

REPRESENTATIVES FOR PETITIONER:

Jeffrey L. Lund, Yoder, Ainlay, Ulmer & Buckingham, LLP
Gregory A. Hartzler, Yoder, Ainlay, Ulmer & Buckingham, LLP

REPRESENTATIVE FOR RESPONDENT:

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

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Greencroft Goshen, Inc. and)	Petition Nos.: 20-035-08-2-8-00001
Greencroft Middlebury, Inc.)	20-035-08-2-8-00002
)	20-035-08-2-8-00003
Petitioner,)	
)	Parcel Nos.: 20-035-02-00398 (Personal Property)
)	20-08-16-226-017.000-035
v.)	20-08-16-226-016.000-035
)	
)	County: Elkhart
Elkhart County Assessor,)	Township: Middlebury
)	
Respondent.)	
)	Assessment Year: 2008

Appeal from the Final Determination of
Elkhart Property Tax Assessment Board of Appeals

August 6, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having 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 residential buildings, senior center and personal property (the Property) owned by the Petitioner are exempt from taxation pursuant to Indiana Code § 6-1.1-10-16 because the Property is predominantly used for charitable purposes.

Procedural History

2. Greencroft Goshen, Inc. and Greencroft Middlebury, Inc.¹ (Greencroft) filed Form 136 Applications for Property Tax Exemption with the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) on May 14, 2008. The Elkhart County PTABOA issued its determinations denying the exemptions on March 16, 2009. On April 21, 2009, Mr. Gregory Hartzler, an attorney employed by Yoder, Ainlay, Ulmer & Buckingham, LLP, on behalf of Greencroft, filed Form 132 Petitions for Review of Exemption, petitioning the Board to conduct an administrative review of the above petitions.

Hearing Facts and Other Matters of Record

3. Pursuant to Indiana Code § 6-1.1-15-4, Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on March 9, 2010, in Elkhart, Indiana.
4. The following persons were sworn as witnesses at the hearing:

¹ Greencroft Goshen, Inc., owns the land and buildings and Greencroft Middlebury, Inc., owns the personal property. *King testimony*. Greencroft Goshen, Inc., was formerly known as Greencroft, Inc. *Board Exhibit A*. The Greencroft Retirement Communities is the management company that oversees the operations of all of the Greencroft campuses. *King and Gibson testimony*.

For the Petitioner:

Robert E. Gibson, Chief Financial Officer, Greencroft
Mark T. King, Chief Executive Officer, Greencroft
Daniel L. Wolfer, Campus Manager, Greencroft Middlebury
Rosealene Long, Resident, Greencroft Middlebury
Dana Snider, Resident, Greencroft Middlebury

For the Respondent:

Cathy Searcy, Elkhart County Assessor
Jack Simper, PTABOA Member

5. The Petitioner submitted the following exhibits:

- Petitioner Exhibit 1 – Memorandum from Gregory A. Hartzler to the Elkhart County PTABOA, dated October 22, 2008,
- Petitioner Exhibit 2 – Letter from Jeffrey A. Bush, Chief Deputy Securities Commissioner, Indiana Secretary of State, to Gregory Hartzler, dated March 5, 2010,
- Petitioner Exhibit 3 – The “Middlebury Monitor,” dated August 2004,
- Petitioner Exhibit 4 – Letters from Mark King, Greencroft CEO, to Greencroft residents, dated November 1, 2007, January 2, 2008, May 1, 2008, August 1, 2008, and September 2, 2008,
- Petitioner Exhibit 5 – Greencroft marketing brochures,
- Petitioner Exhibit 6 – Copy of Revenue Ruling 79-18,
- Petitioner Exhibit 7 – Copy of Revenue Ruling 72-124,
- Petitioner Exhibit 8 – Federal Charitable Contributions §170 [¶11,600],
- Petitioner Exhibit 9 – Federal Exempt Organizations §501 [¶22,602],
- Petitioner Exhibit 10 – Letters from the Department of the Treasury and District Director of the Internal Revenue Service to Greencroft, dated November 6, 1974, and January 15, 1973, respectively,
- Petitioner Exhibit 11 – Letter from the Department of the Treasury, Director of Exempt Organizations, Rulings and Agreements of Internal Revenue Service, to Greencroft Middlebury, Inc., dated November 25, 2003,
- Petitioner Exhibit 12 – Copy of Greencroft’s Schedule F, “Homes for the Aged or Handicapped,”
- Petitioner Exhibit 13 – Letter and the Community Focus Fund grant proposal from Gary O’Dell, Council President, Town of Middlebury, to the Community Development Division of the Indiana Department of Commerce, dated June 24, 2003,

