

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Clark Retirement Community, Inc.,
Petitioner,

v

MTT Docket No. 300634

City of Kentwood,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

FINAL OPINION AND JUDGMENT

This matter was heard before Administrative Law Judge (ALJ) Thomas A. Halick, who issued a Proposed Opinion and Judgment (POJ) on August 30, 2006. The POJ provided, in pertinent part:

The parties have 20 days from date of entry of this Proposed Opinion and Judgment to file any written exceptions to the Proposed Opinion and Judgment. The exceptions must be stated and are **limited to the evidence submitted prior to or at the hearing** and any matter addressed in the Proposed Opinion and Judgment. (Emphasis added.)

On September 19, 2006, Petitioner, disagreeing with the POJ, filed exceptions. On that same day, Respondent filed a response to the Proposed Opinion and Judgment, stating that it has no objection to the POJ. Having reviewed the POJ, Petitioner's exceptions and the case file, the Tribunal finds that ALJ Halick reached the correct conclusion. For the reasons set forth in the POJ and expanded upon herein, the Tribunal finds that Petitioner does not qualify as a charitable institution pursuant to MCL 211.7o.

Petitioner's Exceptions and the Tribunal's Responses

Exception:

In *Wexford County Medical Group v. City of Cadillac*, 474 Mich 192; 713 NW 2d 734 (2006), the Supreme Court held that it is impermissible to consider only the 'level of charitable care' provided. However, in the Proposed Opinion and Judgment . . . the Administrative Law Judge indicated that:

"It is nevertheless relevant to consider whether an organization provides any charitable care (gift) whatsoever or whether the level of charity care results in 'reduced rates' that are de minimus."

While the Administrative Law Judge . . . acknowledges that “Charitable donations were used by Clark to acquire the subject Parcel . . . and support its operations resulting in lower fees to residents,” the Proposed Opinion states:

“However, it has not been demonstrated in any concrete or direct manner that this constitutes a gift to the residents of Oxford Manor or Windsor Manor.”

In so doing, the Proposed Opinion seems to ignore the admonition of the *Wexford County* case and applies a financial ‘litmus test’ to determine the level of charity care. (Exception, pp1-2)

Response:

Petitioner’s first quote makes it appear that this was the POJ’s entire sentence. In fact, the first part of the sentence was omitted. The ALJ’s statement was:

Wexford held that it is impermissible to consider only the “level of charitable care” provided but it is nevertheless relevant to consider whether an organization provides any charitable care (gift) whatsoever or whether the level of charity care results in “reduced rates” that are *de minimus*. (POJ, p53)

It is clear that the *Wexford* Court held that:

A “charitable institution” need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year. *Id.*, p215.

In this case, the ALJ did not make a finding that Petitioner did not meet some monetary threshold of charity or that the charity provided was *de minimus*. In fact, the ALJ did not even perform the analysis necessary to arrive at this conclusion.

Instead, the ALJ’s statement comports with a finding made by the *Wexford* Court. In discussing *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002), that Court held that:

The Court of Appeals was correct to hold that when an institution presents *no evidence* of the charitable works, then as a matter of law, it cannot be found to be a charitable institution. . . ProMed must not be interpreted as requiring quantitative proof of the value of charitable care. Rather, the focus should be on

the overall nature of the institution as judged by the particular facts presented in each individual case. (Emphasis added.) *Id.*, p220.

The Tribunal finds that, in making the statement that Petitioner finds objectionable, the ALJ was attempting to complete one more analysis so as to make a determination as to Petitioner's overall charitable nature. Indeed, the ALJ referenced the *Wexford* Court's discussion of *Retirement Homes of the Detroit Annual Conference of the United Methodist Church v Sylvan Township*, 416 Mich 340; 330 NW2d 682 (1982), stating that:

In *Wexford*, it was specifically noted that Hillside Terrace apartments (from *Michigan Baptist*) only reduced fees for four of its 72 residents in one year, and waived fees completely for only one resident. The occasional departure from the usual financial requirements for admission was not enough to qualify Hillside Terrace for a tax exemption. (POJ, p53)

It is clear that the ALJ found important, as does the Tribunal, the similarities between the petitioner in *Michigan Baptist* and Petitioner. In *Michigan Baptist*:

Residents were hand-selected by the establishment after an application process that asked them to fully detail their financial status and their health. Those who could not show sufficient means or who were in less than reasonably good health were, in large part, rejected. (Citation omitted.) *Wexford*, p208.

While there was no evidence that Petitioner screened residents based on their health, other than to place them in one of their other facilities, overwhelming evidence was presented to establish that residents were "hand-selected by the establishment." Section I of Petitioner's Admission Policy states:

The following persons shall be eligible for admission to Clark Retirement Community upon satisfactory completion of the Admission Process:

C. Persons with sufficient income and assets to cover the cost of care.

Petitioner's Executive Director described how Petitioner determines whether a person has sufficient income and assets to cover the cost of care. From this description, it appears as though Petitioner completes a study that is very similar to an actuarial study.

A person wishing to reside at the subject property must complete an application form and pay a \$200 nonrefundable processing fee. The information provided on the application form indicates a person's income and assets. Petitioner utilizes this information to determine whether the

income and assets are sufficient to pay for the initial fee and the fee charged each month the person is anticipated to live. For the period May 1, 2004, through April 30, 2005, a person requesting a single room with a full bath was required to pay an initial fee of \$12,000, plus a monthly fee of \$3,025.¹

Thus, in the situation of a single room with a full bath, a person requires a minimum income and assets for the first year of \$48,300. According to Petitioner, the average Social Security benefit received by a resident is \$1,000 per month, meaning the person must have at least \$36,300 available to cover the cost of the first year of care. Assuming, for example, Petitioner anticipates that this person will reside at the subject property for five years. In that case, this person would have to have at least \$181,500 in income and assets listed on his or her financial statement. While it is possible that a person with income and assets sufficient to gain access to the subject property would eventually deplete his or her resources, it cannot be said that at the time of admission this person is in need of “charity.”

At the hearing, Petitioner’s witnesses repeatedly stressed that once a resident was admitted in one of its facilities, that person was never turned away due to the inability to pay for his or her care.² While this commitment is honorable, it does not necessarily mean that Petitioner meets the definition of a charitable institution as anyone who has been admitted as a resident has already met Petitioner’s admission standards.³

Moreover, Section III of Petitioner’s Admission Policy states:

- A. Admission of persons unable to meet the full cost of care during the expected life will occur to the extent that Clark Retirement Community is able to find alternative means to meet the full cost of care for these persons.
- B. On an annual basis the Board of Trustees will determine the number of persons that can be supported through benevolent giving and other means.
- C. A record of current and potential public assistance residents will be maintained to insure that this procedure remains under control with a variance of not more than 10% from levels established by the Board of Trustees on an annual basis. (Petitioner’s Exhibit 7)

According to Petitioner’s Executive Director, Section III, Paragraph A, means that only after accommodating the needs of their current residents, to the extent that Petitioner has benevolent

¹ Testimony indicated that there is an ala carte list of things that residents have to pay extra for, including medication.

² Inability to pay does not refer to those residents who have the means to pay but refuse to do so.

³ While Petitioner alluded to admitting residents that have not met the financial eligibility standards, Petitioner provided no evidence to support this claim.

funds available, a resident who does not meet Petitioner’s income and asset test will be accepted. In other words, if Petitioner does not have funds available, they will only accept residents with the financial wherewithal to pay for their care, in their opinion, in perpetuity. “Some people do not make it through the application process.” (Transcript, p115)

Exception:

The Proposed Opinion finds that [Petitioner] has not satisfied the second [Wexford] factor and is not a “charitable institution” that is “organized chiefly, if not solely for charity.” . . . [The Proposed Opinion] states that [Petitioner’s] policies and practices are not consistent with the legal requirement because ‘it has not demonstrated the operation of the subject property promotes the “general welfare of the public without restriction or provides a gift to an indefinite number of persons.” . . . The Proposed Opinion claims its financial restrictions on admissions prevented it from operating primarily if not solely for charity. This finding ignores the admonitions of *Wexford County* that it is improper to focus on any one particular facet or activity and that it is more appropriate to consider the overall [] nature of the institution . . . [Petitioner’s] evidence . . . demonstrates the charitable giving and “benevolent care” afforded to all residents through efforts of [Petitioner] and its Foundation result in “lower fees to residents in [Petitioner’s] facilities including those in occupancy at [the subject property].” . . . The Proposed Opinion ignores the fact that during the tax years in question, [Petitioner] and its Foundation provided ‘benevolent care’ and ‘gifts’ to the general fund budget as follows:”

Organization Wide	4/30/02	4/30/03	4/30/04	4/30/05
Benevolence	260,813	259,994	430,764	603,072
Gifts	635,164	852,748	595,979	875,761

Response:

The Tribunal finds that Petitioner’s exceptions as to the analysis of the second *Wexford* factor are without merit. Petitioner’s statement that the POJ ignored the benevolent care and gifts to its general fund budget is simply incorrect. In the Findings of Fact section of the POJ, the ALJ included this exact chart. (POJ, p21) Part of the problem with Petitioner’s chart and the information provided is that it is a combination of all of Petitioner’s benevolence and gifts. As the ALJ attempted to explain, the issue in this case is the charity provided at the subject property. Petitioner’s other locations are not included in this appeal and, therefore, are of no consequence. By focusing on its “continuum of care,” Petitioner failed to isolate the charity provided at the subject property. Petitioner provided no documentary evidence as to one person who had been admitted to the subject property who was indigent or unable to pay, at least initially. Further, Petitioner provided testimony, but no documentary evidence, as to one person residing at the

subject property who eventually could not cover all of the costs and was provided benevolent care.

The Tribunal also disagrees with Petitioner's statement that the evidence it provided demonstrates that its benevolent care results in lower fees to the subject property's residents. Petitioner provided absolutely no evidence to suggest that its fees are any lower than other adult foster care facilities.

By focusing on what it perceives to be a "litmus test" in the POJ, Petitioner ignores the fundamental requirements of charity. Before establishing the six factors to utilize when determining whether an institution is a "charitable institution" under MCL 211.7o and MCL 211.9(a), the *Wexford* Court discussed preceding cases involving charitable exemption claims.

Several common threads can be found in this line of cases. First, it is clear that the institution's activities as a whole must be examined; it is improper to focus on one particular facet or activity. In that sense, the inquiry pertains more to whether an institution could be considered a "charitable" one, rather than whether the institution offers charity or performs charitable work. *So it is the overall nature of the institution, as opposed to its specific activities, that should be evaluated.*

A second indispensable principle is that the organization must offer its charitable deeds to benefit *people who need the type of charity* being offered. In a general sense, *there can be no restrictions* on those who are afforded the benefit of the institution's charitable deeds. This does not mean, however, that a charity has to serve every single person regardless of the type of charity offered or the type of charity sought. Rather, a charitable institution can exist to serve a particular group or type of person, but the charitable institution *cannot discriminate within that group*. The charitable institution's reach and preclusions must be gauged in terms of the type and scope of charity it offers. *Id.*, pp212-213.

Thus, the inquiry to be made is whether Petitioner could be considered a charitable institution, not whether Petitioner offers charity or performs charitable work. While the Tribunal believes that Petitioner offers charity, Petitioner is not a charitable institution.

Moreover, Petitioner does not meet the second indispensable principle because it does not offer its charitable deeds to people who need the type of charity being offered. Through its income and asset test, Petitioner discriminates against the very people who are in need of the type of care Petitioner offers. Instead of offering this care to everyone, Petitioner performs its own version of a "litmus" test. Vacancies at the subject property are not filled on a first-come, first-serve basis, regardless of ability to pay. In this, Petitioner differs from the petitioner in *Wexford*. It cannot be said that Petitioner "sustains notable financial losses by not restricting the number of Medicare and Medicaid patients it accepts," and "bears those losses rather than restricting its treatment of patients who cannot afford to pay." *Id.*, pp216-217. Nor is Petitioner's "charity"

like that of the petitioner in *Father Murray Nursing Center v City of Centerline*, (Docket No. 293820, August 31, 2006). In that case, the petitioner admitted patients first and later verified the source of payment. As in *Wexford*, the petitioner in *Father Murray* operated “. . . under an open-access policy under which it accepts any patient who walks through its doors, with preferential treatment given to no one.” *Wexford*, p247. The same cannot be said of Petitioner.

Furthermore, the petitioner in *Father Murray* did not restrict the number of Medicaid and Medicare residents it has. In this case, the number of such patients is restricted by Petitioner’s Board of Trustees. Additionally, the petitioner in *Father Murray* readily provided information as to the number of Medicare and Medicaid residents it had; Petitioner provided none of this information.

After concluding its discussion of previous cases dealing with charitable exemption claims, the *Wexford* Court reiterated the definition set forth in *Retirement Homes, supra*. The Court concluded that:

. . . the definition [of charity] set forth in *Retirement Homes, supra*. . .sufficiently encapsulates, without adding language to the statute, what a claimant must show to be granted a tax exemption as a charitable institution:

“[Charity] * * * [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or 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.” *Id.*, p214.

This definition of charity comes into play in *Wexford’s* second factor, namely that “[a] ‘charitable institution’ is one that is organized chiefly, if not solely, for *charity*.” (Emphasis added.) For the reasons stated herein, the Tribunal finds that Petitioner is not organized, chiefly or solely, for charity.

Exception:

[Petitioner] further takes exception to the proposed conclusion that [Petitioner] fails to satisfy the third factor in the test. The Proposed Opinion claims [Petitioner’s] financial restrictions on admission prevent it from “serving any person who needs the particular type of charity”. . . It dismisses the fact that the annual gifts from the Foundation act to lower the rates for all residents including those at [the subject property] and that “as many as 30 to 40 residents in [Petitioner’s] Continuum of Care receive benevolent care which is provided in the form of reductions or total elimination of month rates and charges to those

persons in need. . . The fact that residents/patients at [the subject property] receive a reduction or total elimination of their monthly rates only when [they] have been transferred to the skilled nursing facility in Grand Rapids should be irrelevant because the subject parcel is part of the “Continuum of Care.”. . . The fact that the admission policy requires disclosure of financial information indicating that an applicant has “sufficient income and assets to cover the cost of care” should not disqualify Clark or any other similar institution from an exemption as requiring such an inquiry is essential for budget planning establishing the level of charitable support required in any one year and the ultimate survival of the institution.

