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IN THE INDIANA TAX COURT

RILEY-ROBERTS PARK, LP,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause No. 21T-TA-00024
	)	
JOSEPH O'CONNOR, in his official capacity as MARION COUNTY ASSESSOR,	)	
	)	
	)	
Respondent.	)	

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

FOR PUBLICATION
March 18, 2022

WENTWORTH, J.

Riley-Roberts Park, LP challenges the Indiana Board of Tax Review's final determination upholding the revocation of its charitable purposes exemption for the 2010 tax year and finding its real property was not owned, occupied, and predominately used for charitable purposes during the 2010 through 2016 tax years. Riley-Roberts raises several issues on appeal, however, the dispositive issue is whether the Marion County Property Tax Assessment Board of Appeals ("PTABOA") had the statutory authority to revoke Riley-Roberts's 2010 charitable purposes exemption. Upon review, the Court

finds it did not.

FACTS AND PROCEDURAL HISTORY

In May of 1999, Riley-Roberts was formed as an Indiana limited partnership. (Cert. Admin. R. at 317, 404.) In general, its purpose was "to transact any and all lawful business for which corporations may be incorporated under" the Indiana Business Corporation Law. (See Cert. Admin. R. at 319, 430.) More specifically though, its purpose was to invest in real property and to provide low-income housing "through the construction, renovation, rehabilitation, operation . . . and leasing" of an apartment complex. (See Cert. Admin. R. at 430, 1736-37.)

To that end, on November 29, 1999, Riley-Roberts purchased a seven-story, mixed-use development located along Massachusetts Avenue in downtown Indianapolis from Riley Area Development Corporation, one of its former limited partners,[1] for the nominal price of $10.00. (See Cert. Admin. R. at 310, 632, 1737-38.) The mixed-use development, now known as The Davlan, had been "operated as a project-based HUD subsidized [apartment complex] by an out-of-state owner-operator[.]" (See Cert. Admin. R. at 1723-24, 1734.) When Riley-Roberts purchased the property, however, it was "completely vacated, completely boarded up, [and] was in a high state of disrepair." (Cert. Admin. R. at 1734-35.) (See also Cert. Admin. R. at 1739 (stating that "there was actually crime scene tape on one of the apartments along with what appeared to be blood on the threshold of that apartment"), 1740 (explaining that The Davlan's pocket park was "in a high state of disrepair" and not usable).) Riley-Roberts used funds from a variety of

[1] In September of 2000, Riley Area Development Corporation completely withdrew from the partnership and Alliant Tax Credit IX, Inc. and Alliant Tax Credit Fund IX, Ltd. were admitted to the partnership as limited partners. (See Cert. Admin. R. at 317, 398, 404.)

private and public sources to redevelop, rehabilitate, and revitalize The Davlan and its pocket park, which had an "immediate trickle-down effect" that led to the revitalization of other commercial establishments in the area. (See Cert. Admin. R. at 431-32, 520-24, 1180-1209, 1736, 1741-44.) (See also Cert. Admin. R. at 1763-65 (indicating that the Section 42 tax credits[2] that Riley-Roberts obtained were entirely consumed during the first ten years of operations).)

When the renovations of The Davlan were complete, the first floor of the building contained approximately 13,000 square feet of retail space. (See Cert. Admin. R. at 310, 616-17.) The other six floors contained a mix of 50 one- and two-bedroom apartments; Riley-Roberts charged market rent for 14 of the units and below-market rent for the remaining 36 units. (See, e.g., Cert. Admin. R. at 310, 616, 1334, 1745-47.) During the 2010 to 2016 tax years, the retail space was leased to various for-profit businesses and the below-market apartments were occupied by individuals with annual incomes at or below 60% of the area median income for Marion County (adjusted for family size). (See Cert. Admin. R. at 635-806, 1741-42, 1745-52, 1767, 1774-75, 1797.) (See also Cert. Admin. R. at 814, 1745-47 (providing that 12 units were reserved for tenants living at 60% of the area median income for Marion County, 16 units for those living at 50% of the area median income, and 8 units for those living at 40% or below the area median income).)

On May 15, 2006, Riley-Roberts filed its first "Application for Property Tax Exemption" ("Form 136") seeking a charitable purposes exemption on 100% of The

[2] The Section 42 low-income housing tax credit program is a federal program governed by the Internal Revenue Service. (Cert. Admin. R. at 809). The program's purpose "is to provide a tax credit to property owners/developers to create affordable rental housing." (Cert. Admin. R. at 809.) In exchange for the credit, the property owner must agree to (1) restrict occupancy to program eligible households, (2) follow program rent restrictions, and (3) keep the housing safe and sanitary. (Cert. Admin. R. at 809.)

