



Low Income Housing

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Low Income Housing

- Background
- *Pedcor Investments Case*
- How to Value a Low Income Housing Property
- Recent Tax Court and IBTR Cases
- Questions



Low Income Housing





Low Income Housing

- **Background – Assistance Programs**
- The United States Housing Act of 1937:
 - Provide financial assistance to states and cities for public works projects.
 - Slum clearance and the development of affordable housing developments for low income residents.



Low Income Housing

- The Housing and Community Development (HCD) Act of 1974:
 - Created a new federally assisted housing program: Section 8 Certificate program.
 - Federal housing payments were made directly to private owners of rental housing.
 - Eligible families generally contributed 30% of their adjusted income and the program paid 70%.



Low Income Housing

- The Housing and Community Development (HCD) Act of 1987:
 - Authorized the Section 8 Voucher program.
 - Provided more options in housing selection.
 - No fair market limitation on rent, and the family contribution is not set at a limit of 30% of adjusted income. The family may pay more or less than the 30% depending on the actual rent cost of the unit selected.



Low Income Housing

- Eligibility for a housing voucher:
 - Determined by the Public Housing Agencies (PHA) based on the total annual gross income and family size.
 - Limited to US citizens and specified categories of non-citizens who have eligible immigration status.
 - In general, the family's income may not exceed 50% of the median income for the county or metropolitan area in which the family chooses to live.



Low Income Housing

- PHA must provide 75 percent of its voucher to applicants whose incomes do not exceed 30 percent of the area median income.
- Median income levels are published by the U.S. Department of Housing and Urban Development (HUD) and vary by location.



Low Income Housing

- The PHA determines a payment standard and calculates the amount of housing assistance a family will receive.
- The payment standard does not limit and does not affect the amount of rent a landlord may charge or the family may pay.



Low Income Housing

- The housing voucher family must pay 30% of its monthly adjusted gross income for rent and utilities, and if the unit rent is greater than the payment standard the family is required to pay the additional amount.
- Whenever a family moves to a new unit where the rent exceeds the payment standard, the family may not pay more than 40 percent of its adjusted monthly income for rent.



Low Income Housing

- The PHA calculates the maximum amount of housing assistance allowable.
- The maximum housing assistance is generally the lesser of the payment standard minus 30% of the family's monthly adjusted income or the gross rent for the unit minus 30% of monthly adjusted income.



Low Income Housing

- The PHA's receive federal funds from HUD to administer the voucher program.
- A family that is issued a housing voucher is responsible for finding a suitable housing unit of the family's choice where the owner agrees to rent under the program. This unit may include the family's present residence.



Low Income Housing

- A housing subsidy is paid to the landlord directly by the PHA on behalf of the participating family.
- The family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the program.



Low Income Housing

- **Background – IRS Tax Credits:**
- Tax Reform Act of 1986: Rental Housing Tax Credits (RHTCs) were created under Section 42 of the Internal Revenue Code.
- RHTCs are a financial incentive for developers to construct or rehabilitate housing developments for rental to low-income persons.
- RHTCs are federal tax credits which are allocated to for-profit and not-for-profit developers of affordable rental housing.



Low Income Housing

- In Indiana, administered by the Indiana Housing & Community Development Authority (HCDA).
- HCDA also is responsible for monitoring tax credit properties to insure that they comply with the federal law.
- By reducing a developer's federal tax liability, or selling of tax credits to investors, tax credits can contribute significantly to the financial viability of developing affordable rental units.



Low Income Housing

- Units receiving RHTCs must be rented to persons at or below 60% of the area median income. Demand for credits runs about four (4) times higher than available resources.
- RHTC properties can be either new construction or rehabilitation of an existing building(s).
- They can also contain a mix of units (some to low-income persons and others that are rented at market rates).



Low Income Housing

- Developers have a choice as to what percentage of units they rent to different income levels (e.g. 20% of their RHTC units to households that earn at or below 50% of the area's median income; or 40% of their tax credit units to households that earn at or below 60% of the area's median income).
- All RHTC income and rent limits are based on the area's median income (data is published annually by HUD).



