



recommendation that the requested exemption be denied. In support thereof, I make the following findings of fact and conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

**FINDINGS OF FACT:**

1. The jurisdiction and position of the Illinois Department of Revenue, (hereinafter referred to as the “Department”) that Jackson County Parcel Index No. 15-21-209-001-0060 did not qualify for a property tax exemption for the 2003 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 7)

2. The Department received the application for exemption of the subject parcel from the Jackson County Board of Review. The Board recommended granting a full year exemption for the 2003 assessment year. The Department denied the requested exemption finding that the property was not in exempt ownership and not in exempt use. (Dept. Ex. No. 1)

3. The Applicant acquired the subject parcel by a Corporate Quitclaim Deed on December 1, 1994. (Dept. Ex. No. 1)

4. Applicant was incorporated under the Illinois General Not for Profit Corporation Act on April 23, 1993 for:

The purposes for which the corporation is organized are exclusively for education and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of future United States Internal Revenue law) and consistent therewith:

- a. To construct, equip, manage and maintain a community based non-commercial FM broadcasting facility in Carbondale, Illinois, consistent with the laws of the United States;

- b. to raise and expend funds to promote, support, enhance and operate the facilities for the benefit of the community; and
- c. to provide for and carry on such other activities in connection therewith as may be necessary and appropriate for a non-commercial FM broadcasting facility, and to carry on such additional charitable work as may be consistent with the general purposes of the corporation. (Applicant's Ex. No. 15)

5. Applicant is exempt from the payment of Federal Income Tax pursuant to a determination by the Internal Revenue Service that it qualifies as a charitable organization under §501(c)(3) of the Internal Revenue Code. (Applicant's Ex. Nos. 1-3)

6. Located on the subject property is a 1500 square foot broadcasting facility. The building contains a kitchen, transmitter room, bathroom, music library, production studio, office reception area and main studio. The tower is in the rear of the property behind the building. It is a freestanding structure that is not supported by guy wires, so there are wind load restraints associated with it. A cellular telephone company that operates a paging service has two antennas on the tower structure and pays Applicant \$400 a month rent for that use. (Dept. Ex. No. 1; Applicant's Ex. Nos. 19, 20; Tr. pp. 30-31, 56-57)

7. The call letters of Applicant's radio station are WDBX. It is located at 91.1 F.M. The mission statement of WDBX is that it " provides a public forum for artistic and cultural expression and for the exchange of ideas among individuals and the community." (Applicant's Ex. Nos. 10-12; Tr. pp. 47-48)

8. The Federal Communications Commission (hereinafter "FCC") regulates Applicant's radio station. The FCC regulations on non-commercial educational stations have limitations on announcements that can be heard on behalf of entities contributing to the radio stations. (Applicant's Ex. No. 13; Tr. pp. 60-61, 63)

9. WDBX presents a variety of music including rock, jazz, bluegrass, gospel, folk, hip-hop, blues, experimental, new age, soul and opera. As there are numerous radio stations in the area that carry the top 40's, country and western, and rock and roll, WDBX airs only a minimal amount of that type of music. It also airs several different ethnic music programs including Latino, Japanese, African and reggae. (Dept. Ex. No. 1; Applicant's Ex. No. 6; Tr. pp. 27-28)

10. Applicant's programming is for people high school age through 80. (Tr. p. 11)

11. The area that Applicant serves has a diverse college student population. People from China, Japan, and Taiwan live there. The area has a history of racial violence. (Tr. pp. 12-13, 42)

12. Applicant's direct competition is the Southern Illinois University National Public Radio station, WSIU. At the time WDBX was founded, WSIU aired classical music 95% of the time and news the remainder. (Tr. p. 33)

13. WDBX broadcasts 78 weekly programs produced locally.<sup>1</sup> Five programs are produced out-of-house. The syndicated programs carried weekly by WDBX include: Making Contact<sup>2</sup> (Wednesdays); New Dimensions<sup>3</sup>(Sunday); The Metropolitan Opera (Saturday); and Free Speech Radio News<sup>4</sup> (Monday through Friday). (Applicant's Ex. Nos. 6, 7; Tr. pp. 39-40, 49)

