

REPRESENTATIVE FOR THE PETITIONER: Paul Jones, Attorney

REPRESENTATIVE FOR THE RESPONDENT: Zachary Price, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

APPLECREEK HOUSING, LLC,)	Petition Nos.: 48-003-20-2-8-00255-22
)	48-003-22-2-8-00554-22
Petitioner)	48-003-23-2-8-00406-23
)	
v.)	Parcel No.: 48-12-31-500-003.000-003
)	
MADISON COUNTY ASSESSOR,)	County: Madison
)	
Respondent.)	Township: Anderson
)	
)	Assessment Year: 2020, 2022, & 2023
)	

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:

I. INTRODUCTION

1. Applecreek Housing, LLC (“Applecreek”) owns and operates an affordable-housing apartment complex in Anderson, Indiana. It bought the complex from an unrelated entity that developed the project using tax credits and other governmental financing, in exchange for which it agreed to occupancy and rent restrictions that run with the land.
2. Applecreek sought a charitable-purpose exemption under Indiana’s general exemption statute (Ind. Code § 6-1.1-10-16(a)), which exempts from taxation property that is owned, and predominantly occupied and used, for charitable purposes. Based on the totality of the evidence, we find that Applecreek owned and used the real property at issue in a

charitable manner that lessened a government burden of providing affordable housing beyond simply complying with the property's restrictive covenants. We therefore find that Applecreek was entitled to an exemption for 2022 and 2023.

3. But Applecreek did not buy the complex from the original developer until more than halfway through the year preceding the 2020 assessment date, and there is nothing to show that the developer did anything to relieve a government burden beyond complying with the restrictive covenants while it still owned the complex. We therefore find that Applecreek failed to show that the property was predominantly used for charitable purposes for the 2020 assessment date. Finally, Applecreek did not identify any personal property for which it sought an exemption, much less show how that property was used. We therefore deny a personal property exemption for any of the years under appeal.

II. PROCEDURAL HISTORY

4. Applecreek filed applications seeking an exemption for its real property for the 2020, 2022, and 2023 assessment dates. It is unclear whether Applecreek also sought an exemption for its personal property. While Applecreek claimed that 100% of its personal property was exempt from taxation, it also wrote "N/A" in the space for listing its personal property assessment. In any case, Applecreek indicated that it sought a charitable-use exemption under Ind. Code § 6-1.1-10-16.
5. On May 19, 2022, the Madison County Property Tax Assessment Board of Appeals ("PTABOA") issued a determination on Applecreek's 2022 application, finding the land, improvements, and personal property 100% taxable. On April 19, 2023, the PTABOA issued its determination on Applecreek's 2023 application, again finding the land, improvements, and personal property 100% taxable. Applecreek appealed those determinations to us on June 30, 2022, and June 6, 2023, respectively.¹ After the PTABOA failed to act on the 2020 application, Applecreek petitioned directly to us. *See*

¹ Those are the postmark dates from when Applecreek mailed the petitions.

I.C. §§ 6-1.1-11-7(d) and 6-1.1-15-3(g) (providing that if a county PTABOA fails to act on an exemption application within 180 days of filing, the property's owner may petition us to approve or disapprove the exemption).

6. On November 2, 2023, our designated administrative law judge, Erik Jones ("ALJ"), held a hearing on Applecreek's petitions. Neither he nor we inspected the property. Adam Richter, Ceceily Brickley, and Anna Hensley testified under oath.

7. Applecreek offered the following exhibits:

Petitioner's Exhibit A	2020 Form 136,
Petitioner's Exhibit B	2022 Form 136,
Petitioner's Exhibit C	2023 Form 136,
Petitioner's Exhibit D	2023 Property Record Card ("PRC") for subject property,
Petitioner's Exhibit E	Articles of Incorporation for the Gene B. Glick Family Housing Foundation, Inc.,
Petitioner's Exhibit F	Bylaws for Gene B. Glick Family Housing Foundation,
Petitioner's Exhibit G	IRS Determination letter for Gene B. Glick Family Housing Foundation,
Petitioner's Exhibit H	Articles of Organization for Applecreek LLC,
Petitioner's Exhibit I	Operating agreement for Applecreek, reflecting 100 percent ownership by Foundation,
Petitioner's Exhibit J	Limited warranty deed for subject property,
Petitioner's Exhibit K	Summary regarding Glick philanthropies,
Petitioner's Exhibit L	Foundation service coordinator program summary,
Petitioner's Exhibit M	Service coordinator program for Applecreek Apartments,
Petitioner's Exhibit N	Improvements at Applecreek Apartments,
Petitioner's Exhibit O	Resident information handbook,
Petitioner's Exhibit P	Sample lease contract,
Petitioner's Exhibit Q	Resident matrix for Foundation properties,
Petitioner's Exhibit R	Income levels for January 1, 2020,
Petitioner's Exhibit S	Rent roll for January 1, 2020,
Petitioner's Exhibit T	Income levels for January 1, 2022,
Petitioner's Exhibit U	Rent roll for January 1, 2022,
Petitioner's Exhibit V	Income levels for January 1, 2023,
Petitioner's Exhibit W	Rent roll for January 1, 2023,
Petitioner's Exhibit X	HUD fair market rent schedules for fiscal year 2020,
Petitioner's Exhibit Y	HUD fair market rent schedules for fiscal year 2021,
Petitioner's Exhibit Z	HUD fair market rent schedules for fiscal year 2022,

