

PT 15-08

Tax Type: Property Tax

Tax Issue: Charitable Ownership/Use

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

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

v.

**BRETHREN HOME OF GIRARD
d/b/a PLEASANT HILL VILLAGE,
APPLICANT**

No. 12-PT-0005 (11-59-34)

**Real Estate Tax Exemption
For 2011 Tax Year
P.I.N. 07-000-313-00**

Macoupin County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Matthew Murer and Mr. John Crawford, Polsinelli, Shughart, PC, on behalf of Brethren Home of Girard d/b/a Pleasant Hill Village; Mr. Robin Gill, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether Macoupin County Parcel, identified by Property Index Number 07-000-313-00 (hereinafter the “subject property”), qualifies for exemption from 2011 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, and/or 35 ILCS 200/15-40, which exempts all property used for religious purposes and not used with a view to profit. The subject property is known as Pleasant Hill (hereinafter “PH”) Village and is owned by Brethren Home of Girard, Inc. (hereinafter “Brethren”).

This controversy arises as follows: On December 16, 2011, Brethren filed an Application for Non-homestead Property Tax Exemption with the Macoupin County Board of Review (hereinafter the “Board”) seeking exemption from 2011 real estate taxes for the subject property.¹ The Board reviewed the Application and recommended that a full year exemption be granted. On February 9, 2012, the Department of Revenue of the State of Illinois (hereinafter the “Department”) rejected the Board’s recommendation finding that the subject property was not in exempt ownership or use in 2011. On April 6, 2012, Brethren filed an appeal of the Department’s exemption denial. An evidentiary hearing in this matter was held before Administrative Law Judge Linda Olivero on March 19, 2013, with testimony from Paulette Miller, Executive Director, Linda Snodgrass, an accountant with Brethren’s accounting firm, Kendall Cole, Board member and member of the Brethren Church, Rod Dowell, Board member from the community, and Terry Link, Staff Chaplain.² Following a careful review of the testimony and evidence, it is recommended that the Department’s 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 2011. Tr. pp. 7-9; Dept. Ex. No. 1.
2. PH Village encompasses 34 acres in Girard, Illinois, that serves as an old people’s home consisting of two buildings. PH Healthcare is a nursing home licensed for 98 beds, with 92 in use, in operation since 1905. There are two units devoted to disabilities related to aging and one Alzheimer’s care unit called “Memory Lane.” PH Residence, an independent living facility with senior living services, opened in May, 2002. This

¹ There is testimony that the subject property was exempt prior to 2011, but it is unclear from the record why the exemption was removed. Tr. pp. 116-123.

² ALJ Olivero was unable to write this Recommendation.

facility has 48 rental units, with 47 units used for housing seniors over the age of 55 and 1 unit used as an office. Tr. pp. 19-20, 29-30; App. Ex. No. 5.

3. Approximately 20.2 acres of the 34 acres on the subject property consists of undeveloped land leased for agricultural use under a cash lease. Brethren receives \$3,535/year for rental of the undeveloped land. Tr. pp. 51-52, 57-59; App. Ex. No. 16.
4. Brethren was incorporated under the General Not For Profit Corporation Act on September 29, 1967. Its purpose, *inter alia*, is “to provide elderly persons on a non-profit basis, with housing facilities and services, specially designed to meet the physical, social, spiritual and psychological needs of the aged, and contribute to their health, security, happiness and usefulness in longer living.” Tr. pp. 11-12; App. Ex. No. 1.
5. Brethren is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Brethren was exempted from sales tax in the State of Illinois in a letter dated April 29, 2011. Tr. pp. 12-14, 84; App. Ex. Nos. 2 and 3.
6. Brethren’s Bylaws, in effect in 2011, state in Article XI, entitled “Charity Care,” that “[T]he Corporation shall waive or reduce, based on an individual’s ability to pay, any entrance fee, assignment of asset, or fee for services.” Tr. pp. 14-15; App. Ex. No. 4.
7. Brethren was established in 1905 under the auspices of the Church of the Brethren (hereinafter “Church”). Brethren participates in an annual meeting with the Church and receives donations from the Church throughout the Illinois-Wisconsin district. Eight of Brethren’s twelve Board members are members of the Church. Brethren has a chaplain on staff who “provides services to the residents and also to the community as a whole.” Tr. pp. 15-17.

8. Brethren does not have shareholders and does not pay dividends. Tr. pp. 17-18, 84-85.
9. Brethren's "Financial Assistance Policy" states as follows: PH Village will provide financial assistance to those residents who are unable to pay. PH Village will require a resident to seek qualification for financial assistance annually. Financial assistance is defined as "services and facilities provided at no cost or at a discount to the resident when a resident lacks insurance and meets certain low-income requirements." Qualifying for financial assistance is dependent on the applicant providing accurate information and completing a financial assistance application. Anyone who requests financial assistance will be afforded the opportunity to apply and be considered. Residents seeking financial assistance should apply before move-in. Brethren shall make a "reasonable effort" to determine if an applicant has private insurance or is eligible for assistance through federal or state programs that fully or partially covers the charges for services rendered or facilities provided. A resident may be deemed eligible for financial assistance without submitting an application if the resident is determined to be homeless or without third-party insurance coverage. Brethren's financial assistance policy "will be provided to all current and prospective residents." "In addition, [Brethren] will make simplified versions of this policy and will post these versions in its public areas." Tr. pp. 21-25; App. Ex. No. 7.
10. Residents applying for charity care fill out a "Financial Information Special Consideration Form," in which they list their principal sources and amounts of income, income producing assets, real estate, gross income as reported on the last federal income tax return, life insurance and expenses. This information "is required in order to assure that applicants can maintain the PH Village Lease Agreement and adequately

meet routine living expenses.” Applicants attest on the Form that they “understand that this information will assist PH Village in determining whether the applicant has the financial ability to meet their monthly residency fee, at PH Village, on a continuing basis.” Ms. Miller testified that she alone determines if an applicant will receive charity care. Tr. pp. 26-27, 62-63; App. Ex. No. 8.

