

REPRESENTATIVES FOR PETITIONER:

Richard McKee, Business Director, Bethesda Lutheran Communities, Inc.
Janis C. Griffeth, Area Director, Bethesda Lutheran Communities, Inc.

REPRESENTATIVES FOR RESPONDENT:

Cathy Meyer, Deputy Assessor, Porter County
Peggy Hendron, Deputy Assessor, Porter County.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Bethesda Lutheran Homes	)	Petitions:	64-008-08-2-8-00002
and Services, Inc.,	)		64-016-08-2-8-00002
)		
Petitioner,)		
	)	Parcel Nos.:	64-10-18-328-017.000-004
v.	)		64-06-32-130-003.000-015
)		
Porter County Assessor,	)	County:	Porter
	)	Townships:	Center and Portage
Respondent.)		
	)	Assessment Year:	2008

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

January 25, 2010

FINAL DETERMINATION

The Board has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the Petitioner's real and personal property qualifies for property tax exemption under Indiana Code § 6-1.1-10-16 because the properties are predominately used for charitable purposes.

PROCEDURAL HISTORY

2. The Petitioner, Bethesda Lutheran Homes and Services, Inc., (Bethesda Lutheran)¹ filed exemption applications for its real and personal property for 2008 by applications dated April 14, 2009.
3. The Porter County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations denying the exemptions on July 15, 2009. The Petitioner filed its Petitions for Review of Exemption on August 12, 2009.
4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Ellen Yuhan, held a hearing on October 27, 2009, in Valparaiso, Indiana.
5. The following persons were sworn as witnesses:

For the Petitioner:

Richard McKee, Business Director of Bethesda Lutheran,
Janis C. Griffeth, Area Director for Bethesda Lutheran,

For the Respondent:

Cathy Meyer, Deputy Assessor for Porter County,
Peggy Hendron, Deputy Assessor for Porter County.

¹ The Petitioner has recently changed its name to Bethesda Lutheran Communities, Inc.

6. The Petitioner submitted the following exhibits for each petition:
- Petitioner Exhibit A – Exemption application including the Petitioner’s By-laws, Amended Articles of Incorporation, Consolidated Statement of Financial Position for 2005-2006 and 2007-2008; and Consolidated Statements of Activities for 2005-2006 and 2007-2008,
 - Petitioner Exhibit B – Petitioner’s By-laws and Amended Articles of Incorporation,
 - Petitioner Exhibit C – Organizational name change documentation,
 - Petitioner Exhibit D – Notice of Hearing on Petition, Form 114,
 - Petitioner Exhibit E – Notice of Action on Exemption Application, Form 120,
 - Petitioner Exhibit F – Form 132 Petition,
 - Petitioner Exhibit G – Notice of Hearing on Petition.
7. The Respondent submitted the following exhibits:
- For Petition No. 64-008-08-2-8-00002:
- Respondent Exhibit 1 – AS400 showing exemption removed for failure to file for 2006 exemption,
- For Petition No. 64-016-08-2-8-00002:
- Respondent Exhibit 1 – AS400 showing exemption was never filed,
- For both petitions:
- Respondent Exhibit 2 – Proof of mailing,
 - Respondent Exhibit 3 – Form 136,
 - Respondent Exhibit 4 – Form 114,
 - Respondent Exhibit 5 – Form 120,
 - Respondent Exhibit 6 – Property record card.
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
- Board Exhibit A – Form 132 Petitions with attachments,
 - Board Exhibit B – Notices of Hearing dated September 18, 2009,
 - Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
 - Board Exhibit D – Hearing sign-in sheet.

9. The subject properties are two licensed residential facilities. The first is located at 1601 Sturdy Road in Center Township (Parcel No. 64-10-18-328-017.000-004), and the second is located at 370 Franciscan in Portage Township (Parcel No. 64-06-32-130-003.000-015). Both parcels are in Valparaiso, Indiana.
10. For 2008, the Porter County PTABOA determined the properties to be 100% taxable.²
11. For 2008, the Petitioner claims its real and personal property is 100% 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 Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE 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 Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax

² The Petitioner applied for an exemption for March 1, 2008, for each of its properties, as evidenced by the Petitioner's Form 136, Application for Exemption, and its Form 132, Petitions to the Board for Review of Exemption. The Form 114, Notice of Hearing, and the Form 120, Notice of Action on Exemption Application from the PTABOA, however, reference a March 1, 2009, assessment date. The Petitioner contends the March 1, 2009, date on the PTABOA's documents was simply typographical errors. The Respondent did not dispute this characterization. Therefore, the Board rules on the Petitioner's request exemption for the March 1, 2008, assessment year.

