REPRESENTATIVES FOR PETITIONER:
Michael Red, Attorney
Paul Jones, Attorney[1]

REPRESENTATIVE FOR RESPONDENT:
John Bushemi, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Hebron-Vision, LLC,	)	Petition Nos.: 64-002-12-2-8-00001
	)	64-002-14-2-8-10138-15
Petitioner,	)	64-002-15-2-8-00193-15
	)	
	)	
v.	)	Parcel No.: 64-14-11-301-007.000-002
	)	
	)	
Porter County Assessor,	)	County: Porter
	)	
Respondent.	)	Assessment Years: 2012, 2014, and 2015[2]

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

May 23 , 2018

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

[1] Attorney Jake Kolisek was present, but only in the capacity as a "record keeper" for the Petitioner.
[2] The Petitioner did not file a separate Form 132 for the 2013 assessment year because according to Ind. Code§ 6-1.1-11-3.5, generally speaking, an application for exemption is only required every two years in even years, and an application is only required in an odd year if an exemption was not received in the preceding year. Accordingly, if the Petitioner prevails in 2012 that exemption carries through to 2013.

ISSUE

Is the subject property exempt from property tax under Ind. Code § 6-1.1-10-16 because the property is predominately used for charitable purposes?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. On May 15, 2012, Hebron-Vision, LLC, (Petitioner), notified the Porter County Assessor (Respondent) that pursuant to Ind. Code § 6-1.1-11-3.5(b) the use of the subject property was the same as it was when it was granted an exemption initially and it requested the exemption for its real and personal property be granted for the 2012 assessment year. The Porter County Property Tax Assessment Board of Appeals (PTABOA) held a hearing on March 12, 2013, and issued its determination on May 30, 2013, finding the Petitioner's real and personal property to be 100% taxable. On June 21, 2013, pursuant to Indiana Code § 6-1.1-11-7, the Petitioner filed a Petition for Review of Exemption (Form 132) with the Board, requesting the Board conduct an administrative review of the 2012 exemption request.

2. On May 15, 2014, the Petitioner filed an Application for Property Tax Exemption (Form 136) seeking an exemption for its real and personal property for the 2014 assessment year. The Porter County PTABOA issued its determination on February 13, 2015, finding the Petitioner's property to be 100% taxable. On April 1, 2015, the Petitioner filed a Form 132 requesting the Board conduct an administrative review of the 2014 exemption request.

3. On May 15, 2015, the Petitioner filed a Form 136 seeking an exemption for its real and personal property for the 2015 assessment year. The Porter County PTABOA issued its determination on September 24, 2015, finding the Petitioner's property to be 100% taxable. On November 6, 2015, the Petitioner filed a Form 132 requesting the Board conduct an administrative review of the 2015 exemption request.

HEARING FACTS AND OTHER MATTERS OF RECORD[3]

4. The Board's designated Administrative Law Judge (ALJ), Tom Martindale, held a two day consolidated hearing commencing on January 18, 2017.[4] Neither the Board nor the ALJ inspected the subject property.

5. The following persons were sworn as witnesses:

For the Petitioner:

Jerry Collins, President of Flaherty & Collins Properties and Board Member/Secretary of Vision Communities, Inc.,
Brian Ploss, CFO of Flaherty & Collins Properties and Board Member/Vice President of Vision Communities, Inc.,
Elizabeth Mutzl, Senior Appraiser from Valbridge Advisors, Inc.,
Wendy Conner, Regional property manager for Flaherty & Collins Properties.

For the Respondent:

Jon Snyder, Porter County Assessor.

6. The Petitioner offered the following exhibits:[5]

Petitioner Exhibit 1(A):	Vision Communities, Inc., Articles of Incorporation,
Petitioner Exhibit 1(B):	Bylaws of Vision Communities, Inc.,
Petitioner Exhibit 1(C):	Vision Communities, Inc., conflict of interest policy,
Petitioner Exhibit 1(D):	Excess benefit transaction policy,
Petitioner Exhibit 1(E):	Internal Revenue Service 501(c)(3) letter to Vision Communities, Inc., dated July 2, 2003,
Petitioner Exhibit 1(F):	Vision Communities, Inc., board of directors list,
Petitioner Exhibit 1(G):	Vision Communities, Inc., 2011 Return of Private Foundation (Form 990),
Petitioner Exhibit 1(H):	Hebron-Vision, LLC, operating agreement,
Petitioner Exhibit 1(I):	*Hebron Vision, LLC v. Porter Co. Ass'r,* Ind. Bd. of Tax Rev. Pet. No. 64-001-08-2-8-00001 (December 18, 2009),
Petitioner Exhibit 1(J):	2010 Form 120,
Petitioner Exhibit 1(K):	Various letters regarding the Hebron-Vision, LLC, appeal,
Petitioner Exhibit 1(L):	Misty Glen rent analysis,

[3] The parties waived the deadlines for the Board's issuance of this Final Determination.
[4] On January 13, 2017, the ALJ also held a telephonic conference with the representatives of each party. The telephonic conference was held in an attempt to dispose of several discovery disputes and to inform the Petitioner's representatives the Board was in receipt of numerous correspondence from local residents regarding the appeal.
[5] Petitioner's Exhibits 8, 14, 17, 20, and 23 were initially offered, but ultimately withdrawn by the Petitioner.

Petitioner Exhibit 1(M):	"Event summaries,"
Petitioner Exhibit 1(N):	2011 Housing and Urban Development (HUD) fair market rents,
Petitioner Exhibit 1(O):	Indiana Housing & Community Development Authority (IHCDA) rent limits,
Petitioner Exhibit 1(P):	Rent limit summary,
Petitioner Exhibit 1(Q):	Market study summaries,
Petitioner Exhibit 1(R):	Misty Glen resident services summary,
Petitioner Exhibit 1(S):	Financial assistance summary,
Petitioner Exhibit 1(T):	Resident events summary/excerpts,
Petitioner Exhibit 1(U):	Eviction and collection summary (CONFIDENTIAL),
Petitioner Exhibit 1(V):	"Additional services,"
Petitioner Exhibit 1(W):	Newsletters,
Petitioner Exhibit 1(X):	Resident letters,
Petitioner Exhibit 2:	Vision Communities, Inc., Articles of Incorporation,
Petitioner Exhibit 3:	Vision Communities, Inc., By-laws,
Petitioner Exhibit 4:	Vision Communities, Inc., 501(c)(3) letter dated September 8, 2014,
Petitioner Exhibit 5:	Vision Communities, Inc., conflict of interest and excess benefit transaction policies,
Petitioner Exhibit 6:	Hebron-Vision, LLC, Articles of Organization,
Petitioner Exhibit 7:	Hebron-Vision, LLC, Operating Agreement,
Petitioner Exhibit 8:	Hebron-Vision, LLC, 2010 income statement, balance sheet, and rent roll (CONFIDENTIAL),
Petitioner Exhibit 9:	Vision-Communities, Inc., 2010 Form 990,
Petitioner Exhibit 10:	Hebron-Vision, LLC, 2011 income statement, balance sheet, and rent roll (CONFIDENTIAL),
Petitioner Exhibit 11:	Vision-Communities, Inc., 2011 Form 990,
Petitioner Exhibit 12:	Hebron-Vision, LLC, 2012 income statement, balance sheet, and rent roll (CONFIDENTIAL),[6]
Petitioner Exhibit 13:	Vision-Communities, Inc., 2012 Form 990,
Petitioner Exhibit 14:	Vision-Communities, Inc., 2012 audited financial statement,
Petitioner Exhibit 15:	Hebron-Vision, LLC, 2013 income statement, balance sheet, and rent roll (CONFIDENTIAL),
Petitioner Exhibit 16:	Vision-Communities, Inc., 2013 Form 990,
Petitioner Exhibit 17:	Vision-Communities, Inc., 2013 audited financial statement,
Petitioner Exhibit 18:	Hebron-Vision, LLC, 2014 income statement, balance sheet, and rent roll (CONFIDENTIAL),
Petitioner Exhibit 19:	Vision-Communities, Inc., 2014 Form 990,

[6] At the hearing, Mr. Red requested Petitioner's Exhibit 12 be marked confidential. Mr. Red agreed to provide the Board with a redacted version of this exhibit. To date, the Board has yet to receive a redacted version. Because Petitioner's Exhibits 8, 10, 15, 18 and 21 all include similar material as Petitioner's Exhibit 12, the Board has marked these exhibits confidential as well.

