

REPRESENTATIVE FOR PETITIONER:

Sandra K. Bickel, Attorney

REPRESENTATIVE FOR RESPONDENT:

Marilyn S. Meighen, Meighen & Associates, P.C.

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Gulf Coast Housing Assistance Corporation	)	Petitions: 45-001-06-2-8-00001, et seq. <sup>1</sup>
	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
Lake County Assessor,	)	County: Lake
	)	Township: Calumet
Respondent.	)	
	)	Assessment Year: 2006

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

**April 27, 2010**

**FINAL DETERMINATION**

The Board has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

<sup>1</sup> The Petitioner filed 23 petitions numbered consecutively from 45-001-06-2-8-00001 to 45-001-06-2-8-00023.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **ISSUE**

1. The issue presented for consideration by the Board is whether the Petitioner's real and personal property qualifies for property tax exemption under Indiana Code § 6-1.1-10-16 because the property is predominately used for charitable purposes.

### **PROCEDURAL HISTORY**

2. On May 15, 2006, the Petitioner, Gulf Coast Housing Assistance Corporation (Gulf Coast), filed exemption applications for its real and personal property for 2006. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations denying the exemptions on February 27, 2009. The Petitioner filed its Petitions for Review of Exemption on April 13, 2009.
3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Ellen Yuhan, held a hearing on January 28, 2010, in Crown Point, Indiana.
4. The following persons were sworn as witnesses:  

For the Petitioner:

Kerry Brewer, Vice-president, Greystone Property Management,  
Bill Guessford, Senior Vice-president, Greystone Property Management,

For the Respondent:

Edward Gholsen, Deputy Assessor, Calumet Township.
5. The Petitioner submitted the following exhibits:<sup>2</sup>  

Petitioner Exhibit A – Fourth Articles of Amendment to Articles of Incorporation,  
Petitioner Exhibit B – Amended and Restated By-laws,  
Petitioner Exhibit B1 – Internal Revenue Service letter,

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<sup>2</sup> The Petitioner withdrew its Petitioner Exhibit I.

Petitioner Exhibit C – 2006 Profit and Loss Statement,  
Petitioner Exhibit D – 2006 Demographic Study,  
Petitioner Exhibit E – 2007 Demographic Study,<sup>3</sup>  
Petitioner Exhibit F – HUD Fair Market Rents for Section 8,  
Petitioner Exhibit G – HUD Section 42 Rents and Income Limits,  
Petitioner Exhibit H – Summary sheet,  
Petitioner Exhibit J – AiO Market Survey dated January 6, 2006,  
Petitioner Exhibit K – Capital expenditures,  
Petitioner Exhibit L – Internal Revenue Service Procedure 96-32.

6. The Respondent submitted the following exhibits:

Respondent Exhibit A – Property records cards for the appealed parcels,  
Respondent Exhibit B – Rent and Income Limit Calculator,<sup>4</sup>  
Respondent Exhibit C – 2006 Profit and Loss Statement,  
Respondent Exhibit D – 2006 Demographic Study,  
Respondent Exhibit E – Market Rent Survey and Multi-Unit Agent Detail Report.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 132 Petitions with attachments,  
Board Exhibit B – Notices of Hearing dated November 16, 2009,  
Board Exhibit C – Order Regarding Conduct of Exemption Hearing,  
Board Exhibit D – Hearing sign-in sheet.

8. The Board issued a pre-hearing order on December 10, 2009, requesting that the parties file pre-hearing briefs by January 8, 2010. The parties also requested permission to submit post-hearing briefs. The ALJ allowed the parties until March 5, 2010, to submit their briefs. Both parties timely submitted the briefs.

9. The subject property is an improved commercial property known as Lakeshore Dunes which includes fourteen buildings housing 680 apartment units located in Gary, Indiana.

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<sup>3</sup> The Respondent's counsel objected to the 2007 demographic study on the grounds of relevance. Ms. Meighen asserts the relevant time frame for a 2006 exemption appeal is March 1, 2005, to March 1, 2006, and cited to *Brothers of the Holy Cross v. St. Joseph County Property Tax Assessment Board of Appeals*, 878 N.E.2d 548,550 (Ind. Tax Ct. 2007). The Petitioner's counsel contends the 2007 demographic not only shows a trend but is relevant because a 2006 exemption is also for 2007. Ms. Bickel contends that the Board can look at a property's income on both sides of the relevant date. The Board overrules the objection on the ground that it goes to the weight, rather than the admissibility of the exhibit, and accordingly admits Petitioner Exhibit E.

