

**PT 13-03**  
**Tax Type: Property Tax**  
**Tax Issue: Charitable Ownership/Use**

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

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**THE DEPARTMENT OF REVENUE**  
**OF THE STATE OF ILLINOIS,**

**v.**

**BELOIT MEMORIAL HOSPITAL,**  
**APPLICANT**

**No: 10-PT-0063 (07-101-156)**

**Real Estate Tax Exemption**  
**For 2007 Tax Year**  
**P.I.N. 04-21-200-005**

**Winnebago County Parcel**

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

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Donald F. Hemmesch, Jr. and Mr. Daniel J. Heywood, Smith Hemmesch, Burke, Brannigan & Guerin, on behalf of Beloit Memorial Hospital; 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 Winnebago County Parcel, identified by the P.I.N. 04-21-200-005 (hereinafter the “subject property”), qualifies for exemption from 2007 real estate taxes under 35 ILCS 200/15-86, which established “a new category of ownership for charitable property tax exemption to be applied to not-for-profit hospitals and hospital affiliates,” or 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.

This controversy arises as follows: On March 27, 2008, Beloit Memorial Hospital (hereinafter “Beloit”) filed an Application for Non-homestead Property Tax Exemption with the Winnebago County Board of Review (hereinafter the “Board”) seeking exemption for the subject property from 2007 real estate taxes. The Board reviewed the Application and recommended that a full year exemption be granted. The Department of Revenue of the State of Illinois (hereinafter the “Department”) rejected the Board’s recommendation on July 29, 2010, finding that the subject property was not in exempt ownership or use in 2007. On September 20, 2010, Beloit protested the Department’s exemption denial and requested an evidentiary hearing.<sup>1</sup>

An evidentiary hearing in this matter was held on November 15, 2012, with testimony from Mr. Tim McKeveatt, Senior Vice President, and Mr. Michael Bua, Director of Finance. Following a careful review of the testimony and evidence, it is recommended that the Department’s exemption denial be affirmed.

**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 2007. Tr. pp. 9-11; Dept. Ex. No. 1.
2. Beloit is exempt from income taxes under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 10, 14-15; App. Ex. No. 1.
3. Beloit is incorporated under Wisconsin’s “Non-stock Corporation Laws,” with the purpose, *inter alia*, of providing health care services regardless of race, creed, color, sex, national origin or financial status, and further, to provide

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<sup>1</sup> This case was delayed in the Office of Administrative Hearings while the Illinois Legislature debated and enacted Public Act 97-688 (35 ILCS 200/15-86), effective June 14, 2012.

healthcare services consistent with the community's needs and changes in medical practice and technology, and to maintain quality health care services. Beloit's mission is to be a leader in assembling medical, employee, equipment, facility and community resources in a manner that strives to deliver the highest quality medical and wellness services and improves the overall health status of the community served. Beloit has no capital stock or shareholders. Beloit does not pay dividends. Tr. pp. 10-11, 15-16, 24-26, 44-45; App. Ex. No. 2.

4. Beloit is governed by a Board of Directors. Directors are not compensated. Tr. p. 15.
5. Beloit, with a medical staff of 150 physicians, provides emergency care and secondary care health services. Beloit's primary service area is in Beloit, Wisconsin. The property at issue in this proceeding is the "NorthPointe Health and Wellness Center," (hereinafter "NorthPointe"), located in Winnebago County at 5605 East Rockton Road in Roscoe, Illinois. NorthPointe is approximately a 15 minute drive from Beloit. NorthPointe is considered a "Department" of Beloit with staff rotating between Beloit and NorthPointe. Tr. pp. 14-15, 21-22, 24.
6. Beloit's "Combined Financial Statements and Additional Information" for December 31, 2007 state that "during 2007, [Beloit] completed construction and began operations of a health and wellness center in northern Illinois, d/b/a NorthPointe, consisting of physician clinic space leased to independent physicians, an urgent care facility, related ancillary services, a fitness center, and a separate 24-unit assisted living facility." App. Ex. No. 9.

7. NorthPointe's campus is 122 acres. The total building square footage is 150,194 square feet. Beloit is not seeking exemption for the free standing assisted living area, the physician clinic space and the urgent care facility. The remaining 118,317 square feet, located on two floors, is composed of a fitness center, aquatic center, community rooms and common areas. The second floor contains a track and workout equipment, including treadmills and weight equipment. The fitness area is used by physical therapy and athletic trainers to work with members and patients. Tr. pp. 26, 37; App. Ex. No. 5.
8. On December 12, 2007, one "community room" was used by "Wednesday Working Women-Beloit Chamber" from 8:00 a.m. to 3:00 p.m. Tr. pp. 46-47; App. Ex. Nos. 7 and 8.
9. In building NorthPointe, Beloit worked with Hononegah High School in Roscoe, Illinois to give them a location for their swim team to practice. In addition, NorthPointe provides the team with an athletic trainer at no cost. The trainer also manages sports injuries on the sidelines for the football and basketball teams. Both the boys' and girls' swim teams utilize NorthPointe. The pool is shut down except for other wellness members and the school district gets six lanes of the seven lane pool from 4:30 to 6:30 p.m. during the swim team sessions. Tr. pp. 29-30.
10. The fitness center is used by NorthPointe's "members." "They're like a YMCA." Members are referred to the fitness center by the medical staff for a medical need such as weight reduction or management of an illness. Individuals can join without a medical need but only after a medical screening exam. Individuals can also be referred by the physical therapy department. If a

member's insurance payments run out, or they don't have insurance, they may be eligible for a scholarship in order to continue to use the fitness facilities with a physical therapist. The fitness center has initiation and monthly fees. Tr. pp. 32-33, 45-46.

