

REPRESENTATIVES FOR PETITIONER:

L. Edward Cummings and Katie Kotter, Hart Bell, LLC

REPRESENTATIVE FOR RESPONDENT:

Maurice Doll, Doll & Sievers Attorneys at Law, LLC

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | | |
|-------------------------|---|-------------------|----------------------|
| Freelandville Community |) | Petitions: | See attached |
| Home, Inc., |) | | |
| |) | Parcels: | See attached |
| Petitioner, |) | | |
| |) | County: | Knox |
| v. |) | | |
| |) | Assessment Years: | 2014, 2015, and 2016 |
| Knox County Assessor, |) | | |
| |) | | |
| Respondent. |) | | |

Appeals from the Final Determinations of the
Knox County Property Tax Assessment Board of Appeals

October 20, 2017

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:

INTRODUCTION

1. Freelandville Community Home, Inc. (“Freelandville”) appeals the denials of its exemption applications. After examining the evidence presented, we find that the subject property was exempt from taxation under Indiana Code § 6-1.1-10-16 and § 6-1.1-10-18.5 for the 2014, 2015, and 2016 assessment years.

PROCEDURAL HISTORY

2. Freelandville filed Form 136 Applications for Property Tax Exemption for the 2014, 2015 and 2016 tax years.¹ The PTABOA denied the exemptions and found the property 100% taxable. Freelandville timely appealed to the Board.
3. On May 23, 2017, the designated Administrative Law Judge, Andrew Howell, held a hearing on the petitions. Neither he nor the Board inspected the subject property.
4. Attorneys L. Edward Cummings and Katie Kotter represent Freelandville. Attorney Maurice Doll represents the Knox County Assessor.
5. The following people testified under oath:
 - Rob McLin, CEO, Good Samaritan Hospital
 - John Manning, Vice-President, Freelandville Community Home, Inc.
 - Catherine Lane, Knox County Assessor
6. Freelandville submitted the following exhibits:

| | |
|-----------------------|---|
| Petitioner's Ex. 1: | IRS Letter regarding Freelandville's section 501(c)(3) status |
| Petitioner's Ex. 2: | Amendments to Freelandville Articles of Incorporation |
| Petitioner's Ex. 3: | Freelandville By-Laws, Amended March 11, 1997 |
| Petitioner's Ex. 4: | Map and Photos of the Freelandville Facility |
| Petitioner's Ex. 5-1: | Management Agreement between Good Samaritan Hospital and Freelandville |
| Petitioner's Ex. 5-2: | Health Care Facility Lease Agreement between Good Samaritan Hospital and Freelandville |
| Petitioner's Ex. 6: | Comprehensive Care Licenses for Freelandville Community Home for the years under appeal |
| Petitioner's Ex. 7: | Licenses for Good Samaritan Hospital for the years under appeal |
| Petitioner's Ex. 8: | 2014 Pleadings and Attachments provided to the Board |
| Petitioner's Ex. 9: | 2014 Form 103 and 104 Personal Property Returns |
| Petitioner's Ex. 10: | 2015 Pleadings and Attachments provided to the Board |
| Petitioner's Ex. 11: | 2015 Form 103 and 104 Personal Property Returns |
| Petitioner's Ex. 12: | 2016 Pleadings and Attachments provided to the Board |
| Petitioner's Ex. 13: | 2016 Form 103 and 104 Personal Property Returns |
| Petitioner's Ex. 14: | IRS Letter regarding Good Samaritan Hospital's section 501(c)(3) status |

¹ The Form 136 for the 2014 tax year only requested an exemption under Ind. Code § 6-1.1-10-18.5.

Petitioner's Ex. 15: Excerpt from Freelandville Community Home Admission Manual

7. The Assessor submitted no exhibits.
8. The Board recognizes the following additional items as part of the record: (1) all motions and briefs filed by both parties; (2) all notices and orders issued by the Board; and (3) a digital recording of the hearing.

OBJECTIONS

9. Freelandville objected to the testimony of Catherine Lane, the Knox County Assessor, as the Assessor did not provide Freelandville with a witness or exhibit list prior to the hearing as required by 52 IAC 2-7-1(b)(2). Failure to comply with this requirement “*may* serve as grounds to exclude the evidence or testimony at issue.” 52 IAC 2-7-1(f) (*emphasis added*). However, exclusion of the Assessor’s testimony would not serve the purpose of this discovery rule. “The purpose of the discovery rules is the free exchange of fact information and to permit each party to prepare its case for trial.” *Evansville Courier v. Vanderburgh Cnty. Assessor*, 78 N.E.3d 746, 752 (Ind. Tax Ct. June 5, 2017). This ensures that neither party is subject to litigation by surprise or ambush. *Brandenburg Indus. Serv. Co. v. Ind. Dep't of State Revenue*, 26 N.E.3d 147, 152 (Ind. Tax Ct. 2015). Since the objectionable testimony was that of a named party, Freelandville was aware of the witness and her involvement with this case. Her testimony should come as no surprise to Freelandville. Therefore, allowing the testimony does not prejudice Freelandville. The Board overrules Freelandville’s objection.

