

REPRESENTATIVES FOR PETITIONER: James W. Beatty
Jessica L. Findley

REPRESENTATIVE FOR RESPONDENT: Marilyn S. Meighen

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

LINCOLN VILLAGE)	Petition No.: 03-003-05-2-8-00001
COOPERATIVE, INC.,)	
)	
Petitioner,)	Bartholomew County
)	
v.)	Columbus Township
)	
BARTHOLOMEW COUNTY)	Parcel No.: 19961642100
PROPERTY TAX ASSESSMENT)	
BOARD OF APPEALS,)	Assessment Year: 2005
)	
Respondent.)	

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

May 30, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (“Indiana Board”) has reviewed the designated evidence and the arguments presented for summary judgment. The Indiana Board now enters its findings of facts, conclusions of law, and a final determination on the question of allowing the subject property, which provides low-income housing pursuant to Section 236 of Title II of the National Housing Act, a charitable exemption from property tax under Ind. Code § 6-1.1-10-16.

Procedural History

1. The subject property is a multi-family apartment complex located at 5135 N. Lincoln Village Drive, Columbus, Indiana.
2. The Petitioner, Lincoln Village Cooperative, Inc. (“Lincoln Village”), filed a Form 136 exemption application for the subject property on April 26, 2005. It sought 100% exemption for land, improvements, and personal property pursuant to the charitable use exemption in Ind. Code § 6-1.1-10-16. On April 6, 2006, the Bartholomew County Property Tax Assessment Board of Appeals (“PTABOA”) denied the exemption, stating “Lincoln Village does not meet the criteria to fit Indiana Code 6-1.1-10-16.7 therefore, it is does not qualify for property tax exempt status.”
3. On April 13, 2006, Lincoln Village petitioned the Indiana Board for review by filing a Form 132. This petition claimed charitable exemption for both real and personal property under Ind. Code § 6-1.1-10-16. It also explained that the PTABOA erred because Lincoln Village did not base the request for exemption on Ind. Code 6-1.1-10-16.7:

Section 16.7 is only applicable to subsidized housing receiving tax credits under Section 42 of the Internal Revenue Code. Rather, Lincoln Village filed its Application for Property Tax Exemption based on 6-1.1-10-16 because the subject property is owned, used and occupied for a charitable purpose. Lincoln Village provides housing for low income persons pursuant to Section 236 of the National Housing Act.

4. On September 26, 2006, Lincoln Village filed a Motion For Summary Judgment with a Memorandum In Support, and a Designation of Evidence that includes the following items:

Petitioner Exhibit 1 Petition to the Indiana Board for Review of
Exemption, Form 132, for Parcel No. 19961642100;
1-A Form 120;
1-B Application for Property Tax Exemption, Form 136
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- 1-C Articles of Incorporation;
- 1-D Bylaws;
- 1-E Financial Information for Lincoln Village;
- 1-F Property Record Cards;
- 1-G Regulatory Agreement;
- 1-H Occupancy Agreement;
- 1-I Power of Attorney;
- Petitioner Exhibit 2 Rent Roll as of March 2005;
- Petitioner Exhibit 3 Affidavit of Sandy Waddle;
- Petitioner Exhibit 4 Rent Comparability Study on Lincoln Village dated September 26, 2005;
- Petitioner Exhibit 5 Membership Selection Plan, December 1, 2003;
- Petitioner Exhibit 6 Lincoln Village Online Brochure.

5. On October 23, 2006, the Indiana Board’s designated administrative law judge held a preliminary conference on this matter. Counsel were advised to follow the provisions of Trial Rule 56 regarding the motion for summary judgment, but the times for a response and reply were set by agreement. These dates were confirmed with the Indiana Board’s Scheduling Order entered on October 31, 2006.

6. On December 8, 2006, the PTABOA filed its Response. It claimed Lincoln Village’s motion should be denied. The PTABOA stated that it “does not dispute any facts regarding this matter. The PTABOA does, however, dispute the legal conclusion that Lincoln Village owns, occupies, and uses the moderate-income apartments for exempt purpose.” Accordingly, the PTABOA requested a summary judgment in its favor. In this Response, the PTABOA designated two additional exhibits for consideration:

- Respondent Exhibit 1 *The Valuation of Subsidized Housing*, by Amy R. Siebel;

Respondent Exhibit 2 Dep't of Housing and Urban Development's 2005
Income Limits for Indiana.

