

REPRESENTATIVES FOR PETITIONER: Bradley D. Hasler, BINGHAM McHALE LLP
Jeffrey T. Bennett, BINGHAM McHALE LLP

REPRESENTATIVE FOR RESPONDENT: Marilyn S. Meighen, MEIGHEN &
ASSOCIATES, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

HCPI INDIANA, LLC)	Petition No.: 29-018-04-2-8-00041
)	
Petitioner,)	County: Hamilton
)	
v.)	Township: Clay
)	
HAMILTON COUNTY PROPERTY TAX)	Parcel No.: 16-13-11-04-18-001.105
ASSESSMENT BOARD OF APPEALS,)	
)	Assessment Year: 2004
Respondent.)	
)	

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

February 20, 2006

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issues

1. The issues presented for consideration by the Board are:
ISSUE 1 – *Does the property qualify for an exemption under Ind. Code § 6-1.1-10-16?*
ISSUE 2 – *Does the property qualify for an exemption under Ind. Code § 6-1.1-10-18.5?*
ISSUE 3 – *Is denial of exemption consistent with constitutional requirements for uniform and equal treatment of similarly situated property owners?*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7 Jeffrey Bennett, BINGHAM McHALE, LLP, filed a Form 132, Petition for Review of Exemption, on behalf of HCPI Indiana, LLC (the Petitioner). The Form 132 was filed on July 21, 2004. The determination of the Hamilton County Property Tax Assessment Board of Appeals (the PTABOA) was issued on June 21, 2004.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on September 8, 2005, in Noblesville before Brian McKinney, the Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2.
4. Persons sworn as witnesses at the hearing:
Kenneth P. Catellier, Asset Manager for Bremner, Inc.,
Debbie Folkerts, Hamilton County Assessor,
Kim Powell, Hamilton County Assessor's Office.
5. The following exhibits were presented by the Petitioner:
Petitioner's Exhibit A – Form 136 Exemption Application, and attachments,
Petitioner's Exhibit B – 2003 year to date expense reconciliation,

Petitioner's Exhibit D – Hospital directory for Marion County,
Petitioner's Exhibit E – IRS.gov search for charities web page,
Petitioner's Exhibit F – 2003 fiscal report for Clarian,
Petitioner's Exhibit G – Clarian Health, medical education web page,
Petitioner's Exhibit H – Form 136 exemption application for Professional Careers
Institute, Inc. (PCI) in Marion County,
Petitioner's Exhibit I – Detailed parcel information, PCI property, web page,
Petitioner's Exhibit K – Secretary of State web page with PCI information,
Petitioner's Exhibit L – Form 136 exemption application for ITT Educational
Services, Inc. (ITT) in Marion County,
Petitioner's Exhibit M – Detailed parcel information, ITT property, web page,
Petitioner's Exhibit O – Secretary of State web page with ITT information,
Petitioner's Exhibit P – Form 136 exemption application for Indiana Business
College in Marion County,
Petitioner's Exhibit Q – Detailed parcel information, Indiana Business College,
web page,
Petitioner's Exhibit S – Secretary of State web page with Indiana Business
College information,
Petitioner's Exhibit T – Form 136 exemption application for Clarian Health in
Hamilton County,
Petitioner's Exhibit U – Information for parcel 16-13-11-04-18-001.005,
Petitioner's Exhibit V – Information for parcel 16-13-11-04-18-001.002,
Petitioner's Exhibit W – Information for parcel 16-13-11-00-00-017.000,
Petitioner's Exhibit X – Information for parcel 16-13-11-04-18-001.000,
Petitioner's Exhibit CC – Rent roll for the subject property,
Petitioner's Exhibit EE – Information for parcel 16-13-11-04-01-026.000,
Petitioner's Exhibit LL – Information for parcel 16-09-26-00-00-016.201,
Petitioner's Exhibit NN – Articles of Incorporation, Clarian Health Partners,
Petitioner's Exhibit QQ – Form 136 exemption application for HCPI property in
Marion County,
Petitioner's Exhibit RR – Form 120 granting partial exemption to HCPI property
in Marion County.

