

REPRESENTATIVE FOR PETITIONER: Michael Red. Morse & Bickel, P.C.
 REPRESENTATIVES FOR RESPONDENT: Brian Cusimano, Attorney at Law
 Marilyn Meighen, Attorney at Law

**BEFORE THE
 INDIANA BOARD OF TAX REVIEW**

HOUSING PARTNERSHIPS, INC.)	Pet. Nos.: 03-003-08-2-8-00003
)	03-003-10-2-8-00002
Petitioner,)	03-005-12-2-8-00001
)	03-005-12-2-8-00002
v.)	03-005-14-2-8-00001
)	03-006-16-2-8-01263-16
BARTHOLOMEW COUNTY ASSESSOR,)	
)	Parcel Nos.: Various
Respondent.)	
)	Assessment Years 2008, 2010, 2012, 2014, 2016
)	

**ORDER GRANTING REHEARING AND AMENDING FINDINGS OF FACT,
 CONCLUSIONS OF LAW, AND FINAL DETERMINATION**

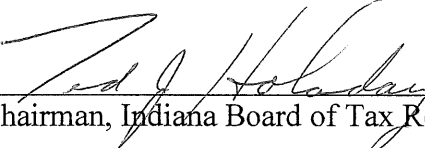
On June 29, 2018, we issued our Findings of Fact, Conclusions of Law, and Final Determination (“Final Determination”) in the above-captioned appeals. In that Final Determination we decided, among other things, that Housing Partnerships, Inc. (“HPI”) failed to prove that a 25-unit apartment building known as the Armory was exempt from taxation and accordingly denied HPI an exemption for that parcel.

On July 13, 2018, HPI filed a Joint Request for Limited Rehearing on the two petitions that addressed the Armory: Petition Nos. 03-005-12-2-8-00001 (“2012 petition”) and 03-005-14-2-8-00001 (“2014 petition”). The 2012 petition dealt solely with the Armory, while the Armory was just one of many parcels included in the 2014 petition. According to the Joint Motion, during the course of the hearing on HPI’s appeals and shortly thereafter, the parties

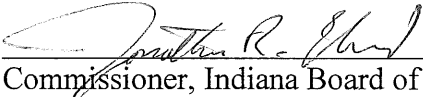
agreed that HPI was entitled to exemption for 2012 and 2014 and HPI had already received tax refunds for those years. The parties therefore requested rehearing for the limited purpose of amending the Final Determination to reflect the parties' agreement.

Based on the representations in the Joint Motion, we GRANT rehearing. Based on the parties' agreement that the Armory was exempt from real estate taxes for the 2012 and 2014 assessment years, we strike the portions of the Final Determination that purport to decide the Armory's entitlement to an exemption on the merits. We adopt our Final Determination as originally issued in all other respects.

Date: JULY 19, 2018


Chairman, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review

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June 29, 2018

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DETERMINATION

INTRODUCTION

1. Taxpayers who receive government funding in exchange for providing affordable housing to low-income tenants face significant hurdles when they seek exemption from property taxes, not the least of which is showing that they, rather than the government, are the ones providing a public benefit. While this is a close case, we find that Housing Partnerships, Inc. (“HPI”) cleared those hurdles for most of the properties at issue. Although HPI received grants requiring it to rent to low-income tenants at or below certain rent

thresholds, it had to provide matching contributions to receive the grants. Through those contributions and other aspects of its operations, HPI appreciably relieved a governmental burden. Because HPI offered little evidence about how it developed and operated a 25-unit apartment building known as the Armory, however, it failed to show that it used that property to provide a public benefit.

PROCEDURAL HISTORY

2. HPI applied to exempt various properties in Bartholomew County that it rented to individuals and families earning significantly below the area's median income. Its applications covered the 2008, 2010, 2012, 2014, and 2016 assessment years. The Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") denied the applications and found the properties 100% taxable. HPI challenged the PTABOA's denials by timely filing Form 132 petitions with us.
3. Our designated administrative law judge, David Pardo ("ALJ"), held a hearing on HPI's petitions. The hearing began August 8, 2017, and lasted two days.
4. The following people were sworn as witnesses:
 - For HPI: Mark Lindenlaub, president and executive director, HPI
Debra Holt, executive director, Columbus Regional Housing Authority
Tracy Souza, president and chief executive officer, Heritage Fund
Mike Mullett, local volunteer
Ilese Sabelhaus, executive director, Stone Belt Arc, Inc.
 - For the Assessor: Lew Wilson, Bartholomew County Assessor
Virginia Whipple, GNA Assessment Professionals
Jonathan C. Scheidt, appraiser with Don R. Scheidt & Co.
5. At a telephonic pre-hearing conference on August 2, 2017, HPI indicated that it wanted to substitute Tom Dell, a Columbus city council member that HPI had not named on its witness list, for Kristen Brown, the former Mayor of Columbus, who was no longer available to testify. HPI expected Dell to provide substantially the same testimony as

Brown. The Assessor agreed to HPI substituting Dell for Brown, but he objected to Dell testifying telephonically. The ALJ indicated that he would not allow Dell to testify telephonically.

6. At the hearing's outset, the ALJ summarized his ruling from the pre-hearing conference and the Assessor renewed his objection to Dell testifying telephonically. HPI objected to the ALJ's previous ruling, arguing that state and federal courts routinely allow witnesses to testify telephonically. HPI further argued that the city council was engaged in its budgeting process and that none of the council members, who are all small-business owners, could carve out time to testify in Indianapolis. Counsel for HPI did not know why Brown was unavailable, and he acknowledged that she was not under subpoena. The ALJ did not reverse his ruling.
7. We adopt the ALJ's ruling not to allow Dell to testify telephonically. Our procedural rules allow us to conduct hearings telephonically if the parties agree to do so. 52 Ind. Admin. Code 2-6-4. The Assessor did not agree to that procedure.
8. Even if we were to read our rules as giving us discretion to allow a witness to testify telephonically over a party's objection, we would not exercise that discretion here. While we are not bound by the Indiana Courts' Administrative Rules, they supply useful guidance. Those rules require a motion at least 30 days before the time specified for the testimony and a showing of good cause. Ind. Administrative Rule 14(B)(2)-(3). They list various factors a court must consider in determining whether good cause exists, including "[w]hether, after due diligence, the party has been unable to procure the physical presence of the witness." Admin. R. 14(B)(2). HPI made its request to substitute Dell and have him testify telephonically just six days before the hearing. And it did not subpoena either Dell or Brown, the witness Dell was to replace.

9. The parties also made various other objections during the hearing. Many went to whether counsel was mischaracterizing the evidence, although some asserted various other grounds. We adopt the ALJ's rulings on those objections.

10. HPI offered the following exhibits:

Exhibit 1	HPI's Articles of Incorporation
Exhibit 2	HPI's Bylaws
Exhibit 3	501(c)(3) Letter
Exhibit 4	2008 Form 990 return
Exhibit 5	2009 Form 990 return
Exhibit 6	2010 Form 990 return
Exhibit 7	2011 Form 990 return
Exhibit 8	2012 Form 990 return
Exhibit 9	2013 Form 990 return
Exhibit 10	2014 Form 990 return
Exhibit 11 ¹	2015 Form 990 return
Exhibit 13	2007 and 2006 audited financial statements
Exhibit 14	2008 and 2007 audited financial statement
Exhibit 15	2009 and 2008 audited financial statement
Exhibit 16	2010 and 2009 audited financial statement
Exhibit 17	2011 and 2010 audited financial statement
Exhibit 18	2012 and 2011 audited financial statement
Exhibit 19	2013 and 2012 audited financial statement
Exhibit 20	2014 and 2013 audited financial statement
Exhibit 21 ²	2015 and 2014 audited financial statement
Exhibit 23	Indiana Housing and Community Development Authority ("IHCDA") Mission, Vision, and Values
Exhibit 24	Fair Market Rents for Section 8 Housing Assistance Payments Program
Exhibit 25	IL History for Bartholomew County
Exhibit 26	Income Limit Summary for Bartholomew County
Exhibit 27	ALICE Study of Financial Hardship
Exhibit 28	2011 Consolidated Action Plan (Tab A), Five Year Consolidated Plan (Tab E), 2016 Annual Action Plan (Tab F)

¹ HPI did not offer an Exhibit 12. It had reserved that number for its 2016 Form 990 return if it was available.

² HPI did not offer an Exhibit 22. It had reserved that number for its 2016 audited financial statements if they were available.

