REPRESENTATIVES FOR PETITIONER: Sandra Bickel, Ice Miller

REPRESENTATIVES FOR RESPONDENT: Terri Boone, Huntington County Assessor

BEFORE THE INDIANA BOARD OF TAX REVIEW

In the matter of:

ROANOKE HEIGHTS APARTMENTS[1],	Petition Nos.: 35-007-06-2-8-00002 35-007-06-2-8-00001
Petitioner,	County: Huntington
v.	Township: Jackson
	Parcel Nos.: 35-01-15-400-037.600-007 220-00102-00 (Personal Property)
HUNTINGTON COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS,	
Respondent.	Assessment Year: 2006

Appeal from the Final Determination of
[Huntington County Property Tax Assessment Board of Appeals]

December 17, 2007

FINAL DETERMINATION

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

[1] At the hearing, Ms. Bickel and Mr. Daymude referred to the Petitioner as Roanoke Heights Limited Partnership. But the Form 132 petitions and exemption applications refer to the Petitioner as Roanoke Heights Apartments. *See Board Ex. A.*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE AND SHORT ANSWER

1. Roanoke Heights Apartments, a partnership owned partly by an individual who develops subsidized housing projects for profit, built the subject property using governmentally subsidized financing. In return for that financing and other benefits, Roanoke rents to low-income tenants at below-market rates. The Board must decide whether Roanoke owns, occupies, and uses its property for charitable purposes and is therefore entitled to an exemption from property taxes.

2. Roanoke is not entitled to an exemption. Because Roanoke rents to low-income tenants at below-market rates only as a condition of receiving government-funded incentives, its actions are neither obviously charitable nor different from the everyday purposes of mankind in general. Any public benefit from the subject property flows from the incentives, not Roanoke. Incentives aside, Ronald Daymude, one of Roanoke's two general partners, chiefly owns his interests in Roanoke and the subject property to make a profit.

PROCEDURAL HISTORY

3. Roanoke filed an application seeking to exempt its real and personal property located at 698 Posey Hill in Roanoke, Indiana. On October 17, 2006, the Huntington County Property Tax Assessment Board of Appeals ("PTABOA") denied that application. On November 16, 2006, Roanoke timely filed two separate Form 132 petitions asking the Board to review the PTABOA's determination.[2] The Board has jurisdiction to hear Roanoke's appeals under Ind. Code § 6-1.5-4-1(a).

[2] One petition addresses Roanoke's real property and the other addresses its personal property. The Board considers both petitions together in these findings, and refers to Roanoke's real and personal property collectively as "the subject property" unless otherwise indicated.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The Board conducted an administrative hearing on August 30, 2007, before its designated administrative law judge, Jennifer Bippus. Neither the Board nor the ALJ inspected the subject property.

5. The following persons were present at the hearing:

For the Petitioner:

Sandra K. Bickel, Ice Miller, LLP
Michael Landwer, Ice Miller, LLP
Ronald Daymude, Roanoke Heights Apartments

For the Respondent:

Terri Boone, Huntington County Assessor
Jennifer Becker

6. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Ronald Daymude, Roanoke Heights Apartments

For the Respondent:

Jennifer Becker

7. The following documents were submitted at the administrative hearing:

For the Petitioner:

Petitioner's Exhibit 1– Project worksheet for credit and rental assistance
Petitioner's Exhibit 2 – Section 515 Audit Report (Current Residence Information)
Petitioner's Exhibit 3 – Articles of Incorporation – Community Housing Initiative
Petitioner's Exhibit 4 – Amended Code of By-Laws – Community

Housing Initiative

Petitioner's Exhibit 5 – Internal Revenue Service Statement

Petitioner's Exhibit 6 – Rent and Income Limit Calculator for Huntington County

Petitioner's Exhibit 7 – Financial statements for the Roanoke Heights Apartments (Phase I and II) prepared by Wagner & Associates, Inc. CPA

Petitioner's Exhibit 8 – Price per square foot comparison of apartment projects in Huntington County prepared by Vogt, Williams, Bowen

For the Respondent:

Respondent's Exhibit 1 – Copy of Subject Property Record Card

Respondent's Exhibit 2 – Copy of IC 6-1.1-10-16(a) (e) & (i)

Respondent's Exhibit 3 – Copy of IC 6-1.1-10-16.7

Respondent's Exhibit 4 - Copy of National Association of Miniature Enthusiasts v. State Board of Tax Commissioners

Respondent's Exhibit 5 – Copy of Raintree Friends Housing Inc. v. Indiana Department of State Revenue[3]

Respondent's Exhibit 6 – Copy of Department of Revenue of the State of Illinois v. Prairie Partners, Inc.

