

REPRESENTATIVES FOR PETITIONER: Barbara Mills, Manager, Greenwood Apartments, Inc., and Board members: Mona Mayberry; Glenda Shearer; Gae Williams; Ralph Wynn.

REPRESENTATIVES FOR RESPONDENT: Charles K. Todd, Jr., Attorney for Elkhart Property Tax Assessment Board of Appeals; Michael P. Statzer, Wayne County Assessor.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

GREENWOOD APARTMENTS)	Petition No.: 89-014-02-2-8-00006
INCORPORATED,)	
)	
Petitioner)	County: Wayne
)	
v.)	Township: Wayne
)	
WAYNE COUNTY PROPERTY)	Parcel No.: 029-15567-00 & Personal Property
TAX ASSESSMENT BOARD OF)	
APPEALS,)	
)	
Respondent)	Assessment Year: 2002
)	

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

March 4, 2004

FINAL DETERMINATION

The 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 Greenwood Apartments qualifies for personal and real property tax exemption in accordance with IC § 6-1.1-10-16.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-3, Odessa Smith, serving as President of Greenwood Apartments, Incorporated (Greenwood) filed a Form 136 application for property tax exemption with the Wayne County Property Tax Assessment Board of Appeals (PTABOA) on June 21, 2002.¹ The County PTABOA denied the application on September 8, 2003, and gave Greenwood proper notice of denial.
3. Pursuant to Ind. Code § 6-1.1-11-7, Greenwood filed a Form 132 petition seeking a review of the PTABOA action by the Board. The Form 132 was filed on September 24, 2003.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code §§ 6-1.1-15-4 and 6-1.5.5-2 a hearing was held on December 18, 2003 in Richmond before Patti Kindler, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3.
5. The following persons were present at the hearing:

For the Petitioner: Barbara Mills, Manager, Greenwood

¹ The purported filing date of the Form 136 application for property tax exemption according to Board Exhibit A; Form 132; page 3, is June 21, 2002. However, the Form 136 was not date-stamped as received by the County. The County did not defect the Form 136 petition as being late-filed. Therefore, timeliness is not an issue in this appeal.

Mona Mayberry, Board Member
Glenda Shearer, Board Member
Gae Williams, Board Member
Ralph Wynn, Board Member
Dan Henning, CPA
Kelly Hale, Independent Counsel

For the Respondent: Charles Todd, Jr., Attorney for the Wayne County PTABOA
Michael Statzer, Wayne County Assessor

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

For the Petitioner: Barbara Mills
Mona Mayberry
Gae Williams
Ralph Wynn

For the Respondent: Charles Todd, Jr.
Michael Statzer

7. The following exhibits were presented:

For the Petitioner:
Petitioner's Exhibit 1 – Wayne County Census Statistics
Petitioner's Exhibit 2 – Copy of Personal Property Form 104
Petitioner's Exhibit 3 – Copy of Petitioner's contentions

For the Respondent:
Respondent's Exhibit 1 – Subject Property Record Card

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

Board Exhibit A – Form 132, Petition for Review of Exemption with the following attachments: Notice of Disapproval of Exemption; Application for Property Tax Exemption; By-Laws; Articles of Incorporation; and, FHA Project Statement of Financial Position for years 1999 to 2001.

Board Exhibit B – Notice of Hearing on Petition

9. The assessed values at appeal are: Land: \$190,300; Improvements: \$2,177,100; and Personal Property: \$68,350.
10. The Administrative Law Judge did not view the subject property, which is assessed as two multi-unit, two-story apartment buildings located at 1460 South 16th Street in Richmond Township, Richmond, Indiana.

Jurisdictional Framework

11. 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.
12. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.5-5-5.

State Review and Petitioner's Burden

13. The Board does not undertake to make the case for the petitioner. The Board decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
14. The petitioner must submit 'probative evidence' that adequately demonstrates alleged errors in the assessment. 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.]

15. 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.]
16. 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.]
17. 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 State (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Constitutional and Statutory Basis for Exemption

18. 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.

19. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
20. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *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

21. 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.
22. 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).
23. 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)).

24. 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).
25. On the subject Form 132, Greenwood claimed an exemption for charitable purposes pursuant to Ind. Code § 6-1.1-10-16.
26. As a condition precedent to being granted an exemption under Ind. Code § 6-1.1-10-16 for charitable purposes, the taxpayer must demonstrate for the record that the subject property is: (1) owned; (2) occupied; and, (3) used for charitable purposes.
27. Indiana courts broadly construe the term “charitable” as the relief of human want and suffering in a manner different from the everyday purposes and activities of man in general. *NAME*, 671, N.E. 2d at 221 (quoting *Indianapolis Elks Bldg. Corp. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 540, 251 N.E. 2d 673, 683 (Ind. App. 1969)).
28. “Charity” is not defined by statute, and the Tax Court looked to *Black’s Law Dictionary* to find the plain, ordinary, and usual meaning of “charity”:

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

Raintree Friends, 667 N.E. 2d at 813-14 (quoting *Black's Law Dictionary*, 213 (5th ed.1979)).

