

REPRESENTATIVE FOR PETITIONER:
Paul M. Jones, Ice Miller, LLP

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Esq.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

CFF Bradford Run, LLC	)	Petition Nos.: 34-006-10-2-8-00001
	)	34-006-10-2-8-00002
	)	34-006-10-2-8-00003
Petitioner,	)	34-006-11-2-8-00001
	)	34-006-11-2-8-00002
	)	34-006-11-2-8-00003
v.)	
	)	Parcel Nos.: 34-09-13-127-002.000-006
	)	34-09-13-127-003.000-006
Howard County Assessor,	)	34-09-13-127-004.000-006
)	
	)	Assessment Years: 2010 and 2011
Respondent.)	

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

January 14, 2013

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 subject property was owned, occupied and used for a charitable purpose and therefore entitled to a tax exemption for the March 1, 2010, and March 1, 2011, assessment dates.

PROCEDURAL HISTORY

2. On March 1, 2010, the Petitioner, CFF Bradford Run, LLC, filed exemption applications for the three parcels that comprise its property, the Bradford Run Apartments, for 2010. And on May 16, 2011, the Petitioner filed exemption applications for 2011. The Howard County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations denying the Petitioner's 2010 exemption request on November 1, 2011, and denying the Petitioner's 2011 exemption request on November 9, 2011. The Petitioner filed its Petitions for Review of Exemption with the Board on December 6, 2011, for both the 2010 and 2011 assessment years.
3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Carol Comer, held a consolidated hearing on these matters on October 17, 2012.
4. The following persons were sworn as witnesses:

For the Petitioner:

Orleanais Minch, District Property Manager
Angie Atkins, Senior Regional Property Manager
Christopher W. Myrvold, Chief Financial Officer
Theresa F. Rhodes, Executive Direction, Buckingham Foundation
Liza Mutzl, appraiser, Mitchell Appraisals

For the Respondent:

Jamie L. Shepherd, County Assessor

5. The Petitioner submitted the following exhibits:

- Petitioner Exhibit A – Articles of Incorporation of Buckingham Foundation, Inc. (formerly the Chambers Family Foundation, Inc.),
- Petitioner Exhibit B – Bylaws of the Chambers Family Foundation,
- Petitioner Exhibit C – Internal Revenue Service, 501(c)(3) letter for the Chambers Family Foundation, dated April 5, 2006,
- Petitioner Exhibit D – Articles of Organization of CFF Bradford Run, LLC,
- Petitioner Exhibit E – Operating Agreement for CFF Bradford Run, LLC,
- Petitioner Exhibit F – Buckingham Foundation Marketing Materials,
- Petitioner Exhibit G – Description of apartments and amenities for Bradford Run,
- Petitioner Exhibit H – 2010 – 2011 Programming for Bradford Run and event flyers,
- Petitioner Exhibit I – Internal Revenue Service, Revenue Procedure, “Low Income Housing Guidelines,”
- Petitioner Exhibit J – Bradford Run’s rent roll for 2010 and 2011 (confidential),
- Petitioner Exhibit K – Rent Analysis dated October 8, 2012.

6. The Respondent submitted the following exhibits:

- Respondent Exhibit A – U. S. Department of Housing and Urban Development, “Supplement to Project Analysis” for Bradford Run,
- Respondent Exhibit B – Mortgage for Bradford Run, dated February 26, 2010,
- Respondent Exhibit C – Letter between P/R Mortgage & Investment Corp. and Indiana State Office of the U.S. Department of Housing and Urban Development, dated February 26, 2010,
- Respondent Exhibit D – Lease Agreement for Bradford Run Apartments and Lease Addendum for Pets,
- Respondent Exhibit E – Petitioner’s Response to Respondent’s First Set of Interrogatories and Request for Production, dated October 1, 2012,
- Respondent Exhibit F – 2010 – 2011 Programming for Bradford Run,
- Respondent Exhibit G – Market Rent Comparison for Howard County Apartments.

7. The following additional items are recognized as part of the record:

- Board Exhibit A – The 132 Petitions,

Board Exhibit B – Notice of Hearing on Petition - Re-Schedule,
Board Exhibit C – Hearing Sign-In Sheet.

JURISDICTIONAL FRAMEWORK

8. 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, (3) property tax exemptions, and (4) property tax credits 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.

BASIS OF EXEMPTION AND BURDEN

9. 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.
10. 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 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).
11. 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)).

12. 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).

SUMMARY OF THE PETITIONER'S CASE

13. The Petitioner contends its property was eligible for 100% exemption in 2010 and 2011 pursuant to Indiana Code § 6-1.1-10-16 because it was owned, occupied and used for charitable purposes.
14. The Petitioner presented the following evidence in regard to this issue:
 - a. The Petitioner's witness, Ms. Rhodes, who is Buckingham Foundation Inc.'s (the Foundation) Executive Director, testified that the Foundation was formed to "promulgate, support and encourage development, operations and services associated with the provision of safe, decent and affordable housing for low and moderate income individuals and families as well as to make grants to public charities that are exempt from federal income tax..." *Rhodes testimony, Petitioner Exhibit A*. According to Ms. Rhodes, in the event of dissolution of the Foundation, its assets must go to another charitable organization. *Id.* In response to questioning, Ms. Rhodes testified that the grants provided by the Foundation come from "some cash we are able to pull off of the [Foundation's] two properties" and from employee pledges. *Id.* The Petitioner's witness, Mr. Myrvold testified that Bradford Run

contributed \$75,747 to the Foundation in 2010, which represented \$72,340 due on an unsecured note and \$3,407 for grants. *Myrvold testimony*. In 2011, Bradford Run’s operations contributed \$150,000 to the Foundation with \$72,340 for the note and \$77,570 available for grants. *Id.* Ms. Rhodes admitted that most of the Foundation’s grant recipients were located in Indianapolis. *Rhodes testimony*. However, she argues, some of the grant recipients work state-wide. *Id.* And, in fact, she argues any additional revenue generated by an exemption on the Petitioner’s property would be used for further grant-making. *Id.*

- b. Similarly, Ms. Rhodes testified that the purpose of the Petitioner - CFF Bradford Run, LLC – is to own, redevelop and rehabilitate real estate in a manner that furthers the charitable purposes of the Foundation. *Rhodes testimony; Petitioner Exhibit D*. “The company is committed to providing charitable services for the benefit of the community served by the corporation as a whole, and to giving charitable purposes priority over maximizing profits for the members of the company.” *Id.* According to Mr. Rhodes, the Buckingham Foundation is the sole member of the Petitioner. *Id.*
- c. In order to further its mission, the Petitioner acquired Bradford Run Apartments (Bradford Run) in February of 2010. *Rhodes testimony*. The Petitioner’s district property manager, Ms. Minch, testified that Bradford Run is an apartment complex with 292 units, located at 3804 Briarwick Drive in Kokomo. *Minch testimony*. It was built in 1994. *Id.* According to the senior regional property manager, Ms. Atkins, the property was built as a “tax-credit property, owned by a general partner and a limited partner” with a fifteen year compliance period. *Atkins testimony*. But as of 2009, the property rolled out of the tax credit program. *Id.* Ms. Atkins testified that tax credit rents are capped to be more affordable to a low or moderate income resident. *Id.* Bradford Run likewise put caps in place even though it was no longer on the tax credit program. *Id.*