Petitioner Exhibit 14 – GIS aerial map of the property under appeal,
 Petitioner Exhibit 15 – Interior and exterior photographs of Greencroft,
 Petitioner Exhibit 16 – Greencroft Middlebury Apartment Lease Agreement –
 100% non-refundable with healthcare discount,
 Petitioner Exhibit 17 – Greencroft Middlebury Market Refund Apartment Lease
 Agreement – 80% market refund no discount,
 Petitioner Exhibit 18 – Greencroft Middlebury Apartment Lease Agreement –
 80% refundable with healthcare discount,
 Petitioner Exhibit 19 – Greencroft Middlebury Lease Pricing Chart,
 Petitioner Exhibit 20 – Greencroft Middlebury floor plans,
 Petitioner Exhibit 21 – “Middlebury Monitor” newsletters, dated
 November/December 2008, March 2005 and
 January/February 2006,
 Petitioner Exhibit 22 – “Middlebury Notes” weekly newsletters, dated from
 January 3, 2007, through December 26, 2007,
 Petitioner Exhibit 23 – “Middlebury Notes” weekly newsletters, dated from
 January 2, 2008, through December 31, 2008,
 Petitioner Exhibit 24 – Greencroft Middlebury monthly calendars of events,
 dated from January 2007 through December 2007,
 Petitioner Exhibit 25 – Greencroft Middlebury monthly calendars of events,
 dated from January 2008 through December 2008,
 Petitioner Exhibit 26 – Greencroft Middlebury flyers on the Monthly Service
 Fee, the Community Senior Center, Greencroft
 Retirement Communities and Frequently Asked
 Questions,
 Petitioner Exhibit 27 – Application for Property Tax Exemption - Form 136,
 Articles of Incorporation and Bylaws for Greencroft
 Goshen, Inc. and related entities, State of Indiana
 disclosure statements for Greencroft Middlebury and
 Greencroft, Goshen, Inc., and Greencroft Retirement
 Communities, Inc., and Consolidated Financial
 Statements for June 30, 2005, through June 30, 2007.

6. The Respondent submitted the following exhibits:²

Respondent Exhibit A – GIS map showing the distance between Greencroft
 Middlebury and Greencroft Goshen,

² The Petitioner’s counsel objected to Respondent’s exhibits D1, D2, D3, E1, E2, F1, F2, G1, G2 and G3 because Ms. Searcy and Mr. Simper admittedly did not author the marketing materials. Therefore, Mr. Hartzler contends, the materials constitute hearsay because they are out of court statements (i.e. written assertions) made by someone other than the declarant, which are being offered into evidence to prove the truth of the matter asserted. *See* Indiana Rule of Evidence 801. The Petitioner’s counsel also objected to the testimony of Ms. Searcy and Mr. Simper because they lack personal knowledge regarding the marketing materials they attempted to introduce into evidence. The Board’s procedural rules provide that hearsay evidence may be admitted. 52 IAC 2-7-3. Thus, the Petitioner’s objection is over-ruled and Respondent’s Exhibits D1, D2, D3, E1, E2, F1, F2, G1, G2 and G3 and Ms. Searcy and Mr. Simper’s testimony are admitted into evidence. However, because the evidence was properly objected to, the Board’s final determination “may not be based solely upon the hearsay evidence.” 52 IAC 2-7-3.

- Respondent Exhibit B1 – Aerial Map of Greencroft Middlebury,
- Respondent Exhibit B2 – Property record cards for Greencroft Middlebury, Parcel Nos. 20-08-16-226-017.000-098 and 20-08-16-226-016.000-098,
- Respondent Exhibit C – Exterior photographs of Greencroft Middlebury, Willows Community Center, Brentwood at Elkhart, Boardwalk Retirement Community and Waterford Crossing,
- Respondent Exhibit D1 – Aerial map of Waterford Crossing,
- Respondent Exhibit D2 – Waterford Crossing brochure with floor plans,
- Respondent Exhibit D3 – Property tax bill, property record card and two exterior photographs for Parcel No. 20-11-27-401-030.000-015, located at 3201 Mallard Lane, Goshen, property tax bills and property record cards for Parcel Nos. 20-11-27-252-011.000-015 and 20-11-27-426-018.000-015 located at 3113 and 3221 Mallard Lane, Goshen and Parcel No.20-11-27-401-036.000-015, located at 1212 Waterford Circle, Goshen,
- Respondent Exhibit E1 – Aerial map of the Willows,
- Respondent Exhibit E2 – The Willows’ “Whispering Notes” dated January 2010 and descriptions of homes available for sale,
- Respondent Exhibit F1 – Aerial map of the Boardwalk Retirement Community,
- Respondent Exhibit F2 – Boardwalk Retirement Community brochure of homes for sale,
- Respondent Exhibit G1 – Aerial Map of Brentwood at Elkhart,
- Respondent Exhibit G2 – Brentwood at Elkhart brochure,
- Respondent Exhibit G3 – Property tax bill and property record card for Parcel No. 20-02-35-176-058.000-027, located at 3600 East Bristol Street, Elkhart,
- Respondent Exhibit H – Section 202, Supportive Housing for the Elderly, U.S. Department of Housing and Urban Development (HUD),
- Respondent Exhibit I – HUD office of Multifamily Housing, Appendix 8 “Applicable Definitions of Elderly and Disability”.

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

- Board Exhibit A – Form 132 petitions with attachments,
- Board Exhibit B – Notice of Hearing on Petitions,
- Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
- Board Exhibit D – Hearing sign-in sheets.

8. The Respondent submitted its post-hearing brief and proposed findings of fact and conclusions of law on March 26, 2010, (Respondent's brief). The Petitioner submitted a hearing transcript, post-hearing brief, and proposed findings of fact and conclusions of law on April 28, 2010, (Petitioner's brief).
9. The properties under appeal are Parcel No. 20-08-16-226-017.000-098, a 16.310 acre parcel developed with 32 duplex homes;³ Parcel No. 20-08-16-226-017.000-098, a .398 acre parcel developed with a 8,278 square foot senior center building and all of the Petitioner's personal property (Parcel No. 20-035-02-00398) located at 706 Crystal Ridge and 701 Windridge Lane, Middlebury, in Middlebury Township, Elkhart County.
10. The ALJ did not conduct an on-site inspection of the property.
11. For 2008, the PTABOA determined the Petitioner's real and personal property to be 100% taxable.
12. For 2008, the Petitioner contends its real and personal property should be 100% tax-exempt.

