

REPRESENTATIVE FOR PETITIONER: Darwinson Valdez, Wilkinson, Goeller, Modesitt,  
Wilkenson & Drummy, LLP

REPRESENTATIVE FOR RESPONDENT: Kevin Gardner, Vigo County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Terre Haute Area Association of Realtors	)	Petition No.:	84-002-21-2-8-00339-21
	)		
Petitioner,	)	Parcel No.:	84-06-27-454-006.000-002
	)		
v.	)	County:	Vigo
	)		
Vigo County Assessor,	)	Assessment Year:	2021
	)		
Respondent.	)		

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Date 12/10/2021

**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:

**Findings of Fact and Conclusions of Law**

**I. Introduction**

1. Indiana's general property-tax-exemption statute (Ind. Code § 6-1.1-10-16(a)) applies to property that is owned for educational, literary, scientific, religious, or charitable purposes and occupied or used predominantly for those purposes. To qualify as charitable or educational, an activity must provide a public benefit sufficient to justify the loss in tax revenue. Educational and other services that a trade association provides to further the business and professional interests of its members generally do not qualify. Because several of the activities that the Terre Haute Area Association of Realtors offered at the subject property furthered the private and professional interest of its

members, and the Association failed to show that other arguably charitable or educational activities predominated over those non-exempt uses, we find that the property was not exempt.

## **II. Procedural History**

2. The Association applied for an exemption for its real property located at 1616 S. 13<sup>th</sup> Street in Terre Haute. On the portion of the application asking the taxpayer to identify the basis for its exemption claim, the Association checked the box for “Educational – pursuant to IC 6.1.1.10-16.” The Vigo County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination denying the exemption and finding that the property was 100% taxable.
3. The Association responded by timely filing a Form 132 petition with us. On that petition, the Association checked the boxes for both educational- and charitable-purposes exemptions. The petitioner listed some activities as charitable and others as educational.
4. On September 15, 2021, our administrative law judge, Erik Jones (“ALJ”), held a telephonic hearing on the Association’s petition. Neither he nor the Board inspected the property. Darwinson Valdez appeared as counsel for the Association. Vigo County Assessor Kevin Gardner represented himself. Gardner, Tracey Malooley, and Thomas Chiado were sworn as witnesses and testified.
5. The Association offered the following exhibits:  
  
Petitioner Exhibit A: Form 132 petition,  
Petitioner Exhibit B: PTABOA determination,  
Petitioner Exhibit C: Form 136 application,  
Petitioner Exhibit D: June 14, 1941 Certificate of Incorporation and Articles of Incorporation for Terre Haute Board of Realtors, Inc.,  
Petitioner Exhibit E: June 10, 2019 Entity Report for Terre Haute Area Association of Realtors, Inc.
6. The Assessor offered no exhibits.

7. The official record also includes the following: (1) all petitions and other documents filed in this appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

### **III. Objections**

8. The Assessor objected to Exhibit A, a copy of the Association's Form 132 petition, on procedural grounds, arguing that the petition seeks an exemption based on the property's use for charitable purposes, while the Association's exemption application only alleged educational use. We overrule the objection. The petition is a procedural document that is part of the record regardless of whether it is offered as an exhibit. As discussed below, the Assessor's argument that the Association waived any claim for a charitable-purposes exemption is moot. Ultimately, this issue has no impact on the outcome of their determination.

### **IV. Findings of Fact**

9. The Association, which apparently is also known as "The Terre Haute Board of Realtors, Inc." and "The Terre Haute Board of Realtor Association," is a nonprofit corporation. As shown by its articles of incorporation, the Association was formed for various purposes tied to promoting the real estate business and safeguarding those who participate in that business, including property owners:

Section 1. To unite those engaged in the recognized branches of the real estate business in this community for the purpose of exerting a beneficial influence upon matters affecting the real estate business and related interests.

