

PETITIONER'S REPRESENTATIVES: Mark GiaQuinta, Sarah Schrieber, HallerColvin, P.C.

RESPONDENT'S REPRESENTATIVES: Nathan Hagerman, Jeffrey Parker, Jr., Taft Stettinius & Hollister LLP

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lutheran Homes, Inc.,)	Petition Nos.: 02-075-20-2-8-00321-21
)	02-075-21-2-8-00427-21
Petitioner,)	
)	Parcel Nos.: 02-11-11-226-003.017-075
v.)	
)	County: Allen
Allen County Assessor,)	
)	Assessment Years: 2020 & 2021
Respondent.)	
)	

Date 10-18-2023

FINAL DETERMINATION

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

I. INTRODUCTION

1. Lutheran Homes, Inc. ("Lutheran") seeks a 100% charitable-use exemption for a property containing 48 cottages that Lutheran operates as part of an independent-living community known as Piper Trail. Indiana Courts have recognized that catering to the non-financial needs of the aged can qualify as a charitable purpose. But Lutheran conceived of, planned, and operated Piper Trail in a commercial manner that was virtually indistinguishable from a for-profit developer or operator. It simply offered a limited, relatively well-off segment of the community the opportunity to age in place at Piper

Trail instead of in their homes or at a competing facility. We therefore find that the property does not qualify for exemption.

II. PROCEDURAL HISTORY

A. Filing of Appeals and Pre-hearing Motions

2. Lutheran filed applications with the Allen County Property Tax Assessment Board of Appeals (“PTABOA”) seeking to exempt one of the two real property parcels composing Piper Trail, as well as unspecified personal property located at that parcel, for the 2020 and 2021 assessment years. The PTABOA denied both applications and determined that the property was 100% taxable for both years. Lutheran appealed the PTABOA decisions by filing Form 132 petitions with us.
3. These appeals followed a long, disjointed path to hearing. We originally set a hearing for October 7, 2021. At the parties’ request, we rescheduled that hearing four times: to May 16-17, 2022; June 23-24, 2022; September 21-22, 2022; and November 9-10, 2022.
4. We largely let the parties set their own deadlines for discovery and other pre-hearing activities through proposed case-management plans that our designated administrative law judge, Erik Jones (“ALJ”), adopted. The parties’ first case-management plan, which they submitted in conjunction with their request to continue the original hearing date, set staggered deadlines for the parties to identify expert witnesses. The Assessor’s deadline was January 20, 2022. The parties later filed amended joint case management plans on January 20, March 23, and May 26, 2022, which the ALJ adopted. The first amended plan moved the deadline for the Assessor to identify any expert witnesses and provide copies of their reports to March 7, 2022. That deadline did not change in the later amended plans.
5. Other deadlines, such as those for completing written discovery and deposing fact witnesses, were extended multiple times. The parties also twice moved the deposition of Lutheran’s designated representative, Alex Kiefer, which had originally been scheduled

for March 25, 2022. The Assessor first asked Lutheran to reschedule the deposition while the parties litigated a motion seeking to compel Lutheran to produce a management agreement between it and Adams County Memorial Hospital for certain other facilities owned by Lutheran. Lutheran agreed to reschedule the deposition for May 12. It then agreed to reschedule the deposition a second time. Lutheran also agreed to jointly seek to continue the June 23-24, 2022 hearing and extend pre-hearing deadlines, due to temporary health issues of Assessor's counsel. We denied the Assessor's motion to compel on May 23. But we granted the parties' joint motion to continue the hearing and adopted their amended case management plan. *Joint Motion to Continue Hearing and Extend Deadlines (May 26, 2022); Response in Opposition to Respondent's Motion for Order Permitting Supplemental Witness and Exhibit Lists and for Reconsideration of Joint Motion to continue Deadlines and Hearing ("September Response")* at 3-4.

6. The Assessor finally deposed Kiefer on June 21, 2022. That deposition, and supplemental discovery responses that Lutheran provided following the deposition, triggered new motions. Those motions centered around Kiefer's testimony that Lutheran possessed income statements and balance sheets specific to Piper Trail, that prospective residents were required to disclose financial information on applications, and that Lutheran had engaged a Georgia firm, [REDACTED], as a consultant to help with cost estimates and revenue projections for Piper Trail.
7. In a July 11, 2022 "emergency" motion, the Assessor sought (1) to continue the scheduled September 21-22, 2022 hearing to December; (2) to reopen discovery through October 10, and (3) to move the dispositive motion deadline to two days after the close of discovery. A few weeks later, on August 1, after a status conference in which the ALJ requested the parties to detail their positions on the Assessor's emergency motion, the parties filed a joint motion seeking to further extend discovery deadlines through December 27, 2022, and to move the hearing into January of 2023. *Emergency Motion to Reopen Discovery, Continue Hearing, Extend Deadlines, and Request Status Conference ("Emergency Motion"); Joint Motion to Continue Deadlines and Hearing.*

8. In support of her requests, the Assessor argued that while Lutheran previously produced consolidated financial information for its overall operation, it had not produced financial information that related specifically to Piper Trail; that it had not produced applications calling for prospective residents' financial information; and that it had not disclosed its relationship with [REDACTED] or produced any reports or other documents that [REDACTED] had given Lutheran. According to the Assessor, the information about [REDACTED] was within the following previously served discovery request:

Produce all pamphlets, brochures, menus, contracts, agreements and any other documents that detail any costs/charges/required payments related in any way to residing at and/or use of the property.

Emergency Motion at 4. Lutheran agreed with the extensions that the Assessor requested, explaining that there was no current discovery dispute and that it was cooperating with the Assessor to resolve all purported deficiencies in its discovery responses. The August 1, 2022 extension requests and Lutheran's agreement are contained in the parties' Joint Motion to Continue Deadlines and Hearing.

9. On August 8, 2022, we issued an order denying the requested extensions. We instructed the parties to proceed with discovery according to the deadlines in the case management plan. We also set deadlines for resolving any discovery disputes before the hearing, including a September 1 deadline to file any motions to compel discovery. While the Assessor made further requests to continue the hearing and extend pre-hearing deadlines, she did not file a motion to compel.
10. On September 2, 2022, the Assessor filed a motion requesting permission to file supplemental witness and exhibit lists and asking us to reconsider our August 8 order. She claimed that our order effectively prevented her from conducting non-party discovery involving [REDACTED]. She also claimed that she needed more time to reconvene Kiefer's deposition because Lutheran had provided more than 2,000 pages of additional documents following Kiefer's June 21 deposition, including more than 1,000 pages on August 19, and some documents as recently as September 1. The Assessor requested that

we (1) grant additional time to exchange supplemental witness and exhibit lists (the deadline for exchanging final witness lists and copies of exhibits was September 1), and (2) continue the hearing to a date reasonably calculated to allow her to review the newly produced documents, reconvene Kiefer's deposition, retain an expert to review the financial documents, and explore deposing [REDACTED]. *Respondent's Amended Motion for Order Permitting Supplemental Witness and Exhibit List and for Reconsideration of Joint Motion to Continue Deadlines and Hearing.*

11. Lutheran opposed the Assessor's motion. Among other things, Lutheran argued that it had cooperated extensively with the Assessor, including by agreeing to the Assessor's multiple requests to reschedule Kiefer's original deposition. And Lutheran noted that the Assessor's request for additional time to supplement her witness and exhibit lists was based at least partly on her intent to call an expert witness, something she had notified Lutheran of for the first time on September 1, 2022—well past the March 7, 2022 deadline from the case-management plans. Lutheran argued that it had spent the last several weeks preparing for hearing and that it would be severely prejudiced by granting the Assessor's requested relief. *September Response* at 1-7.

