

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The restated issue presented for consideration by the Board is:

Whether residential buildings owned by the Petitioner and occupied primarily by elderly residents are owned and occupied for charitable purposes, and therefore exempt from property taxation.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-11-7, Brothers of Holy Cross, Inc. (the “Petitioner”) filed a Form 132 Petition for Review of Exemption (“Form 132 Petition”), petitioning the Board to conduct an administrative review of the partial denial of its application for exemption. The Petitioner filed its underlying Form 136 Application for Property Tax Exemption on May 15, 2002. The St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on September 18, 2003. The Petitioner filed its Form 132 Petition on October 17, 2003.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and 6-1.5-4-1, a hearing was held on March 9, 2005, in South Bend, Indiana before Terry G. Duga, Commissioner, and Dalene McMillen, a duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:

Richard A. Nussbaum II, Sopko, Nussbaum & Inabnit
Thomas C. Sopko, Sopko, Nussbaum & Inabnit
Curtis Coffey, Controller for Brothers of Holy Cross, Inc.
Brother John May, C.S.C., Director of Planning and Interim Administrator
of Holy Cross Village for Brothers of Holy Cross, Inc.

Lori McLaughlin, General Counsel/Vice President of Risk Management
and Legal Affairs for Franciscan Sisters of Chicago Service Corporation

For the Respondent:

Marilyn Meighen, Meighen and Associates, P.C.
Jeff Wuensch, Nexus Group
Terrance Wozniak, Deputy County Attorney for St. Joseph County
David E. Wesoloski, St. Joseph County Assessor
Rosemary Mandrici, Portage Township Assessor
Kevin J. Klaybor, PTABOA Member
Dennis J. Dillman, PTABOA Member
Ross A. Portolese, PTABOA Member
Ralph J. Wolfe, PTABOA Member

Others in Attendance:

James Wensit, Reporter for the South Bend Tribune Newspaper
Eric Walton, Reporter for WNDU Television
Mark Peterson, Reporter for WNDU Television

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Curtis Coffey
Brother John May
Lori McLaughlin

For the Respondent:

David Wesolowski
Jeff Wuensch
Rosemary Mandrici

6. The following exhibits were presented:

Petitioner Exhibit A – Form 136, Application for Property Tax Exemption.

Petitioner Exhibit B – Form 120, Notice of Action on Exemption
Application.

Petitioner Exhibit C – Form 132, Petition to the Indiana Board of Tax Review for
Review of Exemption, with the following attachments:

A – A map of the subject area.

B – A copy of the Residency Agreement for Holy Cross
Village.

C – A copy of *Wittenberg Lutheran Village Endowment
Corporation v. Lake County Property Tax*

Assessment Board of Appeals, 728 N.E.2d 483
(Ind. Tax Ct. 2003).

D – A copy of The Village News and calendar of events for October 2003.

Petitioner Exhibit D – Articles of Incorporation of Brothers of Holy Cross, Inc., dated March 25, 1947, and bylaws of Brothers of Holy Cross, Inc.

Petitioner Exhibit E – Restated Articles of Incorporation of Holy Cross Village at Notre Dame, Inc., dated October 1, 2000, and restated Code of Bylaws of Holy Cross Village at Notre Dame, Inc., dated October 1, 2000.

Petitioner Exhibit F – Letter from the Internal Revenue Service District Director to Ms. Deirdre Dessingue, Associate General Counsel United States Conference of Catholic Bishops, dated July 1, 2004, and one page from the Official Catholic Directory for 2004.

Petitioner Exhibit G – License from the Indiana State Department of Health for the Dujarie House.

Petitioner Exhibit H – List of services offered at Holy Cross Village prepared by Brother John May, CSC, dated February 17, 2005.

Petitioner Exhibit I – List of activities offered at Holy Cross Village prepared by Brother John May, CSC, dated February 17, 2005.

Petitioner Exhibit J – Census of residents at Holy Cross Village (by unit).

Petitioner Exhibit K – Census of individuals that utilized assisted living and nursing facilities.

Petitioner Exhibit L – Census of use/participation in Holy Cross College educational services.

Petitioner Exhibit M – Newsletters for 2003 – 2005 for Holy Cross Village.

Petitioner Exhibit N – Indiana Tax Court cases:

Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Bd. of Appeals, 782 N.E.2d 483 (Ind. Tax Ct. 2003); *Raintree Friends Housing, Inc. v. Indiana Dep't of State Revenue*, 667 N.E.2d 810 (Ind. Tax Ct. 1996); *State Bd. of Tax Comm'rs v. The Methodist Home for the Aged*, 143 Ind. App. 419, 241 N.E.2d 84 (1968).

Petitioner Exhibit O – Indiana Board of Tax Review Final Determination and Findings of Fact and Conclusions of Law for *Haven Hubbard Home dba Hamilton Communities*, dated April 20, 2004.

Petitioner Exhibit P – Videotape of Holy Cross Village.

Petitioner Exhibit Q – Memorandum of law in support of petition for property tax exemption for the Brothers of Holy Cross, Inc. prepared by Richard A. Nussbaum, II.

