

REPRESENTATIVES FOR PETITIONER:

Katie Kotter and L. Edward Cummings, HartBell LLC

REPRESENTATIVE FOR RESPONDENT:

Maurice Doll, Doll & Sievers Attorneys at Law, LLC

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Oak Village, Inc.,	)	Petition No.:	42-002-14-2-8-00001
	)		42-002-14-2-8-00002
Petitioner,	)		42-002-15-2-8-00176-15
	)		42-002-15-2-8-00177-15
)		
v.	)	Parcel No.	42-04-08-312-001.000-002
	)		42-04-17-311-001.000-002
)		
Knox County Assessor,	)	County:	Knox
)		
Respondent.	)	Years:	2014, 2015
)		

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 (the “Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. Oak Village, Inc. 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 and 2015 assessment years.

PROCEDURAL HISTORY

2. Oak Village applied for an exemption on the subject property for the 2014 and 2015 assessment years. The Knox County Property Tax Assessment Board of Appeals determined it was 100% taxable. Oak Village timely appealed this decision to the Indiana Board of Tax Review. Oak Village claimed exemption under Indiana Code § 6-1.1-10-16 and § 6-1.1-10-18.5.
3. On May 23, 2017, our designated Administrative Law Judge, Andrew Howell, held a hearing on Oak Village's exemption application. Neither he nor the Board inspected the subject property.
4. Attorneys Katie Kotter and L. Edward Cummings represented Oak Village, Inc. Attorney Maurice Doll represented the Knox County Assessor.
5. The following people testified under oath:
 - Rob McLin, Good Samaritan Hospital
 - Stephen Hobbs, Oak Village, Inc.
 - Catherine Lane, Knox County Assessor
6. The Petitioner submitted the following exhibits:
 - Petitioner's Ex. 1: IRS Letter regarding Oak Village's 501(c)(3) status
 - Petitioner's Ex. 2: Oak Village Certificate and Articles of Incorporation
 - Petitioner's Ex. 3: Oak Village By-Laws
 - Petitioner's Ex. 4: (1) aerial parcel map; (2) aerial photograph of the parcels in question; (3) street-view of Oak Village; (4) street-view of the storage facility.
 - Petitioner's Ex. 5: Management Agreement between Good Samaritan Hospital and Oak Village, Inc.
 - Petitioner's Ex. 6: Lease Agreement between Oak Village, Inc. and Good Samaritan Hospital

- Petitioner's Ex. 7: Oak Village, Inc.'s Comprehensive Care Licenses for the years under appeal
- Petitioner's Ex. 8: Good Samaritan Hospital Licenses for the years under appeal
- Petitioner's Ex. 9: (1) Notice of Appearance and Certificate of Service; (2) 2014 Form 132; (3) Grounds for Appeal Pre-hearing brief; (4) 2014 Form 120; (5) 2014 Form 136; and (6) Oak Village Financial Statements 2012 and 2013.
- Petitioner's Ex. 10: (1) 2014 Form 104; (2) 2014 Form 103-LONG; (3) 2012 Form 990
- Petitioner's Ex. 11: (1) Notice of Appearance and Certificate of Service; (2) 2015 Form 132; (3) Grounds for Appeal Pre-hearing brief; (4) 2015 Form 120; and (5) 2015 Form 136
- Petitioner's Ex. 12: (1) 2015 Form 104; (2) 2015 Form 103-LONG; (3) 2013 Form 990
- Petitioner's Ex. 13: IRS Letter establishing Good Samaritan Hospital's 501(c)(3) Status

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. Oak Village objects to the inclusion of testimony from Catherine Lane, the Knox County Assessor because she was not named as a witness in accordance with 52 IAC 2-7-1(b)(2). Our rules require parties to provide the opposing side with a list of witnesses and exhibits to be introduced at the hearing and if a party does not comply, it *may* be grounds to exclude the evidence or testimony. *See* 52 IAC 2-7-1(b); *See also*, 52 IAC 2-7-1(f). The Indiana Tax Court in *Evansville Courier* explained that, "the purpose of the discovery rules is the free exchange of fact information and to permit each party to prepare its case for trial." *See Evansville Courier v. Vanderburgh Cty. 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, Oak Village was aware of the witness and her involvement with this case.

Her testimony should come as no surprise to Oak Village. Therefore, allowing the testimony does not prejudice Oak Village. The Board overrules Oak Village's objection.

