole testimony; Pet'r Exs. O-P, U.*

19. According to Mozart, other properties have been treated more favorably than the subject property. Fulton Hill Community Center, which Lincoln Hills Development Corporation owned and operated, hosted 65 different events in 2006. Those events included business meetings, seminars, weddings and receptions, reunions, school and community events, and private parties. The center has been closed since 2010, and it was offered for sale in 2014. Yet it continued to receive an exemption. Similarly, a property owned by Agape Community Church has been vacant for 25 years and was offered for sale several times. It too has been exempt the entire time. Finally, the Perry County Port Authority bought a factory complex from which it receives rental income. The entire complex is exempt. *Cole testimony and argument; Pet'r Exs. W-GG.*

SUMMARY OF THE ASSESSOR'S CASE

20. The PTABOA correctly denied Mozart an exemption. Mozart needed to show more than just noble intent; instead, it needed to show it used the property to provide a public benefit sufficient to justify the loss in tax revenue. It did not do so. At most, Mozart showed that some local sports teams used the gym. But it did not identify the nature of those teams—they could have been private organizations. In any case, the fact that a

²This appears to be the same school corporation that the usage log refers to as “Tell City School Corp.”

sports club uses a property does not necessarily qualify it for exemption. *Cusimano argument* (citing *State Bd. of Tax Comm'rs, v. Ft. Wayne Sports Club, Inc.*, 147 Ind. App. 129, 258 N.E.2d 874 (Ind. Ct. App. 1970)).

21. Cole identified other things Mozart might eventually use the property for, but his explanation as to why those uses had not yet occurred—that he could not raise money for the necessary renovations until the property is declared exempt—is circular. Parts of the facility were (and are) ready for public use. There were things Mozart could have done if it was really trying to benefit the community. Instead, Mozart listed the property for sale beginning in August 2014. It was listed again in May 2015. Although the Assessor did not offer evidence of the asking price from August 2014, the asking price was \$287,000 as of October 23, 2015. *Cusimano argument; see also, Resp't Exs. F-G.*
22. Although Mozart points to what it characterizes as disparities in the way the subject property has been treated compared to three other properties that have been granted exemptions, the Assessor knows of no case law justifying an exemption on that theory. In any event, Mozart did not offer enough evidence about how those other properties were used to make a claim of disparate treatment. *Cusimano argument.*

ANALYSIS

A. Bases for Exemption

23. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton County Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). A taxpayer bears the burden of proving it is entitled to an exemption. *Oaken Bucket*, 938 N.E.2d at 657.
24. All or part of a building that is owned, occupied, and predominantly used for educational, literary, scientific, religious, or charitable purposes is exempt from taxation. *See* I.C. §6-

1.1-10-16(a); I.C. §6-1.1-10-36; *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Ass'r*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct. 2009) *reh'g den.* 914 N.E.2d 13 (Ind. Tax Ct. 2009). That exemption extends to the land on which the building sits and to and to personal property that is owned and used in such a manner that it would qualify for exemption if it were a building. I.C. §6-1.1-10-16(c) and (e).³ A property is predominantly used or occupied for exempt purposes if it is used or occupied for those purposes more than 50% of the time that it is used or occupied in the year that ends on the assessment date. I.C. § 6-1.1-10-36.3(a).

25. Because exemption statutes release properties from bearing their fair share of the cost of government and disturb the equality and distribution of the common burden of government, they are strictly construed against the taxpayer. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). Nonetheless, the term “charitable purpose” must be defined and understood in its broadest constitutional sense. *Knox County Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005). A charitable purpose will generally be found if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *Id.* Worthwhile activity or noble purpose alone, however, is not enough. *See Nat'l Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E. 2d 218, 220 (Ind. Tax Ct. 1996) (“Operating a museum for the public and enhancing the public’s knowledge about miniatures, while a noble endeavor, does not relieve human want and suffering.”).
26. Indiana Courts have applied those same basic principles in interpreting the term “educational” under Ind. Code § 6-1.1-10-16(a) and its predecessor statutes. Education, as that term is broadly understood, can occur anywhere, including private homes. Thus, to avoid irrationally applying the exemption statute, a more restrictive definition of

³ Mozart did not claim an exemption for personal property in its Form 132 petitions.

“educational purposes” is required. *Ft. Wayne Sports Club*, 258 N.E.2d at 881 (interpreting predecessor to I.C. § 6-1.1-10-16). A taxpayer must demonstrate a public benefit by showing it provides education that is the “substantial equivalent” to instruction offered in Indiana’s tax-supported institutions. *Dep’t of Local Gov’t Fin. v. Roller Skating Rink Operators Ass’n*, 853 N.E.2d 1262, 1266 (Ind. 2006). 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 directly analogous to courses taught in public schools; rather, the taxpayer’s courses simply need to be related to public-school offerings. *Id.* (citing *Trinity School of Natural Health v. Kosciusko County Prop. Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003)). And the taxpayer need only relieve the state’s burden of providing public education to “some limited extent.” *Id.* (quoting *Trinity School*, 799 N.E.2d at 1238).

