

PT 07-19

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

**INSTITUTE FOR COMMUNITY AND
COMMUNITY CHRISTIAN CHURCH
OF NAPERVILLE,**

Applicant

v.

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

No: 05-PT-0072

**Real Estate Tax Exemption
For 2005 Tax Year
P.I.N. 04-07-205-004, 04-07-204-002**

Will County Parcels

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Michael P. Mosher and Ms. Sally Wagenmaker, on behalf of Institute for Community and Community Christian Church of Naperville; Mr. John Alshuler, 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 Parcels, identified by property index numbers 04-07-205-004 and 04-07-204-002 (hereinafter the “subject property”) qualify for exemption from 2005 real estate taxes under 35 ILCS 200/15-40 of the Property Tax Code which exempts all property used for religious purposes and/or 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.

This controversy arose as follows: On August 1, 2005, the Institute for Community (hereinafter the “Institute”) and Community Christian Church of Naperville

(hereinafter the “Church”) filed an Application for Non-homestead Property Tax Exemption with the Will County Board of Review (hereinafter the “Board”) seeking exemption from 2005 real estate taxes for the subject property. In 2005, the Church and the Institute owned the subject property, located in Romeoville, as tenants in common. Tr. (23) pp. 91-94, 93-97, 182-184; App. Ex. No. 9 and 10 B. The Board reviewed the Application and recommended that the exemption be denied. On November 3, 2005, 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 2005. The Institute and the Church filed an appeal of the Department’s exemption denial.

On October 23 [Tr. (23)] and October 24 [Tr. (24)], 2006, an evidentiary hearing was held with Mr. Troy McMahon, Pastor, Mr. Mike Vickery, Executive Director of the Institute, Ms. Anita Foster, resident in the HighPoint Woods Development, Mr. Bruno Bottarelli, Managing Director of Marquette Companies, Ms. Karen Barbush, Facility Operations Manager and Adult and Social Program Director at the Institute, Ms. Holly Butenhoff, Children’s Program Director at the Institute, Mr. Dennis Taylor, Lead Producer for services at the Church, and Dr. Mary Nelson, expert in Community Development, testifying. Following a careful review of the testimony and evidence and the Applicant’s “Closing Brief,” the Department’s Response “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 2005. Tr. (23) pp. 16-17; Dept. Ex. No. 1.

2. The subject property was purchased on September 30, 2002, by warranty deed from HighPoint of Romeoville, LLC, by the Institute for Community and Community Christian Church of Naperville as “tenants in common.” The address of the subject property is 175 South HighPoint Drive, Romeoville. Tr. (23) pp. 93-97, 182-184; App. Ex. Nos. 10 and 16 B.
3. The subject property consists of an open-air “Festival Area” on one side of HighPoint Drive and across HighPoint Drive, a building called the “Friendship Center,” a fishing lake, a nature trail surrounding the fishing lake and an outdoor pool. Tr. (23) pp. 54-58, 108, 111; App. Ex. No. 13 B.
4. The area surrounding the subject property contains multi-family apartments, including apartments rented at market rate and apartments set aside for low income tenants. There are also homes, including some Habitat for Humanity homes, located in the development. Tr. (23) pp. 236-238.
5. HighPoint of Romeoville, LLC, as Landlord, and Marquette Management, as Tenant, entered into a “Suite Lease” dated November 30, 1998, for premises located on the second floor of the Friendship Center. Marquette Management is a real estate development company. The Suite Lease was assigned by HighPoint of Romeoville to the Institute for Community on September 30, 2002, concurrent with the sale of the property and the Suite Lease is still in effect. Marquette Management occupies 21% (5,700 square feet) of the 27,000 square feet of the Friendship Center. The Institute is not seeking an exemption for this portion of the Friendship Center. Tr. (23) pp. 102-106, 115-116; App. Ex. Nos. 14 and 15 B.

6. The Church's Articles of Incorporation, filed under the "Illinois Not For Profit Corporation Act" on September 6, 1988, state that the Church "exists to glorify God by winning people to Jesus Christ and helping them become strong, mature Christians in a church noted for its caring love, Bible teaching and encouragement to one another." The Church is independent and nondenominational. Services at the Church include music, worship, drama and video to communicate biblical teaching and communion. Tr. (23) pp. 22-23, 67; App. Ex. No. 1 A.
7. The Church operates under a "Constitution and Bylaws" which states that its purpose "is to help people find their way back to God. This is accomplished by equipping and mobilizing believers to reach out with the relevant message of Jesus Christ ..." Tr. (23) pp. 23-25; App. Ex. No. 2 A.
8. The Church is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. (23) pp. 25-26; App. Ex. No. 3 A.
9. The Church has two worship services on Sunday morning, including service for adults and children, and Sunday school for children. On Sunday evening, there is a worship service for students in sixth grade through high school. On Tuesday evening, there is a celebration support and recovery service for addiction groups. There is an activity night for students on Wednesday night. In partnership with the Institute, the Church sponsors children's leagues including basketball and soccer. Tr. (23) pp. 37-38.
10. There is no altar, pews or permanent seating in the Friendship Center. Chairs, instruments and audio equipment are set up by 120 volunteers at 6:00 a.m. on Sunday for 9:30 a.m. service and taken down at 2:00 p.m. so that the area can be

used as a gym. The Church uses power-point for hymnal words, bible passages and images. The service is conducted from a raised platform. Between 800 and 900 people attend services on Sunday. The Church also holds weddings, baptisms, child dedications and funerals in the Friendship Center. Tr. (23) pp. 37, 38, 67-71, 73, 129-131, (24) pp. 95-99.

11. The Church publicizes its activities by mailing out fliers and by word-of-mouth. The Church does not charge fees for any activities at the Friendship Center. The Church's programs, including Sunday School and student ministry are led by volunteers. Tr. (23) pp. 52-53.

12. The Church used the open-air Festival Area, weather permitting, for concerts and student activities, soccer and interaction with nature as part of the worship service. The subject property also contains an outdoor fenced-in pool that the Church uses for baptisms and for celebrations on a monthly basis, weather permitting. Tr. (23) pp. 54-58; App. Ex. No. 13 B.

13. The Institute used the Festival Area for soccer and after-school and summer camp programs, weather permitting. The Institute holds "Cinco de Mayo" festivals, concerts and outdoor movie nights in the Festival Area. The Institute uses the pool area for parties and festivals throughout the summer. Tr. (23) pp. 106-109, 111; App. Ex. No. 13 B.

14. Parking space on the subject property, near the Festival Area and the Friendship Center, was available for any activity sponsored by the Institute or the Church. Tr. (23) pp. 58-59, 108, 114; App. Ex. No. 13 B.

15. The Church used the following areas in the "Friendship Center." The "Gym/Auditorium" is used for worship service. The "Lobby" and "Cyber

Café” are used for hospitality and as a welcome center. Baptisms are performed in the hot tub area. The “Family Resource Center” is used as a nursery for infants during services and for children’s study groups. The support recovery services use the “Gym/Auditorium” on Tuesday evenings for large meetings and then break out into small groups in the meetings rooms. Student ministry groups and adult groups meet on Sunday, Tuesday and Wednesday nights in the Family Resource Center. The Church uses an office in the mezzanine level “Administration” area on weekends. Tr. (23) pp. 45-52, 68-69; App. Ex. No. 14 B.

16. The Institute uses the Friendship Center in the following ways: Childcare begins at 6:45 a.m. and parents going to work can drop their children off at that time. School busses pick up children in the vestibule of the Friendship Center. During the day, the Family Resource Center is used for small groups and moms groups. Children use the Friendship Center after school. Children over age 12 can use the lobby area to complete their homework. The Institute has an “Academic Enrichment Program” that tutors children from kindergarten through grade 12 in the Friendship Center. Children can use the gym/auditorium in the Friendship Center after school for basketball or volleyball. There are mailboxes off the lobby of the Friendship center for apartments in the development. The Cyber Café has free internet access for children to use. The Friendship Center also has an exercise area, locker rooms and a spa and massage area for adults and a therapist available for holistic massage. Tr. (23) pp.116-121, 125.

17. Children only use the facilities until 6:30 p.m. After that, there are programs for adults including Alcoholics Anonymous, Gamblers Anonymous, smoking cessations programs and wellness programs. Tr. (23) pp. 121-122.
18. On the subject property, there is a playground and a small amphitheater. There is also an area which the Church uses for outdoor weddings, weather permitting, leading to a dock that has paddleboats for people to use on the lake. The lake is stocked with fish. The Institute urges people to catch fish and release them back into the lake. There is a nature trail with some lookout points surrounding the lake where people can look at the wildlife. After-school and summer camp educational programs sponsored by the Institute use the lake and trail. The subject property also contains a sand volleyball court and a community garden area with 25 different plots for vegetables maintained by children in the after-school program sponsored by the Institute. Tr. (23) pp. 108-112; App. Ex. No. 13 B.
19. The Institute was incorporated on August 7, 1995 under the Illinois “Not For Profit Corporation Act” for the purpose of helping “people fulfill the dream of grace-filled living in community ...” Tr. (23) pp. 80-81; App. Ex. No. 1 B.
20. The Institute filed Articles of Amendment on January 1, 2004 restating its purpose as follows: “... the Corporation shall develop and operate various public charitable programs and related services for people seeking to improve their quality of life through a balanced lifestyle, integrating the family in its recreational, educational and career, spiritual, health and wellness pursuits. The programs will help people build quality relationships where they live and work

through the power of genuine community.” Tr. (23) pp. 81-88; App. Ex. No. 3 B.