<sup>4</sup> Respondent's counsel noted for the record that Respondent's Exhibits B, C, and D are duplicates of Petitioner's Exhibits C, D, and F.

10. For 2006, the Lake County PTABOA determined the properties to be 100% taxable.
11. For 2006, the Petitioner claims its real and personal property is 100% exempt.

### **JURISDICTIONAL FRAMEWORK**

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

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

## BASIS OF EXEMPTION AND BURDEN

16. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
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 in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property owner would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
18. 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)).
19. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

## PARTIES' CONTENTIONS

20. The Petitioner contends its real and personal property is eligible for 100% exemption pursuant to Indiana Code § 6-1.1-10-16 because it is owned, occupied and used for charitable purposes.
  
21. The Petitioner presented the following evidence in regard to this issue:
  - A. The Petitioner's counsel contends Gulf Coast is a 501(c)(3) federal, tax-exempt, charitable organization. *Bickel argument*. In support of this contention, the Petitioner presented its Articles of Incorporation, Amended Bylaws, and an Internal Revenue Service (IRS) letter granting a tax exemption to the Petitioner. *Petitioner Exhibits A, B and B1*. According to the Articles of Incorporation, Gulf Coast was founded to “provide aid to the poor and distressed, provide decent, safe and sanitary housing for low income persons and families, elderly and/or disabled persons, provide social services to low income persons and families, assist in the social and economic integration of the poor, combat community deterioration, lessen neighborhood tensions, eliminate prejudice and discrimination and reduce the burden of government through the provision of affordable housing for low income persons and families, elderly persons and/or mentally or physically disabled persons.” *Petitioner Exhibit A*.
  
  - B. The Petitioner's witness, Mr. Guessford, testified that the original owner of Lakeshore Dunes defaulted on its HUD mortgage and Greystone Property Management Corporation (Greystone) purchased the mortgage. *Guessford testimony*. Greystone then sold the real estate to Gulf Coast in 2005. *Id.* According to Mr. Guessford, the Petitioner's mortgage was a market rate loan and there were no governmental income or rent restrictions on the property because the original regulatory agreement was abandoned. *Id.* The Petitioner's witness, Ms. Brewer,

similarly testified that the project is not operating under any federal program and did not receive any federal or state subsidies.<sup>5</sup> *Brewer testimony.*

- C. Ms. Brewer testified that, at the time of the Petitioner purchased Lakeshore Dunes, crime was rampant and the property required 24-hour security. *Brewer testimony.* It was run-down and only 48% of the units were occupied. *Guessford testimony.* According to Ms. Brewer, Gulf Coast spent much of the first year cleaning up the property and addressing the code violations with the city. *Id.* Mr. Guessford testified that Gulf Coast spent \$946,000 for capital improvements. *Guessford testimony; Petitioner Exhibit K.* Although Lakeshore Dunes had a thirty to forty percent vacancy rate during the Petitioner's ownership of the property, Ms. Brewer argued that was because of the condition of the property. *Brewer testimony.* According to Ms. Brewer, many of the units were unrentable when Gulf Coast purchased the property. *Id.*
- D. The Petitioner's counsel argues that, to maintain its status as a charitable organization under Section 501(c)(3) of the Tax Code, Gulf Coast was required to rent at least 75% of its units to individuals or families earning at or below 80% of the Lake County average median income (AMI). *Bickel argument; Petitioner Exhibit L; Petitioner Post-hearing Brief.* According to the Petitioner's witness, in 2006, the Petitioner rented 80% of its occupied units to persons at or below 80% of the AMI and, of that 80%, 44% of the units were rented to residents making at or below 50% of the AMI. *Brewer testimony; Petitioner Exhibits D and E.* In 2007, low-income residents occupied 86% of the apartment units and 60.7% were occupied by those making 50% of the AMI. *Id.* In response to cross examination, Ms. Brewer admitted that the Petitioner charged lease termination fees, penalties for late rental payment, non-sufficient funds charges, and damage fees. *Brewer testimony; Petitioner Exhibit C.* Similarly, Ms. Brewer testified that residents were charged with legal fees that the management company incurred when it evicted a resident for cause. *Id.* According to

