

REPRESENTATIVE FOR PETITIONER:

Sandra K. Bickel, Attorney
Michael N. Red, Attorney

REPRESENTATIVE FOR RESPONDENT:

Sharon S. Meier, Hearing Officer, Porter County

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Hebron-Vision, LLC,	)	Petition No. :	64-001-08-2-8-00001
)		
Petitioner,	)	Parcel Nos.:	17-32105; and
	)		64-14-11-301-006.000-002
v.)		
)		
Porter County Assessor,	)	County:	Porter
	)	Township:	Boone
Respondent.	)	Assessment Year:	2008
)		

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

December 18, 2009

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 Petitioner's real and personal property qualifies for property tax exemption under Indiana Code § 6-1.1-10-16 because the property is predominately used for charitable purposes.

PROCEDURAL HISTORY

2. The Petitioner, Hebron-Vision, LLC (Hebron-Vision), filed an exemption application for its real and personal property for 2008.
3. The Porter County Property Tax Assessment Board of Appeals (PTABOA) granted a partial exemption on the real property on July 28, 2008. The Petitioner filed its Petition for Review of Exemption (Form 132) on September 11, 2008.
4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Ellen Yuhan, held a hearing on September 16, 2009, in Valparaiso, Indiana.
5. The following persons were sworn as witnesses:

For the Petitioner:

Brian L. Ploss, CFO of Flaherty and Collins,
Wendy Conner, Regional Property Manager, Flaherty and Collins,
Sharon J. Hill, Property Manager of Misty Glen,
Michelle Teague, Resident of Misty Glen,
Lynette Wallace, Resident of Misty Glen,

For the Respondent:

Sharon Meier, Hearing Officer for Porter County,
Peggy Hendron, Deputy Assessor for Porter County.

6. The Petitioner submitted the following exhibits:

Petitioner Exhibit A – The Petitioner’s Amended Petition, dated October 24, 2008; the Amended Notice of Action on Exemption Application, dated September 12, 2008; a cover letter and the Petitioner’s original Petition, filed September 1, 2008; the original Notice of Action on Exemption Application, dated July 28, 2008; the Amended Notice of Action on Exemption Application, dated September 12, 2008; the Articles of Incorporation and By-laws for Vision Communities, Inc.; the Operating Agreement for Hebron-Vision, LLC; a Letter of Determination from the Internal Revenue Service: the Petitioner’s December 31, 2007, Balance Sheet; the Petitioner’s December 31, 2007, Income Statement; the Petitioner’s December 31, 2006, Income Statement; the Petitioner’s January 1, 2008, rent roll; the 2008 IHCD Income and Rent Limits for Porter County Tenants; and the original Notice of Action on Exemption,

Petitioner Exhibit B – Chart of Distribution of Tax Credits,

Petitioner Exhibit C – 2008 Audited Financial Statements,

Petitioner Exhibit D – Charitable Contribution,

Petitioner Exhibit E – Rent roll as of February 28, 2008,

Petitioner Exhibit F – Rent roll as of January 1, 2008, with incomes,

Petitioner Exhibit G – 2008 Rent and Income Limit Calculator published by Novogradac and Company,

Petitioner Exhibit H – 2008 Income and Rent Limits published by Indiana Housing and Community Development Authority (IHCD),

Petitioner Exhibit I – Utility Allowances for Porter County,

Petitioner Exhibit I(1) – Summary of actual rents and rent limits,

Petitioner Exhibit J – 2008 Misty Glen Selection Criteria Policy,

Petitioner Exhibit K – Calculation of Average Rent for Misty Glen and the Apartment Guide March 2008 Market Rent Survey,

Petitioner Exhibit L – 2008 Comparable Rent Study,¹

Petitioner Exhibit M – List of Resident Services,

Petitioner Exhibit N – Affidavit of Jason Garcia,

Petitioner Exhibit O – Affidavit of Kimberly Krestan,

¹ Ms. Meier argued that the Petitioner’s counsel previously submitted this exhibit to the Respondent as Exhibit J but that no summary sheets were included. Therefore, Ms. Meier argues, she did not have the opportunity to review or verify the information. The Petitioner argues, however, that the Respondent was sent all of the rental information that was included on the summary sheet prior to the hearing in this matter. Thus, the Board finds that there is no prejudice in allowing a summary of that information to be admitted as evidence.