Petitioner's Exhibit AA	HUD fair market rent schedules for fiscal year 2023,
Petitioner's Exhibit BB	HUD fair market rent schedules for fiscal year 2024,
Petitioner's Exhibit CC	IRS Revenue Procedure 96-32,
Petitioner's Exhibit DD	Land use restriction agreement,
Petitioner's Exhibit EE	Form of Declaration of Extended Low-Income Housing Commitment,
Petitioner's Exhibit FF	Service coordination summary for 2020,
Petitioner's Exhibit GG	Program reports for 2020,
Petitioner's Exhibit HH	Service coordination summary for 2022,
Petitioner's Exhibit II	Program reports for 2022,
Petitioner's Exhibit JJ	Service coordinator summary for 2023,
Petitioner's Exhibit KK	Program reports for 2023.

6. The Assessor offered the following exhibits:

Respondent's Exhibit A	2023 PRC for subject property,
Respondent's Exhibit B	Indiana housing community development rental housing tax credit limits for 2020,
Respondent's Exhibit C	Indiana housing community development rental housing tax credit limits for 2022,
Respondent's Exhibit D	Indiana housing community development rental housing tax credit limits for 2023,
Respondent's Exhibit E	HUD income limits for 2020,
Respondent's Exhibit F	HUD income limits for 2022,
Respondent's Exhibit G	HUD income limits for 2023,
Respondent's Exhibit I	Screenshots of Applecreek Apartments website showing floorplans,
Respondent's Exhibit K	Screenshots of Applecreek Apartments website showing income restrictions and amenities,
Respondent's Exhibit L	Sample lease

7. The record also includes the following: (1) all petitions and other documents filed in these appeals, (2) all orders and notices issued by the Board or ALJ; and (3) a transcript of the hearing.

III. FINDINGS OF FACT

A. Background

8. Both Applecreek and the subject property are integrated into a network of charitable entities founded by Gene Glick and his family. We therefore begin with some background on that network

9. In 1983, Glick, a successful developer of apartment communities, and his wife formed the Gene Glick Foundation (“Family Foundation”), which has made nearly \$300 million in charitable donations. In 2004, the Family Foundation formed its own public charity, the Gene B. Glick Family Housing Foundation, Inc. (“Housing Foundation”), a public benefit corporation organized under the Indiana Nonprofit Corporation Act of 1991. The Family Foundation provides most of the Housing Foundation’s funding. *Pet’r Exs. E-F; Tr. at 18-19, 38.*
10. The Housing Foundation serves a two-fold mission: (1) to preserve affordable housing, and (2) to improve residents’ lives. It tries to implement the first part of its mission by combatting a trend in the housing industry of developers buying affordable housing projects and converting them to market-rate housing, which both drives up rent and reduces the supply of affordable housing. The Housing Foundation therefore buys existing affordable-housing properties that are at risk of being converted. The Housing Foundation (or its subsidiaries) owns approximately 43 properties, mostly in Indiana. Despite its extensive inventory of affordable housing units, there is still a critical shortage of affordable housing, and each property has a wait list. *Pet’r Ex. E, at § 3.1; Tr. at 19-21.*
11. To address the second part of its mission—improving residents’ lives—the Housing Foundation provides residents at each property with access to an on-site service coordinator, many of whom are licensed social workers. The service coordinator’s role varies depending on the type of property at issue. For properties devoted to elderly housing, coordinators try to help residents age in place. In properties geared toward family housing, the goal is to improve residents’ lives in any way that is needed, such as addressing issues with transportation, food security, education, or employment. Service coordinators are expected to work with residents one-on-one as well as to provide on-site programming tailored to residents’ needs. The Housing Foundation has spent more than \$14 million on the service-coordinator program. *Tr. at 31-32.*

12. The services and programming that the service coordinators provide generally fall into three categories, or “buckets.” The first bucket involves one-on-one assessments. After signing a lease, new residents are immediately connected to a property’s service coordinator who performs a “family assessment” to establish areas in which the new residents are thriving or are in crisis. From there, the service coordinator tailors programming and assistance to the tenants’ identified needs. Annual assessments then track improvement in these areas. In more extreme situations, service coordinators will connect residents with emergency or crisis services. *Pet’r Exs. L, M, FF-KK; Tr. at 44-51.*
13. The second bucket focuses on resident engagement and programming. Engagement activities are designed to build social capital and connections among residents. The Foundation believes that social capital is critical to overall mental health and to residents’ economic position within a community. The service coordinator also either directly facilitates or partners with other community-based organizations to bring programs on site. Those organizations then sponsor events, such as educational sessions about receiving benefits and entitlements, and food distribution programs. *Pet’r Exs. FF-KK; Tr. at 44-45, 54-56, 68-70.*
14. The final bucket addresses basic resident needs. Residents’ basic needs include assistance with things like (1) food access, (2) rent, housekeeping, and utilities, and (3) issues, such as cleanliness or hoarding, that have resulted in lease violations. Service coordinators sometimes bring in outside organizations to help tenants navigate those issues. Service coordinators’ highest priority in this bucket is to ensure that residents maintain their housing. *Pet’r Ex. P at §§ 14, 33, FF-KK; Tr. at 70-73, 76-77.*
15. Service coordinators document their interactions with residents, as well as all programs and other engagements at the property. They also track donations and contributions from outside organizations. And they calculate the cost savings to residents from all the

activities and donations based on the market value of the services. *Exs. EE-KK; Tr. at 46-47, 61-84.*

