

REPRESENTATIVE FOR PETITIONER:  
Sandra K. Bickel, Ice Miller LLP

REPRESENTATIVE FOR RESPONDENT:  
Mendy E. Ward, Perry County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:	)	
	)	Petition Nos.: 62-008-06-2-8-00001
GRANDVIEW CARE, INC.,	)	62-008-07-2-8-00001
	)	
Petitioner,	)	Parcel No.: 009-02212-01
	)	
v.	)	
	)	County: Perry
PERRY COUNTY PROPERTY	)	
TAX ASSESSMENT BOARD	)	Township: Troy
OF APPEALS and PERRY	)	
COUNTY ASSESSOR,	)	
	)	Assessment Years: 2006 and 2007
Respondents,	)	

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

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**August 20, 2008**

**FINAL DETERMINATION**

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

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### ISSUE

1. The issue presented for consideration by the Board is whether the Petitioner's real and personal property is exempt from taxation in 2006 and 2007 pursuant to the charitable exemption under Indiana Code § 6-1.1-10-16.

### PROCEDURAL HISTORY

2. Samuel T. Bick, President of Grandview Care, Inc., filed an Application for Property Tax Exemption (Form 136) for real and personal property for the 2006 assessment year on May 11, 2006. The Perry County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the request for exemption and finding the real and personal property 100% taxable on October 20, 2006. The notice of the Perry County PTABOA denial was mailed to the Petitioner on November 27, 2006. Pursuant to Indiana Code § 6-1.1-11-7, the Petitioner's representative, Barton T. Sprunger, filed a Petition for Review of Exemption (Form 132) on behalf of Grandview Care, Inc., on December 26, 2006.<sup>1</sup>
3. Mr. Bick filed an Application for Property Tax Exemption (Form 136) for real and personal property for the 2007 assessment year on May 11, 2007. The Perry County PTABOA issued its determination denying the request for exemption and finding the real and personal property 100% taxable on November 9, 2007. The notice of the Perry County PTABOA denial was mailed to the Petitioner on November 26, 2007. Pursuant to Indiana Code § 6-1.1-11-7, Mr. Sprunger filed a Petition for Review of Exemption (Form 132) on behalf of Grandview Care, on December 21, 2007.
4. On February 6, 2008, Mr. Sprunger filed a *Motion to Consolidate*, seeking to consolidate the appeals for tax years 2006 and 2007, arguing that the issues of whether the property

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<sup>1</sup> While Mr. Sprunger filed the Form 132 Petitions on behalf of the Petitioner, Sandra Bickel represented Grandview Care at hearing.

qualifies for exemption for the two tax years in question are substantially similar. On April 23, 2008, the Troy Township Assessor filed a Notice of Representation by the County Assessor in the matter for the 2006 appeal. *See Board Exhibit D.* At hearing, Judge Barter granted the Petitioner's Motion to Consolidate noting, however, that the rules for the appeal differed to some extent between the 2006 and the 2007 tax year in that, as a result of changes to the law promulgated in Senate Enrolled Act 287, the Respondent in the 2006 appeal is the Perry County Property Tax Assessment Board of Appeals and in the 2007 appeal, it is the Perry County Assessor.

#### **HEARING FACTS AND OTHER MATTERS OF RECORD**

5. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a hearing on April 23, 2008, in Tell City, Indiana.
6. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Samuel T. Bick, President, Grandview Care, Inc.,  
Jerry Wheeler, Grandview maintenance employee and resident,  
Holly E. Richard, Grandview apartment manager,  
Paula Patton, Continental Apartments resident.

For the Respondent:

Mendy E. Ward, Perry County Assessor.