Respondent's Exhibit 7 – Article entitled "Low Income Taxing Tax Shelter" written by Vernon Jacobs, C.P.A. along with Mr. Jacob's credentials

Respondent's Exhibit 8 – Article from the MILWAUKEE JOURNAL SENTINEL

Respondent's Exhibit 9 – Township comments concerning the submission of *College Corner L.P. v. DLGF*

Respondent's Exhibit 10 – Respondent Signature and Attestation Sheet

Respondent's Exhibit 11 - Notice of County Assessor Representation

[3] In response to Roanoke's claim that she was engaging in the unauthorized practice of law (*see infra*), Ms. Becker "rescinded" her testimony about Respondent's Exhibits 2-5. *Becker statement.* It is unclear whether the PTABOA withdrew the exhibits themselves. The Board need not resolve that question, however, because the exhibits are simply copies of statutes and published decisions that the Board may consult without any party having offered them into evidence.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A - Form 132

Board Exhibit B - Notice of Hearing

Board Exhibit C - Order Regarding Conduct of Exemption Hearing

Board Exhibit D - Hearing Sign-In Sheet

OBJECTIONS

9. Roanoke objected to Jennifer Becker appearing both as a witness and as the PTABOA's representative. *Bickel objection.* Roanoke also contended that Ms. Becker engaged in the unauthorized practice of law by (1) appearing on the PTABOA's behalf in an exemption appeal, and (2) interpreting case law. *Id.*

A. Ms. Becker's role at the hearing

10. Roanoke did not cite to any authority barring a person from appearing as both a witness and representative in a Board proceeding. Indiana's Rules of Professional Conduct prohibit attorneys from simultaneously acting in both those roles. Ind. Professional Conduct Rule 3.7. But Ms. Becker is not an attorney and therefore is not bound by those rules. Nonetheless, one of the concerns underlying Ind. Prof. Cond. R. 3.7—the possibility that the trier-of-fact will be confused about whether an attorney is testifying or acting as an advocate at any given time—might justify prohibiting a tax representative from filling both roles in a particular case. *See id.* at comment. This, however, is not such a case. The Board was able to distinguish between Ms. Becker's testimony and argument.

11. And it is not even clear that Ms. Becker acted in dual roles. Indeed, Ms. Becker did not present any evidence that the PTABOA had authorized her to represent it. Ms. Becker did submit a letter from Sheila Hines, the Jackson Township Trustee Assessor, authorizing the Huntington County Assessor to represent her at the hearing. But Ms.

Becker did not submit an appearance or power-of-attorney form authorizing her to represent either the Jackson Township Trustee Assessor or the Huntington County Assessor. And neither of those officials was even a proper party to Roanoke's appeal. Instead, the PTABOA was the statutorily designated governmental party.[4]

12. The PTABOA appeared at the hearing through Ms. Boone, its secretary. *See* Ind. Code § 6-1.1-28-1 (making the county assessor the PTABOA's secretary). The Board therefore construes Ms. Becker's participation as being that of a witness rather than a representative. While she certainly went beyond merely providing testimony and engaged in argument and cross-examination, the Board traditionally has allowed expert witnesses some leeway to assist *pro se* parties. The Board does not recommend Ms. Becker's approach. But it does not believe that her admittedly ambiguous level of participation unduly hampered the fact-finding process.

13. Roanoke also correctly pointed out that, as a paid representative, Ms. Becker had an interest in the proceedings. That interest, however, goes to the weight to be assigned to her testimony. It does not preclude her from acting as both a witness and the PTABOA's representative.

14. Thus, while clarifying Ms. Becker's role at the hearing might have been helpful, her participation did not significantly prejudice either Roanoke or the Board's fact-finding process. The Board therefore overrules Roanoke's objection to the extent that it was premised on Ms. Becker acting in a dual capacity.

