

REPRESENTATIVE FOR PETITIONER:
Paul M. Jones, Jr., Ice Miller, LLP, Attorney

REPRESENTATIVE FOR RESPONDENT:
Marilyn Meighen, Meighen & Associates, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | |
|------------------------|---|------------------------------------|
| GRANDVIEW CARE, INC., |) | Petition Nos.: 62-006-08-2-8-00001 |
| |) | 62-008-09-2-8-00001 |
| Petitioner, |) | |
| |) | Parcel No.: 009-02212-01 |
| v. |) | |
| |) | Perry County |
| PERRY COUNTY ASSESSOR, |) | Troy Township |
| |) | |
| Respondent. |) | Assessment Years: 2008 and 2009 |

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

June 14, 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.

ISSUE

The issue presented for consideration by the Board is whether the Petitioner's real and personal property is 80 percent exempt from taxation in 2008 and 90 percent exempt from taxation in 2009, pursuant to the charitable use exemption under Indiana Code § 6-1.1-10-16.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. On May 13, 2008, Sam T. Bick, President of Grandview Care, Inc., filed a Form 136 Application for Property Tax Exemption, for 2008 on behalf of the Petitioner, seeking an exemption for its Continental Apartments. On March 10, 2009, the Perry County Property Tax Assessment Board of Appeals (PTABOA) issued a Form 120 finding the Petitioner's real and personal property to be 100% taxable. On April 24, 2009, Sandra K. Bickel of Ice Miller LLP, as representative of Grandview Care, Inc., filed a Form 132, Petition for Review of Exemption, claiming the Petitioner's real and personal property should be 80% exempt for 2008, based on the charitable use provisions of Indiana Code § 6-1.1-10-16.
2. On May 14, 2009, Mr. Bick filed a Form 136, Application for Property Tax Exemption, for 2009 on behalf of Grandview Care, Inc., seeking an exemption for its Continental Apartments. On October 19, 2009, the PTABOA issued a Form 120 finding the Petitioner's real and personal property to be 100% taxable. On December 1, 2009, Paul M. Jones, Jr., of Ice Miller LLP, as representative of Grandview Care, Inc., filed a Form 132, Petition for Review of Exemption, claiming the Petitioner's real and personal property should be 90% exempt for 2009, based on the charitable use provisions of Indiana Code § 6-1.1-10-16.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. The parties agreed to consolidate the Petitioner's 2008 and 2009 appeals for purposes of hearing. Pursuant to that agreement and Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ) Rick Barter held a hearing on March 16, 2010, in Tell City, Indiana, on both petitions.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner – Sam T. Bick, President, Grandview Care, Inc.,
Tori B. Rich, Manager, Continental Apartments,

For the Respondent – Mendy Ward, Perry County Assessor.

5. The parties submitted the following exhibits:

Petitioner Exhibit A – Letter from the Internal Revenue Service recognizing Grandview Care, Inc., as exempt from federal income tax as an organization described in Code Section 501(c)(3),

Petitioner Exhibit B – Articles of Incorporation and Certificate of Incorporation of Grandview Care issued by the Indiana Secretary of State,

Petitioner Exhibit C – Grandview Care’s by-laws,

Petitioner Exhibit D – Consolidated Financial Statements for Grandview Care for the years ended December 31, 2006, December 31, 2007, December 31, 2008, and December 31, 2009,

Petitioner Exhibit E – Continental Apartments’ financial statements for 2006, 2007, 2008 and 2009,

Petitioner Exhibit F – Diagram of Continent Apartments,

Petitioner Exhibit G – Form 136 exemption application for 2008,

Petitioner Exhibit H – Form 136 exemption application for 2009,

Petitioner Exhibit I – Grandview Care’s business tangible personal property tax returns for 2008 and 2009,

Petitioner Exhibit J – The PTABOA’s denial of exemption for 2008,

Petitioner Exhibit K – The PTABOA’s denial of exemption for 2009,

Petitioner Exhibit L – The Petitioner’s Form 132 Petition for 2008,

Petitioner Exhibit M – The Petitioner’s Form 132 Petition for 2009,

Petitioner Exhibit N – Resident census and eligibility guidelines for Continental Apartments for 2008 and 2009,

Petitioner Exhibit O – Resident profile for Continental Apartments for 2008 and 2009,

Petitioner Exhibit P – Grandview Care’s affordable housing application,

Petitioner Exhibit Q – Census data for geographical area served by Continental Apartments,