Exhibit 29	Consolidated Annual Performance and Evaluation Reports for 2008 (Tab A), 2014 (Tab H), and 2015 (Tab I)
Exhibit 30	IHCDA CDBG & HOME Program Manual
Exhibit 31	A Study of the Columbus Rental Market Relative to the Appeal of Housing Partnerships, Inc., prepared by Timothy and Jonathan Scheidt (“Scheidt Study”)
Exhibit 32	Spreadsheet with HPI rents and rents from Scheidt Study
Exhibit 33	Sub-Recipient Agreement for CDBG-Funded Project
Exhibit 34	Letter from Tracy Souza and Heritage Fund Grant Agreement
Exhibit 35	IHCDA monitoring results and clearance
Exhibit 36	Lease Agreement
Exhibit 37	Lease Renewal Offer
Exhibit 38	Tenant Selection Criteria: Grounds for Disapproval
Exhibit 39	Determining Tenant Eligibility
Exhibit 40	Qualification Worksheet
Exhibit 41	Tenant Income Certification
Exhibit 42	April 21, 2017 report regarding HPI tenants and Section 8 vouchers
Exhibit 43	Letter from Executive Director of Lincoln Central Neighborhood Family Center
Exhibit 44	Letter from Ilese Sabelhaus
Exhibit 45	2008 Form 132 petition and attachments
Exhibit 46	Cover letter, two copies of Notice of Appearance, 2010 Form 132 petition and attachments
Exhibit 47	Cover letter, Notice of Appearance, 2012 Form 132 petition and attachments
Exhibit 48	2012 Form 136 application and attachments for the Armory
Exhibit 49	2014 Form 132 petition and attachments
Exhibit 50	2015 Form 136 application and attachments for the Armory
Exhibit 51	2016 Form 132 petition and attachments
Exhibit 52	Property record cards
Exhibit 53	2016 Balance Sheet
Exhibit 54	2016 Balance Sheet Normal Trial Detail Balance
Exhibit 55	2016 Income Statement
Exhibit 56	Affirmative Fair Housing Marketing Plan and related documents
Exhibit 57	HPI 20 Years of Impact
Exhibit 58	HPI 22 Years of Impact
Exhibit 59	HPI 24 Years of Impact
Exhibit 60	HPI 25 Years of Impact

Exhibit 61	HPI 26 Years of Impact
Exhibit 62	Miscellaneous marketing communications
Exhibit 63	Miscellaneous marketing information and expenses
Exhibit 64	Rent roll

11. The Assessor offered the following exhibits:

Exhibit A	2007 and 2006 HPI audited financial statements
Exhibit B	2008 and 2007 HPI audited financial statements
Exhibit C	2009 and 2008 HPI audited financial statements
Exhibit D	2010 and 2009 HPI audited financial statements
Exhibit E	2011 and 2010 HPI audited financial statements
Exhibit F	2012 HPI and 2011 audited financial statements
Exhibit G	2013 and 2012 HPI audited financial statements
Exhibit H	2014 and 2013 HPI audited financial statements
Exhibit I ³	2015 and 2014 HPI audited financial statements
Exhibit K	Whipple Resume
Exhibit L	Wilson Resume
Exhibit M	Scheidt Study
Exhibit N	Addendum to Scheidt Study (with confidential information)
Exhibit O	Public addendum to Scheidt Study
Exhibit P	IL History for Bartholomew County, IN
Exhibit Q	Comparison of Scheidt rent analysis to HPI rents prepared by Virginia Whipple
Exhibit R	Whipple support documents
Exhibit S	Spreadsheet with information for assessment appeals (demonstrative)

12. The record also includes (1) all pleadings, briefs, motions, and documents filed in the current appeals, (2) all orders and notices issued by the Board or our administrative law judges, and (3) a digital recording of the hearing.

³ The Assessor did not offer an Exhibit J. He apparently reserved that label for HPI's 2016 audited financial statement if it became available.

III. FINDINGS OF FACT

A. The Properties under Appeal

13. HPI seeks to exempt various single-family homes and multi-unit properties, which we will refer to collectively as HPI's "scattered-site housing." It also seeks to exempt the Armory. HPI rents the scattered-site housing to low-income individuals and families, and it rents the Armory to low-income seniors and people with disabilities. The number of parcels under appeal varies between the assessment years at issue, from a low of 40 to a high of 69. Many of the parcels are included in appeals for multiple years. The Armory appeals cover only 2012 and 2014. *See Stipulation of Facts.*

B. Affordable Housing in Indiana

14. The evidence in this case shows that there is a significant need for affordable housing nationwide, in Indiana, and in Bartholomew County. Multiple witnesses testified to that fact. A report published by the Indiana Association of United Ways, known as the "ALICE" study (meaning "Asset Limited, Income Constrained, Employed") confirms it. The ALICE study sought to identify who in Indiana was struggling financially, and it was intended to establish the level of income needed to cover the basic costs of living, which it referred to as the "Household Survival Budget." Families with income below that threshold were termed ALICE households. The study concluded there was a lack of affordable housing throughout Indiana, including in Bartholomew County. According to the study, between 2007 and 2014, the percentage of Bartholomew County households that either were in poverty or were below the ALICE threshold ranged from 28% to 34%. *Lindenlaub testimony; Holt testimony; Ex. 27 at Executive Summary, ALICE County Pages.*
15. Similarly, the Indiana Housing and Community Development Authority ("IHCDA"), an agency of the state, has consistently listed expanding and preserving affordable housing opportunities as one of its top priorities. The IHCDA has noted a growing concern over

preserving the supply of affordable housing both statewide and in Bartholomew County. Various affordable housing projects throughout the state were financed through grants and other federal programs requiring owners to rent to low-income tenants at affordable rates for set periods, which HPI's executive director, Mark Lindenlaub, alternately referred to as "compliance" or "affordability" periods. Many of those compliance periods were set to expire by December 2015. In some counties, 100% were set to expire by then. That number was 78% for Bartholomew County. As a further sign of the scarcity of affordable housing in Bartholomew County, the Columbus Housing Authority has a waiting list of about 600 families for its low-income housing projects. *Lindenlaub testimony; Holt testimony; Ex. 28, Section III at 36.*

16. The state and federal governments have created agencies to help provide affordable housing to low-income individuals and families. For example, the United States Department of Housing and Urban Development ("HUD") offers various grants to facilitate the development of low-income housing, including HOME grants and community development block grants ("CDBGs"). *See generally Lindenlaub testimony; Ex. 30.*
17. State agencies, such as the IHCDA, administer many of those grants. Its mission is to "provide housing opportunities, promote self-sufficiency, and strengthen communities," which it seeks to accomplish through, among other things, "[c]reat[ing] and preserv[ing] housing for Indiana's most vulnerable population" and "[e]nhanc[ing] self-sufficiency initiatives in existing programs." *Lindenlaub testimony; Ex. 23; see also, Ind. Code § 5-20-1-3 (creating the IHCDA).*
18. In that vein, the IHCDA allocates state and federal funds, including HOME grants and CDBGs. To qualify for a HOME grant, recipients must match at least 25% of the grant amount, minus administration and operating costs for community-home-development organizations ("CHDOs"). Those CHDO operating costs may not exceed 5% of a HOME

grant award and are generally between \$5,000 and \$10,000. Similarly, a recipient must “leverage” 10% of a CDBG. *Lindenlaub testimony; Ex. 30 at 2-3.*

19. Recipients of HOME grants or CDBGs may only use funds from approved resources to meet their match or leverage requirements. The IHCDCA specifies 11 eligible and 6 ineligible sources that recipients may use to match HOME grants. Recipients may not use other federal funds for those contributions. Notably, however, they may use the present discounted value of taxes or other charges that state or local governments have waived. The IHCDCA similarly lists 13 sources recipients may use to leverage CDBGs as well as 2 ineligible resources. Recipients may not use “contributions made from certain federal/state resources” for leverage, although they again may use real estate taxes and other charges that state or local governments have waived. *Lindenlaub testimony; Ex. 30 at 2-3, CDBG Funds Management and HOME Funds Management.*

20. Once they qualify, recipients may use HOME and CDBG funds for various purposes, including hard and soft costs associated with developing affordable housing. But they may not use those grants to cover the general costs of operating their organizations. Similarly, recipients may not use HOME grants for the ongoing costs associated with operating a low-income rental project past an initial rent-up period. The IHCDCA manual lists both “replacement reserves” and “operating reserves” as ineligible costs unless “specifically listed as eligible in an individual Eligible Activity description.” The manual does allow recipients to use HOME grants to fund a “rent-up reserve” to cover operating shortfalls in development income. Funds from the rent-up reserve may be used for “development operating expenses, scheduled payments to replacement reserves, and/or debt service payments.” But the IHCDCA limits the amount of HOME funds that may be used for the rent-up reserve to “three (3) months development operating expenses plus three (3) months of development debt service.” And the reserve may be used only for a period extending to six months after construction is completed. After that point, any unused reserves in the

account are “de-obligated.” *Lindenlaub testimony; Ex. 30 at CDBG Funds Management 2-3 and Home Funds Management 3-4; see also 24 C.F.R § 92.206(b)(5).*⁴