[4] When Roanoke filed its appeal, Ind. Code § 6-1.1-15-3 provided that the township assessor, member of a county property tax assessment board of appeals, or county property tax assessment board of appeals "that made the original determination under appeal" was a party to defend that determination. Ind. Code § 6-1.1-15-3 (2006). And the PTABOA—not the Jackson Township Trustee Assessor or the Huntington County Assessor—made the original determination denying Roanoke's exemption application. *Board Ex. A*; *see also*, Ind. Code § 6-1.1-11-7(c) ("The county property tax assessment board of appeals, after careful examination, shall approve or disapprove each exemption application and shall note its action on the application."). In appeals filed from PTABOA determinations issued after June 30, 2007, however, the county assessor will be the proper party to defend the PTABOA's determination. *See* P.L. 219-2007 § 156(a).

B. Appearing in an exemption appeal

15. The Board's procedural rules prohibit tax representatives from being certified to practice before the Board in matters relating to exemption claims. Ind. Admin. Code tit. 52, r. 1-2-1(b)(1). But 52 IAC 1-1-6(3), as it existed at the time of the hearing, excluded "representatives of local units of government acting on behalf of the unit or as the authorized representative of another unit" from the definition of "tax representative." The Board need not resolve that ambiguity, however, because it believes that Ms. Becker acted as a witness rather than as the PTABOA's representative.[5] Thus, the Board overrules Roanoke's objection to the extent it was premised on Ms. Becker appearing before the Board in an exemption appeal.

C. Practicing law

16. Ms. Becker's attempts to make legal arguments, however, are more troubling. Once again, the Board's procedural rules in effect at the time of the hearing prohibited tax representatives from being certified to engage in any representation involving the practice of law. 52 IAC 1-2-1(b)(4). And there can be no question about whether that prohibition extends to non-attorneys representing local governmental units. The Indiana Supreme Court's Rules for Admission to the Bar and Discipline of Attorneys prohibit non-attorneys from practicing law. *See* Ind. Admission and Discipline Rule 24; *see also Indiana State Bar Ass'n v. Miller* 770 N.E.2d 328, 330 (Ind. 2002). In fact, practicing law without a license can be a criminal offense. *See* Ind. Code § 34-43-2-1(making it a class-B misdemeanor to "engage[] in the business of a practicing lawyer" without having been admitted as an attorney by the Indiana Supreme Court).

17. Becker quoted from several court decisions in arguing that Roanoke's activities were not charitable. She claimed that simply quoting from those decisions did not equate to practicing law, because she was not providing her own opinion about what the decisions

[5] The Board has amended its procedural rules to eliminate that ambiguity. Individuals meeting the requirements set forth in 50 IAC 15-4-1 may represent local government units before the Board. 52 IAC 1-1-3.5 (*filed Nov. 14, 2007, 11:11 a.m.*). But they are subject to the same practice limitations as tax representatives. *Id.* Those amended rules became effective December 14, 2007.

meant. *Becker statement.* The Board disagrees. Quoting from decisions is a form of interpreting them. And it is difficult to imagine a purer form of practicing law that interpreting judicial decisions. Had Ms. Becker more clearly been acting as the PTABOA's representative, her actions likely would have amounted to the unauthorized practice of law. As a witness, her legal arguments are simply irrelevant, and the Board will not consider them in making its final determination.[6]

FINDINGS OF FACT

18. Roanoke is a limited partnership with two general partners—Community Housing Initiative, Inc., and Ronald E. Daymude—each of which owns a 50% interest. *Daymude testimony.* Community Housing is an Indiana not-for-profit corporation organized to provide affordable housing to people with low-to-moderate incomes. *Id; Pet'r Ex. 3.* Ronald Daymude is an individual who develops, builds, owns, and manages government-funded affordable-housing properties. *Daymude testimony.* Daymude has developed between seven- and eight-thousand such properties. *Id.* Indeed, he has not worked on any "private sector" properties. *Id.* He currently manages 90 affordable-housing properties, of which he owns 60. *Id.*

19. Roanoke built the subject apartment buildings in two phases beginning in the 1970s. *Daymude testimony; see also, Resp't Ex. 1* (indicating that the apartment buildings were built in 1970 and 1978). Phase I has 20 apartments and Phase II has 16 apartments. Each two-story building contains a mix of one- and two-bedroom apartments. *Id.*

20. Roanoke financed the project through the "section-515 program" sponsored by Rural Development, an arm of the United States Department of Agriculture. *Id.* While Mr. Daymude did not reference the statutory authority for the section-515 program, he described elements matching those set forth in section 515 of the National Housing Act

