

REPRESENTATIVES FOR ST. MARY’S BUILDING CORPORATION:  
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REPRESENTATIVES FOR WARRICK COUNTY ASSESSOR:  
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Sarah L. Schreiber, Haller & Colvin, P.C.

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

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ST. MARY’S BUILDING CORPORATION, )	Petition Nos.
ST. MARY’S HEALTH, INC., )	
ST. MARY’S MEDICAL GROUP, LLC, and )	87-019-14-2-8-10222-15
ST. MARY’S BREAST CENTER, LLC, )	87-019-14-2-8-10223-15
)	87-019-14-2-8-10224-15
)	87-019-14-2-8-10225-15
Petitioners, )	87-019-14-2-8-10226-15
)	87-019-15-2-8-01454-15
)	87-019-15-2-8-01455-15
)	87-019-15-2-8-01456-15
)	87-019-15-2-8-01457-15
)	87-019-15-2-8-01458-15
)	
vs. )	Parcel Nos.
)	
)	87-12-20-400-043.000-019
)	87-12-20-400-044.000-019
)	87-060-9190-7005
)	87-060-9190-7025
)	87-060-9190-7005
)	
)	County: Warrick
WARRICK COUNTY ASSESSOR, )	
)	Assessment Years: 2014, 2015
Respondent. )	

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**Appeal of the 2014, 2015 Assessments**

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**FINAL DETERMINATION**

The Indiana Board of Tax Review (the “Board”), having reviewed the facts and evidence, now finds and concludes as follows:

## **ISSUE**

1. Petitioners, St. Mary's Building Corporation (the "Building Corporation"), St. Mary's Health, Inc., (the "Hospital"), St. Mary's Medical Group, LLC (the "Medical Group"), and St. Mary's Breast Center, LLC (the "Breast Center"), seek exemptions for a medical building in Newburgh. The Board will refer to the Petitioners collectively as the Building Corporation.
2. Before wading into the specifics of this matter, the Board notes that a religious, nonprofit hospital may be 100% dedicated to its charitable and religious mission, and yet not all of its property may be eligible for a property tax exemption. As explained below, Indiana law freely exempts nonprofit hospital inpatient facilities, but outpatient facilities have a more demanding standard.

## **PROCEDURAL HISTORY**

3. For the 2014 and 2015 tax years, the Building Corporation sought exemption for real property consisting of the building and two parcels, and the Hospital, the Medical Group, and the Breast Center sought exemption for personal property. The Warrick County Property Tax Assessment Board of Appeals found the property 100% taxable for both years, and this appeal followed.
4. The parties filed cross-motions for summary judgment. Jonathan R. Elrod, Commissioner, was designated as the administrative law judge. Before the Board ruled on the motions, the parties moved to present a Joint Stipulated Record and requested the Board to render a final determination based on that record. In accordance with 52 IAC 2-6-3(b), the Board grants the motion.
5. The parties informally agreed to a submission and briefing schedule. Submissions and briefs were received on October 20, 2017. The Board grants the Building Corporation's request for leave to file a lengthy brief.<sup>1</sup> Respondent, the Warrick County Assessor (the "Assessor"), later requested oral argument, and the Building Corporation objected. The

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<sup>1</sup> The Assessor is reminded to review the Board's procedural rules on page limits for briefs.

Board denies oral argument. Both parties moved to file their briefs under seal. The Board denies the motions, and any public access will be pursuant to the Board's rules and Indiana public access laws.

6. The parties submitted a stipulated record, but did not stipulate as to any issue of fact or law.<sup>2</sup> The Joint Stipulated Record is bound in 8 volumes and consecutively bate-stamped.<sup>3</sup> Citations to the Joint Stipulated Record will reference the bate-stamp page number as "Stip. R." The evidence in the Joint Stipulated Record contains:

Deposition of John Zabrowski

Joint Deposition of Kathy Hall and Michael Whitmore

Joint Deposition of John Greaney and Keith Jewell

Deposition of Barbi Shelton

Deposition of Angela Wilder

Petitioner's Answers to Respondent's First Set of Interrogatories, Responses to Requests for Production of Documents and Responses to Requests for Admissions

Petitioner's Answers to Respondent's Second Set of Interrogatories

Petitioner's Answers to Respondent's Third Set of Interrogatories and Responses to Second Set of Requests for Production of Documents

Petitioner's Amended and Supplemental Responses to Second Set of Requests for Production of Documents

Petitioner's Response to Respondent's Second Set of Requests for Admissions

Petitioner's Responses to Respondent's (Third) Requests for Admission and Interrogatories

Petitioner's Responses to Respondent's Fourth Set of Interrogatories and Third Set of Requests for Production of Documents

Respondent's Answers to Petitioner's First Set of Interrogatories

Respondent's Responses to Petitioner's First Requests for Production

St. Mary's Health's Complete Tax Returns for 2013-2015

Petitioner's Tax Returns for 2013-2015

Petitioner's Income Statements for 2011-2014

Forms 136 for 2014-2015

Forms 132 for 2014-2015

Deaconess Hospital statement and Financial Assistance Policy for 2014-2015

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<sup>2</sup> The Joint Stipulated Record contained footnotes indicating that the Assessor reserved the right to object to some of the included documents. The Building Corporation did not raise any objections at briefing or thereafter, and the Board finds any objection waived.

<sup>3</sup> The parties presented redacted and unredacted sets.

Respondent's Motion for Summary Judgment and Memorandum of Law and designated exhibits

Petitioner's Response to Summary Judgment and designated exhibits

Tax Returns for 2014-2015 for St. Mary's Medical Group and St. Mary's at Home  
Community Health Needs Assessment for 2014-2015

The exhibits attached to the various depositions, discovery responses, and summary judgment designations contain numerous additional and duplicative documents.

7. The Board recognizes the following additional items as part of the record of proceedings: (1) Form 132 petitions and attachments; (2) all motions, briefs and/or post-hearing filings by the parties; and (3) all orders and notices issued by the Board or its ALJ.
8. Because of the many organizations involved, a glossary is provided:

Ascension Health

A 501(C) nonprofit corporation that is the parent company of St. Vincent's.

Ascension Health Alliance

A 501(C) nonprofit corporation that is the parent company of Ascension Health.

Evansville Surgical Associates

A private physicians' practice at Epworth Crossing for which the Building Corporation does not seek exemption.

St. Mary's Breast Center, LLC, (the "Breast Center")

A 501(C) limited liability company that operates a breast cancer treatment facility at Epworth Crossing. The LLC may have been dissolved in 2014. It is either a subsidiary of or operated as a d/b/a of the Hospital. The Building Corporation seeks exemption for only a portion of its leased space.

St. Mary's At Home Inc. ("D/M/E")

A 501(C) nonprofit corporation that provides "durable medical equipment" and is controlled by the Hospital. It leases space at Epworth Crossing. The Building Corporation originally sought exemption for this space, but not in its final brief.

St. Mary's Building Corporation (the "Building Corporation")

A 501(C) nonprofit corporation that owns Epworth Crossing and is a subsidiary of the Hospital. Prior to October 2014, it was a subsidiary of Health Services. The Building Corporation is the Petitioner.

St. Mary's Epworth Crossing ("Epworth Crossing")

The name of the medical building subject to this appeal. It is owned by the Building Corporation and operated by it as a passive rental property.

St. Mary's Health, Inc. (the "Hospital")

A 501(C) nonprofit corporation that is successor to St. Mary's Medical Center of Evansville, Inc. The Hospital operated as a d/b/a of St. Mary's Medical Center Evansville and then d/b/a St. Vincent's Evansville. It controls the Building Corporation and it controls or operates some of the medical providers at Epworth Crossing. It leases space at Epworth Crossing for an Urgent Care center, an Outpatient Imaging facility, and a Laboratory. It was controlled by Health Services and then St. Vincent's.

St. Mary's Health Services, Inc. ("Health Services")

A 501(C) nonprofit corporation that operated as a parent company that controlled the Hospital and some of the Hospital's subsidiaries until a reorganization in October 2014. It was succeeded by St. Vincent's Health.

St. Mary's Medical Center of Evansville, Inc.

A 501(C) nonprofit corporation that is the predecessor successor of St. Mary's Health, Inc.

St. Mary's Medical Group, LLC (the "Medical Group")

A 501(C) limited liability company that employs physicians and leases physician offices at Epworth Crossing. It is a subsidiary of the Hospital. Prior to October 2014, it was a subsidiary of Health Services.

St. Mary's Warrick Hospital Inc. ("Warrick Hospital")

A 501(C) nonprofit corporation that operates a small 35 bed hospital in Warrick County. It is a subsidiary of the Hospital. Prior to October 2014, it was a subsidiary of Health Services.

