

PT 09-11
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

INTERNATIONAL ICE CENTER, LLC,

APPLICANT

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

No: 07-PT-0092

Real Estate Tax Exemption
For 2007 Tax Year
P.I.N. 02-31-103-001

Will County Parcel

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Thomas Battista, Rock, Fusco & Associates, LLC, on behalf of International Ice Center, LLC; Mr. Ares Dalianis and Mr. Scott Metcalf, Franczek Sullivan, P.C., on behalf of Intervenor, Board of Education of Plainfield Community Consolidated School District No. 202; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether Will County Parcel, identified by P.I.N. No. 02-31-103-001 (hereinafter the “subject property”), qualifies for exemption from 2007 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by a charity and actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit. The subject property is known as the International

Ice Center (hereinafter “IIC”) and is owned by the Huskies Hockey Club (hereinafter “Huskies”).

This controversy arises as follows: On January 24, 2007, the IIC filed an Application for Non-homestead Property Tax Exemption with the Will County Board of Review (hereinafter the “Board”) seeking exemption from 2007 real estate taxes for the subject property. The Board reviewed the Application and recommended that the exemption be denied. On October 4, 2007, the Department of Revenue of the State of Illinois (hereinafter the “Department”) accepted the Board’s recommendation finding that the subject property was not in exempt ownership and not in exempt use in 2007. On November 20, 2007, the IIC filed an appeal of the Department’s exemption denial. On June 11, 2008, Plainfield Community Consolidated School District No. 202 filed a “Motion to Intervene,” which was granted on July 30, 2008.

On March 16, 17 and 18, an evidentiary hearing was held with testimony from Mr. Joseph Pedota, President of both the Huskies and the IIC in 2007, Mr. Mark Stevens, Treasurer of the Huskies and Chairman of the Finance Committee, Mr. Michael Conway, Team Manager and member of the Huskies’ Board of Directors, Ms. Michele Frodyma, parent of a Huskies’ team member, Mr. Jimmy Andersson, Hockey Director and General Manager of the IIC, Mr. Thomas Hernandez, Director of Community Relations for Plainfield Community Consolidated School District, Ms. Elizabeth Hippman, Secretary of the Huskies and parent of a Huskies’ team member, Dr. John Harper, Superintendent of Plainfield Community Consolidated School District, Mr. Kirk Openchowski, Finance Director for the Village of Romeoville, Mr. Jason Buckholtz, Program Supervisor for Romeoville’s Recreation Department, Mr. Glen Bechard, President of the Plainfield High School Hockey Association, and Mr. Donald DeWilkins, Coach and member of the

Huskies' Board of Directors. Following a careful review of the testimony and evidence including the Applicant's "Closing Argument and Brief" (hereinafter "App. Brief"), the Intervenor's "Post Hearing Brief," and the Applicant's "Reply Brief," it is recommended that the Department's denial be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the subject property was not in exempt ownership or use during 2007. Tr. pp. 6-7; Dept. Ex. No. 1.
2. The IIC was financed through the issuance of \$17.2 million in tax exempt bonds and \$1 million in taxable bonds. The tax exempt bonds were funded through the Illinois Finance Authority's issuance of Sports Facility Revenue Bonds. The funds were used to acquire a 7.5 acre site in Romeoville and to construct and equip the IIC. Tr. pp. 53-57, 447-448; App. Ex. No. 8.
3. On January 31, 2006, the Huskies entered into a "Development Agreement" (hereinafter "Agreement") with Romeoville. The Agreement states that if the Huskies will construct the IIC in conformance with certain architectural elevations requested by Romeoville, Romeoville will abate and waive fees for building permit review and approval and plan review, and sewer and water tap-on fees. Tr. pp. 60-68, 449, 454-456; App. Ex. Nos. 1 and 10.
4. The Agreement also requires that for a period of not less than three years from the date on which the IIC received a certificate of occupancy, all Romeoville residents enrolling in any hockey or skating instructional program offered by the Huskies, shall receive a 10% discount from the lowest price or rate offered and that the Huskies shall be obligated to advertise the availability of this benefit to

the general public. The Agreement also allows Romeoville to have a yearly Christmas party and Halloween party at the IIC free of charge. Tr. pp. 69-71, 114-115, 339-340, 448-449, 454-456; App. Ex. No. 1.

5. Romeoville waived \$276,000 in fees in exchange for concessions from the Huskies. App. Ex. No. 1.
6. The Huskies' Bylaws articulate two classes of members. Any person or family interested in having a child participate in the Huskies' activities is eligible to become a "Regular Member" upon completion of the prescribed application and "payment of the dues established by the Board of Directors." A Regular Member in good standing is one that has signed a member contract or similar agreement on behalf of their player(s) prior to the start of the regular season of the hockey league and who has paid all fees, dues, and/or special assessments currently due according to the financial payment schedule of the member contract or other such payment schedule approved by the Board of Directors. An "Honorary Member" is a person, firm or corporation who supports the purposes for which the Huskies is organized and who is elected to honorary membership by the vote of 2/3 of the Directors of the Huskies. App. Ex. No. 8.
7. The IIC has agreements with local park districts in which the park districts market a program that uses the facilities at the IIC, and IIC and the park districts share the revenue. The park districts advertise the programs and the residents make their payments to the park districts. Tr. pp. 84, 116-117, 251-265, 301-304, 327-332, 333-337, 340-343, 472-478; App. Ex. Nos. 2 and 5.

8. The Plainfield High School Hockey Association, which has students from the four high schools in Plainfield, uses the IIC as its home rink, and pays the IIC \$300 to \$320/hour for rental of the facilities. Tr. pp. 480-488, 492-493.
9. Yearly seasonal fees for a skater in the Huskies depend on age and skill. Fees range from \$2,800 to \$4,000 annually. There are five levels of skaters: Mites (the youngest), Squirts, Peewees, Bantams and Midgets. Within each level, skaters are further divided into “Central States” (the best players), gold, silver and bronze, depending on their skill. There is a higher range of fees charged for each of these divisions and there is more ice time and better coaches as fees increase. Skaters may pay \$475 extra to participate in Spring Leagues. Tr. pp. 27-28, 87-90, 196-197.
10. The Treasurer of the Huskies produces a yearly budget for the season including estimates for hardship assistance, cost of ice, compensation for coaches, discounts for having more than one skater in the family, discounts for goalies and anticipated fundraising. The fee structure for paying participants is then set from this budget amount. Tr. pp. 136-139.
11. A team cannot play without, at least, one goalie. Equipment for goalies is more expensive than for other players. Goalie pads can cost over \$1,000. Goalies usually need private instruction to supplement their training. In 2007, the Huskies allowed the goalies to pay discounted fees and get private lessons or pay full fees, with the Huskies’ goalie director giving them private lessons. Tr. pp. 182-185, 194-195.
12. The Huskies’ audited “Consolidated Financial Statements” (“consolidated” to show the Huskies’ 100% investment interest in the IIC) state that its “revenues

are derived principally from the Organization's programs including Travel Hockey, House League Hockey, In-House Hockey and camps and clinics...". The Huskies' "Consolidated Statement of Activities" for April 30, 2007 shows "Total Revenue" of \$2,268,501, of which \$1,865,672, or 82%, is derived from membership and service fees, \$100,000 (4%) was a donation from the Aline S. Andrew Foundation to build the IIC, and \$188,756 (8%) was from fund-raising revenue. Tr. pp. 34-39; App. Ex. No. 8.

13. The Huskies' audited "Consolidated Statement of Activities" for April 30, 2008 shows "Total Revenue" of \$2,738,682, of which \$2,375,912, or 87%, is derived from membership and service fees, \$50,000 (2%) was a donation to build the IIC, and \$184,895 (7%) was from "Fund Raising Revenue." Int. Ex. No. 4.

14. A "Hardship Assistance Request Worksheet" for the "2006-2007 Season" shows 14 requests for financial assistance. Hardship awards of \$9,065 were granted from an available budget for hardship assistance of \$20,495. Tr. pp. 92-97, 157-158; App. Ex. No. 4.

15. The Huskies have a hockey director for the hockey clubs, paid \$100,000/year, and a hockey director who works as general manager of the IIC, paid \$75,000/year. Tr. pp. 105-106.