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<sup>5</sup> According to Ms. Brewer, there are some residents who receive Section 8 vouchers, but Section 8 is a resident-related voucher that goes with the tenant wherever he or she lives. *Brewer testimony.*

Ms. Brewer, residents could be evicted for criminal activity, over-crowding, repeated violations of community policy and for non-payment of rent. *Id.*

- E. Ms. Brewer contends that the apartments at Lakeshore Dunes rented for considerably less than HUD's published fair market rents (FMR) for affordable housing. *Brewer testimony*. In support of this contention, the Petitioner presented a Rent and Income Limit Calculator published by Novogradac and Company and a summary of Lakeshore Dunes' rents and the FMR. *Petitioner Exhibits F and H*. Ms. Brewer testified that Lakeshore Dunes rented a studio for \$400, a one-bedroom apartment for between \$415-\$455, a two-bedroom unit for \$550-\$630, and a three-bedroom for \$670. *Brewer testimony; Petitioner Exhibit H*. According to Ms. Brewer, the HUD FMR is \$478 for a studio, \$596 for a one-bedroom apartment, \$727 for a two-bedroom apartment, and \$869 for a three-bedroom apartment. *Id.*
- F. Ms. Brewer further contends that the rents charged at Lakeshore Dunes were less than the rents charged by its competitors in the area. *Brewer testimony*. In support of this contention, the Petitioner presented a market survey prepared by AiO. *Petitioner Exhibit J*. According to Ms. Brewer, the market survey compared Lakeshore Dunes with other apartment communities in the area in terms of unit sizes, age, amenities, and utilities. *Brewer testimony*. Ms. Brewer admitted, however, that she could not attest to the accuracy of the information contained in the market study. *Id.* Nor could she testify as to how the data was gathered or where it came from. *Id.* Similarly, Ms. Brewer was not aware of the amenities offered by the "comparable" properties used in the rent study. *Id.* Further, Ms. Brewer admitted that the rent study showed that some of the comparable apartment complexes charged less than Lakeshore Dunes for their apartments. *Id.* Finally, Ms. Brewer admitted that the comparable properties paid for their tenants' gas or electric utilities, but at Lakeshore Dunes the tenants pay for those utilities.<sup>6</sup> *Id.* The rent study did not make adjustments to the comparable properties' rents for the provision of utilities by those apartments. *Id.*

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<sup>6</sup> Mr. Guessford, however, testified that some residents only paid for electric. *Guessford testimony*.

- G. In addition, the Petitioner's witness contends Lakeshore Dunes provides services for its residents that differ from the services offered by conventional apartment complexes. *Brewer testimony*. According to Ms. Brewer, Lakeshore Dunes had several after-school programs for children as well as adults. *Id.* The management company provided a printer and paper in the clubhouse for the residents to do their homework and tutoring. *Id.* They also paid for the children's backpacks and outfitted them with back-to-school supplies. *Id.* Further, Greystone conducted monthly activities to foster a sense of community. *Id.* Those activities included a New Year's celebration, a Valentine Day's party, an Easter egg hunt, trick-or-treat for Halloween, and Thanksgiving dinner. *Id.* Similarly, Ms. Brewer testified, while Greystone managed Lakeshore Dunes, it offered programs to the households that needed guidance and assistance with their children and with social services. *Id.* In response to cross examination, however, Ms. Brewer admitted that Greystone merely referred its tenants to social services rather than providing any actual services to its residents. *Id.*
- H. The Petitioner's witness further testified that the Petitioner provided housing and furnishings for 26 families displaced by Hurricane Katrina. *Brewer testimony*. Ms. Brewer testified that Gulf Coast anticipated that it would receive payment from the federal government but that it did not happen. *Id.* Ms. Brewer contends that the Petitioner took about a 95% loss on providing the housing for the Katrina victims. *Id.* In response to cross examination, however, Ms. Brewer admitted that Gulf Coast applied for reimbursement from FEMA but simply had not received compensation by the time she had stopped working at the complex. *Id.*
- I. The Petitioner's witness, Mr. Guessford, testified that Lakeshore Dunes had a negative cash flow because of its vacancy and its extremely high real estate taxes. *Guessford testimony*. According to Mr. Guessford, the negative cash flow from July 2005 to March 2006 was approximately \$2.2 or \$2.3 million, which included taxes in arrears from 2004. *Petitioner Exhibit C; Guessford testimony*. Mr. Guessford

contends the funds supplied to cover the negative cash flow were in addition to the amount of money invested in capital expenditures. *Id.*