Petitioner Exhibit 20:	Vision-Communities, Inc., 2014 audited financial statement,
Petitioner Exhibit 21:	Hebron-Vision, LLC, 2015 income statement, balance sheet, and rent roll (CONFIDENTIAL),
Petitioner Exhibit 22:	Vision-Communities, Inc., 2015 Form 990,
Petitioner Exhibit 23:	Vision-Communities, Inc., 2015 audited financial statement,
Petitioner Exhibit 24:	IHCDA Mission, Vision, and Value Statement,
Petitioner Exhibit 25:	Fair market rents overview,
Petitioner Exhibit 26:	2011 Porter County fair market rents,
Petitioner Exhibit 27:	2011 Porter County income limits,
Petitioner Exhibit 28:	2012 Porter County fair market rents,
Petitioner Exhibit 29:	2012 Porter County income limits,
Petitioner Exhibit 30:	2013 Porter County fair market rents,
Petitioner Exhibit 31:	2013 Porter County income limits,
Petitioner Exhibit 32:	2014 Porter County fair market rents,
Petitioner Exhibit 33:	2014 Porter County income limits,
Petitioner Exhibit 34:	2015 Porter County fair market rents,
Petitioner Exhibit 35:	2015 Porter County income limits,
Petitioner Exhibit 36:	2012 IHCDA Action plan and five year goals,
Petitioner Exhibit 37:	2016 Asset Limited, Income Constrained, Employed (ALICE) Indiana study of financial hardship,
Petitioner Exhibit 38:	Summary of fair market rents vs. Misty Glen rents,
Petitioner Exhibit 38(C):	Corrected version of Petitioner's Exhibit 38.
Petitioner Exhibit 39:	2012 PTABOA Findings for Hebron-Vision, LLC, with attachments,
Petitioner Exhibit 40:	Rent summaries prepared by Wendy Connor.

7. The Respondent offered the following exhibits:[7]

Respondent Exhibit A:	Email correspondence between Mr. Bushemi and Mr. Red,
Respondent Exhibit C:	Transcript of the 2013 PTABOA hearing,
Respondent Exhibit D:	Misty Glen apartment resident selection criteria,
Respondent Exhibit E:	Assessor's market rent study,
Respondent Exhibit F:	"Boone Civil Township assistance help provided to the residents of Misty Glen 2012-2016."

8. The record also includes (1) all pleadings, briefs, motions, and documents filed in the current appeals, (2) all orders and notices issued by the Board or ALJ, and (3) a digital recording of the hearing.

[7] The Respondent withdrew Respondent's Exhibit B.

9. The property at issue is an eighty unit apartment building commonly known as Misty Glen Apartments (Misty Glen) located at 99 Misty Lane in Hebron.

10. For 2012, 2014, and 2015, the Porter County PTABOA determined the Petitioner's real and personal property is 100% taxable.

11. The Petitioner contends both its real and personal property should be 100% exempt.

OBJECTIONS

12. The parties made numerous objections at the hearing. The ALJ ruled on many objections at the hearing. The Board formally adopts all of the ALJ's rulings made during the hearing. Next we turn to the remaining objections.

13. Mr. Bushemi objected to the "late submission on behalf of the taxpayer of both new witnesses and new exhibits that were never properly identified" in accordance with 52 IAC 2-7-1. Mr. Bushemi argued while Mr. Red submitted the Petitioner's original witness and exhibit list well before the 15-day deadline, Mr. Red improperly added a witness and additional exhibits after that deadline. Mr. Bushemi also argues the Petitioner's exhibit list did not "accurately and specifically" identify certain exhibits.

14. According to Mr. Bushemi, Mr. Red emailed "3,000 to 4,000 pages of new documents" via an email "Dropbox" on January 10, 2017. Then on January 11, 2017, Mr. Red sent an additional email adding more exhibits.[8] Apparently one email "added" Elizabeth Mutzl as a witness for the Petitioner. Mr. Bushemi argues neither Ms. Mutzl's name, nor the additional exhibits, were "specifically identified" on the Petitioner's original witness and exhibit list.

15. In support of his position, Mr. Bushemi argued the Tax Court has specifically addressed 52 IAC 2-7-1 on five occasions and has enforced the rule each time. Mr. Bushemi went on to argue the Respondent would be harmed by including the documents in question

[8] During the January 13, 2017, pre-hearing conference, Mr. Bushemi indicated the date of the first email adding additional exhibits and listing Ms. Mutzl as a witness was January 3, 2017.

because the Assessor did not have adequate time to review the documents and ultimately the admission would result in a "trial by ambush."

16. In response, Mr. Red argued the Petitioner fully complied with the Board's procedural rules regarding the timely exchange of pre-hearing evidence. First, Mr. Red argued 52 IAC 2-7-1(b)(1) requires parties to disclose a witness and exhibit list 15 business days prior to the hearing. According to Mr. Red, a list of witnesses and exhibits was tendered to the Respondent on September 13, 2016. Secondly, Mr. Red argues that 52 IAC 2-7-1(b)(1) states parties are to provide copies of documentary evidence at least five business days prior to a hearing. Again, Mr. Red contends he tendered the Petitioner's evidence to the Respondent on or before January 11, 2017. While making his arguments, Mr. Red alluded to the conference held January 13, 2017, where Mr. Bushemi acknowledged that "five days before the hearing was January 11, 2017."

17. Mr. Red went on to argue 52 IAC 2-7-1 does not require having specific exhibits listed, numbered, and marked 15 business days prior to a hearing, only that the parties provide a "list." And further, "the five business day rule before the hearing does not require me to give him specific exhibits, only documentary evidence."[9]

18. Finally, Mr. Red argued because this case has been "ongoing since 2008" the Petitioner gave a "substantial amount" of evidence to the Respondent in 2013 prior to the PTABOA hearing. Ironically, the Respondent has never attempted to engage in any discovery nor did the Respondent ask for a "further explanation of any of the evidence" supplied in 2013. Mr. Red also argued that based on the extensive and detailed cross-examination Mr. Bushemi conducted during the hearing the Respondent had ample time to review all of the documents and was not harmed or biased. Therefore, Mr. Red argued the Respondent has waived its argument that it is prejudiced. In response, Mr. Bushemi,

[9] Mr. Bushemi argued "exhibits" and "documentary evidence" have the same meaning, therefore the Respondent was entitled to "updated versions." Mr. Red failed to explain how he differentiated "specific exhibits" and "documentary evidence."

argued the Board's hearings are *de novo*; therefore, "it doesn't matter" what was previously submitted to the Assessor.[10]

19. The ALJ informed Mr. Bushemi his objection would not be viewed as a "blanket objection" but instead each piece of evidence would be ruled on individually. The spirit and intent of pre-hearing disclosure is to discourage gamesmanship. The Board's rules intend to encourage mutual cooperation and good faith, which seems to be lacking in this case. Much of the conduct of both sides amounts to game playing and is something the Board will not promote.

