

REPRESENTATIVE FOR PETITIONER:

Stacy K. Somers, Beers Mallers Back & Salin, LLP
Jessica L. Thorson, Beers Mallers Back & Salin, LLP

REPRESENTATIVE FOR RESPONDENT:

Marilyn S. Meighen, Meighen & Associates, P. C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Grandview Health & Rehabilitation)	Petition:	55-021-10-2-8-00001
Center (Hoosier IX, Inc.),)		
)		
Petitioner,)	Parcel No.:	55-13-03-239-001.000-021
)		
v.)		
)		
Morgan County Assessor,)	County:	Morgan
)		
Respondent.)	Assessment Year:	2010

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

January 23, 2012

FINAL DETERMINATION

The Board has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the subject property is entitled to a tax exemption for the March 1, 2010, assessment date because the property is owned, occupied and used for a charitable purpose.

PROCEDURAL HISTORY

2. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner, Hoosier IX, Inc., doing business as Grandview Health & Rehabilitation Center, filed an exemption application for real property for 2010 on May 5, 2010.¹ The Morgan County Property Tax Assessment Board of Appeals (PTABOA) issued notice of its determination denying the exemption on August 11, 2010. On September 10, 2010, the Petitioner filed a Form 132 Petition with the Board requesting a review of the PTABOA's exemption determination.

HEARING FACTS AND OTHER MATTERS OF RECORD.

3. On July 5, 2011, the Petitioner filed its "Petitioner's Motion for Summary Judgment" (Petitioner's Motion); its "Memorandum of Law in Support of Petitioner's Motion for Summary Judgment" (Petitioner's Memorandum); and its "Designation of Evidence in Support of Petitioner's Motion for Summary Judgment" (Petitioner's Designation). The Respondent filed its "Assessor's Response in Opposition to Petitioner's Motion for Summary Judgment and Cross-Motion for Summary Judgment in Her Favor" (Assessor's Response) and the "Assessor's Designation of Evidence" (Assessor's Designation) on July 30, 2011.² On August 15, 2011, the Petitioner filed its "Petitioner's Reply in

¹ The Form 136 also lists T-3 Martinsville, LLC, and TIC MS Martinsville, LLC, as the property owners claiming the exemption.

² The Petitioner contends that the Assessor's "Cross Motion for Summary Judgment" was not timely under the parties' case management plan because dispositive motions were due to be filed by June 1, 2011. The Petitioner, however, did not claim that the Assessor's Response to the Petitioner's Motion for Summary Judgment was untimely. Because the Board may grant summary judgment to either party when a summary judgment motion is filed, the Board over-rules the Petitioner's objection to the Respondent's cross-motion for summary judgment.

Opposition to Assessor's Response in Opposition to Petitioner's Motion for Summary Judgment and Cross-Motion for Summary Judgment in Her Favor" (Petitioner's Reply).

4. The Board held a hearing on August 22, 2011. Both parties appeared by counsel and oral argument was heard by the duly designated administrative law judge, Carol S. Comer.

5. The following persons appeared at the hearing:

For the Petitioner:

Stacy K. Somers, Beers Mellers Back & Salin, LLP
Jessica L. Thorson, Beers Mellers Back & Salin, LLP

For the Respondent:

Marilyn S. Meighen, Meighen & Associates, P.C.

6. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Affidavit of Sara Charles of Hoosier Enterprises IX, Inc., floor plan of the facility, and the lease agreement.³

7. The Respondent presented the following exhibits:

Respondent Exhibit A – Deposition of Paul Eric Turner, dated February 25, 2008, filed as an exhibit to a summary judgment motion in *T-3 Martinsville v. US Holding, LLC*, Cause No. 55D02-0802-PL-00050, in Morgan Superior Court,

Respondent Exhibit B – Indiana Secretary of State information regarding U.S. Holding, LLC,

Respondent Exhibit C – Indiana Secretary of State Certificate of Assumed Name,

Respondent Exhibit D – Affidavit of Brenda Brittain, dated July 26, 2011,

Respondent Exhibit D1 – Petitioner's answers to Interrogatories,

Respondent Exhibit D2 – Admission and payment agreement for Grandview Health and Rehabilitation Center,

Respondent Exhibit D3 – Financial reports for the period ending December 31, 2009, and December 31, 2010,

Respondent Exhibit D4 – Resident Days Summary, January 1, 2008, through December 31, 2010,

³ The Petitioner's Designation also included the 2010 Assessment Year Application for Property Tax Exemption and all attachments, which was attached to the Petition identified as Board Exhibit A.