Low Income Housing

- Most developers set aside a percentage of units (e.g. 30, 40, or 50%) that can be rented to lower income persons.
- The maximum rent that a resident can be charged (including utilities except telephone and cable television) is calculated as 30% of the maximum income limit for the household size.
- The household size is based on the number of bedrooms in the unit, not the actual number of persons residing in the unit.
- A calculation of 1.5 times the number of bedrooms in the unit determines the household size.



Low Income Housing

- Requirements: 1) they must offer the RHTC units at affordable rates; and 2) they must rent RHTC units to persons who earn no more than specified incomes.
- If the entire household is comprised of full-time students, they may not qualify for a RHTC unit.
- Developers cannot discriminate against persons who receive Section 8 vouchers or certificates.



Low Income Housing

- The period of time a developer receives credits is typically ten (10) years.
- The tax credits are sold to investors who receive a reduction on their federal tax return.
- There is typically at least a fifteen (15) year restriction, and more likely a thirty (30) year deed restriction limiting the use of the property to low-income housing.



Low Income Housing

- **Assessment of Low Income Housing**
- IC 6-1.1-4-39 (Emphasis Added)

Assessment of rental property and mobile homes; low income rental housing exclusion

Sec. 39. (a) For assessment dates after February 28, 2005, except as provided in subsections (c) and (e), the true tax value of real property regularly used to rent or otherwise furnish residential accommodations for periods of thirty (30) days or more and that has more than four (4) rental units is the lowest valuation determined by applying each of the following appraisal approaches:



Low Income Housing

- 1) Cost approach that includes an estimated reproduction or replacement cost of buildings and land improvements as of the date of valuation together with estimates of the losses in value that have taken place due to wear and tear, design and plan, or neighborhood influences.
- 2) Sales comparison approach, using data for generally comparable property.



Low Income Housing

- 3) Income capitalization approach, using an applicable capitalization method and appropriate capitalization rates that are developed and used in computations that lead to an indication of value commensurate with the risks for the subject property use.

- b) The gross rent multiplier method is the preferred method of valuing:
 - 1) real property that has at least one (1) and not more than four (4) rental units; and
 - 2) mobile homes assessed under IC 6-1.1-7.



Low Income Housing

- c) A township assessor (if any) or the county assessor is not required to appraise real property referred to in subsection (a) using the three (3) appraisal approaches listed in subsection (a) if the assessor and the taxpayer agree before notice of the assessment is given to the taxpayer under section 22 of this chapter to the determination of the true tax value of the property by the assessor using one (1) of those appraisal approaches.



Low Income Housing

- d) To carry out this section, the department of local government finance may adopt rules for assessors to use in gathering and processing information for the application of the income capitalization method and the gross rent multiplier method. If a taxpayer wishes to have the income capitalization method or the gross rent multiplier method used in the initial formulation of the assessment of the taxpayer's property, the taxpayer must submit the necessary information to the assessor not later than the assessment date.



Low Income Housing

- However, the taxpayer is not prejudiced in any way and is not restricted in pursuing an appeal, if the data is not submitted by the assessment date. A taxpayer must verify under penalties for perjury any information provided to the township or county assessor for use in the application of either method.



Low Income Housing

- All information related to earnings, income, profits, losses, or expenditures that is provided to the assessor under this section is confidential under IC 6-1.1-35-9 to the same extent as information related to earnings, income, profits, losses, or expenditures of personal property is confidential under IC 6-1.1-35-9.



Low Income Housing

- e) The true tax value of low income rental property (as defined in section 41 of this chapter) is not determined under subsection (a). The assessment method prescribed in section 41 of this chapter is the exclusive method for assessment of that property. This subsection does not impede any rights to appeal an assessment.**

As added by P.L.1-2004, SEC.8 and P.L.23-2004, SEC.9. Amended by P.L.199-2005, SEC.3; P.L.146-2008, SEC.85; P.L.146-2012, SEC.2.; P.L. 111-2014, Sec. 15.



