



**Fairbanks North Star Borough** Assessing Department [assessor@fnsb.gov](mailto:assessor@fnsb.gov)  
907 Terminal Street ☆ P.O. Box 71267 ☆ Fairbanks, Alaska 99707-1267 (907) 459-1428 ☆ FAX (907) 459-1416

April 5, 2022

CERTIFIED: 7018 1830 0000 2288 1180

**FAIRBANKS COMMUNITY FOOD BANK SERVICE INC**  
Attn: Ms. Anne Weaver  
725 26<sup>TH</sup> AVE  
FAIRBANKS AK 99701 7034

Re: FINAL DETERMINATION REGARDING 2022 TAX EXEMPTION

LOT 1 BLOCK 23 BJERREMARK *Main food bank warehouse*

LOT 9, 10 ABRAHAM LINCOLN *These are not vacant lots, used for storage, additional parking*

LOTS 13, 14, 15, 16 BLK 31 BJERREMARK

LOTS 1, 2, 3, 4 BLK 31 BJERREMARK

UMB 03 BLK 01 GATEWAY *Literacy Council*

LOT 1A BLOCK 2 BJERREMARK *Volunteer Club House, program space for Food is Medicine*

PANs: 0569429, 0043478, 0043486, 0528013, 0528021, 0528030, 0528048, 0527891, 0527904, *and additional warehouse storage*  
0527912, 0527921, 0520853, 0050229

Dear Ms. Weaver:

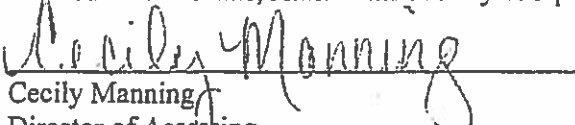
This is the FNSB Assessor's final decision regarding the tax exemption application for the above referenced properties.

The Fairbanks North Star Borough has conducted a review of the tax-exemption application and documents furnished in support of the 2022 exemption application. This review relied on an onsite inspection in 2021 of the above referenced sites. Food Bank provided certain information that you deemed relevant in support of your exemption to assist the Assessor's determination.

Based on the narrow construction that the Assessor must give to the exemption statute, I have reviewed the various uses of all parcels and the respective leases of any tenants, and I have made multiple findings based on the use of each parcel, which are discussed further in Addendum A.

Pursuant to FNSB Code 8.16.040, you have the right to appeal the Assessor's determination regarding tax-exempt status to the Superior Court within 30 days of the date of this letter pursuant to the Alaska Rules of Court applicable to appeals from an agency decision. To be clear, the 30-day appeal period begins as of the date of today's letter.

DATED at Fairbanks, Alaska this 5th day of April 2022.

  
Cecily Manning  
Director of Assessing  
Borough Assessor

## ADDENDUM A

### I. LEGAL RULES ON CHARITABLE PURPOSE EXEMPTION

The Alaska Constitution provides an exemption from real property taxes for property used "exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law."<sup>1</sup> When income is derived from such property, the property is exempt "only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or education groups. If used by nonprofit education groups, the property is exempt only if used exclusively for classroom space."<sup>2</sup>

Tax exemptions are strictly construed, meaning that "a taxpayer is not entitled to an exemption unless he shows that he comes within either the express words or the necessary implication of some statute conferring this privilege upon him."<sup>3</sup> Taxpayers bear the burden of demonstrating their entitlement to an exemption.<sup>4</sup>

Relevant here, AS 29.45.030, provides:

(a) The following property is exempt from general taxation:

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes;

...

(c) Property described in (a)(3) or (4) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

The Alaska Supreme Court has interpreted this statute over the years, creating the following rules.

When an otherwise tax-exempt religious organization sells commercial radio time to fund its missionary activities it loses its tax-exemption because "to hold otherwise would result in a taxed commercial business being forced to compete with the commercial activities of institutions claiming a tax-exempt status under the law."<sup>5</sup>

A summer camp that charges an annual fee to user groups such as 4-H clubs, Alaska Crippled Children, American Baptist Church, and the Y.M.C.A, does not lose its exemption because it falls within the broad definition of "charitable purpose": "what is done out of good will and a desire to add to the improvement of the moral, mental, and physical welfare of the public generally."<sup>6</sup> Even though the camp received income, it was

---

<sup>1</sup> Alaska Const. art. IX, § 4.