11. The subject property also contains a warm water therapy pool used by therapists to provide treatment for paraplegics and for spinal cord injuries and chronic rheumatoid arthritis. There is a locker room area located near the seven lane pool and the therapy pool. Tr. p. 36; App. Ex. No. 5.
12. Upon patient request, it is Beloit's policy to consider an "uncompensated care" adjustment if all other avenues have been exhausted and the patient shows that there is no other means of making payment on the account. Uncompensated care adjustments are granted at the discretion of Beloit upon consideration of certain guidelines. Eligibility for uncompensated care shall be extended to those persons whose family income does not exceed 150% of the current Community Services Administration poverty guidelines. "Persons whose income is greater than the guidelines, but not more than 3 times the guidelines, shall be eligible for charity care on a reduced charge basis." Some procedures, such as cosmetic procedures and hearing aids, are excluded from consideration for uncompensated care adjustments. If a patient's income exceeds the above guidelines, but the patient's expenses also exceed his or her income, the patient may be eligible for an uncompensated care adjustment if the excessive expenses are for medical services or necessary living expenses. Tr. pp. 17-19; App. Ex. No. 4.

13. Uncompensated care adjustments will only be made after a review of patients' accounts and a determination that no third-party reimbursement is available. Applications for uncompensated care must include household income for the last three and twelve months. Household income includes all wage earners in the household excluding minors. Patients who are employed must show proof that group health insurance benefits were not available from their employer. The Patient Accounts Manager, the Director of Financial Services and the Vice President of Finance shall approve uncompensated care adjustments depending on the dollar amount. If a patient receives a partial adjustment, the patient is responsible for payment within 45 days after notice of the adjustment is given. Tr. pp. 17-19; App. Ex. No. 4.

14. It is also the policy of Beloit to extend a discount to all patients receiving care who are not insured by any third party payor or government assistance programs. The discount shall be equal to the "Hospital's First Choice PPO contractual allowance." Effective December 1, 2006, this amount is equal to 13% of charges. The uninsured patient discount is not applicable on any self-pay balance after insurance or government assistance. The uninsured patient discount shall be reversed if Beloit becomes aware that the patient is eligible for any third party payor reimbursement. Tr. pp. 17-19; App. Ex. No. 4.

15. The Charity Policy/Procedure for NorthPointe states that Beloit is committed "to assist persons who become unable to pay for the services provided at [NorthPointe]." The policy states that Beloit offers its services at the "lowest feasible cost, taking into account its expenses related to the payment of indebtedness, maintenance of adequate reserves for each resident or member

and reserves for necessary expansion of facilities and services.” An individual who is a resident or member of NorthPointe is “financially needy” if “he or she is unable to afford the fees for services as they come due.” When making a determination of financial need, Beloit will take into account, but not be limited by, Federal Poverty Income Guidelines. “Beloit has sole discretion to determine on a case-by-case basis an applicant’s eligibility for financial assistance.” Beloit will inform applicants of the waiver or reduction in fees by written notice. Those with monthly charges waived will receive no monthly bill. Tr. pp. 17-19; App. Ex. No. 4.

16. As of December 31, 2007, Beloit had “Total Revenue” of \$106.6 million, of which 96% was “Net Patient Service Revenue.” App. Ex. No. 9.

17. In 2007, Beloit’s unreimbursed Medicare and Medicaid allowances, identified to Illinois zip codes, was \$11.4 million and \$3.6 million respectively. NorthPointe had no unreimbursed Medicare and Medicaid allowances in 2007. App. Ex. No. 11.

18. As of December 31, 2007, the amount of “charges forgone for services and supplies furnished under [Beloit’s] charity care policy aggregated” \$8.8 million, of which \$1.3 million was identified by zip code as provided to Illinois residents. NorthPointe had no “charges foregone for services and supplies” in 2007. Tr. pp. 56-57; App. Ex. No. 11.

### **CONCLUSIONS OF LAW:**

An examination of the record establishes that Beloit has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2007 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 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). In this case, Beloit had the burden of proving, by clear and convincing evidence, that NorthPointe was entitled to an exemption for charitable purposes.

**35 ILCS 200/15-86:** This statute establishes “quantifiable standards for the issuance of charitable exemptions” for property of not-for-profit hospitals and hospital affiliates. Under the statute, “hospital” is defined as “any institution, place, building, buildings on a campus, or other health care facility located in Illinois that is licensed under the Hospital Licensing Act and has a hospital owner.” 35 ILCS 200/15-86(b)(1). The statute requires that the facility under consideration for exemption be located in Illinois. The owner of the subject property, Beloit Memorial Hospital, is not located in Illinois. The property at issue in this proceeding, NorthPointe Health and Wellness Center, is located at 5605 East Rockton Road in Winnebago County, Roscoe, Illinois.

There is no evidence in the record of this case, however, that either Beloit or NorthPointe is licensed under the Hospital Licensing Act, as is required by 35 ILCS 200/15-86. Mr. McKeveatt testified that “we’re licensed in the State of Illinois to operate the facility.” Tr. p. 24. Counsel for Beloit stated in his closing argument that “we have established that this is a facility of a hospital licensed to do business in the State of Illinois.” Tr. p. 66. Being licensed to “do business” in Illinois (805 ILCS 105 *et seq.*) is clearly not the same as being licensed under the Hospital Licensing Act (210 ILCS 85/1 *et seq.*). Beloit had the burden of proving, by clear and convincing evidence, that NorthPointe was entitled to an exemption under 35 ILCS 200/15-86. This exemption

requires proof of licensing under the Hospital Licensing Act. Without documentary evidence in the record of licensing under the Hospital Licensing Act, I must conclude that Beloit has not met its burden of proof and has failed to show that it is entitled to an exemption for the NorthPointe property under 35 ILCS 200/15-86.