7. The Petitioner submitted the following exhibits:

Petitioner's Exhibit A – Letter from the IRS recognizing Grandview Care, Inc., as exempt from federal income tax under Section 501(a) and Section 501 (c)(3),  
Petitioner's Exhibit B – Articles of Incorporation of Grandview Care, Inc.,  
Petitioner's Exhibit C – Bylaws of Grandview Care, Inc.,  
Petitioner's Exhibit D – Balance Sheet and Income Statement for Grandview Care for 2003, 2004, and 2005,  
Petitioner's Exhibit E – Balance Sheet and Income Statement for Grandview Care for 2004, 2005, and 2006,

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Petitioner's Exhibit F – Map of Continental Apartments,  
Petitioner's Exhibit G – Copy of Form 136 Application for 2006 and attachments,  
Petitioner's Exhibit H – Copy of Form 136 Application for 2007 and attachments,  
Petitioner's Exhibit I – Business Tangible Personal Property Return filed by Grandview Care for 2006 and 2007,  
Petitioner's Exhibit J – Notice of Action on Exemption dated October 20, 2006, denying the exemption,  
Petitioner's Exhibit K – The envelope from the Notice of Action showing a postmark of November 26, 2007,  
Petitioner's Exhibit L – Notice of Action on Exemption dated November 9, 2007, denying the exemption,  
Petitioner's Exhibit M – Copy of Form 132 for 2006 received December 26, 2006, and attachments,  
Petitioner's Exhibit N – Copy of Form 132 for 2007 received December 26, 2006, and attachments,  
Petitioner's Exhibit O – Copy of Continental Apartment rent rolls, appraisal of property by David Matthews & Associates dated April 28, 2006, property record card, and other operating documents,  
Petitioner's Exhibit P – Resident census and eligibility study (filed under seal),  
Petitioner's Exhibit Q – Affordable housing rental application for the property,  
Petitioner's Exhibit R – Census Bureau data for Tell City, Indiana,  
Petitioner's Exhibit S – Copy of Grandview Care's Resident Eligibility and Selection Criteria and Low Income Housing Guidelines 96-32,  
Petitioner's Exhibit T – Memorandum of Law,  
Petitioner's Exhibit U – Grandview Care's Mission Statement, Charitable Care Policy, Request for Charitable Assistance form, and financial data for charitable fund.

8. The Respondent presented no exhibits.

9. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The Form 132 Petitions,  
Board Exhibit B – Notices of Hearing and Orders rescheduling hearings,  
Board Exhibit C – Hearing sign-in sheet,  
Board Exhibit D – Notice of Appearance by County Assessor for Troy Township Assessor, Brenda Powers, for tax year 2006 petition,  
Board Exhibit E – Order Regarding Conduct of Exemption Hearing.

10. The subject property is an improved commercial parcel that includes two apartment buildings housing twenty units located on Twentieth Street in Tell City, Troy Township.
11. The ALJ did not conduct an on-site inspection of the property under appeal.
12. For 2006 and 2007 the Perry County PTABOA determined the real and personal property to be 100% taxable. The Petitioner contends the property should be 80% exempt because “80% of the units are leased to qualifying tenants, while 20% of the tenants are non-qualifying.” Board Exhibit A, attachment A.

### **JURISDICTIONAL FRAMEWORK**

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Indiana Code § 6-2.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### **ADMINISTRATIVE REVIEW AND THE PETITIONER’S BURDEN**

14. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. 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”).

16. 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**

17. The general rule is that all property is subject to taxation. Ind. Code § 6-1.1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Article 10, § 1 of the Constitution of Indiana. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.

18. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. These government 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).

19. "The declaration of charity by an organization does not necessarily mean that the dominant use of the organization's property is of the form of charity which the law recognizes as entitling an organization to tax exemption." *Sahara Grotto v. State Board of Tax Comm'rs*, 261 N.E.2d 873, 878 (Ind. 1970). In order to qualify for an exemption, the owner must submit probative evidence that the property is owned for an exempt purpose, used for an exempt purpose, and occupied for an exempt purpose.

20. 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. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Bd. of Tax*

*Comm'rs*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Comm'rs*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).

