

REPRESENTATIVE FOR PETITIONER:

Ronald D. Gifford, Wyland, Humphrey, Wagner, Gifford & Clevenger, LLP

REPRESENTATIVE FOR RESPONDENT:

Rhonda R. Milner, Starke County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Knox Garden Court, Inc.,	)	Petition No.:	75-001-06-2-8-00001
)		
Petitioner,	)	Parcel No:	0180068000
)		
v.)		
)		
Starke County Property Tax	)	County:	Starke
Assessment Board of Appeals,	)	Township:	Center
)		
Respondent.	)	Assessment Year:	2006
)		
)		

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

August 14, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

1. The issue presented for consideration by the Board is whether the subject property is entitled to a 100% tax exemption under Ind. Code § 6-1.1-10-16 as a property used for charitable purposes for the March 1, 2006, assessment date.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

- Ms. Michele Vanlue, on behalf of Knox Garden Court, Inc., (Knox Garden) filed an Application for Property Tax Exemption (Form 136) for the 2006 assessment year on May 3, 2006. The Petitioner filed the Petition for Review of Exemption (Form 132) on October 13, 2006.¹

HEARING FACTS AND OTHER MATTERS OF RECORD

- Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on May 20, 2008, in Knox, Indiana.

- The following persons were sworn and presented testimony at the hearing:
For the Petitioner:

Rodney Ludwig, Director of Finance and Compliance for Real Estate Management Corporation (REMC)

Michele Vanlue, Senior Property Manager, REMC

For the Respondent:²

Rhonda R. Milner, Starke County Assessor,

Ronald Simone, PTABOA member,

Priscilla Upp, Center Township Assessor.

- The Petitioner submitted the following exhibits:

¹ It is not clear when the PTABOA issued the Form 136 or the Form 120 because neither document was signed and dated. The Petitioner's Exhibit D indicates the Petitioner received notice of denial sometime before October 7, 2006. Neither party, however, disputes the timeliness of the Petitioner's appeal.

² Ms. Upp did not testify at the hearing.

Petitioner Exhibit A – Certificate of Incorporation and Articles of Incorporation,
Petitioner Exhibit B – Indiana Nonprofit Sales Tax Exemption and Letter from the Internal Revenue Service,
Petitioner Exhibit C – Application for Property Tax Exemption,
Petitioner Exhibit D – Letter from REMC to Starke County Assessor,
Petitioner Exhibit E – Petition for Review of Exemption, Form 132,
Petitioner Exhibit F – Fax Cover Sheet from REMC to the Starke County Assessor,
Petitioner Exhibit G – Letter from Starke County Assessor to the Board,
Petitioner Exhibit H – Letter of support from Congressman Buyer,
Petitioner Exhibit I – Letter of support from Mayor Dembowski,
Petitioner Exhibit J – Letter of support from the Starke County Development Foundation,
Petitioner Exhibit K – Introduction to Garden Court, Inc.

6. The Respondent submitted the following exhibit:
Respondent Exhibit A – Pre-hearing submission dated May 5, 2008.
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
Board Exhibit A – The 132 Petition,
Board Exhibit B – Notice of Hearing dated March 20, 2008,
Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
Board Exhibit D – Order for Pre-hearing Briefs,
Board Exhibit E – Sign-in Sheet,
Board Exhibit F – Order for Post-hearing Briefs.
8. The subject property is a 24-unit apartment complex located at 601 S. Williams Street in the City of Knox, Center Township, Starke County.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2006, the Starke PTABOA determined the property's land and improvements are 100% taxable.
11. For 2006, the Petitioner contends the property is entitled to 100% exemption.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official

must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id*;
Meridian Towers, 805 N.E.2d at 479.

BASIS OF EXEMPTION AND BURDEN

16. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Article 10, § 1 of the Constitution of Indiana. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.

17. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. These government services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E. 2d 218 (Ind. Tax Ct.1996).