35 ILCS 200/15-86(h)(i) states that nothing in the statute should be construed to limit the ability of an otherwise eligible hospital to obtain a property tax exemption pursuant to another provision of the Property Tax Code. Beloit has also sought exemption for NorthPointe under 35 ILCS 200/15-65.

**35 ILCS 200/15-65:** 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. Illinois courts have consistently refused to grant relief under Section 15-65 of the Property Tax Code absent appropriate evidence that the subject property is owned by an entity that qualifies as an "institution of public charity" and that the property

is “exclusively used” for purposes that qualify as “charitable” within the meaning of Illinois law. 35 ILCS 200/15-65.

At the evidentiary hearing, Beloit 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). However, under a broad reading of 35 ILCS 200/15-65(c), Beloit met some of the threshold requirements of an “organization providing [for] ... educational, social and physical development,” and this subsection must also be considered. Beloit is a non-profit organization under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 10, 14-15; App. Ex. No. 1. Beloit is incorporated under Wisconsin’s “Non-stock Corporation Laws,” with the purpose, as stated in its “Restated Articles of Incorporation,” of providing “health care services regardless of race, creed, color, sex, national origin or financial status, and further to provide healthcare services consistent with the community’s needs and changes in medical practice and technology, and to maintain quality health care services.” App. Ex. No. 2.

35 ILCS 200/15-65(c) requires that the “bylaws” of the facility provide for a waiver or reduction, based on an individual’s ability to pay, of any “fee for services.” Beloit’s Bylaws were not offered into evidence at the hearing. Assuming, *arguendo*, that the above provision in Beloit’s Restated Articles of Incorporation which states that Beloit provides health care services regardless of “financial status” 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 both 35 ILCS 200/15-65(a) or (c).

In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"), the Court articulated the criteria and guidelines for resolving the constitutional question of whether an organization is actually an institution of public charity. 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 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; and (5) the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government. In addition to these factors which are used to assess whether an institution is charitable, an applicant, in this case Beloit, must also show that the exclusive and primary use of the NorthPointe 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).

I am unable to conclude, based on the evidence and testimony presented at the evidentiary hearing, that the subject property is actually owned by Beloit. No deed or other document establishing ownership by Beloit of Winnebago County P.I.N. 04-21-

200-005 was offered into evidence at the hearing.<sup>2</sup> Without evidence of a deed or other document, I am unable to conclude that the NorthPointe property is actually owned by Beloit. The Department denied the exemption in this case, first, because “the property is not in exempt ownership.” Dept. Ex. No. 1. Accordingly, it was absolutely essential that Beloit prove ownership of the subject property at the evidentiary hearing. Beloit’s exemption request must, as a matter of law, fail because the applicant has failed to prove “exempt ownership” of the subject property, one of the requirements of 35 ILCS 200/15-65 of the Property Tax Code. Assuming, *arguendo*, that NorthPointe is owned by Beloit, I am unable to conclude either that Beloit is a charitable organization or that NorthPointe is used “exclusively” for charitable purposes.

Beloit has a medical staff of 150 physicians and provides emergency care and secondary care health services. Their primary service area is in Beloit, Wisconsin. The property at issue in this proceeding is the “NorthPointe Health and Wellness Center,” located in Winnebago County, Illinois. NorthPointe is approximately a 15 minute drive from Beloit. NorthPointe is viewed as a “Department” of Beloit with staff rotating between Beloit and NorthPointe. Tr. pp. 14-15, 21-22, 24.

Beloit’s “Combined Financial Statements and Additional Information” for December 31, 2007 state that “during 2007, [Beloit] completed construction and began operations of a health and wellness center in northern Illinois, d/b/a NorthPointe, consisting of physician clinic space leased to independent physicians, an urgent care facility, related ancillary services, a fitness center, and a separate 24-unit assisted living

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<sup>2</sup> Applicant caused to be admitted into evidence App. Ex. No. 3, a deed for three P.I.N.S in Winnebago County recorded on December 12, 2005. The subject property, P.I.N. 04-21-200-005, is not listed on the deed. Mr. McEvet and Mr. Bua, however, did testify that Beloit owned the subject property. Tr. pp. 15, 24.

facility.”<sup>3</sup> App. Ex. No. 9. NorthPointe’s campus is 122 acres. The total building square footage is 150,194 square feet. Beloit is not seeking exemption for the assisted living area, the physician clinic space and the urgent care facility. The remaining 118,317 square feet, which Beloit is seeking exemption for, is composed of a fitness center, an aquatic center with a seven lane pool, community rooms and prorated common area, located on the first floor. Tr. p. 26; App. Ex. No. 5. The second floor contains a track and workout equipment, including treadmills and weight equipment. The testimony at the hearing was that these areas are used by physical therapy and athletic trainers to work with members and patients. Tr. p. 37; App. Ex. No. 5. On December 12, 2007, one community room was used by “Wednesday Working Women-Beloit Chamber” from 8:00 a.m. to 3:00 p.m. Tr. pp. 46-47; App. Ex. Nos. 7 and 8.<sup>4</sup>

Following is a consideration of the Korzen factors and a discussion of whether the subject property was owned by an institution of public charity and used for exclusively charitable purposes in 2007.

**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, Beloit has failed to prove that the majority of its funding was derived from public and private donations. As of December 31, 2007, Beloit had “Total Revenue” of \$106.6 million, of which 96% was “Net Patient Service Revenue” and 4% was “Other Operating Revenue.” App. Ex. No. 9. It is not clear from

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<sup>3</sup> It is unclear from the record when Beloit began operating the NorthPointe property. The parties agreed at the hearing that, should NorthPointe be found to be exempt, the exemption would begin on December 31, 2007. Tr. pp. 64-65.