Response:

As previously stated, Petitioner did not present any documentary evidence to show the rates charged to the subject property’s residents are lowered as a result of gifts from the Foundation, nor that the rates are lower than those charged by comparable facilities. In fact, statements made by Petitioner result in the opposite conclusion. In particular, Petitioner states that:

The fact that residents/patients at [the subject property] receive a reduction or total elimination of their monthly rates *only when* [they] have been transferred to the skilled nursing facility in Grand Rapids should be irrelevant because the subject parcel is part of the “Continuum of Care.”

Moreover, it is not the fact that Petitioner requires a financial disclosure that disqualifies Petitioner from being considered a charitable institution, it is what Petitioner does with that information, namely screening potential residents.

Exception:

Contrary to the finding contained in the Proposed Opinion . . . [Petitioner] asserts that it does satisfy factor No. (6) because the overall nature of the institution is charitable “regardless of how much money it devotes to the charitable activities in any particular year”. . . The Proposed Opinion states . . . “there is no evidence what a market rate (for resident fees) would be, and therefore, it cannot be determined that the residents of the subject property receive a ‘charitable gift’ in the form of below-market rates.” However, this statement is once again an assertion of an impermissible monetary “litmus test.”

Response:

Again, the Tribunal reiterates that the POJ did not determine whether Petitioner is a charitable institution based on a monetary threshold. Instead, Petitioner was evaluated on its overall nature

instead of its specific activities.

As for the discussion concerning market rates for resident fees, the Tribunal finds that this information is not only appropriate but necessary to gauge whether or not a gift has actually been provided. Petitioner would be hard pressed to say that it provides a gift if, in fact, the fees it charges are comparable to those charged by another facilities that may, for example, be a for-profit institution.

In conclusion, the Tribunal finds the Court's analysis in *Retirement Homes, supra*, particularly relevant in this case. The Court stated:

The question presented can thus be rephrased: Does Retirement Homes operate the apartments in such a way that there is a "gift" for the benefit of "the general public without restriction" or "for the benefit of an indefinite number of persons"? *Id.*, p349.

To rephrase the Court's response to this question, the Tribunal "concludes that there is no "gift for the benefit of an indefinite number of persons or for the benefit of the general public without restriction in the operation of [the subject property]." *Id.*, p349. Petitioner has not demonstrated that the fees it charges at the subject property do not cover the subject property's operating costs. Moreover:

While it does not appear that the [subject property is] operated for a profit, neither does it appear that the residents [of the subject property] receive any significant benefit that they do not pay for. There is no "gift" to the residents. *Id.*, pp349-350.

Due to the "continuum of care," the residents may receive a gift if they are relocated to another of Petitioner's facilities. However, it has not been shown that while they reside at the subject property the residents receive any significant benefit for which they do not pay.

The Tribunal finds that Petitioner's "continuum of care" is similar to the programs offered by the petitioners in *Retirement Homes, supra*, and *NorthPointe Woods v City of Battle Creek*, (Docket No. 293017, November 10, 2004). As in those cases, the Tribunal finds that Petitioner is not a charitable institution under MCL 211.7o or MCL 211.9.

Given this, the Tribunal finds that Petitioner failed to show good cause to justify modifying the Proposed Opinion and Judgment or granting a rehearing. As such, the Tribunal adopts the Proposed Opinion and Judgment as the Tribunal's final decision in this case. *See* MCL 205.726. The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law in the Proposed Opinion and Judgment in this Final Opinion and Judgment.

Therefore,

IT IS ORDERED that Petitioner's claim to a property tax exemption for the subject property for the 2003, 2004 and 2005 tax years pursuant to MCL 211.7o is DENIED.

IT IS FURTHER ORDERED that the subject property's true cash, state equalized and taxable values for the 2003, 2004 and 2005 tax years are as set forth in the Proposed Opinion and Judgment and adopted by this Final Opinion and Judgment.

IT IS FURTHER ORDERED that, pursuant to the Tribunal's March 24, 2011 Order, the subject property's true cash, state equalized and taxable values for the 2006 tax year as set forth in the Proposed Opinion and Judgment is VACATED and not included as part of this Final Opinion and Judgment.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: March 25, 2011

By: Patricia L. Halm

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

Clark Retirement Community, Inc,
Petitioner,

v

City of Kentwood,
Respondent,

MICHIGAN TAX TRIBUNAL
MTT Docket No. 300634

Administrative Law Judge Presiding
Thomas A. Halick

PROPOSED OPINION AND JUDGMENT

A hearing was held on December 14, 2005 in MTT Docket No. 300634 on Petitioner's appeal of the Board of Review's denial of a claim of exemption from ad valorem property taxes under

MCL 211.7o (Charitable Organization Exemption) and/or MCL 211.7d (housing for elderly or disabled persons). This proceeding before the Tribunal is original, independent, and is considered de novo. MCL 205.735(1). The tax years at issue are 2003, 2004, 2005, and 2006. Based upon the stipulated facts, evidence admitted at the hearing, and in consideration of legal arguments and briefs, the Tribunal concludes that the subject property is not exempt from property taxes and the AV, SEV, and TV are as follows:

Parcel Number: 41-18-12-326-012

Year	AV	SEV	TV
2003	\$1,956,100	\$1,956,100	\$1,956,100
2004	\$2,083,700	\$2,083,700	\$2,001,090
2005	\$2,116,700	\$2,116,700	\$2,047,115
2006	\$2,164,300	\$2,164,300	\$2,114,669

Petitioner, Clark Retirement Community, Inc., was represented by attorney Thomas M. Shearer. Respondent, City of Kentwood, was represented by attorneys Ingrid A. Jensen and Jessica L. Wood. Petitioner offered testimony of Petitioner's Executive Director, Robert J. Perl and its Director of Finance, Bruce Blalock. Respondent presented no witnesses.

SUMMARY OF PETITIONER'S DOCUMENTARY EVIDENCE

Petitioner's documentary evidence admitted at hearing is as follows:

1. P-1. Articles of Incorporation of Clark Retirement Community
2. P-2. Bylaws of Clark
3. P-3. Clark Retirement Community Foundation's Articles of Incorporation

4. P-4. Clark Retirement Community Foundation's Bylaws
5. P-5. Internal Revenue Service letter confirming Clark Retirement Community's 501(c)(3) status
6. P-6. Warranty Deed dated June 28, 2003
7. P-7. Clark Retirement Community's Admission Policy for Clark on Keller Lake.
8. P-8. Licenses for Adult Foster Care
9. P-9. Letter regarding license renewals dated April 18, 2003
10. P-10. Letter from State of Michigan denying appeal for licensure of additional units
11. P-11. Clark on Keller Lake Site Plan
12. P-12. Windsor Manor Floor Plan
13. P-13. Oxford Manor Floor Plan
14. P-14. Internal Revenue Service letter confirming Clark Retirement Community Foundation's 501(c)(3) status
15. P-15. Brochure, "We Found Just What We Are Looking For at Clark Retirement Community"
16. P-16. Brochure, "Someone Special"
17. P-17. Clark on Keller Lake – Resident/Family Forms Packet
18. P-18. Rates Schedules for 2003-2004 for Oxford Manor and Windsor Manor
19. P-19. Summary of Operating Revenues and Expenses
20. P-20. Document showing benevolent care, gifts, endowment, and future projections
21. P-21. Covenant of Affiliation – M.J. Clark Memorial Home and West Michigan Conference

- 22. P-22. Consolidated Financial Statements for the years ended April 30, 2003 and 2002
- 23. P-23. Consolidated Financial Statements for the years ended April 30, 2004 and 2003
- 24. P-24. Consolidated Financial Statements for the years ended April 30, 2005 and 2004
- 25. P-25. Residency Agreement

Testimony of Robert J. Perl

Mr. Robert J. Perl is the executive director of Clark Retirement Community and is licensed by the state of Michigan as a “nursing home administrator.” Since 1983, he has been responsible for the overall administration of Clark Retirement Community, Inc.⁴ In 2001, Clark Retirement Community, Inc. acquired the subject property, which constitutes a portion of the property known as “Clark on Keller Lake” located in Kentwood. (The subject property includes two buildings, appurtenant land, and related improvements known as “Oxford Manor” and “Windsor Manor” that are state licensed adult foster care facilities that can accommodate up to 40 residents each. Clark owns facilities in Grand Rapids and Kentwood.)

Clark Retirement Community was established in 1906 when Melvin J. Clark donated his country estate located on 20 acres in the City of Grand Rapids to the Methodist Church to be used as a retirement home for retired Ministers⁵ and others. This statement of purpose appears in Clark’s Articles of Incorporation and continues to appear in its amended by-laws (amended and approved July 26, 2000) in effect during the relevant tax years. In 1913, Petitioner was incorporated as the “M.J. Clark Memorial Home of the Michigan Annual Conference of the Methodist Episcopal

⁴ Clark Retirement Community, Inc. is also referred to herein as “Clark.”

⁵ This is not the subject property.

Church.” The original corporate purpose for the Clark home, as stated in the articles, was “...to be maintained and used as a home for superannuated members of said conference, their wives and the widows of deceased ministers and such other needy and deserving persons as said trustees may designate.” TR 22. The Grand Rapids property consisted of a “home for the aged” with 221 rooms and a “skilled nursing facility” for 111 residents. Also, there was a home where the administrator then lived.

Clark’s By-laws provide for a 21-member Board of Trustees consisting of persons elected by the Annual Conference of the Western Michigan Conference of the United Methodist Church, an association of 426 individual churches in west Michigan. If Clark Retirement Community were to dissolve, the By-laws provide that the assets would be distributed to the Trustees of the West Michigan Conference of the United Methodist Church.

In approximately 1990, Clark adopted a master plan, which included phase 1 and phase 2. Phase 1 involved improvements to the Grand Rapids facilities, including renovations to the skilled nursing facilities, the addition of an ice-cream parlor, a convenience store, a pharmacy, a wellness center, and a fitness area and pool, which were completed in 1995. Phase 1 was financed through tax-exempt bonds in the amount of \$9,000,370, a \$1 million gift from a private donor named Fred Keller, other donations, and “use of reserves.”

Clark Retirement Community follows a “continuum of care” under which a resident may transfer

from “independent living” for persons capable of caring for themselves, to “assisted living” for those who need help with activities such as bathing, medications, dressing, and then to “skilled nursing” for those who need 24-hour nursing care. The level of assistance is tailored to the needs of the individual resident.

Throughout its history, Clark Retirement Community has sought and received charitable gifts from the public and from the United Methodist Church, which also allows Clark to raise funds in its churches and through its church members. In 1995, Clark Retirement Community created a foundation (of which it is the sole member), known as the Clark Community Foundation with the purpose, as stated in its By-laws, to “provide funds for benevolent care for the residents of Clark Retirement Community.” The Foundation accepts charitable gifts and distributes them to Clark Retirement Community. The foundation employs two full-time persons including the director, Mary Louise Avery, who is skilled in fund-raising and devotes her time to that purpose.

One example of “planned giving” to the foundation is a gift of land valued “in today’s dollars at \$6 million” that will be granted to Clark upon the owner’s death. The parcel will be split between Clark and Michigan State University. There is also an annual fund-raising event, the “Clark Walk,” which raises \$50,000 to \$70,000. TR 88. Clark has recently initiated a program in the past year that would allow certain long-term, low-income employees of Clark to become residents of Clark whether they meet financial requirements or not.

During the tax years at issue, the residents of Clark Retirement Community were not all members of or affiliated with the United Methodist Church. Mr. Perl did not testify regarding the number of residents of Oxford Manor or Windsor Manor that are members of or affiliated with the United Methodist Church, but he said that approximately 11% of Clark's residents at all facilities are retired Methodist Ministers or their spouses. There is no testimony or evidence of the number of retired ministers or spouses, if any, who resided at Oxford or Windsor Manors. Clark does not discriminate on the basis of race, color, creed, or religion. However, residents must be "willing to live in a Christian environment."

On June 28, 2001, Petitioner acquired approximately 26 acres in Kentwood in order to serve the growing population of persons reaching retirement age. This 26 acres includes the subject property, which is a 5.8 acre parcel referred to as "Parcel 1" on Petitioner's Exhibit 11-1, upon which the Oxford Manor and Windsor manor are situated, along with parking areas, driveways and sidewalks. In 1998, Petitioner refinanced the tax exempt bonds at a more favorable interest rate. The acquisition of the 26 acres in Kentwood was financed through the tax-exempt bonds and the \$1 million gift from Fred Keller. The total purchase price was approximately \$9,800,000. The buildings have not been changed since the time of acquisition, except for minor modifications and routine "upgrading." Oxford Manor and Windsor Manor each have 40 individual rooms for residents, and include a common dining area and kitchen. There is also a bathing area "because people in assisted living need help with their baths." TR 56. The Oxford Manor includes a unit for persons with significant dementia. Clark Retirement Community

employs a “dementia coordinator” who oversees the dementia units at Oxford Manor and at the Grand Rapids Campus⁶. There is also an administrator who oversees Clark on Keller Lake and who reports to Mr. Perl. Both the Grand Rapids Campus and Clark on Keller Lake operate from a “consolidated budget” overseen by the finance director, Bruce Blalock.

In 2002, Petitioner filed an application with the City of Kentwood for an exemption for Oxford Manor and Windsor Manor. (The independent living town homes at Keller Lake are taxable.) The 2002 Notice of Assessment Taxable Valuation received from Respondent indicated that the subject property was exempt for 2002 (proposed assessment was zero), and that the prior year assessment (2001) was \$1,263,204.

At the time Petitioner acquired Oxford Manor and Windsor Manor, the property was an assisted living facility operated by two privately held (for-profit) limited liability companies, which were not exempt from property taxes. Most residents of the subject property under the former ownership continued to live there after acquisition by Petitioner. All residents of the subject property now benefit from the “continuum of care,” which allows them to transfer to a skilled nursing facility operated by Petitioner. Under the former ownership, residents who were no longer physically or mentally capable of living in assisted living were transferred to other nursing facilities that were not affiliated with the former ownership. They were also required to leave the facility if they could no longer pay the required monthly fee.

⁶ During the hearing, Petitioner’s witness referred to Clark’s property located in Grand Rapids interchangeably as the Franklin campus, the Sherman campus, and the Grand Rapids campus.