- d. Ms. Atkins testified that under IRS guidelines, residents that remain in the community after it rolled out of the tax credit program cannot have their rents raised over the maximum rent in the Section 42 guidelines for a period of three years. *Atkins testimony*. But, the remainder of the property operates according to IRS low income housing requirements: 75% of its residents are at 80% of the local adjusted median income and 20% of that population is at 50% or less of the adjusted median income.¹ *Id.* According to Ms. Atkins, this is different than other properties that roll out of the Section 42 program because many communities become “conventional” apartments and the rents are increased. *Atkins testimony*.
- e. In response to questioning, however, Ms. Atkins admitted that Bradford Run advertises its apartments like conventional apartments and offers incentives to residents because it wants “as full a community as possible.” *Atkins testimony*. And like other “conventional” apartments, Ms. Rhodes admitted that the Petitioner filed eviction proceedings for 26 tenants in 2010 and 24 tenants in 2011 and the Petitioner instituted 99 collection actions between February of 2010 and December of 2011. *Rhodes testimony*. Ms. Atkins also admitted that residents with higher incomes could have lower rents at Bradford Run than other low income families based on specials that were occurring “when somebody moves in and what happens at renewal.” *Id.* Bradford Run does not “shift rents based off income.” *Id.* According to Ms. Atkins, the Petitioner just ensures that its tenant mix meets IRS’ income guidelines. *Id.*
- f. The Petitioner’s chief financial officer testified that Bradford Run was not obtained using a subsidized loan. *Myrvold testimony*. But while the mortgage is at a “market interest rate,” Mr. Myrvold admitted that the Department of Housing and Urban Development 223(f) program allows the Petitioner to mortgage the property for a 35 year term; rather than the 10 or 20 year terms available through Fannie Mae or an insurance company, which “drastically reduces the interest rate risk.” *Id.* Further, the

¹ Although 25% of the Petitioner’s residents do not have to be low or moderate income individuals or families, Ms. Atkins argues this is beneficial because it assists in the social and economic integration of the poorer residents. *Atkins testimony*.

mortgage is FHA insured. *Id.* In addition, in response to questioning, Mr. Myrvold testified that the property was self-sufficient. *Id.* “They can pay their normal operating expenses.” *Id.*

- g. Ms. Rhodes testified that the Petitioner offers an array of services in addition to the amenities that many apartment communities offer. *Rhodes testimony.* For example, Ms. Minch testified that the Petitioner offers two hot breakfasts per month for its residents and holiday meals for Easter, Thanksgiving and Christmas. *Minch testimony.* Moreover, Ms. Rhodes testified, the Petitioner does an annual “backpack attack” where it buys backpacks and school supplies for the children in the community. *Rhodes testimony.* According to Ms. Minch, the Petitioner gave out 107 backpacks in 2010 and 150 backpacks in 2011 to the residents of Bradford Run and the surrounding community. *Minch testimony.* And Bradford Run served as a drop off site for a kids’ coat drive in 2010 and 2011 in partnership with the United Way. *Id.* In addition, Bradford Run donated money and food to the Salvation Army’s food pantry. *Id.* Further, the Petitioner partnered with the Kokomo Fire Department to teach fire safety at the property. *Rhodes testimony.* And Ms. Rhodes testified that the Petitioner is considering launching an after-school tutoring program for children in its community. *Id.*
- h. Ms. Rhodes testified that the Foundation is also focused on literacy. *Rhodes testimony.* Therefore, the Petitioner partnered with the Kokomo Public Library to bring their Bookmobile to Bradford Run to promote youth reading. *Id.* The Petitioner is also working on launching a homebound program for adult readers. *Id.*
- i. Similarly, Ms. Rhodes testified that the Petitioner built a “business and education” center at Bradford Run and the Petitioner is working closely with the Salvation Army to do on-site counseling and programming. *Rhodes testimony.* According to Ms. Rhodes, the center includes a designated area with countertops, office chairs, computers and related equipment. *Id.* Presently the Petitioner focuses on resume

- writing, job searches and career advancement at the business center, but the Petitioner hopes to do structured GED-type tutoring on-site in the future. *Id.* The Salvation Army also provides educational courses on resume writing and helps individuals apply for jobs. *Minch testimony.* And United Way is partnering with the Petitioner to start doing tax returns for its residents. *Id.*
- j. Another area the Petitioner is focusing on is financial literacy. *Rhodes testimony.* In support of this goal, Ms. Rhodes testified, the Petitioner partnered with PNC Bank to do on-site classes to teach money management, financial literacy, how to develop a budget and how to save for a down payment. *Id.* Ms. Minch testified that PNC does these programs quarterly at Bradford Run. *Minch testimony.* Parts of the classes educate residents on how to raise a low credit score and get their finances back on track. *Id.* She admitted, however, that PNC's program on saving accounts, 401(k)s and IRAs may serve to market those services in addition to educating the Petitioner's residents. *Id.*
- k. The Petitioner is also committed to helping its residents move toward home ownership. *Rhodes testimony.* Ms. Rhodes testified that, at Stony Brook Apartments in Indianapolis, the Foundation would allow two residents to live rent-free for eighteen months in order to save for the down payment on a new home. *Id.* Ms. Rhodes admitted, however, that the program did not presently exist at the subject property. *Id.* In fact, Ms. Rhodes admitted that the Petitioner does not offer any rent forgiveness or other concessions to its residents other than standard rent concessions and application fee waivers to attract renters. *Id.*
- l. Moreover, Ms. Rhodes testified, the Petitioner does health forums for its residents covering a variety of topics, including stress management and healthy eating choices. *Rhodes testimony.* The Foundation also offered flu shots, blood pressure screenings, cholesterol screenings, dietician visits, dental screenings and mammograms in partnership with other Howard County organizations. *Id.* In addition, Indiana Health