20. The first specific exhibits related to Mr. Bushemi's objection are Petitioner's Exhibit 24 and Petitioner's Exhibit 36. Both of these exhibits are published by IHCDA and are publicly available on their website. Mr. Bushemi argued these exhibits were "part of a several thousand page Dropbox" emailed to the Respondent on January 10, 2017, and had not previously been "specifically" identified. In response, Mr. Red stated the exhibits were identified as "IHCDA affordable housing data and studies" and were exchanged more than five days prior to the hearing. The ALJ took the objection under advisement.

21. Both Mr. Bushemi and Mr. Red agree that Petitioner's Exhibits 24 and 36 were exchanged more than five days prior to the hearing. Mr. Bushemi did not argue the exhibits were missing, just that he could not find them in the "several thousand page Dropbox." The Board's pre-hearing exchange rule does not require Mr. Red to organize his exhibits in any particular fashion, just to disclose them. The parties should have worked together to alleviate problems such as this prior to the hearing. Excluding evidence is an extreme sanction that the Board will not impose lightly. What Mr. Bushemi has alleged is not sufficient for the Board to conclude that the exhibits should be excluded. Therefore, the objection to these two exhibits is overruled and the exhibits are admitted.

[10] The Board notes during the January 13, 2017, pre-hearing conference Mr. Bushemi was asked several times by the ALJ if the Respondent would like a continuance in order to properly examine the Petitioner's evidence and Mr. Bushemi declined.

22. Mr. Bushemi objected to Petitioner's Exhibit 37, a study performed by the Indiana Association of Community Economic Development (IACED) detailing a need for affordable housing in Indiana. The ALJ also took this objection under advisement. Among other things, Mr. Bushemi argued the exhibit is a "United Way document" and not an IACED document. However, Mr. Red argued he identified the evidence on the Petitioner's witness and exhibit list as "IACED affordable housing studies…and is numbered thirteen on the list." Mr. Bushemi's objection is overruled. Mr. Red not only listed the exhibit on September 13, 2016, but also provided the exhibit to Mr. Bushemi on January 10, 2017. The Board finds Mr. Red substantially complied with 52 IAC 2-7-1 with regard to Petitioner's Exhibit 37 and it is admitted.

23. Mr. Bushemi objected to Petitioner's Exhibits 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, and any questioning regarding those exhibits, on the grounds they were not properly identified at least 15 days prior to the hearing. According to Mr. Red these exhibits deal with "market rents and income limits" and they were properly disclosed on the exhibit list under the title "[H]ousing development fair market rents and area median income and affordable housing data, numbers 10 and 11." The ALJ took the objection under advisement. The Board finds Mr. Red substantially complied with the evidence exchange requirements by properly disclosing the exhibits prior to the hearing. Therefore, Mr. Bushemi's objection to the above referenced exhibits is overruled and the exhibits and related questions are admitted.

24. Mr. Bushemi objected to Petitioner's Exhibit 25 on the grounds it was not exchanged at all. Mr. Red responded it "absolutely was produced." The ALJ took the objection under advisement. Mr. Bushemi's argument was mainly that he did not "remember" the document "among the 4,000 pages" that Mr. Red exchanged. Based on Mr. Red's statement he produced the document, the Board overrules the objection and admits Petitioner's Exhibit 25.

25. Mr. Bushemi objected to Petitioner's Exhibits 8, 10, 12, 15, 18, and 21 on the grounds they were not properly identified 15 days prior to the hearing. Specifically, regarding Petitioner's Exhibit 8, Mr. Bushemi argued this exhibit was not exchanged five days

before the hearing and Mr. Red failed to lay a proper foundation. Mr. Red conceded that he failed to exchange Petitioner's Exhibit 8, and added it was not relevant to the case. As a result the ALJ excluded Petitioner's Exhibit 8.[11] The Board adopts the ALJ's ruling as to Petitioner's Exhibit 8. The ALJ took the remaining objection under advisement.

26. Again, the Board overrules Mr. Bushemi's objection and admits Petitioner Exhibits 10, 12, 15, 18, and 21. In this instance, Mr. Bushemi was not specific regarding the manner in which these exhibits were allegedly "incorrectly identified." The exhibits were exchanged more than five days before the hearing and according to testimony, they were submitted at the PTABOA hearing. Thus, it should come as no surprise the Petitioner would submit those income statements, rent rolls, and balance sheets again during the Board's hearing.

27. Mr. Bushemi objected to portions of Petitioner's Exhibit 1, which includes documents labeled (A) through (X). Mr. Bushemi argued that, according to the transcript of the PTABOA hearing, the documents identified as Petitioner's Exhibit 1 (J), (K), and (N) were not admitted into evidence. In response, Mr. Red argued the documents were *submitted* to the PTABOA. Mr. Red went on to argue the ALJ may waive the evidence exchange deadlines if the documents were *submitted* at the PTABOA hearing and that the rule does not require that the documents were *admitted*. The ALJ took the objection under advisement.

28. According to 52 IAC 2-7-1(d) the Board may waive the evidence exchange deadlines for materials submitted *or* made part of the record at the PTABOA hearing. As the Board has stated many times, the purpose of the evidence exchange rules is to allow parties to be informed, avoid surprises, and promote an organized and efficient hearing. It should come as no surprise that the Petitioner offered materials that it submitted at the PTABOA hearing. Thus, the Respondent is not harmed by the admission of those documents and Mr. Bushemi's objection is overruled. Petitioner's Exhibit 1(J), (K), and (N) are admitted.

[11] Ultimately the exclusion of Petitioner's Exhibit 8 is a moot point as the Petitioner withdrew this exhibit.

29. Mr. Bushemi objected to any testimony from Elizabeth Mutzl and to the admittance of Petitioner's Exhibit 1(L) because they were not properly disclosed on the witness and exhibit list 15 business days prior to the hearing. Mr. Red acknowledged the Petitioner failed to meet the 15 day deadline, but stated the Petitioner provided a "supplement to the preliminary list of witnesses and exhibits previously provided" in an email dated January 3, 2017. The ALJ took both objections under advisement.

30. While the Board agrees Petitioner's Exhibit 1(L) and Ms. Mutzl's addition to the witness list was not timely, the objections are overruled.[12] The Petitioner added her name, and the exhibit, well before the hearing, and the Respondent did not explain specifically how it was prejudiced. Again, given the issues in this case, the nature and subject matter of Ms. Mutzl's testimony and documentary evidence could not have been a surprise. Ms. Mutzl prepared the rent analysis submitted at the PTABOA hearing four years prior to this hearing. The Respondent should not have been "surprised" she would prepare an analysis for the Board's hearing, nor should the Respondent be surprised the analysis would be updated. To the extent the Respondent felt hampered in its ability to cross-examine Ms. Mutzl, the ALJ offered the Respondent an opportunity to request a continuance of the hearing during the January 13, 2017, pre-hearing conference. The Respondent declined the opportunity to do so. While that does not excuse the Petitioner missing the deadline to add Ms. Mutzl's name and Petitioner's Exhibit 1(L) to its witness and exhibit list, the Board will not exercise the extreme sanction of excluding the evidence or Ms. Mutzl's testimony on these unique facts.