Petitioner Exhibit R – Proposed Findings of Fact and Conclusions of Law prepared by Richard A. Nussbaum, II.

- Respondent Exhibit A – Videotape of Holy Cross Village.
- Respondent Exhibit B – Fifteen exterior photographs of Hermitage Estates.
- Respondent Exhibit C – Application Analysis and Tax Impact Analysis for the Holy Cross Village, prepared by Jeff Wuensch, Nexus Group, dated March 4, 2005.
- Respondent Exhibit C-1 – The Brothers of Holy Cross property record cards.
- Respondent Exhibit C-2 – Report on Property Tax Exemptions, Deductions and Abatements, prepared by Department of Local Government Finance, dated August 2004.
- Respondent Exhibit C-3 – The 2003 tax rates for all 92 counties within the State of Indiana, prepared by the Department of Local Government Finance, dated July 26, 2004.
- Respondent Exhibit D – A brief in support of the PTABOA, prepared by Marilyn Meighen.
- Respondent Exhibit E – Proposed Findings of Fact and Conclusions of Law, prepared by Marilyn Meighen.

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

- Board Exhibit A – The Form 132 Petition, dated October 17, 2003.
- Board Exhibit B – Notice of Hearing on Petition, dated February 2, 2005.
- Board Exhibit C – Hearing sign-in sheet.
- Board Exhibit D – Request for Additional Evidence, dated March 9, 2005.
- Board Exhibit E – Post-hearing Submission Waiver, dated March 9, 2005.

8. The subject property is a maintenance-free, independent living community owned by the Petitioner.

9. For 2002, the PTABOA determined the subject property, which consists of 38.62 acres with improvements to be:

- Land: 17% exempt; 83% taxable
- Improvements: 17% exempt; 83% taxable
- Personal Property: 100% exempt; 0% taxable

10. The Petitioner is requesting a 100% exemption for the subject land and improvements.

JURISDICTIONAL FRAMEWORK

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible personal 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.

FACTS

12. The Board finds the following facts, which are relevant to its determination:
 - a. The Petitioner, Brothers of Holy Cross, Inc., is an Indiana not-for profit corporation affiliated with the Roman Catholic Church. *Coffer testimony; Pet’r Ex. D.* The Petitioner qualifies for an income tax exemption under the Internal Revenue Code, Section 501(c)(3). *Coffer testimony.* The Petitioner owns a nursing home, (Dujarie House); an assisted living facility (Schubert Villa); a chapel, a twenty-six (26) unit residential apartment building (Riverside Place); an administrative office building (“Administrative Center”); and thirty (30) buildings containing thirty-nine (39) residences. *Id.; Pet’r Ex. C.*
 - b. The Administrative Center and twenty-eight (28) residential buildings (containing 37 residences) are located on the 38.62 acre tract that is the subject of this appeal. Those twenty-eight (28) residential buildings comprise Holy Cross Village (the “Village”).¹ The PTABOA granted the Petitioner’s application as it pertains to

¹ The Village is operated by Hoy Cross Village at Notre Dame, Inc., and Indiana not-for-profit corporation affiliated with the Petitioner. *Coffer testimony; Pet’r Ex. E.* Dujarie House and Schubert Villa are operated by Andre Residential Services, Inc., an Indiana not-for-profit corporation also affiliated with the Petitioner. *Coffer testimony.*

the Administrative Center, but denied the Petitioner's application with regard to the portion of the subject property comprising the Village.²

- c. The Village residences are independent living units marketed on the basis of a refundable life-use fee. *Coffer testimony*. Title does not transfer to the residents of the Holy Cross Village. *Id.* The Petitioner owns the land and improvements. *Id.*; *Pet'r Ex. C, at tab B*. Residents pay an entrance or "membership" fee loosely based on the size and cost of construction of their units. *Coffer testimony*. Membership fees range from \$119,000 for a 720 square foot unit to \$239,900 for units of 1850 to 2000 square feet. *Id.* The Petitioner has never waived or reduced the membership fee. *Coffer testimony*.
- d. Village residences have the following design and construction elements geared toward senior citizens: grab bars in showers and tubs, and if necessary, the installation of grab bars at stools; interior and exterior doors that are 36 inches wide to accommodate walkers and wheel chairs; handles, rather than knobs, on all doors and cabinetry; skid resistant floors in the kitchen and bathrooms; and single-level construction. *Brother John May testimony*.
- e. Village residents are also charged a monthly service fee for the costs of operating the residences and for various services. *Coffer testimony; Pet'r Ex. C, at tab B; Pet'r Ex. H*. Those services include: grounds keeping, snow removal, repairs both inside and outside the buildings, structural improvements and mail delivery. *Id.* Monthly service fees range from \$415 to \$660 per month and are based on the size of the residence. *Id.* The Residency Agreement signed by residents provides: "Recognizing that the needs and financial resources of Member may change from time to time, Village agrees to explore alternate financial