- Care and Anthem educated residents on insurance options and performed back to school physicals and health screenings for the children. *Id.* According to Ms. Rhodes, the Petitioner paid for the flu shots and mammograms. *Id.* Ms. Minch testified that 54 people were served in the health and wellness clinic in 2011. *Minch testimony.* And Ms. Minch testified that Bradford Run started a community garden in 2010 to promote good health. *Id.*
- m. Finally, Ms. Rhodes testified that the Petitioner is investigating services for seniors and veterans. *Rhodes testimony.*
- n. Ms. Minch argues that Bradford Run’s services and activities are different than the services and activities provided by market properties. *Minch testimony.* According to Ms. Minch, market properties do not offer wellness clinics or they charge for those services. *Id.* And while there are resident events and classes, it is part of an amenities program “that is figured in the market rents.” *Id.* Similarly, Ms. Atkins testified, “our focus is to provide programming and services that speak to literacy, education, health and finding charitable organizations to donate to – whether it be scholarships, grants, or money; that’s just not typically in the business plan for a conventional market rate apartment.” *Atkins testimony.* In response to questioning, however, Ms. Minch admitted that the Petitioner’s amenities serve to attract residents. *Minch testimony.*
- o. In order to show that Bradford Run’s rents were below market rents, the Petitioner offered the testimony of Liza Mutzl, a certified Indiana appraiser. *Mutzl testimony; Petitioner Exhibit K.* Ms. Mutzl testified that she inspected the property and reviewed the rent rolls for Bradford Run for 2010 and 2011. *Id.* Ms. Mutzl then reviewed comparable properties’ rents to determine Bradford Run’s position in the market. *Id.* According to Ms. Mutzl, she chose the five “most comparable” properties based on age, condition, amenities and location. *Id.*

- p. In her analysis, Ms. Mutzl estimated that in 2010 the adjusted rents on a comparable 676 sq.ft., one bedroom apartment ranged from \$442 to \$574, with an average of \$529, or from \$.60 to \$.92 per square foot, with an average of \$.75; whereas the subject property's rents for a 676 sq.ft., one bedroom apartment ranged from \$350 to \$513 with an average of \$432, or from \$.52 to \$.76 with an average of \$.64. *Mutzl testimony; Petitioner Exhibit K*. Similarly, the 2010 adjusted rents on a comparable 715 sq.ft., one bedroom apartment ranged from \$442 to \$574, with an average of \$529, or from \$.60 to \$.92 per square foot, with an average of \$.75; whereas the subject property's rents for a 715 sq.ft., one bedroom apartment ranged from \$375 to \$699 with an average of \$472, or from \$.52 to \$.98 with an average of \$.66. *Mutzl testimony*.
- q. For 2011, Ms. Mutzl estimated that adjusted comparable rents on a 676 sq.ft., one bedroom apartment ranged from \$442 to \$594, with an average of \$544, or from \$.60 to \$.92 per square foot, with an average of \$.77; whereas the subject property's rents for a 676 sq.ft., one bedroom apartment ranged from \$355 to \$504 with an average of \$441, or from \$.53 to \$.75 with an average of \$.65. *Mutzl testimony; Petitioner Exhibit K*. Similarly, the 2011 adjusted comparable rents on a 715 sq.ft., one bedroom apartment ranged from \$442 to \$594, with an average of \$544, or from \$.60 to \$.92 per square foot, with an average of \$.77; whereas the subject property's rents for a 715 sq.ft., one bedroom apartment ranged from \$385 to \$699 with an average of \$493, or from \$.54 to \$.98 with an average of \$.69. *Mutzl testimony*.
- r. For the two bedroom apartments, Ms. Mutzl estimated that in 2010 the adjusted comparable rents on a 852 sq.ft., two bedroom apartment ranged from \$515 to \$723, with an average of \$616, or from \$.52 to \$.67 per square foot, with an average of \$.61; whereas the subject property's rents ranged from \$425 to \$529 with an average of \$478, or from \$.50 to \$.62 with an average of \$.56. *Mutzl testimony; Petitioner Exhibit K*. Similarly, the 2010 adjusted comparable rents on a 889 sq.ft., two bedroom apartment ranged from \$530 to \$738, with an average of \$632, or from \$.53

to \$.68 per square foot, with an average of \$.63; whereas the subject property's rents ranged from \$450 to \$529 with an average of \$491, or from \$.51 to \$.60 with an average of \$.55. *Id.* The 2010 adjusted comparable rents on a 948 sq.ft., two bedroom apartment ranged from \$530 to \$738, with an average of \$632, or from \$.53 to \$.68 per square foot, with an average of \$.63; whereas the subject property's rents ranged from \$475 to \$660 with an average of \$579, or from \$.50 to \$.70 with an average of \$.61. *Id.* The 2010 adjusted comparable rents on a 968 sq.ft., two bedroom apartment ranged from \$530 to \$738, with an average of \$632, or from \$.53 to \$.68 per square foot, with an average of \$.63; whereas the subject property's rents ranged from \$500 to \$699 with an average of \$578, or from \$.52 to \$.72 with an average of \$.60. *Id.* Finally, the 2010 adjusted comparable rents on a 1,034 sq.ft., two bedroom apartment ranged from \$530 to \$738, with an average of \$632, or from \$.53 to \$.68 per square foot, with an average of \$.63; whereas the subject property's rents ranged from \$525 to \$714 with an average of \$655, or from \$.51 to \$.69 with an average of \$.63. *Id.*

- s. Ms. Mutzl estimated that in 2011 the adjusted comparable rents on a 852 sq.ft., two bedroom apartment ranged from \$515 to \$726, with an average of \$614, or from \$.52 to \$.67 per square foot, with an average of \$.61; whereas the subject property's rents ranged from \$430 to \$529 with an average of \$496, or from \$.50 to \$.62 with an average of \$.58.² *Mutzl testimony; Petitioner Exhibit K.* Similarly, the 2011 adjusted comparable rents on a 889 sq.ft., two bedroom apartment ranged from \$530 to \$741, with an average of \$630, or from \$.53 to \$.69 per square foot, with an average of \$.63; whereas the subject property's rents ranged from \$460 to \$538 with an average of \$511, or from \$.52 to \$.61 with an average of \$.57. *Id.* The 2011 adjusted

² In response to cross examination, Ms. Mutzl admitted that there was an error in her 2011 analysis of the comparable rents for two bedroom apartments. *Mutzl testimony.* Accordingly, she corrected the values on her rent study. *Petitioner Exhibit K.* The corrected figures resulted in an average of \$609 or \$.60 per square foot for a comparable 852 sq.ft. two bedroom apartment; \$625 or \$.62 per square foot for a comparable 889 sq.ft. two bedroom apartment; \$625 or \$.62 per square foot for a comparable 948 sq.ft. two bedroom apartment; \$625 or \$.62 per square foot for a comparable 968 sq.ft. two bedroom apartment; and \$625 or \$.62 per square foot for a comparable 1,034 sq.ft. two bedroom apartment. *Id.*

comparable rents on a 948 sq.ft., two bedroom apartment ranged from \$530 to \$741 with an average of \$630, or from \$.53 to \$.69 per square foot, with an average of \$.63; whereas the subject property's rents ranged from \$330 to \$660 with an average of \$574, or from \$.35 to \$.70 with an average of \$.61. *Id.* The 2011 adjusted comparable rents on a 968 sq.ft., two bedroom apartment ranged from \$530 to \$741, with an average of \$630, or from \$.53 to \$.69 per square foot, with an average of \$.63; whereas the subject property's rents ranged from \$520 to \$667 with an average of \$599, or from \$.54 to \$.69 with an average of \$.62. *Id.* Finally, the 2011 adjusted comparable rents on a 1,034 sq.ft., two bedroom apartment ranged from \$530 to \$741, with an average of \$630, or from \$.53 to \$.69 per square foot, with an average of \$.63; whereas the subject property's rents ranged from \$525 to \$714 with an average of \$640, or from \$.51 to \$.69 with an average of \$.62. *Id.*