<sup>2</sup> AS 29.45.030(c).

<sup>3</sup> *Greater Anchorage Area Borough v. Sisters of Charity*, 553 P.2d 467 (Alaska 1976).

<sup>4</sup> *Id.*

<sup>5</sup> *Evangelical Covenant Church of America v. City of Nome*, 394 P.2d 882 (Alaska 1964).

<sup>6</sup> *Matanuska-Susitna Borough v. King's Lake Camp* 439 P.2d 441 (Alaska 1968).

not driven by a "dominant profit motive" and the income was "incidental to and reasonably necessary for the accomplishment of its charitable purposes."

By contrast, a nonprofit hospital that rented part of its space to private-practice doctors lost the exemption: "when the property in question is used even in part by non-exempt parties for their private business purposes, there can be no exemption."<sup>7</sup> A later case makes the same point: "When a person derives income from property in such fashion it seems to us he is using it for his own personal advantage and we can see no valid reason why he should not, as all other citizens who rent their property do, pay the taxes regularly assessed to it."<sup>8</sup>

The case of *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870 (Alaska 1985) also created many rules that apply here:

- "All uses of the property must be for the direct and primary exempt purpose."
- The exemption must be spatially apportioned; it cannot be apportioned by time.
- Any combination of exempt purposes can meet the exemption statute's requirements.
- "Property occasionally used for a nonexempt purpose is not exempt since the property must be used exclusively for exempt purposes."
- Property used primarily for fundraising is not exempt because fundraising is not the same as charity.
- Otherwise nonexempt property may become exempt if its "use was directly incidental to and vitally necessary for the exempt use of other charitable property."
- "Use of true minor import or a *de minimus* use will not defeat exemption." This rule was created for "lots supporting and adjacent to a structure or residence [used exclusively for religious purposes] which are necessary to convenient use," language that does not appear in the current statute. It is therefore doubtful whether the *de minimus* use rule remains good law.

  
*de minimus  
use rule*

The 2011 case of *Henash v. Fairbanks N. Tanana Star Borough*, 265 P.3d 302 (Alaska 2011) disregarded the dominant profit motive test first announced in *King's Lake Camp* and explained that "[t]here are no statutory restrictions on the amount of income such properties may earn" and instead announced the following rule:

Income-deriving properties "used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes" will "remain exempt if (1) the entities using a specific property are all nonprofit religious, charitable, hospital, or educational groups (with educational groups using the property exclusively for classroom space); and (2) the property meets the exclusive use requirement of AS 29.45.030(a), being used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes."

A charitable purpose includes "what is done out of good will and a desire to add to the improvement of the moral, mental, and physical welfare of the public generally."<sup>9</sup>

<sup>7</sup> *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence*, 553 P.2d 467 (Alaska 1976).

<sup>8</sup> *Sisters of Providence*, 672 P.2d 446 (Alaska 1983).

<sup>9</sup> *Matanuska-Susitna Borough v. King's Lake Camp* 439 P.2d 441 (Alaska 1968).

Evidence of a charitable purpose includes providing services for less than their true worth.<sup>10</sup> A charitable purpose "is a gift to a general public use, which extends to the poor as well as to the rich."<sup>11</sup>

An overbroad reading of the charitable purpose exemption could make all nonprofit entities registered with the State, exempt. Just because an entity is a nonprofit corporation does not mean that it is automatically entitled to a charitable purpose exemption.

The various uses to which Food Bank put its property involved money changing hands. AS 29.45.030(c) therefore applies, so the meaning of a "nonprofit group" is relevant. The Assessor determines that a nonprofit group means a 501(c)(3) organization.<sup>12</sup> Relevant here, under IRS guidance, such an organization may have a religious purpose or a charitable one, which includes "relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science."<sup>13</sup> This definition complies with Alaska court rules and allows the Assessor to verify the status of a nonprofit group by researching whether it is an incorporated nonprofit within Alaska. The Assessor follows the 2011 *Henash* case, which does not look at the amount of money properties earn under AS 29.45.030(c) but focuses instead on whether the entity using the property is a nonprofit group using the property for a qualifying exempt purpose.

