

REPRESENTATIVE FOR PETITIONER:  
Brian Hoffer, Kindig & Sloat, P. C.

REPRESENTATIVE FOR RESPONDENT:  
W. L. McLaughlin, McLaughlin, Simpson, Eberhard & Kauffmann, P. C.

---

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

LaCasa of Goshen, Inc,	)	Petition No.:	20-015-03-2-8-00001
	)		
Petitioner,	)	Parcel:	20-11-09-432-006-000015
	)		
v.	)		
	)		
Elkhart County Property Tax	)	Township:	Elkhart
Assessment Board of Appeals	)		
	)		
Respondent.	)	Assessment Year:	2003

---

Appeal from the Final Determination of the  
Elkhart County Property Tax Assessment Board of Appeals

---

**December 11, 2006**

**FINAL DETERMINATION**

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

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The issue presented for consideration by the Board is whether the subject property is used and occupied for charitable purposes and, therefore, exempt from Indiana property tax under Ind. Code §6-1.1-10-16?

## **PROCEDURAL HISTORY**

2. LaCasa of Goshen, Inc. (LaCasa) owns real estate located at 105 S. Cottage Avenue in Goshen. Dennis E. Holsopple, Chief Financial Officer of LaCasa, filed an Application for Property Tax Exemption (Form 136) for the property for the 2003 assessment year on May 14, 2003. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the property is 100% taxable on July 1, 2004.
3. Pursuant to Ind. Code § 6-1.1-11-7, Larry Gautsche, Executive Director of LaCasa, filed a Petition to the Indiana Board of Tax Review for Review of Exemption (Form 132) on July 30, 2004, seeking an administrative review.

## **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Debra Eads, held a hearing on June 20, 2006, in Goshen, Indiana.
5. The following persons were present at the hearing:
  - For the Petitioner:
    - Larry Gautsche, Executive Director of LaCasa of Goshen, Inc.
  - For the Respondent:
    - Veronica Williams, Elkhart County Deputy Assessor
6. The parties presented the following exhibits:
  - Petitioner Exhibit 1 – Petitioner’s Brief,
  - Respondent Exhibit 1 – Respondent’s Brief,
7. The following additional items are officially recognized as part of the record of proceedings:
  - Board Exhibit A – The Form 131 Petition with attachments,
  - Board Exhibit B – Notice of Hearing dated March 7, 2006,

Board Exhibit C – Notice of Appearance of Brian Hoffer,  
Board Exhibit D – Hearing sign in sheet.

8. The subject property is a single-family dwelling located at 105 S. Cottage Avenue in Goshen, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2003, the PTABOA determined the property to be 100% taxable. The Petitioner contends the property should be 100% tax exempt.

### **JURISDICTION**

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### **ADMINISTRATIVE REVIEW AND BURDEN**

12. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
13. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*,

802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).

14. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

### **Basis for Exemption**

15. The general rule is that all property is subject to property taxation. Ind. Code § 6-1.1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. IND. CONST., Art. 10. § 1.
16. Property that “is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes” is exempt from property taxation. Ind. Code § 6-1.1-10-16. For this exemption, the property must be predominantly used or occupied for one or more of the listed purposes. Ind. Code § 6-1.1-10-36.3.
17. An exemption shifts the amount of taxes to other parcels that are not exempt. *National Ass’n of Miniature Enthusiasts v. State Bd. Of Tax Comm’rs*, 671 N.E.2<sup>nd</sup> 218 (Ind. Tax Ct. 1996). The transfer of this obligation to non-exempt properties is not an inconsequential shift. Therefore, worthwhile activities or noble purposes alone are not enough for tax exemption. Exemption is justified and upheld on the basis of accomplishment of a public purpose. *Id.* at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Bd. Of Tax Comm’rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
18. Use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property

is used, but on how money is spent. Federal income tax exemption or not-for-profit status is not determinative of a property tax exemption. *Raintree Friends Housing, Inc. v. Indiana Dep't of Revenue*, 667 N.E.2d 810, 816 n.8 (Ind. Tax Ct. 1996) (non-profit status does not entitle a taxpayer to tax exemption).

