

REPRESENTATIVE FOR PETITIONER:

Dolena M. Mack, President, Marion Home Foundation

REPRESENTATIVES FOR RESPONDENT:

Sharon Fleming, Director of Non-Profit, Lake County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

MARION HOME FOUNDATION	)	Petition No:	45-004-04-2-8-00003
	)		
Petitioner,	)		
	)	Parcel:	254102400001 &
	)		Personal Property
v.	)		
	)		
	)	County:	Lake
LAKE COUNTY PROPERTY	)	Township:	Calumet
TAX ASSESSMENT BOARD OF	)		
APPEALS	)		
	)	Assessment Year:	2004
Respondent.	)		
	)		

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

**April 11, 2007**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the Board) has reviewed the facts and evidence, and having considered the issue, 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 qualifies for a charitable use exemption under Ind. Code § 6-1.1-10-16.

### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-11-7, Dolena Mack, President of the Board of Directors, Marion Home Foundation (the Petitioner) filed a Form 132 Petition for Review of Exemption on June 2, 2006, petitioning the Board to conduct an administrative review of the above petition. The Lake County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination denying the request for exemption and finding the property to be 100% taxable on May 4, 2006.

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2 held a hearing on January 23, 2007, in Crown Point, Indiana.

4. Persons sworn in and present at the hearing:

For the Petitioner:

Dolena M. Mack, President of the Board of Directors, Marion Home  
Foundation

Harryl F. Davidson, Accountant, Marion Home Foundation

For the Respondent:

Sharon Fleming, Director, Non-Profit Department, Lake County  
Assessor's Office/PTABOA representative

Deborah Smith, Staff Member, Lake County Assessor

5. The Petitioner submitted the following evidence:

- Petitioner Exhibit 1 – 2003 Form 990 – Return of Organization Exempt from Income Tax, Schedule A – Organization Exempt Under 501 (c)(3), and Indiana Form NP-20 – Nonprofit Organization’s Annual Report prepared by BKD, LLP for property located at 225 East 7<sup>th</sup> Avenue, Gary, Indiana,<sup>1</sup>
- Petitioner Exhibit 2 – Trumbull Insurance Company invoice, dated November 16, 2004; The United Way of America Endorsed D & O Program insurance invoice, dated December 19, 2003; and Liberty Mutual insurance renewal, dated November 19, 2003, for property located at 225 East 7<sup>th</sup> Avenue, Gary, Indiana,
- Petitioner Exhibit 3 – Petitioner’s statement of revenue and expenses as of December 20, 2004,
- Petitioner Exhibit 4 – Petitioner’s Pregnant Adolescents Board of Directors Meeting agenda, dated October 5, 2005,
- Petitioner Exhibit 5 – Letter from St. Timothy Community Church to the Petitioner, dated October 6, 2005,
- Petitioner Exhibit 6 – Letter from the Petitioner to Mr. Scott Peterson, Licensing Consultant, Division of Family and Children Services, dated June 28, 2005,
- Petitioner Exhibit 7 – Warrant Summaries from Indiana Family and Social Services Administration Contract Services for the period of January 1, 2004 through June 30, 2004, excluding the month of April for the property located at 225 East 7<sup>th</sup> Avenue, Gary, Indiana.

6. The Respondent submitted the following evidence:

- Respondent Exhibit 1 – Letter from the PTABOA to the Petitioner, dated February 24, 2004; PTABOA’s request for site inspection of the property located at 225 East 7<sup>th</sup> Avenue, Gary, Indiana, dated June 1, 2005; PTABOA’s request for paperwork from the Petitioner; Petitioner’s 2002 property record card (PRC); two photographs of the subject property and one photograph of 225 East 7<sup>th</sup> Avenue.

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

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<sup>1</sup> The property located at 225 East 7<sup>th</sup> Avenue, Gary, in Calumet Township is also owned by the Petitioner, but is not under review in these proceedings.

Board Exhibit A – Form 132 petition with attachments,  
Board Exhibit B – Notice of Hearing on Petition,  
Board Exhibit C – Order Regarding Conduct of Exemption Hearing,  
Board Exhibit D – Hearing sign-in sheet.

8. The subject property consists of a two-story brick building situated on a .299 acre tract of land located at 4401 – 4415 Delaware Street, Gary, Calumet Township in Lake County.
9. The ALJ did not conduct an on-site visit of the property.
10. For 2004, the Lake County PTABOA determined the land, improvements and personal property to be 0% exempt and 100% taxable.
11. For 2004, the Petitioner contends the land, improvements and personal property should be 100% tax-exempt.

