

REPRESENTATIVE FOR PETITIONER:
Barton T. Sprunger, Attorney, Ice Miller LLP

REPRESENTATIVE FOR RESPONDENT:
Mark Thiros, Attorney, Cohen & Thiros

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Horace Mann Ambridge Neighborhood)	On Appeal from Determinations
Improvement Organization, Inc.,)	of the Lake County Property Tax
)	Assessment Board of Appeals
Petitioner,)	
)	
v.)	Petitions: 45-004-04-2-8-00015, <i>et seq.</i> ¹
)	
Lake County Assessor,)	
)	
Respondent.)	Assessment Year: 2004
)	

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

June 9, 2009

FINAL DETERMINATION

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

¹ The Petitioner filed 27 petitions, which are numbered consecutively from 45-004-04-2-8-00015 through 45-004-04-2-8-00041.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board was whether the properties at issue in these appeals were owned, occupied, and used for charitable purposes under Ind. Code § 6-1.1-10-16.

PROCEDURAL HISTORY

2. Horace Mann Ambridge Neighborhood Improvement Organization, Inc., (HMANIO), filed Form 136 Applications for Property Tax Exemption with the Lake County Property Tax Assessment Board of Appeals (PTABOA) on May 5, 2004. The Lake County PTABOA issued its determinations denying the exemptions on October 12, 2006. On November 9, 2006, HMANIO filed Form 132 Petitions for Review of Exemption, petitioning the Board to conduct an administrative review of its petitions.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4, Ellen Yuhan, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2, held a hearing on the petitions on February 10, 2009, in Crown Point, Indiana.
4. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Finis L. Springer, HMANIO Board member
Shirley Stanford, 2nd District Councilwoman, City of Gary
Gwendolyn Sims, Certified Residential Appraiser
Pamela Christmas, Tenant
Yvonne Anderson, HMANIO housing employee
Zirl Smith, Executive Director, HMANIO

Rosie Thomas, Executive Director, Lake County Minority Health Coalition
Nadine McDowell, Vice-president, HMANIO

For the Respondent:

Edward Gholsen, Deputy Assessor, Calumet Township.

5. The following exhibits were presented:

For the Petitioner:

Petitioner Exhibit A – IRS tax-exempt letter,
Petitioner Exhibit B – Certificate of Incorporation, Articles of
Incorporation,
Petitioner Exhibit C – Constitution and By-laws,
Petitioner Exhibit D – 2001, 2002, and 2003 Audited Financial
Statements,
Petitioner Exhibit E – Map showing HMANIO boundaries,
Petitioner Exhibit F – List of petitions, parcel numbers, addresses,
assessed values and the property record cards,
Petitioner Exhibit G – HMANIO property data summary,
Petitioner Exhibit H – HUD fair market rent history and the report of
Gwendolyn F. Sims, Certified Residential
Appraiser,
Petitioner Exhibit I – HMANIO Interview Questionnaires and Rental
Agreement,
Petitioner Exhibit J – Letters from Brothers Uplifting Brothers, the Gary
Common Council, and Edgewater Systems,
Petitioner Exhibit K – U. S. Census Bureau facts for Gary, IN for 2000,
Petitioner Exhibit L – Rev. Proc. 96-32, Low-income Housing Guidelines,
Petitioner Exhibit M – Memorandum of Law,
Petitioner Exhibit N – Letter, brochures, and newsletters,
Petitioner Exhibit O – Correspondence to the Lake County PTABOA,

The Respondent did not present any exhibits.

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

Board Exhibit A – Form 132 with attachments,
Board Exhibit B – Notice of Hearing dated December 3, 2008,
Board Exhibit C – Order Regarding Conduct of Exemption Hearing dated
December 30, 2008,

Board Exhibit D – Stipulation of the issues,
Board Exhibit E – Stipulation listing the petitions consolidated for the hearing
with the parcel numbers, addresses, and assessed values,
Board Exhibit F – Hearing sign-in sheet.