- t. For the three bedroom apartments, Ms. Mutzl estimated that in 2010 the adjusted comparable rents on a 1,158 sq.ft., three bedroom apartment ranged from \$682 to \$824, with an average of \$776, or \$.64 per square foot; whereas the subject property's rents ranged from \$600 to \$830 with an average of \$697, or from \$.52 to \$.72 with an average of \$.60. *Mutzl testimony; Petitioner Exhibit K.* Similarly, the 2010 adjusted comparable rents on a 1,482 sq.ft., three bedroom apartment ranged from \$692 to \$834, with an average of \$784, or \$.65 per square foot; whereas the subject property's rents ranged from \$829 to \$1,085 with an average of \$950, or from \$.56 to \$.73 with an average of \$.64. *Id.*
- u. Ms. Mutzl estimated that in 2011 the adjusted comparable rents on a 1,158 sq.ft., three bedroom apartment ranged from \$682 to \$827, with an average of \$777 or \$.64 per square foot; whereas the subject property's rents ranged from \$625 to \$830 with an average of \$706, or from \$.54 to \$.72 with an average of \$.61. *Mutzl testimony; Petitioner Exhibit K.* Similarly, the 2011 adjusted comparable rents on a 1,482 sq.ft., three bedroom apartment ranged from \$692 to \$837, with an average of \$785, or \$.65

per square foot; whereas the subject property's rents ranged from \$683 to \$1,085 with an average of \$950, or from \$.46 to \$.73 with an average of \$.64. *Id.*

- v. Based on her comparable analysis, Ms. Mutzl concluded that "in many cases" the Petitioner's rents "are set at the low end of the market." *Mutzl testimony; Petitioner Exhibit K.* According to Ms. Mutzl, the Petitioner's one bedroom apartments are below the market and "in many cases, they set the low end of the market." *Id. at 53.* The two bedroom apartments are "typically below the market in 2010 with the exception of the 1,034 [sq. ft.] unit" but the rents were "more in line with the market" in 2011. *Id.* Similarly, Ms. Mutzl found the three bedroom units to be "more in line with the market" for both assessment years. *Id.*
- w. In response to questioning, Ms. Mutzl admitted that smaller units did not necessarily rent for the lowest rates. *Mutzl testimony.* But, in furtherance of her conclusion that Bradford Run's rents were below market, Ms. Mutzl testified that she erred in adjusting the comparable properties for water, sewer and trash because she thought the subject property charged for those utilities. *Id.* Ms. Mutzl later learned that Bradford Run did not charge a fee for utilities until 2012. *Id.*
- x. In response to the Assessor's case, Ms. Minch argued that the apartment communities used by the county are not comparable to the Petitioner's property. *Minch testimony.* For example, Ms. Minch testified, Maplecrest was built in 1963, and therefore is much older than the subject property, which was built in 1994. *Id.* Similarly, Kingston and Avery Park were built in 1964, Park Place was built in 1970, Winding Brook was built in 1974, Vinton Woods was built in 1976, Concord Square was built in 1978, and Fox Acres was built in 1981. *Id.* Moreover, Ms. Minch testified, Concord Square is for sale and the seller is not doing repairs for its residents. *Id.* And Brentwood is a 55 and older community. *Id.*

y. In addition, Ms. Minch argues, the Respondent's data was flawed. *Minch testimony*. Contrary to the Respondent's evidence, Ms. Minch testified that Amberwood's rent on a one bedroom was \$555, a two bedroom was \$595, a three bedroom was \$695, and a four bedroom was \$735; Walnut Creek's three bedroom unit rented for between \$729 and \$859, which is higher than the Assessor reported; and at Summerset a one-bedroom was \$566, a two bedroom was \$605, and a three bedroom ranged from \$593 to \$704. *Id.* Similarly, Concord Square is renting a one bedroom apartment for \$512, instead of the \$430 reported by the Assessor. *Id.* Likewise, Maplecrest's rents are much higher than the assessor reported: one bedroom units rent from \$469 to \$479, two bedroom units rent from \$489 to \$519, and three bedroom units rent from \$619 to \$639. *Id.* At Kingston, the rent on the two bedroom, one bath unit is \$409 and the two bedroom, two bath unit is \$499. *Id.* Jefferson Crossing has a two bedroom, one bath apartment for \$480 as a tax credit unit and \$520 as a market unit, a larger two bedroom apartment ranges from \$475 to \$555, and the three bedroom unit ranges from \$590 to \$650. *Id.* Park Place rents a one bedroom unit for \$450 and a two bedroom unit for \$525 to \$550. *Id.* Ashbury's one bedroom units rent for \$475 and their two bedroom units rent for \$525 and \$629. *Id.* Lincolnwood has one bedroom units for \$564 and two bedroom units for \$589. *Id.* Winding Brook has one bedroom units for between \$475 to \$483, two bedroom units for between \$549 and \$555, and three bedroom units for \$660. *Id.* Finally, Autumn Trace rents a one bedroom unit for \$450, a two bedroom unit for \$475 and a two bedroom, two bath unit for \$525. *Id.*

z. In response to questioning, Ms. Minch testified that Bradford Run calls other properties to "find out what our competitors are doing." *Minch testimony*. And if the Petitioner found a competitor doing something that brought in more renters, Ms. Minch agreed "we would certainly want to do that as well." *Id.*

aa. In his post-hearing brief, the Petitioner's counsel argues that the Petitioner does not provide its low income tenants housing "as part of a contractual agreement or as a

condition precedent to receiving federal funds.” *Petitioner’s Post-Hearing Brief at 14*. Further, Mr. Jones argues, the Petitioner does more than simply refer its residents to social services, “it arranged to have organizations come to the site and provide services to its residents, such as a financial counseling program provided by PNC Bank, the wellness clinic and the flu shots.” *Id. at 15*. In addition, Mr. Jones argues, “the Petitioner offered its own programs to improve the situations of its tenants, such as the backpack program, free hot meals and social events coordinated by management.” *Id.*

- bb. The Petitioner’s counsel also argues that providing safe, decent, affordable housing to low and moderate income individuals and families provides a public benefit. *Petitioner’s Post-Hearing Brief at 17*. According to Mr. Jones, “the Indiana General Assembly has found that the provision of low-income housing is very much a governmental burden and obligation for which public funds may be expended.” *Id. at 19*. For example, he cites Indiana Code § 36-7-18-2, which declares that “[t]he clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property may be acquired.” *Id. at 17*. Thus, he concludes, “if the Petitioner has undertaken such activities, then it relieves the government from undertaking these activities.” *Id. at 18-19*.