6. The following exhibits were presented by the Respondent:
 - Respondent's Exhibit 1 – Aerial map,
 - Respondent's Exhibit 2 – Warranty deed conveying property to the Petitioner,
 - Respondent's Exhibit 3 – Secretary of State web page with information regarding the Petitioner,
 - Respondent's Exhibit 4 – 2003 annual report for Health Care Property Investors, Inc (HCP),
 - Respondent's Exhibit 5 – 2004 annual report for HCP,
 - Respondent's Exhibit 6 – web page entitled “About Clarian,”
 - Respondent's Exhibit 8 – Market rent for Class A, multi-tenant office space in Carmel, data collected in November of 2002.

7. The following additional items are officially recognized as part of the record of proceedings:
 - Board Exhibit A – Form 132, Petition for Review of Exemption,
 - Board Exhibit B – Notice of hearing.

8. The parties timely filed post hearing briefs and proposed findings of facts and conclusions of law. These items are part of the record of proceedings. On January 26, 2006, Petitioner filed a “Supplemental Points and Authorities.” This item is also considered part of the record.

9. The subject property consists of 7.77 acres of land located in Hamilton County. A building commonly known as Methodist Medical Plaza Carmel (MMP Carmel) is located on the parcel. MMP Carmel is a three-story structure containing approximately 123,168 rentable square feet. Clarian Health Partners, Inc. (Clarian) leases approximately **[NUMBER REDACTED]** of the building (Clarian Space).

10. The following matters or facts were stipulated and agreed by the parties:
 - a. Clarian is an Indiana not-for-profit corporation.

- b. During the 12 months preceding March 1, 2004, the activities that went on in the Clarian space included performing a variety of surgeries, medical treatments relating to, without limitation, in vitro fertilization, neurology, women's health, arthritis care, injury rehabilitation, ophthalmology, and orthopedics.
11. The ALJ did not conduct an on-site inspection of the subject property.
12. The PTABOA determined the property is 100% taxable for the 2004 assessment.
13. The Petitioner contends the property is entitled to a 59% exemption.
14. Evidence considered particularly relevant to this determination includes the following:
 - a. Petitioner, HCPI, is a Delaware corporation that owns the subject property. Health Care Property Investors, Inc. (HCP), a Maryland corporation, is a separate entity that owned a 90% interest in HCPI in 2003 and a 94% interest in 2004.
 - b. HCP is a self-administered equity real estate investment trust (REIT) that invests directly or through joint ventures in health care facilities throughout the United States. On December 31, 2003, HCP's real estate portfolio of properties, including joint ventures, consisted of 554 properties totaling 34.2 million square feet located in 44 states. HCP had total revenue of \$400,183,000 in 2003 and owned assets totaling \$3,035,957,000. The subject property is included in HCP's portfolio. HCP's business strategy is: "We are organized to invest in income-producing health care related facilities. Our primary goal is to increase shareholder value through profitable growth. Our investment strategy to achieve this goal is based on three principles – an opportunistic investing approach, portfolio diversification, and a conservative balance sheet." *Resp't Ex. 4, pg 2 of Form 10-K report.*

- c. Clarian Health Partners, Inc. (Clarian) is an Indiana not-for-profit corporation organized exclusively for charitable, educational, and scientific purposes within the meaning of 501(c)(3) of the Internal Revenue Code of 1986. Clarian owns and operates, among other facilities, the Methodist/IU/Riley Hospital in downtown Indianapolis. *Pet'r Ex. D – E.*
- d. The subject property is a three-story building containing 123,168 rentable square feet located on 7.77 acres of land. The building has two sections: the outpatient center and the medical office building. Clarian leases approximately [NUMBER REDACTED] of the building from the Petitioner ([NUMBER REDACTED] of the outpatient center and [NUMBER REDACTED] of the medical office building). *Pet'r Ex. CC; Catellier testimony.* The lease is a [NUMBER REDACTED] year lease with possible renewals. *Id.* Under the lease, Clarian pays rent ranging from [NUMBER REDACTED] per square foot to [NUMBER REDACTED] per square foot for the medical office building. *Pet'r Ex. CC.* Clarian also pays from [NUMBER REDACTED] to [NUMBER REDACTED] per square foot for the outpatient center. *Id.* The Petitioner is responsible for expenses up to an established expense stop.¹ *Catellier testimony.* The expense stop is [NUMBER REDACTED] per square foot for the medical office building. *Pet'r Ex. CC.* The expense stop for the outpatient center is [NUMBER REDACTED] for part of the area and [NUMBER REDACTED] for the other part. *Id.* Clarian is responsible for all expenses over the pre-arranged expense stop. *Catellier testimony.* Two other tenants, Midwest Eye Institute and Methodist Sports Medicine, lease the remaining balance of the medical office building. Those tenants pay between [NUMBER REDACTED] and [NUMBER REDACTED] per square foot with an expense stop between [NUMBER REDACTED] and [NUMBER REDACTED] per square foot. *Pet'r Ex. CC, Catellier testimony.* There was no evidence provided regarding the operators of these other spaces or the types of services offered by them. Clarian is the sole occupant of the outpatient center. *Pet'r Ex. CC.*