### **Jurisdictional Framework**

12. 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.

### **Administrative Review and Petitioner's Burden**

13. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also*, *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

14. 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 Township 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”).
15. 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**

16. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
17. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See, generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
18. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d

220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).

19. 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 statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

### **Discussion of Issue**

20. The Petitioner contends that the property should be 100% exempt from property taxation under Ind. Code § 6-1.1-10-16 because the property is used for charitable purposes. *Mack testimony; Board Exhibit A.*
21. In support of this contention, the Petitioner presented the following testimony and other evidence:
  - a. Ms. Mack testified that the Petitioner is a not-for-profit entity organized in 1982. *See Petitioner Exhibit 1.* According to Ms. Mack, the purpose of the organization is to provide a home-like atmosphere while providing pregnant adolescents with temporary housing, food, clothing, counseling and advocacy services. *Mack testimony; Petitioner Exhibit 1.*
  - b. The Petitioner's accountant, Mr. Davidson, testified that the Petitioner has two sites in Gary, Indiana. *Davidson testimony.* According to Mr. Davidson, the first site is located at 225 East 7<sup>th</sup> Avenue and the second property is located at 4401 – 4415 Delaware. *Davidson testimony.* Mr. Davidson contends that the Petitioner's

two facilities have always operated as one entity with all business transactions conducted from the main facility at 225 East 7<sup>th</sup> Avenue. *Id.*

- c. The Petitioner contends that local officials denied the exemption in 2004 because the local officials believed that the facility was not operating. *Mack testimony*. According to Ms. Mack, however, the facility was not closed until 2005 and was operating in 2004.<sup>2</sup> *Id.* In support of this contention, the Petitioner submitted warrant summaries from the Indiana Family and Social Services Administration Contract Services showing monies distributed to the Petitioner for the months of January, February, March, May and June of 2005. *Petitioner Exhibit 7*. In addition, the Petitioner submitted a Form 990 – Return of Organization Exempt from Income Tax for the year ending 2003, a statement of revenue and expenses as of December 20, 2004, showing revenue of \$152,639 and expenditures of \$218,469, and various insurance policies dated in 2003 and 2004. *Petitioner Exhibits 1, 2 and 3*.
22. The Respondent contends that it denied the Petitioner’s exemption request because the Petitioner failed to supply documentation to the PTABOA that the facility was operating in 2004. *Fleming testimony*. The Respondent’s witness, Ms. Fleming testified that the Petitioner failed to file paperwork regarding the facility after 2002. *Id.* In addition, mail sent to the property was returned as undeliverable. *Id.* Further, Ms. Fleming testified, the Respondent performed site inspections in 2005 and found the facility abandoned and boarded up. *Id.*; *Respondent Exhibit 1*. Finally, the Respondent argues that the Petitioner’s evidence only shows operations being conducted at the main facility located at 225 East 7<sup>th</sup> Avenue. *Fleming testimony*. According to the Respondent, the Petitioner

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<sup>2</sup> Ms. Mack and Mr. Davidson testified that the Petitioner’s Board of Directors sent a letter to the Division of Family and Children Services stating that they had met on June 27, 2005, and declared that the Petitioner was officially inactive with no clients to serve. *Mack testimony; Davidson testimony; Petitioner Exhibit 6*. Ms. Mack further testified that, despite the facility’s closure in 2005, the Board of Directors allowed the property to be used to house nine victims of Hurricane Katrina from October 7, 2005, to March 31, 2006. *Mack testimony; Petitioner Exhibits 4 & 5*.

has not shown that the facility was used at least 50% of the time for a charitable purpose.  
*Id.*

### Analysis

23. In Indiana, the general rule is that all property in the state is subject to property taxation. *See* Ind. Code § 6-1.1-2-1. Nonetheless, the Indiana Constitution provides that the General Assembly may exempt from taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1. The Indiana General Assembly has exercised this authority by enacting various statutes providing for property tax exemptions, including Ind. Code § 6-1.1-10-16. Ind. Code § 6-1.1-10-16(a) provides 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.” Similarly, Ind. Code § 6-1.1-10-16(c) provides that a tract of land is exempt if “a building that is exempt under subsection (a) or (b) is situated on it. ...” Personal property is exempt “if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) [of Ind. Code § 6-1.1-10-16] if it were a building.” Ind. Code § 6-1.1-10-16(e).
24. 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).