The Assessor construes the statutes granting exemptions narrowly. Applicants for property tax exemptions have the burden of demonstrating that the subject property qualifies for an exemption.<sup>14</sup>

---

<sup>10</sup> See *Fairbanks North Star Borough v. Dena Nena Henash*, 88 P.3d 124, 136 (Alaska 2004) ("Our decisions have recognized that the existence of a gap between what the *beneficiary* pays and the value of the services the *beneficiary* receives could be evidence of a charitable purpose.").

<sup>11</sup> *City of Nome v. Catholic Bishop of N. America*, 707 P.2d 870, 890 (Alaska 1985).

<sup>12</sup> *Dena Nena Henash*, 88 P.3d at 131 ("TCC's § 501(c)(3) nonprofit status for purposes of the Internal Revenue Code is not necessarily determinative, although its status and corporate purposes are consistent with finding the purposes to be nonprofit.").

<sup>13</sup> <https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501c3>

<sup>14</sup> *Dena Nena Henash*, 88 P.3d at 129.

## **II. ANALYSIS OF THE FAIRBANKS COMMUNITY FOOD BANK SERVICE, INC.'S PARCELS**

### **A. Lot 1 Block 23 Bjerremark, 725 26<sup>th</sup> Avenue Warehouse and Community Volunteer Worksite (exempt per FNSB)**

The Fairbanks Community Food Bank Service, Inc received this lot from Fountainhead Development on December 30, 1998. It was conveyed as 2 parcels: Parcel 1, the N1/2 Block 23 Bjerremark Homestead Subdivision, and Parcel II, the S1/2 Block 23 Bjerremark Homestead Subdivision. They were conveyed with limiting conditions on the deed:

the use of the property shall be to provide food and nutrition for the hungry, primarily in the FNSB and secondarily throughout Interior Alaska (The Primary Purpose). Incidental uses of the property shall directly or indirectly further the primary purpose. If the Grantee ceases to use the property for the primary purpose or violates a term of this instrument, then on not less than ninety days written notice to the grantee the property and improvements could revert to the grantor. The limiting conditions remain in effect until January 1, 2050.

The Food Bank's primary purpose is to provide food for hungry people and to distribute surplus food that would ordinarily be discarded. All locally collected food is to be distributed without charge.

The Fairbanks Community Food Bank Service, Inc states they use the entire bottom warehouse, north side and upstairs administrative offices and warehouse mezzanine area at this 725 26<sup>th</sup> Avenue location. The Assessor determines the bottom warehouse, northside of building, upstairs administrative office, warehouse mezzanine are used by Fairbanks Community Food Bank Service Inc for charitable purposes and are exempt.

Currently there are other 3 other lessors using this building:

**Career Education Center (FNSBSD)** Lease 7/21-6/22 \$82,400,

Suite 1- 5,000 square foot finished office and classroom space for maximum of 10 students and staff.

Suite 5- 300 square foot unfinished storage space.

Serves 17 to 22-year-old "at-risk" high school population.

The Assessor determines Suite 1 is used exclusively for classroom space and Suite 5 is directly incidental to and vitally necessary for the exempt use of the specifically identified property. These lease areas are determined to be exempt for educational purposes.

**Interior Alaska Center for Non-Violent Living** Lease 7/1/20-6/30/2023 \$5,000/mo.

Suite 2, 3, & 4, comprising 4,300 square feet, used for office and administrative space for The Bridge Re-entry program. Serves recently released individuals from jail with education, counseling, resources they need to get re-settled in life outside incarceration.

This is a non-profit, charitable entity which uses the property exclusively for charitable purposes. The Assessor determines Suites 2, 3 & 4 are exempt.

**Alaska Health Fair Lease 3-year extension ends 6/30/2024**

Suite 201-1,750 square feet, 2<sup>nd</sup> floor office space \$1,500/mo. Used for office, meeting, training, clinic space for health fair program.

Services provided by this non-profit are essentially free health and safety education, and health screenings available to the public aimed to improve the health and welfare of all residents of Alaska. The property is exclusively used for charitable purposes. The Assessor determines suite 201 is exempt.