¹ The term "expense stop" means the owner of the building will pay all expenses associated with an area up to a specific amount. Anything beyond the expense stop is the responsibility of the tenant.

- e. Clarian signed a master lease for space in the subject building. Master leases are “nice leases” because they are usually for a larger piece of square footage and longer periods of time. *Catellier testimony*. The rent paid by Clarian is “slightly below market.” *Id.*

- f. Clarian uses the space for a variety of surgeries, medical treatments relating to, without limitation, in vitro fertilization, neurology, women’s health, arthritis care, injury rehabilitation, ophthalmology, and orthopedics. *Joint Stipulation*. During normal business hours there are medical students present who are furthering their education by observing and performing procedures. *Catellier testimony*. Clarian also provides services to some patients at a reduced fee or no fee based on the patient’s inability to pay. *Id.* The entire Clarian organization, including its downtown hospital, provided over \$18.2 million in charity care for 2003. *Id.*; *Pet’r Ex. F.*

- g. Clarian leases and uses [NUMBER REDACTED] of another property similar to the subject property in Marion County (Methodist Medical Plaza East). Marion County granted a 76% exemption to that property. *Pet’r Ex. RR; Catellier testimony*.

- h. Any savings from an exemption granted to the Petitioner would pass through to Clarian in the form of reduced expenses. The amount would be in the range of [NUMBER REDACTED] - [NUMBER REDACTED] per square foot. *Catellier testimony*.

- i. Although the property is occupied and used in a manner similar to that of a hospital, the exemption application was denied because the ownership did not meet the statutory requirements. *Folkerts testimony*.

Jurisdictional Framework

15. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and 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.

Administrative Review and the Petitioner's Burden

16. 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).
17. 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. Washington 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”).
18. 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 of Exemption and Burden

19. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.

20. In Indiana, 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. *Raintree Friends Housing, Inc. v. Indiana Dep't of Revenue*, 667 N.E.2d 810 (Ind. Tax 1996) (nonprofit status does not entitle a taxpayer to tax exemption).
21. For property tax exemption, the property must be predominantly used or occupied for exempt purposes. Ind. Code § 6-1.1-10-36.3.
22. All property receives protection, security, and services from the government, e.g., fire and police protection, and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996). Therefore, in Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
23. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. Therefore, worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is justified and upheld on the basis of accomplishment of public purpose. *Miniature Enthusiasts*, 671 N.E.2d 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)).
24. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel Co, Inc. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Ass'n of*

Seventh Day Adventists v. State Bd. of Tax Comm'rs, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

25. The taxpayer must demonstrate that it provides “a present benefit to the general public ... sufficient to justify the loss of tax revenue.” *Miniature Enthusiasts*, 671 N.E.2d at 221 (quoting *St. Mary's Medical Center of Evansville, Inc. v. State Bd. of Tax Comm'rs*, 534 N.E.2d 277, 279 (Ind. Tax Ct. 1989, aff'd 571 N.E.2d 1247 (Ind. 1991)); *Indianapolis Osteopathic Hospital*, 818 N.E.2d at 1014.

Discussion of Issues

ISSUE 1: Does the property qualify for an exemption under Ind. Code § 6-1.1-10-16?