St. Vincent's Health, Inc. ("St. Vincent's")

A 501(C) nonprofit that serves as the Hospital's parent company since October of 2014.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. Ownership, Occupancy, and Control of Epworth Crossing

9. The Building Corporation is an Indiana nonprofit corporation. *Stip. R. 1067*. It holds the deeds to the parcels on appeal, which contain a medical building known as St. Mary's

Epworth Crossing (“Epworth Crossing”). *Stip. R. 1158*. Epworth Crossing is not an independent entity, and the Building Corporation operates Epworth Crossing only in its capacity as a passive landlord. The Building was put into operation in February of 2014. It replaced a smaller urgent care facility that was demolished later that year. *Stip. R. 314, 397*.

10. The Building Corporation seeks a charitable and religious exemption<sup>4</sup> for Epworth Crossing. *Br. of St. Mary’s Building Corp. in Support of its Petition at Ex. B*. The Building Corporation also seeks exemptions on the same grounds for personal property located at Epworth Crossing and owned by the Hospital, the Medical Group, and the Breast Center. *Stip. R. 1349, 1356*.
11. Epworth Crossing is a 44,015 s/f medical building. In its final briefing, the Building Corporation seeks an exemption for 82% of the property, which is the proportion of the facility leased to the Breast Center, the Medical Group, and the Hospital. *Br. of St. Mary’s Building Corp. in Support of its Petition at Ex. B*. The Building Corporation does not seek an exemption for the space leased to a medical equipment store (St. Mary’s at Home Inc. (D/M/E)), a coffee shop (Penny Lane Coffee House), a portion of the space leased to the Breast Center (Women’s Wellness Center), a private physicians’ practice (Evansville Surgical Associates), or vacant space (psychologist’s office leased by the Hospital).
12. The primary purpose of the Building Corporation is to support Ascension Health and it is expressly intended to rent space to the Hospital. *Stip. R. 1076*. The Building Corporation’s corporate member controls the appointment of its officers and directors. *Stip. R. 1080*. The 2013 tax filings indicate the Building Corporation’s single corporate member was St. Mary’s Health Services, Inc. (“Health Services”). *Stip. R. 2118*. The 2014 tax filings indicate that the Hospital became the corporate member of the Building Corporation in October of 2014. *Stip. R. 2447*.

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<sup>4</sup> The Building Corporation previously sought an educational exemption, but did not make that claim in its final brief.

13. The Hospital is an Indiana nonprofit corporation with the purpose of providing health care and supporting Ascension Health and Ascension Health Alliance. *Stip. R. 1299*. Its corporate member was Health Services. *Stip. R. 1116*. However, as part of a merger effective in October of 2014, the corporate member became St. Vincent's Health, Inc. *Stip. R. 1299, 20181*. The Hospital operates a 494-bed acute care hospital in Evansville that was previously organized as St. Mary's Medical Center of Evansville, Inc., and it was operated under the d/b/a St. Mary's Evansville and later the d/b/a St. Vincent's Evansville. *Stip. R. 3351-52, 1299*. The Hospital also controls St. Mary's Warrick Hospital Inc. ("Warrick Hospital"). *Stip. R. 2309*. It is a small hospital in Warrick County with 35 beds. *Stip. R. 494*. The Board will refer to St. Mary's Health as the "Hospital" which will refer collectively to the corporation and the Evansville and Warrick inpatient facilities.
14. The Hospital's largest program services are "inpatient and outpatient medical services." *Stip. R. 2032*. The Hospital's "Reason for Public Charity Status" is "hospital or a cooperative hospital service organization." *Stip. R. 2043*. The Hospital's federal nonprofit status is based on its health care activities. The Hospital declined to seek federal tax exemption on the grounds of being "a church, a convention of churches, or association of churches." *Stip. R. 2043*. In its tax filing, the Hospital does not describe any religious programs as a measure of expenses in its Statement of Program Service Accomplishments. *Stip. R. 2032*. Its mission is "dedicated to spiritually centered care, which improves the health of individuals and communities." *Stip. R. 2032*.
15. The Hospital operates at least 19 non-hospital health care facilities. *Stip. R. 2083-84*. The Hospital's "outpatient service revenue" exceeds its "inpatient service revenue." *Stip. R. 2039, 2223, 2323*. The Hospital's state license covers the "Hospital, along with all off-premise locations listed on the supplemental license," which lists 11 locations. *Stip. R. 3351-54*. The Hospital's facilities at Epworth Crossing appear to be covered under the Hospital's license. Not all of the Hospital's operations are nonprofit. *Stip. R. 27-28*. Epworth Crossing is not adjacent to either the Hospital or the Warrick Hospital, and it is a 10-15 minute drive from either location. *Stip. R. 494-95*.

16. The Hospital directly leases three separate facilities at Epworth Crossing where it operates an “Urgent Care” facility (9,752 s/f), an “Outpatient Imaging” facility (6,575 s/f), and a “Laboratory” (1,660 s/f). *Br. of St. Mary’s Building Corp. in Support of its Petition at Ex. B.*
17. The Medical Group leases three suites at Epworth Crossing for the offices of primary care doctors and their support staff (totaling 7,746 s/f). *Br. of St. Mary’s Building Corp. in Support of its Petition at Ex. B.* The Medical Group is an Indiana limited liability company organized for charitable purposes, including serving Ascension Health, Ascension Health Alliance, and St. Vincent’s Health. *Stip. R. 1270.* Its sole member was originally Health Services, but its corporate member was changed to the Hospital in October of 2014. *Stip. R. 1256, 1273.* Its mission and most significant activity is “healthcare resources such as physician clinics, speciality (sic) and general, closer to home.” *Stip. R. 3626.* The Medical Group does not operate “hospital facilities.” *Stip. R. 3628.* It does not claim public charity status as a hospital or church. *Stip. R. 3638.* The physicians are not directly employed by the Hospital.<sup>5</sup> All of its program service revenue is listed as “outpatient revenue.” *Stip. R. 3634.*
18. The Breast Center leases three suites at Epworth Crossing, however the Building Corporation seeks exempt status for only two of the suites (totaling 10,805 s/f). *Br. of St. Mary’s Building Corp. in Support of its Petition at Ex. A; B.* The Stipulated Record does not contain corporate documents or tax forms for the Breast Center. The Hospital’s 2014 and 2015 Forms 990 list the Breast Center as a non-hospital facility operated by the Hospital.<sup>6</sup> *Stip. R 2273, 2357.*
19. As noted above, these organizations are expressly organized for the purpose of supporting the Ascension network. The Board notes that the general structure of

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<sup>5</sup> It appears the physicians were initially employed by “Primary Physician Network LLC,” but later amendments to the contracts named the Medical Group as the employer since at least March of 2014. *Stip. R. 1443, 1479.*

<sup>6</sup> It appears that the Hospital “took over as operator” of St. Mary’s Breast Center LLC in October 2014. *Stip. R. 3376.* The 2015 Form 136 for personal property lists the Breast Center listed as a d/b/a of the Hospital. *Stip. R. 2517.* However, the Building Corporation continues to refer to the Breast Center as an LLC, and there is no evidence the lease was assigned to the Hospital. *Br. of St. Mary’s Building Corp. in Support of its Petition at Ex. B.*



Ascension Health and its subsidiaries is helpfully explained in a recent federal district court opinion:

Ascension Health Ministries is an organization within the Roman Catholic Church, created by the Roman Catholic Church's canon law as a "Public Juridic Person." A "Public Juridic Person" is an organization afforded the right to own and operate real and personal property under the auspices of the Church. Currently five Catholic Religious Orders - Daughters of Charity, Congregation of St. Joseph, Sisters of St. Joseph of Carondelet, Alexian Brothers, and Sisters of the Sorrowful Mother - are the "Participating Entities" that appoint the members of Ascension Health Ministries. Seven of the 10 individual members are members of the five religious orders (i.e. brothers and sisters). These members have religious obligations imposed by the canonical statutes to maintain the Roman Catholic Church's control over Ascension and its System Entities, so that Ascension and the System Entities may remain a healing ministry carrying out the apostolic works of the Roman Catholic Church.