Sec. 2. To provide a unified medium for real estate owners and those engaged in the real estate business whereby their collective and individual interests may be safeguarded and advanced.

Sec. 3. To promote and maintain the high standards of conduct in the transacting of the real estate business expressed in the Code of Ethics of the National Association of Real Estate Boards; to enforce that Code among its members in their dealing with one another and with the public; and to adopt that Code as the Code of Ethics of the Board.

Sec. 4. To protect and promote the welfare of real estate, real estate ownership and home ownership[.]

Sec. 5. To designate, for the benefit of the public, those persons and businesses in this community authorized to use the trade term “Realtor” in this community as prescribed and controlled by the National Association of Real Estate Boards.

*Pet’r Exs. D-E; see also, Malooley testimony; Valdez argument* (referring to the Association as “The Terre Haute Board of Realtor Association”).

10. While the Association’s witnesses did not specifically say whether membership is limited to those engaged in the real estate business, their testimony strongly implied that conclusion. So do the articles of incorporation, which refer to active members having the right to use the term “Realtor” and require both active and associate members to maintain high standards of conduct in their real estate activities. We find that all or substantially all the Association’s members are engaged in the real estate business. *See Malooley and Chiado testimony; Pet’r Ex. D.*
11. The Association uses its property for various purposes. It conducts its administrative operations at the property, including processing membership fees and paying expenses. The Association also hosts various events at the property, many of which offer members training on different aspects of the real estate profession. The topics include things such as complying with the National Association of Realtors’ code of ethics; updating members about changes in laws governing real estate and the real estate profession; completing required transactional forms; and identifying what realtors should do when using computers systems and the internet, including when dealing with out-of-state clients. At least some of the training is offered by instructors who are licensed by the State of Indiana, the “National Association,” or the Appraisal Institute. *Malooley and Chiado testimony; Pet’r Ex. C.*
12. Some of the training may comply with State-mandated continuing education requirements, although the Association offered little information about the specific subject matter of any individual event. Indeed, there is no evidence to show the duration or frequency of any professional training event during 2020. The frequency of the

professional training is driven by need. There are at least a couple of trainings every year and as many as four or five in some years. The National Association of Realtors requires ethics training at least every two years. *Malooley and Chiado testimony; Pet'r Ex. C.*

13. In addition to that professional training, the Association also tries to offer training on issues of interest to home buyers, such as how to improve credit scores or get a loan. And it holds public forums on housing issues, such as eviction. As with the professional training, the public training is driven by the need. When the Association gets feedback from realtors that the public does not understand an issue, it will set up a training. In addition, the Association uses its property to assist people who have complaints about realtors. The Association helps them fill out paperwork and holds hearings on the complaints, which may lead to discipline. The National Association of Realtors mandates those hearings.<sup>1</sup> Even without a complaint, if the Association discovers that realtors have been abusing the home-buying process, it will schedule a training to address that issue. *Malooley and Chiado testimony.*
14. The Association also hosts monthly meetings and “power lunches” for members at the property. There is nothing to show what happens at the power lunches beyond the fact that they have a training component, such as training on personal safety or on mold remediation. The lunches had to be “put in abeyance” because of the COVID-19 pandemic, so it is unclear how many were held at the property during 2020. *Chiado testimony.*
15. Finally, the Association hosts events, such as silent auctions or luncheons, to raise money for what Chiado characterized as charitable causes. Like the training events, we have no information about how frequently they occurred, if at all, during 2020. Chiado gave one example from “a couple of years ago,” where the Association redecorated and repainted three childrens’ homes in Vigo County. *Malooley and Chiado testimony.*

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<sup>1</sup> In his opening statement, the Association’s counsel represented that the hearings were mandated by the State. Chiado, however, testified that the National Association of Realtors mandates the hearings.

16. The Association forbids members from using the property to negotiate any for-profit transactions or purchase agreements. It also rejects requests from realtors to rent space in the building because the Association exists to help all realtors and does not favor any one realtor or realty company over another. *Malooley and Chiado testimony*.