16. Each member of the Board of Directors receives a waiver of skater fees for one child participating in the Huskies and two dinner dance tickets. This waiver is per season during the Board member's tenure on the Board. These waivers totaled \$42,235 and \$24,130 for year-end April 30, 2007 and 2008, respectively. There are from 8 to 11 Board members, at different times. Tr. pp. 40-42, 107-109, 537-538, 557; App. Ex. No. 8; Int. Ex. No. 4.

17. Team coaches received compensation of \$2,500 to \$7,000 for the season in 2007, depending on their level of experience. Coaches may receive a fee waiver for one child in lieu of compensation. These waivers totaled \$24,110 and \$22,600 for year-end April 30, 2007 and 2008, respectively. There are also “travel house” coaches who coach in-house programs and are paid \$1,000/season. Tr. pp. 42-44, 109-110, 534-538, 558-559; App. Ex. No. 8; Int. Ex. No. 4.
18. Each team has a team manager. Team managers receive \$250 for the season to cover their costs, which may include copying expenses, mailings, postage and telephone. Team managers act as a liaison between the coach and the skaters and parents and between the Board of Directors and the team. Tr. pp. 44-45, 110, 127-128, 172-174, 179, 560.
19. In order to defray the costs of membership in the Huskies, parents of skaters are able to work the concession stands at Joliet Jackhammer Minor League baseball games, Tweeter Center concerts and at a racetrack in Joliet. These organizations write a check to the Huskies for the hourly concession work of the parents, and the Huskies either credit the annual fee of the skater (if the annual fee has not been paid) or issue a check to the parents (if the annual fee has been paid). Tr. pp. 29-30, 142-143, 180-181, 368-369.
20. The Huskies hosted the “Silver Sticks Tournament” in 2007. Parents of skaters could decorate the IIC, keep score at the games or work tables for \$12.50/hour and have this rebated to them for membership fees. Parents can also sign up to work for \$12.50/hour at playoff games and have the payment rebated to them. Tr. pp. 382-383

21. Skaters and family members can also sell Fannie Mae candy. Fannie Mae rebates 20% of the candy sales to the Huskies and the Huskies rebate this amount to the membership fees of the families that participated. Tr. pp. 30-31, 181, 378-380; App. Ex. No. 15.
22. The Huskies published an ad book. Members may sell ads in the book to corporate sponsors and 45% of the cost of the ad was rebated to members who sold the ad. Tr. pp. 32-33, 180, 373-374; App. Ex. No. 6.
23. The Huskies also have an annual dinner dance and auction. Any Huskies' member can donate an article for the auction. Approximately 40 to 50% of the bid price was rebated to the member who donated the item for auction. Families of members are required to purchase tickets to the dinner dance and raffle tickets, as a condition of participating in the Huskies' league. Tr. pp. 32, 112-114, 370-374, 393; App. Ex. No. 6.
24. Parents may learn about hardship assistance if they express their problems paying the membership fees to any of the Board members or to the team manager. The Huskies may learn about families having a difficult time paying fees through bounced checks or failed credit card payments. There is no formal hardship application for a parent to fill out. Tr. pp. 91-93, 159-160.
25. Not every request for hardship assistance results in a fee waiver. Some families are able to make all payments simply by restructuring the payment terms, from five monthly payments to seven. Some families can make the payments by participating in the fundraising programs, described above. Tr. pp. 131-132, 177-178.

26. An e-mail dated September 7, 2006 from Mr. Conway to “T” (parent of child needing assistance), regarding the “Subject: Hardship Request Details,” states that “The Huskies have a LIMITED hardship budget to provide some assistance for tough financial circumstances.” You need to provide the following information to the Finance Committee: 1) skater requesting assistance; 2) his past teams; 3) reason for making request [As much as you feel comfortable, you need to tell why you needed assistance]; 4) What type of assistance you are requesting to alleviate your hardship [reduction in fees, extended payment plan, something else]. “You need to get this in immediately to be considered for hardship with any other applications. If you delay, the Finance Committee may have distributed all of the hardship funds.” “You should NOT share this information with anyone else.” Tr. pp. 200-204; Int. Ex. No. 2.
27. In a series of e-mails dated August 5, 2006, from Mr. Conway, concerning a request by a parent that fees for goalie camp for her two children be reduced by \$50/each to \$300 in total, Mr. Conway states: 1) They have two goalies and are not well off; 2) Both [child 1] and [child 2] are two of our top goalies; 3) \$50 each is something but won’t break the bank; 4) We are short on goalies in our camp; and 5) It is \$300 we wouldn’t otherwise get. Int. Ex. No. 3.
28. The IIC charges fees for the adult learn-to-play hockey program, adult learn-to-figure skate program, plyometrics, figure skating, girls’ hockey program, adult men’s hockey, and adult women’s hockey. The IIC charges \$5 to \$7/half hour for open public skating. A skater could buy a pass for unlimited skate time in the month and reduce the hourly charge. Tr. pp. 115-116, 321-322, 548-552.

29. Hardship assistance from the Huskies is only available for hockey players who are members of the Huskies. A person requesting hardship assistance for an activity not sponsored by the Huskies, such as adult skating programs, adult learn-to-play hockey programs, adult learn-to-figure skate programs and public skating are referred to the IIC's Board of Directors. Mr. Andersson testified that in his time at the IIC, he did not believe that the Board had "been involved in waiving of any specific fees for participants." Tr. pp. 148-149, 160-161, 164-165, 338-339, 343.

CONCLUSIONS OF LAW:

An examination of the record establishes that the IIC has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2007 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not satisfy the requirements for exemption set forth in 35 ILCS 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

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

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

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

The provisions of the Property Tax Code that govern charitable exemptions are found in Section 15-65. In relevant part, the provision states as follows:

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

- (a) institutions of public charity
- (b) ***
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for exemption, the applicant provides affirmative evidence that the home or facility is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay,

of any entrance fee, assignment of assets, or fee
for services, or (ii) ***

35 ILCS 200/15-65. Illinois courts have consistently refused to grant relief under section 15-65 of the Property Tax Code, absent appropriate evidence that the subject property is owned by an entity that qualifies as an “institution of public charity,” and that the property is “exclusively used” for purposes that qualify as “charitable” within the meaning of Illinois law. 35 ILCS 200/15-65.

At the evidentiary hearing, the IIC took the position that the applicable statutory subsection was 35 ILCS 200/15-65(a), “institutions of public charity,” and proceeded to apply the guidelines articulated in Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"). However, under a broad reading of 35 ILCS 200/15-65(c), the IIC met some of the threshold requirements of an “organization providing [for] ... educational, social and physical development,” and this subsection must also be considered. The Huskies Hockey Club is a non-profit organization under Section 501(c)(3) of the Internal Revenue Code. App. Ex. No. 8. The Huskies’ Bylaws contain 16 consecutively numbered pages. There is no provision in these 16 pages for the waiver or reduction of fees. Attached to the Bylaws, is a one-page document entitled “Huskies Hockey Club, Fee Hardship Policy, Revised: 8/27/2005.” This document is not numbered “page 17.” It simply appears to be attached to the Bylaws. The page was photocopied with an “Exhibit I” sticker on it, but this sticker and notation were not part of this evidentiary hearing. App. Ex. No. 12.

According to the “Fee Hardship Policy” attached to the Bylaws, requests for assistance will be “considered based on need, number of assistance requests and time with the club.” Assistance can include a combination of the following: “reduction in fees, deferral of fees, requirement to volunteer for tournaments/special events.” The

Policy states that the President of the Huskies' Board of Directors will establish a committee to consider hardship requests. If this committee has, in fact, been established by the President, its responsibilities are not articulated in Section 10 of the Bylaws, which is entitled "Committees."

Because the "Fee Hardship Policy" does not appear to be integrated into the Huskies' Bylaws, I am unable to conclude that the Bylaws provide for the waiver of fees, as required by 35 ILCS 200/15-65(c). Without integration into the Bylaws, the "Fee Hardship Policy" appears to be more a statement of intent, rather than to have any binding effect on the Huskies. The Applicant did not make any arguments supporting exemption under 35 ILCS 200/15-65(c) in its "Closing Argument and Brief."