**B. LOT 9 AND 10 ABRAHAM LINCOLN (Vacant lots, taxable per FNSB)**

Food Bank states "they purchased these lots for additional parking for staff members and clients of their tenants, overflow parking, and to provide parking for various non-profits in the area, snow storage, storage of sheds, storage of other items such as the Fair Booth and other sheds and equipment which are too large for storage in the main parking area at 725 26<sup>th</sup> Avenue." While parking, for religious purpose property, it is possible to receive an exemption for "lots required by local ordinance for parking near a structure [such as the church]," AS 29.45.030(b)(3), but there is no similar allowance for parking near buildings used for charitable purposes.

Further, Borough Ordinance 3.08.020 f provides that "Unimproved or Vacant real property of any such organization which is not currently used for religious, charitable, cemetery, hospital, or educational purposes, shall be deemed to be held or used for profit unless, by deed restriction or otherwise, the real property has been effectively dedicated to future use for religious, educational, or charitable purposes only and cannot be sold or used for any other purpose."

In the letter submitted by the Food Bank along with the Exemption application it is asserted that "these lots have been an essential part of our property management "and "are dedicated to use for charitable purposes only and cannot be sold or used or for any other purpose", however that statement is incorrect. Lot 9 was purchased from the FNSB Tax Foreclosure Sale in 2006, with no limiting conditions, noted on the deed. Lot 10 was purchased from a private party in 2007, also with no limiting conditions, noted on the deed.

The current use as a snow storage and parking by "various non-profits in the area" is not for charitable purposes. Just using the space for snow storage and parking isn't, in and of itself, anything charitable and that, further while these activities may be incidental to the use of other exempt property, they are not vitally necessary for it. While additional parking may be desired it is not directly incidental to and vitally necessary for the exempt use of other specifically identified property. The main Food Bank Building and parking lot are sufficient for the charitable workers. The Assessor determines these lots are taxable.

**C. Lots 13, 14, 15 and 16 Block 31 Bjerremark (Vacant lots, taxable per FNSB)**

Food Bank acquired these lots via Statutory Warranty Deed from The Korean Community of Fairbanks. The Korean Community of Fairbanks sale from the City of Fairbanks had conditions attached: #1 the property shall serve a non-profit purpose in perpetuity. #2 Construction of a facility was to commence within 5 years of 2012, if no performance there was a reversion clause.

A Release of Existing Conditions and Agreement for New Conditions was recorded October 2016. At that time the Korean Community of Fairbanks entered a sale agreement with Fairbanks Food Community Food Bank Service, Inc, namely limiting condition #1 that the property shall serve a non-profit purpose in perpetuity was released. The new conditions agreed were: the Food Bank must use the property for Food Bank Operations or other non-profit purposes including snow storage, visitor and tenant parking and shared use with other nonprofit organizations for a period of ten years from the date of recording of the deed to the Food Bank, after which this condition shall automatically expire, and

If the Food Bank permanently stops using the Property for Food Bank operations or other nonprofit purposes before the date stated in (a) the City may elect to buy the property from the Food bank for \$32,000.

In the letter submitted by the Food Bank to the Assessor along with the Exemption application it is asserted that "these lots have been an essential part of our property management," "have been in continuous use as a storage area" and "are dedicated to use for charitable purposes only and cannot be sold or used for any other purpose." However that statement is incorrect, as the limiting condition that the property shall serve a non-profit purpose in perpetuity was released in 2016, and it can be sold.

Furthermore, currently the property is fenced, as excavation on the subject lots occurred late fall 2021 to construct a foundation, for a storage building which is proposed to be built in 2022. The current use of the property is a fenced vacant lot. The Assessor therefore concludes that Lots 13, 14, 15, 16 Block 31 Bjerremark are taxable, it is not exempt as it can "be sold" under 8.04.060(c). Once construction is complete and the "proposed" building is being used "exclusively" for exempt purposes I would encourage Food Bank to reapply for exempt status.

**D. Lots 1, 2, 3 and 4 Block 31 Bjerremark (Vacant lots, taxable per FNSB)**

Food Bank acquired these lots from the Greater Fairbanks Area Habitat for Humanity in June 2006. Simultaneously a Deed Releasing Condition on Use was recorded releasing any limiting conditions on the above referenced lots.