B. Development of the Subject Property

16. The real estate under appeal, which we refer to as the “subject property,” is a 194-unit apartment complex known as Applecreek Apartments. It is located on 60th Street in Anderson. A for-profit developer, Applecreek Commons, LP, originally developed the complex using a variety of sources, including federal low-income-housing tax credits under Section 42 of the Internal Revenue Code and economic development bonds issued by the City of Anderson. *Tr. at 32-33; Pet’r Exs. DD-EE.*
17. In exchange for the government issuing tax credits to be used in financing the development, Paragus, Inc., the managing member of Applecreek Commons’ general partner, executed a Declaration of Extended Low-Income Housing Commitment (“Extended Use Agreement”) in which it agreed to lease at least 50% of the rental units to individuals or families whose income was 60% or less of the area’s median gross income (“AMI”). Paragus also agreed to comply with all of Section 42’s leasing requirements, including limits on rental rates. Paragus elected to proceed under the “40-60” test, meaning that 40% of the complex’s rental units would be both rent restricted and occupied by individuals whose income was 60% or less of AMI. *Pet’r Ex. EE at 1.*
18. The Extended Use Agreement was for an initial compliance period of 15 years after the day on which the first rental unit was placed in service, and it continued for at least another 15 years after the expiration of the compliance period. The minimum 30-year period was defined as the “extended use period.” Under specified circumstances, Paragus could request that the extended use period be terminated at the conclusion of the initial compliance period. But it did not do so. As required by its terms, the Extended Use Agreement was recorded, and its covenants run with the land. *Pet’r Ex. EE at 1, 5.*

19. Applecreek Commons similarly entered into a Land Use Restriction Agreement in exchange for the economic development bonds. Under that agreement, Applecreek Commons agreed to rent 40% of its units to tenants earning 60% of AMI or less. Once again, the restrictive covenants run with the land.²

C. Applecreek and its use of the subject property

20. Applecreek bought the subject property in August 2019. Applecreek is an Indiana domestic limited liability company whose sole member is the Housing Foundation. Applecreek's operating agreement lists its purposes as, among other things, to "[o]wn, redevelop and rehabilitate real estate in a manner that furthers the charitable purposes of [the Housing Foundation]." The operating agreement requires Applecreek to always operate in a manner consistent with the Housing Foundation's charitable purposes. It further specifies that Applecreek is committed to providing charitable services for the benefit of the community served by the Housing Foundation as a whole and to giving charitable purposes priority over maximizing profits for the Housing Foundation. *Pet'r Exs. H, I at 1.*
21. Applecreek contracted with Gene B. Glick Company ("Glick Company"), a for-profit entity, to manage the property and supply accounting services. The Housing Foundation and Glick Company have common management. To ensure compliance with section 501(c)(3) of the Internal Revenue Code, Applecreek and the Foundation had a third-party broker analyze the market to determine a reasonable arm's-length fee for managing the property. The broker determined that a fee of 5% was reasonable. Applecreek also contracts with GAH Insurance Company, a wholly owned subsidiary of Glick Company, to provide insurance for the property. For 2022, the management fee, accounting fee, and insurance premiums were \$88,624, \$24,072, and \$16,063, respectively. *Ex. C (Notes to Financial Statement at 12-13); Tr. at 113-14, 120-21, 123-24.*

² The covenants remain in effect until the latest of (1) 15 years after at least 50% of the units were first occupied, (2) the first day on which none of the bonds were outstanding, or (3) the date on which any assistance provided to the project under Section 8 of the United States Housing Act of 1937 terminates. *Pet'r Ex. DD.*

22. Applecreek operates the property under the restrictive covenants from the Extended Use Agreement and Land Use Agreement. Under the Extended Use Agreement, the maximum rent Applecreek can charge for the program units (i.e. the units it is obligated to rent to individuals or families with income below 60% of AMI) is governed by section 42 of the Internal Revenue Code, and the U.S. Department of Housing and Urban Development (“HUD”) publishes those rates each year. *See Ex. EE at 1* (covenant requiring project to comply with section 42); *see also, Resp’t Exs. C-E.*
23. The Foundation and Applecreek also operate in accordance with the Internal Revenue Service’s Revenue Procedure 96-32, which lays out ways under which an entity that provides low-income housing may qualify for a 501(c)(3) exemption. *Tr. at 28-31; Pet’r Ex. CC.*
24. First, the procedure provides a “safe harbor” under which organizations that provide low-income housing will be considered charitable because they relieve the poor and distressed. The safe harbor requires (a) at least 75% of the units to be occupied by low-income residents (residents with 80% or less of AMI), and (b) at least 20% of the units to be occupied by very-low-income residents (residents with income of 50% or less of AMI) or at least 40% of the units to be occupied by residents whose income does not exceed 120% of the very-low-income threshold. In order to further the social and economic integration of poorer residents, the safe harbor allows 25% of a property’s units to be occupied by families with income above those thresholds. *Tr. at 28-31; Pet’r Ex. CC.*
25. To qualify under the safe harbor, housing must also be affordable to the charitable beneficiaries. That requirement will ordinarily be satisfied by adopting a rental policy that complies with government-imposed rental restrictions or that otherwise limits the tenant’s portion of the rent to ensure that the housing is affordable to low-income and very-low-income tenants. *Pet’r Ex. CC.*