<sup>4</sup> There is evidence in the record of usage of the community rooms in 2008 and 2009. App. Ex. No. 8. Because the exemption requested is for 2007, this Recommendation only focuses on the evidence for the 2007 assessment year.

the record where the “Other Operating Revenue” is derived from, but the word “operating” in the title does not allow to me conclude that it is derived from “public and private donations.” Separate financial statements for NorthPointe were not offered into evidence and I am unable to conclude that NorthPointe’s revenues were derived from public and private charity in 2007.

As the revenue figures indicate, Beloit receives the vast majority of its funding from compensation for medical services, most likely provided from private insurance, Medicare, Medicaid or direct pay. In 2007, Beloit derived 96% of its revenues from providing services for a fee. In Riverside Medical Ctr. v. Dept. of Revenue, 324 Ill. App. 3d 603 (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 Riverside and Alivio indicate, the exchange of services for payment, at the level enjoyed by Beloit, is not an activity that has been recognized by Illinois courts as “charitable.” Charity is an act of kindness or benevolence. “There is nothing particularly kind or benevolent about selling somebody something.” Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4<sup>th</sup> Dist. 2008), aff’d, 236 Ill. 2d 368 (2010).<sup>5</sup>

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<sup>5</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).”

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, Beloit earns a high level of revenue from patient billings for medical services. Assuming that NorthPointe earns its revenue in a similar manner, it strongly indicates that the primary use of the NorthPointe property is not to provide charity, but instead to provide services to paying customers. Beloit and NorthPointe are benefitting paying customers, who either can afford or have the insurance that enables them to afford, the services that they offer. In summary, Beloit has failed to prove that the majority of its funding is from public and private charity and I am unable to conclude that Beloit's use of the NorthPointe property is 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 or organization connected with it.**

Beloit is incorporated under Wisconsin's "Non-stock Corporation Laws." Beloit does not have capital stock or shareholders and does not pay dividends. Beloit is governed by a Board of Directors and members of the Board are not compensated. Tr. pp. 10-11, 15-16, 24-26, 44-45; App. Ex. Nos. 1 and 2. Beloit had "Revenue in Excess of Expenses" of \$5.4 million in 2007. App. Ex. No. 7.

There was no testimony at the evidentiary hearing as to how Beloit or NorthPointe determined compensation for their officers and employees in 2007. No IRS Form 990, "Return of Organization Exempt from Income Tax," showing Beloit's highest paid employees, was offered into evidence. Mr. McKeveatt and Mr. Bua, who testified at the hearing, were not asked their salaries. There is no testimony or documentary

evidence in the record as to whether Beloit or NorthPointe employees, including the CEO, get bonuses. There is no testimony or evidence in the record as to whether Beloit or NorthPointe employees, including the CEO, 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. There is no testimony or documentary evidence in the record as to how Beloit and NorthPointe's salaries compare with those of employees in similar positions at other hospitals.

“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 Beloit and NorthPointe officers and employees are “reasonable.”

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). Because of the deficiencies in the evidence regarding this Korzen factor, I am unable to conclude that Beloit and NorthPointe do not provide unreasonable gain and profit in a private sense to persons connected with it. The lack of evidence in the record with regard to this Korzen must be construed against Beloit and NorthPointe in this case.

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

Before determining whether charity was dispensed by Beloit and NorthPointe to all who needed and applied for it in 2007, it is necessary to look at what charity was actually dispensed during the year.

**Unreimbursed Medicaid and Medicare Expenses:** According to Mr. Bua's testimony, one component of Beloit's "charity" is the difference between hospital charges and the reimbursement that Beloit receives from Medicare and Medicaid. Tr. pp. 56-57. These amounts have been identified by Wisconsin and Illinois zip codes. In 2007, Beloit's unreimbursed Medicare and Medicaid allowance, identified to Illinois zip codes, was \$11.4 million and \$3.6 million, respectively. NorthPointe, which was not fully-operational in 2007, had no unreimbursed Medicare and Medicaid allowances in that year. App. Ex. No. 11.

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 (3<sup>rd</sup> Dist. 2003), Riverside argued, as does Beloit, that the institution's charity care also included "discounted care to patients through Medicare, Medicaid and private insurance." 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." *Id.* at 610.

More recently, Provena Hospital 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 Supreme 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, Beloit is not giving something of value for free. Based on the established law in Illinois, I am unable to conclude that Beloit’s unreimbursed costs for Medicare and Medicaid constitute charity.

**Community Benefits:** Beloit also argues that its “charity” includes health care services and other financial support included in various programs that are designed to “enhance the health of the community including the health of low income patients.” These “community benefit” activities include health fairs, cancer education, healthy heart education, family planning, mental health education, health related publications distributed at no charge, health information on Beloit’s website, support groups for AIDS/HIV, diabetes, substance abuse and weight management, self-help and wellness programs, blood pressure screenings, cholesterol testing, hearing testing, crisis intervention counseling, guidance referral and enrollment assistance for public medical

programs and other family support assistance, delivery of hot in-home meals, emergency bus tokens for the indigent in order to access health care services and encouraging employees to participate in blood drives. “Management estimates the annual cost to [Beloit] to be approximately \$350,000 for community-based activities and programs.” App. Ex. No. 9.

It is unclear from the record where these community-based activities take place. It is unclear from the record whether these activities describe actual uses of the Beloit or NorthPointe property as opposed to the use of income earned by Beloit or NorthPointe. As the Illinois Supreme Court stated over a century ago, the definition of hospital charity care is services needed and performed for free on the subject property itself. “When the patient is unable to pay for medical care, he is treated free of charge ... in the hospital.” Sisters of the Third Order v. Bd. of Review, 231 Ill. 317, 323 (1907). Activities in other locations are irrelevant. LeaderTreks, Inc. v. Department of Revenue, 385 Ill. App. 3d 442, 451 (2d Dist. 2008). The long-settled doctrine in this State forbids property tax exemptions for activities that do not occur on the subject property. Midwest Physician Group, Ltd. V. Department of Revenue, 304 Ill. App. 3d 939, 957 (1<sup>st</sup> Dist. 1999).

