

PT 09-3
Tax Type: Property Tax
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

**IN RE: 2006 Property Tax
Exemption Application of
NEIGHBORHOOD HOUSING
DEVELOPMENT CORPORATION**

Docket # 07-PT-0017

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Meredith Pitts of Heavner, Scott, Beyers & Mihlar for Neighborhood Housing Development Corporation; Kenneth G. Boles, Assistant State’s Attorney, for Macon County Board of Review.

Synopsis:

Neighborhood Housing Development Corporation (“applicant” or “NHDC”) filed applications for property tax exemptions for the year 2006 for four parcels of property located in Macon County. Three of the parcels have townhomes (“Townhomes”) that provide housing for low or very low income individuals. The fourth parcel has an apartment building (“Linwood”) that provides housing for chronically homeless individuals with disabling conditions. NHDC seeks a charitable exemption for the property pursuant to section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*).

The County Board of Review (“County”) determined that the exemption should be denied for the Townhomes property and a partial exemption, from June 1, 2006 through December 31, 2006, should be granted for the Linwood property. The Department of Revenue (“Department”) determined that none of the parcels should be exempt because they are neither owned by a charitable organization nor used for charitable purposes. The applicant timely protested the Department’s decision, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. NHDC is an Illinois non-profit corporation that was organized in January 1990. It does not have any capital, capital stock or shareholders. (App. Ex. #2)

2. NHDC’s articles of incorporation indicate its purposes as follows:

This corporation is formed to foster the development and rehabilitation of housing for the elderly, low and moderate income families, and will provide training opportunities in housing rehabilitation to disadvantaged individuals.

[NHDC] will also provide other activities to present and offset the occurrence of slum and blighted conditions in Macon and surrounding counties. (App. Ex. #2, p. 124)

3. The bylaws of the corporation state its mission as follows:

NHDC’s mission is to improve the quality of life of low and moderate income individuals and families by providing quality affordable housing, creating economic opportunities and promoting community-based cultural activities gear [sic] toward inner city neighborhoods. (App. Ex. #3, p. 127)

4. NHDC’s activities include the rehabilitation, construction, rental and/or purchase of property to address the housing needs of the area. NHDC also serves as a link between families and the various organizations that offer assistance programs to

- meet their housing needs. NHDC educates families concerning home-buying, and it has used rehab jobs to train youth in construction work. In addition, it provides homeowner education workshops to teach new home buyers how to maintain their homes. (App. Ex. #4, pp. 134-135, 150)
5. In July 2000, NHDC received, as a donation through a quit claim deed, title to the majority of property located at 250 and 260 E. Cleveland in Decatur. In January 2002, NHDC purchased the remaining portion of this property and obtained title to it through a warranty deed. (App. Ex. #9, pp. 180-182; Tr. pp. 19-23)
 6. NHDC constructed a housing complex with 10 single family townhomes (“Townhomes”) on the property at 250 and 260 E. Cleveland. (App. Ex. #4, p. 139)
 7. NHDC received financing for the construction of the Townhomes from the Illinois Housing Development Authority (“IHDA”). As part of the financing, the parties signed a Regulatory and Land Use Restriction Agreement (“Regulatory Agreement”) in which IHDA required at least 5 of the units to be occupied by very low income tenants and the remaining units to be occupied by low income tenants.¹ (App. Ex. #10, #11 pp. 200-201; Tr. pp. 23-24)
 8. In 2003, NHDC began renting the Townhomes to very low or low income families. (App. Ex. #4)
 9. The rental application for the Townhomes indicates that the prospective tenant must have monthly income in an amount 3 times greater than the monthly rent.

The tenant must also provide the following: (1) verification of income and

¹ Under the Regulatory Agreement, “Very Low Income Tenant” is defined as one whose income is less than or equal to 50% of the median income of Macon County. “Low Income Tenant” is one whose income is less than or equal to 80% of the median income of Macon County. (App. Ex. #11, p. 208)