7. Lincoln Village filed a reply on January 8, 2007.
8. Neither party requested a summary judgment hearing. Furthermore, the Indiana Board finds that no hearing is necessary to determine this case.

Summary Judgment Standard

9. Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake Co. Property Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2003). Cross-motions for summary judgment do not alter this standard. *Word of His Grace Fellowship v. State Bd. of Tax Comm'rs*, 711 N.E.2d 875, 877, (Ind. Tax Ct. 1999); *Hyatt Corp. v. Dep't of State Rev.*, 695 N.E.2d 1051, 1053 (Ind. Tax Ct. 1998).
10. The party seeking summary judgment bears the burden of demonstrating through designated evidence that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). If the movant satisfies its burden, the non-movant cannot rest upon its pleadings, but instead must designate sufficient evidence to show the existence of a genuine issue for trial. *Id.* The Board must construe all evidence in favor of the non-moving party, and all doubts as to the existence of a material issue of fact must be resolved against the moving party. *See Tibbs v. Grunau Co., Inc.*, 668 N.E.2d 248, 249 (Ind. 1996).

Findings of Fact

11. Lincoln Village is the owner of a 206-unit multi-family apartment complex with 25 buildings on approximately 17 acres of land.
12. Lincoln Village submitted its Articles of Incorporation and Bylaws, balance sheets for three years and summaries of income and expenditure for three years for the subject property to support its exemption claim. Lincoln Village was organized in 1970 as an Indiana not for profit corporation “to provide housing on a mutual ownership basis, in the manner and for the purposes provided in Section 236 of Title II of the National Housing Act, as amended.” Petitioner Exhibit 1-C. The purpose of Lincoln Village as stated in its Bylaws is “to provide its members with housing and community facilities, if any, on a nonprofit basis consonant with the provisions set forth in its Articles of Incorporation.” Petitioner Exhibit 1-D.
13. The Section 236 program was established by the Housing and Urban Development Act of 1968. It combined federal mortgage insurance with interest rate reduction payments for the production of low-cost rental housing. The owner pays a 1% mortgage interest rate and the federal government pays the remainder of the interest rate directly to the mortgagee. Respondent Ex. 1. The Regulatory Agreement that Lincoln Village entered contains the following related paragraphs:

Whereas, the Mortgagor and Mortgagee have requested the [Federal Housing] Commissioner to endorse said Note for mortgage insurance pursuant to Section 236 of Title II of the Act; and

Whereas, the Mortgagee is unwilling to lend said sum to the Mortgagor without a Contract of Mortgage Insurance evidenced by such endorsement, and the Commissioner is unwilling to endorse the Note for mortgage insurance unless and until the Mortgagor shall, by entering into the covenants and agreements set forth below, consent to be regulated and restricted by the Commissioner as provided in the Act.

NOW, THEREFORE, ... in order to induce the Commissioner to endorse for mortgage insurance the Note secured by said

Mortgage, and in order that the Mortgagor may be regulated and restricted by the Commissioner as provided for in said Section 236 and the applicable Rules, the parties hereto agree as follows:

1. The Mortgagor shall promptly make all payments due under the note and mortgage; provided, however, that the Commissioner shall make payments to the mortgagee on behalf of the mortgagor in accordance with the interest reduction contract between the mortgagee and the Commissioner.

Petitioner Ex. 1-G. (The interest reduction contract that this provision mentions, however, is not in the evidence designated by either party.) The Regulatory Agreement makes Lincoln Village subject to various regulations and restrictions in exchange for the lowered mortgage interest rate. Petitioner Ex. 1-G.