Petitioner Exhibit R – Resident eligibility/selection criteria and Revenue Procedure 96-32,

Petitioner Exhibit S – Memorandum of Law,

Petitioner Exhibit T – Information regarding services, including charitable care policy, and social and educational activities, provided to tenants of Continental Apartments,

Respondent Exhibit A – Photographs of Continental Apartments,

Respondent Exhibit B – Aerial map of the Tell City area,

Respondent Exhibit C – List of comparable properties’ addresses and rental rates,

Respondent Exhibit D – Photographs of the property located at Chestnut Grove Road,

Respondent Exhibit E – Photographs of the Rolling Pines property,
Respondent Exhibit F – Photograph of the property located at 702 Ninth Street,
Respondent Exhibit G – Photograph of the property located at 306 Ridgeview Dr.,
Respondent Exhibit H – Letter from Petitioner’s attorney; Grandview lease agreement; Lease addendum – community rules and regulations,
Respondent Exhibit I – Property record card for Ninth Street apartments,
Respondent Exhibit J – Property record card for 306 Ridgeview Street,

6. In addition to the recording of the hearing, labeled Grandview Care, Inc., the following items are recognized as part of the record of the proceedings:

Board Exhibit A – Form 132 Petitions,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Conduct of Exemption Hearing Order.

7. The subject property is an improved commercial parcel, including two apartment buildings housing twenty units, on Twentieth Street in Tell City, Indiana.

8. The ALJ did not conduct an on-site inspection of the property under appeal.

9. For 2008 and 2009, the Perry County PTABOA determined the Petitioner’s real and personal property to be 100% taxable. The Petitioner contends the property should be 80% exempt for 2008 and 90% exempt for 2009.

JURISDICTIONAL FRAMEWORK

10. 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 § 6-2.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

11. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving 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).
12. 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.”)
13. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American Life Insurance 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

14. 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.
15. 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).

16. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
17. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that its 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); *Indiana Association of Seventh Day Adventists v. State Board of Tax Comm'rs*, 512 N.E. 2d 936 (Ind. Tax 1987).

PETITIONER'S CONTENTIONS

18. The Petitioner contends its real and personal property should be 80% exempt for 2008 and 90% exempt for 2009 under Indiana Code § 6-1.1-10-16, because its property is owned, occupied and used for charitable purposes.
19. The Petitioner presented the following evidence in support of its position:
 - a. The Petitioner contends that Continental Apartments is owned by Grandview Care, Inc., a 501(c)(3) federal tax-exempt charitable organization that provides affordable, decent, safe and sanitary housing at below-market rates to tenants who qualify as low-income, elderly or disabled. *Jones argument*. According to the Petitioner's witness, Sam Bick, the property operates in accordance with federal guidelines without receiving federal assistance of any kind. *Bick testimony*. In response to cross examination, however, Mr. Bick, admitted that by qualifying for the "safe harbor" revenue procedure, the Petitioner is exempted from income tax and sales tax. *Id.*
 - b. Mr. Bick testified that Continental Apartments is a small multi-family apartment community in Tell City, comprised of twenty apartments in two 2-story buildings.

Bick testimony. Each apartment unit is approximately 800 square feet in size and has two bedrooms and one bathroom. *Id.* According to Mr. Bick, the apartments are not restricted to low income individuals or families, disabled individuals or the elderly, but are leased on a first come – first served basis. *Id.* In response to cross examination, Mr. Bick testified that there was no difference between the tenants that the Petitioner seeks and the tenants a typical landlord would seek. *Id.* However, Mr. Bick argues, Continental Apartments are “clearly desired” by low-income households because so many low-income families live in the complex. *Id.* Further, Mr. Bick agreed that the Petitioner’s lease gave the Petitioner all the rights of a typical landlord including the right to charge late charges and returned check fees, the right to prohibit changes without consent and the right to evict tenants and seek to recover unpaid rents. *Id.* In fact, Mr. Bick admitted that, although there were no evictions in 2008 or 2009, the Petitioner has asked tenants to move and pursued unpaid rent. *Id.*