26. Second, the IRS procedure lays out a “facts and circumstances” test to determine whether organizations that fall outside the safe harbor nonetheless relieve the poor and distressed. Among the facts and circumstances the IRS considers are “[t]he provision of additional social services affordable to the poor residents[,]” and the existence of “affordability covenants or restrictions running with the property.” *Tr. at 28-31; Pet’r Ex. CC.*
27. Anna Hensley, Glick Company’s regional manager for the subject property, testified that the property complied with the occupancy requirements from the Extended Use Agreement and the Land Use Agreement, as well as with the IRS’s safe-harbor provisions. If the property is ever out of compliance, Glick Company moves to rectify the situation. It does not necessarily do so by evicting tenants who no longer meet the income qualifications. Instead, it seeks not to renew their leases. We credit Hensley’s testimony. *Tr. at 88-89, 97.*
28. In crediting Hensley’s testimony, we recognize that the income roll Applecreek attached to its 2020 exemption application lists only 96 units (49.5% of the complex’s 194 units) as being occupied by tenants with income at or below 60% of AMI and four additional units as being occupied by tenants with income at or below 80% of AMI. While that basically meets the levels required by the restrictive covenants, it is well short of what was necessary to fall within the IRS procedure’s safe harbor. *Pet’r Ex. A.*
29. But Applecreek only bought the property in August 2019, so it presumably needed time to bring in more tenants who earned between 60% and 80% of AMI. Indeed, by February 2023, Applecreek rented more than 75% of the occupied units, and almost 75% of total units, to tenants earning at or below 80% of AMI. Applecreek did not offer a complete income roll for 2022 or any income roll for 2021. But given Hensley’s testimony that Applecreek either complied with the safe-harbor provision or moved to rectify any noncompliance, we find that Applecreek was at least in the process of achieving its end goal of renting 75% of its units to tenants with income at or below 80% of AMI during those years. *Hensley testimony; Pet’r Exs. A, T, V.*

30. We also credit Hensley's testimony that Applecreek sought to comply with HUD's restrictions on rental rates, even though the documents offered by Applecreek are confusing. The rent rolls list "market rent" that differs from HUD's rent limits for each year, and the "gross rent" exceeds the "market rent" for virtually all the units. But nobody explained how to properly read those rolls beyond Hensley testifying that, because the subject property's tenants paid their own utilities, a utility allowance must be deducted from the maximum rent that may be charged for program units. And the Assessor did not claim that Applecreek charged tenants rent in excess of the covenants' restrictions. *Pet'r Exs. S, U; Resp't Exs. C-E; Tr. at 89-92, 94.*
31. There is no evidence to show how Applecreek's rents compared to market-level rent, however. At most, Hensley testified that based on a rent assessment from a couple of years before the hearing, Applecreek's rents were significantly below market rents in the community. But she did not say anything about how the rent assessment was conducted, nor did Applecreek offer the assessment itself into evidence. We therefore give no weight to Hensley's testimony about the conclusions from that assessment. *Tr. at 103.*
32. Before moving into the subject property, prospective tenants must first qualify under the household income restrictions. Applecreek then does a background check. This includes checking credit scores as well as reviewing applicants' criminal histories to further Applecreek's goal of providing safe housing. Applecreek's employees also contact prior landlords for information about whether they would re-lease to the applicant. Applecreek may deny applicants with violent criminal histories outright; however, it more commonly denies applicants with poor credit. *Resp't Exs. E-G; Tr. at 109-10.*
33. Once approved, tenants must cover the property's variable security deposit. This starts at \$199, contingent on credit approval. The deposit may increase to as much as one month's rent under certain conditions, however. Tenants who do not pay rent on time are

assessed an initial \$50 late fee with a \$10-per-day charge for each additional day of delinquency. *Pet'r Ex. P; Tr. at 88-92; 95-97; 103-06.*

34. Applecreek gives tenants up to 30 days to cure delinquent payments. The property's service coordinator works with tenants during that time to try to preserve their housing. For example, the coordinator may work with local organizations to provide rent assistance. Absent extenuating circumstances, however, Applecreek rarely forgives or makes concessions on rent. During the COVID-19 pandemic, the Center for Disease Control mandated a freeze on evictions. Applecreek therefore put tenants who were delinquent with their rent on payment plans. Now that the freeze has been lifted, Applecreek refers rent delinquencies of more than 30 days to an attorney. Where there are extenuating circumstances, it will work with the attorney and tenant to preserve the tenant's housing. *Pet'r Ex. P; Resp't Ex. L; Tr. at 90, 106-08.*
35. Still, Applecreek views eviction as a last resort for lease violations. Where a resident violates the lease, the service coordinator immediately begins working with local organizations to provide rent assistance. In other instances, such as where cleanliness or hoarding is an issue, the service coordinator will partner with local organizations to help the tenant remedy the violation. *Pet'r Ex. P; Tr. at 70-73, 90, 97, 107-08.*
36. Catherine Maynard was hired as service coordinator for the subject property in February, 2020, shortly after Applecreek bought the property. It is unclear which entity—Applecreek or the Foundation—employed Maynard, but the Foundation funded the position. Maynard left in the late summer or early fall of 2023. The Foundation (or Applecreek) was in the process of hiring a replacement at the time of the hearing. *Tr. at 52, 59-60, 85.*
37. Maynard tracked her activities, including those she facilitated with outside organizations, and outside donations for each year. She identified each activity or resident contact as a