Additionally, the Illinois Supreme Court has never recognized community-based benefits, which encompasses the activities at issue here, as charitable acts sufficient for a property tax exemption. Although these activities unquestionably benefit the community, community benefit is not the test for property tax exemption in Illinois. The donations tell us little about the nature of Beloit or NorthPointe. “The critical issue is the use to which the property itself is devoted, not the use to which income derived from the property is employed.” The test is the present use of the property rather than the ultimate use of the proceeds derived from the property sought to be exempted. Provena (2) at 403-404.

Another reason that Illinois courts have never recognized community benefits as sufficient for property tax exemption is that the community benefits often benefit the hospital more than the community. Many of these activities generate business for hospitals by bringing in insured people. As the Supreme Court noted, while considering the question of whether “free health screenings, wellness classes and classes on handling grief” were charitable endeavors, “private for-profit companies frequently offer comparable services as a benefit for employees and customers and a means of generating publicity and goodwill for the organization.” Provena (2) at 404. Beloit’s election to participate in these programs must be viewed as intelligent business decisions, rather than charity.

**Health Professions Education:** Beloit also argues that another component of its “charity” includes its contribution to the education of student nurses and other health care professionals.<sup>6</sup> App. Ex. No. 9. The Illinois Supreme Court described the inclusion of the costs associated with health professions education in “charity” as “problematic.” The Court noted that participation in the education of health care professionals “unquestionably” adds to a hospital’s prestige and enables it to supplement its medical staff. “While [the Court] cannot exclude the possibility that there is some charity in the relationship, it is difficult to know in which direction such charity flows ....” Provena (2) at 406. In light of the Supreme Court’s discussion of the difficulty in determining the “charity” associated with “health professions education,” I am unable to conclude that this activity constitutes “charity.”

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<sup>6</sup> The record does not contain a dollar amount for health professions education. The cost of this activity is included in the \$350,000 for community based activities, mentioned above. App. Ex. No. 9.

**Charity Care:** As of December 31, 2007, the amount of “charges forgone for services and supplies furnished under [Beloit’s] charity care policy aggregated” \$8.8 million, of which \$1.3 million was identified by zip code as provided to Illinois residents. Because NorthPointe only became operational in 2007, it recorded zero “charges foregone for services and supplies” in that year. Tr. pp. 56-57; App. Ex. No. 11. According to the testimony, the “charges forgone” were prepared from the books and records of the hospital “that are kept in the ordinary course of business.” The “charges forgone” “are amounts we have not collected from patients because they qualified for our charity care policies.” Tr. pp. 56-57. Beloit’s Consolidated Financial Statement for 2007 states that Beloit “maintains records to identify the amount of charges foregone for services and supplies furnished under the charity care policy.” App. Ex. No. 9. However, whatever books and records were used to prepare the “charges forgone,” were not offered into evidence on behalf of Beloit. Beloit only offered into evidence the total for “charges forgone,” without any back-up or support for this total.

It is unclear from the record whether the “charges foregone” are based on Beloit’s established rates which a paying patient would be billed for Beloit’s services or the actual cost to Beloit of providing the service. The Illinois Supreme Court commented on this same issue noting that even where Provena Hospital did offer discounted charges, the “charity” was often illusory. “... [U]ninsured patients were charged [Covenant’s] ‘established’ rates, which were more than double the actual costs of care.” “When patients were granted discounts at the 25% or 50% levels, the hospital was still able to generate a surplus.” Provena (2) at 400. Without backup for how Beloit’s “charges forgone” were calculated, I cannot tell if the charges were based on Beloit’s “established”

rates. I am unable to conclude, therefore, that the \$1.3 million identified by zip code as provided to Illinois residents represents “charity” and is not “illusory.”

Additionally, there is no testimony in the record as to how many patients received charity care from Beloit in 2007, either in the \$8.8 million dispensed by Beloit in total, or in the \$1.3 million dispensed to Illinois zip codes. The \$1.3 million dispensed to Illinois zip codes could conceivably represent 2 Illinois residents with \$650,000 in charges “forgone.” Furthermore, there is no testimony in the record as to how much of Beloit’s “Net Patient Service Revenue” is identified as being earned from Illinois residents. I cannot relate the dispensation of charity to Illinois residents to the amount of revenue earned from Illinois residents. “To be charitable, an institution must give liberally.” Provena (1) at 750. Recognizing the considerable amount of evidence that is not in the record, I cannot conclude that Beloit gave liberally in 2007.

In looking at the Korzen factor of whether charity was dispensed to all who needed and applied for it in 2007, it is essential to know the number of people who applied for charity and the number of people who were actually provided charity by Beloit. This evidence is also not in the record. The fact that the number of people asking for and receiving charitable assistance from Beloit in 2007 was never quantified in the record must be held against Beloit in this matter. While it is clear from the record that no person received charity care at NorthPointe in 2007, it is not clear from the record whether anyone applied for charitable care from NorthPointe. “Common sense suggests that the number of charity patients a hospital actually serves has direct relevance to ... whether the hospital ‘dispenses charity to all who need and apply for it.’” The term ‘charitable purpose’ signifies concrete, practical, objective charity, manifested by things actually done for the relief of the unfortunate and the alleviation of suffering or in some

work of practical philanthropy. Provena (1) at 755. (citing In re Estate of Schureman, 8 Ill. 2d 125 (1956)). I cannot characterize Beloit’s dispensation of charity as either “concrete” or “practical” without evidence of how many people applied for charity and how many people received it in 2007.

35 ILCS 200/15-65 requires that, to qualify for an exemption, property must be used exclusively for charitable purposes. No Illinois Supreme Court decision has established a quantitative test for determining whether the amount of charity care dispensed is sufficient to show that the property is exclusively used for charitable purposes. But because no charity was dispensed on the NorthPointe property in 2007, it would be extremely difficult to characterize the use of this property as “exclusively charitable” in 2007.