14. It is undisputed that Lincoln Village operates under the Section 236 housing program. Applicants and tenants must meet specific requirements to be eligible to live there and receive housing assistance. The Department of Housing and Urban Development (“HUD”) regulates this program, and consequently, Lincoln Village’s operations. Eligibility is subject to certain requirements.
- The family’s annual income must not exceed program income limits.
 - Applicants must disclose social security numbers for all family members at least 6 years of age and older and provide proof of the numbers reported.
 - All adults in each applicant family must sign an Authorization for Release of Information prior to receiving assistance and annually thereafter.
 - The unit for which the family is applying must be the family’s only residence.
 - An applicant must agree to pay the rent required by the program under which the applicant will receive assistance.
 - Only U.S. citizens or eligible noncitizens may receive assistance under Section 236 programs.
 - All information reported by the family is subject to verification.

See Occupancy Requirements of Subsidized Multifamily Housing Programs Handbook, Document No. 4350.3, ch. 3, *Eligibility for Assistance and Occupancy*, available at <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503c3HSGH.doc>.

15. The property owner, Lincoln Village, must determine whether applicants are eligible to live in the subsidized property and receive housing assistance based on the provisions of federal statutes and HUD regulations. It is required to report the income status of each assisted tenant to HUD at least annually. *See Id.*

16. HUD sets forth income limits, based on family size, that are used to determine income eligibility. These limits ensure that federal rental assistance is provided only to low-income families. *See Id.* at 4. The sample Occupancy Agreement for Lincoln Village characterizes it is a “housing cooperative ... for low to moderate income households.” Petitioner Ex. 1-H. Although the parties dispute whether this property should be described as low-income housing or moderate-income housing, in this case that characterization is not a genuine issue of material fact. Regardless of those labels, the undisputed facts show that eligible tenants must have income at or below 80% of the median income for the area. In 2005, the income limits for families in Bartholomew County were:

1 person	\$33,800
2 people	\$38,650
3 people	\$43,500
4 people	\$48,300
5 people	\$52,200
6 people	\$56,050
7 people	\$59,900
8 people	\$63,800

Respondent Ex. 2; *See also* Notice PDR-2005-03, *Transmittal of Fiscal Year 2005 Income Limits for the Section 221(d)(3), Section 235, and Section 236 Programs*, (February 11, 2005), available at <http://www.huduser.org/datasets/il/il05/HUD-S236-2005Notice.pdf>.

17. The rents for the Section 236 tenants at Lincoln Village are restricted and also determined by HUD. All Section 236 projects set a minimum rent (“basic rent”) and a maximum rent (“market rent”). Basic rent is either the amount needed to cover costs¹, mortgage principle, and the 1% interest, or a greater amount, but not greater than the market rent for a comparable unsubsidized unit reduced by the value of the government’s interest subsidy. Market rent is essentially the same as Basic rent with an additional amount allowed for mortgage premium insurance that the mortgagor is obligated to pay. Respondent Ex. 1; 12 U.S.C. § 1715z-1(f)(1)(A)(ii) and (iii). Lincoln Village is required to collect rent from each tenant at the higher of either 30% of the tenant’s monthly adjusted income or the basic rent, but the rent may not be more than the market rent. 12 U.S.C. § 1715 z-1(f)(B)(i).
18. Section 236 projects qualify for a rent supplementation program whereby tenants who could not otherwise afford housing under this program pay 30% of adjusted income towards rent and the government pays the difference between basic rent and the tenant’s rent contribution. Respondent’s Ex. 1. Section 8 tenants also reside at Lincoln Village. These tenants pay rent based on their income and the government provides a rent supplement. *Id.*
19. Paragraph 4(c) of the Regulatory Agreement allows for some exceptions to the occupant income limitations:

The Mortgagor [Lincoln Village] covenants and agrees that:

(c) it shall limit occupancy in the project to those families whose incomes do not exceed the limits prescribed by the Commissioner, with the exception of those occupants who agree to pay fair market rental.

Petitioner Ex. 1-G.

¹ “Costs” allows an annual return to an owner that is limited to a dividend of 6% of the original equity invested (.6% of the project’s original cost).

20. Lincoln Village may admit families whose income exceeds the Section 236 income limit without HUD approval if there are no income-eligible applicants available and fewer than 10% of the units are occupied by income-ineligible tenants. *See Occupancy Requirements of Subsidized Multifamily Housing Programs Handbook*, Document No. 4350.3, ch. 3, *Eligibility for Assistance and Occupancy*, at 14 available at <http://www.hudclips.org>. An example of this requirement is given in the HUD handbook:

Brookside Gardens is a 100-unit Section 236 project. Currently 92 tenants pay basic rent, 5 tenants pay market rent, and 3 units are vacant. The owner may fill the 3 vacant units with tenants paying market rent.