As to Ascension Health Alliance, it is the civil law organization created under Missouri non-profit corporate law to oversee Ascension Health and its System Entities so that the canonical responsibilities of Ascension Health Ministries may be carried out. Control between Ascension Health Ministries and Ascension Health Alliance is maintained through the canonical members of Ascension Health Ministries who also serve as the civil law members of Ascension Health Alliance. Ascension Health Ministries has organizational control over Ascension Health Alliance, including the power (1) to appoint and remove Ascension Alliance's directors, board chair, and CEO; (2) to approve the corporate documents, the bylaws and articles of incorporation of Ascension Health Alliance; (3) to approve and ensure compliance with Ascension Health Alliance's philosophy, purpose, and mission to be a health ministry of the Roman Catholic Church; and (4) to approve the sale or alienation of assets and the incurrence of debt by Ascension Health Alliance, all subject to the Roman Catholic Church's canon law requirements.

As to Ascension Health, Ascension Health Alliance is the sole member of Ascension Health and has the following powers over Ascension Health: (i) to approve, assure compliance with, change and interpret its philosophy, mission and values; (ii) to approve the articles and bylaws; (iii) to appoint or remove members of board of trustees and its chair; (iv) to approve alienation of assets as required by canon law; and (v) to approve sale of assets and the strategic, financial and operating plan. Ascension Health Ministries, acting through its members, also has the following direct powers over Ascension Health: (i) to ratify appointment or removal of trustees and

its chair; and (ii) to approve alienation of assets as required by the Roman Catholic Church's canon law.

Regarding, St. John Health, it is a subsidiary of Ascension Health. Ascension Health is the sole member of St. John Health. Ascension Health has the following powers over St. John Health: (i) to approve acquisition of entities and subject to the Roman Catholic Church's canonical requirements, approve the sale or divestiture of assets; (ii) to approve governing documents of St. John Health or any subsidiary; (iii) to appoint or remove members of board of trustees and its chair, in consultation with its canonical sponsor, now Ascension Health Ministries; and (iv) to approve incurrence of debt and the transfer of assets.

Finally, the articles of incorporation and bylaws of each entity affirm its obligation to act in conformity with the teachings of the Roman Catholic Church, including the Ethical and Religious Directives for Catholic Health Care Services. In short, through Ascension Health Ministries, a Public Juridic Person, the Roman Catholic Church maintains control over Ascension and St. John Health.

*Overall v. Ascension*, 23 F. Supp. 3d 816, 830-31 (E.D. Mich 2014)(internal quotations and citations omitted).

20. The Affidavit of Sister Jane McConnel and the brief of the Building Corporation leave an inaccurate impression that the Daughters of Charity and four other orders merged to form Ascension. *See Br. of St. Mary's Building Corp. in Support of its Petition at 3; Stip. R. 3123*. As described in Ascension's financial statement, the orders did not merge and they do not collectively form Ascension. *Stip. R. 2138*. While the Daughters of St. Mary may have some control over Ascension (it is unclear if one of its members serves on Ascension's board), the order does not directly control Ascension or the Hospital.
21. In addition to its health care affiliates, Ascension has a dozen other subsidiaries that operate self-insurance, pension, leadership, and other support services. *Stip. R. 2137*. In 2013 and 2014, Ascension had over \$17B in net assets, \$16B-\$20B in operating revenue, \$450M-\$600M in net income from operations, and overall increases in net assets of \$1.8B to \$4.2B. *Stip. R. 2134-37*. Ascension does not operate at a loss or rely on charitable donations to fund its program services.

22. The Hospital, in 2013, had total revenue of \$472M. *Stip. R. 2039*. Program expenses were \$348M, and management expenses were \$108M. *Stip. R. 2040*. In fiscal years 2013-2015, the Hospital had annual net revenue (profits) ranging from \$15M to \$94M. *Stip. R. 2031, 2215, 2315*. In 2013, the Hospital’s management employees received nearly \$10M in non-program compensation, wages, salary, and other employee benefits, and the CEO was paid in excess of \$1.6M. *Stip. R. 2038, 2040*. The Hospital does not operate at a loss or rely on charitable donations to fund its program services.

### **B. Epworth Crossing and the Hospital’s Inpatient Facility**

23. As explained in further detail below, a critical issue in this case is the factual relationship between the operations at Epworth Crossing and the Hospital’s inpatient facility. The Building Corporation steadfastly claims that all of the space for which it seeks an exemption is “owned and operated by [the Hospital] *as departments of the inpatient hospital* or as separate, wholly owned not-for-profit 501(c)(3) entities” that are departments of the “inpatient facility.” *Br. of St. Mary’s Building Corp. in Support of its Petition at 10 (emphasis added)*.

24. Mr. Zabrowski, the Hospital’s CFO, testified that Epworth Crossing, and any other entity controlled by the Hospital, is a “department of the hospital.” *Stip. R. 8*. The Hospital bills the medical services at Epworth Crossing as “hospital outpatient services.” *See Br. of St. Mary’s Building Corp. in Support of its Petition at 24 (citing Stip. R. 69-70; 476-477; 3351-54)*.<sup>7</sup> The Building Corporation would have the Board draw the inference that because the services at Epworth Crossing are “billed as hospital *outpatient* services” that the facility is therefore managed, operated, and used as a “department of the *inpatient* facility.” *Br. of St. Mary’s Building Corp. in Support of its Petition at 24 (emphasis added)*. It does not logically follow that *outpatient* services are evidence of an *inpatient* use of a building, and the Board finds that Epworth Crossing is an outpatient facility that

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<sup>7</sup> While these citations by the Building Corporation vaguely support the factual proposition cited, the Board accepts the Building Corporation’s undisputed premise that the Hospital bills for the services at Epworth Crossing as “hospital outpatient services.”

provides outpatient services. The focus on the term “department” is misplaced because a hospital department may or may not be related to the operations at an inpatient facility.<sup>8</sup>

25. As for evidence of the relation between the Hospital inpatient and Epworth Crossing operations, the Building Corporation directs the Board to the following undisputed facts: (1) the charitable purposes stated in the subsidiaries’ organizing documents, (2) the Hospital’s control of the operations at the facility, (3) the Hospital’s employment or control of staff at the facilities, and (4) the Hospital’s administration and billing for the services. *Br. of St. Mary’s Building Corp. in Support of its Petition at 23-25; 32-34.*<sup>9</sup> From this, the Board can only find that the Hospital operates *outpatient* facilities at Epworth Crossing as part of the Hospital’s overall mission. It provides little evidence of how the operations at Epworth Crossing relate to the Hospital’s *inpatient* facility.<sup>10</sup>
26. The Board notes that there is evidence within the 3,800 page Stipulated Record that might suggest ways in which the operations at Epworth Crossing support the Hospital’s inpatient operations.<sup>11</sup> But the burden is on the petitioner to walk the Board through the facts supporting its case, and the Board will not make the Building Corporation’s case for it. *Indianapolis Racquet Club, Inc. v. Washington Twp. (Marion Cnty.) Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
27. The Assessor, on the other hand, directs the Board to evidence that suggests that the operations at Epworth Crossing are not related to the Hospital’s inpatient facility. *See Respondent’s Submission of Proposed Findings of Fact and Conclusions of Law at 11-15.* The Assessor notes evidence that the Imaging and Laboratory facilities were built to

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<sup>8</sup> The Board is not unaware that the Hospital’s emphasis on the term “department” is based on a reading of *Indianapolis Osteopathic Hosp. Inc., v. Dep’t. Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004).

<sup>9</sup> The Building Corporation’s citations in its brief do not completely support these propositions, but these facts are not in dispute.

<sup>10</sup> When Mr. Zabrowski was asked if anyone at the Hospital had analyzed the level of support provided by Epworth Crossing to the Hospital, he answered “No.” *Stip. R. 199-200.*

<sup>11</sup> Ms. Whitman testified that the purpose of the urgent care facility is to reduce the number of emergency room visits where the higher level of care is unnecessary, which might impact the inpatient facility. *Stip. R. at 545.* The Building Corporation has failed to rely on this evidence or develop these grounds. This is also different from Mr. Zabrowski’s testimony that the purpose of the Epworth Crossing facility was to generally “provide additional access for people to reach St. Mary’s health services.” *Stip. R. 82.* The record also makes clear there are at least four urgent care facilities in Warrick County (including Epworth Crossing and another urgent care facility owned by the Hospital). *Stip. R. 330-331.*

serve the outpatient needs of the community. *Stip. R. 424-25*. The Hospital's officers concede the Hospital would remain viable without Epworth Crossing. *Stip. R. 513*. The Hospital does not generally track referrals to the Hospital's inpatient facility from Epworth Crossing or elsewhere. *Stip. R. 511*. Because the Hospital has evidently little interest in correlating the services at Epworth Crossing and the Hospital, it suggests that the Hospital's inpatient facility is not dependent on referrals from Epworth Crossing. *Stip. R. 251-263; 432-479*. To the extent referrals are tracked, the data indicates the referrals are several hundred a year. *Stip. R. 808-16*. As the Hospital has over 17,000 inpatients, it does not substantially rely on Epworth Crossing for inpatient referrals. *Stip. R. 2216*.