- Ct. 2003); *see also*, *Clark v. State Bd. of Tax Comm'rs*, 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. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
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 rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. 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 a property owner 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 at 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).

PARTIES' CONTENTIONS

20. The Petitioner contends its real and personal property is eligible for 100% exemption pursuant to Indiana Code § 6-1.1-10-16 because it is owned, occupied and used for charitable purposes.
21. The Petitioner presented the following evidence in regard to this issue:
 - A. The Petitioner argues its properties are used for charitable purposes. *McKee testimony*. In support of this contention, the Petitioner presented its Form 136, Applications for Property Tax Exemption. *Petitioner Exhibit A*. In its applications, the Petitioner describes each property as a “Licensed Community Integrated Living Arrangement providing continuous support and services to six adults with intellectual and developmental disabilities who reside there.” *Id.* According to the application, “the developmentally disabled adults are charged for the cost of the room, board, services and programs provided to them. Bethesda receives partial payment for those costs from Social Security

benefits to which the individuals are entitled. The remainder of the costs and expenses not reimbursed, become part of Bethesda's charitable load.

Bethesda's North East Region, which includes all of Bethesda's Indiana programs, had a net loss of \$363,592 for the 2007-2008 fiscal year.

Bethesda's organizational wide 2007-2008 fiscal year net loss was \$23 million." *Id.* The Petitioner also attached copies of its Consolidated Statement of Financial Position for 2005-2006 and 2007-2008. *Id.*

- B. Further, the Petitioner submitted to the Board its Bylaws and Amended Articles of Incorporation. *Petitioner Exhibit B.* According to Bethesda Lutheran's Articles of Incorporation, "Bethesda Lutheran Communities, Inc. is a charitable corporation formed for the purpose of caring for developmentally disabled children and adults in a Christian manner, specifically instructing them in the evangelical Lutheran doctrines. Since its founding in 1904, Bethesda Lutheran Communities, Inc., has existed to serve developmentally disabled persons by providing for their spiritual, physical, social, mental and emotional needs. In addition to the primary goal of such Christian education, the ultimate aim is to develop their God-given potential, to increase their knowledge and skills, and to enhance their ability to deal with their environment. No dividend or pecuniary profits shall inure to the benefit of any member of Bethesda Lutheran Communities, Inc." *Id.*
- C. In hearing, the Petitioner's witness, Ms. Griffeth, testified that Bethesda Lutheran is licensed by the State of Indiana to operate residential community facilities for the developmentally disabled. *Griffeth testimony.* According to Ms. Griffeth, Bethesda Lutheran built both locations as group homes and uses the homes solely for individuals with intellectual disabilities. *Id.*
- D. Finally, in response to the Respondent's arguments, Mr. McKee contends that in prior years, the County considered the Petitioner's exemption application sufficient to grant an exemption for its property. *McKee testimony.* For

example, Mr. McKee argues, Porter County previously recognized the 1601 Sturdy Road property as exempt. *Id.* According to Mr. McKee, Bethesda Lutheran did not attend the PTABOA hearing because the Form 114, Notice of Hearing, did not state that the PTABOA required Bethesda Lutheran to attend the hearing. *Id.*; *Petitioner Exhibit D.* Mr. McKee argues that if the County had requested Bethesda Lutheran's appearance, it would have sent a representative to the hearing. *Id.*

22. The Respondent contends the PTABOA denied the exemptions because the Petitioner failed to attend the PTABOA hearing. *Meyer argument.* The Respondent's witness, Ms. Meyer, agreed that the County previously considered the Sturdy Road property exempt but argued that the County removed the exemption in 2006 because the Petitioner failed to file an exemption application. *Meyer testimony; Respondent Exhibit 1.* Further, Ms. Meyer argues, the property located at 370 Franciscan was a new construction for which the Petitioner had never filed an exemption application. *Id.* According to Ms. Meyer, when an exemption application is new the PTABOA likes to meet with the taxpayer to find out about the property and the purposes for which it is used. *Id.* Finally, Ms. Meyer observed that the Petitioner signed the 2008 applications on April 14, 2009.

ANALYSIS

23. Indiana Code § 6-1.1-10-16(a) provides that "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." Exemption statutes are strictly construed against the taxpayer and the taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *See New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Bd. of Tax Comm'rs*, 733 N.E.2d 36,38 (Ind. Tax Ct. 2000), *aff'd*, 765 N.E.2d 1257 (Ind. 2002). Despite this, 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 Bd. of Tax Comm’rs*, 145 Ind. App.522,251 N.E.2d 673, 682 (1969)). A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitably acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss in tax revenue. *College Corner, L.P. v. Dept. of Local Govt. Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2008).