- c. The Petitioner further contends that its rent is “below market rent” based on the Department of Housing and Urban Development rent rates. *Jones argument; Bick testimony.* According to Mr. Bick, HUD determined the “market rent” in Perry County of a two bedroom apartment to be \$555 per month in 2008 and \$577 in 2009. *Bick testimony; Petitioner Exhibit G.* The Petitioner, however, only charged \$395 per month for its two-bedroom, one-bath apartments in 2008 and \$415 per month in 2009, which includes gas heat. *Bick testimony.*
- d. Similarly, the Petitioner argues, its rent is “below market rent” based on the lease rates of comparable apartments. *Jones argument; Bick testimony.* Mr. Bick testified that, in an internal market rent study, the rents of comparable properties averaged \$475 for 2008 and \$480 for 2009. *Bick testimony; Petitioner Exhibit G and H.* In support of this contention, Mr. Bick testified that five apartment complexes were “similar” to the subject property and a two bedroom/two bath apartment at Oxford Place rented for \$625-\$650 in 2008 and \$650-\$675 in 2009. *Bick testimony.* In response to cross examination, Mr. Bick testified that the comparable properties in the Petitioner’s “internal survey” rented for monthly

rates ranging from \$385 to \$650 per month and that some properties rented below the Petitioner's lease rates and some properties rented for above the Petitioner's lease rates.¹ *Id.*

- e. The Petitioner argues that the property qualifies for an 80% exemption for 2008 because the Petitioner rented sixteen of its twenty units to qualifying low income and elderly tenants in 2008 and the property qualifies for a 90% exemption for 2009 because it rented eighteen of its twenty units to qualifying low income and elderly tenants in 2009. *Jones argument; Rich testimony; Petitioner Exhibits N and O.* According to the Petitioner's witness, Tori Rich, an internal audit of Continental Apartments' records showed that in 2008 fourteen of its twenty apartments were rented to tenants who qualified under HUD guidelines as low-income individuals or families and two apartments were rented to tenants who qualified as elderly. *Rich testimony; Petitioner Exhibit N.* For 2009, Ms. Rich testified that seventeen apartments were leased to low-income tenants and one to an elderly tenant. *Id.* Under cross-examination, Ms. Rich admitted that the census figures submitted by the Petitioner in its Form 136 Exemption Petitions for both years contained slightly different figures than the records produced by the internal audit upon which her testimony was based. *Rich testimony; Petitioner Exhibits G and H.*
- f. Finally, Mr. Bick testified that the Petitioner maintains a "charitable reserve fund" that it uses to assist its tenants who are experiencing life-changing events, such as a job loss, injury, illness, death in the family, or some other crisis. *Bick testimony; Petitioner Exhibit T.* The Petitioner recorded \$2,504 in charitable giving in 2008 and \$3,097 in 2009. *Petitioner Exhibit E.* In response to cross examination, however, Mr. Bick admitted that the Petitioner included unpaid, uncollectable rent in its "charitable giving." *Id.* According to Mr. Bick, the only grants that were not rent write-offs were a single grant of \$336 in 2008 and two grants in 2009 totaling \$590. *Id.* However, Mr. Bick argues, the Petitioner's

¹ Mr. Bick testified that three of the "comparable" properties' lease rates fell below the average rent and two were above the average rent.

choice not to pursue unpaid rent from its tenants amounts to allowing low-income families to live rent free. *Id.*

RESPONDENT'S CONTENTIONS

20. The Respondent contends the Petitioner's property should be 100% taxable because the Petitioner is nothing more than a typical landlord. *Meighen argument.*
21. The Respondent presented the following evidence in support of its position:
- a. The Respondent argues that it is not enough to be exempt under the Internal Revenue Service 501(c)(3) rules and have bylaws and articles stating a property or entity has a charitable purpose. *Meighen argument.* According to the Respondent's counsel, the actual use of the property is key to exemption issues. *Id.* Here, the Respondent argues, the Petitioner furnishes housing in exchange for revenues in the form of tenant rents and in some cases Section 8 payments from the government.² *Id.* According to Ms. Ward, granting an exemption to the Petitioner gives the Petitioner an advantage over every other rental property in the county. *Id.; Petitioner Exhibit H.* Thus, the Respondent argues, the Petitioner's request for an exemption should be denied because Grandview Care operates in the same manner as any landlord. *Id.*
 - b. Further, the Respondent argues, the Petitioner's rents are not "below market" rents. *Meighen argument.* In support of this argument, the Respondent presented rental information and pictures of four apartments that the Respondent contends are comparable to the Petitioner's property. *Respondent Exhibits C – G.* Two of the properties had two bedroom apartments renting for \$400 per month and one of the properties had two bedroom apartments renting for \$385 per month. *Id.;* *Ward testimony.* The fourth property is a three bedroom, single family home that rents for \$450 per month. *Id.*

² The Section 8 housing program operates to subsidize the rent for tenants who are renting from private landlords.