7. The subject properties include Parcel No. 254400490035, located at 600 Polk St., which is a four unit residential property leased to Edgewater Systems; Parcel No. 254400800013, located at 524 Jefferson St., which is a vacant lot; Parcel No. 254400950004, located at 1020 W. 5th Ave., which is a seven unit residential property, four of which are leased by Brothers Uplifting Brothers; Parcel No. 254400950015, located at 420 Polk St., which is a single family residential rental property; Parcel No. 254400950016, located at 418 Polk St., which is a two unit residential rental property; Parcel No. 254400950018, located at 414 Polk St., which was a property in foreclosure at the time of the assessment; Parcel No. 254400950019, located at 412 Polk St., which is a single family residential rental property; Parcel No. 254400950020, located at 410 Polk St., which is a two unit residential rental property; Parcel No. 254400960030, located at 437 Polk St., which was a property in foreclosure at the time of the assessment; Parcel No. 254400960038, located at 453 Polk St., which is a single family residential rental property; Parcel No. 254400990022, located at 420 Jackson St., which is a three unit residential rental property; Parcel No. 254400990023, located at 418 Jackson St., which is a three unit residential rental property; Parcel No. 254400990024, located at 416 Jackson St., which is a single family residential rental property; Parcel No. 25440990025, located at 414 Jackson St., which is a two unit residential rental property; Parcel No. 254400990026, located at 412 Jackson St., which is a two unit residential rental property; Parcel No. 254400990027, located at 410 Jackson St., which is a two unit residential rental property; Parcel No. 254400990029, located at 406 Jackson St., which is a single family residential rental property; Parcel No. 254400990030, located at 404 Jackson St., which is a residential property provided to the Gary City Police; Parcel No. 254401000033, located at 405 Jackson St., with is a two unit residential rental property; Parcel No. 254401000034, located at 407 Jackson St., which is a two unit residential rental property; Parcel No. 254401000035, located at 409 Jackson St., which is a two unit

residential rental property; Parcel No. 254401000036, located at 411 Jackson St., which is a three unit residential rental property; Parcel No. 254401000037, located at 413 Jackson St., which is a single family residential rental property; Parcel No. 2554401000038, located at 415 Jackson St., which is a four until residential rental property; Parcel No. 254401000039, located at 417 Jackson St., which is a single family residential rental property; Parcel No. 254401650011, located at 764 Grant St., which is a three unit residential rental property; and Parcel No. 254401780004, located at 1614 W. 5th Ave., which serves as the HMANIO offices and houses the Lake County Minority Health Coalition.

8. For 2004, the PTABOA determined the properties were 100% taxable.
9. For 2004, the Petitioner contends all of the properties should be 100% tax exempt.

JURISDICTIONAL FRAMEWORK

10. 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. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

11. 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).

12. 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. Wash. 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”).
13. 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

14. 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.
15. Use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *See Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810, 813 (Ind. Tax Ct. 1996) (non-profit status does not automatically entitle a taxpayer to tax exemption).
16. 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).

17. 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 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E. 2d 936, 938 (Ind. Tax Ct.1987).

PETITIONER'S CONTENTIONS

18. The Petitioner contends the properties should be exempt under Ind. Code § 6-1.1-10-16 because the properties are owned, occupied and used for charitable purposes.
19. The Petitioner presented the following evidence in regard to the issue:
 - A. The Petitioner contends HMANIO is a 501(c)(3) federal, tax-exempt entity and an Indiana nonprofit corporation founded for the purposes of rehabilitating housing, combating neighborhood deterioration, and providing safe, decent, and affordable homes to low income individuals and families. *Sprunger argument*. In support of this contention, the Petitioner presented an Internal Revenue Service (IRS) letter granting tax-exempt status to the Petitioner, a State of Indiana Certificate of Incorporation, HMANIO's Articles of Incorporation, and HMANIO's By-laws and Constitution. *Petitioner Exhibits A-C*.
 - B. The Petitioner further contends the IRS has determined that the provision of housing for low-income persons accomplishes a charitable purpose by fulfilling the needs of the poor and distressed. *Petitioner Exhibit L and Petitioner Exhibit M at 9*. According to the IRS's "safe harbor" provisions, if 75% of a property's units are occupied by residents that qualify as low-income, the housing provider is charitable