Davlan for the 2006 tax year. (See Cert. Admin. R. at 306-41.) The PTABOA, however, determined that The Davlan only qualified for a 54% exemption because "14 units [were] rented out at market rate[s] and [the retail] space [was] leased to [for-profit] businesses."[3] (Cert. Admin. R. at 342-43.) On May 7, 2008, Riley-Roberts filed an exemption application for the 2008 tax year again seeking a 100% exemption for The Davlan. (Cert. Admin. R. at 344-85.) As before, however, the PTABOA found the property only qualified for a 54% exemption. (Cert. Admin. R. at 386-87.) Riley-Roberts did not file an exemption application for the 2009 tax year, but it retained its partial exemption on The Davlan for that year. (See Cert. Admin. R. at 1837.) (See also Cert. Admin. R. at 1958-59.) Believing that its partial exemption continued to be valid for the 2010 tax year as well, Riley-Roberts did not file an exemption application for that year either. (See Cert. Admin. R. at 1726, 1931-33.)

On January 31, 2011, an Exemption Deputy from the Marion County Assessor's

[3] The Indiana Board, based on its interpretation of Riley-Roberts's response to one of the Assessor's requests for admission, found that Riley-Roberts received an exemption under Indiana Code § 6-1.1-10-16(i) in 2006. (See Cert. Admin. R. at 1244, 1663 ¶¶ 32-33.) The administrative record, however, reveals otherwise. Specifically, during discovery, the Assessor served a series of requests for admission on Riley-Roberts, one of which stated: "REQUEST FOR ADMISSION NO. 6: The parcels and properties at issue were not acquired for the purpose of erecting, renovating, or improving a single[-]family residential structure." (Cert. Admin. R. at 1244 (emphasis omitted).) Riley-Roberts's response stated, "Admit. Riley-Roberts does not seek reinstatement of its erroneously removed charitable exemption under Indiana Code Section 6-1.1-10-16(i). Rather, Riley-Roberts should be exempt under Indiana Law, particularly, Indiana Code Section 6-1.1-10-16(a)." (Cert. Admin. R. at 1244.) Through its inarticulate response, Riley-Roberts simply admitted that it sought to reinstate the Indiana Code § 6-1.1-10-16(a) charitable purposes exemption, not the Indiana Code § 6-1.1-10-16(i) exemption. (See Cert. Admin. R. at 1244.) Moreover, Riley-Roberts's 2006 exemption application demonstrates that it applied for a charitable purposes exemption for The Davlan because it states "the ownership, occupancy and use of [the] property advance[s] charitable values[.]" (See Cert. Admin. R. at 306, 308 (emphasis added).) Compare also IND. CODE § 6-1.1-10-16(a) (2006) (exempting all or a part of a building from property taxation when it is owned, occupied, and used for charitable purposes), with I.C. § 6-1.1-10-16(i) (exempting a single-family residence and the land upon which it is located from property tax when certain conditions are met).

Office sent a letter to Riley-Roberts on behalf of the PTABOA. (Cert. Admin. R. at 388.) The letter, which indicated it was about Riley-Roberts's purported 2010 exemption application, stated:

> The PTABOA has requested your compliance in filling-out the attached Worksheet in order to help them better understand the services your organization provides to your tenants. Please fill out the attached Worksheet and return it to our office by February 15, 2011. In addition, please read the "PTABOA Worksheet – General Information" section in order to understand the purpose behind the requested documentation.
>
> The PTABOA will review the Worksheet you provide. If they have questions concerning your organization, you will be notified by February 23, 2011, and your presence will be requested at the February 25, 2011[,] PTABOA meeting. If the PTABOA has no questions concerning the information you have provided they do not intend to hold a hearing concerning the property, but will determine the [property's] eligibility for an exemption based on all the information [that] you have provided. . . . [T]he PTABOA does not intend to grant any continuances for low-income housing applications, and all low-income housing will be going at the February 25, 2011[,] PTABOA meeting.
>
> If you are an attorney and are receiving this letter, please be advised that all your clients who received an exemption in 2008 and/or 2009 based on IC 6-1.1-10-16, as low-income housing are going to be reviewed at this meeting. If you did not submit an application on their behalf for 2010[,] their property will still be heard at the February 25, 2011[,] meeting, but if you did not file the 2010 [Form] 136 [exemption] application we may not [have] a power of attorney entered into our records for 2010.

(Cert. Admin. R. at 388.) The PTABOA, via its attached six-page Worksheet, sought general information about The Davlan, including its address, parcel number(s), and 2010 total assessed value. (See Cert. Admin. R. at 389-94.) The PTABOA also sought detailed information about evictions, late fees, and rental rates; the receipt of government subsidies; the fair market value of the property based on a Market Analysis; and the

charitable services that were provided to the tenants.[4] (See Cert. Admin. R. at 391-94.)

On March 8, 2011, after conducting its February 25 meeting, the PTABOA issued a "Notice of Action on Exemption Application" that revoked Riley-Roberts's 2010 charitable purposes exemption. (See Cert. Admin. R. at 395-96.) The PTABOA's Notice stated:

> Exemption Disallowed. 54% was granted in 2008. Many units are rented out at market rate and space is leased to for[-]profit businesses. Have not provided any information which would show that the property provides a benefit to the public sufficient to justify the loss of tax revenue. Further, applicant receives a subsidy in the form of Section 8.

(Cert. Admin. R. at 395-96.)