12. On September 7, 2022, we issued our Order Setting Deposition Deadline and Prehearing Conference. We ordered the parties (1) to complete Kiefer's ongoing deposition before September 12, which we changed to September 21 by order the next day, and (2) to exchange all proposed witness and exhibit lists, as well as exhibits, by September 19. We converted the scheduled September 21-22, 2022 hearing date to a prehearing conference on September 22 and instructed the parties to be prepared to (1) address all objections to proposed witness and exhibit lists, and (2) discuss alternate hearing dates in the near future. The Assessor filed her amended final witness and exhibit list, in which she first named Mark Kaufman, the person who she would later offer as an expert (and fact) witness at the hearing. In her original final witness and exhibit list that she had exchanged on September 1, she had named "A Certified Public Accountant (TBD)."

13. Finally, on September 27, 2022, we issued an order in which we addressed the parties' arguments and objections from the September 22 prehearing conference. Among other things, we denied the Assessor's request to reopen discovery to allow her to seek additional non-party discovery and to reopen the deadline for providing notice of expert witnesses. And we set a hearing on the merits for November 9-10, 2022.

B. Hearing

14. The ALJ held the hearing as scheduled. Neither he nor the Board inspected the subject property. Alex Kiefer, Dodd Kattman, and Samantha Dennon were sworn as witnesses and testified. The Assessor also offered Mark Kaufman as a witness, but as explained below, the ALJ sustained Lutheran's objection to Kaufman testifying.
15. The parties offered the following exhibits:

Lutheran's Exhibits

- Exhibit 1: Rendering of Piper Trail neighborhood,
- Exhibit 2: Photographs of subject property,
- Exhibit 3: Lutheran Homes Articles of Incorporation,
- Exhibit 4: Certificate of Assumed Business Name of Lutheran Homes, Inc.,
- Exhibit 5: Certificate of Assumed Business Name - Piper Trail,
- Exhibit 7: Lutheran Homes bylaws,
- Exhibit 8: IRS letter, dated December 6, 2011,
- Exhibit 9: IRS letter, dated July 17, 1997,
- Exhibit 10: Form ST-105 for Lutheran Homes, Inc.,
- Exhibit 11: Board of Directors resolution, dated May 25, 2017,
- Exhibit 12: Warranty deed,
- Exhibit 15: 2020 Form 136,
- Exhibit 16: 2021 Form 136,
- Exhibit 17: Form 132 with cover letter and attachments, dated March 11, 2021,
- Exhibit 18: Form 132 with cover letter and attachments, dated May 3, 2021,
- Exhibit 19: Consolidated financial statements for 2018 and 2019,
- Exhibit 20: Consolidated financial statements for 2019 and 2020,
- Exhibit 21: Consolidated financial statements for 2020 and 2021,
- Exhibit 22: Initial disclosure statement, July 1, 2013,
- Exhibit 23: Initial disclosure statement, June 10, 2021,
- Exhibit 24: Initial disclosure statement, May 5, 2022,
- Exhibit 25: Floor plans for Piper Trail cottages,
- Exhibit 26: Piper Trail brochure,

- Exhibit 27: Lutheran Life Villages policy for financial assistance for residents,
- Exhibit 31: Residency agreement form,
- Exhibit 32: Piper Trail programming index,
- Exhibit 34: Piper Trail day program service providers and partners document,
- Exhibit 36: Lutheran Life Villages mission statement,
- Exhibit 37: Bistro club menu,
- Exhibit 38: Piper Trail amenities and services document,
- Exhibit 39: Petitioner's Response to Respondent's First Set of Interrogatories,
- Exhibit 41: Mark Kaufman business card,
- Exhibit 118: Alex Kiefer Affidavit.

The Assessor's Exhibits

- Exhibit A: Alex Kiefer deposition transcript and exhibits, Vol. 1, dated June 21, 2022,
- Exhibit B: Alex Kiefer deposition transcript and exhibits, Vol. 2, dated September 21, 2022,
- Exhibit C: Residency application,
- Exhibit CC: E-mails between Alex Kiefer and various senders, dated May-December 2018,
- Exhibit D: Reservation agreement,
- Exhibit E-1: Residency agreement draft, dated May 11, 2018,
- Exhibit E-2: Residency agreement draft, dated July 17, 2018,
- Exhibit E-4: Residency agreement, updated February 28, 2020,
- Exhibit E-5: Residency agreement, updated May 25, 2021,
- Exhibit EE: Spreadsheet,
- Exhibit F: Schedule of entrance fees and monthly service fees,
- Exhibit FF: 2022 Property Record Cards ("PRC") cottages on subject property,
- Exhibit I: Advertising materials,
- Exhibit J: █████ engagement letters and agreements,
- Exhibit K-2: Piper Trail business plan draft, dated January 21, 2019,
- Exhibit K-4: Piper Trail business plan draft, dated January 25, 2019,
- Exhibit L-1: █████ presentation slides, dated December 5, 2017,
- Exhibit L-2: █████ presentation slides, dated March 29, 2018,
- Exhibit P-1: Lutheran Homes Form 990 (2019),
- Exhibit P-2: Lutheran Homes Form 990 (2020),
- Exhibit S-1: Monthly income statement, dated November 2019,
- Exhibit S-2: Monthly income statement, dated October 2020,
- Exhibit S-3: Monthly income statement, dated November 2021,
- Exhibit S-4: Monthly income statement, dated June 2022,
- Exhibit T: Lutheran Homes balance sheets,
- Exhibit U: Blank Form 136,
- Exhibit V: One page from draft financial statements,

Exhibit W: Piper Trail cottage development request for qualifications / proposals,
Exhibit Z: 2022 PRC for 8151 Glencairn Blvd.

16. The official record also includes the following: (1) all petitions, motions, briefs, and other documents filed in these appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) the hearing transcript.

III. OBJECTIONS

A. Discovery objection

17. At the hearing's outset, the Assessor made an "objection," which she acknowledged was simply an effort to preserve for appeal her position that we had erred in rejecting her efforts to reopen discovery. According to the Assessor, we did not give her the opportunity to complete discovery, to depose a representative from [REDACTED], or to call an expert witness. *Tr. at 12-15.*
18. We overrule the Assessor's objections. As explained above, these appeals followed a long, disjointed path to hearing. The hearing was rescheduled four times, partly due to the Assessor delaying Kiefer's deposition, while her ultimately unsuccessful motion to compel production of a management agreement for other properties owned by Lutheran remained pending. Had the Assessor deposed Kiefer earlier, she would have timelier identified the issues that led her to request continuing the hearing for a fourth time and extending various prehearing deadlines. In any case, it appears that the Assessor ultimately received all of the disputed documents—including segregated financial documents for Piper Trail, residency applications that called for applicants' financial information, and [REDACTED]'s consulting reports—before the hearing.
19. And the supposed need to reopen discovery and extend the hearing to allow the Assessor to depose a [REDACTED] representative was an "emergency" of the Assessor's own making. She blames Lutheran for not informing her that it had engaged [REDACTED] as a consultant before Kiefer's June 23, 2023 deposition, which she in turn claims required reopening discovery

and continuing the scheduled hearing. But there is nothing to show that the Assessor's written discovery requests called on Lutheran to inform her about [REDACTED] or produce any reports from [REDACTED] or any other consultants. Instead, the discovery request to which the Assessor pointed is most reasonably read as requiring Lutheran to produce (1) advertising or marketing materials, such as pamphlets or brochures, regarding fees or other charges to reside at or use Piper Trail, and (2) agreements between Lutheran and residents setting forth those fees.