21. According to Lindenlaub, grant recipients, such as HPI, that qualify as CHDOs may also get small grants to support their operations for specific projects. He may have been referring to CHDO operating costs, which are an eligible expense under HOME grants and are not subject to the match requirement. But it does not appear from the IHCD’s manual that paying ongoing operating expenses over the life of a rental project is an eligible CHDO cost. *Lindenlaub testimony; Ex. 30, HOME Funds Management at 1.*
22. It similarly does not appear that recipients may use CDBGs to pay ongoing operating expenses for low-income rental projects. The eligible costs for those grants relate mainly to expenses associated with rehabilitating housing units. *See Ex. 30, CDBG Funds Management at 1-3.*
23. Recipients of HOME grants and CDBGs must also agree to restrictions on how they operate low-income rental housing. First, they must lease their projects at or below “fair market rents,” or “FMRs” which are rent levels that HUD determines to be affordable for the targeted population. FMRs include shelter rent plus the cost of all tenant-paid utilities except telephones, cable or satellite television service, and internet service. Second, grant recipients must rent to tenants with incomes that do not exceed the level of area median income specified in the project’s grant application. Depending on the project, grant recipients must maintain those rent and income restrictions for a compliance period of up to 20 years. The restrictions are recorded on the deeds of properties developed with the grants, and they run with the land. *Lindenlaub testimony; Ex. 24 at 1; Ex. 30 at 7-8, 111-12.*

⁴ HUD’s regulations allow as an eligible soft cost the cost of “funding an initial operating deficit reserve” to meet shortfalls in project income during a rent-up period of up to 18 months. Unexpended funds that remain in the reserve after the rent-up period “may be retained for project reserves if permitted by the participating jurisdiction.” 24 C.F.R. § 92.206(d)(5).

24. The IHCDCA also administers Indiana Development funds, which it may structure as loans or grants. Recipients of those funds must meet similar requirements as recipients of HOME grants and CDBGs. *Lindenlaub testimony*.

C. HPI's Operations

25. The idea for HPI began at an adult Sunday school class at First Presbyterian Church. It began as a discussion about the teaching that they were blessed to be a blessing to others," which is a way of taking "love your neighbor" and translating that into some sort of tangible action. After examining various community needs, the group focused on a lack of affordable housing in the Columbus area. As a first project, the group gathered donations of materials and time to renovate an elderly widow's home. *Lindenlaub testimony; Exs. 57-59*.
26. In 1990, the group incorporated as HPI, an Indiana nonprofit corporation. Its primary charitable mission is to ameliorate the housing needs of poor, elderly, disabled, and other disadvantaged people and families. According to its articles of incorporation, HPI is organized and operated exclusively for charitable purposes, and private inurement or profit is prohibited. The Internal Revenue Service has recognized HPI as exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. In accordance with its bylaws, a volunteer board of directors controls HPI. As of the hearing, HPI employed seven people, including Lindenlaub. Between 2008 and 2015, total compensation for all employees, including Lindenlaub, ranged from roughly 22% to roughly 35% of revenue. The one exception was 2009, where that compensation equaled 45% of total revenue. Any excess revenues go back into programs to further its charitable mission. *Lindenlaub testimony; Ex. 1; see also, Exs. 4-11*.
27. To further its mission, HPI operates three main programs: (1) it performs construction-related services where it acts as a contractor to develop affordable housing for

municipalities and other non-profit organizations and repairs homes for elderly homeowners; (2) it develops affordable housing to sell to low-income, first-time homebuyers; and (3) it develops and leases affordable housing to low-income individuals and families. The properties at issue in these appeals are part of that last program. *Lindenlaub testimony; Exs. 4-11, 14-21.*

1. Funding of HPI's Low-Income Rental Program

a. Developing and Rehabilitating Housing

28. As part of its program to develop and lease affordable housing, HPI receives HOME grants, CDBGs, and Indiana Development funds. HPI has used various resources to meet the matching and leverage requirements for those grants. For example:
- It has used donations and private grants from community foundations, such as the Heritage Fund, or from organizations like the Federal Home Loan Bank, which makes grants as a way for its member institutions to meet their obligations under the Community Reinvestment Act.
 - It has used donations of building materials and labor, including donated labor from its own board members and employees and from the community at large.
 - It has bought properties to develop or rehabilitate at discounted prices and applied the discount as a donation.

Lindenlaub testimony; see also, Ex. 30 at 2-3; Ex. 34.

29. HPI's evidence about how it funds its development projects focused mostly on its scattered-site housing. It is less clear how the Armory was developed. A wholly owned subsidiary of HPI entered into a limited partnership known as Armory, L.P. HPI was the general partner and a for-profit developer was the limited partner.⁵ They turned a former

⁵ The record is unclear as to whether there was a single limited partner or multiple limited partners. Lindenlaub referred to a single "developer" while the audited financial statements use the plural in referring to limited partners. The distinction does not matter for purposes of these appeals. For ease of reference, we will refer to a single limited partner.

armory into housing for low-income seniors, including seniors with disabilities.

Lindenlaub testimony; see also, e.g. Ex. 18 at 8.

30. We have little evidence about how Armory, L.P. funded its activities beyond explanatory notes in HPI's audited financial statements. Those notes indicate that HPI had a note receivable from the partnership for amounts advanced by the IHCDA. The note had a maturity date of January 31, 2013 and called for annual interest at 1%. On December 31, 2011, the note had a balance of \$482,620. The financial statements also indicate that, in 1998, HPI received a \$125,000 grant from the Federal Home Loan Bank, which HPI then loaned to the partnership to use in developing the Armory. The partnership gave HPI a promissory note that would mature in January 2028. That note called for 6.5% annual interest with payment dependent upon the partnership's available cash flow. *E.g. Ex. 18 at 12.*

31. Lindenlaub testified that the partnership had an end condition where it would dissolve when the "tax credit affordability period" expired and the Armory would revert to HPI ownership for "penalties and fees." According to Lindenlaub, those things happened in 2013. But the weight of the evidence suggests that they happened before then. On January 1, 2011, the limited partner sold its interest in Armory, L.P. to HPI, and HPI began the process of dissolving the partnership. The partnership was officially dissolved the following February, and the Armory was transferred to HPI as sole owner. HPI wrote off the unpaid balances on the promissory notes. *Lindenlaub testimony; see also, e.g., Ex. 18 at 8, 12.*

b. Ongoing Operations

32. As explained above, HPI generally may not use funds from HOME grants and CDBGs to cover its ongoing operating expenses. While HPI charges its tenants rent, those rents do not cover all of HPI's operating costs as an agency. They do not even cover the management expenses for its rental program. For each year between 2008 and 2015, HPI's

rental income was at least \$100,000 less than the management expenses for its rental program.⁶ In 2014 and 2015, its rental income was more than \$300,000 below operating expenses. *Lindenlaub testimony; Exs. 4-22.*

33. Those management expenses, however, include line items for depreciation and amortization. When those line items are excluded, rental income exceeded the remaining management expenses by amounts ranging from \$9,407 to \$40,524 for 2008 through 2010. In 2011, when financial statements first began to include rental income from the Armory, through 2013, rental income exceeded the remaining management expenses by amounts ranging from \$52,258 to \$143,839. In 2014 and 2015, the program operated at a loss, with the remaining management expenses exceeding rental income by \$113,814 and \$97,392, respectively. *Exs. 4-22.*

2. Tenant Selection, Lease Terms, and Rental Rates

a. Tenant Selection

34. To ensure it is serving Indiana's most vulnerable population, and in accordance with HUD and IHCD guidelines, HPI verifies the income of its tenants and prospective residents. In its scattered-site housing, HPI generally serves individuals and families making at or below 60% of area median income. HPI has some "commitments" for the Armory that are as low as 30% of area median income. Armory tenants must also be 55 years old. *Lindenlaub testimony.*

⁶ At first glance, the Form 990 returns show that rental income was slightly above operating expenses in 2011 and that the two were close in 2012. Upon closer examination, however, the spike in income appears to stem from HPI including rent from the Armory on its Form 990s for the first time but still separating out management expenses for the Armory on its audited financial statements. When the Armory's income and expenses are both included, HPI's management expenses for its rental program exceed rental income by more than \$100,000 for 2011 and 2012. Explanatory notes to HPI's audited financial statements appear to bear that out. Beginning in 2013, HPI's audited financial statements no longer broke out operating expenses between the Armory and the rest of its rental program. *Exs. 7-8; Ex. 17 at 11; Ex. 18 at 13; Exs. 19-21.*