The Korzen guideline at issue here 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. The deficiencies in the record do not allow me to conclude that Beloit or NorthPointe dispensed charity to all who needed and applied for it in 2007 and Beloit’s use of the NorthPointe property is not consistent with this characteristic of a charitable organization.

**Korzen factor 4: 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.**

**Beloit:** Beloit’s written “Policy/Procedure” on “Charity Care,” states that Beloit recognizes that there may be circumstances in which patients may not be financially able to pay in full for the services rendered. Beloit will assist in these circumstances with

adjustments for “uncompensated care,” and “uninsured patient discounts.” App. Ex. No. 11.

“Upon patient request,” it is Beloit’s policy to consider an “uncompensated care adjustment” if all other avenues have been exhausted and the patient shows that there is no other means of making payments on the account. Uncompensated care adjustments are granted at the discretion of Beloit. Eligibility for the adjustment will be extended to those persons whose family income does not exceed 150% of the current Community Services Administration poverty guidelines. “Persons whose income is greater than the guidelines, but not more than 3 times the guidelines, shall be eligible for charity care on a reduced charge basis.” Some procedures, such as cosmetic procedures and hearing aids, are excluded from consideration for adjustments. If a patient’s income exceeds the guidelines, but the patient’s expenses also exceed his or her income, the patient may be eligible for an uncompensated care adjustment if the excessive expenses are for medical services or necessary living expenses. Tr. pp. 17-19; App. Ex. No. 4.

Uncompensated care adjustments will only be made after a review of patients’ accounts and a determination that no third-party reimbursement is available. Applications must include household income for the last three and twelve months. Household income includes all wage earners in the household excluding minors. Patients who are employed must show proof that group health insurance benefits were not available from their employer. Beloit’s Patient Accounts Manager, Director of Financial Services and Vice President of Finance approve uncompensated care adjustments, depending on the dollar amount. If a patient receives a partial adjustment, the patient is responsible for the remaining balance within 45 days after notice of the adjustment is given. Tr. pp. 17-19; App. Ex. No. 4.

It is also the policy of Beloit to extend a discount to all patients receiving care who are not insured by any third party payor or government assistance program. This program is called the “uninsured patient discount.” This discount is equal to the “Hospital’s First Choice PPO Contractual Allowance” and, effective December 1, 2006, the discount is equal to 13% of charges. There is no explanation in the record for how the discount rate is determined or applied.<sup>7</sup> The uninsured patient discount is not applicable on any self-pay balance after insurance or government assistance. The discount “shall be reversed if Beloit becomes aware that the patient is eligible for any third party payor reimbursement.” Tr. pp. 17-19; App. Ex. No. 4.

**NorthPointe:** NorthPointe’s written “Policy/Procedure” for “financial assistance” states that Beloit is committed to assist persons who become unable to pay for the services provided at NorthPointe. The policy states that Beloit offers its services at the “lowest feasible cost, taking into account its expenses related to the payment of indebtedness, maintenance of adequate reserves for each resident or member and reserves for necessary expansion of facilities and services.” An individual who is a resident or member of NorthPointe is “financially needy” if “he or she is unable to afford the fees for services as they come due.” When making a determination of financial need, Beloit will take into account, but not be limited by, Federal Poverty Income Guidelines. “Beloit has sole discretion to determine on a case-by-case basis an applicant’s eligibility for financial assistance.” Beloit will inform applicants of the waiver or reduction in fees by written notice. Those with monthly charges waived will receive no monthly bill. Tr. pp. 17-19; App. Ex. No. 4.

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<sup>7</sup> Beloit’s gross margin on services is not in evidence. If Beloit subtracts 13% from an uninsured patients’ billed amount and charges the patient 87%, it is possible that Beloit still makes a profit on this service, making the “charity” for uninsured patients “illusory.”

It must be noted that the “Policy/Procedure” for Beloit’s uncompensated care adjustments states that adjustments are granted at the “discretion” of Beloit. NorthPointe’s “Policy/Procedure” for financial assistance states that Beloit has “sole discretion” to determine an applicant’s eligibility for financial assistance. App. Ex. No. 4. There is no evidence in the record as to how this discretion is exercised and this represents an obstacle in the way of those needing the charitable benefits dispensed by Beloit and NorthPointe. There is no evidence in the record as to the standard or benchmark that Beloit or NorthPointe used in budgeting for financial assistance in 2007. There was no testimony as to whether the budget is revised upwards in years, like 2007, when Beloit had revenue in excess of expenses. There was no testimony as to whether there were empty beds at Beloit in 2007 and how these empty beds related to the amounts budgeted and actually disbursed for financial assistance. Without this evidence, I cannot determine if the financial assistance truly represents “charity” on the part of Beloit or NorthPointe.

Furthermore, basing the dispensation of charity on the grantor’s discretion indicates that there is no guarantee that a patient needing charity from Beloit or NorthPointe would receive assistance. In fact, NorthPointe’s “Policy/Procedure” states that Beloit uses its net earnings to improve the care that Beloit provides, to retire indebtedness, to assist residents in financial need and to expand facilities and services. App. Ex. No. 4. But the “Policy/Procedure” does not state what percentage of the net earnings is provided for each category. The “Policy/Procedure” would allow NorthPointe, in its “discretion,” to use all of its net earnings to expand facilities and services in a given year, at the expense of dispensing any charity care.

“... [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). The record in this case does not allow me to conclude that Beloit will provide a certain level of charitable assistance in the future. There may be years when Beloit’s resources are limited, and in their “discretion,” Beloit may dispense no charitable assistance. This determination could be made while NorthPointe enjoys the benefits of the property tax exemption that they are requesting from this tribunal. Because of the overwhelmingly speculative nature of basing financial assistance on Beloit’s “discretion,” it is difficult to consider it as a factor which governs Beloit’s operations or the NorthPointe property.