22. "The 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 Board of Tax Comm'rs*, 261 N.E.2d 873, 878 (Ind. 1970). In order to qualify for an exemption, the owner must submit probative evidence that the property is owned for an exempt purpose, used for an exempt purpose, and occupied for an exempt purpose.

20. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel,*

v. State Bd. of Tax Comm'rs, 611 N.E. 2d at 714 (Ind.Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E. 2d 936, 938 (Ind. Tax Ct.1987).

PARTIES' CONTENTIONS

21. The Petitioner contends it is eligible for exemption pursuant to Ind. Code § 6-1.1-10-16, because its predominant use and charitable purpose is to provide affordable housing to senior citizens, 62 years and older, who earn less than 50% of the area median income. *Gifford argument*. The Petitioner further contends the other Garden Court Section 202 housing facilities in Indiana are 100% tax-exempt. *Id.*

23. The Petitioner presented the following evidence in regard to this issue:
 - a. The Petitioner contends that Knox Garden is an Indiana not-for-profit corporation. *Petitioner Exhibit A*. According to the Petitioner, Knox Garden is designated as a charitable organization under Section 501(c)(3) of the Internal Revenue Code and is exempt from federal income taxes and state sales tax. *Petitioner Exhibit B*.

 - b. The Petitioner argues that Knox Garden is a public benefit corporation organized for the charitable purpose of providing affordable housing for low-income senior citizens. *Gifford argument; Ludwig testimony; and Vanlue testimony*. According to its Articles of Incorporation, Knox Garden provides “elderly and handicapped persons with housing facilities and services especially designed to meet their physical, social, and psychological needs, and to promote their health, security, happiness, and usefulness in longer living.” *Petitioner Exhibit A*. Thus, in addition to providing safe, comfortable, low-income housing, the Petitioner’s witness testified that Knox Garden provides services like medical services and blood sugar checks and various other services that are not income producing. *Vanlue testimony*.

- c. In furtherance of its purpose, the Petitioner's witness, Rodney Ludwig testified that Knox Garden manages a U.S. Department of Housing and Urban Development (HUD), Section 202, apartment complex. *Ludwig testimony*. The complex consists of 24 one-bedroom units, a small community room, laundry facilities, and an office for the site manager. *Id.* Under Section 202, the apartments may only be occupied by senior citizens 62 years of age and older having no more than 50% of the local median income. *Id.* According to the Petitioner, the complex is 100% occupied and there is a waiting list. *Id.*
- d. The Petitioner contends that Knox Garden built the complex at the request of representatives from the City of Knox. *Ludwig testimony; Vanlue testimony*. According to the Petitioner, the City of Knox, the Starke County Development Foundation, and a United States Congressman all agreed there was a need for adequate housing for seniors in Starke County and supported the application for Section 202 financing. *Ludwig testimony; Petitioner Exhibits H, I and J*. Moreover, the Knox City Council committed \$10,000 to Knox Garden to support the project's construction. *Ludwig testimony; Petitioner Exhibit I*.
- e. The Petitioner contends that HUD sets the rents for the complex based on an annual budget prepared by Knox Garden's management company. *Ludwig testimony*. The current rent is \$372. *Id.* The actual rent paid by the residents is based on 30% of their adjusted income. *Ludwig testimony*. For Knox Garden, the average rate is \$250, which includes utilities. *Id.* According to the Petitioner, this is less than most tenants paid for utilities at their previous homes. *Id.* Mr. Ludwig testified that HUD sends a monthly disbursement for the difference between the rent and the amount the tenants pay. *Id.* All the monies, with the exception of the managing agent's compensation, go to operate the property. *Id.*
- f. The Petitioner argues that the members of the board of directors receive no compensation and no monies revert to any individual. *Gifford argument*;

