

REPRESENTATIVE FOR PETITIONER: Sandra K. Bickel, Attorney

REPRESENTATIVE FOR RESPONDENT: Marilyn S. Meighen, Attorney
Meighen & Associates, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

HOUSING PARTNERSHIPS, INC.,)	Petition Nos.: See Attachment
)	
Petitioner,)	Parcels: See Attachment
)	
v.)	
)	Bartholomew County
BARTHOLOMEW COUNTY)	Columbus Township
ASSESSOR,)	
)	2006 Assessment Year
Respondent.)	
)	

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

April 6, 2010

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 on the following issue: Is the real and personal property of Housing Partnership, Inc. entitled to a charitable tax exemption based on Ind. Code § 6-1.1-10-16?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. Pursuant to Ind. Code § 6-1.1-11-7, Housing Partnerships, Inc. (HPI), filed 36 Petitions for Review of Exemption, Form 132, on April 13, 2007. Those Petitions claimed the subject properties are 100% exempt pursuant to Ind. Code § 6-1.1-10-16 because the properties are used for charitable purposes.
2. The Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on March 13, 2007. It concluded the property is 100% taxable.

Hearing Facts and Other Matters of Record

3. The designated Administrative Law Judge authorized by the Board, Ronald Gudgel, held a hearing on those Petitions on January 30, 2009.
4. The following persons were sworn as witnesses at the hearing:
 - Mark Lindenlaub, President of HPI,
 - Connie Munn, Vice-President and Director of Client Services of HPI,
 - Deborah Holt, Executive Director of Columbus Housing Authority and
HPI Board member,
 - Tom Owens, Bartholomew County Assessor,
 - Cathi Gould, Bartholomew County consultant.
5. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Articles of Incorporation for HPI,
 - Petitioner Exhibit 2 – IRS notification of 501(c)(3) exempt status,
 - Petitioner Exhibit 3 – By laws of HPI,
 - Petitioner Exhibit 4 – HPI: 18 Years of Impact,
 - Petitioner Exhibit 5 – Affidavit of Jennifer Banks,
 - Petitioner Exhibit 6 – Affidavit of Jennifer Bosnyak,
 - Petitioner Exhibit 7 – Affidavit of Karin Sharp,
 - Petitioner Exhibit 8 – Rent Roll on March 1, 2006,

- Petitioner Exhibit 9 – 2006 Low-Income Housing Tax Credit Program 30% Area Median Income Schedule,
- Petitioner Exhibit 10 – Tenant Selection Policy,
- Petitioner Exhibit 11 – Rental Market Comparison Grid,
- Petitioner Exhibit 12 – Services offered through other social service agencies,
- Petitioner Exhibit 13 – Report on Audit of Financial Statements, December 31, 2005 and 2004,
- Petitioner Exhibit 14 – Report on Audit of Financial Statements, December 31, 2004 and 2003,
- Petitioner Exhibit 15 – IRS Low-Income Housing Guidelines,
- Petitioner Exhibit 16 – *College Corner v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905 (Ind. Tax Ct. 2006),
- Petitioner Exhibit 17 – *Grandview Care v. Perry Co. Property Tax Assessment Bd. of Appeals and Perry Co. Assessor* Petitions No. 62-008-06-2-8-00001 and 62-008-07-2-8-00001,
- Petitioner Exhibit 18 – *Knox Garden Court v. Starke Co. Property Tax Assessment Bd. of Appeals*, Petition No. 75-001-06-2-8-00001,
- Petitioner Exhibit 19 – *Greenwood Apartments v. Wayne Co. Property Tax Assessment Bd. of Appeals*, Petition No. 89-014-02-2-8-00006,
- Petitioner Exhibit 20 – Post-hearing Brief.

The Respondent objected to the Affidavits (Petitioner Exhibits 5, 6, and 7) because they are hearsay. Although these Affidavits clearly are hearsay, they were admitted over objection. Hearsay evidence is admissible, but when there is an objection it may not be the sole basis for the Board's determination. 52 IAC 2-7-3.