31. Mr. Red also made several objections relating to the pre-trial exchange of evidence. He objected to Respondent's Exhibit A because the exhibit was not provided prior to the hearing. The ALJ took the objection under advisement.

[12] The Board notes its decision to allow this exhibit and Ms. Mutzl's testimony is distinguishable from the Tax Court's evidentiary holding in Evansville Courier. *See Evansville Courier v. Vanderburgh Co. Ass'r,* 78 N.E.3d 746, 752 (Ind. Tax Ct. 2017) *(citing McCullough v. Archbold Ladder Co.,* 605 N.E.2d 175, 179 (Ind. 1993) "known and anticipated witnesses, even if presented in rebuttal, must be identified pursuant to a court order, such as a pre-trial order, or to a proper discovery request.") Here, the Petitioner was not attempting to engage in "gotcha litigation" as Ms. Mutzl prepared the rent analysis submitted at the PTABOA hearing. (*Distinguishing from Id. at 752* "[T]he County's failure to do so constitutes precisely the type of "gotcha" litigation that Indiana courts abhor.")

32. Respondent's Exhibit A is a string of emails between Mr. Red and Mr. Bushemi. The communications contained in the exhibit took place prior to the five-day deadline and Mr. Red not only viewed them prior to the deadline, he responded to the emails. Given the various arguments and objections made in this highly contentions matter, these communications are somewhat helpful in understanding what both counsel did leading up to the breakdown in cooperation to prepare for this hearing. The objection is overruled and Respondent's Exhibit A is admitted.

33. Mr. Red objected to Respondent's Exhibit F on the grounds the Respondent failed to list the exhibit 15 business days prior to the hearing and the Respondent failed to exchange the exhibit prior to the hearing. Mr. Red argued if he would have been informed the Respondent was going to offer the exhibit, he would have conducted discovery in an effort to determine the validity and reliability of the exhibit. Mr. Bushemi acknowledged the accusation and admitted Mr. Red had not seen the exhibit prior to the hearing. The ALJ took the objection under advisement.

34. Here, it is apparent the Petitioner would be prejudiced by the exhibit's inclusion. This is different than the circumstances surrounding Mr. Bushemi's above objections, in which he had the exhibits in hand five days prior to the hearing, and declined a continuance that would have allowed him more time to examine them and conduct discovery. In the face of its objections above, this is a clear and blatant attempt by the Respondent to circumvent the Board's evidence exchange rules. The objection is sustained and Respondent's Exhibit F is excluded from the record.

35. Numerous objections were made by both parties that were not directly related to the Board's procedural rules regarding the exchange of evidence prior to the hearing.

36. Mr. Red objected to Mr. Bushemi's question to Mr. Collins regarding whether the Petitioner is a "for-profit entity" on grounds that it calls for a legal conclusion. Mr. Red

argued an LLC can be organized as either a "for-profit or not-for-profit entity."[13] The ALJ took the objection under advisement.

37. Mr. Collins had previously testified, and Mr. Red had stipulated, the Petitioner is a for-profit entity. Further, given his position in the organization, Mr. Collins should know whether the Petitioner is a for-profit entity without needing to draw a legal conclusion. As a result, the objection is overruled and Mr. Collins response remains part of the record.

38. Mr. Red objected to questioning Mr. Collins regarding whether the 2007 contract between Misty Glen and Flaherty & Collins included the signature of "Mr. Ploss, the CFO of Flaherty & Collins, Inc., as property manager or representative of the property manager." Mr. Red argued the question assumed facts not in evidence. The ALJ took the objection under advisement.

39. Mr. Bushemi did not assume any facts in asking Mr. Collins a question about a signature on a contract he had already testified exists. Accordingly, the objection is overruled and the question and answer remain part of the record.

40. During the course of Mr. Ploss' testimony, Mr. Bushemi objected to Petitioner's Exhibits 1(L), (P), (Q), (R), and (T) on the grounds that because Mr. Ploss did not author the documents, the exhibits are hearsay. The only response Mr. Red gave was that the exhibits in question were all "submitted" at the PTABOA hearing. The ALJ took the objections under advisement. The Board agrees with Mr. Bushemi that the exhibits are hearsay. While the exhibits are admitted, they cannot form the sole basis for the Board's determination pursuant to 52 IAC 3-1-5(b).[14]

41. During Mr. Bushemi's cross-examination of Ms. Mutzl, Mr. Red objected to asking her to compare random rent amounts to a market rent, specifically for Misty Glen's market, on the grounds that it was an "incomplete hypothetical" which is "a relevance objection."

[13] Mr. Collins answered the question prior to Mr. Red stating his objection. As a result, Mr. Red requested Mr. Collins' answer be stricken from the record.
[14] The Board notes Ms. Mutzl, the author of Petitioner's Exhibit 1(L), later testified regarding the contents of this particular exhibit.

In response, Mr. Bushemi argued he was merely trying to "establish a fact." The ALJ took the objection under advisement. The Board overrules the objection and allows Ms. Mutzl's answer to remain part of the record.

42. Mr. Bushemi also objected to a question Mr. Red posed to Ms. Conner about "why Misty Glen Apartments set its rent lower than The Pines" on the grounds it calls for speculation. Mr. Red argued Ms. Conner had been Misty Glen's property manager for 11 years and therefore had knowledge of "how and why" Misty Glen set its rent charges. The ALJ took the objection under advisement.

43. The proper objection here would have been a lack of proper foundation. Ms. Conner did not establish how she obtained rental information from The Pines. It is difficult to give the testimony any creditability because Ms. Conner failed to explain if she was basing her testimony on her own personal knowledge. Ultimately, Mr. Bushemi's objection goes to the weight of the testimony rather than its admissibility. Therefore, her testimony is to remain a part of the record.

44. Mr. Red argued a proper foundation was not laid for Respondent's Exhibit E and Mr. Snyder's related testimony as an expert witness under Evidence Rule 702. Specifically, Mr. Red argued that Mr. Snyder only testified "vaguely" regarding his purportedly comparable properties and while he established that he is an expert in real estate appraisal, he did not establish that he is an expert in "rent analysis." Mr. Bushemi did not offer a response. The ALJ took the matter under advisement. To the extent Mr. Red intended this to be an objection, it goes to the weight of the testimony rather than its admissibility. Therefore, Respondent's Exhibit E and Mr. Snyder's related testimony both remain part of the record.