FINDINGS OF FACT

10. Freelandville is a 501(c)(3) non-profit organization under the Internal Revenue Code. It was created with the purpose of providing housing and nursing care in the community, thereby allowing aging Freelandville residents to obtain care close to home. To fulfill this purpose, Freelandville owns and occupies a 50-bed facility called the Freelandville Community Home (the “Home”) in Freelandville, Indiana. Freelandville also provides a variety of services to the surrounding community, such as vocational training, community

fundraisers, holiday events, and a Meals on Wheels program. *McLin Testimony; Manning Testimony; Pet'r's Exs. 2, 3, 15.*

11. The large majority of payments for Freelandville's services come from Medicaid. Only a few of the residents of Freelandville pay out of pocket. If someone is unable to make payments, Freelandville has the right to seek collection for unpaid debts. However, Freelandville has never done so. Instead, Freelandville forgives the unpaid debt on an ad hoc basis after obtaining approval from its Board. The Freelandville Board members do not receive compensation for their service. *Manning Testimony; Pet'r's Ex. 3.*
12. In 2013, Freelandville engaged in an arrangement with Good Samaritan Hospital ("GSH"), a county hospital and a 501(c)(3) non-profit organization under the Internal Revenue Code, to increase cash flow by leveraging federal funds. Prior to this arrangement, Freelandville was running at a small net loss. *McLin Testimony; Manning Testimony; Pet'r's Ex. 14.*
13. On July 1, 2013, Freelandville leased the Home to GSH for operation as a health care facility. On that same day, GSH and Freelandville entered into a Management Agreement, making Freelandville the manager of the Home. Although GSH now had authority and responsibility for the operation of the Home, Freelandville remained the owner of the property, retained complete access to the Home, and continued to do all of the day-to-day management activities. *McLin Testimony; Pet'r's Ex. 5-1, 5-2.*
14. By entering into this lease and Management Agreement, Freelandville could obtain federal funds that were otherwise unavailable. Half of these funds were placed into an operating account owned by GSH. Freelandville had access to these funds and wrote checks from this operating account to run the Home. The other half of the funds were controlled by GSH and used to provide further support for the Home, such as paying for a nurse practitioner and providing access to electronic medical records. *McLin Testimony.*
15. During the years under appeal, Freelandville was contractually obligated to use the facility solely for the operation of a nursing home. It was Freelandville's duty to supervise, manage, operate, control, and direct the performance of the Home.

Freelandville had its own billing and accounting, owned and used its own personal property to provide care, and employed the staff of the Home. *McLin Testimony; Manning Testimony; Pet'r's Ex. 5-1, 5-2.*

16. GSH obtained and held the comprehensive care license under I.C. § 16-28 that allowed the Home to operate. GSH was not involved in the day-to-day operations of the Home, but received quarterly updates from Freelandville about satisfaction and safety of the Home. GSH also provided residents of the Home with access to one of its nurse practitioners. This employee was paid with money obtained by GSH through its relationship with Freelandville. *McLin Testimony; Pet'r's Exs. 5-1, 5-2, 6.*
17. The agreement between Freelandville and GSH continues to this day. Since this agreement, Freelandville has been close to breaking even every year. It would have been difficult for Freelandville to continue operating without the money obtained by its arrangement with GSH. *McLin Testimony; Manning Testimony.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

18. While all tangible property is generally subject to taxation, the legislature may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes. Ind. Const., Art. 10 § 1. 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).
19. A taxpayer bears the burden of proving that its property qualifies for an exemption. *Id.* Every exemption case “stand[s] on its own facts,” and it is the Petitioner’s duty to walk the Board through the analysis. *Indianapolis Osteopathic Hospital, Inc.* 818 N.E.2d at 1014; *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

20. The Board hears cases de novo, meaning that we base our decisions on evidence and arguments offered at our hearings. A taxpayer's burden is to prove it is entitled to an exemption, not to demonstrate that a PTABOA's determination was incomplete or relied on faulty reasoning.