21. The Institute’s Bylaws, effective January 1, 2004, state that the “Corporation ... shall strive to make its charitable services and programs available to the appropriate general public without undue obstacles to access. It is the general policy of the Corporation that any fees or charges associated with the charitable services or programs of the Corporation shall be waived or reduced in accordance with each recipient’s ability to pay. The administrative staff shall have the necessary discretion to make such waivers or reductions when appropriate to ensure the maximum distribution of the Corporation’s charitable services and programs. More specifically, the program fee schedules (if any) shall be set in accordance with 35 ILCS 200/15-65(c) of the Illinois Compiled Statutes.” Tr. (23) pp. 85-88; App. Ex. No. 4 B.
22. The Institute is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. (23) pp. 88-89; App. Ex. No. 5 B.
23. The Friendship Center’s “January–April, 2005 Newsletter” states that the Institute “encourage[s] you to view your life as a wheel with 5 spokes. We will try to provide programming for you to choose from to help you lead a well-balanced lifestyle. Our programs are driven by your interest and volunteerism.” The five spokes of the wheel are family, recreation, education, spiritual, and health and wellness. The newsletter describes and advertises programs available by spoke. The Newsletter states that the Institute is “dedicated to building quality relationships where people live and work through the power of genuine community.” The Institute “develops programs and communities serving the

greater Romeoville-Plainfield area through owning and operating” the Friendship Center. “By developing relationships through Friendship, Membership, Partnership and Ownership, the [Institute] adds value to the neighborhoods they serve by providing programming to help people lead balanced lifestyles and connect with their neighbors.” Tr. (23) pp. 144-146; App. Ex. No. 18 B.

24. The Institute distributes surveys to people in the community to see what programs people are interested in. The Institute offers programs that fit into the wheel of life spokes. Tr. (24) pp. 39-41, 47.

25. In 2005, there were 65 activities in the Friendship Center including the following programs, part of the “family” spoke: Before/After School, Summer Camp, Camp Friendship, Spring Break Camp, Christmas Break Camp and Childcare. These programs charged a participation fee. Tr. (23) pp. 146-150; App. Ex. No. 19 B.

26. The following activities, part of the “family” spoke did not charge a participation fee in 2005: Snowman Craft Night, Valentine Night, Easter Egg Hunt, Ice-cream Social, Mother’s Day Craft, Father’s Day Craft, Candy Bar Bingo, Karaoke by the Pool, Flashlight Scavenger Hunt, Halloween Party, Movie and Popcorn and Holiday Craft. Girl Scouts and Brownies and “Mom’s Playgroup,” a “child socialization program” also met in the Friendship Center in 2005. Tr. (23) pp. 146-150; App. Ex. No. 19 B.

27. The following activities, part of the “recreation” spoke, were held in the Friendship Center during 2005: Jazzercise, Tae-Kwon-Do, Kickboxing, Men’s Basketball Club, Youth Soccer League, Youth Basketball League and

Paddleboats. These programs charged a participation fee. Tr. (23) pp. 146-150; App. Ex. No. 19 B.

28. The following activities, part of the “recreation” spoke, were held in the Friendship Center and did not charge a participation fee in 2005: Victory With Honor Teens (at risk teen mentoring basketball program), Pool Party, Movie Night, Super Bowl Party, Book Club, swim lessons, fishing derby, teen open gym, Garden Club, Fundraising Meetings, Youth Banquet Basketball, Youth Banquet Soccer, Youth Banquet Baseball, Baseball tryouts, Summer Concert Series. Tr. (23) pp. 146-150; App. Ex. No. 19 B.
29. The following activities, part of the “health and wellness” spoke were held in the Friendship Center during 2005: Alcoholics Anonymous, Gambler’s Anonymous, Celebrate the Journey, Health Fair and Stop Smoking Cessation. No fee was charged for these activities. Tr. (23) pp. 146-150; App. Ex. No. 19 B.
30. The following activities, part of the “education” spoke were held in the Friendship Center during 2005: Lots for Tots Preschool (participation fee required), Academic Enrichment (participation fee required), Life Map Seminar, Leadership Training, Nature Walk, Therapy Dog Certification, Homework Area (participation fee required), Community Networking (“additional” fee required), Character Counts Seminar, Community Course. Tr. (23) pp. 146-150; App. Ex. No. 19 B.
31. The following activities, part of the “spiritual” spoke were held in the Friendship Center during 2005: Kids City (Sunday School), Mom’s Group, 30

Hour Famine (Youth Ministry), Bible Study, Worship Services. There was no participation fee for these activities. Tr. (23) pp. 146-150; App. Ex. No. 19 B.

32. Families or participants who cannot afford the participation fee can apply for a waiver or reduction of fees by filling out a form entitled “Request for Reduction of Fees” and submitting documentation of their income. The reduction in fees is based on a chart of family income and family size. A family of three (two adults and one child) earning \$26,000 to \$27,999 would receive a 60% reduction in fees and pay 40% of the participation fee. If the family income is above \$58,000, there is no reduction in fees regardless of family size, according to the chart. The reduction in fees is available for any program that charges a participation fee. Tr. (23) pp. 154-158, (24) pp. 52-54; App. Ex. No. 20 B.
33. The Institute’s audited Financial Statements for December 31, 2005 show “Total Support and Revenue” of \$1,252,186, “Total Expenses” of \$941,211 and “Increase in Net Assets” of \$310,975. “Total Expenses” of \$941,211 are composed of the following: \$721,859 in “Program” expenses, \$147,955 in “Management and General,” and \$71,397 in “Fundraising.” Tr. (23) pp. 158-160, 174-176; App. Ex. No. 22 B.
34. “Total Support and Revenue” of \$1,252,186 is composed of the following: “Contributions” of \$893,000, “Program Fees” of \$309,562, “Rent” of \$33,000, and “Other” of \$16,718. “Program Fees” are the participation fees charged by the Institute for its various programs. “Rent” is from the rental of a portion of the Friendship Center to Marquette Properties, for which the Institute is not seeking exemption. “Other” includes the sale of supplies for different arts and

crafts and the sale of light refreshments. Tr. (23) pp. 172-174; App. Ex. No. 22 B.

35. "Contributions" of \$893,000 are composed of the following: \$328,000 from the Church, \$300,000 in "Donations from General Public," \$50,000 in "Donations from Corporate Sponsors," \$60,000 in "Church Contributions (per space sharing agreement)," \$13,000 in "Space Sharing (2 other churches)," \$120,000 in "Apartment Contributions," and \$22,000 in "Homeowner Contributions." Tr. (23) pp. 164-172, 197-203, (24) pp. 5-6, 19-20; App. Ex No. 25 B; Dept. Ex. No. 2.

36. "Contributions" of \$892,906 include a "contribution" from the Church of \$328,000. The Church had a 50% undivided interest in the subject property and assumed 50% of the obligations related to the property in exchange for its interest. Since acquisition, the Institute paid all costs, including debt service, related to the property. In August, 2005, the Institute became liable for the entire mortgage debt. The Institute recognized a contribution from the Church in the amount of \$328,000 as a result of the transaction, representing the excess of the property's appraised value over the related debt assumption. Tr. (23) pp. 160-164, 182-184, (24) pp. 7-8, 16-17; App. Ex. Nos. 16 and 22 B.

37. The \$50,000 in "Donations from Corporate Sponsors" represents four apartment units in the development, each renting for \$1,000/month, that the Institute had use of for its own purposes, including as temporary housing for people displaced for emergency reasons. Tr. (24) pp. 18-19, 21-23.

38. The \$22,000 in "Homeowner Contributions" is based on the following: On October 2, 2002, The Institute and the Church (as "Grantors") entered into a

“Use and Access Easement Agreement” with HighPoint of Romeoville (as “Grantee”). The Agreement states that the Grantor is the holder of legal title to a parcel of land upon “which are located certain improvements, including ... a community center building [the Friendship Center] which contains various facilities benefiting the residents and guests of the Grantor Parcel by providing recreational and social services and programs for their use and enjoyment. Tr. (23) pp. 185-187; App. Ex. No. 23 B.

39. Article 4 of the “Use and Access Easement Agreement” requires that on January 1 of each year, each homeowner in the development shall make a contribution to the Friendship Center equal to an annual fee of \$300 multiplied by the number of dwelling units on each owner’s parcel. In no event, shall the annual fee for any dwelling unit be less than \$300 and the \$300 shall be adjusted yearly based on the “CPI Adjustor.” Any amounts not paid shall accrue interest at the rate of “3% per annum above the corporate base rate.” The Grantor shall “have a lien against the Parcel and any interest of any Owner in a parcel in the amount of any delinquent Annual Fees or other amount,” including interest ... “together with late payment and administrative charges and costs of collection, if any.” If the owner fails to pay the annual fee within 5 days of the due date, the owner shall be liable to the Grantor for interest, a late payment and administrative expense equal to 15% of the amount of the unpaid portion of the annual fee. Tr. (23) pp. 185-187; App. Ex. No. 23 B.