Respondent Exhibit E – Chronological case study for *T-3 Martinsville v. U.S. Holding, LLC*, Cause No. 55D02-0802-PL-00050, Morgan Superior Court.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 132 Petition with attachments,
 - Board Exhibit B – Notice of Hearing, dated November 19, 2010,
 - Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
9. The subject property is a nursing home facility known as Grandview Health and Rehabilitation Center located at 1959 East Columbus Street, Martinsville, Indiana.
10. For 2010, the Morgan County PTABOA determined that the Petitioner’s real property was 100% taxable.
11. For 2010, the Petitioner claims its real property should be 100% exempt.

JURISDICTIONAL FRAMEWORK

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

BASIS OF EXEMPTION AND BURDEN

13. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, §

1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.

14. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property owner would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).

15. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).

16. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

SUMMARY JUDGMENT STANDARD

17. Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Board of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2002). The party seeking summary judgment bears the burden of demonstrating through designated evidence that there are no genuine issues

of material fact and that it is entitled to judgment as a matter of law. *Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). If the movant satisfies its burden, the non-movant cannot rest upon its pleadings, but instead must designate sufficient evidence to show the existence of a genuine issue for trial. *Id.* The Board must construe all evidence in favor of the non-moving party, and all doubts as to the existence of a material issue of fact must be resolved against the moving party. *See Tibbs v. Grunau Co., Inc.*, 668 N.E.2d 248, 249 (Ind. 1996).

PETITIONER'S CONTENTIONS

18. The Petitioner contends that its real property is eligible for 100% exemption pursuant to Indiana Code § 6-1.1-10-16 because the property is owned, occupied and used for charitable purposes.
19. The Petitioner presented the following evidence in regard to this issue:
 - A. The Petitioner's counsel argues that the subject property is owned for a charitable purpose. *Somers argument.* According to Mr. Somers, the Indiana Tax Court explicitly stated that the care of elderly people constitutes a charitable use of property in *Knox Co. Prop. Tax Assess. Bd. of App. v. Grandview Care, Inc.* 826 N.E.2d 177 (Ind. Tax 2005). *Id.*; *Petitioner's Memorandum at 6.* Mr. Somers argues that the owners of the property, T-3 Martinsville, LLC, and MS Martinsville, LLC, purchased the property with the knowledge that the property was intended for use only as a nursing home facility. *Id.*
 - B. T-3 Martinsville, LLC, and MS Martinsville, LLC, leased the subject property to US Holding, which subleased the property to Grandview in 2004. *Somers argument;* *Petitioner's Memorandum at 1 to 2.* Under the terms of the lease, Grandview must "continuously use and occupy the Premises during the Term solely as a licensed nursing facility and/or for the provision of services ancillary thereto; provided, however, Grandview may, subject to Landlord's consent, which consent shall not be

unreasonably withheld or delayed, use all or a portion of the Premises as an assisted living facility, residential care facility for the elderly or other senior living facility.” *Designation of Evidence, Lease at 7*. The Petitioner’s counsel argues that the lease requirements demonstrate that the owners owned the property for the single purpose of operating a nursing facility and therefore, owned the property for a charitable purpose. *Somers argument*.