On April 5, 2011, Riley-Roberts sought review with the Indiana Board alleging, among other things, that the PTABOA lacked the statutory authority to revoke its 2010 charitable purposes exemption. (See Cert. Admin. R. at 1-13.) Over the next ten years, the parties litigated that issue with the Indiana Board as well as whether Riley-Roberts owned, occupied, and predominately used The Davlan for charitable purposes during the 2010 through 2016 tax years.[5] (See, e.g., Cert. Admin. R. at 1931-2072 (materials for first summary judgment proceeding beginning in 2011); 2080-2110 (materials for motion to reconsider filed in 2014).) (See also Cert. Admin. R. at 14-42 and 53-74 (Riley-Roberts's 2011-2016 appeal petitions), 87-135 (materials for second summary judgment

[4] The PTABOA's decision to review Riley-Roberts's 2010 exemption may have been fueled by the Court's issuance of Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor, 909 N.E.2d 1138 (Ind. Tax Ct. 2009), review denied, which held that the provision of affordable housing to low-income persons was not a per se charitable purpose. See, e.g., Riley-Roberts Park, LP v. O'Connor, No. 49T10-1406-TA-37, slip op., 2015 WL 249841, at *1 (Ind. Tax Ct. Jan. 20, 2015).

[5] During that ten-year period, Riley-Roberts also filed an appeal with this Court that was dismissed for lack of subject matter jurisdiction. See id. at *3-4.

proceeding commencing in 2018).)

On September 28, 2020, the Indiana Board conducted an administrative hearing during which Riley-Roberts claimed that neither the Assessor nor the PTABOA had the statutory authority to revoke its 2010 exemption. (See, e.g., Cert. Admin. R. at 1569-71, 1711-16.) Riley-Roberts also asserted that the PTABOA's unprecedented revocation process violated its rights to both due process and equal privileges and immunities. (See, e.g., Cert. Admin. R. at 1571-75, 1714-15.) Lastly, Riley-Roberts claimed that its evidence showed that 54% of The Davlan was owned, occupied, and predominately used for charitable purposes during all the years at issue.[6] (See, e.g., Cert. Admin. R. at 1577-92, 1716-19.)

In response, the Assessor asserted that the PTABOA's review and subsequent revocation of Riley-Roberts's 2010 charitable purposes exemption were authorized by Indiana Code § 6-1.1-11-1 et seq. ("Chapter 11"), just as the Indiana Board had determined during the previous summary judgment proceedings. (See Cert. Admin. R. at 1599-1602, 1719-20.) The Assessor further claimed, among other things, that Riley-Roberts waived its constitutional arguments by failing to develop them, and that none of Riley-Roberts's evidence showed that The Davlan was owned, occupied, and predominately used for charitable purposes during any of the years at issue. (See Cert. Admin. R. at 1599, 1602-05, 1618-19, 1720-22.)

On May 6, 2021, the Indiana Board issued its final determination, finding that (1) various parts of both Chapter 11 and Indiana Code § 6-1.1-13-1 et seq. ("Chapter 13")

[6] Riley-Roberts's evidence included, among other things, its Certificate of Limited Partnership, its Amended and Restated Agreement of Limited Partnership, The Davlan's rent rolls, and the U.S. Department of Housing and Urban Development ("HUD") income reports for the years at issue. (See, e.g., Cert. Admin. R. at 361, 397-590, 651-806.)

authorized the PTABOA to revoke Riley-Roberts's 2010 charitable purposes exemption; (2) Riley-Roberts waived its constitutional claims because it failed to support them with sufficient evidence and "cogent" argument; and (3) none of the evidence showed that The Davlan was owned, occupied, and predominantly used for charitable purposes during the years at issue. (See Cert. Admin. R. at 1652, 1667-88 ¶¶ 44-100.) In dicta, the Indiana Board justified its conclusions by explaining that Riley-Roberts had obtained its 2006 and 2008 exemptions by making material misrepresentations of fact in its exemption applications and "ha[d] placed itself in the untenable position of requesting" the reinstatement of an exemption that was procured through falsehoods.[7] (Cert. Admin. R. 1665-66 ¶¶ 38-39.)

On June 18, 2021, Riley-Roberts initiated this original tax appeal. The Court conducted an oral argument on November 4, 2021. Additional facts will be supplied when necessary.

STANDARD OF REVIEW

The party seeking to reverse an Indiana Board final determination bears the burden of demonstrating its invalidity. Lowe's Home Ctrs., Inc. v. Monroe Cnty. Assessor, 160 N.E.3d 263, 268 (Ind. Tax Ct. 2020). Therefore, Riley-Roberts must demonstrate to the Court that the Indiana Board's final determination in this matter is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of or short of statutory jurisdiction, authority, or limitations; without observance of the procedure required by law; or unsupported by

[7] The Indiana Board also noted, again in dicta, that Riley-Roberts failed to file exemption applications in 2007 and 2009 as required. (See Cert. Admin. R. at 1666-67 ¶¶ 40-43 (declining to decide the case based on Riley-Robert's failure to file exemption applications in 2007 and 2009 because neither party addressed the issue).)

substantial or reliable evidence. See IND. CODE § 33-26-6-6(e)(1)-(5) (2022).