- previous housing (prior 2 years); (2) credit check (favorable history of paying household bills on time); (3) landlord references (favorable history of rent payments); (4) criminal check²; (5) be pre-approved by Illinois Power; (6) photo ID/driver's license; and (7) home visit. (County Ex. #1)
10. Eight of the ten townhomes have 2 bedrooms, and the remaining two have 3 bedrooms. During 2006, the rent varied depending on the unit and the tenant's income; the rent charged was \$350, \$400, or \$475. (App. Ex. #4, p. 139; #15)
 11. Under the Regulatory Agreement, NHDC is required to provide for the management of the facility in a manner satisfactory to the IHDA. The IHDA must approve the Management Agreement. (App. Ex. #11, pp. 201-203)
 12. NHDC hired Cathco, Inc. d/b/a Swartz Properties ("Swartz") to manage the Townhomes. Swartz is responsible for lease signings, rent collection, financial reporting, physical upkeep of the building, and maintenance repairs. (App. Ex. #16, p. 349)
 13. Swartz is a for-profit, fee-based property management company. For managing the Townhomes during 2006, Swartz received a monthly fee equal to 5% of the gross income collected. (App. Ex. #16, p. 349, #26, #30, pp. 437, 503)
 14. Under the Regulatory Agreement, IHDA must approve the lease that must be executed by all tenants. The Agreement allows NHDC to require a security deposit in an amount that does not exceed one month's rent. (App. Ex. #11, pp. 202-203)

² This requires "no criminal convictions that involved physical violence to persons or property or endangered the health and safety of other persons or convictions in connection with manufacture or distribution of a controlled substance or current addiction to or engagement in the illegal use of a controlled substance." (County Ex. #1)

15. The seven-page lease agreement signed by the tenants of the Townhomes indicated that the rent was due in advance by the first day of each month.³ NHDC provided water and garbage service, and the tenant was responsible for electricity and cable television. The tenants also paid security deposits. (App. Ex. #15)
16. The lease agreement allowed NHDC to terminate the lease for the tenant's substantial breach of the terms of the lease. A substantial breach includes "nonpayment of rent beyond any grace period available under State law" and "repeated late payment of rent." (App. Ex. #15, p. 264)
17. The lease agreement indicated that if the tenant does not pay the full amount of the rent by the end of the 5th day of the month, NHDC may collect a fee of no more than \$25 per month as additional rent. NHDC may collect a fee of \$25 as additional rent for any dishonored payment. (App. Ex. #15, p. 264)
18. The one-page renewal agreement signed by tenants of the Townhomes during 2006 included the following paragraph:

All other conditions of the Lease shall remain in effect, and no condition of the lease shall be deemed waived by this Renewal Agreement. Please remember all rent is due and payable on or before the 1st day of each month. A late fee of \$25.00 is due and payable immediately to Lessor if Lessee's full amount of rent is not received in our office by 8:00 a.m. on the 5th day of each month. Any and all checks returned for any reason will be assessed a \$50.00 charge and is due and payable to Lessor immediately. (App. Ex. #15, p. 258)

19. The Management Agreement between NHDC and Swartz for the Townhomes includes the following under the provision titled "Enforcement of Leases":

[Swartz] shall secure full compliance by each Tenant with the terms of such Tenant's Lease. Voluntary compliance shall be

³ Unless otherwise indicated, references to the Townhomes lease agreements are to those leases executed in 2006.

emphasized, and [Swartz] shall counsel Tenants and make referrals to community agencies in cases of financial hardship or other circumstances deemed appropriate by [Swartz], all to the end that involuntary termination of tenancies shall be avoided to the maximum extent, consistent with sound management of the Development. Nevertheless, subject to the procedures prescribed in the Management Plan and the Regulatory Agreement, [Swartz] may lawfully terminate any tenancy when, in [Swartz's] judgment, sufficient cause for such termination occurs under the terms of the Tenant's Lease, including, but not limited to, nonpayment of rent. (App. Ex. 30, p. 495)

20. On May 4, 2006, NHDC's Board of Directors resolved to amend the by-laws to include the following paragraphs:

Notwithstanding any rental agreement provisions to the contrary, it shall be NHDC's policy in owning, managing, and operating its subsidized multi-family housing development located in Decatur, Illinois, not to evict a tenant without income, welfare, or other governmental assistance, solely for non-payment of rent or other charges due under the rental agreement, or in connection with the operation of the project, if such non-payment is due to said tenant's documented financial inability to pay said rent or other charges. This provision shall not be construed to prohibit NHDC from evicting tenants in accordance with the terms of their leases for, among other things, failure to pay rent for reasons other than their financial inability to pay rent.