11. A letter from the Executive Director sent to renters at PH Residence on June 1, 2011 regarding “Change in Rates” advises residents that rates will increase because of “cost of food, fuel surcharges for delivery of products and increased cost of petroleum based products.” The letter states that “if this increase is a financial burden, which can’t be covered by monthly income and assets, please talk with me.” Tr. pp. 26-28, 62-63; App. Ex. No. 9.
12. PH Village has 110 to 115 employees. Ms. Miller earns approximately \$86,000/year, which is the highest salary. The Board of Directors are not compensated. Tr. pp. 42, 47-48.
13. As of June 30, 2011, PH Village had “Total Revenue” of \$5,316,761, of which 86% is from “Daily Resident Services” earned at PH Healthcare, 13% is from “Rent Income” earned at PH Residence and less than 1% is “Contributions” and “Designated Fund Raising.” Contributions are from Brethren Church or the community. PH Village had “Total Expenses” of \$4,652,957, resulting in a positive “Change in Net Assets” of \$663,804, of which 97% is earned by PH Healthcare and 3% is earned by PH Residence. Tr. pp. 95-99, 104; App. Ex. No. 19.

14. As of June 30, 2012, PH Healthcare had Total Revenue of \$4,509,503 and Net Income of \$527,566. PH Residence had Total Revenue of \$714,452 and Net Income of \$30,236. App. Ex. Nos. 21 and 22.

15. Brethren Church began 300 years ago in Germany after the Reformation period. The Church does not have a doctrinal creed but follows the New Testament as its rule of faith and practice and follows the ways and teachings of Jesus. Tr. pp. 129-130.

16. The Staff Chaplain holds a 2:00 service in PH Healthcare, a 3:00 service in PH Residence and a 4:00 service in the dementia unit in PH Healthcare. Tr. p. 129.

CONCLUSIONS OF LAW: CHARITABLE EXEMPTION

An examination of the record establishes that Brethren has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2011 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 (1st 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 (1st 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 (4th Dist. 1994). In this case, Brethren had the burden of proving, by clear and convincing evidence, that PH Village was entitled to an exemption for charitable purposes.

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, Brethren 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), PH Village 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. Brethren is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. App. Ex. No. 3. Brethren's Bylaws, in effect in 2011, state in Article XI, entitled "Charity Care," that "[T]he Corporation shall waive or reduce, based on an individual's ability to pay, any entrance fee, assignment of asset, or fee for services." Tr. pp. 14-15; App. Ex. No. 4.

Assuming, *arguendo*, that the above provision in the 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 benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government; (4) the charity is dispensed to all who need and apply for it; (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; and (6) the exclusive (primary) use of the 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 Brethren Home of Girard does not possess five of the six characteristics of a charitable organization and that PH Village is not exclusively used for charitable purposes.

At the evidentiary hearing, Brethren caused to be admitted into evidence an advertisement for an ice cream social on Monday, July 23. The advertisement says that PH Village “is nestled on a rolling hillside in a quiet residential neighborhood in Girard.” “... We remain a non-profit organization dedicated to providing a high quality of life at our independent

living facility, Pleasant Hill Residence.” “From the charmingly landscaped exterior to the luxurious interior, our spacious residence is designed with you in mind.” “A location you’ll like ... A lifestyle you’ll love.” App. Ex. No. 15.

Following is a consideration of the Korzen factors and whether the subject property, as described above, was owned by a charitable organization and used for charitable purposes in 2011.

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, Brethren has failed to prove that the majority of PH Village’s funds were derived from public and private donations. An attachment to Brethren’s PTAX-300 Application for the subject property states that “[M]ost of [Brethren’s] revenue is derived from rental fees and fees for services charged to the elderly residents of its facilities.” App. Ex. No. 5. As of June 30, 2011, PH Village had “Total Revenue” of \$5,316,761, of which 86% is from “Daily Resident Services” earned at PH Healthcare, 13% is from “Rent Income” earned at PH Residence and less than 1% is “Contributions” and “Designated Fund Raising.” Contributions are received from Brethren Church or the community. Tr. pp. 95-99, 104; App. Ex. No. 19. The record does not contain consolidated financial statements for June 30, 2012. The “unconsolidated” statements for this period show that 99% of PH Healthcare’s revenues were from “Daily Service Revenue” and 98% of PH Residence’s revenues were from “Rent Income.” App. Ex. Nos. 22 and 23.

As the financial statements indicate, PH Village receives the great majority of its funding from “private pay” patients, insurance companies and Medicare and Medicaid in PH Healthcare

and from renters in PH Residence. Approximately 99% of PH Village's revenue is from billing for services. In Riverside Medical Ctr. v. Dept. of Revenue, 324 Ill. App. 3d 603, 608 (3rd 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 (1st 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 PH Village, is not a "use" of property 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 (4th Dist. 2008), aff'd, 236 Ill. 2d 368 (2010).³ 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 PH Village from healthcare services provided to seniors and the rental of the independent living units 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). Brethren has failed to prove that the majority of its funding is from public and private charity and PH Village's use of the subject property is not consistent with this characteristic of a charitable organization.

³ 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)."

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.

Brethren does not have shareholders and does not pay dividends. Tr. pp. 17-18, 84-85. PH Village has 110 to 115 employees. Ms. Miller earns approximately \$86,000/year, which is the highest salary. The Board of Directors is not compensated. Tr. pp. 42, 47-48. The Department “conceded” in its post-hearing brief that “nothing indicates that private inurement occurred during the 2011 assessment year.” Dept. Brief, p. 5. Because of the Department’s concession, I conclude that Brethren possesses this Korzen factor and that PH Village’s use of the subject property is consistent with this characteristic of a charitable organization.

Korzen factor (3): 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 up-front 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.”

There was consistent testimony throughout the evidentiary hearing that Brethren does not charge an entrance fee. Ms. Miller testified that “we do not have an entrance fee.” Tr. p. 21. Ms. Snodgrass also testified that Brethren does not have an entrance fee. Tr. p. 83. The problem with this testimony is that the residency/lease agreement and fee schedule that the residents receive when they move into PH Village was not admitted into evidence. The absence of the residency/lease agreement and fee schedule is a serious omission from the record in this case and it negatively impacts any conclusion that Brethren possesses the characteristics of a charitable organization, as determined in Korzen. Without the residency/lease agreement, it is not clear under what terms residents and patients move into the subject property. It is unclear if late fees or interest are imposed on late payments of the rental amounts. It is unclear if Brethren charges a substantial security deposit for residents. It is also not clear whether residents have to complete an application to move in and whether a substantial application fee is required. Without the residency/lease agreement and fee schedule, I am not able to clearly and convincingly conclude that PH Village does not charge an entrance fee.