Shady Grove is a 100-unit Section 236 project where 88 current tenants pay basic rent and 10 tenants pay market rent. The owner must fill the 2 current vacancies with income-eligible tenants.

- Id.* at 15. In addition, before Lincoln Village admits an ineligible applicant, it must admit all available eligible tenants, take all reasonable steps to attract eligible families, and place a written certification in the ineligible tenant's file that the first two requirements were completed. *Id.*
21. According to the Rent Roll as of March 2005, 131 of the 206 units at Lincoln Village were occupied. Petitioner Ex. 2. The occupants are a mixture of Section 8, Section 236, and market rent tenants. Petitioner Ex. 4 at 1.
22. The Lincoln Village Membership Selection Plan contains the following provisions relating to applicant screening:

V. Applicant Screening

Membership selection criteria may relate to the ability of the applicant to fulfill lease obligations and may not automatically deny tenancy to a particular group or category of otherwise eligible applicants. In determining whether the applicant will be selected, various criteria, as listed below, along with any related explanations offered by the applicant concerning the facts involved, including changes in circumstances will be considered. Co-signers will not be allowed. Rejection of the applicant may be based on one or more of the following criteria:

A. Insufficient/Inaccurate Information

B. Credit & Financial Standing

Applications will be denied if it is determined that the applicant has bad credit. The application will be reviewed to consider whether the applicant has a satisfactory history of meeting financial obligations. All adult members of household must have acceptable rating or the application will be rejected. Applicants will not be denied residency because they do not have a credit history. Bad credit will be defined as:

1. Civil Judgments that occurred within the last five years unless they are medical. If an applicant has established a payment plan with creditor on a judgment that is not from a landlord and can prove they have been making payments an exception may be made.
2. Eviction/Forcible Detainer judgment even when restitution has been made.

C. Landlord History

Residency will be verified for 3 years prior to the application. If at any time during that period an applicant lived with a parent or relative they must provide a notarized statement from that person verifying that the dates of residency and the amount paid for rent, if any. An applicant will be denied if any verification shows that:

1. They were ever evicted or turned over to an attorney for possession, even if the suit was later dropped.
2. They still owe money to a previous landlord.
3. They damaged the property in any way.
4. They have made 3 or more late (over 30 days) rent payments in the last 12 months.
5. If a previous landlord verifies they had Poor housekeeping habits.
6. If they violated the lease agreement in any way or disturbed the peace of others.

D. Criminal Activity

An application will be rejected if the following criminal activity has occurred in the last 5 years:

1. Any household containing a member(s) who was evicted in the last three years from housing for drug-related criminal activity;
2. A household in which any member is currently engaged in illegal use of drugs or for which the owner has reasonable cause to believe that a member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceable enjoyment of the property by other residents;

3. Any household member who is subject to a state sex offender lifetime registration requirement; and
4. Any household member if there is reasonable cause to believe that member's behavior, from abuse or pattern of abuse of alcohol, may interfere with the health, safety, and right to peaceful enjoyment of other residents;
5. Any history of drug related criminal activity even if the activity did not result in a conviction;
6. Any history of violent criminal activity even if the activity did not result in a conviction.

Petitioner Ex. 5 at 3.

23. The Lincoln Village Membership Selection Plan contains the following provisions relating to waiting list priority:

VII. Waiting List Procedures

B. Waiting List Order

Lincoln Village Cooperative will maintain a list that will remain open. The waiting list is defined by applications filled out by the prospect and will appear in the order of the date in which the office received the completed application. The waiting list will be categorized in the following manner:

- 1st **Section 8 only:** Applicants whose income does not exceed 30% of the area median income. This will remain the first preference until the 40% quota has been reached at which time all other preferences will apply in the order below (HUD Notice 00-18; QHWRA).
- 2nd Applicants who have been displaced by a government action or a presidential declared disaster
- 3rd Transfers
- 4th Employee Unit, if necessary
- 5th Completed and Approved Applications in order of date they are approved. If more than one application is approved on the same day they will then be placed in order of the time management received them.