40. Purchasers of homes get a copy of the “Use and Access Easement Agreement” and an “Addendum” to their purchase agreement. This Addendum states that the Purchaser “upon closing shall be obligated to pay an annual fee” equal to \$300

and increased each year by the increase in the Consumer Price Index. Delinquent fees are subject to penalties and liens. Tr. (23) pp. 240-242; App. Ex. No. 1 C.

41. The \$120,000 in “Apartment Contributions” is based on the following: HighPoint of Romeoville own a multi-family rental apartment near the subject property known as “Reflections at High Point.” The “Use and Access Easement Agreement” states that The Institute and The Church (as “Grantors”) desire that the tenants, invitees and guests of Reflections at High Point be entitled to benefit from use and enjoyment of the Friendship Center. As a condition to the use of the Center by these parties, “there shall be certain financial contributions made to the Grantor by the Grantee ... which contributions shall defray certain of the costs of operating the Center.” HighPoint currently pays \$10,000/ month or \$120,000/year under this provision. Tr. (23) pp. 187-192; App. Ex. No. 23 B.
42. Seventy-three people in the general public, not associated with the HighPoint Woods Housing Development, each paid \$396 in 2005 “for a one year full privilege” “community membership” in the Institute. Dept. Ex. No. 2.
43. The Institute has 5 full-time and from 5 to 15 part-time employees. The number of part-time employees increases during summer camp. The Executive Director of the Institute earns \$57,500/year and the next highest paid employee earns \$30,000. Tr. (23) pp. 177-178.

CONCLUSIONS OF LAW:

The property at issue in this proceeding was purchased by warranty deed on September 30, 2002 by the Institute for Community and Community Christian Church of Naperville as “tenants in common” from HighPoint of Romeoville, LLC. The address of

the subject property is 175 South HighPoint Drive, Romeoville. Tr. (23) pp. 93-97, 182-184; App. Ex. Nos. 10 and 16 B. The subject property consists of an open-air “Festival Area” on one side of HighPoint Drive and, across HighPoint Drive, is a building called the “Friendship Center,” a fishing lake, a nature trail surrounding the fishing lake and an outdoor pool. Tr. (23) pp. 54-58, 108, 111; App. Ex. No. 13 B. The area surrounding the subject property contains privately owned multi-family apartments, including apartments rented at market rate and apartments set aside for low income tenants. There are also privately-owned homes located in the development. Tr. (23) pp. 236-238.

There is a “Suite Lease” between HighPoint of Romeoville, LLC, as Landlord, and Marquette Management, as Tenant, dated November 30, 1998, for premises located on the second floor of the Friendship Center. Marquette Management is a real estate development company. This lease was assigned by HighPoint of Romeoville to the Institute for Community on September 30, 2002, concurrent with the sale of the property and the lease is still in effect. Marquette Properties occupies 21% or 5,700 square feet of the total 27,000 square feet of the Friendship Center. The Applicant is not seeking an exemption of this portion of the Friendship Center. Tr. (23) pp. 102-106, 115-116; App. Ex. Nos. 14 and 15 B.

An examination of the record establishes that the Institute for Community and Community Christian Church of Naperville have not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2005 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 200/15-40 or 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 Institute for Community and Community Christian Church have failed to prove, by clear and

convincing evidence, that the subject property falls within the statutory requirements for exemption of property for either religious or charitable purposes.

Religious Exemption: Community Christian Church's Articles of Incorporation, filed on September 6, 1988 under the "Illinois Not For Profit Corporation Act," state that the Church "exists to glorify God by winning people to Jesus Christ and helping them become strong, mature Christians in a church noted for its caring love, Bible teaching and encouragement to one another." The Church is independent and nondenominational. Services at the Church include music, worship, drama and video to communicate biblical teaching and communion. Tr. (23) pp. 22-23, 67; App. Ex. No. 1 A. The Church operates under a "Constitution and Bylaws" which state that its purpose "is to help people find their way back to God. This is accomplished by equipping and mobilizing believers to reach out with the relevant message of Jesus Christ ..." Tr. (23) pp. 23-25; App. Ex. No. 2 A. The Church is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. (23) pp. 25-26; App. Ex. No. 3 A. Additionally, the Church is exempt from Illinois sales tax as of October 1, 2004 as an institution "organized and operated exclusively for religious purposes." Tr. pp. (23) 26-26; App. Ex. No. 4 A.

The Church has two worship services on Sunday morning, including service for adults and children and Sunday school for children. On Sunday evening, there is worship service for students in sixth grade through high school. On Tuesday evening, there is a celebration support and recovery service for addiction groups. The Church sponsors an activity night for students on Wednesday night. In partnership with the Institute, the Church sponsors children's leagues including basketball and soccer. Tr. (23) pp. 37-38. The Church publicizes its activities by mailing out fliers and by word-of-mouth. The Church does not charge fees for any activities at the Friendship Center. The Church's

programs, including Sunday School and student ministry, are led by volunteers. Tr. (23) pp. 52-53.

Section 15-40 of the Property Tax Code exempts “[a]ll property used exclusively for religious purposes...” and “not leased or otherwise used with a view to profit.” 35 ILCS 200/15-40 (1996). The first issue to be decided in the instant case is whether Community Christian Church is a “religion” within the meaning of the statute.

Prior to 1909, the law required that religious property exemptions would be granted only if the party using the property for religious purposes also owned the property. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). However, this is no longer the case because statutory changes have eliminated the ownership requirement. *Id.* Early Illinois case law defined “religion” by stating, “[w]hile religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State, it means the formal recognition of God as members of societies and associations.” People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911), (hereinafter McCullough). Similarly, the Illinois Supreme Court defined religious “worship” as “the act of paying honors to the Supreme Being.” Hamsher v. Hamsher, 132 Ill. 273, 285 (1890). The Illinois Supreme Court defined the term “religious use” as follows:

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

McCullough at 136-137. I conclude, pursuant to the case law discussed above, that Community Christian Church qualifies as a “religion.” Although some of the Church’s

use of the subject property constitutes religious use as defined in McCullough, I am unable to conclude that the property should be exempted for religious purposes because of the requirement in 35 ILCS 200/15-40 that the property be used “exclusively” for religious purposes.

The problem with the Church’s use of the subject property, and the reason that the exemption must be denied in accordance with the statute, is that neither the Friendship Center, nor any other identifiable area on the subject property, is used exclusively by the Church for religious purposes. The word “exclusively” when used in section 200/15-40 and other exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1933). “Primary purpose” is defined as that which is first in intention; that which is fundamental. Black’s Law Dictionary, p. 1972 (5th ed. 1979). Property satisfies the requirement of being used “exclusively for religious purposes” as a statutory basis for real estate tax exemption if the property is primarily used for religious purposes. Lutheran Church of Good Shepherd v. Department of Revenue, 316 Ill. App. 3d 828 (3rd Dist. 2000).

Gym/Auditorium in the Friendship Center: Based on the testimony and evidence presented at the hearing, I must conclude that the Gym/Auditorium in the Friendship Center is not exclusively used for religious purposes. The Gym/Auditorium is used by the Church for worship service. There is no altar, pews or permanent seating in the Gym/Auditorium. Chairs, instruments and audio equipment are set up by 120 volunteers at 6:00 a.m. on Sunday for a 9:30 a.m. service. The Church uses power-point video for hymnal words, bible passages and images. The service is conducted from a raised platform. Weddings, baptisms, child dedications, and funerals are also held by the Church

in the Friendship Center, but the frequency of these uses cannot be determined by this record. In partnership with the Institute, the Church sponsors kid's leagues and basketball inside the gym of the Friendship Center. The frequency of the Church's use of the gym/auditorium for kid's leagues and basketball cannot be determined from the record. Tr. (23) pp. 37-38, 67-71, 73, 129-131, (24) pp. 95-99.

Pastor McMahon testified that upon completion of church services, "teams of volunteers would take all of the chairs and stack them and put everything back away so we would be able to use the gym, usually by about 2:00 o'clock." Counsel for the applicant then asked "[T]he area for which the services takes place at other times is used as a gymnasium?" The Pastor responded "[Y]es," it was used by the Institute for Community. Tr. (23) pp. 69-70.

On a weekly basis then, the Gym/Auditorium in the Friendship Center is used 8 hours on Sundays by the Church and at all remaining times, by the Institute. Clearly, the Gym/Auditorium in the Friendship Center is not primarily or exclusively used for religious purposes. I cannot recommend a religious exemption for the Gym/Auditorium in the Friendship Center for 8 hours on Sundays. The use by the Church of the Gym/Auditorium for 8 hours on Sunday is incidental and secondary to its use, as a gym, by the Institute for Community during the remainder of the week. The primary user of the Gym/Auditorium is the Institute, and as will be discussed in a later section of this recommendation, the Institute's use does not constitute charitable use of the property.

Other Areas of the Friendship Center: The "Lobby" and "Cyber Café" in the Friendship Center are used by the Church for hospitality and as a welcome center. Baptisms are performed in the hot tub area in the Friendship Center. The "Family Resource Center" is used as a nursery for infants during services and for children's study

groups. The support recovery services use the Gym/Auditorium on Tuesday evenings for large meetings and then break out into small groups in the meeting rooms.¹ Student ministry groups and adult groups meet on Sunday, Tuesday and Wednesday nights in the Family Resource Center. The Church uses an office in the mezzanine level “Administration” area on weekends. Tr. (23) pp. 45-52, 68-69; App. Ex. No. 14 B.