It must be noted here that Brethren's Bylaws, under "Charity Care," state that "the corporation shall waive or reduce, based on an individual's ability to pay, any entrance fee, assignment of asset, or fee for service." App. Ex. No. 4. Ms. Miller testified that Brethren does not require the assignments of assets upon a resident's death. Tr. p. 22. And as stated above, there was consistent testimony that Brethren does not charge an entrance fee. Whereas I recognize that Brethren's provision for "Charity Care" in its Bylaws was copied from 35 ILCS 200/15-65(c), I must question why Brethren includes the waiver or reduction of entrance fees and the assignment of assets as "charity care" in its Bylaws when, according to the testimony, they do not have entrance fees or require the assignment of assets. There is no explanation for this inconsistency in the record. It is also possible that if PH Village does not charge an entrance fee, they make up for this loss of income by charging higher monthly fees. Without documentary evidence on the residency/lease agreement and fee schedule, I am unable to conclude that PH Village benefits an indefinite number of persons.

Without PH Village's residency/lease agreement and fee schedule in the record, I am also unable to determine how Brethren charges residents for the space rented in PH Residence. Illinois courts have consistently held that rental of units, based on size and/or location, is not indicative of charitable use. 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, 158 (1968), the Court noted that the monthly service charge, *inter alia*, was 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 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.” PH Village’s advertisement for the subject property notes the “luxurious interior” and the “spacious residence” “designed with you in mind.” App. Ex. No. 15. Without documentary evidence in the record as to PH Village’s contractual arrangements with its residents and the basis of the rental fees charged for the units, I am unable to determine if Brethren charges for rental of the units based on their “spaciousness” and “luxury.” Without this evidence, I cannot conclude that PH Village benefits an indefinite number of persons.

It is also unclear from the record of this case whether potential residents are financially screened before they move into the property. The PH Village “Financial Information Special Consideration Form” requests information on social security, “trust or pension,” interest income, dividend income, other income, income producing assets, gross income from your last tax return, life insurance, burial trusts, property owned and “other expenses that need to be considered.” According to the Form, this information “is required in order to assure that applicants can maintain the PH Village Lease Agreement and adequately meet routine living expenses.” Applicants attest on the Form that they “understand that this information will assist PH Village in determining whether the applicant has the financial ability to meet their monthly residency fee, at PH Village, on a continuing basis.” Tr. pp. 26-27, 62-63; App. Ex. No. 8.

Ms. Miller testified that she alone determines if an Applicant will receive charity care. According to her testimony, the Special Consideration Form is the “application that residents

would complete upon applying for charity care with the community.” Tr. p. 26. But the Form states that this financial information “is required in order to assure that applicants can maintain the PH Village Lease Agreement and adequately meet routine living expenses.” App. Ex. No. 8. A reasonable interpretation of this sentence is that potential PH Village residents are required to fill out this Form when applying to live on the property and that only residents who are determined to be financially able to “maintain” the Lease Agreement and “meet” routine living expenses are allowed to move in.

Brethren’s “Post Hearing Brief” states that “Applicant can only provide free or discounted care to those who need it, it cannot create needy residents.” App. Brief, p. 13. Whereas I agree that Brethren cannot “create” needy residents, I am unable to determine that Brethren does not financially screen out the residents so that “needy” residents never make it on to the subject property in the first place. Without documentary evidence in the record as to the financial requirements to live at PH Village, which I assume would be included in the residency agreement/fee schedule and residency application that were not admitted into evidence, it would be reasonable for me to conclude that “needy residents” are financially screened from PH Village resulting in fewer requests for charitable care. Without documentary evidence in the record on this matter, I cannot conclude that PH Village benefits an indefinite number of persons.

The Korzen factor at issue also requires a consideration of whether Brethren’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). 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. There is no credible evidence in the record of this case showing that Brethren's operations on the subject property reduce any burden on government.

Mr. Cole testified that "we feel like we're providing a service that maybe substitutes for what some government entity might have to." "I know Macoupin County formerly had its own nursing facility that had to close many years ago." Tr. pp. 114-115. However, Counsel for Brethren has not referred me to, and my own research does not indicate, any Illinois statute that requires a governmental entity in this state to operate and maintain a nursing facility or 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 or old peoples' home, there is no burden on Illinois government for PH Village to relieve.

Provena Hospital 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. The Supreme Court noted that services extended for value received do not relieve the State of its burden. Provena (2) 396-397. The medical services offered by PH Village are "for value

received,” with this value either paid by insurance companies, the patients and residents themselves, or by the government, through Medicare and Medicaid. Services extended for value received, including those services paid for by the government, are not relieving the State 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 Brethren did not own and operate PH Village. I am unable to conclude from the record that the benefits derived from PH Village are for an indefinite number of persons or that these benefits reduce a burden on Illinois government. Brethren’s use of the PH Village property is not consistent with this characteristic of a charitable organization.

Korzen factor (4): 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 at PH Village in 2011, it is necessary to look at what charity was actually dispensed on the subject property.

Community Benefits: Ms. Miller was asked to describe Brethren’s interactions with the community “that are of a community benefit type of nature.” She testified that Brethren provides parking spaces for Macoupin County bus transportation services for the seniors in the County. “We also work with the Health Department a couple times a year to be able to give them free space to provide clinics to do flu shots, do wellness checks.” “We have meeting rooms available that we have open to the community.” “The Methodist Church uses us on a monthly basis.” The Kiwanis Club uses “us” on a monthly basis. The local Lion’s Club uses the meeting room “at times.” Brethren also offers a “wellness program” “to any lady in the community that is over the age of 55.” “It’s an exercise program on Monday morning, and our volunteer also then

encourages them to use our exercise equipment that's in the building and also use our hallways as a walking path." There is no charge for these activities. Brethren also shares the produce from its garden with the Food Pantry in Girard. The subject property also occasionally serves as a warming or cooling center for the community. Tr. pp. 44-46.

The Illinois Supreme Court has never recognized community-based benefits, which encompasses the activities described above, as charitable acts sufficient to justify 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 Brethren. Community benefits often benefit the organization more than the community. Many of these activities could be viewed as generating business for Brethren 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. Brethren's election to participate in these programs must be viewed as intelligent business decisions, rather than as charity that would qualify the subject property for exemption.

PH Healthcare: PH Healthcare provided "charity care" of \$6,190 to three people in 2010-2011 and \$880 to one person in 2011-2012. Tr. pp. 23-24, 59-60, 64-69; App. Ex. Nos. 6, 21 and 22.