[6] The Board cautions Ms. Becker against attempting to practice law in the future. Should she do so, the Board will notify the Department of Local Government Finance, which oversees the certification and de-certification of tax representatives. *See* 50 IAC. 15-5-8. It will also notify the Indiana Attorney General, the Indiana Supreme Court Disciplinary Commission and the Indiana State Bar Association, all of which are authorized to bring actions to restrain or enjoin the unauthorized practice of law. *See* Ind. Admission and Discipline Rule 24.

of 1949 and accompanying administrative regulations.[7] Through the section-515 program, Roanoke obtained a loan with a 1%-annual-interest rate, which was amortized over 40 years. *Daymude testimony.*

21. In exchange for that subsidized financing and other benefits, Roanoke agreed to several restrictions on how it can use the subject property. Thus, it can only rent to individuals or families that earn below 80% of the median income for the Huntington County area. *Daymude testimony.*

22. And the section-515 program sets upper and lower limits on the rent that Roanoke can charge. At the low end, Roanoke must charge "basic" rent, which ranges from $297 per month to $394 per month. *Daymude testimony; Pet'r Ex. 1.*

23. That does not mean that all tenants actually pay basic rent. Twenty of the property's thirty-six apartments are "rental assistance units." *Daymude testimony.* Rental assistance is premised on a tenant not having to pay more than 30% of his or her income for rent and utilities. If that 30% ceiling falls below the basic-rent level, the tenant is eligible for a subsidy to bridge the difference. *Id.* Roanoke receives those subsidies as a credit against its mortgage payments. *Id.*; *Pet'r Ex. 1.* Tenants in non-rental-assistance units sometimes pay more than 30% of their incomes in order to meet the basic-rent requirement. But those tenants often move out as soon as they find more affordable housing. *Daymude testimony.*

24. At the high end, Roanoke can charge "note rate" rent ranging from $342 per month to $470 per month. *Daymude testimony; Pet'r Ex. 1.* But Roanoke does not keep any payments above the basic rent. Instead, those overages go to Rural Development. *Daymude testimony.* And both the basic and note-rate rents are less than the Huntington area's market rate. *Daymude testimony; Pet'r Ex. 8.*

25. While the subject property can generate net income, the section-515 program limits Roanoke's annual return to 8% of its original investment. That limit translates to $2,909

[7] That act is codified at 42 U.S.C. § 1485.

for Phase I and $2,458 for phase II. *Daymude testimony*. And those annual returns are not guaranteed. In fact, for several years leading up to the administrative hearing in this case, Roanoke did not earn any returns. *Id.* In some years, Roanoke's general partners actually had to contribute additional money to address health and safety issues. *Id.* To the extent Roanoke does earn returns, the general partners split them evenly. *Id.*

26. Roanoke does not offer any programs to its tenants beyond the reduced and supplemented rent required by the section-515 program. *See Daymude testimony.*

27. Roanoke submitted financial statements for fiscal years 2004-2005. *Pet'r Ex. 7.* Wagner and Associates, certified public accountants, prepared those statements on an "income tax basis." *Id.* Wagner prepared separate statements for Phases I and II. *Id.* Those statements show negative amounts of total partners' capital for Phase I in each year. *Id.*

But they arrive at those values after deducting significant depreciation— *Id.* The statements reflect total partners' capital in Phase II of in 2004 and 2005, respectively. *Id.* And they arrive at those values after deducting fixed-asset depreciation similar to what they deducted for Phase I. *Id.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of proof and basis for exemption

28. Roanoke claims that its property should be exempt from taxation under Ind. Code § 6-1.1-10-16(a). Thus, Roanoke bears the burden of proving, by a preponderance of the evidence, that the subject property is owned, occupied, and predominately used for one of the exempt purposes listed in that statute. *See Indianapolis Osteopathic Hosp. Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1114 (Ind. Tax Ct. 2004). While Ind. Code § 6-1.1-10-16(a) lists a number of exempt purposes, Roanoke claims only that it uses its property for charitable purposes.

29. All property receives protection, security, and services from the government. When property is exempted from taxation, the burden of paying for those services shifts to non-exempt parcels. *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs ("NAME")*, 671 N.E.2d 218, 220-21(Ind. Tax Ct. 1996). Therefore, exemptions are strictly construed against taxpayers and in favor of the State. *Id.* For that same reason, worthwhile activities or noble purposes alone do not justify exempting a property from taxation. Instead, a taxpayer claiming exemption must show that it provides a public benefit sufficient to justify the corresponding revenue loss. *Id.* at 220 (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).