Assuming, *arguendo*, that the Huskies "Fee Hardship Policy" is an integral part of their Bylaws, this does not signify "*ipso facto*" that the property is used for a charitable purpose. In Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273, 287 (2004) the Supreme Court held that even if an applicant met the requirements of 35 ILCS 200/15-65(c), the applicant still "must comply unequivocally with the constitutional requirement of exclusive charitable use." In Korzen, the Court articulated the criteria and guidelines for resolving the constitutional question of exclusive charitable use of property. These guidelines are (1) the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government; (2) the organization's funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (3) the organization has no capital, capital stock or shareholders; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way

of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the exclusive (primary) use of the property is for charitable purposes. Korzen at 156-157.

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

The parties stipulated to the following at the hearing. The organization that owns the subject property, Huskies Hockey Club, is a properly registered organization having 501(c)(3) status. The organization has no capital stock or shareholders, nor may profits be distributed from its treasury. The Huskies Hockey Club is the sole member of the Illinois limited liability company that holds title to the International Ice Center. Tr. pp. 7-8. Based on the parties' stipulation, I conclude that the Huskies owned the subject property in 2007 and that the Huskies possess the characteristic of a charitable organization in that the organization has no capital, capital stock or shareholders.

Korzen factor (1): The benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government.

The Huskies is a youth hockey organization with over 550 skaters. Prior to building the IIC, the Huskies rented ice and skated at Darien Sportsplex and Downers Grove Ice Rink. The Huskies needed three "sheets" of ice to efficiently conduct all of its programs. The cost of renting ice escalated from \$175/hour to \$325/hour over an eight

year span. Approximately 65% to 75% of the Huskies' budget was for the cost of renting ice. The Huskies determined that it would be economically better for them to build their own facility rather than to rent ice from other facilities. The Huskies also wanted to add programs for adult and women's hockey. The Huskies moved to the IIC, which is 106,000 square feet, in August, 2006. Tr. pp. 13-17, 188-189, 195-196; App. Ex. No. 8. The IIC serves Romeoville, Plainfield, Oswego, Yorkville, part of Naperville, Lemont and Lockport. The site for the IIC was chosen because these communities represent a growth area. Mr. Pedota, President of both the Huskies and the IIC in 2007, testified that Plainfield was the fastest growing community in Illinois, "and second or third largest in the nation." Tr. pp. 78-79.

The Huskies' purpose, according to its Bylaws, is to promote, train, teach and develop the sport of organized youth hockey, to associate with other ice hockey associations, to organize and promote competitive team play, to affiliate with USA Hockey, the Amateur Hockey Association of Illinois and the Northern Illinois Hockey League and similar organizations. The Huskies Hockey Club was organized to promote, train, teach and develop the sport of figure skating to youths, to associate with other figure skating associations, to organize and promote competition among figure skaters and to affiliate with other figure skating organizations. Another stated purpose is to develop the physical, mental, and emotional well-being of the youth participants including the development of personal character traits of assertiveness, self-esteem, self-discipline, perseverance, respect for authority, cooperative relationships with others and sportsmanship. App. Ex. No. 12.

The Huskies and/or the IIC offer programs in hockey, figure skating for all ages, plyometrics (off-ice training without weights), senior skating, adult hockey leagues, adult

learn-to-play hockey programs, “three on three hockey” where the rink is split and each team has three members and public skating. Tr. pp. 80-83.

The Huskies is a membership organization and the organization exists because of its membership and the mutual interests of its members in all aspects of hockey. The Huskies’ Bylaws articulate two classes of members. Any person or family interested in having a child participate in the Huskies’ activities is eligible to become a “Regular Member” upon completion of the prescribed application and “payment of the dues established by the Board of Directors.” A “Regular Member” in good standing is one that has signed a member contract or similar agreement on behalf of their player(s) prior to the start of the regular season of the hockey league and who has paid all fees, dues, and/or special assessments currently due according to the financial payment schedule of the member contract or other such payment schedule approved by the Board of Directors. An “Honorary Member” is a person, firm or corporation who supports the purposes for which the Huskies is organized and who is elected to honorary membership by the vote of 2/3 of the Directors of the Huskies. App. Ex. No. 8. Apparently, a “person or family” becomes a “Regular Member” of the Huskies when they pay the fees for their child to join the Huskies Hockey Club.

Mr. Pedota testified that hockey is a “fairly expensive sport to play.” As far as the cost of participating in sports goes, Mr. Pedota estimated that hockey is the most expensive sport. Expenses would include skates, helmets, shoulder pads, shin guards, and hockey pants. Tr. pp. 22-23. Mr. Conway, Team Manager and member of the Huskies’ Board of Directors, testified that “[M]ost people in hockey – obviously hockey is an expensive sport. They have money.” Tr. p. 192. The expense involved in playing hockey is illustrated by the yearly fees paid by parents or families of skaters, who,

according to the Bylaws, become “Regular Members” of the Huskies after payment of the fees.

Yearly fees for a skater in the Fall-Winter League depend on the skater’s age and skill. Fees can range from \$2,800 to \$4,000 annually. There are five levels of skaters: Mites (the youngest), Squirts, Peewees, Bantams and Midgets. Skaters in the Huskies may pay \$475 extra to participate in Spring Leagues. Tr. pp. 27-28, 87-89. Within these categories, skaters are further divided into “Central States,” gold, silver and bronze, depending on their skill. Central States are the best players. There is a higher range of fees charged for each of these categories and there is more ice time and better coaches as fees increase. Tr. pp. 89-90, 196-197. A team cannot play without, at least, one goalie. Equipment for goalies is more expensive than for other hockey players. Goalie pads can cost over \$1,000. Goalies usually need private instruction to supplement their training. In 2007, the Huskies allowed the goalies to pay discounted fees and get private lessons or they could pay full fees and the Huskies’ goalie director would give private lessons. Tr. pp. 182-185, 194-195.

My research indicates that there is no reported case in Illinois where ownership and operation of an ice rink was recognized as an inherently charitable purpose. Whereas promoting, training, teaching and developing the sport of organized youth hockey may be valuable endeavors, participating in these endeavors through the Huskies requires money. Because hockey is an “expensive sport,” it is clear that the Huskies do not benefit an unlimited number of persons, one of the distinctive characteristics of a charitable organization, according to Korzen. The Huskies benefit a limited number of persons, namely the children playing in the leagues whose families have become “Regular Members” of the Huskies by paying the participation fees for their child. The

Huskies may be developing the physical, mental and emotional well-being of the youth who participate in its programs, but this development is only for its members who pay substantial yearly fees to participate in the Huskies' programs.

By its own admission, the Huskies is a membership based organization. When the primary benefit of an organization flows to its members and not the public, then an exemption will be denied. Chicago Bar Association v. Department of Revenue, 177 Ill. App. 3d 896 (2d Dist. 1988). Fraternal and social organizations do not qualify for exempt status because they operate primarily for the benefit of a limited class of persons who maintain membership therein. The Huskies, which sponsors numerous programs that are of interest to its paying membership, operates primarily for the benefit of its members.

In Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286, 291 (1956), the Court found that one of the primary purposes of the organization was "to benefit and afford comradeship to its members." "Affording comradeship to its members" is strikingly similar to some of the purposes of the Huskies, as stated in its Bylaws, including developing "cooperative relationships with others" and "sportsmanship." According to the Court in Rogers Park, the organization's purposes were "patriotic, laudable and public spirited." "Nonetheless, they do not constitute charitable purposes, however desirable or however beneficial." The Court found that the dominant use of the subject property was as a "private club rather than as a headquarters for the dispensation of charitable relief." *Id.* at 290-291.

Similarly, in Albion Ruritan Club v. Dep't. of Revenue, 209 Ill. App. 3d 914 (5th Dist. 1991), the court found that a community service organization's property did not warrant a tax exemption. In denying a property tax exemption to Albion, the court noted

that “it must be shown that the benefits accrue to mankind directly; it is not sufficient that incidental benefits accrue to the public as a result of the property’s use.” *Id.* at 918.