SUMMARY OF THE RESPONDENT’S CASE

15. The Respondent contends that the Petitioner’s property was 100% taxable in 2010 and 2011.
16. The Respondent presented the following evidence in regard to this issue:

- a. The Respondent contends that the Petitioner’s rents are within the range of rents available to tenants in the area. *Shepherd testimony*. According to Ms. Shepherd, her office collected rent information from “most” of the apartment complexes in Howard County. *Id.* While she admitted the rents were collected for 2012, Ms. Shepherd testified, each apartment community was asked how rents had changed in the previous two years. *Id.* And none of the communities reported a significant change in the income being generated by the apartments or the rents being charged during the relevant time period. *Id.*

- b. Ms. Shepherd testified that, in developing her rent analysis, she chose not to make any adjustments to comparable rents “because values are selective in nature.” *Shepherd testimony*. For example, she testified, a carport offered by one community for \$30 a month does not mean a carport is worth \$30 a month to the average renter. *Id.* Instead, Ms. Shepherd testified, her office prepared a baseline, “apples-to-apples” comparison of rent in the county. *Id.*

- c. Based on her analysis, Ms. Shepherd testified that “sometimes Bradford Run’s rents were a little bit more; sometimes they were a little less; and sometimes its rents were pretty close to the comparable apartment community.” *Shepherd testimony*. For example, she testified, Bradford Run’s one bedroom units rented from \$486 to \$556. *Id.* In comparison, Westbrook offered a one bedroom unit for \$479; Amberwood offered a one bedroom unit for \$450; Cambridge Place offered a one bedroom unit for between \$625 and \$635; Fox Acres offered a one bedroom unit for \$555; Walnut Creek offered a one bedroom unit for \$579; Vinton Woods offered a one bedroom unit for \$300; Summerset offered a one bedroom unit for \$426; Concord Square offered a one bedroom unit for \$430; Maple Crest offered a one bedroom unit for between \$449 and \$459; Kingston Green offered a one bedroom unit for \$389; Park Place offered a one bedroom unit for between \$390 and \$450; Meadowlawn offered a one bedroom unit for \$425; Lincolnwood offered a one bedroom unit for \$511; Winding Brook offered a one bedroom unit for \$460; Brentwood Green offered a one

bedroom unit for between \$505 and \$550; Avery Park offered a one bedroom unit for \$484; Kokomo Manor offered a one bedroom unit for \$511; Turtle Creek offered a one bedroom apartment for between \$399 and \$574; Autumn Trace offered a one bedroom apartment for between \$540 and \$560; and Mansard offered a one bedroom apartment for \$400. *Id.*

d. Likewise, Ms. Shepherd testified, Bradford Run's two bedroom, two bath unit rented from \$465 to \$631; whereas Westbrook offered a two bedroom, 1.5 bath unit for \$598; Amberwood offered a two bedroom, one bath unit for \$520; Cambridge Place offered a two bedroom, 1.5 bath unit for \$725 to \$735; Fox Acres offered a two bedroom, one bath unit for \$680; Walnut Creek offered a two bedroom, two bath unit for \$729; Vinton Woods offered a two bedroom, 1.5 bath unit for \$325; Summerset offered a two bedroom, two bath unit for \$512 to \$565; Concord Square offered a two bedroom, one bath unit for \$612; Maple Crest offered a two bedroom, one or 1.5 bath unit for between \$469 and \$599; Kingston Green offered a two bedroom, two bath unit for \$450; Park Place offered a two bedroom, one bath unit for \$525 and \$550; Meadowlawn offered a two bedroom, one bath unit for \$460; Lincolnwood offered a two bedroom, one bath unit for \$649; Winding Brook offered a two bedroom, one bath unit for \$525; Brentwood Green offered a two bedroom, one bath unit for between \$602 and \$625; Avery Park offered a two bedroom, two bath unit for \$744; Kokomo Manor offered a two bedroom, one bath unit for \$649; Turtle Creek offered a two bedroom, one bath apartment for between \$449 and \$604; Autumn Trace offered a two bedroom, two bath apartment for \$705; and Mansard offered a two bedroom, one bath apartment for between \$450 and \$460. *Id.*

e. Ms. Shepherd found a similar result comparing three bedroom apartments. *Shepherd testimony.* According to Ms. Shepherd, a three bedroom, two bath unit at Bradford Run rented for between \$685 and \$931 and a three bedroom, 1.5 bath unit rents for \$595 at Amberwood; a three bedroom, two bath unit rents for \$729 at Walnut Creek; a three bedroom, 1.5 bath unit rents for \$350 at Vinton Woods; a three bedroom, two

- bath unit rents for between \$581 and \$644 at Summerset; a three bedroom, 1.5 bath unit rents for between \$599 and \$619 at Maple Crest; a three bedroom, 1.5 bath unit rents for \$619 at Kingston Green; three bedroom, one bath units rent for \$700 at Park Place and Winding Brook; a three bedroom, two bath unit rents for \$774 at Avery Park; a three bedroom, one bath unit rents for \$827 at Kokomo Manor; a three bedroom, two bath unit rents for \$750 at Autumn Trace; and a three bedroom, 1.5 bath unit rents for \$575 at Mansard. *Id.*
- f. In response to cross examination, however, Ms. Shepherd admitted that several of the properties were older than the subject property, such as Fox Acres, Vinton Woods, Concord Square, Maplecrese, Kingston Green, Park Place, Ashbury and Lincolnwood; although she argues Lincolnwood has been updated which would change its “effective age.” *Shepherd testimony.*
- g. Further, Ms. Shepherd argued that the Petitioner has not shown it has a charitable purpose. *Shepherd argument.* While the Bradford Run may have low and moderate income individuals and families as the majority of its tenants, Ms. Shepherd contends, lower income individuals as a whole are more likely to be renters than homeowners. *Id.* In support of this contention, Ms. Shepherd testified that as the unemployment rate increased in the county, apartment complexes showed lower vacancy rates. *Shepherd testimony.* According to the Respondent’s counsel, the Petitioner failed to show that its tenant mix is any different than other apartment communities in the county. *Meighen argument.*
- h. In addition, Ms. Shepherd argues, the Petitioner’s charitable acts are not unique. *Shepherd testimony.* According to Ms. Shepherd, she knows “quite a few” for-profit businesses that engage in charitable activities. *Id.* For example, she testified, the local grocery stores and pharmacies have an annual “buddy bag” drive; the Windmill Grill does a program to “pack the bus” with school supplies; and Chrysler Corporation gives millions in charity to the community. *Id.*