- under IRS rules. *Id.; Sprunger argument.* Mr. Sprunger argues that HMANIO meets the “safe harbor” requirements because HMANIO is 100% occupied by residents below the low-income threshold. *Sprunger argument.*
- B. The Petitioner also argues that the Tax Court has recognized that the provision of low-income housing can be a charitable purpose. *Sprunger argument; Petitioner Exhibit M at 9.* Mr. Sprunger argues that in the *College Corner* case, the Tax Court held that an organization whose purpose was to revitalize housing and the neighborhood qualified for exemption. *Id.* According to the Petitioner, HMANIO’s activities combat neighborhood deterioration and it lessens the burden of the government. *Sprunger argument; Petitioner Exhibit M at 12.* Thus, Mr. Sprunger contends, HMANIO does exactly what the Tax Court found exempt in the *College Corner* case. *Id.*
- C. The Petitioner’s witness, Ms. Springer, testified that HMANIO was established in 1979 as a result of the efforts by Vista Volunteers to decrease the number of homes abandoned because of suburban flight, neighborhood changes and the banks’ and insurance companies’ practice of redlining. *Springer testimony.* The Petitioner’s witness, Ms. McDowell, testified that when the Community Restoration Act (CRA) was enacted, the banks were forced to cease redlining in order to comply with the law and they also had to partner with a non-profit organization. *McDowell testimony.* HMANIO was the first Community Development Corporation (CDC) in Indiana and the only one in the area. *Id.; Springer testimony.* As a result of its partnership with local banks, HMANIO was able to help their residents get mortgages and home improvement loans. *McDowell testimony.*
- D. Ms. Springer testified that all of the property owned by HMANIO was donated or cost \$1. *Springer testimony.* According to Ms. Springer, HMANIO asked for donations and gifts to rehabilitate the properties and then sold them. *Id.* HMANIO also built a Tot Lot and a basketball court to revitalize the neighborhood. *Id.* Ms.

Springer further testified that HMANIO worked with the Nehemiah Project. *Springer testimony*. According to Ms. Springer, the Nehemiah Project was a federal grant program for non-profit organizations which gave HMANIO \$15,000 which they had to match. *Id.* The program allowed HMANIO to rehabilitate properties and sell them at below market pricing and below market interest rates. *Id.*; *Smith testimony*. HMANIO's first project was to rehabilitate the historical Thomas Edison homes on Polk and Jackson that had fallen into decay. *Springer testimony*.

- E. Mr. Smith testified that HMANIO also administers the Individual Development Accounts (IDA) program for the Gary area. *Smith testimony*; *Petitioner Exhibit N*. According to Mr. Smith, the IDA program helps people save money to buy a house or to further their education. *Id.* Individuals deposit money in the IDA and the state matches \$3 for every dollar saved, up to \$300. *Id.* HMANIO also sponsored a Home Buyers' Club for families to help them correct credit problems and obtain a mortgage. *Smith testimony*.
- F. Mr. Smith testified that if the properties that HMANIO sold went into foreclosure, HMANIO worked with the banks to get them back and then they either resold them at below market interest rates or leased them at below market rental rates. *Smith testimony*. For example, Mr. Smith testified that 414 Polk Street and 437 Polk Street were foreclosures, which HMANIO reacquired out of foreclosure. *Id.* Mr. Smith admitted, however, that HMANIO did not own the two properties on the assessment date.
- G. Ms. Springer testified that, while HMANIO preferred to sell its properties to low income families, in 2003 the organization received a request from the Housing Authority to provide suitable living space for people being displaced from public housing for the Hope VI project. *Springer testimony*. The Hope VI project was a governmental program to provide low income housing. *Id.* Because HMANIO had units available, HMANIO rented them to the families relocated by the Miller project. *Id.* Mr. Smith testified that HMANIO does not profit from the rentals. *Smith*