JURISDICTIONAL FRAMEWORK

45. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits, that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under

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

SUMMARY OF PETITIONER'S CASE

46. Hebron Vision, LLC, (Petitioner) owns and operates the subject property, Misty Glen. Misty Glen is a low-income housing facility that claims to be entitled to a property tax exemption because it is owned, occupied, and used for charitable purposes. The facility provides housing for people at 60% or less of median income "with no expectations to make money," and is treated as a "public charity" by the Internal Revenue Service (IRS). *Red argument; Pet'r Ex. 2.*

47. The Petitioner is a "wholly (owned) subsidiary" of Vision Communities (Vision), an Indiana not-for-profit 501(c)(3) entity, founded by Jerry Collins and Dave Flaherty in 2002 to "give back some of [their] expertise." The goal of Vision is to provide safe, decent, and affordable housing for disadvantaged individuals and families on a nonprofit, charitable basis. According to Brian Ploss, Vice President of Vision, because the Petitioner is a "flow-through entity to a not-for-profit" it is therefore a "not-for-profit itself." According to Mr. Collins, there are no financial conflicts of interests for the Board members of Vision. *Collins testimony; Ploss testimony; Pet'r Ex. 5, 6.*

48. Misty Glen is one of four properties owned by Vision, who acquired the property in 2007. Misty Glen is managed by Flaherty & Collins, a for-profit business, that charges a fee of 6% of gross income ($3,000 to $3,500 per month). This management fee does not cover the cost of overhead for providing management services to Misty Glen. Vision "lose[s] money or break[s] even" on Misty Glen. If revenues would ever exceed expenses for Misty Glen, the profit would belong to Vision, but it would not be distributed among its shareholders. Instead, it would be used for "charitable purposes." At one point "between 2012 and 2016" Vision loaned Misty Glen $70,500, but only $20,000 has been paid back. Vision has not, and would not, foreclose on the remaining amount because doing so would be "against their vision," which is to "provide affordable housing for people in need." *Collins testimony; Ploss testimony; Pet'r Ex. 9, 10, 11, 12, 13, 15, 16, 18, 19, 21, 22.*

49. In 2011, Misty Glen's total rental income was $553,000. From that rental income, Misty Glen paid both a property management fee to Flaherty & Collins and a salary with benefits to a community property manager employed by Flaherty & Collins. While together those expenses totaled $71,000 in 2011, they are two separate expenses. The property lost approximately $29,000 in 2011. For 2012, there was a list of capital replacements totaling $156,000, but the property still showed a profit of $72,000 because it "got some money for the replacement reserve." For 2014, net rental income was approximately $614,000, and the two management expenses together were $79,000. The amount for capital replacements was $53,000. For 2015, total rent income was $626,000. The onsite and offsite management expenses combined to total "about $73,000." There was a capital replacement expense in 2015 of $85,000, and net profit was approximately $77,000. *Ploss testimony; Pet'r Ex. 10, 12, 18, 21.*

50. The IHCDA is the government agency in Indiana charged with providing affordable community housing opportunities. Because the Petitioner must keep its rent charges at a level published by IHCDA and Housing & Urban Development (HUD), it lessens the burden of the government to provide low-income housing. While IHCDA provides "tax credit dollars," the Petitioner did not receive them, as Misty Glen's original unaffiliated owner and developer, Hebron-Pointe, "bought" those tax credits. Thus, the Petitioner could "technically" cease providing low-income housing at any time and not lose any government assistance. Misty Glen tenants receive both Federal Section 8 and township trustee rent voucher funds that they use to pay rent to Misty Glen, but the tenants could use the vouchers to pay rent "at any place that accepts them." Accordingly, the vouchers do not represent a subsidy directly to Misty Glen. *Red argument; Collins testimony; Ploss testimony; Pet'r Ex. 36.*

51. Government agencies, including the IACED, have published studies detailing the need for affordable housing. The poverty rate in Porter County is 31%. The poverty rate in the town of Hebron is 36%. And the rate is 31% in Boone Township. The median family income in Porter County is $65,200. The income limits for low-income housing allowed by HUD and IHCDA is 80%. Misty Glen applies an "income limit of 60%" which is

verified in the tenants' annual reporting requirement. *Ploss testimony; Pet'r Ex. 27, 29, 31, 33, 35, 37.*

52. HUD sets allowable rents at "the 40th percentile of market rents." In 2011, the market rent limit in Porter County for a one-bedroom apartment was $668 per month. The market rent limits were $818 per month for a two-bedroom apartment and $974 per month for a three-bedroom apartment. In 2011, rents at Misty Glen were below those levels, and it is Vision's policy that rents are required to be below those levels. Further, there is a "regulatory agreement" in the subject property's deed from the prior owner that imposes the rent restrictions. *Ploss testimony; Pet'r Ex. 25, 26.*

53. In 2012, the market rent limits were $671 for one-bedroom apartments, $818 for two-bedroom apartments, and $978 for three-bedroom apartments. For 2013, the respective rent limits were $636, $792, and $992. For 2014, the limits were $645, $803, and $1,006. Finally, for 2015, the limits were $646, $805, and $1,008. Rents at Misty Glen were below those levels for each year and in some cases more than $100 below those levels. *Ploss testimony; Pet'r Ex. 12, 15, 18, 21, 28, 30, 32, 34, 38.*

54. According to Mr. Ploss, in 2012 the subject property was worth "nothing" or "barely as much as the liability or debt." The net operating income was $300,000. Subtracting "about $24,000 in capital" leaves $276,000. Using a 10% capitalization rate, the value was $2,760,000, but the debt or liability was $2,738,000. Using similar calculations, Mr. Ploss estimated the subject property was worth negative $1.7 million in 2014, and negative $1.73 million in 2015. *Ploss testimony.*

55. According to Vision's federal tax returns, Vision owned three properties in 2011 with total assets of $16,300,000. Also in 2011, Vision paid a $100,000 "consulting fee" to Flaherty & Collins for what may have been handling "a couple of deals." Mr. Ploss testified that, if that was what the fees were for, a $100,000 fee is not unusual in his line of business. Further, a large portion of the $43,113 listed as "disbursements for charitable purposes" are allowable "operating-type expenses" under federal law, rather than actual donations to charities. Finally, according to the 2011 filing, the "apartment

rental income" amount appears to be mistakenly reported on the "clubhouse rental income" line of Vision's tax return. *Red argument; Ploss testimony; Pet'r Ex. 11.*

56. In 2012, Vision owned four properties. According to Vision's federal tax returns, the book value of assets totaled $21,934,000. According to the tax return, Vision received a $306,011 contribution from IHCDA "that would have passed right through (for) a deal" related to Section 42 housing. Again, the $204,628 listed as "disbursements for charitable purposes" are allowable "operating-type expenses." Mr. Ploss also testified even though the tax return does not list any donations or contributions to charities, "[he] gave $55,000 through Vision." *Ploss testimony; Pet'r Ex. 16.*

57. In 2014, Vision owned four properties, and had a .01% partnership in another three properties. Vision listed its total book value assets at $23,480,000. In 2014, receivables for development fees in the amounts of $740,000 and $498,000 were transferred to Vision. Vision's federal tax return also shows receipt of a "government grant" in the amount of $1,031,011. According to Mr. Ploss, in 2014 Vision donated $16,000 to charities in the Hammond and Indianapolis areas. *Ploss testimony; Pet'r Ex. 19.*

58. In 2015, Vision owned the same four properties it did in 2014 and listed its total assets at $23,455,900. Similar to 2013, Vision received a $306,011 contribution from IHCDA. This is a receivable that does not help with current operations, but may help "down the road." When the tax credits expire on the Section 42 properties involved in the deals, Vision "may own the debt on the properties." In 2015, Vision gave $31,750 to charitable organizations, however none of that amount was given to "Hebron community charities." *Ploss testimony; Pet'r Ex. 22.*

59. Elizabeth Mutzl, a certified general appraiser, performed a rent analysis on the subject property in 2013. During the process of selecting comparable properties, Ms. Mutzl examined properties in "nearby Valparaiso" because there was nothing comparable in Hebron that was "not under a government program" or did not have "restrictions." Ms. Mutzl looked at "market rate properties," or "non-rent-restricted properties," although she acknowledged she determined market rent differently than HUD calculates it. In her

analysis, Ms. Mutzl made adjustments for differences such as size, location, number of bedrooms, parking, and fireplaces. While the Respondent questioned her lack of an adjustment for a swimming pool, she determined such an adjustment was not warranted because "the market does not recognize any value." *Mutzl testimony; Pet'r Ex. 1(L).*