The Petitioner also offered a *Memorandum of Law* in lieu of presenting a closing argument at hearing.

7. The Respondent submitted the following exhibits:
 - Respondent Exhibit 1 – The subject property’s property record card,
 - Respondent Exhibit 2 – The PTABOA determination,
 - Respondent Exhibit 3 – Indiana Code § 6-1.1-10-16-7,
 - Respondent Exhibit 4 – Indiana Code § 6-1.1-10-16,
 - Respondent Exhibit 5 – The Board’s decision in *Grandview Care, Inc.*,
 - Respondent Exhibit 6 – The Board’s decision in *Sheltering Palms Foundation, Inc.*
 - Respondent Exhibit 7 – the Board’s decision in *Memorial Place, Memorial Pointe.*

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- Reschedule dated July 8, 2009,
 - Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
 - Board Exhibit D – Hearing sign-in sheet.

9. The subject property is an improved commercial property known as Misty Glen Apartments which includes five buildings housing eighty apartment units located at 99 Misty Lane, Hebron, Indiana.

10. For 2008, the Porter County PTABOA determined the Petitioner’s real property and personal property to be 10% exempt.

11. For 2008, the Petitioner claims its real and personal 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; 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

13. 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).
14. 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”).
15. 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

16. 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.

17. 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).
18. 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)).
19. 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).

PARTIES' CONTENTIONS

20. The Petitioner contends its real and personal property is eligible for 100% exemption pursuant to Indiana Code § 6-1.1-10-16 because it is owned, occupied and used for charitable purposes.
21. The Petitioner presented the following evidence in regard to this issue:

- A. The Petitioner’s counsel argues that Hebron-Vision owns and operates Misty Glen Apartments to provide safe, decent, and affordable housing for tenants whose income is no more than 60% of the average median income (AMI) in Porter County. *Bickel argument; Petitioner Exhibits A and E through G.* According to Ms. Bickel, Hebron-Vision’s sole member, or shareholder, is Vision Communities, Inc., a 501(c)(3) federal, tax exempt entity and an Indiana nonprofit corporation, which is organized and operated exclusively for charitable purposes. *Id.; Petitioner Exhibit A.* Thus, the Petitioner argues, the property is owned, operated, and occupied for charitable purposes and is qualified for 100% exemption because the Petitioner rents all of its apartment units to qualifying low-income tenants. *Id.*
- B. The Petitioner’s witness, Brian Ploss, testified that Hebron-Vision purchased the property in September 2007, from Hebron-Pointe, LP. *Ploss testimony; Petitioner Exhibit D.* According to Mr. Ploss, Hebron-Pointe was a for-profit entity that operated Misty Glen under the federal government’s Section 42 program. *Id.* Mr. Ploss testified that at the time Hebron-Vision purchased the property the Section 42 tax credits had expired. *Id.; Petitioner Exhibit B.* The property, however, must still be operated under the Section 42 guidelines for the remaining twenty years of the thirty-year program. *Ploss testimony; Conner testimony.*
- C. Mr. Ploss further testified that the project is not operating under any other federal program and does not receive any federal or state subsidies. *Ploss testimony.* According to Mr. Ploss, there are some tenants who receive Section 8 vouchers, but the vouchers are a form of payment to Misty Glen. *Id.* Ms. Bickel contends Misty Glen cannot charge more to any Section 8 tenant than it would charge anyone else. *Bickel argument.* According to Ms. Bickel, Section 8 is a federal program that benefits the tenant, not the property. *Id.*

