

REPRESENTATIVE FOR PETITIONER:

Mary Burger, Vice President and CFO, Historic Landmarks Foundation of Indiana, Inc.

REPRESENTATIVE FOR RESPONDENT:

Dustin Huddleston, Attorney, Huddleston & Huddleston

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Historic Landmarks Foundation of Indiana, Inc.	)	Petitions:	41-002-16-2-8-01282-16
	)		41-002-16-2-8-02034-16
	)		
Petitioner,	)	Parcels:	41-12-34-032-093.000-002
	)		41-12-34-032-093.001-002
	)		
v.	)		
	)		
Johnson County Assessor	)	County:	Johnson
	)		
Respondent.	)	Assessment Year:	2016

Appeals from the Final Determination of the  
Johnson County Property Tax Assessment Board of Appeals

**February 26, 2018**

**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:

**INTRODUCTION**

1. Property is exempt from taxation when it is owned by a not-for-profit entity that is organized and operated primarily to further the field of architecture or other fine arts. The same is true for property owned and predominantly occupied and used for charitable purposes.

2. Even if Historic Landmarks Foundation of Indiana, Inc. was *organized* primarily to further the field of architecture by preserving architecturally significant buildings, the evidence about its *operations* showed that it focused primarily on preserving sites for their historical significance. Landmarks therefore did not qualify for a fine-arts exemption. But preserving buildings for their historical significance qualifies as a charitable activity, and Landmarks owned the subject property for that purpose. It also occupied and used two-thirds of the building exclusively for that purpose. It failed to prove that the other third of the building, which it leased to a tenant, was predominantly occupied and used for charitable purposes. Thus, Landmarks is entitled only to a partial exemption.

### **PROCEDURAL HISTORY**

3. Landmarks owns the property under appeal, located at 101 West Main Cross Street in Edinburgh. It filed Form 136 applications with the Johnson County Assessor claiming a 100% exemption from property tax. The Johnson County Property Tax Assessment Board of Appeals (“PTABOA”) denied the exemption and determined that the property was 100% taxable. Landmarks then filed Form 132 petitions with the Board.
4. On November 29, 2017, our designated administrative law judge, Kyle C. Fletcher (“ALJ”), held a hearing on the petitions. Neither he nor the Board inspected the property.
5. Mary Burger, Vice President and CFO of Landmarks, appeared on its behalf and was sworn as a witness. Dustin Huddleston represented the Johnson County Assessor.
6. Landmarks offered the following exhibits:
  - Petitioner’s Ex. 1: Indiana Preservation Annual Report
  - Petitioner’s Ex. 2: *Indiana Preservationist* article titled “Downtown Revival”
  - Petitioner’s Ex. 3: Excerpts from Johnson County Interim Report of Indiana Historic Sites and Structures Inventory
  - Petitioner’s Ex. 4: March 11, 2015 Real Estate Committee Minutes
  - Petitioner’s Ex. 5: March 18, 2015 Board of Directors Meeting Minutes

- Petitioner's Ex. 6: Efroymsen Family Endangered Places Real Estate Fund basis and expenses for 101 W. Main St.
- Petitioner's Ex. 7: Thompson Building 101 W. Main St. selected contracts and invoices
- Petitioner's Ex. 8: Online advertisement titled "Check Out Edinburgh and This Landmark for Sale"
- Petitioner's Ex. 9: Protective Covenants and Right of First Refusal

7. The Assessor offered the following exhibits:

- Respondent's Ex. A: Service copy of Preliminary Witness and Exhibit Lists
- Respondent's Ex. B: Service copies of Documentary Evidence List and Exhibits

8. The following items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:

- Board Ex. A: Form 132 Petitions for Review
- Board Ex. B: Hearing sign-in sheet

We also recognize as part of the record all notices and orders issued by the Board or our ALJ and a digital recording of the hearing.