B. Mozart’s Claims

27. Mozart bases its exemption claim both on the activities for which the gym has been used since it bought the property and the uses it intends for the remainder of the building once it has made necessary renovations. The Assessor argues that use of the gym by what may be private sports teams does not qualify as charitable or educational and that Mozart has not given sufficient reasons for failing to take concrete steps toward making the proposed uses for the rest of the building a reality. We address each claim in turn.

1. The gym is owned, occupied, and used for charitable and educational purposes

28. We note at the outset that Mozart does not have a profit motive in owning and operating the facility. While not dispositive, that fact is at least relevant. The main question, however, is whether making the gym available at a nominal charge to youth sports teams—two of which were sponsored by a school corporation and the third of which provided athletic opportunities to any junior high student in the area and relieved the

school corporation of the need to monetarily support junior high teams in that sport— qualifies as an educational or charitable use. We find it does.

29. The facts in these appeals are distinguishable from *State Bd. of Tax Comm'rs v. Ft. Wayne Sports Club, Inc.*, the case the Assessor relies on in opposing Mozart's claims. The Indiana Court of Appeals held that two clubs—one of which focused on the promotion of soccer as a sport and used its premises for athletic activities, membership meetings, and dances and the other of which was used solely as an athletic club—were not entitled to an educational-purpose exemption. *Ft. Wayne Sports Club*, 258 N.E.2d at 876-79. According to the court, the dominant motives were social and privately recreational; any educational benefits, such as teaching light physical exercises and indoor games, were merely incidental. *Id.* at 882. Here, by contrast, Mozart did not operate the gym as a club. And neither Mozart nor any of the teams using the gym had social or private recreational motives. To the contrary, Mozart made the gym available for organized instruction in the context of youth team sports, including practices for teams sponsored by tax-supported schools.
30. As with most exemption appeals, our decision turns on the narrow facts before us. Thus, for example, we do not find that all facilities catering to youth sports teams are necessarily exempt. We note the absence of any evidence that non-exempt facilities offer the same opportunities to youth sports teams in the area. But we need not decide whether the existence of such facilities would change our decision.

2. As of 2013, Mozart had taken sufficient objective steps toward realizing its intent of using the rest of the facility for exempt purposes

31. We now turn to the uses Mozart envisions for the rest of the facility once it has been renovated. We must first address whether planned, but as yet unrealized, uses may qualify a property for exemption. The Indiana Tax Court has twice addressed that question. In the first case, a church claimed an exemption for property consisting of several parcels of land where it planned to build a world-class tabernacle. *Foursquare*

Tabernacle Church of God in Christ v. Sate Bd. of Tax Comm 'rs, 550 N.E.2d 850, 851 (Ind. Tax Ct. 1990). The church brought in approximately \$10,000 annually, and the expected cost was up to \$5 million. Yet the church had not designated any savings for the project. It also needed additional properties, which might never be available, to accommodate the construction. *Id.* It had not taken steps to obtain proper zoning. Indeed, the only step was to contact a builder that merely provided some standard information. *Id.*

32. The church claimed an exemption under Ind. Code § 6-1.1-10-16(d), which at the time provided for exempting a tract of land up to 40 acres if it was bought for purposes of erecting a building that would be exempt under Ind. Code § 6-1.1-10-16(a) or (b). *Id.* at 853. The church moved for summary judgment, arguing that it needed only state its intention to use the property for exempt purposes without any other evidence. The court disagreed, quoting with approval the following language from the Ohio Supreme Court:

The intent to use such property for an exempt purpose must be one of substance and not a mere dream that sometime in the future, if funds can be obtained, the entity would so use such property. In other words, it must be shown that the entity, at the time the application for exemption is made, is actively working toward the actual use for the public benefit. Evidence that surveys have been made and plans drawn or that active fund-raising campaigns are being carried on is indicative that the exempting use will be made of the property within a reasonable time.

Id. at 854 (quoting *Holy Trinity Protestant Episcopal Church v. Bowers*, 172 Ohio St. 103, 173 N.E.2d 682, 685 (1961)). While the Tax Court did not doubt the minister's word, it found there was a lack of objective evidence to support the church's entitlement to an exemption and held that a material question of fact existed about future use. *Id.* at 854-55.

33. Eight years later, the Tax Court decided *Trinity Episcopal Church, v. State Bd. of Tax Comm 'rs*, 694 N.E.2d 816 (Ind. Tax Ct. 1998). In that case, the taxpayer claimed an exemption under Ind. Code § 6-1.1-10-16(a) for a building it was renovating and planned

to lease to the Marion County Health and Hospital Corporation for use as a community mental health center. The renovations were costly and were in progress on the assessment date. They were completed a little over four months later, at which time the church leased the property as planned. *Trinity Episcopal Church*, 694 N.E.2d at 817. The State Board of Tax Commissioners denied the exemption because the building was vacant on the assessment date. *Trinity Episcopal Church*, 694 N.E.2d at 817.

