

REPRESENTATIVE FOR PETITIONER: J. F. Beatty, Kathryn Merritt-Thrasher, Landman Beatty, Lawyers

REPRESENTATIVE FOR RESPONDENT: Jess Reagan Gastineau, Office of Corporation Counsel

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Southwood Cooperative, Inc.,	)	Petitions:	<i>See Attachment A</i>
	)		
	)	Parcel Nos.:	<i>See Attachment A</i>
	)		
Petitioner,	)	County:	Marion
	)		
v.	)		
	)		
Marion County Assessor,	)		
	)		
Respondent.	)	Assessment Years:	2010-2016

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**September 1, 2021**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND 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:

**I. INTRODUCTION**

1. Southwood Cooperative, Inc., (the “Coop”) appeals the denial of a charitable exemption by the Marion County Property Tax Assessment Board of Appeals’ (“PTABOA”) pertaining to its cooperatively-owned apartment complex. The Coop fails to establish that the PTABOA acted outside the scope of its statutory authority in reviewing the property’s eligibility for a charitable exemption. The Board finds that the Coop’s claimed provision of low-income housing fails to meet its burden to establish that the property is owned, occupied, and used for charitable purpose.

## II. PROCEDURAL HISTORY

2. The Coop was formed in 1972, and the Coop first sought a charitable exemption on April 22, 2005. (*Pet'r. Ex.* at 699, 2218.)<sup>1</sup> The PTABOA granted a 100% charitable exemption on September 23, 2005. *Id.* at 1221. The Coop filed subsequent applications in 2006 and 2008. *Id.* at 1620, 2037. Exemptions were applied for the years 2005 through 2008. According to testimony summarizing the agenda and minutes, the PTABOA later voted to deny the exemption for 2009.<sup>2</sup> (*Tr.* at 555-56). However, a tax bill was never issued to the Coop, and the taxes were never paid. *Id.* at 556.
3. On January 31, 2011, the deputy assessor sent a notice requesting further information and indicated that the exemption's eligibility would be heard at the PTABOA meeting on February 25, 2011. (*Pet'r. Ex.* at 2076.) The PTABOA found the property taxable for the 2010 tax year, citing to the *Jamestown*<sup>3</sup> decision, through a notice issued on March 8, 2011. The Coop timely appealed to the Board through a Form 132 appeal for 2010, Form 133 appeals for 2011, 2012, and 2013, and Form 131 appeals for 2014, 2015, and 2016.<sup>4</sup>
4. The Coop moved for summary judgment challenging the authority of the PTABOA and the Marion County Assessor (the "Assessor") to review the exemption. The Board denied the motion on January 17, 2014, and, following the Coop's motion to reconsider filed on April 24, 2014, it affirmed the denial.<sup>5</sup> The Coop appealed the denial of summary judgment to the Tax Court. The Tax Court issued an opinion regarding this and several companion cases on January 20, 2015. It determined that the Coop had failed to exhaust its administrative remedies before the Board, dismissed the appeal for lack of subject matter jurisdiction, and remanded the case to the Board for final determination.

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<sup>1</sup> Because the Coop used a single Bates stamp sequence to number the entirety of its proposed exhibits, rather than numbering by exhibit, the Board cites generally to *Pet'r. Ex.*

<sup>2</sup> The Board accepts Gabe Deaton's testimony, drawn from the agenda and minutes of the PTABOA, that the PTABOA revoked the exemption for 2009. (*Tr.* at 553, 555-56.) The parties also stipulated to testimony from the Coop's counsel that the PTABOA did not revoke the 2009 exemption *at the April* PTABOA meeting. (*Tr.* at 565-66.) Because the stipulation does not contain absolute terms (e.g., language stating that the 2009 exemption was *never* revoked), the issue of revocation must be determined as a matter of fact.

<sup>3</sup> *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 909 N.E.2d 1138 (Ind. Tax Ct. 2009).

<sup>4</sup> The Coop utilized the new Form 131 after the elimination of the Form 133.

<sup>5</sup> The Assessor failed to timely respond to the motion for summary judgment, and the Board did not consider the Assessor's response or arguments.

*Southwood Cooperative, Inc. v. O'Connor*, 2015 Ind. Tax LEXIS 9.

5. During the three years following remand, the Coop failed to take any action to prosecute its appeal before the Board until the Board *sua sponte* set it for a status conference. The Coop eventually filed another motion for summary judgment in 2019, restating its previous arguments. The Board denied the motion on May 15, 2019. Thereafter, the Coop tendered its discovery requests.
6. On September 14-16, 2020, our designated Administrative Law Judge (“ALJ”), David Smith, held a hearing on the exemptions for ten cooperative apartment complexes: Harvard Square Cooperative, Inc., Grandville Cooperative, Inc., Lakeview Terrace Cooperative, Inc., Mayfield Cooperative, Inc., Retreat Cooperative, Inc., Southwood Cooperative, Inc., Three Fountains Cooperative, Inc., Three Fountains West Cooperative, Inc., Troy Manor Cooperative, Inc., and Yorktown Homes South, Inc. Neither he nor the Board inspected the properties.
7. The following witnesses were sworn in and testified under oath: Joseph O’Connor, Joe Holland, Dino DeMare, Alicia Osborne, Anthony Weaver, Alyson Alerding, Greg Nolan, Joseph Beatty, Karen Mitchell, Tania Thomas, Linda Stewart, Frankie Morton, Linda Asim, Rosedna Williams, Jim Hermsen, Karen Sanders, Jennifer Rhoades, and Gabe Deaton. Deposition testimony was submitted from Stephanie McGaha.<sup>6</sup>
8. The cooperatives submitted the exhibits listed on *Attachment B*.<sup>7</sup> These were admitted subject to the Assessor’s objections to Exhibits P-48(a), P-48(b), P-48(c) on the grounds of hearsay. (*Tr.* at 13.) The Assessor also made a continuing objection to all exhibits and testimony that are legal conclusions, including Exhibit P-47. (*Tr.* at 9.)

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<sup>6</sup> McGaha was unavailable to testify due to a family matter. The Parties stipulated to the admission into the record of her entire pre-trial deposition which appears in the record as Respondent’s Exhibit R-4(15).

<sup>7</sup> During Alyson Alerding’s testimony, she testified that several exhibits fail to show the data and information for which the reports were to be offered. Specifically, Demographic Exhibits 20(a)-(i), 23(a)-(i), 26(a)-(i), 29(a)-(i), 32(a)-(i); 35(a)-(i), and 38(a)-(i) did not contain the data that the Petitioners had intended to present. Consequently, the witness and counsel for the Coop stated that the aforementioned exhibits were inaccurate and no weight should be given them. (*Tr.* at 139-142.)

9. The Assessor submitted the following exhibits:

Exhibit R-1(1)	List of Form 133 appeals
Exhibit R-1(2)	Form 133s
Exhibit R-2	Petitioner's 2013 Pre-hearing Brief and Exhibits
Exhibit R-5	October 28, 2009 Landman, Beatty 2009 exemption response letter
Exhibit R-6	January 11, 2010 Bylanowski letter
Exhibit R-7	February 25, 2011 PTABOA minutes

10. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) a transcript of the hearing.

### III. FINDINGS OF FACT

11. The Coop was formed in 1972 in order to “provide housing on a mutual basis” through funding under Section 236<sup>8</sup> of Title II of the Federal Housing Act. (*Pet'r. Ex.* at 2218.) The Coop's Articles of Incorporation contemplate operations and activities that further “benevolent, fraternal, and social purposes.” *Id.* at 2219.

12. The Coop secured federal funding and constructed a 116-unit apartment complex. The low-interest federal mortgages required the Coop to offer housing to individuals at 80% of median income and comply with Housing and Urban Development (HUD) regulations. (*Tr.* at 48-51.) The Coop's 40-year mortgage was paid off in 2011. (*Tr.* at 257.) “For the most part,” the Coop continued to abide by HUD handbooks after it was no longer under HUD scrutiny. *Id.* at 508. However, the Coop's management company's practices do not necessarily require income tax returns from its members for verification of low-income eligibility. *Id.* at 159. The Coop does a “recertification” annually and members who exceed guidelines are levied a surcharge. *Id.* at 400.

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<sup>8</sup> The federal laws funding cooperative housing, Section 236 and Section 221(d)(3), had different levels of subsidies on mortgage interest rates. (*Tr.* at 510-11.) In return, Section 236 limited members to those at 80% of area median income and Section 221(d)(3) at 95% of area median income. Under HUD oversight, residents with income in excess of HUD guidelines were required to pay either higher rent or a surcharge, depending on the program, and the difference was returned to HUD or kept with the cooperative if approved by HUD. (*Tr.* at 511.)

13. While the time-frame is not clear, 11 of the Coop's units are under contract for Section 8 housing. (*Tr.* at 398.) Only those units remained subject to HUD oversight after the mortgage was satisfied. There is no distinction between Section 8 and non-Section 8 members.
14. A mutual housing cooperative is an organization made up of its members. (*Tr.* at 48.) The members of the Coop are referred to as tenant-stockholders. (*Pet'r's. Reply Br.* at 11; I.C. 6-1.1-12-37(a)(2)(b)(3).) While the Coop holds the deed to the real estate, the members control the Coop because all voting rights are vested in the holders of memberships. *Id.* at 2220. The members elect the board of directors, and the board of directors operate the Coop, which includes calculating the "monthly carrying charges" (rent), establishing a budget, and hiring a management company. *Id.* at 2293-96.
15. A member joins the Coop by purchasing a subscription (membership certificate) and making a downpayment toward the occupancy agreement (lease). (*Pet'r. Ex.* at 2290-91.) If exercised within 60 days, a membership certificate may transfer to a family member upon death. *Id.* at 2292. If a member leaves the Coop, the Coop has a right to re-purchase the membership certificate by paying the member a set value. *Id.* at 2292-93. If the Coop fails to exercise its option to purchase the membership certificate, the member may sell it "to any person who has been duly approved" by the Coop. *Id.* at 2293. Even if a member is terminated for cause, the Coop must re-purchase the membership certificate from the member. *Id.* at 2294. In the event of the dissolution of the Coop, each member is entitled to a refund of payments made to the Coop plus interest. *Id.* at 2202.<sup>9</sup> After the refunds, any remaining assets must be donated to charity or escheat to the State of Indiana. *Id.*
16. The value of a membership may rise after a cooperative's mortgage is paid off because it "releases the cooperative to do whatever they want at that point." *Tr.* at 57, 78. Then the