- C. The Petitioner’s counsel also contends that the Petitioner’s property is used and occupied for a charitable purpose. *Somers argument*. According to the Affidavit of Sara Charles, Grandview is a nursing facility licensed by the Indiana State Department of Health to operate an eighty-two bed comprehensive care facility. *Charles Aff. at 2*. The facility is handicapped accessible with ramps throughout the building and handrails in the hall. *Id.* Further, Grandview provides its patients with 24-hour skilled nursing care, and offers acute care, sub-acute care, short-term rehabilitation, restorative nursing, intensive therapy, and long-term care. *Id. at 3*. According to the Petitioner’s witness, Grandview also provides physical therapy, occupational therapy, speech therapy and restorative rehabilitation. *Id.* In addition, Grandview employs an activities director to coordinate daily activities for the residents such as ice cream socials, trivia tournaments, music programs, and bingo as well as worship services, and group outings. *Id. at 4*. Mr. Somers contends Grandview provides quality care for its residents through the design of the facility, which allows its elderly or infirm residents to move around as independently as possible, and through the number of Grandview’s staff members which are employed to ensure its residents receive the best quality care both physically and psychosocially. *Somers argument; Petitioner’s Memorandum at 9*. In hearing, the Petitioner’s counsel testified that the Petitioner does not operate any business other than the nursing facility at issue in this appeal. *Somer’s argument*.
- D. Petitioner’s counsel further argues that charging a monthly fee to its residents does not preclude Grandview from receiving a property tax exemption because it uses and occupies the facility for a recognized charitable purpose. *Somers argument*;

Petitioner's Memorandum at 10. Mr. Somers contends that in *Knox Cty. Prop. Tax Assess. Bd. of Rev. v. Grandview Care*, 826 N.E.2d 177 (Ind. Tax Ct. 2005), the Tax Court determined that the monthly fee charged to the residents did not negatively impact the petitioner's application for exemption because "charitable use" did not need to be free. *Petitioner's Memorandum at 9.* Thus, Mr. Somers argues, the Court held it is the nature of the property's use that is the only relevant factor for review, not the existence of potential profit or benefit from the use. *Id. at 9.*

- E. The Petitioner's counsel also argues that Grandview's charitable acts are a benefit which inures to the public sufficient to justify the loss of tax revenue. *Somers argument.* According to Mr. Somers, the Indiana Constitution, Article IX, Section 3, grants county governments the option of providing "farms, as an asylum for those persons who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society." *Id.; Petitioner's Memorandum at 11.* Thus, Mr. Somers argues, caring for the elderly is, at some level, a public policy concern for county governments. *Id.* Therefore, because Grandview provides care to the elderly and infirm, Mr. Somers concludes, state and local governments are relieved of their obligation to provide such care. *Id.*
- F. Finally the Petitioner's counsel argues that while a property must be owned, occupied, and used for a charitable purpose, the law does not require a single entity to fulfill all three functions. *Somers argument.* Where unity is lacking, however, both entities must demonstrate that they possess their own exempt purpose. *Id.; citing Oaken Bucket Partners, LLC v. Hamilton Co. Prop. Tax Assess. Bd. of App.*, 938 N.E.2d 654 (Ind. 2010). Mr. Somers argues that, based on case law and the statutes, Grandview has demonstrated that its property is owned, used, and occupied for a charitable purpose and therefore is entitled to exemption as a matter of law. *Somers argument.*
- G. In its Reply brief, the Petitioner argues that the Board should disregard the Respondent's argument regarding HEA 1001 because "the General Assembly had an opportunity to limit the definition of person, as it applied to I.C. § 6-1.1-10-16, but

chose not to.” *Reply at 5*. According to the Petitioner, the legislature’s decision to allow non-profit, Section 501(c)(3) parties to file retroactive applications for property tax exemption, “does not demonstrate its legislative intent to restrict charitable property tax exemptions to 501(c)(3) on an unlimited, all-encompassing basis.” *Id.*

RESPONDENT’S CONTENTIONS

20. The Respondent contends the Petitioner is not entitled to an exemption on its real property because the property is not owned for a charitable purpose.
21. The Respondent presented the following evidence:
 - A. The Respondent’s counsel argues that Grandview was not owned and predominately used for a charitable purpose during the relevant time frame. *Meighen argument*. According to Ms. Meighen, on the March 1, 2010, assessment date, two for-profit limited liability companies, T-3 Martinsville, LLC, and MS Martinsville, LLC, owned the facility. *Id.*; *Assessor’s Response at 2*. Ms. Meighen contends that the owners purchased the facility for investment purposes. *Id.* In support of this contention, the Respondent presented the deposition of Paul Eric Turner, one of the principals of T-3 Martinsville, LLC. *Respondent Exhibit A*. In his deposition, Mr. Turner testified that T-3 Martinsville, LLC, acquired the facility because they were looking for an investment. *Id.* Further, Mr. Turner testified, T-3 Martinsville and MS Martinsville purchased the facility to take advantage of the federal tax rules regarding like-kind exchange.⁴ *Id.*
 - B. The Respondent’s counsel argues that T-3 Martinsville and MS Martinsville were parties to a twenty-year lease with US Holdings, LLC, dated April 1, 2004, and US Holding, in turn, subleased the property to Grandview. *Meighen argument*;