Low Income Housing

- **IC 6-1.1-4-40 (Emphasis Added)**

Exclusion of federal income tax credits in the determination of the assessed value of low income housing tax credit property

Sec. 40. The value of federal income tax credits awarded under Section 42 of the Internal Revenue Code may not be considered in determining the assessed value of low income housing tax credit property.

As added by P.L.81-2004, SEC.58.



Low Income Housing

- **IC 6-1.1-4-41 (Emphasis Added)**
Assessment of low income rental housing
Sec. 41. (a) For purposes of this section:
 - 1) "low income rental property" means real property used to provide low income housing eligible for federal income tax credits awarded under Section 42 of the Internal Revenue Code; and
 - 2) "rental period" means the period during which low income rental property is eligible for federal income tax credits awarded under Section 42 of the Internal Revenue Code.



Low Income Housing

- (b) For assessment dates after February 28, 2006, the true tax value of low income rental property is the greater of the true tax value:**
- (1) determined using the income capitalization approach;**
 - or**
 - (2) that results in a gross annual tax liability equal to five percent (5%) of the total gross rent received from the rental of all units in the property for the most recent taxpayer fiscal year that ends before the assessment date.**
- (c) The department of local government finance may adopt rules under IC 4-22-2 to implement this section.**
As added by P.L.199-2005, SEC.4. Amended by P.L.1-2006, SEC.132.



Low Income Housing

IC 6-1.1-10-16.7

Real property

Sec. 16.7. All or part of real property is exempt from property taxation if:

- 1) the improvements on the real property were constructed, rehabilitated, or acquired for the purpose of providing housing to income eligible persons under the federal low income housing tax credit program under 26 U.S.C. 42;
- 2) the real property is subject to an extended use agreement under 26 U.S.C. 42 as administered by the Indiana housing and community development authority; and



Low Income Housing

(3) the owner of the property has entered into an agreement to make payments in lieu of taxes under IC 36-1-8-14.2, IC 36-2-6-22, or IC 36-3-2-11.

As added by P.L.19-2000, SEC.1. Amended by P.L.185-2001, SEC.1 and P.L.291-2001, SEC.195; P.L.186-2001, SEC.2; P.L.1-2002, SEC.18; P.L.179-2002, SEC.3; P.L.1-2006, SEC.133 and P.L.181-2006, SEC.42.

Note: “The legislative intent is to use the “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.” (Lincoln Village Cooperative, Inc. v. Bartholomew Co. PTABOA, IBTR–5/30/2008)



Low Income Housing

- **Pedcor Investments-1990-XIII, L.P. v. STB (9/2/1999):**
- A 13-acre, 160-unit apartment complex in Franklin.
- Pedcor entered into an agreement with the City of Franklin, under which Pedcor would build an apartment complex that would serve low and moderate income tenants in Franklin.
- The agreement called for a number of land use restrictions and covenants, the most significant of which is that 40% of the rental units in the apartment complex were to be rented to low and moderate income tenants.



Low Income Housing

- Pedcor appealed its 1992 and 1993 assessments, alleging that the apartment complex suffered from obsolescence due to the requirement that 44% of the rental units be leased to lower-income tenants and the effect that requirement had on the marketability of the remaining rental units.
- Pedcor contended that the State Board failed to consider evidence that the deed restrictions on the property and the decreased market acceptability of the apartment community as a whole were causes of economic obsolescence.



Low Income Housing

- In Pedcor's view, the deed restrictions caused the apartment complex economic obsolescence because 44% of the rental units were to be rented at 13% to 20% less than the market rate.
- According to Pedcor, this loss of income translated into a 7.5% obsolescence figure.
- Pedcor argued that the fact that 44% of the rental units are set aside for lower-income tenants made the other 56% of the rental units less desirable.



Low Income Housing

- The State Board concluded that the deed restrictions “d[id] not fall within the definition of obsolescence” because they did not constitute “an external influence which affects the usage and operation of the property.”
- The State Board also pointed to the fact that Pedcor received a number of federal tax incentives as a result of the deed restrictions and argued that these tax incentives made up for any loss in rental income resulting from the deed restrictions.