² The parties both appear to address all twenty-eight residential buildings in their presentations. *Pet'r Ex. C; Resp't Ex. C-1*. The Form 120 issued by the PTABOA, however, indicates that the PTABOA denied an exemption for 83% of the subject property, which included "the 17 villas that were completed as of 3-1-02 and the 3 duplexes and the land under these structures." *Board Ex. A; Pet'r Ex. B* (emphasis added). Because the parties make no distinction between the use of residences existing as of March 1, 2002 and those completed after that date, the Board finds it unnecessary to resolve this discrepancy.

arrangements to allow the continued occupancy by Member in the event that Member is unable to pay the Monthly Service Fee.” *Pet’r Ex. C, at tab B.* The issue of reducing a resident’s monthly service has not arisen. *Coffer testimony.*

- f. The Petitioner contracts with the Town of Roselawn Police Department to provide security via “drive through” monitoring. *Coffer testimony.* In addition, Holy Cross College has a security force that patrols the campus on foot. *Id.* There is a guardhouse located at the point of access to the Village and the other facilities owned by the Petitioner as well as to Holy Cross College. *Pet’r Ex. C, at tab A.* Neither David Wesolowski nor Jeff Wuensch were stopped at the guardhouse or required to sign-in when they visited the Village on separate occasions. *Wesolowski testimony; Wuensch testimony.* Wesolowski did not see any patrol cars and he was not stopped or questioned despite the fact that he walked around the grounds taking pictures. *Wesolowski testimony.*
- g. There is no age requirement for occupancy of residences in the Village. *Coffer testimony; Pet’r Ex. C, at tab B.* The average age of residents of the Village and Riverside Place Apartments, a complex located on a parcel of land not subject to this appeal, is 72.3 years. *Coffer testimony; Pet’r Ex. J.* This average includes four (4) residents who are in their fifties, and one resident in his forties. *Pet’r Ex. K.* Three (3) Brothers from the Midwest Province of the Brothers of Holy Cross live in the Village. *Coffer testimony.* The Brothers of Holy Cross pay the same amount of fees for the Brothers to live in the Village as the Petitioner charges to lay persons. *Id.*
- h. The Village’s mission statement provides: “HOLY CROSS VILLAGE AT NOTRE DAME draws all who become part of it into AN INTERDEPENDENT COMMUNITY, associating with and reaching out in service to one another and to others, at the same time sensitively respecting each individual’s DIGNITY and right to PRIVACY. HOLY CROSS VILLAGE invites continual reflection and dialogue on the reasons *for* ministry as well as the doing of *ministry*. HOLY

CROSS VILLAGE creates COMMUNITY in a way that surpasses the mere grouping of people together. The Village, rather, seeks to embody the GOSPEL and HUMANITARIAN IDEALS expressed in the terms BROTHERHOOD AND NEIGHBORHOOD as these are understood, acknowledged, and sought everywhere.” *Pet’r Ex. C, at tab B.* In seeking an “interdependent community,” the Petitioner was looking for people who would be of service to each other in a neighborly fashion and who also would value the type of lifestyle the Brothers of Holy Cross practice on campus. *Brother May testimony.*

- i. The Village is located near Dujarie House and Schubert Villa. *Pet’r Ex. C, at tab A.* Village residents are allowed to eat at the Schubert Villa dining room on an *ala carte* basis, and are billed for their meals monthly. *Id.* A number of Village residents also take advantage of physical therapy facilities and exercise at the Dujarie House/Schubert Villa complex. *Id.*
- j. There is no written promise or guarantee giving priority to Village residents for admission to Schubert Villa or Dujarie House. *Coffer testimony.* As a practical matter, Village residents are typically given the opportunity to move to the next level of care if there is an opening. *Id.* During the period from 2001 through 2005, six (6) individuals were admitted from the Village to Schubert Villa, with three returning to their independent living arrangements. *Pet’r Ex. K.* During that same period, five (5) individuals were admitted from the Village to Dujarie House. *Id.* One (1) has returned to independent living, and one (1) is scheduled to return upon completion of rehabilitation. *Id.*
- k. The Petitioner is planning an expansion of services available to residents of the Village. *Coffer testimony.* As part of that expansion, the Village intends to modify its Residency Agreement to explicitly provide that Village residents will have priority in moving through a continuum of care from independent living to long-term care and “dimension care” if needed. *Coffer testimony.* Village residents also will be provided with a “healthcare discount” entitling them to a

reduction in costs in the amount of \$750 per month for up to 36 months if they need to move to a higher level of care. *Id.* In addition, as part of its planned management of the Village, Dujarie House and Schubert Villa, the Franciscan Sisters of Chicago Service Corporation will look at whether a particular number of units in the “health center” need to be reserved for transfers from the Village. *McLaughlin testimony.*

