

REPRESENTATIVE FOR PETITIONER:  
Sandra K. Bickel, Morse & Bickel, P.C.

REPRESENTATIVE FOR RESPONDENT:  
John Slatten, Marion County Assessor's Office

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

|                         |   |                 |                     |
|-------------------------|---|-----------------|---------------------|
| FARH-WEST AFFORDABLE    | ) | Petition Nos.:  | 49-601-08-2-8-00001 |
| HOUSING, INC.,          | ) |                 | 49-601-08-2-8-00002 |
|                         | ) |                 | 49-601-08-2-8-00003 |
|                         | ) |                 | 49-601-08-2-8-00004 |
| Petitioner,             | ) |                 | 49-601-08-2-8-00005 |
|                         | ) |                 | 49-601-08-2-8-00006 |
|                         | ) |                 |                     |
| v.                      | ) | Parcel Nos.:    | 6001308             |
|                         | ) |                 | 6006620             |
|                         | ) |                 | 6006708             |
| MARION COUNTY ASSESSOR, | ) |                 | 6008747             |
|                         | ) |                 | 6009873             |
|                         | ) |                 | 6009976             |
| Respondent.             | ) |                 |                     |
|                         | ) | 2008 Assessment |                     |

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

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**February 10, 2012**

**FINAL DETERMINATION**

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

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### ISSUE

1. The issue presented for consideration by the Board is whether the subject property is entitled to a tax exemption for the March 1, 2008, assessment date because the property was owned, occupied and used for a charitable purpose.

### PROCEDURAL HISTORY

2. On May 13, 2008, the Petitioner, FARH-West Affordable Housing, Inc., which operates Woodhaven Park Apartments, filed exemption applications for its real and personal property for 2008. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations denying the exemptions on August 28, 2009. The Petitioner filed its Petitions for Review of Exemption with the Board on October 12, 2009.
3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Carol Comer, held a hearing in this matter on September 20, 2011.
4. The following persons were sworn as witnesses:

For the Petitioner:

William Guessford, senior vice-president for Greystone Property Management, Corp.

Kerry Brewer, vice-president of operations for Greystone Property Management

Amber N. Smith, resident services coordinator for Greystone Property Management

Paula W. Cane, regional vice-president for Greystone Property Management

Liza Mutzl, appraiser, Mitchell Appraisals

For the Respondent:

Jeff Hill, Commercial/Industrial Specialist with Lawrence Township

5. The Petitioner submitted the following exhibits:

- Petitioner Exhibit A – Capital Improvement Expense Summary,
- Petitioner Exhibit B – Internal Revenue Service letter to FARH-West approving the Petitioner’s 501(c)(3) status as a charitable housing organization, dated February 27, 2007,
- Petitioner Exhibit C – The bylaws of FARH-West Affordable Housing, dated November 30, 2005, and its Certificate of Incorporation as filed with the Delaware Secretary of State on November 29, 2005,
- Petitioner Exhibit D – The 2008 tax form 990 for FARH-West,
- Petitioner Exhibit E – Indiana Nonprofit Organization’s 2008 Annual Report for FARH-West,
- Petitioner Exhibit F – Resident’s Selection Criteria,
- Petitioner Exhibit G – 2008 Income Demographics Study,
- Petitioner Exhibit H – 2009 Income Demographics Study,
- Petitioner Exhibit I – Woodhaven Park Apartments’ Rent Roll Report, dated February 28, 2009,
- Petitioner Exhibit J – Woodhaven Park Apartments’ Rent Roll Report, dated June 30, 2008,
- Petitioner Exhibit K – Indiana Housing Development Authority’s rent level for 2008,
- Petitioner Exhibit L – Indiana Housing Development Authority’s rent level for 2009,
- Petitioner Exhibit M – Profit and Loss Variance for December 31, 2008,
- Petitioner Exhibit N – Profit and Loss Variance for December 31, 2009,
- Petitioner Exhibit O – Woodhaven Market Survey completed in February of 2008,
- Petitioner Exhibit P – Woodhaven Market Survey completed in November of 2009,
- Petitioner Exhibit Q – Market Survey from Moore Reports, dated August 28, 2009,
- Petitioner Exhibit R – A listing of Woodhaven Park charitable benefits and services,
- Petitioner Exhibit S – PTABOA worksheet for general information,
- Petitioner Exhibit T – Affidavit from resident Charlene Cole,
- Petitioner Exhibit U – Affidavit from resident Joann Ray,
- Petitioner Exhibit V – Summary Appraisal Report for Woodhaven Park Apartments,
- Petitioner Exhibit W – FY 2008 Housing and Urban Development’s “Fair Market Rents for Existing Housing,”

