

PT 09-20
Tax Type: Property Tax
Issue: Religious Ownership/Use
Charitable Ownership/Use

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

IN RE:

FRANCISCAN COMMUNITIES, INC.,

APPLICANT

INTERVENOR: BOARD OF EDUCATION
OF LAKE VILLA COMMUNITY
CONSOLIDATED SCHOOL DISTRICT
NO. 41

No: 07-PT-0096 (07-49-167)

Real Estate Tax Exemption
For 2007 Tax Year
P.I.N. 06-03-100-047, 052, 053

Lake County Parcels

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Edward Clancy, Ms. Emily Dierberg, Mr. John Durso, Mr. Tim Horton and Ms. Jamie Robinson, Ungaretti & Harris on behalf of Franciscan Communities, Inc.; Ms. Vanessa Clohessy and Mr. Steven Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, on behalf of Intervenor, Board of Education of Lake Villa Community Consolidated School District No. 41; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether Lake County Parcels, identified by Property Index Numbers 06-03-100-047, 06-03-100-052 and 06-03-100-053 (hereinafter the “subject property”), qualify for exemption from 2007 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by a charity and actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit, and 35 ILCS 200/15-40, which exempts all property used for religious purposes

and not used with a view to profit. The subject property is known as the Village at Victory Lakes (hereinafter “VL”) and is owned by Franciscan Communities, Inc. (hereinafter “FC”).

This controversy arises as follows: On November 8, 2007, FC filed an Application for Non-homestead Property Tax Exemption with the Lake County Board of Review (hereinafter the “Board”) seeking exemption from 2007 real estate taxes for the subject property. The Board reviewed the Application and recommended that the exemption be denied. On December 6, 2007, the Department of Revenue of the State of Illinois (hereinafter the “Department”) accepted the Board’s recommendation finding that the subject property was not in exempt use in 2007.¹ On December 13, 2007, FC filed an appeal of the Department’s exemption denial. On March 14, 2008, the Board of Education of Lake Villa Community Consolidated School District No. 41 filed a “Motion to Intervene,” which was granted on June 9, 2008.²

At a pretrial conference, held on February 3, 2009, the parties agreed that the issue to be determined at hearing was whether the Applicant was entitled to a property tax exemption under 35 ILCS 200/15-65 or 35 ILCS 200/15-40. At this conference, the Applicant requested five days for the evidentiary hearing and the hearing was scheduled for May 11 through May 15, 2009. Based on requests for continuances by the Applicant, the evidentiary hearing was held on the originally scheduled dates and also on May 18, 19, 27 and June 3, 8, 9, 10, and 29.³ The following witnesses testified for the Applicant: Sister Diane Marie Collins (testifying on May 11 and 12), General Minister of the

¹ The Department did not dispute that FC was a charitable and religious organization.

² Intervenors argued in their Motion that the School Board had standing to intervene because “their revenues would be adversely affected if the Department of Revenue grants the [Applicant’s] exemption claims.”

³ Transcript pages were numbered sequentially.

Franciscan Sisters of Chicago; Father Michael Place (May 12, June 8 and 9), who testified on Catholic doctrines, theology, catechism, and Catholic healthcare; Ms. Jeanette Lindish (May 13, 18, 19), Vice-President of Mission Integration and Pastoral Care for Franciscan Sisters of Chicago Service Corporation (hereinafter “FSCSC”); Ms. Elizabeth Heffernan (May 13 and 14), Director of Mission Integration and Pastoral Care at VL; Ms. Mary Riggs (May 14, 19, 22), Executive Director of VL; Mr. Ken Wiberg (May 15), Community Controller at VL in 2007; Mr. Richard Truesdale (May 15 and 18), Corporate Controller for FSCSC; Mr. Tom Allison (May 27), CEO and President of FSCSC and President of FC; and Sister Francis Clare Radke (June 3 and 10), Chairman of the Board of FSCSC and FC and General Minister and Treasurer of the Franciscan Sisters of Chicago. The following witnesses testified for the Intervenor: Mr. Ken Wiberg (May 15) and Mr. Richard Truesdale (May 18). Following a careful review of the testimony and evidence, it is recommended that the Department’s denial be affirmed, except for the chapel located in the continuing care center on the subject property.