Petitioner Ex. 5 at 5.

24. There were 62 Section 8 tenants at Lincoln Village in March 2005. That number is indicated, in part, on the Rent Roll by an amount shown in the column entitled “Asst Pymt.”² Fifty tenants have a Section 8 contract with Lincoln Village. The other 12 tenants from that group receive Section 8 vouchers. The Rent Roll shows that those 12 tenants paid market rent because Lincoln Village gets market rent even though that is not what those tenants actually paid. The rent for Section 8 tenants is reduced and subsidized even more than it is for the Section 236 tenants. Twenty-four tenants actually paid market rent established by HUD. Even these tenants benefit from the fact that the HUD established market rent is less than fair market rent for comparable unassisted projects. Petitioner Ex. 2, 3.
25. Lincoln Village offered a chart that compares “Basic Rent” and “Market Rate Rent” for its own units with the “Average Fair Market Rent” for comparable properties. The undisputed facts in this case are enough to show that the market rent at Lincoln Village, which is the most a tenant would pay, is significantly less than the average fair market rent at comparable properties.³ Petitioner’s Memorandum In Support Of Summary Judgment at 12; Petitioner’s Memorandum In Reply at 17.

² “Asst Pymt” means assistance payment, which is the amount the government pays for Section 8 tenants. Petitioner Ex. 3.

³ The numbers for the comparables are attributed to, and coincide with, the Rent Comparability Study that was certified by Kurt VonSpreckelsen. Petitioner Ex. 4. The Respondent did not dispute the facts established by that comparison study. The “Basic Rent” and “Market Rate Rent” numbers on the chart were not attributed to any particular fact source—although they appear to come from the Rent Roll. Some of the numbers are the same as those shown on the Rent Roll for March 1, 2005, but some differ. For example, the Rent Roll entries for Blandford’s 1 bedroom match the Phases I & II entries on the chart, and the Rent Roll entries for Littrell’s 2 bedroom match the Phases I & II numbers on the chart for a 2 bedroom townhouse, but Rent Roll entries for Jessie’s 3 bedroom do not match the numbers on the chart for a 3 bedroom townhouse. Petitioner Ex. 2, 4. Consequently, for at least some of the units, the exact differences shown on the chart between the comparables and what Lincoln Village is allowed to charge its tenants is not an established fact for purposes of summary judgment. Those exact differences, however, are not determinative of the exemption claim in this case.

Jurisdiction

26. The Indiana Board conducts an impartial review of appeals concerning assessed valuation of tangible property, property tax deductions, and property tax exemptions from a determination by an assessing official or a county property tax assessment board of appeals under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

Basis of Exemption and Burden

27. All property generally is subject to property taxation. Ind. Code § 6-1.1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. IND. CONST. Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting any exemption.
28. All property receives protection, security, and services from the government such as fire protection, security from the police, and public education. Those things require pecuniary support. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels. *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996). The transfer of this obligation to non-exempt properties is not an inconsequential shift. Therefore, worthwhile activities or noble purposes alone are not sufficient to qualify for tax exemption. The taxpayer must demonstrate that it provides “a present benefit to the general public ... sufficient to justify the loss of tax revenue.” *Miniature Enthusiasts*, 671 N.E.2d at 221 (quoting *St. Mary's Medical Center of Evansville, Inc. v. State Bd. of Tax Comm'rs*, 534 N.E.2d 277, 279 (Ind. Tax Ct. 1989); *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004).

29. In seeking an exemption, a taxpayer must prove that all statutory requirements for that exemption are met. *Indianapolis Osteopathic Hospital*, 818 N.E.2d 1009; *Monarch Steel Co., Inc. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Ass'n of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).
30. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemption. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Dep't of Rev.*, 667 N.E.2d 810, 816 n.8 (Ind. Tax Ct. 1996) (non-profit status does not necessarily entitle a taxpayer to tax exemption).