6. The Respondent presented the following exhibits:
 - Respondent Exhibit A – Map,
 - Respondent Exhibit B – List of 33 comparable properties with the property record cards as sub-parts B-1 through B-33,
 - Respondent Exhibit C – List of 34 HPI properties with the property record cards as sub-parts C-1 through C-32 (no sub-parts C-31, C-33, or C-34 were submitted),
 - Respondent Exhibit D – Post-hearing Brief.

7. In addition to the Post-hearing Briefs that they submitted in February 2009, both parties requested the opportunity to submit additional briefing to discuss the Tax Court's new decision in *Jamestown Homes v. St. Joseph Co. Assessor*, 909 N.E.2d 1138 (Ind. Tax Ct.

2009), *rehearing denied* 914 N.E.2d 13 (Ind. Tax Ct. 2009). Both of those briefs were received on October 23, 2009. They are recognized as part of the record.¹

8. The following additional items also are recognized as part of the record:
 - Board Exhibit A – The Petitions,
 - Board Exhibit B – Notices of Hearing,
 - Board Exhibit C – Hearing Sign In sheet.
9. One parcel (Petition No. 03-003-06-2-8-00001) consists of the administrative offices of HPI and related personal property. The remaining 35 parcels are rental properties consisting of single family homes, duplexes, and small apartment buildings.
10. Neither the Board nor the Administrative Law Judge conducted an on-site inspection of those properties.

Summary of the Petitioner’s Case

11. HPI is recognized by the Internal Revenue Service as a 501(c)(3) nonprofit organization. *Lindenlaub testimony; Pet’r Ex. 2.*
12. HPI was formed exclusively for charitable purposes with the primary objective of providing housing to disadvantaged individuals. *Lindenlaub testimony; Pet’r Ex. 1.* The Petitioner’s Articles of Incorporation contain the following provisions:

The Corporation is organized and operated not for profit but exclusively for charitable purposes. No part of the net earnings of the Corporation shall inure to the benefit of any member, directors, officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation).

The Corporation shall not conduct or carry on any activity not permitted to be conducted or carried on by an organization exempt under Section 501 (c) (3) of the Internal Revenue Code and its Regulations as they now exist or may hereafter be amended, or by an organization contributions to which

¹ On March 10, 2010, Jamestown’s Petition For Review was denied.

are deductible under Section 170 (c) (2) of such Code and Regulations as they now exist or as they may hereafter be amended.

Subject to the above provisions and in furtherance of its express purpose, the Corporation has the following specific objectives and no others:

- (a) Generally, to undertake, promote, develop and encourage any activity or means to ameliorate the housing needs of disadvantaged persons, without regard to race, religion, sex, or national origin; and to that end, to sponsor, support and promote, and to undertake, housing projects.
- (b) To build or cause to be built, and to rehabilitate or cause to be rehabilitated, housing units for persons of low-income or moderate-income, either single-unit or multi-unit; and to rent or sell such housing units, without profit; to persons and families not otherwise able to obtain housing that is decent, safe and sanitary.
- (c) To solicit, accept, acquire, receive, take, and hold by bequest, devise, grant, gift, purchase, exchange, lease, transfer, or otherwise, for any of its objects and purposes, any funds and property, real or personal.
- (d) To borrow money from any private governmental sources, and, from time to time, to make, accept, endorse, execute, and issue bonds, notes, debentures or obligations by mortgage, pledge, deed, lien upon, assignment, or agreement in regard to all or any part of the property, rights, or privileges of the Corporation, whether now owned or hereafter acquired.
- (e) To determine and investigate standards of housing; to foster any means for finding more efficient means of housing production which reduce the costs of housing for disadvantaged persons; to make available to the public general information relating to the conditions in which disadvantaged persons are compelled to live; and to promote within the community such goals as may complement the activities of the Corporation.

Pet'r Ex. 1.