“service log.” The following service logs and cost savings were reported for calendar years 2020, 2022, and 2023 (through October 31):

Year	Service Logs	Cost Savings
2020	2,174	\$ 28,651
2022	5,784	\$231,563
2023	4,502	<u>\$103,785</u>
		\$385,002

Roughly \$190,000 of the total reported cost savings were related to eviction prevention/housing retention. *Exs. FF-KK; Tr. at 44-45; 54-56, 68-70.*

38. Maynard also provided a list of programs offered, together with dates and numbers of attendees. Many of the programs appear to generally fall under the resident engagement bucket. Others were more educational or addressed food and nutrition needs, such as food-distribution events. Attendance varied, although most events had fewer than 20 attendees and many had fewer than five. Over the course of each year, however, hundreds of people attended the events as a whole. *Exs. FF-KK.*
39. Based on the totality of the evidence, we find that Applecreek owned the real estate for charitable purposes. We also find that the real estate was occupied and used for charitable purposes the entire time during the calendar years ending on the 2022 and 2023 assessment dates.
40. But we have no information about how Applecreek Commons ran the property before selling it to Applecreek in August 2019. We therefore find that Applecreek failed to prove that the property was occupied and used for charitable purposes more than half the time it was occupied and used in the year ending on the 2020 assessment date.

IV. CONCLUSIONS OF LAW AND ANALYSIS

A. Indiana Code § 6-1.1-10-16.7 is not the exclusive means for a taxpayer to obtain an exemption for a property that is subject to an extended use agreement under Section 42 of the Internal Revenue Code.

41. Although tangible property in Indiana is generally taxable, the Indiana Constitution allows the Legislature to exempt specified classes of property, including property being used for “municipal, educational, literary, scientific, religious, or charitable purposes.” Ind. Const. art. 10, § 1.
42. The Legislature has enacted various statutes exercising that authority, including Ind. Code § 6-1.1-10-16, relevant portions of which exempt a building that is owned, and predominantly used and occupied, for “educational, literary, scientific, religious, or charitable purposes.” I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3(c). That exemption extends to the land on which the building sits and to personal property that is owned and used in such a manner that it would qualify for exemption if it were a building. I.C. § 6-1.1-10-16(c) and (e). We will refer to those provisions collectively as the “general exemption statute.”
43. The Legislature also enacted an exemption statute specifically addressing Section 42 properties, which we will refer to as the “Section 42 exemption statute.” I.C. § 6-1.1-10-16.7. That statute specifies that “[e]xcept as provided in this section . . . all or part of real property is exempt from property taxation if” certain requirements are met. I.C. § 6-1.1-10-16.7(a). Those requirements have changed somewhat over the years since 2001 when the statute was originally enacted. But they have always included three things: (1) that the property was constructed, rehabilitated, or acquired to provide housing to income eligible tenants under Section 42’s low-income-housing tax-credit program; (2) that the property was subject to an extended use agreement under that program; and (3) that the owner had entered into an agreement to make payments in lieu of taxes under specified statutes.

44. Applecreek claimed an exemption under the general exemption statute, alleging that it owned, occupied, and used the subject property for charitable purposes. The Assessor, however, argues that Applecreek was barred from an exemption because it did not make payments in lieu of taxes as required for an exemption under the Section 42 exemption statute. Although the Assessor did little to explain his position, he apparently believes that Section 42 exemption statute offers the exclusive means to obtain an exemption for a Section 42 property that remains subject to an extended use agreement.
45. We disagree. The Assessor's argument ignores the Section 42 exemption statute's plain language. That statute simply lays out several requirements, which if met, qualify a property for exemption. The Assessor would have us rewrite the statute to say that it offers the exclusive avenue for Section 42 properties that are subject to extended use agreements to qualify for exemption.
46. The Tax Court rejected a similar argument in *Lincoln Hills Dev. Corp. v. Indiana State Bd. of Tax Comm'rs*. In that case, an operator of housing projects that provided housing to low-income seniors and people with disabilities claimed an exemption under the general exemption statute. *Lincoln Hills Dev. Corp. v. Indiana State Bd. of Tax Comm'rs*, 521 N.E.2d 1360, 1361 (Ind. Tax Ct. 1988). The State Board of Tax Commissioners denied the exemption on grounds that doing so would render meaningless Ind. Code § 6-1.1-10-18.5, which provided an exemption to property owned by a not-for-profit corporation and used as a licensed residential facility for the aged. *Id.*
47. The Court disagreed, explaining that the evidence required to obtain an exemption under the two statutes differed significantly. Under the general exemption statute, a person needed to show that the property was used for one of the listed exempt purposes. Showing a charitable purpose was necessary even where a taxpayer was organized not for profit. *Id.* at 1361-62. By contrast, the owner of a residential facility for the aged could obtain an exemption under Ind. Code § 6-1.1-10-18.5 simply by proving that it was a not-for-profit corporation and was licensed to run the facility under the applicable licensing

statute. *Id.* Because the statutes had different requirements, the Legislature had not done a useless thing in enacting and amending Ind. Code § 6-1.1-10-18.5. And that statute was not a limitation on claiming exemptions for the purposes listed under the general exemption statute. *Id.* at 1362.