- D. Mr. Ploss also testified that the property is operating at a loss. *Ploss testimony*. According to Mr. Ploss, as of December 31, 2008, the loss was approximately \$48,000. *Id.*; *Petitioner Exhibit C*. As of July 2009, the operating loss will be \$10,000 for the year if the Petitioner must pay property taxes on the apartment complex. *Ploss testimony*. In rebuttal, Mr. Ploss argued that a developer would not purchase the property because the rent on the units cannot be raised above the Section 42 guidelines. *Id.* Further, Mr. Ploss contends, the property's purchase price would be so low, that a seller could not cover its debt in the sale. *Id.*
- E. The Petitioner argues that the apartments at Misty Glen rent for considerably less than both the Section 8 fair market rent (FMR) and the Indiana Housing and Community Development Authority (IHCDA) maximum rent less utility allowance. *Conner testimony*; *Petitioner Exhibit I-1*. The Petitioner's witness, Wendy Conner, testified that as of February 28, 2008, Hebron-Vision rented a one-bedroom apartment for \$509, a two-bedroom unit for \$599 and a three-bedroom for \$669. *Conner testimony*; *Petitioner Exhibit E*. According to Ms. Conner, the Section 8 FMR is \$611 for a one-bedroom apartment, \$691 for a two-bedroom apartment, and \$890 for a three-bedroom apartment. *Id.* Similarly, the maximum rents allowed under Section 42, the low-income housing tax credit program for Porter County are \$690 for a one-bedroom unit, \$829 for a two-bedroom unit, and \$957 for a three-bedroom unit pursuant to IHCDA. *Conner testimony*; *Petitioner Exhibit H*. The IHCDA rent limits, however, are reduced by a utility allowance. *Id.*; *Petitioner Exhibit I*.
- F. Further, the Petitioner argues, its rents are "below market" rents. *Bickel argument*. According to Ms. Conner, the Apartment Guide determined that for March 2008, the average conventional rent was \$799, the average subsidized rent was \$632, and the average student rent was \$772 in the area which includes Hebron. *Conner testimony*; *Petitioner Exhibit K*. Ms. Conner

argues that the average rent for Misty Glen is \$605, which is lower than the average subsidized rent shown in the market survey. *Id.* Similarly, the Petitioner's witness, Sharon Hill, testified that she compiled information on comparable rental properties in the area. *Hill testimony.* According to Ms. Hill, Misty Glen's rents were less than the market rents and, in most case, less than the rent charged at properties operating under a government program. *Id.* In support of this contention, the Petitioner submitted a summary of rents and amenities for the subject property and comparable rental properties.

Petitioner Exhibit L.

G. In addition, the Petitioner argues, it provides services for its residents that are different from the services offered by conventional apartment complexes. *Bickel argument.* According to Ms. Hill, Hebron Vision provides monthly newsletters, referral programs, contests for adults and children, and holiday parties and dinners for the Misty Glen residents. *Hill testimony; Petitioner Exhibit M.* Other services provided for the residents include: monthly neighborhood meetings where safety topics are discussed; access to a business center with computers, Internet access, a printer, and office supplies; free blood pressure screening; and information about day care and the Head Start program. *Id. Petitioner Exhibits M and O.* Ms. Hill testified that she also helps residents with their paperwork and faxes and notarizes documents for them. *Hill testimony; Petitioner Exhibit O.*

H. Ms. Hill testified that the philosophy at Misty Glen is to make a home for the residents. *Hill testimony.* According to Ms. Hill, if the residents are in need of assistance she goes above and beyond to help. *Id.* For example, Ms. Hill testified that she has helped tenants move in and move out of the complex; she has helped them obtain furniture and she has found resources for the tenants to obtain employment, food, or assistance with utility costs. *Id.* Ms. Hill testified that she has also personally provided transportation for some residents and babysat for others. *Id.* In one instance, after obtaining approval

from the regional office, Ms. Hill testified that she allowed a tenant to shovel snow in lieu of paying rent when the check he received from his employer was returned as having insufficient funds. *Id. Petitioner Exhibit N.*

- I. In support of its contentions, the Petitioner presented the testimony of two residents and the affidavits of two additional residents. *Teague testimony; Wallace testimony; Petitioner Exhibits N and O.* The tenants testified that Misty Glen provides a stable, clean, safe, and secure environment for their families and that the community has a friendly, supportive atmosphere. *Id.* According to Ms. Teague, Ms. Hill helped familiarize her with the area and find a job. *Teague testimony.* In addition, Ms. Teague testified, Ms. Hill supplied information on transferring her children to the local schools and helped her find a car. *Teague testimony.* Similarly, Ms. Wallace testified that Ms. Hill helped her with her Section 8 and Section 42 forms and drove her to the school to register her children because she does not have a car. *Wallace testimony.* According to Petitioner’s counsel, Ms. Hill provides the services she does to the residents of Misty Glen because it is the policy of Hebron-Vision and Vision Communities. *Bickel argument.*

