REPRESENTATIVE FOR PETITIONER:
Eric Frey, Attorney/Secretary

REPRESENTATIVE FOR RESPONDENT:
Michael West, Vigo County Reassessment Supervisor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

SILVER LININGS DAYCARE, INC.,	)	Petition No.: 84-002-14-2-8-00001
	)	
Petitioner,	)	Parcel No.: 84-06-27-230-001.000-002
	)	
v.	)	County: Vigo
	)	
VIGO COUNTY ASSESSOR,	)	Township: Harrison
	)	
Respondent.	)	Assessment Year: 2014

DECEMBER 12, 2016

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board"), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. Where a property owner seeks an exemption under Ind. Code § 6-1.1-10-16(a) for a property that is occupied and used by someone else, the owner and occupier each must have its own exempt purpose. Silver Linings Daycare, Inc., leased its property to Nicki Johnson, a sole proprietor who ran a state-subsidized daycare primarily for children of low-income families. Silver Linings offered little evidence about Johnson's operations or the nature of the subsidy. Did it make a prima facie case?

PROCEDURAL HISTORY

2. The property had previously been granted an exemption. Local officials (the record does not disclose who) removed the exemption for 2014. On March 24, 2014, Silver Linings filed an exemption application with the Vigo County Property Tax Assessment Board of Appeals ("PTABOA") requesting that its real and personal property be 100% exempt from taxation. On August 20, 2014, the PTABOA sent notice to Silver Linings denying its exemption request.

3. Silver Linings then timely filed a Form 132 petition with the Board. On September 13, 2016, Gary W. Ricks, our designated administrative law judge ("ALJ") held a hearing. Neither he nor the Board inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The following people were sworn as witnesses at the hearing:

For Silver Linings: Eric Frey, Attorney/Secretary, Silver Linings Daycare, Inc.
Cleytus Malone, President, Silver Linings Daycare, Inc.

For the Assessor: Michael West, Cyclical Reassessment Supervisor, Vigo Co. Assessor's office, Cynthia Farrand, Deputy Assessor, Vigo Co. Assessor's office.

5. Silver Linings offered the following exhibits:

Petitioner Exhibit 1: May 4, 1995 letter from the U.S. Dep't of Treasury to Terre Haute Youth Intervention Center, Inc.,
Petitioner Exhibit 2: Two-page printout from Indiana Secretary of State regarding general entity information for Silver Linings Daycare, Inc.,
Petitioner Exhibit 3: General warranty deed from Terre Haute Youth Intervention Center to Silver Linings.

6. The Assessor offered the following exhibits:

Respondent Exhibit 1: Property Record Cards ("PRCs") for the subject property,
Respondent Exhibit 2: Photograph of Small Wonders Day Care sign,
Respondent Exhibit 3: Printout showing transfer history of subject property,
Respondent Exhibit 4: Copy of I.C. § 6-1.1-10-16,

Respondent Exhibit 5: Silver Linings' Form 136 exemption application,
Respondent Exhibit 6: Copy of Form 120 determination from PTABOA,
Respondent Exhibit 7: Form 132 petition,
Respondent Exhibit 8: *CFF Bradford Run LLC v. Howard County Ass'r,* Pet. No. 34-006-10-2-8-00001 (IBTR, January 14, 2013),
Respondent Exhibit 9: First page of unsigned Form 120 determination with handwritten notations, page from unidentified form with handwritten notations, front pages from two PRCs with handwritten notations.

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

Board Exhibit 1: Form 132 petition with attachments,
Board Exhibit 2: Hearing notice,
Board Exhibit 3: Hearing sign-in sheet.

8. The property is located at 504 S. 15th Street in Terre Haute.

OBJECTIONS

9. The Assessor objected to Petitioner's Exhibits 1 and 2 on grounds that Silver Linings did not exchange them before the hearing, although he admitted that they were in his records. The ALJ took the objection under advisement.

10. We overrule the objection. Our procedural rules require parties to exchange witness and exhibit lists and copies of documentary evidence before a hearing. *See* 52 IAC 2-7-1(b). But we need not exclude evidence based on a party's failure to comply with those exchange requirements where the opposing party suffers no prejudice, such as when the contested exhibits were offered below at the PTABOA hearing. *See* 52 IAC 2-7-1(d). The Respondent suffered no prejudice here.

11. The Assessor made an additional objection to Petitioner's Exhibit 1—a notice from the Internal Revenue Service to the Terre Haute Youth Intervention Center of its exemption from federal income taxation—on relevance grounds because the letter did not refer to Silver Linings. The ALJ also took this objection under advisement.