I am unable to conclude that the "charity care" provided by PH Healthcare is truly charity care. When a resident in PH Healthcare runs out of money, Ms. Miller testified that Brethren "assists them in filling out the Medicaid application." Tr. p. 30. She testified further that she "considers" charitable care "as accepting Medicaid residents." According to her testimony, the

difference between a “regular private pay resident who’s not on Medicaid” compared to the Medicaid reimbursable amount is considered “charity care.” “We don’t put the whole amount as charitable care, it’s just the difference.” Tr. pp. 60-61. When asked specifically what the “charity care” figures for PH Healthcare “represent,” she stated “that’s where people did not have enough money and needed assistance between Medicaid rates or not being able to be eligible for Medicaid and being able to afford our private pay rates. Or at times it’s charitable care. Until they could get applied for Public Aid, we give them a reduction in their rate.” Tr. p. 65. No breakdown of the dollar amount of these categories was offered into evidence. The Department’s Post Hearing Brief notes that the “Department finds it confusing whether the amounts are fee waivers, fee reductions or merely differences between the Medicaid rate and the private pay rate.” Dept. Brief, p. 6. I also find the testimony confusing.

There is a well-developed body of case law in Illinois with regard to whether the unreimbursed costs of Medicare and Medicaid are “charity” and it is, therefore, baffling why these costs were included by PH Healthcare as “charity care.” 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 (3rd Dist. 2003), Riverside argued, as does PH Healthcare, 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. A similar argument was advanced in Alivio Medical Ctr. v. Dept. of Revenue, 299 Ill. App. 3d 647 (1st 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.

More recently, Provena Hospital argued before 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.

PH Healthcare’s participation in Medicare and Medicaid also serves its “financial interests.” Ms. Miller testified that in 2010-2011, PH Healthcare’s average rate for private pay patients was \$116/day while the average Medicaid rate for this time period was \$97.06 in 2010, increased to \$98.57 in 2011. In 2011, 49% of PH Healthcare’s occupancy was Medicaid patients. Tr. pp. 30-34, 73-75; App. Ex. Nos. 12 and 14. In spite of the lower Medicaid rates, PH Healthcare had “Net Income” of \$647,073 in 2010-2011 and \$527,566 in 2011-2012. App. Ex. No. 21.

The Illinois Supreme 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, PH Healthcare is not giving something of value for free. Based on the established case law in Illinois, I am unable to conclude that PH Healthcare’s unreimbursed costs for Medicare and Medicaid constitute charity. Because I cannot distinguish what amounts in PH Healthcare’s “charity care” are unreimbursed costs of Medicare and Medicaid versus something of value given for free, I must conclude that PH Healthcare did not provide charity on the subject property in 2011.

PH Residence: For PH Residence, which is considered “independent living,” “there is no Medicaid.” “It’s either total private pay or our internal charitable care program.” Tr. pp. 67-68. PH Residence provided charity care to six people totaling \$17,964 in 2010-2011 and charity care of \$16,111 in 2011-2012. The record does not show how many people received charity care at PH Residence in 2011-2012. Tr. pp. 23-24, 59-60, 64-69; App. Ex. Nos. 6, 21 and 22.

In PH Residence, renters “are charged monthly rents, and as part of the monthly rent there are certain social services that are included like meals and housekeeping, and other services can be added as the resident needs them.” According to the testimony, monthly rents are “below market.” Tr. p. 20. The only testimony in the record as to how charity care for PH Residence was determined is as follows: “On the residence side, if somebody is unable to afford the rental amount then they are allowed a charitable care [amount] so they can live at the facility.” Tr. p. 84.

It is unclear from the record whether the charity care is based on PH Residence’s established rates, which a self-paying patient would be billed, or the actual cost to PH Residence of providing the rent or service. The Illinois Supreme Court commented on this issue noting that

even where Provena Hospital did offer discounted charges, the “charity” was often illusory. “... [U]ninsured patients were charged [the Hospital’s] ‘established’ rates, which were more than double the actual costs of care.” “When patients were granted [charity] discounts at the 25% or 50% levels, the hospital was still able to generate a surplus.” Provena (2) at 400. PH Residence had surplus of \$16,730 in 2010-2011 and \$30,236 in 2011-2012. App. Ex. No. 22. Without an explanation for how PH Residence’s charity care was calculated, I cannot tell if the amounts were based on its “established rates.” If so, the charity care amounts may be “the illusion of charity” and according to Provena, overstated.

In 2010-2011, PH Residence’s charity care amounts, possibly over-stated as described above, represent 2.6% of its “Rent Income” of \$677,160 and in 2011-2012, 2.3% of its “Rent Income” of \$695,518. “To be charitable, an institution must give liberally.” Provena (1) at 750. I am unable to conclude that PH Residence has given “liberally.” The Property Tax Code allows exemptions for charitable use of property when the property is “exclusively” used for charitable purposes and not used with a view to profit. 35 ILCS 200/15-65. The disparity between PH Residence’s charity care and its “Rent Income” is so extreme that it would not be reasonable to conclude that the primary use of this property is to provide charity, as is required by 35 ILCS 200/15-65. The primary use of PH Residence is the rental of units at a profit to seniors who can afford to live there. The charity care amounts, representing 2% to 3% of the rental income paid by residents on the subject property, fall far short of meeting the primary purpose standard.

Ms. Miller was asked who, “during the application process,” decides if a person receives charity. She responded: “I do.” She was next asked: “And you previously testified that nobody that’s ever asked, applied for the charitable care, has ever been denied.” She replied: “Not that I’m aware of, no.” “And you’re the one that makes those decisions?” She replied: “Yes.” Tr.

pp. 62-63. I do not understand this testimony, which required further explanation. It could be interpreted to mean that some applications for charity care may have been denied, but Ms. Miller is just not “aware” of them. Alternatively, if Ms. Miller is the only person who decides if a person receives charity, how could she not be aware of any denials? The testimony does not arise to the level of clear and convincing evidence that would enable me to conclude that charity is dispensed to all who need and apply for it.

As previously discussed in this Recommendation, it is also unclear from the record whether potential residents are financially screened before they move into PH Residence. The “Financial Information Special Consideration Form” requests financial information in order to assure that applicants can “maintain” the lease agreement and “meet routine living expenses.” App. Ex. No. 8. Accordingly, it seems likely that the population at PH Residence has met Brethren’s financial requirements for living there before moving in. The likelihood then that these residents will ever need financial assistance is minimal, by Brethren’s design.

