

**PT 12-01**  
**Tax Type: Property Tax**  
**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS**  
**DEPARTMENT OF REVENUE**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**CHICAGO, ILLINOIS**

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**IN RE:**

**No: 10-PT-0043 (09-81-53)**

**FRIENDSHIP MANOR,**  
  
**APPLICANT**

**Real Estate Tax Exemption**  
**For 2009 Tax Year**  
**P.I.N. SRI 4215**

**INTERVENOR: CITY OF ROCK**  
**ISLAND**

**Rock Island County Parcel**

**Kenneth J. Galvin**  
**Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. John Callas; McCarthy, Callas, Church & Freeney, and Mr. Edward Clancy and Mr. Patrick J. Hanlon, Ungaretti & Harris, on behalf of Friendship Manor; Mr. Theodore Kutsunis, on behalf of Intervenor, City of Rock Island; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:** This proceeding raises the issue of whether Rock Island County Parcel, identified by Property Index Number SRI 4215, qualifies for exemption from 2009 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by a charity and actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit. The P.I.N. at issue contains independent living units, assisted living units and the Silver Cross Health and Rehabilitation Pavilion (hereinafter “Silver Cross”), all owned by Friendship Manor (hereinafter “Friendship”). In the case at bar, Friendship is only seeking exemption for Silver Cross (the “subject property”).

This controversy arises as follows: On January 19, 2010, Friendship filed an Application for Non-homestead Property Tax Exemption with the Rock Island County Board of Review (hereinafter the “Board”) seeking exemption from 2009 real estate taxes for Silver Cross. The Board reviewed the Application and recommended that the exemption be denied. On March 18, 2010, the Department of Revenue of the State of Illinois (hereinafter the “Department”) accepted the Board’s recommendation finding that Silver Cross was not in exempt ownership or use in 2009. Dept. Ex. No. 1. On May 5, 2010, Friendship filed an appeal of the Department’s exemption denial. The City of Rock Island had previously requested to intervene in this matter.

At a pretrial conference, held on May 4, 2011, the parties agreed that the issue to be determined at hearing was whether the Applicant was entitled to a property tax exemption for the subject property under 35 ILCS 200/15-65. An evidentiary hearing was held on August 2 and 3, 2011,<sup>1</sup> with the following witnesses testifying for the Applicant: Mr. Ferdinand Glassner, resident at Friendship, Judge James Mesich, whose mother was a resident at Friendship, Mr. Daniel Levin, whose parents resided at Friendship, Reverend Ronald Stewart, pastor of Broadway Presbyterian Church in Rock Island and Secretary of Friendship’s Board of Directors, State Representative, Patrick Verschoore, 72<sup>nd</sup> District, whose mother-in-law resided at Friendship, Mr. Jeff Condit, Development Director for Friendship, Mr. Patrick Devinney, Chief Financial Officer for Friendship, and Mr. Ted Pappas, Jr., CEO and President of Friendship and Nursing Home Administrator of Silver Cross. Following a careful review of the testimony and evidence, it is recommended that the Department’s denial be affirmed.

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<sup>1</sup> Mr. Kutsumis, Attorney for the Intervenor, did not appear at the evidentiary hearing.

## **FINDINGS OF FACT:**

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the subject property was not in exempt ownership or use in 2009. Tr. pp. 9-10; Dept. Ex. No. 1.
2. Friendship is a continuing care retirement community. Services offered include independent living apartments, assisted living apartments, in-home services and out-patient therapy. In 2010, 300 residents lived at Friendship, 120 clients were served through in-home services and 30 patients received therapy each month. App. Ex. No. 12.
3. Friendship is organized under the "General Not For Profit Corporation Act" of Illinois. Friendship is exempt from income tax under section 501(c)(3) of the Internal Revenue Code. Tr. pp. 224-228; App. Ex. Nos. 1, 2 and 3.
4. Friendship acquired the P.I.N. on September 9, 1977. Tr. pp. 228-229; App. Ex. No. 4.
5. Friendship operates under Bylaws effective October 25, 2006. Section 3 of the Bylaws, entitled "Charitable Purpose," states as follows: All entrance fees, monthly maintenance charges, routine service charges, and nursing care charges for residents in the Silver Cross Health & Rehabilitation Pavilion may be waived in full, reduced in part, or liability for payment postponed based upon the individual's inability to pay. No individual shall be denied residence or have such residence in Silver Cross terminated solely on the inability to pay. Any individual that requests that fees be waived, reduced, or postponed may be required by Friendship Manor to apply for such assistance from state or federal agencies for which the individual may be eligible. This recitation is printed verbatim in a "Note" on the brochure which advertises Silver Cross and in Silver Cross' "Contract Between Resident and Facility." Friendship's Financial

Statements state at Note 1 that “[N]o resident will be asked to leave Silver Cross due to the inability to pay for such services.” “No resident will be turned away from admission to Silver Cross in the event a financial need exists.” Tr. pp. 51-52, 81, 273-275; App. Ex. Nos. 11, 13, 16 and 19.

6. Silver Cross contains an 81 bed skilled nursing facility and a 13 bed sheltered care facility “right in the heart of Friendship Manor.” Residents can receive physical, occupational, and speech therapy on a short or long-term basis. Respite care and hospice care is also available. Silver Cross is Medicare and Medicaid certified for the skilled nursing facility only. Private rooms are available in sheltered care. The sheltered care facility is licensed by the State. Patients in sheltered care may have long term nursing needs. Tr. pp. 141-142; App. Ex. Nos. 12, 13 and 16.
7. There is no “Charitable Purpose” provision in the Bylaws for Friendship’s assisted living units or independent living units. Tr. pp. 57-59.
8. Friendship’s “Application for Assisted Living Occupancy” and “Application for Independent Living Occupancy,” require the applicant to provide “Financial Information,” including “Total Income,” consisting of social security, pensions, investments, and other income and “Net Worth” consisting of value of real estate, investments, savings and/or checking, and liabilities. Both applications contain the following provision: “I understand final approval of my application will depend on health and financial evaluation.” There is no notice in either application that Friendship provides charitable assistance. Tr. pp. 281-283; Dept. Ex. Nos. 4 and 5.
9. In 2010, the monthly charge for independent living apartments was from \$937 to \$2,438, “depending on unit size.” Included in the monthly charge are utilities, bi-weekly cleaning, cable TV, one-meal per day, “activities galore,” and transportation

services. Assisted living rates vary by service level and unit size and range from \$2,747 to \$4,248. In 2009, the year at issue in these proceedings, rates varied by unit size and “amenities.” Tr. pp. 86-88, 105-107; App. Ex. No. 12.

10. “Plan A” for independent living “requires the resident to pay an advance fee prior to residency and a monthly maintenance fee after occupancy.” The resident has lifetime occupancy rights to the apartment as well as use of other facilities of Friendship. The advance fee ranged from \$72,800 to \$127,800 with an additional \$17,035 fee for a second resident. No resident has entered Friendship under Plan A since 2005. Tr. pp. 173-174, 192-193; App. Ex. No. 16.

11. “Plan B” for independent living requires a resident to pay a monthly fee and a deposit. Tr. pp. 173-174, 193-196; App. Ex. No. 16.