Jurisdictional Framework

13. The Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the 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.

³ The county's property record card shows the parcel has twenty duplex homes and twelve quadplex units. *Respondent Exhibit B2*. Whether the twelve units are duplex homes or quadplexes, however, does not impact the Board's decision regarding the exempt status of the property.

Administrative Review and Petitioner's Burden

14. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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”).
16. 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 case. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

Basis of Exemption and Burden

17. 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.
18. 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).

19. 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)).
20. 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); and *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Petitioner's Contentions

21. The Petitioner contends its residential buildings, senior center, and personal property should be exempt under Indiana Code § 6-1.1-10-16, because the Property is predominantly used for the charitable purposes.
22. The Petitioner presented the following evidence in regard to this issue:
 - A. Greencroft Goshen (Goshen) and Greencroft Middlebury (Middlebury) are both Indiana not-for-profit corporations affiliated with the Mennonite Church.⁴ *King and Gibson testimony, Petitioner Exhibit 27 and Petitioner brief.* According to the

⁴ Greencroft is also affiliated with the Mennonite Health Services Alliance. *King testimony.* The Mennonite Health Service Alliance appoints Greencroft's Board of Directors. *Id.*

Indiana Secretary of State's office, the Greencroft Middlebury campus is considered an "off-site campus" of Greencroft Goshen for purposes of its registration of a continuing care retirement community. *Petitioner Exhibit 2; Petitioner brief.* The Petitioner is exempt under 501(c)(3) and 509(a)(2) of the Internal Revenue Code. *Petitioner Exhibits 10 and 11; Petitioner brief.* The Petitioner's By-laws state that Greencroft's mission is :

"to provide facilities, services, and programs for older adults in areas of identifiable needs of individuals, families and society. In keeping with its Mennonite heritage and philosophy, the Corporation is committed to maintain a Christian emphasis in all its endeavors."

Petitioner Exhibit 27.

- B. The Petitioner's witness, Mr. King, testified that Greencroft Goshen and Middlebury operate under the financial philosophies that (1) no person, firm or corporation derives any profit from Greencroft's operations; (2) all income and receipts including contributions and bequests are devoted to the purposes of Greencroft and to meet the needs of seniors through services and programs; (3) compensation of staff of each of the Greencroft organizations and all outside contractual arrangements, are no more than reasonable terms; (4) the Greencroft facilities are open to all persons; and (5) all properties associated with the Greencroft Middlebury campus are dedicated to charitable purposes and upon liquidation no benefits will inure to any private person, but will be transferred to some other charitable 501 (c)(3).⁵ *King testimony; Petitioner brief.*
- C. Mr. King testified that Greencroft owns and operates a nursing home, an assisted living facility and independent senior housing in Goshen, Indiana, which is approximately twenty minutes from the Middlebury campus. *King testimony; Petitioner brief.* The Middlebury campus has a senior center and 32 residential

⁵ According to the Petitioner's witness, the Greencroft Middlebury campus, including the senior center operates at loss of \$100,000 to \$150,000 per year, and is not expected to "break even" for five to ten years. *Gibson testimony; Petitioner brief.*

buildings located on a total of 16.708 acres. *Id.* The PTABOA granted the Petitioner’s application as it pertained to parcels located in Goshen, but denied the Petitioner’s application with regards to the two parcels and personal property located in Middlebury. *Id.*

- D. The homes at Middlebury are independent living units marketed to persons 55 years of age or older as set forth by the Federal Fair Housing Act.⁶ *King and Gibson testimony; Petitioner Exhibits 16, 17 and 18; Petitioner brief.* Title does not transfer to the residents of Greencroft Middlebury. *Id.* The Petitioner owns the land and buildings and leases the homes to residents on the basis of a 100% non-refundable lease with healthcare discount; an 80% market refund – no discount lease; or an 80% refundable lease with a healthcare discount. *Petitioner Exhibit 27.* The entrance fees on the 100% non-refundable leases and the 80% market refund no discount leases range from \$137,000 for a 1,052 square foot unit to \$222,000 for a 1,606 square foot unit. *Petitioner Exhibit 19; Gibson testimony.* For the 80% market refund with healthcare discount leases the entrance fees range from \$342,500 for a 1,052 square foot unit to \$555,000 for a 1,606 square foot unit.⁷ *Id.*
- E. The Middlebury residents also pay a non-refundable “community fee” of \$5,000. *Petitioner Exhibits 16, 17, 18 and 27 at Greencroft Middlebury disclosure statement page 13.* In addition, the residents are charged a monthly service fee for the cost of operating the residences and for various services. *Gibson testimony; Petitioner Exhibit 19.* Those services include all utilities including cable TV, emergency response system, transportation, priority access to Greencroft Goshen amenities, staff for the Middlebury campus, grounds keeping, snow removal, repairs to the interior and exterior of the buildings and the regularly scheduled replacement of appliances, carpeting and repainting. *Wolfer, Long and Snider testimony;*

⁶ The average age of admission for the residents on the Middlebury campus was 75 years of age as of March 1, 2008. *Wolfer testimony; Petitioner brief.*