PH Residence has 47 units for rental housing for seniors and 41 of these units are rented by seniors who, I can reasonably conclude from the evidence, are fully able to afford the rent and the charges for services. Tr. pp. 19-20. In 2010-2011, 6 people (47 minus 41) received charity care from PH Residence, in the individual amounts of \$150, \$665, \$1,845, \$1,750, \$2,960 and \$10,594. “The monthly rent is \$1,440.” App. Ex. No. 6. Twelve months’ rent at \$1,440 would be \$17,280. From these figures, I can also reasonably conclude that no renter at PH Residence lived totally rent-free for the year 2010-2011. There was no evidence or testimony at the hearing that charity was provided to any applicant who appeared, from the initial application, to be unable to afford to live on the property and/or afford Brethren’s services. PH Residence is not providing rental units for the homeless or the poverty-stricken.

Whereas charging fees and rendering benefits to persons not poverty-stricken does not destroy the charitable nature of an organization, 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). I conclude from the record that PH Residence is providing charity to residents who were previously determined to be able to afford to live on the property but later encountered financial difficulties. The evidence does not allow me to conclude that PH Residence provides charity to people who cannot afford, from the outset, to live there. Accordingly, I am unable to conclude that charity is provided to all who need 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. The record of this case does not show that Brethren possesses this characteristic of a charitable organization or that its use of the subject property is consistent with this characteristic.

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 that PH Village placed several obstacles in the way of those who needed and would have availed themselves of its “charitable” benefits in 2011.

Brethren’s “Financial Assistance Policy” states under Article IV, Section J, entitled “Posting” that the financial assistance policy “will be provided to all current and prospective residents.” The Financial Assistance Policy states under Article I, “Purpose,” that in accordance with Article XI of Brethren’s Bylaws, “this Financial Assistance Policy defines PH Village’s financial assistance program, criteria, application process, and procedures for determining

financial assistance.” App. Ex. No. 7. As discussed above, Article XI of Brethren’s Bylaws states that “the Corporation shall waive or reduced, based on an individual’s ability to pay, any entrance fee, assignment of asset, or fee for services.” App. Ex. No. 4. According to the testimony, Brethren does not charge an entrance fee or require an assignment of assets. The phrase “fee for services” is not explained. I am not sure that anyone reading the Bylaws and needing charity would conclude that “services” includes rent in the independent living units if, in fact, it does. The lack of clarity in the Bylaws as to exactly what the charity is that Brethren is providing is an obstacle in the way of anyone who needs and would avail themselves of Brethren’s charity.

Ms. Miller testified that “on a yearly basis as we send out rate increases, a letter is also attached that shows and lets them know that the charitable care policy is there.” Tr. p. 26. “And then on an annual basis when the rent increases go out again we let them know that there’s a charitable care policy.” Tr. p. 62. A letter sent to renters at PH Residence on June 1, 2011 regarding “Change in Rates” advises renters that rates will increase because of “cost of food, fuel surcharges for delivery of products and increased cost of petroleum based products.” The letter states that “if this increase is a financial burden, which can’t be covered by monthly income and assets, please talk with me.” Tr. pp. 26-28, 62-63; App. Ex. No. 9. In spite of the testimony, the rate increase letter does not state that Brethren has a “charity care policy” and there is no charity care policy “attached” to the rate increase letter. The phrase “please talk with me” would not necessarily indicate to a person needing Brethren’s charity that their rent and fees can be reduced or waived. “Please talk with me” could be interpreted to mean that eviction is looming. This is an obstacle in the way of any resident, currently living at Brethren, who needs to avail themselves of Brethren’s charity.

Brethren caused to be admitted into evidence, without objection from the Department, two rate increase letters, one apparently for PH Healthcare and one for PH Residence. The letters are both dated May 31, 2012, although the year at issue in these exemption proceedings is 2011. The letter sent to renters at PH Residence states that the rate increase will be effective July 1, 2011, which is 13 months before the date of the letter. Both rate increase letters state essentially that if the rate increases present a financial hardship, “that can’t be covered by your monthly income and assets,” “please talk with me.” “Since we are a charitable, 501(c)(3) organization, special consideration can be made in your monthly rates, if you qualify.” App. Ex. No. 10. There is no “attached” letter stating that Brethren has a charitable care policy. The phrase “special consideration” could simply indicate a deferred payment plan, rather than charitable assistance.⁴ These letters are obstacles in the way of any resident, currently living at Brethren, who needs to avail themselves of Brethren’s charity.

In addition, the record in this case does not allow me to conclude that the general public, including prospective residents and patients at PH Village, would know that charitable assistance was available. This is a significant obstacle in the way of anyone who wished to reside or be a patient at PH Village in 2011, but could not afford the daily fees in PH Healthcare or the monthly rent in PH Residence. Ms. Miller testified that “when people are admitting or looking at moving into our campus, we also let them know that we are a 501(c)(3) and part of our duties as being a 501(c)(3) is to provide charitable care if they so need it.” Tr. pp. 26-27. No documentary evidence was offered to support this testimony. Whatever documents a potential patient or

⁴ Ms. Miller testified that she “had a gentleman that gave me notice; he could no longer stay because he could no longer afford to live there.” “I basically handed him a charitable care policy...” Tr. p. 62. The fact that the “gentleman” gave notice is an indication to me that he was unaware that Brethren had a charity care policy and that the charity care policy may not be widely disseminated. Ms. Miller did not testify that this gentleman subsequently received charity.

resident receives when “looking at or moving into our campus” were not admitted into evidence. I am not able to conclude that potential patients or residents are aware that charitable assistance is available.

Brethren caused to be admitted into evidence several advertisements of events on the PH Village campus. Two of the advertisements are for open houses on May 6 and July 23. Neither advertisement states that charitable care is available at PH Village. The May 6 advertisement states that PH Residence is celebrating its 10th anniversary with an open house “and opportunities for you to save money while retaining your freedom.” The advertisement does not state that Brethren is a 501(c)(3) organization or even “non-profit.” The July 23 advertisement states that Brethren remains a “non-profit organization dedicated to providing a high quality of life at our independent living facility...” Neither advertisement lets potential residents or patients know that fees for rent and services can be reduced or waived. App. Ex. No. 15. Additionally, there is no evidence in the record that PH Village’s website lets potential patients and residents know that fees for rent and services can be reduced or waived. This is an obstacle in the way of any potential resident or patient who would like to avail themselves of Brethren’s charity.

