

REPRESENTATIVE FOR PETITIONER: Lynn K. Thornburg
Executive Director

REPRESENTATIVE FOR RESPONDENT: James D. Carmichael
Delaware County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

EAST CENTRAL REINVESTMENT)	
CORPORATION,)	Petition Nos.: See Attached
)	
Petitioner,)	County: Delaware
)	
v.)	Township: Center
)	
DELAWARE COUNTY PROPERTY TAX)	Parcel Nos.: See Attached
ASSESSMENT BOARD OF APPEALS,)	
)	
Respondent.)	Assessment Year: 2004
)	

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

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. The Delaware County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying exemption on September 13, 2004. Pursuant to Ind. Code § 6-1.1-11-7, on October 15, 2004, Lynn K. Thornburg, Executive Director of the East Central Reinvestment Corporation (ECRC) (Petitioner) filed multiple Form 132 Petitions for Review of Exemption on behalf of ECRC petitioning the Board to conduct an administrative review of its 2004 exemption petitions.

Hearing Facts and Other Matters of Record

2. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 29, 2005, in Muncie, Indiana, before Brian McKinney, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
3. The following persons were present at the hearing and sworn as witnesses:
 - Lynn K. Thornburg, Executive Director, ECRC,
 - James D. Carmichael, Delaware County Assessor,
 - Charles F. Ward.
4. The following exhibits were presented:
 - Petitioner's Exhibit 1 – Letter dated June 6, 2005, to Ronna K. Edwards,
 - Petitioner's Exhibit 2 – Pamphlet regarding the Emily Kimbrough House,
 - Petitioner's Exhibit 3 – Pamphlet regarding the ECRC,
 - Respondent's Exhibit 1 – Copy of Ind. Code § 6-1.1-10-16,
 - Respondent's Exhibit 2 – Copy of CAMA transfer screen,¹
 - Respondent's Exhibit 3 – Form 120,
 - Respondent's Exhibit 4 – Property record card.

¹ This screen shows the date the Petitioner acquired the property.

5. The following additional items are officially recognized as part of the record of proceedings:
 - Board Exhibit A – Form 132 Petitions,
 - Board Exhibit B – Notices of Hearing.
6. Petitioner appealed the exemption determination for fourteen parcels. Of the fourteen parcels, ten are vacant lots and four have improvements (dwellings) that Petitioner rents to low-income tenants. *Thornburg testimony.*
7. The ECRC was incorporated as a not-for-profit community development corporation in 1986. *Pet'r Ex. 3.* The ECRC promotes safe, decent housing for the East Central Neighborhood in Muncie, Indiana. *Id.* It is a tax-exempt 501(c)(3) corporation. It is recognized as a Community Housing Development Organization (CHDO). *Thornburg testimony.*
8. Since 1986, ECRC returned several properties to the private sector. It completed rehabilitations of single family and multi-family housing. It owns and oversees the Emily Kimbrough Museum. *Id.* When ECRC is able to do so, it rehabilitates a property, sells the property at market value, and applies the proceeds to other rehabilitation projects. *Id.*
9. “The responsibility of the East Central Reinvestment Corporation is to continue to improve the quality of life in a diverse neighborhood by buying, selling, renting, rehabilitating and maintaining properties, helping individuals obtain and maintain property, and facilitating the flow of resources into the community.” *Id.; Pet'r Ex. 3.*
10. As part of their CHDO agreement with the office of Community Development and the HUD funding requirements, ECRC must rent to persons at 80% of the area median income level, or lower. *Thornburg testimony; Board Ex. A, attachment.*
11. The ECRC uses federal grant money to rehabilitate homes to rent to low-income families. *Id.* To qualify for grant money, the ECRC must rent the homes to low-income families

for periods ranging from five to twenty years. *Id.* When possible, ECRC uses local construction workers and supply companies to rehabilitate homes. *Id.*

12. ECRC has been working with the Muncie Hope VI Homeownership plan in an attempt to build homes on vacant lots for sale to low-income families. *Id.* Of the ten vacant lots at issue in this hearing, ECRD plans to donate four for use in the Muncie Hope VI program. *Pet'r Ex. 1; Thornburg testimony.* The lots include 914 E. Main (Pet. No. 18-003-04-2-8-10002), 526 N. Jefferson (Pet. No. 18-003-04-2-8-10004), 219 E. Gilbert (Pet. No. 18-003-04-2-8-10012), and 215 E. Gilbert (Pet. No. 18-003-04-2-8-10013).² *Id.*
13. The Muncie Hope VI Homeownership program has taken longer than originally expected to start construction. *Thornburg testimony.* The program began in 2000 and as of the date of the hearing, no homes have been built on any ECRC lots. *Id.* They hope to begin construction during summer of 2005. *Id.*
14. Respondent stated that the ECRC is a benefit to the community. *Carmichael testimony.* Respondent testified that everyone in Delaware County benefited from ECRC's work. *Id.; Ward testimony.*

Jurisdictional Framework

15. The Indiana Board conducts an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions from determinations of an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

² 221 E. Gilbert was also listed on the Hope VI letter, however, there is currently a building on it; so whether it will be actually donated was unclear.