## V. Conclusions of Law and Analysis

### A. The Association failed to prove that it occupied and used the property predominantly for exempt purposes.

17. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton Cnty. 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, Ind.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Every exemption appeal “stand[s] on its own facts,” and it is the taxpayer’s duty to walk the Board through the analysis. *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cnty. Ass’r*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009).

#### 1. To qualify for exemption, a property must be owned for exempt purposes and be used or occupied predominantly for those purposes.

18. The Association claims an exemption under Indiana Code § 6-1.1-10-16(a). When read together with Ind. Code § 6-1.1-10-36.3(c), that statute provides an exemption for all or part of a building that is owned for educational, literary, scientific, religious, or charitable purposes and is used or occupied predominantly for those purposes. I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3(c); *Jamestown Homes*, 914 N.E.2d at 15. The exemption generally extends to land on which an exempt building is situated and to personal property used in the same manner. I.C. § 6-1.1-10-16(c), (e).

#### 2. Where property is not used exclusively for exempt purposes, a taxpayer must offer evidence comparing the relative amounts of time that a property was used for exempt and non-exempt purposes.

19. Under the predominant-use test, a property must be occupied or used for exempt purposes during more than 50% of the time that it is occupied or used in the year that ends on the assessment date, which in this case was January 1, 2021. I.C. § 6-1.1-10-36.3; I.C. § 6-1.1-2-1.5(a)(2). A property is 100% exempt if it is exclusively occupied or used for exempt purposes or if it is predominantly occupied or used for exempt purposes by a church, religious society, or nonprofit school. I.C. § 6-1.1-10-36.3(c)(2). Otherwise, a property qualifies only for an exemption that “bears the same proportion to the total assessment” as the amount of time the property’s exempt use bears to its total use. I.C. § 6-1.1-10-36.3(c)(3). Where a property is not used exclusively for exempt purposes, a taxpayer must offer evidence comparing the relative distribution of time between exempt and non-exempt uses. *See Hamilton Cnty. Ass’n v. Duke*, 69 N.E.3d 567, 572 (Ind. Tax Ct. 2017) (“[F]ailure to provide the Indiana Board with a comparison of the relative amounts of time that a property was used for exempt and non-exempt purposes is fatal to a claim of exemption under Indiana Code § 6-1.1-10-36.3.”).

**3. The Association used the property for several non-exempt purposes that furthered the private interests of its members rather than providing a public benefit.**

20. The Association claims that it used the property for both educational and charitable purposes, although the Assessor argues that the Association waived any claim of charitable use by failing to raise that claim on its exemption application. We need not address the Assessor’s waiver argument, however, because we find that the Association failed to prove that exempt uses, whether charitable or educational, predominated over non-exempt uses during the calendar year leading up to the assessment date.

21. 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. *Indianapolis Osteopathic Hospital, 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 it uses the property to provide a benefit justifying the

lost 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).

22. Keeping that in mind, a charitable purpose will generally be found if: “(1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the public sufficient to justify the loss of tax revenue.” *College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 906 (Ind. Tax Ct. 2006).
  
23. Exemptions for educational use are similarly tied to providing a public benefit. *Roller Skating Rink Operators Ass'n*, 853 N.E.2d at 1265. In *Roller Skating Rink Operators*, a nonprofit trade association that served skating-center owners and operators sought an educational-purposes exemption. *Roller Skating Rink Operators*, 853 N.E.2d at 1263-64. The trade association’s purpose was to “inform, educate and foster the professional development of . . . roller skating rink owners and coaches” and to “create opportunities for networking and promote roller-skating as a lifetime sport and safe recreational activity.” *Id.* 1263-64. It offered a curriculum that included the “study of hospitality, merchandising, customer service, personnel management, event planning and promotion, contracts and negotiations, risk management and legal issues, budgeting and finance, and advertising.” *Id.* at 1263. Participants could receive continuing education credits at the University of Wisconsin upon completing the curriculum. *Id.* The trade association used the property at issue to develop and store the materials for the curriculum. *Id.*
  