30. Nevertheless, when interpreting 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 Bd. of Appeals v. Grandview Care, Inc.* 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005) (citing *Indianapolis Elks Bldg. v. State Bd. of Tax Comm'rs,* 145 Ind. App. 522, 251 N.E.2d 673, 682 (1969). Thus, "[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 purpose 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). The same is true where a private organization relieves governmental burdens. *College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 910 (Ind. Tax Ct. 2006)

B. The subject property is not owned, occupied, and used for charitable purposes

1. Roanoke receives significant incentives in exchange for renting to low-income tenants at below-market rates

31. Roanoke did not show that, by owning and operating the subject property, it engages in obviously charitable acts different from the everyday purposes and activities of man in general. True, it rents primarily to individuals and families with incomes significantly below the Huntington area's median. And it typically does not charge those tenants any

more than 30% of their income. Plus, Roanoke operates without the prospect of receiving a significant annual return.

32. But it does those things in exchange for significant benefits. For example, it receives rent subsidies as credits against its mortgage payments. In some instances, those credits actually exceed Roanoke's mortgage payments. *See Pet'r Ex. 1.*

33. More importantly, Roanoke was able to develop the subject property using highly leveraged and subsidized financing. Indeed, Rural Development provided Roanoke with a 1%-interest loan amortized over 40 years. *Daymude testimony.* As the Michigan Supreme Court recognized in addressing how to value a low-income housing project operated under a similar federal program,[8] that subsidized financing carries with it potential federal-income-tax benefits. *Meadowlanes Ltd. Dividend Housing Ass'n v. City of Holland*, 437 Mich. 473, 480, 473 N.W.2d 636, 640 (1991) (citing *Pennsylvania v. Lynn*, 163 U.S. App. D.C. 288, 305 n. 57, 501 F.2d 848 (1974)).

34. Plus the subsidized financing allowed Roanoke to buy the subject property with little risk or equity investment. And when Roanoke satisfies its mortgage, it will be able either to operate the subject property without rent restrictions or to sell it for fair market value. Indeed, when Roanoke first developed the subject property beginning in 1970, there were no limits on a section-515-property owner's ability to pre-pay its mortgage and begin perating its property without restriction.[9] As the United States Court of Federal Claims has recognized, investors viewed the section-515 program and its pre-payment option "as a way to acquire equity in a building that would eventually be converted to market rents." *Franconia Associates v. United States*, 61 Fed. C. 718, 723-24 (2004). *See also American Heritage Apts., Inc. v. Bennett*, 2005 Tenn. App. LEXIS 509 *515-16 (denying

[8] Section 236 of the National Housing Act.

[9] Beginning in 1979, however, Congress passed a series of acts restricting section-515-property owners' ability to pre-pay their subsidized mortgages. They culminated in the Emergency Low Income Housing Preservation Act of 1987 ("ELIHPA") and the Housing and Community Development Act of 1992. *See* Pub. L. No. 100-242, § 241, 101 Stat. 1886 (*codified at* 42 U.S.C. § 1472(c)) and Pub. L. No. 102-550 § 712, 106 Stat. 3841 (*codified* at 42 U.S.C. § 1472(c)). Those acts limit, but do not absolutely bar, section-515-property owners' ability to pre-pay their mortgages. They also authorize the federal government to provide incentives for the owner to keep its property in the section-515 program. *Id.*

the benevolence of the organization but the fact that such is a condition of the federal government's low-interest loan.").

35. The Indiana Tax Court has also recognized the importance of government subsidies in motivating taxpayers to provide low-income housing. Thus, the court has held that the tax credits property owners receive under 26 U.S.C. § 42 as an incentive for complying with federally mandated rent restrictions must be considered in determining whether those rent restrictions cause a property to experience obsolescence. *Hometowne Associates, L.P., v. Maley*, 839 N.E.2d 269, 280 n. 17 (Ind. Tax Ct. 2005); *Pedcor Investments-1990-XIII, L.P. v. State Bd. of Tax Comm'rs*, 715 N.E.2d 432, 439 (Ind. Tax Ct. 1999).[10] Indeed, in *Pedcor*, the court noted that the taxpayer likely would not have agreed to rent restrictions if the federal tax credits did not adequately compensate it for its decreased rental income. *Pedcor*, 715 N.E.2d at 438.