Low Income Housing

- The Tax Court found that:
 - 1) The federal tax incentives must be taken into account when evaluating whether the deed restrictions cause the apartment complex to experience economic obsolescence;
 - 2) The deed restrictions create financial benefits; and
 - 3) The vacancy of the apartment complex was not evidence of the complex suffering a loss of value.



Low Income Housing

How to Value a Low Income Housing Property:

- 1. Per IC 6-1.1-4-41 (b), the true tax value of low income rental property is the greater of the true tax value:**
 - (1) determined using the income capitalization approach; or**
 - (2) that results in a gross annual tax liability equal to five percent (5%) of the total gross rent received from the rental of all units in the property for the most recent taxpayer fiscal year that ends before the assessment date.**



Low Income Housing

- **Income Approach (2011 [sic 2012] Real Property Manual – page 10):**
- The income approach to value is based on the assumption that potential buyers will pay no more for the subject property than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property.



Low Income Housing

- It considers the subject property as an investment and, to that end; its value is based on the rent it will produce for the owner. It can be expressed in a formula as follows:
 - $I \div R = V$
 - Where: I = Income from rental of the property
 - R = Rate of return on the investment
 - V = Total Property Value



Low Income Housing

- Like other income producing properties, the Income Approach for Low Income Housing is calculated using an estimated Net Operating Income (Gross Income less Operating Expenses) and converted to a present value by dividing it by a capitalization rate, which reflects the Discount Rate, the Recapture Rate, and the Effective Tax Rate.
- Replacement Reserves, which account for short-lived items, are considered an allowable operating expense.
- Tax credits may not be considered in determining the operating income of Low Income Housing Property.



Low Income Housing

Example - Income Capitalization Approach:

Gross Rent:	\$100,000
Total Expenses:	\$ 75,000
Net Operating Income:	<u>\$ 25,000</u>

Developed Capitalization Rate: 12%

Indicated Value: \$208,333

$$(\$25,000 / .12 = \$208,333.33)$$



Low Income Housing

Example – Gross Rent Received Multiplied by 5%:

Gross Rent Received: \$100,000

Gross Annual Tax Liability:
($\$100,000 \times 5\%$) \$5,000

Tax District Gross Tax Rate: \$2.0632

Indicated Value: \$242,342

$(\$5,000 / 2.0632 / 100 = \$242,341.99)$



Low Income Housing

For assessment dates after February 28, 2006, the true tax value of low income rental property is the greater of the true tax value:

**Example - Income Capitalization Approach:
\$208,333**

**Example - Gross Rent Received Multiplied by
5%: \$242,342**



Low Income Housing

- **Recent IN Tax Court Cases and IBTR Determinations:**
- Three Fountains Cooperative, Inc. v. Marion Co. Assessor,
- Cause No. 49T10-1406-TA-44 (1/20/2015)
- On April 22, 2005, Three Fountains filed an Application for Property Tax Exemption with the assessor, claiming that its 342-unit multi-family cooperative apartment complex and personal property were exempt from property taxation because they were owned, occupied, and exclusively used for the charitable purpose of providing affordable housing to low-income persons.
- The Marion County Property Tax Assessment Board of Appeals (PTABOA) granted Three Fountains' 2005 exemption application.



Low Income Housing

- Three Fountains' property remained exempt from property tax for the next four years.
- In 2009, the Tax Court issued a decision in which it held that the provision of affordable housing to low-income persons was not a per se charitable purpose.
- As a result, the PTABOA questioned several of its prior exemption determinations, including Three Fountains'.
- On March 8, 2011, after conducting a hearing, the PTABOA revoked Three Fountains' exemption for the 2010 tax year.
- On April 5, 2011, Three Fountains appealed to the Indiana Board of Tax Review, alleging that the PTABOA lacked the statutory authority to revoke Three Fountains' 2010 exemption.