LAW AND ANALYSIS

As previously mentioned, the dispositive issue in this case is whether the PTABOA had the statutory authority to revoke Riley-Roberts's 2010 charitable purposes exemption. On appeal, Riley-Roberts claims that the Indiana Board's finding that specific provisions of Chapter 11 and Chapter 13 gave the PTABOA the power to revoke that exemption is arbitrary, capricious, an abuse of discretion, and contrary to law.[8] (See Pet'r Br. at 16-20, 24-29; Oral Arg. Tr. at 4-6.)

The Assessor, on the other hand, contends that Riley-Roberts's claims must fail because the Indiana Board's final determination

> cited ample statutory authority for the PTABOA's authority to deny an ineligible exemption for a subsequent year. I.C. § 6-1.1-11-7(a) (PTABOA's obligation for "careful examination"); I.C. § 6-1.1-[11-]3.5(d) (ongoing authority to consider whether a property "is no longer eligible for the exemption"); I.C. § 6-1.1-13-3 (reviewing whether omitted or underassessed property should be returned to the tax rolls); I.C. § 6-1.1-13-2 (assessor's obligation to recommend corrections and changes); I.C. § 6-1.1-13-4 (PTABOA's broad authority to "do whatever else may be necessary" to comply with law); I.C. §§ 6-1.1-11-3.5(b)[,](d); I.C. § 6-1.1-11-4(d)(3) (requirement for the property's continued eligibility); I.C. § 6-1.1-11-4(e)[,](f) (2014) (assessor's right to direct the auditor to suspend exemption for change in "use").

(See Resp't Br. at 10.) The Assessor further contends that the Indiana Board's finding

[8] Riley-Roberts also claims that the Indiana Board failed to: (1) prohibit the PTABOA's retroactive application of caselaw and enforce its statutorily prescribed review procedures; (2) protect Riley-Roberts's procedural due process rights and its rights under the equal privileges and immunities clause; and (3) conduct an impartial review of Riley-Roberts's case, address all of its arguments, and support its finding that The Davlan was not owned, occupied, and predominately used for charitable purposes with substantial or reliable evidence. (See Pet'r Br. at 14-15, 21-23, 30-52.) The Court, however, does not address these claims given its disposition of the case on other grounds. See, e.g., Ward v. Carter, 90 N.E.3d 660, 666 (Ind. 2018) (declining to address a litigant's "broader arguments" because the case was resolved on narrower grounds).

that the PTABOA's revocation of Riley-Roberts's 2010 exemption is proper because Riley-Roberts procured the exemption by making material misrepresentations in its 2006 and 2008 exemption applications.[9] (See Resp't Br. at 11-12.) Accordingly, the Court must determine whether the cited provisions of Chapter 11, the cited provisions of Chapter 13, or certain equitable principles authorized the PTABOA's revocation of Riley-Roberts's 2010 charitable purposes exemption.

1. Chapter 11

According to the Assessor, the Indiana Board primarily relied on three statutes, i.e., sections 6-1.1-11-3.5, 6-1.1-11-4, and 6-1.1-11-7, as authority for the PTABOA's revocation of Riley-Roberts's 2010 charitable purposes exemption. (See Resp't Br. at 10.) (See also Cert. Admin. R. at 1667-74 ¶¶ 44-46, 49-59.) All three of the statutes are contained in Chapter 11, which sets forth the Indiana property tax exemption procedures. See, e.g., IND. CODE § 6-1.1-11-2 (2010) (providing that the general exemption procedures in Chapter 11 apply unless other procedures for obtaining a specific exemption are provided by law).

To begin with, Indiana Code § 6-1.1-11-3.5 provides the application process and procedures for a not-for-profit corporation to acquire or to retain a property tax exemption

[9] The Assessor also claims that the revocation of Riley-Roberts's 2010 exemption was proper because it failed to file annual exemption applications in 2007 and 2009. (Resp't Br. at 11.) The Court declines to address this claim because those tax years are not at issue in this case and the Indiana Board, rather than the Assessor, pointed out the alleged application flaws regarding those years and appropriately declined to rely on them in upholding the PTABOA's revocation of Riley-Roberts's 2010 exemption. See CVS Corp. #2519-01 v. Prince, 149 N.E.3d 323, 327 (Ind. Tax Ct. 2020) (stating that "[t]he Indiana Board is not authorized to ride in on a white horse to save the day when [a litigant] fails to provide relevant evidence, legal authority, or persuasive argument for his cause") (citation omitted). Moreover, the parties stipulated that Riley-Roberts "retained its 2009 charitable [purposes] exemption" even though it did not file an exemption application for that year. (See Cert. Admin. R. at 1837.)

for its property:

> (a) A not-for-profit corporation that seeks an exemption provided by IC 6-1.1-10 for 2000 or for a year that follows 2000 by a multiple of two (2) years must file an application for the exemption in that year. However, if a not-for-profit corporation seeks an exemption provided by IC 6-1.1-10 for a year not specified in this subsection and the corporation did not receive the exemption for the preceding year, the corporation must file an application for the exemption in the year for which the exemption is sought. The not-for-profit corporation must file each exemption application in the manner (other than the requirement for filing annually) prescribed in section 3 of this chapter.
>
> * * * * *
>
> (d) For each year that is not a year specified in subsection (a), the auditor of each county shall apply an exemption provided under IC 6-1.1-10 to the tangible property owned by a not-for-profit corporation that received the exemption in the preceding year unless the county property tax assessment board of appeals [("county ptaboa")] determines that the not-for-profit corporation is no longer eligible for the exemption.