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. The record does not conclusively show that either Beloit or Beloit’s operation of the NorthPointe property is consistent with this characteristic of a charitable organization.

**Signage:** There is no evidence in the record that either Beloit’s or NorthPointe’s “Policy/Procedure” for charitable assistance is advertised. Beloit’s “uncompensated care adjustment” is “upon patient request,” but it is not clear from the record how a patient would know to request charitable assistance.<sup>8</sup> There is no testimony that the “Policy/Procedure” is advertised through signage, brochures, web sites or that the

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<sup>8</sup> Mr. McKeveatt testified that Beloit “offers” the “charity care policy” when [patients] “admit verbally.” Tr. p. 43. This statement is not backed up by any legally sufficient documentary evidence. Beloit’s “Policy/Procedure” has no requirement that charity care be offered to patients when they “admit verbally.” App. Ex. No. 4. No admitting clerk testified at the hearing and there is no evidence in the record as to how Beloit ensures that its charity care policy is offered to prospective patients upon admission.

advertisements are in a language appropriate for Beloit's service area. There is no testimony that the availability of charitable assistance is posted on the walls, public places, waiting rooms, or at entrances to Beloit or NorthPointe, including entrances for inpatient and outpatient services or in the emergency room.

A sample "Monthly Statement" of Beloit/NorthPointe states as follows: "For details on the Hospital's or NorthPointe's Financial Assistance Program, please call the Credit Department at ..." Tr. pp. 25-26; App. Ex. No. 4. But this notice to the patient is on a bill and it goes out after the patient has received services. It is unclear from the record how the patient would know to ask for charitable assistance before he received the medical services. Patients may forego needed medical services because they are unaware that charitable assistance may be available.

In Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272, 281 (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." Similarly, in Alivio Medical Ctr. v. Dept. of Revenue, 299 Ill. App. 3d 647, 652 (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." In the instant case, the record does not show that the "general public" would know that free or discounted care was available from Beloit or NorthPointe in 2007.

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). I am unable to conclude from the record of this case that Beloit and NorthPointe do not place obstacles in the way of those who need and would avail themselves of the charitable benefits that these organizations profess to dispense.

**Korzen factor (5): The benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government.**

For both Beloit and NorthPointe, the record contains no evidence as to the number of patients who applied for charity, the number of patients who were dispensed charity and the number of patients who were denied charity. The record is devoid of any information about what percentage of Beloit's admissions were charity cases. In addition, the record is devoid of any information as to how many beds were empty at Beloit in 2007 which could have been used to provide an "indefinite number of persons" with charity care. These evidentiary lapses do not allow me to conclude that either Beloit or NorthPointe dispensed charity to an indefinite number of persons in 2007.

The Korzen factor at issue also requires a consideration of whether Beloit's or NorthPointe's charitable 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 Beloit or NorthPointe alleviates any financial burden on Illinois taxing bodies or Illinois government. Mr. McKevev testified that Beloit Hospital was originally organized as a

municipal hospital in 1928 by the City of Beloit. “In the 1960’s, the City approached the hospital. There was a group of individuals in the City that worked together that formed Beloit Memorial Hospital Corporation. That corporation was established to assume the burden of health care from the City of Beloit to the new corporation.” Funds were raised to build Beloit Hospital at its current location. “The initial bond issue was a 30 year bond issue. When those bonds matured in the 1990’s, the ownership of the Hospital was to revert back to the City of Beloit.” In the early 1990’s, the Hospital approached the City of Beloit “and they affirmed that they wanted us to waive that requirement that ownership would go back to the City of Beloit and for us to continue to carry on the burden of health care for the greater Beloit area.” According to the testimony, the above circumstances “relieved the City of providing health care to the public.” Tr. pp. 19-21.

It is a *sine qua non* of charitable status that those seeking a charitable exemption are able to demonstrate that their activities will help alleviate some financial burden incurred by the affected taxing bodies in performing their governmental functions. Provena (2) at 395. The “affected taxing bodies” in the instant case are located in Winnebago County, Illinois. Beloit Hospital may be relieving a burden on the City of Beloit to provide health care to the “public,” but it is not relieving a burden on the “affected” taxing bodies in Winnebago County, Illinois, even while it requests an exemption from Illinois property taxes.

This is further demonstrated by the fact that my research does not indicate any Illinois statute that requires a governmental entity in this state to operate and maintain a county hospital. 55 ILCS 5/5-1005(6) states that each county in Illinois “shall have the power” to cause to be erected, and maintain, suitable buildings for a county hospital and to provide for the management of the same. However, the statute does not require a

county to erect and maintain such a hospital. If there is no requirement for Illinois counties to erect and maintain a county hospital, there is no burden on Illinois government for Beloit or NorthPointe to relieve.

Provena Hospital previously advanced a similar argument. The Appellate Court noted that Provena argued that it lessens the burdens of government because, if not for the existence of Provena Hospital, Champaign County would have to build a hospital. Provena (1) at 744. The Supreme Court found that even if there was evidence that Provena Hospital used the property to provide the *type* of services which the local taxing bodies might find helpful in meeting their obligations to the citizenry of Champaign County, the *terms* of the service also make a difference. Services extended for value received do not relieve the State of its burden. Provena (2) at 396-397. The medical services offered by Beloit and NorthPointe were for value received, with this value either paid by insurance companies, the patients themselves, or by the government. Services extended for value received, including those services paid for by the government, cannot relieve the government of a burden.