⁷ The healthcare discounts leases provide for a discount for services at Greencroft Health Care which range from 2% to 10%. *Petitioner Exhibits 16 and 18.*

Petitioner Exhibit 26. Monthly fees range from \$600 to \$922 per month and are based on the size of the residence. *Petitioner Exhibit 19.*

- F. While Greencroft requires that new residents show they are financially able to afford to live at the community, Greencroft is committed to caring for their residents even when their assets run out due to no fault of their own. *King testimony; Petitioner brief.* According to Mr. Gibson, Greencroft's Chief Financial Officer, Greencroft reviews the finances of its residents to determine which unit they can afford. *Gibson testimony.* If a resident becomes unable to pay, Greencroft works to keep the resident in their home or another more suitable Greencroft facility.⁸ *Petitioner Exhibit 12; Id.* Mr. Gibson testified Greencroft has various resources to help meet the needs of individuals that are running out of money and that no resident has been evicted due their inability to pay. *Gibson testimony.*
- G. The property manager at Middlebury, Mr. Wolfer, testified that Greencroft residences have lower overhead kitchen cabinets, pullout pantry and cabinet shelves and no steps into the garage from the house to accommodate the needs of seniors. *Wolfer testimony; Petitioner brief.* In addition, the homes have wider doorways and hallways to allow wheelchair access, and levered door handles and rocker light switches that are easier for seniors to open and turn on. *Id.* According to Mr. Wolfer, the electrical outlets are located 24 inches from the floor and the windows are lowered to allow persons in wheelchairs to be able to look out the window. *Id.* The bathrooms are also equipped with grab bars, higher bathroom stools, non-skid floors and no-step showers. *Id.* Moreover, the community provides non-softened drinking water to avoid interactions with medications. *Id.* Mr. Wolfer testified that each unit has an emergency telephone and emergency call buttons in each bathroom and, if necessary, the emergency call button can be worn by the resident. *Id.* The homes also have a designated storm protection room and smoke detectors. *Id.*

⁸ In fact, the lease agreements signed by the residents provides, "Greencroft agrees to explore fully all financial arrangements to allow the continued occupancy by Resident of the apartment home, recognizing that the needs and financial resources of Resident may change from time to time." *Petitioner Exhibits 16, 17 and 18.*

Further, a “green tube in the refrigerator” is used to store the medical records and current medication of the resident and the Middlebury Emergency Medical Service has access to each living unit through a lockbox key stored at the Middlebury Senior Center. *Id.*

- H. The Middlebury residents also have access to the skilled nursing facilities in Goshen on the same basis as the general public to the extent that space is available. *Gibson testimony, Petitioner Exhibits 5, 12 and 26; Petitioner brief.* However, Middlebury residents have preferential access to all other health care services provided by Greencroft, including the assisted living facilities. *Id.* As a practical matter, Mr. Gibson testified, Middlebury residents are given preferential access at extra cost to all the health care facilities and services offered by the Greencroft organization to the extent permitted by law. *Id.* The Middlebury residents may also participate in the Greencroft Care at Home Program. *King testimony; Petitioner Exhibit 5; Petitioner brief.* The Greencroft Care at Home Program offers a variety of in-home services to the residents such as housekeeping, meal preparation, laundry, changing linens, companion help, shopping and handyman services and healthcare services through a licensed home health agency. *Id.* While these services must be paid for by the residents, all Greencroft residents receive a 10% discount. *Id.*
- I. The Middlebury campus also includes a senior center which was funded by the City of Middlebury through a \$500,000 government grant and Greencroft who raised \$500,000. *Gibson testimony; Petitioner Exhibit 13; Petitioner brief.* The senior center provides adult education programs, health clinics, computer learning, art classes, exercise and wellness programs, and other services to the Middlebury residents and to the estimated 371 elderly and 342 disabled people living in the Town of Middlebury. *Wolfer testimony; Petitioner Exhibit 13.* The Middlebury campus also offers spiritual opportunities such as bible studies, Chaplin services, personal prayer requests and conversations relating to spirituality. *King testimony; Petitioner brief.* While the Petitioner admits that the senior center has been used on

a limited basis for non-senior events, Mr. Wolfer testified such events represent less than 2% of the activity at the senior center and are “de minimis.”⁹ *Wolfer testimony; Petitioner brief.*

- J. Finally, Mr. Wolfer argues, Greencroft communicates with the Middlebury campus residents in a number of ways. *Wolfer testimony; Petitioner brief.* Greencroft has a cable television channel devoted to announcing events and providing information of general interest. *Long, Snider and Wolfer testimony; Petitioner brief.* In addition, Greencroft publishes the “Middlebury Monitor,” a quarterly publication which introduces new residents and announces upcoming events at Greencroft. *Petitioner Exhibit 21; Petitioner brief.* Similarly, the “Middlebury Notes” is a weekly publication that announces residents’ birthdays and events on the Middlebury campus. *Petitioner Exhibits 22 and 23; Petitioner brief.* Mr. King, Greencroft’s CEO, also sends letters to the residents. *Petitioner Exhibit 4; Petitioner brief.* In addition, the Greencroft staff is present daily to meet with residents and administer the operations of the campus. *Id.*
- K. One of the Petitioner’s residents, Mrs. Long, testified that Greencroft offers her a safe and maintenance free environment. *Long testimony.* She also testified that she enjoys participating in the residential activities at the senior center, such as euchre, movie night, carry-in dinners, book clubs and the Christmas bazaar. *Id.* Another Middlebury resident, Mr. Snider, testified that he likes being at Greencroft because it is a continuing care community. *Snider testimony.* According to Mr. Snider, he is on Greencroft Middlebury resident council and aids in coordinating and planning special events at the Middlebury campus. *Id.* Mr. Snider testified the residents of Greencroft Middlebury use the senior center to support a variety of charitable endeavors, such as the Boys and Girls Clubs, being pen pals with a classroom of children and the Pumpkin Vine Bike Ride. *Snider testimony.*

