

REPRESENTATIVE FOR PETITIONER: Katrina M. Clingerman, Attorney

REPRESENTATIVE FOR RESPONDENT: Mendy Ward, Perry County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

GRANDVIEW CARE, INC.,	)	Petitions No.:	62-008-03-2-8-00003
	)		62-008-03-2-8-00004
	)		62-008-03-2-8-00005
	)		62-008-03-2-8-00006
)		
Petitioner	)	County:	Perry
)		
v.	)	Township:	Troy
)		
	)	Parcels No.:	009-03089-00
PERRY COUNTY	)		009-02212-01
PROPERTY TAX BOARD	)		009-02178-24
OF APPEALS ,	)		009-02178-23
)		
Respondents.	)	Assessment Year:	2003
)		

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

MAY 27, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (the “Board”) has reviewed the facts and evidence. The Board has considered the issues presented in this case. The Board now enters its findings of fact, conclusions of law and final determination as follows.

ISSUE: Do Grandview Care's Cambridge and Continental Apartments qualify for charitable use tax exemption as provided by Indiana Code § 6-1.1-10-16?

PROCEDURAL HISTORY

1. Pursuant to Ind. Code § 6-1.1-11-7, Grandview Care, Inc. (the “Petitioner”), filed Form 132 Petitions for Review of Exemption on July 12, 2004. The Perry County Property Tax Assessment Board of Appeals previously had denied exemption on May 10, 2004.
2. Rick Barter, the duly designated Administrative Law Judge (“ALJ”), held a hearing on those exemption petitions in Tell City on November 30, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. The following persons were sworn as witnesses and presented testimony at the hearing:
For the Petitioner – Sam T. Bick, President of Grandview Care, Inc.,
For the Respondent – Mendy Ward, Perry County Assessor,
Alan Malone, Cambridge Apartments tenant.
4. The following exhibits were presented for the Petitioner:
Petitioner’s Exhibit A – A copy of the letter from the Internal Revenue Service regarding the federal tax status for Grandview Care, Inc.,
Petitioner’s Exhibit B – A copy of the Not-For-Profit Tax Registration Certificate issued by the Indiana Department of Review regarding the income tax exempt status for Grandview Care, Inc.,
Petitioner’s Exhibit C – A copy of the Articles of Incorporation for Grandview Care, Inc.,
Petitioner’s Exhibit D – A copy of the Bylaws for Grandview Care, Inc.,
Petitioner’s Exhibit E – A copy of the January 1, 2003, Statement of Financial Condition for Grandview Care, Inc.,
Petitioner’s Exhibit F – A diagram showing the location of the buildings on the Cambridge site,

Petitioner's Exhibit G – A diagram showing the location of the buildings on the Continental site,

Petitioner's Exhibit H – A copy of Form 136 for Cambridge,

Petitioner's Exhibit I – A copy of Form 136 for Continental,

Petitioner's Exhibit J – A copy of the 2003 Forms 104 and 103, Business Tangible Personal Property Return filed for the subject properties,

Petitioner's Exhibit K – A copy of Form 120, Notice of Action on Exemption, for Cambridge,

Petitioner's Exhibit L – A copy of Form 120, Notice of Action on Exemption, for Continental,

Petitioner's Exhibit M – A copy of the Form 132 petition for Cambridge,

Petitioner's Exhibit N – A copy of the Form 132 petition for Continental,

Petitioner's Exhibit O – A copy of the Form 132 petition for Continental,

Petitioner's Exhibit P – A copy of the Form 132 petition for Continental,

Petitioner's Exhibit Q – 2003 rent information and income guidelines for Cambridge,

Petitioner's Exhibit R – 2003 rent information and income guidelines for Continental Apartments,

Petitioner's Exhibit S – Resident Census/Eligibility Summary for Cambridge as of March 1, 2003,

Petitioner's Exhibit T – Resident Census/Eligibility Summary for Continental as of March 1, 2003,

Petitioner's Exhibit U – A copy of a lease application for Cambridge,

Petitioner's Exhibit V – Census data for the area,

Petitioner's Exhibit W – Comparable rental rates for the area,

Petitioner's Exhibit X – Copy of Revenue Procedure 96-32,

Petitioner's Exhibit Y – Acquisition documents for the subject properties,

Petitioner's Exhibit Z – Copy of Power of Attorney,

Petitioner's Exhibit AA – Memorandum of Law,

Petitioner's Exhibit BB – A list of planned activities to be offered,

Petitioner's Exhibit CC – Copy of Alan Malone's lease application.