Petitioner Exhibit X – Excerpts of emails between Jeff Hill and Sandy Bickel,  
Petitioner Exhibit Y – A map showing the location of the properties cited by Mr.  
Hill in the Respondent’s rent analysis.

6. The Respondent submitted the following exhibits:

Respondent Exhibit 1 – Jeffrey A. Hill’s resume,  
Respondent Exhibit 2 – Rent analysis as of 2011.

7. The following additional items are recognized as part of the record:

Board Exhibit A – The 132 Petitions,  
Board Exhibit B – Notices of Hearing on Petition - Re-Schedule,  
Board Exhibit C – Hearing sign-in sheet.

#### **JURISDICTIONAL FRAMEWORK**

8. 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, (3) property tax exemptions, and (4) property tax credits 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.

#### **BASIS OF EXEMPTION AND BURDEN**

9. 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.

10. 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 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).
11. 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)).
12. 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).

#### **SUMMARY OF THE PETITIONER'S CASE**

13. The Petitioner contends its real and personal property was eligible for 100% exemption in 2008 pursuant to Indiana Code § 6-1.1-10-16 because it was owned, occupied and used for charitable purposes.
14. The Petitioner presented the following evidence in regard to this issue:

- a. The Petitioner's counsel contends FARH-West is a 501(c)(3) federal, tax-exempt, charitable organization. *Bickel argument*. In support of this contention, the Petitioner presented FARH-West's 501(c)(3) letter dated February 27, 2007; the Bylaws of the FARH-West Affordable Housing, dated November 30, 2005, and its Certificate of Incorporation filed with the Delaware Secretary of State on November 29, 2005; FARH-West's form 990 for 2008, which is the tax form that is used by a not-for-profit organization exempt from income taxes; and FARH-West's Indiana Nonprofit Organization's Annual Report for 2008. *Petitioner Exhibits B through E*. According to FARH-West's annual report for 2008, the purpose of the organization is to provide affordable housing to low income tenants. *Petitioner Exhibit E*.
  
- b. The Petitioner's witness, Mr. Guessford, testified that FARH-West purchased Woodhaven Park, which is the property at issue in this appeal, in November of 2007 and spent \$973,000 on capital projects over the next few years. *Guessford testimony; Petitioner Exhibit A*. One of the Petitioner's projects was repaving the road that Woodhaven Park shares with the single-family homes across the street. *Guessford testimony*. According to Mr. Guessford, the Petitioner spent \$133,000 repaving the city street, which relieved the government of the burden of maintaining the street. *Id*.
  