IND. CODE § 6-1.1-11-3.5(a), (d) (2010). The plain language of this statute does not provide authority for the PTABOA to review and revoke Riley-Roberts's previously granted exemption because it applies solely to not-for-profit corporations and Riley-Roberts is a for-profit limited partnership. See, e.g., Southlake Indiana, LLC v. Lake Cnty. Assessor, 174 N.E.3d 177, 179 (Ind. 2021) ("When interpreting a statute, [courts should] start with its clear and unambiguous meaning and apply its terms in their plain, ordinary, and usual sense") (citation omitted). (See also, e.g., Cert. Admin. R. at 1774 (stating Riley-Roberts is a "for-profit partnership").)

Nonetheless, Indiana Code § 6-1.1-11-3(a), a counterpart to Indiana Code § 6-1.1-11-3.5, contains application procedures for for-profit entities like Riley-Roberts, stating, for example, that

> an owner of tangible property who wishes to obtain an exemption from property taxation shall file a certified application in duplicate with the county assessor of the county in which the property that is the subject of the exemption is located. The application must be filed annually on or before May 15 on forms prescribed by the department of local government finance [("Department")]. Except as provided in sections 1, 3.5, and 4 of this chapter, the application applies only for the taxes imposed for the year for which the application is filed.

IND. CODE § 6-1.1-11-3(a) (2010) (amended 2014). The other subsections of Indiana Code § 6-1.1-11-3 provide certain administrative procedures for the application process, including standards for the signing of exemption applications, the required information in an exemption application, and the filing of the assessor's record kept under Indiana Code § 6-1.1-4-25. See I.C. § 6-1.1-11-3(b)-(g). Accordingly, Indiana Code § 6-1.1-11-3 applies solely to for-profit entities seeking a charitable purposes exemption and does not confer any authority to a county ptaboa to review or revoke an existing charitable purposes exemption. See, e.g., Southlake Indiana, 174 N.E.3d at 179.

Indiana Code § 6-1.1-11-4, the second statute relied on by the Indiana Board, does not confer authority to a county ptaboa to review or revoke exemption applications, but instead sets forth the circumstances when an exemption application is not required to be filed:

> (d) The exemption application referred to in section 3 or 3.5 of this chapter is not required if:
>
> (1) the exempt property is:
>
> (A) tangible property used for religious purposes described in IC 6-1.1-10-21;
>
> (B) tangible property owned by a church or religious society used for educational purposes described in IC 6-1.1-10-16;
>
> (C) other tangible property owned, occupied, and used

> by a person for educational, literary, scientific, religious, or charitable purposes described in IC 6-1.1-10-16; or
>
> (D) other tangible property owned by a fraternity or sorority (as defined in IC 6-1.1-10-24).
>
> (2) the exemption application referred to in section 3 or 3.5 of this chapter was filed properly at least once for a religious use under IC 6-1.1-10-21, an educational, literary, scientific, religious, or charitable use under IC 6-1.1-10-16, or use by a fraternity or sorority under IC 6-1.1-10-24; and
>
> (3) the property continues to meet the requirements for an exemption under IC 6-1.1-10-16, IC 6-1.1-10-21, or IC 6-1.1-10-24.

IND. CODE § 6-1.1-11-4(d)(1)-(3) (2010) (amended 2014) (emphases added) (hereinafter, "Subsection (d)").[10] In turn, the remainder of Subsection (d) specifies that a property no longer meets the requirements for an exemption if there are certain changes in the property's ownership or the property's use:

> A change in ownership of property does not terminate an exemption of the property if after the change in ownership the property continues to meet the requirements for an exemption under IC 6-1.1-10-16, IC 6-1.1-10-21, or IC 6-1.1-10-24. However, if title to any real property subject to the exemption changes or any of the tangible property subject to the exemption is used for a nonexempt purpose after the date of the last properly filed exemption application, the person that obtained the exemption or the current owner of the property shall notify the county assessor for the county where the tangible property is located of the change in the year that the change occurs. The notice must be in the form prescribed by the [Department]. If the county assessor discovers that title to the property granted an exemption described in IC 6-1.1-10-16, IC 6-1.1-10-21, or IC 6-1.1-10-24 has changed, the county assessor shall notify the persons entitled to a tax statement under IC 6-1.1-22-8.1 for the property of the change in title and indicate that the county auditor will suspend the exemption for the property until the persons provide the county assessor with an affidavit, signed under penalties

[10] The Legislature amended Indiana Code § 6-1.1-11-4(d) in 2014, (see P.L. 183-2014, § 6 (eff. July 1, 2014)), after the years at issue, therefore, this decision does not interpret the statute as amended.