20. In any case, the Assessor sought to move the hearing first to December 27, 2022, and then to January of 2023. At that point, we had already continued the hearing three times to a date that was almost a year past its original setting. Our administrative hearing process is meant to be a streamlined procedure—there needs to be an endpoint to litigation.
21. The same may be said for the Assessor's claim that we unjustifiably denied her the chance to call an expert witness to testify about Lutheran's financial statements for Piper Trail. She waited until September 1, 2022 to notify Lutheran that she might want to call an expert witness. That was almost five months after the deadline for her to identify any expert witnesses and less than three weeks before the fourth scheduled hearing date. Regardless of what Lutheran's supplemental discovery responses contained, the Assessor did not show good cause for the further delays that her tardy identification of an expert witness would have entailed.

B. Objection to Kaufman testifying

22. Despite our pre-hearing ruling refusing to reopen the deadline for identifying expert witnesses, the Assessor called Mark Kaufman as a witness. Lutheran objected on grounds that the Assessor was simply trying to get around our ruling under the guise of offering Kaufman as a fact witness when he had no personal knowledge of any relevant facts and would instead simply testify to his opinion. *Tr. at 400-401.*

23. The Assessor responded that she was offering Kaufman's testimony in two capacities. First, she was calling Kaufman to make an offer of proof as to what he would testify to if allowed to testify as an expert. Among other things, Kaufman would have offered his expert opinion about the implications of Piper Trail's projected debt service coverage ratio, as well as his opinions that the structure of Piper Trail's monthly service fees is nothing more than rent, that Lutheran taking depreciation on the real estate significantly skewed its reported income, that Lutheran was not providing "a deal at all" to Piper Trail residents, and that Lutheran constructed the Piper Trail venture in a way that generated a return far in excess of what he would have expected from a regular real estate deal. *Tr. at 341-45; 431-38*. Second, the Assessor claimed that she was offering Kaufman to rebut Kiefer's testimony about various topics, including two of the topics on which she would have called Kaufman as an expert—the significance of Piper Trail's debt service coverage ratio and the effect of depreciation deductions. She also would have had Kaufman provide a CPA's interpretation of Piper Trail's use of entrance fees to finance construction bonds. *Tr. at 421-29*. According to the Assessor, Kaufman would testify to those things based on personal knowledge he gained from reviewing Piper Trail's financial documents. *Tr. at 433*.
24. We adopt the ALJ's ruling sustaining Lutheran's objection and excluding Kaufman. As we have already explained, Lutheran did not timely identify an expert witness under the parties' amended case management plans and did not show good cause for why we should have allowed her to do so belatedly. And we agree with Lutheran that allowing the Assessor to call Kaufman as a rebuttal witness would simply have been a backdoor means for Kaufman to offer his expert opinion. Despite the Assessor's claim that Kaufman had personal knowledge of Lutheran's financial documents, she sought to elicit Kaufman's opinions about what those documents showed based on his experience and training as a certified public accountant. That is the definition of an expert opinion. *See Ind. Evidence Rule 702(a)* (providing that a "witness who is qualified as an expert by knowledge, skill, experience, training, or education" may testify in the form of an

opinion). Indeed, Kaufman testified on voir dire that he was being paid \$250/hour to attend the hearing, which is incompatible with him being a fact witness. *Tr. at 407-08.*

C. Objections to exhibits

25. The ALJ took several objections to exhibits under advisement. We now rule on those objections.

1. The Assessor's objections

26. The Assessor objected to Exhibit 27—Lutheran's April 21, 2022 Policy for Financial Assistance for Residents—on grounds that Lutheran adopted it after the years at issue on appeal. *Tr. at 149-50.* Kiefer, however, testified that the policy was a codification of Lutheran's historical practice. *Tr. at 51, 310.* We therefore find that the document is relevant and overrule the objection.

2. Lutheran's objections

27. Lutheran objected to several of the Assessor's exhibits. First, it objected to part of Exhibit B, a transcript of Kiefer's September 21, 2022 deposition together with deposition exhibits. Specifically, Lutheran objected to deposition exhibit G—a spreadsheet that the Assessor's office created to track the construction of Piper Trail with additional information about assessments and fees for the various cottages on the property. Lutheran argued that the spreadsheet had been produced for the first time at that deposition, so Lutheran could not confirm how it was prepared or whether the information it contained was accurate. *Tr. at 199-202.* The Assessor conceded that she could not lay a foundation for admitting the exhibit through Kiefer but indicated that she would do so through a separate witness in her case-in-chief. *Id.* Although the Assessor did not revisit deposition exhibit G, she offered an updated version of the spreadsheet with information for 2022 as Exhibit EE, to which Lutheran did not object. *Tr. at 442-43.* We therefore overrule Lutheran's objection.

28. Lutheran also objected to several other exhibits on relevance grounds, primarily because they reflect communications or events that either pre- or post-date the assessment years on appeal. *Tr. at 169-70, 229-31, 237-40, 262-64.* We begin with Lutheran's objections to Exhibits CC, E-1, E-2, J, L-1, and L2. Exhibit CC is a series of emails involving Kiefer, other employees of Lutheran, and employees of [REDACTED]. Exhibits E-1 and E-2 are a pair of 2018 Piper Trail residency agreements. Exhibit J is a series of correspondences between Lutheran Homes and [REDACTED], and Exhibits L-1 and L-2 are [REDACTED] presentations. Lutheran objected on grounds that the exhibits pre-date the relevant assessment years. The Assessor responded that they address Lutheran's financial planning for building and marketing Piper Trail. According to the Assessor, Kiefer testified about those topics on direct examination and they relate to a central issue in these appeals: Lutheran's purposes in operating Piper Trail. *Tr. at 169-70, 229-31, 237-40.* We agree with the Assessor and overrule the objections.
29. Turning to the exhibits that post-date the assessment years under appeal, Lutheran first objected to Exhibit S-4, a monthly income statement for June 2022. The Assessor, however, argued that the exhibit shows the extent to which Lutheran's projections about Piper Trail's start-up phase, which included the years under appeal, materialized. *Tr. at 239-41.* We find the exhibit at least marginally relevant and overrule Lutheran's objection.
30. Lutheran next objected to Exhibits FF and Z—2022 property record cards for the subject parcel and an adjacent parcel that Lutheran operates together as Piper Trail. In addition to the fact that the record cards post-date the assessment years at issue, Lutheran argued that the adjacent parcel was not on appeal. *Tr. at 446-52.* Again, we find that the cards are at least minimally relevant and overrule Lutheran's objection. Although the documents may contain information about 2022, they also contain information about previous assessment years. And while the adjacent parcel is not under appeal, it is part of Piper Trail.

31. Finally, Lutheran objected to Respondent’s Exhibit V—a single-page excerpt from a draft financial statement—on grounds that it is not the complete document. *Tr. at 257-59*. We overrule the objection. If Lutheran believed that offering the excerpted page without the rest of the document created an unfair or misleading impression, it should have specified how. It then could have insisted that the rest of the document be admitted as well. *See* Ind. Evidence Rule 106 (“if a party introduces all or part of a writing . . . , an adverse party may require the introduction, at that time, or any other part . . . that in fairness ought to be considered at the same time.”). Indeed, Lutheran possessed the full document and could have offered the omitted portions if it chose to do so.

IV. FINDINGS OF FACT

32. Lutheran owns and operates Piper Trail as a registered continuing care retirement community (“CCRC”) under Ind. Code § 23-2-4. Piper Trail consists of approximately 12 acres spread across two tax parcels. The parcel on appeal contains 48 single-family homes that Lutheran refers to as “cottages,” while the other parcel includes a clubhouse and two cottages. Lutheran started building the cottages in May 2019. The first cottage was occupied in December of that year. The last cottage was completed and occupied in May 2022. *Exs. 1-2, B at 108; Tr. at 63, 69, 77-78, 100, 102*.
33. Lutheran is an Indiana not-for-profit corporation. Its members consist of affiliated Lutheran churches. As shown by its restated articles of incorporation, Lutheran was organized “[a]s an expression of Christ’s love . . . to provide older people residential, health care, and program options which accommodate changing needs, maximize human potential, and enhance family, church, and community life.” Its mission statement similarly reads: “As an expression of Christ’s love, we serve individuals and their caregivers with compassion and respect for independence, wellness, and spiritual life.” No part of Lutheran’s net earnings may inure to the private benefit of its members, trustees, or officers, or to other private persons or entities. Lutheran’s articles of incorporation and bylaws call for its assets to be distributed to its member non-profit churches upon dissolution. *Exs. 3, 7-8, 36; Tr. at 38-39, 48, 50-51, 77*.