35. That does not mean that HPI accepts everyone who meets those income levels. HPI has criteria that it uses as grounds for disqualifying prospective tenants, although HPI's written policy indicates that it will favorably consider changes in behavior since the time a disqualifying event occurred as well as other extenuating circumstances. *Ex. 38; see also Lindenlaub testimony.*
36. The disqualifying grounds largely focus on issues—such as a history of violence or drug abuse—that might pose health or safety threats or that would interfere with other tenants' enjoyment of their homes. They also include non-compliance with prior rental agreements. An applicant who has an unpaid balance from any other HPI rental unit must pay back the delinquency before being accepted. Similarly, HPI may reject an applicant for “a consistent, severe or recent history of deficiencies in rent payment” that would indicate an applicant's inability or unwillingness to timely pay rent, unless the applicant can show good cause. But HPI makes an exception for previously evicted tenants who have an outside support group that is actively working with them to improve their housing, and where HPI has a memorandum of understanding in place. Thus, unlike many for-profit landlords, HPI does not automatically reject prospective tenants for prior evictions, poor credit history (aside from non-payment or delinquencies in rent), or non-violent criminal offenses. That is true even though the HOME and CDBG programs would allow HPI to do so. *Ex. 30 at 9-10; Ex. 38; see also Lindenlaub testimony.*
37. If applicants meet the selection criteria, they must sign a standard lease. The lease includes many provisions that would be expected in any residential lease. It calls for a security deposit and penalties for late rental payments. It also gives HPI the rights to evict tenants for defaults, including the failure to pay rent, and to recover attorney fees if it brings an action to enforce the lease. *Ex. 36.*
38. Nonetheless, an attachment to the lease provides, “[a]ll reasonable measures of negotiation, compromise and assistance to the tenant will be attempted prior to commencing with an

eviction proceeding.” HPI follows that procedure in practice. Lindenlaub testified without dispute that HPI works with tenants to discover the underlying reasons they cannot pay rent, such as loss of a job or divorce. He pointed to examples where HPI had done that. In one case, HPI made a \$100-per-month rent concession for a single mother who lost her job, and it allowed her to take more than a year to catch up on rent. It allowed another tenant who lost her job to catch up on thousands of dollars of back rent over several years. HPI refers tenants to other organizations and support agencies for things like job-skills training. As long as tenants stay engaged with HPI and HPI believes they are following its advice and making their best efforts, it works with them. Sometimes when the condition requiring the accommodation has been alleviated, tenants can make-up the lost rent. But HPI does not always try to recapture the help it has provided; it depends on the tenant. *Lindenlaub testimony; Ex. 36.*

39. Tenants do not necessarily pay the entire amount of their rent by themselves. During all the years at issue, HPI had tenants who received rent vouchers under Section 8 of the Housing Act of 1937. Section 8 vouchers are assigned to tenants to bridge the gap between HUD’s calculation of 30% of the household’s adjusted income and the rent for the unit they occupy. The Housing Authority administers the Section 8 program for Columbus. *Holt testimony; Lindenlaub testimony; Ex. 24.*
40. An employee of the Housing Authority prepared a list showing each address, including the Armory, where an HPI (or Armory, L.P.) tenant received a Section 8 voucher between 2007 and April 21, 2017. The list provides “MoveIn” and “MoveOut” dates that delineate the period during which a tenant with a voucher occupied the unit. The list also includes highlighted references to 44 tenants who were “still on” the program and 46 who “went off.” And it indicates that 66 “has had” Section 8 vouchers.
41. Based on the “MoveIn” and “MoveOut” dates listed for each address, we can determine whether a tenant with a Section 8 voucher occupied that unit for any part of a year under

appeal. For the scattered-site housing, those occupancy numbers ranged from 14 to 39 for the years under appeal. Although HPI appealed fewer than 70 parcels each year, several of the parcels had multiple rental units. By our count, HPI had between 64 and 91 rental units in its scattered-site housing during the years in question.⁷ In 2008, when HPI had 64 units, Section 8 tenants occupied only 14 of those units during any part of the year. In 2016, when HPI had 91 units, Section 8 tenants occupied 39 of them during some part of the year. For the two years where the Armory is on appeal, Section 8 tenants occupied 7 and 10 out of 25 units, respectively. *See Holt testimony; Lindenlaub testimony; Exs. 42, 64; Stipulation of Facts; Joint Ex. 1.*

42. Thus, Section 8 tenants never occupied more than 43% of HPI's scattered-site rental units or 40% of the Armory units for any year under appeal. In some years, the percentage was significantly lower. Given Lindenlaub's testimony that HPI's occupancy level was normally close to 100%, which the rent rolls corroborate, we find that Section 8 tenants also constituted less than 50% of HPI's tenant pool in each year. *Lindenlaub testimony.*

b. Rent Levels

43. Regardless of where the rent payment comes from, HPI's rents are generally 30% or less of a family's income. According to Lindenlaub, any rent over that amount is unaffordable and becomes a burden. HPI leases only about 10% to 15% of its units at rates above that threshold. *Lindenlaub testimony.*
44. In addition, HUD and the IHEDA set FMR as the rent ceiling for projects developed using HOME grants and CDBGs. Lindenlaub's undisputed testimony shows that HPI habitually charged less than FMR. Exactly how much less is unclear. HPI offered an exhibit

⁷ We excluded two parcels (McKinley Court Lots 5 and 6) that simply have lot numbers and do not have any information for bedroom numbers or rent levels on HPI's rent roll. Those parcels do not have improvements on them, and they may support the other homes on McKinley Court that HPI owns. We also excluded properties that are listed on HPI's rent rolls but that do not appear in the lists of appealed properties attached to the Stipulation of Facts. *See Stipulation of Facts; Exs 52, 64.*

comparing its monthly rent to FMR for each unit. In most instances, HPI's rent was over \$150 less than FMR. In many instances, it was more than \$200 under FMR. In some cases, it was \$300 under that threshold. But HUD's calculation of FMR includes utility costs, and HPI's standard lease makes tenants responsible for utilities. Without evidence allocating FMR between shelter costs and utilities, we cannot say how much below FMR the rent for any specific unit was. *Lindenlaub testimony; Ex. 64.*

45. Based on a rent survey offered by the Assessor, HPI's rents also generally appear to be less than market rent for similarly sized older homes in the areas in which HPI's properties are located. The Assessor hired Timothy and Jonathan C. Scheidt, certified residential appraisers, to perform that study. Only Jonathan Scheidt testified, so we will refer to the study and opinions as his. *Scheidt testimony; Ex. M.*
46. Scheidt separated the locations of HPI's scattered-site housing into six neighborhoods based on market characteristics. The scope of his report included researching and analyzing local factors that would affect the rental markets in those neighborhoods. It did not include analyzing any single property. Scheidt therefore did not purport to determine market rent for any HPI property. Although he did not inspect any home's interior, he had no reason to doubt Lindenlaub's testimony that HPI's homes were generally in better condition than homes owned by for-profit landlords. *Scheidt testimony; Ex. M at 2-5.*
47. To gather data for his study, Scheidt used information from his files as well as rent rolls from landlords who were willing to respond to his inquiries. Where sufficient data was available, he determined median rents for the neighborhood based on number of bedrooms. Where the data was insufficient to determine median rents by bedroom count, he used data from other neighborhoods to calculate adjustments. In any event, he came up with a median rent by bedroom count for each neighborhood and computed a range by taking 5% on either side of that median, which he testified was an accepted range in the appraisal industry. *Scheidt testimony; Ex. M at 13-15.*