> of perjury, that identifies the new owners of the property and indicates that the property continues to meet the requirements for an exemption under IC 6-1.1-10-21, IC 6-1.1-10-16, or IC 6-1.1-10-24. Upon receipt of the affidavit, the county assessor shall reinstate the exemption for the years for which the exemption was suspended and each year thereafter that the property continues to meet the requirements for an exemption under IC 6-1.1-10-21, IC 6-1.1-10-16, or IC 6-1.1-10-24.

I.C. § 6-1.1-11-4(d). Nothing within the plain terms of this statute expresses or implies that the PTABOA has authority to revoke, disallow, or suspend a charitable purposes exemption. See F.A. Wilhelm Constr. Co. v. Indiana Dep't of State Revenue, 586 N.E.2d 953, 955 (Ind. Tax Ct. 1992) (explaining that the Court has no power to limit or extend the operation of an unambiguous statute). Indeed, the last paragraph of Subsection (d) quoted above authorizes a county assessor to review and a county auditor to suspend an exemption upon certain changes in a property's ownership or use, but does not express or imply that a county ptaboa has the power to review, suspend, or terminate a previously granted exemption. See I.C. § 6-1.1-11-4(d); F.A. Wilhelm Constr., 586 N.E.2d at 955. Moreover, even if these statutory powers were conferred on county ptaboas, which they were not, the authority to review, suspend, or terminate a previously granted exemption could not have been triggered because the record evidence demonstrates that there was no change in either The Davlan's ownership or its use. (See, e.g., Cert. Admin. R. at 1726-27.)

Finally, the Indiana Board's third source of authority under Chapter 11, Indiana Code § 6-1.1-11-7 ("Section 7"), provides:

> (a) The [county ptaboa], after careful examination, shall approve or disapprove each exemption application and shall note its action on the application.
>
> (b) If the [county ptaboa] approves the exemption, in whole or part:

> (1) the county assessor shall notify the county auditor of the approval; and
>
> (2) the county auditor shall note the [county ptaboa's] action on the tax duplicate.[11]
>
> The county auditor's notation is notice to the county treasurer that the exempt property shall not be taxed for the current year unless otherwise ordered by the [Department].
>
> (c) If the exemption application is disapproved by the [county ptaboa], the county assessor shall notify the applicant by mail. Within thirty (30) days after the notice is mailed, the owner may, in the manner prescribed in IC 6-1.1-15-3, petition the Indiana board to review the [county ptaboa's] determination.

IND. CODE § 6-1.1-11-7 (2010) (amended 2016). By its terms, therefore, Section 7 gives a county ptaboa only the power to approve or to disapprove an exemption application. I.C. § 6-1.1-11-7(a); see also Southlake Indiana, 174 N.E.3d at 180 (providing that courts are to apply a statute as it is written and should not "second-guess" the legislature's decision to limit its application).

Here, Section 7 could not authorize the PTABOA's revocation of Riley-Roberts's charitable purposes exemption for two reasons. First, the PTABOA's March 8, 2011, Notice that revoked Riley-Roberts's 2010 charitable purposes exemption states:

> This is a[] notice of action on an exemption application by the [PTABOA] as provided for pursuant to [Section 7.] . . . If you do not agree with the action of the [PTABOA], the Indiana Board of Tax Review will review that action if you file a Form 132 petition with the [Assessor] . . . WITHIN THIRTY DAYS (30) DAYS of the mailing of this notice. See IC 6-1.1-15-3.

(Cert. Admin. R. at 395 (emphasis added).) Although the Notice states that the PTABOA

[11] The "tax duplicate" is an annual list of property taxes payable in a county that contains "(1) the value of all the assessed property of the county; (2) the person liable for the taxes on the assessed property; and (3) any other information that the state board of accounts, with the advice and approval of the [Department], may prescribe." IND. CODE § 6-1.1-22-3(a) (2010).

acted upon an exemption application, there is no evidence that Riley-Roberts filed an exemption application for the 2010 tax year. (See, e.g., Cert. Admin. R. at 1667 ¶ 42 (the Indiana Board finding that Riley-Roberts "did not file an exemption application in 2010"); Pet'r Br. at 8 (Riley-Roberts's statement that it did not file an exemption application in 2010); Oral Arg. Tr. at 54 (the Assessor's assertion that Riley-Roberts "should be penalized for . . . not filing [an exemption] application for" 2010).) Moreover, the Worksheet filled out by Riley-Roberts at the PTABOA's request cannot constitute an exemption application because the record evidence does not demonstrate that it was prescribed by the Department. (Compare Cert. Admin. R. at 388-94 (indicating that the PTABOA created the Worksheet), and 1811-13 (failing to indicate whether the Department approved the Worksheet), with I.C. § 6-1.1-11-3(a) (requiring taxpayers to file exemption applications on forms prescribed by the Department), and Cert. Admin. R. at 306, 344 (Riley-Roberts's 2006 and 2008 completed exemption applications that were on forms prescribed by the Department).)