- i. Nor are the Petitioner’s “educational” programs unique. *Shepherd argument*. According to Ms. Shepherd, banks market their products in many offices. *Id.* In fact, Ms. Shepherd testified various banks have come to the assessor’s office to promote their business. *Id.* In addition, she has firsthand knowledge of banks presenting to pharmacists and doctor’s offices because they want to invest their employees’ money. *Id.* Similarly, Ms. Shepherd testified, she has personal knowledge of the fire department presenting its “stop, drop and roll” program to a day care facility. *Id.* Likewise, the public library’s “bookmobile” stops at many locations, including places like the Marsh supermarket. *Id.* In the Respondent’s Post-Hearing Brief, Ms. Meighen reports that “work stations are available in hotels and other apartment complexes such as Walnut Creek.” *Assessor’s Brief at 24.* And being a drop-off point for another organization’s coat drive is available at the Rusty Bucket Restaurant in Indianapolis. *Id.*

- j. The Respondent also contends that the Petitioner’s rent analysis should be given little weight. *Shepherd testimony*. According to Ms. Shepherd, apartments are valued on a price per unit basis; rather than on a square foot basis. *Id.* And the Petitioner’s apartments are rented at levels that are within the range of rents available in the market. *Id.* Moreover, Ms. Shepherd argues, the Petitioner acts like a typical landlord. *Id.; Respondent Exhibit D.* For example, Ms. Shepherd testified, the Petitioner’s lease allows it to assess a late fee of \$100 when rent is not paid on time and an additional fee of \$5 a day can accrue. *Id.* Similarly, the lease allows a \$75 fee for a returned check. *Id.* And the Petitioner may terminate the lease and evict a tenant upon a tenant’s default. *Id.*

- k. Finally, Ms. Shepherd argues that the Petitioner’s property should not receive an exemption because it receives the same level of services other properties receive from the county. *Shepherd testimony*. According to Ms. Shepherd, to grant an exemption to Bradford Run would “shift their tax burden onto the remainder ... of residents and

taxpayers in Howard County.” *Id.* Moreover, she argues, an exemption from property taxes would give Bradford Run a competitive advantage compared to other apartment communities in the county. *Id.*

- l. In her “County Assessor’s Brief in Support of Taxation,” the Respondent’s counsel argues that the Petitioner is simply a landlord. *Assessor’s Brief at 5.* According to Ms. Meighen, “Bradford maintains the common-place rights of landlords.” *Id.* In support of this contention, Ms. Meighen cites Bradford Run’s lease language requiring payment of timely rent or a late fee of \$100; a fee of \$75 for bounced checks; the prohibition against tenant alterations; the tenant’s responsibility for damages and attorney fees in the event of default; and the tenant’s requirements to observe Bradford’s rules and regulations. *Id.* In fact, she notes, “Bradford filed approximately 99 instances of collection actions against Bradford Run tenants between February 2010 and December 2011.” *Id.* And “other than standard rent concessions and application fee waivers, Bradford is not aware of any rent forgiveness to its tenants.” *Id.*

- m. Moreover, Ms. Meighen argues, while “Bradford seeks 100% exemption – or the removal of approximately \$8,000,000 in assessed value from the local tax rolls each year,” its charitable benefits “are actually far removed from the local taxing units.”³ *Assessor’s Brief at 3.* More importantly, Ms. Meighen contends that the leasing of 75% of the Petitioner’s apartment units to low or moderate income individuals and families “is *necessary* for Bradford and Buckingham to receive a federal income tax exemption.” *Id. at 4 (emphasis in original).* According to Ms. Meighen, “Bradford offers the Board much rhetoric by characterizing tenants as objects of charity because

³Ms. Meighen notes “It is presumed that Bradford will argue that ‘community benefit’ should be viewed in a universal context – if somebody somewhere receives benefit, then ‘community benefit’ is achieved. But this is too expansive reading of the phrase and over broadens the scope of the second prong of the charitable test. It is contrary to the Supreme Court, ‘In other words, exempting one piece of property shifts the tax burden to the other properties in the same taxing unit.’” *Assessor’s Brief at 25-26, citing Roller Skating Rink Operators Association, 853 N.E. 2d at 1265.*

- their incomes fall within certain percentages of the AMI, but there is nothing in the Record to show that the income levels of Bradford Run are any different than the income levels of persons in the general population who rent, or that Bradford Run's tenants fall into a group of individuals avoided by landlords in general." *Id. at 22.*
- n. Ms. Meighen argues that in almost every case, Bradford Run's rents fall within the range of rents charged by the comparable apartment communities in the Petitioner's rent study. *Assessor's Brief at 9-11, 18-20.* And while the Petitioner's appraiser compares units on a square foot basis, the report also shows that the size of an apartment "is not directly related to rent charged." *Id. at 11.* The Respondent's rent study similarly shows that a range of rental options are available and Bradford Run's rents fall within the range of rents charged by apartments in the community. *Assessor's Brief at 12-13.* According to Ms. Meighen, "market rent is not one particular dollar amount." *Id. at 18.* The Petitioner's comparable properties "charge a variety of rents." *Id.* Some less than others. *Id.* "This does not mean that conventional [apartments] charging less than others are 'charitable.'" *Id.* And Bradford is not renting its units to its low and moderate income residents at any lower rate than it charges higher income tenants. *Assessor's Brief at 6.* According to Ms. Meighen, "when a single person household with an annual income of \$81,000 pays less than a three person household with an annual income of \$21,600 or a two person household with an income of \$9,600, largess is lacking." *Id. at 21.*
- o. Thus, Ms. Meighen concludes "below market rents at Bradford Run are far from proven" for the Petitioner. *Assessor's Brief at 22.* And "even if the Board finds there is some substantive, quantifiable difference between market rents and those of Bradford Run, both the Supreme Court and the Tax Court have explicitly held that renting at below market rent is insufficient for the grant of exemption." *Id., citing Oaken Bucket Partners, 938 N.E. 2d at 658; and Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor, 909 N.E. 2d 1138, 1142, n.9, and 1144 (Ind. Tax Ct. 2009).*

ANALYSIS

17. Indiana Code § 6-1.1-10-16(a) states 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.” Ind. Code § 6-1.1-10-16(a). Further, “a tract of land ... is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred in subdivision (1) is situated on it.” Ind. Code § 6-1.1-10-16(c).
18. Exemption statutes are strictly construed against the taxpayer. *See New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 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 Board of Tax Commissioners*, 251 N.E.2d 673, 682 (Ind. 1969)). 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 that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).
19. An exemption requires probative evidence that a property is owned, occupied, and used for an exempt purpose. While the words “owned, occupied and used” restrict the activities that may be conducted on the property that can qualify for exemption, they do not require a single entity to achieve a unity of ownership, occupancy and use. Rather, these words are used to ensure that the particular arrangement involved is not driven by a profit motive. *Sangrlea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954, 959 (Ind. Tax Ct. 1997) (“Sangrlea 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.”). Once these three elements are met, the property can be exempt from property taxation. *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005).