14. Applicant carries seven different talk shows, most of which are produced locally. Topics range from social justice to racial, environmental and legal issues. The station also

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<sup>1</sup> For example the programs locally produced in the fall of 2003 on Wednesdays included: The 70's Show, Cyril's Cabaret, Folk Fiasco, Electric Blues Hour, Rasta Revolution, Back to Bluegrass, Special Folks, The Grateful Dead, Artists Only, and The Devil's Jukebox.

<sup>2</sup> Making Contact deals with international issues of economics and social justice.

<sup>3</sup> New Dimensions is a new-age spiritual program dealing with such things as interviews with authors.

<sup>4</sup> Free Speech Radio News is a news program produced by Pacifica Network that covers activities around the world not usually reported by mainstream media.

carries the Carbondale High School football and basketball games, and is paid for that programming. In December it airs the annual local Girl Scout Holiday Sing, and each February it broadcasts the annual Homelessness Marathon.<sup>5</sup> (Applicant's Ex. No 6; Tr. pp. 39-41, 49)

15. Applicant's By-Laws state in Article II that the corporation shall have no members. However, WDBX has over 400 members.<sup>6</sup> Student membership is \$10 per year; a family membership is \$25 a year; patron membership is \$100; and a supreme membership is \$250. (Dept. Ex. No. 1; Applicant's Ex. Nos. 10, 15; Tr. pp. 18, 21, 45)

16. Initially when the radio station was started, funding was a problem. Applicant's founder decided to start a thrift store to help defray the costs. Currently the thrift store gives \$500 a month to the radio station to help with expenses like utilities, mortgage, purchases of boards or CD players and office supplies. If the radio station has needs the thrift store "can provide money" if it has it. (Applicant's Ex. No. 4; Tr. pp. 23-24, 33)

17. The income of the radio station is used for "electricity; utilities that we have to pay; water; we have a mortgage on the building; we have a mortgage on the Adopt a Watt for our transmitter that we purchased; we have Brian's salary; we have purchases of boards or CD players; there's office supplies that have to be taken care of, and things of that nature." (Tr. p. 25)

18. The thrift store is a totally separate operation from the radio station. (Tr. p. 34)

19. Applicant's income statement for January through December 2003 combines "Thrift" and "WDBX". It shows income from thrift store sales of \$92,649.56, income from the radio station of \$59,559.42, for total income of \$152,208.98. Of the income amount for the radio

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<sup>5</sup> The Homelessness Marathon is a syndicated call in program that addresses issues of the homeless.

<sup>6</sup> Applicant's testimony and documents tend to use WDBX and the name Heterodyne interchangeably. For example, in its protest, Applicant asserted it would produce the articles of incorporation for WDBX, however the only articles produced were for Heterodyne. There is nothing in the record to indicate that WDBX is separately incorporated.

station, underwriting accounted for \$27,542.95, membership and donations were \$20,761.42, special events generated \$7,627.00, sponsors<sup>7</sup> \$3,100.00, PIFI<sup>8</sup> contributions were \$198.05 and promotional income was \$330.00 for ordinary income totaling \$59,559.42. Expenses totaled \$41,404.04<sup>9</sup> for total net ordinary income of \$18,155.38. Additional income came from the “Adopt-A-Watt”<sup>10</sup> program for \$3,935.00, thrift store contributions of \$3,312.89,<sup>11</sup> tower rental of \$4,800.00 and interest income of \$54.19. Other expenses including accounting fees of \$475.00, interest of \$12,703.21,<sup>12</sup> and legal and professional fees of \$304.00 totaled \$13,482.21. After subtracting expenses, the total net income for the radio station was \$16,775.25. (Applicant’s Ex. No. 14)