- c. FARH-West is a subsidiary of FARH, which is the Foundation for Affordable Rental Housing. *Guessford testimony*. According to Mr. Guessford, organizing FARH-West as a subsidiary was necessary because Freddie Mac and Fannie Mae, and in many cases with the Federal Housing Authority as well, they only guarantee loans for single-asset entities. *Id*. While funds may flow between FARH and FARH-West, Mr. Guessford testified, no funds have ever gone to compensate the Board members of either FARH or FARH-West. *Id*. Moreover, Mr. Guessford testified, according to Section 4 of the Bylaws, upon the dissolution of the property, any surplus from the dissolution will go to another

like kind not-for-profit housing organization. *Guessford testimony; Petitioner Exhibit C.*

- d. Mr. Guessford testified that Greystone Property Management, Corp., helped facilitate funding for FARH-West through WAMU to purchase the subject property, but Greystone did not receive fees or remuneration for obtaining the loan for the Petitioner. *Guessford testimony.* In addition, although Greystone is compensated for managing the subject property, Mr. Guessford argues, Greystone only charges 3 to 4 percent of the property's net revenue; while the market standard is a 5 to 7 percent management charge, depending on the size of the apartment complex. *Id.*
- e. Mr. Guessford testified that FARH received no federal guarantee in financing the property. *Guessford testimony.* However, he testified, there are some subsidies that come into the property, such as residents that are provided Section 8 vouchers to assist in paying their rent. *Id.* But, he argues, the Section 8 vouchers are not a significant source of revenue in the overall operations of Woodhaven Park. *Id.*
- f. The Petitioner's counsel argues its property provides safe, decent housing for low income individuals and families. *Bickel argument.* According to the 2008 Income Demographics Study, the Petitioner's witness testified, there were 646 persons living in the apartments; of which 176 households were below 30% of the area median income, 256 households were below 50% of the area median income and 285 households were below 60% of the area median income. *Petitioner Exhibit G.* Ms. Brewer testified that 99% of the households in Woodhaven were at or below the 80% median income threshold in 2008. *Brewer testimony.* In 2009, Ms. Brewer testified, over 95% of the households at Woodhaven had income levels that were below 80% of the median income and 58 of the units were occupied by people earning at or below 30% of area median income. *Id.;* *Petitioner Exhibit H.* While Ms. Brewer admitted that the property had 47 vacant

units that were identified as being occupied by families with incomes below 30%, she argues that the former tenants in those units were families with less than 30% of the area median income and the Petitioner was holding the apartments open for families with a similar income level. *Brewer testimony; Petitioner Exhibit F.*

- g. Moreover, the Petitioner's counsel argues, it charges below market rents for its apartments. *Bickel argument.* In support of this contention, Ms. Brewer testified that in 2008, Woodhaven charged \$460 for a one bedroom/one bath apartment; \$550 to \$610 for a two bedroom/two bath townhome and \$725 for a three bedroom/two bath townhome;<sup>1</sup> whereas the Indiana Housing Development Authority allowed a one bedroom apartment to rent for \$732, a two bedroom apartment to rent for \$879, and a three bedroom apartment to rent for \$1,015 in 2008 for families with 60% of the area median income. *Brewer testimony; Petitioner Exhibit I through L.* Similarly, the federal Housing and Urban Development (HUD) "fair market rents" for Indiana were \$611 for a one-bedroom apartment, \$726 for a two-bedroom apartment, and \$939 for a three-bedroom apartment in 2008. *Brewer testimony; Petitioner Exhibit W.* In response to cross examination, however, Ms. Brewer admitted that the HUD market rents were developed based on the income and rent levels in nine central Indiana counties, and not just based on the northwest section of Marion County. *Id.*
- h. Further, the Petitioner's witness contends, Woodhaven Park charges rents that are below the rent charged by other comparable properties. *Cane testimony.* In support of this contention, the Petitioner presented market surveys prepared by Greystone Property Management Corporation in February of 2008 and November of 2009. *Petitioner Exhibits O and P.* According to the rent survey, Woodhaven

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<sup>1</sup> Ms. Brewer noted, however, that for some families whose rents were subsidized with Section 8 vouchers, the city or county would compensate Woodhaven at an even lower rent level. *Brewer testimony.* Although the housing dollars that were available for affordable housing were no longer paying Woodhaven's rent, Ms. Brewer testified, the Petitioner did not evict any of the tenants just because they were Section 8 families. *Id.* In fact, Ms. Brewer testified, the only evictions that occurred during the stabilization process were for cause, mostly criminal activity. *Id.*