B. Indiana Code § 6-1.1-10-18.5 : Nonprofit corporation property used in operation of a home for the aged

21. Freelandville claims it is exempt under I.C. § 6-1.1-10-18.5(b), which reads:

- (b) Tangible property is exempt from property taxation if it is:
 - (1) owned by an Indiana nonprofit corporation; and
 - (2) used by that corporation . . . in the operation of a residential facility for the aged licensed under IC 16-28...

22. The Assessor argues that Freelandville does not meet the statutory requirements of I.C. § 6-1.1-10-18.5. First, the Assessor argues that, by the terms of the Management Agreement, GSH operates the Home and this lack of unity prohibits Freelandville from obtaining an exemption. Second, the Assessor argues that Freelandville's failure to hold the comprehensive care licenses for the Home prohibited Freelandville from qualifying for an exemption. These arguments are incorrect.

23. Freelandville satisfies the first requirement of I.C. § 6-1.1-10-18.5(b) by being an Indiana nonprofit corporation that owns the subject property.

24. As to the second requirement, Freelandville is not required to hold the title of "operator" in its contract with GSH to qualify for an exemption under I.C. § 6-1.1-10-18.5. While GSH was defined as the "operator" of the Home under its contract with Freelandville, I.C. § 6-1.1-10-18.5 only requires that the property be "used by [its owner] in the operation of . . . a residential facility for the aged." Freelandville owned and used its personal property to provide care in the Home, which was located on real property owned by Freelandville. This qualifies as using property in the operation of a residential facility for the aged.

25. Likewise, Freelandville is not required to be named on the comprehensive care license. Freelandville may qualify for exemption under I.C. § 6-1.1-10-18.5 as long as the Home itself is “used by [its owner] . . . and licensed under I.C. § 16-28.” There is no dispute that the Home is licensed under I.C. § 16-28. Thus, Freelandville qualifies for the exemption. The statute does not explicitly require that the owner of the property to be the license holder. The Board will not read new requirements or new language into the Indiana Code.
26. Because Freelandville owned the property at issue in this case and used that property in the operation of a properly licensed residential facility for the aged, Freelandville qualifies for an exemption from tax under I.C. § 6-1.1-10-18.5.

C. Indiana Code § 6-1.1-10-16 : Charitable Purpose Exemption

27. Freelandville also claimed an exemption for a charitable purpose under § 6-1.1-10-16.² Although Freelandville qualifies for an exemption under I.C. § 6-1.1-10-18.5, the exemption provision under Ind. Code § 6-1.1-10-16 requires a completely separate inquiry. *See Lincoln Hills Dev. Corp. v. Indiana State Bd. of Tax Comm’rs*, 521 N.E.2d 1360, 1361 (explaining the different evidence required under each statute to obtain an exemption).
28. To qualify for a charitable purpose exemption, the property at issue must be “owned, occupied, and used by a person for . . . charitable purposes.” I.C. § 6-1.1-10-16. That exemption extends to the land on which the building is situated. Ind. Code § 6-1.1-10-16(c).
29. Evaluating whether a property is owned, occupied, and used for exempt purposes is a “fact sensitive inquiry; there are no bright-line tests.” A property need not be owned, occupied, and used by the same entity to be exempt. *See Jamestown Homes of*

² The Assessor argues that because Freelandville did not indicate it was seeking a charitable exemption on its 2014 Form 136 it has waived that claim. As the Assessor’s own testimony indicates that the PTABOA considered whether Freelandville qualified for a charitable exemption, we do not find the argument waived. *Lane testimony*.

Mishawaka, Inc. v. St. Joseph County Assessor, 914 N.E. 2d 13, 14 (Ind. Tax Ct. 2009);
See also Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs, 686 N.E.2d 954, 959
(Ind. Tax Ct. 1997).

30. Despite this well settled principle, the Assessor asks the Board to ignore the Tax Court's prior rulings:

Let me begin by acknowledging the Tax Court's decision in [*Grandview*], but with all due respect, its opinion as to the legislature's intent not to require one charitable entity to achieve unity of ownership, occupation, and use is wrong. *Resp't Brief at 15.*

The Assessor goes on at length to explain why she believes the Tax Court has misinterpreted I.C. § 6-1.1-10-16(a). We are both unwilling and unable to ignore the Tax Court's precedent. But this fact does not affect our determination, as we find Freelandville owned, occupied, and used the subject property.