It shall be NHDC's policy in owning, managing and operating its multifamily housing developments located in Decatur, Illinois, not to impose fees associated with accepting and processing applications, screening applicants, or verifying income eligibility on any applicant, and not to impose other fees, including security deposits, pet deposits, meal program fees, fees for supportive service programming, and late fees, on a[n] applicant or tenant without income, welfare or other governmental assistance, if said tenant has a documented financial inability to pay said fees. (App. Ex. #17)

21. The lease agreement for the Townhomes also included the following:

Resident agrees that a re-certification of income, family composition and other eligibility requirements shall be made to [NHDC] at least once every year...or less frequently upon written approval of [NHDC];...

The foregoing notwithstanding, [NHDC] and Resident agree that if at the time of re-certification Resident's income exceeds the maximum provided under applicable rules and procedures of IHDA, Resident shall be permitted to remain in occupancy only upon payment of a rental surcharge in accordance with a schedule of surcharges approved from time to time by IHDA. (App. Ex. #15, p. 260)

22. On November 7, 2005, NHDC entered into a Home Program FY2005 Community Housing Development Organization Agreement ("CHDO Agreement") with the City of Decatur ("City").⁴ The City received a special allocation from the U.S. Department of Housing and Urban Development ("HUD") for housing to be developed or owned by a CHDO for the purpose of providing permanent housing for chronically homeless individuals. (App. Ex. #29)
23. Pursuant to the CHDO Agreement, the City allowed NHDC to receive up to \$176,200 in order to acquire and rehabilitate an apartment building located at 456 W. Wood Street in Decatur ("Linwood") to be used as permanent housing for 8 chronically homeless individuals. (App. Ex. #29)
24. In December 2005, NHDC paid \$125,000 to obtain title to the Linwood property pursuant to an independent executor's deed. The apartment building contains 8 studio apartments, and the total square footage of the building is 2,223. (App. Ex. #18, #28, p. 439, #29, p. 483)
25. The Linwood property provides housing for chronically homeless individuals who each have a disabling condition. A chronically homeless person is one who has had three episodes of homelessness in the last two years. (App. Ex. #28, p. 450)
26. Tenants began living at the Linwood on June 1, 2006. (App. Ex. #28, p. 450)

⁴ The City certified NHDC as a CHDO, which is an organization that provides affordable housing for low to moderate income families. (App. Ex. 4, p. 143; Tr. p. 12)

27. Each tenant in the Linwood is a beneficiary of a rental subsidy. All of the subsidies are from different programs under HUD. (App. Ex. #23, #24, #25; Tr. pp. 51, 104, 130)
28. During 2006, six of the eight rental subsidies were paid by Dove, Inc. (“Dove”), which had received grants from two different programs under HUD.⁵ One grant that Dove received was a two-year Supportive Housing Grant in the amount of \$32,579 that allowed Dove to pay \$339.36 per month for 4 of the units at the Linwood (units #2, 6, 7, and 8). None of the tenants in these 4 units contributed anything toward their rent. (App. Ex. #22, pp. 375, 400, 406, 412, #23; Tr. pp. 104-107)
29. The other two rental subsidies paid by Dove were from a grant that was specifically for individuals whose disability was HIV/AIDS. With this grant, Dove paid \$354 per month for each of 2 units at the Linwood (units #1 and 5), and neither of these tenants contributed anything toward their rent.⁶ (App. Ex. #22, pp. 417-1, 417-7, #24; Tr. pp. 110-113)
30. Another rental subsidy was from the Decatur Housing Authority, which received a grant through the Shelter Plus Care program. This program allowed a subsidy based on the tenant’s income.⁷ (App. Ex. #25; Tr. pp. 113-116)

⁵ Dove is a non-profit, social service organization that provides various services to individuals, including the homeless. (Tr. p. 50)

⁶ The amount of the subsidies for units #3 and #4 during 2006 was unclear. The only lease agreement provided for unit #3 began on May 8, 2007; a lease for 2006 was not provided. (App. Ex. #22, p. 381) A lease agreement was provided for unit #4 that was for one year beginning on September 18, 2006; the rent was \$339.36, and the lease stated that the resident’s portion of the rent “shall be 30% of Gross Income or \$101.81 and is subject to change.” (App. Ex. #22, p. 393) The record does not clearly indicate who subsidized this lease (see also Finding of Fact #30 and footnote 7 concerning unit #4).