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 use in 2007. Tr. pp. 59-61; Dept. Ex. No. 1.
2. In 2007, VL offered three types of services: independent living apartments and garden homes, where people lived independently but had the services of a continuing care retirement community; assisted living units, which provided people with assistance with activities of daily living and medication monitoring; and a skilled nursing facility, known as the “continuing care center,” which

included an Alzheimer's unit, rehabilitation facilities, Medicare program and general long-term care. VL was certified to take Medicaid patients in October, 2007. Twelve beds in the continuing care center were Medicaid certified. Tr. pp. 867-869, 871-872, 881.

3. VL's "Statement of Operations" for the twelve months ending December 31, 2007 shows "Resident Service Revenue" of \$17.4 million. Subtracted from this were "Contractual Allowances," which include adjustments for Medicare, Medicaid, Gift of Care and financial aid, in the total amount of \$1.8 million, yielding a "Net Resident Service Revenue of" \$15.6 million. Operating earnings before income tax, depreciation and amortization (hereinafter "EBITDA") was \$1.5 million. EBITDA approximates estimated cash from operations. Tr. pp. 1075-1082, 1092-1094, 1113-1116, 1238, 1286-1288, 1309-1311, 1319-1320, 1336-1341; Int. Ex. No. 21, 23; App. Ex. No. 39.
4. "Monthly Service Packages" effective July 1, 2007 for independent living "prairie style garden homes" in the "traditional style," were as follows: 2 bedrooms (1,000 sq. ft.) required a 90% "refundable entrance fee" of \$244,186 and a "monthly service package" of \$1,248, increasing at 5 different levels to 3 bedrooms, extra storage (1,185 sq. ft.), which required a 90% refundable entrance fee of \$289,360 and a monthly service package of \$1,479. "Classic style" homes, 2 bedrooms (1,200 sq. ft.), required a 90% refundable entrance fee of \$281,077 with a monthly service package of \$1,497, increasing at 4 different levels to 3 bedrooms, extra storage (1,420 sq. ft), which required a 90% refundable entrance fee of \$332,608 and a \$1,771 monthly service package. The monthly service package for a "second person" for traditional or

classic style units was \$348 additional. Tr. pp. 964-967, 1786-1787; Int. Ex. No. 4.

5. "Monthly Service Packages" effective July 1, 2007 for independent living apartments, consisting of 13 floor plans, A through M, list the lowest price unit as a studio (472 sq. ft.) with a 90% refundable entrance fee of \$127,596 and a monthly service package of \$1,630, increasing by square footage, to a "2 bedroom deluxe" unit (951 sq. ft.) with a 90% refundable entrance fee of \$252,525 and a monthly service package of \$2,445. Individual garages are \$88 extra/month. The monthly service package for a "second person" in the apartment was \$667. Tr. pp. 964-967, 1786-1787; Int. Ex. No. 4.
6. Section 6(B) of the "Residency Agreement," for the independent living units, entitled "Termination of Residency after Occupancy," states that residency may be terminated for certain medical and nonmedical reasons. "Nonmedical reasons" include, *inter alia*, if a resident files for protection under the bankruptcy laws of the United States, under any chapter, or conveys all assets for the benefit of creditors, or involuntarily files for bankruptcy law protection or fails to pay the monthly service fee or other amounts owed to VL when due unless other mutually satisfactory arrangements have been made. Tr. pp. 978-980, 1804-1806; Int. Ex. No. 8.
7. Section 4(G) of the Residency Agreement for the independent living units, entitled "Residents Who Become Unable to Pay," states that, in keeping with FC's mission, it is "our policy that this Agreement will not be terminated solely because of your financial inability to continue to pay the monthly service fee or other charges. If you present facts which, in our sole discretion, justify special

financial consideration, we will give careful consideration in subsidizing in part or in whole the monthly service fee and other charges payable by you under the terms of this Agreement, so long as such subsidy can be made without impairing our ability to attain our objectives while operating on a sound financial basis. If we determine to provide you with any financial assistance or subsidy, you agree we may charge such amounts against the refund of the resident deposit, including interest income lost as a result of applying a portion of the resident deposit to pay such amounts. Furthermore, we may require you to move to a smaller and/or less expensive residence. The cost of any such financial assistance provided in excess of the refundable portion of the resident deposit shall be accrued and remain your obligation and the obligation of your estate.” Tr. pp. 1802-1803; Int. Ex. No. 8.

