

REPRESENTATIVE FOR PETITIONER:

Katrina Clingerman, Ice Miller

REPRESENTATIVE FOR RESPONDENT:

Bruce A. Smith, Knox County Attorney

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

GRANDVIEW CARE, INC.,	)	Petition No.: 42-022-02-2-8-00001
	)	
Petitioner,	)	County: Knox
	)	
v.	)	Township: Vincennes
	)	
KNOX COUNTY PROPERTY	)	Parcel No.: 022012UP07004007
TAX ASSESSMENT BOARD	)	
OF APPEALS,	)	
	)	Assessment Year: 2002
Respondent.	)	
	)	

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

**February 12, 2004**

**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 property owned by Grandview Care, Inc. qualifies for exemption from property taxation pursuant to Ind. Code § 6-1.1-10-16 as charitable.*

## **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-11-3.5, Grandview Care, Inc. (Grandview) filed a Form 136, Application for Property Tax Exemption for the March 1, 2002 assessment date. Grandview owns and operates BridgePointe Health Campus (BridgePointe), a licensed nursing home facility. Grandview claimed an exemption on 11.55 acres of land and personal property. The nursing home facility was under construction on the March 1, 2002 assessment date. BridgePointe opened in April 2002.
3. The Knox County Property Tax Assessment Board of Appeals (PTABOA) denied Grandview's application for property tax exemption and determined the land to be 100% taxable. The PTABOA determination was issued on July 24, 2003.
4. Pursuant to Ind. Code § 6-1.1-11-7, Katrina Clingerman, attorney with Ice Miller, filed a Form 132, Petition for Review of Exemption on behalf of Grandview, petitioning the Board to conduct an administrative review of the above petition. The Form 132 petition was filed on August 22, 2003.

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

5. Prior to the hearing, the Petitioner complied with all requirements set forth concerning the exchange of discovery, including the exchange of a list of witnesses and exhibits at least fifteen (15) days before the hearing, and an exchange of evidence and summary of witness testimony at least five (5) days before the hearing. The Respondent did not comply, but the Petitioner did not want to continue the hearing to a later date. Both

parties signed the Hearing Sign-In sheet agreeing to continue with the hearing as scheduled for November 18, 2003.

6. Pursuant to Ind. Code §§ 6-1.1-15-4 and 6-1.5-5-2, a hearing was held on November 18, 2003, in Vincennes, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3.

7. The following persons were present at the hearing:

For the Petitioner:

Katrina Clingerman, Ice Miller

Barbara Knepp, Administrator – BridgePointe Health Campus

Samuel T. Bick, President, Grandview

For the Respondent:

Bruce A. Smith, County Attorney

Ray Loheider, Knox County Assessor

Rose Goodwin, Vincennes Township Assessor

Jeff Padgett, Colonial Health Facility, Vincennes, Witness

Ken Mairranz, Colonial Health Facility, Vincennes, Witness

Jerrold W. Mecuin, Gentle Care, Vincennes, Witness

8. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Barbara Knepp

Samuel T. Bick

For the Respondent:

Ray Loheider

Rose Goodwin

Jeff Padgett

Ken Mairranz

Jerrold W. Mecuin

9. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit A – Letter from the IRS recognizing the exemption of Grandview from federal income tax under Section 501(a) as an organization described in Section 501(c)(3).

Petitioner's Exhibit B – Letter from the Indiana Department of State Revenue recognizing Grandview as exempt from Indiana sales tax and gross income tax.

Petitioner's Exhibit C – Articles of Incorporation of Grandview.

Petitioner's Exhibit D – Bylaws of Grandview.

Petitioner's Exhibit E - Balance Sheet and Profit/Loss Statement for Grandview as of December 31, 2001.

Petitioner's Exhibit F – License issued by Indiana State Department of Health to Grandview Care D/B/A Bridgepointe Health Campus effective April 19, 2002 through March 31, 2003.

Petitioner's Exhibit G – A copy of the Grandview (BridgePointe) overall floor plan.

Petitioner's Exhibit H – Application for Property Tax Exemption, Form 136, filed by Grandview for March 1, 2002 assessment date with attachments.

Petitioner's Exhibit I – Business Tangible Personal Property Return (Form 103) filed by Grandview for March 1, 2002 assessment date.