20. “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose,” however, “is a fact sensitive inquiry; there are no bright-line tests.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13 (Ind. Tax Ct. 2009) (citation omitted). Thus every exemption case “stand[s] on its own facts” and on how the parties present those facts. See *Indianapolis Osteopathic Hosp., Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).
21. The Indiana Tax Court first addressed the question of whether property used for low income housing was exempt in *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 909 N.E.2d 1138 (Ind. Tax Ct. 2009) *trans. denied*. In that case, Jamestown Homes constructed a 160-unit, multi-family apartment complex under the federal Section 221(d)(3) program.⁴ 909 N.E.2d at 1139. In exchange for the mortgage insurance and interest rate subsidy provided by the Section 221(d)(3) program, Jamestown Homes agreed to rent its apartments only to individuals and families whose annual income was at or below 95% of the area median income and only charge rents that allowed it to cover the property’s operating costs and debt service. *Id.* As Judge Fisher noted, however, “Jamestown retained several ‘typical’ landlord rights: it could evict tenants who failed to pay their rent, it charged fees for late rental payments or returned checks, and charged security deposits.” 909 N.E.2d at 1140.

⁴ The Section 221(d)(3) program provides a federally insured and subsidized low interest rate loan to developers to promote the construction of affordable housing for low to moderate income families. 909 N.E.2d at 1139.

22. In deciding the *Jamestown Homes* case, Judge Fisher adopted the analysis of a 1967 decision from the Supreme Court of New Mexico regarding a similar Section 221(d)(3) property, *Mountain View Homes, Inc. v. State Tax Comm'n*, 427 P.2d 13 (N.M. 1967). In that case, the New Mexico Supreme Court found that, although the property operated not for profit and “provided better housing than would have otherwise been available to them,” the recipients of such “benefits” were not “sick or indigent.” *Jamestown Homes*, 909 N.E.2d at 1144, citing *Mountain View Homes*, 427 P.2d at 17. In fact, the Court surmised that many of the tenants would be “surprised to learn that they are considered as being proper objects for, or as recipients of charity.” *Id.* Thus, the New Mexico Supreme Court concluded: “Here, we have an enterprise to furnish low-cost housing to a certain segment of our population. It was intended to be self-supporting, without any thought that gifts or charity were involved. The tenants are required to pay for the premises occupied by them with the rentals being fixed so as to return the amount estimated as being necessary to pay out the project.” *Id.* The Court held that the property’s use was not “charitable” because the property was “competitive with landlords offering other residential property for rent on which taxes must be paid” and “there is no evidence that the public is relieved of any expense in comparison with the loss of tax revenue.” *Id.*
23. Similarly, in denying Jamestown Homes’ property a charitable exemption, Judge Fisher found:

The administrative record in this case merely reveals that Jamestown rents its apartments to moderate and low-income individuals for below market rates. There is no evidence, however, indicating that there are any welfare clients in Jamestown’s apartments, nor is there any evidence indicating that Jamestown’s tenants are permitted to occupy their apartments when they are unable to pay their rent. Likewise, there is no evidence in the administrative record indicating that Jamestown provides an ‘element of fraternity, brotherhood, or good fellowship intended to improve the spirits or impel to renewed effort,’ whether it be through, for example, free services for, or counseling of, its tenants. Finally, there is no evidence in the administrative record demonstrating that Jamestown has lessened the burden of government in meeting the need for affordable housing because that need is ultimately being met by the government through its mortgage insurance and interest subsidy.

909 N.E.2d at 1144.

24. Here, the Petitioner argues that it provides “safe, decent, affordable housing for low and moderate income individuals and families.” And that because 75% of its residents are at 80% of the local adjusted median income and 20% of that population is at 50% or less of the adjusted median income, the Petitioner’s property should be entitled to an exemption. However, as the Respondent notes, the Petitioner must restrict the income levels of its tenants in order to maintain its federal income tax exemption.

25. Moreover, the Petitioner failed to show the income levels of its tenants differ from the income levels of residents at other conventional apartments. And like the residents in *Mountain View Homes, Inc. v. State Tax Comm’n*, 427 P.2d 13 (N.M. 1967), cited by the Indiana Tax Court in *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 909 N.E.2d 1138 (Ind. Tax Ct. 2009), the Petitioner’s residents might be “surprised to learn that they are considered as being proper objects for, or as recipients of charity.” 427 P.2d at 17. For example, a single individual earning an annual income of \$34,400 or \$34,850 – which represents 80% of the area median income – would seem far from “indigent” and in need of charity under normal circumstances. *See Petitioner’s Exhibit J*.

26. And like the Petitioner in *Jamestown Homes*, Bradford Run retained “several ‘typical’ landlord rights: it could evict tenants who failed to pay their rent, it charged fees for late rental payments or returned checks, and charged security deposits.” *Jamestown Homes*, 909 N.E.2d at 1140. Ms. Rhodes admitted the Petitioner does not offer any rent forgiveness or other concessions other than standard rent concessions and application fee waivers. *Rhodes testimony*. Further, Ms. Rhodes admitted that the Petitioner filed eviction proceedings for 26 tenants in 2010 and 24 tenants in 2011 and the Petitioner instituted 99 collection actions between February of 2010 and December of 2011. *Id*.

27. Although the Petitioner claims to offer its residents “affordable” apartments, affordability does not equate to charitable. And the Petitioner’s own evidence fails to clearly show that its rents are “below market.”
28. Ms. Mutzl estimated that in 2010 adjusted comparable rents on a 676 sq.ft., one bedroom apartment ranged from \$442 to \$574, and the subject property’s rents ranged from \$350 to \$513. *Mutzl testimony; Petitioner Exhibit K.* Likewise, the 2010 adjusted comparable rents on a 715 sq.ft., one bedroom apartment ranged from \$442 to \$574 and the subject property’s rents ranged from \$375 to \$699. *Id.* Thus, the subject property’s rents were within the range of rents charged by other conventional apartment complexes. A similar result was found for 2011: adjusted comparable rents on a 676 sq.ft., one bedroom apartment ranged from \$442 to \$594 and the subject property’s rents ranged from \$355 to \$504; and the adjusted comparable rents on a 715 sq.ft., one bedroom apartment ranged from \$442 to \$594, and the subject property’s rents ranged from \$385 to \$699. *Id.* Thus, for each type of unit, in each year, the Petitioner’s apartments rented within the range of rents charged at “comparable” conventional apartments. Although in many cases the Petitioner’s rents were at the “low end” of the range of rents charged by the properties its appraiser deemed comparable, having a lease rate below the average lease rate does not make an apartment complex “charitable.” By definition at least half of the properties would have a rent rate “below the average lease rate.”
29. For the two bedroom apartments, Ms. Mutzl estimated that in 2010 adjusted comparable rents on a 852 sq.ft., two bedroom apartment ranged from \$515 to \$723, and the subject property’s rents ranged from \$425 to \$529; the adjusted comparable rents on a 948 sq.ft., two bedroom apartment ranged from \$530 to \$738, and the subject property’s rents ranged from \$475 to \$660; the adjusted comparable rents on a 968 sq.ft., two bedroom apartment ranged from \$530 to \$738, and the subject property’s rents ranged from \$500 to \$699; and the adjusted comparable rents on a 1,034 sq.ft., two bedroom apartment ranged from \$530 to \$738, and the subject property’s rents ranged from \$525 to \$714. *Mutzl testimony; Petitioner Exhibit K.* Thus, for each size of two bedroom apartment, the