- J. The Petitioner's witness further testified that Gulf Coast offered rent concessions that became more and more sizable as it moved through the leasing process at Lakeshore Dunes. *Guessford testimony*. According to Mr. Guessford, most of the concessions were for one or two months rent, which helped the residents to pay the costs of moving and transferring utilities and their security deposits. *Guessford testimony*. Mr. Guessford further testified that Gulf Coast also lowered rents after it purchased the property in order to make the property affordable. *Id.* According to Mr. Guessford, however, his "driving factor" in lower rents was to "create a competitive edge." *Id.* Further, in response to cross examination, Mr. Guessford admitted to lowering the rents to "stabilize occupancy." *Id.*
- K. The Petitioner's counsel argues that the Board has granted exemptions to charitable organizations if they provide affordable housing to low-income individuals and families and do not depend on government assistance for funding or operate under a government program. *See Hebron-Vision, LLC v. Porter County Assessor*, Petition No. 64-001-08-2-8-00001 (December 2009); *Horace Mann Ambridge Neighborhood Improvement Organization, Inc. v. Lake County Assessor*, Petition No. 45-004-04-2-8-00015, *et seq.* (June 2009); *Grandview Care v. Perry County PTABOA*, Petition No. 62-008-07-2-8-00001 (August 2008); *Knox Garden Court v. Starke County PTABOA*, Petition No. 75-001-06-2-8-00001; *Willowbrook Affordable Housing Corporation v. Marion County PTABOA*, Petition No. 49-800-97-2-8-00082 (April 2002); *Piedmont-Nantucket Cove, LLV v. Marion County PTABOA*, Petition No. 49-500-98-2-8-00006 (February 2002).
- L. Ms. Bickel further argues that the apartment complex in *Hebron-Vision* is similar to Lakeshore Dunes. *Petitioner Post-hearing Brief*. According to Ms. Bickel, neither property received government subsidies nor operated under any government program. *Id.* Similarly, she contends, both properties are owned by organizations determined by the IRS to be charitable under 501(c) (3) of the Internal Revenue Code and have a

- charitable purpose. *Id.* Further, upon dissolution of the corporation, both companies are obligated to transfer any funds remaining after the payment of liabilities to a 501(c) (3) charitable organization with a similar purpose and mission. *Id.* Finally, Ms. Bickel argues, both the property in *Hebron-Vision* and the Petitioner's property charged rents that were below market rent for the area and both properties provided services targeted to low-income individuals and families. *Id.*
- M. Moreover, the Petitioner's counsel argues, Indiana Code § 6-1.1-11-3.8(a) requires applicants for an exemption who lease property to submit a copy of the lease with the application. *Bickel argument.* According to Ms. Bickel, that statute specifically excludes applicants who lease units in an affordable housing development from this requirement. *Id.* Thus, she argues, because the General Assembly exempted affordable housing developments from submitting its leases, it clearly means the General Assembly intended that affordable housing properties are to be exempt. *Id.*
- N. Finally, the Petitioner's counsel argues that the facts in a recent Tax Court decision in which the Court denied an exemption for low income housing are distinguishable from the Petitioner's case. *Bickel argument; Petitioner Post-hearing Brief.* According to Ms. Bickel, in *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 909 N.E.2d 1138 (Ind. Tax Ct. 2009) (*Jamestown I*), *rehearing denied*, 919 N.E.2d 13 (Ind. Tax Ct. 2009) (*Jamestown II*), the Tax Court held that Jamestown did not qualify for property tax exemption because it did not make a prima facie case that the use of the property was charitable. *Id.* In that case, the residents could have incomes up to 95% of AMI, the property had a government insured mortgage, and it received subsidies from the federal government. *Id.* Further, Ms. Bickel argues, the Petitioner in *Jamestown* made no showing that there were any additional services offered to its tenants that differed from those provided by a market rate, non-exempt property. *Id.*
- O. Here, however, Ms. Bickel argues, the Petitioner rehabilitated a distressed property without any government assistance and it leased clean, safe apartments to low-income earners at below market rents. *Bickel argument.* Further, the Petitioner's

management company provided services tailored to the needs of low-income tenants; it organized activities to develop a sense of community; and it served Katrina victims – mostly without compensation. *Id.* Although the Petitioner recouped its original investment and more when it sold the property in 2007, Ms. Bickel argues, the proceeds from the sale were used to acquire another distressed property to rehabilitate and lease to low-income tenants or were transferred to another charitable organization with the same charitable mission as Gulf Coast. *Petitioner Post-hearing Brief.*