12. We overrule the objection. The undisputed evidence shows that Terre Haute Youth Intervention Center, Inc., changed its name to Silver Linings Daycare, Inc., in 2012. They are the same corporation. In fact, except where otherwise indicated, we will refer to the corporation as Silver Linings regardless of what its name was at the time of any events discussed.

13. Silver Linings objected to Respondent's Exhibit 8—a Board determination in a different appeal—on relevance grounds. The ALJ took the objection under advisement. We overrule it. The exhibit is not evidentiary; the Assessor cited to it in making legal argument. Providing a copy is simply a courtesy for the convenience of the parties and the Board.

SILVER LININGS' CONTENTIONS

14. In 1994, the city of Terre Haute contacted Eric Frey, Cleytus Malone, and another person asking for help in taking over the subject property, which had previously been used as a privately owned nursing home, but had since been abandoned. The city wanted to establish a facility for boys and girls who needed counseling, pre-criminal detention, and other assistance to avoid incarceration. Through its Department of Redevelopment, the city received an approximately $300,000 federal grant to renovate the building. Frey incorporated a not-for-profit organization to buy the property and operate it. That corporation was originally named The Terre Haute Youth Intervention Center, Inc. It has since changed its name to Silver Linings Daycare, Inc. *Frey testimony*.

15. Frey sought and received a ruling from the United States Department of Treasury that Silver Linings was exempt from federal income tax. That ruling allowed it to administer the federal funds. According to Frey and Malone, Silver Linings' original articles of incorporation were destroyed in a fire, but they indicated that title to the property reverts to the city if Silver Linings stops doing business. *Frey testimony*.

16. Silver Linings ran the facility by itself for several years, but found meeting various state requirements, such as licensing, overwhelming. It then contracted with the Children's Bureau in Indianapolis to run the facility. Eventually, funding decreased and the Children's Bureau stopped operating the facility. The property sat vacant for "a few years." *Frey testimony;*[1] *West testimony.*

17. Then Silver Linings decided to use the property as a daycare facility for minorities and children from low-income families. In 2012, Frey and Malone amended the articles of incorporation to change the entity's name and reflect its new purpose. According to Frey, Malone tried to run the daycare by himself for a while, but Silver Linings later leased the property to Nicki Johnson, a sole proprietor, who runs Small Wonders Day Care. Frey did not say when that happened. In response to questions about the current use of the property, he testified that Johnson has been "in operation for about four or five years now." In Silver Linings' March 24, 2014, exemption application, Malone indicated that Silver Linings occupied the property. *Frey testimony, Malone testimony; Pet'r Ex. 2; Resp't Ex. 5.*

18. Johnson caters to children of "low-income" families, which Malone described as approximately 95% of the community surrounding the property. She provides daycare services that include decent meals, tutoring, counseling, and transportation where parents have trouble getting their children to and from the facility. She operates on a "shoestring" budget. According to Malone, families pay a "lesser" amount, but he did not elaborate on that point. Malone also testified that the State of Indiana subsidizes the operation through an agency that he thought was the Children's Bureau. He did not explain the process for, or extent of, that subsidy, although Silver Linings' exemption application indicates, "the State reimburses the daily fee for low income children." Malone did testify that without the subsidy, the families who use Small Wonders would

[1] In some instances, it is not clear whether Frey was testifying or simply making arguments. Frey made several factual assertions in what he described as his opening argument. Some of those facts, particularly ones relating to Silver Linings' formation and the property's original use, were not offered through later testimony or exhibits. We treat all his factual assertions as evidence.

not be able to receive the services they do. *Frey testimony, Malone testimony; Resp't Ex. 5.*

19. Silver Linings leases the property to Johnson for $1,100 per month. That is barely enough to pay the costs of upkeep, which are significant. It also recently had to repair a leak in the ceiling and a compressor will cost another $5,000 to fix. Silver Linings also must clean the carpets, maintain the restrooms, and pay for insurance and sewer costs. *Malone testimony.*

20. This case differs from *CFF Bradford Run, LLC v. Howard County Ass'r,* Pet. No. 34-006-10-2-8-00001 (IBTR, January 14, 2013), which the Assessor cited. In that case, the Board denied an exemption to a private entity that owned and operated an apartment complex catering to low- and moderate-income tenants. Giving that property an exemption would have taken it off the tax rolls. By contrast, the daycare will cease to operate if Silver Linings has to pay taxes, and the property will revert to the city. So it will still end up being exempt. *Malone and Frey testimony*; *Frey argument.*