29. It is equally clear that “charity” must confer benefit upon the public at large or relieve the government of some of an obligation that it would otherwise be required to fill. *NAME*, 671 N.E. 2d at 221; *Foursquare Tabernacle*, 550 N.E. 2d at 854; *St. Mary's Medical Center*, 534 N.E. 2d at 279.

Discussion of Issue

Whether Greenwood Apartments qualifies for personal and real property tax exemption in accordance with IC § 6-1.1-10-16.

30. The Petitioner contends Greenwood represents a nonprofit charitable organization, which holds title to apartments that are one hundred percent (100%) subsidized as Section 8 HUD for low-income elderly, disabled and handicapped persons. Greenwood asserts the real and personal property thereby qualifies for a charitable tax exemption.
31. The Respondent contends the PTABOA denied the exemption because Greenwood failed to cite the specific law on the Form 136 under which the exemption was claimed and failed to provide sufficient information to meet its burden by showing the property was used predominantly for charitable purposes.
32. The applicable rules governing this Issue are:

IC § 6-1.1-10-16(a)

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

IC § 6-1.1-10-16(c)

A tract of land, including the campus or athletic grounds of an educational institution, is exempt from property taxation if a building which is exempt under subsection (a) or (b) is situated on it and the tract does not exceed fifty (50) acres

in the case of an educational institution or a tract that was exempt on March 1, 1987 or fifteen (15) acres in all other cases.

IC § 6-1.1-10-16(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.

IC § 6-1.1-10-36.3

Property is predominately used or occupied for one of the stated purposes if it is used or occupied for one or more of those purposes during more than 50% of the time that it is used or occupied in the year that ends on the assessment date of the property.

***Raintree Friends v. State Board of Tax Commissioners*, 667 N.E. 2d at 813-14 (Ind. Tax 1996)**

Charity defined in part as “an attempt in good faith to advance and benefit mankind in general...without regard to their ability to supply that need from other sources and without hope or expectation...of gain or profit.”

33. Evidence and testimony considered particularly relevant to this determination include the following:
- (a) Greenwood Apartments is a Section 8 HUD subsidized apartment complex offering low cost housing to elderly, multi-family, and handicapped or disabled persons in the city of Richmond. *Williams Testimony; Petitioner’s Ex. 3.*
 - (b) With assistance from Richmond city in 1967, Reverend R.E. Girten, Pastor of the Mt. Moriah Baptist Church, sought federal approval to participate in the HUD rent supplement program to assist citizens in the Richmond area. *Mills Testimony; Petitioner’s Ex. 3.*
 - (c) As a result, Greenwood Apartments opened in 1970 on land donated by Mt. Moriah Church for the purpose of providing, on a nonprofit basis, housing for low and moderate-income families and displaced families, where no adequate housing existed for such groups. *Attachment to Board Ex. A; Articles of Incorporation.*
 - (d) Greenwood has previously had the benefit of property tax exemption. *Board Attachment to Board Ex. A; Form 132, Section III.* If said exemption is denied, the increased cost will be passed on to the poor. *Mayberry Testimony.*

- (e) Greenwood is irrevocably dedicated to, and operated exclusively for, nonprofit purposes. *Attachment to Board Ex. A; Articles of Incorporation.* No part of the income or assets of the facility shall be distributed to, or inure to the benefit of any individual. *Id.*
- (f) All residents of Greenwood pay thirty percent (30%) of their gross annual income, less deductions allowed for dependants, child-care, and medical expenses. *Mills Testimony.* The average gross income of Greenwood's residents is five thousand, five hundred and sixty six (\$5,566.00) dollars per year. *Id.* The average rent charged per month is one hundred and eight (\$108.00) dollars. *Mills Testimony; Petitioner's Ex. 3.*
- (g) Along with affordable housing, Greenwood offers financial and personal security to many families in Richmond by offering flexible rents based on income, full time assistance twenty-four hours per day, security cameras, neighborhood patrols, and on-site security officers. *Mills Testimony; Petitioner's Ex. 3.*
- (h) Some of the other services offered by Greenwood, many derived through three approved grants include: security doors, hardware accessories for the handicapped, computer learning center, after school programs, children's playground, field trips, cook-outs, on-site laundry, personal assistance with grocery shopping, house cleaning, HUD paperwork, utility bills, and assistance with filing for social service programs and benefits. *Mills Testimony; Petitioner's Ex. 3.*
- (i) The need for low-income housing in Richmond is evident. *Mills Testimony.* Greenwood is ninety-nine percent (99%) occupied with low-income tenants. Currently there are ten to fifteen prospective tenants on a waiting list for the one-bedroom apartments, and twenty-one prospective tenants waiting for two-bedroom and three-bedroom apartments. *Id.*
- (j) Greenwood was initiated in 1967 as a charitable organization under the premise of providing housing and services to those in need; the need is as prevalent in 2002 as it was when Greenwood was founded. *Wynn Testimony.*
- (k) The proper decision was made by the County PTABOA based on the information that was provided by Greenwood. *Todd Testimony.* In its denial, the PTABOA