Low Income Housing

- Alternatively, Three Fountains alleged that the PTABOA's exemption revocation was untimely and ignored the fact that its property had been owned, occupied, and exclusively used for charitable purposes since 2005.
- The Indiana Board explained that Indiana Code § 6-1.1-11-1 et seq. authorized the PTABOA's exemption revocation and that the revocation was both timely and in compliance with all applicable notice requirements.



Low Income Housing

- The assessor claimed that the Court did not have subject matter jurisdiction over the matter because Three Fountains sought the review of an Indiana Board interlocutory order, not an Indiana Board final determination.
- Three Fountains contended that the Court does have subject matter jurisdiction because the Indiana Board created a final determination when it issued an order on a procedural issue that terminated the litigation between the parties.



Low Income Housing

- The Court found that Three Fountains must exhaust its administrative remedies before the Court may address whether Indiana Code § 6-1.1-11-1 et seq. authorized the PTABOA's review and revocation of Three Fountains' exemption for the 2010 tax year.



Low Income Housing

- Troy Manor Cooperative, Inc. v. Marion Co. Assessor,
Cause No. 49T10-1406-TA-39 (1/20/2015)
- Southwood Cooperative, Inc. v. Marion Co. Assessor,
Cause No. 49T10-1406-TA-43 (1/20/2015)
- Grandville Cooperative, Inc. v. Marion Co. Assessor,
Cause No. 49T10-1406-TA-35 (1/20/2015)
- Harvard Square Cooperative, Inc. v. Marion Co. Assessor,
Cause No. 49T10-1406-TA-36 (1/20/2015)
- Yorktown Homes South, Inc. v. Marion Co. Assessor,
Cause No. 49T10-1406-TA-38 (1/20/2015)
- Riley-Roberts Park, LP v. Marion Co. Assessor,
Cause No. 49T10-1406-TA-37 (1/20/2015)



Low Income Housing

- Retreat Cooperative, Inc. v. Marion Co. Assessor,
Cause No. 49T10-1406-TA-45 (1/20/2015)
- Lakeview Terrace Cooperative, Inc. v. Marion Co. Assessor,
Cause No. 49T10-1406-TA-40 (1/20/2015)
- Mayfield Green Cooperative, Inc. v. Marion Co. Assessor,
Cause No. 49T10-1406-TA-41 (1/20/2015)
- Three Fountains West, Inc. v. Marion Co. Assessor,
Cause No. 49T10-1406-TA-42 (1/20/2015)

- All of the aforementioned cases had similar scenarios, with the same determination rendered as the Three Fountains Cooperative, Inc. case.



Low Income Housing

- Housing Partnerships, Inc. v. Tom Owens, Bartholomew Co. Assessor, Cause No. 49T10-1005-TA-23 (9/4/2014)
- On June 4, 2014, the Tax Court issued an opinion in Housing Partnerships, Inc. v. Tom Owens, Bartholomew County Assessor, 10 N.E.3d 1057 (Ind. Tax Ct. 2014), holding that Housing Partnerships failed to show that its rental properties qualified for the charitable purposes exemption under Indiana Code § 6-1.1-10-16 for the 2006 tax year. Housing Partnerships requested the Tax Court to reverse that decision.
- The Court denied its request.



Low Income Housing

- Housing Partnerships acknowledged that eligibility for the charitable purposes exemption requires a showing that 1) it owned, occupied, and used its property for purposes that relieve human want by acts different than the everyday activities of man, and 2) its activities benefit the public sufficiently to justify the loss of tax revenue.
- Housing Partnerships asked for a reversal, however, claiming the Court not only failed to recognize the substantial evidence that demonstrated its activities relieve the government of a burden it would otherwise bear, but also misconstrued the holding in Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor.



Low Income Housing

- The Court recognized that Housing Partnerships provided substantial evidence to the Indiana Board demonstrating that it owned, occupied, and used its property to provide affordable housing and financial counseling to low-income residents of Bartholomew County.
- Nonetheless, the provision of low-income housing is not per se a charitable purpose, i.e., good and noble deeds alone do not satisfy the requirements for a charitable purposes exemption.
- Evidence is still required that good deeds relieve the government of a cost it would otherwise bear, showing that Housing Partnerships engaged in its activities to provide a public benefit not for private profit.