48. Virginia Whipple, who contracts with the Assessor to handle real estate assessments, compared the midpoints and high ends of Scheidt's ranges to the rent HPI charged for each property. She expressed HPI's rent as a percentage of those values. For example, in 2016, 1447 Union Street rented for 86% of Scheidt's midpoint and 82% of Scheidt's high end. In some cases, HPI's properties rented for more than 100% of Scheidt's values. In the vast majority of cases, however, HPI's rent was below both Scheidt's midpoint and high-end rent. Whipple examined those percentages by neighborhood and year. When she considered all neighborhoods and years together, she concluded that the median HPI percentage of Scheidt's high-rent was 81% and the average HPI percentage was 79%. For what she called Scheidt's "average" rent, but which was really his midpoint, she determined that the median and average HPI percentages were 85% and 84%, respectively. *Whipple testimony; Ex. Q.*
49. Scheidt's rent study did not include the Armory. Nobody offered detailed information for rent levels at the Armory. But in 2011, the average rent was \$341 per unit, which the PTABOA considered to be significantly below market level. Based on that rent level as well as the fact that the Armory rented to very poor seniors, the PTABOA granted the Armory an exemption beginning in 2015. *Wilson testimony.*
50. HPI has lowered its standard rent for various units to assist families who were going through the rapid rehousing program and were homeless and for tenants who did not qualify for Section 8 vouchers. *Lindenlaub testimony.*

c. HPI's Continued Adherence to Restrictions

51. Although the restrictions tied to HPI's grants govern its tenant-selection criteria and rent levels, HPI continues to voluntarily follow or exceed those restrictions after the affordability periods expire. Other than the Armory, however, HPI did not identify any specific property for which the affordability period had expired. *See Lindenlaub testimony.*

d. Services and Accommodations

52. HPI also offers services and programs to its tenants. It offers credit counseling, although there is no evidence about what that program involves. It also provides case-management services designed to encourage self-sufficiency. Again, HPI offered few details about those services. They appear to include referring tenants to social-service agencies and other organizations, such as the Lincoln Central Neighborhood Family Center. According to Lindenlaub, those types of services are important to helping families become self-sufficient. The IHADA has identified gaps in the delivery system for housing and community development, including the coordination of social-service providers, as a barrier to meeting community needs for affordable housing. *Lindenlaub testimony; Ex. 28, sec. 4 at 49-50.*
53. In a similar vein, HPI accommodated the needs of disabled tenants in its scattered-site housing. Ilse Sabelhaus is the director of supportive services for Stonebelt Arc, Inc., a charitable organization that provides services to the disabled. She testified that HPI was generally willing to make accommodations for disabled tenants without raising their rent. She also outlined discrete instances where HPI did so, such as installing a swing set anchored in concrete that an autistic tenant needed to calm himself. *Lindenlaub testimony.*
54. HPI also offers services and accommodations designed to meet the needs of the Armory's tenants. The Armory has "congregate living or one," which Lindenlaub described as "community spaces" that provide tenants with "facilities . . . they wouldn't otherwise have," and it does a congregate meal program. Tenants can get home-based services delivered to them from various sources, including from Aging and Community Services, an organization through which HPI has a joint venture that it operates under the name Thrive Alliance. The Armory's hallways have handrails. The apartment doorways are wide enough to permit visitors who are in wheelchairs. HPI also dedicates four units for people

in wheelchairs, and those units have handrails and grab bars. If other residents need handrails or grab bars, HPI installs them. *Lindenlaub testimony*.

55. All the witnesses who actively work with poor, disabled, and at-risk clients testified to the quality and affordability of HPI's rental housing, comparing it favorably to the housing provided by for-profit landlords. Those witnesses also uniformly believed that by providing quality housing at rents lower than what other landlords charged, HPI helped make its tenants more self-sufficient and less reliant on government programs such as Section 8 vouchers, food stamps, and subsidized health care. *Lindenlaub testimony; Holt testimony; Sabelhaus testimony; Souza testimony*.

IV. Conclusions of Law

A. General Requirements for Charitable-Purposes Exemptions

56. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004) (*citing* IND. CONST. ART. X § 1 and I.C. § 6-1.1-2-1). A taxpayer bears the burden of proving its property qualifies for exemption. *Id.*
57. HPI claims an exemption under Ind. Code § 6-1.1-10-16(a), which exempts “[a]ll or part of a building” that is owned, occupied, and predominantly used 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); *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cnty. Ass'r*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct. 2009) *reh'g den.* 914 N.E.2d 13 (Ind. Tax Ct. 2009). 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), (e).

58. HPI claims that it owned, occupied, and used its properties exclusively for charitable purposes. “Because an exemption releases property from the obligation of bearing its share of the cost of government and serves to disturb the equality and distribution of the common burden of government upon all property,” we must strictly construe exemption statutes. *St. Mary's Med. Ctr. of Evansville, Inc. v. State Bd. of Tax Comm'rs*, 534 N.E.2d 277, 280 (Ind. Tax 1989), *aff'd*, 571 N.E.2d 1247 (Ind. 1991). Nonetheless, the term “charitable purpose” must be understood in its broadest constitutional sense. *Knox Cnty. Prop. Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005). Courts will generally find a charitable purpose 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. *Id.*

B. Low-Income Housing Cases

59. The Indiana Tax Court has twice addressed the substance of exemption claims by low-income housing providers. The first case, *Jamestown Homes*, involved a not-for-profit corporation that provided housing to low- and moderate-income tenants under Section 221(d)(3) of Title II of the National Housing Act as amended. *Jamestown Homes*, 909 N.E.2d at 1139. Through that program, the taxpayer financed its apartment complex with a 40-year loan at an annual interest rate of only 3%. *Id.* In exchange for the federal government’s mortgage insurance and interest subsidy, the taxpayer agreed to several restrictions. *Id.* For example, it agreed to rent only to families whose annual income was at or below 95% of the area’s median income and to charge rent that would allow it to recover only its operating and debt-service costs. *Id.* Despite those restrictions, the taxpayer retained several “typical” landlord rights: it could evict tenants for failing to pay rent, charge fees for late rental payments or returned checks, and charge security deposits. *Id.* at 1140.

60. The Tax Court described the issue before it—“whether housing owned by a not-for-profit corporation who receives governmental subsidies so that it may rent to moderate/low-income tenants at below-market rates is property used for a charitable purpose”—as one of first impression in Indiana. *Id.* at 1142-43. The Court noted that several other jurisdictions had addressed the issue, with the majority resolving it against allowing an exemption. *Id.* at 1143, n.10. While those decisions were not binding, the Court found a New Mexico Supreme Court decision especially persuasive because it was based on a similar fact pattern and exemption provision. *Id.* at 1143 (citing *Mountain View Homes, Inc. v. State Tax Comm’n*, 427 P.2d 13 (N.M. 1967)).
61. In *Mountain View Homes*, the New Mexico Supreme Court denied an exemption to an apartment complex that, like the property in *Jamestown Homes*, was financed and administered under Section 221(d)(3) of the National Housing Act. The Indiana Tax Court adopted as its own the reasoning from that case. The New Mexico Supreme Court recognized that the taxpayer did not operate the property for profit and that by getting better housing at lower prices than they otherwise would be able to afford, certain people who might be described as “low income” received a benefit. *Id.* But that was not a charitable use within the meaning of the exemption statute:

[T]he recipients are certainly in no sense sick or indigent, and we would venture that most would be surprised to learn that they are considered as being proper objects for, or as recipients of charity. There is nothing in the record which indicates that any are welfare clients, or are permitted to occupy apartments without payment of the established rental. Neither is there any element of fraternity, brotherhood or good fellowship intended to improve the spirits or impel to renewed effort. It is clear that rents are fixed at an amount necessary to pay the interest, amortize the principal and pay all expenses of maintaining the property. . . . Here, we have an enterprise to furnish low-cost housing to a certain segment of our population. It was intended to be self-supporting, without any thought that gifts or charity were involved. The tenants are required to pay for the premises occupied by them with the rentals being fixed so as to return the amount estimated as being necessary to pay out the project. It is competitive with landlords offering other residential property for rent and on which taxes must be paid. Also . . . there [i]s no evidence that

the public is relieved of any expense in comparison with the loss of tax revenue.
We conclude the use is not charitable so as to exempt the property from taxes[.]

Id. at 1144 (quoting *Mountain View Homes*, 427 P.2d at 17).

62. Applying the New Mexico court’s reasoning to the case before it, the Tax Court found that the Board had not erred in denying the taxpayer a charitable-purposes exemption. *Id.* The record simply revealed that the taxpayer rented its apartments to moderate- and low-income tenants for below-market rates. But there was no evidence that it rented to any welfare clients or that it let tenants stay in their apartments without paying rent. Nor was there any evidence that the taxpayer provided elements of “‘fraternity, brotherhood, or good fellowship intended to improve the spirits or impel to renewed effort,’ whether it be through, for example, free services for, or counseling of, its tenants.” *Id.* (quoting *Mountain View Homes*, 427 P.2d at 17). Finally, the Court found no evidence that the taxpayer 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.” *Id.*
63. Five years after it issued *Jamestown Homes*, the Tax Court again addressed an exemption request by a low-income-housing provider. That provider was HPI, which sought exemptions for its scattered site rental homes and an apartment complex (presumably the Armory) for the 2006 tax year. *Housing P’ships v. Owens*, 10 N.E.3d 1057, 1059 (Ind. Tax Ct. 2014) *reh’g den.* 17 N.E.3d 403.
64. In support of its claims, HPI offered evidence that it funded its housing projects with money from several different sources: income from the sale and rental of its housing units, donations from individuals and businesses, and grants from public and private sources. It rented the properties to people with incomes at or below 60% of the area median income (adjusted for family size). Lindenlaub and HPI’s vice president testified that:
- The federal grants enabled HPI to charge below-market rental rates.