31. It is uncontested that Freelandville owned the tangible property in question. Moreover, as the day-to-day manager of the Home, Freelandville was both the user and the occupant of the property. Through its Management Agreement with GSH, Freelandville had contractual rights of occupation and use, which allowed it to operate the Home. Freelandville utilized these rights to retain a constant presence in the nursing facility, maintain control over the facility, and perform the essential functions necessary to operate the facility during the years at issue.

32. In contrast, we find insufficient evidence to show that GSH was actually occupying or using the facility. GSH held quarterly meetings with the management, but the nature of the meetings was merely to get updates and reports on quality care measures. The hospital also had a nurse practitioner who saw patients when the medical director was unavailable, but these activities were minimal and do not rise to the level of occupancy or use.

33. Because Freelandville owned, used, and occupied the Home, we must determine whether its use was charitable. A charitable purpose exists if there is: (1) evidence of the relief of

human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general, and (2) 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) (citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 251 N.E.2d 673, 682 (Ind. Ct. App. 1969)).

34. The Indiana Tax Court has established that caring for the aged can constitute a charitable purpose relieving human want and inuring benefit to the general public by providing intangible benefits to the aged. The needs of seniors go beyond assistance with health or finances. *Wittenberg Lutheran Vill. Endowment Corp. v. Lake Cty. Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483 (Ind. Tax Ct. 2003). Seniors also need a sense of community and involvement. *Id.* In *Raintree Friends Housing, Inc. v. Indiana Dep't of State Revenue*, 667 N.E.2d 810 (Ind. Tax Ct. 1996), the court stated that:

Caring for the aged is a recognized benefit to the community at large and society as a whole. Indiana law recognizes that the aged require care and attention entirely independent of financial needs, and that present day humanitarian principles demand that those in their declining years have the opportunity to live with as much independence as their strength will permit, in as pleasant and happy surroundings as their finances will reasonable justify. Thus, by meeting the needs of the aging, namely, relief of loneliness and boredom, decent housing that has safety and convenience, and is adapted to their age, security, well-being, emotional stability, and attention to problems of health, a charitable purpose is accomplished.

Raintree Friends Housing at 814-15 (internal citations and punctuation omitted).

35. Although care for the aged can achieve a charitable purpose, there is no per se rule that automatically exempts an assisted living facility from tax merely because the facility happens to care for the elderly. In *Tipton Cnty. Health Care Found., Inc. v. Tipton Cnty. Assessor*, the Tax Court found that a for-profit entity that operated assisted living facilities was not charitable. 961 N.E.2d 1048, 1052 (Ind. Tax Ct. 2012). Although the activities done were “good and noble deeds,” there was no evidence provided to show a

charitable purpose as opposed to a profit motive. *Id.* In this case, neither Freelandville nor the Hospital were for-profit companies. Freelandville proved it had a charitable purpose, and its arrangement with the Hospital does not undermine that purpose.

36. Freelandville has shown it was not operating with a profit motive as its purpose. First, Freelandville is a 501(c)(3) non-profit entity. Although this fact is not alone determinative, it is germane in the determination of whether or not Freelandville operated with a charitable or a profit motive. *Tipton Cnty.*, 961 N.E.2d at 1053. Freelandville states unequivocally, in both its bylaws and its articles of incorporation, that its purpose is to provide housing and nursing care for the aged. In doing so, the Home allowed aging Freelandville residents to stay in Freelandville and receive care close to their home. Freelandville also went beyond providing medical care and housing at the Home to meet the intangible needs of its residence and the community through vocational training, community fundraisers, holiday events, and a Meals on Wheels program. Prior to its agreement with GSH, Freelandville was operating at a loss. The agreement between Freelandville and GSH allowed Freelandville to break even and the Home to stay in operation. Caring for the aged and seeking to break even are distinct from operating with a profit motive. Finally, the volunteer Board of Freelandville repeatedly voted to forgive the debts of patients who were unable to pay, which demonstrates the lack of a profit motive from the decision makers at the facility.
37. The Assessor made a number of arguments regarding the amount of care provided by Freelandville for which it did not receive compensation. In summary, the Assessor argues that only the care that was provided free of charge can be considered charitable. We find this interpretation impermissibly narrow. Instead, we find that Freelandville uses its property for a single, charitable purpose: caring for the elderly. The care provided was not limited to forgiving unpaid expenses or providing housing, but included all of the activities that connect the aged residents to their community.³

³ The Assessor also argued that Freelandville failed to meet the requirements of the predominate use test. This argument was premised on the Assessor's contention that only the care provided free of charge was charitable. As we find Freelandville's entire use of the property was charitable, it meets the requirements of the predominate use test.