22. The Respondent contends the property is 100% taxable.
  
23. The Respondent presented the following evidence in regard to the issue:
  - A. The Respondent’s counsel argues that Gulf Coast is not charitable under Indiana Code § 6-1.1-10-16. *Meighen argument.* While the Petitioner may be a nonprofit organization, Ms. Meighen argues, that is not commensurate with charitable ownership and use. *Id.* According to Ms. Meighen, Gulf Coast’s business is that of a landlord and, during the short time Gulf Coast owned Lakeshore Dunes, Gulf Coast had all the rights of a typical landlord. *Id.* Ms. Meighen argues that “Gulf Coast claims ‘charity’ on the basis of renting to a particular segment of society, but the record does not establish that Gulf Coast does anything different than landlords in general.” *Respondent Post-hearing Brief.*
  
  - B. The Respondent’s counsel further contends that Lakeshore Dunes charged rents comparable to other properties in the area. *Meighen argument.* In support of this argument, the Respondent submitted a market rent survey itemizing the rents at several apartment complexes located in Gary. *Respondent Exhibit E.* The Respondent’s witness, Mr. Gholsen, testified that in preparing his market survey, he obtained information from property managers, appraisals, and the rent rolls. *Gholsen testimony.* According to the Mr. Gholsen, Greenbriar, Concord Commons, Westbook, Kellwood Apartments, Glenwood Manor, and Woodlake Village all had lower rents than Lakeshore Dunes in 2006. *Id.; Respondent Exhibit E.* For example,

Mr. Gholsen testified, a 1-bedroom unit in Greenbriar rented for between \$446 and \$477, while at Lakeshore Dunes the rent for a 1-bedroom was \$545. *Id.* In both cases, Mr. Gholsen's survey showed, the tenants paid for their gas and electric. *Id.*

C. In response to cross examination, Mr. Gholsen admitted that he did not make any adjustments to the rents in his rent study for amenities or for the age of the apartments. *Gholsen testimony.* Further, he admitted that none of his comparable properties were located on the lake.<sup>7</sup> *Id.* On redirect, however, Mr. Gholsen testified that the Petitioner's "comparable" properties were also not lakefront properties. *Id.* Similarly, Mr. Gholsen testified, the apartment complexes listed in the Petitioner's market survey are not comparable to Lakeshore Dunes because they are located in Griffith, Merrillville and Portage. *Id.*

D. The Respondent's counsel argues that Gulf Coast has no commitment to the local community because it is a Texas non-profit corporation with all the Directors located in Georgia. *Meighen argument; Respondent Post-hearing Brief.* Ms. Meighen further argues that no community benefit exists because Gulf Coast purchased Lakeshore Dunes in 2006 for \$7,500,000, spent approximately \$589,226 to renovate it, and sold the property for \$13 million in 2007.<sup>8</sup> *Id.* According to Ms. Meighen, Gulf Coast essentially "flipped" the property. *Id.* Further, Mr. Gholsen testified that he was personally familiar with the property and did not see any major renovations to the property. *Gholsen testimony.* According to Mr. Gholsen, the Petitioner just painted and installed new carpeting, which, Mr. Gholsen argues, is something any property owner would do. *Id.* Likewise, Mr. Gholsen contends that, while he has seen some activities at the complex, the activities are not substantive or unusual because other apartment complexes have similar kinds of activities. *Id.*

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<sup>7</sup> Mr. Gholsen argued that Miller Village has lake views and its rents are similar to Lakeshore Dunes. *Gholsen testimony.*

<sup>8</sup> Apparently, there is a difference of opinion as to the purchase date and, therefore in the amount spent on capital expenditures. The Petitioner presented testimony that the purchase took place in July 2005 and capital expenditures were \$946,000. The Respondent's post hearing brief shows the purchase date as February 2006, with a resulting change in capital expenditures.