According to Mr. Perl, Clark Retirement Community promises that residents who come to live at Clark will never be asked to leave for financial reasons. “In the 99 year history of Clark, we have never asked a resident to leave because they’ve run out of funds.” TR 64. The residents of Clark on Keller Lake also have access to the amenities at the Grand Rapids campus. Under Clark’s ownership, there is now a physician, Dr. Neubig, who works regularly with residents at the Grand Rapids Campus and Clark on Keller Lake; and, there is a chaplain who consistently works with and gets to know the residents and their families. Under prior ownership, there were a variety of visiting clergy who would stop in, but generally not on a continuing basis.

To be eligible for residency, a person must be at least 62 years old and must agree to live at the appropriate level of the continuum. “So, if their needs are for independent living, they can live in independent living, but if they need assisted living, routine services, then they must transfer to that [assisted living].” TR 70. The third main requirement for admission is to demonstrate “sufficient income and assets to cover the cost of care.” TR 70. With regard to the “financial review” as part of the admission policy, Perl stated, “...we do that financial review to make sure that we will be able to keep the commitment that we make to people that we will care for them for the rest of their lives regardless of their financial situation.” TR 72. The record shows the following exchange on direct examination:

Q. [Mr. Shearer] And in this day and age of extended longevity and better medical care for elderly, it’s not unusual to find somebody living beyond their actuarial life expectancy; isn’t that true?

A. [Mr. Perl] That’s – yes.

It was further testified that if a resident no longer can afford to stay at Clark on Keller Lake, the resident and family meet with Mr. Perl and the director of finance to “work out arrangements so that person can continue” to live somewhere within Clark Retirement Community. If it becomes evident that a resident is no longer able to live at their current level (for example, they require skilled nursing care) the staff of Clark Retirement Community meets with the resident and the family to discuss the resident’s needs and the services available and “reach a consensus that the individual needs to move to another level.” TR 75.

Mr. Perl testified that the Residency Agreement (“Involuntary Discharge”) provides that Clark may involuntarily transfer or discharge a resident who is “delinquent in the payment of regular monthly charges for three (3) or more months...” with 30 days notice. This applies “if somebody has income and assets but refuses to make payment to Clark, even though they, as an individual, have money, and they just said to us, we’re not going to pay – and I do think this is consistent with Michigan law – then we are able to give appropriate notice and ask them to leave.” TR 77.

He further testified that this provision does not apply “if somebody runs out of funds.” TR 77. In such case, he stated that, “...we will then take care of them for the rest of their lives.” If a person “runs out of money” and is unable to make the monthly payments, then the provisions of paragraph 9 of the Residency Agreement apply, which states that the resident “may continue to live at Oxford Manor/Windsor Manor so long as he/she agrees to execute such applications and other forms [as] may be required to secure governmental financial assistance to cover the cost of the resident’s care...so long as it does not jeopardize the financial stability or operation of

Clark.” At such point in time, the cost of care would be covered by the “benevolent care program” as well as governmental funding. If the patient requires skilled nursing care, then Medicaid is available. But for those in assisted living (adult foster care) at Oxford Manor or Windsor Manor, Medicaid is not available. Clark’s skilled nursing facility is located at the Grand Rapids campus. Finally, Mr. Perl testified that Clark’s campus in Grand Rapids is exempt from property taxes as determined by the City of Grand Rapids. This includes the assisted living portion of the Grand Rapids property and the skilled nursing facility.

On cross-examination, Mr. Perl explained the admission policy, which requires a prospective resident to “affirm their willingness to live within a Christian atmosphere....” means, for example, that residents may say a prayer before breakfast, and that a resident should be aware that Clark is affiliated with the United Methodist Church and that “Christian values are espoused and discussed.” TR 122. He further stated that Clark does not discriminate on the basis of religion, race, creed, color or national origin. TR 43. A prospective resident must agree (affirm) that they are willing, able, and desire to live in a “Christian atmosphere” of an organization that was founded to serve the needs of retired ministers and others associated with the West Michigan Conference of the United Methodist Church. In his words, Clark is a very “inclusive” organization. He estimated that approximately 11% of the residents of Clark Retirement Community (including both campuses) are retired United Methodist Ministers, their spouses, widows, widowers, or deaconesses of the church, but that the majority of these residents are not at Oxford Manor or Windsor Manor.

Mr. Perl testified that fund raising activities are important to maintaining financial stability, and also that “our financially qualifying residents is another one of those” mechanisms that help maintain financial stability. If, in the future, there were too many residents in need of benevolent care Clark might need to “tighten” the admissions criteria. Mr. Perl was unable to answer the question regarding the average number of residents of Windsor Manor or Oxford Manor who receive “benevolent assistance” annually.

It’s really difficult to say, because it does vary. And, again, part of – we have owned Clark on Keller Lake just since 2001. So I can’t even tell you on an annual basis. I – we do have the documentation of who has received the services. The other thing that has happened very significantly is people who have lived at Windsor Manor have transferred to our skilled nursing facility and received benevolent care there. So I can’t really tell you on an annual basis, how many are receiving it. TR 143.

In the skilled nursing area (Grand Rapids campus), at any given time 30 to 40 percent of the residents have “run out of funds, and we’re raising funding for them.” He stated that, “A lower percent at any given time in assisted living have run out of funds. And then probably a lower percent than that in our congregate home for the aged have run out of funds.” TR 149.

Mr. Perl explained that the Grand Rapids campus includes a licensed “home for the aged,” whereas Clark on Keller Lake facilities are licensed as “adult foster care” facilities. There is no state licensure for “assisted living” but both the Grand Rapids campus and the subject facilities offer assisted living. If Clark Retirement Community has a surplus of funds at the end of a year, “It goes right back into Clark Retirement Community for improving its buildings, for providing

resident care, employee training. No individual benefits from a positive bottom line.” TR 154.

Testimony of Mr. Bruce Blalock

Mr. Bruce Blalock is the Director of Finance and Administration for Clark Retirement Community. He testified regarding Exhibit P-20, a chart also included in the Stipulation of Facts. He noted that the “gifts” for fiscal year ending April 30, 2005 on the stipulated chart shows the amount of \$875,000 and Exhibit 20 shows that the amount is \$625,000. This difference of \$250,000 is attributable to a “restricted gift that was not included on Exhibit 20.” TR 163. The restricted gift was earmarked for the renovation of one of the floors.

Mr. Blalock explained that, in the footnote to the stipulated chart (on page 5 of the Stipulated Statement of Facts), the term “benevolence” is not accurately defined. “Benevolence” is not the amount of interest earned on the restricted endowment fund transferred by the Foundation to Clark. TR 165. Rather, benevolence means “the amount of charitable care that we have actually given during the fiscal year for each respective column.” TR 164. (Respondent did not object to the above noted “corrections” to the Stipulated Statement of Facts.) Benevolent care does not involve a transfer of funds from Clark to the resident, but it is the difference between the full cost of the services provided and the reduced amount that the resident actually pays. For the fiscal year ended April 30, 2003, the Clark Retirement Community Foundation received gifts totaling \$852,748 from “third-party donors, corporations, but mainly family members and residents.” TR 168. These gifts were made to the Clark Retirement Community Foundation for the benefit of

Petitioner. If there is not enough cash in the general fund, Mr. Blalock calls for a transfer from the foundation to Petitioner.

The “Summary of Operating Revenues & Expenses” (Exhibit P-19) includes operating revenue and expenses for all of Clark Retirement Community, Inc., including the subject “Clark on Keller Lake” for fiscal years ending April 30, 2003, 2004, and 2005. The total revenues for these three fiscal years were \$16,005,283, \$15,732,532, and \$16,965,431, respectively. Operating expenses in each of these years exceeded revenues resulting in net losses of \$223,561, \$433,494, and \$155,383, respectively. Mr. Blalock testified that the property taxes for the subject property are not separately stated on Exhibit P-19, but are included in the line for operating expenses for “Keller Lake.” The amount paid for property taxes under protest upon the Oxford Manor and Windsor Manor (parcel “012”) for the years in question, were “just over \$95,000” for 2003, and “right around \$100,000” for 2004. TR 182. Assuming full occupancy (80 residents), the property taxes amount to approximately \$1,250 per resident.

Mr. Blalock testified that he determines the resident’s income and assets when a resident runs out of money and is no longer able to make monthly payments. In most cases, the monthly income is “right around \$1,000, which is almost all Social Security.” TR 184. He stated further that 99.9 percent of the time residents do not qualify for any government funding for assisted living, “So we implement our benevolent care program, which does follow the Medicaid guidelines, say you’ve gotten down to \$2,000 in assets max.” TR 184. He then examines the resident’s actual

monthly expenses including pharmaceuticals, health insurance premiums, and an estimated \$60 for personal care. TR 184. The expenses are deducted from the resident's monthly income (estimated at \$1,000), to determine the new monthly fee, which on average is approximately \$700 to \$750, according to Mr. Blalock. "You compare that to the \$3,000, or \$3,100 that we charge at Keller Lake, and it's quite a big difference" that is covered by benevolent care. TR 185. Mr. Blalock explained that a person who resides in a skilled nursing facility may qualify for Medicaid if his or her assets are less than \$2,000. Under current guidelines, the person may own a home (which is not counted in the total assets), but typically Clark residents do not own a home. Furthermore, Medicaid will cover pharmaceuticals.

In 2003, 2004, and 2005, 65 residents transferred from "assisted living" in Windsor and Oxford Manors to the skilled nursing facility at the Grand Rapids Campus. Of those 65 persons, 23 stayed permanently at the skilled nursing facility and the rest (42) returned to Keller Lake. Of the 23 "permanent transfers," nine were on Medicaid. The nine residents who transferred to skilled nursing and qualified for Medicaid also received "benevolent care." TR 179. Some or all of these nine residents had passed away as of the date of the hearing. Mr. Blalock testified that "If they're on Medicaid, they're also receiving benevolent care." TR 180. One of the residents who was rehabilitated and returned to Keller Lake received benevolent care at Keller Lake.

At the time Clark acquired the subject property, it was approximately 90 percent occupied. By the fall of 2005, the subject property was approximately 75 percent occupied. TR 181.

For fiscal year ended April 30, 2005, \$216,980 was transferred from the Clark Retirement Community, Inc. Foundation to Clark Retirement Community, Inc. for benevolent care. TR 188. However, the total value of the services provided under the “benevolent care” program for that year was \$603,072. (Exhibit P-20). This is the difference between the amount of money actually paid by those receiving “benevolent care” and the “full cost” that they would have been charged had they not run out of money. The amounts transferred from the Foundation to Petitioner do not cover the full amount of benevolent care. TR 189.

On cross-examination, Mr. Blalock reaffirmed his previous testimony that one person who transferred from skilled nursing care (at the Grand Rapids Campus) to assisted living at Clark on Keller Lake continued to receive benevolent care at Clark on Keller Lake. It is unknown how long this benevolent care continued. There was no testimony regarding any other resident of Oxford Manor or Windsor Manor who was supported by “benevolent care.”

When Petitioner acquired the subject property from the former, for-profit owner, the residents were given the choice to either enter a new contract with Clark, or to continue to reside there under the terms of the contract then in effect (with the former owners).

SUMMARY OF RESPONDENT’S DOCUMENTARY EVIDENCE

Respondent admitted the following documentary evidence:

1. Exhibit R 1 – Commercial / Industrial Property Record Card

2. Exhibit R 2 – Disclosure Statement, March 3, 2003 – Clark Retirement Community, Inc.
3. Exhibit R 3 – Clark Retirement Community Wait List Policy, March 15, 2000
4. Exhibit R 4 – “Embrace the Future” – Clark Foundation
5. Exhibit R 5 – Clark Walk – Clark Retirement Community Walk for Benevolent Care

Respondent called no witnesses, but conducted cross-examination of Petitioner’s witnesses, which is summarized above and in the Findings of Fact below, and is discussed in the Conclusions of Law section of this opinion.

FINDINGS OF FACT

The parties filed a Stipulated Statement of Facts (November 24, 2005), containing the following matters, which are adopted as the Tribunal’s Findings of Fact:

Clark Retirement Community, Inc (Petitioner, or “Clark”) was incorporated on September 19, 1913 in Battle Creek, Michigan. The “Certificate of Incorporation of the Trustees of the M.J. Clark Memorial Home of the Michigan Annual Conference of the Methodist Episcopal Church” states:

That Whereas such conference having heretofore acquired through the beneficence of Melvin J. Clark (now deceased) and his wife, Emily J. Clark, of the City of Grand Rapids, Michigan, several acres of land situated in said City of Grand Rapids, Michigan, and a large house thereon; on which property a beautiful new structure has been built largely through said Emily J. Clark’s Liberality; which premises were conveyed to the Trustees of said Michigan Annual Conference, August 23, 2005, by said Clarks, to be maintained and used as a home for superannuated members of said conference and their wives and the widows of deceased ministers and such other needy and deserving persons as said Trustees may designate; and in addition to the aforesaid gifts and grants, other

gifts and grants have been made by other persons for endowment and other purposes; and it is expected that still other gifts, grants and bequests will in future be made for the same purpose; and all of said property needs will need to be carefully and prudently managed and maintained.

* * *

The Articles identify the need to establish a “separate board of trustees to hold, control and manage said property and affairs of said home.”

As a result of the original generous gift from the Clark family and other donations, the 17 acre original campus located in the City of Grand Rapids, at 1551 Franklin SE (the “Grand Rapids Campus” or the “Franklin Campus”) was expanded and enlarged over time to include 109 congregate living rooms (home for the aged), 65 assisted living accommodations and 111 skilled nursing beds. Amenities include congregate dining, game room, library, coffee shop, greenhouse, beauty/barber shops, post office, pharmacy, convenience store, music room, chapel and administrative offices.

From 1913 until 1991, the formal name of the corporation was “The Trustees of the M.J. Clark Memorial Home.” On December 30, 1991 the name of the corporation was changed to “Clark Retirement Community, Inc.” Clark has been exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code since 1938. A copy of Clark’s tax exemption letter from the Department of Treasury is in the file and marked as Exhibit 5.

Clark has had a close historical tie with the United Methodist Church (formerly Methodist

Episcopal Church). This relationship has continued through the years. Not only do the current Bylaws refer to and incorporate verbatim the original purpose set forth in the Certificate of Incorporation which states Clark is to provide “retirement home, related nursing facilities, and such other facilities, and such other facilities and services as may be ancillary thereto for the benefit of Superannuated Ministers of the West Michigan Conference of the United Methodist Church, and other needy and deserving persons” (see page 1 & 2), but the relationship is affirmed by the fact that:

- a. Paragraph 1 of Article II of the Bylaws of Clark provides that:

The Board of Trustees shall consist of twenty-one (21) persons, each of whom shall be elected by the Annual Conference of the West Michigan Conference of the United Methodist Church. It also includes as a member of the board, the Grand Rapids District Superintendent of the West Michigan Conference of the United Methodist Church.