60. Based on her analysis, Ms. Mutzl concluded for 2012 the adjusted average rent for a one-bedroom apartment in the subject property's market was $639 per month, or $0.89 per square foot. Misty Glen charged $559 per month, or $0.85 per square foot. For two-bedroom apartments, the adjusted market average was $732 per month, or $0.79 per square foot. Misty Glen charged $649 per month, or $0.77 per square foot. For three-bedroom apartments, the adjusted market averages was $989 per month, or $0.78 per square foot. For a three-bedroom apartment Misty Glen charged $729 per month. *Mutzl testimony; Pet'r Ex. 1(L).*

61. Ms. Mutzl concluded in 2012 Misty Glen rents were below market. Similarly, Ms. Mutzl testified, based on her continued research and reflecting on Misty Glen rents for 2013 through 2015, it is "more likely than not" that Misty Glen rents continued to be below-market at all relevant times. Ms. Mutzl did state rents in Indiana generally increased from 2012 to 2015 and Misty Glen's rates "ran similar" to those trends. *Mutzl testimony; Pet'r Ex. 1(L).*

62. The Petitioner's last witness, Wendy Conner, regional property manager for Flaherty & Collins, presented her own market study. Ms. Conner testified she regularly surveys rents of properties that, in her professional experience, ensure Misty Glen rents remain below market. The first property Ms. Conner selected was The Pines, an apartment complex located in Hebron, less than a mile from Misty Glen. The Pines is under a "Section 515" government program, and a "rural development" program. As a Section 515 property, The Pines has rent requirements of "30% of median income rather than 60%." The Pines 2012 rents were $442 for a one-bedroom, $487 for a two-bedroom, and $677 for a three-bedroom. Rents at The Pines were less than Misty Glen, but Misty Glen is "quite superior" because The Pines is approximately 30 years older than Misty Glen and is "not as well maintained." *Conner testimony; Pet'r Ex. 1(Q), 40.*

63. Ms. Conner also examined Windridge Village in Valparaiso, another Section 42 affordable housing property. Windridge Village is "very comparable" to Misty Glen in terms of age and condition. Windridge Village's 2012 rents were $639 for a one-bedroom, $739 for a two-bedroom, and $864 for a three-bedroom. Windridge Village rents were higher than Misty Glen, but still below market rent. *Conner testimony; Pet'r Ex. 1(Q), 40.*

64. The last property Ms. Conner examined was Covington Square, also located in Valparaiso. This property "appears" to be a Section 42 property. Covington Square is 10 years older than Misty Glen, but in similar condition. Covington Square's 2012 rents were $720 for a one-bedroom, $860 for a two-bedroom, and $1,205 for a three-bedroom. Misty Glen rents were considerably lower than Covington Square because Covington Square charges rents "outside the fair market rent level." *Conner testimony; Pet'r Ex. 1(Q), 40.*

65. In addition to providing housing at reduced rates, Misty Glen also offers various services to its residents. Those services include neighborhood watch meetings, self-defense training, fitness and nutrition training, scam education, resume writing and job search assistance, and help with tax preparation. There are no charges to the residents for any of those services. Most of these services are typically not provided at for-profit entities managed by Flaherty & Collins. *Conner testimony; Pet'r Ex. 1(R), 1(U), 1(V), 1(W).*

66. Further, tenant evictions are "kept to a bare minimum." In 2013, 2014, and 2015, there was a total of four evictions for nonpayment of rent. That is "considerably" fewer when compared to the for-profit entities managed by Flaherty & Collins. Misty Glen attempts to "work with" tenants and also refers them to outside agencies for assistance. There are conditions, such as adequate credit and no prior evictions, that may exclude tenants in the initial application screening, and such exclusions happen "often." *Conner testimony; Pet'r Ex. 1(R), 1(U), 1(V), 1(W).*

67. In 2009, the Board granted a 100% exemption to the Petitioner for the 2008 assessment year because the subject property was used for charitable purposes. In the time since that

exemption was granted, the ownership, use, and occupation of the subject property has not changed. *Red argument; Ploss testimony; Collins testimony; Conner testimony; Pet'r Ex. 1(I).*

SUMMARY OF RESPONDENT'S CASE

68. The subject property does not qualify for property tax exemption. Whether Misty Glen meets the standard of relieving human want and suffering in a manner different from the everyday purposes and activities of man in general is "clearly in doubt." Misty Glen benefits from local, state, and federal subsidies, because the assistance given to the tenants "flows directly through to the property." Misty Glen also receives assistance from "at least 14 public or private entities" rather than providing charitable services itself. Further, it is not entirely clear if the rent charged by Misty Glen is below market rents. *Bushemi argument* (citing *Gulf Coast Housing Assistance Corp. v. Lake Co. Ass'r,* Ind. Bd. of Tax Rev. pet. No. 45-001-06-2-8-00001, et seq. (April 27, 2010); *Housing Partnerships, Inc. v. Bartholomew Co. Ass'r,* Ind. Bd. of Tax Rev. Pet. No. 03-003-06-2-8-00001, et. seq. (April 6, 2010); *Jamestown Homes of Mishawaka v. St. Joseph Co. Ass'r*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct. 2009), *reh'g denied,* 914 N.E.2d 13, *review denied*).

69. County Assessor Jon Snyder performed his own market rent analysis using data from the Multiple Listing Service (MLS) and other local sources. For the years in question, Mr. Snyder determined Misty Glen charged $559 per month for one-bedroom apartments, $649 for two-bedrooms, and $729 for three-bedrooms. In gathering his market data, Mr. Snyder examined the "competing markets" of Lowell and Hebron determining that Lowell "is a similar distance from its county seat as Hebron" and has similar shopping and amenities. *Snyder testimony; Resp't Ex. E.*

70. Based on his own analysis of five comparable properties, Mr. Snyder determined the average market rent for one-bedroom apartments in Hebron and Lowell is $549 per month. Utilizing six comparable properties, Mr. Snyder determined that the market rent in Hebron and Lowell for a two-bedroom apartment is $650 per month. For three-bedroom apartments, Mr. Snyder was only able to locate one comparable property, and

based on this property determined a market rent for a three-bedroom apartment is $735 per month. Accordingly, Mr. Snyder concluded that Misty Glen's rent charges are similar to, but not below, market rent. Mr. Snyder conceded that he did not consider the age of his comparable properties, which were built between 1953 and 1970, in his analysis. The parties stipulated that Misty Glen was built in 1997. *Snyder testimony; Resp't Ex. E.*

71. The Petitioner's rent analysis is flawed because Ms. Mutzl erroneously relied on purportedly comparable properties from Valparaiso. According to Mr. Snyder, Valparaiso is much more desirable than Hebron, and therefore not a comparable market. The average cost of housing in Valparaiso is $181,500 while the average in Hebron is $126,500. Rental prices are also higher in Valparaiso than in Hebron. Lowell's housing and rental prices are "much closer" to Hebron's levels. The average home price in Lowell is $148,675. *Snyder testimony (referencing Pet'r Ex.1 (L)); Resp't Ex. E.*

72. Based on Mr. Snyder's own experience as a rental-property owner, when a request for rental assistance is made to the Township Trustee's office, the Trustee forwards a check "directly to the property owner." In general, Mr. Snyder opines that "any form of assistance" from local, state, or federal agencies is a form of government subsidy that benefits the property owner. *Snyder argument.*

ANALYSIS

73. As a general proposition, all tangible property in Indiana is subject to taxation. Ind. Code § 6-1.1-2-1. But Ind. Code § 6-1.1-10-16(a) provides an exception: "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."[15] If a property is exclusively used for exempt purposes, then it is totally exempt. If a property is predominantly used for exempt charitable purposes then it gets a partial exemption based on the percentage of exempt use. If a property is predominantly used for non-exempt

[15] Separate subsections, 16(c) and 16(e), allow for exemptions of land and personal property, but they specifically relate back to the requirement in 16(a).

purposes, then it is not entitled to an exemption. Ind. Code § 6-1.1-10-36.3(b). "Predominant use" means more than 50% of the time that a property is used during the year that ends on the assessment date. Ind. Code § 6-1.1-36.3(a).