21. The Assessor claims that the property no longer qualifies as exempt because its use changed from a group home to a daycare. According to the Assessor, the former use provides a public benefit but the latter does not. Silver Linings disagrees, arguing that it has always used the property for the public benefit—to provide services to disadvantaged youth in the community. The daycare accomplishes the same things as the previous operation accomplished: children receive instruction and meals, and families get counseling. *See Frey and Malone testimony; Frey argument.*

THE ASSESSOR'S CONTENTIONS

22. The property is 100% taxable, including the land, improvements, and personal property. *West argument.*

23. The exemption was removed in 2014 because the property was no longer used as a group home and was instead being used as a daycare. At some point after 2012, the Assessor's office discovered that the property was being used as Small Wonders Day Care. On October 10, 2013, they called Johnson to get more information and left a message. After that call, Silver Linings filed a new exemption application, which the PTABOA denied. Small Wonders Daycare still runs a daycare at the property. An August 8, 2016 photograph shows Small Wonders' sign there. *West testimony and argument; Resp't Exs. 2, 9.*

24. An entity seeking an exemption bears the burden of proving that the property is entitled to the exemption. It must point to a statute under which it qualifies. To qualify under Ind. Code § 6-1.1-10-16, a taxpayer must show its property is owned, occupied, and used for an exempt purpose. Silver Linings did not do that. Showing a worthwhile purpose is not enough. The property must be used to help accomplish some public benefit. By itself, charging reduced fees does not justify an exemption. Because the State subsidizes the daycare, the reduced fees might not even be a hardship. Silver Linings did not show that Johnson restricted her customer base to residents of the surrounding community or to families of any particular income class. It would not turn children away simply because their families make too much money. *See West argument; Resp't Ex. 8.*

ANALYSIS

25. The property was exempt until 2014. As with much of this case, the record is unclear about how local officials removed the exemption. Silver Linings does not allege any procedural irregularities. It focused on whether the property qualifies for an exemption. We do the same.

26. 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. 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 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). 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 ending on the assessment date. I.C. § 6-1.1-10-36.3(a).

27. 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, we must strictly construe them 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.")

28. While a taxpayer must show that its property is owned for exempt purposes, occupied for exempt purposes, and predominately used for exempt purposes, unity of ownership, occupancy, and use by a single entity is not required. *Hamilton County PTABOA v.*

Oaken Bucket Partners, LLC, 938 N.E.2d 654, 657 (Ind. 2010)*; see also, Tipton County Health Care Foundation v. Tipton County Ass'r,* 961 N.E.2d 1048, 1051 (Ind. Tax Ct. 2012). Where, as in this case, that unity is lacking, a taxpayer must show that each person or entity possesses its own exempt purpose. *See id*.

29. In *Tipton County Healthcare*, the Tipton County Healthcare Foundation bought an assisted living facility from the Tipton County Memorial Hospital in December 2007. The hospital had previously contracted with Miller's Health Systems, Inc. to provide consulting services. Miller's continued to do so for the Foundation for a short period. Beginning January 1, 2008, however, the Foundation leased the facility to Miller's, which agreed to operate it as an assisted living facility and pay annual base rent and certain other expenses. The Foundation applied for a charitable purposes exemption for 2008 and 2009, which the county PTABOA denied. We affirmed that denial on appeal, finding that the Foundation failed to make a prima facie case that Miller's had a charitable purpose.

30. The Tax Court affirmed. The Foundation pointed to Miller's mission statement and the lease as evidence of Miller's charitable intent. *Id*. at 1052-53. But the Court found that the mission statement read more like an advertisement of Miller's operating style than a declaration of its charitable purpose. *Id*. at 1053. Similarly, while Miller's agreed in the lease to use the property solely as an assisted living facility and to maintain its license for that use, the lease in its entirety was simply another example of a triple-net lease. The lease indicated how Miller's would use the facility during its tenancy, not that Miller's had a charitable purpose. *Id*.

31. The Court also found that the record was deficient regarding whether the Foundation's arrangement with Miller's was entered into for a public or private benefit. *Id.* The Court rejected the Foundation's argument that given its lack of profit from the arrangement and the absence of any evidence to show Miller's profited, the Assessor bore the burden of showing a private benefit. *Id*. As the Court explained, "the taxpayer ha[d] the burden to

prove that both the Foundation and Miller's lease arrangement [were] driven by a charitable purpose and not a profit motive." *Id*. And while "an entity's for-profit status alone is not sufficient to show that a lease arrangement will result in private benefit, its status is germane." *Id*. Because the record did not show whether Miller's had charitable purpose or a profit motive, the Board's finding that the Foundation failed to make a prima facie case was supported by substantial evidence. *Id*.