12. “Plan C” for independent living requires a resident to pay an advance fee prior to residency and a monthly maintenance fee after occupancy. The resident, in turn, was given a lifetime occupancy right to the apartment. The advance fee ranged from \$44,000 to \$95,000. Advance fees were 90% refundable when Friendship was able to relet the unit. Unlike Plan A, residents under Plan C must pay 90% of Friendship’s standard daily charges, for use of the sheltered care and nursing facilities. Friendship stopped using Plan C after January 1, 2005, but there were residents at Friendship in 2009 who entered under Plan C. Tr. pp. 191-192, 194, 277-278; App. Ex. No. 16.

13. Section 4 of Friendship’s Bylaws state as follows: No part of the net earnings of the corporation shall inure to the benefit of any private individual. Tr. pp. 51-52, 127-128; App. Ex. No. 11.

14. Friendship does not have capital stock or stockholders and does not pay dividends. Tr. pp. 54-55, 114, 127-128, 267.

15. In 2009, Friendship had property taxes of \$159,772. Silver Cross and common areas used by Silver Cross represent 29.23% of the P.I.N, and the property taxes attributable to Silver Cross and these areas were \$46,701. Tr. pp. 135-136, 250-264; App. Ex. Nos. 25 and 34.
16. Silver Cross provided \$129,233 in “resident assistance/charitable care” in 2009. “This assistance is generally provided in the form of subsidizing the resident’s monthly fee due to the Manor.” Residents pay the balance of their accounts after the subsidy. No patient gets entirely free monthly care at Silver Cross. The \$129,233 represents 2.3% of Silver Cross’ revenue of \$5,727,644 and 1.1% of Friendship’s revenue of \$11,768,263. Tr. pp. 137-139, 167-168; App. Ex. Nos. 16 and 25.
17. Friendship provided no charitable assistance to any residents in independent living or assisted living in 2009. Tr. pp. 171, 173-174, 290; App. Ex. No. 16.
18. Patients can be admitted to Silver Cross for “observation stay.” This occurs when patients are discharged from a hospital but their family is not comfortable with the patient going home. It gives the family time to regroup and determine a long-term plan. Observation stay is offered at the reduced rate of \$128/day plus Medicare B benefits, regardless of the financial needs of the family. If a longer stay is required after Medicare B therapies are complete, the daily rate will increase to the current daily room rate charged by Silver Cross. Silver Cross’ “residence assistance/charitable care” of \$129,233 in 2009 includes reduced rates for observation stay. Tr. pp. 157-160, 271-273; App. Ex. No. 15.
19. In 2009, Silver Cross’ “cost in excess of what we would receive in reimbursement from a Medicaid resident” for the skilled nursing facility was \$420,244. Tr. pp. 139-142; App. Ex. Nos. 16 and 25.

20. In 2009, Silver Cross had a net loss of \$243,861. Tr. pp. 140-141; App. Ex. No. 25.

21. In 2009, Friendship had “Total revenue, gains and other support” of \$11,768,263 and an “Excess of revenue, gains and other support over expenses” of \$670,312. In 2009, Friendship received “Contributions” of \$147,440, equal to 1.2% of total revenue. Tr. pp. 171-172; App. Ex. No. 16.

22. The P.I.N. contains a “Main Street” which includes American Bank & Trust, a bistro, a fitness center and a King’s Daughters and Sons Country Shop. The Bank pays rent at the market rate. Tr. pp. 195-199, 239-240; App. Ex. No. 8 (Photos 21-26, 29).

### **CONCLUSIONS OF LAW:**

An examination of the record establishes that Friendship has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2009 real estate taxes for charitable purposes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not satisfy the requirements for exemption set forth in 35 ILCS 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly’s power to exempt property from taxation 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.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution.

Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4<sup>th</sup> Dist. 1994).

Friendship's burden in this case is two pronged. Under the Property Tax Code, it is not sufficient that the subject property be "exclusively used for charitable or beneficent purposes." The Illinois General Assembly has set down a further requirement for exemption: the subject property must also be owned by an "institution of public charity." Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 741 (4<sup>th</sup> Dist. 2008), aff'd. 236 Ill. 2d 368 (2010).<sup>2</sup> Friendship is seeking exemption for 29.23% of the P.I.N. which comprises Silver Cross and common areas used by Silver Cross. Tr. pp. 135-136; 250-264; App. Ex. Nos. 25 and 34. Accordingly, Friendship, as owner, has the burden of proving 1) that it is an "institution of public charity" and 2) that Silver Lake is "exclusively used for charitable or beneficent purposes."

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<sup>2</sup> In this Recommendation, the Provena Appellate Court case will be cited as "Provena (1)" and the Provena Supreme Court case will be cited as "Provena (2)."

The provisions of the Property Tax Code that govern charitable exemptions are found in Section 15-65. In relevant part, the provision states 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
- (b) \*\*\*
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for exemption, the applicant provides affirmative evidence that the home or facility is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) \*\*\*

35 ILCS 200/15-65.

At the evidentiary hearing, Friendship took the position that the applicable statutory subsection was 35 ILCS 200/15-65(a), "institutions of public charity," and proceeded to apply the guidelines articulated in Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"). However, under a broad reading of 35 ILCS 200/15-65(c), Friendship met some of the threshold requirements of an "old people's home" and "organization providing [for] ... educational, social and physical development," and this subsection must also be considered. Friendship is organized under the "General Not For Profit Corporation Act" of Illinois and is exempt from income tax under section 501(c)(3) of the Internal Revenue Code. Tr. pp. 224-228; App. Ex. Nos. 1, 2 and 3.

Friendship operates under Bylaws effective October 25, 2006. Section 3 of the Bylaws, entitled "Charitable Purpose," states as follows: All entrance fees, monthly maintenance charges,

routine service charges, and nursing care charges for residents in the Silver Cross Health & Rehabilitation Pavilion may be waived in full, reduced in part, or liability for payment postponed based upon the individual's inability to pay. No individual shall be denied residence or have such residence in Silver Cross terminated solely on the inability to pay. Any individual that requests that fees be waived, reduced, or postponed may be required by Friendship Manor to apply for such assistance from state or federal agencies for which the individual may be eligible. Tr. pp. 51-52, 81, 273-275; App. Ex. Nos. 11, 13 and 19. There is no "Charitable Purpose" provision in the Bylaws for Friendship's assisted living units or independent living units. Tr. pp. 57-59.

Assuming, *arguendo*, that the above provision in Friendship's Bylaws conforms to the requirements of 35 ILCS 200/15-65(c), this does not signify "*ipso facto*" that the subject property is used for a charitable purpose. In Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273, 287 (2004) the Supreme Court held that even if an applicant met the requirements of 35 ILCS 200/15-65(c), the applicant still "must comply unequivocally with the constitutional requirement of exclusive charitable use." Therefore, the following conclusions are applicable under an analysis of either 35 ILCS 200/15-65(a) or (c).