⁹ According to the Petitioner’s evidence, there were approximately 580 events held in 2007 and 618 events in 2008. *Petitioner Exhibits 24 and 25; Petitioner brief.* Mr. Wolfer testified that approximately 10 events per year were non-senior events, such as baby showers, graduation and wedding receptions. *Wolfer testimony.*

- L. Greencroft’s personal property is used in connection with the two real estate parcels under appeal by the Petitioner. *Hartzler argument; Petitioner brief*. According to Mr. Wolfer, the personal property at issue includes the kitchen appliances located in the living units and the equipment, such as pool tables, exercise equipment, tables, chairs and bookcases located in the senior center. *Wolfer testimony; Petitioner Exhibit 15*.
- M. The Petitioner’s counsel contends that the Internal Revenue Service (IRS) considers retirement communities like Greencroft to be charitable. *Hartzler argument; Petitioner brief*. According to Mr. Hartzler, the IRS Revenue Ruling 72-124 provides that an organization formed under a church congregation will qualify as charitable for Federal tax law purposes if it operates in a manner designed to satisfy the three primary needs of aged persons – housing, healthcare, and financial security. *Petitioner Exhibit 7; Id.* Further, in Revenue Ruling 79-18, the IRS held that an organization meets the housing needs of the elderly by building and operating a complex designed especially for seniors. *Petitioner Exhibit 6; Hartzler argument; Petitioner brief*. In that ruling, the facility at issue had units constructed with grab bars, wide entrance doorways, ramps and elevators, no-slip floors and an emergency 24-hour alarm system. *Id.* In addition, the resident manager coordinated recreational and social programs for the residents, and once persons were admitted to the facility, the organization was committed to maintaining them as residents. *Id.* According to Mr. Hartzler, Greencroft meets the criteria of Revenue Rulings 72-124 and 79-18 to be considered charitable. *Hartzler argument; Petitioner brief*.
- N. The Petitioner’s counsel further argues that Indiana case law recognizes that care for the “aged” is a charitable activity. *Hartzler argument; Petitioner brief*. According to Mr. Hartzler, the Indiana Tax Court has found that seniors need more than financial security and healthcare. *Id.* “Seniors also need a sense of community and involvement, a sense of security and safety, social interaction, supportive services that enable them to live more independently for a longer period of time, and the

need to function at active levels.” *Id.*, citing *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Board of Appeals*, 782 N.E.2d 483 (Ind. Tax Ct. 2003). Mr. Hartzler also cited *State Board of Tax Commissioners v. Methodist Home for the Aged*, 241 N.E. 2d 84 (Ind. Ct. App. 1968); *Raintree Friends Housing Inc. v. Indiana Department of State Revenue*, 667 N.E.2d 810 (Ind. Tax 1996); and *Knox County Property Tax Assessment Board of Appeals v. Grandview Care Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005), in his argument. *Id.* Based on these cases, Mr. Hartzler argues, the Petitioner’s Property is owned, operated and used for charitable purposes. *Hartzler argument; Petitioner brief.*

- O. The Petitioner’s counsel argues that the short distance between the Petitioner’s assisted living facilities and nursing home in Goshen and the Middlebury campus should not negate the Petitioner’s charitable purpose. *Hartzler argument; Petitioner brief.* According to Mr. Hartzler, the services offered to Middlebury residents and the programs offered at the Senior Center are similar to the services offered at Goshen. *Id.* Further, the Middlebury residents are given priority access to the Petitioner’s healthcare facilities to the extent allowed by law. *Id.* Because there are no nursing homes or hospitals in Middlebury, Mr. Hartzler argues, any program addressing the health care needs of Middlebury residents necessarily involves facilities located in Elkhart or Goshen. *Id.*
- P. Finally, the Petitioner argues, Greencroft Middlebury has been granted a charitable exemption in prior years. *Hartzler argument; Petitioner brief.* According to Mr. Hartzler, the charitable exemption should continue in 2008, because there has been no change in use of the properties or governing law. *Id.* Therefore, the Petitioner concludes, the continuing care retirement program operated at Middlebury and the senior center, along with the Petitioner’s personal property on those two parcels, should be granted a 100% exemption. *Id.*