### Analysis

19. The Petitioner contends that LaCasa is an Indiana Non-Profit Corporation that owns, occupies, and uses the subject property for a “charitable purpose” under Ind. Code § 6-1.1-10-16 (a) ), which states that “[a]ll or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious or charitable purposes.” *Hoffer argument, Petitioner Exhibit 1 at 3.*
20. In support of its contention, the Petitioner presented the following testimony and other evidence:
  - a. According to the Petitioner, the subject property is a residential property located at 105 Cottage Avenue in Goshen that was purchased by the City of Goshen with funds restricted to benefit low to moderate income families. *Hoffer argument; Petitioner Exhibit 1 at 1.* In conjunction with the establishment of a Safe Neighborhood Program, Goshen transferred title of the property to the Petitioner to administer the program for a three year period. *Id.* The Petitioner was required to rehabilitate the property and lease the subject property to a Goshen police officer through a subsidized lease. *Id.; Petitioner Exhibit 1 at 2.* In the event that the property is not rented to a police officer, the agreement with the city requires that the Petitioner rent the property to a family whose income falls below 80% of median income. *Id.*
  - b. The Petitioner contends that the property was initially rented for \$150 a month and presently rents for \$350 a month. *Hoffer argument.* The Petitioner contends that, in exchange for this “below market rent,” a tenant police officer lives in the

neighborhood and works with community outreach staff to resolve neighborhood issues. *Id.*; *Attachment to Board Exhibit A, Property Rental Agreement.*

- c. Further, the Petitioner contends that its use of the property is consistent with the Petitioner's by-laws and Articles of Incorporation. *Hoffer argument.* According to the Petitioner, the agreement between LaCasa and the City of Goshen to administer the Safe Housing Program and the subsequent leasing of the subject property to a Goshen police officer are within the stated purposes in the Amended Articles of Incorporation of LaCasa of Goshen. *Id.*; *Petitioner Exhibit 1 at 4.*
  - d. Finally, the Petitioner argues that not every possible charitable use for property has been specifically designated by statute. *Hoffer argument.* According to the Petitioner, courts have frequently found that uses meet the charitable purpose test even when the specific use has not been listed in the statutes. *Id.*
21. The Respondent contends that, while the Petitioner may be a charitable entity, the leasing of the subject property to a police officer does not represent a charitable purpose.  
*McLaughlin argument.*
- a. The Respondent argues that the term "charitable" may have a broad definition in Indiana statute, but qualification for exemption is based on the use of the property and is therefore quite narrow. *McLaughlin argument.* Here, the Respondent contends that the subject property is not used for a charitable purpose because, according to the Respondent, the Petitioner's tenant is not a low income person. *Id.*
  - b. The Respondent further contends that no statute or court case indicates that rental of property to a police office in order to assist in the safety of the neighborhood would constitute an exempt use of the property. *McLaughlin argument.* According to the Respondent, the Petitioner's interpretation of "charitable

purpose” suggests that the residence of any police officer could be considered exempt from taxation. *Id.*

#### ANALYSIS

22. The Petitioner claims that it is entitled to an exemption because the subject property is owned, occupied and used for charitable purposes. The Indiana General Assembly has provided that “[a]ll or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for education, literary, scientific, religious, or charitable purposes.” Ind. Cod § 6-1.1-10-16(a). Similarly, a tract of land is exempt if “a building that is exempt under subsection (a) or (b) is situated on it. . .” Ind. Code § 6-1.1-10-16(c).
23. When interpreting the exemption provided by Ind. Code § 6-1.1-10-16(a), “the term ‘charitable purpose’ is to be defined and understood in its broadest constitutional sense.” *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005) (citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 251 N.E.2d 673, 682 (1969)). As a result, “[a] charitable purpose will generally be found to exist 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 of a benefit that will inure to the public by the accomplishment of such acts.” *Id.* (quoting *Indianapolis Elks*, 251 N.E.2d at 683).
24. The test used to determine whether all or a portion of a subject property qualifies for an exemption for charitable purposes is the “predominant use” test. *New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Ind. Code § 6-1.1-10-36.3(a) states that “property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.” Ind. Code § 6-1.1-10-36.3(c) further

provides that “[p]roperty that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.” Ind. Code § 6-1.1-10-36.3(c)(3).

