

PT 16-06
Tax Type: Property Tax
Tax Issue: Charitable Ownership/Use

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

In re)	Docket Nos.	14-PT-023
2013 Property Tax)		13-16-495
Exemption Application of)	PINs	25-19-113-001, 25-19-113-002
BEVERLY AREA)	John E. White,	
PLANNING ASSOCIATION)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Timothy Moran and Tatia Gibbons, Schmidt Salzman & Moran, Ltd., appeared for Beverly Area Planning Association; Ashley Forte, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after Beverly Area Planning Association (BAPA or Applicant) protested the Illinois Department of Revenue's (Department) denial of its 2013 application for a non-homestead property tax exemption for two parcels of property BAPA owns, and which are situated in Cook County, Illinois. The issue is whether BAPA is entitled to a charitable property tax exemption for a portion of the property described in its application.

The hearing was held at the Department's offices in Chicago. BAPA presented evidence consisting of books and records and other documents, as well as the testimony of three witnesses. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend the Director affirm the Department's denial, and that the property remain on the tax rolls.

Findings of Fact:

1. BAPA is the title-holder and owner of the property at issue. Applicant Ex. C (copy of warranty deed to property).
2. The property is improved with a 2-story brick building and adjacent parking lot. Applicant Exs. D (copies of, respectively, 1st floor plan, 2d floor plan, and plat of survey of property), E (photos of building exterior and 1st floor interior of building).
3. BAPA's application seeks an exemption for the first floor of the building located on the property, and for the adjacent parking lot. Hearing Transcript (Tr.) pp. 11, 13-14 (opening statements).

Facts Regarding BAPA's Organization and Operations

4. BAPA was incorporated as an Illinois not-for-profit corporation in 1947. Applicant Ex. B (copies of, respectively, Illinois Secretary of State's Certificate of Records regarding BAPA, BAPA's original Articles of Incorporation, and 1972 Articles of Amendment).
5. Article 5 of BAPA's original Articles of Incorporation provided:
 5. The purpose or purposes for which the corporation is organized are:
 - A. To cooperate with members in the solution of neighborhood problems, with particular regard to:
 - (i) The maintenance of restrictions governing the legal uses to which property may be put.
 - (ii) Assistance in the handling and solution of any civic problem which is common to a majority of the membership of the association.
 - (iii) Support to and sponsorship of any movement that has for its purpose the elimination or prevention of depreciated areas.
 - (iv) To consolidate and coordinate the efforts of individual and organization members in speedily obtaining the objectives of the Association.
 - B. To encourage legislation and to enlist public support in favor of measures favorable to the progress of neighborhood organizations.

Applicant Ex. B, pp. 4-5.

6. After being amended in 1972, Article 5 of BAPA's Articles of Incorporation provided:
 5. The purpose or purposes for which the corporation is organized are:

To serve as the central organization for community organizations in the Beverly Hills/Morgan Park communities and thereby provide a forum for the discussion of problems common to the area; to coordinate and implement comprehensive plans designed to combat community deterioration and eliminate depreciated areas, improve public services, and lessen neighborhood tensions by helping to maintain a stabilized community;

To stimulate the civic interest of property owners, residents, and business enterprises in improving and extending parks, playgrounds, parkways, and other community facilities;

To obtain information and conduct research, studies and analyses, and prepare and publish reports, as to any and all matters that may be of use to the educational system in the community and the City of Chicago, and that may be of use in conserving and improving property values and the zoning plan in the community;

No part of the net earnings of the corporation shall inure to the benefit of any member, trustee, officer of the corporation; or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation in furtherance of its charitable and educational purposes), and no member, trustee, officer of the corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting, to influence legislation, and the corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office;

Notwithstanding any other provision of the certificate, the corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under Section 501(c)(3) of the Internal Revenue Code and its regulations as they now exist or as they may hereafter be amended.

Notwithstanding any other provision of the certificate, upon the dissolution of the corporation or the winding up of its affairs, the assets of the corporation shall be distributed exclusively to an organization exempt under Section 501(c)(3) of the Internal Revenue Code or an organization incorporated as a not-for-profit corporation in Illinois, as selected by the board of directors.

Applicant Ex. B, pp. 9-10.

7. During 2013, BAPA's bylaws provided, in pertinent part, as follows:

ARTICLE I-NAME. LOCATION. ORGANIZATION

Section 3-Community Boundaries

For purposes of these By-laws, the Community to be served, or the “Beverly Hills/Morgan Park Community,” is defined as that part of the City of Chicago which is located within an area bounded on the North by the south side of 87th Street, on the East (from 87th Street to 91st Street) by the eastern boundary of the Dan Ryan Woods Forest Preserve and (from 91st Street to 103rd Street) by the center line of Beverly Avenue, and (from 103rd Street to 119th Street) by the center line of Vincennes Avenue; on the south by the north side of 119th Street; and on the West by the Grand Trunk Western Railroad tracks.

ARTICLE II-PURPOSES

Section 1-Purposes of the Association

- A. Enhance our commercial areas (Business Development and Support Committee)
- B. Support the maintenance of quality housing stock and advocate for racial diversity (Housing Committee)
- C. Advocate for strong schools, serving the best interests of the community (Education Committee)
- D. Serve as an information resource
- E. Support efforts to maintain a safe community (Safety Committee)
- F. Increase residential involvement in the community (Volunteer Committee)

BAPA may solicit financial support and may use such financial support to carry out its purposes in such manner as determined by the Executive Committee and BAPA management (Development Committee)

Applicant Ex. F (copy of BAPA’s bylaws).

- 8. At hearing, Walsh described BAPA’s mission as being: “to maintain and enhance Beverly Hills and Morgan Park as a culturally diverse village in the city, with increasing home values, safe streets, strong schools, and a thriving business district.” Tr. p. 31 (Walsh).
- 9. BAPA’s bylaws provide as follows regarding membership in BAPA:

ARTICLE IV-Membership

Section 1-Classes of Membership

Membership in the Association shall be divided into four classes: Civic Association, Business Association, Associate, and Contributing Member

- A. Member Civic Associations-Civic Association members are the organized civic groups operating within the Beverly-Morgan Park community. Participation and voting power shall be exercised by one Delegate elected or appointed annually by each Civic Association to be

its representative on the BAPA Council of Delegates. Each civic association group shall inform BAPA, at its office of the name, address, and telephone number of its delegate (and alternate, if any) as soon as possible after same are chosen.

- B. Member Business Associations-One representative shall be from the 95th Street Business Association, one shall be chosen by the financial institutions located within or on the border of the Beverly-Morgan Park Community. Each of said groups shall advise the Association of the same information as is required for civic association member delegates and alternates, as soon as possible after they are chosen.
- C. Associate Members-No more than 12 Associate (or “At Large[”]) delegates will be elected from among persons residing within the Community Boundaries.
- D. Contributing Members-Each community resident who contributes not less than the annual dues amount for residents as established by the Association and each business that contributes not less than the annual dues amount established by the Association for businesses shall be deemed a Contributing Member during each year that such dues are paid. Contributing Members who are not also serving as Delegates shall not have voting privileges.

Section 2-Admission to Membership

- A. Applications by a duly organized civic group for a Civic Association membership shall be made in writing, shall be the name of the applicant group’s officers, directors, and purpose, and shall be supplemented with such additional information as the Corporation may request. Each application for Civic Association membership shall be investigated by or at the direction of the Executive Committee, which shall submit said application to the Council of Delegates, along with its recommendations, if any, for approval or denial. The Council of Delegates shall vote to accept or deny any such application.
- B. Any duly organized business association seeking to apply for membership, and for the right to designate an additional or replacement Business Delegate, shall apply in the same manner as civil groups. Action on said applications shall be taken in the same manner as is provided for Civic Association membership applications.

ARTICLE XI-Dues/Revenue

Section 1-Civic Association Dues

Each Civic Association member shall pay a membership fee. The suggested fee shall be at the rate of \$2.00 annually per individual member of the Civic Association. At the option of the Council of Delegates, a minimum payment may be required of a Civic Association for membership in BAPA.

Section 2-Payment of Dues

The annual dues of all Civic Association members shall be due and payable no later than July 1 of each year. Said dues may be paid in installments with the consent of the Executive Committee. Any Civic Association member more

than three (3) months in arrears for any indebtedness may be considered as not in good standing.