- J. The Petitioner’s counsel contends the Internal Revenue Service (IRS) routinely recognized that affordable housing organizations, given certain criteria, will be considered to relieve the poor and distressed within the meaning of Code Section 501(c)(3). *Bickel argument; Memorandum of Law.* Specifically, Ms. Bickel argues, the IRS published Revenue Procedure 96-32, which provides a “safe harbor” and presents guidelines that, if met, ensure that the activities of affordable housing organizations will be considered to relieve the poor and distressed. *Id.* According to Ms. Bickel, Hebron-Vision meets all of the requirements of Revenue Procedure 96-32. *Id.*

- K. The Petitioner’s counsel further argues that Indiana case law supports a charitable exemption for affordable housing. *Bickel argument; Memorandum*

of Law. According to Ms. Bickel, in *State Bd. of Tax Comm'rs v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. App. 1968), the Court of Appeals determined that Methodist Home, a nonprofit organization which provided care for its aged occupants and which devoted all income, after payment of expenses, to maintaining the home was entitled to total exemption from property taxes. *Id.* The Court also held that charging a fee for residency does not destroy charitable status. Ms. Bickel argues that *Methodist Home* demonstrates that it is appropriate to refer to Federal income tax law when seeking definitions for identical terms that are not defined for purposes of a particular Indiana tax provision. *Id.* Ms. Bickel also cited *Raintree Friends Housing Inc. v. Ind. Dep't of State Revenue*, 667 N.E.2d 810 (Ind. Tax 1996), in her argument. *Id.*

- L. Similarly, the Petitioner argues that the Board has held on numerous occasions that affordable housing was exempt. *Bickel argument.* According to Ms. Bickel, in the *Grandview Care* case, the property was an affordable housing property owned by a 501(c)(3) which charged affordable rent and provided services to its low-income tenants. *Id.* Ms. Bickel also cited to *Sheltering Palms Foundation* and *Horace Mann Ambridge Neighborhood Improvement Organization* in which she asserts the Board granted exemption for affordable housing. *Id.*
- M. Ms. Bickel contends that the facts in a recent Tax Court decision in which the Court denied an exemption for low income housing, *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, Cause No. 49T10-0802-TA-17 (Ind. Tax Ct., July 24, 2009), are distinguishable from the Petitioner's case. *Bickel argument; Memorandum of Law.* According to Ms. Bickel, in *Jamestown Homes*, the IRS did not recognize the property owner as a 501(c)(3) organization. *Id.* Additionally, Jamestown rented apartments to individuals whose incomes were at or below 95% of AMI and so it did not meet the requirements of Revenue Procedure 96-32. *Id.* The Court

determined that Jamestown did not show any evidence indicating that there were welfare clients in its apartments nor did it demonstrate that it lessened the burden of government in meeting the need for affordable housing because that need was ultimately being met by the government through a mortgage interest subsidy. *Id.*

- N. Moreover, the Petitioner's counsel argues, in 2002, the General Assembly enacted Indiana Code § 6-1.1-11-3.8(2)(c)(4) which requires an exempt not-for-profit that leased its property to provide a copy of that lease to the PTABOA. *Bickel argument.* According to Ms. Bickel, one of the specific types of properties exempted from this requirement is an affordable housing development. *Id.* Thus, Ms. Bickel argues, if the General Assembly exempted affordable housing developments from submitting its leases, it clearly means the General Assembly intended that affordable housing properties are exempt. *Id.*
- O. In her rebuttal argument, Ms. Bickel contends that Indiana Code §6-1.1-10-16.7 applies to Section 42 properties that have entered into an agreement for payments in lieu of taxes, PILOTS, in the same amount of the taxes. *Bickel argument.* However, Ms. Bickel argues, this applies when the property is actually being funded by Section 42. *Id.* Section 42 properties are never 501(c)(3) organizations because they are owned by a for-profit entity, a limited partnership, and are expected to pay taxes. *Id.* According to Ms. Bickel, this provision does not apply to the subject property because it is now owned by a 501(c)(3), not-for-profit, charitable organization. *Id.*
22. The Respondent contends the property is not entitled to a 100% exemption.
23. The Respondent presented the following evidence in regard to the issue:

- A. The Respondent's witness, Ms. Meier, contends the PTABOA granted a 10% exemption based on the fact that only 10% of the apartments are rented to Section 8 tenants. *Meier testimony*. According to Ms. Meier, the minutes from the PTABOA hearing show that the property is no longer Section 42 housing. *Id.* In support of this contention, the Respondent submitted the minutes from the PTABOA hearing. *Respondent Exhibit 2*.
- B. Further, the Respondent's witness contends that Indiana Code § 6-1.1-10-16.7 applies to an exemption for Section 42 property, not Section 8. *Meier testimony*. In support of this contention, the Respondent submitted a copy of Indiana Code § 6-1.1-10-16.7. *Respondent Exhibit 3*. Ms. Meier argued that it is not clear what percentage of the property is Section 8 and what percentage is Section 42. *Meier testimony*.
- C. Moreover, the Respondent presented Board decisions in *Grandview Care, Inc.; Sheltering Palms Foundation, Inc. v. Madison County PTABOA*; and *Memorial Place Apartments v. Vanderburgh County PTABOA* to show the basis for exemption and the Petitioner's burden to prove that it is entitled to the exemption. *Meier testimony; Respondent Exhibits 5, 6 and 7*. Ms. Meier argues that, "Pursuant to Section 3 of the IRS Revenue Procedure 96-32, the Petitioner must rent at least 75% of the units to residents who also qualify as low-income." *Meier argument*.
- D. Finally, Ms. Meier referred to the definition of "charity" as noted by the Tax Court in *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E.2d at 813, 814 (Ind. Tax 1996). *Meier testimony; Respondent Exhibit 6 at 8*. She contends that the use of a property by a nonprofit entity does not establish any inherent right to exemption. *Meier testimony; Respondent Exhibit 6 at 6*. And she argued that the taxpayer must demonstrate that it provides a present benefit to the general public. *Meier testimony*.

ANALYSIS

24. 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.” Exemption statutes are strictly construed against the taxpayer. 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 charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).
25. The Petitioner’s counsel first argues that Indiana case law supports a charitable exemption for affordable housing as shown in *State Bd. of Tax Comm’rs v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. App. 1968) and in *Raintree Friends Housing Inc. v. Ind. Dep’t of State Revenue*, 667 N.E.2d 810 (Ind. Tax 1996). These cases, however, addressed housing for senior citizens and found that meeting the special needs of seniors is an exempt purpose. “Indiana courts have long recognized that providing care and comfort to the aged constitutes a charitable purpose.” *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.* 826 N.E.2d 177,182 (Ind. Tax Ct. 2005). The Court of Appeals made clear that its exemption determination in *Methodist Home* was not

based on any requirement that the home's residents be low income or any requirement that the rent charged by Methodist Home be below market rent. *State Bd. of Tax Comm'rs v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. App. 1968). As the Court noted, "it is now common knowledge that the aged require care and attention entirely independent of financial needs, and that present day humanitarian principles demand that those in their declining years have the opportunity to live with as much independence as their strength will permit, in as pleasant and happy surroundings as their finances will reasonably justify." *Id.* at 89. Here, the Petitioner did not offer any evidence that it was predominantly used to provide housing to senior citizens. Thus, these cases do not support an exemption for the Petitioner.