24. Here the Petitioner contends that its properties, operated as group homes for the developmentally disabled, are exempt from property taxes because they are solely used for a charitable purpose. The Board notes that no Indiana case law addresses whether community based residential facilities are exempt.³ The Board finds, however, that providing housing and services to the developmentally disabled is similar to providing housing and services to the aged. In *State Bd. of Tax Comm. v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. Ct. App. 1968), the Indiana Court of Appeals held that “It is now common knowledge that the aged require care and attention entirely independent of financial needs, and that present day humanitarian principles demand that those in their declining years have the opportunity to live with as much independence as their strength will permit, in as pleasant and happy surroundings as their finances will reasonably justify.” *Id.* at 89. Further, the Tax Court in *Raintree Friends Housing Inc. v. Ind. Dep’t of State Revenue*, 667 N.E.2d 810 (Ind. Tax 1996), held that “by meeting the needs of the aging, namely relief of loneliness and boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, and attention to problems of health, a charitable purpose is

³ In the unreported decision of *Bedford Apartments v. Jean*, Cause No. 49T10-0310-TA-51 (April 27, 2006), the Tax Court addressed an obsolescence claim related to the Petitioner’s provision of low-income housing that gave preference to developmentally disabled tenants on three of its units. That case, however, did not discuss whether such an activity was a “charitable purpose.”

accomplished.” *Id.* at 814-815. The Board finds that, like the aging, persons with developmental disabilities have unique needs and that “present day humanitarian principles demand” that those with disabilities “have the opportunity to live with as much independence” as their disability will permit. 241 N.E.2d at 89. By meeting the needs of the developmentally disabled, “a charitable purpose is accomplished.” 667 N.E.2d at 814-815.

25. Moreover, other states that have addressed the issue of housing for the developmentally disabled found almost universally that such residential facilities were charitable. For example, in *Community Access Unlimited, Inc., v. City of Elizabeth*, 21 N.J. Tax 604 (N.J. Tax Ct. 2003), the Petitioner owned three properties where the residents had some form of mental disability. The amount of rent never exceeded thirty percent of the tenants’ monthly income and the Petitioner did not evict tenants if they failed to pay. The Petitioner’s funding came from various state grants as well as fundraising conducted by the Petitioner. According to the Petitioner, its goal was to “provide its members with an opportunity to live independently and lead a normal productive life as a citizen.” In finding the Petitioner’s property exempt, the Court held that the Petitioner provided “much more than just housing to its members residing at the subject properties. In fact, the court finds that the housing itself is secondary to CAU’s main purpose, which is to give individuals incapable of functioning on their own an opportunity to live as close to a normal life as possible.”
26. Similarly, in *American Baptist Homes of the Midwest v. State of Minnesota and the County of Freeborn*, 1992 Minn. Tax LEXIS 2 (Minn. Tax Ct. 1992), the Petitioner operated five group homes for the developmentally disabled that were “dedicated to policies and practices of normalization which: (a) reduce dependency by fostering normal development and growth; (b) promote responsibility by providing opportunities to initiate and make decisions; (c) teach a rhythm of life by encouraging participation in an outside work, training or educational program daily; and (d) request participation by offering both

individual and group activities in the community.” According to the findings of fact, individual programs were designed for each of the fifteen residents that included teaching routine home-living and social skills such as emergency response, health and medical, appliance safety, food preparation, handling of money, domestic, grooming, clothing care, appropriate behavior, time management, and community, leisure and social relationships. The goal was to “enable each mentally handicapped resident to experience and develop a sense of self-worth, dignity and belonging.” Further, the Petitioner never removed a resident because of an inability to pay. Nor had the Petitioner denied admission due to the financial condition of a prospective resident. Based on its findings of fact, the Minnesota Tax Court held that the Petitioner’s property was exempt as an institution of purely public charity.

27. *See also Twin Valley Community Services v. Town of Randolph*, 756 A.2d 1233 (Vt. 2000) (home built to house three lower-income developmentally disabled adults found to be tax exempt as a public benefit); *Mary’s Manor, Inc. v. Galloway Township*, 12 N.J. Tax 189 (N.J. Tax Ct. 1991) (property used in connection with the care and training of mentally retarded persons met requirements for statutory exemption); *Bethphage Community Services, Inc. v. County Board of Phelps County, Nebraska*, 381 N.W.2d 166 (Neb. 1986) (because the residents of the group homes were receiving special training for life beyond the group homes, the activities at the group homes were exclusively educational rather than merely incidental to the facilities’ use as dormitories for the disabled). *But see Essex Properties Urban Renewal Associates, Inc. v. City of Newark*, 20 N.J. Tax 360 (N.J. Tax Ct. 2002) (apartment facility for developmentally disabled was not exempt because the facility was predominantly supported by federal funds and there was no evidence that the organization’s rental fee was lower than market rent).