⁴ Internal Revenue Code 1031 allows owners of investment and business property to postpone paying tax on a gain from the sale of real estate if the proceeds are invested in a similar property as part of a like-kind exchange. *Assessor’s Response at 4, fn 1*.

- Assessor's Response at 2.* Ms. Meighen contends that a landlord cannot rely upon the exempt purpose of its tenant. *Id.* Instead, Ms. Meighen argues, the property owners must have their own exempt purpose. *Id.* Because T-3 Martinsville, MS Martinsville, US Holding, and Grandview spent several years suing and countersuing over failure to pay rent shows that there was no unity of purpose. *Id.*
- C. Ms. Meighen argues that the ownership, occupancy, and use requirements set forth in Indiana Code § 6-1.1-10-16 “prevent an entity from leasing property to another for either party’s profit and claiming an exemption.” *Meighen argument; Assessor’s Response at 11, citing Sangralea Boys Club, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954,959 (Ind. TaxCt.1997). Further, Ms. Meighen argues, in *Oaken Bucket*, the Supreme Court held that an individual holding rental property holds such property for his own use and benefit - for his individual profit - and not for the public good. *Id., citing Oaken Bucket*, 938 N.E.2d at 659-60 and *Spohn v. Stark*, 150 N.E. 787,788 (Ind. 1926).
- D. Similarly, Ms. Meighen argues, in previous appeals, the Board has found an investment purpose at odds with exempt purpose. *Meighen argument; Assessor’s Response at 11, citing Brookschool, LLC v. Hamilton County Property Tax Assessment Board of Appeals*, Petition No. 29-020-02-2-8-00001 (portion of a shopping center leased to non-profit religious organization was not entitled to exemption because owner owned the property for for-profit business venture) and *Tony Tornatta v. Vanderburgh County Property Tax Assessment Board of Appeals*, Petition No. 82-029-00-2-8-00001 (even though taxpayer did not show a profit on a building leased to a religious organization, any rent to the landlord was a gain and not considered owned for charitable or religious purpose).
- E. Ms. Meighen further argues that the non-code provision amending the “go back” provisions of HEA 1001-2009, sec 479 to require that the party seeking to file an exemption application be a non-profit, Section 501(c)(3) entity shows that the General Assembly intended a non-profit motive similar to the cases interpreting the

charitable provisions of Indiana Code § 6-1.1-10-16(a). *Assessor's Response at 14, citing HEA 1086-2010, sec 178.*

- F. In addition, Ms. Meighen argues, the Petitioner's property was not occupied or used for an exempt purpose. *Meighen argument; Assessor's Response at 2.* According to Ms. Meighen, Grandview is a for-profit business enterprise providing housing and care to residents who are able to pay, either individually, or through Medicare, Medicaid, or private insurance. *Id.* Grandview is a business enterprise and the residents' receipt of services emanate from the government, not from the gratuity of the owners or Grandview. *Id.* According to the Respondent's evidence, 90 to 95% of the patient days in the Petitioner's facility were charged to Medicare or Medicaid in 2010. *Assessor's Response at 5; Affidavit of Brenda Brittain.* "Though Grandview may claim to 'help' the government by providing housing and care to the elderly, this claim is an overly broad extension of Indiana law. Many private businesses 'help' the government to fulfill its responsibilities but this 'help' does not entitle a party to a government contract to property tax exemption." *Assessor's Response at 16.*
- G. Finally, the Respondent argues, while a for-profit label is not enough to disqualify an organization from exemption, simply providing housing and care to the elderly is not enough to qualify an institution as charitable. *Assessor's Response at 14.* The Respondent admitted that institutions for the aged "do not lose their exempt status by charging fees to their residents," but, she argues, only if it "does not appear that the fees are more than sufficient to pay the expense of maintenance or that the proprietors of the institution derive any profit therefrom." *Id. at 13, citing State Board of Tax Comm'rs v. Methodist Home for the Aged, 241 N.E.2d 84 (Ind. Ct. App. 1968).* In this case, Ms. Meighen argues, the only services the Petitioner provided in 2009 and 2010 that it was not compensated for were those that were written off as bad debt. *Meighen argument.* According to Ms. Meighen, "write-offs" are not charity. *Id.* More importantly, the Petitioners had an income of approximately \$313,000 for the 2010 tax year. *Meighen argument; Respondent Exhibit D3.*