As discussed more fully below, the benefits of the IIC accrue to the Huskies. In fact, Mr. Pedota testified that the Huskies built the IIC so that the organization could control its own destiny. Tr. pp. 17-19. The dominant use of the IIC is as a private club for the Huskies’ regular members, who pay hefty annual fees for the privilege of using the IIC. Mr. Andersson, General Manager of the IIC, testified that because of work and school schedules, there are periods during the day when ice is most desirable, “when people want to skate.” These periods are known as “prime ice time.” Tr. p. 321. On a typical weekday during 2007, there were at least 15 hours of prime ice time at the IIC. Tr. p. 317. Between 6 and 10 of these hours of prime ice time each weekday are dedicated to the Huskies and its programs. Tr. p. 319.

The primary benefit of the IIC is not to the public at large, but to the Huskies’ “Regular Members,” *i.e.*, the families who pay the hefty annual fee for their children to join the Huskies. If there are any benefits to mankind or the public at large from the Huskies’ activities at the IIC, the benefits are incidental and secondary to its main purpose. Developing the physical, mental and emotional well-being of the youth who participate in the Huskies is “laudable and public spirited.” But it is not logical to conclude that an organization that sponsors such “charitable” activities as hockey, figure skating, adult hockey, and adult learn-to-skate programs, *intra alia*, for paying participants, is a “headquarters for the dispensation of charitable relief.” The IIC is a “headquarters” for activities that are of interest to and paid for by Huskies’ members. The record in this case shows that the primary purpose of the Huskies is not to provide charity. The primary purpose of the Huskies is to provide programs of interest to its

members and paying participants. Accordingly, I conclude that the benefits derived from the use of the subject property are not for an indefinite number of persons.

The record in this case also shows conclusively that the IIC does not reduce a burden on government. “The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them and a consequent relief, to some extent, of the burdens upon the state to care for and advance the interests of its citizens.” School of Domestic Arts and Sciences v. Carr, 322 Ill. 562 (1926).

The IIC was financed through the issuance of \$17.2 million in tax exempt bonds and \$1 million in taxable bonds. The tax exempt bonds were funded through the Illinois Finance Authority’s issuance of Sports Facility Revenue Bonds. The funds were used to acquire the 7.5 acre site in Romeoville and to construct and equip the IIC. Tr. pp. 53-57, 447-448; App. Ex. No. 8. However, the IIC’s financing does not support any inference regarding the charitable nature of the Huskies. Mr. Openchowski, Finance Director for the Village of Romeoville, testified that the Huskies were able to issue the bonds because they were a Section 501(c)(3) organization. Tr. p. 448. However, exemption from federal income tax is not determinative of whether the subject property is used for charitable purposes and therefore exempt from real estate taxes. Clark v. Marian Park, Inc., 80 Ill. App. 3d 1010 (2d Dist. 1980).

On January 31, 2006, the Huskies entered into a “Development Agreement” (the “Agreement”) with Romeoville. The Agreement states that if the Huskies will construct the IIC in conformance with certain architectural elevations requested by Romeoville, Romeoville will abate and waive fees for building permit review and approval and plan review, and sewer and water tap-on fees. Tr. pp. 60-68, 449, 454-456; App. Ex. Nos. 1

and 10. The Agreement also requires that for a period of not less than three years from the date on which the IIC received a certificate of occupancy, all Romeoville residents enrolling in any hockey or skating instructional program offered by the Huskies, shall receive a 10% discount from the lowest price or rate offered and that the Huskies shall be obligated to advertise the availability of this benefit to the general public. The Agreement allows Romeoville to have a Christmas and Halloween party at the IIC free of charge. Romeoville waived \$276,000 in fees in exchange for concessions from the Huskies with regard to development of the site. Tr. pp. 69-71, 114-115, 339-340, 448-449, 454-456; App. Ex. No. 1.

There was no testimony at the evidentiary hearing that Romeoville was required to maintain and operate an ice rink in the Village. The Applicant failed to delineate any statute, ordinance or legal mandate requiring Romeoville to provide recreational facilities, including an ice rink, for its citizens. Mr. Openchowski testified that, prior to construction of the IIC, Romeoville was working with some developers and “looking at putting in kind of like a sports complex facility,” “facilities where [Romeoville] perhaps could hold local concerts and items of this sort, and also kind of for ... training and recreation uses as well.” Tr. p. 437. If such a facility had been opened, it was intended that Romeoville would have been the owner. Tr. p. 438. However, there was no testimony that Romeoville was required, by ordinance, to open a recreational facility. In fact, Romeoville has continued to look at further development of the site, even after construction of the IIC. Mr. Openchowski testified that Romeoville was “looking to see if we could kind of even tie in with what the [IIC] was doing, so it would kind of be like on one continuous complex out there.” These plans have been “shelved” because Romeoville cannot afford the project at this time. Tr. pp. 450-451. Mr. Openchowski’s

testimony shows that construction of the IIC was part of Romeoville’s overall plan for development of the site, but there is no evidence in the record that the IIC was relieving the Village of any “burden.”

There is also no evidence in the record that the IIC benefits any local school districts. Plainfield Community School District 202 has 30 schools in the District, 17 of which are elementary schools, and 2 of which are in close proximity to the IIC. The District strives for a “coordinated and articulated curriculum across all our schools.” The 2 schools in close proximity to the IIC are required to follow the same curriculum as the other elementary schools that are quite a distance away from the IIC. Mr. Harper, Superintendent of District 202, testified that the ancillary costs of transporting kids back and forth to the IIC within “the parameters of the scheduled instructional day” would preclude the District from taking advantage of the IIC. “It’s not likely” that District 202 could incorporate ice skating into the curriculum, “recognizing the limitations of our other campuses.” Tr. pp. 516-418. Clearly, the IIC is not lessening any burden on District 202.¹

Other school-related organizations that use the IIC are simply paying for ice time, similar to IIC’s other commercial transactions. The Plainfield High School Hockey Association, which has students from the four high schools in Plainfield, uses the IIC as its home rink, and pays the IIC \$300 to \$320/hour for rental of the facilities. Tr. pp. 480-488, 492-493. Mr. Pedota testified that there are four or five high school programs “based out of IIC.” These programs enter into ice sale contracts in order to buy their ice time. They are “actually purchasing their ice from the IIC.” Tr. p. 116. Mr. Andersson, testified that Lemont, Nequa Valley, and Plainfield High Schools paid the IIC \$335/hour

¹ Plainfield Community School District 202 is the “Intervenor” in this case.

for ice time in 2007. “All of the teams for the 2007 September season paid \$335.” Tr. pp. 322-323. It is ludicrous to argue that the IIC is providing “charity” to these high schools, while it is charging them \$335/hour for ice time. The hourly fee charged to the school-related organizations does not show that the IIC is lessening any burden on the government.

The IIC has agreements with local park districts in which the park district markets a program that uses the facilities at the IIC, with the IIC and the park district splitting the revenue. Shorewood, Plainfield, Lemont, Naperville’s Nequa Valley Park District and Romeoville participate in these programs. The park district advertises the program and the residents make their payment to the park district. Tr. pp. 84, 116-117, 251-265, 301-304, 327-332, 333-337, 340-343, 472-478; App. Ex. Nos. 2 and 5. “The Huskies take 60% of the fee and the park districts get 40% of each dollar in fees.” “Romeoville, the first park district to sign up to share in the revenue, gets [a] 20% share of all fees.” “This is in addition to the resident discount enjoyed by all Romeoville residents.” App. Brief, p. 12.

IIC’s sharing of revenues with the park districts is not a charitable endeavor and the sharing does not reduce a burden on government. In fact, Mr. Buckholtz, Program Supervisor for Romeoville’s Recreation Department, testified that all “contractual” programs are charged 10% to 20% for Romeoville’s costs of advertising the programs in their brochures and registering the participants. Mr. Buckholtz testified that Romeoville’s “contractual” programs included theater classes, pre-school classes and casino trips. Tr. p. 477. There is nothing particularly “charitable” about how the IIC splits revenues with the park districts as for-profit entities, such as casinos, have the same relationship with the park districts.