Ludwig testimony; Vanlue testimony. According to the Articles of Incorporation, “(b) The Corporation is irrevocably dedicated to and operated exclusively for, nonprofit purposes; and no part of the income or assets of the Corporation shall be distributed to, nor inure to the benefit of, any individual.” *Petitioner Exhibit A at 2.* Further, the Petitioner contends, when the mortgage is released in 40 years Knox Garden will still be a not-for-profit entity operated by volunteer directors. *Gifford testimony.* According to the Petitioner, upon liquidation of the entity or sale of the property to a for-profit entity, the monies realized have to go to another 501(c)(3) involved in similar type transactions. *Id.* There is no profit motive. *Id.*

- g. Finally, the Petitioner argues that there is no provision for the payment of property taxes in its Section 202 financing. *Gifford argument.* According to the Petitioner, the property’s rent is kept low because Knox Garden is not paying property taxes and also because HUD does not require it to pay the mortgage as long as the facility is properly operated according to HUD requirements. *Id.* Thus, the Petitioner argues, the end result of imposing property taxes would be devastating, not only to this facility but to the community which would lose safe, comfortable housing for its low-income senior citizens. *Id.*

- 24. The Respondent contends the Petitioner is not eligible for a charitable exemption.

- 25. The Respondent presented the following evidence in regard to the issue:
 - a. The Respondent contends that, because the project is fully subsidized by the government and the tenants’ rents, there is no charity involved. *Milner testimony.* The Respondent further contends that services provided at the complex, such as the medical services that Health Force Indiana makes available to the tenants, are the charitable donations of the service providers, not the Petitioner’s donation. *Id.*

- b. The Respondent contends the Petitioner's Articles of Incorporation allow Knox Garden to fix compensation for directors and to establish pension plans. *Milner testimony; Petitioner Exhibit A*. The Respondent further contends that even though the Petitioner claims they do not do this at the present time, the Petitioner has the authority to compensate its directors. *Id.* According to the Respondent, this is in conflict with charity. *Id.*
- c. Finally, the Respondent argues that the Petitioner has not identified any specific law that entitles it to an exemption. *Milner testimony; Simone testimony*. According to the Respondent, the Petitioner only argues that no other county has denied the exemption. *Respondent Post-hearing Brief*. The Respondent contends that this is insufficient to grant the exemption.

ANALYSIS

- 26. The Petitioner contends the subject property is a multi-unit apartment complex whose units are leased to low-income senior citizens, 62 years and older. The property has on-site management to respond to tenants' needs and a community room for socialization. The Petitioner also provides health services such as blood pressure measurements and blood sugar checks. In addition, the tenants' rent rates are limited to 30% of the resident's adjusted income so that the tenants are assured of having money left over to buy prescriptions and other necessities. The Petitioner argues that it provides a comfortable living to the low income seniors of Starke County and, therefore, the subject property is operated for charitable purposes and should be exempt from property taxation.
- 27. Indiana Code § 6-1.1-10-16(a) states that "All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes." Exemption statutes are strictly construed against the taxpayer. *See New Castle Lodge # 147, Loyal Order*

of Moose, Inc. v. State Bd. of Tax Comm'rs, 733 N.E.2d 36, 38 (Ind. Tax Ct. 2000), *aff'd*, 765 N.E.2d 1257 (Ind. 2002). Despite this, “the term ‘charitable purpose’ is to be defined and understood in its broadest constitutional sense.” *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005)(citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 251 N.E.2d 673, 682 (1969)). A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner, L.P., v. Department of Local Government Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).

28. The Indiana Court of Appeals first addressed the issue of care for the aged as a charitable purpose in the *State Bd. of Tax Comm'rs v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. Ct. App. 1968). In that case, the Court recognized that the senior population had special needs, “namely relief of loneliness, boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, attention to problems of health, etc.” 241 N.E.2d at 86. In finding a non-profit retirement home exempt, the Court held that “it is now common knowledge that the aged require care and attention entirely independent of financial needs, and that present day humanitarian principles demand that those in their declining years have the opportunity to live with as much independence as their strength will permit, in as pleasant and happy surroundings as their finances will reasonably justify.” *Id.* at 89.
29. The Indiana Court of Appeals decision in *Methodist Home* has been followed numerous times by the Indiana Tax Court. See *Raintree Friends Housing, Inc. v. Ind. Dep't. of State Rev.*, 667 N.E.2d 810 (Ind. Tax Ct. 1996); *Wittenberg Lutheran Village Endowment Corporation v. Lake County Property Tax Assessment Board of Appeals*, 782 N.E.2d 483 (Ind. Tax Ct. 2003); and *Knox*