ANALYSIS

22. Indiana Code § 6-1.1-10-16(a) states that “All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.” Ind. Code § 6-1.1-10-16(a). Further, “a tract of land . . . is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred in subdivision (1) is situated on it.” Ind. Code § 6-1.1-10-16(c).
23. Exemption statutes are strictly construed against the taxpayer. *See New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 733 N.E.2d 36, 38 (Ind. Tax Ct. 2000), *aff'd*, 765 N.E.2d 1257 (Ind. 2002). Despite this, “the term ‘charitable purpose’ is to be defined and understood in its broadest constitutional sense.” *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.* 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005) (citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 251 N.E.2d 673, 682 (Ind. 1969)). A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).
24. An exemption requires probative evidence that a property is owned, occupied, and used for an exempt purpose. While the words “owned, occupied and used” restrict the activities that may be conducted on the property that can qualify for exemption, they do not require a single entity to achieve a unity of ownership, occupancy and use. Rather, these words are used to ensure that the particular arrangement involved is not driven by a profit motive. *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954, 959 (Ind. Tax Ct. 1997) (“Sangralea does not own the property as investment property or with a motive of profit. The use and occupation of the property by the Lessees is in furtherance of Sangralea’s exempt purposes.”). Once these three elements

are met, the property can be exempt from property taxation. *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005).

25. “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose,” however, “is a fact sensitive inquiry; there are no bright-line tests.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13 (Ind. Tax Ct. 2009) (citation omitted). Thus every exemption case “stand[s] on its own facts” and on how the parties present those facts. See *Indianapolis Osteopathic Hosp., Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).
26. The Indiana Court of Appeals first addressed the issue of care for the aged as a charitable purpose in the *State Board of Tax Commissioners v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. Ct. App. 1968). In that case, the Court recognized that the senior population had special needs, “namely relief of loneliness, boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, attention to problems of health, etc.” 241 N.E.2d at 86. In finding a non-profit retirement home exempt, the Court held that “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.
27. The Indiana Court of Appeals decision in *Methodist Home* has been followed numerous times by the Indiana Tax Court. See *Raintree Friends Housing, Inc. v. Indiana Department of State Revenue*, 667 N.E.2d 810 (Ind. Tax Ct. 1996); *Wittenburg Lutheran Village Endowment Corporation v. Lake County Property Tax Assessment Board of*

Appeals, 782 N.E.2d 483 (Ind. Tax Ct. 2003); and *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.* 826 N.E.2d 177 (Ind. Tax Ct. 2005).

28. In *Raintree Friends*, the facility at issue was funded almost exclusively by tenant rents and fees, although the property received non-financial support and services from local Quaker congregations. 667 N.E.2d at 812. In supporting its determination that the property owner was subject to gross income, sales and food and beverage taxes, the Department of Revenue argued that the properties were “not operating for a charitable purpose because the services they offer are no different than those offered by traditional apartment complexes.” *Id.* The Court in granting an exemption held:

The Housing Corporations provide beneficial and worthwhile services to the aged population. Indeed, the mission statement of each Retirement Home articulates that its goal is to assist residents in living as independently as possible for as long as possible. The Retirement Homes provide a benefit to society by catering to the specific needs of their aged residents and by providing community, security, and assisted living for those in need.