Low Income Housing

- While Housing Partnerships laid out its good works, it made only conclusory statements about how those good works lessened government's financial burdens.
- Housing Partnerships failed to distinguish the government grants it received from those that defeated the exemption in Jamestown Homes.
- Housing Partnerships' failure to tie its good deeds to a public benefit is like holding out several pearls to admire as a necklace without actually stringing the pearls together. No matter how much the Court admires the good deeds done, it cannot make up for this failure and be the advocate.



Low Income Housing

- Both in its original tax appeal and its Petition for Rehearing, Housing Partnerships used only conclusory statements to link the evidence of its good deeds to how its good deeds lessen governmental burdens. This is insufficient to show that it is entitled to a charitable purposes exemption for the 2006 tax year.



Low Income Housing

- Housing Partnerships, Inc. v. Tom Owens, Bartholomew Co. Assessor, Cause No. 49T10-1005-TA-23 (6/6/2014)
- Housing Partnerships, an Indiana corporation, was formed in 1990. Its articles of incorporation state that it “is organized and operated not for profit but exclusively for charitable purposes.”
- More specifically, Housing Partnerships’ stated purpose is “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” in Bartholomew County, Indiana.



Low Income Housing

- Housing Partnerships funds its housing projects by using money from several different sources: the income it receives from both the sale and the rental of its housing units, donations from individuals and businesses, and monies received from various public and private grants.
- In 2005 alone, Housing Partnerships received over \$1 million in federal grant money.
- In 2006, Housing Partnerships owned numerous single family homes, duplexes, and small apartment buildings in Bartholomew County. Housing Partnerships rented these properties (or the units in them) to individuals whose annual incomes were at or below 60% of the area median income (adjusted for family size).



Low Income Housing

- On February 3, 2006, Housing Partnerships filed an Application For Property Tax Exemption on each of its rental properties and its administrative office (the subject properties). The applications claimed that the subject properties were entitled to the charitable purposes exemption set forth in Indiana Code § 6-1.1-10-16 because they were used to provide housing to low-income individuals and families.
- On March 13, 2007, the Bartholomew County Property Tax Board of Appeals (PTABOA) denied the applications.
- Housing Partnerships subsequently appealed to the Indiana Board.



Low Income Housing

- On April 6, 2010, the Indiana Board issued a final determination affirming the PTABOA's exemption denial because Housing Partnerships' evidence failed to establish a prima facie case that the subject properties were entitled to the charitable purposes exemption.
- The Indiana Board's final determination also stated that to the extent Housing Partnerships had received a substantial amount of money through federal grants, but did not explain what, if any, terms and conditions were attached to that financial support, an exemption was not proper.



Low Income Housing

- Housing Partnerships needed to demonstrate two things at the Indiana Board hearing. First, it must have shown that its ownership, occupation, and use of the subject properties as low-income housing provided “evidence of relief of human want . . . manifested by obviously charitable acts different from the everyday purposes and activities of man in general.”
- Second, Housing Partnerships must have shown that through the accomplishment of those charitable acts, benefit inures to the public sufficient to justify the loss of tax revenue.



Low Income Housing

- In evaluating all of this testimonial evidence, the Indiana Board explained that it demonstrated that Housing Partnerships was “a good landlord and d[id] some nice things for its tenants,” but it did not demonstrate that the subject properties were owned, occupied, and predominately used for a charitable purpose as that term is used in Indiana Code § 6-1.1-10-16.
- Evidence that a nonprofit corporation charges low-income 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.



Low Income Housing

- No probative evidence was offered for the Indiana Board to determine whether Housing Partnerships relieved the government of an expense it would otherwise have borne, or whether the government, through its federal grants, was still bearing the expense itself.
- Housing Partnerships did not demonstrate that the Indiana Board's final determination was arbitrary, capricious, an abuse of discretion, or contrary to law.