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 (1st Dist. 1998), where the court denied a charitable exemption for a medical care facility, the court again noted

that “[A]lvio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care.”

Similarly, the record in this case does not show that the “general public” would know that charity was available at PH Village. The record does not show conclusively that Brethren’s charity care policy was widely disseminated or that all of its existing residents 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). The Korzen criteria that a charitable organization place no obstacles in the way of those needing assistance 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 record of this case does not show that Brethren possesses this characteristic of a charitable organization or that its use of the subject property is consistent with this characteristic.

Korzen factor (6): The exclusive (primary) use of the property is for charitable purposes.

The statute which allows exemption from property taxes for charitable use requires that the property not be leased or otherwise used with a view to profit. 35 ILCS 200/15-65. Approximately 20.2 acres of the 34 acres on the subject property consists of undeveloped land leased for agricultural use under a cash lease. Brethren receives \$3,535/year for rental of the undeveloped land which, according to the testimony, goes “right back into our operating cash.” The 20.2 acres is included in the same P.I.N. as PH Village. Counsel for Brethren characterized the rent income from the undeveloped land as “de minimus.” Tr. pp. 51-52, 57-59; App. Ex. No. 16.

However, the concern in 35 ILCS 200/15-65 is whether the property is used with a view to profit, not whether the owner is maximizing his profit. In People v. Withers Home, 312 Ill. 136, 140 (1924), the Court noted that “former decisions of this court” show that the phrase “not leased or otherwise used with a view to profit,” “has the ordinary meaning of the words.” “If real estate is leased for rent, whether in cash or in other form of consideration, it is used for profit.” Brethren is leasing 59% (20.2 acres leased/34 total acres) of the subject property for rent. In Turnverein “Lincoln” v. Bd. Of Appeals, 358 Ill. 135, 144 (1934), the Court noted, with regard to the argument that income from the rented property was offset by operating expenses, that “it need only be observed that if property, however owned, is let for a return, it is used for profit and so far as liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss.” The 20.2 acres that Brethren is leasing, which constitutes the majority of the acreage in the P.I.N., is “let for a return.”

In 2011, PH Residence earned revenue from a beauty shop, laundry, “meals-residents and other guests,” garage rental, “sleeping room” and cable. Tr. pp. 41-42; App. Ex. No. 22. In 2011, PH Healthcare earned revenue from “TV Income,” beauty income, vending income and unexplained “miscellaneous” income. App. Ex. No. 21. There was no evidence at the hearing as to who operates these amenities located on the subject property. There was no evidence at the hearing as to whether the space for these activities was leased or rented to businesses to operate them. There was no evidence at the hearing as to whether the space for the amenities was leased or rented for a profit. No leases or rental agreements were offered into evidence. There was no evidence at the hearing with regard to the actual space used at PH Village for the amenities described above. If I had concluded that any part of this property was entitled to an exemption for charitable purposes, I would have had to recommend that the exemption be denied for one

hundred percent of the property because I am unable to carve out the areas used for the beauty shop, garage rental and the other areas mentioned above.

Because Brethren 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 PH Village's other sources of revenue must be construed against them. In addition to the leasing of the 20.2 acres for a profit, it is reasonable to conclude that other areas in PH Village may also be leased or used with a view toward profit.

The six 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 (1st Dist. 1987).

In 2011, PH Village failed to satisfy five of the six Korzen factors, used to determine whether an entity is used "exclusively" for charitable purposes. An attachment to Brethren's PTAX-300 Application for the subject property states that "[M]ost of [Brethren's] revenue is derived from rental fees and fees for services charged to the elderly residents of its facilities." App. Ex. No. 5. In 2010-2011, PH Residence's charity care amounts represented 2.6% of its "Rent Income" and in 2011-2012, 2.3% of its "Rent Income." This, along with a consideration of all the facts relating to the operation of the subject property in 2011, establishes that Brethren's charity on this property represents an incidental act of beneficence that is legally insufficient to establish that PH Village "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 PH Village's facilities are accessible only to those who have the funds to rent the units and 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 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.

CONCLUSIONS OF LAW: RELIGIOUS EXEMPTION

The provisions of the Property Tax Code that govern religious exemptions are found in 35 ILCS 200/15-40. Section 200/15-40(a) exempts property used exclusively for religious purposes, school and religious purposes or orphanages as long as the property is not used with a view to profit. Section 15-40(b) exempts property that is owned by churches, religious institutions or religious denominations and that is used in conjunction therewith as housing facilities provided for ministers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations. Section 15-40(b) states specifically that "[A] parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility." 35 ILCS 200/15-40.

PH Village is a "housing facility" that is owned by a religious institution, Church of the Brethren. Ms. Miller testified that Brethren had a chaplain "on staff" who provides services to the residents and also to the community as a whole. Tr. p. 16. Mr. Terry Link, "Staff Chaplain," testified about his responsibilities on the subject property. But there is no evidence in the record

that Mr. Link or any other minister or chaplain lived on the subject property in 2011. Accordingly, I must conclude that the subject property was not exclusively used for “religious purposes” under Section 15-40(b) in 2011 because there is no evidence in the record that any person who performed religious related activity resided on the facility as a condition of their employment. Therefore, if the subject property qualifies for exemption under Section 15-40 of the Property Tax Code, it must qualify under Section 15-40(a) as property used “exclusively” for religious purposes.

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt so that only the limited class of properties meant to be exempt actually receives the exempt status that the Illinois legislature intended to confer. Exempting PH Village for religious purposes under Section 15-40(a) would require an extraordinarily liberal reading and interpretation of the religious exemption statute which, as noted above, must be strictly construed in favor of taxation and against exemption. The record in this case shows conclusively that PH Village is unable to meet the requirements of Section 15-40(a).

Section 15-40(a) exempts “[a]ll property used exclusively for religious purposes...” and “not used with a view to profit.” 35 ILCS 200/15-40. The first issue to be determined in the instant case is what use constitutes the “exclusive” use of the subject property. The word “exclusively” when used in Section 200/15-40 and other exemption statutes means “the primary

purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1933). Property satisfies the requirement of being used “exclusively for religious purposes” as a statutory basis for real estate tax exemption if the property is primarily used for religious purposes. Lutheran Church of Good Shepherd v. Department of Revenue, 316 Ill. App. 3d 828 (3rd Dist. 2000). Property satisfies the exclusive-use requirement if it is primarily used for the exempted purpose, even though it may also be used for a secular or incidental purpose. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983).