36. And Roanoke neither provides a public benefit nor relieves governmental burdens. Although low-income tenants benefit from the subject property's comparatively low rent, the federal government, not Roanoke, provides that benefit through its section-515 incentives. Indeed, Roanoke does not provide any services, programs, or benefits other than those required as conditions for receiving the section-515 incentives. And because Roanoke operates in exchange for taxpayer-funded incentives, it does little to relieve governmental burdens.

37. Roanoke essentially seeks to 'double dip.' It already receives a substantial benefit from the taxpayer-funded section-515 incentives. It now wants to use those federal tax dollars to leverage a state property tax exemption.

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mortgages. They also authorize the federal government to provide incentives for the owner to keep its property in the section-515 program. *Id.*

[10] In 2004, the Indiana General Assembly added Ind. Code § 6-1.1-4-40, which provides: "The value of federal income tax credits awarded under Section 42 of the Internal Revenue Code may not be considered in determining the assessed value of low income housing tax credit property." P.L. 81-2004, SEC.58. That section became effective on March 1, 2004. *Id.* Thus, it does not limit the Tax Court's holdings in *Hometowne Associates* and *Pedcor* as applied to assessments before that date.

38. The General Assembly, however, did not intend for government-subsidized low-income-housing properties to be exempt from taxation without the properties' owners contributing something to the government in return. Thus, Ind. Code § 6-1.1-10-16.7 allows a property owner to claim an exemption if it operates its property under the low-income-housing tax credit program established by 26 U.S.C. § 42. But to receive an exemption, the owner must agree to make payments in lieu of taxes ("PILOTS"). Ind. Code § 6-1.1-10-16.7. For properties located outside Marion County, those PILOTS must be in the same amount as the property taxes that would have been levied if the property were not exempt. *Id.;* Ind. Code § 36-1-8-14.2; Ind. Code § 36-2-6-22.[11] And the PILOTS are otherwise treated in the same manner as property taxes, except that, in some instances, they are deposited in the taxing unit's affordable housing fund or housing trust fund. *See* Ind. Code § 36-1-8-14.2; Ind. Code § 36-2-6-22; Ind. Code § 36-3-2-11.

39. Roanoke nonetheless argues that the Indiana Tax Court has recognized providing low-income housing as a charitable purpose. *Bickel argument.* Specifically, Roanoke points to a footnote in *College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905 (Ind. Tax Ct. 2006).

40. In that case, College Corner, L.P. was formed to restore and revitalize an historic, but blighted area in Indianapolis. Its activities included rebuilding deteriorating infrastructure, renovating existing homes, and building new homes to reflect the neighborhood's historical character. *Id.* at 906. The Tax Court wrote the footnote in question as part of its response to the Department of Local Government Finance's argument that College Corner was not providing relief from human want. The court acknowledged that College Corner was not helping people without the means or ability to help themselves, as would have been the case had it been redeveloping the neighborhood to provide low-income housing:

> For instance, if [the taxpayer's] redevelopment efforts were aimed at providing housing for low-income families and individuals, such efforts

[11] In Marion County, the local government and property owner can agree to PILOTS that are less than the amount that would otherwise have been levied as property taxes. Ind. Code § 36-3-2-11(e)(2).

> would provide relief of human want. *See* IND. CODE ANN. § 6-1.1-10-16(i). . . .

840 N.E.2d at 909 n.8. But the court held that the constitutional and statutory definition of charity was broad enough to include activities beyond simply helping economically deprived people. *Id.* at 909.

41. Thus, the court's footnote is dictum. More importantly, it does not address the factual scenario at issue here. The court pointed to a specific statute exempting property acquired for purposes of building, renovating, or improving single-family homes to be given away or sold in a charitable manner. Ind. Code § 6-1.1-10-16(i). And that statute sets forth several limitations, including that the exempt tract must be three acres or less and that the property will return to the tax rolls upon being sold or donated. *Id.*

42. Roanoke, by contrast, does not seek an exemption under a specific, limited provision that would return its property to the tax rolls in a relatively short time. Instead, it argues that simply providing low-income housing necessarily constitutes a charitable purpose, without any limitation on the period that the property will be removed from the tax rolls. More importantly, Roanoke claims that providing low-income housing is a charitable activity regardless of any government-funded benefits received as an incentive to provide that housing. The court's footnote does not support those propositions.