Applicant argues in its “Closing Argument and Brief” that Decatur Sports Foundation v. Department of Revenue, 177 Ill. App. 3d 696 (4th Dist. 1988) “sets out the framework for evaluating” the instant case. App. Brief, pp. 32-33. The granting of a charitable tax exemption in Decatur and the court’s finding that the Foundation lessened a burden on government were based on completely different facts from the case at issue. In Decatur, a representative from the local park district stated that without the Foundation’s field, the park district would have to build more diamonds, reschedule games to less desirable times or reduce the number of games. “This is sufficient evidence from which to conclude the Foundation reduces the burden of government by privately supplementing public recreational facilities.” *Id.* at 706.

However, the “sufficient evidence,” as the court termed it, is completely lacking from the case at issue. There was no testimony that Romeoville would have built a facility containing ice rinks, in fact three ice rinks, if the Huskies had not built the IIC. There was no testimony that Romeoville had previously undertaken the task of providing ice rinks to its citizens and that those facilities would be severely strained without the Huskies’ additional three rinks at the IIC. The court noted further in Decatur that the “[F]oundation does not require membership in order to use the field.” *Id.* at 706. As discussed previously, the Huskies are a membership organization charging hefty fees in order to use the IIC. The IIC’s reliance on Decatur for its argument that it lessens a burden on government is misplaced.

The record in this case does not show that the Huskies confer any benefit on local park districts or school districts from use of the IIC. I conclude that the Huskies have failed to prove that the benefits derived from use of the IIC are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government.

The Huskies have failed to prove that the organization possesses this characteristic of a charitable organization.

Korzen factor (2): The organization’s funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter.

With respect to this Korzen factor, the Huskies failed to prove that the majority of its funds were derived from public and private donations. The Huskies’ Consolidated Financial Statements for April 30, 2007, states specifically in Note A that “revenues are derived principally from the Organization’s programs including Travel Hockey, House Hockey Leagues, In-House Hockey and camps and clinics which in total compose 450-500 participants on average.”² The “Consolidated Statement of Activities” for April 30, 2007 shows “Total Revenue” of \$2,268,501, of which \$1,865,672, or 82%, is derived from “Program Revenue,” consisting of membership and service fees, \$100,000 (4%) was a donation from the Aline S. Andrew Foundation to build the IIC, and \$188,756 (8%) was from “Fund Raising Revenue,” including the ad book, candy sales, dinner dance, raffle, *et al.* Tr. pp. 34-39; App. Ex. No. 8. The “Fund Raising Revenue” includes \$155,200 from the “dinner dance” and raffle tickets. Families of members are required to purchase tickets to the dinner dance and raffle tickets as a condition of participating in the Huskies league. Tr. pp. 112-113. Accordingly, it seems that the proceeds from the dinner dance and raffle tickets are more correctly characterized as “Program Revenue,” than fund raising revenue. If the proceeds of the dinner dance and raffle tickets were included

² Because the Huskies are the sole member of the International Ice Center, LLC, “and under common control,” the financial statements of the two entities are consolidated. App. Ex. No. 8; Note B.

in “Program Revenue,” 90% of the Huskies’ revenue would be from membership and service fees.

Figures for April 30, 2008 show “Total Revenue” of \$2,738,682, of which \$2,375,912, or 87%, is derived from membership and service fees, \$50,000 (2%) was a donation to build the IIC, and \$184,895 (7%) was from “Fund Raising Revenue.” Int. Ex. No. 4. If the dinner dance and raffle tickets (\$149,636) are included in “Program Revenue,” 92% of the Huskies revenue would be from membership and service fees.

As the financial data indicates, the great majority of the Huskies’ funding is earned from selling its programs to its members. Charity is an act of kindness or benevolence. “There is nothing particularly kind or benevolent about selling somebody something.” Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 734, 750 (4th Dist. 2008), *cert granted* 229 Ill 2d 694 (2008). Because of the high level of revenue being earned from program fees, I conclude that the Huskies’ primary purpose and the primary use of the IIC is to provide recreational services to those who are able to pay for them. If the IIC is benefiting an indefinite number of persons, these persons are paying customers.

In Riverside Medical Ctr. v. Dept. of Revenue, 324 Ill. App. 3d 603 (3rd Dist. 2003), the court noted that 97% of Riverside’s net revenue of \$10 million came from patient billing. According to the court, “this level of revenue is not consistent with the provision of charity.” *Id.* at 608. Similarly, in Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647 (1st Dist. 1998), Alivio argued that 59% of its revenue was from patient fees and 25% was derived from charitable contributions. The court found that Alivio was not a charitable institution. As the above cases indicate, the exchange of

services for payment, at the level enjoyed by the Huskies, is not a “use” of property that has been recognized by Illinois courts as “charitable.”

It should also be noted that the IIC charges fees for programs that are not connected with the Huskies’ hockey leagues. The IIC charges fees for the adult learn-to-play hockey program, adult learn-to-figure skate program, plyometrics, figure skating, girls’ hockey program, adult men’s hockey and adult women’s hockey. The IIC charges \$5 to \$7/half hour for open public skating. A skater can buy a pass for unlimited skate time in the month and reduce the hourly charge. Tr. pp. 115-116, 321-322, 548-552.

Although the source of funding may not be a decisive factor in determining whether the Huskies is a charitable organization, this factor must be taken into account in determining charitable ownership. Lutheran General Health Care System v. Department of Revenue, 231 Ill. App. 3d 652 (1st Dist. 1992). Having an operating income derived almost entirely from contractual charges goes against a charitable identity. Small v. Pangle, 60 Ill. 2d 510, 517 (1975). In the instant case, the high level of revenue from the Huskies’ programs and activities at the IIC indicates that the primary use of the IIC is recreational, not charitable. The Huskies have failed to prove that the majority of its funding is from public and private charity and the Huskies do not possess this characteristic of a charitable organization.

Korzen factor (4): Charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it.

A “Hardship Assistance Request Worksheet” for the “2006-2007 Season” shows 14 recipients of “hardship” assistance. Hardship awards of \$9,065 were granted to the 14 recipients from an available budget for assistance of \$20,495. Tr. pp. 92-97, 157-158; App. Ex. No. 4. The hardship awards of \$9,065 represent less than ½ of 1% of the

Huskies' "Total Revenue" for April 30, 2007 of \$2,268,501. Similar figures for the "2007-2008 Season" show "financial aid" of \$7,776 granted to 7 recipients. This financial aid again represents less than ½ of 1% of the Huskies "Total Revenue" for April 30, 2008 of \$2,738,682. Tr. pp. 98-105; Int. Ex. No. 4. It should also be noted here that Mr. Pedota estimated that at the time of the Huskies' move to the IIC, the Huskies had 31 teams and 550 skaters. Tr. pp. 13-14. The 14 and 7 financial aid recipients for the 2006-2007 and 2007-2008 Seasons represent 2.5% and 1.3%, respectively, of the 550 skaters. "To be charitable, an institution must give liberally." Provena Covenant Medical Center at 750. It would defy logic to conclude that the Huskies have given "liberally." The disparity between the Huskies' hardship assistance and its "Total Revenue" is so extreme that it is disingenuous to maintain that the primary purpose of the organization is to provide charity. In order to obtain an exemption for charitable use, an organization is required to prove that its primary purpose is charity. The figures showing the Huskies' hardship assistance in 2007 and 2008, both in terms of dollars and in terms of persons receiving assistance, fall far short of meeting the primary purpose standard.

Mr. Pedota testified that there was no formal application procedure for parents to follow if they wanted financial aid. Parents cannot download a hardship application from the Huskies' website. The parents "either ... come verbally and discuss with someone or they send an e-mail." Tr. p. 92. However, without a formal application procedure, I cannot conclude that charity is provided to all who need and apply for it. I must question whether parents in need of hardship assistance would know to "come verbally" or "send an e-mail" requesting assistance. If families do not know that assistance is available, they would not be applying for it. One can infer from the minimal amount of hardship assistance provided and the lack of a formal application procedure, that charity is not

being provided by the Huskies to all who need it. The Korzen criteria that a charitable organization dispense charity to all who need and apply for it is “more than a guideline.” It is an “essential criteria” and it “goes to the heart of what it means to be a charitable institution.” Provena Covenant Medical Center at 750.