- testimony*. In fact, the overhead and the administrative costs of the properties come out of grants that actually subsidize the rental program. *Id.*
- H. The Petitioner argues that the properties on appeal consist mainly of rental properties whose occupants are low-income individuals and families. *Sprunger argument*. In fact, the Petitioner argues, 60% of the families served by HMANIO are below the very low income limit, which is 50% of area median income. *Id.* In support of this contention, the Petitioner presented a property data summary showing the use of the units, the rents, and the gross annual income of the occupants. *Petitioner Exhibit G*.
- I. Further, the Petitioner argues, it rents its properties at below market rates. *Sprunger argument*. According to the Petitioner's witness and exhibits, HMANIO rented its 2-bedroom units for \$450 in 2004. *Sims testimony; Petitioner Exhibit G*. Ms. Sims testified that the average market rent for a 2-bedroom unit was \$600 and the Section 8 rent for a 2-bedroom was \$755 at that time. *Sims testimony; Petitioner Exhibit H*. In support of this contention, the Petitioner presented its property data summary, the HUD fair market rent history, and an evaluation of the 2004 rental market prepared by Gwendolyn F. Sims, a certified residential appraiser. *Petitioner Exhibits G and H*.
- J. In addition, some of the properties on appeal serve other charitable functions. *Sprunger argument*. For example, the property located at 600 Polk Street is a four unit, multi-family building that is leased to Edgewater Systems, a 501(c)(3) organization that provides services for the developmentally disabled. *Smith testimony; Petitioner Exhibit G*. Similarly, HMANIO leases four units of a seven-unit apartment building at 1020 W. 5th to Brothers Uplifting Brothers, another 501(c)(3) charitable organization, that provides housing for people with HIV and AIDS. *Smith testimony; Petitioner Exhibit J*.
- K. Mr. Smith also testified that the property located at 524 Jefferson was donated to the Hope VI project. *Smith testimony*. According to Mr. Smith, HMANIO demolished the structure on that parcel and donated the land to the low income housing project.

- Id.* The Petitioner likewise donated lots to the Greater Educational Opportunities Foundation for the 21st Century Charter School. *Id.*
- L. In addition, Mr. Smith testified that 404 Jackson was rented to the Gary Police Department for \$1 as part of a program called “Weed and Seed” to assure a police presence in the neighborhood. *Smith testimony.* In return for housing, the police did neighborhood watch programs and worked with the neighbors on eradicating crime and making sure abandoned homes were not further damaged. *Id.*
- M. Finally, Mr. Smith testified, the property located at 1614 W. 5th Street consists of two buildings – one is the HMANIO headquarters and the other is leased to the Lake County Minority Health Coalition (the Health Coalition), another 501 (c)(3) organization. *Smith testimony; Petitioner Exhibits G and M.* The Petitioner’s witness, Ms. Thomas testified that the Health Coalition has leased space from HMANIO since 1996. *Thomas testimony.* The Health Coalition and HMANIO support each other by referring clients to each other when appropriate. *Id.* The Health Coalition also provides health information for HMANIO’s newsletters and HMANIO provides housing information to the Health Coalition for the same reason. *Id.* According to Ms. Thomas, the HMANIO staff also volunteers at the Health Coalition health fairs and other programs. *Id.*
- T. Thus, the Petitioner argues, the evidence shows that HMANIO is a tax-exempt organization that operates without profit to any individual. *Sprunger argument.* Further, HMANIO is in the business to benefit the community, low-income individuals, and individuals such as the developmentally disabled. *Id.* HMANIO is an organization that would operate at a loss if not supported and subsidized by public charities. *Id.* Mr. Sprunger argues that HMANIO has met the “safe harbor” requirements for federal tax exemption and state tax exemption. *Id.* Thus, the Petitioner concludes, HMANIO should be exempt from property taxation. *Id.*

RESPONDENT'S CONTENTIONS

20. The Respondent contends that the Petitioner does not qualify for a charitable exemption.
21. The Respondent presented the following in regard to this issue:
- A. The Respondent contends that HMANIO's rental properties do not qualify as a charitable use. *Thiros argument*. The Respondent argues that the stated missions and goals of HMANIO are to revitalize the neighborhood and to engage in the rehabilitation of houses, buildings and other structures. *Id.* Thus, the Respondent argues, it is not HMANIO's purpose is to alleviate the burdens of government, or alleviate the hardship on mankind. *Id.* Nor was HMANIO intended to provide low-income rental properties. *Id.*
- C. Furthermore, the Respondent contends that the properties are not being rented for below market rent. *Thiros argument*. In support of this contention, the Respondent presented the testimony of Mr. Gholsen. *Gholsen testimony*. Mr. Gholsen testified that an apartment project similar to the subject properties in Gary, Kelwood Apartments, consists of 2-bedroom townhouses, which rented for \$450 a month in 2004. *Id.* According to Mr. Gholsen, conventional 2-bedroom apartments with water, sewer, and trash included rented for \$525. *Id.* Similarly, Mr. Gholsen testified that he looked at single-family homes in different areas of Gary. *Gholsen testimony*. According to Mr. Gholsen, 3- and 4-bedroom homes in Miller rented for between \$375 and \$450 in 2004 and a 3-bedroom, single-story home closer to the Horace Mann area rented for \$450. *Id.*
- D. Mr. Gholsen testified that, in regard to 1614 W. 5th, the property record card shows one building with 1,400 square feet consisting of a basement, 1st and 2nd floors and assessed as general office. *Gholsen testimony*. In his opinion, commercial office space would have rented for \$2.00 to \$3.50 per square foot in 2004. *Id.* According to