28. Here, Bethesda Lutheran was formed for the purpose of caring for developmentally disabled children and adults. Bethesda Lutheran is licensed by the state of Indiana and operates its group homes 24 hours a day, 7 days a week

for its residents. According to the Articles of Incorporation, Bethesda Lutheran exists to “serve developmentally disabled persons by providing for their spiritual, physical, social, mental, and emotional needs. In addition to the primary goal of Christian education, the ultimate aim is to develop their God-given potential, to increase their knowledge and skills, and to enhance their ability to deal with their environment. No dividend or pecuniary profits shall inure to the benefit of any member of Bethesda Lutheran Homes and Services, Inc.” Bethesda Lutheran’s exhibits show that it is a tax exempt organization under section 501(c)(3) of the Internal Revenue Code and there is no evidence in the record that the Petitioner operates its facilities under any federal or state incentive program. According to the Petitioner’s application, the costs and expenses of a resident’s care, not reimbursed from the resident’s Social Security benefits, become part of Bethesda Lutheran’s charitable load. Thus, the Board finds that Bethesda Lutheran presented a prima facie case that its properties are owned, occupied and used for charitable purposes.⁴

29. Once the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent failed to present any evidence to rebut or impeach the Petitioner’s case and, in fact, the Respondent’s witness confirmed that the Sturdy Road property had been considered exempt by the County prior to 2006. Ms. Meyer merely argued that the Petitioner failed to appear at the PTABOA hearing and the exemptions were

⁴ The Board notes that the sum total of the Petitioner’s testimony regarding the use of its property was presented by Ms. Griffeth: “Both locations are considered group homes. We are licensed as residential, community facilities for the developmentally disabled by the State of Indiana. Both homes were built and are being used as group home for six individuals with intellectual disabilities and that is the sole purpose of the home.” The Board was able to glean additional information from its application and from the Petitioner’s exhibits. However, that is not the Board’s responsibility. “It is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis.” *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). In future proceedings, the Petitioner would be well served to treat its request for exemption with more care and attention. A representative for the Petitioner should appear up at all hearings for which the Petitioner is given notice prepared to testify as to the funding, services, activities and benefits that make its properties charitable and provide documentary evidence to support that testimony. A taxpayer that leaves it to the Board to find the evidence in the record to support its case does so at its peril.

denied on that basis. Indiana Code § 6-1.1-11-7(a) states that “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.” Thus, exemptions are granted or denied based on the information in a taxpayer’s application. To the extent the PTABOA felt the Petitioner’s application was insufficient, it could have denied the exemption on that basis. The Respondent, however, raised no issue with the information provided by the Petitioner in its application. Thus, the exemption should have been granted. The Petitioner’s failure to appear at the PTABOA hearing does not warrant the denial of an otherwise sufficient exemption application.

30. The Respondent’s witness also argued that the Petitioner’s applications were untimely. According to Ms. Meyer, the Petitioner’s representative signed the exemption applications for 2008 on April 14, 2009. Indiana Code § 6-1.1-11-3(b) states that an “owner of tangible property who wishes to obtain an exemption from property taxation shall file a certified application in duplicate with the auditor of the county in which the property that is the subject of the exemption is located. The application must be filed annually on or before May 15 on forms described by the department of local government finance.” Ind. Code § 6-1.1-11-3(b). In 2009, however, the Indiana Legislature enacted a statutory provision which allows a charitable entity that failed to timely file an application under Indiana Code § 6-1.1-11 to file or refile an application for property tax exemption before September 1, 2009, for any assessment occurring after March 1, 2000, and before March 1, 2010. HEA 1001-2009, Section 479. Thus, whether the Petitioner’s filing was untimely under Indiana Code § 6-1.1-11, the provisions of HEA 1001-2009 cure that defect.

SUMMARY OF FINAL DETERMINATION

31. The Petitioner raised a prima facie case that the subject properties are owned, occupied and used for a charitable purpose. The Respondent failed to rebut the

Petitioner's case. The Board finds in favor of the Petitioner and holds that the subject properties' land, improvements and personal property are 100% exempt for the 2008 assessment year.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>>