34. The Internal Revenue Service has recognized Lutheran as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. The most recent determination from the IRS on Lutheran's tax-exempt status was in 2011, which predates Piper Trail's development. Lutheran did not seek a determination from the IRS regarding whether income from Piper Trail should be treated as unrelated taxable business income. *Exs. 8-9; Tr. at 48, 211.*
35. In 1931, Lutheran began operating a single home in Kendallville, Indiana. In the 1960s, Lutheran expanded to Fort Wayne proper, starting with a facility at Anthony Boulevard. It now manages multiple facilities geared toward the aged, including those that offer independent living, assisted living, skilled nursing and rehabilitation care, outpatient therapy, and adult daycare and memory care. *Ex. J at 2; Tr. at 34-40.*
36. Piper Trail is Lutheran's newest facility. It grew out of strategic planning that Lutheran began in 2016 with the help of two consultants: [REDACTED] and [REDACTED]. Through that process, Lutheran and its consultants explored how Lutheran could manage its existing assets while also responding to community demands. The process included a "SWOT" analysis, where Lutheran identified its strengths, weaknesses, opportunities and threats. It identified an opportunity on the southwest side of town because its Birchwood facility, which provided adult day services focusing on Alzheimer's disease and other forms of dementia, bordered a vacant parcel of land. As a result of its strategic planning, Lutheran decided to explore refinancing existing loans on some of its facilities. It also decided to explore building an independent-living community, which eventually became Piper Trail. To do so, Lutheran proposed renovating the Birchwood facility so that part of it could be used as the community's clubhouse and buying the adjacent parcel to build cottages. *Ex. J at 2, K-4 at 7; Tr. at 35-36, 53-57.*
37. [REDACTED] helped Lutheran explore the financial feasibility of the Piper Trail project. [REDACTED] researched independent-living facilities in the 16-zipcode-wide area that it defined as

Piper Trail's primary market area ("PMA"). It identified eight comparable facilities, five of which were owned by for-profit entities, as well as an additional planned project about a mile from the Piper Trail site. █████ examined each facility's services, unit types, and pricing structure. *Ex. K-4 at 17, 24-27.*

38. It also examined the number of adults within the PMA who, by specified age categories (65-74 and 75 and above) and annual income parameters (\$35,000 and over and \$50,000 and over), would be eligible to live at Piper Trail. For 2019, █████ estimated that 65.4% of households aged 65-74 would meet the \$35,000 threshold and 50.3% would meet the \$50,000 threshold. For households aged 75 and above, those percentages were 48.4% and 32.7%, respectively. █████ projected that those percentages would increase slightly by 2024. As of the hearing date, Piper Trail's residents were approximately 78 years old, on average. DHG also ascertained the market penetration that would be required for Piper Trail to achieve stabilized occupancy of 95%. *Ex. K-4 at 21-22, 24-39; Tr. at 119.*
39. In analyzing the Piper Trail project's feasibility, █████ used a proposed pricing model where residents would obtain a license to occupy a cottage by paying an entrance fee, part of which would be refundable. The refund percentage was 80% or 90%, depending on whether the resident was part of Piper Trail's "Founder's Club," i.e., a resident who had reserved a unit (with deposit) before construction began. Lutheran adopted this option. Lutheran does not pay residents any interest on the refundable portion of the entrance fees. It holds the obligation for those fees as a liability on its balance sheet and refunds them out of its operating account. It treats second-generation entrance fees (entrance fees from new occupants after a cottage is re-occupied) the same way. Lutheran recognizes the non-refundable portion of each entrance fee as income based on the resident's life-expectancy. *Exs. 118 at ¶ 31, A at 40-41, F, K-4 at 10-12; Tr. at 146, 165-68, 267-77, 293-97, 327.*
40. █████ and Lutheran also envisioned that some cottages would be available for occupancy by paying a non-refundable "admission fee." That option was for people who wanted to

pay a lower fee up front, with a higher monthly service fee. Ultimately, nobody chose it, and Piper Trail no longer offers it as an option. *Exs. A at 40-42, F, K-4 at 10-12; Tr. at 327.*

41. The entrance and admission fees varied based on which of the nine cottage floorplans a resident reserved. The lowest entrance and admission fees under ██████ assumptions were for Astor and Bluestem cottages (\$197,500 entrance fee or \$45,000 admission fee). The highest were for Tall Seed cottages (\$325,000 entrance fee or \$75,000 admission fee). For waterfront cottages, Lutheran charged an additional \$30,000 premium. In addition to entrance fees, residents paid a monthly service fee, which again varied based on the cottage floor plan. Those monthly fees ranged from \$1,400 to \$1,950 (if any residents had chosen the admission-fee option, those monthly fees would have been higher). *Ex. K-4 at 10.*
42. ██████ also found that potential residents of independent-living facilities often use proceeds from the sale of their existing homes to pay entrance fees. It therefore researched the days on market and sale prices for homes in Piper Trail's primary market area. Piper Trail's entrance fees were all higher than the 2018 weighted average sale price of \$171,333. Some of the residents who ultimately bought licenses at Piper Trail sold their homes, while others did not. *Exs. B at 31-41, K-4 at 23.*
43. As Lutheran continued to accept reservations, the cottage mix changed slightly from ██████ assumptions. Lutheran also changed the entrance and monthly fees. By November 2020, the low-end entrance fees had increased to \$225,000, the high end had risen to \$340,225, and the waterfront premium had jumped to \$50,000. Similarly, the range of monthly fees rose to a range of \$1,575 to \$2,100. The monthly fees were within the range of those charged for duplexes or cottages by the comparable facilities that ██████ examined. And Kiefer, who is Lutheran's president and CEO, described those fees as being "what people are willing to pay," which he acknowledged "[f]eels like market." Lutheran similarly examined its entrance and monthly fees periodically throughout the

term of the project. It increased the entrance fees to match the market. *Exs. A at 49-55, F; K-4 at 24-25; Tr. at 33, 227-28.*

44. Lutheran both anticipated spending, and actually spent, hundreds of thousands of dollars to market Piper Trail. It entered into a [REDACTED] agreement with a marketing firm to provide strategic communications and marketing services for the project. Over the 12 months ending on August 31, 2021, Lutheran spent more than [REDACTED] to advertise Piper Trail on radio and television. According to Kiefer, those expenditures were necessary to compete in the independent-living market. They started out in-line with what he has seen for similar projects but increased because of the global pandemic that began in 2020. He anticipated they would decrease significantly now that the cottages are fully occupied. *Ex. B (Kiefer deposition) at 77-78, 85-86, L at Bates Stamp 2644; Ex. K-4 at 16.*

45. [REDACTED] projected that Lutheran would finance its strategic-planning initiatives largely through the following tax-exempt private placement bonds:

Fund Source

Series 2019 A Long-term Bond
Series 2019 B Entrance Fee Bond
Series 2019 C Refunding Bond
Total Private Placement Bonds
Equity Contribution
Total Source of Funds

[REDACTED]

Lutheran was to use the Funds as follows:

Piper Trail Project Costs
Refinancing Existing Loans
Funded Interest
Cost of Issuance and other Costs
Total use of Funds

[REDACTED]

Exs. 118 at ¶¶7-9, K-4 at 13.