13. The Petitioner provided audited financial statements for HPI that cover years 2003, 2004 and 2005. According to these audit reports, HPI “provides programs and processes that make affordable housing available to people in Bartholomew County, Indiana. There are five different programs that HPI provides: home ownership, homeowner repair, rental, lease-purchase program, and fee for service. These programs are designed to educate and assist individuals to obtain affordable housing.” The independent auditors’ reports

conclude that these financial statements fairly present the financial position of HPI in conformity with generally accepted accounting principles. *Pet'r Exs. 13, 14.*

14. HPI operates a home ownership program to assist qualified individuals in purchasing a home. HPI provides home ownership classes two or three times a year to tenants desiring and able to purchase their own home. It also operates a rental program to assist tenants who are unable to purchase their own home. The housing units under appeal are all part of the rental program. They are owned, occupied and used to provide housing for low-income and disabled tenants. In exchange for the funding that HPI gets from grant money it makes commitments to rent to people at various income levels. The rental program is open to people with incomes at or below 60% of area median income, but the majority of clients are less. The rents HPI charges are well under the maximums that are allowed for those programs. *Lindenlaub testimony.*

15. HPI targets its revitalization efforts to older neighborhoods in a state of distress. Based on its budget, HPI purchases older homes for rehabilitation. Some are too dilapidated for repair and must be razed in order to construct a new home on the site. This process saves the local government the expense of having to rehabilitate these neighborhoods. *Lindenlaub testimony.*

16. HPI does not operate under any specific government program. In doing its mission, HPI will apply for any kind of grants that it can so that the doors can stay open. HPI receives two types of grants—up front and reimbursement—that help with the costs for rehabbing properties. HPI applies for “chunks of grant money” that help with half a dozen to as many as fifteen homes at a time. These grants are obtained from a variety of federal, state, local government and private sources. As a result of the subsidies that cover part of its development costs, HPI is able to rent its properties at lower than market rates. HPI’s rental rates would be approximately \$200-\$300 greater without the subsidies and at that level the rents would not be financially feasible for the clients HPI serves. If HPI were required to pay property taxes, the rents probably would have to go up about \$75 per month from where they currently are. *Lindenlaub testimony; Munn testimony.*

17. The rents for HPI properties tend to run \$200 to \$300 less than area apartment complexes and individual landlords. In 2005, HPI performed a survey of market rents in the Columbus area. Because HPI had no way of knowing which single family homes were rental properties, HPI surveyed the apartment complexes in the Columbus area and found that on a per square foot basis, its rents were much lower than the rents of market rate properties in the area. (This survey notes different amenities that the comparables have and the HPI properties lack, such as pools and clubhouses, but it did not make adjustments for them.) *Pet'r Ex. 11; Munn testimony.*

18. HPI's tenant selection policy begins with income guidelines. The applicant is rejected if income guidelines are not met. A credit report is obtained for applicants meeting the guidelines. HPI pays for credit counseling services for tenants with "workable" credit.² Those applicants whose credit history is not workable or whose credit counseling findings are inadequate are rejected. Once verification of salary and other assets is completed, the applicant is placed on a waiting list. Any targeting requirements are met first according to the grant requirements. Successful applicants are then offered an appropriate unit based on family size. *Pet'r Ex. 10.*

19. HPI rents its one-bedroom unit for \$335 per month, a two-bedroom unit for \$405 per month, and a three-bedroom unit for \$470 per month. The rent for some HPI units is less than what some market landlords charge. The rent for some HPI units is about the same as market rent. And for some HPI units the rent is a little bit over market rent. *Munn testimony.*

20. HPI offers referral services to other social services agencies to assist tenants in need. *Munn testimony.* These additional social services include educational programs and participation in the Indiana Development Account program (assisting low-income individuals establish savings accounts.) *Id.; Pet'r Exs. 5, 6, 7, 12.*

² A workable credit history is defined by the Petitioner as "credit that can be made 'bank ready' within the time frame of the program that the applicant is working within." *Pet'r Ex. 10.*

21. Although there are lots of good landlords involved with the Section 8 program, HPI is the best landlord that the Columbus Housing Authority deals with. HPI promptly addresses maintenance issues and its properties are superior in cleanliness. HPI is sensitive to the needs of its clients and it offers supportive services. The Columbus Housing Authority refers the lowest income families to HPI—it is one of the few landlords in town with such low rents. The Section 8 housing program operates to subsidize the rent for tenants who are renting from private landlords. Approximately 35% of HPI's clients in 2006 obtained Section 8 housing vouchers. There is a waiting list in Columbus for Section 8 vouchers because the 2008 floods created a demand for temporary housing. Nevertheless, HPI has not raised its rental rates since the flood. *Holt testimony.*
22. The rent for a particular property does not change if a particular tenant gets help with paying rent through the Section 8 voucher program. Section 8 operates to subsidize tenants, not HPI. *Lindenlaub testimony.*