Respondent's Contentions

23. The Respondent contends that the Petitioner is not entitled to an exemption on its real property and personal property because the Petitioner's property operates similar to many other senior communities.
24. The Respondent presented the following evidence in support of its contention:
- A. The Respondent's counsel argues that the Petitioner's evidence focused on the mission of the Greencroft organization. *Meighen argument; Respondent brief*. Ms. Meighen contends, however, that Indiana's "charity standard" does not focus on the organization itself, but on the use of the property for which the organization is claiming an exemption. *Id.* According to Ms. Meighen, the Petitioner failed to show the Middlebury properties' are predominantly used for exempt purposes. *Id.*
 - B. The Respondent contends that the PTABOA denied Greencroft Middlebury's exemption request because the Property is not part of Greencroft's campus in Goshen where the assisted living facilities and nursing home are located. *Searcy testimony; Respondent brief*. In support of this contention, the Respondent submitted a GIS map showing the distance between Middlebury and Goshen. *Respondent Exhibit A*. According to Ms. Meighen, the Petitioner's evidence shows Greencroft Middlebury is an off-campus community with independent living units that offer a nice place to live, a carefree life style, and friendly neighbors to persons 55 years of age or more, but a community that discriminates on the basis of age does not qualify as charitable. *Respondent Exhibits B1 and B2; Id.*
 - C. The Respondent contends that while Greencroft Middlebury may avail itself of certain amenities, such as maintenance free living, security, social and healthy living activities, there is little to no difference between those amenities and the benefits that any other senior neighborhood or apartment community that pays property

taxes may provide its residents in Elkhart County. *Searcy and Simper testimony*. In support of this contention, the Respondent submitted photographs, aerial maps, marketing brochures, tax bills and property record cards for comparable senior housing communities. *Respondent Exhibits, C, D1, D2, D3, E1, E2, F1, F2, G1, G2 and G3*.

- D. The Respondent's counsel argues that Indiana has never extended the concept of charity based strictly on age. *Meighen argument; Respondent brief*. According to Ms. Meighen, in *Brothers of Holy Cross, Inc. v. St. Joseph County Property Tax Assessment Board of Appeals*, Petition No. 71-025-02-2-8-00001 at ¶ 41 (issued June 7, 2007), *affirmed* 878 N.E.2d 548 (Ind. Tax 2007), the Board determined that while the homes owned by Brothers of the Holy Cross may have been attractive to older people, the age of the resident does not necessarily evidence a specific intent to serve the needs of the aged. *Id.* Ms. Meighen argues that to extend the constitutional concept of charity to Greencroft Middlebury, a subdivision of homes limited to a target age group of persons 55 years or older, would be an overly broad extension of an exemption. *Id.*
- E. Similarly, the Respondent's counsel argues that while Indiana case law has supported a charitable exemption regarding elderly, the amenities and services available to the residents in those cases were far more comprehensive and available than those at Greencroft Middlebury which is merely a "subdivision of duplexes". *Meighen argument; Respondent brief*. According to Ms. Meighen, in *State Board of Tax Commissioners v. Methodist Home for the Aged of the Indiana Conference of the Methodist Church, Inc.* 241 N.E.2d 84 (Ind. App. Ct. 1968), the Court of Appeals found "charity" to be based on humanitarian principles. *Id.* While the specific type of housing and care were not an issue in *Methodist Home*, Ms. Meighen argues, the retirement home at issue included an onsite medical annex and healthcare center staffed with trained medical personnel that provided good health related services at below cost to many residents and meals were provided to residents in a central dining room. *Id.* at 85-86. Thus, *Methodist Home* was a "full

service” facility providing all encompassing services to the elderly. *Id.* Similarly, Ms. Meighen contends that the facts found in the Tax Court decisions of *Raintree Friends, Grandview Care and Wittenburg*, in which the Court granted an exemption for senior housing, are distinguishable from the Petitioner’s case. *Meighen argument; Respondent brief.* For example, although Greencroft Middlebury has constructed its units with wheelchair friendly hallways and kitchen cabinets and a telephone line to Greencroft Goshen, the Middlebury campus is twenty minutes from Greencroft Goshen. *Id.* This, Ms. Meighen argues, shows a lack of integration of the facilities and is plainly a distinguishing factor from the villas of *Wittenburg. Id.*

- F. The Respondent further contends that Greencroft has not shown it takes any extra measures to ensure the safety or immediate health care needs of its residents. *Meighen argument; Respondent brief.* According to Ms. Meighen, the residents at Greencroft Middlebury feel a sense of safety as a result of living in the City of Middlebury and because the Middlebury police occasionally drive through the area. *Id.* In addition, Greencroft Middlebury does not have a medical director or other healthcare related professionals on staff with on-site office hours or onsite meals, which were also important considerations for the “continuum of care” found in *Methodist Home, Raintree Friends and Wittenburg. Id.* When a resident is in need of immediate health care, Ms. Meighen argues, they rely upon the City of Middlebury’s Emergency Medical Service (EMS). *Respondent brief.*
- G. Moreover, the Respondent’s counsel argues that Greencroft’s Middlebury residents have access to Greencroft’s nursing home in Goshen “on the same basis as the general public.” *Respondent brief.* According to Ms. Meighen this is another difference between a true “continuum of care” and simply allowing access to a higher level of care if an opening exist. *Id.* While the Petitioner’s witnesses testified that Greencroft Middlebury residents have access to health related services at extra costs, the services were not defined and are subject to Medicaid requirements. *Id.* Because the record is void of whether the residents of Greencroft

Middlebury have used any health related services at all, Ms. Meighen argues, the Petitioner’s unidentified services with a small discount depending on the lease signed do not translate to a charitable purpose.¹⁰ *Id.*