24. The State Board of Tax Commissioners had originally denied an exemption to the trade association, but the Tax Court reversed. On review, the Indiana Supreme Court reversed the Tax Court. The Supreme Court generally affirmed prior caselaw recognizing (1) that exemptions are available to private institutions that provide courses related to courses found in tax-supported public schools but not necessarily provided by those schools, and (2) that a taxpayer need relieve the State’s burden only “to some limited extent.” *Id.* at

1266-67 (citing, e.g., *Trinity Sch. of Natural Health v. Kosciusko Cnty. Prop. Tax Assessment Bd. of App.*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003)). *Id.*

25. The Court distinguished Rolling Skating Rink Operators because, the attendees in those previous cases were not “largely or exclusively affiliated with the presenter,” and the courses did not further their business interests. *Id.* at 1266. As the Court explained, education that “primarily serves the private interests of an organization’s members does not warrant public subsidy” because it does not meet the “public benefits test.” *Id.* In reversing the Tax Court, the Supreme Court relied on the State Board’s finding that the trade association’s educational training was merely incidental to the association’s promotional activities and therefore did not confer a public benefit. *Id.* at 1266-67.
26. More broadly, the Court held that “programs of a trade association directed to the development of the private businesses of its members, though ‘educational’ in some sense, do not qualify for property exemption as educational activities.” *Id.* 1263. While many of the marketing and business concepts taught at the trade association’s property mirrored those taught at tax-supported institutions, “[t]he same could be said of the professional development and training provided by virtually any trade association.” *Id.* at 1266.
27. Applying the statutes and relevant case law to the facts at hand, we find that the Association failed to prove that it owned the property for exempt purposes or that it occupied or used the property predominantly for such purposes. The Association’s members are engaged in the real estate business. Its articles of incorporation show that it was formed to exert “a beneficial influence upon matters affecting” that business and related interests. The Association therefore exists, at least in significant part, to promote the private business interests of its members. As explained by the Court in *Roller Skating Rink Operators*, such a private promotional purpose does not meet the public-benefit test. The Association’s articles also identify some at least nominally public purposes, like safeguarding and advancing the interests of homeowners and enforcing a national code of

ethics. But fostering confidence in the professionalism of realtors and policing their conduct also furthers the interests of the profession and of the Association's members.

28. Because the Association used the property for its own administrative purposes, such as processing membership dues, and the Association exists in significant part to further the private, professional interests of its members, we find that at least some part of the Association's administrative use was for non-exempt purposes.
29. Even if the Association's administrative use of the property was only incidental (which the Association offered no evidence to support), the Association failed to show that several other uses it identified furthered charitable or educational purposes within the meaning of the exemption statute.
30. The Association claims that its training programs relate to courses offered in tax-supported schools and therefore qualify as educational. In keeping with *Roller Skating Rink Operators*, however, we begin with the premise that educational programs offered by a trade association to its members generally do not qualify and that the Association needed to show how its educational activities differ from the "professional development and training provided by virtually any trade association." *Roller Skating Rink Operators*, 853 N.E.2d at 1263, 1267; *see also*, *6787 Steelworkers Hall, Inc. v. Snyder*, 71 N.E.3d 97, 101, 104 (Ind. Tax Ct. 2017) (upholding Board's finding that labor union's activities, which included healthcare, training, and educational initiatives primarily benefitted members and were not exempt educational or charitable uses). The Association gave only vague descriptions of the various training courses it offered. Some of those descriptions appear to be geared solely toward the professional interests of its members, such as trainings on how to use computers when dealing with out-of-state clients.
31. Nor do we find that offering training on the National Association of Realtors' code of ethics necessarily promotes public interests over professional development or industry concerns. Fostering public confidence in realtors' ethics, both through training and

through the internal disciplinary hearings the Association holds at the property, promotes the business interests of the Association's membership.