### PETITIONER'S CONTENTIONS

21. The Petitioner contends the property should be 80% exempt under Indiana Code § 6-1.1-10-16.
  
22. The Petitioner presented the following evidence in regard to this issue:
  - a. The Petitioner contends that Continental Apartments is owned by the not-for-profit organization, Grandview Care, and is operated to provide decent, safe, affordable and sanitary housing at below-market rates to tenants who are low-income, elderly or disabled. *Bickel argument, Petitioner Exhibits O through T*. Thus, the Petitioner argues, it is owned, operated, and used for charitable purposes and is qualified for an 80% exemption on the property because the Petitioner rents sixteen of its twenty units to qualifying low income and elderly tenants. *Id.*
  
  - b. The Petitioner's witness, Sam Bick, testified that the Petitioner acquired Continental Apartments in 2003 to provide housing for the elderly, low income families and the disabled. *Bick testimony*. According to Mr. Bick, the Petitioner charged only \$350 per month for their apartments in 2006 and \$375 per month in 2007. *Id.* Further, the Petitioner provides gas heat for its tenants. *Id.* The Petitioner contends that its rent is "below market rent" because HUD considers market rent for Perry County to be \$512 per month. *Id.; Petitioner Exhibit O*. Further, an independent appraisal determined that the Petitioner is charging below market rent. *Id.*
  
  - c. The Petitioner's witness, Paula Patton testified that the complex had three elderly residents, ten low income residents and three very low income residents. *Patton testimony*. According to the Petitioner, low income residents are those with less than 80% of median income and very low income residents are those with less

than 30% of median income. *Petitioner Exhibit O*. Ms. Patton testified that Continental Apartments always has a waiting list because the complex pays gas and water. *Id.*

- d. Finally, Mr. Bick testified that the Petitioner has a charitable reserve that it uses to assist residents going through life changing events. *Bick testimony*. According to Mr. Bick, a tenant that has experienced an uncontrollable event, like the loss of a job, illness, injury or a death in the family, may apply to receive a grant to pay his or her rent. *Id.* The Petitioner has awarded up to two months' rent. *Id.*
- e. The Petitioner argues that Article 10, §1 of the Constitution of Indiana authorizes the General Assembly to exempt from property tax all property "being used for...charitable purposes." *Bickel argument, Petitioner Exhibit T*. Indiana Code § 6-1.1-10-16 generally exempts property from tax that is owned, occupied and used for such exempt purposes. *Id.* The Petitioner argues that the standard to be applied in determining whether particular activities or use of a property qualifies for exemption is whether the activity or use is "reasonably necessary" for the maintenance or effective welfare of the organization's "charitable purposes." *Bickel argument* (citing *LeSea Broadcasting Corp. v. State Bd. of Tax Comm'rs*, 525 N.E.2d 637 (Ind. Tax Ct. 1988)). The activity or use need not be essential or indispensable. *Id.*
- f. The Petitioner argues that Indiana courts have consistently held that the words "educational, religious or charitable purposes" in the exemption statutes must be interpreted in their broadest constitutional sense. *Bickel argument*. In support of its argument, the Petitioner's counsel cites *LeSea Broadcasting Corp. v. State Bd. of Tax Comm'rs*, 525 N.E.2d 637 (Ind. Tax Ct. 1988) (recognizing the exemption of broadcasting facilities); *State Bd. of Tax Comm'rs v. Warner Press, Inc.*, 248 N.E.2d 405 (Ind. 1969) (exempting printing facilities, even though used occasionally by a for-profit subsidiary, unimproved acreage for agricultural purposes, and unimproved acreage leased for a nominal sum to Anderson College for use as an athletic facility); *State Bd. of Tax Comm'rs v. Wright*, 215 N.E.2d