20. The station sells underwriting announcements to local businesses, organizations and individuals. The underwriting rates are \$5 per announcement for general station support (scheduled anywhere) and \$7 per announcement for specific program sponsorships. Applicant has approximately 55 underwriters. (Applicant’s Ex. Nos. 6, 9, 13; Tr. p. 51)

21. Applicant admits that there is a benefit to an underwriter that has its name mentioned on Applicant’s station. WDBX has four spots for underwriters per hour. Applicant’s radio station currently operates on a daily basis from 7:00 a.m. to 4:00 a.m. the next morning. (Tr. pp. 33, 61)

22. WDBX has one paid employee, the station manager. His salary in 2003 was \$17,500 including bonuses. (Applicant’s Ex. No. 6; Tr. pp. 18, 37)

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<sup>7</sup> The category of sponsors was not explained

<sup>8</sup> PIFI was not explained.

<sup>9</sup> Expenses include operating costs such as office supplies, payroll expenses, Valentine’s Day Ball expenses, insurance, licenses and permits, postage, telephone, etc.

<sup>10</sup> Applicant’s radio station started with 700 watts. Applicant recently purchased a 3,000-watt transmitter. A separate fund, called the “Adopt-A-Watt” program was established where a person could donate \$20 to help pay for the mortgage on the new transmitter. (Tr. pp. 11, 22-23, 25, 50)

<sup>11</sup> This number is not equal to \$500 a month as the testimony asserted. (Tr. p. 24)

<sup>12</sup> The basis of this liability was not explained.

23. Applicant hosts a Valentine's Ball as an annual fundraising event. Tickets cost \$30. People who have a patron or supreme membership are given tickets to the event. Six to eight percent of Applicant's annual budget comes from the Ball. The Ball consists of live bands, a catered dinner with a cash bar, a silent auction and a raffle. (Applicant's Ex. No. 12; Tr. p. 46)

24. Applicant's eight member Advisory Board advises the Board of Directors. The eight-member Advisory Board is comprised of two permanent members, an attorney and the founder of the Applicant, and six other people who are members and have made contributions to the radio station. Applicant holds an election each fall for three of the six elected positions. (Tr. pp. 15-16, 44)

25. Applicant's three-member Board of Directors oversees the general overall operation of the radio station. The Board is comprised of an accountant, an attorney, and the founder of the Applicant. The Board is not compensated for its services. Applicant has no capitol stock or shareholders. (Tr. pp. 9, 15-16, 45)

26. Applicant serves seven counties in southern Illinois and its programs reach approximately 100,000 people. (Tr. pp. 11-12)

### **CONCLUSIONS OF LAW:**

Article IX, §6 of the Illinois Constitution of 1970, provides in part 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.

This provision is not self-executing but merely authorizes the General Assembly to enact

legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill. 2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill. 2d 272 (1967)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation 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) Beneficent and charitable organizations incorporated in any state of the United States, . . .

The property tax exemption at issue applies to "institutions of public charity." In determining what is charitable use of property, courts consider the following factors:

1. Whether the benefits derived from the property are for an indefinite number of persons;
2. Whether the property benefits the public in such a way as to persuade them to an educational or religious conviction, for their general welfare;

3. Whether the property benefits the public in such a way that it reduces the burdens of government;
4. Whether the organization has no capital, capital stock, or shareholders and earns no profits or dividends;
5. Whether the organization's funds are derived mainly from public and private charity;
6. Whether such funds are held in trust for the objects and purposes expressed in the organization's charter;
7. Whether the organization dispenses charity to all that need and apply for it;
8. Whether the organization provides gain or profit in a private sense to any person connected with it;
9. Whether the organization places obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; and
10. Whether the exclusively (primary) use of its property is for charitable purposes. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57 (1968).

These factors are not requirements, but are guidelines that are considered in assessing an organization's charitable status. Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468 (2<sup>nd</sup> Dist. 1995) (*leave to appeal denied*, 164 Ill. 2d 561) Illinois courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old Peoples Home v. Korzen, *supra* at 156.