Section 3-Contributing Membership

The Executive Committee shall establish, and may revise annually, the amount of contributing membership dues for businesses and residents.

Section 4-Other Revenue

In addition, BAPA may engage in any other lawful revenue-producing enterprises, and receive any other voluntary contributions or grants, that may be required to meet its fiscal needs, with the approval of the Executive Committee.

Applicant Ex. F.

10. BAPA's bylaws do not contain a provision for waiving dues for any members. Applicant Ex. F.
11. BAPA has never had a provision in its bylaws for the waiver of dues for any members. Tr. p. 101 (Walsh).
12. BAPA's bylaws call for six officers: president, first and second vice-presidents, secretary, treasurer, and past president. Applicant Ex. F, p. 4 (Article V, § 1); Tr. p. 30 (testimony of Matthew Walsh (Walsh)).
13. Beverly is organized so as to be governed by representatives (delegates) of its members. Applicant Ex. F, p. 7; Tr. p. 29 (Walsh).
14. BAPA's Council of Delegates consists of "one representative (either the Delegate or the Alternate Delegate) from each Civic Association member in good standing, the three (3) Business Delegates, the three (3) or more Delegates-at-Large, the Members of the Executive Committee and the Officers of the Association." Applicant Ex. F, pp. 7-8 (Article VIII, § 2).
15. BAPA's Council of Delegates has full supervision over BAPA's affairs. Applicant Ex. F, p. 7 (Article VIII, § 1).
16. BAPA's Executive Committee "shall be composed of the Officers of the Association and at least five (5) additional members, to be elected at the November meeting. The Executive

Director shall be a non-voting member of the Executive Committee.” Applicant Ex. F, p. 9 (Article IX, § 1).

17. During 2013, Matthew Walsh (Walsh) was BAPA’s executive director. Tr. p. 18 (Walsh).

The executive director is in charge of BAPA’s day-to-day operations. Tr. p. 30 (Walsh).

18. BAPA’s bylaws provide for seven standing committees, which are as follows: Business Development and Support Committee; the Education Committee; the Housing Committee; the Safety Committee; the Volunteer Committee; the Development Committee; and the Nominating Committee. Applicant Ex. F, p. 9 (Article IX, § 2A).

19. Walsh described the primary role of the standing committees as being to provide community input, and volunteer efforts, to assist the Council of Delegates and the Executive Committee in formulating policies within each committee’s area of concern, and to assist BAPA staff in executing said policies. Applicant Ex. F, p. 9 (Article IX, § 2B). Walsh also referred to one of the standing committees as the fundraising committee. Tr. pp. 35-36 (Walsh).

20. The BAPA fundraising committee meets monthly, others less frequently or as needed. Tr. p. 36 (Walsh). When any of BAPA’s committees have a meeting, it is ordinarily held at BAPA’s offices on the property. Tr. pp. 36-37 (Walsh).

21. BAPA has no capital stock and no shareholders. Applicant Ex. F, *passim*; Tr. pp. 30-31 (Walsh).

22. BAPA is exempt from federal income tax pursuant to § 501(c)(3) of the Internal Revenue Code (IRC), and files a form 990 with the IRS each year. Applicant Ex. G (copy of BAPA’s completed Form 990 and related schedules for calendar year 2013).

23. BAPA has financial statements prepared annually by an accounting service, which also prepares BAPA’s Form 990. Applicant Ex. H (copies of BAPA’s 2013 Financial

Statements);¹ Tr. p. 39 (Walsh).

24. BAPA reports that it has public charity status because it is: “An organization that normally receives: (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions — subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975.” Applicant Ex. G, p. 13 (Schedule A of Form 990 (Part I, line 9)).

25. On BAPA’s 2013 Form 990, when asked to “Briefly describe the organization’s mission[.]”

BAPA wrote:

“... (BAPA) was founded in 1947 and restructured in 1972 as a not-for profit Illinois corporation. It serves as the central organization for community organizations in the Beverly Hills/Morgan Park communities and thereby provides a forum for the discussion of concerns common to the area. The Association coordinates and implements comprehensive plans designed to improve the community through programs in housing, education, economic development, marketing, and special events. BAPA also publishes a free monthly newspaper.”

Applicant Ex. G, pp. 2 (Part III Statement of Program Service Accomplishments, line 1), 33 (Schedule O Supplemental Information to Form 990 or 990-EZ (continuing description of Program Service Accomplishments begun on page 1 of form)).

26. Part III of the 2013 Form 990 asks the filer to “Describe the organization’s program service accomplishments for each of its three largest program services, as measured by expenses[....]” Applicant Ex. G, p. 2 (Part III, line 4a).

27. Instead of separately reporting its program service accomplishments for each of its three largest program services, as measured by expenses, BAPA reported as follows:

¹ Applicant Exhibit H begins with an unnumbered cover page, table of contents, and independent auditor’s report, so the exhibit pages do not coincide with the page numbers stated on the latter pages of the exhibit.

The Organization sponsors various community programs involving housing, commercial development including improvement to the economic viability of the neighborhood, education, seniors, safety, and public relation within the community. The Organization publishes a community newspaper, The Villager, which is distributed free of charge in the community.

Applicant Ex. G, p. 2 (Part III, line 4a). BAPA reported that, for the program services described, it had expenses in the amount of \$358,135, and revenues in the amount of \$13,617. Applicant Ex. G, p. 2 (Part III, line 4a).

28. In BAPA's 2013 Financial Statements, the amount of \$358,135 is the sum of BAPA's expenses for program services (338,008) plus its rental operations (22,127). Applicant Ex. H, p. 6 (of exhibit).

29. In 2013, BAPA had 75 dues-paying business members, and 1062 dues-paying residential members. Applicant Ex. I, p. 2; Tr. p. 55 (Walsh) ("We call them members, but that's just a word we use.").

30. In 2013, BAPA received dues from business members in the amount of \$19,025, and from residential members in the amount of \$140,152, for a total of \$159,177. Applicant Exs. I (pp. 1-2) (rounding to the nearest dollar), G (pp. 4, 15), H (p. 4); Tr. pp. 57-58 (Walsh).

31. Part VIII (Statement of Revenues) of a 2013 Form 990 includes a line regarding which a filer may report the amount of revenues it received as "Membership dues[.]" Applicant Ex. G, p. 9 (Part VIII of Form 990, Statement of Revenue, line 1b).

32. BAPA did not report the \$159,177 it received from membership dues on line 1b of Part VIII of its 2013 Form 990. *Compare* Applicant Exs. F and I with Applicant Ex. G, p. 9 (Part VIII of Form 990, Statement of Revenue, line 1b).

33. Instead, BAPA included the revenues from its members' dues on Part VIII, line 1f of its Form 990, within the amounts it reported as being attributable to "all other contributions,

gifts, grants, and similar amounts ...”, and in Part III of Schedule A of that form. Applicant Ex. G, pp. 9 (Part VIII, lines 1b, 1f), 15 (Schedule A, Part III, Support Schedule for Organizations Described in Section 509(a)(2), Section A, Public Support, line 1).

34. For tax reporting purposes, BAPA treated the revenues it received from members’ dues as donations. Tr. pp. 55-61 (Walsh); *compare also* Applicant Exs. F, I (copy of 2-page statement showing number and categories of BAPA donors, and amounts each category donated, for years which include 2013) *with* Applicant Ex. G, pp. 9 (Part VIII, lines 1b, 1f), 15 Applicant Ex. G, pp. 4 (Part VIII, lines 1a-h), 15 (Form 990 Schedule A, Part III, Section A line 1, column (e)) *and* Applicant Ex. H, p. 6.
35. BAPA’s members’ dues in 2013 were approximately 81% of what BAPA recorded as its Yearly Dollars (Applicant Ex. I, p. 1 ($159,177/196,381 \approx 0.8105$), and approximately 76% of the amounts it reported within the category of “all other contributions, gifts, grants, and similar amounts ...” on Part VIII, line 1f of its 2013 Form 990. Applicant Ex. G, p. 9 ($159,177/208,225 \approx 0.7644$).
36. Of BAPA’s 2013 total functional expenses of \$548,845, \$248,918 were paid as staff salaries. Applicant Ex. G, p. 10 (lines 5, 7); Applicant Ex. H, pp. 4-5; Tr. pp. 40-41 (Walsh) (“... salaries of the staff is the biggest chunk” of BPA’s program expenses).
37. On BAPA’s 2013 Financial Statements, none of BAPA’s 2013 functional expenses include any amounts that BAPA directly gave to charitable organizations, or any amounts of in-kind donations of services BAPA provided to such organizations. Applicant Ex. H, p. 5; Tr. pp. 104-05 (Walsh); *see also* Applicant Exs. B, F (making charitable donations not included within purposes expressed in BAPA’s articles of incorporation or bylaws).
38. BAPA has five paid employees, and one who works on contract and is paid on commission.

