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**IN THE
INDIANA TAX COURT**

HCPI INDIANA LLC,

Petitioner,

v.

HAMILTON COUNTY PROPERTY TAX
ASSESSMENT BOARD OF APPEALS and
HAMILTON COUNTY ASSESSOR,

Respondents.

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Cause No. 49T10-0604-TA-36

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

NOT FOR PUBLICATION
May 31, 2007

FISHER, J.

HCPI Indiana LLC (HCPI) appeals the final determination of the Indiana Board of Tax Review (Indiana Board) denying its request for a property tax exemption for the 2004 tax year (the year at issue). The issue for this Court to decide is whether the Indiana Board erred in holding that HCPI failed to establish that its property was owned, occupied, and predominately used for charitable or educational purposes.

FACTS AND PROCEDURAL HISTORY

HCPI, a foreign limited liability company, owns a 7.77 acre parcel of land in Carmel, Indiana. On the parcel are the Methodist Medical Plaza of Carmel (the MMP) and its attendant parking lot. The MMP is a 123,168 square foot building comprised of an outpatient center and eleven medical office suites. During the year at issue, HCPI leased 59% of the MMP (i.e., the entire outpatient center and nine suites) to Clarian Health Partners, Inc. (Clarian), a domestic non-profit corporation.¹ Clarian, under the terms of a ten-year lease with HCPI, agreed to pay a base rent and operating expenses, which included property taxes, in excess of an agreed upon amount.

Clarian is “organized exclusively for charitable, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code[.]” (Cert. Admin. R. at 434.) Clarian uses the MMP to perform surgeries or provide other forms of medical care related to in vitro fertilization, neurology, women’s health, arthritis care, injury rehabilitation, ophthalmology, and orthopedics. Clarian also uses the MMP to provide free or reduced fee health care to eligible patients and to provide an experiential educational setting for medical students.

On May 17, 2004, HCPI filed an application for an exemption with the Hamilton County Property Tax Assessment Board of Appeals (PTABOA), seeking a charitable purposes exemption, an educational purposes exemption, or a hospital purposes exemption for the portion of the MMP leased to Clarian. On June 21, 2004, the PTABOA denied each of HCPI’s requests for exemption. HCPI subsequently appealed to the Indiana Board. On February 20, 2006, after conducting a hearing, the Indiana

¹ Two other for-profit corporations that provide health care services leased the remaining suites.

Board issued a final determination denying each of HCPI's requests for exemption.

On April 6, 2006, HCPI initiated this original tax appeal.² The Court heard the parties' oral arguments on February 28, 2007. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. See *Knox County Prop. Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 180 (Ind. Tax Ct. 2005). Consequently, the Court will reverse a final determination of the Indiana Board only if it is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1) - (5) (West 2007).

The taxpayer bears the burden of proving that it is entitled to the exemption it

² In its appeal to this Court, HCPI abandoned its claim with respect to the hospital purposes exemption. (See Pet'r Br. at 16-20; Oral Argument Tr. at 12-13.) Consequently, the Court will not discuss the matter further.

seeks.³ See *College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006) (footnote added). In order to meet that burden, the taxpayer must have submitted probative evidence, during the administrative hearing, sufficient to establish that its property qualifies for a tax exemption. See *id.* at 907-08. "Probative evidence is evidence that tends to prove or disprove a point in issue." *Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 211 (Ind. Tax Ct. 2000), *review denied* (internal quotation and citation omitted).

DISCUSSION AND ANALYSIS

In Indiana, all tangible property is subject to taxation. See IND. CODE ANN. § 6-1.1-2-1 (West 2007). Nevertheless, the Indiana Constitution provides that the legislature may exempt certain categories of property from taxation. See IND. CONST. art X, § 1. Pursuant to this grant of authority, the legislature enacted Indiana Code § 6-1.1-10-16(a), which provides that "[a]ll or part of a building is exempt from property taxation if it is owned, occupied, and used [] for educational, literary, scientific, religious, or charitable purposes." IND. CODE ANN. § 6-1.1-10-16(a) (West 2004). This exemption also generally extends to the land on which the exempt building is situated, as well as the personal property that is contained therein. See A.I.C. § 6-1.1-10-16(c), (e).