25. The test used to determine whether all or a portion of a property qualifies for an exemption for charitable purposes, is the “predominant use” test. *New Castle Lodge v. State Board of Tax Commissioners*, 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).
26. Here the Petitioner contends it is a not for profit entity. *Mack testimony; Petitioner Exhibit 1*. Exemption, however, is tied to use of the property, not the status of the owner. *See College Corner v. Department of Local Government Finance*, 840 N.E.2d 905, 911 (Ind. Tax Ct. 2006); *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954, 959 (Ind. Tax Ct. 1997). Indeed, Article X, § 1 of the Indiana Constitution clearly “contemplates the character and purpose of the property that may be exempted from taxation, not the character and purpose of the owner of the property.” *State ex rel. Tieman v. City of Indianapolis*, 69 Ind. 375, 376 (1879). Therefore, the fact that the Petitioner is a not-for-profit organization or has been recognized as an exempt 501(c)(3) organization by the Internal Revenue Service does not establish that it qualifies for an Indiana property tax exemption.
27. Further, the Petitioner contends it is organized to provide a home-like atmosphere while giving pregnant adolescents temporary housing, food, clothing, counseling and advocacy

services. *Mack testimony; Petitioner Exhibit I*. The Petitioner, however, failed to provide any specific evidence of its use and occupation of the property for charitable purposes. “The 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). Thus, while providing housing for unwed, teenage mothers may, in fact, be a charitable purpose, the Petitioner did not provide evidence that it was the “predominant use” of the property. Simply showing that the property was “in operation” at the time of the assessment is insufficient. The onus is on taxpayers to produce detailed facility usage reports with supporting documentation of exempt use. *State Bd. of Tax Comm’rs v. New Castle Lodge No. 147*, 765 N.E.2d 1257, 1264 (Ind. 2002) (“The Lodge presented mostly anecdotal evidence, including newsletters that referred to a few charitable projects and a tax return that listed some charitable donations. . . . It did not offer any sort of log of the time the facility was used in furtherance of these charitable efforts versus total time used. Taxpayers may not avoid their burden of proof by "making a de minimis showing and then forcing the State Board to support its decisions with detailed factual findings." *Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1025 (Ind. Tax. 1999). The Board is therefore correct in saying the Lodge failed to meet its burden under the predominant use standard.”)

28. In the case at bar, the Petitioner has not provided any documentation, such as a description of the facility, how often or how many rooms were occupied by pregnant adolescents or teenage mothers, and if any other type of activities were conducted at the facility that would support an exemption on the subject property for the 2004

assessment.<sup>3</sup> The Petitioner's warrant summaries merely provided payment to the Marion Home Foundation, Inc. for "essential services" in the amounts of \$1,144.75, \$582.38, \$815.45, \$2021.26, \$992.37 for the months of January 2004, February 2004, March 2004, May 2004 and June 2004. The Petitioner, however, presented no evidence that any young women were housed at the facility in 2004. Nor did the Petitioner present evidence of how many women the facility supports. A facility cannot be predominantly vacant and still support an exemption. See *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1019 (Ind. Tax Ct. 2004) ("...the State Board did not err in determining that the exemption did not apply to the portion of the MP that is vacant. Indiana Code § 6-1.1-10-16 clearly provides that the exemption applies only to that portion of the building that is "owned, occupied, and used" for charitable purposes. An exempt use will not be imputed to vacant space.") (internal citations omitted). Thus, the Petitioner's failure to provide a log or documentation of how many young women the facility can house, the number of young women served and the period of time in which the women stayed at the facility is fatal to the Petitioner's exemption request.

29. The Petitioner's case is further undercut by the fact that its 2004 evidence refers to the property located at 225 East 7<sup>th</sup> Avenue. Thus, even if the Petitioner's Form 990 income tax return, insurance invoices, statement of revenue and expenses, and warrant summaries from Indiana Family and Social Services Administration were sufficient to show predominant use, the Petitioner failed to establish how this information is relevant to the subject property located at 4401- 4415 Delaware. The Petitioner, therefore, failed to show that the subject property was owned, occupied, and used for charitable purposes in 2004.

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<sup>3</sup> The Petitioner submitted evidence that it provided housing to nine victims of Hurricane Katrina in 2005 and 2006. While the Board commends the Petitioner for opening its facility to the victims of that storm, evidence of the facility's use in 2005 and 2006 is not probative that the facility was "predominantly used" for charitable purposes at the time the Petitioner filed its Application for Property Tax Exemption (Form 136) in 2004.

30. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Summary of Final Determination**

31. The Petitioner failed to raise a prima facie case that the property is entitled to an exemption. The Board finds for the Respondent.

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

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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 [www.in.gov/judiciary/rules/tax/index.html](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>.