Mr. Stevens, Treasurer of the Huskies and Chairman of the Finance Committee, testified that the Huskies give financial credits to families with more than one skater in the family and financial credits to goalies whose fees are more expensive than other skaters. He estimated that the aggregate of these credits would be \$100,000. Tr. pp. 137-138. No documentary evidence was admitted to support this amount. Assuming, *arguendo*, that this \$100,000 figure is accurate, it represents less than 5% of “Total Revenue” for April 30, 2007 and 2008.

The fee waivers discussed above are minimal in absolute terms, but they become comparatively smaller when compared to the fee waivers granted to the members of the Board of Directors of the Huskies and the coaches. Each member of the Board of Directors receives a waiver of skater fees for one child participating in the Huskies and two dinner dance tickets. The waiver is per season during the Board member’s tenure on the Board. These waivers totaled \$42,235 and \$24,130 for year-end April 30, 2007 and 2008, respectively. There are 8 to 11 Board members. Tr. pp. 40-42, 107-109, 537-538, 557; App. Ex. No. 8; Int. Ex. No. 4. It should be noted that the fee waivers for Board members in 2007 were more than twice the amount of hardship assistance budgeted for 2007, which was \$20,495, and almost 5 times more than the amount of hardship waivers actually granted, \$9,065. In addition, whereas Board members receive full fee waivers, no applicant for hardship assistance as listed on Applicant’s Ex. No. 4, for the 2006-2007

Season, and Intervenor's Ex. No. 1, for the 2007-2008 Season, received a full waiver of fees.

The Huskies have a hockey director for the hockey clubs, paid \$100,000/year, and a hockey director who works as general manager of the IIC, paid \$75,000/year. Tr. pp. 105-106. There was testimony at the evidentiary hearing about relatives of Board members receiving business contracts from the Huskies. These contracts are detailed under "Note J – Related Parties" in the Consolidated Financial Statements. The Huskies had a "long history" of contracting, through early fiscal 2007, with an administrative management company that provided employee leasing services, including the payment of compensation, health insurance and related employee benefits, extensive administrative support and certain purchasing discounts. The administrative management company's principal shareholder is the spouse of one of the Board of Directors of the IIC. The sister of a Huskies' Board member received a \$4,340 contract with an employee leasing company. The spouse of a Huskies' Board member sells jerseys to the Huskies. Tr. pp. 388-390; App. Ex. No. 8; Int. Ex. No. 4.

During 2007, team coaches received compensation of \$2,500 to \$7,000 for the season, depending on their level of experience. Similar to Board members, coaches may receive a fee waiver for one child in lieu of their salary. These waivers totaled \$24,110 and \$22,600 for year-end April 30, 2007 and 2008 respectively. It should be noted again that the fee waivers for coaches in 2007 and 2008 were 2 times more than the amount of hardship waivers actually granted in those years. In addition, whereas coaches receive full fee waivers, no applicant for hardship assistance as listed on Applicant's Ex. No. 4, for the 2006-2007 Season, and Intervenor's Ex. No. 1, for the 2007-2008 Season, received a full waiver of fees. Coaches of "in house" teams are paid \$1,000/season. Tr.

pp. 42-44, 109-110, 534-538, 558-559; App. Ex. No. 8; Int. Ex. No. 4. Each team has a team manager. Team managers receive \$250 to cover their costs, which may include copying expenses, mailings, postage and telephone. Tr. pp. 44-45, 110, 127-128, 172-174, 179, 560.

“The employees of a charitable institution are not compelled to perform free services in order that the institution may be charitable.” Yates v. Board of Review, 312 Ill. 367 (1924). “The payment of reasonable salaries to necessary employees for services actually rendered does not convert a nonprofit enterprise into a business enterprise.” 86 Ill. Admin. Code §130.2005(h). No evidence was presented at the evidentiary hearing as to whether the Huskies’ salaries and fee waivers were reasonable, as compared to similar organizations. Based on the record in this case, I conclude that the Huskies have failed to prove that the organization dispenses charity to all who need and apply for it, and does not provide gain or profit in a private sense to persons connected with it. The Huskies have failed to prove that the organization possesses this characteristic of a charitable organization.

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

The Huskies and the IIC place several obstacles in the way of those who need and would avail themselves of their “charitable” benefits. As discussed previously, a “Fee Hardship Policy” is attached to the end of the Huskies’ Bylaws. This document does not appear to be integrated into the Bylaws. App. Ex. No. 12. In addition, the Huskies do not have a formal application procedure for hardship assistance. Mr. Pedota testified that “[T]here actually is no formal application” for financial assistance. Parents “come

verbally and discuss with someone, or they send an e-mail.” Parents cannot go to a website and download a hardship application. Mr. Pedota also testified that one way that the Huskies learn about families in need is through “bounced checks or failed credit card payments.” Tr. pp. 91-92.

The informal nature of the application process and the use of e-mails to request hardship assistance have some inherent problems, as illustrated below. The Intervenor caused to be admitted into evidence an e-mail from Mike Conway regarding a financial assistance request from a parent asking for a \$50 reduction per child for two children so that the children could attend goalie camp. After the \$50 reduction per child, the parent would have to pay \$300 for the camp. The e-mail includes some “Considerations” as follows: 1) They have 2 goalies and are not well off; 2) Both [child 1] and [child 2] are two of our top goalies; 3) \$50 each is something but won’t break the bank; 4) We are short on goalies in our camp; and 5) It is \$300 we wouldn’t otherwise get. “This is \$300 EXTRA for us – not a reduction in fees.” Int. Ex. No. 3. The “Considerations” in the e-mail are obviously “lacking in the warmth and spontaneity indicative of a charitable impulse” and appear to be “related to the bargaining of the commercial market place.” Korzen *supra* at 158.

When asked to explain some of the comments in the e-mail, Mr. Conway testified that the “problem” is that the finance committee has a “hard job” of identifying people who truly need hardship assistance as compared to people “trying to get free fees, when they can afford to pay.” “And we’ve had people who’ve had summer homes that applied for financial assistance and didn’t need it.” “You know, if I know someone has a vacation home or someone is building a million dollar house, I can question whether these people really need financial assistance.” Tr. pp. 215-216. This testimony leads me

to conclude that there is apparently a great deal of subjectivity in determining who actually will receive hardship assistance. In addition, Mr. Conway's testimony does not explain the "Considerations" in the e-mail about the two "top goalies" when the Huskies are "short on goalies." If the skill level and availability of goalies is the standard for giving hardship assistance, it goes more to the needs of the Huskies rather than the financial needs of the family. Processing requests for hardship assistance informally and through e-mails can create misunderstandings and prevent those in need of assistance from actually receiving it. This is clearly an obstacle in the way of the truly needy who are applying for assistance.

Mr. Stevens testified that when people express concern about the amount of the Huskies' membership dues, they are told about the various options for assistance. Tr. pp. 129-130. Mr. Stevens also testified that a parent will learn of the opportunity for hardship assistance, "if they express their problems paying to any of the Board members, to the team manager, [or] to other people on the team that have received assistance." Tr. p. 160. Mr. Stevens' testimony about parents finding out about the opportunity for hardship assistance by talking to "other people on the team that have received assistance" is undercut, first, by an e-mail sent by Mr. Conway and second, by the Huskies "Fee Hardship Policy," attached to its Bylaws.

In this e-mail, dated September 7, 2006, with the "Subject: Hardship Request Details," sent to a parent requesting information about hardship assistance, Mr. Conway stated that "[T]he Huskies have a LIMITED hardship budget to provide some assistance for tough financial circumstances." You need to provide the following information to the Finance Committee: 1) skater requesting assistance; 2) his past teams; 3) reason for making request [As much as you feel comfortable, you need to tell why you needed

assistance]; 4) What type of assistance you are requesting to alleviate your hardship [reduction in fees, extended payment plan, something else]. “You need to get this in immediately to be considered for hardship with any other applications. If you delay, the Finance Committee may have distributed all of the hardship funds.” “You should NOT share this information with anyone else.” Tr. pp. 200-204; Int. Ex. No. 2.