Tr. pp. 41-45 (Walsh).

39. BAPA's 2013 Financial Statements include a Statement of Activities, which reflects amounts of its revenues, expenses and assets for that year. Applicant Ex. H, p. 6.

40. The substance of BAPA's 2013 Statement of Activities is reflected below, with categorical subtotals added:

BAPA STATEMENT OF ACTIVITIES ... [for 2013]					
	Unrestricted	Temporarily Restricted	2013 Total	[Subtotals]	2012 Total
Public Support and Revenue					
Special Events					
Contributions	83,717		83,717		86,745
Ticket Revenue	108,675		108,675		151,056
Less cost of direct benefit to donors	- 114,653		- 114,653		- 141,719
Net Revenues from special events	77,739		77,739		
[Special Events Subtotal]				[77,739]	
Donations					
Residents	144,454		144,454		
Businesses	16,925		16,925		
Foundations and other	29,000		29,000		
Schools, churches and other	2,846		2,846		
Bequests	15,000		15,000		
[Donations Subtotal]				[208,225]	
Government Grants					
Dept of Planning and Development	51,469		51,469		
Other government grants	155,786		155,786		
Grants for special service area		10,946	10,946		
[Government Grants Subtotal]				[218,201]	
Advertising – The Villager	86,683		86,683		
Interest	346		346		
Rent income	5,975		5,975		
Other	7,642		7,642		
Net assets released from restrictions – satisfaction of program restrictions	15,514	- 15,514			
[Other Revenue Subtotal]				[100,646]	
Total Public Support and Revenue	609,379	- 4,568	604,811	[604,811]	
Expenses					
Program Services	336,008		336,008		363,863
Rental operations	22,127		22,127		37,786
Management and general expense	90,397		90,397		79,235
Fundraising	100,313		100,313		110,821

Total Expenses	548,845		548,845		591,705
Change in Net Assets	60,534	- 4,568	55,966		- 45,356
Net Assets , beginning of year	<u>684,631</u>	<u>7,670</u>	<u>692,301</u>		<u>737,657</u>
Net Assets, end of year	745,165	3,102	748,267		692,301

Applicant Ex. H, p. 6; *see also* Applicant Ex. G, p. 9.

41. Most of BAPA’s program service expenses were for salaries paid to BAPA’s employees.

Applicant Ex. H, p. 6; Tr. pp. 41-46, 105 (Walsh).

42. When asked to elaborate on the services BAPA provided to individuals, Walsh gave as an example, persons asking about which trades people in the community BAPA would recommend. Applicant Ex. N, Planned Giving pamphlet; Tr. p. 94 (Walsh).

43. Walsh opined that the most common issue BAPA confronted when offering conflict reduction services involved dogs or plants on property. Tr. pp. 96-97 (Walsh).

44. Regarding BAPA’s bylaws, Walsh opined that BAPA’s stated purposes of maintaining quality housing stock, advocating for strong schools and maintaining community safety constituted charity. Tr. pp. 99-100 (Walsh); Applicant Ex. F.

45. Walsh considered the salaries BAPA paid to staff to constitute one of the two types of expenses that measured the value of the charity it provided to others. *See* Tr. p. 105 (Walsh); Applicant Ex. H, pp. 4-5. The other was valued in the expenses BAPA paid for occupancy regarding the property. Tr. p. 105 (Walsh); Applicant Ex. H, p. 5. When asked, “how is the payment of salaries charitable?”, Walsh responded:

The employees are working on behalf of [the] community. We are doing our normal programs, and their efforts every day are to enhance and increase, enhance and maintain the community. I would say that that’s a charitable use of their time.

Tr. pp. 105-06 (Walsh).

46. BAPA’s rental operations expenses refer to the expenses associated with maintaining the building, which included expenses for example, for snow removal; cleaning the second floor;

supplying the second floor bathroom items. Applicant Ex. H, p. 6; Tr. p. 46 (Walsh).

47. BAPA's management and general expenses include expenses related to operating the building, which includes items like paper, renting a fax machine; utilities and general office expenses. Applicant Ex. H, p. 6; Tr. p. 46 (Walsh).
48. As used on BAPA's 2013 Statement of Activities, the expenses for BAPA's fundraising refer to the amounts BAPA spent to raise the donations it received. Applicant Ex. H, p. 6; Tr. pp. 46-47 (Walsh); *see also* Applicant Ex. G, p. 28 (Schedule G to Form 990), Part II, column d (itemizing revenues and direct expenses regarding all of BAPA's 2013 fundraising events).
49. What BAPA's 2013 Form 990, Schedule G refers to as the direct expense summary of BAPA's fundraising activities (Applicant Ex. G, p. 28 (Part II, column d, line 10)) means the amount of the direct benefit to persons who either contributed to, or purchased a ticket for, BAPA's fundraising events. Applicant Ex. H, p. 6; Tr. pp. 46-47 (Walsh).
50. When explaining the different categories of revenues reflected on BAPA's 2013 Statement of Activities, Walsh described the term, contributions, to mean the sponsorships BAPA received from businesses to help offset the cost of BAPA's special events, giving as examples, tent rental for BAPA's Memorial Day services and/or for its Ridge Run, which is BAPA's single biggest fundraising event. Applicant Ex. H, p. 6; Tr. p. 48 (Walsh).
51. Walsh described the term, ticket revenue, as used on BAPA's 2013 Statement of Activities, as being the entry fees that people paid to take part in one of BAPA's fundraising events, giving as examples the fee to run in BAPA's Ridge Run, or to come to a concert given by BAPA. Applicant Ex. H, p. 6; Tr. p. 49 (Walsh).
52. Walsh confirmed that the heading of donations, as used on BAPA's 2013 Statement of Activities, includes the revenues BAPA received from members' dues. Tr. pp. 55-61

(Walsh); *compare also* Applicant Exs. F, I *with* Applicant Ex. G, pp. 4, 9, 15 *and* Applicant Ex. H, p. 6.

53. Regarding the revenues obtained from Government grants, as that term is used on BAPA's 2013 Statement of Activities, Walsh explained that BAPA had been a delegate with the City of Chicago's Economic Development Committee for years, and received, during 2013, a \$51,000 grant from that agency to help with economic development in BAPA's community area. Tr. p. 50 (Walsh); Applicant Ex. H, p. 6.
54. When describing the Statement of Accounts' listing of other government grants, Walsh explained that BAPA received an SBIF grant from the City of Chicago, given to small businesses to help maintain property. Tr. p. 51 (Walsh); Applicant Ex. H, p. 6; *see also* <http://www.chicagocitytreasurer.com/small-business-chicago/small-business-loan-programs/small-business-improvement-fund/> (website of the Office of the Treasurer of the City of Chicago, describing SBIF grant program) (last viewed on June 6, 2016).
55. Walsh explained that the city granted the SBIF grant to BAPA to cover some of its expenses to improve the façade of the building on the property, and to add signage to the building. Tr. p. 51 (Walsh); Applicant Ex. H, p. 6.
56. Walsh explained that BAPA also received a grant from the Illinois Environmental Protection Agency (IEPA) to build a green parking lot on the property, to mitigate rain water run-off. Tr. p. 51 (Walsh); Applicant Ex. G, p. 18 (Form 990, Schedule B (Part I, Contributors), IEPA listed as contributor of grant of \$72,273 to BAPA).
57. BAPA received revenues from selling advertising in The Villager, the community newspaper it publishes and delivers without charge to BAPA's community. Tr. pp. 53-54 (Walsh); Applicant Ex. H, p. 6.