48. Like the licensed-residential-facility statute at issue in *Lincoln Hills*, the Section 42 exemption statute sets forth different elements that a property owner must prove to obtain an exemption than what is required under the general exemption statute. Thus, the Section 42 exemption statute does not limit a taxpayer from claiming an exemption under the general exemption statute.

B. The subject property qualified for a charitable-purposes exemption for the 2022 and 2023 tax years, but not for 2020.

49. We therefore turn to Applecreek's claim that it is entitled to a charitable-purposes exemption under the general exemption statute. We find that Applecreek owned the property for charitable purposes. And for the 2022 and 2023 appeals, we also find that Applecreek proved that the property was used and occupied exclusively for charitable purposes. For its 2020 appeal, however, we find that Applecreek failed to prove that the property was used predominantly for charitable purposes. We begin with our discussion of Applecreek's 2022 and 2023 appeals.

1. Applecreek owned and exclusively occupied and used the subject property for charitable purposes for the 2022 and 2023 tax years.

50. Because exemptions relieve properties from bearing their share of the cost of government services, they are strictly construed against taxpayers and in favor of the state. *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). A taxpayer bears the burden of proving it is entitled to an exemption. *Id.* Every exemption appeal "stand[s] on its own facts," and it is the taxpayer's duty to walk us through the analysis. *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cty. Ass'r*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009).

51. We must consider the term “charitable purpose” in its broadest constitutional sense. *Starke Cty. Ass’r v. Porter-Starke Servs., Inc.*, 88 N.E.3d 814, 817 (Ind. Tax Ct. 2017). A charitable purpose generally exists if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday 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. *Id.* When a private entity “takes on a task that would otherwise fall to the government, this provides a benefit to the community as a whole because it allows the government to direct its funds and attention to other community needs.” *College Corner, L.P. v. Dep’t of Local Gov’t Fin.*, 840 N.E.2d 905, 910 (Ind. Tax Ct. 2006).
52. Applecreek owns the property for a charitable purpose: to provide affordable housing to people with low income. In doing so, Applecreek seeks to relieve a burden that the State of Indiana has assumed. *See Hebron-Vision, LLC v. Porter Cty. Ass’r*, 134 N.E.3d 1077, 1084-185 (Ind. Tax Ct. 2019) (explaining the statutory underpinnings of how the Legislature has assumed the burden of providing affordable housing to low-income individuals and families through, among other things, creating the Indiana Housing and Community Development Authority).
53. And Applecreek does so without seeking to profit. Although organized as a domestic limited liability company rather than as a not-for-profit corporation, Applecreek does not operate with a profit motive. Instead, it was formed to further the Housing Foundation’s scheme to preserve the dwindling stock of affordable housing by purchasing properties that are at risk of being converted to market-rate housing.
54. Although Applecreek contracted with a related for-profit entity, Glick Company, to manage the property, it paid Glick Company what a third-party broker’s market research determined was a reasonable arm’s-length fee. There is no evidence of a similar process for determining the reasonableness of the fees charged by Glick Company for its

accounting services or the premiums charged by GAH Insurance. But those were relatively minor expenses, and we see no evidence of an overarching scheme to use the subject property to further the Glick Family's for-profit ventures.

55. We also find that Applecreek used the property exclusively for charitable purposes both by leasing its units primarily to low-income individuals and families at affordable rates and through the efforts of its social-service coordinator program, which seeks to improve the lives of all its tenants. Through those obviously charitable acts, Applecreek provided a benefit sufficient to justify the loss of tax revenue.
56. The Assessor disagrees that Applecreek provided a public benefit sufficient to justify an exemption. In that vein, he argues: (1) that Applecreek provided housing to low-income tenants merely as a quid pro quo for arrangements with the federal government to finance the property's development; (2) that it rented as many units without income or rent restrictions as it could while still complying with the restrictive covenants burdening the property; and (3) that it did not offer sufficient evidence regarding the income level of its tenants and the rents it charged.
57. We disagree on each point. The first two points are closely related and stem from the principle that a taxpayer is not entitled to receive an exemption where it merely acts as a conduit through which the government provides a public benefit. *See Jamestown Homes of Mishawaka v. St. Joseph Cty. Ass'r*, 909 N.E.2d 1138, 1144 (Ind. Tax Ct. 2009) *reh'g den.* 914 N.E.2d 13 (holding, in part, that the taxpayer failed to show it had "lessened the burden of government in meeting the need for affordable housing because that need is ultimately being met by the government through its mortgage insurance and interest subsidy").
58. There was no quid pro quo in this case, however. Applecreek did not enter into an agreement with the federal government to finance the property's development—Applecreek Commons did. And there is no evidence to suggest that Applecreek

Commons or Paragus, the managing member of Applecreek Commons' limited partner, were related either to Applecreek or to Applecreek's sole member, the Housing Foundation.