There was testimony at the hearing that the Institute uses areas in the Friendship Center in the following ways: Childcare begins at 6:45 a.m. daily and parents going to work can drop their children off at that time. School busses pick up children in the vestibule of the Friendship Center. During the day, the Family Resource Center is used by the Institute for small groups and moms’ groups. Children use the Friendship Center after school. Children over 12 can use the lobby area to complete their homework. The Institute has an “Academic Enrichment Program” that tutors children from kindergarten through grade 12 in the Friendship Center. Children can use the Gym/Auditorium after school for basketball or volleyball. There are mailboxes off the lobby of the Friendship Center for the apartments in the development. The Cyber Café has internet access for children to use. Tr. (23) pp. 116-121, 125

The Friendship Center also has an exercise area, locker rooms and a spa and massage area for adults, all sponsored by the Institute. The Friendship Center has a therapist available that does holistic massage. Tr. pp. (23) 116-121, 125. The Institute sponsors the following programs in the Friendship Center: Community Pumpkin Carving Contest with pumpkins donated by area businesses; Ice Cream Socials that mix older people with the younger generation; summer camp, adult social dances for seniors, exercise classes and health fairs. Tr. (23) pp. 126-135; App. Ex. No. 17 B. There was

¹ My research indicates no case where use of property by support recovery groups was found to constitute “religious” use of property

testimony at the hearing that 4,000 to 6,000 people use the Friendship Center each month, and some of these people use it more than one time. Tr. pp. 149-150. The Institute's Newsletter states that "... programs bring traffic of 8,000-10,000 people a month to the Friendship Center to participate." App. Ex. No. 18 B.

There was no testimony at the hearing, and I am unable to conclude, that any area in the Friendship Center is used exclusively by the Church for religious purposes. There was no testimony at the hearing that any room or area in the Friendship Center was dedicated to use by the Church exclusively for religious purposes. The property tax exemption is based on space used and the statute requires that the space be exclusively used for the exemption claimed.

Applicant argues in its "Reply Brief" that while the Department focuses on the terms "primary" and "exclusively" used, nowhere is it required that there be only one primary use. Reply Brief, p. 3. This argument ignores the fact that both the religious exemption statute, 35 ILCS 200/15-40, and the charitable exemption statute, 35 ILCS 200/15-65, require that an exemption be given only if the use claimed for exemption is the exclusive use of the property. Applicant's argument suggests that the legislatively mandated requirement that property be "exclusively" used for the exemption claimed can and should be disregarded and that the fundamental and primary use of the property can be ignored. "The right to a tax exemption is to be accorded to schools, charitable and religious organizations only when the property claimed to be exempt is exclusively used for either one of the three purposes." "Property is generally susceptible of more than one use at a given time and the exemption is determined upon the primary use, and not upon any secondary or incidental use." People ex rel. Marsters v. Missionaries, 409 Ill. 370, 375 (1951). The Friendship Center has more than one use and the question of whether the

Center is entitled to exemption must be determined from its primary use. The evidence clearly indicates that the Church's use of areas in the Friendship Center is not the primary use and I cannot recommend an exemption for these areas in the Friendship Center based on religious use.²

Use of the Subject Property Other than the Friendship Center: I am also unable to conclude that other uses of the subject property (excluding the Friendship Center) by the Church constitute use for "religious purposes" as required by 35 ILCS 200/15-40. If the Church's use of the subject property (excluding the Friendship Center) is for "religious purposes," I am again unable to conclude that the area is "exclusively" used for religious purposes. The Church used the "Festival Area," weather permitting, for concerts and students activities, soccer and interaction with nature as part of the worship service. The subject property also contains an outdoor fenced-in pool that the Church uses for baptisms and for celebrations on a monthly basis, weather permitting. The frequency of the Church's use of the area for baptisms, celebrations and interaction with nature as part of the worship service cannot be determined from the record. There is no definitive way to exempt property used for religious purposes, "weather permitting." Given the vagaries of Illinois weather, it is impossible to determine when outdoor property is actually used for exempt purposes. The Property Tax Code does not provide for seasonal exemptions of property.

The Institute uses the pool area for parties and festivals throughout the summer. Tr. (23) pp. 54-58, 108, 111; App. Ex. No. 13 B. The Institute used the "Festival Area" for

² There was testimony that two other churches use the "facility" "occasionally" with the Institute's permission. These two churches paid the Institute \$13,000 in 2005 for this use. According to the testimony, the two churches do not have a written agreement. Tr. (24) p. 25. This was the only evidence presented with regard to these two churches and it is insufficient for me to conclude that this use by the two churches constitutes religious use of the property entitling the applicant to a property tax exemption.

soccer and after-school and summer camp programs, weather permitting. “Cinco de Mayo” festivals, concerts and outdoor movie nights sponsored by the Institute are held in the Festival Area. Tr. (23) pp. 106-109; App. Ex. No. 13 B. The Institute sponsors the following activities which I presume are conducted outside the Friendship Center although no specific area was given: Easter egg hunts; Lockport Park District partnership events; Earth Day; Clean Up Day for the Friendship Center and Grounds. Tr. (23) pp. 126-135; App. Ex. No. 17 B.

The “religious purposes” contemplated by the Property Tax Code involve the use of property for “public worship, Sunday schools and religious instruction.” McCullough, *supra*. It is unclear from the testimony how soccer, concerts, student activities and unidentified “celebrations” (or for that matter, kid’s leagues and basketball, sponsored by the Church inside the Friendship Center) help further the Church’s religious purposes. Providing a space for soccer, concerts, student activities, unidentified celebrations, kid’s leagues and basketball is obviously beneficial to the residential development surrounding the subject property. There is just nothing inherently religious about these activities. In addition, I am unable to conclude from the limited testimony on these activities that the activities are necessary for the accomplishment and fulfillment of the religious objectives of the Church’s ministry. DuPage County Board of Review v. Department of Revenue, *et al.*, 339 Ill. App. 3d 230 (2d Dist. 2003). If these activities do further the Church’s religious purposes, I am unable to conclude that the space used is used exclusively and primarily for religious purposes since the Institute uses the same space.

Although baptism may constitute religious use of property, I cannot recommend an exemption of the outdoor pool for the hours it is used for baptisms on a monthly basis, weather permitting. With the Institute using the outdoor pool for parties and festivals

throughout the summer, the Church's use for baptisms would not be the exclusive use of this area, as required for exemption under the statute. "Interaction with nature as part of the worship service" weather permitting, may also constitute "religious use" of the Festival Area, but no specific area was identified for this use and with the Institute using the same property, I am not able to conclude that any space in the Festival Area is exclusively used by the Church for religious purposes.

Also included in the subject property are a playground and a small amphitheater. There is an area which the Church uses for outdoor weddings, leading to a dock that had paddleboats for people to use on the lake. The lake is stocked with fish. The Institute urges people to catch fish and release them back into the lake. There is a nature trail with some lookout points over the lake where people can look at the wildlife. After-school and summer camp educational programs sponsored by the Institute use the lake and trail. The subject property also contains a sand volleyball court and a community garden area with 25 different plots for vegetables, tended to by children in the after-school program. Tr. (23) pp. 108-112; App. Ex. No. 13 B. Whereas "outdoor weddings" may constitute religious use of the property, no specific area was identified for the weddings and the frequency of the Church's use of [some] area for outdoor weddings cannot be determined from the record. With the same area being used by the Institute, I am unable to conclude that any area is dedicated exclusively to use for religious purposes by the Church.

Like all provisions exempting property from taxation, 35 ILCS 200/15-40 must be strictly construed against exemption, with all unproven facts and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Therefore, the applicant bears the burden of showing, by a standard of clear and convincing evidence, that the property it is seeking to exempt falls within the provisions

under which the exemption is sought. *Id.* In the instant case, applicant has failed to prove, by clear and convincing evidence, that the property it is seeking to exempt for religious purposes, falls within the provisions of 35 ILCS 200/15-40 of the Property Tax Code.

Charitable Exemption: 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) ***

If a not-for profit organization leases property that is otherwise exempt under this subsection to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt.

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," that the property is "exclusively used" for purposes that qualify as "charitable" within the meaning of Illinois

law and that the property is not leased or otherwise used with a view to profit. 35 ILCS 200/15-65.

In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 157 (1968) (hereinafter Korzen) the Illinois Supreme Court outlined the following “distinctive characteristics” of a charitable institution: (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 has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (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.

The Illinois Supreme Court articulated the criteria in Methodist Old People's Home “to resolve the constitutional issue of charitable use.” Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273 (2004). Courts consider and balance the criteria 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, 469 (2d Dist. 1965). I am unable to conclude, based on the evidence and testimony presented at the evidentiary hearing, that the subject property is owned by an “institution of public charity,” that the subject property is exclusively used for charitable purposes or that the subject property is not leased or otherwise used with a view to profit.

The PTAX-300, “Application for Non-homestead Property Tax Exemption” filed by the applicant lists the “Property Owner” as “Community Christian Church of Naperville & Institute for Community, Inc.” App. Ex. No. 7 B. In the year 2005, which is at issue in this case, it is clear that both the Church and the Institute owned the subject property. On October 11, 2006, which is after the exemption year at issue, the Church transferred its 50% interest in the subject property to the Institute by quit-claim deed. App. Ex. No. 28 B.