5. The following exhibit was presented for the Respondent:
Respondent's Exhibit A – Copy of Property Record Cards (PRCs) for Cambridge, Parcels 009-03089, 009-02178-24, and 009-02178-23 and Continental, Parcel 009-02212-01.
6. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
Board Exhibit A – Form 132 Petition for each parcel with attachments,
Board Exhibit B – Notice of Hearing on Petitions,
Board Exhibit C – Hearing Sign In Sheet.
7. The subject properties are residential apartment complexes located in Tell City. Continental has 2 buildings containing 20 units. Continental is identified as Parcel 009-02212-01 on Petition 62-008-03-2-8-00004. Cambridge has 4 buildings containing 24 units. Cambridge is identified as Parcels 009-03089-00, 009-02178-23, and 009-02178-24 on Petitions 62-008-03-2-8-00003, 62-008-03-2-8-00006, and 62-008-03-2-8-00005.
8. The ALJ did not conduct an onsite inspection of the property.

JURISDICTIONAL FRAMEWORK

9. 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

10. 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).
11. 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. Washington 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”).
12. 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.

CONSTITUTIONAL AND STATUTORY BASIS FOR EXEMPTION

13. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1.
14. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting an exemption.
15. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Dep't of Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996) (non-profit

status does not entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. of Tax Comm'rs v. New Castle Lodge, Loyal Order of Moose*, 765 N.E.2d 1257, 1263, (Ind. 2002); *State Bd. of Tax Comm'rs v. Fort Wayne Sport Club*, 258 N.E.2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

BASIS OF EXEMPTION AND BURDEN

16. In Indiana, the general rule is that all property in the State is subject to property taxation. *See* Ind. Code § 6-1.1-2-1.
17. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support, which is taxation. When property is exempted 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).
18. The transfer of this obligation to non-exempt properties by the granting of an exemption should never be seen as inconsequential. This consequence is the reason that worthwhile activities or noble purposes alone are not enough for tax exemption. Exemption is granted when there is an expectation that a benefit will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990).
19. Anyone seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that its use falls specifically within the statutory authority for the exemption. *Monarch Steel v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Assoc. of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

DISCUSSION OF THE ISSUE

Do Grandview Care's Cambridge and Continental Apartments qualify for charitable use tax exemption as provided by Indiana Code § 6-1.1-10-16?

20. Because the subject properties are used to provide safe housing for the elderly, the handicapped and/or low-income families, Petitioner contends that they serve a charitable purpose and, therefore, qualify for 100 percent property tax exemption. *Bick testimony; Petitioner Exhibit AA.*
21. Because not all of the apartment units are leased to income-qualified, elderly or handicapped tenants, Respondent contends that the subject properties do not qualify for property tax exemption. *Ward testimony.*
22. The Petitioner presented the following as evidence in support of this issue:
 - a) Petitioner is an Indiana not-for-profit corporation organized for the purpose of providing housing, nursing care and assisted living for the elderly and needy. *Petitioner Exhibit C.*
 - b) Cambridge and Continental are operated to provide housing for low income, elderly, and disabled people consistent with, and in furtherance of, the charitable purposes of Grandview Care, Inc. *Petitioner Exhibit AA.*
 - c) As of March 1, 2003, the assessment date, 21 percent of Cambridge's units were leased to low income or elderly people. Continental leased 90 percent of its units to either low-income families or the elderly. *Bick testimony; Petitioner's Exhibits S – T.*
 - d) The list of social and educational activities planned for Cambridge and Continental tenants includes community cookouts, holiday events and gatherings, game nights, exercise sessions, community gardening, blood pressure and cholesterol monitoring,

glucose testing, mammograms, library services, religious services, health education and awareness, transportation services, and coordination with support agencies.

Petitioner's Exhibit BB.