- b. Clark is considered an affiliated agency by the West Michigan Conference subject to the joint resolution between Clark and the Annual Conference, which defines the rights and responsibilities of the parties with respect to their debts, obligations and liabilities.

Phase I – Master Plan⁷

In 1993, Clark adopted a new Master Plan for its Grand Rapids Campus facilities that included the construction of a new skilled nursing facility, construction of a new lap pool, and other amenities. In 1993, Clark secured funding for the Master Plan through the sale of tax exempt bonds in the amount of \$9,000,370 financing and a charitable gift of \$1,000,000 from the Fred

⁷ Headings were not included in the original Stipulated Statement of Facts.

M. Keller family.

In 1995, with the assistance of donated funds and the financing in place, Clark renovated and constructed a new skilled nursing facility at the Grand Rapids Campus known as Keller Center, uniquely designed and composed of 12 “households” where 8-10 rooms surround a common living room for dining and activities, and 111 skilled nursing beds (75 private and 18 semi-private rooms) located on the second and third floors of the Keller Center. The Keller Center also contains the Dementia Center, a secured area for residents in the late stages of Alzheimer’s disease. The first floor of the Keller Center is called “Main Street” and offers services for all Clark residents including the reconstructed business office, barber/beauty shop, library, coffee shop, game room, post office and the addition of a new therapy and lap pool. The Assisted Living Center at the Grand Rapids Campus, composed of 66 private accommodations, was also renovated.

As a part of this first phase of the Master Plan, Clark also reacquired 4½ acres of vacant land at the Grand Rapids Campus from Calvin Christian Reformed Church and constructed 38 independent living units on the land to expand Clark’s “continuum of care.” This land and the 38 living units have been treated as a separate tax parcel by the City of Grand Rapids and is subject to real estate taxes. The remainder of Clark’s Grand Rapids Campus facilities has been treated as tax exempt for many years by the City of Grand Rapids.

In order to enhance its non-profit fund raising activities for its residents, Clark established a separate Section 501(c)(3) corporation on December 21, 1994 known as Clark Retirement Community Foundation (the “Foundation”). The Foundation was recognized as an organization exempt from Federal income tax under Section 501(c)(3) on August 7, 1995. Exhibit B is a letter from the IRS dated August 7, 1995, attached to the Stipulation of Facts. Among purposes identified for creating the Foundation as described in Article II of its Articles of Incorporation are the following:

- A. To provide funds for Benevolent Care for the residents at Clark Retirement Community, Inc.
 - B. To provide for Capital needs of the residents of Clark Retirement Community, Inc.
 - C. To hold and disburse gift income for Clark Retirement Community, Inc.
- * * *
- F. Build endowment funds for Benevolent Care, Capital needs and community needs.
 - G. To raise funds through annual drives, planned giving, and special events to be used for the purposes set forth in these Articles.

During the fiscal years 2002 through 2005, the total giving to Clark from the Foundation in the form of “benevolence” and “gifts” was as follows:

	ACTUAL					PROJECTED		
	Fiscal Years Ending				5 Months			
Organization Wide	4/30/02	4/30/03	4/30/04	4/30/05	4/30/06	4/30/06	4/30/07	4/30/08
Benevolence	260,813	259,994	430,764	603,072	320,603	750,000	1,000,000	1,250,000

Gifts	635,164	852,748	595,979	875,761	224,064	750,000	1,000,000	1,250,000
Endowment Amount	1,872,827	2,221,300	2,105,544	2,412,657	2,494,649			

* The term “benevolence” is the amount of interest earned on the restricted Endowment funds transferred by the Foundation to Clark, and “gifts” are annual transfers of unrestricted funds from the Foundation to Clark. The “Endowment Amount” is the total principal of the restricted Endowment for each year⁸

⁸ The Tribunal notes that this Stipulated Fact was corrected by the testimony of Respondent’s witness, Bruce Blalock, as summarized in the previous section of this Opinion.

Phase II – Master Plan (The Subject Property)

In 2001, in order to meet the growing needs of the elderly in the community and fulfill Clark's mission, vision and values as part of Phase II of the Master Plan, Clark purchased property from Somerset Management LLC and Zylstra Land Company, consisting of approximately 31.79 acres of land, 2 single story 48 room buildings, a storage building, lake and wetlands, for the sum of \$9,800,000 with the assistance of another \$1,000,000 gift from the Keller family and additional financing (the "Keller Campus").⁹ The 2 single story 48 room buildings, and the land upon which they are located, constitute the subject property.

The subject parcel includes Oxford Manor, a single story, 22,750 square foot building, containing 48 resident rooms and occupants, each with a private bath built in 1994, and Windsor Manor, a single story, 25,200 square foot building, containing 48 resident rooms and occupants, each with a private bath built in 1998 (hereafter "Oxford" and "Windsor" or sometimes "the Manors.")

At the time of acquisition, the Manors had been licensed as adult foster care facilities by the Bureau of Family Services with an allowable capacity of 96 residents (48 in each building).

After the Manors were purchased, the Bureau refused to grant Clark renewal of the licenses with variances to permit 96 persons. Instead, the licenses were issued with a total occupancy limit to 80 persons.

⁹ The "Keller Campus" is also referred to as "Clark on Keller Lake."

In December 2001, Clark filed an Application for Tax Exempt Status with the Kentwood City Assessor for the Manors parcel. Its application for exemption was based on Clark's historic tax exempt status under Section 501(c)(3) of the Internal Revenue Code and Section 7o of the General Property Tax Act, being MCL 211.7o. The City Assessor for Respondent, City of Kentwood, granted the parcel tax exempt status for the 2002 tax year. [Attached to the Stipulation in the Tribunal's file, as Exhibit C, is the assessment change notice indicating that the property's taxable value, assessed value and state equalized value was reduced to zero due to the determination that the property was exempt.]

Petitioner uses Windsor and Oxford Manors as assisted living centers for those residents in the continuum of care who have some various degrees of dementia. One wing of Oxford Manor is designed as a "secure facility" for residents in later stages of Alzheimer's Disease.

Residency Agreement – Entrance Fee- Monthly Rate

Each resident admitted to Oxford and Windsor Manors enters into a Residency Agreement with Clark, requiring payment of an entrance fee plus monthly rates to defray the cost of care. The Residency Agreement assures that each resident has the opportunity to move through each level of the continuum care based on that person's medical information and functional assessment.

In order to be eligible for admission to Oxford or Windsor, a person must meet the following requirements:

- A. Be 62 years of age or older without regard to race, creed, color or national origin who affirm their willingness to live within the Christian atmosphere of Clark Retirement Community.
- B. Willing to live at the appropriate level on the continuum care based on medical information and functional assessment.
- C. Have sufficient income and assets to cover the cost of care.

The Oxford and Windsor Manor Admission Policy provides with respect to Financial Eligibility as follows:

- i. Admissions of persons unable to meet the full cost of care during the expected life will occur to the extent that Clark Retirement Community is able to find alternative means to support the full cost of care for these persons.
- ii. On an annual basis the Board of Trustees will determine the number of persons that can be supported through benevolent giving and other means.
- iii. A record of current and potential public assistance residents will be maintained to assure that this procedure remains under control with a variance of not more than 10% from the levels established by the Board of Trustees on an annual basis.

With respect to an applicant's medical condition, the policy states "Assisted Living is designed for persons who need assistance with various activities of daily living such as dressing, bathing, walking to and from meals and remembering." The only medical restriction or condition upon admission is that the applicant cannot have a "medical condition which might pose a threat or danger to the well being of the residents or employees."

In addition to the foregoing regulations, Petitioner's policy regarding residents who have financial difficulties states as follows:

In the event the Resident, through no fault of his/her own becomes financially unable to make payments required for the Resident's care and support as determined by Clark Retirement Community, the Resident may continue to live at Clark Retirement Community so long as he/she agrees to execute such application and other forms as may be required to secure governmental assistance to cover the cost of resident's care in accordance with the terms of his agreement and so long as it does not jeopardize the financial stability or operations of Clark Retirement Community. [emphasis added]

Over the past three fiscal years, gifts and bequests have constituted an average 5.25% of Clark's total revenues. Clark has relied on volunteer giving by residents, family members and "friends of Clark" who cover the cost of providing care to those residents who are unable to pay the annual cost of their care. Between 2003 and 2005, the number of individuals making charitable gifts to Clark has increased from 1,248 to 1,385 as a result of Clark's annual giving campaigns.

Without its annual fund raising and its planned giving program Clark would not be able to continue to provide benevolent care to its residents. In this past fiscal year, a nonresident donor took the steps necessary to create a gift, to be received over time, with a current value amounting to \$6 million for the benefit of Clark's benevolent care endowment.

As a part of and in fulfillment of its non-profit charitable purpose, Clark provides the following additional services to the community:

1. Clark provides for direct admission to the Keller Center skilled nursing facility (located at the Grand Rapids Campus) of patients from area acute care hospitals notwithstanding the fact that the direct admittees' sole source of payment is through Medicaid.
2. Clark regularly provides students from local high schools, colleges and universities the opportunity to learn through internships and hands-on clinical experience at Clark as a part of their studies.
3. Clark provides intergenerational activities and events between residents of Clark and K-12 school students.
4. Clark makes its chapel and other facilities such as the "congregate dining area" available for community, and family events.

The events giving rise to this appeal are as follows:

- a. On December 27, 2001, Clark applied for tax exemption for the Manor Parcel. On February 7, 2002, Clark received notification that the City Assessor for Respondent had determined the Parcel was exempt from real estate taxes for the 2002 year.
- b. On February 11, 2003, Petitioner received a notice of assessment from Respondent indicating the City has reclassified the Parcel to taxable commercial real estate and placed a value on it for the 2003 tax year of \$1,956,100 (see attached *Exhibit D*). [Attached to the Stipulation in the Tribunal's file, is Exhibit D, the assessment change notice for 2003 indicating that the property's taxable value, assessed value and state equalized value were increased from zero to \$1,956,100 due to the determination that the property was not exempt.]

- c. On February 14, 2003, Clark filed a letter application to Respondent's City Assessor requesting that its charitable exemption be restored for the 2003 tax year, attached as Exhibit E to the Stipulation in the Tribunal's file.
- d. On February 24, 2003, Clark received notification that Respondent's City Assessor had denied the request and that an appeal should be filed with the Kentwood Board of Review. [Attached to the Stipulation in the Tribunal's file is Exhibit F, which is a copy of the letter.]
- e. On February 25, 2003, Petitioner filed an appeal of the assessed value to the Kentwood Board of Review. [Attached to the Stipulation in the Tribunal's file is Exhibit G.]
- f. Following a hearing on March 4, 2003, Clark received notification on April 25, 2003 that its appeal had been denied and that the final state equalized and assessed value of the Parcel for the 2003 year would be \$1,956,100.
- g. On June 24, 2003, Clark filed its appeal with the Michigan Tax Tribunal seeking relief.

In each of the tax years 2004 and 2005, Respondent, City of Kentwood, has continued to treat the Parcel as taxable and has made adjustments in the tax assessment for each year. Clark, in turn, has paid any and all taxes assessed for 2003, 2004 and 2005 under protest and has filed a motion to amend its original petition of appeal with the Michigan Tax Tribunal to include the question of whether its Parcel should be tax exempt for 2004, 2005, and 2006 as well. The principal issue in this case is whether or not Clark's Manor Parcel is tax exempt under MCL 211.7o.

Additional Findings of Fact

In addition to the stipulated facts, the Tribunal finds by a preponderance of the evidence that “Windsor Manor North” is licensed to Clark Retirement Community, Inc. (“licensee”) for “Adult Foster Care,” issued under 1979 PA 218. The License document (Exhibit P 8-1) describes the licensed programs as: “Aged” and “Alzheimers.” Oxford Manor West is also licensed for the same purpose under a separate license. (Exhibit P 8-2).

Windsor Manor South is licensed for “Adult Foster Care” with programs stated for “Aged.” Exhibit P 8-3. Oxford Manor East is licensed for the same purpose as Windsor Manor South (Adult Foster Care for the “Aged”). Exhibit P 8-4.

Oxford Manor West, Oxford Manor East, Windsor Manor South, and Windsor Manor North, are each licensed as an “adult care large group home” with an approved capacity of not more than 20 residents each. Exhibit P 10-1 through 8.

Oxford Manor and Windsor Manor include private rooms with half or full bath. Windsor Manor includes private efficiency rooms with a full bath, two closets, a dining area, full-sized refrigerator, microwave, and two-burner cook top. All rooms are located near a group dining room. “Resident care aides” provide assistance and monitoring of residents. Exhibit P 15.

Petitioner’s Exhibit 16 describes “benevolent care” as follows:

Benevolent care pays for the care of the people who live at Clark who have completely run out of funds. These people are very old, very fragile and most of them are suffering from Alzheimer's disease or another form of dementia. These people need care for many years. At Clark we do not turn out people who can no longer pay. We do this because it is our ministry and it is also the right thing to do. The need for benevolent care continues to grow each year. With people living longer and the cutbacks in Medicare, Clark cannot take care of these people alone. We need help for their care. All donations to the Someone Special program will go to help these special people at Clark.

Respondent's Exhibit 4 states that between 50 and 60 residents receive financial assistance from the benevolent care program "at any given time," but it does not state that these individuals reside at Oxford Manor or Windsor Manor. It further states that residents may run out of money for various reasons, including Alzheimer's disease. "This disease can take years to run its course and unfortunately, for much of that time, full time nursing care is required. It is not hard to understand how a person's funds can be depleted when so much care is required for so long." Exhibit R 4.

On cross-examination, Mr. Perl stated he did not know how many *residents of Windsor Manor and Oxford Manor* receive benevolent care annually. "...we have owned Clark on Keller Lake just since 2001. So I can't tell you on an annual basis. I – we do have the documentation of who has received the services." TR 143. He also stated that residents of Windsor Manor have transferred to the skilled nursing facility and received benevolent care there. TR 143. He stated that "at times" Clark will admit a person directly into skilled nursing care even though they are receiving Medicaid. Such a person would not meet the financial eligibility requirements for the usual monthly payments from their personal finances.