ANALYSIS

26. Indiana Code § 6-1.1-10-16(a) provides 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. The taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *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). 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 Bd. of Tax Comm’rs*, 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).
27. Here, the Petitioner claims it is entitled to 80% exemption in 2008 and a 90% exemption in 2009. According to the Petitioner, Continental Apartments is owned by Grandview Care, a 501(c)(3) organization that follows the low-income housing procedures outlined in Internal Revenue Procedure 96-32. *Jones argument; Bick testimony*. The Petitioner argues that in 2008, Continental Apartments leased two units to elderly tenants and fourteen units to low income residents. *Petitioner Exhibit N*. Similarly, in 2009, the Petitioner argues, Continental Apartments leased one unit to an elderly tenant and seventeen units to low income residents. *Id.*
28. The Petitioner’s argument, however, focuses on the characteristics of the Petitioner’s residents rather than the Petitioner’s ownership, operation and use of its property. The Board is not aware of, nor has the Petitioner presented, any statute or case law holding that marketing goods or services to lower income individuals is an exempt purpose. More importantly, there is nothing in the record to suggest that the tenants of Continental

Apartments have appreciably lower incomes than the tenants at any other apartment property. In fact, the Petitioner's witness testified that Continental Apartments targets the same market as other apartment complexes. *Bick testimony*. According to Mr. Bick, the apartments are not restricted to low-income individuals and families, but instead are leased on a first come – first served basis. *Id.* Mr. Bick argues, however, that the number of low income families suggests that the property is “clearly desired by low income households.” *Id.* The Board notes, however, that the number of low income families could also suggest that higher income households chose to live in nicer apartments or they simply own their own homes.

29. While the Petitioner is a non-profit organization, its charitable purpose must be proven before its tax exempt status is assured. *See Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996) (non-profit status does not automatically entitle a taxpayer to tax exemption). As the law clearly states, it is the ownership, occupation and use of a property that determines its exempt purpose. Ind. Code § 6-1.1-10-16(a). Thus, the Petitioner must show that it does something more than merely operate as a landlord for tenants that have incomes below the area median income. It must show that it acts different from the everyday purposes and activities of man in general. *College Corner, L.P.*, 840 N.E.2d at 908.

30. The Petitioner argues that its property should be granted a charitable exemption because it provides its apartments to low income individuals at below market rents. *Jones argument*. In support of its argument, Mr. Bick testified that the Petitioner performed a survey of market rents in the Tell City area and chose five properties that are “comparable” to the Petitioner's property: Twelve Oaks, Cambridge, Oxford Place, Kingston and Chateau Village. *Bick testimony*. According to Mr. Bick, his market survey determined that the average rent for those apartments was \$475 per month in 2008 and \$480 per month in 2009. *Bick testimony*. However, the Petitioner provided nothing but Mr. Bick's scant testimony regarding the five properties. This falls short of the burden to prove the properties are comparable. Moreover, Mr. Bick only provided rental information for Oxford Place, which he admitted were two bedroom/two bath duplexes

rather than two bedroom/one bath apartments.³ The Petitioner failed to present any individual rental information for the other four “comparable” properties. In response to cross examination, Mr. Bick admitted that the rental rates in his survey ranged from \$385 to \$650 and that the rent at three of the “comparable” complexes fell below the “average” rent rate. Thus, the Petitioner’s own evidence shows that its lease rates are within the range of market rates in the area and any testimony that Continental’s rents are “below market rents” is nothing more than an unsubstantiated conclusion. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998)

31. Undisputedly, the rent charged by the Petitioner at Continental Apartments falls below the amounts listed by HUD as “fair market rent” for Perry County. *Petitioner Exhibits G and H*. However, all of the Respondent’s comparable properties and at least three of the Petitioner’s comparable apartment complexes charged rents below the HUD “fair market” rent. Thus, the Petitioner has not shown that its rental policies are any different than its competitors.
32. The Petitioner also argues that it offers a “charitable care” program wherein it awards grants to tenants needing financial assistance. In response to cross examination, however, the Petitioner’s witness testified that the vast majority of its “charitable care” grants were simply uncollectable rents that that the Petitioner chose not to pursue in court. While funding those unpaid rents from the Petitioner’s reserve fund would protect a tenant from court action, this benefits the tenant as well as the apartment complex who does not incur the time and expense of a lawsuit. How such action would offer relief to the government is not apparent to the Board.⁴ The Petitioner failed to present any evidence that it offers programs or other social services to its tenants. Further, the Petitioner’s witness testified that the Petitioner’s lease gave the Petitioner all the rights of

³ At best, this evidence only establishes that a larger duplex with more amenities has a higher rental rate than the Petitioner’s property.