57 (Ind. Ct. App. 1966) (exempting summer camp facilities and cabins leased to church members); *State Bd. of Tax Comm'rs v. Indianapolis Lodge #17*, 200 N.E.2d 221 (Ind. 1964) (exempting a cafeteria in a lodge building, even though the cafeteria was open to the public for lunch five days a week, four hours per day); and *Sangrlea Boys Fund, Inc. State Bd. of Tax Comm'rs*, 686 N.E.2d 954 (Ind. Tax Ct. 1987); *Alte Salem Kirche, Inc. v. State Bd. of Tax Comm'rs*, 694 N.E.2d 810 (Ind. Tax Ct. 1998); *Knox County PTABOA v. Grandview Care, Inc.*, 826 N.E.2d 177 (Ind. Tax Ct. 2005). *Id.* Further, the Petitioner argues that organizations and activities have been recognized as “charitable” even if they primarily confine their benefits to fee paying individuals or members of a particular group or order. *Bickel argument, Petitioner Exhibit T.*

- g. According to Ms. Bickel, the Indiana Court of Appeals construed the word “charitable” in the context of housing facilities in *State Bd. of Tax Comm'rs v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. App. 1968). *Bickel argument, Petitioner Exhibit T.* According to Ms. Bickel, the Indiana Tax Court specifically endorsed the broad interpretation of the word “charitable” and the reasoning employed in *Methodist Home in Raintree Friends Housing, Inc. v. Indiana Dept. of St. Revenue*, 667 N.E.2d 810 (Ind. Tax Ct. 1996); and *Wittenberg Lutheran Village Endowment Corp. v. Lake County PTABOA*, 782 N.E.2d 483 (Ind. Tax Ct. 2003). *Id.* Consistent with those decisions, Ms. Bickel argues, the Tax Court recognized that the use of property to provide safe, decent, affordable housing for low income families and individuals is a “charitable use” in *College Corner, L.P. v. Dept. of Local Govt. Finance*, 840 N.E.2d 177, 282 (Ind. Tax Ct. 2006) (“if [the taxpayer’s] redevelopment efforts were aimed at providing housing for low-income families and individuals such efforts would provide relief of human want”). *Id.* Similarly, Ms. Bickel argues, the Board in *Willowbrook Affordable Housing Corp v. Marion County PTABOA*, Petition No. 49-800-97-2-8-00083, (Final Determination issued April 9, 2002), held that “[t]he State has previously recognized that the providing of low-income housing may, under particular circumstance, qualify as a charitable purpose as it relieves the poor and distressed by providing them one of life’s basic necessities and it relieves the government of

some of its obligation to provide such housing to the needy.” *Petitioner Exhibit T; Bickel argument.*

- h. Ms. Bickel contends the testimony of Mr. Bick, president of Grandview, Holly Richard, Continental Apartments’ site manager, and Paula Patton and Jerry Wheeler, Continental Apartments residents, demonstrates the charitable nature of the operation of the complex and the activities and services provided to tenants at rents undisputed as below market rents. *Bickel testimony.* Further, Ms. Bickle contends, the existence of a charitable reserve fund which can be used to assist tenants who have particular financial needs is additional evidence of charitable use. *Id.;Petitioner Exhibit U.*
- i. The Petitioner argues that the Board has previously followed Rev. Proc. 96-32, *Low Income Housing Guidelines*, which provides that if at least 75% of residents in an apartment complex are earning at or below 80% of the area median income and the apartments are rented on an affordable basis, for federal tax purposes the property may be considered owned, occupied and used for charitable purpose. *Id.* The Petitioner contends that the Board should adopt this standard and find that the subject property is exempt. *Id.*<sup>2</sup>

#### **RESPONDENT’S CONTENTIONS**

- 23. The Respondent contends that, while the Petitioner’s efforts on behalf of low income and elderly residents in the community are admirable, the Petitioner’s property does not qualify for exemption because the property’s use is not charitable. *Ward testimony.* The Petitioner chooses to rent its apartments to low-income tenants and granting it an exemption would give Grandview Care an unfair advantage in the marketplace. *Id.*