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<sup>9</sup> The articles of incorporation of the several cooperatives on appeal are nearly identical in form. It appears the page containing the rights on dissolution for this Coop has been omitted, and the Board references here the language from one of the other coops on appeal.

cooperative can be operated “more like a condominium association where members could sell their memberships for whatever the market could bear.” *Id.* at 75. Hypothetically speaking, and depending on the condition of the complex, a member might receive “\$50,000 when they sell their membership.” *Id.*

17. In managing a Coop, there is no for-profit owner “trying to earn a profit,” and all cash flow “gets put back in the property.” (*Tr.* at 501-2.) The goal is to “cover the expenses and keep the rents as low as they can.” *Id.* at 503. The low rent ensures much lower turnover compared to traditional apartment complexes. *Id.* at 504. Often times people start off at a cooperative intending to save money to buy a house, but stay for 30 years “because of the sense of ownership and the sense of the ability to control what’s happening in the community.” *Id.* at 505. Most cooperatives have waiting lists. *Id.* at 530-31. The Coop’s management company does not advertise or market the Coop. *Id.* at 265). Occupancy at a cooperative is frequently multigenerational. *Id.* at 94.
18. The Coop has clearly established that it offers affordable housing at rates substantially below HUD guidelines. The Coop’s rental rates (“carrying charges”) are not based on federal guidelines, but “the cost of running the operation in addition to funding reserves for future expenses.” (*Tr.* at 64.)
19. The Coop will try to set up payment plans for members who are unable to pay. (*Tr.* at 399.) The Coop evicted 12 members for nonpayment of rent during the years 2009-2016,<sup>10</sup> a rate of 1.71 a year, or 1.48%. (*Pet’r. Ex.* at 5261.) The total eviction rate for all causes was 4%.<sup>11</sup>

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<sup>10</sup> While the chart in the Coop’s brief indicates the data for evictions relates to the period of 2009-2016, the numbers were actually run from March 1, 2009 through January 1, 2016. (*Pet’r.’s Post-Tr. Br.* at 25; *Pet’r. Br.* at 5254-65.) It covers two months shy of 7 years, and effectively none of 2016.

<sup>11</sup> Evictions for nonpayment are separate from evictions for when “someone was asked to leave because of a policy or procedure break.” (*Tr.* at 153). Thus, the Coop points to its 12 nonpayment evictions, not the 24 additional evictions for cause. (*Pet’r Ex.* at 5260.) Thus the eviction rate of 36 across 7 years, is 5.1, or 4% annually relative to the 116 total units.

20. The Coop holds fall festivals and Christmas programs for its members. (*Tr.* at 397.) In the summer, the Coop facilitates a summer lunch program.<sup>12</sup> *Id.* at 397. The Coop also hires security. *Id.* at 397.
21. The Coop's use and ownership had not changed since the "day they were deeded." (*Tr.* at 237, 241, 256.) The record is silent as to what prompted the Coop to seek a charitable exemption nearly forty years into its existence.

#### **IV. CONCLUSIONS OF LAW**

##### **A. BURDEN OF PROOF**

22. The Indiana Supreme Court has established that the taxpayer "bears the burden of proving it is entitled to an exemption." *Hamilton County Prop. Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 656-57 (Ind. 2010). A claim for an exemption is "strictly construed against the taxpayer." *Id.* This is because "an exemption releases property from the obligation of bearing its share of the cost of government and serves to disturb the equality and distribution of the common burden of government upon all property." *Id.*

##### **B. THE PTABOA HAD AUTHORITY TO REVIEW THE COOP'S ELIGIBILITY FOR A CHARITABLE EXEMPTION**

23. The Board first turns to the Coop's primary argument in this matter: its claim that I.C. § 6-1.1-11-4 prohibits the PTABOA from denying an exemption if an application has been granted in a prior year. The Board has issued three preliminary orders rejecting the Coop's interpretation of the law. The Coop's repeated rhetoric suggesting that the Board made arguments on the Assessor's behalf are specious and display a willful ignorance of the law. As the Board's original order summarized:

Summary judgment shall not be granted as of course because the opposing party fails to offer opposing affidavits or evidence, but the court shall make its determination from the evidentiary matter designated to the court. T.R. 56(C). "A trial court is not required to grant an unopposed motion

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<sup>12</sup> Evidently the Coop currently provides the "My Little Library" book lending program for residents and the public, but that was not started until after the years at issue. *Id.* at 151, 401.

for summary judgment.” *Murphy v. Curtis*, 930 N.E.2d 1228, 1233 (Ind. Ct. App. 2010) (citing *Parks v. State*, 789 N.E.2d 40, 48 (Ind. Ct. App. 2003), trans. denied). “Summary judgment is awarded on the merits of the motion, not on technicalities.” *Id.* at 1233-34. In fact, “even a party who failed to respond to a motion for summary judgment could have summary judgment entered in his favor.” *Id.* at 1233.

(*Order on Pet’r’s. M. for S.J.* at 5.) Undeniably, the Board has no obligation to adopt a party’s poorly reasoned and unpersuasive legal arguments, even in the absence of an opposing brief. The Board does not become an advocate merely because it considers all of the relevant provisions of the Indiana Code and the Indiana Constitution, and, after due deliberation, declines to swallow the Coop’s argument hook, line, and sinker. The very purpose of this specialized administrative agency is to faithfully and impartially apply the property tax laws to the controversies before it, and the Board will not shrink from its duty.

24. As set forth below, the Board concludes that the Legislature has granted PTABOAs the statutory authority to review the eligibility of property exemptions, and the 2009 amendments to IC § 6-1.1-11-4 did not alter that authority. Necessarily, the legal analysis in this Final Determination constitutes the Board’s final ruling on this issue and supplants any prior analysis in the orders denying summary judgment.

**i. THE EXEMPTION APPLICATION PROCESS**

25. The Legislature has enacted three separate procedures for claiming and maintaining an exemption for a particular tax year: I.C. § 6-1.1-11-3, I.C. § 6-1.1-11-3.5, and I.C. § 6-1.1-11-4. The first procedure, I.C. § 6-1.1-11-3, applies generally to all owners seeking an exemption, and the exemption application must be filed annually. The second procedure, I.C. § 6-1.1-11-3.5, permits “not-for-profit organizations,” to file applications in even-numbered years rather than every year. I.C. § 6-1.1-11-3.5(a). The third procedure, I.C. § 6-1.1-11-4, originally limited to properties used for religious purposes, allows an owner to avoid filing annual applications once an exemption is granted. In



2009, the Legislature expanded I.C. § 6-1.1-11-4 beyond religious purposes and included charitable uses.<sup>13</sup>

26. The Coop filed its only exemption application in 2008 and presumably relied on I.C. § 6-1.1-11-3.5 for 2009. The Coop did not file an exemption application in 2010, presumably based on the newly amended I.C. § 6-1.1-11-4. After the PTABOA disapproved the exemption for 2010, the Coop chose not to file exemption applications for the years 2010-2016, again relying on I.C. § 6-1.1-11-4 to claim the exemption.
27. As the Board has weighed the testimony and found that the PTABOA revoked the Coop's exemption for 2009 (though no tax bill was issued for that year), the Coop was required to file a timely new application for 2010 and any year thereafter. It failed to do so, and necessarily this should foreclose any relief for the Coop. However, because neither party directly addresses this issue, we decline to dispose of the matter on this ground.

**ii. THE PTABOA HAS STATUTORY AUTHORITY TO REVIEW EXEMPTIONS FOR ELIGIBILITY**

28. It is well settled that “exemption applications are approved or disapproved by the county [PTABOA].” *Marion County Auditor v. Revival Temple Apostolic Church*, 898 N.E.2d 437, 447 (Ind. Ct. App. 2008); *see also, Alpha PSI Chptr. v. Auditor*, 849 N.E.2d 1131, 1133 n.3 (Ind. 2006) (noting that the PTABOA is “the entity usually charged with approving or disapproving exemptions”). The statutory authority of the PTABOA to grant or deny an exemption is found in I.C. § 6-1.1-11-7(a):

The [PTABOA], after careful examination, shall approve or disapprove each exemption application and shall note its action on the application.

The PTABOA is statutorily obligated to investigate, through “careful examination,” the eligibility of an exemption. The ongoing authority of the PTABOA to consider whether a property “is no longer eligible for the exemption” in a year in which no application is required is expressly referenced in I.C. § 6-1.1-11-3.5(d).

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<sup>13</sup> P.L.182-2009(ss), § 107, emergency eff. June 30, 2009.

29. The PTABOA also has the statutory authority to review whether omitted or undervalued property should be returned to the tax rolls:

A [PTABOA] shall, on its own motion or on sufficient cause shown by any person, add to the assessment lists the names of persons, the correct assessed value of undervalued or omitted personal property, and the description and correct assessed value of real property undervalued on or omitted from the lists.

I.C. § 6-1.1-13-3. The assessor is obligated to “make recommendations to the [PTABOA] for corrections and changes in the returns and assessments.” I.C. § 6-1.1-13-2. The statute clearly contemplates a process by which an assessor recommends that the PTABOA consider whether property has been erroneously omitted from the tax rolls. No language in this chapter would preclude a PTABOA from reviewing exemptions to determine if property has been omitted from the rolls, and the Board can find no logical reason why it should.

30. Additionally, “the [PTABOA] shall do whatever else may be necessary to make the assessment lists and returns comply with the *provisions of this article* and the rules and regulations of the department of local government finance.” I.C. § 6-1.1-13-4 (emphasis added). Even after the PTABOA “issues a final determination on an assessment, it can make changes in that assessment.” *Mills v. State Bd. of Tax Comm'rs*, 639 N.E.2d 698, 701 (Ind. Tax Ct. 1994). These several statutes affirm a broad power, and responsibility, invested in the PTABOA to ensure that all taxable property is taxed. The Coop fails to cite to any case law that supports the proposition that the PTABOA lacks the authority to deny an ineligible exemption for a subsequent year.

**iii. ONLY ELIGIBLE PROPERTIES ARE ENTITLED TO AN EXEMPTION IN THE YEARS FOLLOWING THE PTABOA’S APPROVAL OF AN APPLICATION**

31. While the application processes may vary, eligibility for an exemption is always determined by the use of the property in the prior year:

A taxpayer who seeks a charitable purposes exemption pursuant to Indiana Code § 6-1.1-10-16(a) must demonstrate that its property was owned, occupied, and predominately used for a charitable purpose during the

relevant tax year (i.e., "the year that ends on the assessment date of the property").