In Korzen, the Court articulated the criteria and guidelines for resolving the constitutional question of exclusive charitable use of property. These guidelines are (1) the organization's funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (2) the organization has no capital, capital stock or shareholders and does not provide gain or profit in a private sense to any person connected with it; (3) the charity is dispensed to all who need and apply for it; (4) the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government; and (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. In

addition to these factors which are used to assess whether an institution is charitable, an Applicant, in this case Friendship, must also show that the exclusive and primary use of the subject property is for charitable purposes. Korzen at 156-157.

Courts consider and balance the criteria and guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Com'n on Accreditation of HealthCare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1965). Based on the evidence and testimony presented at the evidentiary hearing, I conclude that Friendship is not an institution of public charity and that Silver Cross is not exclusively used for charitable purposes.

Friendship's ministry to aging seniors started in 1942 as the Cleaveland Home for King's Daughters in downtown Rock Island, as a ministry of the Illinois Branch of the King's Daughters and Sons. App. Ex. No. 12. Friendship is now a continuing care retirement community ("CCRC"). Services offered include independent living apartments, assisted living apartments, in-home services and out-patient therapy. In 2010, 300 residents lived at Friendship, 120 clients were served through in-home services and 30 patients received therapy each month.<sup>3</sup> App. Ex. No. 12. Friendship acquired the P.I.N. on September 9, 1977, and ownership by Friendship is not an issue in this proceeding. Tr. pp. 228-229; App. Ex. No. 4.

Friendship's Mission Statement states that it "will strive to remain the area's leading retirement services organization, by staying well-connected to the community, differentiating ourselves as the market leader, and serving as the area's foremost employer in retirement services." One of Friendship's "Core Values" is as follows: "[W]e value fiscal responsibility in order to maintain a modern facility and to provide the greatest value to our current and future residents." Tr. pp. 265-267; App. Ex. No. 10.

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<sup>3</sup> Comparable statistics were not offered into evidence for 2009, the year at issue in these proceedings.

Silver Cross contains an 81 bed skilled nursing facility and a 13 bed sheltered care facility “right in the heart of Friendship Manor.” Residents can receive physical, occupational, and speech therapy on a short or long-term basis. Respite care and hospice care is also available. Silver Cross is Medicare and Medicaid certified for the skilled nursing facility only. Private rooms are available in sheltered care. The sheltered care facility is licensed by the State. Tr. pp. 141-142; App. Ex. Nos. 12, 13 and 16.

Following is a consideration of the Korzen factors and whether Silver Cross, was used for charitable purposes in 2009.

**Korzen factor (1): The organization’s funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter.**

With respect to this Korzen factor, Friendship has failed to prove that the majority of its funds were derived from public and private donations. In 2009, Friendship had “Total revenue, gains and other support” of \$11,768,263 and received “Contributions” of \$147,440, equal to 1.2% of total revenue. Tr. pp. 171-172. “Net resident service revenue,” which represents 92% of Friendship’s total revenue, is described in the Notes to the Financial Statements as charges to residents of Friendship including meals, laundry and other related charges reported at the estimated net realizable amounts expected to be collected from residents, third party payors and others for services rendered. App. Ex. No. 16.

As the financial data indicates, in 2009, Friendship received the great majority, 92%, of its funding from residents or third party payors for providing independent and assisted living services and skilled nursing and sheltered care to seniors. Mr. Devinney testified that Friendship derived its funds from “private pay, Medicare and Medicaid.” Tr. pp. 115-116. In Riverside Medical Ctr. v. Dept. of Revenue, 324 Ill. App. 3d 603, 608 (3<sup>rd</sup> Dist. 2003), the court noted that

97% of Riverside’s net revenue of \$10 million came from patient billing. According to the court, “this level of revenue is not consistent with the provision of charity.”

Similarly, in Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647 (1<sup>st</sup> Dist. 1998), Alivio argued that 59% of its revenue was from patient fees and 25% was derived from charitable contributions. The court found that Alivio was not a charitable institution. As the above cases indicate, the exchange of services for payment, at the level enjoyed by Friendship, does not distinguish an organization as “charitable.” Charity is an act of kindness or benevolence. “There is nothing particularly kind or benevolent about selling somebody something.” Provena (1) at 750.

Having an operating income derived almost entirely from contractual charges goes against a charitable identity. Small v. Pangle, 60 Ill. 2d 510, 517 (1975). In the instant case, the high level of revenue earned by Friendship from the services provided to seniors indicates that the primary use of the subject property is not to provide charity, “but to provide a certain enhanced lifestyle to the elderly who can afford to pay for it.” Wyndemere Retirement Comm. v. Dept. of Revenue, 274 Ill. App. 3d 455 (2d Dist. 1995). Friendship is not benefiting an indefinite number of persons. Friendship is, in fact, benefitting seniors who can afford and choose to pay for the services that Friendship offers. Friendship has failed to prove that the majority of its funding is from public and private charity and its use of the subject property is not consistent with this characteristic of a charitable organization.

**Korzen factor (2): The organization has no capital, capital stock or shareholders, and does not provide gain or profit in a private sense to any person connected with it.**

Section 4 of Friendship’s Bylaws state as follows: No part of the net earnings of the corporation shall inure to the benefit of any private individual. Tr. pp. 51-52, 127-128; App. Ex. No. 11. There was testimony at the hearing that Friendship does not have capital stock or

stockholders and does not pay dividends. Tr. pp. 54-55, 114, 127-128, 267. In 2009, Friendship had an “Excess of revenue, gains and other support over expenses” of \$670,312. Tr. pp. 171-172; App. Ex. No. 16. Reverend Stewart, Secretary of Friendship’s Board of Directors, testified that the Board is an “all volunteer Board” and that no member is compensated. Tr. p. 48.

However, the record in this case does not allow me to conclude that Friendship does not provide gain or profit in a private sense to persons connected with it. Friendship did not offer into evidence its Form 990, “Return of Organization Exempt from Income Tax,” for 2009, which would have included a schedule of its five highest paid employees. There was no testimony at the evidentiary hearing as to how Friendship determined compensation for its officers and employees in 2009. No Friendship employee who testified at the hearing was asked his salary. There is no testimony or documentary evidence in the record as to whether Friendship’s employees, including the CEO, get bonuses and whether they may improve their yearly compensation by improving the corporate bottom-line. If so, this may pose an incentive for reducing amounts dispensed for charitable purposes.

“The employees of a charitable institution are not compelled to perform free services in order that the institution may be charitable.” Yates v. Board of Review, 312 Ill. 367 (1924). “The payment of reasonable salaries to necessary employees for services actually rendered does not convert a nonprofit enterprise into a business enterprise.” 86 Ill. Admin. Code §130.2005(h). The problem in the instant case is that the record contains no testimony or documentary evidence to substantiate that salaries paid to Friendship’s officers and employees are reasonable. There is no testimony or documentary evidence in the record as to how Friendship’s salaries compare with those of employees in similar positions at other CCRC’s. Because of the deficiencies in the evidence regarding salaries, I am unable to conclude that Friendship does not provide unreasonable profit and gain in a private sense to officers and employees connected with it.

**Korzen factor (3): Charity is dispensed to all who need and apply for it.**

Before determining whether charity was dispensed to all who needed and applied for it, it is necessary to look at what charity was actually dispensed by Friendship in 2009.