Mr. Conway testified that the last sentence of the e-mail was added “in order to encourage these guys to apply for financial assistance, which most people don’t want to do, because they’re – whether they’re ashamed or embarrassed, but to tell them, only the finance committee knows this stuff; don’t share it with anybody else.” Tr. p. 217. It should also be noted that the Huskies’ “Fee Hardship Policy,” attached to its Bylaws, contains the following provision: “Upon awarding of assistance, the member will be notified and asked to keep assistance confidential.” Applicant’s Ex. No. 12. It simply is not logical to conclude that a parent needing hardship assistance could find out about its availability from other parents on the team that have received assistance, as Mr. Stevens testified, when these same parents are being told to keep their receipt of hardship assistance “confidential.” Tr. p. 160. It is reasonable to conclude that the “confidential” nature of the Huskies’ hardship assistance program is a way of limiting the assistance that will be requested.

In Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272 (2d Dist. 1987), the court found that an Immediate Care Center did not qualify for a charitable exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that “the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care may be available to those who need it.” *Id.* at 281. Similarly, in Alivio Medical Ctr. v.

Department of Revenue, 299 Ill. App. 3d 647 (1st Dist. 1998), where the court denied a charitable exemption for a medical care facility, the court again noted that “Alivio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care.” *Id.* at 652.

There was no testimony at the evidentiary hearing in this matter that the “general public” would ever know that hardship assistance is available from the Huskies since the availability of assistance is not advertised. The Huskies may know that member families need assistance when checks bounce, when credit card payments fail or when the parents express concern about their membership dues. But the “general public,” not knowing that hardship assistance is available, if it is available, would never have joined the Huskies in the first place. The fact that the availability of hardship assistance is not advertised to the general public is a significant obstacle in the way of those who wish to join the Huskies but cannot afford the membership fees. A charity dispenses charity and does not obstruct the path to its charitable benefits. Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273, 287 (2004)

Another obstacle in the way of those needing assistance is that the amount of hardship assistance available from the Huskies is limited. As the e-mail from Mr. Conway, above, indicates, “[T]he Huskies have a LIMITED hardship budget.” Int. Ex. No. 2. The “Hardship Assistance Request Worksheet” for the “2006-2007 Season,” discussed above, shows that the available budget for assistance was \$20,495. Tr. pp. 92-97, 157-158; App. Ex. No. 4. Mr. Stevens testified that because of “how our financial cycle and our process works, in essence I am budgeting in the assistance to our fee structure at the beginning of the year.” “So I’m estimating historically how much assistance we’ve had to provide, and I’ll include that in my budget.” Mr. Stevens then

testified that "... in essence, every paying member is paying a portion of the hardships that will eventually be granted." Tr. pp. 136-137. This statement causes me to seriously question whether the Huskies, as an organization, are truly providing any hardship assistance.

The "Fee Hardship Policy" attached to the Bylaws states that requests for financial assistance will "be considered based on need, number of assistance requests and time with the club." App. Ex. No. 12. No explanation for these limitations was offered at the evidentiary hearing. Does "number of assistance requests" indicate a member is limited in how many seasons he can ask for assistance or does it mean that all requests for assistance in one season will be limited by the dollar amount of assistance available? Does "time with the club" indicate that first year players do not get assistance even if they are more needy than someone who has been in the Huskies for a longer period of time?

Further, the "LIMITED hardship budget" represents an obstacle in the way of those needing assistance. In any given year, the number of families needing assistance from the Huskies may exceed the budgeted amounts, and this could occur as the Huskies enjoyed the benefits of the property tax exemption that they are requesting from this tribunal. There is no guarantee that someone needing assistance will get it. These provisions, which clearly limit the number of people who may receive hardship assistance and the dollar amount of assistance available, support the conclusion that the Huskies' place obstacles in the way of those who need and would avail themselves of its charitable benefits.

In order to defray the costs of membership in the Huskies, parents of skaters are able to work the concession stands at Joliet Jackhammer Minor League baseball games,

Tweeter Center concerts and at a racetrack in Joliet. The parents are paid at the rate of \$12.50/hour. These organizations write a check to the Huskies for the hourly concession work of the parents, and the Huskies either credit the annual fee of the skater (if the annual fee has not been paid) or issue a check to the parents (if the annual fee has been paid). Tr. pp. 29-30, 142-143, 180-181, 368-369. Skaters and family members can also sell Fannie Mae candy. Fannie Mae rebates 20% of the candy sales to the Huskies and the Huskies rebate this amount to the membership fees of the families that participated. Tr. pp. 30-31, 181, 378-380; App. Ex. No. 15. The Huskies also published an ad book. Members may sell ads in the book to corporate sponsors and 45% of the cost of the ad was rebated to members who sold the ad. Tr. pp. 32-33, 180, 373-374; App. Ex. No. 6.

Unlike the hardship waivers for which there is no formal advertising, parents can learn about the fundraising opportunities through a variety of sources. Mr. Stevens testified that parents can learn about fundraising opportunities in three different ways: 1) through the Huskies website; 2) through “pre-season materials that we send out to everyone that has our registration information;” and 3) at the contract signing ceremony held in early September when parents sign contracts for the fees for the next season. Tr. pp. 161-162, 383-384. Ms. Hippman, Secretary of the Huskies and parent of a Huskies’ team member, testified that she knew of a family that worked off 50% of their fee and a family that worked off 75% of their fee through these fundraising efforts. Some families have come close to working off their entire fee, but so far, no one has done it.³ Tr. p. 386. As discussed previously, members of the Huskies’ Board of Directors and some coaches receive a 100% fee waiver.

³ At \$12.50/hour, a parent paying membership fees of \$2,800 for their child, which is in the low range of fees, would have to work 224 hours to work off their entire fee.

I am unable to conclude that the fundraising efforts described above constitute “charity” by the Huskies. When a Huskies member takes on an additional job, at \$12.50/hour, to pay their membership dues, the best that can be said for the Huskies is that the organization helped the member find the job. My research indicates that there is no Illinois case where a club was considered as organized for charitable purposes because it found a job for a member so that the member could afford the club’s dues.

Moreover, the Huskies’ hardship assistance, discussed above, is only granted when other forms of accommodation, such as fundraising, working off fees, or extending payment plans do not cover the cost of membership. Mr. Stevens testified that “we offer a basket of assistance that changes from extended payment terms, volunteer and other shared fundraising programs, where they can earn money and earn rebates and earn credits against their fees, up to and including an actual fee waiver of portions of their hockey fees.” He added that not every request for financial assistance results in a fee waiver. “Some are able to make their payments simply by restructuring the payment terms or participating in the credit earning programs that we have.” Tr. pp. 130-131.

Mr. Conway testified that “financial assistance doesn’t always come in the form of you’re knocking off a thousand dollars of your fees. It also comes in the form of extending payment plans.” “[A] lot of people, instead of making five payments, they can make six or seven payments.” Tr. pp. 177-178. The “Fee Hardship Policy” attached to the Huskies’ Bylaws, states that assistance can include a combination of the following: reduction in fees; deferral of fees; or requirement to volunteer for tournaments/special events. App. Ex. No. 12. For charity to occur, “something of value must be given for free.” Provena Covenant Medical Center at 751. Restructuring and extending payment

plans, deferring fees and requiring parents to volunteer are accommodations. They are not charity.

The Korzen criteria that a charitable organization place no obstacles in the way of those needing assistance is “more than a guideline.” It is an “essential criteria” and it “goes to the heart of what it means to be a charitable institution.” Provena Covenant Medical Center at 750. The record in this case shows that the Huskies have an informal hardship policy not included in its Bylaws and no formal application process. The availability of financial assistance is limited by the budget. The record contains no evidence that the availability of financial assistance is advertised outside the Huskies’ organization. Within the Huskies’ organization, there appears to be an attempt to keep the granting of financial assistance confidential. If families request assistance, they are first steered to programs in which they can raise the funds for their membership dues through their own efforts. A fee waiver is granted only if these opportunities fail. These are all obstacles placed in the way of those who need and would avail themselves of the Huskies’ hardship assistance.