- HPI paid the cost of its tenants attending at least one credit counseling session.
- It offered classes on how to buy homes and make home repairs.
- It wrote recommendation letters for tenants, took them to Alcoholics Anonymous meetings, and referred them to various service organizations.
- It directed its building and rehabilitation efforts to the oldest, poorest, and most dilapidated areas in Bartholomew County.

Id. at 1061-62.

65. Three affidavits from tenants described how HPI and its employees made a difference in their lives. And Holt testified that in her position with the Housing Authority, she referred many clients to HPI because she believed it was the best landlord in Columbus, and that in its absence, there would be a huge number of homeless people in the area because they would not be able to find good, clean, affordable housing. *Id.* at 1062.
66. The Board affirmed the PTABOA’s denial of HPI’s exemption applications. It found that, while HPI had shown it was “a good landlord and d[id] some nice things for its tenants,” it failed to make a prima facie case that the properties were entitled to exemption. *Id.* at 1060. The Board also explained that, to the extent HPI had received substantial money through federal grants without explaining what, if any, terms and conditions were attached to that financial support, an exemption was improper. *Id.*
67. HPI made two claims on judicial review. First, it argued that the Board ignored what HPI described as “overwhelming” evidence that it used its properties to provide low-income people in the county’s distressed areas “clean, safe and secure housing . . . at affordable and below market rents,” as well as with services designed to “assist them in becoming self-sufficient and productive members of the community.” Second, it argued that the Board’s decision was contrary to law because it misinterpreted *Jamestown Homes* as precluding exemption merely because HPI received government grants, even if the grants had nothing to do with the properties at issue. *Id.* at 1061, 1063.

68. The Tax Court rejected both arguments. As to HPI's argument that the Board ignored the evidence, the Court explained that a taxpayer must do more than simply show it is not organized for profit and performs good deeds. *Id.* at 1062. Similarly, merely providing below-market rent to low-income tenants does not suffice to show that a property is used for charitable purposes, even where the taxpayer provides the tenants with free services. *Id.* at 1062-63 (citing *Jamestown Homes*, 909 N.E.2d at 1144). Instead, the taxpayer must show that it relieved the government of an expense it otherwise would have borne. *Id.*
69. As to that last point, the Tax Court addressed HPI's claims that (1) it relieved the government of its burden to revitalize distressed areas; (2) it helped prevent people from "falling through the cracks," which the government would otherwise have to do; (3), it offered lower rent than other landlords, which relieved HUD of its obligation to subsidize a greater portion of rents for HPI's Section 8 tenants; and (4) it helped people become more financially self-sufficient, which relieved the government of its burden to support them. *Id.* at 1063. The Court described those claims as mere conclusions. Unlike *College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905 (Ind. Tax Ct. 2006) where the taxpayer relieved the government of its burden to provide neighborhood sidewalks, HPI offered no evidence that the government bore the burden of revitalizing distressed neighborhoods or preventing people from "falling through the cracks." *Id.* (citing *College Corner*, 840 N.E. 2d at 910).
70. The Tax Court similarly disagreed with HPI's claim that the Board misapplied *Jamestown Homes*. In *Jamestown Homes*, the taxpayer failed to show, among other things, that it had lessened the burden of government in meeting affordable housing needs because the government was ultimately meeting that need through its mortgage insurance and interest subsidy. *Id.* at 1063-64. Likewise, because HPI offered nothing to explain whether the federal government imposed any conditions on HPI's grants, HPI failed to offer probative evidence from which the Board could determine whether HPI relieved the government of

an expense that it otherwise would have borne, or whether the government, through federal grants, was still bearing that expense itself. *Id.*

71. The Tax Court clarified its holdings in a published decision denying HPI's petition for rehearing. *Housing P'ships v. Owens*, 17 N.E.3d 403 (2014). It emphasized that providing low-income housing is not per se a charitable purpose; instead, HPI needed to lay out how its good works lessened the government's financial burdens and distinguish the grants it received from the ones that defeated an exemption in *Jamestown Homes*. *Housing P'ships*, 17 N.E.3d at 404-05. In short, HPI needed to prove its case. The Court could not act as its advocate. *Id.* at 405.

72. Taken together, *Jamestown Homes and Housing P'ships* stand for a few main propositions. First, providing low-income housing neither qualifies nor disqualifies a property for a charitable-purposes exemption per se. Instead, determining whether a purpose is charitable within the meaning of the exemption statute requires a fact-sensitive inquiry. Second, low-income housing providers compete with other landlords who must pay taxes. So merely charging rent that is something less than the market rate and providing some services to low-income clients does not create a public benefit sufficient to justify the loss in tax revenue, particularly where the government is ultimately the one meeting affordable housing needs through the obligations attached to its grants and subsidies. Third, although the taxpayer cannot merely be a conduit through which the government meets its burden, the fact that a taxpayer receives public funds does not automatically disqualify its property from exemption. Rather, as the Tax Court later explained, *Housing P'ships* emphasizes "the basic litigation principle that a taxpayer must provide actual evidence that a government burden exists and that this burden is relieved beyond the extent of the grants." *Starke Cnty. Ass'r v. Porter-Starke Serv., Inc.*, 88 N.E.3d 814, 820 (Ind. Tax Ct. 2017).

C. HPI's Current Appeals

73. With that in mind, we turn to the facts in the appeals before us. Not surprisingly, because they involve the same taxpayer and many of the same properties, the facts from *Housing P'ships* are similar to HPI's current appeals in many ways. HPI's corporate identity and purposes were the same. It used similar funding sources to develop affordable rental housing, and it rented to the same segment of economically disadvantaged tenants. Similarly, in both sets of appeals, HPI claimed that it charged below-market rent, although there appears to be more concrete evidence for those claims in these appeals than in *Housing P'ships*. And in both cases, HPI described some services, such as credit counseling, that it provided to its tenants.
74. Those facts did not convince us or the Tax Court that HPI owned, occupied, and used the properties for charitable purposes in the 2006 appeals. But that does not mean they are irrelevant. They just were not enough by themselves to show a public benefit sufficient to justify the loss of tax revenue, such as through the relief of a government burden.
75. HPI therefore took the Tax Court's advice and went to great lengths to show both the existence of a government burden to address the shortage of affordable housing for low-income families and that it helped lessen that burden.

1. HPI Showed the Existence of a Governmental Burden to Provide Affordable Housing to Low-Income Individuals and Families

76. As to the existence of a governmental burden, HUD allocates funds for use in providing affordable housing. Similarly, in the IHCD's enabling act, our legislature recognized, as a matter of public policy, the need for safe, affordable housing as well as the desirability of using public funds to spur private development of such housing. I.C. § 5-20-1-1. In rejecting a challenge to the act's constitutionality, our state supreme court emphatically echoed those findings:

It requires little evidence and less imagination to realize the effect upon communities and the state generally when housing is inadequate and substandard. The lack of adequate housing underlies many of the problems suffered by a state. . . . All citizens are then called upon to bear the cost of combating the evils which are inevitable in the absence of good, adequate, clean, and financially possible housing. Nothing could be more of a public purpose.

Steup v. Ind. Hous. Fin. Auth., 402 N.E.2d 1215, 1221 (Ind. 1980) (*quoting State ex. re. Douglas v. Nebraska Mtg. Fin. Fund*, 201 Neb. 45, 283 N.W.2d 12, 21-22 (1979)).

77. To help carry out that purpose, the legislature created the IHCDA, which is an instrumentality or agency of the state, although not the state in its sovereign corporate capacity. I.C. § 5-20-1-3(a); *Steup*, 402 N.E.2d at 1218 (*quoting Orbison v. Welsh* 242 Ind. 385, 179 N.E. 2d 727, 734 (1961)). Similarly, the Columbus Housing Authority provides housing and other assistance to Columbus' most economically vulnerable population.
78. The Assessor argues that HPI failed to show that the government is obligated to provide affordable housing. A constitutional or statutory obligation may establish a government burden. But our state's exemption law does not require such an affirmative obligation. To the contrary, the government may voluntarily undertake a burden. *See College Corner* 840 N.E.2d at 910 (citing to statute providing that a municipality *may* establish a cumulative street fund to provide money for acquiring rights of way and constructing or repairing public ways and sidewalks to show governmental burden) (emphasis added). HPI has shown that various levels of government have undertaken the burden to provide affordable housing to low-income families.
79. The Assessor also argues that the legislature did not intend for its declaration of policy to equate to an exemption. According to the Assessor, had that been the legislature's intention, it would have enacted a statute exempting property used to provide low-income housing. For support, he points to Ind. Code § 6-8-15-3-23, which both declares that operating and maintaining toll roads are essential government functions and provides an

exemption to private entities that enter into public-private contracts to, among other things, build, develop, repair, and maintain toll roads.