County Property Tax Assessment Board of Appeals v. Grandview Care, Inc., 826 N.E.2d 177 (Ind. Tax Ct. 2005).

30. In *Raintree Friends*, the facility at issue was funded almost exclusively by tenant rents and fees, although the property received non-financial support and services from local Quaker congregations. 667 N.E.2d at 812. In supporting its determination that the property owner was subject to gross income, sales and food and beverage taxes, the Department of Revenue argued that the properties were “not operating for a charitable purpose because the services they offer are no different than those offered by traditional apartment complexes.” *Id.* The Court in granting an exemption held:

The Housing Corporations provide beneficial and worthwhile services to the aged population. Indeed, the mission statement of each Retirement Home articulates that its goal is to assist residents in living as independently as possible for as long as possible. The Retirement Homes provide a benefit to society by catering to the specific needs of their aged residents and by providing community, security, and assisted living for those in need.

Id. at 815. The Court further found that “The fact that the Retirement Homes charge a fee for the services they provide is not a bar to their charitable status, as charities often need to charge reasonable and sufficient fees to cover the cost of their operation.” *Id.*

31. Similarly, in *Wittenberg Lutheran Village*, the property was an integrated retirement community including a nursing home, an assisted living facility and eighteen 4-unit residential apartment buildings known as the “Villas.” 782 N.E.2d at 483. The Lake County Property Tax Assessment Board of Appeals argued that because the Villas did not cater to the ill or infirm, the facility was “nothing more than a traditional apartment complex.” *Id.* at 487. The Court found that

In addition to provide the amenities found in traditional apartment living, the Villas offer many unique and special services to its residents. For instance, each apartment is equipped with safety features (such as bathroom grab bars) and is wheelchair accessible. All units are built on a crawl-space foundation, providing less stress on elderly bones and joints than slab foundations. Chaplaincy and worship services are available to all Villa residents. Villa residents may participate in a wide range of free planned group activities and have free access to exercise equipment within the Village. They may use the Village mini-bus for regularly scheduled shopping, planned group outings, and health-related appointments at nearby medical facilities. In addition, Villa residents may volunteer in the assisted living facility or the nursing home.

Id. at 485. Thus, the Tax Court concluded that “contrary to the PTABOA’s rational, the needs of senior citizens are not exclusively financial, nor are they merely health-related.” *Id.* at 488. Seniors “need a sense of community and involvement.” They need social interaction and supportive services “that enable them to live more independently for a longer period of time.” *Id.* They need a sense of security and they need to “function at active levels.” *Id.* Because the Villas met these needs, the Court found the property to be “owned occupied and used for a charitable purpose.”

32. Most recently, in *Grandview Care*, the Tax Court found that “Indiana courts have long recognized that providing care and comfort to the aged constitutes a charitable purpose.” 826 N.E.2d at 182. In the *Grandview Care* case, Grandview Care was an Indiana not-for-profit organization that owned BridgePointe Health Campus. *Id.* at 179. Unlike the *Raintree Friends*, *Methodist Home* or the *Wittenberg Lutheran* cases, the nursing home and assisted living corporation at issue in *Grandview Care* was not affiliated with any religious denomination or church. *Id.* at 182. Further, BridgePointe was managed by a for-profit organization, Trilogy Health Services, which was paid \$17,000 per month. *Id.* at 179. The Knox County PTABOA denied the property owner’s application for exemption because Grandview contracted with Trilogy and therefore, the PTABOA held, the facility was being operated for profit. *Id.* The Tax Court