asserted that Greenwood failed to meet its burden by proving entitlement to tax exemption, showing that the property was used predominantly for charitable uses, and for omitting to cite the specific law under which the exemption was claimed. *Attachment to Board Ex. A; Form 120, Section IV.*

Analysis of the ISSUE

34. Greenwood claims a charitable exemption pursuant to IC § 6-1.1-10-16. To qualify for the requested exemption the Petitioner must present probative evidence that establishes a prima facie case that the property in question is “owned, occupied, and used by a person for *** charitable purposes.” *See*, Section 16 (a) (c) and (e). Also see ¶ 33.
35. Greenwood has provided evidence that it is a nonprofit entity dedicated to the purpose of providing low cost housing to the elderly, low-income multi-family, handicapped, and disabled persons in conjunction with the Federal HUD Section 8 program. Greenwood has presented sufficient evidence via its Articles of Incorporation, Bylaws, letter of contention, and testimony that it is a not-for-profit property owned solely for its charitable purpose of offering low cost housing to those in need.
36. The next showing to be made is whether the property is occupied for charitable purposes. Greenwood claims to occupy this property in totality to provide low-income housing for people in need of help. 100% of the property is rented to elderly, low-income multi-family, handicapped, and disabled persons. The residents are only required to pay 30% of their gross income, less certain deductions, for rent. The average income of the residents of Greenwood is \$5,566.00. Greenwood has presented sufficient evidence indicating the property is occupied for a charitable purpose
37. The third and final test is whether Greenwood’s predominate use of the property is question should be classified as charitable.

38. Pursuant to IC § 6-1.1-10-36.3(a) “ *** property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.”
39. In determining whether property qualifies for tax exemption, predominant and primary use of property is controlling. See *NAME*, 671 N.E. 2d at 221.
40. Greenwood presented probative evidence through testimony and exhibits that the predominant, primary, and in fact, the only use of the property is to provide low-income housing in Richmond, Wayne County, Indiana. See ¶ 34 (a) – (f).
41. Greenwood’s primary purpose of ownership of the subject property is its charitable mission. The record indicates that Greenwood receives no profit or financial gain from the ownership of the subject property. The property is exclusively used and occupied for its charitable cause. Greenwood’s charitable mission, which began in 1967, was clearly accomplished and is still applicable in the 2002 assessment year.
42. The County PTABOA claimed Greenwood’s record was incomplete and did not contain sufficient evidence to meet their burden at the local hearing. However, the PTABOA did not rebut Greenwood’s charitable cause or whether its burden was met at the subsequent Board hearing.
43. Based on the above analysis, it is clear that the predominant and only use of the Greenwood property is to provide housing for low-income, less fortunate persons from the Richmond area within the statutory requirements of IC § 6-1.1-10-16 and current case law. Therefore, Greenwood is entitled to a property tax exemption on the property. The action of the Wayne County PTABOA is overturned and the land, improvements and personal property are determined to be 100% exempt.

Summary of Final Determination

Whether Greenwood Apartments qualifies for personal and real property tax exemption in accordance with IC § 6-1.1-10-16

44. Greenwood is owned exclusively to further an exempt purpose within the statutory requirements of IC § 6-1.1-10-16. Therefore, Greenwood has entitlement to a 100% property tax exemption for its personal and real property for the 2002 assessment year.

Other Findings

45. The Respondent made an objection to Petitioner's Exhibit 1, claiming it hadn't been presented at the PTABOA hearing or offered as part of Greenwood's discovery materials. The Board declines to conduct an in-depth analysis of the procedural rules as they pertain to this appeal as such an analysis would have no bearing on the outcome of this determination.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

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