Administrative Review and the Petitioner's Burden

16. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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 Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
17. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington 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”).
18. 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

19. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST., Art. 10, § 1. This provision, however, is not self-enacting. The General Assembly must enact legislation granting an exemption.
20. 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. *See Raintree Friends Housing, Inc. v. Indiana Dep't of Rev.*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996) (non-profit status does not entitle a taxpayer to tax exemption). In determining whether

property qualifies for an exemption, the predominant use of the property is controlling. *See Knox Co. Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 181-182 (Ind. Tax Ct. 2005); *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1015-19 (Ind. Tax Ct. 2004); *State Bd. of Tax Comm'rs v. New Castle Lodge, Loyal Order of Moose*, 765 N.E.2d 1257, 1263 (Ind. 2002); *State Bd. of Tax Comm'rs v. Fort Wayne Sport Club*, 258 N.E.2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

21. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
22. The transfer of this obligation to non-exempt properties by granting an exemption should never be seen as inconsequential. Consequently, worthwhile activities or noble purpose alone is not enough for tax exemption. An exemption is granted when there is an expectation that a benefit will inure to the public because of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax 1990).
23. In Indiana, the general rule is that all property in the State is subject to property taxation. *See Ind. Code § 6-1.1-2-1*. Anyone 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. *See Monarch Steel v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Assoc. of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

ANALYSIS

Issue: Are the subject parcels exempt under Ind. Code § 6-1.1-10-16 (a) or (d)?

24. Petitioner contends the parcels under appeal qualify for exemption under Ind. Code § 6-1.1-10-16 (a) or (d) as property used for charitable purposes.
25. Respondent contends that Petitioner did not show substantial and timely progress toward erecting buildings on certain vacant parcels that will be used for exempt purposes as required by Ind. Code § 6-1.1-10-16 (i). Respondent failed to directly address the claims based on subsections (a) or (d).
26. The most applicable statutory provisions governing this exemption claim are:

Buildings and land used for educational, literary, scientific, religious, or charitable purposes

- (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.

- (d) A tract of land is exempt from property taxation if:
 - (1) it is purchased for the purpose of erecting a building which is to be owned, occupied, and used in such a manner that the building will be exempt under subsection (a) or (b); and
 - (2) not more than three (3) years after the property is purchased, and for each year after the three (3) year period, the owner demonstrates substantial progress and active pursuit towards the erection of the intended building and use of the tract for the exempt purpose. To establish that substantial progress and active pursuit under this subdivision, the owner must prove the existence of factors such as the following:
 - (A) Organization of and activity by a building committee or other oversight group.
 - (B) Completion and filing of building plans with the appropriate local government authority.
 - (C) Cash reserves dedicated to the project of a sufficient amount to lead a reasonable individual to believe the actual construction can and will begin within three (3) years.
 - (D) The breaking of ground and the beginning of actual construction.
 - (E) Any other factor that would lead a reasonable individual to believe that construction of the building is an active plan and that the building is

capable of being completed within six (6) years considering the circumstances of the owner.

- (i) A tract of land or a tract of land plus all or part of a structure on the land is exempt from property taxation if:
 - (1) the tract is acquired for the purpose of erecting, renovating, or improving a single family residential structure that is to be given away or sold:
 - (A) in a charitable manner;
 - (B) by a nonprofit organization, and
 - (C) to low income individuals who will:
 - (i) use the land as a family residence; and
 - (ii) not have an exemption for the land under this section;
 - (2) the tract does not exceed three (3) acres;
 - (3) the tract of land or the tract of land plus all or part of a structure on the land is not used for profit while exempt under this section; and
 - (4) not more than three (3) years after the property is acquired for the purpose described in subdivision (1), and for each year after the three (3) year period, the owner demonstrates substantial progress and active pursuit towards the erection, renovation, or improvement of the intended structure. To establish substantial progress and active pursuit under this subdivision, the owner must prove the existence of factors such as the following:
 - (A) Organization of and activity by a building committee or other oversight group.
 - (B) Completion and filing of building plans with the appropriate local government authority.
 - (C) Cash reserves dedicated to the project of a sufficient amount to lead a reasonable individual to believe the actual construction can and will begin within six (6) years of the initial exemption received under this subsection.
 - (D) The breaking of ground and the beginning of actual construction.
 - (E) Any other factor that would lead a reasonable individual to believe that construction of the structure is an active plan and that the structure is capable of being:
 - (i) completed; and
 - (ii) transferred to a low income individual who does not receive an exemption under this section;

within six (6) years considering the circumstances of the owner.