Analysis and Conclusions

31. This claim for a charitable exemption from property tax is primarily governed by Ind. Code § 6-1.1-10-16(a), which provides that “[a]ll 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.” Separate subsections provide for exemption of land and personal property, but they specifically relate back to the requirements in subsection (a).⁴ The land, buildings, and personal property of Lincoln Village are exempt only if they are owned, occupied and used for charitable purposes.
32. Neither party raised any significant, material dispute about the facts as they relate to Lincoln Village itself or what it does. Lincoln Village contends that its property is entirely exempt because it is a not for profit corporation, and pursuant

⁴ Land may qualify for exemption according to Ind. Code § 6-1.1-10-16(c). Personal property may qualify for exemption according to Ind. Code § 6-1.1-10-16(e).

to government programs⁵ the subject property provides housing at a price that is substantially less than comparable fair market rents, which many occupants would not otherwise be able to afford. On the other hand, the Respondent contends that Lincoln Village does not provide charity by participating in these government programs because under the Section 236 program Lincoln Village has the benefit of paying only 1% mortgage interest (the federal government pays the remainder of the interest rate directly to the mortgagee) and because even though a Section 8 tenant pays rent based on income, the government supplements what a tenant pays so that Lincoln Village still receives “contract rent.”

Charitable Use

33. Exemption statutes are strictly construed against the taxpayer. Any taxpayer who claims an exemption has the burden of proving that it is entitled to the exemption it seeks. *See New Castle Lodge # 147, Loyal Order of Moose, Inc. v. State Bd. of Tax Comm'rs*, 733 N.E.2d 36, 38 (Ind. Tax Ct. 2000), *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 Co. Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005)(citing *Indianapolis Elks Bldg. v. State Bd. of Tax Comm'rs*, 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. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).
34. “The declaration of charity by an organization does not necessarily mean that the dominant use of the organization’s property is of the form of charity which the

⁵ These programs have many requirements and restrictions such as those discussed in the “Findings of Fact” that limit eligibility and rent.

law recognizes as entitling an organization to tax exemption.” *Sahara Grotto v. State Bd. of Tax Comm’rs*, 261 N.E.2d 873, 878 (1970). In order to qualify for an exemption, the owner must submit probative evidence that the property is owned for an exempt purpose, used for an exempt purpose, and occupied for an exempt purpose. Once these three elements are met, the property can be exempt from taxation. *Grandview Care*, 826 N.E.2d at 183.

35. Here, Lincoln Village entered into a contractual arrangement with the federal government to provide affordable housing in return for consideration that includes a subsidized mortgage interest rate where Lincoln Village pays 1% interest and the federal government pays the remainder of the interest directly to the mortgagee. There is no dispute that the federal government offered the program as an incentive to build affordable housing and that Lincoln Village elected to participate in that program. The Regulatory Agreement indicates that at the end of the mortgage period, or a shorter time if the mortgage is paid off earlier, Lincoln Village will own the property and it can rent without restrictions:

[I]n order that the Mortgagor [Lincoln Village] may be regulated and restricted by the Commissioner [HUD] as provided for in said Section 236 and the applicable Rules, the parties hereto agree as follows: that as long as the Contract of Mortgage Insurance continues in effect, and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, or during any time the Commissioner is obligated to insure a mortgage on the mortgaged property

Petitioner Ex. 1-G. In addition, Lincoln Village gets government rent subsidies. Thus, Lincoln Village receives a set rental rate from a secure source for each of its units and, at the end of the mortgage period, it will have an asset that it may not otherwise have been able to afford to finance or build.

36. The fact that many of the tenants pay less to live at Lincoln Village than they might have to pay at comparable apartments that do not participate in Section 236 or Section 8 housing programs does not justify allowing the charitable property tax exemption. If the provision of low income housing was really “charitable,”

Lincoln Village would need no such incentives to operate such a facility. If Lincoln Village were offering safe, clean, quality apartments to low income individuals for below market rents without contracting to receive a mortgage subsidy or rent subsidies, such use would likely be for a charitable purpose. But that situation is not the case before the Indiana Board. Here, the public already supports the program with tax dollars. The subsidized mortgage allows Lincoln Village to charge less for its units than it otherwise would need to charge in order to cover its costs, which should be a competitive advantage. Further, the government rent subsidies come from a stable, secure payment source so that Lincoln Village may experience fewer late payment or no payment situations than similar non-subsidized housing units.