58. BAPA holds out that it has the following programs:

BAPA PROGRAMS

BUSINESS SUPPORT

- New business recruitment
- Local shopping initiatives and promotions
- Business networking and resources

SAFETY

- CAPS involvement
- Keeping local concerns at forefront of law enforcement agendas
- Community Safety Alerts
- Victim support in court & through legal systems
- Crime prevention education

HOUSING

- Annual home buyers' survey / home sales trends
- New Neighbor Welcome Packets
- Trades Referral Service
- Foreclosure prevention / intervention
- Code violation contact and follow up
- Partner with civic associations to identify and resolve community-wide issues

SCHOOLS

- Promote neighborhood schools
- Address education issues critical to community stability
- Encourage involvement in schools and Local School Councils
- Advocate for local public, private and parochial schools

COMMUNICATIONS

- The Villager
- www.bapa.org
- Weekly Villager e-update
- Online Community calendar
- Facebook and social media

SPECIAL EVENTS

- Home tour, Ridge Run, Beverly Hills Cycling Classic, Snowflake Ball

Applicant Group Ex. N (consisting of a card, titled, BAPA 2013 Events calendar (hereafter, 2013 Calendar); and three BAPA published pamphlets, including: a street map of BAPA's community area (hereafter BAPA map); pamphlet titled, Historic Beverly Hills/Morgan Park (BAPA Historic buildings pamphlet), showing photos, street map and other information regarding 51 historic buildings in BAPA's community; and pamphlet containing, among

others, the heading, Your Neighborhood Legacy: Planned Giving (hereafter Planned Giving pamphlet)), Planned Giving pamphlet.

59. The special events listed on BAPA's Planned Giving pamphlet are all fundraising events for BAPA. *See* Applicant Ex. G, p. 28; Applicant Ex. K, p. 1 (describing Snowflake Ball).
60. Walsh described all of BAPA's fundraising events as community building events. Tr. pp. 75-79 (Walsh); *see also* Applicant Ex. G, p. 28.
61. BAPA's financial statements and its Form 990 record its expenses and revenues attributable to The Villager and to its special events, but not regarding the other programs described on its Planned Giving pamphlet. *Compare* Applicant Group Ex. N, Planned Giving pamphlet *with* Applicant Exs. G-H.
62. As described by Walsh, BAPA's business development committee sought to attract new businesses to community, or to rehab and refinance run-down or unused real estate. Tr. pp. 64-65 (Walsh).
63. BAPA's business development committee hosted a regular business breakfast for businesses to network, and regarding which it arranged for different speakers to discuss business issues. *Id.*, p. 66 (Walsh). Walsh explained that BAPA would charge attendees for the cost of the breakfast, but not for the meetings, and that such meetings were open to persons who were not BAPA members. *Id.*
64. Regarding BAPA's housing committee, Walsh explained that BAPA's geographical community has three historic areas, including an historic housing district which is one of the larger historic housing districts in the country. Tr. p. 67 (Walsh); Applicant Group Ex. N, Historic buildings pamphlet.
65. Because BAPA was instrumental in creating the Beverly historic housing district, when the

owner of a historic house or building wants to make a change to the building, the owner must seek approval from BAPA for the proposed change. Tr. p. 67 (Walsh). The record does not include any evidence regarding the procedures for submitting or approving such requests.

66. Regarding BAPA's safety committee, Walsh explained that BAPA would occasionally host meetings at the community room on the property to offer safety presentations. Tr. pp. 68-69 (Walsh).

67. At the time of hearing, Alice Collins (Collins) was BAPA's Coordinator of Safety Education and Property Preservation. Tr. p. 117 (Collins).

68. Regarding BAPA's safety committee, Walsh explained that BAPA kept track of problem houses, meaning those falling into disrepair or nearing or in foreclosure, to notify the owners of options that might be available to them. Tr. pp. 70-71 (Walsh), 148-49 (Collins); Applicant Ex. W (copies of form letters written by Collins, for delivery to persons whose homes were in or nearing foreclosure, with attachments).

69. BAPA never gave homeowners whose homes were in or nearing foreclosure any direct financial assistance. Tr. p. 96 (Walsh).

70. Collins was first hired by BAPA in 1998, as Coordinator of Safety, and was paid pursuant to a grant BAPA received through the Chicago Police Department's Chicago Alternative Policing Strategy (CAPS) program. Tr. p. 120 (Collins).

71. In 2010, Collins received a volunteer appreciation award for her work as a 22d district advisory council member. Applicant Ex. Q (copy of 2010 award certificate); Tr. pp. 124-25 (Collins). Collins has also received other notes of appreciation for her services while employed by BAPA. Applicant Exs. R, T-U, X-Z, DD.

72. BAPA is a co-sponsor of the 22d Police District's Court Advocacy program, which uses

volunteers to attend court hearings and other matters of interest to the 22d Police District, to provide support for victims or witnesses who might be hesitant to testify or attend court. Applicant Ex. S (copy of flyer titled, Court Advocacy Volunteers Needed, and bearing Collins' and BAPA's names, and the name of an officer from the 22d Police District's CAPS program); Tr. pp. 129-131 (Collins).

73. As a BAPA employee, Collins has volunteered with several different entities either located or working in BAPA's community boundaries. *See* Tr. pp. 129-181 (Collins); Applicant Exs. R, T-U, X-Z, DD. These entities include schools, churches or church affiliated organizations, the Chicago Police Department, the Cook County States' Attorney Office, and various departments of the City of Chicago. *See* Applicant Exs. R, T-U, X-Z, DD.

74. When Collins volunteers to serve on a board or association, she does so as a paid staff member of BAPA. Tr. pp. 122-23, 161 (Collins).

75. When publishing and distributing *The Villager*, BAPA strongly encourages readers to shop at and use the services of neighborhood businesses and professionals. Group Ex. K, p. 2. For example, the issue of *The Villager* that was produced during 2013, and admitted as Applicant Exhibit K, included an article that provided, in full, as follows:

Village Viewpoint

By Matt Walsh, BAPA Executive Director

It's worth repeating.

Regular readers of *The Villager* and of this column will have noticed that BAPA places a strong emphasis on shopping locally. The Deals of the Day (which we created with the Morgan Park/Beverly Hills and the 95th Street Business Associations and which now includes the Mount Greenwood Community and Business Association) is designed to alert our neighbors to the shopping possibilities right here at home. The Shop the Village campaign, noticeable in signage at local businesses, on our reusable shopping bags and through our Facebook posts, serves as a reminder to make your purchases where they benefit you the most. We often list the statistics that show money spent at family owned businesses stays in the community. That money spent at a national retailer does so at a much lower level. And that money spent

online does not benefit our neighborhood at all.

Articles on that store just down the street can often be found in these pages. The Villager ran a series of snapshots called “Shop Hopping” that showed patrons enjoying the fare at stores and restaurants throughout the neighborhood. And every Thursday the BAPA staff buys its lunch at one of our local dining establishments. It’s just one way we try to put our money where our mouth is.

But it’s worth repeating that the way to keep good businesses here is to try to support them with our dollars. And this is an especially important time to show your shopping loyalty.

If you go to 91st and Western, or drive west on 95th, you will see that our local merchants have stiff competition. And it may be tempting to try shopping at the new store down the street where you might save a dollar or two. But we ask you to think before you do that. Consider more than just the price of an item, but also the real value you get when you support our small businesses.

Try to remember who it was that sponsored your kid’s baseball team. Think back to what store donated the apples to runners at the Ridge Run and what bank donated the water. Consider which liquor merchant has been an anchor on the corner for years and who always says ‘yes’ when asked to support community events. Take into account what the street would look like if the florist closed, or the bike shop wasn’t there. Remember which garage has been giving your car affordable and reliable service for years and at a location within walking distance from your house. Shop at the bakery where you always see a friend, the sandwich shop where they know you by name, the specialty store where you can always get that hard-to-find item. Don’t forget our newer businesses where you can always buy handmade candy, craft brews or fashionable accessories. And I would be remiss if I did not mention the professionals who provide quality legal, medical, real estate, financial and insurance services, to name a few. The list goes on and on as do the benefits we get when these businesses are thriving.

Yes, Beverly Hills/Morgan Park has many quality businesses that you can choose from. Shopping locally keeps them profitable. It strengthens our community, raises our home values, and encourages other businesses to open. You’ve heard us say it time and time again. But it’s worth repeating.

Applicant Ex. K, p. 2.

Facts Regarding BAPA’s Use of the Property

76. At the time of hearing, BAPA was leasing portions of the second floor of the building to three, separate, unrelated businesses. Tr. pp. 20-21, 106 (Walsh); *see* Applicant Ex. D (copies of, respectively, floor plans of first and second floors of building, and plat survey of property), p. 1.