2. Ronald Daymude owns his interests in Roanoke and the subject property primarily to earn a profit

43. Even if the section-515 incentives by themselves do not disqualify the subject property from receiving an exemption, Roanoke still failed to prove that it engages in charitable acts different from the everyday purposes of man in general. Indeed, one of its two general partners is primarily motivated by profit.

44. Mr. Daymude is in the business of building, developing, managing, and owning government-funded low-income housing projects. In fact, he deals exclusively with those types of properties. And Mr. Daymude's testimony leads the Board to infer that he

owns his 50% interest in Roanoke, and therefore an interest in the subject property,[12] for the same purposes that he owns, builds, manages, and develops other properties—for profit.

45. Roanoke characterized Daymude's ownership as "really not for profit," because its 2004-2005 financial statements reflect little partners' capital for the combined buildings, and negative capital for Phase I. *Bickel argument; Pet'r Ex. 7.* But the fact that Daymude may have made a poor investment does little to negate a profit motive. Also, the partners' capital is based, in part, on the substantial depreciation that Roanoke's accountants applied to its fixed assets. Those numbers, however, were determined on an "income tax basis." *Id.* Thus, they may have little to do with the actual value of either the subject property itself or Daymude's interest in that property.

46. The Board recognizes that it must tread carefully when examining the purposes for which a property owner, or any of its partners or shareholders, is organized. Indeed, the mere fact that a property owner is organized for profit is irrelevant to whether any given property that it owns is entitled to an exemption. *College Corner* 840 N.E.2d at 906. And a property is not disqualified from receiving an exemption simply because one of its owners receives incidental income from it. *Id.*

47. In *College Corner*, the Old Northside Foundation, Inc., an Indiana not-for-profit corporation, and National City Community Development Corporation, an Ohio for-profit corporation, created to promote revitalizing low- and moderate-income neighborhoods throughout the local communities of its banking subsidiaries, formed College Corner, L.P. And as explained above, College Corner bought properties in an effort to restore and revitalize an historic Indianapolis neighborhood. *Id.* at 906.

48. National City contributed $248,000 in equity that College Corner used to secure mortgages on 17 parcels. *Id.* at 907, 911. In doing so, National City acted pursuant to Community Reinvestment Act, which encourages financial institutions to help meet the

[12] "A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership." Ind. Code § 23-4-1-25(1).

credit needs of the communities in which they are chartered. National City was to receive a 7% return on its equity investment when the parcels sold. *Id.* at 907.

49. The Tax Court found the fact that National City was organized for profit to be "of no consequence," noting that Ind. Code § 6-1.1-10-16(a) grants an exemption to *any* entity that otherwise qualifies, without distinguishing between for-profit and not-for-profit organizations. *Id.* at 911. And it found that National City's profit on the College Corner project was similarly inconsequential.

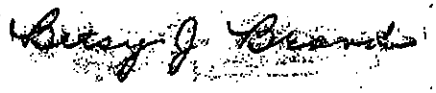
50. But the court did not hold that an entity's profit motive in owning or operating a specific property claimed to be exempt is irrelevant. Instead, it distinguished between cases where an owner's profit motive dominates and those where any income earned from the property is merely incidental to the owner's charitable motives. *See id.* (citing *State Bd. of Tax Comm'rs v. Int'l Bus. College*, 145 Ind. App. 353, 251 N.E.2d 39, 42 (1969) and *Matanuska-Susitna Borough v. King's Lake Camp*, 439 P.2d 441 (Alaska 1968)). Given the purposes for which National City was organized and the fact that it acted pursuant to the Community Reinvestment Act, the court refused to "judicially impart any particular profit motive to [National City's] officers, directors, or shareholders." *Id.*

51. Unlike National City's interest in the College Corner project, Mr. Daymude owns his 50% interest in Roanoke primarily to make a profit from the subject property. And he did not act pursuant to the Community Reinvestment Act or any comparable federal statute. Thus, any charitable purposes that Mr. Daymude may harbor are incidental to his dominant profit motive, not the other way around.

Summary of Final Determination

52. Roanoke failed to make a prima facie case that the subject property was owned, occupied, and predominately used for charitable purposes. The Board therefore finds for the PTABOA.

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



Chairman, Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>