Id. at 815. The Court further found that “the fact that the Retirement Homes charge a fee for the services they provide is not a bar to their charitable status, as charities often need to charge reasonable and sufficient fees to cover the cost of their operation.” *Id.*

29. Similarly, in *Wittenburg Lutheran Village*, the property was an integrated retirement community including a nursing home, an assisted living facility and eighteen four-unit residential apartment buildings known as the “Villas.” 782 N.E.2d at 483. The Lake County Property Tax Assessment Board of Appeals argued that because the Villas did not cater to the ill or infirm, the facility was “nothing more than a traditional apartment complex.” *Id.* at 487. The Court found that:

In addition to providing the amenities found in traditional apartment living, the Villas offer many unique and special services to its residents. For instance, each apartment is equipped with safety features (such as bathroom grab bars) and is wheelchair accessible. All units are built on a crawl-space foundation, providing less stress on elderly bones and joints than slab foundations. Chaplaincy and worship services are available to all Villa residents. Villa residents may participate in a wide range of free planned group activities and have free access to

exercise equipment within the Village. They may use the Village mini-bus for regularly scheduled shopping, planned group outings, and health-related appointments at nearby medical facilities. In addition, Villa residents may volunteer in the assisted living facility or the nursing home

Id. at 485. Thus, the Tax Court concluded that “contrary to the PTABOA’s rationale, the needs of senior citizens are not exclusively financial, nor are they merely health-related.”

Id. at 488. Seniors “need a sense of community and involvement.” *Id.* They need social interaction and supportive services “that enable them to live more independently for a longer period of time.” *Id.* They need a sense of security and they need to “function at active levels.” *Id.* Because the Villas met these needs, the Court found the property to be “owned occupied and used for a charitable purpose.” *Id.*

30. More recently, in *Grandview Care*, the Tax Court found that “Indiana courts have long recognized that providing care and comfort to the aged constitutes a charitable purpose.” 826 N.E.2d at 182. In the *Grandview Care* case, Grandview Care was an Indiana not-for-profit organization that owned BridgePointe Health Campus. *Id.* at 179. Unlike the *Raintree Friends*, *Methodist Home* or the *Wittenburg Lutheran* cases, the owner of the nursing home and assisted living facility at issue in *Grandview Care* was not affiliated with any religious denomination or church. *Id.* at 182. Further, BridgePointe was managed by a for-profit organization, Trilogy Health Services, which was paid \$17,000 per month. *Id.* at 179. The Knox County PTABOA denied the property owner’s application for exemption because Grandview contracted with Trilogy and therefore, the PTABOA held, the facility was being operated for profit. *Id.* The Tax Court granted the exemption finding that “the fact that residents of such facilities are charged for their stay does not necessarily negate the charitable purpose of the institution, particularly ‘when it does not appear that the fees are more than sufficient to pay the expenses of maintenance or that the proprietors of the institution derive any profit therefrom.’” *Id.* at 184 (citing *Methodist Home*, 241 N.E.2d at 88-89). The Court held that Trilogy was an “operating expense” and that there was no evidence that Grandview was deriving a profit from the operation of facility or that the fees charged by Grandview were more than necessary to pay its expenses. *Id.* at 185.

31. Here, the evidence shows that T-3 Martinsville, LLC, and MS Martinsville, LLC, are for-profit entities that purchased the subject property as an investment. According to the sworn testimony of one of T-3 Martinsville's owners, the nursing home was purchased because the owners wanted to take advantage of federal tax rules that allowed them to defer the tax gains on the sale of another property. The owners leased the property to US Holding, which subleased the property to Grandview. The lease shows that Grandview was charged approximately \$255,000 for rent in 2009, in addition to the taxes, utilities and insurance on the property.⁵
32. Mr. Somers argues the property owner's profit motive is not relevant in determining whether the property qualifies for exemption. This is contrary to the Indiana Supreme Court's ruling in *Hamilton County Property Tax Assessment Board of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654 (Ind. 2010). In that case, the Court determined that a for-profit leasing company that was leasing space to a not-for-profit church, did not own the property for an exempt purpose even if it leased the space for below-market rent. 938 N.E.2d at 658. The Court held that "absent evidence that an owner of leased property possesses an exempt purpose separate and distinct from the exempt purpose of its lessee, the owner holds the property for its own benefit, not that of the public, and thus its property is not entitled to the statutory exemption." 938 N.E.2d at 659.
33. The language of Indiana Code § 6-1.1-10-16 does not differentiate between entities that are not-for-profit and those that are for-profit. *College Corner, LP v. Dep't of Local Gov't Fin.*, 840 N.E. 2d 905, 911 (Ind. Tax Ct. 2006). Thus, while the owner's status as a for-profit entity is not a determining factor, the manner in which the owner uses the property is relevant.