26. The Petitioner contends the Clarian portion of the property is used for both educational and charitable purposes, and therefore, it qualifies for a 59% exemption.
27. The Respondent contends the property is owned by a for-profit entity whose goal is to reward shareholders. Respondent further contends that with this property HCPI is engaged in a private, profit-making business venture through investing and leasing.
28. The applicable law governing this issue is:

Ind. Code § 6-1.1-10-16 – Exemption of building, land, and personal property used for various purposes; termination of eligibility for exemption

Sec. 16. (a) All 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.

Analysis of ISSUE 1

29. 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.

Knox Co. Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc., 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005).

30. For the Petitioner to show the property is exempt under Ind. Code § 6-1.1-10-16, it must present probative evidence indicating the property is predominantly used for charitable and educational purposes. *See also*, Ind. Code § 6-1.1-10-36.3. The Respondent denied exemption because the ownership did not meet the statutory requirements. The Respondent testified that the property was predominantly used as a hospital. Use of a property as a hospital is a separate exemption covered under Ind. Code § 6-1.1-10-18.5 and is a separate issue in this case.
31. The warranty deed filed with the Hamilton County Recorder's office on December 11, 1998, transfers title to the Petitioner. The Petitioner argues that Clarian has an ownership interest in the property through its lease. Nevertheless, Ind. Code § 6-1.1-1-9 states that the holder of legal title is the owner of that property. In the present case, the Petitioner, not Clarian, is the holder of legal title and must be recognized as the owner of the property.
32. The Petitioner argues that the Indiana Tax Court recognized that an interest of less than fee simple can satisfy the ownership requirement, citing *Word of His Grace Fellowship v. State Bd. of Tax Comm'rs*, 711 N.E.2d 875, 877 (Ind. Tax Ct. 1999). Petitioner's reliance is misplaced. In that case, the issue was not the ownership of the property at issue, but whether Word had authority to file an exemption application. The State Board of Tax Commissioners conceded that the property was owned, used, and occupied for exempt purposes. *Id.* The State Board of Tax Commissioners' argued that Word did not have authority to file an exemption application because it was not the owner of the property. The Tax Court held that argument was a post hoc rationalization and it could not be raised for the first time in the Tax Court. It held that because the State Board of Tax Commissioners conceded the property was owned, occupied, and used for exempt purposes, the property was entitled to an exemption. The HCPI claim is much different because the Respondent has not conceded ownership for an exempt purpose.

33. Furthermore, the Tax Court has held that a church who purchased property under a land contract did not qualify as the owner of property under Ind. Code § 6-1.1-1-9. *Community Christian Church, Inc. v. State Bd. of Tax Comm'rs*, 523 N.E.2d 462 (Ind. Tax Ct. 1998). The Tax Court held in that case that “[t]he vendor, who holds legal title to the property, is the owner under IC 6-1.1-10-16(a).” *Id.* at 465.
34. Clarian is not the owner of the property within the meaning of Ind. Code § 6-1.1-10-16. Petitioner has legal title to the property and is the owner. Petitioner claimed an exemption under Ind. Code § 6-1.1-10-16 for charitable and educational purposes. Therefore, Petitioner bears the burden of providing probative evidence that it owns the property for exempt purposes, the property is occupied for exempt purposes, and the property is used for exempt purposes.
35. Exemption statutes are "decidedly aimed at fostering the operations of charitable enterprises by allowing a tax exemption for engaging in conduct beneficial to the general public." *Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 959 (Ind. Tax Ct. 1997). The Petitioner argues that the conduct beneficial to the general public is Clarian's charitable and educational use. The Petitioner argues it has consented to Clarian's use and occupancy for exempt purposes. The Petitioner argues that the "identity of the owner is not relevant in determining whether the Clarian space qualifies for an exemption." *Petitioner's Post Hearing Brief* at 9. To construe the ownership aspect as Petitioner argues, however, would nullify the ownership aspect in Ind. Code § 6-1.1-10-16. The identity of the owner is relevant in determining whether the property is owned for an exempt purpose.
36. Indiana Code § 6-1.1-10-16 "contains specific limits of ownership, occupation, and use in furtherance of [exempt] goals. These limits prevent an entity from leasing property to another, for either party's profit and claiming an exemption." *Sangralea*, 686 N.E.2d at 959. The HCPI investment and leasing activity in this case is exactly the type of thing that *Sangralea* recognized as being excluded from the exemption.