74. Anyone who seeks a property tax exemption has the burden to prove the property is entitled to the benefit of such an exemption. Therefore, to be successful the record must establish that all the requirements for the claimed exemption are met. *See Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.,* 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004)*; Monarch Steel Co., Inc. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993).

75. Tax exemption statutes are strictly construed against the person claiming the exemption. *Trinity Episcopal Church v. State Bd. of Tax Comm'rs*, 694 N.E.2d 816, 818 (Ind. Tax Ct. 1998); *Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 956 (Ind. Tax Ct. 1997). Exemption provisions, however, are not to be construed so narrowly that the legislature's purpose is defeated or frustrated. *See id*. Furthermore, the listed exempt purposes are to be construed broadly and in accordance with their constitutional meaning. *Trinity Episcopal Church*, 694 N.E.2d at 818.

76. Not-for-profit status does not establish any inherent right to a property tax exemption. *See Knox Co. Prop. Tax Assessment Bd. of Appeals v. Grandview Care*, 826 N.E.2d 177, 182-183 (Ind. Tax Ct. 2005)*; Lincoln Hills Dev. Corp. v. State Bd. of Tax Comm'rs*, 521 N.E.2d 1360, 1361 (Ind. Tax Ct. 1998); *Raintree Friends Housing, Inc. v. Indiana Dep't of Rev.*, 667 N.E.2d 810, 816 n.8 (Ind. Tax Ct. 1996).

77. Exemptions are decided based on the actual use of a property. The declaration of charity by an organization does not necessarily mean that the dominant use of its property is the form of use that the law recognizes as exempt. *Sahara Grotto v. State Bd. of Tax Comm'rs,* 261 N.E.2d 873, 878 (1970).

78. The test for allowing the charitable use exemption from property tax has two parts: (1) there must be 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 must

be an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *Jamestown Homes,* 909 N.E.2d 1138, 1141; s*ee also, College Corner v. Dep't of Local Gov't Fin.,* 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006); *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990); *Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm'rs*, 251 N.E.2d 673, 683 (Ind. Ct. App. 1969).

79. There is no bright-line test. Determining whether a particular property satisfies this test is a fact sensitive inquiry. *Jamestown Homes,* 909 N.E.2d 1138; *Oaken Bucket Partners, LLC v. Hamilton Co. Prop. Tax Assessment Bd. of Appeals*, 909 N.E.2d 1129, 1134 (Ind. Tax Ct. 2009). Every exemption case depends on its own facts, "and, ultimately, how the parties present those facts." *See Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.,* 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004), *review denied*; *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis and cannot assume the evidence speaks for itself.)

80. Here, the Petitioner is a "wholly (owned) subsidiary" of Vision, an Indiana not-for-profit 501(c)(3) entity. The Respondent does not dispute the Petitioner is owned by a 501(c)(3) entity; however, that fact alone is insufficient to qualify for exemption. The grant of a federal or state income tax exemption does not entitle a taxpayer to a property tax exemption because an income tax exemption does not depend on how a property is used, but on how money is spent. *See Raintree Friends,* 667 N.E.2d at 813 (stating "non-profit status does not automatically entitle a taxpayer to tax exemption.") As the law states, it is the ownership, occupation and use of a property that determines its exempt purpose. *See* Ind. Code § 6-1.1-10-16(a). Thus, the Petitioner must show it does something more than merely operate as a landlord. It must show it acts differently from the everyday purposes and activities of man in general. *See College Corner*, 840 N.E.2d at 908.

81. The Indiana Tax Court first addressed the question of whether property used for low income housing was exempt in *Jamestown Homes*. In that case, Jamestown Homes constructed a 160-unit, multi-family apartment complex under the federal Section

221(d)(3) program.[16] In exchange for the mortgage insurance and interest rate subsidy provided by the Section 221(d)(3) program, Jamestown Homes agreed to rent its apartments only to individuals and families whose annual income was at or below 95% of the area median income and to charge only rents that allowed it to cover the property's operating costs and debt service. The Tax Court noted "Jamestown retained several 'typical' landlord rights: it could evict tenants who failed to pay their rent, it charged fees for late rental payments or returned checks, and charged security deposits." *Jamestown Homes,* 909 N.E.2d at 1140.

82. The *Jamestown Homes* decision adopted the analysis of a 1967 decision from the Supreme Court of New Mexico regarding a similar Section 221(d)(3) property. *Mountain View Homes, Inc. v. State Tax Comm'n*, 427 P.2d 13 (N.M. 1967). In that case, the New Mexico Supreme Court found, although the property operated not-for-profit and "provided better housing than would have otherwise been available to them," the recipients of such "benefits" were not "sick or indigent." *Jamestown Homes,* 909 N.E.2d at 1144, citing *Mountain View Homes,* 427 P.2d at 17. In fact, the Court surmised that many of the tenants would be "surprised to learn that they are considered as being proper objects for, or as recipients of charity." *Id.* The New Mexico Supreme Court concluded:

> [H]ere, we have an enterprise to furnish low-cost housing to a certain segment of our population. It was intended to be self-supporting, without any thought that gifts or charity were involved. The tenants are required to pay for the premises occupied by them with the rentals being fixed so as to return the amount estimated as being necessary to pay out the project.

Jamestown Homes, 909 N.E.2d at 1144, citing *Mountain View Homes,* 427 P.2d at 17. The New Mexico Supreme Court held that the use of the property was not "charitable" because the property was "competitive with landlords offering other residential property for rent on which taxes must be paid" and "there is no evidence that the public is relieved

[16] The Section 221(d)(3) program provides a federally insured and subsidized low interest rate loan to developers to promote the construction of affordable housing for low to moderate income families.

of any expense in comparison with the loss of tax revenue." *Jamestown Homes,* 909 N.E.2d at 1144, citing *Mountain View Homes,* 427 P.2d at 17.

83. Similarly, in denying exemption for Jamestown Homes, the Tax Court found:

> [T]he administrative record in this case merely reveals that Jamestown rents its apartments to moderate and low-income individuals for below market rates. There is no evidence, however, indicating that there are any welfare clients in Jamestown's apartments, nor is there any evidence indicating that Jamestown's tenants are permitted to occupy their apartments when they are unable to pay their rent. Likewise, there is no evidence in the administrative record indicating that Jamestown provides an 'element of fraternity, brotherhood, or good fellowship intended to improve the spirits or impel to renewed effort,' whether it be through, for example, free services for, or counseling of, its tenants. Finally, there is no evidence in the administrative record demonstrating that Jamestown has lessened the burden of government in meeting the need for affordable housing because that need is ultimately being met by the government through its mortgage insurance and interest subsidy.