77. BAPA rented a portion of the second floor of the building to only one tenant during 2013, receiving rent in the amount of totaling \$4,925. Applicant Ex. H, p. 11. After the end of 2013, BAPA rented portions of the second floor to a total of three tenants, and expected to receive the following rents for the following years:

Year	Minimum lease revenue expected
2014	26,831
2015	25,537
2016	20,522
2017	<u>5,043</u>
	77,933

Applicant Ex. H, p. 11.

78. BAPA's leases for the second floor of the building are written. Tr. p. 106 (Walsh).

79. The parking lot situated on the property consists of twelve marked parking spots. Applicant Ex. D, p. 3; Tr. p. 26 (Walsh). By unwritten agreement, BAPA has granted the second floor lessees use of the parking areas on the property.

80. The first floor of the building includes seven offices which are primarily used by BAPA's executive director, and BAPA's employees. The community room is also used by organizations BAPA works with, as needed. Tr. pp. 23-24 (Walsh); Applicant Ex. D, pp. 1, 3.

81. During 2013, different community groups were permitted to use BAPA's community room for different events. Tr. p. 88 (Walsh).

82. The BAPA meetings most regularly held on the property are meetings of BAPA's fundraising committee. Tr. p. 36 (Walsh).

83. BAPA did not offer into evidence any documentary evidence which showed the number or types of events that were actually held at or conducted on the property during 2013.

84. Collins performed much of her work at BAPA's offices on the property. Tr. pp. 186-87, 195, 197-98 (Collins).

85. BAPA writes most of the copy for The Villager at its first floor offices on the property. Tr. p. 80 (Walsh); Applicant Ex. K (copy of January 2014 edition of The Villager).

Conclusions of Law:

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). When construing Article IX of the 1970 Illinois Constitution, the Illinois Supreme has held that:

Under Illinois law, taxation is the rule. Tax exemption is the exception. All property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto. Statutes granting tax exemptions must be strictly construed in favor of taxation (*Board of Certified Safety Professionals of the Americas, Inc. v. Johnson*, 112 Ill.2d 542, 547, 98 Ill.Dec. 363, 494 N.E.2d 485 (1986)), and courts have no power to create exemption from taxation by judicial construction (*City of Chicago v. Illinois Department of Revenue*, 147 Ill.2d 484, 491, 168 Ill.Dec. 841, 590 N.E.2d 478 (1992)).

Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 388, 925 N.E.2d 1131, 1143-44 (2010) (hereafter, Provena).

Article IX, § 6 of the 1970 Illinois Constitution permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970). One class of property that the legislature may exempt from taxation is property that is actually and exclusively used for charitable purposes. Ill. Const. Art. IX, § 6 (1970); Eden, 213 Ill. 2d at 286-87, 821 N.E.2d at 248. Section 15-65 of Illinois' Property Tax Code (PTC) provides, in relevant part:

§ 15-65 Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.

35 ILCS 200/15-65. For purposes of Article IX, § 6 of the Illinois Constitution and Illinois' tax statutes, the term "exclusively" means "primarily." People ex rel. Nordlund v. Assoc. of the Winnebago Home for the Aged, 40 Ill. 2d 91, 101, 237 N.E.2d 533, 539 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 435, 507 N.E.2d 141, 145 (1st Dist. 1987).

The Department denied BAPA's application for exemption because it determined that the property was not in exempt ownership, and that it was not in exempt use. Department Ex. 1; *see also* Tr. p. 6 (Department's opening statement). Put another way, after reviewing BAPA's application, the Department determined that BAPA (1) was not an institution of public charity, and (2) did not actually and primarily use the property for charitable or beneficent purposes. Each of those determinations forms an independent basis for denial. Provena, 236 Ill. 2d at 397, 925 N.E.2d at 1147 ("As detailed earlier in this opinion, eligibility for a charitable exemption under section 15-65 ... requires not only charitable ownership, but charitable use.").

To qualify for the statutory exemption authorized by PTC § 15-65(a), the property must be owned by an institution of public charity. 35 ILCS 200/15-65(a); Provena, 236 Ill. 2d at 397, 925 N.E.2d at 1147. If BAPA is not an institution of public charity, then its property cannot, as a matter of statute, be exempt under § 15-65(a). 35 ILCS 200/15-65(a). When considering whether an entity is an institution of public charity, Illinois courts and the Department follow the guidelines the Illinois Supreme Court set forth in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 233 N.E.2d 537 (1968), to determine whether the entity is organized and operated primarily for charitable purposes. Provena, 236 Ill. 2d at 390-91, 925 N.E.2d at 1145.²

² Different courts have placed the Methodist Old Peoples Home guidelines in different order. Compare *e.g.*, Provena, 236 Ill. 2d at 390-91, 925 N.E.2d at 1145 with Provena Covenant Medical Center

The Methodist Old Peoples Home guidelines ask whether:

- (1) the benefits derived are for an indefinite number of persons for their general welfare or in some way reduce the burdens on government;
- (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise;
- (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the organization's charter;
- (4) charity is dispensed to all who need and apply for it;
- (5) obstacles are placed in the way of those seeking the benefits; and
- (6) whether the primary purpose for which property is used is charitable, and not merely a secondary or incidental purpose.

Methodist Old Peoples Home, 39 Ill. 2d at 156-57, 233 N.E.2d at 542.

The first five Methodist Old Peoples Home guidelines are designed to determine whether the applicant/owner of the property is, in fact, an institution of public charity. See Provena, 236 Ill. 2d at 397, 925 N.E.2d at 1147. Here, BAPA argues that it satisfies all of the Methodist Old Peoples Home guidelines, and I will address each in turn.

Before starting, however, I first note that the Illinois Supreme Court has made clear that an entity's exemption from federal income tax, pursuant to § 501(c)(3) of the IRC, does not automatically make it an institution of public charity for purposes of Illinois' tax exemption statutes. Eden, 213 Ill. 2d at 290-91, 821 N.E.2d at 250; accord Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 456, 654 N.E.2d 608, 609 (2d Dist. 1995) ("The record reveals that Wyndemere is an Illinois not-for-profit corporation and is exempt from Federal income tax as a charitable organization under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3) (1988))"); *id.* at 461, 654 N.E.2d at 612 ("It is clear from the record that the primary purpose of Wyndemere is not to provide charity, but to provide a certain enhanced lifestyle to the elderly who can afford to pay for it."). Nor does an

v. Department of Revenue, 384 Ill. App. 3d 734, 742, 894 N.E.2d 452, 460 (4th Dist. 2008). This recommendation will use the Illinois Supreme Court's most recent order.

entity's federal tax-exempt status prove that a parcel of its property is actually and primarily being used for charitable purposes, as that phrase is used in Article IX of the 1970 Illinois Constitution. Eden, 213 Ill. 2d at 290-91, 821 N.E.2d at 250.

Guideline 1: Are the benefits derived from BAPA’s operations for an indefinite number of persons, for their general welfare, or in some way reduce the burdens on government?

Put another way, this guideline asks whether the purposes for which the entity was organized and operated constitute charity. At hearing, BAPA argued that a charitable purpose is very broadly defined, and may refer to almost anything that promotes the well-being of society or individuals. Tr. pp. 202, 207-08 (closing argument). The Department countered that the evidence shows that BAPA’s purposes are primarily civic in nature, and that its activities are not primarily charitable. Tr. pp. 212-14 (closing argument).

The Illinois Supreme Court has defined “charity” to mean “... a gift to be applied, consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education, religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.” School of Domestic Arts & Science v. Carr, 322 Ill. 562, 568, 153 N.E. 669, 671 (1926) (*quoting Crerar v. Williams*, 145 Ill. 625, 643, 34 N.E. 467 (1893)) (internal quotation marks omitted).

A corporation’s organizational documents control the question of the purposes for which it was organized. Oak Park Club v. Lindheimer, 369 Ill. 462, 465, 17 N.E.2d 32, 33 (1938). Here, BAPA’s amended Articles of Incorporation provide that its purposes are:

To serve as the central organization for community organizations in the Beverly Hills/Morgan Park communities and thereby provide a forum for the discussion of problems common to the area; to coordinate and implement comprehensive plans designed to combat community deterioration and eliminate depreciated areas, improve public services, and lessen neighborhood tensions by helping to maintain a stabilized community;

To stimulate the civic interest of property owners, residents, and business enterprises in improving and extending parks, playgrounds, parkways, and other community facilities; the maintenance of restrictions governing the

legal uses to which property may be put.