E. Finally, the Respondent’s counsel argues, in *Jamestown*, the Tax Court explicitly stated that while the provision of low-income housing relieves human want, the Court did not say that the provision of such housing rises to the level necessary for exemption. *Respondent Post-hearing Brief*. Nor did it say that through the provision of such housing, a benefit inured to the public sufficient to justify the loss of tax revenue. *Id.* Similarly, Ms. Meighen contends that when Indiana Code § 6-1.1-10-16.7 is considered in conjunction with Indiana Code § 6-1.1-10-16(i) and (j), it is clear the Legislature intended for such properties to be taxable. *Meighen argument; Respondent Post-hearing Brief*. According to Ms. Meighen, if the General Assembly envisions low-income families paying taxes on their homes under Indiana Code 6-1.1-10-16(j), Gulf Coast should pay taxes too. *Id.*

#### ANALYSIS

24. 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).

25. Here, the Petitioner claims it is entitled to 100% exemption. According to the Petitioner, Lakeshore Dunes is owned by Gulf Coast, a 501(c)(3) organization. In order to maintain its status as a charitable organization under Section 501(c)(3) of the Tax Code, Gulf Coast follows the low-income housing procedures outlined in Internal Revenue Procedure 96-32. *Petitioner Post-hearing Brief*. Under that revenue procedure, Gulf Coast must rent at least 75% of its units to individuals or families earning at or below 80% of the Lake County AMI and at least 20% of the units must be occupied by residents that meet the very low-income limit for the area or 40% of the units must be occupied by residents that do not exceed 120% of the area's very low-income limit. *Petitioner Exhibit L*. Gulf Coast established that in 2006, it rented 80% of its occupied units to residents with income levels at or below 80% of the AMI and, of that 80%, 44% of the residents were considered very low income residents with income levels at or below 50% of the AMI. Similarly, in 2007, Gulf Coast rented 85.6% of its occupied units to residents earning income at or below 80% of the AMI and, of that 85.6%, 60.7% earned less than 50% of the AMI.
26. The Petitioner's argument focuses on the characteristics of the Petitioner's residents rather than the Petitioner's ownership, operation and use of its property. However, the Board is not aware of, nor has the Petitioner presented, any statute or case law holding that marketing a good or service to lower income individuals is an exempt purpose. More importantly, there is nothing in the record to suggest that the tenants at Lakeshore Dunes have appreciably lower incomes than the tenants at any other apartment property. Further, the Petitioner's status as a 501(c)(3) corporation is insufficient alone to qualify it for an exemption. The grant of a federal or state income tax exemption does not entitle a taxpayer to a property tax exemption because an income tax exemption does not depend so much on how a property is used, but on how money is spent. *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). While the Petitioner is a non-profit organization, its charitable purpose must be proven before its tax exempt status is assured. *Id.* 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. 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.

27. The Petitioner argues that it provides apartments to low income individuals at below market rents. In support of its argument, the Petitioner presented a “market survey” purporting to show its rents are lower than the rents at comparable properties. The Petitioner’s rent study, however, was not an appraisal and was neither signed, nor certified, by its preparer. Nor did the preparer appear at hearing to testify under oath in support of his or her rent study. Thus, the study had none of the inherent safeguards that assured accuracy and reliability. Further, the Petitioner’s witness could not attest to the accuracy of the information contained in its market study.<sup>9</sup> Nor could she testify as to how the data was gathered or where it came from. Thus the market survey has little credibility and is entitled to little weight before this Board. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).
28. While the rent study purported to make “adjustments” to the rents of comparable apartment properties, the study provided no explanation or basis for those adjustments. Further, the study failed to make clear how it accounted for those adjustments. It appears that the market survey did not value the differences between properties. Rather, it assigned an amount to each amenity or unit feature and then determined a total value for the amenities and features of each apartment complex. According to the market study, Lakeshore Dunes had \$37 worth of amenities and \$69 in unit features; Woodlake Village had \$13 worth of amenities and \$38 in unit features; Hickory Ridge Lake had \$6 in amenities and \$54 in unit features; The Mansards had \$28 in amenities and \$58 in unit

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<sup>9</sup> In fact, the rent study appears to have errors in its basic information. The rent study identifies the Petitioner’s rents as ranging from \$400 for an efficiency to \$670 for a three bedroom, two bath unit. To the contrary, the Petitioner’s demographic studies show that Lakeshore Dunes has units renting from \$389 to \$975. Further, the study compares unit types that are not shown in the Apartment Community Profile. For example, only three of the complexes have 2-bedroom, 2-bath units, yet the survey has a chart showing that all six have that unit type.