34. The Tax Court reversed, holding that a taxpayer's actions in preparing a building to be used for exempt purposes in the future may qualify it for property tax exemption under Ind. Code § 6-1.1-10-16(a). *Id.* at 818. But as the court once again explained, ownership alone does not suffice; the intent to use a property for an exempt purpose must be "more than a mere dream." *Id.* (quoting *Foursquare Tabernacle* 550 N.E.2d at 854). In the case before it, the court found that the taxpayer's intent was no mere dream; instead, the taxpayer had taken concrete steps at great expense to prepare its building for use as a mental health center. Thus, the building qualified for an exemption because, as of the assessment date, the taxpayer held the building with the intent to use it for exempt purposes in the future. *Id.* at 818-19.

35. *Foursquare Tabernacle* and *Trinity* reflect opposite ends of the spectrum. In the first case, the church had taken no objective steps toward making its dream a reality, while in the second, it had gone to great expense to realize its goals within a short time. Mozart falls somewhere between the two. It obtained a change in zoning that would allow non-residential uses, including use as a community-use facility. And Mr. Cole at least explored various community-oriented or educational uses. Some were specific and obviously exempt, such as his offer to let Ivy Tech use the facility. Others were vaguer, such as allowing the facility to be used for live and electronically streamed classes on unidentified subjects, or his loosely formed plan for a business incubator. None of the uses actually occurred, because Mozart has not begun raising funds for the necessary renovations. Mozart does not even appear to have any specific fundraising plans, owing to Cole's reluctance to begin soliciting donations until Mozart first obtains an exemption.

36. Nonetheless, as of the date it applied for an exemption, Mozart was taking objective steps to make its vision of turning the property into a community-use facility a reality. While Mozart had not formulated detailed plans, the uses it explored were designed to benefit the public and generally would qualify as charitable or educational. Given that little more than six months had passed between the date Mozart took title and the date it applied for an exemption, Mozart’s relatively limited actions were sufficient indicators that the entire facility would be put to use for public benefit within a reasonable time. Indeed, Mozart made the gym—the one part of the building that was readily convertible to use for the public benefit—available to youth sports teams within a few months of buying the property.

C. Our decision applies to 2013 only; we do not address Mozart’s eligibility for exemption in later years

37. Our decision addresses the 2013 assessment year only. We need not decide whether Mozart’s lack of discernible progress in converting the facility to exempt uses over time affects its entitlement to an exemption in future years. In that vein, we note that the legislature amended Ind. Code § 6-1.1-10-16(d) following *Four Square Tabernacle*. That section now requires a taxpayer who buys a tract of land for the purpose of erecting a building that would be exempt under Ind. Code § 6-1.1-10-16(a) or (b) to “not more than four (4) years after the property is purchased and for each year thereafter” demonstrate “substantial progress and active pursuit towards the erection of the intended building and use of the tract for the exempt purpose.” I.C. § 6-1.1-10-16(d). The statute lists the type of factors the owner must prove to show substantial progress, such as organizing an active building committee or other oversight group, completing and filing building plans, setting aside cash reserves in an amount that would lead a reasonable person to believe construction can and will begin within four years, breaking ground, and any other factor “that would lead a reasonable individual to believe that construction of the building is an

active plan and that the building is capable of being completed within eight (8) years considering the circumstances of the owner.” *Id.*⁴

38. We are dealing with an improved property, so Ind. Code § 6-1.1-10-16(d) does not directly apply. But it is instructive as to the type of progress toward the goal of exempt use that is necessary. Actions that constitute objective steps toward exempt use in year one might not suffice in later years. And while we give little weight to Mozart’s decision to list the property for sale beginning in August 2014 in deciding its eligibility for exemption in 2013, that fact might carry greater weight going forward.⁵ We need not decide those questions today, however. Instead, we find the property was entitled to a 100% exemption for 2013.

FINAL DETERMINATION

39. The gym was owned, occupied, and exclusively used for charitable or educational purposes for the 2013 assessment year. Although the rest of the facility was vacant, Mozart took enough objective steps toward realizing its intention of using the facility for charitable or educational purposes within a reasonable time to qualify for exemption. For those reasons, we find the property was 100% exempt for 2013. We make no finding as to its eligibility in subsequent years.

⁴ The original amendment required the showing of substantial progress after three (rather than four) years and had a catch-all provision for factors that would lead a reasonable individual to believe that the building was capable of being completed within six (rather than eight) years. 1993 Ind. Acts. 57, § 7.

⁵ Although Mozart may not be required to file a formal exemption application for subsequent years, the property must continue to meet the requirements of Ind. Code § 6-1.1-10-16 to be entitled to an exemption in those years. *See* I.C. § 6-1.1-10-16(d)(3).

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, 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 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 Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.