To obtain information and conduct research, studies and analyses, and prepare and publish reports, as to any and all matters that may be of use to the educational system in the community and the City of Chicago, and that may be of use in conserving and improving property values and zoning plan in the community;

Applicant Ex. B. Additionally, BAPA's bylaws provide that the purposes of the Association are to: (1) Enhance our commercial areas; (2) Support the maintenance of quality housing stock and advocate for racial diversity; (3) Advocate for strong schools, serving the best interests of the community; (4) Serve as an information resource; (5) Support efforts to maintain a safe community; and (6) Increase residential involvement in the community. Applicant Ex. F.

During its closing argument, BAPA's attorney cited, among other things, 86 Ill. Admin. Code § 130.2005, which is the administrative regulation adopted to show how the Department would administer certain statutory exemptions from sales and use tax. Tr. p. 208. That regulation provides, in pertinent part, as follows:

Section 130.2005 Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons

a) Sales by Nonprofit Service Organizations

Effective August 1, 1961, nonprofit country clubs, boat clubs, employees' clubs or organizations and other nonprofit social, athletic or recreational organizations, lodges, patriotic organizations, fraternities, sororities, professional and trade associations, civic organizations, labor unions and other nonprofit persons who are not exclusively charitable, religious or educational organizations are liable for Retailers' Occupation Tax when selling tangible personal property at retail to members, guests or others. The same is true of exclusively charitable, religious or educational organizations and institutions with certain limited exceptions.

g) Nonprofit Professional and Trade Associations – Labor Unions – Civic Clubs – Patriotic Organizations

Nonprofit Bar Associations, Medical Associations, Lions Clubs, Rotary Clubs, Chambers of Commerce and other professional, trade or business associations and labor unions, which draw their funds largely from their own members, and as to which an important purpose is to protect and advance the interests of their members in the business world, are not organized and operated exclusively for charitable or educational purposes,

even though such organizations may engage in some charitable and educational work. The same conclusion applies to the American Legion, Veterans of Foreign Wars, Amvets, the Daughters of the American Revolution and other similar nonprofit patriotic organizations.

86 Ill. Admin. Code § 130.2005(a), (g).

The regulation paragraphs quoted above do not provide citations to Illinois court cases from which the agency's rule is drawn. However, I take note that different Illinois courts have previously held, in cases involving Illinois charitable tax exemption statutes, that a non-profit corporation whose purposes were primarily civic and social in nature, was not organized primarily for charitable purposes. Several such cases are referred to in the following passage from Kiwanis International v. Lorenz, 23 Ill. 2d 141, 177 N.E.2d 220 (1961):

While the purposes of Kiwanis International are laudable, and many of the activities of the local clubs are charitable, it has other important purposes, — the social, professional and business advancement of the members. In this respect Kiwanis International is like Rotary International, the American Legion, the International College of Surgeons, and the American Medical Association. Rotary International v. Paschen, 14 Ill.2d 480, 153 N.E.2d 4; Rogers Park Post No. 108, etc. v. Brenza, 8 Ill.2d 286, 134 N.E.2d 292; International College of Surgeons v. Brenza, 8 Ill.2d 141, 133 N.E.2d 269, 61 A.L.R.2d 1027; American Medical Ass'n v. Board of Review, 392 Ill. 614, 65 N.E.2d 350. Each of these organizations does philanthropic work of public value but each of them also contains the element of personal advantage to their members,"); accord Oak Park Club v. Lindheimer, 369 Ill. 462, 466, 17 N.E.2d 32, 34 (1938) ("The certificate of incorporation, the by-laws and the oral testimony disclosed that the primary purpose of the club ... were social, and that the charitable work of the club was secondary.").

Kiwanis International, 23 Ill. 2d at 146, 177 N.E.2d at 223-24.

In this case, BAPA's own organizational documents fully support the Department's argument and determination that BAPA was organized primarily to serve the social, civic and economic interests of its members, and was not organized primarily for charitable purposes. Department Ex. A; Applicant Exs. B, F. The purposes set forth in BAPA's corporate articles and

bylaws are expressly intended to enhance its members' business and civic interests. Applicant Exs. B, F. Those organizational documents, moreover, contain no express organizational intent to provide charity to the general public. *Id.*; see also Rotary International v. Paschen, 14 Ill. 2d 480, 488, 153 N.E.2d 4, 9 (1958) (“There is nothing in its objects which requires plaintiff to devote its funds or income to purposes deemed charitable in law.”). Here, since BAPA’s organizational documents do not expressly set forth charitable purposes, then, as a matter of fact, it was not — and is not — organized primarily for charitable purposes. Applicant Exs. B, F; Oak Park Club v. Lindheimer, 369 Ill. at 466, 17 N.E.2d at 34. If an entity is not organized primarily for charitable purposes, it cannot be organized *and* operated primarily for charitable purposes. See Provena, 236 Ill. 2d at 397, 925 N.E.2d at 1147. If an entity is not organized and operated primarily for charitable purposes, it is not an institution of public charity under § 15-65(a) of the PTC. 35 ILCS 200/15-65(a); Provena, 236 Ill. 2d at 397, 925 N.E.2d at 1147.

Guideline 2: Does BAPA have any capital, capital stock, or shareholders, and does it provide any private profit from the enterprise?

BAPA’s organizational documents show that it has no capital or capital stock. Applicant Exs. B, F. BAPA, however, does not satisfy the last part of this guideline, because of the civic, associational, and economic benefits BAPA was organized to provide, and actually provides, to its business and other members.

Illinois courts have recognized that the determining feature of profit with respect to a charitable institution is whether there is inurement of benefit to a private individual. DuPage Co. Bd. of Review v. Joint Comm. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 470, 654 N.E.2d 240, 246 (2d Dist. 1995). Profit has been found not only where there is a direct pecuniary benefit to an insider of the organization (*e.g.*, People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 264 N.E.2d 4 (1970)), but also where the members

of an organization obtain some benefit which non-members cannot obtain. For example, an art club that allowed only members to show and sell their works at club fairs was found to provide private inurement to members. DuPage Art League v. Department of Revenue, 177 Ill. App. 3d 895, 901-02, 532 N.E.2d 1116, 1120 (2d Dist. 1988) (primary purpose of organization was to benefit its members, and was, therefore, not entitled to the statutory exemption).

Here, BAPA's express organizational purposes are intended to enhance its members' business, civic and social associational interests. Applicant Exs. B, F. The documentary evidence shows that BAPA operates to serve such organizational purposes. For example, Beverly Bank, one of BAPA's business members, holds the mortgage on the property. Applicant Ex. G, p. 32 (Schedule L (Transactions with interested Persons) of Form 990, Part V). Beverly Bank's president was also BAPA's treasurer during 2013. *Id.* Now, no evidence suggests that BAPA's mortgage with Beverly Bank unduly favors the interests of an insider — that is, in a way that suggests that BAPA was dissipating its assets in favor of one of its business members. *See e.g.*, United Cancer Council, Inc. v. Commissioner, 165 F.3d 1173, 1176 (7th Cir. 1999) (“A charity is not to siphon its earnings to its founder, or the members of its board, or their families, or anyone else fairly to be described as an insider,”). That said, other than the annual amounts due from BAPA to Beverly Bank (Applicant Exs. G (p. 32), H (p. 10)), there was little additional evidence offered regarding the mortgage. But one of BAPA's express purposes is to help improve the local Beverly/Morgan Park commercial economy (Applicant Ex. F), and, when it was looking for a mortgage, BAPA found one through a financial institution that was part of the Beverly/Morgan Park community and which was also one of BAPA's business members. BAPA's preference to use the services of a business member was by design, not happenstance. See Applicant Exs. B, F. There can be no doubt that BAPA actually operated primarily to serve the interests of its

members. Applicant Exs. B, F, G-H, K (p. 2).