37. Sangralea owned the property and actually engaged in exempt activities. Sangralea leased out a portion of its building to other entities that were also engaging in exempt activities.² The Tax Court held:

Because a property's exempt status is tied to its use, it is clear that Sangralea is entitled to an exemption. Sangralea owned the property and ensured it was used in charitable work. *Sangralea does not own the property as investment property or with a motive of profit. The use and occupation of the property by the Lessees is in furtherance of Sangralea's exempt purposes. Sangralea contracted with Lessees to operate the property in a manner consistent with Sangralea's charitable purpose.* Lessees and Sangralea have simply come to an agreement as to the method of producing public benefit from the property. No profit is made on the venture, and noble goals are accomplished. Therefore, the property is owned, occupied, and used for charitable purposes.

Sangralea, 686 N.E.2d at 959 (emphasis added).

38. In *Grandview*, the owner of a property contracted with a for-profit management firm to run a home for the aged. The Tax Court stated that “the PTABOA has presented no evidence that the fees charged by Grandview are more than sufficient to pay its expenses. Likewise, the PTABOA has presented no evidence that Grandview is deriving a profit from the operation of [the property].” *Grandview*, 826 N.E.2d at 184.³
39. The language of Ind. Code § 6-1.1-10-16 is clear and unambiguous. It does not differentiate between entities that are not-for-profit and those that are for-profit. *College Corner, LP, v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, (Ind. Tax Ct. 2006) (January 19, 2006, slip op. at 10). College Corner was a limited partnership organized for the purpose of revitalizing an area of Indianapolis' historic Old Northside. Its goal was to rebuild the area's infrastructure, renovate the existing homes, and build new homes that would reflect the historic character of the neighborhood. *Id.*, slip op. at 2. The general partner was an Indiana not-for-profit corporation with a 501(c)(3) designation. The sole

² The leases in *Sangralea* were rent free. 686 N.E.2d at 955.

³ The *Grandview* case is a bit different in that the local assessor was the challenging party and bore the initial burden. In the present case, the Petitioner is the challenging party and bears the initial burden.

limited partner was an Ohio for-profit corporation. *Id.* The limited partner provided equity that allowed the partnership to acquire mortgages on 17 properties. The limited partner got a fixed 7% return on its investment. As part of its activities in renovating the neighborhood, the owner would rebuild infrastructure including renovation and addition of sidewalks and alleys. *Id.* The Tax Court held that “when a private organization takes on a task that would otherwise fall to the government, this provides a benefit to the community as a whole because it allows the government to direct its funds and attention to other community needs. Therefore, the Court agrees that restoration of College Corner’s infrastructure lessens the burden of government and thus constitutes a charitable purpose.” *Id.*, slip op. at 9.

40. While the Petitioner’s status as a for-profit entity is not a determining factor, the manner in which *the owner* uses the property is relevant. The property manager testified that the rents charged to Clarian are “slightly below market.” He then went on to state that Clarian had signed a nice master lease for a good amount of space. The statement by the property’s manager that the rent is slightly below market is not sufficient to establish what the market rate in the area is for medical office space. The Petitioner did not offer probative evidence that established the extent to which the rent paid by Clarian was below market. Without the actual market rate to compare too, the statement about below market rent is conclusory. Such statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
41. The Respondent presented a comparison of other office space in the area. This comparison indicates office space was renting for between \$16.50 per square foot and \$20.50 per square foot. The Petitioner contends this space was not medical office space. While the Petitioner may be correct, the Petitioner failed to present any probative evidence that the market rate for medical office space would be more expensive or less expensive. The record establishes that the rent paid by Clarian for the medical office building is similar to other tenants in the building and surrounding office space. There is no evidence establishing how much below market, if any, the rent for the outpatient center might be.