granted exemption finding that “the fact that residents of such facilities are charged for their stays does not necessarily negate the charitable purpose of the institution, particularly ‘when it does not appear that the fees are more than sufficient to pay the expenses of maintenance or that the proprietors of the institution derive any profit therefrom.’” *Id.* at 184 (citing *Methodist Home*, 241 N.E.2d at 88-89). The Court held that Trilogy was an “operating expense” and that there was no evidence that Grandview was deriving a profit from the operation of the facility or that the fees charged by Grandview were more than necessary to pay its expenses.³ *Id.* at 185.

33. Here, the Petitioner presented evidence that its apartments were built for senior citizens. Only individuals over the age of 62 and their spouses whose incomes were below 50% of the local median income could reside at Knox Garden. According to the Starke County Development Foundation, “the poverty rate for Starke County is among the highest in the state and the age 65 plus population rate in the county is higher than the state average.” *Petitioner Exhibit J*. Thus, the Development Foundation concluded that there was “abundant need” for low income senior housing.⁴ *Id.*

34. The Petitioner is a non-profit entity and the officers and the directors of Knox Garden receive no compensation for serving on the Board. All receipts received by the property are used to maintain the property. Because there is no profit motive and HUD requires no payment on the mortgage so long as the property is being used for low income senior housing, the Petitioner argues that “obviously the rents are substantially below market.” *Post-Hearing Brief of Petitioner* at 9.

³ While the PTABOA questioned the relationship between Grandview and Trilogy, the Court held that “to the extent that the PTABOA believe both an explanation as to the nature of the ... relationship, as well as the management agreement between Grandview and Trilogy, were vital to an accurate determination by the Indiana Board, the PTABOA – not Grandview – was responsible for getting that information into the administrative record.” 826 N.E.2d at 185, fn. 8. The Court noted that despite a variety of discovery tools, the PTABOA failed to present any evidence regarding any ties between the entities. *Id.*

⁴ The Petitioner distinguished other low income housing projects by noting that “they can rent to residents that have income in the moderate range, which is about twice as high as the very low income threshold allowed under HUD Section 202 program.” *Post-Hearing Brief of Petitioner* at 11.

35. Knox Garden residents are able to obtain suitable retirement housing and yet remain in their hometown. Further, the facility has “a community room to enjoy social gatherings, entertainment and games, as well as a patio area to sit outside.” *Petitioner Exhibit K*. In addition, Knox Garden provides services to its residents through Health Force of Indiana. As counsel for the Petitioner noted, Knox Garden’s residents are “assured of a comfortable living and assured of having money left over to buy their prescriptions.” *Gifford argument*. According to the Petitioner, it “operates its residential facility providing a safe and decent housing experience at a very low rent so that the aged members of the Starke County population can live in an independent manner, but with socialization activities and decent housing that makes their life considerably easier and safer.” *Post-Hearing Brief of Petitioner* at 11.
36. The Tax Court found that “the needs of senior citizens are not exclusively financial, nor are they merely health-related.” *Wittenberg Lutheran*, 782 N.E.2d at 488. Seniors “need a sense of community and involvement.” *Id.* They need social interaction and supportive services “that enable them to live more independently for a longer period of time.” *Id.* They need a sense of security and they need to “function at active levels.” *Id.* While the Petitioner would have been better served providing evidence of the services it provides to its residents rather than focusing on whether other “similar” facilities have received an exemption, the Board finds sufficient evidence was presented that Starke County residents in their declining years will “have the opportunity to live with as much independence as their strength will permit, in as pleasant and happy surroundings” despite their limited incomes. *Methodist Home*, 241 N.E.2d at 89. Thus, the Board finds that Knox Garden Court is owned, occupied and used for a charitable purpose and, as such, is 100% exempt.

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

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to 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 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/bills/2007/SE0287.1.html>.