Park charged \$0.69 per square foot for its one bedroom apartment in 2008; whereas the comparable properties charged from \$0.56 to \$0.97 per square foot.<sup>2</sup> *Cane Testimony; Petitioner Exhibit O*. Similarly, Woodhaven Park only charged \$0.57 to \$0.58 for its two bedroom townhomes; while comparable properties charged from \$0.60 to \$0.82. *Id.* Finally, while Woodhaven Park charged \$0.57 for its three bedroom townhomes, comparable properties charged from \$0.58 to \$0.71. *Id.* The Petitioner also presented a market survey prepared by Julie Moore from Moore Reports. *Petitioner Exhibit Q*. The Moore Report indicated that the average rent per square foot for all of the units combined was \$0.60 for Woodhaven Park, while the average rent per square foot for Chesapeake Landing was \$0.68. *Cane testimony; Petitioner Exhibit Q*. In response to cross examination, Ms. Cane admitted that two of the comparable properties used in the reports, Idlewood and Chesapeake Landing, were located outside of the 465 loop and that Idlewood was built in 1992. *Id.* However, Ms. Cane argues, Phase II of Woodhaven Park was built in 1999. *Id.*

- i. Likewise, the Petitioner's witness, Ms. Mutzl, contends that the rent charged by the Petitioner is lower than other apartments in the area in 2008. *Mutzl testimony*. In support of this contention, the Petitioner presented a summary appraisal report of Woodhaven Park by Mitchell Appraisals, Inc., in which the appraisers did a rent analysis of the northwest Indianapolis market based on a Tikijian Associates Report. *Mutzl testimony, Petitioner Exhibit V*. According to Ms. Mutzl, in 2008, the rent charged for a one-bedroom/one bath apartment in the northwest area ranged from \$524 to \$542; while the Petitioner was charging \$460 for a one bedroom/one bath apartment at Woodhaven. *Id.* Similarly, for a two-bedroom/two bath townhome, the Petitioner was charging \$499, while the minimum

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<sup>2</sup> While Chesapeake Landing only charged \$0.56 per square foot for its one bedroom apartment, Ms. Cane argues, the apartment was running a rent special at the time of the survey. *Cane testimony*.

apartment rent was reported to be \$728 and the maximum \$741.<sup>3</sup> *Id.* For a three-bedroom/two bath apartment, the Petitioner charged \$725, while the minimum apartment rent was reported to be \$766 and the maximum rent was reported to be \$782. *Id.* Ms. Mutzl testified that there are no other properties in the 37 properties covered by the Tikijian Associates Report that were charging rent as low as \$460 per month, although Ms. Mutzl admitted she had no way of knowing whether each of the 37 properties in the report were comparable to Woodhaven Park. *Id.*

- j. Finally, the Petitioner's counsel contends, that it provides charitable benefits and services to its residents sufficient to justify an exemption. *Bickel argument.* According to Ms. Cane, in 2008 Woodhaven Park provided a language learning program and student tutoring. *Cane testimony.* It provided a space and resources for a credit counseling organization to provide services to its residents and provided a rent credit for its residents to have their income tax forms prepared. *Id.* Woodhaven Park also provided a rental assistance program, a utility assistance program to help residents under financial hardship and referred residents to county and state assistance programs for help. *Cane testimony, Petitioner Exhibit R.* Woodhaven Park also donated a backpack and back-to-school supplies for the students in the apartment complex and provided after school activities such as basketball games and picnic or movie days. *Id.* Further, FARH-West conducted monthly activities to foster a sense of community, including a New Year's Day celebration, a Valentine's Day Party, and a Spring Fling. *Id.* Over the summer, Woodhaven Park provided the location to conduct a free lunch program for kids under the age of eighteen and paid for its employees to be certified for food service. *Id.* In addition, the Petitioner applied for grants such as a grant from Microsoft which donated computers and sixty software