46. The Series A and B bonds were structured as draw-down bonds. The maximum amount for the Series A bond [REDACTED] ended up being lower than [REDACTED] had projected. The

Series B bond was for the projected amount and carried 3.32% interest. Principal payments were not scheduled to begin until May 1, 2024. Lutheran originally planned to prepay its debt under the Series B bond through entrance fees. Because construction was delayed by the pandemic, the entrance fees that Lutheran had collected were insufficient to fully retire the bond. So Lutheran used funds from its operating account to make up the difference, effectively loaning the money to the Piper Trail project. Lutheran later transferred money from Piper Trail's entrance-fee escrow account to Lutheran's operating account to repay the loan. Although Kiefer did not agree with this characterization, we find that Lutheran was essentially able to retire an interest-bearing debt for Piper Trail's construction through what amounted to an interest-free loan from Piper Trail residents in the form of entrance fees. *Ex. 23 at Bates Stamp 1113-14; Ex. 118 at ¶¶11-34; Tr. at 73, 165-68, 293-97, 327.*

47. Based on its various assumptions, including that Piper Trail would achieve stabilized occupancy of 95% by March 2021, ██████ made financial projections about the project's operating margins and financial viability. It projected that Piper Trail would have an annual debt service coverage ratio of ██████ days of cash on hand at the end of 2023, meaning that Piper Trail could cover its debt ██████ times over and still have ██████ days cash on hand. ██████ performed various sensitivity analyses to determine what would happen if its assumptions about stabilized occupancy were overly optimistic. In one analysis, it assumed that stabilized occupancy was only 85%. In that scenario, the debt service coverage ratio would be ██████ with ██████ days cash on hand. ██████ also analyzed what the "breakeven" occupancy level would be, meaning the occupancy level at which Piper Trail would have zero days of cash on hand. It determined that the breakeven level was 36.4%. *Ex. K-4 at 44-45; Tr. at 234-35.*

48. Prospective residents at Piper Trail can reserve a cottage by completing a reservation agreement and paying a deposit equaling 10% of the entrance fee. Upon being notified that their cottage is ready for occupancy, residents have 90 days to pay the balance of their entrance fee, enter into a residency agreement, and provide Lutheran with related

documents showing that they qualify for residency. As part of that process, prospective residents must fill out a residency application disclosing their income, assets, and liabilities. Lutheran does not offer any financial assistance to prospective residents who cannot afford to live at Piper Trail, although it does refer them to other Lutheran-owned facilities if it determines that those facilities meet their needs. *Exs. A at 101, B at 31-32, D, E-4.*

49. The residency agreement has changed slightly over time. The agreement from 2020 lays out various admission requirements, including that the resident (or in the case of couples, at least one member of the couple) must be at least 55 years old at the time of occupancy. Residents must be able to live independently, although Piper Trail views that concept broadly. They must also have assets and income sufficient to pay their obligations, including the entrance fee and monthly fees. If approved by Lutheran and executed by the parties, the residency agreement gives residents a revocable license to occupy the cottage, the right to use the community's common areas and amenities, and the ability to participate in programs and receive other services offered at Piper Trail. It also gives residents who develop the need for a higher level of care priority access to receive services at another Lutheran facility. *Ex. E-4; Tr. at 119-25, 195-97; see also, Tr. at 99-100.*
50. Under the agreement, Lutheran provides most basic appliances and utilities. It maintains lawns and all common areas. It also maintains and repairs the cottages, furnishings, appliances, and equipment. Lutheran reserves the right to charge monthly interest at 1.5% on any delinquent payments, although it has not done so. The agreement also calls for residents to indemnify Lutheran for injuries to themselves or their guests, excluding only injuries caused by Lutheran's intentional or reckless acts. *Ex. E-4; Tr. at 303-04.*
51. Residents can terminate the agreement for any reason and will receive the refundable portion of their entrance fee within 30 days of the earliest of either (1) Lutheran getting a new entrance fee for the cottage that the resident has vacated, or (2) the cottage having

been vacated for 12 months.¹ Those provisions are the industry standard for independent-living facilities. Piper Trail can also terminate the agreement at any time based on specified circumstances, including where residents fail to pay any fees or charges. As of the hearing date, Lutheran had not terminated any residency agreement for a failure to pay fees. But there is no evidence that any residents had failed to pay fees. Only one resident has vacated a cottage, and it took Lutheran only two weeks to resell the occupancy license and get a new entrance fee. *Exs. A at 110, B at 34-35, E-4; Tr. at 303-04.*

52. In April 2022, Lutheran approved its Policy for Financial Assistance for Residents, which Kiefer referred to as its “benevolence policy.” The policy applies to all of Lutheran’s facilities, and it codifies Lutheran’s historical practice. Under the benevolence policy, if residents can no longer pay the agreed monthly fees in their leases or residency agreements, they can apply for financial assistance from Lutheran. In doing so, residents must disclose their income and all assets worth more than \$500. Historically, if residents in Lutheran’s facilities had financial need, Lutheran looked for ways to help them use their own resources, including looking at different places for them to live, such as a smaller apartment. Although Kiefer explained that the process could also entail reducing rates to an amount residents could afford, he did not give any examples of Lutheran having done so. He also acknowledged that if a Piper Trail resident needed financial assistance, Lutheran would provide it through the refundable portion of the resident’s own entrance fee. Because Piper Trail is new, none of the residents have needed assistance under the policy yet. *Exs. 27, 32; Tr. at 125-29, 149-156, 193, 289, 310.*

53. In going forward with the project, Lutheran set out to design a community that allowed residents to age in place. As Kiefer explained, aging in place is a concept that emphasizes people being able to stay in their homes as long as they can. Over the last 10 years, there has been a push from the federal government (through Medicaid and

¹ The refundable portion of the Entrance Fee was higher than 80% if the residency agreement was terminated within one-year of occupancy. *Ex. E-4 at 8-9, Schedule 1.*

Medicare) and the State of Indiana to emphasize providing community-based services to people in their homes. Kiefer believes that people who are able to age in place in an independent-living setting like Piper Trail are less likely to use Medicaid and Medicare benefits, because Lutheran helps them stay healthier longer. But he did not offer any data to show that. *Tr. at 91-92, 97-98, 175-76.*

54. Piper Trail's architectural design was intended to help meet residents' physical, social, and environmental needs. Several design elements promote social interaction among the residents as well as between the residents and other members of the Fort Wayne community:

- The cottages are largely built in clusters or "pockets" around community greens.
- An extensive set of sidewalks loops through the greens and all around the campus, ultimately connecting everyone to the clubhouse, where all mailboxes are housed and where various social events and activities occur.
- The sidewalks have ample places for rest, and they connect to two Fort Wayne trail systems.
- The cottages' porches are closer to each other than they would normally be in a planned community.
- The dining and kitchen spaces are toward the front of the cottages so the occupants can see other residents walking on the sidewalks.