- l. Residents of the Village have access to a shuttle bus to Notre Dame and to points within the “Holy Cross community,” including Holy Cross College. *Brother May testimony; Pet’r Ex. H; Pet’r Ex. M, at 26.* The bus schedule is geared toward the colleges’ academic schedule. *Brother May testimony; Pet’r Ex. M, at 26.* The bus does not run from May 7th through August 22nd or during Thanksgiving or Christmas breaks. *Id.* The Petitioner did not indicate which particular entity pays for the operation of this shuttle service. The shuttle is referred to as the Notre Dame/St. Mary’s shuttle. *Pet’r Ex. M, at 26.*
- m. Village residents have access to pastoral services at Holy Cross College. *Brother May testimony; Pet’r Ex. H.* They can attend daily masses on the college campus and at Dujarie House’s chapel. *Brother May testimony.* Chaplain Father Ken Grabnor also provides pastoral services to people who call on him or visit him. *Id.* A Brother has visited residents of the Village to ask for suggestions on ways to improve the community. *Id.* There are also other opportunities for pastoral services such as lectures and bible study presented by one of the residents of the Village. *Id.*
- n. Village residents have access to various educational services at Holy Cross College, as well as to social events related to the college. *Brother May testimony.* Some residents take classes at the college for a “small fee.” *Id.* In some instances, residents have served as instructors. *Id.* Residents also have access to the Holy Cross College library, and arrangements can be made for access to libraries at Notre Dame and St. Mary’s College. *Id.* Residents receive internet

access through Holy Cross College. *Id.* The residents also are allowed to consult Holy Cross College's physician's assistant ("PA") to discuss health questions and receive flu shots. *Id.*

- o. Village residents receive a monthly newsletter. *Brother May testimony; Pet'r Ex. M.* Among other things, the newsletter contains a calendar of events occurring at Holy Cross College, Dujarie House, and Schubert Villa. *Id.*

- p. On average, Village residents have a net worth of \$1,000,169. *Wuensch testimony; Resp't Ex. C.* The Petitioner also presented testimony that, if the Village were assessed like other South Bend properties, the assessed value of the Village properties would be \$8,063,800, yielding property taxes of \$172,485. *Wuensch testimony; Resp't Ex. C-2.* Currently, the Village has an assigned assessed value of \$5,118,200, yielding property taxes of \$109,478. *Wuensch testimony; Resp't Ex. C.*³

ANALYSIS

Parties' Contentions

- 13. The Petitioner contends that the land and improvements at issue should be 100% exempt under Ind. Code § 6-1.1-10-16. In support of its position, the Petitioner submits that the Village is part of a continuum of care provided by the Petitioner through its various facilities, including, Schubert Villa and Dujarie House. Moreover, the Petitioner contends that it provides Village residents with a variety of amenities and services designed to meet the needs of senior citizens. While the residents are charged entry fees

³ The Petitioner objected to the admission of Exhibits C and C-1, C-2 and C-3 on grounds of relevancy. The Petitioner also objected to Wuensch's testimony concerning those exhibits. Commissioner Duga overruled the Petitioner's objections. Nonetheless, the Board assigns no weight to such exhibits and testimony to the extent they address the tax burden that would be shifted to non-exempt properties as a result of granting the Petitioner's application for exemption. The Tax Court has held that exemption statutes are to be strictly construed against the taxpayer, because the granting of an exemption shifts the tax burden of providing government services onto other properties. *See National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218, 220 (Ind. Tax Ct. 1996). The extent of that shift in any given case, however, is irrelevant to the determination of whether a particular property is entitled to an exemption.

and monthly service fees, those fees simply allow the Village to break even on its operations. According to the Petitioner, the facts in this case are indistinguishable from those in *Wittenberg Lutheran Village Endowment Corporation v. Lake County Property Tax Assessment Bd. of Appeals*, 782 N.E.2d 483 (Ind. Tax Ct. 2003) and *Haven Hubbard Homes d/b/a Hamilton Communities v. St. Joseph County Property Tax Assessment Bd. of Appeals*, Pet. Nos. 71-017-02-2-8-00001 and 00002 (Indiana Board of Tax Review, April 20, 2004) where the Indiana Tax Court and the Board respectively upheld petitioners' requests for exemptions.

14. The Respondent contends that the Village is not entitled to an exemption because: (1) limiting residency to those with a portfolio attractive enough to pay fees does not constitute charity; (2) the Village does not provide a benefit to the general public or appreciably limit the burdens of government, because it limits residency to a restricted group of people who meet financial and health requirements; and (3) while the occupants of the Village may avail themselves of certain amenities, there is no difference between those amenities and the benefits that any other neighborhood association or apartment community may provide to its residents. Moreover, the grant of an exemption will shift the tax burden onto others members of the South Bend community, many of whom are seniors who own modest homes and were hard-hit by the 2002 general reassessment. *Meighen argument; Resp't Ex. D, at 1-2.*

Constitutional and Statutory Basis for Exemption

15. 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. Nonetheless, the Indiana Constitution provides that 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. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.