Although the subject property was owned by both the Church and the Institute in 2005, no financial information or financial statements were offered into evidence on behalf of the Church. To qualify for property tax exemption under 35 ILCS 200/15-65, it was incumbent upon the applicant to prove that both owners of the subject property, in this case the Church and the Institute, were “institutions of public charity,” that both owners had the “distinctive characteristics” of a “charitable institution” as described in Korzen, and that both owners did not use the subject property with a view to profit. Since the record in this case contains no financial information on the Church, a separate entity with a one-half ownership interest in the subject property during the year at issue, the determinations required for exemption under the charitable exemption statute and Korzen cannot be made for the Church. The remainder of this recommendation considers whether the Institute is an institution of public charity, whether the Institute has the distinctive characteristics of a charitable institution, and whether the Institute used the property with a view toward profit, but it must be strongly noted that one-half of the evidence required for exemption of the subject property under 35 ILCS 200/15-65 is missing from this record.

The Institute for Community was incorporated on August 7, 1995 under the Illinois Not For Profit Corporation Act for the purpose of helping “people fulfill the dream of grace-filled living in community” through research, development, and consultation regarding church-centered communities. Tr. (23) pp. 80-81; App. Ex. No. 1 B. The Institute filed Articles of Amendment on January 1, 2004 restating its purpose as follows: “... the Corporation shall develop and operate various public charitable programs and related services for people seeking to improve their quality of life through a balanced lifestyle, integrating the family in its recreational, educational and career, spiritual, health and wellness pursuits. The programs will help people build quality relationships where they live and work through the power of genuine community.” Tr. (23) pp. 81-88; App. Ex. No. 3 B. The Institute is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. (23) pp. 88-89; App. Ex. No. 5 B.³

The Department’s denial of exemption dated November 3, 2005 found that the subject property was not in exempt ownership and not in exempt use. Dept. Ex. No. 1. Based on the testimony and evidence presented at the hearing, I also conclude that the subject property is not “owned by an institution of public charity” and that the subject property is not used for charitable purposes as required by 35 ILCS 200/15-65.

The Institute exists because of the membership and mutual interests of the apartment dwellers and home owners in the complex surrounding the subject property, who pay for this membership with an annual assessment, subject to a lien on their property. The Institute is similar to a homeowners’ or condominium association that has

³ As of February 1, 2005, the Institute is also exempt from Illinois sales tax as an institution “organized and operated exclusively for charitable purposes.” Tr. (23) pp. 89-90; App. Ex. No. 6 B. The Institute’s exemption from sales and use taxes has no impact on the property tax exemption sought in this proceeding. Each individual tax exemption claim must be determined from the facts presented. Rogy’s New Generation v. The Department of Revenue, 318 Ill. App. 3d 765 (1st Dist. 2000).

common elements and amenities used by its residents, or an exclusive gated community with a clubhouse used by its residents. Common elements, amenities and clubhouses in these developments are supported by a mandatory assessment on the residents, similar to the Institute's mandatory assessment on apartment dwellers and home owners in the complex surrounding the Friendship Center. The Institute has the right to lien the parcel and interest of any owner in the development in the amount of any unpaid or delinquent annual assessment including interest, late payment and administrative charges and costs of collection, if any. App. Ex. No. 23 B. The Institute's provisions for the mandatory assessment are similar to those of other homeowners' and condominium associations and gated communities.

Private homeowners' and condominium associations pay for the amenities offered in the common elements of the complex, which may include recreation areas, pools and clubhouses. It certainly is likely that these associations sponsor programs and activities in these facilities that are of interest to the residents in the complex. This is similar to the Institute's operation and maintenance of the Friendship Center and surrounding grounds and the sponsoring of 65 programs and activities of interest and concern to the residents of the development. My research indicates no support in the charitable exemption statute or the case law based on that statute, for a finding that an organization such as the Institute, with a membership consisting mainly of homeowners and apartments dwellers, participating in programs that are requested by them, of mutual interest to them, and supported by them through mandatory yearly assessments subject to lien, in addition to "participation fees," is an "institution of public charity."

The Institute's original Articles of Incorporation state that its purpose was to help "people fulfill the dream of grace-filled living in community..." App. Ex. No. 1. The

Institute filed Articles of Amendment on January 1, 2004 restating its purpose as follows: "... the Corporation shall develop and operate various public charitable programs and related services for people seeking to improve their quality of life through a balanced lifestyle..." The programs will help people build quality relationships where they live and work through the power of genuine community. Tr. (23) pp. 81-88; App. Ex. No. 3 B.

The Friendship Center's "January–April, 2005 Newsletter" states that the Institute "encourage[s] you to view your life as a wheel with 5 spokes. We will try to provide programming for you to choose from to help you lead a well-balanced lifestyle." The five spokes are family, recreation, education, spiritual, and health and wellness. The newsletter describes and advertises programs available by spoke. The Newsletter states that the Institute is "dedicated to building quality relationships where people live and work through the power of genuine community." The Institute "develops programs and communities serving the greater Romeoville-Plainfield area through owning and operating the Friendship Center." "By developing relationships through Friendship, Membership, Partnership and Ownership, the [Institute] adds value to the neighborhoods they serve by providing programming to help people lead balanced lifestyles and connect with their neighbors." Tr. (23) pp. 144-146; App. Ex. No. 18 B. The Institute distributes interest surveys to people in the community to see what programs people are interested in. The Institute offers programs that fit into the wheel of life spokes. "Programming is fueled by participant interests and volunteerism." Tr. (24) pp. 39-41, 47; App. Ex. No. 18 B.

Fulfilling the dream of "grace-filled living" in community, improving the quality of one's life through a balanced lifestyle, building quality relationships where one lives and works through the power of genuine community, and developing relationships

through friendship, membership, partnership and ownership, adding “value” to the neighborhood, and “connecting” with one’s neighbors are all valuable endeavors. It is suggested that these endeavors would be similar to the objectives of any homeowners’ or condominium association where “building quality relationships” where one lives and “connecting” with one’s neighbors adds “value” to the development. However, building quality relationships and adding “value” to the development does not benefit an unlimited number of persons, one of the distinctive characteristics of Korzen. It benefits the people and the property values in the development. The Friendship Center and the surrounding subject property may improve the quality of life through a balanced lifestyle, but this “improvement” is only for the members of the development who participate in the programs offered and who pay for these programs by their annual assessment, subject to lien. The Institute is advocating a “well-balanced lifestyle.” However, using property to promote a lifestyle has never been recognized in Illinois as a charitable purpose.

The Institute’s Newsletter states that relationships can be developed through “membership” and “ownership,” both of which add “value” to the neighborhood. The primary beneficiaries of the “balanced lifestyle” offered by the Institute are its “membership,” consisting primarily of apartment dwellers and homeowners, who are assessed an annual fee for this membership. By its own admission, the Institute is a membership based organization. In an affidavit submitted to the Department in the original application for exemption, Mr. Vickery stated that \$28,954 in revenue “comes from about seventy-three (73) people in the general public and not associated with the HighPoint Woods Housing Development and who chose to have a ‘community

membership’ and who paid about \$396.00 last year for a one year full privilege membership.”⁴ Dept. Ex. No. 2. Membership then consists of apartment dwellers and homeowners who are assessed an annual fee in order to use the subject property and the “general public” who can become members by paying the annual fee for a one year “full privilege membership.”

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 Institute, which sponsors 65 programs that are of interest to its paying membership, operates primarily for the benefit of the apartment dwellers and homeowners who are assessed an annual fee for this benefit, subject to a lien on their property if the assessment is unpaid, and for community members who purchase yearly memberships.

In the original application for exemption, Mr. Vickery stated that “it was important to understand” that all “services and privileges available to the community members [consisting of assessed apartment dwellers and homeowners and the 73 paying community members], are also available to the general public.” “Each month, more than 10,000 ‘units of service’ are provided-that is a specific participation by a person on any day of the week.” Dept. Ex. No. 2. Ms. Barbush, Facility Operations Manager and Adult and Social Program Director at the Institute, testified that 7 to 10 thousand people “come into the Friendship Center on a monthly basis.” When asked what her “estimate” was of

⁴ The Institute’s form entitled “Request for Reduction of Fees” lists three types of membership: Adult, Family and Couple. No testimony or evidence was presented on the types of membership and, what I presume, are the different membership rates charged for each. It is unclear from the testimony and evidence how the “community membership” compares with the adult, family and couple membership.

facility users who were not homeowners and apartment dwellers who “have to pay a fee to come,” she did not “have that information.” Tr. (24) p. 47.

In two days of testimony from eight witnesses at the evidentiary hearing, not one witness testified as to how many people from the “general public,” who pay no annual membership fee, use the facilities on the subject property. Because there was no testimony or documentary evidence as to how many people use the facility who do not pay for the “services and privileges” through the annual assessment on homeowners and apartment dwellers or through the annual membership fee, I must conclude that the Institute is a membership based organization, composed of homeowners and apartment dwellers who have to pay an assessment, subject to lien, in order to participate and the 73 individual paying community members who elected to participate by paying an annual fee to join. If the Institute’s membership is broader than this and if the subject property does, in fact, benefit an indefinite number of people in the community who have not paid a fee to join, it was incumbent on the Institute to prove this at the hearing.

In Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286, 291 (1956), the Court found that the primary purpose of the organization was “to foster love of country, respect for our civil institutions and to benefit and afford comradeship to its members.” “Affording comradeship to its members” is strikingly similar to many of the purposes of the Institute, as stated above. 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. Albion's constitution listed its objectives, *inter alia*, as "[T]o promote fellowship and good will among its members and the citizens in the community, and to inspire each other to higher efforts." 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.

Similarly, the dominant use of the Friendship Center and the surrounding subject property is as a private club for apartment dwellers and homeowners who pay an annual fee for the privilege of using the club and for members who purchase a yearly membership for the privileges. If there are any benefits to mankind or the public from the Institute's activities, the benefits are incidental and secondary to its main purpose. The primary benefit of the Institute is not to the public at large, but to those people who pay the annual fee. Improving the quality of life through a balanced lifestyle and building relationships through the power of genuine community are "laudable and public spirited." But it is not logical to conclude that an organization that sponsors such "charitable" activities as jazzercise, tae-kwon-do, kickboxing, fishing, bingo, holistic massage, karaoke by the pool, paddle-boating, book club and garden club, *intra alia*, for its paying members, is a "headquarters for the dispensation of charitable relief." The Institute and the surrounding subject property is a "headquarters" for activities that are of interest to and paid for by its members. The members are paying for this "headquarters" either through the assessment of an annual fee, subject to lien, or through the purchase of a yearly membership. The primary purpose of the Institute is not to provide charity. The primary purpose of the Institute is to provide services and "privileges" to its paying membership, thereby improving the quality of their lives through a balanced lifestyle.

Based on the testimony and evidence presented at the hearing, I am also unable to conclude that the subject property lessens a burden on government, which according to Korzen, is a “distinctive characteristic” of a charitable organization. “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). Ms. Butenhoff, Children’s Program Director at the Institute, testified that the Institute provided its programs so that the City of Romeoville did not have to. Tr. (24) p. 83. However, the Institute failed to delineate any statute, ordinance or legal mandate requiring the Village of Romeoville to provide recreational facilities for its citizens.

Moreover, it appears from the evidence that the Village of Romeoville does, in fact, provide extensive recreational and park facilities for its citizens. The “Romeoville Park and Recreation Department Park and Facility Site Map” shows that the Village provides the following parks and facilities: Romeoville Recreational Center, “Fit 4 Life Fitness Center,” “Jungle Safari Indoor Playground,” 25 “Park Sites,” 7 “Future Park Sites,” 3 “School Park Sites” and 3 “Township Park Sites.” App. Ex. No. 21 B. There was testimony that some of the Romeoville facilities are accessible by residents from the HighPoint development only by car or only by crossing busy streets, making access dangerous or difficult for children. Tr. (24) pp. 82-83. This may be a concern for residents in the HighPoint development. There is, however, no exemption in the Property Tax Code for convenient or safe recreational facilities and the HighPoint development’s easy access to the Friendship Center and the surrounding subject property is not evidence that the subject property lessens a burden on Village of Romeoville.

The testimony and the evidence indicate that the Village of Romeoville chooses to provide extensive recreational facilities and parks for its citizens. However, there is no evidence in the record showing that the Village is required to provide recreational and park facilities, and absent this evidence, I am unable to conclude that the subject property lessens the Village's "burden."

Based on the evidence and testimony presented at the evidentiary hearing, I am also unable to conclude that the Institute's funds are derived mainly from public and private charity. It appears that the reasoning behind this guideline is that an "exclusively" charitable organization will meet its needs by soliciting and receiving donations from individuals and others with charitable impulses. The "exclusively" charitable organization then holds the donations in trust and exercises its expertise and experience to apply the donations to an identifiable charitable need.

The Institute's Financial Statements for December 31, 2005 show "Total Support and Revenue" of \$1,252,186, "Total Expenses" of \$941,211 and "Increase in Net Assets" of \$310,975. The "Increase in Net Assets" of \$310,975 may be held for the Institute's objects and purposes, but as discussed in this recommendation, these objects and purposes are not charitable.

"Total Expenses" of \$941,211 are composed of the following: \$721,859 in "Program" expenses, \$147,955 in "Management and General," and \$71,397 in "Fundraising." Tr. (23) pp. 158-160, 174-176; App. Ex. No. 22 B. "Total Support and Revenue" of \$1,252,186 is composed of the following: "Program Fees" of \$309,562, "Rent" of \$33,000, "Other" of \$16,718 and "Contributions" of \$892,906,

Program Fees: In addition to paying an annual assessment for the use of the subject property or an annual membership fee, participants in certain programs must pay

an additional fee. These “Program Fees” of \$309,562 are the additional fees charged by the Institute for its various programs. Tr. pp. 171-172. The following activities, held in the Friendship Center in 2005, part of the “family” spoke charged a participation fee: Before/After School, Summer Camp, Camp Friendship, Spring Break Camp, Christmas Break Camp and Childcare. Tr. (23) pp. 146-150; App. Ex. No. 19 B. The following activities, part of the “recreation” spoke, were held in the Friendship Center in 2005 and charged a “participation fee:” Jazzercise, Tae-Kwon-Do, Kickboxing, Men’s Basketball Club, Youth Soccer League, Youth Basketball League and Paddleboats. Tr. (23) pp. 146-150; App. Ex. No. 19 B. The following programs, part of the “education” spoke charged a participation fee in 2005: Lots for Tots Preschool, Academic Enrichment, Homework Area and Community Networking. Tr. (23) pp. 146-150; App. Ex. No. 19 B. The fees charged by the Institute cannot be considered “public and private charity” because they are, in fact, payment for the programs by participants. These “Program Fees” represent 25% of the Institute’s “Total Support and Revenue.”

“Rent” and “Other:” “Rent” of \$33,000 is from the rental of a portion of the Friendship Center to Marquette Properties. The Institute is not seeking exemption for the rented portion of the property. “Other” of \$16,718 includes the sale of supplies for different arts and crafts and the sale of light refreshments. Tr. pp. 172-174; App. Ex. No. 22 B. “Rent” and “Other” represent 4% of “Total Support and Revenue” of \$1,252,186.

“Contributions:” The Institute’s financial statements characterize \$892,906 of the “Total Support and Revenue” as “Contributions.” However, an analysis of the composition of this account indicates that the majority of the funds are not, in fact, “contributions.” The “Contributions” of \$892,906 are composed of the following: \$328,000 from the Community Christian Church, \$60,000 in “Church Contributions (per

space sharing agreement),” \$13,000 in “Space Sharing (2 other churches),” \$22,000 in “Homeowner Contributions,” \$120,000 in “Apartment Contributions,” \$300,000 in “Donations from General Public,” \$50,000 in “Donations from Corporate Sponsors,” Tr. (23) pp. 164-172, 197-203, (24) pp. 5-6, 19-20; App. Ex No. 25 B; Dept. Ex. No. 2.

“Contribution” from Community Christian Church: “Contributions” of \$892,906 include a “contribution” from the Community Christian Church of Naperville of \$328,000. The Church had a 50% undivided interest in the subject property and assumed 50% of the obligations related to the property in exchange for its interest. Since acquisition, the Institute paid all costs, including debt service, related to the property. The mortgage was refinanced in August, 2005, and the Institute became liable for the entire mortgage debt. On October 11, 2006, after the year at issue in this case, the Church transferred its 50% interest in the subject property to the Institute by quit claim deed. In 2005, the Institute recognized a “contribution” from the Church in the amount of \$328,000 as a result of the Institute’s assumption of the mortgage, representing the excess of the property’s appraised value over the related debt assumption by the Institute. There was testimony that no cash was exchanged in this transaction. No documentary evidence was admitted to support this testimony. Tr. (23) pp. 160-164, 182-184, (24) pp. 7-8, 16-17; App. Ex. Nos. 16, 22 and 28 B.

As discussed previously, no financial statements or financial information was admitted into evidence on behalf of the Church so I am unable to determine how the Church accounted for the transfer of the mortgage. Mr. Vickery testified that the Institute filed Internal Revenue Service Form 990, “Return of Organization Exempt from Income Tax.” Tr. (24). p. 16. The Institute’s Form 990 for the year 2005 was not offered into evidence and I am unable to determine if the Institute characterized the \$328,000 as a

gain or a contribution for federal tax purposes. The Church's "contribution" to the Institute is, in effect, a one-time accounting entry to record the transfer of the Church's interest in the mortgage on the subject property. There is not enough information in the record for me to conclude that the \$328,000 is a contribution from public and private charity. The \$328,000 represents 26% of the Institute's "Total Support and Revenue."

"Space Sharing" Agreements: The Institute's "contributions" of \$892,906 also include \$60,000 in "Church Contributions (per space sharing agreement)" from Community Christian Church and \$13,000 in "Space Sharing" from two other unrelated churches. Tr. (24) pp. 23-26. There was testimony at the hearing that Community Christian Church gets its revenue from weekly donations and tithes.⁵ "Their worship services on Sunday are in [the Institute's] building, so what they do is, they share some of [their] revenue with us to help offset some of the expenses that we have for, you know, electricity, and heating the building, and the audio equipment and all the things that they're using in the building." Tr. (24) p. 24. Counsel for the applicant referred to this arrangement as a "pass-through" of expenses associated with the use of the property. There was testimony that the other two churches use the subject property in the same manner. There was testimony that the Institute's arrangements with the churches are "informal" and there are no written agreements. Tr. (24) pp. 25-26.