In the letter submitted by the Food Bank along with the Exemption application to the Assessor, it was asserted that "these lots have been an essential part of our property management "and "are for parking for other non-profits in the area" and "are dedicated to use for charitable purposes only and cannot be sold or used or for any other purpose." However, that statement is incorrect. An overbroad reading of the charitable purpose exemption could make all nonprofit entities registered with the State, exempt. Just



because an entity is a nonprofit corporation does not mean that it is automatically entitled to a charitable purpose exemption.

The current use as a snow storage and parking does not qualify for the charitable purpose exemption because the reported use by "various non-profits in the area" is not charitable. Just using the space for snow storage and parking isn't, in and of itself, anything charitable. Further, while these activities may be incidental to the use of other exempt property, they are not vitally necessary for it. While additional parking may be desired it is not "directly incidental to and vitally necessary for the exempt use of other specifically identified property" as the Food Bank lot with the constructed building has parking for the charitable workers. The Assessor determines these lots are taxable.

#### **E. UMB Block 1 Gateway Lot 8 Block 1 (partially taxable per FNSB)**

Food Bank has been leasing this Location in its entirety to Literacy Council from September 1, 2004 to current, at a lease rate of \$2,500 month and performance of \$30,000 of remodeling within the first 18 months of the lease. This location also houses Forget Me Not Books a used book storefront. "Forget-Me-Not Books is a used bookstore serving Fairbanks and the Interior. We sell quality used book for excellent prices. All proceeds support the educational programs of the Literacy Council of Alaska." There is no further evidence other than what is stated as the mission on the website that Forget Me Not Books is "charitable." To qualify for an exemption the direct and primary purpose must be charity. "Property used by a charitable organization to raise money for that group's charitable activities is not exempt since the property's direct and primary use is fund-raising and not charity itself"<sup>15</sup> The book shop can't be charitable solely on the basis that it is raising money for the Literacy Council; it must be a stand-alone charity to receive the exemption, otherwise its area must be taxable and spatially apportioned.

The Assessor determines this building must be spatially apportioned. The area of the building being used by the Literacy Council is exempt. The area used by Forget Me Not Books is taxable and must be spatially apportioned.

#### **F. Lot 1A Block 2 Bjerremark (partially taxable per FNSB)**

Fairbanks Community Food Bank Volunteer Clubhouse, located at 2216 South Cushman Street, is the Former Variety Motors building and houses two distinct areas. The warehouse portion is used by the Fairbanks Community Food Bank Service, Inc to service their Food is Medicine Program. The Food is Medicine Program uses the warehouse portion of the building 5 days a week from 11am 3pm (4 hours a day) for distribution of fresh food for those who are medically referred by doctors due to chronic diseases.

The other portion of the building, which is referred by the "Food Bank" as "sales office" space of the former Variety Motors, is used as hospitality for various community volunteer efforts. The Food Bank stated in their letter to the Assessor they used this

<sup>15</sup>City of Nome v. Cath. Bishop of N. Alaska, 707 P.2d 870, 879 (Alaska 1985)



portion of the building a couple of times in the last year as a "fundraising" location. In April it hosted the "Empty Bowls" Potter Guild fundraiser event, and again on June 26<sup>th</sup> there was a Lemonade Stand fundraiser done by students. All uses of the property must be for the direct and primary exempt purpose. Property used by a charitable organization to raise money for that group's charitable activities is not exempt since the property's direct and primary use is fund-raising and not charity itself.

This space was used by many community people and agencies, for example the "Co-Op Market used it in 2020 for their quarterly board meetings." "Other Community groups regularly use the space for their trainings or board meetings." Property occasionally used for a nonexempt purpose is not exempt since the property must be used exclusively for exempt purposes. When the property in question is used even in part by non-exempt parties for their private business purposes, there can be no exemption. Other Community Groups may or may not be nonprofit corporations, but under AS 29.45.030(c), they do not use the center for exempt purposes. Holding "training and Board Meetings" is not charitable, and religious and educational uses do not apply here.