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<sup>3</sup> The Board notes that the rent purported to be charged by the Petitioner in the Mitchell appraisal is somewhat lower than the rent reported to be charged by the Petitioner in its own rent surveys. According to the Petitioner's rent surveys, Woodhaven charged \$460 for a one bedroom/one bath apartment; \$550 to \$610 for a two bedroom/two bath townhome and \$725 for a three bedroom/two bath townhome in 2008. *See Petitioner Exhibit O.*

licenses, and a Book Club for Kids in which FARH paid for books and provided them at no cost to Woodhaven Park residents. *Id.* According to Ms. Cane, although some of the programs are referrals and coordinate work with the government agencies and other charities, most programs are provided at a substantial cost to the Petitioner. *Id.* In fact, Ms. Cane argues, an additional office person was hired to assist with the programs at Woodhaven Park. *Id.*

- k. In its rebuttal case, the Petitioner's counsel contends the Board should give little weight to the Respondent's rent analysis. *Bickel argument.* The Petitioner's witness testified that, while Scarborough Lake and Greystone Village might be considered comparable to the Petitioner's property, Brookstone, International Village, Las Palmas, and Coppertree were not comparable to Woodhaven Park. *Brewer testimony.* According to Ms. Brewer, Brookstone, International Village, and Las Palmas are substandard to Woodhaven Park and Coppertree is almost five miles away from the property. *Id.*

#### **SUMMARY OF THE RESPONDENT'S CASE**

15. The Respondent contends that the Petitioner's property was 100% taxable in 2008.
16. The Respondent presented the following evidence in regard to this issue:
  - a. The Respondent contends that the Petitioner's rent analyses should be given little weight. *Slatten argument.* The Respondent's witness, Mr. Hill, testified that the area outside of I-465 is a separate submarket than the area inside I-465, and that residential commercial real estate has declined much more inside the highway. *Hill Testimony.* According to Mr. Hill, properties outside of I-465 start to pick up some influence from the Eagle Creek area, and the residential commercial real property stock and infrastructure are much newer on that side of the highway. *Hill Testimony.* Therefore, Mr. Hill argues, the Petitioner's comparable properties

of Chesapeake Landing and Idlewood are not comparable to the subject property because they are located outside of the I-465 loop. *Id.*, citing *Petitioner Exhibit O*. Mr. Hill further contends that the Petitioner’s Tikijian Associates Report used a market area far too large to provide reliable comparable information for Woodhaven Park. *Id.*

- b. Mr. Hill contends that, based on his research, the rents charged by Woodhaven Park are very close to market rents. *Hill Testimony*. In support of this contention, the Respondent submitted a rent analysis. *Respondent Exhibit 2*. In response to cross examination, however, Mr. Hill admitted that the data in his rent analysis comes from 2011 while the exemption under appeal is for 2008. *Hill Testimony*. Further, he admitted that Brookstone, one of the comparable properties in his research, is a less valuable property than the Petitioner’s property. *Id.*

#### ANALYSIS

17. Indiana Code § 6-1.1-10-16(a) states 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.” Ind. Code § 6-1.1-10-16(a). Further, “a tract of land . . . is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred in subdivision (1) is situated on it.” Ind. Code § 6-1.1-10-16(c).
18. Exemption statutes are strictly construed against the taxpayer. *See New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 733 N.E.2d 36, 38 (Ind. Tax Ct. 2000), *aff’d*, 765 N.E.2d 1257 (Ind. 2002). 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 Board of Tax Commissioners*, 251 N.E.2d 673, 682 (Ind. 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).