One component of Friendship's "charity" is "Cost of Care Underwritten by Friendship Manor" in the amount of \$420,244. This amount represents "our cost in excess of what we would receive in reimbursement from a Medicaid resident." The amount is calculated "in terms of the difference between what Medicaid pays you and your actual cost of providing that service." Tr. pp. 139-140; App. Ex. No. 20.

Illinois courts have consistently rejected the argument that unreimbursed costs of Medicare and Medicaid constitute charitable care. In Riverside Medical Ctr. v. Dept. of Revenue, 342 Ill. App. 3d 603, 610 (3<sup>rd</sup> Dist. 2003), Riverside argued, as does Friendship, that the institution's charity care also included discounted care to patients through Medicare and Medicaid. Riverside claimed to provide this care at 50% of actual cost. The court stated that it was "unpersuaded" by Riverside's arguments that the unreimbursed amounts constituted charitable care. The court was "confident that these discounts are not charitable and do not warrant a finding in favor of Riverside." A similar argument was advanced in Alivio Medical Ctr. v. Dept. of Revenue, 299 Ill. App. 3d 647 (1<sup>st</sup> Dist. 1998), where Alivio argued, *inter alia*, that 78% of its patient fees came from Medicaid reimbursement and 2% came from Medicare reimbursement. The court found that Alivio was not a charitable organization and its use of the property was not charitable.

Provena Hospitals argued in the Illinois Supreme Court that its shortfall from treatment of Medicare and Medicaid patients should be considered charitable expenditures because the payments it received for treating such patients did not cover the full cost of care. The Court noted that participation in Medicare and Medicaid is not mandatory and stated the following:

“While it is consistent with Provena Hospitals’ mission, it also serves the organization’s financial interests.” “In exchange for agreeing to accept less than its ‘established’ rate, the corporation receives a reliable stream of revenue and is able to generate income from hospital resources that might otherwise be underutilized.” “Participation in the programs also enables the institution to qualify for favorable treatment under federal tax law, which is governed by different standards.” Provena (2) at 401-402.

The Court observed further that it would be “anomalous” to characterize services provided to Medicare and Medicaid patients as charity. Charity is, by definition, a type of gift and must be gratuitous. “Hospitals do not serve Medicare and Medicaid patients gratuitously. They are paid to do so.” Provena (2) at 402. “For a gift (and, therefore, charity) to occur, something of value must be given for free.” Provena (1) at 751. In serving Medicare and Medicaid patients, something of value is not being given for free. Based on the established law in Illinois, I am unable to conclude that Friendship’s unreimbursed costs for Medicare and Medicaid constitute charity.

In 2009, Friendship provided no charitable assistance to any residents in independent living or assisted living. Mr. Devinney was “not aware specifically of assistance being given to somebody in independent or assisted living in 2009.” Tr. pp. 171, 173-174. Mr. Pappas testified that no residents in independent or assisted living received financial assistance in 2009. Tr. p. 290. There is no note in Friendship’s Financial Statements that Friendship provided charitable assistance to any resident in independent or assisted living in 2009. App. Ex. No. 16.

Mr. Devinney testified that the contract for independent living indicated that financial assistance “would be available.” He did not know the exact wording of the contract and he could not “paraphrase the contract.” Tr. p. 120. The contract for independent living was not admitted

into evidence. He testified further that the contract for assisted living also offered financial assistance. Tr. p. 121. The contract for assisted living was also not offered into evidence.

It must be noted that Friendship's Bylaws, which contain a "Charitable Purpose" provision for Silver Cross, do not contain a similar provision for independent and assisted living units. Tr. pp. 57-59; App. Ex. No. 11. Friendship's "Application for Assisted Living Occupancy" and "Application for Independent Living Occupancy," require the applicant to provide "Financial Information," including "Total Income," consisting of social security, pensions, investments, and other income and "Net Worth" consisting of value of real estate, investments, savings and/or checking, and liabilities. Both applications have the following provision: "I understand final approval of my application will depend on health and financial evaluation." There is no notice in either application that Friendship provides charitable assistance to independent or assisted living residents. Tr. pp. 281-283; Dept. Ex. Nos. 4 and 5. Conditioning "final approvals" on "financial evaluation" allows Friendship to only admit residents who would not currently need charitable assistance and would be unlikely to need it in the future.

With regard to the independent and assisted living units, the record in this case shows that no charitable assistance was provided by Friendship in 2009. There is no provision for charitable assistance for these units in the Bylaws. There is no notice in the applications for these units that charitable assistance is provided. Mr. Devinney testified that "our terms of assistance, our message is more than in the contract ... it's spoken, it's a part of our culture..." Tr. p. 120. Unfortunately, Friendship's spoken message and culture are not part of the record in this case. No documentary evidence was offered to show that charitable assistance has been offered or given to any applicant in the independent and assisted living units. With this record, it would be both unreasonable and illogical for me to conclude that charity is dispensed to all who need and

apply for it in the independent living and assisted living units. Friendship argues that it is a charitable organization, as required for exemption under 35 ILCS 200/15-65. However, approximately 70% of the Friendship campus was devoted to independent and assisted living units in 2009 and I am not able to conclude that one dollar in charitable benefits was offered or derived from this 70%.

Silver Cross provided \$129,233 in “resident assistance/charitable care” in 2009. “This assistance is generally provided in the form of subsidizing the resident’s monthly fee due to the Manor.” No patient gets entirely free monthly care at Silver Cross. Residents pay the balance of their accounts after the subsidy. The \$129,233 represents 2.3% of Silver Cross’ revenue of \$5,727,644 and 1.1% of Friendship’s revenue of \$11,768,263. Tr. pp. 137-139, 167-168; App. Ex. Nos. 16 and 25.

Friendship’s designation of the \$129,233 figure as “charitable care” is misleading because this figure includes amounts that are not “charitable.” Patients can be admitted to Silver Cross for “observation stay.” This occurs when patients are discharged from a hospital but the family is not comfortable with the patient going home. It gives the family time to regroup and determine a long-term plan. According to the testimony, observation stay helps relieve a family’s stress. Observation stay is offered at Silver Cross at a reduced rate of \$128/day plus Medicare B benefits. If a longer stay is required after Medicare B therapies are completed, the daily rate will increase to the current daily room rate charged by Silver Cross. Tr. pp. 157-160, 271-273; App. Ex. No. 15. Apparently, the difference between the current daily room rate and the \$128/day rate for observation stay is included in “charitable care.”

Mr. Devinney testified that observation stay “is not really based on any kind of financial need, per se.” Patients are given a reduced rate “even if they have the funds to pay for it.” “We don’t ask the question of whether they have the funds to pay for it.” “It’s more of a humanitarian

gesture.” Tr. pp. 158-159. I deduce from this testimony that an over-insured millionaire, with no need for charity, could enter Silver Cross for observation stay and his underpayment of the daily rate would be included in “charitable care.” There is no testimony in the record that Silver Cross loses money on the \$128/day rate for observation stay. In fact, Silver Cross may be earning a profit on this specific part of its operation, even while dispensing this “charity.”