PH Village: The record in this case shows that the exclusive use of PH Village in 2011 was to provide housing and medical services to seniors. Brethren’s Mission Statement states that PH Village was founded “to provide quality care on a non-profit basis, with housing facilities and services, especially designed to meet needs of the aged and contribute to their health, security, happiness and usefulness in longer living.” App. Ex. No. 17. Brethren’s Bylaws state that the “purpose” of Brethren is “to provide elderly persons on a non-profit basis, with housing facilities and services, specially designed to meet the physical, social, spiritual and psychological needs of the aged and contribute to their health, security, happiness and usefulness in longer living.” App. Ex. No. 4. While there may be a “spiritual” component to PH Village’s operations, advancing religion is not identified in any of its corporate documents as a primary or dominant purpose. Provena (2) at 409.

The Illinois Supreme Court defined the term “religious use” as follows:

As applied to the uses of religious property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911), (hereinafter McCullough). Several years later, the Illinois Supreme Court explained that its pronouncement in McCullough “was not stated as inclusive of everything that might in the future be regarded as a use for religious purposes but as illustrative of the nature of such use.” People ex rel. Carson v. Muldoon, 306 Ill. 234, 238 (1922). However, if public worship, Sunday schools and religious instruction are “illustrative of the nature of [religious] use,” it must follow that “religious use” has a determinable nature and that to be a religious use, the activity must somehow resemble the activities in Deutsche Gemeinde. Provena (1) at 767.

Although some of PH Village’s use of the subject property may constitute religious use as defined in McCullough, I am unable to conclude that the property should be exempted for religious purposes because of the requirement in 35 ILCS 200/15-40 that the property be used “exclusively” for religious purposes. There is no evidence in the record that there is a chapel or room, exclusively devoted to religious use, at PH Village. Chaplain Link testified that he holds a 2:00 service in PH Healthcare and a 3:00 service in PH Residence. There is also a 4:00 service in the dementia unit in PH Healthcare. Tr. p. 129. It is unclear from the record whether these services are held daily, weekly or monthly and whether there is a room or rooms dedicated exclusively to these services. There is no evidence in the record as to how many residents and patients participated in these services. Chaplain Link also testified that he “conducts funerals as needed” and officiated at weddings for staff members and he provides “pastoral care one on one, talk with people if they would like.” Tr. p. 129. Again, it is unclear from the record where these activities take place on the subject property and if there is a room or rooms dedicated exclusively to these activities.

Accordingly, I am unable to conclude that any specific identifiable area at PH Village was used exclusively for religious purposes in 2011. The three religious services described by Chaplain Link would appear to be an incidental use of some unidentifiable area at PH Village. The primary use of the space, and not the incidental use, is controlling in determining whether property is exempt from taxation. The property tax exemption is based on space used and the statute requires that the space be used exclusively for the exemption claimed. I cannot recommend an exemption for the three hours per day, week or month that services are held on the subject property. The record in this case does not support an exemption for religious use of the entire PH Village upon the basis of the three hours of services held daily, weekly or monthly in an unidentifiable area.

Brethren Church started 300 years ago in Germany after the Reformation period “when there was a lot of Protestant groups springing up and a lot of persecution.” The Church does not have a doctrinal creed but follows the New Testament as its rule of faith and practice and follows the ways and teachings of Jesus. Tr. pp. 129-130. PH Village started as a ministry of the Brethren Church in 1905, originally for the aged and orphans. In the 1920’s, the State removed children and began institutional care for them. Chaplain Link testified that “one of the early rules [was] that [Brethren] would care for as many as there was funds and space available.” “... We have faithfully continued that in our mission ever since to the aged and neighbors in need.” Tr. pp. 130-132. According to Chaplain Link’s testimony, charity care, “provided in both good years and bad years is really consistent with [the] overall ministry of the Brethren Church...” Tr. p. 133. Mr. Cole testified that the care that Brethren provides and the support to the elderly is consistent with the ministry of the Brethren Church. Tr. p. 112. I find the testimony of Brethren’s witnesses, with regard to the characterization of its activities at PH Village, to be

credible and made in good faith. I am confident that these witnesses believe that the operation of PH Village is a religious activity consistent with the ministry of Brethren Church.

However, the testimony discussed above is strikingly similar to the testimony elicited in Fairview Haven v. Dept. of Revenue, 153 Ill. App. 3d 763, 768 (4th Dist. 1987), where members of the Apostolic Christian Church of America (hereinafter “Apostolic Church”), similar to Brethren, sought a religious and charitable exemption for independent living units and an intermediate care facility. The court noted that one of the basic tenets of the Apostolic Church “is that salvation is accomplished through faith and Christian witness.” In Fairview Haven, all policies, rules and regulations of Fairview had to subscribe to the beliefs of the Apostolic Church and be reflected in the operation of the nursing home. A member of Fairview’s Board of Directors testified that Fairview was “an integral part of the Church, governed by the Church, and maintained by it.” Similarly, in the instant case, eight of the twelve members of PH Village’s Board of Directors are required to be members of the Brethren denomination. Tr. pp. 110-111; App. Ex. No. 4.

In Fairview Haven, the court noted that the practice of charity, kindness to other persons and in particular to the aged, and the practice of all virtues are encouraged by religious organizations. “[H]owever, it cannot be stated that they are religious purposes within commonly accepted definitions of the word.” *Id.* at 774. The Illinois Supreme Court has also noted that religious purpose necessary to exempt property under the Property Tax Code is not determined solely by the professed motives or beliefs of the property’s owner. Provena (2) at 409. Similarly, I cannot conclude that Brethren’s “support to the elderly” is necessarily a religious purpose, sufficient to exempt the subject property under the Property Tax Code. In Faith Builders Church v. Dept. of Revenue, 378 Ill. App. 3d 1037, 1046 (4th Dist. 2008), the court noted that “[I]n a

sense, everything a deeply religious person does has a religious purpose.” “But if that formulation determined the exemption from property taxes, religious identity would effectively be the sole criterion.” Accordingly, PH Village’s religious identity with the Church of the Brethren cannot be the “sole criterion” for the subject property’s exemption for religious purposes under the Property Tax Code.