Petitioner's Executive Director testified that if a resident is no longer able to live at his or her current level, staff meets with the resident and the family to discuss the resident's needs and the services available and they "reach a consensus that the individual needs to move to another level." TR 75. According to the Clark Retirement Community, Inc. Residency Agreement, the Executive Director has sole discretion to determine that a resident no longer meets the criteria for residency in assisted living at the subject property. The agreement provides that "if conditions should develop that in the opinion of the Executive Director, the resident no longer meets the criteria...for residency" the person may be transferred. The criteria include that the resident "is able to live safely and care for [himself / herself] within the available services." In such case, "arrangements will be made for living in the Health Center, or some other facility better able to supply the services needed." Exhibit P-25, page 2, paragraph 5.

The Executive Director also has authority to determine that the resident must be permanently transferred to the Health Center, in which case the Oxford or Windsor Manor accommodations and obligations thereunder are terminated, and the resident shall pay the monthly charges as specified for such occupancy. Exhibit P-25, page 2, paragraph 3. The Residency Agreement further provides: "Clark Retirement Community will not terminate a Residency Agreement without thirty (30) days notice unless Clark Retirement Community provides access to an adequate alternative facility." Exhibit P-25, page 5, paragraph 9. b. (6).

Petitioner's Exhibit 15 describes "Clark on Keller Lake" as assisted living care in two centers with care focused on residents who require a high level of assistance or who suffer from dementia and Alzheimer's disease. Also located at "Clark on Keller Lake," *but not subject to this appeal*, are the town homes that feature "gracious living in a serene and natural setting...with sizes ranging from 1,550 – 1,725 square feet and feature cathedral ceilings, one or two car garages, master bedroom suites, and solariums."

Also included with Petitioner's Exhibit 16 is an "Application for Residency" for the subject property which requires the applicant to disclose the following assets: "Checking Account(s); Certificate(s) of Deposit; Trusts; Bonds; Real Estates; Saving Account(s); Money Market(s); Stocks; Mutual Funds; Other Major Assets." The applicant must also disclose all liabilities and income sources. Furthermore, by signing the application, the applicant affirms that, "The assets listed above are pledged for the care of the resident."

Mr. Perl answered questions related to the "Clark on Keller Lake Admission Policy" (Exhibit P-7) and the provision regarding "Admissions of persons unable to meet the full cost of care during the expected life...." The policy states that such admissions will be made "to the extent that Clark Retirement Community is able to find alternative means to meet the full cost of care for these persons." Mr. Perl was asked, "What if the alternative means weren't there?" He responded that Clark would need to "tighten the admission criteria," which had occurred once approximately 20 years ago. If the admission criteria ever needed to be "tightened" again, it

would be done “in a way that we would be sure that we could care for those that we were already serving.” His response did not address the primary point of the question, which pertained to the financial eligibility requirements for admission. However, the admission policy clearly provides that a determination is made regarding the applicant’s ability to “meet the full cost of care during the expected life....” In other words, Clark considers the applicant’s age, health and “life expectancy,” as well as the financial assets available to make the monthly payments during that life expectancy. The applicant must pledge all his or her income and assets for the support of the cost of care. While this does not *ipso facto* disqualify Petitioner from the exemption, it does establish that Clark Retirement Community does not generally accept low-income persons for residency. Rather, under the admission policy, the general rule for requirement for admission is that a person must demonstrate that they have sufficient finances to pay “the full cost of care” during their life at Clark on Keller Lake. The full cost of care, as set forth below, is substantial. The exception to the rule is that Clark *may* accept a person whose finances fall short, but only if Clark determines that there are sufficient “benevolent care” funds. Again, there is no evidence that anyone has been admitted to Oxford Manor or Windsor Manor who did not demonstrate the ability to pay the full cost.

Mr. Perl’s answer addressed the issue of what happens when a resident outlives his or her life expectancy and therefore runs out of money. There was no clear discussion of exactly what analysis takes place regarding how a person’s assets and life expectancy influence the decision to accept or reject a person from Clark on Keller Lake. It is accepted as true that once a person is

admitted to Clark on Keller Lake (once the person demonstrates to the satisfaction of Clark that they have sufficient assets to pay for care during their expected life) they will never be required to leave due to lack of funds. However, this does not address the main issue, which is how does Clark treat applicants who do not have “sufficient funds to pay for the full cost of care” at the time of admission. Mr. Perl stated that “20-some years ago” there were a growing number of Medicaid residents so the board had to “tighten the admissions process.” This is interpreted to mean that the board required a higher level of income or assets as a requirement for residency.

Based on Mr. Perl’s testimony regarding the requirement that a person must affirm his or her willingness to live in a Christian atmosphere, it is apparent that in practice, as long as a person does not object, he or she would be accepted for residency, as long as the other requirements are met. It is accepted as true that Clark does not consider religion (i.e., does not discriminate based on creed or religion) in the admissions process.

CONCLUSIONS OF LAW

Petitioner’s motions to amend the Petition to add the 2005 and 2006 tax years were granted. Petitioner’s claim for exemption under MCL 211.7d is deemed abandoned, there being no evidence admitted and no arguments made in Petitioner’s legal briefs on this issue.

The legal question is whether the subject property is exempt from property taxes under MCL 211.7o. Petitioner bears the burden of proving that it is entitled to the exemption by a

preponderance of the evidence. *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).

The General Property Tax Act (“the Act”) provides for the annual assessment and taxation of all real and personal property within the state unless expressly exempted. “The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day....” MCL 211.2(2). The relevant, material facts do not vary significantly for each of the tax years in question. Based on the above findings of fact and the following legal analysis, the Tribunal concludes that Petitioner has not met its burden of proof that the subject property is exempt from *ad valorem* property taxes under MCL 211.7o.

“The property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act.” MCL 211.7o(1). In *Michigan Baptist Homes & Development Company v City of Ann Arbor*, 396 Mich 660 (1976), the Michigan Supreme Court narrowly interpreted this exemption, and applied the following criteria:

1. The real estate must be owned and occupied by the exemption claimant;
2. The exemption claimant must be a library, benevolent, charitable, educational, or scientific institution;

3. The exemption claimant must have been incorporated under the laws of this State¹⁰;
4. The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.

Petitioner owns the real estate, and “occupies” it as that term is used in MCL 211.7o. *Kalamazoo Nature Center v Cooper Township*, 104 Mich App 657; 305 NW2d 283 (1981); *Holland Home v City of Grand Rapids*, 219 Mich App 384; 557 NW2d 518 (1996). However, Petitioner has not proven that it is a “charitable” institution that occupies the subject property solely for its charitable purposes, for reasons discussed hereafter.

After the date of the hearing and after the Post-Hearing Briefs were filed, the Michigan Supreme Court issued its decision in *Wexford Medical Group v City of Cadillac*, 474 Mich 102; 713 NW2d 734 (2006), which reaffirmed the “widely used definition” of “charity”:

[Charity] * * * [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or 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.” [*Id.* at 348-349, 330 N.W.2d 682, quoting *Jackson v. Phillips*, 96 Mass (14 Allen) 539 (1867) (emphasis deleted; alterations in original).] *Wexford*, 211.

Wexford also identified six factors relevant to the determination of whether an organization meets the definition of “charity” that was first set forth in *Retirement Homes*, *supra*.

¹⁰ The third requirement is not at issue and has been held unconstitutional by appellate courts.

In light of this definition, certain factors come into play when determining whether an institution is a "charitable institution" under MCL 211.7o and MCL 211.9(a). Among them are the following:

- (1) A "charitable institution" must be a nonprofit institution.
- (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.
- (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.
- (4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
- (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
- (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year. *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 215; 713 NW2d 734, 746 (2006).

In *Wexford*, the court restated the inquiry as originally framed in *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Township*, 416 Mich 340; 330 NW2d 682 (1982), pertaining to the tax exempt status of independent living apartments for seniors: "Does Retirement Homes operate the apartments in such a way that there is a 'gift' for the benefit of 'the general public without restriction' or 'for the benefit of an indefinite number of persons'?" *Id.* at 349, 330 NW2d 682. In that case, the Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc. owned a facility that included a licensed nursing home, a licensed home for the aged, and the Chelsea Village Apartments. The

nursing home and home for the aged were admitted to be exempt and were not in dispute -- only the Chelsea Village Apartments were at issue. The court held that the apartments were not exempt and that residents did not “receive any significant benefit that they do not pay for” and therefore, there is no “gift to the residents.” Furthermore, the residents were generally in good health and able to live independently, both physically and financially. The *Wexford* opinion cited from *Retirement Homes* as follows:

[T]here is no “gift” for the benefit of an indefinite number of persons or for the benefit of the general public without restriction in the operation of the apartments. The monthly fee is designed to cover all operating costs as well as to recover the construction costs of the apartments. While it does not appear that the apartments are operated for a profit, neither does it appear that the residents receive any significant benefit that they do not pay for. There is no “gift” to the residents. The operation of the apartments does not appear to benefit the general public. Its residents are chosen on the basis of their good health, their ability to pay the monthly charge, and, generally, their ability to live independently. [*Id.* at 349-350, 330 NW2d 682.] *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

The following passage from *Wexford* is on point:

Petitioner is also fundamentally different from the Hillside Terrace home for the aged in *Michigan Baptist, supra*, and the apartment complex in *Retirement Homes, supra*. In both of those cases, the cost of maintaining the institutions was covered by fees collected from the residents. Prospective residents whose health or financial status did not meet strict requirements were not accepted. And although the petitioner in *Michigan Baptist* made some small exceptions in that regard, the general rule was of an exclusionary nature, not a charitable one. *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

In holding that the nonprofit hospital, Wexford Medical Group, was entitled to an exemption under MCL 211.7o, the Court stated:

Petitioner has a charity care program that offers free and reduced-cost medical care to the indigent with no restrictions. It operates under an open-access policy under which it accepts any patient who walks through its doors, with preferential treatment given to no one. Although petitioner sustains notable financial losses by not restricting the number of Medicare and Medicaid patients it accepts, it bears those losses rather than restricting its treatment of patients who cannot afford to pay. *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

Wexford Medical Group was held to be a charitable institution that exists for, and carries out, the purpose of giving a gift for the benefit of an indefinite number of persons *by providing free and below-cost medical care to anyone who needs it without qualification*. Furthermore, it realized no pecuniary gain. As such, Wexford Medical Group was entitled to an ad valorem tax exemption. *Id.* 222.

The six factors enumerated by the Supreme Court must be applied along with the recognized statutory definition of charity, on a case-by-case basis, with special attention paid to published cases involving similar facts. In applying the relevant factors to the subject property, the Tribunal concludes as follows:

(1) A "charitable institution" must be a nonprofit institution.

Petitioner is a “nonprofit institution” organized under the Michigan Nonprofit Corporation Act. There is no evidence that any profit, dividend, or pecuniary benefit is paid to or otherwise inures to any private shareholder or other person. In *Gull Lake Bible Conference Association v Township of Ross*, 351 Mich 269; 88 NW2d 262 (1958), the court held that, “[A]side from modest salaries paid to necessary employees, no individual receives any pecuniary benefit from

its operation.” Therefore, it can be concluded that excessive salaries may constitute an impermissible “pecuniary benefit” to a private individual. Under the Michigan Nonprofit Corporation Act, compensation paid to an officer or employee, must be “reasonable.” MCL 450.2301.

The Court of Appeals has held that an organization’s federal income tax exemption under IRC 501(c)(3) has little or no relevance to our present inquiry. *American Concrete Institute v State Tax Commission*, 12 Mich App 595, 606 (1968). Although the exemption under Michigan property tax law (MCL 211.7o) is stricter than federal income tax law, it is nevertheless helpful to look to federal tax law principles on the limited issue of what constitutes reasonable compensation for an officer of a charitable organization, such as whether the compensation was decided by an independent board, whether the compensation is consistent with salaries paid by similar organizations for similar services, and whether the basis for determining compensation was documented. All items of compensation are taken into account. See Treas. Reg. § 53.4958-6(c)(2)(iii); *Founding Church of Scientology v United States*, 412 F 2d 1197; 188 Ct Cl 490 (Ct Cl 1969), *cert denied*, 397 US 1009, 90 S Ct 1237, 25 L Ed2d 422 (1970); and *World Family Corp v Commissioner*, 81 TC 958, 1983 WL 14904 (1983). In *Founding Church of Scientology*, the court held:

... [P]ayment of reasonable salaries by an allegedly tax-exempt organization does not result in the inurement of net earnings to the benefit of private individuals. Of course, ... excessive salaries do result in inurement of benefit. As always, whether the salaries paid are reasonable is a question of fact. *Id.* at 1198.

In *World Family Corp*, the United States Tax Court examined the issue of compensation to private individuals who served as officers and directors of a sec. 501(c)(3) tax exempt organization. *Id.* at 959.

It is well established that an exempt organization is entitled to pay reasonable compensation for services without endangering its exemption. Such payments are permissible even though they are made to the organization's trustees, officers, or founders; the issue is whether the payments are reasonable. *Id.* at 968.

Generally, compensation is reasonable if the transaction is approved by the organization's governing body or committee which is composed entirely of individuals who do not have a conflict of interest who (i) relied upon appropriate data as to comparability prior to making their determination, and (ii) adequately documented the basis for their determination. In this case, there is no allegation or evidence that compensation paid to any individual is unreasonable so as to contravene its nonprofit status under Michigan law.

(2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.

Petitioner is organized chiefly to provide retirement home, related nursing facilities, and such other related facilities and services for certain elderly persons in need of such services. There are two parts to this inquiry. First, the Tribunal must examine the stated purpose of the organization in its articles, bylaws, written policies, and other sources. Second, the Tribunal must determine whether the organization acts in conformity with its stated purpose. It is not enough that the exemption claimant perform good works, but it must prove that it provides charity, which has

been defined as “a gift...for the benefit of an indefinite number of persons...either by bringing their minds or hearts under the influence of education or religion, relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life...or otherwise lessening the burdens of government.” *Wexford*, 215. Part of the inquiry focuses on the type of charity provided.