FINDINGS OF FACT

10. Oak Village is an Indiana 501(c)(3) non-profit organization under the Internal Revenue Code. It owns the subject parcels located at 200 W. 4th Street, Oaktown, Indiana. Oak Village does not pay dividends to shareholders. It is governed by a board of directors, which is selected from its donors. *See Pet. Ex. 1, 2; Hobbs testimony.*
11. Oak Village is a 50-bed skilled nursing care facility. It provides a variety of services including long-term care, assisted living, intermediate care, physical therapy, occupational therapy, and speech therapy among other services. It participates in Medicare and Medicaid programs, which provide the majority of its revenue. It was created to allow the people that were born, raised, and lived in Oaktown and need skilled nursing care to continue to live and die in Oaktown. In addition, Oak Village wrote off bills of patients who were unable to pay on a regular basis. *Hobbs testimony.*
12. On or about October 1, 2013, Oak Village entered into a Health Care Facility Lease Agreement and Management Agreement with Good Samaritan Hospital ("GSH"). Oak Village leased the facility to Good Samaritan Hospital for a monthly rent of \$20,911.50. Oak Village retained ownership of the facility and all tangible property, personal property, and real estate associated with the facility. Good Samaritan Hospital and Oak Village simultaneously executed a Management Agreement by which GSH as operator hired Oak Village to manage the facility. Oak Village controlled the day-to-day operations and use of the facility. All nursing staff, support staff, and administrative personnel remained as employees of Oak Village and continued to provide care to the residents of the facility. Oak Village continued to do its own accounting and perform other activities associated with operating a skilled nursing care facility. *See Pet. Ex. 5 & 6; Mclin testimony; Hobbs testimony.*

13. GSH by definition of the agreement was the “operator” of the facility. Under Section 2.2.1 of the Management Agreement, Oak Village’s sole duty was, “to supervise, manage, *operate*, control and direct the performance of the facility.” In addition, Oak Village was required under Section 11.2.1 of the Management Agreement to use the facility “solely for the operation of a nursing home.” Oak Village had extensive responsibilities under Section 2.2.5 that required them to physically occupy the space such as performing patient care, maintaining and replenishing inventories and supplies, and notifying the hospital of any substantial changes to the operation of the facility. Good Samaritan Hospital held quarterly meetings with the Oak Village management to receive updates and reports on quality care measures. The hospital also had nurse practitioners that saw patients on weeks where the Oak Village medical director was unavailable. The nurse practitioners remained employees of GSH. GSH was not otherwise on the property. *See Pet. Ex. 5; McLin Testimony.*

14. The purpose of the GSH-Oak Village arrangement is to maximize an extra funding source provided by the Federal government. GSH and Oak Village would evenly divide the additional funds received. GSH also reserved a portion of this additional money for Oak Village although it was not obligated to. Maximizing extra funding is a common practice in Indiana as roughly 90% of nursing homes now have partnerships with hospitals. Oak Village was interested in entering into this type of agreement because of financial problems resulting from the low reimbursement rates of Medicare and Medicaid. Oak Village was losing money and it was very likely that without these additional funds the Oak Village facility would cease operations. The money received allowed Oak Village to make significant improvements to the facility such as build a new dining room, a new roof, a new fire suppression system, and a new furnace and air conditioner. Despite this arrangement, Oak Village’s revenues continued to fall. *See McLin testimony; Hobbs testimony; Pet. Ex. 10 & 12.*

CONCLUSIONS OF LAW

A. Burden of Proof

15. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *See Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). A taxpayer bears the burden of proving that its property qualifies for an exemption. *Id.*
16. Exemption statutes are strictly construed against the taxpayer. Every exemption case “stand[s] on its own facts,” and it is the Petitioner’s duty to walk the Board through the analysis. *Id.*; *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471.

B. Indiana Code § 6-1.1-10-18.5

17. Oak Village first argues that it qualifies for an exemption 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...
18. Oak Village satisfies the first requirement of I.C. § 6-1.1-10-18.5(b) because it is an Indiana nonprofit corporation that owns the subject property.
19. The Assessor argued that Oak Village did not meet the statutory requirements of I.C. § 6-1.1-10-18.5 for two reasons. First, the Assessor argued that under the Management Agreement GSH is the operator of the facility and that this lack of unity prohibits Oak Village from obtaining an exemption. Second, the Assessor argued that Oak Village’s failure to hold a comprehensive care license for the facility prohibits it from qualifying for an exemption. We disagree.

20. The Assessor is correct that GSH is defined as an operator for purposes of the Management Agreement. However, the responsibilities of operating the facility were delegated to Oak Village under the agreement as referenced above. Thus, Oak Village owns the property and uses it in the operation of a licensed health care facility.
21. It is undisputed that the facility was licensed under I.C. § 16-28, but that license is held by the Hospital, not by Oak Village. Contrary to the Assessor’s argument, the statutory language of I.C. § 6-1.1-10-18.5 does not explicitly require the non-profit corporation that owns the property to also hold the license. We will not read new language or new requirements into the statute.
22. We find that Oak Village is an Indiana nonprofit corporation that used the tangible property in the operation of the facility, and that the facility is licensed under I.C. § 16-28. Therefore, we find that Oak Village is exempt under I.C. § 6-1.1-10-18.5(b) based on the plain meaning of the statute.