When seeking an exemption pursuant to Indiana Code § 6-1.1-10-16(a), a taxpayer must demonstrate that it owns, occupies, and uses its property for an exempt purpose. Additionally, a taxpayer must demonstrate that the exempt purpose is the

³ In Indiana, an exemption is strictly construed against the taxpayer and in favor of the State because it releases property from the obligation of bearing its fair share of the cost of government and serves to disturb the equality and distribution of the common burden of government upon all property. *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004), *review denied*.

property's predominate use. See IND. CODE ANN. § 6-1.1-10-36.3. See also *State Bd. of Tax Comm'rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1263 (Ind. 2002). "Once these [] elements have been met, regardless of by whom, the property can be exempt from taxation." See *Grandview Care*, 826 N.E.2d at 183 (citation omitted).

During the administrative hearing, HCPI asserted that it owned the MMP for a charitable purpose and that Clarian occupied and used it for both charitable and educational purposes. More specifically, HCPI claimed that it owned the MMP for a charitable purpose because its ownership and management of the property allowed Clarian to "free[-]up [] capital and human resources to pursue the improvement of its charitable care and [its] education of medical students." (See Cert. Admin. R. at 988-89; Pet'r Reply Br. at 5; Oral Argument Tr. at 6-7.) HCPI also claimed that its charitable purpose was further demonstrated by the fact that it leased the MMP to Clarian for below market rent. (See Cert. Admin. R. at 1022; Pet'r Reply Br. at 5.)

In turn, HCPI asserted that Clarian occupied and used the MMP for charitable purposes because Clarian used the MMP to provide both free health care and reduced fee health care to some of its indigent patients. (See Cert. Admin. R. at 1013, 1017-18; Oral Argument Tr. at 2.) To support its assertion, HCPI presented Clarian's 2003 Annual Fiscal Report (Fiscal Report), which indicated that Clarian, in operating Methodist Hospital, Indiana University Hospital, Riley Hospital for Children, and the MMP, provided over \$29 million dollars of charity care and community benefits during the year at issue. (See Cert. Admin. R. at 359-65, 1012-16.) HCPI also asserted that Clarian occupied and used the MMP for educational purposes as Clarian provided

medical students with an opportunity, during normal business hours, to “[s]it[] next to a doctor [and learn about or perform] the procedures . . . they provide.” (See Cert. Admin. R. at 1011, 1016-17; Pet’r Br. at 8-9.) To support this assertion, HCPI presented a copy of Clarian’s webpage, which indicated that Clarian “actively participates in the education of medical students through the residency program offered at Indiana University School of Medicine.” (Cert. Admin. R. at 366, 1011-13.) Finally, HCPI explained that if it received an exemption on the MMP, Clarian would be the true beneficiary because the exemption would directly reduce the excess operating expenses Clarian owed HCPI under the terms of their lease. (See Cert. Admin. R. at 993-94, 1028-30; Oral Argument Tr. at 33-34.)

In its appeal to this Court, HCPI asserts that the Indiana Board’s final determination denying the exemption was arbitrary and not supported by substantial evidence because it offered sufficient evidence during the administrative hearing to establish that the MMP qualified for an exemption. Specifically, HCPI contends that its evidence “establishe[d] without dispute that Clarian use[d the MMP] continuously for charitable and educational purposes[;]” therefore, the only issue in dispute is whether the MMP was owned for a charitable purpose. (See Pet’r Br. at 9-11; Oral Argument Tr. at 3-4.) The Court, however, must disagree.

HCPI did not present any evidence showing that the MMP *was used more than 50% of the time (i.e., predominately)* to educate medical students or to provide charitable health care (i.e., health care which is provided for free or at a reduced fee). (See Cert. Admin. R. at 978-1116.) For instance, during the administrative hearing, HCPI acknowledged that non-educational activities also took place on the premises.