28. The Board finds that the Hospital operates Epworth Crossing as an outpatient facility. Epworth Crossing and the Hospital's inpatient facilities are related only by the Hospital's control, overall mission, and administration of Epworth Crossings.

### **C. The Charitable Operations**

29. The Building Corporation contends that 100% of the Hospital's operations at Epworth Crossing are in furtherance of Ascension's religious and charitable mission. The Board finds that this contention is true, and the record contains no evidence to the contrary. However, as the Building Corporation concedes, not all of the operations at Epworth Crossing are charitable under Indiana law property tax law. The Board will look to the property's actual operations to determine a charitable use.
30. As evidence of charitable activities, the Building Corporation's brief offers a disjointed parade of generalizations rather than a methodic explanation of the charity provided by the Hospital. The Board notes that "[c]onclusory statements do not constitute probative evidence." *Blesich v. Lake Cnty. Assessor*, 46 N.E.3d 14, 17 (Ind. Tax Ct. 2015). The Building Corporation's claims are also somewhat inconsistent and opaque. *Br. of St. Mary's Building Corp. in Support of its Petition at 11-15*. In some instances, the testimony of the Hospital's officers is in conflict with each other and with the documentary evidence. Overall, the Building Corporation did little in its brief to sift

through the evidence and present a comprehensive, or even accurate, summation of the evidence.

31. The Building Corporation starts with the Hospital's hundreds of millions of dollars in gross "revenue from its program services." *Br. of St. Mary's Building Corp. in Support of its Petition at 11-12*. These are payments *to the hospital* for services rendered. These may also include a substantial profit margin.<sup>12</sup> The Hospital's expenditures on "program services" establish that the Hospital spends hundreds of millions of dollars in providing health care *to patients*. It does not establish that the care is charitable.
32. The Building Corporation next points to a broad category of "uncompensated care." *Br. of St. Mary's Building Corp. in Support of its Petition at 11-12*. This includes the costs of charity care, bad debt, unreimbursed Medicare, and unreimbursed Medicaid. These reflect the charges to patients written off through the Hospital's financial assistance program. The Hospital's financial assistance program is intended to aid the "uninsured and underinsured." The Hospital has 5 levels of financial assistance:
- Medicaid, Medicare, Medicare Disability, and other government healthcare programs
  - "Charity care consideration" based on household or family income
  - "Sliding scale" for incomes between 200% and 300% of HHS guidelines
  - "Discount for services for uninsured patients" with income greater than 300% of HHS guidelines
  - Repayment terms for unpaid, uninsured, or underinsured portions of bills

*Stip. R. 1390*. Eligible patients must apply for Medicaid or Medicare, and be denied, prior to seeking a reduction of the bill under charity care. *Stip. R. 1391-92*.

33. Those who seek financial assistance are also divided into three general categories. "Charity Care" is available for those who qualify as "indigent under HHS Poverty Guidelines." The "Financial Assistance Program" ("FAP") is available for those who do

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<sup>12</sup> The Hospital calculates a fixed ratio of "right about 25% more or less" of gross charges as the cost of its services. *Stip. R. 167-68*. Consequently, 75% of the bill, on average, is profits (a 300% profit margin prior to managed care or government discounts).

not qualify as indigent “but have a demonstrated inability to pay for services.” Finally, there is a category for those who have “Means to Pay.” *Stip. R. 1390.*

34. Under Charity Care, the program may write off the bill if:

- A patient becomes eligible for Medicaid after the date of service
- A patient has Medicaid in another state where the Hospital is not a provider and it is cost-prohibitive to become a provider
- A patient has Medicaid but the services are not covered by Medicaid
- A community clinic refers the patient to the Hospital after its own eligibility determination
- A patient is homeless
- A patient is deceased and with no assets or responsible survivor
- A patient is incapacitated and without a legal caretaker
- A patient later becomes HIP cap eligible
- A patient files bankruptcy.

*Stip. R. 1392-93.* The Board notes that several of these factors relate more to the collectability of a debt than a charitable intent.

35. Under FAP, the program may discount a bill based on total household income and family size. For those between 200% and 300% of HHS poverty guidelines, discounts range from 60% to 90%, and an episode of care for inpatient or outpatient services is capped at 10% of gross household income. The uninsured who are above 300% of poverty receive a 40% discount. For the underinsured, the same sliding scale is applied to the balance due. Assistance under FAP may be denied based on extraordinary assets such as owning a motorcycle in addition to a car. *Stip. R. 1395-96.*

36. The Board notes that the Form 990 states that all self-pay patients receive a 15% discount before all statements are mailed, *Stip. R. 2078*, but it would appear that all persons (anyone above 300% of poverty) who are uninsured are entitled to a 40% discount under the FAP. The 40%, which is the “maximum amounts that can be charged to FAP-eligible individuals,” is based on “the lowest discount provided to managed care payers that comprise at least 3% of our volume with an added prompt pay discount to the highest paid discount provided to our managed care payers.” *Stip. R. 824, 839.* In other words, the Hospital looks at what it actually charges insurance companies and “charitably” gives

that discount to those who ask for it. It would appear that the 15% and 40% discounts are considered traditional charity care even though they are not means-based.

37. It is unclear if the “Financial Assistance at Cost” reported in the Forms 990 at Part I, line 7 includes write-offs under Charity Care or only the discounts under the FAP. The record does not include Form 990 Worksheets 1, 3, 4, 5, and 8. *Stip. R. 2061*. The Board has difficulty in discerning how the \$17,952,308 in “Financial Assistance at cost” was calculated. *Stip. R. 2061*. This is the amount claimed as “traditional financial assistance,” (*Stip. R. 2032*), and its origin should be explained.
38. The Hospital also refers to bad debt as uncompensated services. The internal calculations are not in the record.<sup>13</sup> According to the Forms 990, the Hospital’s calculation of bad debt, or “doubtful accounts,” includes “those accounts not covered by insurance.” *Stip. R. 2073*. Thus, it appears that “bad debt” includes all of the fiscal year-end outstanding accounts that are the patient’s responsibility, and consequently, includes bills that will likely be paid.
39. The evidence provides little explanation of how the expenses of the Charity Care and FAP programs are translated into the “charity care” and “bad debt” entries on the Forms 990.<sup>14</sup> The record does not reflect what accounts are actually written off. However, the Hospital does estimate the portion of the total bad debt (in cost) attributable to “patients eligible under the organization’s financial assistance policy.” *Stip. R. 2063*. The Forms 990 indicate that the Hospital used 10% as a baseline in each year. *Stip. R. 2063, 2248, 2350*. Consequently, the Board finds that the Hospital cannot claim more than 10% of its bad debt costs as related to means-based charity.
40. The unreimbursed costs of Medicare are self-explanatory. However, Medicare is not means-based health insurance. Both Ascension and the Hospital, in accordance with

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<sup>13</sup> The Board notes that the Hospital does not report bad debt in accordance with the Healthcare Financial Management Association Statement No. 15. *Stip. R. 2063*.

<sup>14</sup> Mr. Zabrowski describes the Charity Care as “the costs of all accounts that were written off related to people who received services that didn’t have the ability to pay” and states that it does not include “bad debt.” *Stip. R. 46*. Without the worksheets, the Board cannot determine if that is the case.



Catholic Health Association guidelines, do not consider unreimbursed Medicare costs to be charity care. *Stip. R. 2075, 2138.*

41. All of the “uncompensated services” are supposed to be calculated at the Hospital’s cost rather than charges.<sup>15</sup> The calculation of costs in determining “uncompensated services” is unclear. The Hospital uses a fixed ratio of “right about 25% more or less” applied to gross charges. *Stip. R. 167-68.* Or it might be “29% give or take.” *Stip. R. 192.* Included are “labor, supplies, equipment cost, and rental expense,” but the Building Corporation did not provide the specific numbers used. Mr. Jewell suggested that all of the amount written off for FAP goes into the charity care column. *Stip. R. at 572.* Mr. Zabrowski clearly stated that the Forms 990 charity and bad debt entries were the amounts written off multiplied by the cost ratio. This is where a view of the actual numbers would be helpful.<sup>16</sup>
42. From this record, the Board has difficulty discerning how the financial assistance programs translate into the “uncompensated services” numbers. This error was compounded by Mr. Zabrowski’s absurd testimony that the value of *charitable* services, from a *nonprofit* organization, should be increased to include a 10% “profit margin” or “fair return on effort expended.” *Br. of St. Mary’s Building Corp. in Support of its Petition at 11; Stip. R. 219.*
43. In addition to health services, the Building Corporation claims the Hospital provided \$47M in community benefits for 2014 and \$57M in 2015. *Br. of St. Mary’s Building Corp. in Support of its Petition at 17.* It cites expenditures for programs in schools,

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<sup>15</sup> Mr. Jewell, the former president, believed that charity care was not valued on cost, but a reimbursement rate equal to the lowest or the average of the managed care plans. *Stip R. 564-65; 567.* The record contained the depositions of a former CEO, two vice presidents, and a CFO, and their testimony was far from consistent as to how the Hospital’s charity care was calculated. In this regard, the Board relies on the testimony of Mr. Zabrowski, the CFO.