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<sup>2</sup> The Board notes that during opening remarks proffered by counsel for the Petitioner, Ms. Bickel states that the Board’s consideration and opinions regarding “charitable exemptions” is in a “state of flux.” Counsel further suggests that the Board may be disregarding statute and case precedent, but instead, in its opinions, the Board is reacting to public outcry and media attention which Ms. Bickel describes as a “perceived property tax crisis.” The Board views counsel’s comments as a direct impugment of its integrity. The Board takes a dim view of such attacks and admonishes counsel to adhere to a professional decorum if she desires to continue to practice before it.

## ANALYSIS OF THE ISSUE

24. Indiana Code § 6-1.1-10-16(a) provides that “[a]ll 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.” The taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *See New Castle Lodge #147, Loyal Order of Moose, Inc. v. State 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*, 145 Ind. App. 522, 251 N.E.2d 673, 682 (1969)). A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously 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).
25. The Petitioner’s counsel argues that the Board must follow the precedent established in *State Bd. of Tax Comm’rs v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. App. 1968); *Raintree Friends Housing, Inc. v. Indiana Dept. of St. Revenue*, 667 N.E.2d 810 (Ind. Tax Ct. 1996); and *Wittenberg Lutheran Village Endowment Corp. v. Lake County PTABOA*, 782 N.E.2d 483 (Ind. Tax Ct. 2003). These cases, however, addressed housing for senior citizens and found that meeting the special needs of seniors is an exempt purpose. “Indiana courts have long recognized that providing care and comfort to the aged constitutes a charitable purpose.” *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005). The Court of Appeals made clear that its exemption determination in *Methodist Home* was not based on any requirement that the home’s residents be low income or any requirement that the rent charged by Methodist Home be below market rent. *State Bd. of Tax Comm’rs v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. App. 1968). As the Court noted, “it is now common knowledge that the aged require care and attention entirely independent of

financial needs, and that present day humanitarian principles demand that those in their declining years have the opportunity to live with as much independence as their strength will permit, in as pleasant and happy surroundings as their finances will reasonably justify.” *Id.* at 89. Continental Apartments provides housing for only three seniors in its twenty unit complex. Thus, senior housing is not the Petitioner’s “predominant use” and Ms. Bickel’s alleged “precedent” does not apply.

26. Ms. Bickel next cites dicta in *College Corner, L.P. v. Dept. of Local Govt. Finance*, 840 N.E.2d 905 (Ind. Tax Ct. 2006), in support of the Petitioner’s position. In that case, the taxpayer was formed to revitalize the College Corner area of the city’s historic old northside. The Tax Court found that the taxpayer relieved government burdens, preserved the area’s historic character and prevented “community deterioration” and, thus, was entitled to exemption. 840 N.E.2d at 911. In a footnote, the Court cited Indiana Code §6-1.1-10-16(i) stating that “if [the taxpayer’s] redevelopment efforts were aimed at providing housing for low-income families and individuals such efforts would provide relief of human want.” *Id.* at 909, fn. 8.

27. Indiana Code §6-1.1-10-16(i) holds that land purchased “for the purpose of erecting, renovating, or improving a single family residential structure that is to be given away or sold” is exempt if it is sold in a charitable manner by a nonprofit organization to low income individuals who will use the property as a family residence. Most importantly, the exemption terminates, “when the property is conveyed by the nonprofit organization to another owner.” Ind. Code §6-1.1-10-16(j). Thus, in *College Corner*, the Tax Court addressed single family homes built or renovated for low income families that would return to the tax rolls as soon as the construction or renovation was completed and the property was sold to a low income family. That is not the case at bar. Here the Petitioner seeks an exemption for an apartment complex, not a single family home. Further, the Petitioner seeks an exemption that removes the property from the tax rolls as long as it owns the property and it continues in its current use. Thus, while the language in *College Corner* may be somewhat instructive, it does not directly support the Petitioner’s claim.