Ind. Code § 6-1.1-10-16.

27. 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. *See Indianapolis Osteopathic Hospital*, 818 N.E.2d at 1014-1015; *National*

Ass'n of Miniature Enthusiasts, 671 N.E.2d at 221 (quoting *Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm'rs*, 251 N.E.2d 673, 683 (Ind. Ct. App. 1969)).

28. A charitable purpose exemption is based on a corresponding public benefit. To qualify for the charitable exemption, Petitioner needs to present evidence showing benefit to the public that is sufficient to justify the loss of tax revenue. *See Foursquare Tabernacle*, 550 N.E.2d at 854; *see also, Indianapolis Osteopathic*, 818 N.E.2d at 1014; *Sangrlea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 958 (Ind. Tax Ct. 1997).
29. In the present case, Petitioner is a not-for-profit corporation that acquires vacant or run down properties and rehabilitates them. In the process of rehabilitating the homes, they attempt to hire local workers, and use local supplies to help the local economy. Once the rehabilitation is finished, the homes are either sold or rented to low-income families. Petitioner rents each of the four homes at issue in this appeal to a low-income family. Although Petitioner established that there are some restrictions on the amount of rent, there is no evidence in the record that establishes either what market rent for the properties would be or what compensation Petitioner actually receives. In addition, Petitioner admitted that when it can sell one of the properties, they sell at market value.
30. Fundamentally, this case turns on whether or not those operations constitute charitable use.
31. The Petitioner's properties fall into two groups. Group 1 is the group of four improved parcels rented as low-income housing.³ Group 2 is the remaining 10 parcels that are vacant lots.⁴

³ Group 1: Petition 18-003-04-2-8-10007 — 237 North Pershing
Petition 18-003-04-2-8-10008 — 713 Mulberry
Petition 18-003-04-2-8-10010 — 522 North Jefferson
Petition 18-003-04-2-8-10011 — 221 East Gilbert

⁴ Group 2: Petition 18-003-04-2-8-10000 — 315 South Vine
Petition 18-003-04-2-8-10001 — 211 South Pershing
Petition 18-003-04-2-8-10002 — 914 East Main
Petition 18-003-04-2-8-10003 — 808 East Jackson
Petition 18-003-04-2-8-10004 — 526 North Jefferson
Petition 18-003-04-2-8-10005 — 304 South Beacon
Petition 18-003-04-2-8-10006 — 1000 block of East Adams

Group 1 — Low-Income Housing

32. Petitioner rents the homes in Group 1 to persons who are at or below 80% of the median income level for the area. Petitioner offered testimony that the rent for those homes is below market rents. This point appears to be a principle reason for Petitioner's claim that it is engaged in predominantly charitable work.
33. The evidence Petitioner presented, however, fails to prove that this housing is a sufficient benefit to the general public to justify the loss of tax revenue. Petitioner did not offer probative evidence regarding what market rents for these properties would be. Petitioner did not offer probative evidence regarding what rent or other compensation it actually receives for the properties. Petitioner failed to prove or explain the facts about the programs in which it participates that are the basis for rent restrictions and income limitations for tenants. From the record in this case, it is impossible to determine the extent to which Petitioner might provide low-income housing for less than its market value.
34. If there is a public benefit based on this low-income housing, Petitioner failed to prove it with substantial, probative evidence. The conclusory testimony about "below market rents" and the other positive aspects about how Petitioner's operations improve the quality of life in the neighborhood are not probative evidence. It has no weight in proving the predominant use is charitable. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
35. Petitioner failed to offer probative evidence that its rental program operates to provide relief from human want and suffering. Similarly, Petitioner failed to offer probative evidence that its activity of buying, selling, renting, rehabilitating and maintaining properties meets such a need.

36. Without doubt, the community benefits from efforts to rehabilitate property and maintain homes in deteriorated areas. Respondent acknowledged and expressed appreciation for Petitioner's efforts in improving the quality of the neighborhood. The record fails to establish that those activities are different from the everyday purposes and activities of man in general. Without more probative facts, Petitioner's claim rests only upon the assumption that providing low-income housing and neighborhood renovation is primarily and necessarily a charitable use. Petitioner has cited no authority for that position and the Board is aware of none. The concept and common meaning of charity is not that broad. Therefore, the record fails to establish that Petitioner's use of these properties is predominantly charitable.