59. Nonetheless, we recognize that for the years under appeal, Applecreek was bound by the restrictive covenants requiring it to lease at least 50% of its units to tenants earning 60% or less of AMI at restricted rates and that once those covenants expire, Applecreek will be free to rent all of the property's units at market rates to any tenants it chooses, regardless of their income level. But the undisputed evidence shows that Applecreek planned to continue to rent primarily to low-income tenants at affordable rates even after the covenants expire. Indeed, that is how the Housing Foundation, Applecreek's sole member, operates all the properties it acquires as part of its plan to preserve affordable housing. So Applecreek was contributing to relieving a government burden in a way that a housing provider that merely receives federal subsidies in exchange for complying with income-level and rent restrictions does not.
60. More importantly, to qualify for exemption, a taxpayer need not demonstrate that it relieves a government obligation completely. *Hebron Vision*, 134 N.E.3d at 1095. Thus, even when a taxpayer receives government funds, it fulfills a charitable purpose “to the extent that it lessened *some part* of the government's burden.” *Id.* at 1096 (*quoting Porter-Starke Serv.*, 88 N.E.3d at 819) (emphasis in original)).
61. Applecreek went above and beyond simply complying with the restrictive covenants. Those covenants require only that Applecreek rent at least 50% of its units to tenants earning 60% or less of AMI. Applecreek, however, sought to rent additional units to tenants earning between 60% and 80% of AMI. While Applecreek rented only four units to such tenants on January 1, 2020, it had bought the property less than five months earlier. That changed once Applecreek began operating the property. Although we do not have a complete income roll for 2022, we credit Hensley's testimony that Applecreek complied with the IRS's safe-harbor provisions and that if ever out of compliance, it

moved to rectify the situation. Indeed, that is reflected by the income roll from February 2023, showing that more than 75% of the occupied units were rented to tenants earning 80% or less of AMI.

62. The Assessor has a different take on that last fact. In the Assessor's view, it shows that Applecreek sought to rent as many units without income or rent restrictions as allowable under the IRS' safe-harbor guidance and therefore negates any charitable intent. We disagree. As the IRS recognizes, renting a limited number of units to tenants with income above the 80%-of-AMI threshold assists in the social and economic integration of poorer residents. Thus, rather than negating a charitable purpose, renting some units to tenants earning at least 80% of AMI actually furthers that purpose.
63. More importantly, unlike the income-level and rent restrictions from the restrictive covenants, Applecreek was not bound to comply with the IRS' safe-harbor provisions. So Applecreek using the safe-harbor provisions as a guide for the appropriate number of units to rent without regard to tenants' income levels does not equate to the federal government subsidizing Applecreek's provision of housing to tenants earning between 60% and 80% of AMI. Were it otherwise, we struggle to imagine how any taxpayer would qualify for an exemption. One could always say that through the grant of exemption in exchange for a taxpayer's charitable acts, the government is relieving its own burden.
64. We give a little more weight to the Assessor's argument that Applecreek offered no evidence to show it charged its low-income tenants below-market rent. Of course, the Assessor did not offer any evidence to show that Applecreek charged above market rent either. And despite the lack of explanation as to how to properly read Applecreek's rent rolls, there is no dispute that Applecreek complied with HUD's rent limitations for the restricted units. So regardless of what the actual market rent was for any of the subject property's program units, we find that Applecreek was charging those tenants affordable rent.

65. In any case, Applecreek did more to relieve a government burden than simply renting to tenants earning less than area median income at affordable rates: it also provided a full-time service coordinator to improve residents' lives. While not solely geared toward low-income tenants or the preservation of affordable housing, the services the coordinator provided or facilitated largely addressed the economic and housing needs of the property's low-income residents. For example, many of the services—and almost half of the cost savings provided to tenants in the years for which we have specific data—directly addressed maintaining tenants' housing. Other activities addressed economic, employment, social, mental-health, and food-security needs that must be met for individuals and families to thrive and that therefore indirectly affect their ability to maintain stable housing.
66. The Assessor argues that the service coordinator's efforts to help tenants keep their housing was self-serving because Applecreek was interested in maintaining the property's occupancy and continuing to receive rent. He further argues that most of the services and the corresponding cost savings to tenants were donated by outside groups and that those outside groups, rather than Applecreek, were the ones providing benefits to Applecreek's residents. In any case, he argues that the services provided by the coordinator had little impact on residents given what he characterizes as the low attendance at the majority of the coordinator's programs.
67. We disagree on all those points. While Applecreek may have reaped some benefit from the services that the coordinator provided, that was merely a byproduct of—not the motive for—the service coordinator's actions. The Housing Foundation created the service-coordinator position in order to improve tenants' lives. And there is no evidence to suggest that profit-oriented landlords provide similar services.
68. We similarly give little weight to the fact that Applecreek's service coordinator facilitated, rather than directly provided, most of the benefits received by the tenants.