*Bros. of Holy Cross, Inc. v. St. Joseph County Prop. Tax Assessment Bd. of Appeals*, 878 N.E.2d 548, 550 (Ind. Tax Ct. 2007). Accordingly, if a property ceases to be owned, occupied or predominantly used for a charitable purpose, it loses its eligibility in the following year. All of the application procedures expressly require continued eligibility. The right to file biannually hinges on whether the property remains "eligible for the exemption." I.C. § 6-1.1-11-3.5(b); (d). The right to avoid filing subsequent applications is based on the condition precedent that the "property continues to meet the requirements for an exemption." I.C. § 6-1.1-11-4(d)(3).

32. The Tax Court has rejected the suggestion that equitable grounds should prevent a PTABOA from denying an application for a previously exempt property. *Izaak Walton League of Am. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 881 N.E.2d 737, 742, (Ind. Tax Ct. 2008) (rejecting the claim that the "subject property is entitled to the exemption on equitable grounds" in 2000 merely because the "subject property actually received an exemption from 1990 through 1999.")
33. The Board must conclude that after an exemption application has been approved, the property is entitled to the exemption in subsequent years only if it remains eligible. The Coop does not dispute this, only the authority of the PTABOA to enforce eligibility.

**iv. THE 2009 AMENDMENTS TO I.C. § 6-1.1-11-4 NEITHER GRANDFATHERED  
INELIGIBLE EXEMPTIONS NOR CREATED AN HONOR SYSTEM**

34. When the Legislature, in 2009, increased the scope of I.C. § 6-1.1-11-4 beyond religious exemptions to include "educational, literary, scientific, religious, or charitable purposes," it added additional obligations on the owners and granted new summary powers to the assessors:

A change in ownership of property does not terminate an exemption of the property if after the change in ownership the property continues to meet the requirements for an exemption under IC 6-1.1-10-16 or IC 6-1.1-10-21. However, if title to any of the real property subject to the exemption

changes or any of the tangible property subject to the exemption is used for a nonexempt purpose after the date of the last properly filed exemption application, the person that obtained the exemption or the current owner of the property shall notify the county assessor for the county where the tangible property is located of the change in the year that the change occurs. The notice must be in the form prescribed by the department of local government finance. If the county assessor discovers that title to property granted an exemption described in IC 6-1.1-10-16 or IC 6-1.1-10-21 has changed, the county assessor shall notify the persons entitled to a tax statement under IC 6-1.1-22-8.1 for the property of the change in title and indicate that the county auditor will suspend the exemption for the property until the persons provide the county assessor with an affidavit, signed under penalties of perjury, that identifies the new owners of the property and indicates that the property continues to meet the requirements for an exemption under IC 6-1.1-10-21 or IC 6-1.1-10-16. Upon receipt of the affidavit, the county assessor shall reinstate the exemption for the years for which the exemption was suspended and each year thereafter that the property continues to meet the requirements for an exemption under IC 6-1.1-10-21 or IC 6-1.1-10-16.

I.C. § 6-1.1-11-4(d) (2009). The operative language in the 2009 Amendment granted the assessor the right to direct the auditor to suspend an exemption in the event of a change in ownership. It also obligated the taxpayer to notify the assessor regarding a change in title or use in the year that the change occurs. Later, the 2014 Amendment moved the language to subsections I.C. § 6-1.1-11-4(e) and (f) and added a change in “use” to the assessor’s suspension powers. Under both versions, the assessor could reinstate the exemption if the taxpayer submitted an affidavit that “indicates that the property continues to meet the requirements for an exemption.”

35. The Board notes that language of this statute has no express application to the facts here. The facts establish that the *PTABOA* denied the exemption. Had the *Assessor* suspended the exemption, then I.C. § 6-1.1-11-4 would control whether such authority was exercised in conformity with the law. To fit the square peg in the round hole, the Coop argues that the 2009 Amendments implicitly stripped the *PTABOA* of any authority to review an exemption once applied pursuant to I.C. § 6-1.1-11-4. It advocates an interpretation that would grandfather all exemptions except in the event of a change in title and create an “honor system” where taxing officials could act only in the event a taxpayer self-reports a

change in use or ownership. Such a strained construction of the statute must fail for several reasons.

36. The obvious purpose of I.C. § 6-1.1-11-4 is to remove the burden of filing exemption applications annually or biannually. But it also creates additional provisions for policing the eligibility of an exemption “after the date of the last properly filed exemption application.” No language within the statute expressly restricts the general authority of the PTABOA to review a taxpayer’s actual use of a property. “When construing a statute, it is equally important to recognize what the statute does not say as what it does say.” *Whetzel v. Dep’t. of Local Gov’t. Finance*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002) citing *City of Evansville v. Zirkelbach*, 662 N.E.2d 651, 654 (Ind. Ct App. 1996). The Coop construes I.C. § 6-1.1-11-4 to limit the PTABOA’s authority to deny exemptions under I.C. § 6-1.1-11-7 and its power to review omitted or undervalued property under I.C. § 6-1.1-13-3. But the Board cannot “select one provision from a statute for incorporation into another statute without the express direction of a statute or other authority.” *Hutcherson v. Ward*, 2 N.E.3d 138, 144 (Ind. Tax Ct. 2013). Had the Legislature intended to modify the general authority of the PTABOA to review exemptions, it would have done so by modifying those specific statutes. Accordingly, the Board concludes that the PTABOA’s authority under I.C. § 6-1.1-11-7 and I.C. § 6-1.1-13-3 was in no way affected by the 2009 amendment to I.C. § 6-1.1-11-4.
37. The property tax statutes contemplate multiple layers of review for an exemption. Every exemption granted by the PTABOA may be denied after an independent review before the Department of Local Government Finance. I.C. § 6-1.1-11-8. The tandem authority of the assessor and the PTABOA to review eligibility is entirely consistent with the authority granted the assessor to refer omitted or undervalued property to the PTABOA under I.C. § 6-1.1-13-2. The assessor’s power to suspend does not necessarily restrict the PTABOA’s power to deny, and the general statutory structure compels the opposite conclusion.
38. The Coop’s construction of I.C. § 6-1.1-11-4 is inconsistent with the purposes of the

2009 amendment's suspension and notification procedures. It defies logic to construe language that is intended to prevent ineligible properties from receiving exemptions as a "get out of jail free" card for properties put to nonexempt uses. It is not difficult to imagine a situation where a taxpayer might misrepresent its ownership or use on an exemption application. Likewise, later promulgated statutes or caselaw might cause a property to lose its exempt status. The Coop's interpretation would foreclose local taxing authorities from revoking those erroneous exemptions. Because the 2009 version limited the assessor's suspension power solely to changes in title, under the Coop's interpretation neither the assessor nor the PTABOA could have denied an exemption based on a change in use. Such a result would be constitutionally impermissible.

39. The Indiana Constitution authorizes the Legislature to exempt property used for charitable purposes. "Article X, section 1 of the Indiana Constitution operates as a limitation on the legislature's power to grant exemptions insofar as it may exempt only those kinds of property enumerated therein." *Indiana University Foundation v. State Bd. of Tax Comm'rs*, 527 N.E.2d 1166, 1168 (Ind. Tax Ct. 1988). A statute that grants a charitable exemption for a tax year by "default" or "grandfathering," rather than its actual use would violate the Indiana Constitution. In effect, the Coop would hold that I.C. § 6-1.1-11-4 amended the Indiana Constitution such that property once eligible is always eligible. The Board must interpret statutes in a manner consistent with the Indiana Constitution, and accordingly the Board must reject the Coop's arguments.
40. The only relief contemplated in the 2009 amendments to I.C. § 6-1.1-11-4 is the right of owners of exempt properties to avoid filing annual applications. The Legislature made no other changes to the role of the PTABOA. Accordingly, the Board rejects the Coop's claims that the PTABOA lacked the authority to review or deny its exemption.

**v. THE TIMELINESS OF THE PTABOA'S ACTION**

41. The Coop next relies on I.C. § 6-1.1-11-5 to claim that the PTABOA's review of the subject property's exemption was untimely. Subsection 5(a) provides statutory deadlines for the auditor and assessor to exchange updated lists of exempt property. The duty of

the assessor is to return a list of exempt properties with “a notation of any action of the [PTABOA] on that year’s exemption of each listed property” before July 1st of an even-numbered year. I.C. § 6-1.1-11-5(a).

42. The duties of an assessor following the PTABOA’s decision on an exemption application are found in I.C. § 6-1.1-11-7(b) and 7(c). If the PTABOA “approves the exemption, in whole or part,” the assessor notifies the auditor, and the auditor “notes the board’s action on the tax duplicate.” I.C. § 6-1.1-11-7(b). If the exemption is denied, the notice goes only to the taxpayer. I.C. § 6-1.1-11-7(c).
43. The Coop argues that “the dates set forth in the statute not only limit the power the PTABOA has in regard to exemptions, but also sets forth the mandatory time limit.” (*Pet’rs. Memo. in Support of S.J.* at 7.) But the notice provisions of I.C. § 6-1.1-11-7(b) and I.C. § 6-1.1-11-5(a) create duties between the assessor and the auditor, and they make no reference to the PTABOA. The Coop provides no cogent argument as to why the deadline for the assessor to provide an update to the auditor should be interpreted to create a limitation on the authority of the PTABOA, and this claim must be rejected.

**vi. THE COOP’S CONSTITUTIONAL CLAIMS**

44. The Coop strenuously alleges that the Assessor and the PTABOA violated its equal protection and due process rights by reviewing the exemption. The Board has already concluded that the Assessor and the PTABOA acted within their statutory authority, and the Coop has failed to introduce any evidence of a malicious or officious abuse of office.<sup>14</sup> An exemption is a privilege, and it is no injustice to require a taxpayer to produce evidence as to the charitable use of its property.

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<sup>14</sup> The Board is tasked with deciding the cases and controversies that are properly before it, and the Board has no supervisory or regulatory authority over local assessing officials. The Legislature has tasked the Department of Local Government Finance with regulating local assessing officials. I.C. 6-1.1-31-1. To the extent the Coop alleges that the Assessor engaged in “prohibited actions” under I.C. 6-1.1-35.7-6, the Legislature has provided an avenue elsewhere for a review of an assessing official’s professional discipline. In any event, the Legislature has not codified a provision where use of an “unauthorized form” forfeits the PTABOA’s right to review a property’s eligibility for an exemption. Moreover, the Legislature has not even required a hearing prior to the PTABOA taking action on an exemption application in the first place.