The cottages are built to accommodate the physical needs of seniors. They are "zero entry," meaning that they are flat and that residents do not have to use steps or ramps to enter. They also have various other design features intended to accommodate wheelchairs and other mobility devices. *Exs. 1-3, 25-26, 36; Tr. at 84-91, 346-60.*

55. To encourage active lifestyles, Lutheran offers programs and group activities at Piper Trail. They include things like sporting events, social hours, exercise classes, euchre and dice games, and movie nights. Lutheran also partners with various organizations to teach classes on a range of subjects such as art, cooking, and financial awareness. The activities largely take place in the clubhouse. Lutheran employs a concierge at Piper

Trail, who residents may contact for help with various issues, such as arranging transportation and directing staff to cottages for maintenance issues or assistance with minor tasks, like hanging a picture. Residents receive updates about events, programs, and other issues through the Connected Living computer application. They can also use that application to communicate with each other and with Piper Trail's staff. The application allows staff to check on residents' welfare and to send out alerts in the event of an emergency. *Tr. at 112-14, 129-30, 133-45.*

56. For additional fees, residents can access a variety of services, including the clubhouse's \$15/mo. "bistro club," educational resources through local colleges, and medical services. Residents may even request personal services in their own cottage, such as physical therapy, meal preparation, and medicine checks. Those additional services are provided at market rates. Lutheran will also help residents who need—and can afford—skilled nursing care arrange for that service in their cottages, as long as it can be done safely. *Exs. A at 60, (deposition Ex. C at Bates Stamp 914-15); Exs. 32, 37-38; Tr. at 99, 112-14, 133-43, 148, 214-16, 222.*

V. CONCLUSIONS OF LAW

57. Although tangible property in Indiana is generally taxable, the Legislature has exercised its constitutional power to exempt certain types of property. *Hamilton Cty. Prop. Tax Assessment Bd. of App. v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). A taxpayer bears the burden of proving it is entitled to an exemption. *State Bd. of Tax Comm'rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Because exemptions relieve properties from bearing their share of the cost of government services, they are strictly construed against taxpayers and in favor of the State. *Indiana Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). Worthwhile activities or noble purposes alone do not suffice. Rather, a taxpayer must show that the property is being used to provide a benefit that justifies the loss of tax revenue. *See, e.g., Dep't of Local Gov't Fin. v. Roller Skating Rink Operators Ass'n*, 853 N.E.2d 1262, 1265 (Ind. 2006).

58. Lutheran claims a charitable exemption under Indiana Code § 6-1.1-10-16(a), which exempts all or part of a building that is owned, and is exclusively or predominantly occupied and used, for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3(c). That exemption extends to a tract of land on which an exempt building is situated, as well as to parking lots and other structures that serve the exempt building. I.C. § 6-1.1-10-16(c)(1)-(2). It also extends to personal property that is owned and used in such a manner that it would qualify for exemption if it were a building. I.C. § 6-1.1-10-16(e).

59. The Tax Court has emphasized that there is no *per se* charitable-purpose exemption. Instead, exemption claims stand on their own facts. *Tipton Cty. Health Care Found., Inc. v. Tipton Cty. Ass'r*, 961 N.E.2d 1048, 1052 (Ind. Tax Ct. 2012). A property qualifies for exemption “only where the taxpayer provides evidence . . . that shows 1) relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general[,] and (2) a benefit sufficient to justify the loss of tax revenue inures to the public through its acts.” *St. Mary’s Bldg. Corp. v. Redman*, 135 N.E.3d 681, 689 (Ind. Tax Ct. 2019) (emphasis in original). The showing of a charitable purpose ensures that the benefit the exemption confers “both relieves the government of a cost that it would otherwise bear and does not primarily serve a commercial profit motive.” *Id.* at 685 (quoting *Hamilton Cty. Ass’r v. SPD Realty, LLC*, 9 N.E.3d 773, 775 (Ind. Tax Ct. 2014)).

A. Because Lutheran conceived of, planned, and operated Piper Trail in a commercial manner, it does not qualify for a charitable-purpose exemption.

60. Lutheran claims that it uses Piper Trail for a charitable purpose because it relieves a government burden by helping Piper Trail’s residents age in place. Lutheran points to the way it consciously designed Piper Trail to promote social interaction and to the various programs and services it offers residents to help them live longer, healthier, happier lives in place rather than in an institutional setting. Lutheran argues that the benefits and

services it provides to Piper Trail's residents mirror those provided by the taxpayers in a trio of cases where courts found that independent- and assisted-living facilities qualified for charitable-purpose exemptions: *State Bd. of Tax Comm'rs v. Methodist Home for the Aged*, 143 Ind. App. 419, 241 N.E.2d 84 (1968); *Wittenberg Lutheran Vill. Endowment Corp. v. Lake Cty. Prop. Tax Assessment Bd. of App.*, 782 N.E.2d 483 (Ind. Tax Ct. 2003); *Raintree Friends Hous., Inc. v. Ind. Dep't of State Revenue*, 667 N.E.2d 810 (Ind. Tax Ct. 1996).

61. The Assessor responds that Lutheran failed to meet its burden of showing how it relieved any government burden. Instead, the Assessor argues that Lutheran charges fees that (1) are at market rates, (2) are sufficient to pay down its construction debt, cover expenses, and still have hundreds of days of cash on hand, and (3) are at a level that Lutheran has not shown a significant portion of Fort Wayne's elderly community can afford. Lutheran requires residents to show that they can afford Piper Trail's fees, and it reserves the right to terminate residency agreements where residents fail to meet their obligations. As for the *Methodist Home* trilogy, the Assessor argues (1) that those cases were decided before the Tax Court in *St. Mary's* set forth a new standard requiring taxpayers to affirmatively show how they have relieved a government burden, and (2) that they are otherwise distinguishable on their facts.
62. We largely agree with the Assessor. Indiana Courts have recognized that the aged have needs beyond the merely financial, and that addressing those needs may fit within the broad constitutional definition of charity contemplated by Ind. Code § 6-1.1-10-16(a) and its predecessors. Lutheran addresses the non-financial needs of its elderly residents through Piper Trail's architectural design as well as through various programs and services it provides. But it does so in a commercial, rather than a charitable, manner. In the final analysis, senior housing is not per se charitable simply because it is operated by a nonprofit entity. The record fails to support the proposition that Lutheran is providing a charitable service justifying a shift in the tax burden to the public.

1. As shown by the *Methodist Home* trilogy, addressing the non-financial needs of aging residents may, in some instances, qualify as charitable within the meaning of the exemption statute.

63. To explain our analysis, we begin with the *Methodist Home* Trilogy. In the first case, *Methodist Home*, the Indiana Court of Appeals upheld a trial court's order granting an exemption to a retirement home that included dwelling units, as well as dining, recreational, and medical facilities. *Methodist Home*, 241 N.E.2d at 85. The majority of occupants paid an entrance fee that was refundable on a sliding scale, although 25% paid no fee. To the extent they were financially able, residents also paid a monthly charge for their care, including meals. *Id.* at 85-86. The home maintained a medical annex and health center where as many as 20% of residents received "good care below cost." *Id.* The trial court found that the home was meeting needs that "gerontologists state must be provided the aging, namely: relief of loneliness, boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, attention to problems of health etc." *Id.* at 86.
64. The State Board of Tax Commissioners appealed the trial court's determination, arguing that a retirement home was only charitable to the extent it cared for the indigent. *Id.* at 422. The Court of Appeals disagreed, explaining that the then-existing general exemption statute² had to be understood in its broadest constitutional sense. *Id.* It pointed to decisions holding that charity need not be universal, and that charging fees did not necessarily disqualify a home for the aged from exemption when "it does not appear that the fees are more than sufficient to pay the expenses of maintenance or that the proprietors of the institution derive any profit therefrom." *Id.* at 88-89 (*quoting* Opinions of the Attorney General (1921) p. 438 and *citing* *City of Indianapolis v. The Grand Master, etc. of the Grand Lodge of Indiana*, 25 Ind. 518, 522 (1865), and *The Salem Lutheran Home Ass'n of the Bay Cites*, 2 CCH Tax Ct. Mem. 157, 159 (1943)).

² In relevant part, that statute exempted "[e]very building, or part thereof, used and set apart for . . . charitable purposes . . ." *Methodist Home*, 241 N.E.2d at 86 (*citing* Fifth Clause of Burns' Ind. Stat. Anno. § 64-201 (1961 Repl.)).

65. According to the Court,

It is now common knowledge that the aged require care and attention entirely independent of financial needs, and that present day humanitarian principles demand that those in their declining years have the opportunity to live with as much independence as their strength will permit, in as pleasant and happy surroundings as their finances will reasonably justify.

Id. In light of the historic broad construction of the term “charitable” and of the trial court’s findings of “the public need for such institutions,” the Court affirmed the grant of exemption. *Id.* at 90.