16. The Indiana General Assembly has provided that “[a]ll of part or 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.” Ind. Code § 6-1.1-10-16(a). Similarly, a tract of land is exempt if “a building that is exempt under subsection (a) or (b) is situated on it. . . .” I.C. § 6-1.1-10-16(c).
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 – taxation. *Id.* When property is exempted from taxation, the effect is to shift the amount of taxes that parcel would have paid to other parcels that are not exempt. *National Ass’n of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E.2d 218, 220-21 (Ind. Tax Ct. 1996).
18. The transfer of this obligation to non-exempt properties is not an inconsequential shift. For this reason, an exemption from taxation is strictly construed against the taxpayer. *Id.* (citing *St. Mary’s Medical Center of Evansville, Inc. v. State Bd. of Tax Comm’rs*, 534 N.E.2d 277, 280 (Ind. Tax Ct. 1989)). Thus, the taxpayer must demonstrate that it provides a “present benefit to the general public . . . sufficient to justify the loss of tax revenue.” *Id.* (quoting *St. Mary’s Medical Center*, 534 N.E.2d at 279).
19. When interpreting the exemption provided by I.C. § 6-1.1-10-16(a), however, “the term ‘charitable purpose’ is to be defined and understood in its broadest, constitutional sense.” *Knox County Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177 (Ind. Tax Ct. 2005)(citing *Indianapolis Elks Bldg. v. State Bd. of Tax Comm’rs*, 145 Ind. App. 522, 251 N.E.2d 673, 682 (1969)). As a result, “[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 of a benefit that will inure to the public by the accomplishment of such acts.” *Id.* (quoting *Indianapolis Elks*, 251 N.E.2d at 683).

Decisions Addressing Charitable Exemptions Based upon Care for the Aged

20. Indiana Courts have long recognized that providing care and comfort to the aged constitutes a charitable purpose. *See, e.g., Grandview*, 826 N.E.2d at 182; *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 782 N.E.2d 483 (Ind. Tax Ct. 2003); *Raintree Friends Housing, Inc. v. Indiana Dep't of State Revenue*, 667 N.E.2d 810 (Ind. Tax Ct. 1996); *Methodist Home for the Aged*, 143 Ind. App. 410, 241 N.E.2d 84 (1963).

Raintree

21. In *Raintree*, two housing corporations (“Corporations”), which operated a total of three retirement homes for the aged (collectively “Retirement Homes”), appealed final determinations of the Indiana Department of State Revenue assessing them with gross income, sales, and food and beverage taxes. *Raintree*, 667 N.E.2d at 811. The Retirement Homes were “assisted living” or “congregate support” communities, which helped aged persons live independent lives. *Id.* at 812. The Retirement Homes catered to the aged, and did not admit persons under fifty-five (55) years of age, although they did allow an exception to the age requirement for spouses of qualified residents. *Id.*
22. The Tax Court addressed the question of whether the Corporations were organized and operated exclusively for charitable purposes and therefore exempt from the gross income tax under I.C. § 6-2.1-3-20(a). *Id.* at 813. The Corporations argued that the care they provided for the aged benefited society by relieving a burden that society would otherwise have had to shoulder. *Id.* The Department of Revenue countered that the Corporations were not operating for a charitable purpose, because the services they offered were no different than those offered by traditional apartment complexes. *Id.*
23. The Court found cases interpreting the charitable purpose exemption from property taxes to be persuasive. *Id.* at 814 (citing, e.g. *Methodist Home*, 241 N.E.2d at 90). As noted by the Court, those cases applied a broad construction of the term “charitable.” *Id.* The

Court also found that public policy supports a broad construction of charity in that the historical purpose of providing charitable organizations with exemptions was to reward organizations providing a benefit to citizens through the services they offer. *Id.* In that vein, the Court noted Indiana law recognizes that:

the aged require care and attention entirely independent of financial needs, and that present day humanitarian principles demand that those in their declining years have the opportunity to live with as much independence as their strength will permit, in as pleasant and happy surroundings as their finances will reasonably justify

Id. (quoting *Methodist Home*, 241 N.E.2d at 89). Consequently, the Court reasoned that, “by meeting the needs of the aging, namely: ‘relief of loneliness, boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, [and] attention to problems of health,’ a charitable purpose is accomplished. *Id.* (quoting *Methodist Home*, 241 N.E.2d at 89).

24. Turning to the facts before it, the Court found that the Corporations provided beneficial and worthwhile services to the aged and provided a benefit to society by catering to the specific needs of their aged residents and by supplying “community, security and assisted living for those in need.” *Id.* at 815.
25. First, the Court noted that the Retirement Homes’ mission statements articulated goals of assisting residents in living as independently as possible for as long as possible. *Id.* The Court then pointed to several amenities and services provided by the Retirement Homes to support its conclusion. The Retirement homes enabled residents to stay within their communities and among family and friends. *Id.* Social functions were organized and promoted by an activities director and common areas were open for social activities and gatherings. *Id.* The Retirement homes extended themselves into the community by hosting conferences on aging and by inviting school groups and other community organizations to visit and provide entertainment to the residents. *Id.*
26. The Retirement Homes also provided special amenities that suited the needs of aged persons. *Id.* Each unit was equipped with hallway grab bars and an emergency pull cord

alerting the staff of emergencies. *Id.* A security guard patrolled the halls at night. *Id.* Residents were required to attend one meal per day in the dining facility, which both promoted mental health and independent living and enabled the staff to monitor residents. *Id.* The meals were tailored to the dietary and health needs of aged persons. *Id.*