Group 2 — Vacant Parcels

37. Petitioner offered evidence that it will use some of the vacant lots for building low-income housing and will add some of the vacant lots as extra yard space for some of its other properties. Again, Petitioner provided no authority for what appears to be an underlying assumption that renovation and providing low-income housing necessarily would be charitable uses. The Board is aware of no such authority and remains unconvinced that even a broad application of the word "charitable" goes that far. Petitioner's evidence fails to prove that its intended use will provide "relief of human want and suffering in a manner different from the everyday purposes and activities of man in general." *National Ass'n of Miniature Enthusiasts*, 671 N.E.2d at 221. None of the evidence proves that those vacant lots are owned, occupied and used for any predominantly charitable purpose. Therefore, Petitioner failed to present probative evidence that the vacant lots are exempt by the terms of Ind. Code § 6-1.1-10-16 (a) based on current use.
38. That failure is fatal to Petitioner's claim for exemption based on plans for future use. Petitioner also claims exemption for the ten vacant parcels under Ind. Code § 6-1.1-10-16 (d). Respondent denied the exemption because Petitioner failed to prove substantial progress and active pursuit within three years of acquiring the property as required under Ind. Code § 6-1.1-10-16 (i). Compliance with 16 (i) is irrelevant in this case because

Petitioner made no claim that was based on that particular provision. Nevertheless, these two statutes have similarities in requiring substantial progress and active pursuit within three years that make the substance of Respondent's argument somewhat relevant.

39. To qualify for an exemption under either subsection (d) or (i), Petitioner must present probative evidence showing the plan for future use is more than a mere dream. *See Trinity Episcopal Church v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 816, 818 (Ind. Tax Ct. 1998). Furthermore, Petitioner must show concrete steps have been taken in furtherance of their plans. *Id.*
40. The owner of the property has no more than three years after the property is acquired to demonstrate substantial progress and active pursuit towards the erection, renovation, or improvement of the intended property. Ind. Code § 6-1.1-10-16 (i). The evidence established that Petitioner acquired all of these lots more than three years earlier.
41. A letter dated June 6, 2005, indicates that four of these parcels would be offered as a donation for the Muncie Hope VI Homeownership program. The evidence does not establish a start date or completion date. Petitioner's witness could only state that they hoped to start construction on the first home during summer of 2005. Petitioner did not present plans for homes, or evidence indicating funds were available to begin construction.
42. The evidence does not demonstrate timely, substantial progress and active pursuit toward a project that would be used in a charitable manner. Consequently, the Respondent's burden to support the denial of exemption was not triggered. *See generally, Lacy Diversified*, 799 N.E.2d at 1221-1222 (stating that where a petitioner fails to present probative evidence in support of a claim, the assessing official's duty to support a determination is not triggered). Accordingly, the Board finds for the Respondent.

Summary of Final Determination

43. Petitioner failed to make a prima facie for exemption regarding any of these properties. Petitioner failed to present probative evidence that the current predominant use of the properties is charitable and Petitioner failed to present probative evidence of timely substantial progress and active pursuit of a predominantly charitable use. Therefore, the Board finds for the Respondent. The properties are 100% taxable.

The Respondent's denial of exemption for each of these fourteen parcels is hereby affirmed.

Commissioner, Indiana Board of Tax Review

Date: _____

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), § 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.

Attachment

Petition Number	Parcel Number	Address
18-003-04-2-8-10000	11-15-131-008-000	315 S. Vine
18-003-04-2-8-10001	11-15-128-009-000	211 S. Pershing
18-003-04-2-8-10002	11-10-455-010-000	914 E Main St ⁵
18-003-04-2-8-10003	11-10-391-004-000	808 E. Jackson
18-003-04-2-8-10004	11-10-309-001-000	526 N. Jefferson
18-003-04-2-8-10005	11-15-209-002-000	304 S. Beacon
18-003-04-2-8-10006	11-15-205-009-000	1000 Block E. Adams
18-003-04-2-8-10007	11-10-382-009-000	237 N. Pershing Dr
18-003-04-2-8-10008	11-10-154-017-000	713 N. Mulberry
18-003-04-2-8-10009	11-10-455-010-000	900 E. Main St ⁶
18-003-04-2-8-10010	11-10-309-002-000	522 N. Jefferson
18-003-04-2-8-10011	11-10-356-006-000	221 E. Gilbert
18-003-04-2-8-10012	11-10-356-005-000	219 E. Gilbert
18-003-04-2-8-10013	11-10-365-004-000	215 E. Gilbert

⁵ Although the parcel numbers on the Form 132 petitions are the same for 900 and 914 East Main Street, the complete number as shown on the Form 136 Application For Property Tax Exemption for 914 East Main Street is 15-07892-000 11-10-455-010-000.

⁶ The complete number as shown on the Form 136 Application For Property Tax Exemption for 900 East Main Street is 15-03095-000 11-10-455-010-000.