<sup>16</sup> Even as Mr. Zabrowski described the calculation, it may inflate the cost of charity care. For example, a \$2,000 MRI charge, with a 25% cost ratio, has a cost to the Hospital of \$500. So an FAP write-off of 75% (\$1,500), with the patient still responsible for \$500, arguably is not charity-care-at-cost because the Hospital’s cost was not written off as charity. If the Hospital claims \$375 in charity care (25% cost ratio of the \$1,500), then it is claiming foregone profits rather than the cost of charity. Likewise, the discounts for the self-insured (15% and 40%) would reflect foregone profits, but not the cost of charity care. The same issue would apply to bad debts. If a patient paid \$500 on the \$2,000 MRI, then the bad debt write-off of \$375 (25% of \$1,500) would be in error because it counts the foregone profits.

dietician and chef programs, direct support to organizations such as the American Cancer Society, Junior Achievement, councils on aging, Easter Seals, Gilda’s Club, and Holly’s House, and the operations of the St. Mary’s Kempf Bipolar Wellness Center. *Br. of St. Mary’s Building Corp. in Support of its Petition at 16-17.* These amount to less than \$3M in any year. The remaining \$45M-\$55M is a double count of the “uncompensated services” listed above.<sup>17</sup> *Stip. R. 3342, 2349.* The Board notes that the community benefits report is created by the Hospital’s “public relations team.” *Stip. R. 300.*

44. The best picture of the actual costs and expenditures by the Hospital, as best the Board can piece them from the record, are those listed in the table below. The expenditures are expressed as costs and as a percentage of the total revenue as reported on the Forms 990.

Hospital Charitable Expenditures at Cost (in millions)						
	FY2013		FY2014		FY2015	
	Amount	% of \$471M Rev.	Amount	% of \$574M Rev.	Amount	% of \$527M Rev.
Charity Care	\$ 18.0	3.8%	\$ 14.2	2.5%	\$ 11.5	2.2%
Charity Bad Debt	\$ 0.4	0.1%	\$ 0.5	0.1%	\$ 0.4	0.1%
Unreimbursed Medicare	\$ 49.4	10.5%	\$ 37.4	6.5%	\$ -	0.0%
Unreimbursed Medicaid	\$ 25.0	5.3%	\$ 31.9	5.6%	\$ 38.3	7.3%
Community Benefits	\$ 1.4	0.3%	\$ 2.6	0.5%	\$ 1.5	0.3%
Total	\$ 94.2	20.0%	\$ 86.6	15.1%	\$ 51.7	9.8%
Excl. Medicare	\$ 44.8	9.5%	\$ 49.2	8.6%	\$ 51.7	9.8%
Excl. Medicare, Medicaid	\$ 19.8	4.2%	\$ 17.3	3.0%	\$ 13.4	2.5%

45. The Building Corporation did not review the 2015 numbers. The Building Corporation’s brief, filed October 24, 2017, stated that the Hospital’s “990 for 2015 has not yet been completed.” *Br. of St. Mary’s Building Corp. in Support of its Petition at 12.* It cited testimony at deposition that the CFO “did not expect [the 2015] 990 to vary greatly from the 990 for 2013 and 2014.” The 2015 Form 990 is signed May 12, 2017, and is in fact part of the Joint Stipulated Record.<sup>18</sup> *Stip. R. 2315-2382.* The 2015 Form 990 does vary

<sup>17</sup> The Building Corporation’s brief characterizes the community benefits as “in addition to” its uncompensated care. *Br. of St. Mary’s Building Corp. in Support of its Petition at 16-17.* The failure to clarify the overlap is either an intentional distortion or a careless oversight, neither of which reflects favorably on the Building Corporation.

<sup>18</sup> This is one example of the lack of attention to detail that is evident throughout the Building Corporation’s brief. While it was probably a “cut and paste” oversight from the summary judgment brief, such carelessness significantly hinders the Board’s ability to follow the Building Corporation’s arguments and credit its claims.

greatly because it reports a surplus for Medicare: Medicare revenue exceeded the allowable costs for Medicare by \$27.6M. *Stip. R. 2350.*

46. Stepping away from the actual numbers, the Hospital emphasizes the fact that it accepts patients regardless of their ability to pay. As stated by Vice President, Regional Administrator, Kathy Hall:

The [Hospital] sees patients regardless of ability to pay so we have patients who come in who have no insurance and they are not turned away. We treat every patient before determining how we are going to bill them.

*Stip. R. 519.* Mr. Zabrowski explained that, at Epworth Crossing, “regardless of ability to pay, you’re able to be seen, you’re able to apply for charity, you’re able to apply for financial assistance.” *Stip. R. 125.* This establishes that patients are not turned away due to lack of insurance. Eligibility for charity care is typically determined retrospectively. *Stip. R. 522-23; 560.* It is equally true that at the time of treatment *everyone* gets billed regardless of ability to pay. Collection is foregone only after eligibility is established.

47. Ms. Hall could not state what percentage of patients do not pay for services. *Stip. R. 519.* She was not aware of any records being kept for the percentage of patients receiving charity care at Epworth Crossing. *Stip. R. 527.* When a nonprofit hospital prides itself on treating those who are unable to pay, the Board would expect that the hospital would maintain records on that.<sup>19</sup> There was some testimony regarding the types of paying patients (private insurance, Medicaid, Medicare, self-pay) in terms of revenue, but there was no break-down of the charity care by patient or by category (uninsured, under-insured, or means-based).
48. Ms. Hall also stated that she believed that other health care providers would not accept patients who were “unable to pay.” *Stip. R. 542-544.* But she admitted that she had no proof of that. *Stip. R. 543.* In addition, the Board notes that federal law mandates “in many instances” that the Hospital cannot request payment prior to service and must treat

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<sup>19</sup> The Building Corporation notes that Warrick County has a population with 11.8% uninsured and 7.5% in poverty, and states that it should not be “surprising that a significant portion of the patients” are not charity patients. *Br. of St. Mary’s Building Corp. in Support of its Petition at 28.* While that may be true and reasonable, the Building Corporation has not presented numbers of the uninsured patients treated at the Hospital or Epworth Crossing.

patients “regardless of ability to pay.” *Stip. R. 654-56*. The record does not establish that the Hospital, or Epworth Crossing, *in fact* treats patients that were unable to access health care elsewhere.

49. Looking at Epworth Crossing individually, the Building Corporation attempts to compare the total operating revenue of the facility to the charitable services provided at the facility. *Br. of St. Mary’s Building Corp. in Support of its Petition at 11-13*. The documents cited for the total operating revenue do not contain revenue numbers. *Stip. R. 3376-78 (c.f. Stip. R. 983-85)*. The Hospital does not track Medicaid numbers for Epworth Crossing independently. *Stip. R. 66*. The Hospital does not track the community benefits specifically provided by Epworth Crossing independently. *Stip. R. 607*. Furthermore, it is not clear if the claimed charitable activities include the operations from portions of the building for which it does not seek an exemption. The numbers cited in the brief include the operations of St. Mary’s at Home D/M/E. *Br. of St. Mary’s Building Corp. in Support of its Petition at 11-13*.
50. The Building Corporation has not presented clear evidence of the charitable operations specific to the portions of Epworth Crossing for which an exemption is sought. However, the Board finds sufficient evidence in the record, and it is not in dispute, that Epworth Crossing is used to provide at least some charity care, Medicare, and Medicaid, for which a portion of the Hospital’s costs are unreimbursed.

#### **D. The Religious Operations**

51. As detailed above, the Hospital seeks its federal tax exemption based on its health care rather than its religious programs. Epworth Crossing is a medical building. The religious operations at Epworth Crossing include the placement of crucifixes, morning staff prayers, and the staff’s willingness to “engage in spiritual support should a patient reach out and request it.” *Stip. R. 245*. It also appears the Hospital has programs relating to chaplains and “mission representatives.” *Stip. R. 631-34*. While the Hospital’s provision of health care is undoubtedly inspired and guided by religious objectives, Epworth Crossing is not used as a typical religious property like a place of worship, seminary, or convent.