Low Income Housing

- FARH-WEST AFFORDABLE HOUSING, INC.,
Petitioner v. MARION COUNTY ASSESSOR,
Respondent [2008 Assessment – IBTR
Determination] (2/10/2012)
- The issue presented for consideration by the Board is whether the subject property is entitled to a tax exemption for the March 1, 2008, assessment date because the property was owned, occupied, and used for a charitable purpose.



Low Income Housing

- On May 13, 2008, the Petitioner, FARH-West Affordable Housing, Inc., which operates Woodhaven Park Apartments, filed exemption applications for its real and personal property for 2008. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations denying the exemptions on August 28, 2009.
- The Petitioner contends its real and personal property was eligible for 100% exemption in 2008 pursuant to Indiana Code § 6-1.1-10-16 because it was owned, occupied, and used for charitable purposes.
- The Petitioner's counsel contends FARH-West is a 501(c)(3) federal, tax-exempt, charitable organization.



Low Income Housing

- The Petitioner's witness testified that FARH-West purchased Woodhaven Park, which is the property at issue in this appeal, in November of 2007 and spent \$973,000 on capital projects over the next few years.
- One of the Petitioner's projects was repaving the road that Woodhaven Park shares with the single-family homes across the street.
- The Petitioner's witness claimed they spent \$133,000 repaving the city street, which relieved the government of the burden of maintaining the street.



Low Income Housing

- The Petitioner's witness testified that FARH received no federal guarantee in financing the property. However, he testified, there are some subsidies that come into the property, such as residents that are provided Section 8 vouchers to assist in paying their rent. But, he argued, the Section 8 vouchers are not a significant source of revenue in the overall operations of Woodhaven Park.



Low Income Housing

- According to the 2008 Income Demographics Study, the Petitioner's witness testified, there were 646 persons living in the apartments; of which 176 households were below 30% of the area median income, 256 households were below 50% of the area median income and 285 households were below 60% of the area median income."
- Another Petitioner's witness testified that 99% of the households in Woodhaven were at or below the 80% median income threshold in 2008. In 2009, the witness testified, over 95% of the households at Woodhaven had income levels that were below 80% of the median income and 58 of the units were occupied by people earning at or below 30% of area median income.



Low Income Housing

- The Petitioner's witness admitted that the property had 47 vacant units that were identified as being occupied by families with incomes below 30%. She argued that the former tenants in those units were families with less than 30% of the area median income and the Petitioner was holding the apartments open for families with a similar income level.
- Further, the Petitioner's witness contended, Woodhaven Park charged rents that were below the rent charged by other comparable properties.
- Finally, the Petitioner's counsel contended, that it provided charitable benefits and services to its residents sufficient to justify an exemption.



Low Income Housing

- According to another witness, in 2008 Woodhaven Park provided a language learning program and student tutoring.
- Woodhaven Park also provided a rental assistance program, a utility assistance program to help residents under financial hardship, and referred residents to county and state assistance programs for help.
- It provided a space and resources for a credit counseling organization to provide services to its residents and provided a rent credit for its residents to have their income tax forms prepared.



Low Income Housing

- Woodhaven Park also donated a backpack and back-to-school supplies for the students in the apartment complex and provided after school activities such as basketball games and picnic or movie days.
- Further, FARH-West conducted monthly activities to foster a sense of community, including a New Year's Day celebration, a Valentine's Day Party, and a Spring Fling.
- Over the summer, Woodhaven Park provided the location to conduct a free lunch program for kids under the age of eighteen and paid for its employees to be certified for food service.



Low Income Housing

- In addition, the Petitioner applied for grants such as a grant from Microsoft which donated computers and sixty software licenses, and a Book Club for Kids in which FARH paid for books and provided them at no cost to Woodhaven Park residents.
- According to the Petitioner's witness, although some of the programs are referrals and coordinate work with the government agencies and other charities, most programs were provided at a substantial cost to the Petitioner.