A taxpayer claiming a tax exemption must produce evidence sufficient to prove the property's eligibility to the exemption. For the reasons explained above relating to these same uses, the Assessor determines that building must be spatially apportioned. The warehouse portion of the building used for the Food is Medicine Program is determined to be exempt. The area referred to as the "former sales office" and used as hospitality for community volunteer efforts is determined to be taxable.

## CONCLUSION

Fairbanks Community Food Bank Service, Inc has not demonstrated that all its uses of its property clearly fell within the exemption statute's language. After careful review of the State law, FNSB codes, submissions by the applicants, and the direction derived from the courts, the Assessor concludes that the majority of the uses were for charitable purposes or otherwise exempt, but other uses for parking, snow removal, storage, vacant lots, and fundraising do not qualify for an exemption under Alaska law.

## SUMMARY OF DECISION

**PAN 0569429** Lot 1 Block 23 Bjerremark- Food Bank Warehouse & Community Volunteer Worksite- Exempt.

**PAN 0043478 & 0043486** Lot 9 & 10 Abraham Lincoln, Vacant Lots- Taxable.

**PANs 0528013, 0528021, 0528030, 0528048** Lots 13, 14, 15, & 16 Block 31 Bjerremark- Vacant Lots - Taxable.

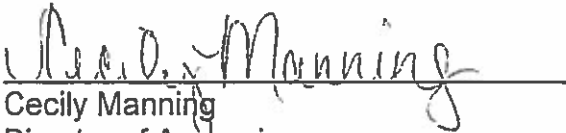
**PANs 0527891, 0527904, 0527912, 0527921** Lot 1, 2, 3 & 4, Block 31 Bjerremark- Vacant Lots- Taxable

PAN 0520853 Umb 03 Block 01 Gateway- Partially Taxable  
Literacy Council- Exempt  
Forget-Me-Not-Books- Taxable

PAN 0050229 Lot 1A Block 2 Bjerremark-- Food Bank Volunteer Clubhouse- Partially  
Taxable-  
Warehouse-Exempt  
Hospitality Community Volunteer Efforts front area "Sales Office"- Taxable

DATED at Fairbanks, Alaska this 5<sup>th</sup> day of April 2022.

FAIRBANKS NORTH STAR BOROUGH

  
Cecily Manning  
Director of Assessing  
Borough Assessor

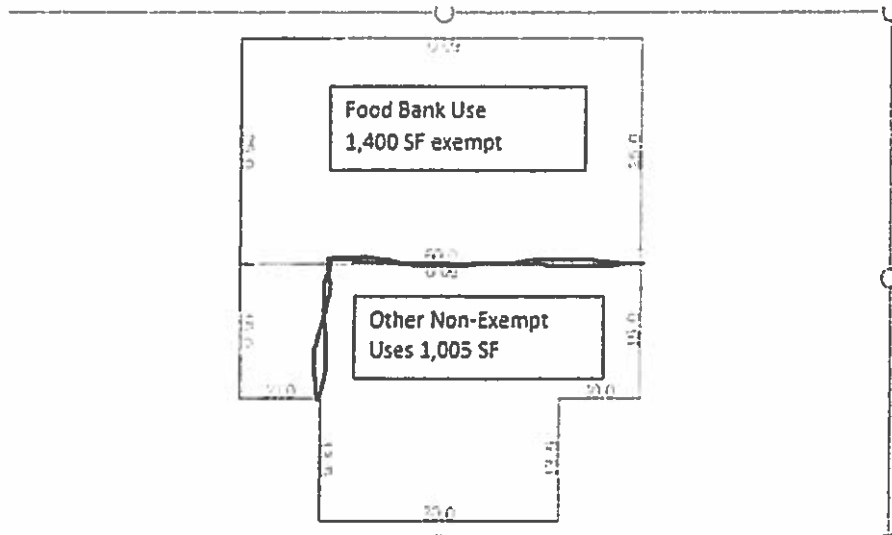
## SPATIALLY APPORTIONED PROPERTY DETAIL

PAN 0050229

Lot 1A Block 2 Bjerremark

2022 Spatially Apportioned Taxable Value

Land \$5,025 Improvement \$116,173 Total \$121,198



PAN 0520853

UMB 03 Block 01 Gateway

2022 Spatially Apportioned Taxable Value

Land \$15,840 Improvement \$122,301 Total \$138,141