## E. Conclusions of Law

52. Exemptions, under Indiana law, are highly fact-sensitive. The body of law developed by the Tax Court has expressly declined to adopt “bright-line tests or other abbreviated inquiries” in determining eligibility for an exemption. *Tipton County Health Care Found., Inc. v. Tipton County Assessor*, 961 N.E.2d 1048, 1052 (Ind. Tax Ct. 2012). In fact, the Tax Court has cautioned that “neither the language of one case nor an apparent trend from several cases” should be construed as “a per se rule” that an applicant for exemption is “automatically considered exempt by the mere character of its deeds.” *Id.* Thus, “every exemption case stands on its own facts.” *Id.* However, the absence of “per se rules” does not indicate an absence of guiding principles. As the Indiana Supreme Court has summarized:

In Indiana all tangible property is subject to taxation. However, the Indiana Constitution provides that the legislature may exempt certain categories of property. Under this grant of authority the legislature enacted Indiana Code section 6-1.1-10-16(a) which provides, all or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes. Generally exemptions from taxation are granted when there is an expectation that the public will derive a benefit from the exemption. 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, an exemption from taxation is strictly construed against the taxpayer and in favor of the State. In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. The taxpayer bears the burden of proving it is entitled to an exemption.

*Hamilton County Property Tax Assessment Board of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 656-57 (Ind. 2010)(citations and internal quotations omitted).

53. Pursuant to statute, Chapter 10 exemptions are subject to the predominant use test. I.C. § 6-1.1-10-36.3(c). The statute ensures that an exemption is not granted when a property is “used or occupied in connection with a trade or business that is not substantially related to the exercise or performance of one (1) or more of the stated [exempt] purposes.” I.C. § 6-1.1-10-36.3(d). The Indiana Supreme Court has stated that:

In order to qualify for an exemption the taxpayer must demonstrate that its property is owned for exempt purposes, occupied for exempt purposes, and predominately used for exempt purposes. Once these three elements have been met, regardless of by whom, the property can be exempt from taxation. [U]nity of ownership, occupancy, and use by a single entity is not required. Importantly however, when a unity of ownership, occupancy, and use is lacking . . . both entities must demonstrate that they possess their own exempt purposes.

*Id.* at 657. (citations and internal quotations omitted).

54. For each assessment year, the exemption is based on the use of the property during “the year that ends on the assessment date of the property.”<sup>20</sup> I.C. § 6-1.1-11-3(c)(5). A taxpayer “must demonstrate that its property was owned, occupied, and predominately used for [an exempt] 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 Board of Appeals*, 878 N.E.2d 548, 550 (Ind. Tax Ct. 2007).

Furthermore, the Petitioner must prove that the building is predominately used for exempt purposes more than 50% of the time. *New Castle Lodge #147 v. State Bd. of Tax Comm'rs*, 733 N.E.2d 36, 39 (Ind. Tax Ct. 2000), *affirmed by State Bd. of Tax Comm'rs v. New Castle Lodge # 147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257 (Ind. 2002). An exemption case “stands on its own facts and, ultimately, how the parties present those facts.” *6787 Steelworkers Hall, Inc. v. Scott*, 933 N.E.2d 591, 596, (Ind. Tax Ct. 2010) (*citing Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009)).

### **1. Religious Exemption**

55. Epworth Crossing is a medical building and there are no religious program services. The Board “acts properly when it takes a hard look at the use of certain property, especially where, as here, the property's use does not have the normal hallmarks of religious

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<sup>20</sup> Epworth Crossing was put into use a couple of months prior to the 2014 assessment date. Additionally, the Hospital operates on a fiscal year ending in June. The evidence for each year cannot be directly aligned with the assessment dates. As the ownership, occupancy, and use was substantially similar during the relevant periods, and the charitable programs and policies were substantially similar, the Board will consider evidence from the 2013, 2014, and 2015 fiscal years in considering the use of the property because a portion of each fiscal year falls within the prior year of each assessment date.

activity.” *Alte Salems Kirche, Inc. v. State Bd. of Tax Comm'rs*, 694 N.E.2d 810, 815 (Ind. Tax Ct. 1988). Mere ownership by a religious organization has never been sufficient. See *State Bd. of Tax Comm'rs v. Wright*, 215 N.E.2d 57, 62 (Ind. Ct. App. 1966); *Cedar Lake Conf. Ass'n v. Lake County Prop. Tax Assessment Bd.*, 887 N.E.2d 205 (Ind. Tax Ct. 2008); *Indiana Assoc. of Seventh-Day Adventists v. State Bd. of Tax Commissioners*, 512 N.E.2d 936, 939 (Ind. Tax Ct. 1987). The record references programs relating to chaplains and “mission representatives.” *Stip. R. 631-34*. But the Building Corporation does not cite to them, and the Board will not make its case for it. In any event, a chaplain does not convert a hospital into a church any more than a school nurse would convert a school into a hospital.

56. The Building Corporation urges the Board to rely on *Cedar Lake* to find a religious use. As the Building Corporation notes in its brief, the Tax Court found that the taxpayer in *Cedar Lake* predominantly used the property for religious services, education, evangelism, and spiritual growth. The question in *Cedar Lake* was whether the campgrounds contiguous to the indisputably religious retreat center should also be exempt. The operations at Epworth Crossing are not analogous because it is not appurtenant to an inherently religious property.
57. The Board will not ignore the evidence that the Hospital functions within a colossal health care organization funded by private and government health insurance. It is not a ministry funded by a church or congregation. It is not substantially staffed by members of a religious order or volunteer congregants of a local parish. Clearly, the Hospital’s upper management have not taken vows of poverty. The Hospital’s brief cites the following religious uses:
  - Providing health care to the community with an emphasis on care for the “sick and poor;”
  - Providing charity care to those in need;
  - To serve as an integral part in the Roman Catholic Church’s mission to support these charitable purposes;

- To provide health care in accordance with the Roman Catholic Church’s Ethical and Religious Directives for Catholic Health Care Service.

*Br. of St. Mary’s Building Corp. in Support of its Petition at 37.* The first two reference the provision of charitable health care without mention of religion. The third emphasizes a charitable endeavor of the church. The fourth references a religious directive relating to the manner in which health care is provided. The Hospital further argues that the Epworth Crossing serves its part in the Hospital’s role “as an integral part of the Roman Catholic Church.” *Id.* The Tax Court has long held that “intent does not establish predominate use.” *6787 Steelworkers Hall, Inc.*, 933 N.E.2d at 596. Epworth Crossing is not chiefly engaged in inherently religious activities like worship or evangelization.

58. The Building Corporation really makes only one argument: that the provision of health care is a continuance of a “centuries long religious ministry of caring for those in need.” *Br. of St. Mary’s Building Corp. in Support of its Petition at 40.* Once again, “caring for those in need” is a charitable activity. And while it may have been a centuries-long ministry, it has not been a centuries-long exempt use. *See St. Mary’s Medical Center, Inc. v. State Bd. of Tax Comm’rs*, 534 N.E.2d 277, 279 (Ind. Tax Ct. 1989) *aff’d and adopted by St. Mary’s Medical Center, Inc. v. State Bd. of Tax Comm’rs*, 571 N.E.2d 1247, 1248 (Ind. 1991)(denying an exemption for medical offices adjacent to St. Mary’s Medical Center of Evansville).
59. The Board cannot find that this largely independent business enterprise, conducted as a nonprofit subservient ministry of a church, is entitled to a religious exemption. The Board finds further guidance in the cases of *State Bd. of Tax Comm’rs. v. Warner Press, Inc.*, 248 N.E.2d 405 (Ind. Ct. App. 1969) and *County Bd. of Tax Review et. al (Himes) v. Free Methodist Publishing House*, 251 N.E.2d 486 (Ind. Ct. App. 1969). Both cases involved book publishers that were owned by churches. *Warner Press* involved a printing press and retail store, controlled by the Church of God, that predominantly sold religious items.<sup>21</sup> *Warner Press, Inc.*, 248 N.E.2d at 407, 410. Interpreting a prior

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<sup>21</sup> Part of the building was leased to a wholly owned, for-profit subsidiary that operated a commercial printing press that accounted for a small portion of total sales. *Warner Press, Inc.*, 248 N.E.2d at 408.