Second, Riley-Roberts was not required to file an exemption application for 2010. Specifically, the record evidence shows that (1) an exemption application for Riley-Roberts had been properly filed in 2008; (2) Riley-Roberts received a charitable purposes exemption on 54% of The Davlan based on the 2008 exemption application; and (3) Riley-Roberts's ownership, occupancy, and use of the property had not changed since it received the exemption. (See, e.g., Cert. Admin. R. at 344-87, 1726-27.) See also I.C. § 6-1.1-11-4(d) (describing when an exemption application must be filed). Therefore, the plain language of Section 7, like the plain language of Indiana Code §§ 6-1.1-11-3, 6-1.1-11-3.5, and 6-1.1-11-4, did not give the PTABOA the authority to revoke Riley-Roberts's

2010 exemption. Consequently, the Court finds that none of the cited provisions of Chapter 11 authorized the PTABOA's revocation of Riley-Roberts's 2010 charitable purposes exemption. Matonovich v. State Bd. of Tax Comm'rs, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999) (stating that "'[a]ll doubts regarding a claim to power by a governmental agency are resolved against the agency'") (citation omitted), review denied.

2. Chapter 13

As previously mentioned, the Indiana Board also determined that three separate provisions of Chapter 13, i.e., sections 6-1.1-13-2,[12] 6-1.1-13-3,[13] and 6-1.1-13-4,[14]

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[12] Indiana Code § 6-1.1-13-2 provides:

> When the [county ptaboa] convenes, the county auditor shall submit to the board the assessment list of the county for the current year as returned by the township assessors (if any) and as amended and returned by the county assessor. The county assessor shall make recommendations to the board for corrections and changes in the returns and assessments. The board shall consider and act upon all the recommendations.

IND. CODE § 6-1.1-13-2 (2010).

[13] Indiana Code § 6-1.1-13-3 states:

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

IND. CODE § 6-1.1-13-3 (2010).

[14] Indiana Code § 6-1.1-13-4 provides:

> A [county ptaboa] shall correct any errors in the names of persons, in the description of tangible property, and in the assessed valuation of tangible property appearing on the assessment lists. In addition, the board shall do whatever else may be necessary to make the assessment lists and returns comply with the provisions of this article and the rules and regulations of the [Department].

IND. CODE § 6-1.1-13-4 (2010).

authorized the PTABOA to revoke Riley-Roberts's 2010 charitable purposes exemption. (See, e.g., Cert. Admin. R. at 1669-70 ¶¶ 47-48.) Generally, Chapter 13 provides a county ptaboa with the power to make specific changes to "tangible property assessments made with respect to the last preceding assessment date." See, e.g., IND. CODE § 6-1.1-13-1 (2010) (amended 2012) (emphasis added). Accordingly, the three Chapter 13 provisions simply authorize a county ptaboa to correct errors on the assessment rolls[15] that are related to the names of persons, descriptions of tangible property, and assessed values of tangible property, not to review and revoke exemptions. See IND. CODE §§ 6-1.1-13-2, -3, -4 (2010). See also F.A. Wilhelm Constr., 586 N.E.2d at 955 (explaining that the Court has no power to limit or extend the operation of an unambiguous statute).

While the grant of a property tax exemption affects the tax liability of a taxpayer, it does not alter an assessment (i.e., the assessed value) of the taxpayer's property. See IND. CODE § 6-1.1-11-9(a) (2010) (providing that "all property otherwise subject to assessment under this article shall be assessed in the usual manner, whether or not it is exempt from taxation"); Dep't of Local Gov't Fin. v. Roller Skating Rink Operators Ass'n, 853 N.E.2d 1262, 1265 (Ind. 2006) (explaining that "exempting one piece of property [from taxation] shifts the tax burden to the other properties in the same taxing unit"). Here, the evidence and arguments presented during the administrative proceedings fail to show that the assessment roll needed to be corrected because there were errors in the names of persons, the description of The Davlan, or the assessed value of The Davlan. Contrary to the Indiana Board's finding, therefore, the three provisions of Chapter 13 relied on by

[15] An "assessment roll" is "[t]he official listing of all properties within a given taxing jurisdiction by ownership, description, and location showing the corresponding assessed value for each." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2011 (incorporated by reference at 50 IND. ADMIN. CODE 2.4-1-2(c) (2011) (amended 2020)), Bk. 2, Glossary at 3.

the Indiana Board did not authorize the PTABOA to revoke Riley-Roberts's 2010 charitable purposes exemption.

3. Equity

Finally, the Indiana Board found that Riley-Roberts made material misrepresentations in its 2006 and 2008 exemption applications regarding:

> a. The description of [T]he Davlan as residential apartments without disclosing the commercial space[;]
>
> b. The description of 50 low-income residential units when only 36 units were set aside for low-income tenants[;]
>
> c. The denial of income-generating activities at [T]he Davlan when it collected residential and commercial income[;]
>
> d. The claim that [T]he Davlan provided low-income housing to senior citizens, implying an age-eligibility standard that did not exist[;]
>
> e. The statement that there were no charges for the charitable services when the low-income tenants were charged rent[; and]
>
> f. The statement that Riley Area Development Corporation or Westside Community Development Corporation provided the charitable services "as a partner," when neither was a partner nor the provider of low-income housing at [T]he Davlan.