- e) The rent income is used to pay the operating expenses and maintenance expenses for Cambridge and Continental. *Board Exhibit A.*
- f) The related personal property is owned and used in the operation of Cambridge and Continental. *Petitioner Exhibit AA.*
- g) Petitioner owns 8 other apartment communities in Indiana that are used for the same purposes as Cambridge and Continental. Four of those communities were granted complete property tax exemption. One community was granted partial exemption. The remaining 3 communities have exemption appeals pending. *Bick testimony.*

23. The Respondent presented the following as evidence in regard to this issue:

- a) The exemption application was denied based on information provided to the PTABOA by Petitioner regarding the rent rolls for Cambridge and Continental.
- b) The information showed that Cambridge is leasing only 5 of its 24 units to elderly or low income tenants. *Ward testimony*
- c) The tenant information provided by Petitioner shows that Mr. Alan Malone, a tenant of Cambridge, is listed as a two-person household with an income of \$30,000, which is within the federal low income housing guidelines. *Ward testimony.* Nevertheless, Mr. Malone is a one-person household with his daughter visiting on weekends. *Malone testimony.* A one-person household with an income of \$30,000 does not qualify as low income for federal housing programs. *Ward testimony.*

- d) The tenant information for Continental lists Mr. Mike Dixon as having an income of \$18,000. Mr. Dixon is employed, full time, by General Electric and his income “is nowhere near \$18,000.” *Ward testimony.*
- e) The tenant information for Cambridge also lists Mr. Earl Hauser, who is 63 years old with a full time job. Mr. Hauser is not receiving a discounted rent due to his age. *Ward testimony.*
- f) There is question regarding the validity of the rent roll information provided by the Petitioner. Although tenants are required to verify that the information on the lease applications is accurate, the review of the tenant information for Mr. Malon, Mr. Dixon, and Mr. Hauser brings the accuracy of the information into question. *Ward testimony.*

ANALYSIS

- 24. Real property is exempt from property taxation if it is owned, used, and occupied by a person for charitable purposes. Land is exempt from property taxation if a building qualifying for property tax exemption is located upon it. Personal property is exempt from property taxation if it is owned and used in a manner that would qualify a building for exemption under the exemption statutes. Ind. Code § 6-1.1-10-16.
- 25. A property's exempt status is tied to its use, not to its owner. *State ex rel. Tieman v. City of Indianapolis*, 69 Ind. 375, 376 (1879); *Knox Co. Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177 (Ind. Tax Ct. 2005). Furthermore, the "predominant use test" must be applied to determine whether a property is exempt. *Knox Co. v. Grandview*, 826 N.E.2d 177; *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1015-19 (Ind. Tax Ct. 2004); *Lincoln Hills Dev. Corp. v. State Bd. of Tax Comm'rs*, 521 N.E.2d 1360, 1361 (Ind. Tax Ct. 1988) (holding that a corporation's not-for-profit status does not automatically qualify it for an

exemption under Ind. Code § 6-1.1-10-16; rather, the corporation must show that the property was used for one of the listed exempt purposes).

26. As used in the exemption statutes, the words “educational, religious or charitable purposes” must be interpreted in their broadest constitutional sense. *See Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954 (Ind. Tax Ct. 1997).
27. The needs of the elderly are not restricted to financial or medical needs. Providing benefits other than financial or medical, such as housing, transportation, social interaction, a sense of community and involvement, etc., constitutes a charitable purpose. *See Wittenberg Lutheran Village Endowment Corp. v. Lake Co. Property Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 488-489 (Ind. Tax Ct. 2003); *see also, Raintree Friends Housing, Inc. v. Indiana Dep’t of State Revenue*, 667 N.E.2d 810, 812, 814 (Ind. Tax Ct. 1996).
28. Charity is realized through public benefit purposes. These purposes are demonstrated through good faith attempts to advance and benefit mankind in general, or those in need of advancement, spiritually, physically, intellectually, socially, and economically. The charity is achieved when the attempt to advance or benefit those in need is carried out without regard to whether those in need could find assistance through other sources or without hope or expectation of gain or profit. *Raintree Friends Housing*, 667 N.E. 2d at 814.
29. The decisive question is whether the actual use of Cambridge or Continental is for charitable purposes.
30. Petitioner offered testimony that it owns and uses Cambridge and Continental to provide safe housing to the elderly, low income, and disabled. Testimony indicated that the rents are set at level to accommodate persons falling within these categories. Additional testimony indicated that the revenue from the rent is used to pay the operating expenses and maintenance expenses for the apartments.