- Mr. Gholsen, the monthly rent would equal the area of the building multiplied by the rental rate and divided by 12 months. *Id.* Mr. Thiros calculated that at \$3.50 a square foot, the rent for the property would be \$408 a month. *Thiros argument.*
- E. Mr. Gholsen testified that Edgewater paid rent in the amount of \$1,768 for four units, or \$442 per unit for the property located at 600 Polk Street. *Gholsen testimony.* Mr. Gholsen testified that he believed that was “around market rent” for 2004. *Id.* Similarly, the seven-unit building at 1020 W.5th Avenue rented for \$415 for a 1-bedroom apartment. *Id.* Mr. Gholsen testified that rent was only a “little less than market rent.” *Id.* Similarly, Mr. Gholsen testified that he believes the 2-bedroom units at \$515 are equivalent to market rent, but, he argues, no information was given as to what, if any, utilities were included. *Id.*
- F. Mr. Gholsen contends the HUD rental information in Petitioner Exhibit H is not the best source of information for a median or market rent for Gary because the data is from Lake and Porter Counties combined. *Gholsen testimony.* According to Mr. Gholsen, Gary is unique because of its serious issues concerning education and crime. *Id.* Thus, Mr. Gholsen argues, tenants will not pay the same rents in Gary as they would in other more desirable areas. *Id.*
- G. The Respondent argues that the Petitioner’s properties receive the benefit of government services, such as police and fire protection and should not be exempt. *Thiros argument.* The Respondent further argues that the vacant lot is not used for charitable purposes and exemption should be denied. *Id.* In addition, 414 Polk Street and 437 Polk Street were in foreclosure and were not owned by HMANIO at the time and therefore those properties are not entitled to tax exemption. *Id.* The Respondent argues that the only parcel that is being used charitably is the property used by the Gary Police Department because HMANIO’s other tenants are paying market rent. *Id.*

H. Finally, the Respondent argues that if the Board somehow finds that HMANIO's use of the properties was charitable, the properties should only be granted a partial exemption. *Thiros argument*. According to Mr. Thiros, if fair market rent is \$700 for a 2-bedroom unit and HMANIO's tenants are paying \$450, the exemption should be granted on a percentage basis. *Id.*

ANALYSIS OF THE ISSUES

22. Indiana Code § 6-1.1-10-16(a) provides 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.” 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 Bd. of Tax Comm'rs*, 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 Bd. of Tax Comm'rs*, 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 charitably 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 in tax revenue. *College Corner, L.P. v. Dept. of Local Govt. Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2008).
23. Mr. Sprunger argues that HMANIO does exactly what the Tax Court talked about in *College Corner*. In that case, the taxpayer was formed to revitalize the College Corner area of the city's historic 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 an exemption. *College Corner*, 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

24. 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 can be returned 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 rental properties which would remove the properties from the tax rolls as long as it owns the properties and the properties continue in their current use. This is different from the situation at issue in *College Corner* and is a difficult case because of that difference.
25. The Board has denied exemption in the past for low income rental properties based on incentives the property owners have received to construct and operate such housing. 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).

26. Contrary to those prior cases, however, here the Petitioner has shown that the purpose of its organization is revitalization and neighborhood preservation. HMANIO provides housing to low-income individuals and families as part of that mission to revitalize and preserve the neighborhood. Although the properties at issue were rental properties, there was no evidence that HMANIO provided the housing as part of a contractual agreement or as a condition precedent to receiving federal funds. Further, although HMANIO received some state and federal funds, its activities were largely accomplished through grants and donations. More than just providing rental properties to low income families, however, HMANIO provides services to those families to achieve their goal of home ownership.
27. The Petitioner contends that it rents its units at below market rates and presented evidence showing the HUD rental rates, the market rents, and the rents that HMANIO charges. Further, the Petitioner has shown that the properties rented to entities other than

individuals are leased to other 501(c)(3) organizations, such as Lake County Minority Health Coalition, Brothers Uplifting Brothers, and Edgewater, that are engaged in providing for the health and welfare of vulnerable populations.