#### **MOTIONS AND OBJECTIONS**

9. The Assessor objected to all of Landmarks' exhibits and testimony because Landmarks failed to exchange witness and exhibit lists and copies of its documentary evidence prior to the hearing. Our ALJ took the objection under advisement.

10. Our procedural rules require parties to exchange (1) witness and exhibit lists at least 15 business days before a hearing, and (2) copies of documentary evidence at least five business days before the hearing. 52 IAC 2-7-1(b). These exchanges are designed to avoid surprises in litigation and to promote an organized, efficient, and fair consideration of the issues. *See Outback Steakhouse of Fla., Inc. v. Markley*, 856 N.E.2d 65, 76-77 (Ind. 2006). We may exclude evidence based on a party's failure to exchange where it appears that admitting the evidence would prejudice the opposing party. *See* 52 IAC 2-7-1(f).

11. Landmarks' failure to provide a witness list and exchange copies of its exhibits before the hearing created the type of unfair surprise that our pre-hearing exchange rule was designed to prevent. Landmarks does not claim that it attached the exhibits to its exemption application or that the PTABOA or Assessor otherwise knew of their existence and relevance to the appeals. We therefore sustain the Assessor's objection to Petitioner's Exhibits 1 through 9 and exclude them from evidence.<sup>1</sup>
  
12. But we overrule the Assessor's objection to Burger testifying. Although there is no dispute that Landmarks failed to give the Assessor a witness list before the hearing, the Assessor knew that Burger was involved in the appeal. She signed the Form 136 applications for exemption and the Form 132 petitions that brought this appeal before us. The Assessor even addressed his service copies of exhibit and witness lists and documentary evidence to her. Thus, Burger was not a surprise witness—the Assessor anticipated her involvement in this case and could have deposed her if he desired. While we do not condone Landmarks' failure to comply with our pre-hearing disclosure rules, we fail to see how the Assessor was unfairly prejudiced by allowing Burger to testify.
  
13. Indeed, in the event we overruled his objections, the Assessor asked for a continuance to allow him to review and respond to Landmarks' exhibits. He did not ask for additional time to depose Burger. The ALJ took that request under advisement. By excluding the exhibits, we have addressed the Assessor's concerns. Thus, we find no extraordinary circumstances to warrant a continuance and we deny the Assessor's request. *See* 52 IAC 2-8-1(b) (proving that the Board will only grant a continuance requested less than two days before a hearing on a showing of extraordinary circumstances).

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<sup>1</sup> The Assessor also objected to Petitioner's Exhibits 1 through 9 for lack of relevancy and to Petitioner's Exhibits 4 and 5 as hearsay. Our ruling excluding the exhibits for failure to exchange them makes those objections moot.

## FINDINGS OF FACT

14. Landmarks is a non-profit organization with a mission of historic preservation. It has a charitable purpose: to “advance the knowledge related to historical and architecturally significant sites and structures and to support directly or indirectly the preservation, redevelopment, improvement, renovation, and maintenance of such sites and structures in the state of Indiana.” *Burger testimony.*
15. Landmarks fulfills its mission by educating the public about contemporary rehabilitation and preservation, providing financial support to local organizations, and acquiring historic properties that appear threatened. When Landmarks acquires a property, it performs “immediate stabilization” before marketing the property for sale. It sells the property with protective covenants that require the new owner to complete the restoration within a specified period and to maintain the building’s exterior in a manner consistent with its historic appearance. Landmarks monitors the buildings it sells and enforces the covenants when it discovers violations. *Burger testimony.*
16. The program for buying and restoring properties began in Indianapolis in 1968 and Landmarks later expanded it to include the entire state. Landmarks has bought and sold more than 500 properties through that program. The property under appeal is one of those properties. *Burger testimony.*
17. Landmarks found out about the property from The Conover Foundation, a not-for-profit organization that focuses on rehabilitating facades in downtown Edinburgh. The building was constructed one year after Edinburgh incorporated, and it is one of two three-story buildings in the downtown area. It is on a prominent intersection in the town’s commercial district, which was nominated to the National Register of Historic Places. Landmarks believes that the property is significant because of the building’s age and

prominence in the city. Landmarks also believes the building is important to maintaining Edinburgh's streetscape and the historic integrity of its downtown. *Burger testimony.*