Petitioner's Exhibit J – Notice of Action on Exemption (Form 120) from the Knox County PTABOA, denying the exemption.

Petitioner's Exhibit K - Copy of the Form 132 petition with attachments.

Petitioner's Exhibit L – A copy of the Power of Attorney.

Petitioner's Exhibit M – Memorandum of Law.

For the Respondent:

Respondent's Exhibit A – A copy from the internet showing Grandview Care, Inc.'s address to be 712 Jefferson St., Tell City, IN.

Respondent's Exhibit B – A copy from the internet showing Ramsey Financial's address to be 108 S. Madison Ave., Louisville, KY.

Respondent's Exhibit C – A copy of the Form 1023 filed with the Internal Revenue Service by Grandview.

Respondent's Exhibit D – A copy of the Certificate of Authorization from the Secretary of State for Trilogy Health Services, LLC.

10. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - [A] Copy of the Form 132 petition and attachments.
  - [B] Notice of Hearing dated October 8, 2003.
  - [C] A copy of the Petitioner's List of Exhibits and List of Witnesses with respect to the November 18<sup>th</sup> hearing, dated November 3, 2003.
  - [D] A copy of the Petitioner's documentary evidence and Summary of Witness Testimony to be presented on November 18<sup>th</sup>, dated November 12, 2003.
  - [E] A copy of Request for Memorandum of Law from Petitioner and Response by Respondent, dated November 18, 2003.
11. At the hearing, the Petitioner requested permission to submit a Supplemental Memorandum of Law. The Administrative Law Judge granted the request and the Petitioner was given a deadline of November 25, 2003. The Respondent was given a deadline of December 4, 2003, to respond to the Petitioner's Memorandum of Law.
12. The Petitioner's Supplemental Memorandum of Law was submitted by Katrina Clingerman on November 25, 2003, and is labeled as Petitioner's Exhibit N.
13. On December 4, 2003, the Respondent filed the following: 1) Post Hearing Brief with supplementary documentation; 2) The PTABOA's Motion to Supplement Evidence; and 3) Copies of case law cited in Post Hearing Brief. The Respondent's filing is labeled as Respondent's Exhibit E.
14. On December 15, 2003, the Petitioner filed the following: 1) an Objection to Motion to Supplement the Evidence and an Affidavit of Samuel T. Bick; 2) a Motion for Leave to

File Reply to Post Hearing Brief of the PTABOA; and 3) Reply to Post Hearing Brief of PTABOA. The Petitioner's December 15, 2003, filings are labeled as Petitioner's Exhibit O.

15. On December 29, 2003, the Respondent filed a Response to Grandview's Motion for Leave to Reply to PTABOA Post-Hearing Brief and Response to Grandview's Objection to the PTABOA's Motion to Supplement the Evidence. This response is labeled as Respondent's Exhibit F.
16. On January 5, 2004, the Board issued an order on the Motions to Supplement Evidence. The Board ordered that the PTABOA's Motion to Supplement the Evidence is denied and the proffered evidence will not be considered. It further ordered that Grandview's Motion for Leave to File Reply to Post Hearing Brief of PTABOA is also denied. The Board will confine its review to the evidence presented at the hearing, Grandview's Supplemental Memorandum of Law filed November 25, 2003, and the PTABOA's Post Hearing Brief *excluding* the attached documents and all references to those documents. The Board's Order is labeled as Board Exhibit F.

### **Jurisdictional Framework**

17. This matter is governed by the provisions of Ind. Code §§ 6-1.1, 6-1.5, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
18. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.5-5-5.

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

19. The Board does not undertake to make the case for the petitioner. The Board bases its decision 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).

20. 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.]
21. 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.]
22. 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.]
23. The Board 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 Board (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 Board 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**

24. 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.
  
25. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
  
26. 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) (non-profit status does not entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *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.

## **Basis of Exemption and Burden**

27. 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.
  
28. 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 – 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. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners* (NAME), 671 N.E. 2d 218 (Ind. Tax 1996).



29. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. This is why worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is granted when there is an expectation that a benefit will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).
30. 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 Co. v. State Bd. of Tax Comm'rs*, 611 N.E. 2d 708, 713; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).