32. With those underlying principles in mind, we turn to the appeal at hand. Silver Linings focused much of its case on the purpose for which it was organized, its relationship with the city, and its historical use of the property. We assume, without deciding, that Silver Linings owned the property for charitable purposes.

33. But Silver Linings does not occupy and use the property—Johnson does. As with most relevant facts in this appeal, the record is unclear about when Johnson leased the property and began operating Small Wonders. Frey indicated that Malone operated a daycare at the property (presumably in his capacity as Silver Linings' president) for a while before Silver Linings leased the property to Johnson, but he did not say for how long. Malone testified that Johnson had been "in operation for about four or five years." Someone from the Assessor's office called Johnson to get information about the daycare on October 10, 2013, indicating that she must have leased the property on or before that date. On the other hand, Silver Linings' March 24, 2014, exemption application indicates that Silver Linings occupied the property. After weighing the admittedly thin evidence, we find that Johnson occupied and used property on the assessment date and likely for the entire year leading up to that date. Indeed, the only evidence Silver Linings offered about the daycare's actual operation dealt with how Johnson runs Small Wonders.

34. And that evidence does little to show that Johnson occupied and used the property for charitable purposes. Silver Linings offered very little evidence about the leasing arrangement. It did not even include a copy of the lease. At most, we know that Johnson pays $1,100 per month in rent and that Silver Linings pays at least some expenses.

Johnson is a sole proprietor rather than a nonprofit corporation. As was the case for the lessee in *Tipton County Healthcare*, there is nothing to prevent Johnson from seeking to profit from the arrangement. And Silver Linings offered little to show Johnson was motivated by charitable intent rather than profit. At most, it showed (1) that Johnson provides meals, some tutoring, and in some instances transportation for families that need it, (2) that she caters mostly to children from "low-income" families, (3) that she charges those families a "lesser" amount, and (4) that the State subsidizes her operation.

35. Silver Linings did not claim an educational-purposes exemption. In any case, it did not explain the nature or extent of the tutoring Johnson offers. As for providing meals, Johnson cares for children during the course of the day. They have to eat. Non-exempt daycare facilities presumably offer meals as well. Silver Linings offered no evidence to the contrary. We are more inclined to believe that Johnson's transportation services are less typical and possibly motivated by something other than a dominant profit motive. But Silver Linings offered nothing to show the extent to which Johnson provides those services. It similarly failed to describe the extent or nature of the counseling Johnson provides. And there is no evidence to show whether Johnson charges any additional fees for tutoring, meals, counseling, or transportation.

36. Likewise, simply offering services to "low-income" families does not automatically qualify as a charitable purpose. Neither does Malone's vague testimony that Johnson charges a "lesser" amount to low-income families. Indeed, Johnson and Frey testified that the State subsidizes Johnson's operations. Without knowing more either about Johnson's rates or about the amount or nature of the subsidy, we cannot say she has a charitable purpose as opposed to a dominant profit motive. For example the "lesser" amount Malone referenced might refer to what low-income families have to pay, while the subsidy bridges the difference between that rate and the going rate for comparable daycare operations. There is little to show that Johnson, rather than the State through its subsidy, offers any benefit to the public or relieves governmental burdens. *See Jamestown Homes*, 909 N.E.2d at 1144 ("[T]here is no evidence . . . demonstrating that

Jamestown has lessened the burden of government in meeting the need for affordable housing because that need is ultimately being met by the government through its mortgage insurance and interest subsidy."). In short, like the taxpayer in *Tipton County Healthcare*, Silver Linings failed to make a prima facie case that its lessee occupied and used the property for charitable purposes.

37. Finally, Malone testified that the building could no longer be operated if we deny Silver Linings' exemption request. He claimed the property would then revert to city, making it exempt from taxation. His testimony is largely speculative. Even if the property reverts to the city, there is nothing showing the city would be precluded from selling it to an entity that would use it for taxable purposes. More importantly, what might happen to the property in the future is irrelevant to the issue at hand: whether Johnson occupied and used the property for a charitable purpose. Silver Linings failed to make a prima facie case to show she did. Therefore, we deny the exemption claim.

FINAL DETERMINATION

38. Silver Linings failed make a prima facie case that the property was occupied and used for charitable purposes. We therefore find that the property does not qualify for an exemption under Ind. Code § 6-1.1-10-16(a).

We issue this Final Determination 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>.