80. We disagree. When the Court in *Housing P'ships* held that HPI needed to show it relieved a governmental burden, the Court did not mean HPI needed to point to a statute that expressly exempts property used to provide low-income housing. To the contrary, if HPI could point to such a statute, its claim under Ind. Code § 6-1.1-10-16(a) would be moot. In other cases, the Tax Court has upheld charitable purposes exemptions under Ind. Code § 6-1.1-10-16(a) where taxpayers (1) pointed to statutes showing that the government had undertaken burdens, such as providing mental health care for the indigent or sidewalks and alleys, and (2) offered evidence to show they relieved those burdens. *College Corner* 840 N.E.2d at 910; *Porter-Starke Serv.*, 88 N.E.3d at 820. In neither of those cases did the Court find that the absence of a separate statute specifically exempting property used for those purposes precluded exemption. *Id.*

2. The Extent to Which HPI Relieved a Governmental Burden

81. Of course, finding that the government has undertaken a burden is only half the equation. We still must determine whether HPI relieved the government's burden of meeting the community's affordable housing needs, or whether the government itself met those needs through its grants. In *Jamestown Homes*, the Tax Court found that the federal government was the one providing the affordable housing through its subsidies under Section 221(d)(3) of the National Housing Act, and that the taxpayer simply accepted the restrictions on tenant income and rent as a condition of receiving those subsidies. Similarly, in *Housing P'ships*, the Court denied HPI an exemption partly because HPI failed to explain the restrictions that accompanied its grants and to distinguish those grants from the subsidies at issue in *Jamestown Homes*.
82. Most of HPI's evidence and arguments addressing whether it relieved the governmental burden of providing affordable housing to low-income individuals and families in these

appeals dealt with its scattered-site housing. We therefore address those properties before dealing with the Amory.

a. HPI's Scattered-Site Housing

83. HPI offered detailed information about the restrictions attached to HOME grants and CDBGs that it used to develop and rehabilitate its scattered-site housing. For properties developed or rehabilitated using those funds, HPI had to rent only to tenants who made less than 60% of area median income, and it could not charge rent any higher than FMR. Thus, to the extent HPI catered exclusively to low-income clients and charged affordable rent simply as a reciprocal requirement for receiving federal funds, the government, not HPI, provided the public the benefit.
84. But HPI voluntarily went beyond the federal requirements. It routinely set its rents so they did not exceed 30% of its tenants' income, which is what the ALICE study, among others, considers affordable. HPI's rents were also below FMR.
85. Of course, if FMR exceeded the rent level that the market would actually bear for HPI's homes, charging rent below FMR would do little to show a charitable purpose. When viewed through measures of central tendency, however, HPI's rents were also significantly lower than what Scheidt determined as the median rent for similarly sized rental properties in the same neighborhoods. The disparity is even greater when HPI's rents are compared to the high end of Scheidt's range, which is the more apt comparison in light of the undisputed testimony from several witnesses that HPI's homes are typically of higher quality than those offered by for-profit landlords. While none of that shows precisely what the market rent was for any HPI property, it tends to show that HPI generally charged below-market rent. Testimony from Lindenlaub, Holt, and Sablehaus, all of whom favorably compared HPI's rents to rents charged by for-profit landlords in the area, supports that conclusion.

86. HPI also made rent concessions where tenants could not afford its stated rents, and it provided accommodations to disabled tenants without passing the cost on to them. There is no evidence that HPI was required to do so. And HPI continues to comply with or do better than the grant restrictions on tenant selection and rent levels when the compliance periods end and its properties are no longer bound by those restrictions. In those instances, the federal government is no longer providing most of the public benefit. We do not know which, if any, of the properties under appeal have completed their compliance periods or when they did so. For that reason, we give only moderate weight to HPI's voluntary adherence to the restrictions on tenant selection.
87. Even if HPI simply adhered to its obligations under the grants, it still would have relieved a government burden to some degree. HPI had to match at least 25% of the amount of HOME funds and 10% of CDBGs. Although the grant programs recognize some narrow circumstances where recipients may use other government funds (or waivers of fees and taxes) in calculating the required match, there is no evidence that HPI used those sources. Instead, HPI used volunteer labor, donated equipment, grants from private organizations, and property donations in the form of below-market sales.
88. Plus HPI had to continue to operate the properties while complying with the grants' rent limitations, and it could not use HOME or CDBG funds for ongoing operating expenses. To the extent rents failed to cover operating expenses, there is no evidence to suggest that HPI was entitled to, sought, or received relief from the grants' rent restrictions. By contrast, the Section 221(d)(3) program at issue in *Jamestown Homes* and *Mountain View Homes* allowed participants to charge rent sufficient to recover their operating costs and debt service. *Jamestown Homes*, 909 N.E.2d at 1139; *Mountain View Homes*, 427 P.2d at 17.
89. Beyond that, HPI referred its tenants to other service providers to help them become more self-sufficient. Similar activities were not enough to support an exemption in HPI's 2006

appeals or in other appeals we have decided. But in these appeals, HPI showed both that IHCD has identified the lack of coordination of social service providers as an obstacle to meeting community needs for affordable housing and that HPI's activities help address that problem. Thus, HPI's referral activities at least tangentially contribute to relieving a governmental burden. That said, HPI's evidence about its referral activities was often vague and mostly anecdotal. And as a CHDO, it may use a small part of its HOME grants to pay its operating costs, which may help fund its ongoing referral and coordination activities. We therefore give those activities only limited weight.

90. In sum, while the federal government shouldered a significant part of the burden of providing affordable housing at HPI's properties, it did not shoulder the entire burden. Through the combined effects of its matching contributions and its continued operation of the properties while complying with, and even exceeding the grant restrictions, and to a lesser extent, its referral activities, HPI relieved the government of a meaningful part of the burden of providing affordable housing to low-income tenants. The fact that HPI's financial and other contributions were smaller than the government's contribution does not defeat the exemption. "Even when a taxpayer receives government funds, it 'fulfill[s] a charitable purpose to the extent that it lessened *some part* of the government's burden.'" *Porter-Starke Serv.*, 88 N.E.3d at 819 (*quoting College Corner*, 840 N.E.2d at 910) (emphasis in original).
91. The Assessor, however, argues that HPI did not relieve a government burden because its matching contributions came from volunteers or donations. To the extent anyone was relieving a government burden, the Assessor argues that it was those volunteers and donors—not HPI. We disagree. Many charitable organizations rely on donations to help them accomplish their missions. The legislature surely did not intend for that fact to defeat their entitlement to an exemption.
92. The Assessor also argues that HPI funded its operations through other government grants and contracts, Section 8 vouchers, and tenant rents. But we fail to see how grants HPI used

for its home ownership program or income it earned through contracting with cities are relevant. These appeals do not seek to exempt property that HPI uses in its home-ownership program. And there is no evidence that the money HPI earned as a contractor for various cities came with any restrictions. Thus, to the extent it used that money to help fund its rental-housing program, HPI—not the cities—was the one providing a public benefit.

93. We agree with the Assessor that the federal government subsidized some of HPI's tenants through Section 8 vouchers. That arguably created an incentive for HPI not to charge any more than FMR, although HPI was already limited to that ceiling for the homes that were still within their compliance periods. Regardless, HPI generally set its rents below FMR. And less than half of HPI's tenants had Section 8 vouchers. In some of the years at issue, significantly less than half the tenants had vouchers.
94. We similarly disagree that charging rent necessarily translates to HPI doing nothing to relieve a government burden or otherwise provide a public benefit. As the Tax Court has explained in the context of charitable exemptions for facilities that provide comfort and care for the aged, "charitable is not necessarily the equivalent of free." *Grandview Care*, 826 N.E.2d at 184 (internal quotation marks omitted). The fact that an institution charges residents for their stays does not necessarily negate its charitable purpose, "particularly 'when it does not appear that the fees are more than sufficient to pay the expenses of maintenance or that the proprietors of the institution derive any profit therefrom.'" *Id.* (quoting *State Bd. of Tax Comm'rs v. Methodist Home for the Aged*, 143 Ind. App. 419, 241 N.E.2d 84, 88-89 (1968)).
95. HPI operated its rental properties at a paper loss. When depreciation and amortization are excluded, however, HPI more than covered its management expenses in most years. But it did not cover them by much. Thus, it does not appear that HPI sought to charge tenants more than the costs of maintaining the properties. Nor did it have a profit motive. It is a

non-profit corporation. And its principals do not profit from the enterprise indirectly through, for example, salaries or contracts to perform development or rehabilitation work or to manage the rental program. To the contrary, it employs a small staff to which it pays reasonable compensation in light of the scope of its operations.