27. The Retirement Homes further provided supportive services to enable residents to live independently for longer periods of time. *Id.* Those services included wake up calls and assistance in dressing, bathing, taking medication, making medical appointments, laundering clothes and cleaning residences. *Id.* Some of the services were incorporated in the residents' monthly fees and others required additional fees. *Id.* Nonetheless, the Court found that the convenience of the services and having only one cumulative monthly bill reduced anxiety levels and enabled residents to tend to their own needs longer in life. *Id.*
28. The Court found that the amenities and services provided by the Retirement Homes were equally beneficial to the residents and to society at large as providing financial assistance, which the Court characterized as the traditional notion of charity. *Id.* The Court explained that, even though the Retirement Homes were limited to residents capable of paying monthly fees, charitable organizations may limit the persons to whom they provide services without jeopardizing their charitable status. *Id.* (citing *Methodist Home*, 241 N.E.2d at 88). In that vein, the Court explained that the Corporations provided assisted living “for persons who typically have a small retirement plus social security funds which disqualifies them from government assistance, yet does not enable them to afford the services they need if purchased within the community.” *Id.*

Wittenberg

29. In *Wittenberg*, a not-for-profit corporation affiliated with the Lutheran Church sought a charitable exemption under I.C. § 6-1.1-10-16 for eighteen buildings containing residential units. *Wittenberg*, 782 N.E.2d at 484. Those units were known collectively as

the “Villas.” *Id.* The Villas were part of an integrated retirement community, which also consisted of a nursing home, an assisted living facility, and a chapel. *Id.*

30. The Villas were restricted to independent, active seniors who were at least sixty (60) years old. *Id.* The Villas also offered unique amenities and services in addition to those found in traditional apartment living. *Id.* at 495. For example, all units were wheelchair accessible and were equipped with special safety features, such as bathroom grab bars. *Id.* Moreover, the units were built on a crawl-space foundation, which provided less stress on elderly bones and joints than slab foundations. *Id.* Chaplaincy and worship services were available to all Villas residents, and residents could participate in a “wide range of free planned group activities” and had free access to exercise equipment within the larger integrated retirement community. *Id.* Residents of the Villas also were able to use the integrated retirement community’s mini-bus for regularly scheduled shopping, planned group outings and health-related appointments. *Id.* In addition, Residents could volunteer at the assisted living facility or the nursing home. *Id.*
31. For additional fees, Villa residents could purchase housekeeping and could dine at the nursing home or assisted living facility. *Id.* Villa Residents also could purchase home health aide type services. *Id.* Moreover, the integrated retirement community had a medical doctor who would see Villa residents for scheduled appointments. *Id.* Other health care professionals also had regular on-site office hours. *Id.* Finally, Villa residents were able to contact the nursing staff at the nursing home for any medical emergencies. *Id.*
32. Villa residents purchased occupancy rights for set terms. *Id.* In the event of early departure, the fee was refundable. *Id.* The occupancy agreement provided that it would not be terminated solely for the financial inability of the resident to pay monthly fees if the resident established a need for special financial consideration and such need could be granted without impairing the Villas’ ability to operate on a sound financial basis. *Id.* Residents of the Villas had priority, subject to availability, to be moved to the assisted living or nursing home facilities within the retirement community. *Id.*

33. The petitioner in *Wittenberg* moved for summary judgment to reverse the decision of the State Board of Tax Commissioners, which had upheld the Lake County Property Tax Assessment Board of Appeal's ("Lake County PTABOA") denial of a charitable exemption to the Villas. The Lake County PTABOA defended on grounds that, because the Villas did not cater to the ill or infirm, they amounted to nothing more than a traditional apartment complex. *Id.* at 487. The Tax Court disagreed, adopting the petitioner's position that the Villas represented one element of a "continuum of care," and that its residents had a variety of services available to them which were not available to elderly persons in their own homes. *Id.* Citing to *Raintree*, the Court stated:

[T]he needs of senior citizens are not exclusively financial, nor are they merely health-related. Indeed, seniors also need a sense of community and involvement. Seniors need a sense of security and safety. Seniors need social interaction. Seniors need supportive services that enable them to live more independently for a longer period of time. Seniors need to function at active levels. The Villas meet all those needs and are thus owned, occupied, and used for a charitable purpose.

Id. at 489 (internal citations omitted).

Application of Law to the Instant Case

34. When viewed as a whole, the services and amenities available to the residents of the Village do not evince a charitable purpose within the meaning of I.C. § 6-1.1-10-16(a). Village residents have access to some of the same types of amenities and services as were provided to residents in *Raintree* and *Wittenberg*. The amenities and services available to Village residents, however, are not as comprehensive as those provided by the petitioners in *Raintree* and *Wittenberg*. In addition, unlike *Wittenberg* and *Raintree*, where the services were provided by the entities seeking exemption, most of the services identified by the Petitioner are provided by other entities, such as Holy Cross College, and are also available to students or members of the community at large. Moreover, with a few exceptions, the amenities and services identified by the Petitioner are not geared toward addressing specific needs of the aged as opposed to the needs of people in general. Thus, there is insufficient evidence either of the "relief of human want . . . manifested by

obviously charitable acts different from the everyday purposes and activities of man in general' or an expectation of a benefit that will inure to the public by the accomplishment of such acts. *Grandview*, 826 N.E.2d at 182 (quoting *Elks Bldg.*, 251 N.E.2d at 683).