It may be a “humanitarian gesture” on Friendship’s part, but it’s also a way of getting patients into Silver Cross who may need further therapy which they will have to pay for at the current daily room rate. Charging reduced rates for observation stay is similar to a store selling an article, called a “loss leader,” cheaply or below cost in order to attract customers. The store selling the “loss leader” is not dispensing charity; the store has simply devised a strategy to attract customers. Charity is based on need. I find no support in Illinois case law for finding that Silver Lake’s reduced rate for observation stay, given to all residents without regard to financial need, constitutes “charity.” Furthermore, “for a gift (and, therefore, charity) to occur, something of value must be given for free.” Provena (1) at 751. The reduced rates for observation stay are not something of value given for free.

There was testimony at the evidentiary hearing that between “12 and 14” people received charitable assistance included in the \$129,233. Tr. pp. 205, 279-280. Some of these requests were for reduced fees in the sheltered care area. “And the residents were then billed or invoiced at a reduced rate.” Tr. p. 280. Counsel for the Department asked Mr. Pappas why she only received invoices for four residents when she “made a discovery request asking for the bills or invoices for residents that received reduced care.” He replied that “with relative certainty,” the remainder of the patients included in the \$129,233 were admitted for observation stay. Tr. pp. 280-281. In other words, 4 of the 12 to 14 people received “charitable care” because of financial need and the remainder were admitted for observation stay, paying a reduced rate without

exhibiting financial need. No dollar breakdown between those patients paying a reduced rate and those admitted for observation stay was offered into evidence.

Furthermore, Friendship's calculation of "charitable care" from the reduced rates is not sanctioned by the Illinois courts. According to Friendship's Financial Statements, "assistance is generally provided in the form of subsidizing the resident's monthly fee due to the Manor." App. Ex. No. 16. Mr. Devinney testified that if a patient's daily rate was \$178/day and the patient only paid \$65/day, the difference of \$113/day "we are writing that off as assistance to them." So Friendship took the \$113/day and multiplied this daily rate times the number of days that the patient was in Silver Cross in 2009 and this amount was the "charitable care" given to the patient. Tr. pp. 145-146. This calculation is based on foregone revenue to Friendship which may include a profit factor. The calculation is not based on the foregone cost of the services provided. In Provena, the court recommended that charity be measured by cost. Measuring charity by foregone revenue is "the illusion of charity." Provena (1) at 759.

"To be charitable, an institution must give liberally." Provena (1) at 750. I am unable to conclude from the record of this case that Friendship has given "liberally." The disparity between the overstated \$129,233 in "charitable care" in 2009 and Friendship's and Silver Cross's revenue is so extreme, 1.1% and 2.3% respectively, that it is disingenuous to maintain that Friendship is a charitable organization or that the primary use of the subject property is to provide charity. In 2009, Silver Cross had 94 available beds and 4 of these beds were occupied by patients who needed charitable assistance. There is no testimony in the record regarding Friendship's and Silver Cross' actual occupancy numbers in 2009. Silver Cross may have had available space in 2009 and Friendship still only provided charitable assistance to 4 patients in that facility. In order to obtain an exemption for charitable use, an organization is required to prove that its primary purpose is charity. The figures showing Friendship's charity for 2009, both

in terms of dollars and in terms of persons receiving “charitable care,” fall far short of meeting the primary purpose standard.

Mr. Devinney testified that to his knowledge Friendship “has never denied anyone financial assistance if that person asked for it.” Tr. p. 125. But this testimony fails to recognize that Friendship financially screens applicants before they are admitted into residency. Accordingly, Friendship’s population has already met Friendship’s stringent financial requirements for living there. The likelihood that these residents will ever need financial assistance is minimal, by Friendship’s design.

Charging fees and rendering benefits to persons not poverty-stricken does not destroy the charitable nature of an organization, but this is only true to the extent that the organization also admits people who need and seek the benefits offered but are unable to pay. Small v. Pangle, 60 Ill. 2d 510 (1975). There was no evidence or testimony at the hearing that charitable assistance was provided to any applicant who appeared through Friendship’s financial screening to be unable to afford to live on the property. The record in this case does not show that Friendship admitted any residents in 2009 to independent living or assisted living who were unable to pay for its services. Friendship’s financial screening of applicants, which allowed Friendship to have to provide charitable assistance to only 4 residents in 2009, results in a reasonable conclusion that Friendship does not dispense charity to all who need and apply for it.

The Korzen criteria that a charitable organization dispense charity to all who need and apply for it is “more than a guideline.” It is an “essential criteria” and it “goes to the heart of what it means to be a charitable institution.” Provena (1) at 750. Friendship use of the subject property is not consistent with this characteristic of a charitable organization.

**Korzen factor (4): The benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government.**

Illinois courts have consistently refused to grant charitable exemptions to retirement homes that charge entrance and upfront fees because these fees prevent “an indefinite number of persons” from benefitting from the home. In Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149, 158 (1968), where prospective residents paid a “Founder’s Fee” of \$6,250 to \$25,000 and a monthly charge from \$175 to \$375, the Supreme Court stated that the Founder’s Fee and monthly charges, *inter alia*, were “certainly sufficiently restrictive to prevent our saying that the property is used for the benefit of an indefinite number of people...” In People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91, 101 (1968), where candidates for admission paid a mandatory \$4,000 entry fee, the Supreme Court stated that the defendant’s insistence upon the payment of a sizeable admission fee, *inter alia*, constitutes a serious impediment to the tax exempt status it was seeking. The Court could not “reconcile” the entrance fee “with our requirements of the application of benefits to an indefinite number of persons...” In Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273, 293 (2004) where Eden charged up front entrance fees ranging from \$65,000 to \$76,900 for a duplex unit or a \$5,000 security deposit for a rental unit, the Supreme Court noted that “most certainly, the benefits derived are only for persons who can pay the substantial entrance fees.”

Similarly, in Wyndemere Retirement. Comm. v. Dept. of Revenue, 274 Ill. App. 3d 455, 460 (2d Dist. 1995), the court denied a sales tax exemption to a retirement community whose funding was “provided by the substantial entrance and monthly fees charged to those who can afford to avail themselves of Wyndemere’s services.” In Plymouth Place, Inc. v. Tully, 54 Ill. App. 3d 657, 661 (1<sup>st</sup> Dist. 1977), where candidates for admission paid an initial “Foundation Fee” which was “rarely below \$10,000” plus monthly fees, the court stated that the fact that most applicants are required to pay a substantial Foundation Fee clearly represents an obstacle to the receipt of benefits.

In Good Samaritan Home v. Dept. of Revenue, 130 Ill. App. 3d 1036 (4<sup>th</sup> Dist. 1985), the home charged up front the prepaid cost of construction of a retirement cottage, which ranged from \$36,000 to \$58,000, and then amortized the prepaid costs over the term of the rental agreement. The Court noted that “residents of the cottages with prepaid rent requirements must not only be able to initially afford the prepayment of rent, which is substantially more than many of the ‘founder’s fees,’ but also will not have the financial use of the sums of prepaid rent.” In other words, these residents must initially put up a substantial sum of money to enter the facilities and they must have the means, and be prepared, to live without the “financial use” of this money for the term of their residency. The Court concluded “that the fact that most applicants are required to pay a substantial amount of ‘prepaid rent’ clearly represents an obstacle to the receipt of the benefits offered by the Home.” *Id.* at 1041. The prepaid rent requirement is not indicative of charitable ownership of property because an “indefinite number of persons” are not able to put up the money, and then live without the money, and therefore would never be able to enjoy the benefits of the retirement home.