18. Landmarks bought the property in June 2015. At the time, the building's first floor was leased. The rest had been vacant for several decades. Upon buying the property, Landmarks replaced the roof. Based on experience, Landmarks knows that problems with the roof can cause the rest of a building to deteriorate quickly. Landmarks also repaired and replaced the windows, fixed some masonry issues, and painted the exterior. *Burger testimony.*
19. Once it had restored the exterior, Landmarks began marketing the property for sale, although it expected to take a significant loss. As of the hearing, the property remained up for sale. *Burger testimony.*

#### **CONCLUSIONS OF LAW AND ANALYSIS**

20. While all tangible property is generally taxable, the legislature has exercised its constitutional authority to exempt certain types of property. *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). Because exemptions relieve properties from bearing their share of the cost of government services, we strictly construe them against taxpayers and in favor of the State. A taxpayer therefore bears the burden of proving that its property qualifies for an exemption. *Id.*
21. Landmarks claims an exemption under two statutes: Ind. Code § 6-1.1-10-18 and Ind. Code § 6-1.1-10-16. The first statute exempts property from taxation when it is owned by an Indiana not-for-profit corporation that "is organized and operated for the primary purpose of coordinating, promoting, encouraging, housing, or providing financial support to activities in the field of fine arts." I.C. § 6-1.1-10-18(a). The statute defines the field of fine arts as including architecture. I.C. § 6-1.1-10-18(b)(5).

22. Landmarks did little to show the purposes for which it was organized. It did not offer articles of incorporation, by-laws, or any other organizational documents at the hearing, although it attached what appears to be an excerpt from its articles of incorporation to its Form 132 petition. Those excerpts, some of which Burger echoed in her testimony, identify preserving, redeveloping, improving, renovating, and maintaining sites of architectural significance as corporate purposes, although they identify other corporate purposes as well.
23. Even if we assume that, despite any other purposes identified in its articles of incorporation, preserving and supporting architecturally significant buildings was the primary purpose for which Landmarks was *organized*, Burger’s testimony does not show that it was *operated* primarily for that purpose. Instead, she testified mostly about Landmarks’ activities in preserving historically significant sites. We recognize that there is some overlap between the two—historically significant buildings may also be architecturally significant. But history and architecture are not the same things. Based on Burger’s testimony, it appears that Landmarks focused at least as much, if not more, on preserving sites for their historical value as it did on preserving sites for architectural significance. Therefore, Landmarks failed to show that it qualified for an exemption under Ind. Code § 6-1.1-10-18.
24. We now turn to Landmarks’ claim that it was entitled to a charitable-purpose exemption under Ind. Code § 6-1.1-10-16. That statute gives an exemption to all or part of a building (and generally, the land on which the building sits) that is owned and either exclusively or predominantly used or occupied for educational, literary, scientific, religious, or charitable purposes. Ind. Code § 6-1.1-10-16(a), (c); I.C. § 6-1.1-10-36.3(c); *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Ass’r*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct. 2009) *reh’g den.* 914 N.E.2d 13 (Ind. Tax Ct. 2009). Property is predominantly used or occupied for exempt purposes if it is used or occupied for those purposes more than 50% of the time

that it is used or occupied in the year ending on the assessment date. I.C. § 6-1.1-10-36.3(a).

25. We must view the term “charity” in its broadest constitutional sense. *College Corner, L.P. v. Dep’t of Local Gov’t Fin.*, 840 N.E.2d 905, 909-10 (Ind. Tax Ct. 2006). Generally, a charitable purpose exists if: ““(1) there is evidence of relief of human want . . . manifested by obviously charitable acts different from the everyday purposes and activities of man in general[;]’ and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue.” *College Corner*, 840 N.E.2d at 909-10 (quoting *Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm’rs*, 145 Ind. App. 522, 251 N.E.2d 673, 683 (Ind. Ct. App. 1969)).
  