C. Indiana Code § 6-1.1-10-16

23. Oak Village also claimed an exemption for a charitable purpose under § 6-1.1-10-16.¹ Although Oak Village 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 separate analysis. *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).
24. 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. I.C. § 6-1.1-10-16(c).

¹ The Assessor argues that because Oak Village did not indicate it was seeking a charitable exemption on its 2014 Form 136 it has waived that claim and may not make it on appeal. As the Assessor’s own testimony indicates that the PTABOA considered whether Oak Village qualified for a charitable exemption, we do not find the argument waived. *Lane testimony*.

25. 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 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).

26. 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. Nevertheless, this fact does not affect our determination, as we find Oak Village owned, occupied, and used the subject property.

27. It is uncontested that Oak Village owns the personal and real property in question. It is less clear who occupied and used the property because of the nature of the agreement with the Hospital. This agreement gives the Hospital a legal right of occupancy. But during the assessment years at issue it was Oak Village’s employees and patients that physically occupied and used the subject property. In contrast, the Hospital was only minimally involved with the day to day operations of the facility. As stated above, the Hospital and Oak Village held quarterly meetings, but only for Oak Village to provide the reports and other documents required by the management agreement. Additionally, nurse practitioners from the Hospital visited the facility, but only when the Oak Village medical director was unavailable. We find these contacts are minimal, and insufficient to make the Hospital even a partial occupant or user. For those reasons, we find that Oak Village was the owner, occupant, and user of the subject property.

28. Next, we evaluate whether Oak Village proved it had a charitable purpose in its use of the subject property. The Assessor made a number of arguments regarding the amount of care provided by Oak Village 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.

29. A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *See Grandview at 182.*

30. The Indiana Courts and Indiana law have long recognized the humanitarian principle of caring for the aged as a charitable act. 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).

31. Oak Village provided exactly the sort of benefit to the public that is described in *Raintree Friends*. In addition, we find it particularly significant that the founders of Oak Village created it with the purpose giving aged residents in need of care the option to remain in their community. Not only does this benefit the patients of Oak Village, it also benefits their family and friends. We find this to be exactly the sort of obviously charitable act

that merits a tax exemption. The Assessor's assertion that exemptions must be confined to care that is provided free of charge is misguided.²

32. As the Assessor points out, in *Tipton County Health Care Foundation, Inc. f/k/a Tipton County Memorial Hospital Foundation v. Tipton County Assessor*, 961 N.E.2d 1048, 1052-3 (Ind. Tax 2012) the Tax Court held there is no *per se* rule that operating an assisted living facility that cares for the elderly is charitable. In that case, the Foundation hired a for-profit management company to operate the facility but failed to prove whether “the arrangement...was entered into for a public benefit (i.e., charitable purpose) or a private benefit (i.e., a profit motive).” *Id. at 1053*. In this case, neither Oak Village nor the Hospital were for-profit companies. Oak Village proved it had a charitable purpose, and its arrangement with the hospital does not undermine that purpose.

33. The Assessor also suggests that Oak Village should not receive an exemption because it receives significant government funds from Medicaid and Medicare. The Assessor also argued that there is a for-profit motivation behind the GSH-Oak Village agreement and as a result, Oak Village could not have a charitable purpose. The Assessor implied that because Oak Village sought out this extra federal money it had a profit motive for operating. We find the McLin and Hobbs testimony more persuasive than the Assessor's narrative. It is abundantly clear from the record that all of the money Oak Village received from the Federal government was necessary for the facility to continue operating. In addition, Oak Village wrote off some patient's bills as an act of financial charity. Finally, Oak Village's provided a facility that allowed residents to stay in the local community. This is obviously charitable act that goes beyond the government money it receives. Therefore, we find that Oak Village owned, occupied, and used the facility for a charitable purpose. As a result, Oak Village qualified for an exemption under I.C. § 6-1.1-10-16 in the 2014 and 2015 tax years. *See Pet. Ex. 10, 12; See Tipton*

² The Assessor also argued that Oak Village 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 Oak Village entire use the property was charitable, it meets the requirements of the predominate use test.

*County Health Care Foundation, Inc. f/k/a Tipton County Memorial Hospital Foundation
v. Tipton County Assessor, 961 N.E.2d 1048, 1052-3 (Ind. Tax 2012).*

SUMMARY OF FINAL DETERMINATION

34. Oak Village qualifies for an exemption under I.C. § 6-1.1-10-16 and I.C. § 6-1.1-10-18.5 for the 2014 and 2015 tax years.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- 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>>.