42. The Petitioner failed to provide probative evidence to show how the general public benefited by the arrangement between Petitioner and Clarian. For example, the owner in the *College Corner* case provided rehabilitation to sidewalks and alleys in the area. This was a benefit to the general public and relieved the government of its burden to do the same. Here, Petitioner offered no probative evidence to show how the arrangement (i.e. the lease) between Petitioner and Clarian furthers the property's allegedly exempt purposes. The Petitioner failed to prove how the general public benefited from the arrangement. No probative evidence was presented to show how the Petitioner owned or used the property for anything other than a money-making investment. The record establishes that the Petitioner owned and used the building as a business endeavor. The record does not indicate the lease requires Clarian to use the property for charitable or educational purposes. The record does not indicate Petitioner put any type of limitation on how Clarian uses the property. The Petitioner failed to prove how HCPI uses the property in an exempt manner. The record establishes that the building is an income generating business investment for HCPI, who is the owner.
43. Petitioner contends that the Respondent conceded the "used and occupied" portions of Ind. Code § 6-1.1-10-16. Respondent conceded the property was used and occupied by Clarian as a hospital, but the Respondent did not concede the property was used and occupied for charitable and educational purposes. While a hospital may qualify for an exemption under Ind. Code § 6-1.1-10-16 (if it meets the requirements set out in that section), use as a hospital does not automatically entitle a property to an exemption under this section.
44. While the cases discussed above establish that the owners' status as a for-profit or not-for-profit corporation is not determinative of charitable, exempt use, they also establish that an exemption should not be allowed when the property is leased by the owner to make a profit. In the present case, the property has at least two uses. The Petitioner uses the property as an income generating investment property. Clarian has its own, separate use for the property. The Petitioner failed to provide authority or substantial explanation to establish how Clarian's use should be attributed to it under these circumstances.

45. Even if Clarian's use is the use to be analyzed under Ind. Code § 6-1.1-10-16, the Petitioner's argument would still fail. Exemptions in general are to be strictly construed against the taxpayer and in favor of taxation. Nevertheless, the term "charity" in the exemption statute is to be understood in its broadest constitutional sense. *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). Accordingly, a charitable purpose exemption will generally be found to exist if 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 when there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner*, slip op. at 6 (citing *Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm'rs*, 251 N.E.2d 673, 683 (Ind. Ct. App. 1969); *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990).
46. Petitioner presented a copy of Clarian's 2003 fiscal report to show that Clarian is a charitable entity. This report shows revenue and charitable contribution of all property owned under the Clarian umbrella, including Methodist/IU/Riley Hospitals in Indianapolis. This report does not show how the subject property was used for charitable purposes. There was no breakdown of the space or time used, or even a breakdown of charitable activities performed. Instead, the Petitioner attempts to show that because the overall Clarian enterprise is charitable, this single piece of the enterprise must be charitable as well. The Board does not reach the same conclusion. In *Grandview*, the Tax Court stated that a property's exempt status is "tied to its use, not to its owner." *Grandview*, 826 N.E.2d at 181. Therefore, just because the overall business entity known as Clarian may be charitable does not lead to the conclusion that the subject property has predominantly charitable use simply because it is occupied and used by Clarian. "[T]he statutory test since 1983 has been predominant use of the facility, not distribution of income for charitable purposes." *State Bd. of Tax Comm'rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1263 (Ind. 2002). The Petitioner must present probative evidence that the actual use of the subject property is charitable, not how Clarian generally is charitable. The Petitioner did not provide probative evidence indicating the property is occupied or used by Clarian in a charitable manner.

47. To qualify for the educational purposes exemption, a taxpayer must demonstrate that the predominant use of its property is educational. *New Castle Lodge*, 765 N.E.2d at 1259. In addition, the educational purposes exemption will be denied when educational training is merely incidental to the other activities conducted on the property. See *Miniature Enthusiasts*, 617 N.E.2d at 222. One test to determine if the educational aspect is the predominant use was outlined in *Trinity School of Natural Health, Inc. v. Kosciusko County Property Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234 (Ind. Tax Ct. 2003). In *Trinity* the Tax Court reasoned that “[i]f Trinity stopped providing lessons to students or grading tests, the program would not exist. As a result, Trinity’s educational use of the property is predominant, and not ‘merely incidental.’” *Id.* at 1238.
48. The Petitioner presented evidence that medical students participated in rounds. Those students observed or performed procedures continually at the subject property. HCPI failed to present probative evidence detailing the number of medical students or the activities actually performed. Furthermore, simply because some educational activity may take place does not necessarily qualify the property for an educational exemption. Clarian uses the subject property to treat their patients and to support its downtown hospitals. Any educational aspect that may occur at the property is secondary or incidental to the property’s primary purpose. The subject property would continue the same function even if the medical students were not present. The kind of evidence that might prove the subject property is an educational facility is lacking in this case: no evidence of classes that are taught or preparation for the teaching of any classes; no evidence that this facility offers any type of educational degree; no evidence that the use of this facility relieves the State’s burden with programs and courses similar to those found in tax-supported schools. Therefore, the Petitioner failed to show the subject property is predominantly used or occupied by Clarian for educational purposes.
49. Furthermore, Petitioner failed to present probative evidence that the property is predominantly used for exempt purposes even if the charitable and educational aspects of Clarian’s use are considered together. Again, Petitioner did not offer any type of breakdown showing how often the structure was used in these types of endeavors.