⁴ According to Mr. Bick, only a single grant of \$336 was awarded in 2008 and only two grants totaling \$590 were awarded in 2009 that were unrelated to uncollectable rent. While admirable, three grants over a two year period does not relieve human want or provide a benefit that will inure to the general public sufficient to justify the loss of tax revenue. *See College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006); *See also New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1263 (Ind. Tax Ct. 2002) (While charitable giving may serve as evidence to support a claim of charitable use, the statutory test, however, is the predominant use of the property, not the distribution of income for charitable purposes).

a typical landlord, including the right to charge late charges and returned check fees, the right to prohibit changes without its consent and the right to evict tenants and seek to recover unpaid rents. *Bick testimony*. In fact, Mr. Bick admitted that, although there were no evictions in 2008 or 2009, the Petitioner has asked tenants to move and pursued unpaid rent. *Id.* Thus, despite the Petitioner's "charitable care fund," the evidence shows that the Petitioner does little more than act as a landlord.

33. Finally, the Petitioner argues that the Board granted an exemption for Continental Apartments for 2006 and 2007. *See Grandview Care, Inc. v. Perry County Property Tax Assessment Board of Appeals and Perry County Assessor*, Petition Nos. 62-008-006-2-8-00001 and 62-008-006-2-8-00001 (Aug. 20, 2008). According to the Petitioner, the case law and the property's use has not changed since that time. Therefore, the Petitioner concludes, its property should be exempt for 2008 and 2009 also. The Board notes, however, that every assessment and tax year stands alone. Evidence as to a property's assessment in one year does not prove its true tax value in a different year. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)).
34. Moreover, determining whether a particular property is exempt is a fact sensitive inquiry. *Jamestown Homes of Mishawaka v. St. Joseph Co. Assessor*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009) *review denied*; *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." *Id.*, citing *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *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). In its 2006 and 2007 appeals, the Petitioner presented an appraisal that determined that Continental's rental rates were "below market rent." Here, no such probative evidence was presented to the Board. Moreover, in the 2006 and 2007 appeals, the Respondent did not dispute that the Petitioner's rent was "below market." In fact, the

only argument the Respondent made in the Petitioner's 2006 and 2007 appeals was that granting the Petitioner an exemption would give it an advantage over other rental properties. Here, the Respondent's counsel elicited testimony that impeached the Petitioner's evidence and presented evidence that rebutted the Petitioner's case.

35. The Petitioner 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 "affordable, decent, safe and sanitary" housing to qualified tenants, its property should be granted a charitable use exemption under Indiana Code § 6-1.1-10-16. The Petitioner, however, presented no evidence that its apartments were safer, more sanitary, or more affordable than other similar rental properties. The Board therefore finds that the Petitioner failed to raise a prima facie case that its property was predominantly used for charitable purposes in 2008 and 2009. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
36. Despite this, the Board finds that even if the Petitioner had minimally raised a prima facie case, the Respondent sufficiently rebutted the Petitioner's evidence. Here, the Respondent argues that the rent charged by the Petitioner at Continental Apartments is not below market rent. *Meighen argument*. In support of this contention, the Respondent submitted pictures and rent information for four properties located near the Petitioner's property. *Respondent Exhibits C – G*. According to the Assessor, Ms. Ward, the photographs were taken and the rent information was obtained at her direction. *Ward testimony*. The rents at the Respondent's "comparable" properties were \$385, \$400 and \$400, respectively, for two bedroom apartments and \$450 for a three bedroom house. *Id.; Respondent Exhibit C*. Thus, the Respondent concludes, Continental Apartments' rent is similar to the rent rates at four other nearby rental properties. *Id.; Respondent Exhibits C – G*. Although not the best evidence available, the Board finds the Respondent's evidence to be somewhat more persuasive than the Petitioner's unsupported, conclusory testimony that the "average" rent in Tell City is \$475.

SUMMARY OF THE FINAL DETERMINATION

37. The Petitioner failed to raise a prima facie case that the subject property is owned, occupied, and used for a charitable purpose. Even if it could be seen as raising a minimally sufficient prima facie case, the Respondent rebutted the Petitioner’s evidence. The Board therefore finds in favor of the Respondent and determines the Petitioner’s land, improvements, and personal property to be 100% taxable.

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 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>