statute, the court granted the exemption in deference to “established judicial interpretation,” but concluded that the use “scarcely remains within even the most lenient interpretation” of the statute. *Id.* at 410. Likewise, *Free Methodist* involved a religious exemption for a nonprofit publishing house that published religious materials and was owned and controlled by the Free Methodist Church. *Free Methodist Publishing House*, 251 N.E.2d at 465-66. In granting the exemption, the court noted the “key” finding is the “very direct relationship between the product and the religious purposes of the [church].” *Id.* at 469-70. It held that a “not-for-profit religious publishing house is unique in this regard.” *Id.* Furthermore, by way of example, a church subsidiary formed to “manufacture tennis shoes” would not be entitled to an exemption. *Id.* The court expressly considered *Werner Press* and noted that the “product-purpose analysis is a reasonable check on church-owned businesses and is implicit in the holding of *Werner Press.*” *Id.*

60. The Board finds that the “product-purpose analysis” is helpful here. This is a church-owned business. The question is whether the Hospital’s functions at Epworth Crossing are more akin to selling footwear or religious literature. The Board finds that the Hospital’s provision of health care is not uniquely religious in the way that a religious publishing house is. The creation and dissemination of religious literature, by subject matter, is overtly religious and directed toward indoctrination, proselyzation, and theological education. Healing the sick through modern medicine is not implicitly religious in the same manner. While there are religious directives on some important issues, a doctor’s actions are not overtly religious when she sets a broken leg, diagnoses a hernia, or reviews an MRI. In contrast, an editor’s actions in choosing and publishing religious texts are fundamentally religious.
61. The Board declines to find that any noble endeavor of a religious organization is necessarily a religious use of a property solely because it is labeled as a ministry. The fact that Indiana strictly construes its interpretation of a religious use does not denigrate the role of religion at the Hospital. It only means the Hospital must rely on the merits of its charitable activities, just as it does in seeking its federal income tax exemption.

## 2. Charitable Exemption

### a. Hospital Exemptions

62. While a hospital is not an enumerated exempt use under I.C. § 6-1.1-10-16, that section contains provisions presuming that hospitals may be entitled to exemption. *See* I.C. § 6-1.1-10-16 (f), (g), and (h). In contrast, I.C. § 6-1.1-10-18.5 does address health care exemptions more directly:

(b) Tangible property is exempt from property taxation if it is:

(1) owned by an Indiana nonprofit corporation; and

(2) used by that corporation in the operation of a hospital licensed under IC 16-21, a health facility licensed under IC 16-28, or in the operation of a residential facility for the aged and licensed under IC 16-28, or in the operation of a Christian Science home or sanatorium.

Both Section 16 and Section 18.5 contain language restricting this exemption:

This section does not exempt from property tax an office or a practice of a physician or group of physicians that is owned by a hospital licensed under IC 16-21-2 or other property that is not substantially related to or supportive of the inpatient facility of the hospital unless the office, practice, or other property:

(1) provides or supports the provision of charity care (as defined in IC 16-18-2-52.5), including providing funds or other financial support for health care services for individuals who are indigent (as defined in IC 16-18-2-52.5(b) and IC 16-18-2-52.5(c)); or

(2) provides or supports the provision of community benefits (as defined in IC 16-21-9-1), including research, education, or government sponsored indigent health care (as defined in IC 16-21-9-2).

However, participation in the Medicaid or Medicare program, alone, does not entitle an office, a practice, or other property described in this subsection to an exemption under this section.

I.C. § 6-1.1-10-16(h) (*c/f* I.C. § 6-1.1-10-18.5 which varies only under Section 18.5(a)(1) where the word “providing” is omitted). Only two reported cases have cited I.C. § 6-1.1-10-18.5. The Tax Court has held that these are independent provisions.

The two statutes are not in conflict and the legislature has not done a useless thing in enacting and amending IC 6-1.1-10-18.5 since different requirements exist in each statute. IC 6-1.1-10-18.5 is not a limitation upon exemptions granted for the purposes listed in IC 6-1.1-10-16.

*Lincoln Hills Dev. Corp. v. Indiana State Bd. of Tax Comm'rs*, 521 N.E.2d 1360, 1362-63 (Ind. Tax Ct. 1988). The only other citation appears in a footnote, where the Tax Court notes that “property owned by an Indiana nonprofit corporation that is used in the operation of a hospital is exempt from taxation.” *Methodist Hosp., Inc. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 862 N.E.2d 335, 338 n.5 (Ind. Tax Ct. 2007).

63. Under I.C. § 6-1.1-10-16(h), property owned by an exempt hospital “does not automatically receive a charitable purposes exemption.” *Indianapolis Osteopathic Hosp., Inc.*, 818 N.E.2d at 1015. Rather, “the charitable purposes exemption does not apply to other property owned by a hospital that is not substantially related to or supportive of its inpatient facility.” *Id.* (internal quotations omitted).
64. There are two exceptions to the requirement of support for an inpatient facility. Under the first exception, subsection (h)(1), the property must support the provision of charity care as defined in I.C. § 16-18-2-52.5.

“Charity care”, for purposes of IC 16-21-6 and IC 16-21-9, means the unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services:

(1) to a person classified by the hospital as financially indigent or medically indigent on an inpatient or outpatient basis; and

(2) to financially indigent patients through other nonprofit or public outpatient clinics, hospitals, or health care organizations.

I.C. § 16-18-2-52.5(a). Under the second exception, I.C. § 6-1.1-10-16(h)(2), the property must support the provision of community benefits as defined in I.C. § 16-21-9-1. “Community benefits” are defined as “the unreimbursed cost to a hospital of providing charity care, government sponsored indigent health care, donations, education, government sponsored program services, research, and subsidized health services.” I.C. § 16-21-9-1.

65. While daunting at first glance, these statutory provisions are easily untangled. First, I.C. § 6-1.1-10-18.5 expressly exempts property owned by a nonprofit corporation if licensed and used as a hospital. However, a hospital’s “other property” is not necessarily exempt. Second, the same limitations on a hospital’s “other property” apply to a hospital entitled to an exemption under I.C. § 6-1.1-10-16. Thus, while an exemption may be granted to a hospital under either statute, they contain the same limitations on “other property.” Third, because I.C. § 6-1.1-10-18.5(a)(1) and I.C. § 6-1.1-10-16(h) generally require “other property” to be “substantially related to or supportive of the inpatient facility” in order to be exempt, the Legislature has clearly distinguished between outpatient and inpatient facilities. Fourth, there is an exception to the general rule when “other property” is used for charity care or community benefits. This exception contains a caveat that the provision of charity care and benefits cannot be based solely on “participation” in Medicaid or Medicare programs. Fifth, the “predominant use” test applies to each statutory question relating to the manner of use of the property. I.C. § 6-1.1-10-36.3(d).
66. The Building Corporation has maintained that all of the relevant entities, including the Building Corporation, the Breast Center, and the Medical Group, and the overall management of Epworth Commons, are controlled by the Hospital and operated as departments of the Hospital. Based on this, the Board concludes as a matter of law that Epworth Commons and all of the personal property, for purposes of eligibility, are owned, occupied, and used by the Hospital. The next question is whether Epworth Crossing supports the Hospital’s inpatient facility.<sup>22</sup>

**b. “Other Property” Supporting an Inpatient Facility**

67. “An inpatient facility is not an entire hospital, but only a portion of a hospital.” *Methodist Hospitals, Inc.*, 862 N.E.2d at 338-39. An inpatient facility is “where admitted patients are provided overnight accommodations, meals, and medical treatment.” *Id.* at

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<sup>22</sup> The Building Corporation has not claimed that any of the operations at Epworth Crossing qualify as a health facility licensed under IC 16-28, a residential facility for the aged and licensed under IC 16-28, or a Christian Science home or sanatorium. I.C. § 6-1.1-10-18.5.

339. Epworth Commons is not an inpatient facility, and it must therefore be considered “other property” owned by a Hospital.

68. The Tax Court has interpreted the statutory phrase “substantially related to or supportive of” to mean that:

The other property is associated, to a considerable degree, to a hospital’s inpatient facility or that the other property provides considerable aid to, or promotes to a considerable degree, the interests of the hospital’s inpatient facility.

*Id.* at 339. In *Methodist Hospitals*, the Tax Court considered a number of arguments on this issue. Evidence that the hospital employs the workers, bills the patients, and performs the administrative functions of an outpatient facility is insufficient. *Id.* Evidence that the outpatient facility supports the hospital’s “overall continuum of care” is insufficient. *Id.* Furthermore, evidence that the outpatient facility provides substantially more care to “the general public” than to the patients of the inpatient facility might establish that it is *not* substantially supportive of the inpatient facility. *Id.* at 340.