ISSUE 2: Does the property qualify for an exemption under Ind. Code § 6-1.1-10-18.5?

50. The Petitioner contends Clarian has sufficient legal interest in the Clarian Space to qualify for an exemption (*i.e.*, ownership of leasehold interest). Clarian is a nonprofit corporation that is also licensed as a hospital. The Clarian Space supports its inpatient facility because the Clarian Space is used to provide the same treatment and services as those offered at Clarian inpatient facilities.
51. The applicable law governing this issue is:

Ind. Code § 6-1.1-10-18.5 – Nonprofit corporation property used in operation of health facility or home for the aged

Sec. 18.5. (a) This section does not exempt from property tax an office or a practice of a physician or group of physicians that is owned by a hospital licensed under IC 16-21-1 or other property that is not substantially related to or supportive of the inpatient facility of the hospital unless the office, practice, or other property:

(1) provides or supports the provision of charity care (as defined in IC 16-18-2-52.5), including funds or other financial support for health care services for individuals who are indigent (as defined in IC 16-18-2-52.5(b) and IC 16-18-2-52.5(c)); or

(2) provides or supports the provision of community benefits (as defined in IC 16-21-9-1), including research, education, or government sponsored indigent health care (as defined in IC 16-21-9-2).

However, participation in the Medicaid or Medicare program, alone, does not entitle an office, a practice, or other property described in this subsection to an exemption under this section.

(b) Tangible property is exempt from property taxation if it is:

(1) owned by an Indiana nonprofit corporation; and

(2) used by that corporation in the operation of a hospital licensed under IC 16-21, a health facility licensed under IC 16-28, or in the operation of a residential facility for the aged and licensed under IC 16-28, or in the operation of a Christian Science home or sanatorium.

(c) Property referred to in this section shall be assessed to the extent required under IC 6-1.1-11-9.

Analysis of ISSUE 2

52. The Petitioner is the owner, not Clarian. HCPI is not a nonprofit corporation. Furthermore, there is no evidence that HCPI operates any of the types of facilities listed in Ind. Code § 6-1.1-10-18.5 (b)(2).
53. Indiana Code § 6-1.1-10-18.5 exempts property from taxation if it is owned and used by an Indiana nonprofit corporation in the operation of a licensed hospital, health care facility, residential facility for the aged, or Christian Science home or sanatorium. The Petitioner failed to establish the subject property qualifies for an exemption under this section because the property is not owned by an Indiana nonprofit corporation. The subject property is owned by a for-profit State of Delaware corporation. Furthermore, the lessee, not the owner, uses the property to support its licensed downtown hospital. The Petitioner is clearly not the kind of owner described by this statute.
54. Petitioner again argues that Clarian has an interest in the property through its lease with the Petitioner. While Clarian clearly has a leasehold interest, the fact remains that Petitioner is the owner of the property. Clarian's interest does not satisfy the plain, clear language of the statute.
55. Indiana Code § 6-1.1-10-18.5 requires the owner to use that property for certain uses: a hospital licensed under Ind. Code § 16-21; a health facility licensed under Ind. Code § 16-28; a residential facility for the aged licensed under Ind. Code § 16-28; or a Christian Science home or sanatorium.⁴ The record does not establish that the subject property is used by the Petitioner in the required manner. Furthermore, the record does not establish that anyone has such a license for this particular facility.
56. The statute does not state that someone else's use can be attributed to the owner. The Petitioner has failed to provide sufficient authority to convince the Board that such an expansive interpretation would be consistent with the legislative intent behind this exemption provision.