Low Income Housing

- The Respondent contended that the Petitioner's property was 100% taxable in 2008.
- The Respondent contended that the Petitioner's rent analyses should be given little weight.
- The Respondent further contended that the Petitioner's Report used a market area far too large to provide reliable comparable information for Woodhaven Park.



Low Income Housing

- 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.
- An exemption requires probative evidence that a property is owned, occupied, and used for an exempt purpose. While the words 'owned, occupied and used' restrict the activities that may be conducted on the property that can qualify for exemption, they do not require a single entity to achieve a unity of ownership, occupancy, and use. Rather, these words are used to ensure that the particular arrangement involved is not driven by a profit motive.



Low Income Housing

- “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose,” however, “is a fact sensitive inquiry; there are no bright-line tests.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13 (Ind. Tax Ct. 2009) (citation omitted). Thus every exemption case “stand[s] on its own facts” and on how the parties present those facts.
- Unlike the property at issue in *Jamestown Homes*, the Petitioner here did not provide its low income tenants housing as part of a contractual agreement or as a condition precedent to receiving federal funds. Moreover, the Petitioner did more than simply provide housing to low income families. It also provided social services and fosters an atmosphere of fraternity and good fellowship.



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- The IBTR concluded: “First, the Petitioner’s evidence raises a prima facie case that the Petitioner leased the apartments at Woodhaven Park for less than fair market rent. The Petitioner showed that its rent rates were below the rent levels established by the Indiana Housing Development Authority and the market rents used by HUD.”
- “Similarly, except for a single property which was offering a ‘rent special’ on its one bedroom apartments, three rent studies, and an USPAP-compliant appraisal found that Woodhaven Park’s rent levels for its one bedroom apartments and two bedroom and three bedroom townhomes fell below the rates charged by other apartment complexes in the area.”



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- “The Petitioner also raised a prima facie case that it provided charitable benefits and services to its residents, in addition to providing affordable housing. Here, the Petitioner did more than simply refer its tenants to social services, it arranged to have organizations come to the site and provide services to its residents such as a credit counseling program, personal and family counseling, and a summer lunch program.”
- “Similarly, while the Petitioner did not provide its own tax preparation services, it offered a rent credit to its residents to obtain tax preparation assistance.”



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- “Further, the Petitioner offered its own programs to improve the situations of its tenants, such as resume assistance, financial planning, a language learning program, and a student tutoring program – in addition to community activities such as a New Year’s Eve celebration and a Valentine’s Day party. The Petitioner also offered rent and utility assistance by offering payment options and forbearance plans in case of tenant hardship.”
- “Finally, the Petitioner applied for grants, such as a grant from Microsoft which donated computers and sixty software licenses and a Book Club for Kids grant which gave the Petitioner the opportunity to buy books at a reduced cost which the Petitioner then gave for free to its residents.”



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- “The undisputed evidence showed that offering such programs came at a significant cost to the Petitioner.”
- “In addition, by repaving the city street that Woodhaven Park shared with the single-family homes across the street, the Petitioner relieved the government of the burden to maintain that street.”
- “The Board therefore finds that the Petitioner raised a prima facie case its property was predominantly owned, occupied, and used for charitable purposes and qualifies for 100% exemption for the 2008 assessment year.”



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- “Moreover, the Respondent failed to rebut or impeach any of the Petitioner’s evidence regarding the services and programs that it offers its low income residents. Therefore, the Respondent failed to rebut the Petitioner’s prima facie case that its property was entitled to 100% exemption for the 2008 assessment year.”
- “The Petitioner established a prima facie case that its property was owned, occupied, and used for a charitable purpose and qualifies for 100% exemption for the March 1, 2008, assessment. The Respondent failed to rebut this evidence. The Board therefore finds in favor of the Petitioner and holds that the Petitioner’s properties are 100% exempt.”



Low Income Housing

- There is one other IBTR decision involving Section 42 – Low Income Housing you might want to review:
- http://www.in.gov/ibtr/files/Columbia_City_Heritage_Homes_92-004-08-1-5-00009_and_94-004-09-1-4-00034.pdf
(7/12/2011)



Questions?



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