These "contributions" from churches, totaling \$73,000 in 2005, represent approximately 6% of the Institute's "Total Support and Revenue."⁶ Although the Institute describes the Churches' payment as a "contribution," a "space-sharing agreement" and a

⁵ No financial information was provided for the Church and it cannot be determined from the record how the Church accounts for this "space sharing."

⁶ It should be noted that the Institute also rents "roughly about 20% of the building" to Marquette Management, for \$33,000/year. The Institute is not seeking an exemption for this space. Tr. (23) p. 14. No explanation was offered by the applicant as to why rental of space to Community Christian Church, at

“pass-through,” in effect, these amounts represent rental income to the Institute. I must conclude, based on the evidence presented, that the rental income from the three churches constitutes use of the subject property by the Institute “with a view to profit,” which is proscribed by the statute and, by itself, sufficient to deny an exemption under 35 ILCS 200/15-65.

No documentary evidence was admitted to show how the Institute “offsets” their expenses with the rental income from the three churches. It must be noted here that the Institute’s “Statement of Functional Expenses” lists total “utilities” for the year 2005 of \$56,379. Based on this figure, which was never addressed at the hearing, it is impossible for me to conclude that the \$73,000 in rental income received by the Institute from the three churches, used to “offset” electricity, heating and audio, does not constitute the rental of the subject property at a substantial profit to the Institute. The rental of the property to the Churches at \$73,000 for 2005 is for more than the Institute’s utility expense for the entire year. The property that is rented to the three churches is used with a view to profit and the property does, in fact, generate a substantial profit for the Institute.

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). 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

\$60,000 year, was \$27,000 higher than rental to Marquette Management, in light of the testimony and evidence of the Church’s minimal space and time usage of the subject property.

case, the applicant has failed to prove that the subject property is not rented “with a view to profit,” which is a use specifically proscribed by 35 ILCS 200/15-65.

The Institute for Community is a not-for-profit corporation. Tr. (23) pp. 80-81; App. Ex. No. 1 B. 35 ILCS 200/15-65(c) states that if a not-for-profit organization leases property that is otherwise exempt to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt. However, the proscription against leasing or otherwise using property with a view to profit, contained in the opening clause of 35 ILCS 200/15-65, applies to properties falling within the parameters of the subsections of the statute, including subsection (c).⁷ Because I have concluded that the Institute for Community is leasing to Community Christian Church and two other churches with a view to profit, the subject property at issue in this proceeding is not “otherwise exempt” as required by subsection (c) of 35 ILCS 200/15-65, and, accordingly, the subject property does not qualify for exemption under 35 ILCS 200/15-65(c).

Homeowner and Apartment “Contributions:” The \$22,000 in “Homeowner Contributions” is based on the following: On October 2, 2002, The Institute and the Church (as “Grantors”) entered into a “Use and Access Easement Agreement” with HighPoint of Romeoville (as Grantee). The Agreement states that the Grantor is the holder of legal title to a parcel of land upon “which are located certain improvements, including ... a community center building which contains various facilities benefiting the residents and guests of the Grantor Parcel by providing recreational and social services

⁷ See, *i.e.*, Swank v. Department of Revenue, 336 Ill. App. 3d 851 (2d Dist. 2003) which determined that the phrase “leased or otherwise used with a view to profit” contained in the opening clause of 35 ILCS 200/15-35 applied to properties falling within the parameters of the subsections of that statute.

and programs for their use and enjoyment (such building, ... hereinafter referred to as the 'Center')." Tr. (23) pp. 185-187; App. Ex. No. 23 B.

Article 4 of the "Use and Access Easement Agreement" requires that on January 1 of each year, each owner in the development shall make a "contribution" to the Friendship Center equal to an annual fee of \$300 multiplied by the number of dwelling units on each owner's parcel. In no event, shall the annual fee for any dwelling unit be less than \$300 and the \$300 shall be adjusted yearly based on the "[Consumer Price Index] Adjustor."⁸ Any amounts not paid shall accrue interest at the rate of "3% per annum above the corporate base rate." The Grantor shall "have a lien against the Parcel and any interest of any Owner in a parcel in the amount of any delinquent Annual Fees or other amount," including interest ... together with late payment and administrative charges and costs of collection, if any. If an owner fails to pay the annual fee within 5 days of the due date, the owner shall be liable to the Grantor for interest, a late payment and administrative expense equal to 15% of the amount of the unpaid portion of the annual fee. Tr. (23) pp. 185-187; App. Ex. No. 23 B.

Purchasers of homes in the development get a copy of the "Use and Access Easement Agreement" and an "Addendum" to their purchase agreement. This Addendum states that the Purchaser "upon closing shall be obligated to pay an annual fee" equal to \$300 and increased each year by the increase in the Consumer Price Index. Delinquent fees are subject to penalties and liens. Tr. (23) pp. 240-242. In an affidavit filed with the Institute's original application for exemption, Mr. Vickery stated that the special assessment is explained to prospective buyers prior to purchasing a home. "To date, no

⁸ There was testimony that the annual fee is currently \$396. Tr. (23) p. 242.

prospective buyer has declined to purchase a home due to the assessment and all payments are willingly made by the homeowner.” Dept. Ex. No. 2.

The \$120,000 in “Apartment Contributions” is based on the following: HighPoint of Romeoville, LLC, owns a multi-family rental apartment near the subject property known as “Reflections at High Point.” The “Use and Access Easement Agreement” states that the Institute and the Church (“Grantors”) desire that the tenants, invitees and guests of Reflections at High Point be entitled to benefits from use and enjoyment of the Friendship Center. As a condition to the use of the Friendship Center by these parties, “there shall be certain financial contributions made to the Grantor by the Grantee ... which contributions shall defray certain of the costs of operating the Center.” Reflections at HighPoint currently pays \$10,000/month or \$120,000/year under this provision which allows the apartment dwellers to use the subject property. Tr. (23) pp. 187-192; App. Ex. No. 23 B.

There was extensive testimony at the evidentiary hearing as to the nature of the homeowner and apartment “contributions.” In his opening statement, counsel for the applicant stated that the yearly assessment is “merely a creative way of providing for a small tax that is assessed to people who live in the neighborhood.” Tr. (23) p. 14. Mr. Bottarelli, Managing Director of Marquette Properties, testified that “the idea here is that if you choose to purchase a home within HighPoint, that – you have a use agreement for access and a use and access agreement to the Friendship Center. And its’ amenities, including the lake and the town square for an annual fee as a way of offsetting its program costs.” Tr. (23) pp. 240-241.

The “Use and Access Easement Agreement” states that “as a condition to the use of the Center by the Benefited Parties” there must be “financial contributions” made to

the Grantor to defray certain of the costs of operating the Center.” App. Ex. No. 23 B. There was no testimony at the hearing that the financial “contributions” made by the homeowners and apartment dwellers to defray the costs of the amenities are deductible as “contributions” for federal income tax purposes. I am not aware of any instance where the yearly assessment of a homeowner’s or condominium association or a gated community was deductible as a “contribution” for federal income tax purposes. In fact, this “contribution” is nothing other than a mandatory property assessment. Nor am I aware of any instance where the dollar amount of a “contribution” was tied to the Consumer Price Index. There was no testimony at the hearing as to the connection between the Consumer Price Index and the costs of running the social and recreational activities on the subject property.

I must conclude that HighPoint of Romeoville, LLC, which owns Reflections at High Point, is renting the apartment units at a profit. Similarly, it is reasonable to conclude that homeowners in the development purchased their houses with a view toward making a profit. Exempting the subject property will give HighPoint of Romeoville, LLC, and the homeowners in the development a distinct advantage that residents in other developments, who support their common elements, amenities and clubhouses by assessment without benefit of tax exemption, do not have.

Mr. Bottarelli was asked what would happen if a homeowner, for no compelling reason, did not want to pay the fee. He responded: “If you don’t pay and if you’re in arrears, you would get liened.”⁹ Tr. (23) pp. 246-247. My research indicates no Illinois case where a “donor’s” property could be liened for failure to make a “contribution.” The Use and Access Easement Agreement states that if an owner fails to pay the annual

⁹ Mr. Bottarelli testified that he was not aware of any instances where a lien was placed on a home for a homeowner’s refusal to pay the annual assessment. Tr. (23) p. 248.

fee within 5 days of the due date, the owner shall be liable to the Grantor for interest, a late payment and administrative expense equal to 15% of the amount of the unpaid portion of the annual fee. Tr. (23) pp. 185-187; App. Ex. No. 23 B.

The collection provisions for this “contribution,” which are apparently designed to enforce payment of the annual fee, are indicative of a business, not a charity. There may be sound business reasons for the Institute to have such onerous collection policies for their “contributions.” However, the provisions for collection of the annual fee and for lienning the owner’s property are “lacking in the warmth and spontaneity indicative of a charitable impulse” and appear to be “related to the bargaining of the commercial market place,” rather than a charitable institution. Korzen, *supra* at 158.