- H. Ms. Meighen also argues that the senior center is not exempt. *Meighen argument; Respondent brief.* According to Ms. Meighen, the social and recreational activities conducted at the center do not exhibit a use of the property that is charitable even within the most lenient constitutional definition of the term. *Meighen argument; Respondent brief, citing Sahara Grotto and Styx, Inc. v. State Board of Tax Commissioners*, 147 Ind. App. 471, 261 N.E.2d 873, 877 (1970); and *Indianapolis Elks Building Corporation v. State Board of Tax Commissioners*, 145 Ind. App. 522, 251 N.E.2d 673, 681 (1969). Further, while some outside organizations make presentations at the senior center, Ms. Meighen argues, it is simply a case of the Petitioner taking advantage of existing services offered by a third party. *Id.* To the extent that these third party services may offer a public benefit to justify an exemption, the parties providing the service presumably have been rewarded with an exemption. *Id.*
- I. Finally, Ms. Meighen argues that regardless of whether Greencroft Middlebury was granted an exemption in the past by the PTABOA and there have been no changes in the statutes, neither the PTABOA, nor the Board, is bound by such a determination. *Respondent brief.* According to Ms. Meighen, the doctrine of legislative acquiescence has been specifically rejected by the Indiana Supreme Court. *Id. citing St. Mary’s Medical Center of Evansville, Inc., et al. v. State Board of Tax Commissioners*, 571 N.E.2d 1247, 1250 (Ind. 1991) (“Administrative interpretations involved in the decisions to grant those exemptions in former years

¹⁰ The Respondent argues that giving discounts or directing residents to another business owned and operated by the Greencroft organization is commonplace among many businesses. *Respondent brief.* Ms. Meighen cites *Jamestown Homes of Mishawaka*, 909 N.E.2d at 1144 (quoting *Mountain View Homes, Inc. v. State Tax Commission*, 427 P.2d 13, 17 (N.M. 1967)), which states “It seems apparent to us that almost any activity which is not undertaken for profit and which has beneficial aspects concerning certain segments of our society may readily be classified as ‘charitable’... Conceivably, this could include a banking business, manufacturing business, or any other commercial enterprise, the proceeds from which are used to promote and advance the well-being of man. It is our firm conviction that no such all-embracing application of the term was contemplated by the drafters of our constitution ...” *Id.*

did not have the notoriety and significance which sheds light on legislative silence and inaction.”); and *State Board of Tax commissioners v. Fraternal Order of Eagles Lodge No. 255*, 521 N.E.2d 678 (Ind. 1988) (“invoking the doctrine of legislative acquiescence upon the facts in the case at bar overbroadens its scope. We share Judge Sullivan’s trepidation that to so broaden the doctrine would trap administrative agencies in their own mistakes and in the absences of legislative change would force them to continue their errors *ad infinitum*.”).

Analysis of the Issue

25. 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). Similarly, “[p]ersonal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.” Ind. Code § 6-1.1-10-16(d).
26. 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*, 145 Ind. App. 522, 251 N.E.2d 673, 682 (1969)). A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the

general public sufficient to justify the loss of tax revenue. *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).

27. The Indiana Court of Appeals first addressed the issue of care for the aged as a charitable purpose in the *State Board of Tax Commissioners v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. Ct. App. 1968). In that case, the Court recognized that the senior population had special needs, “namely relief of loneliness, boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, attention to problems of health, etc.” 241 N.E.2d at 86. In finding a non-profit retirement home exempt, the Court held that “it is now common knowledge 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.* at 89. The Indiana Court of Appeals decision in *Methodist Home* has been followed numerous times by the Indiana Tax Court. See *Raintree Friends Housing, Inc. v. Indiana Department of State Revenue*, 667 N.E.2d 810 (Ind. Tax Ct. 1996); *Wittenburg Lutheran Village Endowment Corporation v. Lake County Property Tax Assessment Board of Appeals*, 782 N.E.2d 483 (Ind. Tax Ct. 2003); and *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.* 826 N.E.2d 177 (Ind. Tax Ct. 2005).
28. In *Raintree Friends*, the facility at issue was funded almost exclusively by tenant rents and fees, although the property received non-financial support and services from local Quaker congregations. 667 N.E.2d at 812. In supporting its determination that the property owner was subject to gross income, sales and food and beverage taxes, the Department of Revenue argued that the properties were “not operating for a charitable purpose because the services they offer are no different than those offered by traditional apartment complexes.” *Id.* The Court in granting an exemption held:

The Housing Corporations provide beneficial and worthwhile services to the aged population. Indeed, the 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. The Retirement Homes provide a benefit to society by catering to the specific needs of their aged residents and by providing community, security, and assisted living for those in need.

Id. at 815. The Court further found that “The fact that the Retirement Homes charge a fee for the services they provide is not a bar to their charitable status, as charities often need to charge reasonable and sufficient fees to cover the cost of their operation.” *Id.*

29. Similarly, in *Wittenburg Lutheran Village*, the property was an integrated retirement community including a nursing home, an assisted living facility and eighteen 4-unit residential apartment buildings known as the “Villas”. 782 N.E.2d at 483. The Lake County Property Tax Assessment Board of Appeals argued that because the Villas did not cater to the ill or infirm, the facility was “nothing more than a traditional apartment complex.” *Id.* at 487. The Court found that:

In addition to providing the amenities found in traditional apartment living, the Villas offer many unique and special services to its residents. For instance, each apartment is equipped with safety features (such as bathroom grab bars) and is wheelchair accessible. All units are built on a crawl-space foundation, providing less stress on elderly bones and joints than slab foundations. Chaplaincy and worship services are available to all Villa residents. Villa residents may participate in a wide range of free planned group activities and have free access to exercise equipment within the Village. They may use the Village mini-bus for regularly scheduled shopping, planned group outings, and health-related appointments at nearby medical facilities. In addition, Villa residents may volunteer in the assisted living facility or the nursing home.