features; Tiberon Trails had \$28 worth of amenities and \$40 in unit features; and Park Place had \$10 worth of amenities and \$43 in unit features. When the market study compared rents, however, it added these values to the comparable properties' rents, but not to the subject property's rents. Thus, the evidence suggests that the rent study compares apples and oranges.<sup>10</sup>

29. More importantly, the Petitioner's own rent study showed that its rents were comparable to other properties. For example, the rent study contends that a large one bedroom apartment rents for \$0.79 per sq. ft., but Park Place's "adjusted" rent was the same price per square foot and Woodlake Village rents for only \$0.80 per square foot. Similarly, Lakeshore Dunes' small two bedroom rents for \$0.79 per square foot, but Park Place rents a similar unit for only \$0.63 after the study's purported "adjustments." Taking the market survey's unsupported "adjustments" out of the equation, the report shows that Lakeshore Dunes' rents are typically higher than half of the comparable properties across most categories of unit types. In response to cross examination, the Petitioner's witness admitted that the market survey showed that some of the comparable apartment complexes charged less than Lakeshore Dunes for their apartments.<sup>11</sup>
30. Even if the Petitioner had sufficiently shown that its rents were "below market rents," that is not sufficient to show that a property qualifies for a charitable exemption. *Jamestown Homes*, 909 N.E. 2d at 1144. Here, rather than having a "charitable purpose," the evidence suggests that the Petitioner lowered its rents to gain a competitive advantage and increase its occupancy. In fact, the Petitioner's witness, Mr. Guessford, testified that when Gulf Coast purchased the property, it offered rent concessions and lowered the rents to be competitive in the market. According to Mr. Guessford, his "driving factor" in lower rents was to "create a competitive edge." Further, in response to cross

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<sup>10</sup> More troubling still, despite adjusting rent for "paid cable," the rent study made no adjustments for the fact that all of the comparable apartments paid their tenants' gas and electric, whereas most of the Petitioner's tenants paid those utilities themselves.

<sup>11</sup> The Petitioner also provided evidence showing that its rents are below HUD FMR. The Petitioner's market survey however shows that with the exception of the Mansards apartment complex and the 3-bedroom units at Tiberon Trails all of the complexes' rents are under the HUD FMR. Thus, the Petitioner has not shown that its rental policies are any different from its competitors.

examination, Mr. Guessford admitted to lowering the rents to “stabilize occupancy” rather than for any charitable purpose. *See Bedford Apartments v. Jean*, 2006 Ind. Tax LEXIS 16 (Ind. Tax Ct. April 27, 2006) (unpublished decision) (obsolescence denied where a low-income housing complex charged lower rental rates “not because it was mandated to do so pursuant to the rental restrictions with the government. . . . Rather, as Bedford acknowledges, the reason it charged lower than market rates was because “the [] market would not support rents at the maximum allowable amounts. Therefore, rents had to be reduced.”)

31. The Petitioner also argues that it offered programs to households that needed guidance and assistance with their children and with social services, but Ms. Brewer admitted that the Petitioner merely referred its tenants to social services rather than providing any actual services to its residents.<sup>12</sup> While the Petitioner may have offered community activities such as an Easter egg hunt or Halloween parties, the Board finds that those activities are not the type of activities that 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).
32. The Board therefore finds that the Petitioner failed to raise a prima facie case that its property was predominantly used for charitable purposes. 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). 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.

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<sup>12</sup> The Petitioner also argues that it offered housing to victims of Hurricane Katrina. However, while the Petitioner may have not received payment by the time it sold the building, the evidence shows that it offered those accommodations fully intending to be compensated for that service by FEMA. Regardless, providing 26 apartments out of the property’s 680 units cannot be considered the “predominant use” of the property.