66. In *Raintree*, two housing corporations that operated “assisted living” or “congregate support” communities for people over 55 years old claimed that the communities were exempt from gross income, sales, and food and beverage taxes on grounds that they were operated exclusively for charitable purposes. *Raintree*, 667 N.E.2d at 811-12. The Tax Court found that the housing corporations provided a benefit to society by catering to the specific needs of their aged residents and by supplying “community, security and assisted living for those in need.” *Id.* at 815. The Court pointed to the corporations’ mission statements, which articulated goals of assisting residents in living as independently as possible for as long as possible, as well as to amenities and services that the communities offered to meet the needs of the aged. Those amenities and services included construction elements designed for the elderly as well as social functions and other programs, many of which involved people and groups from the greater community. The communities also offered support services—like assistance in dressing, bathing, taking medication, and making medical appointments—that residents could receive in their homes. *Id.* Some of the services were incorporated in the residents’ monthly fees, while others required additional fees. *Id.*

67. The Court cited to *Methodist Home* for the proposition that charging fees did not disqualify the activities as charitable because charities often must charge “reasonable and sufficient fees to cover the cost of their operation.” *Id.* In that vein, the Court explained that the retirement communities provided assisted living “for persons who typically have

a small retirement plus social security funds which disqualifies them from government assistance, yet does not enable them to afford the services they need if purchased within the community.” *Id.* at 816. “Upon the facts of this case,” the Court found that the housing corporations were organized and operated exclusively for charitable purposes. *Id.*

68. Finally, in *Wittenberg*, the Tax Court granted a charitable-purpose exemption to 18 buildings containing residential units called “the Villas,” which were part of an integrated retirement community. That community also included a nursing home, an assisted living facility, and a chapel. *Wittenberg*, 782 N.E.2d at 484-85. The Villas, which were owned by a not-for-profit corporation affiliated with the Lutheran Church, offered amenities and services similar to those offered by the housing corporations in *Raintree*. *Id.* at 485. For additional fees, residents could purchase housekeeping and other services and could dine at the nursing home or assisted living facility. *Id.* They also could purchase assistance with daily activities and administering medication, and the integrated retirement community had a medical doctor who would see Villa residents for scheduled appointments. *Id.* Other health care professionals also had regular on-site office hours, and Villas residents could contact the round-the-clock nursing staff at the nursing home for any medical emergencies. *Id.*
69. Villas residents bought occupancy rights for set terms although the fee was refundable in the event of early departure. *Id.* The occupancy agreement provided that it would not be terminated solely for the resident’s inability to pay monthly fees if the resident established a need for special financial consideration that the corporation could provide without impairing the Villas’ ability to operate on a sound financial basis. *Id.* Villas residents had priority, subject to availability, to be moved to the assisted living or nursing home facilities within the retirement community. *Id.* at 486
70. The corporation moved for summary judgment to reverse the State Board’s determination denying an exemption. The Lake County PTABOA defended on grounds that because

the Villas did not cater to the ill or infirm, they amounted to nothing more than a traditional apartment complex. *Id.* at 487. The Tax Court disagreed, adopting the petitioner’s position that the Villas represented one element of a “continuum of care,” and that residents had a variety of services available to them which were not available to elderly people in their own homes. *Id.* Citing to *Raintree*, the Court reiterated that senior citizens have needs that are not exclusively financial. Because the Court found that the Villas met those needs, it granted summary judgement for the corporation. *Id.* at 488-89.

71. Also instructive is *Brothers of Holy Cross, Inc. v. St. Joseph Cty. Prop. Tax Assessment Bd. of Appeals*. While it was undisputed that the property in that case was used for senior housing, there was no evidence that additional services were provided for the tax year at issue. *Brothers of Holy Cross, Inc. v. St. Joseph Cty. Prop. Tax Assessment Bd. of Appeals*, 878 N.E.2d 548, 549-53 (Ind. Tax Ct. 2007). Had the law only required the provision of senior housing by a nonprofit entity, the Court would not have required additional evidence of “what services and activities” might justify a charitable exemption. *Id.* at 552.

2. Although Lutheran addressed the non-financial needs of Piper Trail’s residents, it did so in a commercial, rather than charitable, manner.

72. While we disagree that the Tax Court has changed the standard for a taxpayer to prove that it qualifies for a charitable-purpose exemption, we agree with the Assessor that Lutheran failed to show that it used Piper Trail for charitable purposes within the meaning of the exemption statute. As shown by the *Methodist Home* trilogy, providing seniors who otherwise might not have the means to easily age in place the opportunity to do so may, in some instances, qualify as charitable, at least where the taxpayer providing those services does so in a charitable—rather than a commercial—manner. But that is not what Lutheran has done with Piper Trail. Instead, Lutheran conceived of, planned, and operated Piper Trail in a commercial manner that was virtually indistinguishable from a for-profit developer or operator. It actively competed with other providers, most of which were organized for-profit, to offer a limited, relatively affluent segment of the

community the opportunity to age in place at Piper Trail instead of in their homes or at a competing facility.

73. In each of the cases in the *Methodist Home* trilogy, the owner showed more than that it was simply a nonprofit offering senior housing. The law requires more, and Lutheran has failed to make that showing.

a. Piper Trail actively competed with other providers for a share of the market of relatively affluent seniors.

74. Lutheran used Piper Trail to pursue commercial interests from the outset. It invested significant time and resources to investigate both the market for an independent-living facility on Fort Wayne's southwest side and its ability to capture a share of that market. Lutheran also lavished resources on marketing Piper Trail so that it could compete in, and capture its share of, the independent-living market. It spent hundreds of thousands of dollars on a marketing firm and on radio and television advertising in order to ultimately achieve full occupancy.

75. And the market share for which Lutheran competes does not include seniors with "a small retirement plus social security funds which disqualifies them from government assistance, yet does not enable them to afford the services they need if purchased within the community," like those contemplated by the Court in *Raintree*. *Raintree*, 667 N.E.2d at 816. To the contrary, the market Lutheran targets for Piper Trail consists of a comparatively small segment of seniors with sufficient assets to pay its market-priced entrance fees, which were well above the recent average sale price for single-family homes within the PMA, as well as sufficient income to pay its monthly service fees.

76. We recognize that, as the *Methodist Home* trilogy explains, charity need be neither exclusively financial nor universal. But the relative affluence of the recipients, and their corresponding ability to procure services that will allow them to live independently

wherever they choose to reside, is relevant. Indiana Courts have not held otherwise.³ Despite some of the broad language in *Methodist Home*, the Court of Appeals was responding to, and rejecting, the State Board of Tax Commissioners' argument that a retirement home is charitable only to the extent that it provides care to the indigent. That does not equate to a holding that the relative affluence of the residents is irrelevant. Indeed, the facility in *Methodist Home* catered partly to seniors who could not afford entrance fees.

b. Lutheran designed Piper Trail to generate substantial operating margins.

77. Piper Trail's fee structure and financing plan further highlights Lutheran's commercial purpose for the property. Rather than charging fees designed simply to cover Piper Trail's operating costs, Lutheran and █████ assumed market-based pricing models designed to give the project substantial operating margins. Indeed, █████ sensitivity analyses predicted that Piper Trail would easily be able to cover its debt and maintain hundreds of days of cash-on-hand even at occupancy levels well below what it anticipated as stabilized occupancy. Although Lutheran's pricing model evolved slightly from the original assumptions, Lutheran did not significantly reduce the fees it charged. In many cases, it increased those fees. We do not criticize Lutheran for conducting due diligence to assure that Piper Trail would not fail or become a drain on Lutheran's other more overtly charitable activities. But the focus on maximizing returns rather than providing affordable housing detracts significantly from its claims of a charitable intent for Piper Trail.