32. To the extent any specific member-focused training events served to fulfill State-mandated continuing education requirements, however, those events arguably differ from the types of training and development offered by virtually any trade association and might qualify as educational within the meaning of the exemption statute. But the Association failed to offer any evidence to show which, if any, training events during 2020 fulfilled State-mandated requirements. Some of the public training might also meet the public-benefit test, although educating potential home buyers on how to improve credit scores or get loans also serves the professional interests of the Association's membership by promoting real estate transactions.
33. Beyond training, the Association also hosts monthly meetings and "power lunches." Based on the scant information the Association offered about those activities, they do not qualify as either charitable or educational. The Association did not describe what happens at the meetings or the power lunches, other than to say that each power lunch has a training component. The training components Chiado described—education on personal safety and on issues related to mold remediation—appear to primarily serve the personal and professional interests of the Association's members. The power lunches were "put in abeyance" due to the COVID-19 pandemic. But it is unclear when that abeyance period began or ended or how many monthly meetings or power lunches occurred during 2020.
34. Finally, the Association vaguely identified events that it claims were charitable, such as hosting silent auctions and other fundraisers. In keeping with the rest of its evidentiary presentation, the Association offered no information about how frequently it hosted those events or whether any occurred during 2020. Chiado did give an example where the

Association redecorated and repainted three children's homes "a couple of years ago." But it is not clear how the property was used in connection with that project.<sup>2</sup>

**4. Because the Association offered no evidence showing how often any of the activities occurred in 2020, we cannot say that exempt uses predominated over non-exempt uses.**

35. In sum, we have evidence that the Association generally used the property for non-exempt purposes, including using it for its own administrative activities, non-State-mandated professional training, hearings and training involving the National Association of Realtors' ethics code, monthly meetings, and power lunches. It also used the property for some arguably exempt educational activities, such as State-mandated professional training and some of the training offered to the public. And it may have used the property for some charitable fundraisers. But the Association did not offer any evidence about when, or even if, any of the activities occurred during 2020. It therefore failed to prove that it used the property predominantly for exempt charitable or educational purposes.

**B. Simply being a non-profit corporation and prohibiting members from using the property for business transactions does not equate to charitable or educational use.**

36. The Association emphasizes the fact that it is organized as a nonprofit corporation and that its members do not enter into purchase agreements or otherwise conduct business at the property. But neither of those facts translate to the Association using the property for charitable or educational purposes. Absence of a dominant profit motive may be necessary for an exemption, but it is not sufficient. Indeed, the trade association in *Roller Skating Rink Operators* was a nonprofit corporation. Similarly, there are many ways to further the private business interests of a trade association's membership beyond allowing members to use a property for discrete business transactions. Offering members

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<sup>2</sup> The Association's Form 132 petition referenced other charitable projects. Even if we were to view those allegations as evidence, the petition did not identify whether any of those events occurred in 2020, or in many instances, how the property was used in connection with the projects. *See Pet'r Ex. A.*

professional training or networking opportunities, both of which the Association uses its property for, are two examples.<sup>3</sup>

## VI. Conclusion

37. The Association failed to meet its burden of showing that its property was owned, occupied, and used predominantly for exempt purposes. We therefore find that the property was 100% taxable for the 2021 assessment year.

We issue this Final Determination on the date first listed above.

  
Chairman, Indiana Board of Tax Review

  
Commissioner, Indiana Board of Tax Review

  
Commissioner, Indiana Board of Tax Review

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required 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>.

<sup>3</sup> The Association's executive director, Tracey Malooley, testified that another association from Terre Haute did not pay real estate taxes. But she did not identify that association or offer any details about how its property was used. And the Association did not argue that it was entitled to an exemption on that ground much less offer legal support for such a claim.