(Cert. Admin. R. at 1665 ¶ 38.) The Indiana Board further stated that the "material misrepresentations of fact were made before the PTABOA in an effort to obtain a 100% charitable tax exemption based on the provision of low-income housing without disclosing the other commercial and market residential uses of the property." (Cert. Admin. R. at 1665 ¶ 38.) During the oral argument before the Tax Court, the Assessor doubled down on the Indiana Board's allegations by asserting that Riley-Roberts had committed fraud and had "unclean hands" because it "never filed an accurate" exemption application. (See Oral Arg. Tr. at 76-78.) Consequently, the Assessor claims that equity requires the Court

to affirm the Indiana Board's final determination. (See, e.g., Oral Arg. Tr. at 75-76.)

In Indiana, courts generally will not exercise equitable powers when an adequate remedy at law exists. See, e.g., State ex. rel. Hahn v. Howard Cir. Ct., 571 N.E.2d 540, 541 (Ind. 1991); N. Indiana Pub. Serv. Co. v. Sloan, 4 N.E.3d 760, 767 (Ind. Ct. App. 2014), trans. denied. "'Equity has power, where necessary, to pierce rigid statutory rules to prevent injustice.'" N. Indiana Pub. Serv. Co., 4 N.E.3d at 767 (citation omitted). "'But where substantial justice can be accomplished by following the law, and the parties' actions are clearly governed by rules of law, equity follows the law.'" Id. (citation omitted). Equity, however, cannot be applied here for two reasons.

First, while the Indiana Board noted that Riley-Roberts misrepresented facts on its 2006 and 2008 exemption applications, the Court gives no credence to this dictum because accurate facts must have been supplied for the PTABOA to have granted a 54% instead of a 100% exemption. (See, e.g., Cert. Admin. R. at 342-43, 386-87, 1665-67 ¶¶ 38-43.) Furthermore, the Assessor did not raise a misrepresentation of fact claim at the administrative level as a reason for the Indiana Board to find the PTABOA's actions were authorized. (See, e.g., Cert. Admin. R. at 1304-50, 1840-51.) Thus, the Court finds this claim is beyond the scope of its review, and likely was beyond the scope of the matter before the Indiana Board. See, e.g., CVS Corp. #2519-01 v. Prince, 149 N.E.3d 323, 327 (Ind. Tax Ct. 2020) (stating that "[t]he Indiana Board is not authorized to ride in on a white horse to save the day when [a litigant] fails to provide relevant evidence, legal authority, or persuasive argument for his cause") (citation omitted); Inland Steel Co. v. State Bd. of Tax Comm'rs, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (explaining that when a litigant fails to raise an issue or present an argument at the administrative level, the issue is

waived and may not be considered by the Court on appeal), review denied.

Second, even though the Assessor did argue that Riley-Roberts committed fraud and had unclean hands during the Tax Court oral argument, he admitted that he never raised the equitable defense of unclean hands during the administrative proceeding. (See Oral Arg. Tr. at 57-58, 68-69, 77-79.) Moreover, he did not offer a single piece of evidence to the Indiana Board regarding Riley-Roberts's alleged factual misrepresentations or fraudulent acts. (See, e.g., Cert. Admin. R. at 1305-50, 1840-51.) Consequently, both the Indiana Board's and Assessor's harangues about Riley-Roberts's alleged misdeeds constitute cinema, unsupported by evidence in the record, which, in a judicial context, are indistinguishable from gross incivility. See Wisner v. Laney, 984 N.E.2d 1201, 1207 (Ind. 2012) ("Professionalism and civility must be the foundation of the practice of law. Upon this foundation we lay competency, honesty, dedication to the rule of law, passion, and humility. Every lawyer and judge is charged with the duty to maintain the respect due to courts and each other.") Consequently, the Court finds that none of the equitable principles advanced by either the Indiana Board or the Assessor provided the PTABOA with authority to revoke Riley-Roberts's 2010 charitable purposes exemption.

CONCLUSION

The PTABOA, as a creature of statute, only has those powers that the Legislature expressly conferred to it, and unless the grant of powers and authority is found in a statute, the Court must conclude that no power exists. See IND. CODE § 6-1.1-28-1(a) (2010) (amended 2017) (authorizing the creation of county ptaboas); Musgrave v. Squaw Creek Coal Co., 964 N.E.2d 891, 902 (Ind. Ct. App. 2012), trans. denied. The Court, having found no express or implicit statutory authority for the PTABOA's revocation of

Riley-Roberts's 2010 charitable purposes exemption accordingly finds that the PTABOA's actions were ultra vires and void. See, e.g., Anderson Lumber & Supply Co. v. Fletcher, 89 N.E.2d 449, 452 (Ind. 1950) (explaining that when an administrative agency acts in excess of its statutorily prescribed powers, its actions are ultra vires and void). Accordingly, the Court REVERSES the Indiana Board's final determination and REMANDS this matter to the Indiana Board for actions consistent with this opinion.