Id. at 485. Thus, the Tax Court concluded that the “contrary to the PTABOA’s rational, the needs of senior citizens are not exclusively financial, nor are they merely health-related.” *Id.* at 488. Seniors “need a sense of community and involvement.” *Id.* They need social interaction and supportive services “that enable them to live more independently for a longer period of time.” *Id.* They need a sense of security and they need to “function at active levels.” *Id.* Because the Villas met these needs, the Court found the property to be “owned occupied and used for a charitable purpose.” *Id.*

30. Here, the Petitioner presented evidence that Greencroft is a not-for-profit entity affiliated with the Mennonite Church which is exempt under 501 (c)(3) and 509 (a)(2) of the Internal Revenue Code. *King and Gibson testimony; Petitioner Exhibits 10, 11 and 27; Petitioner brief.* No person, firm or corporation derives any profit from Greencroft's operations and all income and receipts received are devoted to the purposes of Greencroft and to meet the needs of seniors through services and programs. *Petitioner brief.* Upon liquidation of Greencroft Middlebury no benefits will inure to any private person, but will be transferred to some other charitable 501 (c)(3). *Id.*
31. The Petitioner's purpose is to provide safe, secure and suitable retirement housing for Middlebury residents so that they may remain in their hometown. *Petitioner brief.* The Petitioner's living units were built for senior citizens with items such as grab bars in the bathroom, lower kitchen cabinets, non-skid floor and emergency telephone service. *Wolfer testimony; Petitioner brief.* Further, Middlebury has a "senior center" so residents and seniors in the community at large can enjoy games, exercise programs, entertainment and social gatherings. *Wolfer, Long and Snider testimony; Petitioner Exhibit 13; Petitioner brief.* In addition, the Greencroft Care at Home Program allows the Middlebury residents to live independently in their units "for an extended period of time ...". *King testimony.* Also, Greencroft's leases provide that its residents have access at extra cost to Greencroft's assisted living and licensed skilled nursing facility in Goshen. *Id.* As its counsel noted, Greencroft "addresses healthcare through its practice and commitment to give preferential access to residents to all of the health care facilities and services offered by Greencroft." *Petitioner brief.*
32. The Tax Court has found that "the needs of senior citizens are not exclusively financial, nor are they merely health-related." *Wittenberg Lutheran*, 782 N.E.2d at 488. Seniors "need a sense of community and involvement." *Id.* They need social interaction and supportive services "that enable them to live more independently for a longer period of time." *Id.* They need a sense of security and they need to "function at active levels." *Id.*

The Board finds the Petitioner has presented sufficient evidence that Greencroft Middlebury residents will “have the opportunity to live with as much independence as their strength will permit, in as pleasant and happy surroundings” in their declining years. *Methodist Home*, 241 N.E.2d at 89. Thus, the Board finds that the Petitioner has raised a prima facie case that its property is owned, occupied and used for a charitable purpose.¹¹

33. Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner’s case. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent did not dispute any of the Petitioner’s evidence. Nor did the Respondent dispute the services that the Petitioner offers to its residents. The Respondent merely argued that the Petitioner’s case is distinguishable from facts in the Tax Court decisions of *Methodist Home*, *Raintree Friends and Wittenburg*, because Greencroft Middlebury’s campus is located twenty minutes from the assisted living and nursing home facilities at Greencroft’s Goshen campus. *Meighen argument; Respondent brief*. Ms. Meighen argues that this shows a lack of “integration” and, thus, proves that the Petitioner does not offer a “continuum of care.” *Id.*
34. The Board, however, does not interpret the rulings of *Methodist Home*, *Raintree Friends and Wittenburg* to require that any or all of the additional health-care related services offered by Greencroft to its Middlebury campus residents must be located adjacent to the independent living units, or even in the same town. This is particularly true, as is the case here, where Middlebury is a small community that must seek all of its healthcare needs in the neighboring cities of Goshen or Elkhart. The fact that Greencroft Middlebury is part of the Greencroft organization and its residents have the opportunity to use all of the services within the Greencroft system is sufficient to meet the definition of continuum of care. In making its determination, the Board is not ruling that the distance between facilities can never be a factor in showing a taxpayer’s intent in owning and operating senior housing – only that under the facts presented in this case, the Board does not find there is sufficient separation between the facilities to treat the Middlebury independent

¹¹ The fact that Greencroft’s senior center is occasionally rented to the public does not diminish the organization’s charitable purpose.

living units differently than the Goshen independent living units. Thus, the Respondent failed to rebut or impeach the Petitioner's prima facie case.¹²

Summary of Final Determination

35. The Petitioner established a prima facie case showing that its land, improvements and personal property qualify for 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 subject properties are 100% exempt.

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

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

¹² The Respondent also argued that the social activities and maintenance free living style offered at Greencroft Middlebury does not differ significantly from other senior communities or apartments that pay taxes in Elkhart County. The Board, however, finds that while the Respondent has shown that some for-profit retirement communities are paying taxes, the Respondent failed to show how this impacts or is relevant to the Petitioner's request for exemption.

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 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 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/bills/2007/SE0287.1.html>.