69. The Board cannot ignore this guidance. The evidence of the Hospital’s administrative control of Epworth Crossing is insufficient to conclude that it supports the inpatient facility. The role of Epworth Crossing in the Hospital’s overall mission is also insufficient. Additionally, the facts suggest that Epworth Crossing is directed more at the general public than the Hospital’s inpatients. The Board must conclude, based on the evidence presented by the Building Corporation, that the operations at Epworth Crossing are not substantially supportive of the Hospital’s inpatient facility.<sup>23</sup>

70. The Building Corporation relies heavily on an earlier case, *Indianapolis Osteopathic Hosp. Inc.*, 818 N.E.2d at 1018-19. *Indianapolis Osteopathic* involved a facility that included a health club (Healthplex) and medical offices (Medical Pavilion) on the campus of Westview Hospital. The denial of the exemption for the Healthplex was affirmed, but

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<sup>23</sup> A more narrow reading of *Methodist Hospitals* would place significant weight on the fact that the facility at issue was solely a physician’s office, which is expressly “other property” under the statute. But the statute does not contain different standards for physician’s offices and “other property,” and the Board will not create such a distinction.

the denial of the Medical Pavilion was reversed in part. The Board finds important distinctions between *Indianapolis Osteopathic* and the facts of this case. First, unlike Epworth Crossing, the Medical Pavilion was located on the hospital's inpatient facility campus.<sup>24</sup> *Id.* at 1011. Second, the petitioner conceded the hospital-employed physician's offices were not exempt. *Id.* at 1019 n. 13. Third, the Tax Court concluded that the Medical Pavilion's MRI, mammography, physical therapy, integrated medicine, and patient registrations were used by "Westview Hospital." *Id.* at 1013. As noted above, the Building Corporation has failed to prove that Epworth Crossing's facilities were used by the Hospital's inpatient facility. Fourth, Westview Hospital, "and another hospital," used the boardroom for administrative meetings. *Id.* The facts of *Indianapolis Osteopathic* show a level of integration between the "hospital departments" at the Medical Pavilion and the inpatient facility of Westview Hospital that are not present here. The Board is not convinced that *Indianapolis Osteopathic* compels a conclusion that Epworth Crossing supports an inpatient facility. The Building Corporation has not established that Epworth Crossing is exempt based on the "substantially supportive" exception for "other property."

**c. "Other Property" Providing of Charity Care and Community Benefits**

71. The only remaining question is whether Epworth Crossing is used to "provide or support the provision" of charity care and community benefits. It is not disputed that the Hospital provides charity care and community benefits at Epworth Crossing. The question is whether the provision or support of charity care and community benefits is the predominant use of Epworth Crossing. The Assessor argues that a charity care expenditure of "10% falls woefully short of predominant use." *Respondent's Submission of Proposed Findings of Fact and Conclusions of Law at 39.*

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<sup>24</sup> See also *St. Mary's Medical Center, Inc. v. State Bd. of Tax Comm'rs*, 534 N.E.2d 277, 279 (Ind. Tax Ct. 1989) *aff'd by St. Mary's Medical Center, Inc. v. State Bd. of Tax Comm'rs*, 571 N.E.2d 1247, 1248 (Ind. 1991) ("Move the office building down the road two miles and a serious question arises, even under the most liberal statutory construction, as to whether it would then significantly further, or be incidental to the operation of appellant's hospital.")

72. Under I.C. 6-1.1-10-36.3, the predominant use test “focuses on the amount of time that property was used for exempt purposes in relation to its total usage.” *Hamilton Cnty. Assessor v. Duke*, 69 N.E.3d 567, 570 (Ind. Tax Ct. 2017). However, the definitions of charity care and community benefits, as referenced in the “other property” exceptions, are based on the property owner’s charitable expenditures as measured in “unreimbursed cost.” I.C. § 16-18-2-52.5(a); I.C. § 16-21-9-1. One might interpret this, as the Assessor does, to require that the charitable use be measured in regard to expenditures on charity care. This would be contrary to established law:

Although charitable giving might serve as evidence to support claimed charitable use of the facility, the statutory test since 1983 has been predominant use of the facility, not distribution of income for charitable purposes.

*State Bd. of Tax Comm'rs v. New Castle Lodge # 147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1263 (Ind. 2002) (reversing the State Board of Tax Commissioners for denying an exemption to a Moose Lodge that donated only 4% of gross revenues to charity instead of considering the predominant use of the building). For this reason, the test proposed by the Assessor is incorrect. Under *New Castle Lodge*, it is not the Board’s province to weigh what percentage of revenue is charitable *enough*. Rather, the Board must determine if the property was used most of the time to deliver charity care and community benefits.

73. Under the statute, the property must be used for the provision of charity care and community benefits at an unreimbursed cost to the hospital. I.C. § 16-18-2-52.5(a); I.C. § 16-21-9-1. This is in contrast to medical care to persons, or programs, for which the hospital’s costs are paid. Epworth Crossing provides medical services to persons whose costs are reimbursed (through insurance), and also to persons whose costs are unreimbursed (fully or partially). Under the community benefits and charity care standard, Epworth Crossing is used for both charitable and non-charitable purposes.

74. The Building Corporation has not provided a time-usage study for the portions of Epworth Crossing for which it seeks an exemption. Consequently, “a failure to provide the Indiana Board with a comparison of the relative amounts of time that a property was

used for exempt and non-exempt purposes is fatal to a claim of exemption.” *Duke*, 69 N.E.3d at 571. The Board finds that the Building Corporation is not entitled to an exemption on these grounds because the evidence does not reveal the relative time the facility is used for exempt versus nonexempt purposes.<sup>25</sup>

**d. Charitable Use Independent of its Status as Hospital-Owned “Other Property”**

75. Citing to I.C. § 6-1.1-10-16(h), the Tax Court has held that “the charitable purposes exemption does not apply to other property owned by a hospital that is not substantially related to or supportive of [its] inpatient facility.” *Indianapolis Osteopathic*, 818 N.E.2d at 1015. Arguably this might foreclose a charitable use except in the circumstances outlined above. The Tax Court has not addressed this issue directly, and the Board cannot find that the Building Corporation is necessarily foreclosed from establishing a charitable use of Epworth Crossing independent of its status as an exempt hospital’s “other property.” The standard is clear:

A charitable purpose is established when a taxpayer provides evidence to the Indiana Board showing 1) "relief of human want . . . manifested by obviously charitable acts different from the everyday purposes and activities of man in general[ ]" and 2) that a benefit sufficient to justify the loss of tax revenue inures to the public through these acts.

*Starke Cty. Assessor v. Porter-Starke Servs., Inc.*, 88 N.E.3d 814 (Ind. Tax Ct. 2017).

The facts here reveal a medical office building that operates on a fee-for-service basis, with an indeterminate impact on the poor, uninsured, or underinsured. There is no evidence that Epworth Crossing satisfies a particular need in the community that would otherwise be unmet or fall to the government. Moreover, finding a charitable use under the facts as presented here would likely require a similar finding in regard to *all* hospital-owned “other property,” and effectively nullify the express language of the statute. The Board finds the Building Corporation has failed to show that Epworth Crossing has a

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<sup>25</sup> The Board offers no opinion on the types accounting or proxies that might be used to establish a predominant use under this standard. The Board also notes that this standard is separate from the test for “substantially supportive of an inpatient facility.” For instance, a wellness center that is predominantly used for community benefit programs at a partially unreimbursed cost might be exempt.



charitable use sufficient for an exemption independent of its status as hospital-owned property.

### **3. Educational Exemption**

76. The Hospital does not develop an argument in support of an educational use exemption in its brief. *Br. of St. Mary's Building Corp. in Supp. of its Petition*. The Board declines to address arguments raised in previous pleadings regarding an educational exemption and considers it waived. Moreover, the record contains no evidence of the type of uses necessary for an educational exemption, such as classrooms, curriculum, or teaching staff.

### **4. Admissions or Concessions by Warrick County Assessor**

77. Lastly, the Building Corporation argues that the Assessor's statements before the Warrick County Council and at deposition should establish that the Assessor has admitted or conceded that Epworth Crossing should be exempt. *See Br. of St. Mary's Building Corp. in Supp. of its Petition at 18-19*. A statement that "[i]t was my opinion that, yes, they deserved some exemption, possibly," is not an unequivocal admission or concession. *Id.* at 19 (emphasis added). Absent circumstances where a party relied on a representation as to the claims at issue, and proof of prejudice arising therefrom, the Board will not find grounds for estoppel. Those are not present here.

## FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that neither the real nor personal property is entitled to an exemption.

ISSUED: February 23, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 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 <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.