45. Starting with the equal protection claim, the Board agrees with the Assessor's argument that the Coop merely references the Indiana Constitution while failing to cite to relevant case law, and accordingly, the Coop has waived its claim. (*Pet'r.'s Post-Trial Br.* at 10-11; *Pet'r.'s Reply Br.* at 6.) The Board finds no evidence of bad faith, bias, or discriminatory intent on the part of the taxing officials for scrutinizing low-income housing exemptions, an area of property tax law that is intensely fact-sensitive and eschews bright-line precedent.
46. Turning to the due process claims, the Coop focuses on a perceived injustice in a deputy assessor's manner of reviewing low-income housing exemptions rather than outlining what due process required. (*Pet'r.'s Post-Hearing Br.* at 8-9; *Pet'r.'s Reply Br.* at 6.) While the Coop cites to relevant case law, it fails to compare any of the facts of those cases to the matter at hand. The Board agrees with the Assessor that the Coop has waived its constitutional claims due to its failure to develop a cogent argument.
47. Waiver aside, the Indiana Supreme Court has held that a taxpayer is not entitled to a hearing prior to any adverse action by a taxing official. Rather, a statutory procedure is sufficient when it "does not deny, but merely postpones, due process opportunities by providing a full and fair opportunity to be heard post-deprivation when the taxpayer protests his assessment." *Cliff v. Ind. Dept. of State Revenue*, 660 N.E.2d 310, 318 (Ind. 1995). The Court has applied the same standard in regard to property tax appeals. *See State Bd. of Tax Comm'rs v. Mixmill Mfg. Co.*, 702 N.E.2d 701, 705 (Ind. 1998) (holding that "[w]here property rights are involved, mere postponement of the opportunity to be heard is not a denial of due process if the opportunity ultimately given is adequate.")
48. The Indiana Tax Court has recently rejected due process claims like those claimed by the Coop:
- [The Taxpayer] has not only filed an appeal with this Court challenging the 2010 Proposed Assessment, but also received another opportunity to present the Department with evidence related thereto during the second supplemental audit. Due process requires no more.

*Thermo-Cycler Indus. v. Ind. Dep't of State Revenue*, 78 N.E.3d 30, 36 (Ind. Tax Ct.)



2017) (internal citation omitted). To the extent the PTABOA hearing may or may not have comported with due process, the Coop's rights were merely postponed until its appeal here before the Board.

**C. COOP HAS FAILED TO ESTABLISH THE PROPERTY IS PREDOMINATELY OWNED, OCCUPIED, AND USED FOR CHARITABLE PURPOSES**

49. The standard for a charitable exemption is well-worn and without controversy, but the confines of the “nebulous sanctuary of exemption”<sup>15</sup> is particularly amorphous in the area of low-income housing. Endeavoring not to lose the forest for the trees, the Board must determine whether the charitable exemption can be stretched to include cooperatively-owned housing. As detailed in the analysis below, the Board finds that Indiana's definition of charitable is not broad enough to encompass the Coop's apartment complex.
50. The Board would be remiss if it failed to express its admiration for the Coop. For over a half-century, the Coop has clearly offered excellent accommodations and services to its members at remarkably low rents. The board president and its able property manager are to be commended for the efficiency of their operations. We have no doubt the Coop has created a very unique and special community for its members, and the Board has faith the Coop will continue to thrive while contributing taxes for the city services that benefit all residents.
51. In order to qualify for an exemption, the taxpayer must demonstrate that its property is owned for exempt purposes, occupied for exempt purposes, and predominantly used for exempt purposes. *Sangrlea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 959 (Ind. Tax Ct. 1997). “Once these three elements have been met, regardless of by whom, the property can be exempt from taxation.” *Id.* A party seeking an exemption must present “evidence that meets every element of that exemption” and also walk the Board “through every element of its analysis.” *St. Mary's Bldg. Corp. v. Redman*, 135 N.E.3d 681, 690 (Ind. Tax Ct. 2019).

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<sup>15</sup> *State Board of Tax Comm'rs v. Warner Press, Inc.*, 248 N.E.2d 405, 410 (Ind. Ct. App. 1969).

**i. THE COOP IS NOT PREDOMINATELY OWNED FOR THE PURPOSE OF PROVIDING CHARITABLE HOUSING**

**1. COOPERATIVE HOUSING AND ITS PURPOSES UNDER THE FAIR HOUSING ADMINISTRATION**

52. A “cooperative housing association” is statutorily defined as a “consumer cooperative that provides dwelling units to its members.” IC § 32-31-3-2. “Cooperative ownership” is defined by the Appraisal Institute as follows:

A form or ownership in which each owner of stock in a cooperative apartment building or housing corporation receives a proprietary lease on a specific apartment and is obligated to pay a monthly maintenance charge that represents the proportionate share of operating expenses and debt service on the mortgage, which is paid by the corporation.

Appraisal Institute; *Dictionary of Real Estate Appraisal*, 5<sup>th</sup> Ed. at 46. A “cooperative apartment unit” is “an apartment in a building owned by a corporation or trust in which each unit owner purchases stock representing the value of a single apartment unit and receives a proprietary lease as evidence of title.” *Id.* In contrast, a member of a condominium association owns a particular unit in fee simple and also holds an undivided interest in the common areas and facilities. *See* IC § 32-25-2-11.

53. The federal statutes promoting cooperative housing were intended to stimulate the building trades, encourage private lending, and increase housing for middle income individuals:

The plain objectives of the National Housing Act were *to stimulate the building trades and to increase employment*, *United States v. Emory*, 314 U.S. 423, 62 S. Ct. 317, 86 L. Ed. 315 (1941); to provide housing accommodations designed principally for residential use, *The Darlington, Inc., v. Federal Housing Administration*, 142 F. Supp. 341 (E.D.S.C. 1956), reversed 352 U.S. 977, 77 S. Ct. 381, 1 L. Ed. 2d 363 (1957); and *to construct housing in great quantities* in areas where industries are located, *Boosman v. United Bldg. Co.*, 109 Cal. App. 2d 486, 241 P.2d 58 (Ct. App. 1952).

...

In 1950 Congress adopted an amendment to the act, known as Title 2, Section 213, authorizing the Federal Housing Administration to insure certain mortgages covering cooperative apartments of eight units or more.

64 Stat. 54 (1950), as amended 12 U.S.C.A. Sec. 1715e. This enactment "firmly established the policy that federal *aid to middle-income co-ops* would be limited to mortgage insurance, that is, to the encouragement of *private lending*." 68 Yale L.J. 542, 553 (1958-1959).

*Pine Grove Manor, Section No. 1 v. Director, Division of Taxation, Etc*, 171 A.2d 676, 681 (N.J. Super. Ct. 1961) (emphasis added). The members of an FHA-regulated cooperative receive very real and profitable benefits:

The tenants, regular certificate holders, are the primary and exclusive beneficiaries of the cooperative housing projects . . . (1) they are furnished with low-cost housing accommodations at monthly payments lower than the prevailing rental market, all of which is made possible by long-term government financing aid; (2) their monthly payments include a proportionate contribution toward . . . the real estate taxes and mortgage interest, deductible for federal income tax purposes . . . (3) their investment has a book value and the net worth thereof is determined by a fixed formula as stated in the by-laws; (4) in case a member desires to sell his certificate and the corporation does not exercise its 30-day option right to repurchase, there is no limitation on the purchase price; (5) upon liquidation or dissolution of the corporation, they would participate proportionately in the final distribution of the net assets of the corporation, which conceivably could be substantial, particularly if a profitable sale be made after a full or sizeable reduction of the mortgage encumbrance; (6) the F.H.A. mortgage is subject to prepayment, whereupon the governmental controls and restrictions terminate; (7) equity distributions may be made to the certificate holders in case of the total destruction of the apartment buildings by fire; (8) they have an interest in the residual receipts from vending machines, washing and drying machines, non-dwelling facilities, etc., and the surplus funds which, after reserves and obligations, are distributable to members, "in the form of reduced carrying charges or reduced sales prices of the dwelling accommodations, or patronage refunds." See 24 C.F.R., sec. 241.25.

These enumerated acquirements are real and potential and should not be considered as being indefinite or intangible; they result from the commercial activities of a nonstock cooperative housing corporation operated for the financial and social betterment of its members.

*Id.* at 685-86. The ownership rights and benefits conferred on members of a cooperative housing corporation expand well beyond the legal interests of typical residential tenants.

## 2. INDIANA LAW AND THE OWNERSHIP INTERESTS OF MEMBERS OF A COOPERATIVE HOUSING CORPORATION

54. In the area of landlord-tenant law, Indiana courts have recognized the “unique and symbiotic nature of cooperative living” and held that a member of a mutual housing cooperative “is neither an owner nor a tenant of the real estate.” *Cunningham v. Georgetown Homes, Inc.*, 708 N.E.2d 623, 626-27 (Ind. Ct. App. 1999). Members of a cooperative cannot be placed within a “landlord-tenant category or a property ownership category.” *Id.* at 626. Cooperatives are often referred to “as ‘legal hybrids’ because they contain elements of both property ownership and leasehold.” *Id.* at 625. Indiana law has recognized cooperatives as “sui generis,” meaning “the only one of its own kind; peculiar.” *Hoang v. Jamestown Homes, Inc.*, 768 N.E.2d 1029, 1033 (Ind. App. 2002); *Black’s Law Dictionary*, 4<sup>th</sup> Edition; West, 1951.
55. In the more pertinent area of property taxes, Indiana law treats the members (tenant-stockholders) of cooperatives the same as homeowners, and they are entitled to claim the homestead deductions available for owner-occupied residences. IC § 6-1.1-12-37(a)(2)(B)(iii). There is no dispute that the Coop’s members are entitled to homestead deductions under Indiana law. (*Pet’r.’s Reply Br.* at 11). In this regard, the Coop is more similar to an owner than a tenant.
56. The Board fully recognizes that the Coop’s members do not hold their interests in the real estate through a deed. Rather, the Coop holds fee simple title to the land and buildings. However, the Board cannot simply ignore the “sui generis” nature of the members’ role in the ownership of the property. As the Coop admits, the members’ leases are “proprietary,” citing *Hoang*. (*Pet’r.’s Reply Br.* at 11, n.12.) Proprietary leases are unique to cooperative housing. See Appraisal Institute, *The Dictionary of Real Estate Appraisal* at 153. Proprietary means “belonging to ownership; relating to a certain owner or proprietor.” *Black’s Law Dictionary* 4<sup>th</sup> Ed. Likewise, the members, through their representatives on the board, control and direct the management of the Coop, including the repairs and renovations of their units and common areas. It is these indicia of

ownership that justify the policy behind the Coop's members being treated more like homeowners than tenants in regard to the homestead deduction. Members of a coop are entitled to a homestead deduction, even without a deed, because they are defined as owner-occupiers under property tax law.