Friendship had the same requirements for residents in its independent living units as Good Samaritan Home. Friendship has historically offered entrance plans which charged up front fees and prepayments and these entrance fees prevented an “indefinite number of persons” from enjoying Friendship’s benefits. Friendship had three “plans” for residents wishing to move into independent living units. “Plan A” “required the resident to pay an advance fee prior to residency and a monthly maintenance fee after occupancy.” The resident has lifetime occupancy rights to the apartment as well as use of other facilities of Friendship. The advance fee ranged from \$72,800 to \$127,800 with an additional \$17,035 fee for a second resident. Plan A is a “limited life care contract.” “[Y]ou would turn over a sum of money and then you would get a reduced monthly fee in the independent living, then if you went to sheltered care or skilled

nursing, you would also get a reduced fee, we would then charge you [for] meals, laundry and a medical charge...” No resident has come in under Plan A since 2005. Mr. Pappas testified that there were “no new Plan A residents in 2009.” Tr. p. 278. However, it is unclear from the record whether there were residents at Friendship who had entered under Plan A in 2009. Tr. pp. 173-174, 192-193; App. Ex. No. 16.

“Plan C” required a resident to pay an advance fee prior to residency and a monthly maintenance fee after occupancy. The resident, in turn, was given a lifetime occupancy right to the apartment. The advance fee ranged from \$44,000 to \$95,000. Advance fees were 90% refundable when Friendship was able to relet the unit. Unlike Plan A, residents under Plan C must pay 90% of Friendship’s standard daily charges, for use of the sheltered care and nursing facilities. Friendship stopped using Plan C after January 1, 2005, but there were still residents at Friendship in 2009 who entered under Plan C. Tr. pp. 191-192, 194, 277-278; App. Ex. No. 16.

Similar to the residents of the cottages in Good Samaritan Home, residents at Friendship had to put up a substantial entrance fee and be prepared to live without the “financial use” of this money for the terms of their residency. Putting up this amount of money, without the future use of it, is clearly an obstacle for an “indefinite number of people” who would wish to avail themselves of Friendship’s benefits.

Friendship stopped admitting residents under Plan A and Plan C because the “entrance fees and endowment fees were not working in Rock Island.” “They weren’t working because the demographic was changing, people couldn’t afford those entrance fees and endowment programs any longer.” Tr. p. 192. There was testimony that the population of Rock Island has declined by 15,000 people to 35,000 people since the mid-1970’s. The population overall is shrinking and the populations that are growing are Hispanic and immigrant. Tr. pp. 194-195. Mr. Levin testified that he’s seen “many other nursing homes and assisted living facilities built within the

entire Quad Cities marketplace, both Illinois and Iowa...” Tr. p. 42. It is clear from the testimony that Plan A and Plan C were not discontinued for any charitable purpose. They were discontinued because Plan A and Plan C “were not working” in Rock Island.

Plan B was Friendship’s way of “reinventing ourselves in the market,” because the perception of Friendship was “it’s just too expensive, or you have to turn over everything you own.” “Plan B” for independent living requires a resident to pay a monthly fee and “a non-refundable \$2,000 deposit.”<sup>4</sup> Plan B is “simply straight rental, and that’s the program that the dogs are eating in the market now...” “[Y]ou pay a deposit of a couple thousand to get your unit ready.” “And then if you don’t tear out your walls, become a rock star and destroy the unit, you get your deposit back.”<sup>5</sup> Tr. pp. 173-174, 193-196; App. Ex. No. 16.

Friendship’s “Application for Assisted Living Occupancy” and “Application for Independent Living Occupancy,” require the applicant to provide “Financial Information,” including “Total Income,” consisting of social security, pensions, investments, and other income and “Net Worth” consisting of the value of real estate, investments, savings and/or checking, and liabilities. Both applications have the following provision: “I understand final approval of my application will depend on health and financial evaluation.” It seems reasonable to conclude that basing final admission approval for independent and assisted living on “financial evaluation” would be an effective way of not having to provide charitable assistance to an “indefinite number of persons.” There is no notice in either application that Friendship provides charitable assistance. Tr. pp. 281-283; Dept. Ex. Nos. 4 and 5.

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<sup>4</sup> There was no specific testimony as to whether Plan B was used for assisted living.

<sup>5</sup> There was considerable testimony in the record with regard to residents getting a refund of the deposit. Mr. Pappas testified that a resident would get their deposit back “as long as there wasn’t damage to the unit.” Tr. p. 279. On the other hand, in the “Financial Statements,” Note 6, under “Plan B Agreement,” it states that “[T]his agreement requires a non-refundable \$2,000 deposit (\$3,500 refundable deposit prior to November 1, 2008) ...” App. Ex. No. 16. It is unclear from this record whether deposits are, in fact, refundable.

In 2010, the monthly charge for independent living apartments was from \$937 to \$2,438, “depending on unit size.” Included in the monthly charge are utilities, bi-weekly cleaning, cable TV, one-meal per day, “activities galore,” and transportation services. Assisted living rates “vary by service level and unit size” and range from \$2,747 to \$4,248.<sup>6</sup> In 2009, the year at issue in these proceedings, rates varied by unit size and “amenities.” Tr. pp. 86-88, 105-107; App. Ex. No. 12.

In Friendship’s independent and assisted living units, space is allocated based on the size of the unit. In Wyndemere Retirement Comm. v. Dept. of Revenue, 274 Ill. App. 3d 455, 460 (2d Dist 1995), the court noted that the “variance in charges based on the size of the unit is also a factor indicative of noncharitable use.” In Small v. Pangle, 60 Ill. 2d 510, 517 (1975), the court noted that the variance of the monthly charges, based upon the size and location of the room, “smacks” as being indicative of a noncharitable use.

In Methodist Old Peoples’ Home v. Korzen, 39 Ill. 2d 149 (1968), the Court noted that the Founder’s Fee and monthly service charge were based on the size and location of the quarters to be assigned, “corresponding in principle with the type of rate structure one would find in a commercially operated cooperative multiple dwelling property.” The fact that the “old peoples’ home” allocated living space from the standpoint of desirability of location and size on the basis of the Founder’s Fee and monthly charges paid by a resident, seemed to the Supreme Court to be “lacking in the warmth and spontaneity indicative of a charitable impulse.” “Rather, it seems more related to the bargaining of the commercial market place.” *Id.* at 158.

Likewise, Friendship’s variance in charges based on the size of the unit or suite also “smacks” of noncharitable use. As recognized by Korzen, this variance in charges based on size is what one would normally find in a commercially operated multiple dwelling property.

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<sup>6</sup> Comparable rates for 2009 for independent living and assisted living were not offered into evidence.

Friendship's charging of fees based on the size of the unit is a evidence that Friendship is not a charitable institution.