Applicant has been determined to be a charitable organization under §501(c)(3) of the Internal Revenue Code so I therefore conclude that Applicant has no capital, capital stock, or shareholders. However, the fact that an organization had been granted a letter of exemption from

Federal Income Taxes is not determinative of the issue of whether the property of an organization claiming exemption from real estate taxes was used exclusively for charitable purposes. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450 (1970); Clark v. Marian Park, Inc. 80 Ill. App. 3d 1010 (1980).

At issue herein is a broadcasting station that allows its members to have their own shows to broadcast different types of music and diverse programs. Applicant relies upon two cases, which it states are “directly on point in which a publicly supported, non-profit community radio station was granted a real estate exemption under 35 ILCS 200/15-65. The first case is *Prairie Air, Inc. v Illinois Department of Revenue*, Property tax exemption docket number 91-10-22 (Opinion approved July 12, 1993). The second case is *WBEZ Alliance, Inc. v. Illinois Department of Revenue*, Circuit Court of Cook County docket number 99-CH-5173 (Decided July 1, 2004) overruling *WBEZ Alliance, Inc. v. Illinois Department of Revenue*, 98-PT-0008 (Decided February 24, 1999).” (Applicant’s Brief p. 6)<sup>13</sup> Although the two cases are not precedent in this matter, each one contains an analysis of a national public radio station requesting a property tax exemption as a charitable organization.

In *Prairie Air, Inc. v. Illinois Department of Revenue*, *supra*, Prairie Air was organized to provide community based educational non-commercial radio broadcasts to the area. Prairie Air operated WEFT, 90.1 FM. Its station manager was its only full time paid staff member. Prairie Air’s primary sources of income in 1991 were membership contributions, Airshifter Class fees,<sup>14</sup> special events, grants, Wireless<sup>15</sup> advertising, merchandise sales, and corporate underwriting.

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<sup>13</sup> The Special Assistant Attorney General for the Department reserved the right to submit a post hearing response brief. He did not file the brief.

<sup>14</sup> Prairie Air charged \$30 to a person wishing to take training to be a “volunteer-on-the-air associate” who presented a program. If the person was a contributing member of WEFT, the fee was waived. The fee was reduced in cases of need. Airshifters were required to contribute 4 hours of volunteer service.

<sup>15</sup> The quarterly program guide of WEFT. The guide was mailed to members and given away to the general public.

The Administrative Law Judge (hereinafter referred to as the “ALJ”) concluded that the membership fees were in fact contributions, as were the grants and corporate underwriting, without giving an analysis of how he came to that conclusion. In accordance with that conclusion, out of total income of \$64,722.78 only \$2,315 was from Airshifter Class fees, Wireless advertising and merchandise sales, the only income that was not public or private charity according to the ALJ.

Since WEFT programming was available to anyone with a radio, free of charge, and Airshifter class fees were waived in case of need, the ALJ’s conclusion was that the benefits of Prairie Air, Inc. and WEFT were available to an indefinite number of persons, available to all who needed and applied for them, no obstacles were placed in the way of those seeking Prairie Air’s charitable benefits, and that the property qualified for a property tax exemption for the year in question.

The other case Applicant relies upon is WBEZ Alliance, Inc. v Illinois Department of Revenue, *supra*, in which the Circuit Court of Cook County overturned the Department’s determination that the property was not exempt on which WBEZ, the sole Chicago affiliate of the National Public Radio Network, was located. WBEZ was exempt from Federal Income Tax, Illinois Use and related taxes. WBEZ broadcasted a variety of programs devoted to news, current events, talk shows and other educational programming. It broadcasted only its own programming. The programming was broadcast at Navy Pier and the broadcasts reached approximately 400,000 listeners each week. Sixty-two employees worked for WBEZ including a general manager. Fifty employees were full time and twelve were part time. The average salary was \$32,394 with the general manager earning \$95,000 a year during the year at issue.