In Provena Covenant, where the court denied a religious property tax exemption to a hospital, the court stated that if “religious purpose” meant whatever one did in the name of religion, it would be an unlimited and amorphous concept. Exemption would be the rule, and taxation would be the exception. The court noted that “religious purpose” within the meaning of 735 ILCS 200/15-40(a) has to be narrower than “Christian service,” or else “religious purpose” would mean everything (and therefore nothing). Provena (1) at 766-767. The Illinois Property Tax Code does not provide an exemption for religious identity. The Illinois Legislature required “religious use” for exemption of property under 735 ILCS 200/15-40. Religious identity, religious ministry and religious spirit are not synonymous with, and are legally insufficient to establish, religious use.

PH Healthcare: The court in Provena Covenant stated that if “public worship, Sunday schools, and religious instruction” are illustrative of the nature of religious use, it must follow that “religious use” has a determinable nature and that to be a religious use, the activity must somehow resemble public worship, Sunday schools and religious instruction. The Court then stated succinctly: “We do not see how medical care resembles public worship, Sunday school, or religious instruction.” Provena (1) at 767. The Illinois Supreme Court stated even more clearly that medical care, “while potentially miraculous, is not intrinsically, necessarily or even normally religious in nature.” Provena (2) at 410. Similarly, in the instant case, the medical care

provided at PH Healthcare is not necessarily or intrinsically religious. Brethren has failed to show that the medical services provided to patients at PH Healthcare “resemble” public worship, Sunday school or religious instruction. Accordingly, I find no precedent in Illinois case law for exempting PH Healthcare under 35 ILCS 200/15-40(a).

PH Residence: PH Residence includes 47 independent living units. Tr. pp. 19-20; App. Ex. No. 26. Residents live in the independent living apartments 24 hours/day, 7 days/week, 365 days/year. There is no evidence in the record that residents must be members of the Church of the Brethren in order to live on the subject property. There is no evidence in the record as to how many of the residents, if any, were members of the Church of the Brethren in 2011. There is no testimony or evidence in the record that residents have to be, in any way, religiously inclined to live at PH Residence. Without evidence to the contrary, I must assume that PH Residence is open to persons of all religious and non-religious backgrounds. Renters at PH Residence may be comfortable with having no religious affiliation while living in the independent living apartments.

It is abundantly clear then that PH Residence is not used primarily and exclusively for religious purposes. Brethren is asking for a religious exemption for 47 apartments on the subject property when the renters living in the residences may be indifferent toward religion. This puts Brethren in the unique position of asking for a religious exemption for independent living apartments when there is no evidence in the record that any religious activity takes place in those individual apartments. There can be only one primary use of property. “Property is generally susceptible of more than one use at a given time and the exemption is determined upon the primary use, and not upon any secondary or incidental use.” People ex rel. Marsters v. Missionaries, 409 Ill. 370, 375 (1951). PH Residence may have more than one use but the

question of whether it is entitled to exemption for religious purposes must be determined from its primary use. The evidence clearly indicates that the primary use of the independent living apartments is to provide housing to seniors. It would not be reasonable for me to conclude that PH Residence is exclusively used for religious purposes when the record is devoid of any evidence showing the religious use of those apartments.

Brethren was required to prove that the religious use of the subject property was its primary use. If the operation of the property is businesslike and more characteristic of a place of commerce than a facility used primarily for religious purposes, then property is not exempt from taxation under Section 200/15-40(a). Faith Builders Church v. Dept. of Revenue, 378 Ill. App. 3d 1037, 1046 (4th Dist. 2008).

As of June 30, 2011, PH Village had “Total Revenue” of \$5,316,761, of which 86% is from “Daily Resident Services” earned at PH Healthcare and 13% is from “Rent Income” earned at PH Residence. Less than 1% is “Contributions” and “Designated Fund Raising.” In the same period, PH Village had a positive “Change in Net Assets” of \$663,804, of which 97% is earned by PH Healthcare and 3% is earned by PH Residence. Tr. pp. 95-99, 104; App. Ex. No. 19. There is no evidence in the record that there is a chapel or a space dedicated to religious worship on the subject property. Brethren has failed to show that it used any “religious” type of benchmark to evaluate its success on the subject property. The operation of the property may have served as a ministry of the Brethren Church, but this is not the basis for an exemption under the Property Tax Code. Based on the record in this case, I conclude that the operation of PH Village more closely resembles a business, with some spiritual overtones, than property used exclusively for religious purposes.

The statute which allows exemption from property taxes for religious use requires that the property not be used with a view to profit. 35 ILCS 200/15-40. As discussed previously in this Recommendation for Disposition, the record in this case shows that in 2011, approximately 20.2 acres of the 34 acres in the subject property is undeveloped land leased for agricultural use under a cash lease. Brethren receives \$3,535/year for rental of the undeveloped land. Tr. pp. 51-52, 57-59; App. Ex. No. 16. I concluded above that 59% of the P.I.N. is leased with a view to profit.

In addition, in 2011, PH Residence earned revenue from a beauty shop, laundry, “meals-residents and other guests,” garage rental and “sleeping room.” App. Ex. No. 22. In 2011, PH Healthcare earned revenue from “TV Income,” beauty income, vending income and unexplained “miscellaneous” income. App. Ex. No. 21. There was no testimony at the evidentiary hearing that these revenue generating activities furthered any religious purposes. There was no testimony at the evidentiary hearing as to whether the space for these activities was leased or rented to businesses to operate them. There was no testimony at the evidentiary hearing as to whether the space for the amenities was used with a view to profit. No leases or rental agreements were offered into evidence. Because Brethren had the burden of proof to show that it was entitled to an exemption for religious purposes, the lack of testimony and evidence on the issue of PH Village’s other sources of revenue must be construed against them.

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 (4th Dist. 1994). In the instant case, Brethren has

failed to prove, and the record does not support, PH Village's entitlement to a charitable or a religious exemption on the subject property.

For the above stated reasons, it is recommended that the Department's determination which denied the exemption from 2011 real estate taxes on the grounds that the subject property was not in exempt ownership or use should be affirmed and Macoupin County Parcel, Property Index Number 07-000-313-00, should not be exempt from 2011 property taxes.

June 26, 2015

Kenneth J. Galvin
Administrative Law Judge