⁷ The record is again unclear concerning the amount of this subsidy during 2006. The “Shelter Plus Care Rent Assistance Program Payments Contract” indicated that the total rent was \$350 with the tenant’s share of the rent being \$338 and the Housing Authority’s share being \$12. (App. Ex. #22, pp. 388-389) The

31. In addition to providing housing, the terms of the rental subsidies required supportive services to be provided. Those services were provided by Heritage Behavioral Health Center (“Heritage”). Heritage provides mental health, substance abuse treatment, and HIV/AIDS services. It also provides assistance with any issue that might arise, and a case worker meets with each tenant at least once a week. (App. Ex. #23, 24; Tr. pp. 107-109, 113)
32. NHDC hired Swartz in June 2006 to manage the Linwood apartments. Swartz receives a monthly fee equal to 5% of the gross income collected. Swartz collects rent, provides lawn care, snow removal, janitorial, and maintenance services. (App. Ex. #29, p. 483, #31; Tr. pp. 45, 152)
33. The Management Agreement between NHDC and Swartz for the Linwood property includes, in part, the following:

THE OWNER [NHDC] AGREES:

To give the AGENT [Swartz] the following authority and powers (all or any of which may be exercised in the name of the OWNER) and agrees to assume all expenses in connection therewith.

(a)...to renew and or cancel the existing leases and prepare and execute the new lease without additional charge to the OWNER; to terminate tenancies and to sign and serve such notices as are deemed necessary by the AGENT; to institute and prosecute actions to evict tenants and to recover possession of the Premises’ to sue for and recover rent; and, when expedient, to settle, compromise and release such actions or suits, or reinstate such tenancies.... (App. Ex. #31, p. 513)

contract was for unit #4, and the term of the contract began November 22, 2006; a lease relating to this contract was not provided. *Id.* According to the testimony, however, the Shelter Plus Care subsidy was \$304, and the tenant paid an additional \$50 (the rental unit was not identified during the testimony). (Tr. p. 115)

34. The lease agreement for tenants at the Linwood during 2006 stated that NHDC provides all of the utilities.⁸ The lease also specifically stated that the resident is not responsible for paying a security deposit. (App. Ex. #22, pp. 369, 373)
35. The lease agreement for tenants at the Linwood allowed NHDC to terminate the lease for, *inter alia*, “[f]ailure to pay rents when due if the resident has income to pay.” (App. Ex. #22, p. 370)
36. The lease agreement for tenants at the Linwood had a provision titled “Termination of Assistance – Shelter Plus Care, Section 8,” which provides as follows:
- The Service Provider may terminate program assistance for the Resident for any grounds authorized in accordance with HUD requirements. If the termination of program assistance for the Resident occurs, the Lease terminates automatically. (App. Ex. #22, p. 373)
37. NHDC’s audited financial statements for the year ending December 31, 2006 show the following under Statement of Activities:

<u>Revenue and Other Support</u>	<u>Unrestricted</u>	<u>Temporarily Restricted</u>	<u>Total</u>
Grants	\$ -	\$ 323,699	\$323,699
Rental income	5,850	-	5,850
Rental income – Townhomes and Linwood Apartments	72,260	-	72,260
Contributions	6,750	-	6,750
Development Fee Income	21,761	-	21,761
Other income	475	-	475
Interest income	-	1,561	1,561
Net assets released from restrictions:			
Satisfaction of program restrictions	283,845	(283,845)	-
Total revenue and other support	<u>390,941</u>	<u>41,415</u>	<u>432,356</u>
 <u>Expenses</u>			

⁸ Unless otherwise indicated, references to the Linwood lease agreements are to those leases executed in 2006.

Program expenses	374,866	-	374,866
Management and general	<u>23,050</u>	<u>-</u>	<u>23,050</u>
Total Expenses	<u>397,916</u>	<u>-</u>	<u>397,916</u>
Change in Net Assets before			
Mortgages receivable forgiveness	(6,975)	41,415	34,440
Mortgages receivable forgiveness	<u>-</u>	<u>(41,395)</u>	<u>(41,395)</u>
Change in Net Assets	(6,975)	20	(6,955)

(App. Ex. #8, p. 169)

38. NHDC is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code and is exempt from retailers' occupation taxes and use taxes pursuant to a determination made by the Department on May 6, 2005.

(App. Ex. #5, #6)

CONCLUSIONS OF LAW:

Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances and provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. Ill. Const. 1970, art. IX, §6.