Without the coordinator's efforts in identifying the tenants' needs for those services and coordinating with various outside entities to deliver them, the tenants would not have received the services. Indeed, the Tax Court rejected another assessor's attempt to characterize a low-income apartment community's facilitation of social services as something other than charitable acts by the community because the services were largely provided by outside agencies. *Hebron-Vision*, 134 N.E.3d at 1093-94. We therefore find that providing the service coordinator is an obviously charitable act that differs from the everyday activities of man in general.

69. As for the Assessor's last point—that attendance at many programs sponsored by the coordinator was low—we note that putting on those programs was only one aspect of the services the coordinator provided. And while attendance at many individual events was relatively low, hundreds of residents attended the events over the course of each year for which we have specific data.
70. Finally, the Assessor argues that Applecreek did not use the property for a charitable purpose because it retained traditional landlord rights, such as the rights to perform background checks on potential residents, require security deposits, apply late fees, and evict tenants.
71. Once again, we disagree. Retaining traditional landlord rights may be consistent with a charitable purpose. For example, Applecreek strives to provide its residents with a safe and secure place to live, and it needs to conduct background checks to do that. In other cases, however, maintaining traditional landlord rights might weigh against a finding of charitable purpose. Either way, retention of traditional landlord rights is simply one fact to consider in determining whether the weight of the evidence shows that the property is being used for charitable purposes.
72. We find that the traditional landlord rights retained by Applecreek largely do not weigh against a finding of charitable use. While Applecreek retains the right to evict tenants,

including for nonpayment of rent, it strives to avoid doing so. *See Hebron Vision*, 134 N.E.3d at 1094 (citing to fact that taxpayer worked with tenants to keep evictions to a minimum as support for finding that the Board had erred in concluding that taxpayer had not shown a charitable purpose). Granted, those efforts mostly do not include Applecreek making rent concessions. But it already charges affordable rent, and “charitable” is not necessarily the equivalent of “free.” *Knox Cty. Prop. Tax Assessment Bd. of App. v. Grandview Care, Inc.*, 826 N.E.2d 177, 184 (Ind. Tax Ct. 2005).

73. Charging late fees and using credit histories to deny applicants or to charge higher security deposits arguably are less in keeping with a charitable purpose. But that does not outweigh the evidence tending to show that Applecreek had a charitable purpose in owning and using the property. We therefore find that the totality of the evidence shows that the property was owned, and was exclusively occupied and used, for charitable purposes.
2. Applecreek is not entitled to an exemption for the 2020 tax year because it failed to show that the subject property was predominantly used for charitable purposes in the year ending on the assessment date.
74. While Applecreek owned the property for charitable purposes on the January 1, 2020, assessment date, it failed to prove that the subject property was used predominantly for charitable purposes during the course of 2019. Under the predominant-use test, “a property must be used or occupied for exempt purposes during more than 50% of the time that it is used or occupied in the year that ends on the assessment date.” I.C. § 6-1.1-10-36.3(c)(3).
75. While we have ample evidence describing how Applecreek used the property after acquiring it from Applecreek Commons in mid-August of 2019, we have little evidence to show how Applecreek Commons used the property during the first eight months of that year. At most, we can infer that Applecreek Commons rented roughly 50% of the units to tenants earning 60% or less of AMI at affordable rates as required by the restrictive covenants.

76. By itself, complying with the restrictive covenants does not suffice to show a charitable purpose. Unlike Applecreek, which acquired the property after it had been developed, Applecreek Commons agreed to rent at least 50% of the property's apartments at restricted rates to families making 60% of less of AMI as a quid pro quo for receiving government subsidies (tax credits and economic development revenue bonds) to finance the project's development. Applecreek therefore needed to offer additional evidence to show that Applecreek Commons relieved the government burden of providing affordable housing, rather than the government relieving its own burden through those subsidies.
77. Because Applecreek did not show that the subject property was predominantly used for charitable purposes during the year ending on the January 1, 2020 assessment date, we deny its request for an exemption for the 2020 tax year.

C. Applecreek failed to identify any of its personal property, much less prove that it owned and used that property for charitable purposes.

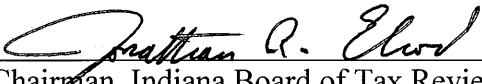
78. Finally, it is unclear whether Applecreek still seeks an exemption for its personal property. On its exemption applications, Applecreek indicated that it was seeking an exemption for that property, although it wrote "N/A" in the space asking for the assessed value of that property. But Applecreek did not specifically refer to personal property in its appeal petitions. More importantly, it did not offer evidence to identify any of its personal property, much less to show that such property was owned or used for charitable purposes. We therefore find that Applecreek failed to prove that it was entitled to an exemption for personal property.

V. CONCLUSION

79. We find that the subject real property was owned, and was exclusively occupied and used, for charitable purposes for the 2022 and 2023 assessment dates. It is therefore entitled to a 100% exemption for those years. But we find that Applecreek failed to prove that the real property was predominantly used for charitable purposes for the 2020

assessment date, and we therefore deny its exemption request for that year. Finally we find that Applecreek failed to prove that its personal property was entitled to an exemption for any of the years under appeal.

DATE: OCTOBER 15, 2024



Chairman, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.