35. The Petitioner points to the following amenities and services offered to residents of the Village: (1) construction elements that the Petitioner contends are “geared toward seniors;” (2) building maintenance and grounds upkeep; (3) security services; (4) scheduled transportation; (5) pastoral services; (6) dining services; (7) access to the facilities of the nursing home (Dujarie House) and assisted living entity (Schubert Villa), (8) priority access to placement in Dujarie House and Schubert Villa; (9) clinical services, including consultation with a physician’s assistant through Holy Cross College; (10) access to educational service and social events at Holy Cross College and access to diagnostic treatment and evaluation services at the Holy Cross College’s Student Health and Wellness Center; (11) library access to Holy Cross College, University of Notre Dame and St. Mary’s College; and (12) internet services through Holy Cross College.

36. As an initial matter, most of the services identified by the Petitioner are provided through Holy Cross College, Notre Dame or St. Mary’s College. Those services include: “foot patrol” security services, library access, clinical and diagnostic services, educational opportunities, transportation (shuttle bus service), and internet access. *Coffer testimony*; *Brother May testimony*. Although Holy Cross College is a ministry of the Brothers of Holy Cross, there is no evidence that the Petitioner owns the college or pays for any of the services provided by the college. The same is true with regard to the services provided by Notre Dame and St. Mary’s College. As explained by the Court in *Raintree*, the historical purpose of providing charitable organizations with exemptions was to reward organizations for providing a benefit to citizens through the services they offer. *Raintree*, 671 N.E.2d at 814. That purpose does not extend to rewarding organizations that simply take advantage of otherwise existing services provided by third parties. To the extent that those services offer sufficient public benefits to justify an exemption, the actual providers of the services presumably have been rewarded with an exemption already.

37. In addition, with few exceptions, the Petitioner did not establish that the above described amenities and services were designed specifically to meet the needs of aged residents. For example, while Village residents have access to shuttle bus transportation, the service is clearly geared toward the needs of students at the three college campuses. It runs between various points on those campuses and does not operate during breaks in the academic year. *Pet'r Ex. M, at 26; May testimony*. The Petitioner likewise did not establish how the maintenance and upkeep services offered to Village residents differ from those offered by other communities regardless of the age of residents. Similarly, the Petitioner did not explain how Village residents' access to security services, pastoral services, educational services, diagnostic services, library services, social events or the internet differs from the access enjoyed by students at Holy Cross College. In fact, the Village residents' access to several of those services, including the ability to attend masses at Dujarie House or Holy Cross College, to receive pastoral care or to attend social events connected with the college does not appear to differ from the access of residents of the South Bend community at large. The Petitioner is simply taking advantage of existing services that were designed without reference to the Village or to the age of its residents.
38. In short, other than the facts that the Village residences have construction elements "geared toward seniors"⁴ and that seniors dine at and use certain other services at Dujarie House and Schubert Villa, there is little evidence of services provided by the Petitioner that are designed to address the special needs of seniors as opposed to the needs and desires of human beings in general. The Board recognizes that many of the Village's amenities and services generally address needs described in *Raintree* and *Wittenberg*, such as relief of loneliness and boredom, decent housing that has safety, convenience and security and the attention to problems of health, however those are needs shared by all people. Unlike the facilities in *Raintree* and *Wittenberg*, there is a lack of evidence that the Village is designed to address those needs in ways which are specifically geared

⁴ Those elements include: grab bars, doors built to accommodate wheel chairs, handles as opposed to knobs on doors and cabinetry, skid resistant floors, and single level construction. *Brother May testimony*.

toward the aged and which are not generally available to individuals in their own homes or in non-exempt apartment or condominium communities.

39. In fact, unlike the facilities in *Wittenberg* and *Raintree*, the Village has no minimum age requirement. *See Wittenberg*, 782 N.E.2d at 484, n.4; *Raintree*, 667 N.E.2d at 812, n.1. Similarly, neither the Residency Agreement nor the Village’s mission statement, mentions the needs of seniors or the aged in touting the benefits of the community. The Residency agreement states that the Village has been “organized to provide a secure yet interdependent lifestyle in a community that respects the privacy and dignity of its residents. . . .” *Pet’r Ex. C, at tab B*. The mission statement contains similar language. *Id.* This contrasts with the Retirement Homes in *Raintree*, which were designed expressly to meet the needs of the aged. *See Raintree*, 667 N.E.2d at 815 (“[T]he mission statement of each Retirement Home articulates that its goal is to assist residents in living as independently as possible for as long as possible.”).