For another example, the evidence shows that BAPA provided members and non members with a list of recommended trades people in the community (Tr. pp. 94 (Walsh), 166-68 (Collins)), and that the solicitation of such recommended trades people was one of the most common requests for information. *See* Applicant Group Ex. N, Planned Giving pamphlet; Tr. p. 94 (Walsh). The copy of *The Villager* in evidence shows that BAPA discloses the names of its residential and business members, and encourages the community to use its business members' services over others. Applicant Ex. K, pp. 2, 17. Since BAPA offered no evidence to the contrary, I will assume that many of the recommended trades people on BAPA's list are also members of BAPA. BAPA offered no evidence to show that it did not prefer members over nonmembers in other ways, too, for example, by offering discounted rates to members who sought to advertise in *The Villager*. The absence of any direct evidence on such fact questions, moreover, does not inure to BAPA's benefit. *See Arts Club of Chicago v. Department of Revenue*, 334 Ill. App. 3d 235, 246, 777 N.E.2d 700, 709 (1st Dist. 2002) ("We ... consider the absence of evidence in the record regarding [an issue] to weigh in the Department's favor because the taxpayer claiming the exemption has the burden of proof.").

These examples merely illustrate how — on its face — an agreement by persons to associate together for the express purpose of enhancing each other's commercial interests is intended to provide direct benefits to the persons agreeing to associate. *E.g.* *Kiwanis International*, 23 Ill. 2d at 146, 177 N.E.2d at 223-24 (and cases cited there). Business members who are economically enhanced through their association with BAPA, just like property-owning residential members of BAPA who are better able to maintain quality housing, neighborhood safety, and strong neighborhood schools, realize direct benefits from their interested associations

with each other, through BAPA. *See* Applicant Ex. F; Applicant Ex K, p. 2 (“Yes, Beverly Hills/Morgan Park has many quality businesses that you can choose from. Shopping locally keeps them profitable. It strengthens our community, raises our home values, and encourages other businesses to open.”). These direct benefits are the natural and intended consequences of BAPA’s — and its members’ — associational purposes, not merely isolated incidents of them. *See* Applicant Exs. B, F; DuPage Art League, 177 Ill. App. 3d at 901-02, 532 N.E.2d at 1120.

Since all fact questions are to be resolved against exemption, I must conclude that BAPA has not provided clear and convincing evidence that its dues paying members realize no benefit or profit from the enterprise that nonmembers do not also receive. As a result, BAPA has not satisfied this Methodist Old Peoples Home guideline.

Guideline 3: Are BAPA’s funds derived mainly from private and public charity, and are they held in trust for the objects and purposes expressed in BAPA’s charter?

This guideline has two parts. First, it asks whether the entity’s funds are derived mainly from private and public charity, and then, whether such funds are held in trust for the objects and purposes expressed in the organization's charter. Methodist Old Peoples Home, 39 Ill. 2d at 156-57, 233 N.E.2d at 542. The evidence relevant to both parts of this guideline includes copies of BAPA’s financial statements, its 2013 Form 990, the schedule titled, Yearly Dollars, and Walsh’s testimony. Applicant Exs. G-I; Tr. pp. 50-51 (Walsh).

I start with the revenues BAPA realized from its other government grants, in the amount of \$155,786. Applicant Ex. H, p. 6 (of exhibit).³ Walsh explained that BAPA received an SBIF grant from the City of Chicago, given to small businesses to help maintain property. Tr. p. 51 (Walsh). The city granted the SBIF grant to BAPA to cover some of its expenses to improve the

³ The hearing transcript reflects Walsh saying that BAPA’s other government grants were in the amount of \$135,000, whereas the financial statement itself identifies the larger amount of \$155,786. *Compare* Applicant Ex. H, p. 6 *with* Tr. p. 51 (Walsh). I assume the financial statement is more correct than the transcript.

façade of the building on the property, and to add signage to the building. Tr. p. 51 (Walsh); *see* Applicant Ex. H, p. 6. BAPA also received a grant from the Illinois Environmental Protection Agency (IEPA) to build a green parking lot on the property, to mitigate rain water run-off. Tr. p. 51 (Walsh); Applicant Ex. G, p. 18 (Form 990, Schedule B (Part I, Contributors), IEPA listed as contributor of grant of \$72,273 to BAPA). This evidence shows that a large percentage — if not the majority — of the revenues BAPA received in the form of government grants during 2013 were given for the express purpose of improving BAPA’s own real property. Applicant Ex. G, pp. 9, 18-19 (83,513 + 72,273 = 155,786, the total of BAPA’s other government grants as per its financial statements); Applicant Ex. H, p. 6; Tr. pp. 50-51 (Walsh).

Next, the documentary evidence shows that BAPA’s revenues from “all other contributions, gifts, grants and similar amounts ...” was \$208,225. Applicant Ex. G, p. 9 (Part VIII, line 1f). Of those revenues, \$159,177 were from members’ dues. *Id.*; Applicant Exs. H (p. 4), I (p. 1); Tr. pp. 55-61 (Walsh); 86 Ill. Admin. Code § 130.2005(g). So, BAPA’s members’ dues in 2013 were approximately 76% of the amounts it reported on Part VIII, line 1f of its 2013 Form 990. *Id.*; Applicant Ex. G, p. 9 (Part VIII of Form 990, Statement of Revenue, line 1f) (159,177/208,225 ≈ 0.7644).

Regarding the revenues BAPA realized from fundraising events, Walsh explained that the term, contributions, when used on BAPA’s 2013 Statement of Activities, meant the sponsorships BAPA received from businesses to help offset the cost of BAPA’s fundraising events, giving as examples, tent rental for BAPA’s Memorial Day services and/or for its Ridge Run, which is BAPA’s single biggest fundraising event. Applicant Ex. H, p. 6; Tr. p. 48 (Walsh). He further explained that the term, ticket revenue, when used in BAPA’s 2013 Statement of Activities, referred to the amount of the entry fees that people paid to attend or take part in BAPA’s

fundraising events, giving as examples the fee to run in BAPA's Ridge Run, or to come to a concert given by BAPA. Applicant Exs. H (p. 6), K (p. 1), N (Planned Giving pamphlet); Tr. p. 49 (Walsh). Taken together, the evidence shows that the largest share of BAPA's 2013 revenues from donations came from its members' dues, and the largest share of its revenues from special events came in the form of event fees. Applicant Exs. G (p. 9), H (p. 4), I (p. 1).

The evidence further shows that BAPA spent most of its revenues to pay staff salaries and related amounts, and to pay for the related expenses of its property and building. Applicant Exs. G (pp. 1, 10), H (pp. 4-5); Tr. pp. 40-41, 105 (Walsh). When it came to fundraising, its expenses exceeded its receipts, meaning that all of the funds raised through such activities, and more, were used to pay for the various prizes, food and beverages, and rental or other costs incurred when BAPA held its Ridge Run, Memorial Day services, Snowflake Ball, and other fundraising events. Applicant Exs. G (pp. 9-10, 28), H (pp. 4-5), K (p. 1) (photo and story re: upcoming Snowflake Ball fundraiser); N (BAPA 2013 Events Calendar). In short, BAPA spent most of its revenues to pay its own staff and its operating and other expenses, and not to provide charity to others. Given that BAPA's organizational documents do not include the provision of charity as one of its express corporate purposes (Applicant Exs. B, F; Tr. p. 98 (Walsh)), this is not surprising.

After reviewing all of the relevant financial documents and Walsh's testimony regarding them, I conclude that BAPA has not provided clear and convincing evidence that it satisfies this Methodist Old Peoples' Home guideline.

Guidelines 4 & 5: Does BAPA dispense charity to all who need and apply for it, and does it place any obstacles in the way of those seeking charitable benefits?

I discuss these guidelines together. When doing so, I will distinguish between the

programs for which BAPA records expenses and revenues (Applicant Ex. G, pp. 1-2, 9-10, 28), and those BAPA holds itself out as providing. Applicant Group Ex. N, Planned Giving pamphlet. I begin, however, by repeating the conclusion that BAPA's own organization documents and regularly kept books and records show that BAPA is organized to be governed by representatives of its dues-paying members, and primarily to serve the economic, social and civic interests of such dues-paying members. Applicant Ex. B; Applicant Ex. F, p. 7; Tr. p. 29 (Walsh). To carry out those purposes, BAPA has and maintains different classes of members, and BAPA's bylaws require members to pay dues. Applicant Ex. F. BAPA's bylaws do not provide, and have never provided, for any waiver of dues for businesses or residents who wanted to become members but who could not afford BAPA's membership dues. Applicant Ex. F; Tr. p. 101 (Walsh). In short, the evidence clearly and convincingly shows that that BAPA places obstacles in the way of all persons intended to be the primary beneficiaries of its associational operations.