78. Lutheran claims that its operating margins merely accounted for ordinary and necessary costs, required reserves for interest expenses, amortization expenses, organizational overhead, and capital expenditures necessary to run the facilities at Piper Trail.

Petitioner's Brief in Response to Assessor's Post-Hearing Brief at 12. But the testimony

³ While footnote 7 in *Brothers of Holy Cross* suggests in dicta that evidence of the residents' "net worth" is irrelevant (878 N.E.2d at 553 n.7), the provision of housing to the indigent would certainly be relevant, as would the absence of such recipients.

from Kiefer that Lutheran cites does not support those specific claims. Instead, Kiefer generally testified (1) that Lutheran tried to keep construction costs low to be responsible and to generate margins that would allow it to sustain its mission for years to come, (2) that it would not last very long by charging below-market rates and that to require it to provide services at less than cost would be to “demand that nonprofits don’t exist,” and (3) that excess revenues from Piper Trail go back to Lutheran. But the question before us is whether the land and buildings were put to a charitable use—Lutheran’s use of the profits elsewhere is irrelevant to whether the activities at Piper Trail are charitable. *Tr. at 73-74, 158, 161-62.*

79. The facts in these appeals differ starkly from *Knox County Prop. Tax Assessment Bd. of Appeals v. Grandview Care, Inc.* 826 N.E.2d 177 (Ind. Tax Ct. 2005), a case that Lutheran cites in its reply brief. There, the Knox County PTABOA contested our determination granting an exemption for a nursing home and assisted-living facility. Among other things, the county PTABOA argued that the facility was used solely to generate a profit. *Grandview Care*, 826 N.E.2d at 184. But, as the Court explained in rejecting that argument, the county PTABOA offered no evidence to show that the owner charged residents fees that were more than necessary to pay its expenses or that it was profiting from the facility’s operation. Instead, it merely pointed to an operating expense—a \$17,0000 monthly management fee the owner paid to another entity to operate the facility—and claimed that was its proof. *Id.* The fundamental question in *Grandview* was whether the use of a for-profit contractor to manage and operate the facility would defeat the owner’s charitable purpose. That issue is not present here, and *Grandview* in no way departs from the *Methodist Home* trilogy.

80. Similarly, in an effort to achieve its desired margins, Lutheran financed more than half the cost of Piper Trail’s construction through what amounted to an interest-free loan from residents in the form of entrance fees. Although Lutheran carries the refundable portion of the fees as a liability on its balance sheet, it is unlikely to realize that liability in the foreseeable future. With the possible exception where Lutheran might allow financially

distraught Piper Trail residents to use some of the refundable part of their entrance fees to pay monthly fees, the only way Lutheran will pay out a refund without already receiving a new entrance fee for the same cottage is if it cannot find a new occupant within one year. It has been established that the refundable entrance-fee arrangement is standard in the industry, including for-profit companies. Allowing residents to use their own money to pay monthly fees does not make Piper Trail charitable. *See Grandview*, 826 N.E.2d at 180 (noting that the owner “will not turn a resident away due to an inability to pay the monthly fee.”).

81. Lutheran also reserved the right to terminate the residency agreement if residents failed to pay fees. We recognize that in *Raintree*, the Tax Court excused a provision allowing the taxpayer housing corporations to terminate leases for failure to pay by pointing out that the corporations had never done so. Lutheran similarly has never terminated a Piper Trail residency agreement for failure to pay. But given the lack of evidence showing that any residents had failed to pay their fees (as opposed to simply being delinquent), that fact carries little weight. And while Lutheran had an established benevolence policy, Kiefer acknowledged that Lutheran would simply allow residents to use their own money in the form of the refundable portion of the entrance fee that Piper Trail already carries as a liability. That hardly counts as a policy by Lutheran to forego its rights under the residency agreement.
82. Thus, while Lutheran offers many amenities and services that are the same as, or similar to, those offered by the taxpayers in the *Methodist Home* trilogy, it does not do so in a charitable manner. Each of those cases was decided on its facts, and in none of them did the taxpayer operate its facility in the overtly commercial manner that Lutheran conceived of, built, and operated Piper Trail.⁴ The Tax Court has repeatedly held that

⁴ Lutheran also cites to our decisions in *Oak Village, Inc. v. Knox Cty. Ass'r*, pet. no. 42-002-14-2-8-00001 etc. (IBTR Oct. 20, 2017) and *Greencroft Goshen, Inc. v. Elkhart Cty. Ass'r*, pet. no. 20-035-08-2-8-0001 etc. (IBTR Aug. 6, 2010), pointing out that in *Greencroft*, we found that an independent-living community was entitled to a charitable-purpose exemption. Lutheran highlights the fact that the community charged entrance fees on 80% refundable leases as high as \$352,500-\$555,500 (although they came with a healthcare discount). Our prior determinations have no precedential value. *Pulvie Homes of Ind., LLC v. Hendricks Cty. Ass'r*, 42 N.E.3d 590, 594 (Ind. Tax Ct. 2015). In any case, we do not base our determination in these appeals on any single fact, such as the

using a property to accomplish noble deeds does not suffice to qualify for an exemption. The property must be used in a way that differs from the normal activities of mankind in general and cannot be operated in a manner indistinguishable from a for-profit provider. The purpose of a charitable exemption is to encourage charitable activities, not simply to eliminate property taxes as an expense item for any senior housing developer that happens to be organized not-for-profit.

c. We give little weight to Lutheran's status as a nonprofit corporation, its operation as a CCRC, or its tax-exempt status under section 501(c)(3).

83. Finally, Lutheran relies on its status as a charitable nonprofit corporation. Taken to its logical conclusion, Lutheran's position would allow an entity to exempt almost any commercial use of a property as long as the entity distributes any net revenue to charitable or other exempt activities. That stretches the term "charitable" beyond even its broadest constitutional sense.

84. Lutheran argues that Ind. Code § 23-2-4 requires that "every single dollar of revenue a public charity receives must be used for its charitable purpose." *Petitioner's Response Brief* at 10. That chapter of the Indiana Code does not address public charities or even exclusively deal with nonprofit entities. Instead, it regulates CCRCs, i.e. independent-living facilities and certain other facilities that charge entrance fees and periodic charges. I.C. § 23-2-4-1 and -2. It is designed to protect people who reside at those facilities by, among other things, requiring the facilities to provide certain services and remain financially viable. For example, the chapter requires that providers use entrance fees and income earned on those fees "only for purposes directly related to the construction, maintenance, or operation of that particular [CCRC]." I.C. § 23-2-4-12. It does not similarly restrict a provider's use of monthly or other periodic fees. Moreover, the Legislature has not designated CCRCs as being exempt from property taxes through that

level of entrance fees that Lutheran charged, but instead on the totality of evidence showing Lutheran's commercial purpose. Neither of the cited cases had similar evidence showing the taxpayer's commercial purpose.

statute, and Lutheran cannot short-circuit the exemption analysis under Ind. Code § 6-1.1-10 by citing to it.

85. We similarly give little weight to the fact that the IRS recognized Lutheran as exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. First, the IRS made that determination years before Lutheran developed Piper Trail. Second, as the Tax Court explained in *St. Mary's*, a property's "entitlement to the charitable purposes exemption is not demonstrated through the 501(c)(3) statuses of its owner and/or its tenants." *St. Mary's*, 135 N.E.3d at 689. Instead, a property's exemption is tied to its use. *Id.*

VI. CONCLUSION

86. We find that Lutheran failed to prove that it owned, and predominantly occupied and used, the subject real and personal property⁵ for charitable purposes. We therefore find that the property is 100% taxable for each year on appeal.



Chairman, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review

⁵ While Lutheran claimed an exemption for personal property on its exemption applications and its Form 132 petitions, it did not specifically identify that property. Nor did it address that claim at the hearing.

- 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 of the date of this notice.

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