Jamestown Homes, 909 N.E.2d at 1144. [17]

84. According to the Petitioner, it provides "safe, decent, and affordable housing for disadvantaged individuals and families" and it rents to "people at 60% or less of median income, with no expectations to make money, and is treated as a public charity by the IRS." According to the Respondent, the Petitioner benefits from local, state, and federal subsidies, because the assistance given to tenants "flows directly through to the property" and providing housing to this demographic is required in order for Vision to receive a federal income tax exemption. According to the Respondent, the "government" is still bearing a significant burden that the Petitioner failed to prove it relieved. *See Jamestown Homes,* 909 N.E.2d 1138; *Housing Partnerships,* 10 N.E.3d 1057.

85. Neither party was able to precisely explain what a tenant must prove to be granted a "voucher" or be entitled to Federal Section 8 assistance. The Board is only left with the

[17] The Indiana Tax Court reached a strikingly similar decision in *Housing Partnerships.* In this case, the Tax Court concluded that the Board did not misinterpret *Jamestown Homes* when it found the taxpayer did not provide facts showing its provision of low-income housing met the requirements of a charitable purpose that would entitle it to an exemption from the general duty to pay property tax. *Housing Partnerships, Inc. v. Bartholomew Co. Ass'r,* 10 N.E.3d 1057, 1064 (Ind. Tax Ct. 2014) referencing *Jamestown Homes,* 909 N.E.2d 1138.

conclusory statement that tenants receive these benefits. The Board cannot conclude if every tenant receives these benefits or just a select few. Additionally, we do not know the extent of the benefits or the conditions surrounding the receipt of these benefits.

86. The Board can conclude the predominant and primary use of the subject property is providing apartment living to its tenants. The Petitioner characterized its tenants as "disadvantaged" because their income levels fall within certain income limits established by IHCDA. However, the Petitioner failed to show the income levels of its tenants differ from the income levels of residents at other conventional apartments.

87. Similar to the Petitioner in *Jamestown Homes,* Misty Glen retains several "typical" landlord rights: tenants can be evicted if they failed to pay their rent, charges can be applied for late rent payments, an initial "application screening" is conducted to determine if tenants had adequate credit, and tenants must prove they have had no prior evictions. *Jamestown Homes,* 909 N.E.2d at 1140. Admittedly, the Petitioner has "often" denied potential tenants during the initial screening. Consequently, Misty Glen evicted four tenants during the years in question for nonpayment of rent. Clearly Misty Glen is using shrewd business skills in selecting tenants. But this also indicates that Misty Glen is not selecting tenants who are in most need of charitable housing or who have difficulties finding housing due to prior evictions or bad credit.

88. The Petitioner also introduced evidence in an attempt to prove it provides "an element of fraternity and brotherhood." According to Ms. Conner, Misty Glen offers various services to its tenants that "typically (are) not provided at for-profit entities." *Conner testimony.* Those services include neighborhood watch meetings, self-defense training, fitness and nutrition training, scam education, various social events, resumé writing and job search assistance, free blood pressure tests, and help with tax preparation. Admittedly, several of these services are provided to the tenants from several outside government and private sector agencies and are not actually provided by the Petitioner. While these services may be admirable, the Board finds these activities fail to prove the predominant use of the subject property is for charitable purposes. Additionally, these services are not the type of activities that relieve human want or provide a benefit that

will inure to the general public sufficient to justify the loss of tax revenue. *See Jamestown Homes,* 909 N.E.2d at 1144; and *Tipton Co. Health Care Foundation, Inc. v. Tipton Co. Ass'r,* 961 N.E.2d 1048 (Ind. Tax Ct. 2012) (stating "good and noble deeds alone do not satisfy the requirements for a charitable purposes exemption from property taxes.")

89. The Board is also concerned about the founders of the 501(c)(3) parent company profiting from Misty Glen by using their for-profit company to manage the property. A fee of 6% of gross rent plus the salary of an employee, is not insignificant. Using Mr. Ploss' 10% capitalization rate, that equates to a $710,000 boon to Flaherty & Collins. This is contrary to the requirement that property be owned, occupied, and used for a charitable purpose.

90. Although the Petitioner claims to offer its tenants "affordable" apartments, affordability does not equate to charitable. The Petitioner presented conflicting evidence making it difficult for the Board to definitively conclude that the rents charged at Misty Glen are in fact "below market." In fact, according to the Petitioner's witness, Ms. Conner, Misty Glen rents are actually higher than The Pines, a nearby Section 515 property.

91. The Petitioner presented a rent analysis prepared by Ms. Mutzl, a certified general appraiser. According to Ms. Mutzl, in 2012 Misty Glen rented one bedroom apartments "at the low end of the range" of adjusted market rents on a per square foot basis. For two bedrooms, Ms. Mutzl determined that Misty Glen rented "below average" of the adjusted market rents on a per square foot basis. And finally, for three bedrooms, Ms. Mutzl concluded Misty Glen rented "at the low end of the range" of adjusted market rents on a per square foot basis. Ms. Mutzl deduced that in 2012, Misty Glen rents were "below market." Ms. Mutzl went on to state that, based on her "continued research," Misty Glen rents for 2013, 2014, and 2015 were "more likely than not" also below market. The Board will not accept Ms. Mutzl's conclusory statement that based on her "continued research" 2013, 2014, and 2015 rents were "more likely than not" also below market. As a result, Ms. Mutzl has failed to convince the Board that Misty Glen charged below market rents in 2013, 2014, and 2015. With that being said, even if the Board accepts

that the 2012 rents were at the "low end" of the range of rents charged by purportedly comparable properties, having a rent rate below the average does not make an apartment complex "charitable."

92. Even if the Petitioner had sufficiently shown its rents were "below market," the Tax Court has explicitly held that renting below market is insufficient for the grant of an exemption. *Jamestown Homes,* 909 N.E.2d at 1144. "Evidence that a nonprofit corporation charges individuals below market rents for its apartments is not enough to show that the property is used for a charitable purpose, even when the nonprofit corporation provides free services to its tenants." *See Housing Partnerships,* 10 N.E.3d at 1062, 1063 citing *Jamestown Homes,* 909 N.E.2d at 1144. In *Jamestown Homes,* the Petitioner established its rents were at least marginally below market rent. *Jamestown Homes,* 909 N.E.2d 1138. It failed, however, to demonstrate that point justified the loss of property tax revenue. *Id.* The Petitioner may have noble purposes, but it failed to prove it relieved the government of an expense that it otherwise would have borne. In turn, it failed to prove that providing low income housing justified the granting of a charitable use exemption. *Id* at 1144.

93. Ultimately, after weighing the evidence, we find the Petitioner failed to sufficiently prove its property was predominantly owned, occupied, and used for charitable purposes pursuant to Ind. Code § 6-1.1-10-16 for the assessment years at issue.

94. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003.)

95. In making its determination, the Board continues to recognize the long standing principle that each exemption application must be examined on its own facts, as it was in this case.

SUMMARY OF FINAL DETERMINATION

96. The Petitioner failed to prove its property was predominantly owned, occupied, and used for charitable purposes. The Board finds in favor of the Respondent and determines the subject property is 100% taxable for each year under appeal.

The Final Determination of the above captioned matter is issued on the date 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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at<http://www.in.gov/judiciary/rules/tax/index.html>.