It defies logic to conclude that the “small tax” and the “annual fee,” as described above, are charitable contributions and I am unable to conclude that the assessments on homeowners and apartment dwellers, representing 11% of the Institute’s “Total Support and Revenue,” are charitable contributions. The assessments on homeowners and apartment dwellers and the “program fees” charged for participation in certain of the Institute’s programs represent 36% of the Institute’s “Total Support and Revenue” and indicate that 36% of the Institute’s revenue is payment for the recreational and social activities offered by the Institute.

Additionally, I conclude that the “small tax” and the “annual fee” are obstacles in the way of those who would participate in the benefits of the subject property. Ms. Foster, a resident in the HighPoint development, testified that her annual fee was waived by Mr. Vickery in January of 2005 and 2006 when her husband was scheduled to go to Iraq (2005) and was in Iraq (2006). Tr. (23) pp. 210-211. Mr. Vickery testified that the Institute can reduce or waive the “easement” if necessary but “[M]ost of the homeowners

don't come into a situation where \$300 a year would be a hardship on them." Tr. (23) pp. 189-190. There was no testimony at the hearing that there were waivers of the annual fee other than Ms. Fosters.' It is unclear how the general public, for whom the annual fee assessment may be a "hardship," would know that their annual membership fees could be waived. There was no testimony that the Institute advertised to the general public that waivers of the annual fee were available and I must conclude that the annual fee is an obstacle in the way of those who would like to take advantage of the privileges of membership in the Institute.

Donations from Corporate Sponsors: The \$50,000 in "Donations from Corporate Sponsors" represents four apartment units, each renting for \$1,000/month that the Institute had use of for its own purposes. According to the testimony of Mr. Vickery, these units were for purposes of "benevolence and [to] help people that were in trouble." "And for staffing purposes and things like that." Mr. Vickery testified that there had been a gas explosion in a neighboring community and "the people that lost their homes for that period of time were put up in units secured by the Institute under our control in order to provide them temporary housing until they were able to move on to other housing." No explanation was offered for the phrase "staffing purposes and things like that." Tr. (24) pp. 18-19, 21-23. Assuming this \$50,000 does represent in-kind corporate contributions, it represents 4% of the Institute's "Total Revenue and Support."

"Donations from the General Public:" The only remaining item of "Total Support and Revenue" not discussed above is \$300,000 in "Donations from the General Public," representing 24% of the Institute's "Total Support and Revenue." Mr. Vickery testified that "we also have corporate contributions of monthly corporate sponsors that would donate monies to our programming, simply in support of our scholarship

programming and things like that.” Tr. (23) pp 168-169. “Bigelow Homes is a home builder throughout the western and southwestern suburbs... They’re very partial about our community. They make a contribution of roughly \$3,000 a month.” Tr. (23) pp. 199-200. This is the only testimony in the record regarding this account.

In the Department’s Post Trial “Brief,” Counsel noted that, with regard to “Donations from the General Public,” “the record is devoid of any reliable proof with respect to what the actual source or sources of this money are.” “Given the fact that [the] line item is not supported by documentary evidence, it must be disregarded.” I agree with the Department on this point for the following reasons.

Mr. Vickery submitted an affidavit with the Institute’s original application for exemption in which he stated that “General” Community Contributions come from about seventy three people in the general public, not associated with the HighPoint Woods Housing Development, who chose to have a “community membership” and who paid about \$396 each last year for a one year full privilege membership. Dept. Ex. No. 2. Additionally, Mr. Bottarelli testified that “if you’re outside of Romeoville, for example, or outside of the area and you want to use the facility, you can use it. But the rates, the charges, like the YMCA, the charges are different.” “So the farther away you live, ... I would imagine it would cost a little bit different.” Tr. [23] pp. 245-246. There was no explanation at the evidentiary hearing as to where the “General” Community Contributions and “the rates, the charges” for users outside Romeoville are in the Institute’s “Total Support and Revenue.” I assume that these are included in the “Donations From the General Public” account, although they are, in reality, payments for memberships and services offered by the Institute, and not “Donations.” I am therefore unable to conclude that the \$300,000 in “Donations from the General Public,”

representing 24% of the Institute's "Total Support and Revenue," constitutes public and private charity.

In summary, I conclude that of the Institute's "Total Support and Revenue" of \$1,252,186, only \$50,000, or 4%, representing the in-kind corporate contributions for use of the four apartments, is derived from public and private charity. Clearly, the Institute is not meeting its need for funding by soliciting and receiving donations from individuals and others with charitable impulses and using its expertise and experience to apply the donations to an identifiable charitable need.

The Institute's "Scholarship Disbursement" Policy: The Institute's Bylaws, effective January 1, 2004, state that the "Corporation ... shall strive to make its charitable services and programs available to the appropriate general public without undue obstacles to access. It is the general policy of the Corporation that any fees or charges associated with the charitable services or programs of the Corporation shall be waived or reduced in accordance with each recipient's ability to pay. The administrative staff shall have the necessary discretion to make such waivers or reductions when appropriate to ensure the maximum distribution of the Corporation's charitable services and programs. More specifically, the program fee schedules (if any) shall be set in accordance with 35 ILCS 200/15-65(c) of the Illinois Compiled Statutes."¹⁰ Tr. (23) pp. 85-88; App. Ex. No. 4 B.

Families or participants who cannot afford the participation fee for activities offered by the Institute can apply for a waiver or reduction of participation fees by filling out a form titled "Request for Reduction of Fees" and submitting documentation of their

¹⁰ Although the Institute is a not-for-profit organization exempt from income taxes under section 501(c)(3) of the Internal Revenue Code and its bylaws contain a provision for waiver or reduction in fees, it is not entitled to exemption under 35 ILCS 200/15-65(c). As determined in this recommendation, the Institute's use of the subject property is not charitable and the Institute cannot "clear" the nonstatutory "hurdles" articulated in Korzen, which "resolve the constitutional issue of charitable use." Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273 (2004).

income. The reduction in participation fees is based on a chart entitled “Scholarship Disbursement Scale” containing a grid of family income and family size. The chart shows that a family of four (two adults and two children) earning \$30,000 would receive a 55% reduction in participation fees and pay 45% of the participation fees. If the family income is above \$58,000, there is no reduction in participation fees regardless of family size, according to the chart. The reduction in participation fees is available for any program for which a fee is charged. Circulars advertising the different programs offered by the Institute show that the reduction in fees is advertised. Tr. (23) pp. 154-158, (24) pp. 52-54; App. Ex. No. 20 B, 1 D, 2 E.

The Institute’s “Scholarship Disbursement Scale” fails to dispense charity according to the Korzen factors discussed above. The scale takes into consideration income levels and family size but completely ignores the financial burden incurred by these families for the participation fees incurred. For example, a family of four earning \$30,000 with participation fees of \$1,000 would receive a 55% reduction in fees and would owe \$450. A family of four at the same income level with participation fees of \$100 would similarly receive a 55% reduction in fees and would owe \$45. As the illustration demonstrates, after application of the Institute’s scholarship disbursement scale, one family will be left with a bill for participation fees that is 10 times higher than a family at the same income level.

The Scholarship Disbursement Scale followed by the Institute produces massively unequal financial burdens on two families at the same level of income. Whereas the Institute may have identified members in need of assistance, the financial assistance and the resulting “charitable” benefits dispensed are not, in fact, based on need. It certainly can be argued that the family whose participation fees are \$1,000 is much more in “need”

of a greater level of assistance from the Institute than the family whose participation fees are \$100. Yet the Institute applies the same 55% reduction in charges to both families, basing the reduction on the level of income and family size without consideration of the participation fees incurred.

Application of the Scholarship Disbursement Scale does not amount to dispensing charity to all who need it, because the policy does not consider the participation fees incurred and the needs of the family in relation to those fees. The policy followed by the Institute becomes, in effect, an obstacle for the family that incurs high participation fees and is therefore much more in need of “charitable” relief than a family at the same income level incurring smaller participation fees. Moreover, it is conceivable that a family would limit its participation in the programs that charge a fee, knowing that the fees would be unaffordable, even after the discount offered by the Scholarship Disbursement Scale. In that case, the Scholarship Disbursement Scale has a chilling effect on participation in the Institute’s programs and again presents an obstacle for the family that would like to participate but feels it cannot afford the participation fees even after the discount. I conclude that the Scholarship Disbursement Scale does not provide for the dispensation of charity in accordance with the Korzen guidelines.

I have balanced the above considerations against factors indicating that the Institute is a charitable organization. There was testimony that the Institute does not issue capital stock and has never paid dividends. Tr. (23) pp. 87-88. The Institute has 5 full-time and from 5 to 15 part-time employees. The Executive Director of the Institute earns \$57,500/year and the next highest employee earns \$30,000. Tr. (23) pp. 177-178. It does not appear that the Institute provides gain or profit in a private sense to any person

connected with it. Although the Institute does have these characteristics of a charitable organization, it has neither a purpose nor a use which is primarily charitable.

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 either religious or charitable purposes.

For the above stated reasons, it is recommended that the Department's determination which denied the exemption from 2005 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 Parcels, Property Index Numbers 04-07-205-004 and 04-07-204-002 should not be exempt from 2005 real estate taxes.

Kenneth J. Galvin

May 9, 2007