57. In *Oaken Bucket*, the Indiana Supreme Court held that “unity of ownership, occupancy, and use by a single entity is not required,” however, in circumstances where multiple entities are involved, each “must demonstrate that they possess their own exempt purposes.” *Oaken Bucket*, 938 N.E.2d at 657 (Ind. 2010). The Court also found it proper to look to both the exempt purposes of the partners and the partnership.<sup>16</sup> *Id.* at 658. Even if the members of the Coop are not considered “owners,” they are controlling tenant-stockholders, and the Board must consider whether they possess exempt purposes. For these reasons, the Board must look to both the nonprofit and its members in determining whether the apartment complex is owned for charitable purposes.

### 3. THE COOP FAILS TO ESTABLISH THE PROPERTY IS OWNED FOR CHARITABLE PURPOSES

58. The Board begins with the purposes of the Coop. The Coop argued that it was organized “for the purpose of providing housing on a mutual basis and for the purpose of low income housing pursuant to Section 236 of Title II of the National Housing Act” and cites to Ex. P-11(f), the Articles of Incorporation. (*Pet'r.'s Post-Tr. Br.* at 16.) Nowhere does that exhibit reference “low income housing.” The Coop admits that under Section 221(d)(3), the Coop is restricted to individuals at 80% of area median income. *Id.* at 19. The Coop subsequently hedges its claim that it provides low-income housing with the admission that it provides “housing to low and *moderate* income households.” *Id.* at 15.

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<sup>16</sup> The Indiana Supreme Court's analysis of *College Corner, L.P. v. Dep't. of Local Gov't. Fin.*, 840 N.E.2d 905 (Ind. Tax Ct. 2006) noted that “a for profit corporation — National City Community Development Corporation (“NCCDC”), and a not-for-profit corporation — Old Northside Foundation, Inc., (“ONF”) formed a limited partnership — College Corner L.P. (“CCLP”) to revitalize a historic area of the City of Indianapolis.” *Oaken Bucket*, 938 N.E.2d at 658. The Supreme Court favorably cited *College Corner's* conclusion that the NCCDC's Articles of Incorporation established a charitable purpose, particularly in light of the “inconsequential” profits it received under the partnership. *Id.* Because both partners demonstrated a charitable purpose, CCLP was entitled to an exemption. *Id.* Thus, it is appropriate to consider the purposes of each partner.

59. The Articles and Bylaws of the Coop do not establish a charitable purpose other than those conferred on its members through affordable mutual housing and its related “nonprofit, benevolent, fraternal, and social purposes.” (*Pet’r. Ex.* at 2290.) These bylaws are not similar to the purposes found in other low-income housing nonprofits. In *Hebron Vision*, the nonprofit sought to house “residents who otherwise would not be able to find or afford a suitable place to live;” “relieve the poor, distresse[d], underprivileged and indigent by enabling them to secure the basic human needs of decent shelter;” and “combat[] the deterioration of the community and contribut[e] to its physical improvement.” *Hebron-Vision, LLC v. Porter Cty. Assessor*, 134 N.E.3d 1077, 1080-1081 (Ind. Tax Ct. 2019). The Coop’s organizing documents establish the property is owned for the purpose of providing *cooperative housing*, not necessarily low-income housing.
60. The Coop does not cite to any authority to suggest that cooperative housing is inherently charitable. Perhaps it is not surprising, given that the Coop did not seek a charitable property tax exemption during its first three decades of operation, that the Board has found very little case law, across the U.S., where cooperative housing corporations have sought charitable exemptions. More often they have sought homestead deductions or their equivalent. The Board concludes that cooperative housing is merely a financial and legal arrangement; it is not an inherently charitable enterprise.
61. Even while under HUD supervision, the Coop’s members were limited to 80% of area median income. For 2009, median area income was \$68,100, and at 80% of that level, one who makes \$54,480 is not obviously someone in poverty. (*Pet. Ex.* at 2776).<sup>17</sup> While many of the Coop’s members may have low incomes, the fact that a landlord rents to people of limited means does not establish that the landlord has a charitable purpose in providing low-income housing. Many businesses market their goods or services to persons in lower economic segments, but that does not mean their businesses are owned for charitable purposes.

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<sup>17</sup> MFI stands for “median family income,” and the term is generally used synonymously with “area median income.” (*Pet. Ex.* at 2778).

62. As a whole, the Board finds that the Coop is owned for the purpose of providing cooperative housing, not low-income housing. Many private landlords offer low- and moderate-income residents with safe, affordable, quality housing with no expectation of exempt status. The Coop is unique only in that it provides housing at below-market rents. But that is the purpose of mutual benefit housing: housing without a profit margin going to a landlord. The Board concludes that the Coop predominantly owns the apartment complex for the purpose of securing the benefits of cooperative housing to its members.

**4. THE MEMBERS OF THE COOP FAIL TO ESTABLISH THE PROPERTY IS  
PREDOMINATELY OWNED FOR CHARITABLE PURPOSES**

63. The Board now turns to the ownership purposes of the Coop's members. In discussing the Coop's operations, the Coop argued that "[t]here is no profit motive" in establishing the rent levels. (*Pet'r.'s Post-Tr. Br.* at 19.) That statement is only true from the perspective of the nonprofit. The Coop's members have a very definite "profit motive" in keeping rent as low as possible. In the final analysis, the purpose of the members' ownership in the property is to provide below-market-rent-housing *to themselves*. The fundamental issue is whether the members of a cooperative housing corporation can be *the object of their own charity*.

64. Sometimes the answer to a legal question is so obvious that there is little case law to support it. If a property owner lets a destitute person stay at a home rent-free, that house is owned for a charitable purpose. At the very moment the property owner gives away the house to that person in need, the house is no longer owned for a charitable purpose. Once a person owns a property for personal use, it's no longer charitable, no matter how destitute the person may be. The same conclusion must follow here: coops exist to benefit their own members, and the provision of housing to themselves cannot be considered charitable.

65. Under exemption law, if a taxpayer's "activities primarily benefitted its members," and the "property was not used like a benevolent corporation," then the property is not owned

for charitable purposes. *6787 Steelworkers Hall, Inc. v. Snyder*, 71 N.E.3d 97, 104 (Ind. Tax Ct. 2017). “If a property owner's use of property does not serve the public good, the property is taxable.” *Dep't of Local Gov't Fin. v. Roller Skating Rink Operators Ass'n*, 853 N.E.2d 1262, 1265 (Ind. 2006) (holding that “[e]ducation that primarily serves the private interests of an organization's members does not warrant public subsidy [and] does not meet the ‘public benefit’ test.”)

66. The Board finds the members of the Coop are not simply charitable tenants. They are owners who maintain their affordable housing through their ownership and active participation in the nonprofit. The sui generis status of cooperative housing is confirmed both in case law and by statute entitling stock-holder tenants to claim homestead deductions as any other owner-occupying homeowner. The Board must conclude that the self-interest reflected in the Coop’s members’ ownership of the nonprofit predominates over any charitable purposes.

**ii. THE COOP IS NOT PREDOMINATELY OCCUPIED AND USED FOR THE PURPOSE OF PROVIDING CHARITABLE HOUSING**

67. The Coop’s apartment complex is occupied and used by its members. Because of the uniformity of occupancy and use, the same analysis applies to both elements. Even if the Board were to conclude that the Coop and its members owned the subject property for predominately charitable purposes, the members’ occupancy and use are not charitable.

68. As the Indiana Supreme Court remarked over a century ago, a statute “ought not to be so strictly construed as to defeat its purpose, yet it must still be remembered that it is not to be extended beyond its evident purpose.” *Sandy v. Board of Comm'rs*, 171 Ind. 674, 676, 87 N.E. 131, 132 (Ind. 1909). The definition of charity must be “constitutionally liberal,” but not so broad as to render “virtually every act of man and incorporation a tax-exempt charitable act.” *Indianapolis Elks Bldg. Corp. v. State Board of Tax Comm'rs*, 251 N.E.2d 673, 682, (Ind. Ct. App. 1969).

69. A charitable use will be found if a taxpayer shows (1) there is evidence of relief from



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. *Knox Cty. Prop. Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005).

### 1. RELIEF OF HUMAN WANT

70. When the Indiana Tax Court first considered an exemption claimed on the basis of low-income housing, it adopted the reasoning found in a New Mexico case rejecting a charitable exemption:

Here, we have an enterprise to furnish low-cost housing to a certain segment of our population. It was intended to be self-supporting, without any thought that gifts or charity were involved. The tenants are required to pay for the premises occupied by them with the rentals being fixed so as to return the amount estimated as being necessary to pay out the project. It is competitive with landlords offering other residential property for rent and on which taxes must be paid.

*Jamestown Homes*, 909 N.E.2d at 1144 (citing *Mountain View Homes, Inc. v. State Tax Comm'n*, 77 N.M. 649, 655, 427 P.2d 13, 17 (N.M. 1967)). On rehearing, the Tax Court reiterated that a charitable exemption requires more than simply providing “safe, clean, and affordable housing to low-income persons at below-market rents” in compliance with the “numerous regulations prescribed by HUD.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13, 16 (Ind. Tax Ct. 2009).

71. In *Housing Partnerships I*, the Tax Court noted that the nonprofit claimed several charitable acts beyond the mere provision of low-income housing:

- 1) its building and rehabilitation efforts were directed to the distressed areas in Bartholomew County, relieving the government of its burden to revitalize those areas;
- 2) it helped people “from falling through the cracks,” relieving human want and therefore doing something the government otherwise would have had to do;
- 3) its rental rates were lower than other housing units, relieving the government (i.e., HUD) of its obligation to subsidize a greater portion of the rents paid by Housing Partnerships' Section 8 tenants;

4) it helped its tenants to become more financially self-sufficient, relieving the government of its burden to support them

*Hous. P'ships v. Owens*, 10 N.E.3d 1057, 1062 (Ind. Tax Ct. 2014). These were insufficient for a charitable exemption.