25. Moreover, “[t]he declaration of charity by an organization does not necessarily mean that the dominant use of the organization’s property is of the form of charity which the law recognizes as entitling an organization to tax exemption.” *Sahara Grotto v. State Board of Tax Commissioners*, 261 N.E.2d 873, 878 (1970). In order to qualify for an exemption, the owner must submit probative evidence that the property is owned for an exempt purpose, used for an exempt purpose, and occupied for an exempt purpose. Once these three elements are met, the property can be exempt from taxation. *Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005).
26. Here the Petitioner claims that it is entitled to an exemption under Ind. Code § 6-1.1-10-16(a), because it owns, occupies and uses the subject property to lease the property at a subsidized rent to a police officer in order to reduce crime in a low-income neighborhood. In support of this contention, the parties agreed that the property was rented for \$150 a month to a Goshen police officer who acted as a community “liaison.” Thus the Petitioner essentially argues that, first, renting the subject property for \$150 is a charitable act and, second, providing a police presence in the community provides a public benefit.
27. First, the Petitioner claims that it rents the property “below market rent.” The Petitioner, however, presented no evidence of market rent for the property at the time of the assessment. Similarly, the Petitioner failed to present any testimony regarding the size or



character of the property that would allow the Board to determine whether a rent of \$150 per month was below market rent for the subject property. It is not sufficient merely to allege that the rent is below market. The Petitioner must present probative evidence of that fact. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). The Respondent, however, agreed that the property was leased for less than market rent. Thus, for the purposes of establishing a prima facie case, the Board will consider the rent for the subject property to be below market rent.

28. The Petitioner further contends that providing a police presence in a low income neighborhood is a “charitable purpose.” In support of this contention, the Petitioner merely testified that the tenant acted as a “liaison” for the community. It is insufficient to point to a police officer’s residence and claim a police presence. If that were enough to show a charitable purpose then, as the Respondent argued, the residence of every law enforcement agent would potentially be exempt. Further, it is not enough to show that the officer was involved in neighborhood activities or organized a neighborhood watch program, because these are the activities of any civic-minded individual living in a neighborhood. The lease, however, requires that the tenant participate in the community, help to establish a crime prevention program, serve as a liaison to criminal justice agencies, and meet regularly with the Safe Neighborhoods Program administrators to plan neighborhood activities. *Board Exhibit A, Property Rental Agreement, ¶3*. Whereas a civic-minded individual chooses to act on behalf of the community, here the lease requires that the tenant act on behalf of the community.<sup>1</sup> Thus, the Petitioner has

---

<sup>1</sup> We note, however, that the Board is not required to comb through the record to support the Petitioner’s case. Nor is it sufficient for the Petitioner to point to the lease without any explanation of its relevance and simply contend that it has raised a prima facie case. The Petitioner is cautioned that it is the taxpayer’s duty “to walk the Indiana Board . . . through every element of the analysis.” See *Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004)). A Petitioner “cannot ‘generically claim without explanation that [they] made a prima facie case then [ ] cite to . . . the record as though the evidence speaks for itself.’” *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005). We further note that the Petitioner presented no evidence that the tenant met its obligations. The Petitioner failed to show that any activities or programs had been organized, created or promoted as a result of the Petitioner’s tenant’s presence and involvement in the community. Thus, the Petitioner’s case may have been easily rebutted.

minimally shown that the property provides a public benefit in relieving the city of some public safety obligations in the neighborhood and requires acts different from the everyday purposes and activities of man in general.

29. The Petitioner raised a minimally sufficient prima facie case based on the parties' agreement as to the facts of the case.<sup>2</sup> Where the Petitioner has established a prima facie case, the burden shifts to the Respondent to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent contends that the Petitioner filed for exemption under Ind. Code § 6-1.1-10-16(i)(1)(c), which refers to the rehabilitation of property, but the application for exemption does not support the Respondent's claim. *Hoffer argument; Attachment to Board Exhibit A*. The Respondent further argues that rental of property to a police office in order to assist in the safety of the neighborhood is not an exempt use of the property. The Board, however, finds that the Petitioner's showing that its tenant has obligations under the lease to establish a police presence in the neighborhood and participate in the community is minimally sufficient to show a public benefit.

#### **SUMMARY OF FINAL DETERMINATION**

30. The Petitioner raised a prima facie case. The Respondent agreed to the facts of the case and failed to rebut the Petitioner's evidence. The Board, therefore, finds in favor of the Petitioner and holds that the property should be 100% tax exempt.

---

<sup>2</sup> We make no determination whether \$350 or even \$150 is "below market rent" for the property. Nor do we determine whether the lease or sale of the property to an individual with 80% of the median income would be a "charitable" use. The parties agreed that the rent was "below market" rent and the Board accepts that agreement. Further, any different or future use of the property is not before the Board in this proceeding.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

---

Commissioner, Indiana Board of Tax Review

**IMPORTANT NOTICE**  
**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.