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

The IIC contains three National Hockey League sized ice rinks (17,000 square feet), six office spaces, fourteen locker rooms including locker rooms for women, one locker room dedicated to the Huskies, various storage areas, four meeting rooms and spectator stands. One meeting room is soundproofed and used as a study center where children can do their homework. This meeting room has free internet Wi-Fi. The IIC also contains a synthetic ice goalie practice center, which is a sheet of plastic used for training goalies and for training young kids how to skate. There is an area for off-ice training with

weights and treadmills. The IIC also contains a leased concession area with a counter where food and beverages are sold and a pro-shop, leased to Gunzo's Sports, which sells hockey equipment and sharpens skates. The IIC is not seeking exemption for the leased concession area and pro-shop. Tr. pp. 71-78, 236-237, 314-315, 504-518, 532-533; App. Ex. No. 17 and 18.

A typical weekly schedule for the IIC is as follows: Figure skaters practice at 6:00 a.m. on Monday through Fridays. At 9:00 a.m. on Monday, Wednesday and Friday, there is adult hockey. There is a public skate from 1:00 p.m. to 3:00 p.m. From 3:00 p.m. to 4:00 p.m., there is "stick and puck," which is public skating using a stick and a puck. From 4:00 p.m. to 5:00 p.m., there are lessons and practice for the figure skaters. From 5:00 p.m. to 10:00 p.m., the high schools and the Huskies practice using three sheets of ice. After 10:00 p.m. the IIC is used by adult leagues. On Saturdays, figure skaters use one rink until noon, little Huskies use one rink until noon for the "learn-to-skate" program and adult Huskies use the other rink. Some high schools use the rink on Saturday afternoons and evenings for practice and games. There is also public skating on Saturday night and Sunday afternoons. If the ice is not being used by the IIC or the Huskies, it can be sold in ice sales contracts. Tr. pp. 238-247, 316-321.

When the Huskies are not using the IIC, the general public can use it for a fee. The IIC (rather than the Huskies) charges fees for the adult learn-to-play hockey program, adult learn-to-figure skate program, "three on three" programs, plyometrics, figure skating, girls' hockey program, adult men's hockey and adult women's hockey. The IIC charges \$5 to \$7/half hour for open public skating.⁴ A skater can buy a pass for

⁴ Mr. Donald DeWilkins, Coach and Board Member of the Huskies, testified that the \$7 charge for public skating was a "donation," rather than a fee. He was "sure" a skater could get in if he chose not to make a donation even if the skater could afford to make a donation. He was then asked: "So if someone said, I have

unlimited skate time in the month and reduce the hourly charge. Tr. pp. 115-116, 321-322, 548-552. Someone wanting to take a skating class at the IIC would pay a fee of between \$100 to \$240 for the class. App. Ex. No. 2. As discussed previously, (non-Huskies) hockey teams and hockey organizations wishing to use the IIC would pay approximately \$335/hour for ice time. The IIC's meeting rooms can be rented for parties. Renters may be charged \$25 for this rental to cover clean up costs. If someone rents ice space for a party, they are not charged if they use a meeting room. Tr. pp. 116-117, 310-311.

There is no documentary evidence in the record showing that there is a policy for waiving fees for the above programs, sponsored by the IIC. Mr. Stevens testified that he believed that those needing or wanting financial aid "have to approach the IIC management team to say that they would like to do something and they can't afford it, but I don't know what the process is on the non-Huskies side." Tr. pp. 148-149. Mr. Andersson was asked whether anyone used the IIC "for free pursuant to your discretion during 2007?" He responded that "[W]e have given people free classes and sessions." He could not be exact as to how many people. "We don't keep detailed records of that." Mr. Andersson was then asked if the IIC Board ever got involved in the waiving of fees for IIC programs. He responded: "In my time there, I don't believe they have been involved in any waiving of specific fees for participants." Tr. pp. 337-338. The record in this case, which itself lacks any "detailed records" that the IIC provides charity for the programs it sponsors, does not prove that the IIC is exclusively used for charitable purposes.

the resources to pay the \$7, but I chose not to pay it, give me access to the ice, they would be granted access to the ice?" He responded: "I'm not the general manager. I don't know." Tr. pp. 551-552.

I have balanced the above considerations against factors showing some charitable use of the subject property. Mr. Pedota testified that senior citizens are welcome to use the IIC's facilities for free, in the late morning, Monday through Friday. "And right now there is only one gentleman that comes in and uses that hour of ice." Tr. pp. 84-85. Mr. Andersson testified that the IIC started offering the "Learn-to-Skate" program for free, "just to give kids an opportunity to try it." Tr. p. 248. This program is for children, ages five to seven. The "hope of the Program" would be that the children continue on in other programs at the IIC and with the Huskies, or just with hockey in general. Tr. pp. 494-495.

There is testimony in the record that the IIC charged discounted rates to some organizations. In Summer, 2007, the IIC offered discounted figure skating sessions to the Girl Scouts. The discounted rate was \$28 for each Scout with the IIC's usual rate between \$100 to \$125. Tr. pp. 278-279; App. Ex. No. 3. There was no testimony as to how many Girl Scouts participated. In December, 2007, the Huskies held a toy drive in the IIC. The IIC advertised the toy drive and asked the coaches to support it. The toys were donated to the Ronald McDonald house. Tr. pp. 280-281, 332-333; App. Ex. No. 3. In 2007, the IIC donated Chicago Blackhawks' tickets, party passes and VIP skating passes for a silent auction held for a student undergoing transplant surgery. Tr. pp. 287-288; App. Ex. No. 3. In the Fall, 2007, the IIC put up a poster and set up a bin for the "Warm-up Chicagoland" charity coat drive sponsored by the DuPage Figure Skating Club. Tr. pp. 288-289; App. Ex. No. 2.

Mr. Pedota testified that "we had a cancer organization come in, and they wanted to hold a fundraising hockey game, which we gave them the use of the rink for free." Mr. Pedota was then asked how many other organizations used the IIC for free in 2007. He responded: "I can't give you the exact number... I know there was more than two." Tr.

pp. 119-120. Mr. Andersson testified that there were two events in 2007 where organizations using the IIC did not pay any fees. On November 2, 2007, the “ATI Foundation,” which assists children in need of funding for medical issues and disability, held a fund raiser at the IIC with the IIC donating ice time and party rooms. Tr. pp. 289-290; App. Ex. No. 3. There was testimony that Naperville High School held a “Shoot Out For Cancer” event, and paid no fees. Tr. pp. 290-290. Mr. DeWilkins testified that he authorized a fundraiser, at no charge, for a Plainfield “gentleman who was injured very badly in a car accident.” Tr. p. 530.

There was testimony that the Amateur Hockey Association held a tournament at the IIC and rented the ice for \$275/hour. The usual rate for ice time rental charged by the IIC may be \$335/hour, depending on the time that the ice is rented. Tr. pp. 325-327. In November, 2007, the IIC provided a 40% discount on the rental of ice to “USA-Canada 2007 International Super Cup II.” This is a fundraising event where participants sell ads in a book to raise funds for a cancer charity. Tr. pp. 296-297; App. Ex. No. 3.

The record does not contain any testimony or evidence as to the value of the ice time provided for these events. Without knowing the quantity or value of the services donated to these organizations, and considering the small amount of hardship assistance provided by the Huskies to its members, as discussed above, I am unable to conclude that the primary use of the IIC in 2007 was for charitable purposes. The applicant had the burden of proving here, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994). In this case, the applicant has failed to prove that the subject property was exclusively used for charitable purposes in 2007, as is required by 35 ILCS 200/15-65.

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt so that only the limited class of properties meant to be exempt actually receives the exempt status that the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the charitable exemption will cause damage to public treasuries and the overall tax base. In this case, the applicant has failed to prove that the subject property falls within the limited class of properties meant to be exempt for charitable purposes.

For the above stated reasons, it is recommended that the Department's determination which denied the exemption from 2007 real estate taxes on the grounds that the subject property was not in exempt ownership and not in exempt use should be affirmed, and Will County Parcel, Property Index Number 02-31-103-001 should not be exempt from 2007 real estate taxes.

ENTER:

Kenneth J. Galvin

July 31, 2009