Pursuant to this constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and provides in relevant part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity. 35 ILCS 200/15-65(a).

Property may be exempt under this subsection if it is (1) owned by an entity that is an institution of public charity; (2) actually and exclusively used for charitable purposes; and (3) not used with a view to profit. *Id.*; Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 270 (1996). Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57 (1968). If the primary use of the property is charitable, then the property is “exclusively used” for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill. App. 3d 658, 661 (1st Dist. 1982). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987).

In Methodist Old Peoples Home, *supra*, the Supreme Court provided guidelines for determining charitable ownership and use. The guidelines are as follows: (1) whether the organization’s gift benefits an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders and earns no profits or dividends; (3) whether the organization’s funds are derived mainly from public and private charity; (4) whether charity is dispensed to all who need and apply for it and without obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; (5) whether the organization does not provide gain or profit in a private sense to any person connected with it; and (6) whether the primary purpose for which the property is used and not any secondary or incidental purpose is charitable. *Id.* at 156-57. These factors are

used to determine whether property meets the constitutional standards for a charitable purposes exemption. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 290-291 (2004). The guidelines are to be balanced with an overall focus on whether and how the organization and use of the property serve the public interest and lessen the State's burden. See Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-469 (2nd Dist. 1995).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen's Association, at 271; People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1992).

NHDC contends that it is a charitable organization because it is a non-profit corporation, it is exempt from income taxes pursuant to section 501(c)(3), and it is exempt from retailers' occupation taxes and use taxes. NHDC states that the Department has not presented any evidence or otherwise suggested that NHDC is anything other than a charitable organization. In addition, a charitable organization does not lose its charitable character by requiring recipients who are able to pay for its benefits to do so when no profit is made but the amounts received are applied in furthering its charitable purpose. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580, 587 (2nd Dist. 1987) (citing People ex rel. Cannon v. Southern Illinois Hospital Corporation, 404

Ill. 66, 69 (1949)). NHDC claims that all the income derived from the property is used to pay the costs associated with maintaining the buildings.

NHDC argues that the Townhomes and the Linwood property are used for exempt purposes because they both meet the criteria set forth in Methodist Old Peoples Home, *supra*. NHDC believes it benefits an indefinite number of people because it was organized to foster the development and rehabilitation of housing for low income people. NHDC states that its funds are derived mainly from grants, and the rent from the Townhomes and the Linwood constitutes less than 20% of NHDC's total income.

In NHDC's view, it dispenses charity to all who need and apply for it, subject only to the restrictions imposed by IHDA at the Townhomes and by HUD at the Linwood. A non-eviction policy prohibits a tenant from being evicted for the failure to pay rent due to an inability to pay. NHDC claims that this policy has been in effect since the Townhomes opened in 2003 and was formalized on May 4, 2006; no one has been evicted from either property due to an inability to pay rent.

NHDC contends it does not place obstacles in the way of those seeking its benefits because as long as a prospective tenant meets the criteria of IHDA and HUD, his or her application is accepted. NHDC also claims the property is used for charitable purposes because it is used to provide housing to low and very low income individuals. The properties are not leased with a view to profit; both properties cost more to maintain and operate than what is collected in rent. Swartz's involvement as property manager does not disqualify it from achieving tax exempt status. IHDA, as part of its agreement with NHDC, required a property manager for the property. Swartz had to submit a management plan to IHDA for its approval. As a community organization, NHDC does

not have the resources to manage property. NHDC contends that failure to advertise a fee waiver policy is not fatal, and in this case the policy absolutely exists; NHDC has acted consistent with the policy.

In response, the County argues that with respect to the Townhomes, the property does not meet most of the factors in Methodist Old Peoples Home, *supra*. The County believes that the benefits are not given to an indefinite number of people, are not given to all who need and apply for them, and the organization places obstacles in the way of those seeking benefits. During the hearing, Swartz's property manager for the Townhomes testified that tenants are selected according to the criteria set forth in IHDA's Tenant Selection Plan.⁹ She stated that the criteria include the following: (1) low or very low income; (2) no criminal history in the last 5 years; (3) good landlord references; (4) birth certificate, proof of U.S. citizenship and social security number; (5) sufficient income to pay rent; and (6) pre-approved by Illinois Power. (Tr. pp. 167, 175) The County maintains that the citizenship requirement is particularly disturbing because national origin discrimination is prohibited by the Illinois Human Rights Act.¹⁰ (775 ILCS 5/1 *et seq.*) The County contends that Decatur is a low rent district, and prospective tenants who meet these requirements would have no problem obtaining housing in the private sector. The County also believes that the Townhomes are not used for charitable purposes because the rents are comparable to rents of private sector housing in Decatur, and the tenants are allowed to stay even if their income increases.¹¹

⁹ NHDC did not provide a copy of IHDA's Tenant Selection Plan.