Petitioner's apartments rented within the range of rents charged at "comparable" conventional apartments. *Id.* The only exception was that the range of rents for a 889 sq.ft., two bedroom apartment at Bradford Run in 2010 fell entirely below the range of rents at "comparable" properties: the 2010 adjusted comparable rents on a 889 sq.ft., two bedroom apartment ranged from \$530 to \$738, and the subject property's rents ranged from \$450 to \$529. *Id.* But even on that unit, Bradford Run's highest rent rate was only one dollar lower than the range of "market" rents identified by the Petitioner's appraiser. *Id.*

30. In 2011, Ms. Mutzl found that the adjusted comparable rents on a 852 sq.ft., two bedroom apartment ranged from \$515 to \$726, and the subject property's rents ranged from \$430 to \$529; the adjusted comparable rents on a 889 sq.ft., two bedroom apartment ranged from \$530 to \$741, and the subject property's rents ranged from \$460 to \$538; the adjusted comparable rents on a 948 sq.ft., two bedroom apartment ranged from \$530 to \$741, and the subject property's rents ranged from \$330 to \$660; the adjusted comparable rents on a 968 sq.ft., two bedroom apartment ranged from \$530 to \$741, and the subject property's rents ranged from \$520 to \$667; and the 2011 adjusted comparable rents on a 1,034 sq.ft., two bedroom apartment ranged from \$530 to \$741, and the subject property's rents ranged from \$525 to \$714. *Mutzl testimony; Petitioner Exhibit K.* Again, for each size of unit, the Petitioner's two bedroom apartments rented within the range of rents charged at "comparable" conventional apartments in 2011. *Id.*
31. Finally, for the three bedroom apartments, Ms. Mutzl estimated that in 2010 adjusted comparable rents on a 1,158 sq.ft., three bedroom apartment ranged from \$682 to \$824, and the subject property's rents ranged from \$600 to \$830; and the adjusted comparable rents on a 1,482 sq.ft., three bedroom apartment ranged from \$692 to \$834, and the subject property's rents ranged from \$829 to \$1,085. *Mutzl testimony; Petitioner Exhibit K.* Similarly, for 2011, the adjusted comparable rents on a 1,158 sq.ft., three bedroom apartment ranged from \$682 to \$827, and the subject property's rents ranged from \$625 to \$830 and; the adjusted comparable rents on a 1,482 sq.ft., three bedroom apartment

ranged from \$692 to \$837, and subject property's rents ranged from \$683 to \$1,085. *Id.* Again, for both units, for both assessment years, the Petitioner's apartments rented within the range of rents charged at "comparable" conventional apartments and, in fact, even exceeded the range of rents charged at comparable apartments. *Id.*

32. Based on her comparable analysis, Ms. Mutzl merely concluded that "in many cases" the Petitioner's rents "are set at the low end of the market." *Mutzl testimony; Petitioner Exhibit K.* This is insufficient to show that the Petitioner's rents were "below market" rents and fails to show a "public benefit" or "charitable intent" sufficient to justify the grant of an exemption.
33. Even if the Petitioner had sufficiently proven that its rents were "below market," the Tax Court has explicitly held that renting at below market rent is insufficient for the grant of an exemption. *See Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 909 N.E. 2d 1138, 1142, n.9, and 1144 (Ind. Tax Ct. 2009).
34. The Petitioner makes much of the services that it offers its residents such as hot breakfasts, backpacks and school supplies for its resident's school age children, its partnership with PNC bank to teach money management and budgeting, its partnership with the library to promote reading, its arrangement with the fire station to teach fire safety and its arrangement with other Howard County organizations to promote resident's health, and its computer station for residents where they can write a resume and search for a job. And those services are admirable. However, the evidence shows that the Petitioner's programs and services are not unique to the Petitioner's property or to a "charitable" enterprise. Many of the Petitioner's programs are offered elsewhere by for-profit entities. As the Respondent testified, local grocery stores and pharmacies have an annual "buddy bag" drive; the Windmill Grill does a program to "pack the bus" with school supplies; and Chrysler Corporation gives millions in charity to the community. *Shepherd testimony.* Moreover, the fire department presents its "stop, drop and roll" program to day care facilities, the public library's "bookmobile" stops at many locations,

including places like the Marsh supermarket, and being a drop off point for another organization's coat drive occurs at other locations, such as the Rusty Bucket Restaurant in Indianapolis. *Id.*; *Meighen argument*. Finally, banks go to various offices to promote their business and work stations are available in hotels and other apartment complexes such as Walnut Creek. *Id.*

35. Ms. Minch admitted that the Petitioner's amenities attract residents. *Minch testimony*. Moreover, the cost of such programs appears to be included in the rent because Mr. Myrvold described the property as "self-sufficient." *Myrvold testimony*. And, in fact, the property contributes money to the Foundation for its grant-making mission. *Myrvold testimony*. Like the taxpayer in *Mountain View Homes*, "here, we have an enterprise to furnish low-cost housing to a certain segment of our population. It was intended to be self-supporting, without any thought that gifts or charity were involved. The tenants are required to pay for the premises occupied by them with the rentals being fixed so as to return the amount estimated as being necessary to pay out the project." 427 P.2d at 17.
36. Thus, the Board finds that the Petitioner failed to sufficiently prove its property was owned, operated and used for a charitable purpose pursuant to Indiana Code § 6-1.1-10-16 for the 2010 or 2011 assessment year.

SUMMARY OF FINAL DETERMINATION

37. The Petitioner failed to prove its property was owned, occupied, and used for a charitable purpose in 2010 or 2011. The Board finds in favor of the Respondent and holds that the property is 100% taxable for the March 1, 2010, and March 1, 2011, assessment dates.

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

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, 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>