26. The Petitioner's counsel further argues that the Board has held on numerous occasions that affordable housing was exempt and cites to three determinations, *Grandview Care, Inc v. Perry County PTABOA and the Perry County Assessor*, *Sheltering Palms Foundation, Inc. v. Madison County PTABOA*, and *Horace Mann Ambridge Neighborhood Improvement Organization, Inc.* in support of her argument. Ms. Bickel acknowledges that the Board has denied an exemption to organizations that provide low income housing pursuant to various government programs because the Board found that it is the federal government that has provided the benefit, not the organization operating pursuant to the federal programs. This was recently upheld by the Indiana Tax Court in *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, Cause No. 49T10-0802-TA-17 (Ind. Tax Ct., July 24, 2009). However, Ms. Bickel argues that the Petitioner's case differs from the Jamestown Homes case because Jamestown Homes was not a 501(c)(3) organization and it did not meet the requirements of Revenue Procedure 96-32. Further, she argues, Jamestown Homes received a mortgage interest subsidy from the government so it did not relieve the burdens of government.

27. The Board recognizes that there are many different programs and numerous organizations that provide what may be considered “low income housing.” The Board does not treat all such organizations and programs as interchangeable, but reviews the facts in each case. Here, Hebron-Vision is owned by a 501(c)(3) organization and rents 100% of its units to tenants with income levels at or below 60% of the average median income in the area. The Petitioner also provided sufficient evidence to raise a prima facie case that its rents are below market rents. While the Petitioner is bound by the Section 42 contract entered into by the former owner of the property to charge such rents, the tax credits related to the Section 42 program have expired and the Petitioner is receiving no federal subsidies to operate the apartment complex. Further, the Petitioner provides services to its residents in the form of monthly newsletters, referral programs, and neighborhood meetings. In addition, the Petitioner provides its residents access to a business center with computers, Internet access, a printer, and office supplies; free blood pressure screening; and information about day care and the Head Start program. Thus, the Board finds that the Petitioner raised a prima facie case that its real and personal property is 100% exempt because it is used for charitable purposes.
28. Once the Petitioner establishes a prima facie case, the burden shifts 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 presented no evidence to rebut or impeach the Petitioner’s prima facie showing that it rents its apartments to low income residents at below market rents. Nor did the Respondent dispute the services that the Petitioner offers to its residents. The Respondent did, however, raise the issue of Indiana Code § 6-1.1-10-16.7 as it relates to Section 42 properties.
18. Indiana Code § 6-1.1-10-16.7 states that “All or part of real property is exempt from property taxation if (1) the improvements on the real property were constructed, rehabilitated, or acquired for the purpose of providing housing to

income eligible persons under the federal low income housing tax credit program under 26 U.S.C. 42, (2) the real property is subject to an extended use agreement under 26 U.S.C. 42 as administered by the Indiana Housing and Community Development Authority; and (3) the owner of the property has entered into an agreement to make payments in lieu of taxes under Ind. Code § 36-1-8-14.2.” Arguably, because the subject property was “constructed, rehabilitated, or acquired for the purpose of providing housing to income eligible persons under the federal low income housing tax credit program under 26 U.S.C. 42” and the property is “subject to an extended use agreement under 26 U.S.C. 42 as administered by the Indiana Housing and Community Development Authority” the property would only be exempt if “the owner of the property has entered into an agreement to make payments in lieu of taxes under Ind. Code § 36-1-8-14.2.” A strict reading of this statute suggests that Section 42 housing could never be exempt without making “payments in lieu of taxes.” The Board, however, recognizes that no tax credits remain on the property and the for-profit entity that originally constructed the property to obtain such tax credits is no longer the owner of the property. The Board further finds that the Petitioner did not “acquire” the property to obtain those tax credits, but to simply provide low income housing to income eligible individuals. Therefore, the Board concludes that Indiana Code § 6-1.1-10-16.7 does not alter the Petitioner’s prima facie showing that it is entitled to exemption.²

SUMMARY OF FINAL DETERMINATION

35. The Petitioner raised a prima facie case that the subject property is owned, occupied, and used for a charitable purpose. The Respondent failed to rebut the Petitioner’s case. The Board finds in favor of the Petitioner and holds that the Petitioner’s land, improvements, and personal property are 100% exempt.

² This finding comports with an earlier Board determination in *Memorial Place, Apts., LP, Memorial Pointe, Apts., LP, Memorial Pointe II, LP v. Vanderburgh County PTABOA* wherein the board held that an exemption for Section 42 housing was precluded until such time as the tax credits expire and the ownership reverted to the General Partner only.

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

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 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>>