¹⁰ The Regulatory Agreement between NHDC and IHDA provides that NHDC "shall not discriminate against any person on the grounds of ... national origin...." (App. Ex. #11, p. 206) The County does not support, with citations to authority, its contention that discrimination on the basis of citizenship is the same as discrimination on the basis of national origin.

¹¹ The Department did not file a brief or provide arguments in response to NHDC's arguments or the County's arguments.

With respect to the Linwood property, the County believes that it should be exempt because it meets all of the guidelines in Methodist Old Peoples Home, *supra*. The Linwood property is a housing-first facility, which is one that does not require addicts to be drug free before or after receiving housing at Linwood, and there are too few programs like this in our country. The County contends that there cannot be a purpose more charitable than providing housing to homeless drug addicts, mental health patients, and AIDS sufferers.

As previously mentioned, the applicant, not the Department, bears the burden of proving clearly and convincingly that NHDC is a charitable organization and that the property is used for charitable purposes. Chicago Patrolmen's Association, *supra*. The evidence presented in this case unfortunately falls short of meeting that burden. The fact that NHDC is a 501(c)(3) corporation or that it is exempt from sales and use taxes is not determinative of whether it is a charitable organization for property tax purposes. See Hopedale Medical Foundation, *supra* at 464. The Department may review the tax-exempt status of a corporation at any time. See Rogy's New Generation, Inc. v. Department of Revenue, 318 Ill. App. 3d 765 (1st Dist. 2000). Because the Department denied this exemption on the basis that there is neither exempt ownership nor use, the applicant must establish that both the owner of the property and the use of the property meet the criteria set forth in Methodist Old Peoples Home, *supra*. See Chicago Patrolmen's Association, *supra* at 271; Small v. Pangle, 60 Ill. 2d 510, 515 (1975).

Although NHDC does not have capital, capital stock or shareholders, it is not clear whether its income is derived mainly from public charity. "Grant" income may be

public charity; to determine whether it is, a distinction is made between government contributions (grants) and government fees received pursuant to contracts for services (see e.g., IRS Form 990 (2006), Return of Organization Exempt From Income Tax, lines 1(d) and 2). If the income is a government contribution rather than payment for services, it is considered to be public charity.

Limited information was provided concerning the majority of NHDC's income. The audited financial statement for 2006 shows income from "Grants" in the amount of \$323,699, but substantiation for this amount was not given. NHDC indicated that it was from multiple grants (tr. p. 17) but did not provide additional information, such as a copy of its Form 990 for 2006, to support this.¹² Because the source of the majority of its income was not substantiated, it cannot be found that NHDC's income is primarily from public charity. The fact that NHDC's income is ultimately used for its charitable purposes does not automatically make it a charitable organization. See Salvation Army v. Department of Revenue, 170 Ill. App. 3d 336, 344 (2nd Dist. 1988).

The evidence concerning the remaining factors does not clearly and convincingly establish that the property qualifies for an exemption. As the County indicated, with respect to the Townhomes, a prospective tenant must meet a list of requirements before being eligible to reside there. Besides having low or very low income, a prospective tenant must have monthly income in an amount 3 times greater than the monthly rent. The prospective tenant must also pass credit and criminal checks, have landlord references, and be pre-approved by Illinois Power. Although it is not listed on the rental

¹² NHDC provided a copy of the CHDO Agreement, which allowed NHDC to receive up to \$176,200 from the City in order to acquire and rehabilitate the Linwood property. (App. Ex. #29) Because the Agreement was entered into in 2005, however, it is unclear whether money received pursuant to this Agreement was included in the \$323,699 "grant" income.

application, the testimony indicated that the prospective tenant must also have proof of U.S. citizenship. (Tr. p. 175) Because these requirements must be met, not everyone who needs help will receive it. The requirements also help to ensure that NHDC receives payment and are obstacles in the way of those seeking benefits.