33. Here, the Respondent argues that Gulf Coast is a typical landlord with all the rights of a landlord. In response to cross examination, Gulf Coast's witness testified that the Petitioner charges damage deposits, late fees and has the right to evict tenants for non-payment. Further, Ms. Brewer testified that residents were charged with legal fees that the management company incurred when it evicted a resident for cause.
34. Further, the Respondent's witness argues that the Petitioner's "comparable" properties are not comparable to the subject property because they are all located in Griffith, Portage and Merrillville. According to Mr. Gholsen, "trying to compare a property in Griffith to a rental property in Gary would be like trying to compare the south side of Chicago to Lake Shore Drive." Further, while Mr. Gholsen admitted none of his comparable properties were on Lake Michigan, he testified that one property was close to the lake and another property he was familiar with, Miller Village, had lake views. More importantly, Mr. Gholsen argued, none of the Petitioner's comparable properties were located on the lake.
35. The Respondent further argues that rents at Lakeshore Dunes are not below market rents. In support of this contention, the Respondent submitted a market survey focused mainly on apartments located in Gary. The Respondent's witness testified that he prepared the survey and explained how he obtained the information contained in the survey. The Respondent's survey compared the various unit types and the market rents for those units, as well as indicating who was responsible for paying the utilities. According to the Respondent's rent survey, the rents at Lakeshore Dunes are higher than other complexes in Gary, except for Woodlake Village, Phase III. While the Respondent's witness did not adjust the comparable rents for differences in the various apartment complexes, Mr. Gholsen himself collected the data and testified as to the properties' rents and locations. Although not the best evidence available, the Board finds the Respondent's evidence somewhat more persuasive than the Petitioner's unsupported, conclusory market study because Mr. Gholsen used properties in the same area, prepared the material himself, and testified under oath regarding his findings.

36. Finally, the evidence shows that the Petitioner sold the property for \$13 million less than two years after purchasing the apartments for approximately \$7.5 million. Mr. Gholsen testified that he is personally familiar with the Petitioner's property and only saw aesthetic improvements such as painting and new carpet. According to Mr. Gholsen, those are improvements any new landlord would make. Thus, any argument that the Petitioner provided some benefit by "rehabilitating" a problem property was rebutted by the Respondent's evidence that the Petitioner merely made cosmetic changes and flipped the property for a tidy profit.

#### **SUMMARY OF 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 finds in favor of the Respondent and determines the Petitioner's land, improvements, and personal property are 100% taxable.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>

## Gulf Coast Housing Assistance Corporation

<u>Petition</u>	<u>Parcel</u>	<u>Address</u>
45-001-06-2-8-00001	25-45-0159-0012	438-450 N. Lake St.
45-001-06-2-8-00002	25-45-0160-0021	300-330 N. Lake St.
45-001-06-2-8-00003	25-45-0159-0016	428-430 Appr. Lake St.
45-001-06-2-8-00004	25-45-0159-0015	432 N. Lake St.
45-001-06-2-8-00005	25-45-0155-0020	415-435 N. Lake St.
45-001-06-2-8-00006	25-45-0153-0018	515 N. Lake-5900 Hemlock
45-001-06-2-8-00007	25-40-0110-0030	5801-5807 Kennedy Terrace
45-001-06-2-8-00008	25-40-0110-0029	5700-5706 Kennedy Terrace
45-001-06-2-8-00009	25-40-0110-0028	5920 Appr. Lake St.
45-001-06-2-8-00010	25-40-0110-0027	5800-5806 Kennedy Terrace
45-001-06-2-8-00011	25-40-0110-0026	5900 Appr. E.Kennedy
45-001-06-2-8-00012	25-40-0110-0025	5600 Cypress Ave.
45-001-06-2-8-00013	25-40-0110-0024	5700-5712 Cypress Ave.
45-001-06-2-8-00014	25-40-0110-0023	5800-5812 Cypress Ave.
45-001-06-2-8-00015	25-40-0110-0022	5700-5724 Hemlock Ave.
45-001-06-2-8-00016	25-40-0110-0021	5701-5725 Hemlock Ave.
45-001-06-2-8-00017	25-40-0110-0020	5801-5815 Hemlock Ave.
45-001-06-2-8-00018	25-40-0110-0019	610-630 N Lake, 5850 Forest
45-001-06-2-8-00019	25-40-0110-0017	5800 Hemlock Ave.
45-001-06-2-8-00020	25-40-0110-0015	5800-5830 Forest Ct.
45-001-06-2-8-00021	25-40-0110-0013	500 N. Lake St.
45-001-06-2-8-00022	25-40-0110-0001	5742 Forest Ct.
45-001-06-2-8-00023	25-99977	(Personal property)