19. An exemption requires probative evidence that a property is owned, occupied, and used for an exempt purpose. While the words “owned, occupied and used” restrict the activities that may be conducted on the property that can qualify for exemption, they do not require a single entity to achieve a unity of ownership, occupancy and use. Rather, these words are used to ensure that the particular arrangement involved is not driven by a profit motive. *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954, 959 (Ind. Tax Ct. 1997) (“Sangralea does not own the property as investment property or with a motive of profit. The use and occupation of the property by the Lessees is in furtherance of Sangralea’s exempt purposes.”). Once these three elements are met, the property can be exempt from property taxation. *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005).
20. “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose,” however, “is a fact sensitive inquiry; there are no bright-line tests.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13 (Ind. Tax Ct. 2009) (citation omitted). Thus every exemption case “stand[s] on its own facts” and on how the parties present those facts. See *Indianapolis Osteopathic Hosp., Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).

21. The Indiana Tax Court first addressed the question of whether property used for low income housing was exempt in *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 909 N.E.2d 1138 (Ind. Tax Ct. 2009) *trans. denied*. In that case, Jamestown Homes, a not-for-profit corporation, constructed a 160-unit, multi-family apartment complex under the federal Section 221(d)(3) program.<sup>4</sup> 909 N.E.2d at 1139. In exchange for the mortgage insurance and interest rate subsidy provided by the Section 221(d)(3) program, Jamestown Homes agreed to rent its apartments only to individuals and families whose annual income was at or below 95% of the area median income and only charge rents that allowed it to cover the property's operating costs and debt service. *Id.* As Judge Fisher noted, however, "Jamestown retained several 'typical' landlord rights: it could evict tenants who failed to pay their rent, it charged fees for late rental payments or returned checks, and charged security deposits." 909 N.E.2d at 1140.
22. In deciding the *Jamestown Homes* case, Judge Fisher adopted the analysis of a 1967 decision from the Supreme Court of New Mexico regarding a similar Section 221(d)(3) property, *Mountain View Homes, Inc. v. State Tax Comm'n*, 427 P.2d 13 (N.M. 1967). In that case, the New Mexico Supreme Court found that, although the property operated as a not for profit and "provided better housing than would have otherwise been available to them," the recipients of such "benefits" were not "sick or indigent." *Jamestown Homes*, 909 N.E.2d at 1144, citing *Mountain View Homes*, 427 P.2d at 17. In fact, the Court surmised that many of the tenants would be "surprised to learn that they are considered as being proper objects for, or as recipients of charity." *Id.* Thus, the New Mexico Supreme Court concluded: "Here, we have an enterprise to furnish low-cost housing to a certain segment of our population. It was intended to be self-supporting, without any thought that gifts or charity were involved. The tenants are required to pay for the premises occupied by them with the rentals being fixed so as to return the amount estimated as being necessary to pay out the project." *Id.* The Court held that the property's use was not "charitable" because the property was "competitive with landlords offering other

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<sup>4</sup> The Section 221(d)(3) program provides a federally insured and subsidized low interest rate loan to developers to promote the construction of affordable housing for low to moderate income families. 909 N.E.2d at 1139.

residential property for rent on which taxes must be paid” and “there is no evidence that the public is relieved of any expense in comparison with the loss of tax revenue.” *Id.*

23. Similarly, in denying Jamestown Homes’ property a charitable exemption, Judge Fisher found:

The administrative record in this case merely reveals that Jamestown rents its apartments to moderate and low-income individuals for below market rates. There is no evidence, however, indicating that there are any welfare clients in Jamestown’s apartments, nor is there any evidence indicating that Jamestown’s tenants are permitted to occupy their apartments when they are unable to pay their rent. Likewise, there is no evidence in the administrative record indicating that Jamestown provides an ‘element of fraternity, brotherhood, or good fellowship intended to improve the spirits or impel to renewed effort,’ whether it be through, for example, free services for, or counseling of, its tenants. Finally, there is no evidence in the administrative record demonstrating that Jamestown has lessened the burden of government in meeting the need for affordable housing because that need is ultimately being met by the government through its mortgage insurance and interest subsidy.