72. In *Hebron Vision*, the Tax Court noted that a low-income apartment complex provided residents with:

Access to free tax preparation services and blood pressure screenings; monthly meetings on topics that included self-defense, senior scams, and nutrition; on-site community book and video libraries; holiday/special event parties and contests; and referral information for rent, food, utility, and transportation assistance. Additionally, the residents had access to a business center where they received help with their resumés, completing online applications, and performing online research for jobs. The evidence also shows that Hebron-Vision worked with its tenants to keep evictions at a minimum, as evidenced by the fact that only six tenants were evicted over the four year period at issue.

*Hebron Vision*, 134 N.E.3d. at 1094. This opinion by Senior Judge Fisher, which contained no comparison of its facts to the those in *Jamestown* or *Housing Partnerships I*, found that the apartment complex, owned by an LLC controlled by a developer, was entitled to a charitable exemption.

73. Soon after, the Tax Court held in *Housing Partnerships II* that low-income housing is eligible when it provides evidence that:

- 1) the government had assumed the burden of providing affordable housing to low-income persons and families;
- 2) it rehabilitated residences in blighted areas and rented housing at below-market rents to people living at or below 60% of the area median income;
- 3) it maintained below-market rents after it was no longer obligated to do so;
- 4) it helped its low-income tenants become financially independent and provided them with access to credit counseling, childcare referrals, and food, clothing, and utility assistance;
- 5) it provided tenants with rent concessions rather than evicting them for non-payment of rent and rented to tenants with poor credit histories, non-violent criminal offenses, and prior evictions even though other landlords

declined to do so;

6) it used its own funds (secured from private donations, grants, the value of volunteer time, and the sale of certain homes) to operate its home rental program; and

7) its annual audits indicated that there was no private inurement.

*Bartholomew County Assessor v. Hous. P'ships.*, 151 N.E.3d 821, 824 (Ind. Tax Ct. 2020).

74. The Coop argues that it provides relief from human want through its not-for-profit status, below-market rents, low- and moderate-income clientele, low eviction rate, and its services, programs, and fraternal activities. The Board concludes that the Coop's activities do not rise to the level of relief of human want found in *Hebron Vision or Housing Partnerships II*.
75. As for nonprofit status, simply "declaring itself a charity does not make [a nonprofit's] activities and endeavors the sort the law recognizes as charitable and therefore entitled to tax exemption." *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Commr's*, 671 N.E.2d 218, 221, (Ind. 1996). In any event, an organization's status as a nonprofit does not in itself relieve human want. It may establish the absence of "private inurement," but the Board has already concluded that the members' ownership of the Coop is based on self-interest rather than a charitable purpose.
76. In regard to the provision of below-market rents, the Coop directs us to no evidence as to what the apartment units could charge on the open market. The Coop instead provides the HUD guidelines that develop a metro-area market rent for various-sized units, and a below-market rate ceiling for each income class.<sup>18</sup> Nonetheless, the Board accepts that the Coop offers below-market rents as a characteristic of cooperative housing.
77. The next question is whether the Coop provides below-market housing to individuals based on their low-income status. The Coop does not argue that its members meet

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<sup>18</sup> Rents vary immensely depending on location, quality, and amenities, and the Coop has not presented probative evidence of *market* rents based on the leases at comparable apartment complexes.

eligibility guidelines; it states that “member-applicants’ incomes are screened” for eligibility. (*Pet’r.’s Post-Tr. Br.* at 19.) It further argues that an applicant is not admitted if “the applicant’s income is above the income limits.” *Id.* In support of those claims, it cites to Alerding’s testimony at page 147 in the transcript, which merely states the Coops “continued to operate with a lot of the HUD rules and regulations as far as income limits.” Because this testimony does not unequivocally describe *which* rules each Coop follows, it does not establish the fact that *this* Coop screens its members annually in accordance with HUD guidelines. More importantly, the Coop neither argues nor directs the Board to testimony that might unequivocally establish that only persons meeting income eligibility guidelines are members of the Coop.

78. Except in regard to the Section 8 units, the Coop no longer submitted income verification to HUD during several of the years at issue. In any event, persons exceeding income guidelines are not evicted under federal rules; they were required to pay a surcharge that was passed on to HUD or kept by the coop. (*Tr.* at 400, 511.) Compliance with HUD rules for a cooperative does not mean all members meet eligibility guidelines—only that their income met the guidelines when their membership certificates were *first purchased*.
79. The Coop claims that 72.63% of its households have less than \$10,000 in income. (*Pet’r.’s Post-Tr. Br.* at 24.) That data related only to October of 2009, and only included data for 95 households out of 116 units occupied. (*Pet’r.’s Ex.* at 2739.) This failure of the Coop to maintain comprehensive income eligibility information continued. For example, in 2015, 114 units were occupied, but income was tracked for only 38 households (a third of the total units). (*Pet’r.’s Ex.* at 4000.)
80. To claim a use as low-income housing, it is necessary for the Coop to provide unequivocal evidence and documentary support that it verifies the income eligibility of its members and excludes those who exceed the requirements. Having failed to do so for 2009 or any other year at issue, the Board cannot conclude that the Coop provides eligibility-based low-income housing to low-income persons.

81. Even if the Board were to find that the Coop provided low-income housing, Indiana law has established that “the provision of low-income housing is not *per se* a charitable purpose.” *Hous. P’ships*, 10 N.E.3d at 1061. While admitting that premise is controlling, the Coop goes on to argue, in the very next sentence, that the Coop’s “ownership occupation and use of the [apartment complex] *as low-income housing*,” established its prima facie case for an exemption. (*Pet’r.’s Reply Br.* at 6-7 (emphasis in original).) The Coop later concedes that the Board should consider low-income housing as “one factor,” though “presumably a heavily weighted one.” *Id.* at 7, n. 5. The law is unequivocal that evidence of the provision of low-income by the Coop does not establish a prima facie case that it is entitled to a charitable exemption.<sup>19</sup> In analyzing the “weight” that should be placed on that factor, it is instructive to review other property tax statutes related to low-income housing.

82. The Legislature plainly anticipates that properties used for the provision of low-income housing, including those subsidized through Section 42, will be assessed and taxed:

(a) For purposes of this section, "low income rental property" means real property used to provide low income housing eligible for federal income tax credits awarded under Section 42 of the Internal Revenue Code, including during the time period during which the property is subject to an extended low income housing commitment under Section 42(h)(6)(B) of the Internal Revenue Code.

(b) For assessment dates after February 28, 2006, the true tax value of low income rental property is the greater of the true tax value:

- (1) determined using the income capitalization approach; or
- (2) that results in a gross annual tax liability equal to five percent (5%) of the total gross rent received from the rental of all units in the property for the most recent taxpayer fiscal year that ends before the assessment date.

(c) For assessment dates after December 31, 2017, the total true tax value of low income rental property that offers or is used to provide Medicaid assisted living services is equal to the total true tax value that results in a gross annual tax liability equal to five percent (5%) of the total gross rent received from the rental of all living units in the property for the most recent taxpayer fiscal year that ends before the assessment date. The total true tax value shall not include the gross receipts from, or value of, any

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<sup>19</sup> Accordingly, the Board rejects the Coop’s argument that it made a prima facie case and the Assessor failed to rebut it.

assisted living services provided.

(d) The department of local government finance may adopt rules under IC 4-22-2 to implement this section.

IC § 6-1.1-4-41.<sup>20</sup> In light of this statute, the Board finds substantial support for the proposition that the Legislature generally expects low-income housing to be taxed. The Legislature has also created a vehicle specifically for Section 42 low-income housing that is not eligible under IC § 6-1.1-10-16 to seek an exemption through an agreement to make payments in lieu of taxes.<sup>21</sup> I.C. § 6-1.1-10-16.7. This compels the conclusion that the Legislature anticipates that property owners seeking to exempt its low-income housing may likely fail under the general standard for a charitable exemption.

83. These statutory provisions add substantial weight to the conclusion that *Hebron Vision* cannot be interpreted as an abrogation of the high bar established by *Jamestown* and *Housing Partnerships I*. Indeed, *Hebron Vision* barely mentions the two cases, let alone expressly departs from their precedent. After *Hebron Vision*, the Tax Court upheld the Board's conclusion that the grant of an exemption in *Housing Partnerships II* was a "close call." *Housing Partnerships II*, 151 N.E.3d at 828. The law remains absolutely clear that the provision of low-income housing, alone, is insufficient to prove a charitable use under IC § 6-1.1-10-16.
84. While a nonprofit's "facilities and activities [may] undoubtedly suppress human want and suffering in addition to promoting brotherly love, justice, fidelity, etc.," it is not entitled to an exemption if "these noble objectives can also be seen in the family home and at various other public and private establishments." *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Commr's*, 671 N.E.2d 218, 221. The mere fact a landlord rents an apartment to low- or moderate-income tenants at an affordable rate does not establish relief from want any more than a fast-food restaurant that offers cheap food in a poor neighborhood.

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<sup>20</sup> See also IC § 6-1.1-4-40: "The value of federal income tax credits awarded under Section 42 of the Internal Revenue Code may not be considered in determining the assessed value of low income housing tax credit property."

<sup>21</sup> The Coop does not seek an exemption pursuant to this statute.

85. The Coop next points to its minimal evictions. Without evidence of a market eviction rate, the Board cannot conclude that the Coop acts more charitably than any other landlord in evicting tenants. Moreover, the Coop has not produced evidence similar to *Jamestown II* where the nonprofit provided its “tenants with rent concessions rather than evicting them for non-payment of rent and rented to tenants with poor credit histories, non-violent criminal offenses, and prior evictions even though other landlords declined to do so.” *Housing Partnerships II*, 151 N.E.3d at 824. The number of evictions does not establish the number of times it has charitably offered rent concessions or forbearance. The Coop does, however, allow payment plans over a few months. This factor weighs in favor of a charitable use, but it is not substantial enough on its own.
86. The Coop finally turns to its services, programs, and fraternal activities. In its brief, the Coop sets forth thirty-two services conducted “collectively and individually” at the “Subject Properties.” (*Pet’r.’s Post-Tr. Br.* at 27). Because the question before the Board is *the individual* cooperative’s occupancy and use, the Board can only consider evidence that pertains to *this* Coop. The Board rejects the efforts to paint all of the cooperatives with a *collective* broad brush because it fails to walk the Board through which activities applied to this Coop specifically. *St. Mary’s Bldg. Corp.*, 135 N.E.3d at 690. The Coop has waived its arguments as to the Coop’s services, programs, and fraternal activities.
87. However, even if we consider the record as a whole, the Coop’s evidence is insufficient. In regard to the documentation of its activities, the Board must follow *Bros. of Holy Cross, Inc. v. St. Joseph County Prop. Tax Assessment Bd. of Appeals*, 878 N.E.2d 548, 549 (Ind. Tax Ct. 2007), where an Indiana not-for-profit sought a charitable exemption for its retirement community consisting of single and multiple unit residences. The nonprofit offered “amenities found in traditional apartment living as well as unique and special services” that included facilities and programs geared at “social, educational, religious, and healthcare needs.” *Id.* at 551. In support of its claim, the nonprofit offered “monthly newsletters and activity calendars, summaries of the services and activities

offered to the Village's residents, and lists of residents that had utilized some of those services and activities.” *Id.* The Tax Court held that such evidence “lacks probative value with respect to the year at issue because it fails to establish what services and activities were available to the [nonprofit’s] residents at that time.” *Id.* Because the Coop does not create a record of services and activities available for each year under appeal, the Coop has failed to present probative evidence of its services, programs, and activities.