Summary of the Respondent's Case

23. The non-profit status of HPI does not automatically qualify the subject property for property tax exemption. The exemption should be denied because HPI operates in the same manner as any landlord in that it furnishes housing in exchange for revenues in the form of tenant rents and government grants. *Meighen argument.*
24. According to HPI's financial statements it gets federal grants. In 2005 the federal grants were in the amount of \$1,053,032. *Pet'r Ex. 13.* The particular government program that helps fund the operation is a distinction without a difference. *Resp't Supplemental Brief at 4.* “[I]t does not matter that funds are distributed from one line item of the government budget or another, because that exalts form over substance. The key is that the government along with tenants paying rent shoulder the commercial business of HP[I].” *Resp't Supplemental Brief at 6.*

25. According to the financial statements, for 2005 HPI had approximately \$2.2 million in total revenue and approximately \$1.8 million in total expenses. *Pet'r Ex. 13; Lindenlaub testimony.*
26. According to the financial statements, HPI received \$1,365,272 in government funds and rents for calendar year 2005. Its expenses for rental management and rental construction during that year were \$424,386, which was only 31% of revenue generated from rents and the federal government. *Pet'r Ex. 13; Meighen argument.*
27. Monthly market rents in the Columbus area range from \$333 to \$890, with a significant number of rents in the \$450 to \$550 range. These rates are comparable to the rates charged by HPI. *Owens testimony; Resp't Exs. B, C.* Comparability was based on similar utility of the units. The Assessor's office obtained market rents by using mailed questionnaires, telephone inquiries, and information obtained by field representatives. *Owens testimony; Gould testimony.*

Analysis and Conclusions

28. 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."³ If a property is exclusively used for exempt purposes, then it is totally exempt. If a property is predominantly used for exempt purposes then it gets a partial exemption based on the percentage of exempt use. If a property is predominantly used for non-exempt purposes, then it gets no 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).

³ Separate subsections, 16(c) and 16(e), allow for exemption of land and personal property, but they specifically relate back to the requirements in 16(a).

29. Anybody 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).
30. 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.
31. 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).
32. Exemptions are decided based on the actual use of a property. Consequently, "[t]he declaration of charity by an organization does not necessarily mean that the dominant use of the organization's property is of the form of charity which the law recognizes as entitling an organization to tax exemption." *Sahara Grotto v. State Bd. of Tax Comm'rs*, 261 N.E.2d 873, 878 (1970).
33. 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 of Mishawaka v. St. Joseph Co. Assessor*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct. 2009), *reh'g denied*, 914 N.E.2d 13, *review denied*; *see 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).

34. There is, however, no bright-line test. Determining whether a particular property satisfies this test is a fact sensitive inquiry. *Jamestown Homes*, 914 N.E. 2d at 15; *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. Assessor*, 821 N.E.2d 466, 471 Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself), *review denied*.” *Jamestown Homes*, 914 N.E.2d at 15.
35. The totality of the evidence and arguments for exemption as presented in this case failed to satisfy the requirements for allowing such a claim. Instead, HPI presented a case that, for the most part, relied on broad generalities and unsubstantiated conclusions to support its claim that as a 501(c)(3) nonprofit organization providing low income housing it should be allowed the charitable use property tax exemption in Ind. Code § 6-1.1-10-16. According to HPI, its revitalization efforts for older neighborhoods in distress save local government the expense of rehabilitating these neighborhoods. But no evidence was introduced to show that local, state, or federal government had any such plans or obligations. There is no substantial evidence that HPI’s activities relieve an obligation that otherwise necessarily would have been funded at government expense.
36. One of HPI’s main arguments was that the Board has already decided low income housing is a “charitable purpose.” It cited several older determinations: *Willowbrook*