909 N.E.2d at 1144.

24. Unlike the property at issue in *Jamestown Homes*, the Petitioner here does not provide its low income tenants housing as part of a contractual agreement or as a condition precedent to receiving federal funds. Moreover, the Petitioner does more than simply provide housing to low income families. It also provides social services and fosters an atmosphere of fraternity and good fellowship.
25. First, the Petitioner’s evidence raises a prima facie case that the Petitioner leased the apartments at Woodhaven Park for less than fair market rent. The Petitioner showed that its rent rates were below the rent levels established by the Indiana Housing Development Authority and the market rents used by HUD. *Petitioner Exhibit K, L and W*. Similarly, except for a single property which was offering a “rent special” on its one bedroom apartments, three rent studies and an USPAP-compliant appraisal found that Woodhaven Park’s rent levels for its one bedroom apartments and two bedroom and three bedroom

townhomes fell below the rates charged by other apartment complexes in the area. *See Petitioner Exhibits O through Q and V.*

26. The Petitioner also raised a prima facie case that it provided charitable benefits and services to its residents, in addition to providing affordable housing. Here, the Petitioner did more than simply refer its tenants to social services, it arranged to have organizations come to the site and provide services to its residents such as a credit counseling program, personal and family counseling, and a summer lunch program. Similarly, while the Petitioner did not provide its own tax preparation services, it offered a rent credit to its residents to obtain tax preparation assistance. Further, the Petitioner offered its own programs to improve the situations of its tenants, such as resume assistance, financial planning, a language learning program and a student tutoring program – in addition to community activities such as a New Year’s Eve celebration and a Valentine’s Day party. The Petitioner also offered rent and utility assistance by offering payment options and forbearance plans in case of tenant hardship. Finally, the Petitioner applied for grants, such as a grant from Microsoft which donated computers and sixty software licenses and a Book Club for Kids grant which gave the Petitioner the opportunity to buy books at a reduced cost which the Petitioner then gave for free to its residents. The undisputed evidence showed that offering such programs came at a significant cost to the Petitioner. *See Petitioner Exhibit S at p. 5 through 6.* In fact, the Petitioner’s witness testified that its management company hired an extra employee to assist with these particular programs. *Cane testimony.*
27. In addition, by repaving the city street that Woodhaven Park shared with the single-family homes across the street, the Petitioner relieved the government of the burden to maintain that street.
28. The Board therefore finds that the Petitioner raised a prima facie case its property was predominantly owned, occupied and used for charitable purposes and qualifies for 100% exemption for the 2008 assessment year.



29. Once the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut the Petitioner's case. *See American United Life v. Maley*, 809 N.E.2d 276 (Ind. Tax Ct. 2004). The Respondent here contends that the Petitioner did charge below market rents for its apartments. According to the Respondent's witness, based on his research, "they are very close to market." *Hill testimony*. Mr. Hill testified, "I think you could argue that the one-bedroom units are a little bit above market and the two bedroom, three bedroom units are a little bit below." *Id.* While the Respondent's analysis is some evidence that the property's lease rates are close to market, it is insufficient to rebut the Petitioner's multiple rent studies and USPAP-compliant appraisal. Moreover, the Respondent failed to rebut or impeach any of the Petitioner's evidence regarding the services and programs that it offers its low income residents. Therefore, the Respondent failed to rebut the Petitioner's prima facie case that its property was entitled to 100% exemption for the 2008 assessment year.

#### **SUMMARY OF FINAL DETERMINATION**

30. The Petitioner established a prima facie case that its property was owned, occupied, and used for a charitable purpose and qualifies for 100% exemption for the March 1, 2008, assessment. The Respondent failed to rebut this evidence. The Board therefore finds in favor of the Petitioner and holds that the Petitioner's properties are 100% exempt.

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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Commissioner, 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

**- 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>