37. Lincoln Village built or purchased the subject property with the help of tax dollars that lower its interest expense. Lincoln Village is being compensated with rental payments and rent subsidies paid from tax dollars. Lincoln Village provides a service that it contracted with the federal government to provide. This kind of business activity is not “different from the everyday purposes and activities of man in general.” *College Corner*, 840 N.E.2d at 908. In seeking a charitable property tax exemption in addition to the substantial incentives and benefits it already gets from the government, Lincoln Village has not advanced any substantial argument that sufficient benefit inures to the general public to justify the loss of tax revenue that would result from granting a charitable purpose tax exemption in addition to the mortgage assistance and rent subsidies the property already gets.

38. Lincoln Village argues that the Indiana Board has already decided that low income housing is a “charitable purpose” and cites to several older determinations in support of its claim. *See e.g. Lafayette Neighborhood Housing Services, Inc. v. Tippecanoe Co. Property Tax Assessment Bd. of Appeals*, Petition No. 79-0001-95-2-8-00007 (1995 tax year); *Willowbrook Affordable Housing Corp. v. Marion Co. Property Tax Assessment Bd. of Appeals*, Petition No. 49-800-97-2-8-00083

(1997 tax year); *Piedmont-Nantucket Cove, LLC v. Marion Co. Property Tax Assessment Bd. of Appeals*, Petition No. 49-500-00-2-8-00007 *et al.* (2000 tax year); *Greenwood Apartments Inc. v. Wayne Co. Property Tax Assessment Bd. of Appeals*, Petition No. 89-014-02-2-8-00006 (2002 tax year).

39. The Indiana Board’s more recent rulings, however, have found low income housing not to be an exempt purpose. See *East Central Reinvestment Corp. v. Delaware Co. Property Tax Assessment Bd. of Appeals*, Petition No. 18-003-04-2-8-10000 *et al.* (2004 tax year) (“If there is a public benefit based on this low-income housing, Petitioner failed to prove it with substantial, probative evidence. The conclusory testimony about ‘below market rents’ and the other positive aspects about how Petitioner’s operations improve the quality of life in the neighborhood are not probative evidence.”) ¶ 34; *Grandview Care, Inc. v. Perry Co. Property Tax Bd. of Appeals*, Petition No. 62-008-03-2-8-00003 (2003 tax year) (“Petitioner failed to establish that providing housing for low income or disabled tenants necessarily constitutes a charitable use.”) ¶¶ 35, 36. Further, while the Tax Court has granted economic obsolescence to low income housing projects in various cases,⁶ the parties have pointed to no Indiana cases addressing an exemption application for a low income housing project.

Legislative Purpose

40. Further, the Indiana Board notes that the legislature specifically addressed the issue of low income housing in a separate grant of exemption, which the PTABOA cited in its decision to deny Lincoln Village’s claim. Ind. Code § 6-1.1-10-16.7 states that “All or part of real property is exempt from property taxation if (1) the improvements on the real property were constructed, rehabilitated, or acquired for the purpose of providing housing to income eligible

⁶ See, e.g., *Pedcor Investments-1990-XIII, L.P. v. State Bd. of Tax Comm’rs*, 715 N.E.2d 432, 437 (Ind. Tax Ct. 1999); *Meadowbrook North Apartments v. Conner*, 854 N.E.2d 950 (Ind. Tax Ct. 2005); *Hometowne Associates, LP v. Maley*, 839 N.E.2d 269 (Ind. Tax Ct. 2005).

persons under the federal low income housing tax credit program under 26 U.S.C. 42;⁷ (2) the real property is subject to an extended use agreement under 26 U.S.C. 42 as administered by the Indiana Housing and Community Development Authority; and (3) the owner of the property has entered into an agreement to make payments in lieu of taxes under Ind. Code § 36-1-8-14.2.” Careful reading of these statutes indicates the legislative intent is to use payments in lieu of taxes (“PILOTs”) to establish a fund to encourage rehabilitation of affordable housing and to establish programs with resources for affordable housing clientele at the state and local level.