(See Cert. Admin. R. at 1049-50.) HCPI also acknowledged that “not [] every patient that came in the door got their services [for] free[; rather], the doors were open during [normal business hours] to *potentially* serve those who were indigent[.]” (See Cert. Admin. R. at 1017-18 (emphasis added).) Moreover, because Clarian’s Fiscal Report is not property specific, it merely suggests that the MMP may have been used to provide charitable health care to *some* degree. (See Cert. Admin. R. at 359-65, 1047.) In any event, as explained by Indiana’s Supreme Court, “the statutory test [for an exemption is the] predominant use of the facility, not distribution of income for charitable purposes.” See *New Castle Lodge #147*, 765 N.E.2d at 1263. Given that HCPI’s evidence merely demonstrates that Clarian used the MMP to provide an unspecified amount of educational and charitable activity, the Indiana Board did not err in denying it the

exemption.⁴ See *id.* at 1264 (stating that the Indiana Board is “fully justified in placing the onus on taxpayers to produce facility usage reports in great[] detail [] with [] supporting documentation” when seeking a property tax exemption) (footnote added).⁵

⁴ HCPI also claims that in denying the exemption, the Indiana Board not only violated its equal protection rights under both the Fourteenth Amendment of the United States Constitution and Article 1, § 23 of the Indiana Constitution, but also its right to a uniform rate of taxation as guaranteed under Article 10, § 1 of the Indiana Constitution. (See Pet’r Br. at 21-25.) To support this claim, HCPI presented, among other things, Clarian’s 2004 application for exemption for a number of parcels it owned in Hamilton County. (See Cert. Admin. R. at 404-07, 1037-39.) One of the parcels for which Clarian sought and received an exemption was a parking lot, which was used to provide parking for the MMP. HCPI contends that the only discernable difference between its parking lot and Clarian’s parking lot is the fact that a for-profit corporation owns its parking lot and a non-profit corporation owns Clarian’s parking lot. (See Oral Argument Tr. at 7-12.) Thus, HCPI claims that in denying it the exemption based on its status, rather than its use of the property, the Indiana Board violated both its state and federal constitutional rights. HCPI, however, is incorrect.

First of all, the evidence in the administrative record does not clearly indicate why the PTABOA granted an exemption for Clarian’s parking lot: neither Clarian’s application for exemption nor any other evidence in the record established that Clarian’s parking lot was granted an exemption because Clarian owned the property or because it was used as a parking lot. (See Cert. Admin. R.) Second, while the Indiana Board did state in its final determination that “[t]he identity of the owner is relevant in determining whether the property is owned for an exempt purpose[,]” its analysis focuses on how the MMP was being used. (*Cf.* Cert. Admin. R. at 164, ¶ 35 with Cert. Admin. R. at 164-69, ¶¶ 36-49.) Thus, in concluding that HCPI’s use of the MMP was not charitable, the Indiana Board found that HCPI *used* the property for the purpose of earning a profit, similar to any other landlord. (See Cert. Admin. R. at 164-67.) Similarly, the Indiana Board found that HCPI failed to show that Clarian *predominately used* the MMP for educational or charitable purposes. (See Cert. Admin. R. at 167-69.) Consequently, the Indiana Board did not violate HCPI’s state or federal constitutional rights in denying it the exemption.

⁵ HCPI also contends that the Indiana Board exceeded its authority in rendering either a finding of fact or a conclusion of law regarding the grant of an exemption for a property that was not the subject of HCPI’s appeal and requests that the finding be stricken from the Indiana Board’s final determination. (See Pet’r Br. at 26; Oral Argument Tr. at 12.) The Court, however, declines to reach this issue, as it has no bearing on the Court’s decision with respect to the property under appeal.

CONCLUSION

For the above stated reasons, the final determination of the Indiana Board is
AFFIRMED.