⁵ According to the lease, "during the fourth (4th) Lease Year and each succeeding Lease Year thereafter, the annual Rent shall be 1.02 times the previous Lease Year's rent. For example, Rent in the fourth Lease Year (April 1, 2007 through March 31, 2008) will be \$244,800 for the year (\$20,400 per month)." The Board notes that Grandview's financial reports however show Grandview paid \$243,600, \$714,526.04, and \$329,553.09 for rent for 2007, 2008, and 2009 respectively.

34. Here the Petitioner contends the property is a nursing home and nursing homes are exempt. However, simply owning a property that is operated as a nursing facility does not automatically entitle a for-profit entity to an exemption any more than owning a property that was being operated as a church entitled the property owner to an exemption on the property in *Oaken Bucket*. Because the Petitioner has not shown that the owners of the property had anything other than a profit motive in owning and leasing the subject property, the Petitioner has not proven its property was owned for a charitable purpose.
35. Similarly, the Petitioner failed to show the property was occupied and used for a charitable purpose. The Petitioner contends Grandview occupies and uses the property as a nursing home and therefore occupies and uses the property for an exempt purpose. Mr. Somers appears to argue that the *Grandview Care*, *Raintree Friends*, *Methodist Home* and *Wittenburg Lutheran* cases hold that anyone providing services to the elderly is performing a charitable function. The Board, however, does not read those decisions as broadly as the Petitioner urges.
36. In *Grandview Care*, *Raintree Friends*, *Methodist Home* and *Wittenburg Lutheran*, the entity that owned or operated the nursing home or assisted living facility at issue was a non-profit entity. More importantly, in each of those decisions except *Wittenburg Lutheran*, the Court specifically held charity was “without hope or expectation” of gain or profit, or that the entity that owned or operated the facility was exempt because the organization did not seek to profit from its ownership or operation of the nursing home. See *Raintree Friends*, 667 N.E.2d at 813-14 (“Charity is broadly defined as: 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.”); *Grandview Care* 826 N.E.2d at 184 (“the fact that residents of such facilities are charged for their stay does not necessarily negate the charitable purpose of the institution, particularly ‘when it does not appear that the fees are more

than sufficient to pay the expenses of maintenance or that the proprietors of the institution derive any profit therefrom.”); similarly *Methodist Home*, 241 N.E.2d at 90 (a nursing home does not lose its exempt status by charging fees to its residents when “It does not appear that the fees are more than sufficient to pay the expense of maintenance or that the proprietors of the institution derive any profit therefrom.”)⁶

37. Here, Grandview has not shown that its use and occupancy of the subject property is anything other than a business motivated by the expectation of profit. According to Petitioner’s counsel, Grandview does not own or operate any other facility. Thus, given the Petitioner’s “for profit” status and the fact that this facility is the Petitioner’s only business, the Board can only infer that the Petitioner operates the subject property for the purpose of making a profit. This is supported by Grandview’s financial statements which show that its net income for the period ending December 31, 2010, was \$313,320.98. Further, Grandview receives a substantial amount of its revenue from the government and therefore, it is not relieving the government of any financial burden.
38. The Board finds that the Petitioner failed to make a prima facie case that its property was owned, operated and used for charitable purposes for the 2010 assessment year. The Board therefore denies the Petitioner’s motion for summary judgment and grants summary judgment in favor of the Respondent.

⁶ While the Court in *Wittenburg Lutheran* did not discuss the impact of a “profit motive” on the exempt status of a nursing home or assisted living facility, the Board notes that the property was owned, operated and used by a non-profit, church-affiliated organization. Therefore, any discussion of profit motive was unnecessary to the Court’s determination. *Wittenburg Lutheran Village Endowment Corporation v. Lake County Property Tax Assessment Board of Appeals*, 782 N.E.2d 483 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

The Petitioner’s Motion for Summary Judgment is denied and summary judgment is granted in favor of the Respondent. The Board finds the Petitioner’s property to be 100% taxable for the March 1, 2010, assessment.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>.