

REPRESENTATIVE FOR PETITIONER: Sandra Bickel, Ice Miller

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Meighen & Associates, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

COMMUNITY HOUSING)	Petition No.: 47-012-02-2-8-00001
INITIATIVE,)	
)	
Petitioner,)	County: Lawrence
)	
v.)	Township: Marion
)	
LAWRENCE COUNTY)	Parcel Nos.: 12-2108-00, 12-2109-00, 12-2110-00
PROPERTY TAX ASSESSMENT)	12-2111-00, 12-2112-00, 12-2113-00
BOARD OF APPEALS,)	12-2114-00, 12-2115-00, 12-2116-00
)	12-2118-00, 12-2119-00, 12-2120-00
Respondent.)	12-2121-00, 12-2122-00, 12-2123-00
)	
)	Assessment Year: 2002
)	

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

December 17, 2003

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board was:
Whether the subject property should be exempt from property taxation pursuant to Ind. Code § 6-1.1-10-16 as charitable.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Sandra Bickel, on behalf of Community Housing Initiative (Petitioner), filed a Form 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on January 13, 2003. The determination of the Lawrence County PTABOA was issued on December 13, 2002.

Hearing Facts and Other Matters of Record

3. On May 28, 2003, Marilyn Meighen filed a Notice of Appearance to represent Lawrence County in this appeal.
4. Prior to the hearing, the parties exchanged witness, summary of testimony, and exhibit lists.
5. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 17, 2003, in Bedford, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2 and 6-1.5-3-3.
6. Prior to the hearing, it was brought to the attention of all of the parties involved that the full list of parcel numbers was not listed on the Form 132. At the hearing, and stated for the record, all parties agreed that the hearing would encompass all the parcel numbers listed on the addendum to the original Form 132, filed with Lawrence County on behalf of Community Housing Initiative, Inc.

7. The following persons were present at the hearing:

For the Petitioner:

Sandra Bickel, Ice Miller

James Oleksak, Executive Director, Community Housing Initiative

For the Respondent:

Marilyn Meighen, Meighen & Associates, P.C.

8. The following person was sworn in as a witness and presented testimony:

For the Petitioner:

James Oleksak, Executive Director, Community Housing Initiative

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

For the Petitioner:

Petitioner's Exhibit 1 – Amended Code of By-Laws

Petitioner's Exhibit 2 – Articles of Incorporation

Petitioner's Exhibit 3 – Internal Revenue Service Letter

Petitioner's Exhibit 4 – Photos of the subject property

Petitioner's Exhibit 5 – Assumption of Original or Withdrawing Partner's
Obligation

Petitioner's Exhibit 6 – Multi Family Housing Assumption Agreement

Petitioner's Exhibit 7 – Loan Resolution (Form RD 1944-35) for \$1,402,620.60
(correct amount) and \$1,402,082.28

Petitioner's Exhibit 8 – Promissory Note (Form RD 1944-52)

Petitioner's Exhibit 9 – Loan Resolution (Form RD 1944-35) for \$140,000.00

Petitioner's Exhibit 10 – Rental Assistance Agreement (Form RD 1944-27)

Petitioner's Exhibit 11 – Tax Credit Report (Rental roll) as of June 30, 2003

Petitioner's Exhibit 12 – SBTC Memorandum to Barton Sprunger, dated 9/2/97

Petitioner's Exhibit 13 – Estimate and Certificate of Actual Cost (Form FmHA 1924-13)

Petitioner's Exhibit 14 – Multiple Family Housing Interest Credit & Rental
Assistance Agreement

For the Respondent:

Respondent's Exhibit 1 – SBTC Final Determination for CME-Postbrook East, Inc.

Respondent's Exhibit 2 – SBTC Final Determination for Parkview Memorial
Hospital

Respondent's Exhibit 3 – SBTC Final Determination for West Indianapolis
Development Corporation

Respondent's Exhibit 4 – Property record cards for subject

10. The Respondent objected to Petitioner's Exhibit 12. The Respondent noted that the memo clearly states that it may not be cited as precedent in administrative or judicial proceedings. The Respondent's objection was noted for the record.

11. In addition, the following additional evidence was provided by the Petitioner in a timely manner:

Petitioner's Exhibit 15 – Letter from Sandra Bickel regarding information requested
at the hearing

Petitioner's Exhibit 16 – Form 990 Return of Organization Exempt from Income Tax

Petitioner's Exhibit 17 – Rent Roll as of March 1, 2002

Petitioner's Exhibit 18 – Statement of Rental Operations for year ended October 31,
2002

Petitioner's Exhibit 19 – List of private entities receiving payment in 2002

Petitioner's Exhibit 20 – Detailed list of vendors or "breakdown of administrative
costs" for 2002

12. The following additional items are officially recognized as part of the record of proceedings:

Board Exhibit A - Form 132 Petition

Board Exhibit B - Notice of Hearing

Board Exhibit C - Request for Additional Evidence given to the Petitioner at the
June 17, 2003, hearing

Jurisdictional Framework

13. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

State Review and Petitioner's Burden

14. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998).
15. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890 (Ind. Tax 1995). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
16. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
17. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
18. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case.' See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax 1998), and *North Park Cinemas*,

Inc. v. State Bd. of Tax Comm'rs, 689 N.E.2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Constitutional and Statutory Basis for Exemption

19. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.
20. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
21. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E.2d 810 (Ind. Tax 1996) (501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

22. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.

23. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners (NAME)*, 671 N.E.2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
24. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *NAME*, 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 1990)).
25. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E.2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax 1987).
26. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), the taxpayer must demonstrate that it provides “a present benefit to the general public...sufficient to justify the loss of tax revenue.” *NAME*, 671 N.E.2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E.2d 277, 279 (Ind. Tax 1989), *aff’d* 571 N.E.2d (Ind. Tax 1991)).

Discussion of Issue

Whether the subject property should be exempt from property taxation pursuant to Ind. Code § 6-1.1-10-16 as charitable.

27. The Petitioner contends the property should be exempt from property taxation under Ind. Code § 6-1.1-10-16. The Petitioner operates under the regulations of the United States Department of Agriculture to provide affordable housing to low income individuals and families.

28. The Respondent contends that the Petitioner has not met the Federal Safe Harbor requirements for section 8 housing. The Respondent further contends that the Petitioner has not shown that a public benefit has been provided and therefore the property should not be exempt.

29. The applicable rules governing this issue are:

Ind. Code § 6-1.1-10-16(a)

All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.

Ind. Code § 6-1.1-10-36.3

(a) For purposes of this section, 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.

30. Evidence and testimony considered particularly relevant to this determination include the following:

A. The Petitioner is organized to provide decent housing that is affordable to low and moderate income persons and to promote, formulate, conduct, administer and otherwise assist in research, programs and studies in the fields of housing and urban development. *Oleksak Testimony*.

B. The corporation is a public benefit corporation within the meaning of Ind. Code § 23-17-2-23. *Oleksak Testimony*.

C. The Petitioner has exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). *Petitioner's Exhibit 3*.

D. The Petitioner is also a Community Housing Development Organization (CHDO). This means that they have special permission to compete for special funds for low-moderate income housing. To qualify as CHDO, the organization

must be able to provide low to moderate-income housing and also must have a board of directors made up of 1/3 low-moderate income representatives. *Oleksak Testimony.*

- E. The subject property is United States Department of Agriculture (USDA) Rural Development Section 515 housing, not Section 8 or Section 42. The original decision by the Lawrence County PTABOA was made on faulty information about Section 8 housing. *Oleksak Testimony.*
- F. The subject property was donated to the Petitioner. The Petitioner assumed the existing USDA mortgage. The effective interest rate on the assumed loan is 1%. The Petitioner agreed to pay the back taxes. The Petitioner will have to raise approximately \$2 million for renovations. *Oleksak Testimony.*
- G. The Petitioner has received a \$1 million dollar rehabilitation loan, contingent on the Petitioner coming up with another \$1 million dollars for the rehabilitation. The Petitioner is in the process of applying for HOME funds, federal funds passed to the State of Indiana through the Indiana Housing Finance Authority. *Oleksak Testimony.*
- H. There are major foundation and mold problems with some of the buildings. The Petitioner has hired a company to do a study for USDA Rural Development. Three of the buildings may be torn down. *Oleksak Testimony.*
- I. There are eighty-eight (88) total apartment units in the subject complex. Several units are not used due to the foundation and mold problems. *Oleksak Testimony.* As of March 1, 2002, forty-one (41) units were occupied. *Petitioner's Exhibit 17.*
- J. Under USDA Rural Development Section 515, rents are restricted. A formula based on income is used to compute the rent. There is also a utility allowance. *Oleksak Testimony.*
- K. All units are affordable, meaning that the tenant pays no more than 30% of their income as rent (up to market rent). The rent varies based on the tenant's income. *Oleksak Testimony.*
- L. Mr. Olesak testified that 20 units are rent assistance. An additional 32 units have been requested for rent assistance after the rehabilitation. *Oleksak Testimony.* Petitioner's Exhibit 10, Rental Assistance Agreement, shows 32 units with an amount obligated of \$516,096.

- M. Mr. Olesak explained rent assistance as follows: a project is given a certain amount of dollars in rent assistance. Based on who applies for the rent assistance, the property management firm allocates the rent assistance to income eligible households on a monthly basis. For example, rent is \$350 (HUD Farm Market rents), allow \$50 for utilities (the tenants pay their own utilities), this brings the rent down to \$300. Based on the person's income, 30% of the income is \$100, so that person pays \$100. That leaves \$200 that is paid by the rent assistance. The person is still paying 30% of their income.
- N. Management services are contracted out to a for-profit company. Mr. Oleksak estimates that the company is paid \$35 per unit, per month. The USDA approves the amount. *Oleksak Testimony*.
- O. The Petitioner receives no profit or return of money. A typical investor puts up \$50,000 to \$60,000 and gets an 8% return on the investment. *Oleksak Testimony*. The Petitioner receives no dividends. *Petitioner's Exhibit 7, page 2*.