### Discussion of Issue

*Whether the property owned by Grandview Care, Inc. qualifies for exemption from property taxation pursuant to Ind. Code § 6-1.1-10-16 as charitable.*

31. The Petitioner contends that the subject property should be 100% exempt from property taxation.
32. The Respondent contends that property should be taxable because it does not fit the criteria of owned, used, and occupied by the a tax exempt entity.
33. The applicable rule governing this Issue is:
- Ind. Code § 6-1.1-10-16 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);
  - (2) the tract does not exceed:

- (A) fifty (50) acres in the case of:
  - (i) an educational institution; or
  - (ii) a tract that was exempt under this subsection on March 1, 1987; or
- (B) fifteen (15) acres in all other cases; and
- (3) 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 towards the erection of the intended building and use of the tract for the exempt purpose. To establish that substantial progress is being made, 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 t 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.

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(e) Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.

***Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Bd. of Appeals, 782 N.E. 2d 483, 488-89 (Ind. Tax 2003).***

“[B]y meeting the needs of the aging, namely, relief of loneliness and boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, and attention to problems of health, a charitable purpose is accomplished.”

34. Evidence and testimony considered particularly relevant to this determination

include the following:

- a. The subject facility is both a nursing home facility and a licensed assisted living facility. *Knepp testimony.*
- b. Grandview applied for and received a not-for-profit designation as a 501(c)(3) organization. *Bick testimony.*
- c. The sole purpose of the facility is to provide housing and services to the elderly, needy, handicapped, and other disabled persons and households. *Bick testimony.*
- d. Grandview is a public entity and upon dissolution, no assets are distributed to any individual shareholder, partner, member, etc. The Articles of Incorporation

state that the assets shall be transferred to another exempt entity that is also a 501(c)(3) entity. *Bick testimony; Petitioner's Exhibit C.*

- e. BridgePointe accepted its first resident on April 22, 2002, after receiving final licensing materials. Construction of the facility was completed shortly prior to this. *Bick testimony.*
- f. Grandview contracts with Trilogy, a for profit management company, to manage the BridgePointe facility. *Knepp testimony.*
- g. Grandview maintains control of BridgePointe and ensures that it is operated in furtherance of its purpose of providing housing and care for the elderly. Trilogy is experienced in the operation of residential facilities for the elderly. *Petitioner's Exhibit N.*
- h. Trilogy manages other facilities in Indiana and Kentucky. Trilogy is paid a management fee by Grandview as agreed upon, and Grandview's checking account pays the salaries and other expenses of the facility, using Trilogy's management expertise. Further, Grandview pays all debt service. Mr. Bick is paid a salary through Grandview. *Bick testimony.*
- i. Grandview also pays consultant fees for necessary entities as needed to properly run the healthcare center. *Bick testimony.*
- j. Grandview promotes its charitable purpose by providing nursing care facilities. *Bick testimony.*
- k. Grandview bases its case on Ind. Code § 6-1.1-10-16, citing that granting property tax exemption to Grandview rewards Grandview for its charitable ownership, occupancy and use of the property and helps ensure that Grandview can continue to provide such housing and care. *Clingerman argument.*
- l. Trilogy does not lease the property from Grandview, has no legal interest in the property (such as a lessee would have), and does not benefit from a grant of property tax exemption in any way. Trilogy is solely a service provider. *Clingerman argument; Petitioner's Exhibit N.*
- m. The statute requires that the property be owned, occupied, and used. The Respondent contends that all three elements are not present, that Grandview only owns the property. *Smith argument.*

- n. The Respondent contends that Grandview does not occupy or use the facility. The Respondent contends that Trilogy, a for profit entity, uses and occupies the facility. *Smith argument*.

#### Analysis of ISSUE

#### Whether the property owned by Grandview Care, Inc. qualifies for exemption from property taxation pursuant to Ind. Code § 6-1.1-10-16 as charitable.