38. We find Freelandville's activities to be charitable in nature, and not driven by a profit motive. Freelandville owned, occupied, and used its property for a charitable purpose. Therefore, the property owned by Freelandville is exempt from tax under Ind. Code § 6-1.1-10-16.

D. Conclusion

39. Freelandville owned the property at issue in this case and used that property in the operation of a properly licensed residential facility for the aged. Thus, the subject property is exempt from tax under I.C. § 6-1.1-10-18.5.

40. We also find that Freelandville demonstrated that the property in question was owned, occupied, and used for a charitable purpose. Thus, the subject property is exempt from tax under I.C. § 6-1.1-10-16.

The Indiana Board of Tax Review issues the Final Determination of the above captioned matter on the date written above.

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 after 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>>.

ATTACHMENT

| Petition # | Petitioner | Parcel # |
|------------------------|------------------------------------|--------------------------|
| 42-021-14-2-8-00010 | Freelandville Community Home, Inc. | 42-03-16-202-013.000-021 |
| 42-021-14-2-8-00009 | Freelandville Community Home, Inc. | 42-03-16-202-021.000-021 |
| 42-021-14-2-8-00008 | Freelandville Community Home, Inc. | 42-03-16-202-005.000-021 |
| 42-021-14-2-8-00007 | Freelandville Community Home, Inc. | 42-03-16-202-007.000-021 |
| 42-021-14-2-8-00006 | Freelandville Community Home, Inc. | 42-03-16-202-008.000-021 |
| 42-021-14-2-8-00005 | Freelandville Community Home, Inc. | 42-03-16-202-011.000-021 |
| 42-021-14-2-8-00004 | Freelandville Community Home, Inc. | 42-03-16-202-012.000-021 |
| 42-021-14-2-8-00003 | Freelandville Community Home, Inc. | 42-03-16-202-022.000-021 |
| 42-021-14-2-8-00002 | Freelandville Community Home, Inc. | 42-03-16-202-025.000-021 |
| 42-021-14-2-8-00001 | Freelandville Community Home, Inc. | 42-03-16-202-014.000-021 |
| 42-021-15-2-8-00167-15 | Freelandville Community Home, Inc. | 42-03-16-202-008.000-021 |
| 42-021-15-2-8-00166-15 | Freelandville Community Home, Inc. | 42-03-16-202-012.000-021 |
| 42-021-15-2-8-00168-15 | Freelandville Community Home, Inc. | 42-03-16-202-013.000-021 |
| 42-021-15-2-8-00169-15 | Freelandville Community Home, Inc. | 42-03-16-202-005.000-021 |
| 42-021-15-2-8-00170-15 | Freelandville Community Home, Inc. | 42-03-16-202-021.000-021 |
| 42-021-15-2-8-00171-15 | Freelandville Community Home, Inc. | 42-03-16-202-007.000-021 |
| 42-021-15-2-8-00172-15 | Freelandville Community Home, Inc. | 42-03-16-202-011.000-021 |
| 42-021-15-2-8-00173-15 | Freelandville Community Home, Inc. | 42-03-16-202-022.000-021 |
| 42-021-15-2-8-00174-15 | Freelandville Community Home, Inc. | 42-03-16-202-025.000-021 |
| 42-021-15-2-8-00175-15 | Freelandville Community Home, Inc. | 42-03-16-202-014.000-021 |
| 42-021-16-2-8-01599-16 | Freelandville Community Home, Inc. | 42-03-16-202-013.000-021 |
| 42-021-16-2-8-01600-16 | Freelandville Community Home, Inc. | 42-03-16-202-005.000-021 |
| 42-021-16-2-8-01601-16 | Freelandville Community Home, Inc. | 42-03-16-202-011.000-021 |
| 42-021-16-2-8-01603-16 | Freelandville Community Home, Inc. | 42-03-16-202-025.000-021 |
| 42-021-16-2-8-01605-16 | Freelandville Community Home, Inc. | 42-03-16-202-022.000-021 |
| 42-021-16-2-8-01607-16 | Freelandville Community Home, Inc. | 42-03-16-202-021.000-021 |
| 42-021-16-1-8-01609-16 | Freelandville Community Home, Inc. | 42-03-16-202-014.000-021 |
| 42-021-16-2-8-01611-16 | Freelandville Community Home, Inc. | 42-03-16-202-012.000-021 |
| 42-021-16-2-8-01613-16 | Freelandville Community Home, Inc. | 42-03-16-202-008.000-021 |
| 42-021-16-2-8-01614-16 | Freelandville Community Home, Inc. | 42-03-16-202-007.000-021 |