Analysis of Issue

31. The Petitioner stated that the subject property should be 100% exempt. The Petitioner contends the buildings are owned, used and occupied for a charitable purpose. The subject buildings are used to house low and moderate income clientele. Further, the corporation is a public benefit corporation within the meaning of Ind. Code § 23-17-2-23.
32. The original owner of the housing project, subsidized through the USDA, donated the project to the Petitioner, after the project was faltering. In turn, the Petitioner signed a Multi Family Housing Assumption Agreement with USDA to take over the property on October 29, 2001. The Petitioner was the owner on the March 1, 2002 assessment date.
33. The Petitioner is restricted so that on dissolution the corporation must distribute the corporation's assets to an organization organized for a public or charitable purpose that is recognized as exempt under Section 501(c) (3) of the Internal Revenue Code. (*Petitioner's Exhibit D, Pages 10-11*).

34. The Petitioner has claimed exemption as charitable, therefore the Petitioner must show how the property is owned, occupied, and used for charitable purposes.
35. Indiana courts broadly construe the term “charitable” as the relief of human want and suffering in a manner different from the everyday purposes and activities of man in general. *NAME*, 671 N.E.2d at 221 (quoting *Indianapolis Elks Bldg. Corp. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 540, 251 N.E.2d 673, 683 (Ind. App. 1969)).
36. “Charity” is not defined by statute, and the Tax Court looked to *Black’s Law Dictionary* to find the plain, ordinary, and usual meaning of “charity”:

a gift for, or institution engaged in, public benevolent purposes. [It is a]n attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without hope or expectation, if not with positive abnegation, of gain or profit by donor or by instrumentality of charity.

Raintree Friends, 667 N.E.2d at 813-14 (quoting *Black’s Law Dictionary*, 213 (5th ed. 1979)).
37. It is equally clear the “charity” must confer benefit upon the public at large or relieve the government of some of an obligation that it would otherwise be required to fill. *NAME*, 67 N.E.2d at 221; *Foursquare Tabernacle*, 550 N.E.2d at 854; *St. Mary’s Medical Center*, 534 N.E.2d at 279.
38. The Petitioner accepted the property from a private developer who couldn’t make the project work. The Petitioner assumed the existing mortgage and has started work on securing financing for the rehabilitation of the property. The Petitioner is a public benefit corporation and does not receive any dividends. Based on the testimony and evidence, there is no indication of private benefit to the Petitioner.

39. On the assessment date in question, the Petitioner was providing apartments for low and moderate-income clientele. Rents are restricted; the tenants pay no more than 30% of their income as rent. Many tenants receive rental assistance.
40. The Petitioner has shown that the property is owned, occupied, and used for a charitable purpose.
41. For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.
42. On the assessment date in question, forty-one (41) apartments were rented. The remaining apartments were vacant due to foundation and mold problems. The Petitioner had hired a company to do a study for the USDA. The Petitioner secured a rehabilitation loan. The Petitioner was also attempting to raise funds to pay for the rehabilitation of the property.
43. In *Trinity Episcopal Church v. State Board of Tax Commissioners*, 694 N.E.2d 816, 818 (Ind. Tax 1998), the Tax Court noted:

[O]n the assessment date, [taxpayer's] intent to use the building in furtherance of exempt purposes was more than a dream, and that it did more than merely own the building. [Taxpayer] had taken concrete steps at great expense to prepare the building for use as a community mental health center. This is more than enough objective evidence to support [taxpayer's] contention that on the assessment date, it held the building with an intention to use the building in the future for exempt purposes.
44. This issue was also addressed in *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax 1990). The Tax Court noted “the intent to use the property for an exempt purpose must be ‘more than a mere dream.’” *Id.* (internal citations omitted).
45. The Petitioner accepted the property with the intention of providing low and moderate-income housing. While the entire property was not occupied and used for a charitable purpose on the assessment date, the Petitioner’s intention was “more than a mere dream.”

The Petitioner has taken concrete steps toward its goal by doing a study, securing a rehabilitation loan, and applying for federal funds.

46. Based on the testimony and evidence, the property is owned, occupied and used for charitable purposes. The Petitioner qualifies for 100 % exemption pursuant to Ind. Code § 6-1.1-10-16 as charitable.

Summary of Final Determination

Whether the subject property should be exempt from property taxation pursuant to Ind. Code § 6-1.1-10-16 as charitable.

47. The Petitioner has shown that the property qualifies for exemption as charitable. The property is determined to be 100% exempt.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.