There is simply nothing of fact in the record of this case which would lead me to conclude that Illinois government would have an increased burden if Beloit did not own and operate NorthPointe. I am unable to conclude from the record that the benefits derived from Beloit and NorthPointe are for an indefinite number of persons or that Beloit or NorthPointe reduces a burden on Illinois government. Beloit's use of the NorthPointe property is not consistent with this characteristic of a charitable organization. **The exclusive (primary) use of the property is for charitable purposes.**

This Korzen factors require a determination as to whether charity is the primary use of the subject property or 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)). Incidental acts of beneficence are legally insufficient to establish that the applicant is “exclusively” or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

The subject property contains a fitness center with locker rooms and an “aquatic center.” The aquatic center contains a seven lane lap pool. There is also a warm water therapy pool. According to the testimony, the therapy pool is used by NorthPointe’s therapists to provide warm water therapy treatment for spinal cord injuries, paraplegics and chronic rheumatoid arthritis. Tr. pp. 29, 35-36. The second floor of the subject property has a three lane running track and workout equipment, “ranging from treadmills to weight exercise.” Tr. p. 37. Two of the “community rooms” are used as exercise rooms. “Like for a spin class or something like that.” Tr. p. 37.

According to the testimony, the fitness center is open to “members.” “They’re like a YMCA.” “Our largest referral source is from our medical staff, and it’s different than other traditional fitness facilities in that it’s a medical based facility.” Most of our members have a medical need, whether it’s weight reduction, [or] management of their illnesses.” Tr. pp. 31-32.

It must be strongly noted here, however, that the “healthy” public, meaning those people that are not in need of medical care, can also join NorthPointe’s fitness center. Mr. McKevitt was asked at the hearing whether a “healthy person” could come in and join

and he responded “yes.” Counsel for Beloit added “but as you can see from the location of this, it’s still in a fairly remote area.” Tr. p. 33. Nonetheless, healthy persons not receiving medical care can become members of NorthPointe’s fitness center. There is no evidence in the record as to the percentage of NorthPointe’s 2007 membership that was referred for truly medical reasons and the percentage of the membership that simply joined a fitness center on their own initiative. Because NorthPointe first became operational in 2007, it is unclear whether these percentages, if known, would represent future usage of the property. Without knowing the breakdown in membership of healthy members and those joining for truly medical reasons, the dues paid, and the revenue received by NorthPointe from each of these groups, I cannot say that NorthPointe is used “exclusively” for charitable purposes.<sup>9</sup>

Mr. McKeveitt also testified that members join NorthPointe for the purpose of weight reduction. Logic and experience compel me to conclude that one of the most common reasons to join any fitness center, even a for-profit fitness center, is for “weight reduction.” In fact, athletic facilities provide a variety of benefits to individuals who take part in them. The benefits associated with athletics and physical activities are so universally recognized as valuable that many organizations seek to make a profit from offering a place where others can engage in such activities, like a gym, or a health or country club, or by offering services associated with such facilities, for example trainers and coaches. Other organizations provide similar facilities and services as not-for-profit entities. But the benefits offered by both organizations are similar, even if the cost of obtaining them may differ. Because the benefits received from attending a for-profit fitness center for a fee are no different than those received from attending a non-profit

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<sup>9</sup> 2007 financial statements for NorthPointe were not offered into evidence at the hearing.

fitness center for a fee, it would not be logical to consider the former to be providing services for hire and the latter to be providing charity. The athletics and physical activities that take place in the NorthPointe fitness center do not lead to the conclusion that the subject property is used “exclusively” for charitable purposes.

There was also testimony at the hearing that in building NorthPointe, Beloit worked with Hononegah High School in Roscoe, Illinois to give them a location for their swim team to practice. NorthPointe provides the team with an athletic trainer at no cost. The trainer also manages sports injuries on the sidelines for the football and basketball teams. Both the boys’ and girls’ swim teams utilize the NorthPointe pool. The pool is shut down except for one lane for use by other fitness center members, “during actually peak times.” The school district gets six lanes of the seven lane pool from 4:30 to 6:30 p.m. during the swim team sessions. Tr. pp. 29-30.

The Illinois Supreme Court explained that the reason for exemptions in favor of charitable institutions is the benefit conferred upon the public by them, and a consequent relief, to some extent, of the burden upon the State to care for and advance the interests of its citizens. Provena (2) at 395. Beloit has failed to delineate the benefit conferred upon the public by letting the boys’ and girls’ swim teams of Hononegah High School use the NorthPointe pool. Beloit has failed to identify a State law that puts a burden on Illinois high schools to teach swimming and have access to a pool. Assuming, *arguendo*, that allowing swim teams to use a pool did provide a basis for a charitable exemption, I cannot recommend an exemption for six of seven lanes of a pool, for two hours/day, during swim team practice sessions. If this is charity, it is an incidental act of beneficence, and it does not show that the fitness center complex is “exclusively” used for charitable purposes.

There was also testimony that the high school planned and acquired land just south of the NorthPointe campus in order to expand the high school. “One of the agreements” that Beloit reached with the high school was “we were going to allow them access to that site from our [NorthPointe] campus roads.” “The cost of those roads would be \$1 million, and the annual maintenance cost is \$75,000 for those roads.” Tr. p. 29.

The “agreements” between NorthPointe and Hononegah High School were not offered into evidence. My research indicates no case where allowing someone access to your roads provided a basis for a charitable exemption. There is no evidence in the record that the access occurred in 2007, the year at issue in these proceedings.

In 2007, Beloit and North Pointe failed to satisfy any of the Korzen factors. The record in this case does not allow me to conclude either that Beloit is a charitable organization or that Beloit used the North Pointe property for charitable purposes in 2007. Accordingly, it is recommended that the Department’s determination which denied an exemption from 2007 real estate taxes for Winnebago County P.I.N. 04-21-200-005, on the grounds that the subject property was not in exempt ownership and use for charitable purposes, should be affirmed.

ENTER:



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Kenneth J. Galvin

May 28, 2013