28. The Petitioner’s counsel argues that the Board’s more recent decisions in cases of “low income” apartments and charitable exemptions have moved away from earlier determinations of the Board. Ms. Bickel apparently seeks to define one category – “low income housing” – and treat all properties alike. The Board, however, recognizes that there are many different programs and numerous organizations providing a broad range of housing options that may fall under the very large umbrella of “low income” housing. The Board does not treat all the organizations and programs as interchangeable, but reviews the facts of each case.

29. For example, in *Jamestown Homes of Mishawaka v. St. Joseph County Property Tax Assessment Board of Appeals*, the taxpayers had entered into contractual arrangements with the federal government to provide affordable housing. *Jamestown Homes of Mishawaka v. St. Joseph County Property Tax Assessment Board of Appeals*, Petition Nos. 71-022-05-2-8-00030 and 71-022-05-2-8-00031 (January 7, 2008). The Board, in that case, found that

The Petitioner purchased or built the property leveraged by federal tax dollars. The Petitioner is being compensated with rental payments and rent subsidies paid for through local tax dollars. The Petitioner is providing a service it contracted with the federal government to provide. This is not “different from the everyday purposes and activities of man in general.” *College Corner*, 840 N.E.2d at 908.

*Id.* See also, *Lincoln Village Cooperative, Inc. v. Bartholomew County Property Tax Assessment Board of Appeals*, Petition No. 03-003-05-2-8-00001 (May 30, 2008) (“The fact that many of the tenants pay less to live at Lincoln Village than they might have to pay at comparable apartments that do not participate in Section 236 or Section 8 housing programs does not justify allowing the charitable property tax exemption. If the provision of low income housing was really “charitable,” Lincoln Village would need no such incentives to operate such a facility.”); and *Roanoke Heights Apartments v. Huntington County Property Tax Assessment Board of Appeals*, Petition Nos. 35-007-06-2-8-00001 and 35-007-06-2-8-00002 (December 17, 2007) (while Roanoke rents primarily to individuals and families with incomes significantly below the Huntington area’s median income and does not charge those tenants more than 30% of their income, it operates in

this manner in exchange for significant benefits including receiving federally subsidized financing).

30. Here, however, there is no evidence that the Petitioner built or purchased the property using federal funds or receives any federal subsidies. Thus, the Petitioner does not act as a simple “conduit” for federal funds. Further, the Respondent did not dispute that Continental Apartments’ rent was “below market.” Nor did the Respondent dispute the income-qualification data or the testimony of any of the Petitioner’s witnesses.

31. The Petitioner chooses to rent its units at below market rents to income-qualified and elderly tenants. It is not required to do so because it is receiving government benefits. In addition, the Petitioner assists tenants experiencing life changing event by providing grants to pay the tenant’s rent through the Petitioner’s charitable reserve. As the Board recognized in *Jamestown Homes*, “offering safe, clean, quality apartments to low income individuals for below market rents without contracting to receive a mortgage subsidy or rent subsidies,” can be a charitable purpose. *Jamestown Homes of Mishawaka v. St. Joseph County Property Tax Assessment Board of Appeals*, Petition Nos. 71-022-05-2-8-00030 and 71-022-05-2-8-00031 (January 7, 2008). Here, the Board finds it is.

#### **SUMMARY OF FINAL DETERMINATION**

32. The Petitioner raised a prima facie case that the subject property is owned, occupied and used for a charitable purpose. The Respondent offered no evidence to impeach or rebut Petitioner’s case. The Board, therefore, finds in favor of the Petitioner and holds that the subject property’s land, improvements and personal property are 80% exempt.

## FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines an exemption should be granted.

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Chairman,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

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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 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 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/bills/2007/SE0287.1.html>.**