28. The Petitioner established a prima facie case that it owns, occupies and uses the subject properties for charitable purposes. Therefore the burden shifted to the Respondent to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent argues that the only property that could be considered as having a charitable use is the property rented to the Gary Police Department for \$1. According to the Respondent, the rents charged by HMANIO for the other rentals are not below market rates and, at best, HMANIO is entitled to only a partial exemption for those.
29. The Respondent contends the market rents and the HUD established rates submitted by the Petitioner do not reflect the rents for Gary, but the Respondent failed to present any documentation to support that contention. The Respondent's witness merely identified a single apartment complex as evidence that the Petitioner's rents were "market" rents and offered vague testimony about rents for other "conventional apartments during that time."
30. The Petitioner, on the other hand submitted a market rent report. Although the report was prepared by an appraiser, the report does not purport to be an appraisal. Therefore, it is presented with none of the assurances of reliability and credibility that an appraisal, by its nature has. The Petitioner's witness, however, supported her evaluation with a HUD market rent history and a median rent survey for Gary, Indiana. Although not the best evidence available, we find the Petitioner's evidence more persuasive than the Respondent's unsupported testimony regarding rental rates at a single individual property.
31. The Respondent also argues that the vacant lot located at 524 Jefferson St., Parcel No. 254400800013, is not entitled to exemption because it is not being used for charitable purposes. The Petitioner, however, demonstrated that it acquired the parcel and

demolished the building for the purposes of donating to property to the Hope VI project for the construction of low income housing.

32. Finally, the Respondent contends that the properties in foreclosure, Parcel No. 254400950018 located at 414 Polk Street and Parcel No. 254400960030 located at 437 Polk Street, do not qualify for exemption because, by its own admission, the Petitioner did not own them on the assessment date. While HMANIO may have later acquired the properties in foreclosure, at the time of the assessment, the properties were either owned by individual families as residences or by the bank as foreclosures and thus, the properties were not “owned, occupied and used” for a charitable purpose.

33. The Board, therefore, determines Parcel No. 254400950018 and Parcel No. 254400960030 are 100% taxable. The Respondent, however, failed to offer sufficient evidence to rebut or impeach the Petitioner’s prima facie case on the remaining parcels. Thus, the Board finds that Parcel No. 254400490035, located at 600 Polk St.; Parcel No. 254400800013, located at 524 Jefferson St.; Parcel No. 254400950004, located at 1020 W. 5th Ave.; Parcel No. 254400950015, located at 420 Polk St.; Parcel No. 254400950016, located at 418 Polk St.; Parcel No. 254400950019, located at 412 Polk St.; Parcel No. 254400950020, located at 410 Polk St.; Parcel No. 254400960038, located at 453 Polk St.; Parcel No. 254400990022, located at 420 Jackson St.; Parcel No. 254400990023, located at 418 Jackson St.; Parcel No. 254400990024, located at 416 Jackson St.; Parcel No. 25440990025, located at 414 Jackson St.; Parcel No. 254400990026, located at 412 Jackson St.; Parcel No. 254400990027, located at 410 Jackson St.; Parcel No. 254400990029, located at 406 Jackson St.; Parcel No. 254400990030, located at 404 Jackson St.; Parcel No. 254401000033, located at 405 Jackson St.; Parcel No. 254401000034, located at 407 Jackson St.; Parcel No. 254401000035, located at 409 Jackson St.; Parcel No. 254401000036, located at 411 Jackson St.; Parcel No. 254401000037, located at 413 Jackson St.; Parcel No. 254401000038, located at 415 Jackson St.; Parcel No. 254401000039, located at 417

Jackson St.; Parcel No. 254401650011, located at 764 Grant St.; and Parcel No. 254401780004, located at 1614 W. 5th Ave., are 100% tax exempt.

SUMMARY OF FINAL DETERMINATION

34. The Board determines the properties owned by HMANIO are owned, occupied, and used for a charitable purpose and are, therefore, 100% exempt, with the exception of Parcel No. 254400950018, located at 414 Polk St., and Parcel No. 254400960030, located at 437 Polk St., which are both 100% taxable.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under 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 Indiana 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/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>