The Korzen factor at issue also requires a consideration of whether Friendship's benefits reduce a burden on government. "The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them and a consequent relief, to some extent, of the burdens upon the state to care for and advance the interests of its citizens." School of Domestic Arts and Sciences v. Carr, 322 Ill. 562 (1926). There is no credible evidence in the record of this case showing that Friendship reduces any burden on government.

Mr. Devinney testified that the quality of care offered at Friendship "reduces a burden on government, whether it's directly in terms of somebody not being on Medicaid roll that otherwise would be on Medicaid roll." According to his testimony, the quality of life provided by Friendship promotes "not just living longer, but living more vibrant and less dependent." Medication costs and health care costs are reduced "when individuals live in an environment like ours." Tr. pp. 163-164.

There is no evidence in the record to support any of these arguments that Friendship reduces a burden on government. There is no fact in the record that shows or proves that residents live longer in independent living units or assisted living units. No witness testified as to how many persons at Friendship, if any, were kept off Medicaid because of the care received at Friendship. The idea that Friendship keeps residents off Medicaid, is pure speculation.

There is simply nothing of fact in the record which would lead me to conclude that the federal and state government would have an increased burden if Friendship did not own and operate this facility. I am unable to conclude from the record that the benefits derived from Friendship are for an indefinite number of persons or that Friendship reduces a burden on

government. Friendship's use of the subject property is not consistent with this characteristic of a charitable institution.

**Korzen factor 5: The organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.**

The record shows conclusively that Friendship placed several obstacles in the way of those who needed and would have availed themselves of its "charitable" benefits in 2009.

Mr. Devinney testified that Friendship does not have "an application for charitable care or for charity care for assistance." "In the admissions process, the resident or the resident's family makes us aware of the need and their financial ability or inability to pay our rates." "Essentially, that's where the decision gets made then on charity care." Tr. pp. 125-126. The "lack of an application process" was in place in 2009. Tr. p. 127.

Not having a formal application process is an obstacle in the way of those who need and would avail themselves of the charitable benefits that Friendship dispenses. Friendship's applications for independent and assisted living do not mention that charitable assistance is available. App. Ex. Nos. 4 and 5. If there is an application for Silver Cross, it was not offered into evidence. Without a formal application process, I must question whether residents or residents' families in need of charitable assistance would know to apply for it when going through the admissions process. Additionally, it is unclear from Mr. Devinney's testimony as to who makes the decision to grant or deny charitable assistance and whether these decisions are reviewed by Friendship's management. It is reasonable to infer from the minimal amount of charitable assistance provided in 2009 to four residents at Silver Cross and the lack of a formal application procedure, that Friendship has placed an obstacle in the way of those who need charitable assistance.

Mr. Devinney was asked if people in the community were aware that Friendship would help them if they did not have the resources. He replied: “Well, we try to make them aware. We like to think that they are aware.” “... [W]e oftentimes find that people in the community don’t know a lot of things about us that we think they should know or would know but we publicize it, ... , we put in on our website, in our brochures, it’s in our contracts, I believe it’s in our annual report that we will not ask anybody to leave the Manor because of their inability to pay.... I think it might be in our Bylaws now.” Tr. p. 126. However, these statements do not give assurance that people are aware that Friendship dispenses charity.

Section 3 of Friendship’s Bylaws, entitled “Charitable Purpose,” effective October 25, 2006, states that all entrance fees, monthly maintenance charges, routine service charges, and nursing care charges for residents in the Silver Cross Health & Rehabilitation Pavilion may be waived in full, reduced in part, or liability for payment postponed based upon the individual’s inability to pay. No individual shall be denied residence or have such residence in Silver Cross terminated solely on the inability to pay. Any individual that requests that fees be waived, reduced, or postponed may be required by Friendship Manor to apply for such assistance from state or federal agencies for which the individual may be eligible. This recitation is printed verbatim in a “Note” on the brochure which advertises Silver Cross and in Silver Cross’ “Contract Between Resident and Facility.” Tr. pp. 51-52, 81, 273-275; App. Ex. Nos. 11, 13 and 19. According to the testimony, brochures advertising Friendship’s services are given to social workers, hospitals, doctors’ offices, pharmacies, grocery stores and churches. Tr. pp. 221-222.

Friendship’s Financial Statements state at Note 1 that “[N]o resident will be asked to leave Silver Cross due to the inability to pay for such services.” “No resident will be turned away from admission to Silver Cross in the event a financial need exists.” App. Ex. No. 16.

But it must be noted that no document in the record of this case shows that charitable assistance for the independent and assisted living units is advertised. This lack of advertisement is an obstacle in the way of anyone needing charitable assistance to reside in these units. The website page admitted into evidence only discusses charitable care at Silver Cross. App. Ex. No. 14. No advertising brochures for independent and assisted living were offered into evidence. The applications for independent and assisted living contain no notation that charitable assistance is available. App. Ex. Nos. 4 and 5. Mr. Pappas testified “that in the assisted living and independent living contracts, we do have a provision, and that provision does state that [Friendship] does provide charity care ... [the provision is] slightly different than the contract in [Silver Cross] but it does allow the resident, if they have a financial need, to seek assistance.” Tr. p. 288. No contracts for the independent and assisted living units were offered into evidence. As discussed previously, the independent and assisted living units did not dispense any charitable assistance in 2009. It would be unreasonable and illogical to conclude from the record of this case that Friendship is advertising that charitable assistance is available in these units when no charity was dispensed in 2009.

In Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272 (2d Dist. 1987), the court found that an immediate care center did not qualify for a charitable exemption because; *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that “the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care may be available to those who need it.” *Id.* at 281. Similarly, in Alivio Medical Ctr. v. Dept. of Revenue, 299 Ill. App. 3d 647 (1<sup>st</sup> Dist. 1998), where the court denied a charitable exemption for a medical care facility, the court again noted that “[A]livio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care.” *Id.* at 652.

The record in this case does not show that the “general public” would ever know that charitable assistance is available, if it is in fact available, for Friendship’s independent and assisted living units. Friendship has not shown that its charitable assistance program was widely disseminated or that all of its prospective or existing residents of independent and assisted living were made aware of the availability of financial assistance, let alone encouraged to apply for it. These are obstacles to receiving benefits. A charity dispenses charity and does not obstruct the path to its charitable benefits. Eden Retirement Center v. Dept. of Revenue, 213 Ill. 273, 287 (2004).

Additionally, there was no testimony at the hearing as to whether Friendship’s charitable assistance is a percentage of budgeted revenue or whether it is based on the occupancy or vacancy rates. There was no testimony as to the standard or benchmark that Friendship used in budgeting for financial assistance. Without a standard or benchmark, I cannot determine if Friendship’s charitable expenditure truly represents “charity” on its part.

“... [T]he Korzen factor that charity be dispensed ‘to all who need it’ is not limited to the past but also requires an assessment of future policy.” Wyndemere Retirement Comm. v. Dept. of Revenue, 274 Ill. App. 3d 455, 460 (2d Dist. 1995). Mr. Pappas testified that Friendship does “not have unlimited funds.” Friendship has an endowment of approximately \$7,000, “not a very big endowment.” “To actually serve [Friendship] with the amount of charity care that we have, we probably need an endowment of about \$6 million.” Tr. pp. 205-206. These comments and the lack of evidence as to how charitable assistance is budgeted requires me to question whether Friendship will provide any charitable assistance in the future, even while enjoying the substantial financial benefits of the property tax exemption that they are requesting from this tribunal. The speculative nature of Friendship’s charitable assistance is obviously an obstacle in the way of those who would need and avail themselves of Friendship’s charitable benefits.