41. If the Indiana Board were to interpret the charitable-use exemption statute as including low-income housing providers operating under contract with HUD, the PILOT statutes would be nullified. If project owners could merely claim a property tax exemption for charitable use, they would side step the PILOT requirement that the state legislature designed to benefit low income families. It also would allow those facilities operating under less stringent requirements than 26 U.S.C §42(g) to receive greater tax benefits. That kind of result would not be consistent with legislative intent behind these statutes. When interpreting a statute, the Indiana Board must consider not only the objects and purpose of the statute, but also the effects and repercussions of its interpretation. *See Bushong v. Williamson*, 790 N.E.2d 467, 471 (Ind. 2003). Granting an affordable housing sponsor a charitable purpose exemption would undermine the legislative purpose in establishing an affordable housing fund.⁸

⁷ 26 U.S.C §42(g) provides two tests for qualified low income housing, the 20-50 test and the 60-40 test. Under the 20-50 test, a project meets the requirements of the subparagraph if 20 percent or more of the residential units are both rent restricted and occupied by persons whose income is 50 percent or less of median gross income. Under the 40-60 test, a project meets the requirements of this subparagraph if 40 percent of the residential units are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median income.

⁸ Indiana statutes also provide for an exemption during the construction or renovation of a residence for a low income individual within the charitable use statute. *See Ind. Code § 6-1.1-10-16(i)* (“A tract of land or a tract of land plus all or part of a structure on the land is exempt from property taxation if: (1) the tract is acquired for the purpose of erecting, renovating, or improving a single family residential structure that is to be given away or sold: (A) in a charitable manner; (B) by a nonprofit organization; and (C) to low income individuals who will: (i) use the land as a family residence; and (ii) not have an exemption for the land

42. Here Lincoln Village seeks a 100% exemption. It does not offer to pay into a low income housing fund in lieu of paying its property taxes. Nor is there any representation that the property would come back on the tax rolls except, perhaps, at the end of its 40 year mortgage if the property no longer operates as low income housing. The Indiana Board is not convinced that even a broad interpretation of the phrase “charitable purpose” when read in context with the whole of the exemption statutes should be interpreted to allow such a result.
43. The Indiana Board does not take the position that the rent restrictions are without affect. In the past, obsolescence was the appropriate method of addressing any impact such restrictions may have on the value of the subject property. *See Pedcor Investments-1990-XIII, L.P. v. State Bd. of Tax Comm'rs*, 715 N.E.2d 432, 437 (Ind. Tax Ct. 1999) (To the extent that a taxpayer shows that such restrictions hinder the property's ability to generate income, an obsolescence adjustment may be applied). With Indiana’s new valuation methodology a taxpayer still may prove such restrictions adversely impact the market value-in-use of a property. Furthermore, the Indiana Board does not take the position that providing low income housing could never be a “charitable purpose.” It only finds that, under the facts presented here, Lincoln Village has not shown that a benefit would inure to the general public sufficient to justify the loss of the tax revenue that would result from granting a charitable purpose tax exemption in addition to the tax-supported mortgage assistance and rent subsidies the property presently receives.

under this section; (2) the tract does not exceed three (3) acres; (3) the tract of land or the tract of land plus all or part of a structure on the land is not used for profit while exempt under this section; and (4) not more than four (4) years after the property is acquired for the purpose described in subdivision (1), and for each year after the four (4) year period, the owner demonstrates substantial progress and active pursuit towards the erection, renovation, or improvement of the intended structure.”) This provision grants an exemption only during the construction or renovation of the residence and clearly intends that the property would return to the tax rolls once renovation or construction had ceased. Similarly, the Petitioner cites *College Corner, L.P. v. Dept. of Local Gov't. Finance*, 840 N.E.2d 905 (Ind. Tax Ct. 2006) in support of its exemption request. Like Ind. Code § 6-1.1-10-16(i), however, the properties at issue in *College Corner* would return to the tax rolls when the renovation work was completed and the properties sold.

Summary of Final Determination

44. Lincoln Village's Motion For Summary Judgment is denied. The Board finds in favor of the Respondent on its Motion For Summary Judgment. Accordingly, the the subject property is not entitled to a charitable exemption from property tax as provided by Ind. Code § 6-1.1-10-16.

This Final Determination of the above captioned matter is issued on the date first written above.

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>