40. The Petitioner appears to argue that its goal of providing an “interdependent lifestyle” referred to in its Residency Agreement and mission statement addresses the needs of the aged, because such a lifestyle includes inter-generational contact between residents and students at Holy Cross College. The Petitioner, however, did little to explain the significance of such interdependent lifestyle to the needs of the aged. In fact, Brother May’s testimony concerning the significance of an interdependent lifestyle demonstrates a purpose unrelated to the specific needs of the aged. As he explained, the Village was looking for people who wanted to be of service to each other in a neighborly fashion and who valued the type of lifestyle the Petitioner practiced on the campus of Holy Cross College. *Brother John May testimony*. The Petitioner took into account the opportunity for residents of the Village to interact with homesick students, mentor them and invite them to dinner. *Id.* If anything, the interdependence sought by the Petitioner appears to be geared more toward serving the needs of students than of the Village residents. The Board does not reject the notion that such interaction might also serve specific needs of the aged; however, the Petitioner has not established that the needs of the aged were the primary motivation behind fostering such a lifestyle at the Village.

41. The Board recognizes that, despite the lack of a minimum age requirement or an express mission of catering to the aged, the Village is comprised largely of elderly residents. The average age of the residents of the Village, including those living on an adjoining parcel that is not the subject of this appeal, is 73.2 years, although several residents are in their forties and fifties. *Brother John May testimony; Pet'r Ex. J.* While this is at least some evidence that the Village offers amenities and services that are attractive to older people, it does not necessarily evidence a specific intent to serve needs of the aged. A charitable purpose involves something beyond merely successfully marketing one's services to seniors. It implies some level of sacrifice on the part of the entity providing those services. It is this sacrifice that separates an "obviously charitable act" from the everyday purposes and activities of man in general. *See Grandview*, 826 N.E.2d at 182. By not imposing an age restriction, the Petitioner has not limited itself in any way. It is free to accept any person with the financial means necessary pay the membership and monthly service fees.

42. The Petitioner also argues that the Village is designed to address the needs of the aged as one element in a "continuum of care," which also involves Schubert Villa and Dujarie House. This argument has facial appeal. In fact, the Tax Court agreed with the petitioner in *Wittenberg*, that the role played by its independent living facilities (the Villas) in providing a continuum of care supported its claim for an exemption. *Wittenberg*, 782 N.E.2d at 487.

43. There was, however, a greater degree of integration between the Villas and the higher level care facilities at issue in *Wittenberg* than exists between the Village and Schubert Villa and Dujarie House in this case. In *Wittenberg*, the integrated retirement community as a whole had a medical doctor who would see Villa residents for scheduled appointments and other health care professionals who had on-site office hours. *Id.* at 495. Villa residents were also able to contact the nursing staff at the nursing home for medical emergencies. *Id.* at 495. Moreover, the integrated retirement community also had a mini-bus for regularly scheduled shopping, planned group outings and health-

related appointments. *Id.* By contrast, Village residents simply have the option of dining, exercising and receiving physical therapy at the Dujarie House and Schubert Villa. *Coffer testimony.*

44. Moreover, Villa residents in *Wittenberg* had priority, subject to availability, to be admitted to the related assisted care facility and nursing home. *Wittenberg*, 782 N.E.2d at 495. By contrast, Village residents are given no written guarantee or promise of priority to move into the Dujarie House or Schubert Villa. *Coffer testimony.* As a practical matter, Village residents typically are given the opportunity to move to the next level of care if there is an opening. *Id.* There is a qualitative difference, however, between obligating oneself to prioritize admission and simply admitting residents, where there is an opening, on a case-by-case basis.
45. The Petitioner presented evidence that it is planning an expansion of services available to residents of the Village. This expansion will include an explicit provision in the Residency Agreement providing Village residents with priority for transfer to higher levels of care together with a “healthcare discount.” *Coffer testimony.* The Petitioner also provided evidence that it will look to whether it may be necessary to reserve some of the “health center” units for transfers from the Village. *McLaughlin testimony.*
46. The Board need not decide whether, upon completion of the planned expansion, the facilities will be integrated sufficiently to entitle the Village to an exemption as a component of a “continuum of care” for the aged. The Petitioner has appealed a denial of its exemption from taxes for 2002. The evidence does not demonstrate sufficient integration of the facilities, as of the assessment date, to justify an exemption.
47. Finally, the Board notes that the Petitioner charges residents substantial amounts of money in the form of membership and monthly service fees. The Board recognizes that the mere fact that an entity charges fees to cover its costs in providing amenities and services by itself, does not, disqualify a property from receiving an exemption. The amount of the fees charged, however, is not entirely irrelevant to the question of whether

a charitable purpose exists. *See Raintree* 667 N.E.2d at 816 (noting that the entities seeking exemption provided services for individuals ineligible for government assistance, but who could not necessarily afford to purchase the services they needed within the community). Here, the Village appears to cater largely to individuals who could otherwise purchase amenities and services comparable to those offered by the Village if they resided in their own homes. *See Wuensch testimony; Resp't Ex. C* (indicating that the average net worth of Village residents exceeds \$1,000,000).

48. Based on the foregoing, the Petitioner has not shown by a preponderance of the evidence that it is entitled to an exemption greater than the exemption granted by the PTABOA.

SUMMARY OF FINAL DETERMINATION

49. The Petitioner did not prove, by a preponderance of the evidence, that Holy Cross Village is owned, occupied and used for a charitable purpose. The Board therefore finds in favor of the Respondent.

The Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date 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. **You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trial_proc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.**