WBEZ offered a variety of educational programs including those about history to current events. All programming was commercial free. Membership contributions accounted for 44% of WBEZ's income; capital campaign contributions for 7%; government gifts & grants – 14%; private gifts & grants – 8%; program underwriting – 13%; investment income – 3%; special events – 1%; satellite and other – 2%; and in-kind services and other contributions for 8%. Seventy percent of its expenses were for programming, production, public information and broadcasting.

In analyzing whether WBEZ conferred a benefit upon the public and relieved a state burden, Judge White found that the charity and education offered by WBEZ was made available to all persons who sought it, without regard to the person's station, wealth or position. "The acts of education and charity greatly lessen the state's burden to educate its people as well as providing a great and valuable service." *Id.* at p. 7. Relying upon Decatur Sports Foundation v. Dept. of Revenue, 177 Ill. App. 3d 696 (4<sup>th</sup> Dist. 1988) and applying the guidelines of Methodist Old Peoples Home v. Korzen, *supra*, Judge White concluded that the focus should more properly be on an applicant's overall contribution to the community and not just the source of its funds. Judge White determined that WBEZ qualified for a property tax exemption for its property that broadcasts on Navy Pier.

I respectfully disagree with some of the analysis provided in Prairie Air, Inc. v. Illinois Department of Revenue, *supra*, and WBEZ Alliance, Inc. v. Illinois Department of Revenue, *supra*. Judge White, in particular, focused on whether an applicant confers a benefit upon the public and/or relieves a state burden. He opined that the focus of a charitable analysis should be concentrated on an applicant's overall contribution to the community and not necessarily on the source of its funds. As to whether the funds of an applicant come from public or private charity,

the source of an applicant's funding cannot be dismissed. In Rotary International v. Paschen, 14 Ill. 2d 480 (1958), the court found that an administrative and coordinating body for various Rotary clubs throughout the world, having as its objective encouraging and fostering ideals of service to local communities, was not a charitable organization using the property for charitable purposes under the property tax code. The court said that objectives of a not-for-profit corporation may be commendable, yet not charitable under the law. *Id.* at 488-89 In addition, whether the organization's funds are derived mainly from public and private charity and whether such funds are held in trust for the objects and purposes expressed in the organization's charter are guidelines to be considered under Methodist Old Peoples Home v. Korzen, *supra*. Therefore, it is appropriate to do an analysis of the charter or articles of incorporation of an applicant, as well as its funding sources, and how they may be used to further an applicant's charitable purpose.

Just as occurred in Prairie Air, Inc. v. Illinois Department of Revenue, *supra*, and WBEZ Alliance, Inc. v. Illinois Department of Revenue, *supra*, Applicant's radio station, WDBX, on the property at issue, is a public broadcasting station that is regulated by the FCC as to the content of its endorsements and underwriting. Underwriters provided 46% of Applicant's income in 2003. The underwriters pay either \$5 or \$7 per announcement for the mention of the name of the person or company that is paying for sponsorship. Applicant has an audience of approximately 100,000 listeners that the sponsors are targeting. Although, the sponsors are not allowed to do comparative advertising, they are getting their name out to the public. Illinois courts have long ascribed to the following definition of charity originally articulated in Crerar v. Williams, 145 Ill. 625 (1893) that states:

A charity, in a legal sense, may be fully defined as a gift to be applied, consistently with existing laws, for the benefit of an

indefinite number of persons, . . . It is immaterial whether the purpose is called charitable in the gift itself if it is so described as to show that it is charitable in its nature. *Id.* at 643.

Simply put, charity is assistance to the needy untainted by motives of private gain. It is a gift for public or benevolent purposes bestowed without compensation.