Of the programs BAPA holds itself out as providing — Business support, Safety, Housing, Schools, Communications, Special Events (Applicant Group Ex. N, Planned Giving pamphlet) — its financial records detail only the expenses and revenues attributable to the last two. BAPA provides a range of communications to members, and to Beverly Hills/Morgan Park community. *Compare, e.g.*, Applicant Exs. K, N, V-W with Applicant Ex. Group K, Planned Giving pamphlet. Perhaps most primarily, it communicates through its publication and free distribution of its monthly newspaper, The Villager. Applicant Ex. K. Collins also testified that many of the communications BAPA has published and provides to the community and other interested persons are available to view at its web site. BAPA offered examples of some of its other communications into evidence. Applicant Group Ex. N.

The financial records show that BAPA incurs expenses related to its publication of The

Villager, which is offset by the revenues it charges to persons who wish to advertise in the newspaper. Applicant Exs. G (pp. 9-10) H (pp. 6-7). Just as there is no evidence that BAPA charged different rates to members versus nonmembers to advertise in The Villager, there is no evidence that BAPA had a fee waiver program in place for any advertisers in The Villager. If one wants to advertise in the Villager, one must pay. This only points out that the benefit that BAPA provides to the community is its free distribution of The Villager, whereas advertising in The Villager is a benefit for which advertisers must pay, or do without. In sum, BAPA offered credible evidence that it made no charge to persons to receive The Villager, and distributed it throughout the community, without charge to recipients. Tr. p. 53 (Walsh). The evidence clearly and convincingly shows that BAPA provides a neighborhood newspaper to members of the community without charge to the recipients.

The next program services for which BAPA has financial records are its special events, which BAPA's financial records show were all fundraising events. Walsh testified that BAPA's fundraising events were also community-building events. Tr. pp. 75-79 (Walsh). Regarding these events, Walsh testified that the term ticket revenue, when used on BAPA's 2013 financial records, were the entry fees that people paid to come to BAPA's fundraising events, giving as examples the fee to run in BAPA's Ridge Run, or to come to a concert given by BAPA. Applicant Ex. H, p. 6; Tr. p. 49 (Walsh). The article in the Villager showed that the cost to attend the Snowflake Ball was \$75 per person. Applicant Ex. K, p. 1. No evidence was offered regarding the ticket prices for the BAPA's other special events, but its financial records show that BAPA did charge and collect entry fees for each such event. Applicant Ex. G, p. 28. BAPA provided no evidence that any BAPA member, or any member of the general public, could take part in any one or more of BAPA's special events without payment. Nor was there any evidence

that BAPA had a fee waiver or reduction program for any of the entrance fees required for any of its special events. The evidence clearly and convincingly shows that BAPA placed obstacles in the way of anyone who wanted to take part in its special events.

Finally, BAPA offered some evidence that it provided services to persons asking for assistance without any charge, but this evidence was at best anecdotal, and insufficient to show that the services discussed constituted BAPA's primary operations. Most of this evidence, moreover, was offered regarding the volunteer activities of its employee, Collins. To be sure, this evidence tends to show that Collins was a one-woman, volunteering dynamo. But the statute at issue is not designed to provide tax exemptions to property owners who employ good, kind, generous, and helpful neighbors, like Collins. Illinois property taxes are imposed and assessed upon both for profit and not-for profit businesses, and upon good and bad neighbors, just as they are assessed on property owners who remain strangers to their neighbors. *See Provena*, 236 Ill. 2d at 388, 925 N.E.2d at 1143 ("Under Illinois law, taxation is the rule. Tax exemption is the exception."). And while the evidence of Collins' activities tends to show that her volunteerism was a manifestly good thing for BAPA, for its members, and for the other associations and committees on whose boards she served (*see* Applicant Exs. R, T-U, X-Z, DD), it does not counter the documentary evidence showing that BAPA's purposes, and its operations, primarily served the civic, social and economic interests of BAPA's business and residential members. Applicant Exs. B, F; G-H, K (p. 2).

After considering the documentary and other evidence admitted at hearing, I conclude that BAPA's programs do not primarily provide charitable benefits to the general public. *See, e.g., Board of Certified Safety Professionals of the Americas, Inc. v. Johnson*, 112 Ill. 2d 542, 546, 494 N.E.2d 485, 488 (1986) (exemption requires that an organization's operations primarily

benefit the public, not the organization's members). Rather, BAPA was more in the nature of a local civic organization, or a local chamber of commerce, as referred to in 86 Ill. Admin. Code § 130.2005(a), (g). Like the latter type of organization, BAPA draws its funds largely from its own members, and its express purposes are to protect and advance the interests of its members. The evidence further shows that BAPA places obstacles in the way of those who wish to be members, and before those who want to take part in any of BAPA's special events. Finally, while the evidence shows that BAPA distributes a monthly newspaper without charge to those who receive it, that activity, too, is intended to serve the social, civic, and business interests of BAPA's business and residential members. Applicant Ex. K, p. 2. To the extent that the general public benefits as a result of BAPA's programs, those benefits are only an incident to its operations.

After considering the documentary and other evidence admitted at hearing, and the first five Methodist Old Peoples' Home guidelines, I conclude that BAPA is not an institution of public charity, as that phrase is used in § 15-65(a) of the PTC. Since it is not an institution of public charity, none of its real property can be exempt under § 15-65 of the PTC. 35 ILCS 200/15-65; Provena, 236 Ill. 2d at 397, 925 N.E.2d at 1147.

Guideline 6: DOES BAPA actually and primarily use the property for charitable purposes?

The final guideline calls for an examination of whether the property is actually and primarily used for charitable purposes. Methodist Old Peoples Home, 39 Ill. 2d at 157, 233 N.E.2d at 542. BAPA has limited its exemption application to just the first floor of the building, plus the parking lot, since there is no dispute that BAPA leases the other half of the building on the property to businesses. Tr. pp. 11, 13-14 (opening statements).

Regarding BAPA's claim for exemption to the parking lot, the evidence shows that BAPA permits its lessees use of the parking lot. Tr. pp. 106-07 (Walsh). BAPA, moreover,

offered no evidence to show that it imposed a restriction on the lessees' use of the parking lot. Finally, BAPA offered no evidence to show that the parking lot was open to the public, to use without charge. So, there is no way discern whether, on any given day, the persons primarily using the parking would be BAPA's lessees or customers, or BAPA's own employees or BAPA's invitees. As a result, the evidence does not clearly and convincingly show that the parking lot was being used primarily for charitable purposes.

Regarding the half of the building that BAPA, itself, uses, the evidence shows that BAPA is the primary user of the property, and that it uses such property as the place where it conducts all or most of the different activities required to operate the non-profit corporation. All of this evidence, moreover, consists of testimony, as opposed to documentary evidence. For example, BAPA had no regularly kept calendar which documents the events that were scheduled and actually held at or conducted on the property during 2013. Finally, the testimony that BAPA offered to show that BAPA's property was occasionally used by non members, or by the public, did not clearly and convincingly demonstrate that that was how the property was being primarily used during 2013.

In sum, the evidence tends to show that BAPA uses the property primarily to conduct the day-to-day operations which fund and further its not-for-profit corporate purposes. The evidence also shows that BAPA's corporate purposes are not, themselves, primarily charitable (Applicant Exs. B, F), and that BAPA's operations primarily benefit the business, civic and associational interests of its dues paying members. Applicant Exs. G-I. I know of no cases which hold that an Illinois not-for-profit corporation's use of property for such purposes constitutes a primarily charitable use of such property, and the case law that does exist is to the contrary. *See, e.g., Kiwanis International*, 23 Ill. 2d at 146, 177 N.E.2d at 223-24 (and cases cited there); Albion

Ruritan Club v. Department of Revenue, 209 Ill. App. 3d 914, 919, 568 N.E.2d 478, 481 (5th Dist. 1991) (“From the record we find that Albion’s primary purpose is to maintain its property and pay for its monthly meetings. Although Albion donates a substantial portion of its earnings to other causes, this does not change its primary purpose of generating income to fund Albion’s operations.”). After reviewing the record, I conclude that BAPA has not clearly and convincingly shown that it uses the half of the building it does not lease, primarily for charitable purposes.

Conclusion:

After reviewing the record, I conclude that BAPA has not shown clear and convincing evidence that it is an institute of public charity, or that it used the property described on its application primarily for charitable purposes. I recommend that the Director finalize the Department’s prior denial as issued, and that the property remain on the tax rolls.

July 6, 2016

John E. White

Administrative Law Judge