⁴ Indiana Code § 16-21-2-14 provides that a license is not assignable or transferable and is issued only for the premises named in the application. Similarly, licenses issued under Ind. Code § 16-28 are not assignable or transferable and may be issued only for the person and premises named in the application.

57. The subject property does not qualify for an exemption under Ind. Code § 6-1.1-10-18.5.

ISSUE 3: Is denial of exemption consistent with constitutional requirements for uniform and equal treatment of similarly situated property owners?

58. The Petitioner contends that Respondent's denial of exemption based solely on the Petitioner's for-profit status is a violation of the Indiana Constitution and the United States Constitution.
59. The Respondent did not offer any argument relating to this issue.

Analysis of ISSUE 3

60. The Petitioner argues that Respondent wrongfully denied exemption because HCPI is a for-profit corporation. Petitioner relies on an Indiana Supreme Court case that held an exemption must be based on use of property and cannot be denied simply because the owner belongs to a certain class of persons (such as for-profit corporations). The Petitioner is correct that a charitable or educational exemption cannot be denied because the owner of the property is a for-profit corporation. The charitable and educational exemption statute, Ind. Code § 6-1.1-10-16, makes no such distinction. *College Corner*, 840 N.E.2d 905. The exemption in Ind. Code § 6-1.1-10-18.5 for licensed hospitals, however, does specify the owner must be a nonprofit corporation.
61. Even if Respondent denied the exemption for invalid reasons at the PTABOA level, that fact does not establish that Petitioner qualifies for any particular exemption.
62. The Petitioner's burden before the Board is to present probative evidence that it qualifies for an exemption. The Board's hearing is de novo. Consequently, a de novo hearing cures any alleged constitutional violation by the Respondent in denying the exemption. The alleged constitutional violations in the PTABOA decision, whether they actually existed or not, are moot.
63. The Petitioner presented evidence that property surrounding the subject property was granted an exemption. Petitioner offered testimony that the only difference between the

properties is that the subject is owned by a for-profit entity and the other properties are owned by not-for-profit entities related to Clarian. This statement that there is only one difference, however, is conclusory. Consequently, it has no probative value. *Whitley Products*, 704 N.E.2d at 1119. The evidence does not support that the for-profit and not-for-profit character of the owners is the only difference. Similarly, the evidence does not establish that the for-profit or not-for-profit character of the owners should be the reason that exemptions are granted or denied.

64. The Respondent testified that the surrounding property was granted exemption based on other sections of the Indiana Code. For example, surrounding vacant land was granted exemption under Ind. Code § 6-1.1-10-16(d) for a future building site. A neighboring parking lot was granted exemption as hospital property because it is owned by a hospital. The Petitioner's evidence has not proven the properties are similar.
65. Furthermore, the Petitioner presented evidence indicating a building in Marion County was granted a 76% exemption because Clarian occupies [NUMBER REDACTED] of the building. The decision of the Marion County PTABOA indicates it was allowed because it was "leased to Clarian Health Partners." There is no evidence establishing that the facts and situations are similar to this case. Furthermore, even if the properties are identical, the Petitioner still has the burden to provide probative evidence indicating the subject property is owned, occupied, and used for an exempt purpose. An incorrect decision by a local assessing body does not bind this Board to that same incorrect decision.
66. The Petitioner's constitutional arguments regarding the charitable and educational exemption are based on a faulty premise because the Board does not consider the for-profit status of HCPI to be a determinative test. The licensed hospital exemption is entitled to a strong presumption that it is constitutional in being limited to nonprofit corporate owners. The Petitioner's case has not overcome that presumption. There will be no change to allow either exemption as a result of the Petitioner's constitutional arguments.

Summary of Final Determination

67. The evidence does not prove the property is owned, occupied, and used for predominantly exempt purposes recognized by Ind. Code § 6-1.1-10-16. The Board finds for the Respondent.
68. The Petitioner failed to establish a prima facie case indicating the property qualifies for an exemption under Ind. Code § 6-1.1-10-18.5. The Board finds for the Respondent.
69. The Petitioner failed to establish a prima facie case that denial of its exemption claim creates any state or federal constitutional violation. The Board finds for the Respondent.

This Final Determination of the above captioned matter is issued this 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. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.