96. The Assessor also argues that HPI does not differ from any other landlord with which it competes, except that HPI uses government funds to help gain a competitive advantage. For support, the Assessor points to HPI's form lease, which includes many terms that are typical for any residential lease, including the rights to charge a security deposit and to evict tenants for failing to pay rent. But HPI does not necessarily evict tenants when they cannot pay rent. Instead, it works with them to help resolve the underlying conditions that led to their inability to pay, and it assesses whether those conditions can be alleviated. *See Raintree Friends Hous., Inc. v. Dep't of State Revenue*, 667 N.E.2d 810, 815 (Ind. Tax Ct. 1996) (noting in case interpreting charitable-purposes exemption to state income tax, that although assisted living facilities' leases mentioned eviction for non-payment, no resident had ever been evicted for failure to pay). While the Assessor faults HPI for not pointing to more than one specific instance where it worked with tenants who fell behind in their rent, the clear import of Lindenlaub's testimony and HPI's written policy is that it was HPI's practice to do so. The Assessor offered nothing to dispute that.
97. HPI also reduced rent levels for tenants who could no longer afford the amount they had agreed to. While HPI did not show how often it made such rent concessions, Lindenlaub testified that HPI's practice was to do so. Once again, the Assessor did not offer any evidence to dispute his testimony on that point. HPI also abstained from typical landlord practices when selecting tenants. For example, it did not reject tenants based on credit history, even though the grant programs would have allowed it to do so.
98. Finally, the Assessor claims that granting HPI a charitable-purposes exemption under Ind. Code § 6-1.1-10-16(a) would frustrate the legislative intent expressed in Ind. Code § 6-1.1-

10-16.7 (“Section 42 exemption statute”). For the assessment dates at issue, that statute provided an exemption for property that was funded under the low income housing tax credit program codified in 26 U.S.C. 42 and was subject to an extended use agreement under that program, provided that the owner had agreed to make payments in lieu of taxes. I.C. § 6-1.1-10-16.7. Fiscal bodies of local units of government could enact ordinances to receive those payments and (1) place them in an affordable housing fund or a housing trust fund, or (2) distribute them in the same manner as if they were property taxes. *Id.*; I.C. § 36-1-8-14.2; I.C. § 36-2-6-22; I.C. § 36-3-2-11.

99. We agree that the Section 42 exemption statute shows that the legislature does not consider providing low-income housing to be a charitable purpose per se. Otherwise, taxpayers might treat that statute and its requirement for payments in lieu of taxes as a nullity and claim that their Section 42 tax-credit properties are exempt under the more general statute (Ind. Code § 6-1.1-10-16(a)). Of course, HPI does not claim that simply providing low-income housing is an exempt purpose per se.

100. Citing to our determination in a previous appeal, however, the Assessor argues that if we grant exemptions to providers of low-income housing who operate under contracts with HUD, the Section 42 exemption statute and its requirement of payments in lieu of taxes “could be side-stepped and would be nullified.” *Assessor’s Post-Hearing Brief at 17* (citing *Lincoln Village Cooperative, Inc. v. Bartholomew Cnty. Property Tax Assessment Bd. of Appeals*, pet. No. 03-003-05-2-8-00001 (IBTR May 30, 2008)). Our *Lincoln Village* determination predates the Tax Court’s decisions in *Jamestown Homes* and *Housing P’ships*. In neither case did the Tax Court point to the Section 42 exemption statute or otherwise hold that receiving federal subsidies through HUD automatically disqualified the taxpayer from exemption. To the contrary, in *Housing P’ships*, the Court explained that HPI needed to show that it relieved a governmental burden rather than the government simply relieving its own burden through its subsidies.

101. This is a close case, and it illustrates how fact sensitive exemption appeals can be. Were the facts slightly different, we might reach a different conclusion. Based on the record as a whole, however, we find that HPI owned, occupied, and used its scattered-site housing to relieve human want by engaging in obviously charitable acts different from the everyday purposes and activities of man in general. We also find that HPI appreciably relieved a governmental burden and that its activities therefore provided a public benefit sufficient to justify the loss of tax revenue.

b. The Armory

102. We reach the opposite conclusion for the Armory. Perhaps because HPI initially was unsure whether the Armory was on appeal,⁸ it offered very little evidence about how that property was developed. Armory, L.P. had a for-profit developer as a limited partner. We know nothing about the developer's role, its level of investment, or its motives. We similarly know little about what type of government funds were used in the development process, or what, if any, restrictions came with those funds. Lindenlaub referred to the Amory's "tax credit affordability period" having expired. His testimony at least raises an inference that Armory, L.P. may have used tax credits under 26 U.S.C. 42 to develop the Armory. The "tax credit affordability period" appears to correspond to the 15-year compliance period under the federal tax-credit statute. 26 U.S.C. 42(h)(7)(i)(1). But as a condition of receiving tax credits, the partnership may have been required to enter into an extended-use agreement committing the property to income and rent restrictions for an additional 15 years or more. *See* 26 U.S.C. 42(h)(6). If that was the case, allowing HPI an exemption under Ind. Code § 6-1.1-10-16(a) rather than requiring it to make payments in lieu of taxes as a condition for receiving an exemption would frustrate the legislature's purpose in enacting the Section 42 exemption statute.

⁸ When the parties offered their Stipulation of Facts as to what properties were on appeal for each year, the ALJ noted that the stipulation's caption omitted a 2012 petition that was included in the caption to the parties' appeal management plan. That led to a discussion about whether the appeals at issue included the Armory. Counsel for HPI indicated that he would research the question. The parties ultimately agreed that the Stipulation of Facts included appeals for the Armory for 2012 and 2014. *See Red and Scheel discussion; Stipulation of Facts.*

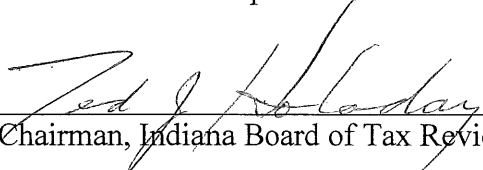
103. Of course, none of those things may be true. Given the dearth of evidence about the Armory, we simply do not know. We recognize that the Assessor did little specifically to contest the Armory's entitlement to an exemption. To the contrary, he testified that the PTABOA considered rent at the Armory to be significantly below market. Based on that rent, as well as the facts that it served very poor tenants and seniors, the PTABOA granted the Armory an exemption beginning in 2015. We also note that HPI's post-hearing brief contains a footnote indicating, "[w]hile Mr. Lindenlaub gave additional testimony concerning the Armory, the Assessor has now determined it should be exempt for the years under appeal and any further Analysis concerning the Armory is moot." *Petitioner's Post-Hearing Brief*, at 22 n.2. But there is no citation indicating when or how the Assessor supposedly determined that the Armory should be exempt for 2012 and 2014. The Assessor did not file a stipulation to that effect.

104. Without an express concession or stipulation relieving HPI of its burden of proving that the Armory was entitled to an exemption, we are left with the few facts that HPI offered to support its claims. Those facts are not enough to show that HPI used the Armory to relieve a governmental burden to provide affordable housing to low-income individuals rather than the government simply meeting its burden through grants, tax credits, or other subsidies. To the extent HPI claims that it provided a public benefit by catering to the unique needs of the aged or people with disabilities, its evidence was too vague and insubstantial to support an exemption. In any case, it still failed to show that it, rather than the government, was meeting those needs.

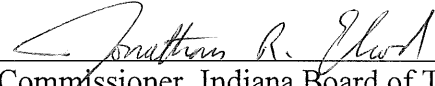
Final Determination

105. HPI proved that its scattered-site housing was owned and exclusively occupied and used for charitable purposes. We therefore order that HPI be granted an exemption for those parcels for each year under appeal. Because HPI failed to meet its burden to show that the

Armory was owned, occupied, and used for charitable purposes, we deny HPI's exemption claim for that parcel.⁹


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>.

⁹ HPI's filed its 2012 appeal for the Armory on a discrete Form 132 petition: pet. no. 03-005-12-2-8-00001. Its 2014 appeal for the Armory was included with 65 other parcels on pet. no. 03-005-14-2-8-00001.