It is concluded that Petitioner uses the subject property to relieve persons from “disease, suffering or constraint” and also to assist persons to “establish themselves for life,” which are two charitable purposes set forth in case law. *Wexford*, 211. The assisted living services provide a benefit to elderly persons who cannot care for themselves due to dementia or Alzheimer’s. Furthermore, Petitioner provides an atmosphere that is conducive to bringing “minds or hearts under the influence of religion,” which has been expressly recognized as “charitable” in nature. *Wexford*, 211. Petitioner employs a full time chaplain and offers religious services in its chapel. Clark is able to provide more hours of care per day for each resident than a similar, for-profit institution, based on the testimony of Mr. Blalock. The bylaws state that Clark serves “needy and deserving persons.” Therefore, it is concluded that the articles and bylaws of Clark state a charitable purpose and it actually performs certain activities that are charitable in nature, as discussed above. However, its written policies and actual practice impose financial restrictions that are not consistent with the legal requirement that its activities must constitute a “gift” in order to be truly “charitable” within the meaning of MCL 211.7o.

Case law requires that Petitioner must provide a “gift” for the benefit of an indefinite number of persons or for the benefit of the general public without restriction. An organization that provides a service that is charitable in nature (such as relieving a person from suffering or helping establish them for life) must further prove that it provides a “gift” as defined by case law. There was no question in *Wexford* that the taxpayer, a nonprofit hospital, “relieved persons from suffering” but the analysis did not end there. The court further considered the restrictions (or lack of restrictions) on the care provided. In *Wexford*, it was crucial that the hospital treated anyone who needed care, without regard to the person’s ability to pay. (However, the level of free or “charitable” care is not relevant because no such threshold is set forth in the statute.)

In this case, there was testimony that charitable donations were used to acquire the subject property and to help support operations. These donations allegedly result in lower fees to residents. However, it has not been demonstrated in any concrete or direct manner that this constitutes a gift to the residents of Oxford Manor or Windsor Manor. There is evidence that the charitable donations are used to support those receiving “benevolent care” in the skilled nursing center (not the subject property). It has not been proven that the residents of Oxford Manor or Windsor Manor receive any “significant gift” that they do not pay for.

In *Wexford*, the Supreme Court held:

First, whether the organization claiming the exemption is a charitable one; and, second, whether the property on which the exemption is claimed is being devoted to charitable purposes. In general, it may be said that any body not organized for profit, *which has for its purpose the promotion of the general welfare of the*

public, extending its benefits without discrimination as to race, color, or creed, is a charitable or benevolent organization within the meaning of the tax exemption statutes... the fact that a charge is made for benefits conferred, against those who are able to pay, in no way detracts from the charitable character of an organization. *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 206-207, 713 NW2d 734, 742 (2006).

In our present case, a charge is made against those who are “able to pay” – however, all residents of the subject property are able to pay, with one isolated exception. It has not been demonstrated that the operation of the subject property promotes the “general welfare of the public without restriction” or provides a gift to an “indefinite number of persons.”

It must be noted that “charity” within the meaning of MCL 211.7o is not limited to dispensing money or goods to the poor. The courts have rejected an overly narrow interpretation that would limit the exemption to charitable institutions that are “kind and generous in giving money or help to those in need.” In *Edsel & Eleanor Ford House v Village of Grosse Pointe Shores*, 134 Mich App 448, 456; 350 NW2d 894, 897 (1984), although the claimant did not provide aid to the poor, it nevertheless offered its cultural and historical center and accommodations *to the general public without restriction*. The Edsel & Eleanor Ford House was open to the public. Groups could use it for various functions for fees far below maintenance costs. *Id.* 460.

It has been held that providing *low-cost* day care services for children of low-income families promotes the general welfare. In *Association of Little Friends, infra*, the day care services were available at low cost to an indefinite number of persons and the property used for that purpose

was exempt. *Michigan Sanitarium & Benevolent Ass'n v Battle Creek*, 138 Mich 676; 101 NW 855 (1904), held that a nonprofit hospital was entitled to a property tax exemption where the hospital treated some patients for free and some at a reduced rate, notwithstanding that most patients paid a regular schedule of fixed fees. Those unable to pay were not refused services. Part of Petitioner's purpose is to provide its services to "other needy and deserving" persons; however, Petitioner has not proven that it admits financially needy persons for residency. Petitioner's financial restrictions upon admission prevent it from operating primarily if not solely for charity. It cannot be concluded on this record that providing assisted living services to seniors who have the financial means to pay the full cost promotes the general welfare of the people of the state of Michigan or benefits an indefinite number of persons.

(3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.

The Tribunal must analyze the financial restrictions, the benevolent care provisions in Clark's Admissions Policy, as well as Clark's purpose to serve "superannuated ministers" and other "needy and deserving persons." It is concluded Clark's financial restrictions upon admission to the subject property prevent it from serving "any person who needs the particular type of charity." The parties stipulated to the following:

In order to be eligible for admission to Oxford or Windsor, a person must meet the following requirements:

- A. Be 62 years of age or older without regard to race, creed, color or national origin who affirm their willingness to live within the Christian atmosphere of Clark Retirement Community.
- B. Willing to live at the appropriate level on the continuum care based on medical information and functional assessment.
- C. Have sufficient income and assets to cover the cost of care.

Michigan Sanitarium and Benevolent Association v Battle Creek, 138 Mich 676; 101 NW 855 (1904), involved a hospital that accepted “indigent or other sick and infirm persons.” *In Gundry v RB Smith Memorial Hospital Association*, 293 Mich 36; 291 NW 213 (1940), the hospital did not refuse admittance to any poor person due to inability to pay. That case also held that a tax exempt charitable organization must have for its purpose the “promotion of the general welfare of the public.” In the case of a hospital, this requirement was met because the hospital accepted anyone for treatment without regard to their ability to pay. It offered care to *any person who needs the particular type of charity being offered*. Likewise, in *Wexford*, the hospital had an “open access policy under which it accepts any patient who walks through its doors.” *Id.* 216. In the above “hospital” cases, it did not matter how many persons were served, but that the hospital was willing and able and actually served those indigent persons who needed care.

In this case, Petitioner argues, “Although admission to Clark involves an evaluation of an applicant’s income, conditions, life expectancy and functional needs, its facilities are available to

all without regard to race, creed or color.” Petitioner’s Post-Hearing Brief, p 12. It is not disputed that Clark does not unlawfully discriminate on the basis of any legally protected characteristic. However, Petitioner only accepts for admission those who demonstrate the ability to pay the full cost during their expected life as determined by Petitioner at the time the person applies for residency. There is no evidence that Petitioner accepts the indigent for admission to Oxford Manor or Windsor Manor.

In *Wexford*, the Supreme Court discussed *Michigan Baptist Homes*, which involved a taxable nursing home that offered reduced rates to only four of its 72 residents in one year and waived the fees for another. The nursing home residents were “... hand-selected by the establishment after an application process that asked them to fully detail their financial status and their health.” *Wexford*, 208. Petitioner is similar to the non-exempt licensed “home for the aged” (“Hillside Terrace”) in *Michigan Baptist*. Petitioner requires full disclosure of income and assets and considers a person’s health and life expectancy before admitting them. The “benevolence” in our present case is only extended to persons who are admitted for residency based on their ability to cover the cost of their care during their expected life. There is no evidence that Petitioner accepts the “indigent.” In *Michigan Baptist*, those who could not show sufficient means or who were in less than reasonably good health were, in large part, rejected. Petitioner argues that, “At any one time during the year, as many as 30 to 40 residents in Clark’s Continuum of Care receive benevolent care which is provided in the form of reductions or total elimination of monthly rates and charges to those persons in need.” Petitioner’s Post-Hearing Brief, P 12. However, the

testimony established that almost all of these patients were transferred from the subject property to Clark's skilled nursing facility in Grand Rapids. Only one patient at Clark on Keller Lake received benevolent care, according to Mr. Blalock's testimony. There is no evidence that any other patient received benevolent care at Clark on Keller Lake.

Restrictions that exclude a resident based on the ability to live independently have been cited as a factor that weighs against granting an exemption in a case involving "independent living" apartments. *Retirement Homes, supra*, 350; *Michigan Baptist, supra*, 669. In *Retirement Homes*, the relative good health of those residents militated against tax exempt status. In our case, due to the nature of the services provided at the subject property, persons who need 24-hour skilled nursing care are not admitted to Oxford Manor or Windsor Manor. Residents must submit health information and a physical examination to determine the level of care that is appropriate.

Although the health requirements exclude persons based on their physical condition, it cannot be concluded that this is an improper restriction or discrimination. In part, the health requirements merely identify those persons who need the particular type of service being offered (assisted living for seniors - particularly those with dementia or Alzheimer's) as distinguished from persons able to live independently, or who need more intensive, skilled nursing care. In this case, it cannot be concluded that the health restrictions alone are a factor that supports denial of the exemption.

However, the health information also serves the purpose of determining the person's life

expectancy, which is an aspect of the financial requirements. Petitioner argues that each resident has the “right and privilege of remaining as residents even when the residents no longer have the money to pay full resident fees. No one has ever been asked to leave Clark in its 99 years because of the inability to pay resident fees.” Petitioner’s Post-Hearing Brief, p 13. This statement obscures that fact that this applies only to those fortunate enough to have gained admission based on the strict criteria designed to qualify only those whose finances are sufficient to cover the full cost of care during their expected life. Only those who out-live their projected life expectancy, and therefore “run out” of money, benefit from the “benevolent care” program. That program is not available to any person who needs this type of charity.

In *Holland Home*, the residents of the independent living apartments for seniors were also promised continuing care in the event they exhausted their financial resources as long as that resident applied for public assistance. The Supreme Court held this was not a charitable “gift.” Holland Home had never granted complete waivers of its entrance fees, had granted only three partial waivers in 1987 totaling \$51,900, and the service was provided at a sizable cost given that entrance fees ranged from \$72,700 to \$194,000.

In this case, petitioner's continuing care plan is contained within the agreement between petitioner and its residents.... The agreement is a contract because petitioner offers the resident a home and care under certain terms and conditions, the resident accepts the offer as extended, the resident pays the entrance fees and promises to pay the monthly fees, and petitioner promises to extend care even when the resident can no longer pay. In addition, the continuing care plan is a legally enforceable, binding promise, imposing a duty on petitioner to provide its residents with care after the exhaustion of the residents' financial resources as long as the residents have applied for the available public assistance. Restatement

Contracts, 2d, § 1. *We therefore conclude that petitioner's continuing care plan cannot be a gift because a gift requires no pecuniary consideration. Holland Home v City of Grand Rapids*, 219 Mich App 384, 399-401; 557 NW2d 118, 124 - 125 (1996).

Under its “Admission Policy,” Clark is under no obligation to serve “any person who needs” assisted living services. There are undoubtedly many persons who need *the particular type of charity being offered* but who are excluded due to inability to meet the financial requirements. Clark does not use the subject property for the benefit of “needy” persons generally. The financial restrictions in this case preclude a finding that there is a charitable gift to residents. These restrictions are a basis for “discriminating” or choosing from the group it purports to serve, who deserves the services. Clearly, many who need this type of charity are excluded based on the financial requirements. There is no evidence that the admission requirement for financial eligibility has ever been waived in whole or in part.

Mr. Perl testified that Clark recently implemented a program under which certain low-income employees could qualify for residency regardless of their ability to pay; however, there is no evidence that any employee has been admitted yet under this new program. There is no legal authority to support a conclusion that providing such a benefit to long-term employees demonstrates that Clark extends its services as a gift to an indeterminate number of people.

The admission policy also provides that admission of persons “unable to meet the full cost of care during the expected life will occur to the extent that Clark Retirement Community is able to find alternative means to meet the full cost of care for these persons.” Paragraph III of the Admission Policy, Exhibit P-7. Clark states it will admit an indigent person, *if Clark determines it is able to do so*. The Admission Policy provides the discretion for Clark to do so, but only if Clark finds alternative funds, which it is under no obligation to find. On its face, the promise of continuing care applies to everyone regardless of their financial means at the time of admission, *but in practice, it has not been demonstrated that any financially needy person has ever been admitted to the subject property in the first instance*.

Exhibit P-18 shows the “Monthly Rates” and “Residency Agreement Fee” charged to those admitted for residency at “Clark on Keller Lake Oxford Manor and Windsor Manor” May 1, 2003 – April 30, 2004. The Monthly Rates are as follows:

Single Room – Oxford Windsor	\$2,950
Oxford Dementia Unit – West	\$3,300
Efficiency Unit (Kitchenette) - Windsor	
One Person	\$3,900
Two Persons	\$4,300
Two Room Suite – Windsor	
One Person	\$4,500

Two Person \$4,900

Assisted Living Plus Monthly Rate Plus \$400

The “residency agreement fees” charged at the time of admission are as follows for the same time period:

Single Room with ½ Bath	\$8,000 plus monthly rate
Single Room with full Bath	\$12,000 plus monthly rate
Efficiency with kitchenette and full bath	\$15,000 plus monthly rate
Two Room Suite with kitchenette and 2 baths	\$20,000 plus monthly rate

In order to demonstrate ability to “cover the cost of care” in a single room with a half bath in Oxford or Windsor, a person needs, at minimum, assets to pay a one-time fee of \$8,000 and monthly fees of \$2,950 (\$35,400 annually). A two-room suite with kitchenette and 2 baths requires a \$20,000 fee and monthly fees of \$4,500 (\$54,000 per year). The up-front residency agreement fee is partially refundable on a pro rata basis over 66 months in the event of death or termination of residency. After 66 months, Clark retains the entire residency agreement fee.

The subject property is similar to the non-exempt Hillside Terrace property that was the subject of *Michigan Baptist, supra*, which is also discussed in *Wexford, supra*. As factors supporting the non-exempt status of Hillside Terrace, the Supreme Court cited that “residents paid a substantial

up-front sum and monthly fees thereafter.” *Id.* 208. Hillside Terrace had losses for two consecutive years, but fees would be increased if necessary to eliminate deficits. In our present case, Petitioner has experienced small operating losses, and resident fees increased in 2003 and 2004. Four of the 72 residents of Hillside Terrace were offered reduced rates in one year and fees were waived for one resident. In our present case, only one resident of the subject property was charged less than full cost of care. Others received benevolent care after being transferred to the skilled nursing center, but not while residing at the subject property.