31. Petitioner offered testimony about a variety of services for tending to the economic, social, physical, spiritual, and intellectual needs of the tenants at Cambridge and Continental. These services include, but are not limited to, transportation services, support service agency coordination, movie nights, game nights, field trips, holiday events and gatherings, exercise sessions, blood pressure and cholesterol monitoring, glucose testing, audiology testing, community newsletter, library services, etc.
32. If the facts proved that the use of Cambridge or Continental is predominately for the purpose of tending to the needs of the elderly, that use would qualify for exemption. *See Wittenberg*, 782 N.E.2d 483; *see also, Raintree Friends*, 667 N.E. 2d 810. The weight of the evidence, however, does not support that conclusion.
33. Respondent attempted to rebut the Petitioner's case by focusing on the amount of rent charge to the tenants and misreported information of certain tenants. Respondent sought to show that the property is not serving a charitable purpose because the rent rates are not discounted. Merely because rent rates for the elderly are at market levels and not discounted does not mean that a charitable purpose is not being served. Charity for the elderly is not only financial in nature. It is also manifested through tending to their social, physical, and other needs. *See Wittenberg*, 782 N.E.2d 483. Thus, the simple fact that Petitioner does not discount the rent rates for the elderly does not necessarily mean the property fails to serve a charitable purpose. Furthermore, Respondent introduced no probative evidence to prove that the rents are more than sufficient to pay expenses. Similarly, Respondent introduced no probative evidence that Petitioner is deriving a profit from the operation of either Cambridge or Continental. Thus, these reasons are not ones upon which exemption can be denied in this case. *Knox County v. Grandview*, 826 N.E.2d 177.
34. There is, however, a fatal flaw in Petitioner's claim. Respondent pointed to discrepancies in the tenant information Petitioner reported and raised the question of credibility of this information. Respondent attempted to prove that a few of the tenants who were reported

as low income really do not qualify as such. Respondent's attempt was not effective. Nevertheless, even if the Board accepts Petitioner's characterization of the tenants for these apartments as accurate, that evidence is not sufficient to establish either apartment complex is predominately used for charitable purposes.

35. In Indiana it is now a well-settled proposition that providing for the special needs of elderly residents can be sufficient use to qualify for a charitable exemption, regardless of what the cost to live there might be. The same cannot be said in regard to housing for low income or disabled individuals. Petitioner has not provided the Board with comparable case authority for the latter two categories. Even though Petitioner's argument lumps them all together, the Board will not do so.
36. There is no probative evidence that the low income and disabled tenants pay anything less than market value rents to live there. (In fact, there is no evidence that there are any disabled tenants.) There is no probative evidence that there are specific eligibility requirements that such tenants must meet to live there. Petitioner failed to establish that providing housing for low income or disabled tenants necessarily constitutes a charitable use. Such tenants do not help to establish Petitioner's claim.
37. According to Petitioner, Cambridge had only one "elderly" tenant (out of 24 units) as of the assessment date and Continental had only nine (out of 20 units) as of the assessment date. Clearly, in neither case was providing housing for the elderly the predominant use of Cambridge or Continental apartments. Rather, from the evidence as a whole, it appears that Petitioner merely attempted to place a favorable characterization on the group of tenants who happened to reside in these apartments at the time of purchase. The tenant mix at both apartments does not establish that either one is predominantly used for charitable purposes.

Summary of Final Determination

38. The real and personal property owned and used in the operation of the Cambridge apartments does not qualify for the property tax exemption provided by Ind. Code § 6-1.1-10-16 for property that is used for charitable purposes. Similarly, the real and personal property owned and used in the operation of the Continental apartments does not qualify for the property tax exemption provided by Ind. Code § 6-1.1-10-16 for property that is used for charitable purposes.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date first written above.

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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.