Affordable Housing Corp. v. Marion Co. Property Tax Assessment Bd. of Appeals, Petition No. 49-800-97-2-8-00083 (1997 tax year); *Grandview Care, Inc. v. Perry County Property Tax Assessment Board of Appeals and Perry County Assessor*, Petitions No. 62-008-06-2-8-00001 and 62-008-07-2-8-00001 (2006 and 2007 tax years); *Knox Garden Court, Inc. v. Starke County Property Tax Assessment Board of Appeals*; Petition No. 75-001-06-2-8-00001 (2006 tax year); *Greenwood Apartments Incorporated v. Wayne County Property Tax Assessment Bd. of Appeals*, Petition No. 89-014-02-2-8-00006 (2002 tax year). No such general rule, however, has been established. In *Grandview Care v. Perry County* we explained that exemptions for low income housing must be determined on an individual basis:

Ms. Bickel [the attorney for both Grandview Care and HPI] apparently seeks to define one category—‘low income housing’—and treat all properties alike. The Board, however, recognizes that there are many different programs and numerous organizations providing a broad range of housing options that may fall under the very large umbrella of ‘low income’ housing. The Board does not treat all the organizations and programs as interchangeable, but reviews the facts of each case.

Pet’r Ex. 17 at 13. And some of our more recent rulings have found low income housing not to be an exempt purpose. *See, e.g., East Central Reinvestment Corp. v. Delaware Co. Property Tax Assessment Bd. of Appeals*, Petition No. 18-003-04-2-8-10000 *et al.* (2004 tax year) (“If there is a public benefit based on this low-income housing, Petitioner failed to prove it with substantial probative evidence.”). Again, every exemption case depends on its facts and how those facts were presented.

37. This case differs from several others where we have considered claims involving low income housing in that HPI does not get government support from *specific* programs such as Section 221(d)(3) of Title II of the National Housing Act or Section 42 of the Internal Revenue Code.⁴ Where such specific federal programs are involved there are various specific requirements and conditions attached to getting the government support.

Although it is not involved in such specific programs, the evidence clearly shows that

⁴ Although some of HPI’s tenants get Section 8 vouchers to help with their rent payments, HPI explained with undisputed testimony that that program is not one that subsidizes HPI. For purposes of the analysis in this case we will assume that position is accurate.

HPI gets substantial government support through federal grants—the financial statements list \$1,053,032 in federal grants in 2005.⁵ There is no substantial dispute that HPI built or rehabilitated its rental properties with the help of federal grant money.

38. But no evidence was offered about what specific terms and conditions might be attached to the federal grant money that HPI gets. Although HPI apparently believed the federal grant money had little or no significance to their exemption claim, we agree with the Respondent that government funding is a significant consideration. The lack of evidence or explanation on this point is significant because exemption for low income rental properties has been denied based on incentives the property owners have received to construct and operate such housing. *See Jamestown Homes*, 909 N.E.2d 1138, *reh'g denied*, 914 N.E.2d 13; *see also Lincoln Village Cooperative, Inc. v. Bartholomew Co. Property Tax Assessment Bd. of Appeals*, Petition No. 03-003-05-2-8-00001 (May 30, 2008) (“The fact that many tenants pay less to live at Lincoln Village than they might have to pay at comparable apartments that do not participate in Section 236 or Section 8 housing programs does not justify allowing the charitable property tax exemption.”); *Roanoke Heights Apartments v. Huntington Co. Property Tax Assessment Bd. of Appeals*, Petition Nos. 35-007-06-2-8-00001 and 35-007-06-2-8-00002 (December 17, 2007) (while Roanoke rents primarily to individuals and families significantly below the Huntington area’s median income and does not charge those tenants more than 30% of their income, it operates in this manner in exchange for significant benefits including receiving federally subsidized financing.)
39. While it may not be tied to a specific program for federal grant money, HPI failed to establish how that fact is sufficient to distinguish its case or support exemption. Without a better explanation, the government funding is a point that weighs against allowing the exemption claim.

⁵ The evidence indicates that HPI obtains support from both government and private sources and that support allows its rents to be \$200 to \$300 less than they otherwise would be.