On May 4, 2006, NHDC formalized its non-eviction policy and its policy to not charge security deposits or fees to those with an inability to pay; examples of when NHDC actually waived fees, however, were not provided. The testimony indicated that the policy was always in effect even before it was formalized, but, to the contrary, the lease agreement for the Townhomes specifically stated that the lease may be terminated due to non-payment of rent, security deposits are required, and late fees may be assessed. The lease agreement also required the tenants to pay for electricity. Despite the formalization of the non-eviction and fee waiver policies, the lease renewals that were signed after the by-laws were amended do not indicate that the lease was changed to reflect the written policies. (App. Ex. #15, pp. 295, 313, 342-348) In addition, the Management Agreement between NHDC and Swartz was not changed to reflect the written policies, and the Management Agreement gives Swartz the discretion to determine whether a lease should be terminated due to nonpayment of rent.

NHDC's failure to notify the public of its fee waiver or non-eviction policy does not automatically warrant denying the exemption. See Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1068 (1st Dist. 2000). In Randolph Street Gallery, however, the court found that during the years in question, the applicant had, and used, an undisputed and consistent fee-waiver policy. The evidence in the present case does not support a finding that fees have actually been waived or that a tenant was not evicted

despite the failure to pay rent. In addition, notwithstanding testimony that Swartz does not charge late fees (tr. p. 171), the 2006 General Ledger for the Townhomes included an account titled “NSF & Late Fee Charges,” which had charges throughout the year. (App. Ex. #14, pp. 242-243) The Income Register also included “NSF & Late Fee Charges” as rent income. (App. Ex. #14, pp. 249-252) At the very least, the charging of late fees raises doubt concerning the charitable nature of the rental activity.

Having a property manager does not *per se* disqualify the property for an exemption, but the evidence does not clearly establish that the property was used in a charitable manner. Swartz is a for-profit entity that receives payment based on the amount of rent that it collects. The oral testimony indicated that if a tenant at the Townhomes falls behind in rent payments, Swartz works with them and accepts partial payments until their account is current. (Tr. p. 163) A few tenants had fallen behind, but they all managed to pay in full. (Tr. pp. 170-171) Because Swartz’s fees are based the amount of rent collected and every tenant has a current account, specific evidence concerning Swartz’s collection practices is relevant but was not provided. The oral testimony indicated that NHDC allows Swartz to send letters to tenants with late rent payments because NHDC wants to encourage the tenants to establish a good credit history (tr. pp. 39-40, 74), but examples of the letters that were sent were not given.

With respect to the Linwood property, NHDC’s charitable practices include not charging security deposits, paying for all the utilities, and having the lease agreement state that it may be terminated for failure to pay rent “if the resident has income to pay.” (App. Ex. #22, p. 370) The evidence was unclear, however, concerning the amount of rent paid by the tenants in units #3 and #4 and the extent to which charity was needed and

provided to these tenants. Because sufficient documentary evidence was not provided, it cannot be found that these units are exempt.

Moreover, the rent for the remaining tenants was fully subsidized by Dove, and the lease included a provision indicating that the lease automatically terminates if the program assistance is terminated on grounds authorized in accordance with HUD requirements. The record does not include the grounds on which HUD authorizes termination, but it appears as though NHDC rents to those for whom it expects payment from some source. Other than this provision in the lease, the record does not indicate what happens to a resident when his or her subsidy is terminated. In addition, the Management Agreement for the Linwood property, like the Management Agreement for the Townhomes, does not reflect NHDC's non-eviction and fee waiver policies. Although providing a home for the disabled homeless is a noble cause, noble causes do not necessarily constitute charity. See Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286, 291 (1956) (laudable and public spirited objectives are not charitable purposes for property tax exemptions). The record in this case does not clearly establish that this property is used in a charitable manner.

Exemption provisions are strictly construed; all doubts and debatable questions must be resolved in favor of taxation. Chicago Patrolmen's Association, *supra*. The evidence raises doubts that NHDC meets most of the criteria of Methodist Old Peoples Home, *supra*. Because the evidence falls short of showing clearly and convincingly that the applicant meets most of the guidelines, the exemptions must be denied.

Recommendation:

For the foregoing reasons, it is recommended that the exemptions be denied.

Linda Olivero
Administrative Law Judge

Enter: January 23, 2009