Applicant's testimony was that the difference between advertising and underwriting is that underwriting mentions that the business is sponsoring a program, whereas advertising describes the products of the advertiser and business and how they are better than their competition. Advertisers and underwriters want their actions known and call attention to the name of the advertiser or underwriter. The difference between an underwriter and a donor is that an underwriter gets the mention of their business on the air to promote it, whereas a donor's money is a gift. A donor expects nothing for a gift. (Tr. pp. 31-32) In this matter, Applicant acknowledges that there must be a benefit to the underwriters and corporate sponsors "because they – they continue to underwrite with us." (Tr. p. 33) Applicant admits that underwriting is not a gift, the word describing charity in Crerar v. Williams, *supra*. Therefore, I cannot conclude that corporate underwriting and sponsorships are public and private charity.

Applicant earns \$4,800 by leasing space on its radio tower. That is 8% of Applicant's income. Applicant is also paid for broadcasting the Carbondale High School football and basketball games. These payments certainly cannot be described as public and private charity.

In addition, WDBX's memberships and donations provide for 35% of its income. Applicant's volunteers range in age from 17-81 with a wide variety of ethnic backgrounds. The volunteers may have their own radio shows as well as help with the station. In order to be a disc jockey on WDBX, a volunteer has to be trained in the operation of the equipment and be familiar with the applicable FCC regulations. Although the testimony was that the DJ and station

manager of WDBX conducts the training sessions at no cost to the student volunteers, there is nothing in evidence to distinguish the volunteers from members who pay membership fees. There is nothing in the record to show that a volunteer at Applicant's radio station is not also a member of WDBX. There are over 100 people that volunteer at WDBX and approximately 400 members. (Dept. Ex. No. 1; Applicant's Ex. No. 6; Tr. pp. 18, 25-27, 52-53)

The By-Laws and Articles of Incorporation of WDBX were not in evidence, even though Applicant's protest to the denial of the application asserted that those items would be provided at hearing. The By-Laws of the Applicant state that it has no members. Therefore, there is nothing to establish that WDBX is separately incorporated with its own purpose clause, in either its By-Laws or Articles of Incorporation, and nothing to establish membership qualifications.

It is well settled in Illinois that the character and purpose for which a corporation is organized, must be ascertained from its Articles of Incorporation. People v. Wyanett Light Co., 306 Ill. 377 (1922); Rotary International v. Paschen, 14 Ill. 2d 480 (1958). The standards for membership and the procedure for any type of waiver of membership fees, if any, were not provided. There is nothing in the record to indicate that someone does not have to be a member to volunteer for WDBX or work at the radio station. Therefore, the assertion that the DJ and station manager of WDBX conducts the training sessions at no cost to the student volunteers (Tr. p. 27) is not supported by the record.

A purchaser of a patron membership for \$100 or a supreme membership for \$250 is given a ticket to the Valentine Ball, Applicant's main social fundraising event. Others must pay \$30 to be admitted. Although the testimony was that people that help produce the event may get in free, there has been no evidence presented that there is a provision for a waiver of the \$30 fee if a person cannot afford it and/or cannot do the volunteer work.

Based upon the foregoing, it cannot be said that Applicant's benefits are available to an indefinite number of persons, that the organization dispenses charity to all that need and apply for it, or that there are no obstacles placed in the way of those who need and would avail themselves of Applicant's charitable benefits. It also cannot be said that the exclusive (primary) use of the property is for charitable purposes.

Although Applicant's brief asserts that WDBX's activities lessen a governmental burden to educate its people, Applicant never explained how exposing someone to diverse cultural music would necessarily foster tolerance in the community. (Applicant's Brief p. 12; Tr. p. 62) Just because the Applicant introduces diverse cultural concepts to a listening audience does not necessarily broaden understanding within the community. Applicant submitted no evidentiary substantiation of this concept.

As the Applicant has shown that it does not meet the majority of the guidelines set forth in Methodist Old Peoples Home, *supra*, and has not established that it is a charitable organization using the subject property for charitable purposes, it is recommended that Jackson County Parcel Index Number 15-21-209-001-0060 remain on the tax rolls for the 2003 assessment year and be assessed to the Applicant, the owner thereof.

Barbara S. Rowe  
Administrative Law Judge  
December 19, 2005