40. HPI also attempted to support its charitable exemption claim by proving that its tenants pay less than market rents for its rental properties. “In 2005, HPI performed a survey of market rents in the Columbus area. Because HPI had no way of knowing which single family homes were rental properties, HPI surveyed the apartment complexes in the Columbus area and found that on a per square foot basis, its rents were much lower than the rents of market rate properties in the area.” *Pet’r Brief at 10-11.*
41. In order to use a comparison approach one must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *See Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent also must explain how any differences between the properties affect their relative market values-in-use. *Id.* The subject properties are a mixture of single family homes, duplexes, and small apartment buildings, which appear to be quite different from the apartment complexes that HPI used for its rent comparisons. Although the apartment complexes may have charged more, they have amenities such as a clubhouse, fitness room and swimming pool not found in HPI’s properties. HPI failed to establish what those differences might mean to the relative rental prices. Consequently, the testimony that HPI’s rents are lower is nothing more than unsubstantiated conclusions—not probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
42. In addition, on cross examination Connie Munn acknowledged that while some of HPI’s rents were less than other market rents, in other instances its rents were “about the same” and sometimes they were even “a little bit over” other residential rental rates. Even though there was undisputed evidence that HPI is a good landlord and does some nice things for its tenants, the evidence about HPI’s rents is not enough to convincingly prove these rentals are a predominantly charitable use of the properties.

43. The legislature provided a limited exemption for some Section 42 low income housing with Ind. Code § 6-1.1-10-16.7. But to get that exemption, subsection (3) requires the owner to agree to make payments in lieu of taxes under Ind. Code § 36-1-8-14.2. The legislature used payments in lieu of taxes (PILOT) to establish a fund to encourage rehabilitation of affordable housing and to establish programs with resources for affordable housing clientele at the state and local level. While the subject property is not Section 42 housing, and consequently Ind. Code § 6-1.1-10-16.7 clearly would not apply, the existence of this statute is significant. If all low-income housing were charitable use, the PILOT requirement that the state legislature designed to benefit low income families would be nullified. That kind of result would be improper. *See Bushong v. Williamson*, 790 N.E.2d 467, 471 (Ind. 2003).
44. HPI also sought exemption for its administrative office and related personal property. Apparently this part of the claim is tied to the purportedly overall charitable and exempt nature of low-income housing because not much evidence or argument was presented that is specifically about the use of the administrative office or personal property. Testimony established that the application process consists primarily of routine administrative tasks no different from those of any landlord, such as credit checks and verification of applicant income. Perhaps the financial and home ownership classes or programs that HPI offers could be points that count toward charitable use, but because so little evidence about those programs was presented, it is impossible to draw any meaningful conclusion based on them. Some of the charitable activities that HPI pointed to consist of merely referring tenants to other social service agencies who then provide the actual services needed by the client. *Pet'r Ex. 12*. The totality of the evidence failed to prove the predominant use of the administrative office or personal property is charitable.
45. Under the facts presented here, HPI has not shown that any benefit its operations provides to the general public is sufficient to justify the loss of the tax revenue that would result from granting a charitable purpose tax exemption. Therefore, its exemption claim was properly denied.

Summary of Final Determination

In accordance with the above findings and conclusions, the denial of exemption will not be changed.

This Final Determination is issued on the date first written above.

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>

Attachment

Petition Number	Parcel Number
03-003-06-2-8-00001	199618312500 & 2192066006
03-003-06-2-8-00002	199629211501
03-003-06-2-8-00003	199629211502
03-003-06-2-8-00004	199629211503
03-003-06-2-8-00005	199629211504
03-003-06-2-8-00006	199629432600
03-003-06-2-8-00007	199630213000
03-003-06-2-8-00008	199630214700
03-003-06-2-8-00009	199630242700
03-003-06-2-8-00010	199630242900
03-003-06-2-8-00011	1995124370012
03-003-06-2-8-00012	1995124370023
03-003-06-2-8-00013	1996184311100
03-003-06-2-8-00014	1996193111500
03-003-06-2-8-00015	1996193213700
03-003-06-2-8-00016	1996194414201
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03-003-06-2-8-00028	199512430011

Petition Number (cont.)

Parcel Number (cont.)

03-003-06-2-8-00029

199524133500

03-003-06-2-8-00030

199524134300

03-003-06-2-8-00031

199524418300

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199524426600

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03-003-06-2-8-00035

199619328000

03-003-06-2-8-00036

199619426600