26. Landmarks has a charitable purpose—to preserve and maintain historical sites and structures. As both our Tax Court and courts of other jurisdictions have recognized, “there is an inherent benefit to the community in preserving historic buildings and areas.” *College Corner*, 840 N.E.2d at 910 (citing e.g., *City of Houston v. River Oaks Garden Club*, 360 S.W.2d 855, 857 (Tex. Civ. App. 1962)).
  
27. In *College Corner*, two entities formed a limited partnership to revitalize the College Corner area of Indianapolis’ historic Old Northside. *Id.* at 906-07. The partnership’s goal was to rebuild the area’s deteriorating infrastructure, renovate existing homes, and build new homes that would reflect the neighborhood’s historic character. Architectural and design standards were established to ensure that the homes would be built in an appropriate historical context and with approval from the Indianapolis Historic Preservation Commission. *Id.* at 910. The partnership secured mortgages to buy properties and redevelop them and sold the properties when it was finished. It sought an exemption only for the period during which it owned, occupied, and used the parcels. *Id.* at 907.

28. The Tax Court rejected the Department of Local Government Finance’s argument that the partnership did not relieve human want, explaining that relieving human want encompasses more than simply providing relief to the needy. Bearing that in mind, the Court found that partnership provided a general benefit to the community that was charitable in nature. *Id.* at 909. It relieved government burdens by providing sidewalks and alleys to the area it was restoring. *Id.* at 910-11. But the partnership’s efforts to preserve historic buildings and areas also provided a community benefit. The benefit was even greater because the partnership was restoring areas that had fallen into disrepair. *Id.* at 909-10. Consequently, the Court agreed that the partnership’s efforts to preserve the area’s historic character fulfilled a charitable purpose. *Id.* at 910.
29. *College Corner* is directly on point. Landmarks had a charitable purpose: preserving the historic character of Edinburgh’s commercial district, at least part of which—the building under appeal—had fallen into disrepair. Landmarks owned and used the property to further that charitable purpose. It renovated and stabilized the building and attempted to sell the property subject to covenants obligating any buyer to maintain and preserve the building in its historic condition. Similarly, Landmarks either actually or constructively occupied the property while it was doing those things.
30. But Landmarks’ occupancy was not exclusive—the building’s first floor was leased when Landmarks bought it. The statute does not require unity of ownership, use, and occupancy. *Hamilton Cnty. Prop. Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). Where unity is lacking, however, each entity “must demonstrate that it has its own exempt purpose and explain the nexus between that purpose and its ownership, occupancy, and use of the property.” *Tipton Cnty. Health Care Foundation, Inc. v. Tipton Cnty. Ass’r*, 961 N.E.2d 1048, 1051 (Ind. Tax Ct. 2012).

31. Without more details about how the tenant used the property, we cannot say that its occupancy and use of the building were merely incidental to Landmarks' occupancy and use. And there is nothing to show that the tenant had its own exempt purpose. On the limited record before us, Landmarks proved that two-thirds of the three-story building were occupied and used exclusively for charitable purposes, but it did not prove that the other third was used and occupied predominately for exempt purposes. Landmarks is therefore entitled to exempt two thirds of the property's assessment from taxation.<sup>2</sup>

### CONCLUSION

32. We find that 66.7% of Landmarks' property qualifies for a charitable-purposes exemption.

The Indiana Board of Tax Review issues the Final Determination of the above captioned matter on the date written above.

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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

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<sup>2</sup> Landmarks stabilized the property and actively marketed it for sale during the year leading up to the March 1, 2016 assessment date at issue in this appeal. Nothing else is before us. We make no finding as to whether the property would continue to qualify if held by Landmarks for a significant period after its initial stabilization and marketing efforts.

**- 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>>.