Another important similarity between the subject property and the Hillside Terrace property discussed in *Michigan Baptist* is the admission policy under which “Residents were hand-selected by the establishment after an application process that asked them to fully detail their financial status and their health...Those who could not show sufficient means or who were in less than reasonably good health were, in large part, rejected.” *Id.*

With but few exceptions above noted, ability to pay all fees is a factor determining whether an applicant will be admitted to Hillside Terrace. Although it is plaintiff's policy not to evict anyone because of that person's financial reverses, plaintiff's rules state that there is a corresponding responsibility on all residents to care properly for financial resources. To determine whether these resources are sufficient to begin with, each applicant is asked to make a rather complete disclosure of assets and income. *Michigan Baptist Homes & Development Co v City of Ann Arbor*, 396 Mich 660, 668; 242 NW2d 749, 752 (1976). *Wexford* held that it is impermissible to consider only the “level of charitable care” provided, but it is nevertheless relevant to consider whether an organization provides any charitable care (gift) whatsoever or whether the level of charity care results in “reduced rates” that are *de minimis*. In *Wexford*, it was specifically noted that Hillside Terrace apartments (from *Michigan Baptist*) only

reduced fees for four of its 72 residents in one year, and waived fees completely for only one resident. The occasional departure from the usual financial requirements for admission was not enough to qualify Hillside Terrace for a tax exemption.

One of Petitioner's stated purposes is to benefit "superannuated ministers," certain other persons associated with the United Methodist Church, and other "needy and deserving persons" as the trustees may designate. It is concluded these restrictions do not, standing alone, impermissibly restrict the charitable gift so as to disqualify Petitioner for the exemption as a matter of law. The Articles of Incorporation state that Petitioner, as originally organized, acquired certain property in Grand Rapids (not the subject property) by a gift from Mr. and Mrs. Clark in 1905. The original Clark Memorial Home property was granted for use as a home for "superannuated members of the Michigan Annual Conference of the Methodist Episcopal Church." The Michigan Annual Conference of the United Methodist Church was composed of the "ministers, churches, and societies of said denomination" in the western part of the lower peninsula. The Bylaws elaborate upon and interpret the Articles as follows:

The founding purpose of the Clark Retirement Community, Inc. was to provide a retirement home, related nursing facilities, and such other facilities and services as may be ancillary thereto for the benefit of superannuated ministers of the West Michigan Conference of the United Methodist Church, their wives, widows and widowers, Deaconesses of the church and such other needy and deserving persons without regard to race, creed, color, or national origin who desire and are able to live in the Christian atmosphere of Clark Retirement Community, Inc. as may qualify for admission as determined by the Board of Trustees. Exhibit P-2.

The Bylaws state that “members of such conference” include “ministers, spouses, widows and widowers, Deaconesses of the church” and not merely all members of the United Methodist Church in the west Michigan region. However, the Bylaws further state that residency is available to “other needy and deserving persons” which on its face includes any person, whether or not associated with the church. Therefore, the *group of intended beneficiaries* as stated in the Articles and Bylaws is broad enough that it does not run afoul of the requirement that a tax-exempt charitable organization must provide service to “an indefinite number of persons or for the benefit of the general public without restriction.” *Retirement Homes, supra*. There is no evidence that Clark discriminates on the basis of religion or extends benefits only to members of a particular religion.

Wexford cited with approval the “pertinent question” as stated in *Retirement Home*, which requires a “gift for the benefit of an indefinite number of persons or for the benefit of the general public without restriction.” *Wexford* elaborated upon this requirement by stating that the benefits cannot be offered on a “discriminatory basis” and there can be “no restrictions on those who are afforded the benefit of the institution’s charitable deeds.” However, *Wexford* also held that a charitable institution’s “reach and preclusions must be gauged in terms of the type and scope of charity it offers.” *Wexford*, 213. It follows that Clark’s outreach to “elderly adults” is an acceptable “restriction.” The specific purpose and use of Oxford Manor and Windsor Manor is to serve “elderly adults” who suffer from some degree of dementia or Alzheimer’s, but who are not

in need of skilled nursing care. These “restrictions” are not improperly narrow or discriminatory when gauged in terms of the type and scope of services Clark offers at the subject property.

Testimony establishes that approximately 11% of Clark’s residents are retired Methodist Ministers, but it was not established if any of them are residents of the subject property (Oxford Manor or Windsor Manor). Based on this record, it cannot be concluded as a matter of law that Clark impermissibly restricts admission to persons of a particular faith or creed, notwithstanding its purpose to serve certain retired ministers and others associated with the United Methodist Church. The testimony fairly establishes that no person is rejected for residency on the basis of their religion or creed, and therefore, it cannot be concluded that Clark must be disqualified for a tax exemption merely because it is a religiously affiliated organization. Services are available and actually extended to those of other faiths or of no faith who desire to live at Clark. Under Michigan case law, one of the purposes that may qualify an organization as an exempt charity is to bring “people’s minds or hearts under the influence of education or religion.” It would therefore, be improper to disqualify Clark based on its religious mission or affiliation, even if it tends to serve persons of a particular religious persuasion, as long as it does not discriminate against others and actually provides a charitable gift to others.

Wexford addressed the question as to whether an organization “benefits the general public.” It has been held that a nature association that preserves land in its natural condition provides a benefit to the general public without restriction. *Michigan Nature Association v Twp of Saugatuck*, MTT

No. 283322, held that property that was open to the general public for hiking and recreational purposes and not restricted to dues-paying members of the association, was exempt under MCL 211.7o.

In *Association of Little Friends v City of Escanaba*, 138 Mich App 302; 360 NW2d 602 (1984), the court remanded the case to the Tax Tribunal to determine whether low-cost day care services and other charitable activities provided a benefit to the general public without restriction or to an indefinite number of persons.

On remand, the Tribunal noted that other jurisdictions were split on the issue of whether a non-profit day care center is entitled to a property tax exemption, but found that the taxpayer served *low-income* families (although not exclusively low income families), which, along with the free care and other services, contributed significantly to the conclusion that there was a charitable gift for the benefit of the general public.

It is unrefuted that problem students from public schools are admitted free of charge by Petitioner (P-1, dep. of Ivan Ryan) and such students receive assistance along with vocational training in an effort to establish them in many related capacities. Such activities alone may well be a sufficient activity to qualify for charitable exemption.... Meals are also served at Petitioner's facilities to pre-school children of low-income families which is done in cooperation with the federal government (which pays for the meals) and with the State Board of Education, which administers the program (Hirn dep., pp 34-36). *Association of Little Friends v City of Escanaba*, 5 MTT 107 (1987).

Also see, *Altrusa Day Nursery, Inc v City of Battle Creek*, MTT Docket No. 103230 (1991), in which the Tribunal held that a day care center/preschool was an exempt charitable organization.

(4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.

This factor focuses upon the type of work the organization does and whether it is “charitable” in nature. As discussed above, Petitioner relieves people’s bodies from disease, suffering, or constraint and assists people to establish themselves for life by providing assisted living services to persons with some degree of dementia and/or Alzheimer’s disease. Such persons are vulnerable and are in need of care from a trusted provider. The residents and their families benefit from the availability of such services. In addition, Petitioner’s purpose involves “bringing people’s minds or hearts under the influence of religion” and residents may benefit from the presence of a chaplain, regular religious services held in the chapel, and the “Christian atmosphere.” However, in *Michigan Baptist*, the Supreme Court recognized that merely serving a “valuable social purpose” does not necessarily qualify a property for an exemption under MCL 211.7o. *Id* 672.

(5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.

It has not been clearly established that the fees charged are more than what is needed for the successful maintenance of the ownership and operation of the subject property. The evidence is inconclusive as to whether the fees paid by residents of Oxford Manor and Windsor Manor subsidize other facilities owned and operated by Clark. There is no evidence that any individual profits from the revenues. There is no evidence of excessive salaries paid to any employees or

executives of Clark. Part of the cost of operations is supported by charitable giving from the general public and from the United Methodist Church. Clark has operated at a loss for the years in question. In *Michigan Sanitarium & Benevolent Ass'n v Battle Creek*, 138 Mich 676; 101 NW 855 (1904), the Supreme Court held that a hospital was a tax-exempt charitable organization, where it treated some patients for free and some at a reduced rate. Most patients paid a regular schedule of prices fixed by management. The evidence did not prove that the charges collected were “larger than necessary to the successful maintenance of the institution.” In our present case, it cannot be concluded that the fees charged to residents are more than necessary to the successful maintenance of the institution. However, the case law does not elaborate upon what constitutes “successful maintenance of the institution.” For example, there is no guidance as to whether it is relevant to consider the quality or character of accommodations provided by a licensed adult foster care facility that provides assisted living services. In this case, there is no evidence that Petitioner’s fees are above average in the industry for similar accommodations and services, or that the amenities are far superior to the average facility. However, it is noted that *Lutheran Social Services of Michigan v Bloomfield Township*, Unpublished Opinion of the Court of Appeals, decided September 11, 2003 (Docket No. 239460), discussed the relatively high “rent” paid for an “attractive environment.” That case upheld the Tribunal’s decision denying an exemption under MCL 211.7o in *Lutheran Social Services v Bloomfield Township*, MTT Docket No. 269403 (2002).

Petitioner's Exhibit 15 describes the Oxford and Windsor Manor Rooms as approximately 304 square feet with a private half or full bath and a closet. The Windsor Manor Efficiencies are approximately 360 square feet, with a full bath, two closets, dining area, full-size refrigerator, microwave, and two burner cook top. All rooms are located near a separate dining room. Based on the evidence, including brochures with color photographs of Oxford Manor and Windsor Manor, it could be said that the subject property provides an attractive environment for those able to pay for it; but it cannot be concluded on this record that the fees charged are more than necessary to support the institution.

Wexford noted that a tax-exempt "nursing home" (Bach Home) owned by Michigan Baptist Homes, "was endowed by and partially financed through charitable contributions and annual charity drives." Operational costs were not covered by resident fees, but were paid using principal and interest from the endowment fund. Residents did not pay the full cost of care, nor were they expected to. Finally, residents of the exempt "Bach Home" *were accepted on the basis of their lack of ability to find care elsewhere, not on the basis of their being in good financial and physical health.* *Wexford*, p 208. On the other hand, the taxable Hillside Terrace (also discussed in *Michigan Baptist*) was "funded entirely by loans, debentures, and resident fees" and not charitable donations.

In *Retirement Homes*, it was found that the construction of the property was financed entirely by gifts, donations and bequests, as contrasted to the taxable Hillside Terrace. The court explained,

“Because Retirement Homes incurred *no debt* in financing construction, the monthly charge was set to recover only direct expenses and fund replacement, not payment of interest.” *Retirement Homes*, p 347 [emphasis added]. In our present case, this factor is relevant but not conclusive. The subject property was financed by a combination of charitable gifts and tax exempt bonds; although the tax exempt bonds far outweighed the charitable gifts. Clark actively solicits charitable contributions. The charitable gifts may result in lower fees to residents, although it is unclear exactly where the charitable gifts are applied and who benefits from them. The facts demonstrate that the charitable gifts support the “benevolent care” program, which is not generally provided to residents of Oxford Manor and Windsor Manor. It is unknown whether Oxford and Windsor Manor residents pay a market rate for the accommodations and services. The evidence is inconclusive on this point and it cannot be concluded that charitable giving by Clark’s donors translates into a “reduced” or below-market rate, so as to constitute a gift to residents.

Clark acquired the subject property by a combination of “tax exempt bonds,” charitable gifts, and “reserves.” The acquisition of the Clark on Keller Lake property was not financed only by “loans, debentures, and resident fees” as was the taxable home for the aged, Hillside Terrace, in *Michigan Baptist*, but Clark was financed predominantly by loans. Another contrast between the taxable Hillside Terrace and the subject property is that Clark actively solicits and receives charitable gifts, whereas Hillside Terrace did not. The charitable contributions to Clark must be

considered, but are outweighed by other factors in this case that indicate that Clark is not chiefly a “charitable” organization under MCL 211.7o.

(6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.

The Tribunal shall not apply a monetary threshold of charity, but rather examines the overall nature of the organization, and its use of the subject property, including whether it provides a charitable gift as required by law. There is no question that Clark was established nearly 100 years ago by a charitable gift of the original Clark Memorial Home. Clark actively solicits and receives charitable donations. Clark relieves suffering and establishes persons for life. The most relevant consideration is not the amount of money allegedly “devoted to charitable activities” but rather the restrictions upon who benefits from Clark’s property and services. In support of its claim that Clark has admitted persons who cannot pay, Petitioner offered Exhibit P-20, which summarizes the annual gifts and benevolent care for the benefit of Clark’s residents, which exceeded a million dollars in 2003, 2004, and 2005. Petitioner’s Post-Hearing Reply Brief, page 10. There is no evidence that any of the “gifts and benevolent care” were given to persons who lack the means to pay the cost of care during their expected life at the time of admission. Clark further argues that the gifts, including regular gifts from the United Methodist Church, “together with the benevolent care amount, work for the benefit of all Clark’s residents by reducing the rates they would otherwise have to pay if required to pay....” However, there is no evidence of what a market rate would be, and therefore, it cannot be determined that the residents of the

subject property receive a “charitable gift” in the form of below-market rates. Furthermore, this does not demonstrate whether and to what extent these gifts support *the admission of persons, if any, who do not meet the financial requirements*. This is not the type of “charity” discussed in *Wexford, Michigan Sanitarium, Gundry, and Michigan Baptist*. The promise not to evict residents is not a “gift” under *Retirement Home* because it was restricted to pre-approved residents.

Holland Home involved an “independent care apartment” complex for residents who were able to care for themselves without “active monitoring.” The Holland Home offered a “continuing care plan” under which a resident of the independent care apartments could transfer to assisted living or skilled nursing facilities operated by Holland Home. Furthermore, Holland Home promised to “care for its residents for the remainder of their lives without regard for the resident’s ability to pay.” *Id.* 387. It was held that this promise was contractual, supported by consideration, and did not amount to a charitable gift. Although *Holland Home* involved independent care apartments (rather than a licensed adult foster care facility offering assisted living), the nature of the promise for continuing care in that case is legally indistinguishable from the promise of continuing care made to the residents in this case.

In the closing paragraph of Petitioner’s Reply Brief, Petitioner argues that it should be exempt as a charitable organization because it makes its “continuum of care available to the universe of potential admittees in its west Michigan market including those who cannot pay the full cost of

their care” and therefore that Clark lessens the burden on government as a whole. Petitioner’s Post-Hearing Reply Brief, page 11. However, the “universe of potential admittees” is restricted by a person’s ability to prove that they can pay the full cost of care during their expected life. Assuming the resident’s expected life is accurately determined, he or she will never require charitable or benevolent care. The financial restrictions weigh heavily against tax exempt status. Clark’s financial restrictions are contrary to the provision in the articles that Clark exists to serve “needy” and deserving persons.