88. Even if the Coop had presented probative evidence, the Board must still conclude that these activities are incidental. “[I]ncidental . . . activities [will] not justify a statement that the dominant use of the property is the promotion of charity.” *Elks Bldg. Corp.*, 251 N.E.2d at 682; *Indiana State Bd. of Tax Comm'rs v. Fraternal Order of Eagles, Lodge No. 255*, 521 N.E.2d 678, 681, (Ind. 1988) (noting that this case closely parallels *Indianapolis Elks I*). Additionally, if a nonprofit uses its property “to promote the same social and recreational activities as are encouraged by and the objects of any place of rest and relaxation,” it will not be entitled to an exemption. *Elks Bldg. Corp.*, 251 N.E.2d at 682.
89. The Board concludes that the Coop’s services and programs are not the type of relief from human want necessary for an exemption. The Coop’s fall festivals and Christmas programs are great amenities for the members. But these are the same “social and recreational activities as are encouraged by and the objects of any place of rest and relaxation” under *Elks Bldg. Corp.* While these are hallmarks of healthy and active communities, they are not charitable; i.e. the type of relief of human want necessary for an exemption.
90. It is laudable that the Coop hosts a summer lunch program. However, this is not the predominate use of the apartment complex, and incidental uses are insufficient under the standard for an exemption.
91. In conclusion, without unequivocal evidence of the provision of eligibility-based low-



income housing, the Board cannot find a charitable use based on low-income housing. Additionally, the Coop fails to walk the Board through its analysis of the Coop's specific additional programs and services, and those gleaned from the record are too incidental to justify a charitable exemption.

## 2. RELIEF OF GOVERNMENT BURDEN

92. The Board has already found that the Coop's activities do not relieve human want as necessary for a charitable exemption. Consequently, the Coop cannot show it relieves a government burden under the second prong of the test. Nonetheless, the Board will address this issue as well.
93. There is no dispute that the state and federal governments have undertaken efforts to encourage the provision of low-income housing, and this constitutes the assumption of a "government burden" to provide low-income housing. The Coop's apartment complex exists through the aid of a federally subsidized mortgage, regardless of when the mortgage was paid off. Under the case law, this fact cuts both ways because it may provide evidence, on the one hand, that the nonprofit has "relieved the government of an expense it would otherwise have borne," or, on the other, that "the government, through its federal grants, was still bearing the expense itself." *Hous. P'ships v. Owens*, 10 N.E.3d at 1064. Thus, the provision of subsidized housing does not per se establish the relief of a government burden.
94. As for safety issues, a private business owner does not alleviate a public burden by hiring security officers to protect its own property, and the Board does not find that such commonplace measures relieve a government burden.
95. Turning to redevelopment, the Coop has failed to establish that an apartment complex's use of funds to maintain its buildings and apartment units constitutes the type of redevelopment addressed in *College Corner*, 840 N.E.2d 905. These are ordinary business activities without a charitable purpose.
96. Under the second prong of the exemption test, whether the benefit expected to "inure to

the general public” is “sufficient to justify the loss of tax revenue,” the Board concludes that the incidental nature of the Coop’s charitable activities are insufficient to justify the loss in tax revenue.

**FINAL DETERMINATION**

The Coop presented insufficient probative evidence to establish that it was owned, occupied, and used for an exempt purpose 100% of the time in any appeal year. Therefore, we deny the exemptions for 2010-2016.

ISSUED: SEPTEMBER 1, 2021

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Chairman, Indiana Board of Tax Review

*Betsy J. Brand*  
\_\_\_\_\_  
Commissioner, Indiana Board of Tax Review

*Jonathan R. Chel*  
\_\_\_\_\_  
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 not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>

Southwood Cooperative, Inc.

Attachment A

Petition No.	Parcel No.
49-500-10-2-8-03225	E501479 (Personal)
49-500-10-2-8-03223	5027175
49-500-11-3-4-82389-15	5027175
49-500-12-3-8-01062-17	5027175
49-500-13-3-8-01060-17	5027175
49-500-14-1-8-00983-18	5027175
49-500-15-1-4-00420-20	5027175
49-500-16-1-4-00465-20	5027175
49-500-10-2-8-03224	5027176
49-500-11-3-4-82390-15	5027176
49-500-12-3-8-01063-17	5027176
49-500-13-3-8-01061-17	5027176
49-500-14-1-8-00982-18	5027176
49-500-15-1-4-00421-20	5027176
49-500-16-1-4-00466-20	5027176

## ATTACHMENT B

### PETITIONER'S EXHIBIT LIST

Exhibit P-1(a)(i)	United States National Housing Act of 1937
(a)(ii)	Housing and Urban Development ("HUD") Act of 1968
(b)	Indiana Code § 5-20-1-1
(c)(i)	<i>Jamestown Homes of Mishawaka v. St. Joseph Cty. Assessor</i> , 909 N.E.2d 1138 (Ind. Tax Ct. 2009)
(c)(ii)	<i>Jamestown Homes of Mishawaka v. St. Joseph Cty. Assessor</i> , (IBTR January 7, 2008)
(c)(iii)	<i>Hebron-Vision, LLC v. Porter Cty. Assessor</i> , 134 N.E.3d 1077 (Ind. Tax Ct. 2019)
Exhibit P-2(a)(i)	Indiana Code § 6-1.1-10-16
(a)(ii)	Indiana Code § 6-1.1-31-1
(a)(iii)	Indiana Code § 6-1.1-11-3
(a)(iv)	Indiana Code § 6-1.1-11-3.5
(a)(v)	Form 136 Application for Property Tax Exemption
(a)(vi)	Indiana Code § 6-1.1-11-4
(a)(vii)	Form 136-CO/U Change of Ownership or Use
(a)(viii)	Indiana Code § 6-1.1-11-5
(a)(ix)	Indiana Code § 6-1.1-11-6
(a)(x)	Indiana Code § 6-1.1-11-7
(a)(xi)	<i>Keith v. Town of Long Beach</i> , 536 N.E.2d 552, 555 (Ind. Ct. of App. 1989)
(b)(i)	Indiana Code § 6-1.1-15-12 (2009)
(b)(ii)	Indiana Code § 6-1.1-15-1.1 (2015)
(c)(i)	Indiana Code § 6-1.5-4-1
(c)(ii)	<i>CVS Corp. #2519-01 v. Prince</i> , 149 N.E.3d 323 (Ind. Tax Ct. 2020)

#### **Applications for Exemption (March 1, 2005 assessment)**

Exhibit P-3(a)	Grandville Cooperative, Inc.
(b)	Harvard Square Cooperative, Inc.
(c)	Lakeview Terrace Cooperative, Inc.
(d)	Mayfield Green Cooperative, Inc.
(e)	Retreat Cooperative, Inc.
(f)	Southwood Cooperative, Inc.
(g)	Three Fountains Cooperative, Inc.
(h)	Troy Manor Cooperative, Inc.
(i)	Yorktown Homes South, Inc.

#### **Form 120 Notice of Action on Exemption Application (March 1, 2005 assessment)**

Exhibit P-4(a)	Grandville Cooperative, Inc.
(b)	Harvard Square Cooperative, Inc.
(c)	Lakeview Terrace Cooperative, Inc.
(d)	Mayfield Green Cooperative, Inc.

- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.

**Applications for Exemption (March 1, 2006 assessment)**

- Exhibit P-5(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**Form 120 Notice of Action on Exemption Application (March 1, 2006 assessment)**

- Exhibit P-6(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**Applications for Exemption (March 1, 2008 assessment)**

- Exhibit P-7(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.

**Form 120 Notice of Action on Exemption Application (March 1, 2008 assessment)**

- Exhibit P-8(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.

- (e) Retreat Cooperative, Inc.
  - (f) Southwood Cooperative, Inc.
  - (g) Three Fountains Cooperative, Inc.
  - (h) Troy Manor Cooperative, Inc.
  - (i) Yorktown Homes South, Inc.
  - (j) Three Fountains West, Inc.
- Exhibit P-9 January 31, 2011 Marion County Assessor letter

**Form 120 Notice of Action on Exemption Application (March 1, 2010 assessment)**

- Exhibit P-10(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**Articles of Incorporation**

- Exhibit P-11(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**By-Laws**

- Exhibit P-12(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**Photographs of Petitioners' Properties**

- Exhibit P-13(a) Grandville Cooperative, Inc.

- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**Website Excerpts of Petitioners' Properties**

- Exhibit P-14(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**Petitioners' Deeds**

- Exhibit P-15(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**March 1, 2009 rent rolls**

- Exhibit P-16(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**March 1, 2009 Demographic Summary Statistics**

- Exhibit P-17(a) Grandville Cooperative, Inc.
  - (b) Harvard Square Cooperative, Inc.
  - (c) Lakeview Terrace Cooperative, Inc.
  - (d) Mayfield Green Cooperative, Inc.
  - (e) Retreat Cooperative, Inc.
  - (f) Southwood Cooperative, Inc.
  - (g) Three Fountains Cooperative, Inc.
  - (h) Troy Manor Cooperative, Inc.
  - (i) Yorktown Homes South, Inc.
  - (j) Three Fountains West, Inc.
- 
- Exhibit P-18(a) HUD Fair Market Rent Data (2009)
  - (b) HUD Marion County Area Median Income Data (2009)

**March 1, 2010 Rent Rolls**

- Exhibit P-19(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**March 1, 2010 Demographic Summary Statistics**

- Exhibit P-20(a) Grandville Cooperative, Inc.
  - (b) Harvard Square Cooperative, Inc.
  - (c) Lakeview Terrace Cooperative, Inc.
  - (d) Mayfield Green Cooperative, Inc.
  - (e) Retreat Cooperative, Inc.
  - (f) Southwood Cooperative, Inc.
  - (g) Three Fountains Cooperative, Inc.
  - (h) Troy Manor Cooperative, Inc.
  - (i) Yorktown Homes South, Inc.
  - (j) Three Fountains West, Inc.
- 
- Exhibit P-21(a) HUD Fair Market Rent Data (2010)
  - (b) HUD Marion County Area Median Income Data (2010)

**March 1, 2011 Rent Rolls**

- Exhibit P-22(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.



- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**March 1, 2011 Demographic Summary Statistics**

- Exhibit P-23(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

- Exhibit P-24(a) HUD Fair Market Rent Data (2011)
- (b) HUD Marion County Area Median Income Data (2011)

**March 1, 2012 Rent Rolls**

- Exhibit P-25(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**March 1, 2012 Demographic Summary Statistics**

- Exhibit P-26(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.

- (j) Three Fountains West, Inc.
- Exhibit P-27(a) HUD Fair Market Rent Data (2012)
- (b) HUD Marion County Area Median Income Data (2012)

**March 1, 2013 Rent Rolls**

- Exhibit P-28(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**March 1, 2013 Demographic Summary Statistics**

- Exhibit P-29(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

- Exhibit P-30(a) HUD Fair Market Rent Data (2013)
- (b) HUD Marion County Area Median Income Data (2013)

**March 1, 2014 Rent Rolls**

- Exhibit 31P-(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**March 1, 2014 Demographic Summary Statistics**

- Exhibit P-32(a) Grandville Cooperative, Inc.

- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

- Exhibit P-33(a) HUD Fair Market Rent Data (2014)
- (b) HUD Marion County Area Median Income Data (2014)

**March 1, 2015 Rent Rolls**

- Exhibit P-34(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**March 1, 2015 Demographic Summary Statistics**

- Exhibit P-35(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

- Exhibit P-36(a) HUD Fair Market Rent Data (2015)
- (b) HUD Marion County Area Median Income Data (2015)

**March 1, 2016 Rent Rolls**

- Exhibit P-37(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.

- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**March 1, 2016 Demographic Summary Statistics**

- Exhibit P-38(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.
  
- Exhibit P-39(a) HUD Fair Market Rent Data (2016)
- (b) HUD Marion County Area Median Income Data (2016)

**Occupancy Agreement**

- Exhibit P-40(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**Member's Handbook**

- Exhibit P-41(a) Grandville Cooperative, Inc.
- (b) Harvard Square Cooperative, Inc.
- (c) Lakeview Terrace Cooperative, Inc.
- (d) Mayfield Green Cooperative, Inc.
- (e) Retreat Cooperative, Inc.
- (f) Southwood Cooperative, Inc.
- (g) Three Fountains Cooperative, Inc.
- (h) Troy Manor Cooperative, Inc.
- (i) Yorktown Homes South, Inc.
- (j) Three Fountains West, Inc.

**Membership Selection Plan (in effective March 1, 2009 through January 1, 2016)**

Exhibit P-42(a)	Grandville Cooperative, Inc.
(b)	Harvard Square Cooperative, Inc.
(c)	Lakeview Terrace Cooperative, Inc.
(d)	Mayfield Green Cooperative, Inc.
(e)	Retreat Cooperative, Inc.
(f)	Southwood Cooperative, Inc.
(g)	Three Fountains Cooperative, Inc.
(h)	Troy Manor Cooperative, Inc.
(i)	Yorktown Homes South, Inc.
(j)	Three Fountains West, Inc.

**Application for Membership (in effect March 1, 2009 through January 1, 2016)**

Exhibit P-43(a)	Grandville Cooperative, Inc.
(b)	Harvard Square Cooperative, Inc.
(c)	Lakeview Terrace Cooperative, Inc.
(d)	Mayfield Green Cooperative, Inc.
(e)	Retreat Cooperative, Inc.
(f)	Southwood Cooperative, Inc.
(g)	Three Fountains Cooperative, Inc.
(h)	Troy Manor Cooperative, Inc.
(i)	Yorktown Homes South, Inc.
(j)	Three Fountains West, Inc.

**Mortgage Releases**

Exhibit P-44(a)	Grandville Cooperative, Inc.
(b)	Harvard Square Cooperative, Inc.
(c)	Lakeview Terrace Cooperative, Inc.
(d)	Mayfield Green Cooperative, Inc.
(e)	Retreat Cooperative, Inc.
(f)	Southwood Cooperative, Inc.
(g)	Three Fountains Cooperative, Inc.
(h)	Troy Manor Cooperative, Inc.
(i)	Yorktown Homes South, Inc.
(j)	Three Fountains West, Inc.

**Use Agreements**

Exhibit P-45(a)	Grandville Cooperative, Inc.
(b)	Harvard Square Cooperative, Inc.
(c)	Lakeview Terrace Cooperative, Inc.
(d)	Mayfield Green Cooperative, Inc.
(e)	Retreat Cooperative, Inc.
(f)	Southwood Cooperative, Inc.
(g)	Three Fountains Cooperative, Inc.
(h)	Troy Manor Cooperative, Inc.
(i)	Yorktown Homes South, Inc.

(j) Three Fountains West, Inc.

**Eviction Data (March 1, 2009 through January 1, 2016)**

Exhibit P-46(a) Grandville Cooperative, Inc.  
(b) Harvard Square Cooperative, Inc.  
(c) Lakeview Terrace Cooperative, Inc.  
(d) Mayfield Green Cooperative, Inc.  
(e) Retreat Cooperative, Inc.  
(f) Southwood Cooperative, Inc.  
(g) Three Fountains Cooperative, Inc.  
(h) Troy Manor Cooperative, Inc.  
(i) Yorktown Homes South, Inc.  
(j) Three Fountains West, Inc.

Exhibit P-47 Owned, occupied, and used charitable checklist

Exhibit P-48(a) Affidavit of Joe Holland  
(b) Affidavit of Alicia Osborne  
(c) Affidavit of Dino DeMare

Exhibit P-49 Indianapolis Star Article (August 18, 2020)

Exhibit P-50(a) Child Care and Development Fund (“CCDF”)  
(b) Head Start and Early Head Start  
(c) Indiana Special Supplemental Nutrition Program for Women, Infants, and Children  
(d) Indiana Supplemental Nutrition Assistance Program  
(e) Summer Food Service Program for Indiana  
(f) Child and Adult Care Food Program (“CACFP”)  
(g) Commodity Supplemental Food Programs  
(h) Ryan White HIV/AIDS Program  
(i) Administration on Aging

Exhibit P-51(a) HUD Section 221(d)(3) program document  
(b) HUD Section 236 program document  
(c) HUD Project Based Section 8 document  
(d) HUD Housing Choice Voucher program document

Exhibit P-52(a) Respondent’s Answers to Petitioner’s First Set of Request for Admission  
(b) Respondent’s Answers to Petitioner’s First Set of Interrogatories  
(c) Respondent’s Answers to Petitioner’s First Set of Request for Production

Exhibit P-53(a) Petitioner’s Answers to Respondent’s Requests for Admission  
(b) Petitioner’s Answers to Respondent’s Interrogatories  
(c) Petitioner’s Answers to Respondent’s Request for Production

Exhibit P-54 Exhibits identified on the Respondent’s witness list

Exhibit P-55 All pleadings in this case and any exhibits thereto

Exhibit P-56	All petitions in this case and any exhibits thereto
Exhibit P-57	Demonstrative exhibits, including summaries
Exhibit P-58	Any other exhibit needed for purposes of rebuttal or impeachment

**Rebuttal Exhibits**

Exhibit P-59	Summary of Petitioner's properties
Exhibit P-60	Marion County Landlord Funding Agreement
Exhibit P-61	<i>Bartholomew Co. Assessor v. Hous. Partnerships, Inc.</i> , No. 18T-TA-00021, 2020 WL 4493216 (Ind. Tax Ct. August 3, 2020)
Exhibit P-62	<i>Hous. Partnerships, Inc. v. Bartholomew Co. Assessor</i> (IBTR July 19, 2018)
Exhibit P-63	<i>Town of St. John v. State Bd. Of Tax Comm'rs</i> , 691 N.E.2d 1387 (Ind. Tax Ct.) <i>order clarified</i> , 698 N.E.2d 399 (Ind. Tax Ct. 1998), and <i>aff'd in part, rev'd in part</i> , 702 N.E.2d 1034 (Ind. 1998)
Exhibit P-64	<i>Bros. of Holy Cross, Inc. v. St. Joseph Cty. Prop. Tax Assessment Bd. Of Appeals</i> , 878 N.E.2d 548 (Ind. Tax Ct. 2007)
Exhibit P-65	<i>Cnty. Christian Church, Inc. v. State Bd. of Tax Comm'rs</i> , 523 N.E.2d 462 (Ind. Tax Ct. 1988)
Exhibit P-66	Indiana Code § 32-31-2.9-4
Exhibit P-67	Indiana Code § 6-1.1-1-9
Exhibit P-68(a)	Indiana Code § 6-1.1-12-37 (Effective July 1, 2009 to June 30, 2010)
(b)	Indiana Code §6-1.1-12-37 (Effective March 1, 2011 to June 30, 2012)
(c)	Indiana Code § 6-1.1-12-37 (Effective July 1, 2012 to February 28, 2013)
(d)	Indiana Code § 6-1.1-12-37 (Effective March 1, 2013 to June 30, 2013)
(e)	Indiana Code § 6-1.1-12-37 (Effective July 1, 2013 to March 12, 2014)
(f)	Indiana Code § 6-1.1-12-37 (Effective March 13, 2014 to June 30, 2014)
(g)	Indiana Code § 6-1.1-12-37 (Effective July 1, 2014 to April 14, 2015)
(h)	Indiana Code § 6-1.1-12-37 (Effective April 15, 2015 to May 3, 2015)
(i)	Indiana Code § 6-1.1-12-37 (Effective May 4, 2015 to December 31, 2015)
(j)	Indiana Code § 6-1.1-12-37 (Effective January 1, 2016 to December 31, 2016)
Exhibit P-69	United States Constitution, 14 <sup>th</sup> Amendment
Exhibit P-70	Exhibits identified on Respondent's Rebuttal Exhibit List