The Korzen criteria that a charitable organization place no obstacles in the way of those needing assistance is also “more than a guideline.” It is an “essential criteria” and it “goes to the heart of what it means to be a charitable institution.” Provena (1) at 750. Friendship does not possess this characteristic of a charitable organization.

In summary, I have concluded that Friendship does not satisfy even one of the Korzen factors, and accordingly, Friendship has failed that it is an “institution of public charity.” Under section 200/15-65(a), it will not suffice that the property is “exclusively used for charitable purposes, the owner of the property must be a charitable organization.” Provena (1) at 741-742. Having failed to prove that it is a charitable organization, Friendship is not entitled to exemption under 35 ILCS 200/15-65.

**The exclusive (primary) use of the subject property is for charitable purposes.**

Assuming, *arguendo*, that Friendship is a charitable organization, this discussion of charitable use of the property is provided. Friendship’s witnesses testified as to the following “charitable” use of the subject property in 2009. Mr. Glassner testified that his son resides at Silver Lake, where “they take his social security check and that’s all he pays.” He receives the “full services of the Manor.” Tr. p. 14; App. Ex. No. 28. Mr. Glassner’s son is one of the four residents who received charitable care from Friendship at Silver Lake in 2009. Dept. Ex. No. 2.

Judge James Mesich testified that his mother moved to Friendship in 1995 and then purchased an endowment of between \$40,000 and \$45,000. She was told that if she ever needed care at Silver Cross, “she could get that care for the same price she was paying for her apartment with the addition of the additional laundry expenses, food expenses, but she was guaranteed that she wouldn’t have to go through her entire estate if she had to go to [Silver Cross].” Friendship honored the terms of its obligation. Tr. pp. 23-26. However, even with the endowment, his mother paid monthly fees to Silver Cross. Tr. p. 32.

Mr. Levin testified that his parents moved into the assisted living units at Friendship approximately 6 years ago. His parents eventually moved into Silver Cross' sheltered care and then skilled nursing units. Tr. pp. 43-44. When his parents entered Friendship they were told "they would be able to stay in the nursing home under Medicaid if that's the decision that you make." When his parents went on Medicaid, they were "never degraded." Mr. Levin "never saw a difference in attitude or perception or anything they could do within the institution from that time." Tr. pp. 37-38.

Representative Verschoore testified that his mother-in-law has been a resident in the independent living units for "10-plus years." She is on "private pay" at approximately \$1,850/month. He has heard nothing but good things about Friendship from her. Friendship is "very clean." "Most of the time in the wintertime," if residents ask, the Friendship staff "will go out and brush the snow off the cars for the residents." Representative Verschoore was asked "if any of his constituents [came] in and [voiced] any complaints about being denied access to Friendship Manor, being denied care, to your knowledge." He responded: "Not that I can remember." Tr. pp. 62-71.

Mr. Pappas testified that Friendship offers families of residents that are dying "free coupons to the bistro to eat and we give them as many coupons [as] needed while their loved one is passing, and in some cases it can be a week-long process, that can be charity where we say to folks we understand your pain." Friendship also allows Golden Kiwanis to meet on the property without paying rent. Some Friendship residents are members and they don't have to leave the campus. "That could be defined as charity." Tr. p. 268.

There was testimony that in 2009, Silver Cross contributed \$12,745 in "charitable donations," including donations to the Alzheimer's Association and Senior Olympics. Tr. pp. 139-140; App. Ex. Nos. 16 and 25.

It was elicited in testimony that the Friendship grounds have a “Main Street” which includes American Bank & Trust, a bistro, a fitness center and a King’s Daughters and Sons Country Shop. Friendship is asking for exemption of the bistro because residents of Silver Cross have the opportunity to eat there. According to Mr. Pappas’ testimony, the bistro does not pay rent. “The only entity that pays us rent is American Bank and it’s at market rate.” According to the testimony, the rent is “nominal” and the Bank is there for the “convenience of our residents,” so they won’t have to leave the building in winter to do their banking. The Bank is included in the area of the subject property which Friendship seeks to exempt in these proceedings. Tr. pp. 195-199, 239-240; App. Ex. No. 8 (Photos 21-26, 29). There was no testimony at the hearing that the amenities on Main Street were exclusively used by Silver Cross residents and I assume that the amenities on Main Street are also used by independent and assisted living residents. If I were to recommend that the Silver Cross portion of the subject property be exempted, the record in this case would not allow me to recommend an exemption for Main Street.

No leases or rental agreements for the businesses on Main Street were offered into evidence. Friendship’s “Statement of Operations” for December 31, 2009 shows “Other Operating Revenue” of \$234,200. App. Ex. No. 16. No explanation was offered at the hearing as to the components of “Other Operating Revenue,” and whether this account included leasing or rental income from the Bank. Because Friendship had the burden of proof to show that it was entitled to an exemption for charitable purposes, the lack of testimony and evidence on the issue of Friendship’s “Other Operating Revenue” must be construed against them.

The Korzen factors require a determination of whether charity is the primary use of the property or rather whether it is a secondary or incidental use. 35 ILCS 200/15-65 of the Property Tax Code requires that the subject property be “exclusively” used for charitable purposes. An “exclusively” charitable purpose need not be interpreted literally as the entity’s sole purpose; it

should be interpreted to mean the primary purpose, but not a merely incidental purpose or secondary purpose or effect. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987).

In this proceeding, Friendship has failed to prove that it is an institution of public charity and has failed to prove that Silver Cross is exclusively used for charitable purposes. Friendship earned \$11.8 million in revenue from providing its services in 2009 and provided charity care to 4 residents. This, along with a consideration of all the facts relating to the operation of the subject property in 2009, establishes that the Applicant's charity on this property represents an incidental act of beneficence that is legally insufficient to establish that Friendship "exclusively" uses its property for charitable purposes. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956). It is clear from the record in this case that Friendship's facilities, including independent and assisted living and the subject property, Silver Cross, are primarily accessible only to those who have the funds to pay for the services provided. Illinois courts have determined that these factors do not constitute a charitable purpose sufficient to qualify for the requested exemption.

The primary purpose of Friendship is not to provide charity, but to provide a certain enhanced lifestyle to seniors who can afford to pay for it. Wyndemere Retirement Comm. v. Department of Revenue, 274 Ill. App. 3d 455 (2d Dist. 1995). The record in this case does not allow me to conclude that the exclusive use of the subject property is for charitable purposes and accordingly, I recommend that the Department's determination denying the exemption for charitable purposes be affirmed.

For the above stated reasons, it is recommended that the Department's determination which denied the exemption from 2009 real estate taxes on the grounds that the subject property was not in exempt ownership or use for charitable purposes should be affirmed and Rock Island Parcel, Property Index Number SRI 4251 should not be exempt from 2009 real estate taxes.

January 9, 2012

Kenneth J. Galvin  
Administrative Law Judge