35. Petitioner claims an exemption under Ind. Code § 6-1.1-10-16 as charitable.
36. 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 Building Corporation v. State Board of Tax Commissioners*, 145 Ind. App.522, 540, 251 N.E. 2d 673, 683 (Ind. App. 1969)).
37. In *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 782 N.E. 2d 483 (Ind. Tax 2003), *review denied*, the Tax Court stated:
- [c]aring for the aged is a recognized benefit to the community at large and society as a whole. Indiana law recognizes that the aged require care and attention entirely independent of financial needs, and that present day humanitarian principles demand that those in their declining years have the opportunity to live with as much independence as their strength will permit, in as pleasant and happy surroundings as their finances will justify. Thus, by meeting the needs of the aging, namely relief of loneliness and boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, and attention to problems of health, a charitable purpose is accomplished.
- Id.* at 488-489 (citing *Raintree Friends*, 667 N.E. 2d at 814-15).
38. The evidence presented by the Petitioner demonstrates that Grandview is a non-profit corporation. BridgePointe is a nursing home and assisted living facility, whose purpose is to provide housing and services to the elderly, needy, handicapped, and other disabled

persons. On the March 1, 2002, assessment date, the BridgePointe facility was under construction. BridgePointe opened in April 2002.

39. Caring for the aged is a recognized benefit to the community at large and to society as a whole. *Raintree Friends*, 667 N.E. 2d at 816. Facilities that care for the aged qualify as “charitable” because they provide the relief of loneliness, boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, [and] attention to problems of health. *Methodist Home for the Aged*, 241 N.E. 2d at 86. In *Wittenberg*, the Tax Court again stated that a charitable purpose is accomplished by meeting the needs of the aging. *Wittenberg*, 782 N.E. 2d at 488-89.
40. The Respondent questioned whether the property is “owned, used, and occupied” by Grandview. Since Grandview has hired a management firm to address the day to day operations of BridgePointe, the Respondent does not believe that the property is “owned, used, and occupied” in the manner required for an exemption. The Respondent argues that the property is occupied and used by Trilogy, the for profit management company. The Respondent concludes that Grandview does not own, use and occupy the property, therefore the property does not qualify for exemption. The Respondent does not dispute that BridgePointe is a nursing home and assisted living facility.
41. The Petitioner has demonstrated that the BridgePointe facility provides housing and services to the elderly, needy, and handicapped. Therefore, the Petitioner has accomplished a charitable purpose.
42. Ind. Code § 6-1.1-10-16 requires that the property be owned, occupied and used for the charitable purpose. The property (BridgePointe) is owned by Grandview, an Indiana non-profit organization, for the purpose of operating a nursing home and assisted living facility. The property is occupied by residents who are elderly, needy, and handicapped. The property is used as a nursing home and assisted living facility. The property is owned, occupied and used for the purpose of operating a nursing home and assisted living facility.

43. The contract between Trilogy and Grandview is for management of the BridgePointe facility. Trilogy is experienced in the operation of residential facilities for the elderly. Grandview maintains control of BridgePointe and ensures that it is operated in furtherance of its purpose of providing housing and care for the elderly. There is no evidence that Trilogy is unduly compensated for its management services or that they benefit from the granting of a property tax exemption.
44. Whether Grandview manages the facility itself, or contracts with a management company, the purpose of the property is the operation of a nursing home and assisted living facility to provide housing and care for the elderly.
45. The Petitioner owns, occupies and uses the property to provide housing and care for the elderly. The Tax Court has stated that a charitable purpose is accomplished by meeting the needs of the aging.
46. The Respondent's argument that Grandview does not occupy or use the property due to the management contract with Trilogy is not persuasive. The Board is not able to conclude from the evidence that Trilogy occupies or uses the property in any sense other than to manage the operations. The Board does not find that such arrangements constitute the "use" or "occupancy" under Ind. Code § 6-1.1-10-16.
47. The Petitioner has shown by a preponderance of the evidence that the property qualifies for exemption under Ind. Code § 6-1.1-10-16 as charitable.

### **Summary of Final Determination**

*Whether the property owned by Grandview Care, Inc. qualifies for exemption from property taxation pursuant to Ind. Code § 6-1.1-10-16 as charitable.*

48. The Petitioner prevailed by a preponderance of the evidence on this Issue. The property is 100% exempt from property taxation.

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

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Commissioner, Indiana Board of Tax Review

**IMPORTANT NOTICE**

**- APPEAL RIGHTS -**

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