Holland Home was held to be taxable although it received substantial charitable contributions and volunteer services that were found to be essential to its operations and capital improvements. *Holland Home*, p 388. It also admitted residents, first come, first served, on a non-discriminatory basis. The fact that it gave preference to employees was not held to be improper discrimination and neither did this fact weigh in favor of the claimed exemption. Although Holland Home requested only “limited financial information for billing purposes” it required substantial “entrance fees” ranging from \$72,700 to \$129,000, which effectively screened out needy or indigent applicants.

Clark’s witnesses stated that they could not disclose which residents specifically benefited from the benevolent care due to privacy rights of the residents. Petitioner’s Post-Hearing Reply Brief, p 10. However, Petitioner did not offer any proof that “gifts or benevolent care” are extended

without restriction to any individual at the time of admission. Testimony to this effect could have been provided without specifically identifying names of persons benefited.

In *Northpointe Woods v City of Battle Creek*, MTT Docket No. 293017 (November 10, 2004), the Michigan Tax Tribunal denied a claim for exemption under MCL 211.7o for a property consisting of 100 independent living units and 50 assisted living rooms. The assisted living portion was a “licensed home for the aged” with a maximum capacity of 66 persons. The persons in independent living received 20 meals per month. The assisted living residents received three meals per day. Applicants for both independent and assisted living were required to demonstrate assets of at least \$75,000 and monthly income of at least one and one-half times the monthly rental. There was a “scholarship policy” that provided financial assistance for persons who were already residents. The scholarships were limited to 30% of the units. (Scholarships were not extended to persons who could not meet financial requirements at the time of admission.) The Tribunal held that there was no gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons, due to the financial restrictions upon admission.

As such, even if the scholarship program is considered a "gift," it cannot be argued that the gift benefits the general public without restriction or that it benefits an indefinite number of persons. As previously mentioned, only those persons who are able to demonstrate a minimum asset base of \$75,000 and a monthly income of at least one and one-half times the monthly rental fee are considered for admission. (The monthly rental fee requirement is most onerous for an assisted living resident. In 2004, the monthly income requirement ranged from \$3,355.50 to \$3,973.50.) *NorthPointe Woods v City of Battle Creek, supra.*

In *Northpointe*, the Tribunal found that the petitioner did not qualify for the exemption based on the financial restrictions alone, without regard to the physical health requirements. However, as additional grounds for denying the exemption, the Tribunal found that the admission policy “was restrictive in terms of a potential resident’s health, especially for the assisted living portion, which required a current physical examination.” The financial restrictions on applicants to both independent living and assisted living disqualified the exemption for both types of properties, citing *Retirement Home, supra*, and *Michigan Baptist, supra*. Furthermore, the possibility that all residents could receive a “scholarship” in the future was not a charitable “gift.” In *Northpointe* there was evidence that persons in both assisted living and independent living received support under the “scholarship” program for each tax year at issue; whereas, in our present case only one person has ever received benevolent care while at Oxford Manor or Windsor Manor.

Michigan United Conservation Clubs v Lansing Township, 423 Mich 661; 378 NW2d 737 (1985), concluded that although the petitioner provided some services that could be deemed charitable gifts, it was not exempt. In *Wexford*, the court noted that on balance, the MUCC “was organized to benefit its paying members rather than to benefit ‘the general public without restriction’ or ‘for the benefit of an indefinite number of persons.’” *Wexford*, p 212 [emphasis added]. Our Supreme Court has explained that the organization must offer its charity to people who need the type of charity being offered. On the other hand, a charity need not serve “every single person regardless of the type of charity offered...” but can serve a particular group or type of person, but cannot discriminate within that group. “The charitable institution’s reach and

preclusions must be gauged in terms of the type and scope of charity it offers.” *Wexford*, p 213.

The question here is whether Clark’s “reach and preclusions” render it a non-charitable organization for property tax purposes. It is concluded that the *financial restrictions* serve to exclude, discriminate, and impermissibly preclude members of the group of persons Clark purports to serve. However, all the relevant factors outlined above must be carefully considered and balanced, including the charitable donations to Clark, its history of providing this type of service, its policy that allows for “benevolent care,” and other factors discussed above.

The exempt status of other properties owned by Clark in Grand Rapids and the independent living units in Kentwood are not at issue. This is not to say that the activities of Clark as a whole are not relevant, but the law requires the Tribunal to examine the charitable purpose for which the subject property is used. It is possible for a nonprofit organization to own and operate an exempt property along with a taxable property. See, *Michigan Baptist, supra*. Also, in the unpublished decision in *Lutheran Social Services of Michigan v Bloomfield Township*, Unpublished Opinion of the Court of Appeals, decided September 11, 2003 (Docket No. 239460), the Court of Appeals upheld the Tribunal’s denial of an exemption under MCL 211.7o holding that, “The Tribunal correctly focused on the circumstances surrounding the specific property at issue...” rather than other charitable activities of the organization.

The property at issue in *Lutheran Social Services* (“Maple Village”) included both independent living units and assisted living units. The assisted living units provided three meals daily, seven

days a week; daily housekeeping; linens, bed sheets, towels provided; 24-hour registered nurse or licensed practical nurse on site and medical and medication monitoring. Maple Village was not a licensed home for the aged or chronically ill. The petitioner never reduced rents or deposits based upon a tenant's economic means or ability to pay. The petitioner never waived the security deposit and/or administrative fee required to be paid by prospective tenants prior to occupancy or reduced its rents for any of its units based on a prospective tenant's income.

The following passage from the Tribunal's opinion in *Lutheran Social Services* is on point:

While it is undisputed that many of the activities of Petitioner fall within the definition of "charity" as defined in *Retirement Homes v Sylvan Township, supra*, this record is devoid of anything that would indicate that Petitioner's ownership of Maple Village, which is an upper end retirement facility that requires annual rental payments of \$35,000 to \$50,000, together with deposits and applications fees of \$3,500 or more, constitutes a gift for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, or relieving their bodies of 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. The facts of this case are analogous to the facts found in *Michigan Baptist Homes v Ann Arbor*, 396 Mich 660; 242 NW2d 747 (1976), wherein after an analysis of the entry fees, costs to tenants, etc., the Court found that the operation of the facility in question "did not serve the elderly generally, but rather provides an attractive environment for those among the elderly who have the health to enjoy it and can afford to pay for it." *Lutheran Social Services of Michigan v Bloomfield Township*, MTT Docket No. 269403 (2002).

In *Redford Opportunity House v Township of Redford*, Unpublished Opinion of the Court of Appeals, decided January 27, 2004 (Docket No. 241718), the Court of Appeals upheld the Tribunal's ruling that a licensed facility for developmentally disabled adults was exempt under MCL 211.7o. The residents were required to either be eligible for Supplemental Social Security

Income benefits (“SSI”) or have sufficient resources to pay anticipated expenses. All persons entering the program had developmental disabilities and therefore qualified for SSI, which, along with other governmental benefits, covered the cost of care. Therefore, it was irrelevant that fees had never been waived. The financial restrictions in our present case are distinguishable.

Other state courts have considered the tax exempt status of similar “assisted living” facilities. The Minnesota Tax Court recently denied a tax exemption for assisted living units. In *Croixdale, Inc v County of Washington*, 2005 WL 3542887, the assisted living property consisted of 43 residential units and 10 memory care units (“Assisted Living Unit”). The taxpayer also owned related independent living apartments, which were determined to be taxable, and were not at issue. The Assisted Living Unit had a common area, which included recreational areas, dining areas, and other amenities. The court held that the “Assisted Living Unit does not qualify for exemption from taxation as an institution of purely public charity...” under Minnesota law, which similar to Michigan, defines charity to mean:

[A] gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons "by bringing their hearts under the influence of education or 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. *Croixdale, Inc v County of Washington*, 2005 WL 3542887, (Minn.Tax Regular Div., 2005)

Minnesota also applies a test with six factors, some of which are similar to Michigan law, including “Whether the beneficiaries of the charity are restricted or unrestricted and, if unrestricted, whether the class of persons to whom the charity is made available to is one having a reasonable relationship to the charitable objectives.” The taxpayer in *Croixdale* had a “Mission

Benevolence Fund” similar to the benevolent care program in our present case. In that regard, the Minnesota Tax Court held:

The record shows that the Mission Benevolence Fund was never intended to be promoted to or for persons not already a part of Petitioner's system, and it is available only when all other resources are gone. Rather than lessening the burden on government, the only beneficiaries are already residents of the facility. *Croixdale, Inc v County of Washington*, 2005 WL 3542887 (Minn.Tax Regular Div., 2005)

The Indiana Tax Court recently held that a “nursing home and assisted living” facility was exempt from property taxes based on the principle that caring for the aged is an inherently charitable purpose that benefits the public, regardless of whether the individual beneficiary is financially needy.

To that end, Indiana courts have long recognized that providing care and comfort to the aged constitutes a charitable purpose. *See Wittenberg Lutheran Village Endowment Corp v Lake County Property Tax Assessment Bd of Appeals*, 782 NE2d 483 (IndTax Ct2003); *Raintree Friends Housing, Inc v Indiana Dep't of State Revenue*, 667 NE2d 810 (IndTax Ct1996); *Methodist Home for the Aged*, 143 Ind App 419; 241 NE2d 84; *Wilson v Dexter*, 135 Ind App 247; 192 NE2d 469, 474 (1963). Indeed, as this Court once explained: Caring for the aged is a recognized benefit to the community at large and society as a whole. Indiana law recognizes that the aged require care and attention *entirely independent of financial needs*, and that present day humanitarian principles demand that those in their declining years have the opportunity to live with as much independence as their strength will permit, in as pleasant and happy surroundings as their finances will reasonably justify. Thus, by meeting the needs of the aging, namely, relief of loneliness and boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, and attention to problems of health, a charitable purpose is accomplished. *Raintree Friends Housing, Inc*, 667 NE2d at 814-15 (internal citations and punctuation omitted). The facts in this case clearly demonstrate that BridgePointe's provision of comfort and care to the elderly accomplishes a charitable purpose. *Knox County Property Tax Assessment Bd of Appeals v Grandview Care, Inc*, 826 NE2d 177, 182 (Ind.Tax,2005)

The court found that the taxpayer was a legitimate nonprofit entity; that there was no evidence that the fees charged were more than necessary to pay the expenses of providing the care; and, there was no evidence of how the fees compared to those charged by similar facilities.

The Court of Appeals for the State of Georgia has held that a nonprofit organization that operated a “home for the aged” was entitled to a property tax exemption for its “independent living” apartments under a specific statute that provided an exemption for:

- (12)(A) Property of a nonprofit home for the aged used in connection with its operation when the home for the aged has no stockholders and no income or profit which is distributed to or for the benefit of any private person and when the home is qualified as an exempt organization under the United States Internal Revenue Code, Section 501(c)(3), as amended, and Code Section 48- 7-25, and is subject to the laws of this state regulating nonprofit and charitable corporations;
- (B) Property exempted by this paragraph shall not include property of a home for the aged held primarily for investment purposes or used for purposes unrelated to the providing of residential or health care for the aged. OCGA § 48-5-41(a)(12)(A), (a)(12)(B); Ga. L. 1977, p. 1152, §§ 1, 2.

The court based its decision on the above statute, but noted that the subject property, a nonprofit home for the aged, “could have been termed an institution of ‘purely public charity,’” a term dating from the oldest versions of this statute, now encoded at OCGA § 48-5-41(a)(4). *Board of Tax Assessors of Ware County v Baptist Village, Inc*, 269 Ga App 848, 850-851; 605 SE2d 436, 438 - 439 (2004). Under Georgia law, like Indiana, “charity” does not require a financial “gift” to a needy beneficiary:

The concept of charity is not confined to the relief of the needy and destitute, for aged people require care and attention apart from financial assistance, and the supply of this care and attention is as much a charitable and benevolent purpose as the relief of their financial wants. (Citations and punctuation omitted.) *Board of*

Tax Assessors of Ware County v Baptist Village, Inc, 269 Ga App 848, 852-853;
605 SE2d 436, 439 - 440 (2004).

In contrast, Michigan courts have required something more than a generalized social benefit but have considered the financial condition of those directly served. In *Michigan United Conservation Clubs, supra*, although the MUCC could be said to provide a benefit in the public interest, it was held that it primarily benefited its members and “others with an active interest in the conservation of our natural resources.” This was not a charitable gift to the general public without restriction or to an indefinite number of persons, notwithstanding that the people of the State of Michigan have an expressed, constitutional “interest in the conservation of our natural resources.”¹¹

Finally, the incidental activities set forth in the stipulated facts regarding direct admission to the skilled nursing facility, internships for high school and college students, “intergenerational activities” with K-12 school students, and the availability of the chapel and other facilities for community use, are insufficient to qualify for the exemption at issue.

In our present case, it cannot be concluded that the use of the subject property constitutes a gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons. The Tribunal concludes that the subject property is not exempt from property taxes

¹¹ “The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.” Michigan Constitution of 1963, Article IV, Section 52.

under MCL 211.7o and the TCV, SEV, TV are as follows:

Parcel Number: 41-18-12-326-012

Year	AV	SEV	TV
2003	\$1,956,100	\$1,956,100	\$1,956,100
2004	\$2,083,700	\$2,083,700	\$2,001,090
2005	\$2,116,700	\$2,116,700	\$2,047,115
2006	\$2,164,300	\$2,164,300	\$2,114,669

JUDGMENT

IT IS ORDERED and ADJUDGED that the subject property (parcel number 41-18-12-326-012) is not exempt from property tax under MCL 211.7o for the tax years 2003, 2004, 2005, and 2006 as provided in the Conclusions of Law section of this Proposed Opinion and Judgment.

IT IS FURTHER ORDERED and ADJUDGED that the parties shall have 20 days from date of entry of this Proposed Opinion and Judgment to file exceptions and written arguments with the Tribunal consistent with Section 81 of the Administrative Procedures Act (MCL 24.281).

Exceptions and written arguments shall be limited to the evidence and legal arguments presented to the administrative law judge. This Proposed Opinion and Judgment, together with any exceptions and written arguments, shall be considered by the Tribunal in arriving at a final decision in this matter pursuant to Section 26 of the Tax Tribunal Act (MCL 205.726).

MICHIGAN TAX TRIBUNAL

Entered: August 30, 2006

By: Thomas A. Halick
Administrative Law Judge