8. “Monthly fees” in effect during 2007 for the assisted living units at VL begin at \$3,881.36 for a “studio-level I” with increases at various levels to \$4,741.16 for “alcove-level II.” Prior to admission, one month’s fee must be paid in advance in addition to one month’s fee to cover the security deposit. A security deposit was required from all assisted living residents who were not on Medicare or Medicaid. If more than one person entered into a contract for an assisted living unit, the “second person” would pay an additional fee of \$648.72/month. Tr. pp. 969-971, 1011, 1311-1312, 1790-1791; Int. Ex. No. 5.
9. The residency agreement for the assisted living units states that the contract may be terminated upon 30 days written notice if the resident fails to comply with the terms of the contract, however the resident shall not be entitled to a prorated refund of any advance payment of the monthly standard rate. If the resident’s

failure to comply with the contract terms relates to payment of charges and rates, the resident will be given 30 days written notice of delinquency of payments and 15 days to cure the delinquency prior to the termination of the contract. Tr. pp. 981-982, 1806-1812; Int. Ex. No. 9.

10. A pamphlet for the “continuing care center” lists the “basic daily fee” in 2007 at \$167 for intermediate care and \$197 for skilled, Alzheimer’s and respite care. An additional daily charge was assessed for private rooms. A 30-day deposit at \$197/day was due from private payers and held in escrow until discharge. Respite care offered a family taking care of a patient at home an interval of relief from the demands of day-to-day care. “It is an opportunity to restore personal strength so that quality care can continue at home.” Respite care was available in the continuing care center for periods of 24 hours to 30 days and in the assisted living center for periods of 1 week to 30 days. Tr. pp. 974-976, 1312, 1795-1796; Int. Ex. No. 6.

11. Charges for the continuing care center, effective February 1, 2007, show “room and board” charges depending on the following levels of care: intermediate \$191; intermediate-private room \$264; skilled \$226; skilled-private room \$302; large private room \$343; respite \$226; Alzheimer’s \$226; assisted living \$142. There are “ancillary charges” for, *inter alia*, equipment, oxygen, beauty shop, activities, escort service, physical therapy, speech therapy, occupational therapy, nursing services and supplies, laundry services and dietary services. Tr. pp. 976-978, 1771-1777; Int. Ex. No. 7.

12. FSCSC’s minutes of a meeting of its Board of Directors, dated November 29, 2005, state under the section entitled “President’s Report” that FSCSC is

exploring an acquisition of The Village at Victory Lakes. “The meeting began with a prayer and a short period of reflection of the Mission, Values and Vision Statement.” Tr. pp. 2074-2082, 2125-2126, 2270-2276; Int. Ex. No. 27.

13. FC’s minutes of a “Special Meeting of the Board of Directors” dated December 26, 2005 state under the section entitled “Business” that the Board received a recommendation from FSCSC’s Audit/Finance Committee to approve a proposal to acquire the Village at VL with a purchase price not to exceed \$23 million and a total finance amount not to exceed \$26 million. “The meeting began with a prayer.” Tr. pp. 2082-2087, 2125-2126, 2276-2278; Int. Ex. No. 28.

14. FSCSC’s minutes of a “Special Meeting of the Board of Directors” dated January 3, 2006, under the section entitled “The Village at Victory Lakes” state as follows: “‘JK’ reported that there are two important areas to consider when reviewing an acquisition: market and financial. All agreed that strategically the Village at Victory Lakes was a good acquisition based on location/market area.” “In order to achieve a break-even position, both marketing efforts and monthly rates will need to increase.” “The meeting began with a prayer and a short period of reflection of the Mission, Values and Vision Statement.” Tr. pp. 2087-2090, 2124; Int. Ex. No. 29.

15. FSCSC’s minutes of a “Special Meeting of the Board of Directors” dated January 9, 2006, under the section entitled “The Village at Victory Lakes,” states that “[A] lengthy discussion ensued regarding FSCSC’s marketing efforts, strengths, structure and those who oversee the marketing function.” “The

meeting began with a prayer.” The minutes state that VL “is part of our strategic plan.” Tr. pp. 2090-2097, 2125-2126, 2278-2280; Int. Ex. No. 30.

16. FC’s minutes of its “Annual Meeting of the Board of Directors,” dated May 7, 2007 state that VL has examined the possibility of transitioning their therapy staff to Alliance Rehab and outsourcing the services. Preliminary estimates indicate a positive revenue increase of \$400,000 per year, after expenses. The staff at VL would be given credit for their years of service at VL as part of the transition. “The meeting began with a prayer and a short reflection of the mission and values.” Tr. pp. 2097-2098, 2122-2124, 2281-2283; Int. Ex. No. 31.

17. FC’s minutes of a “Special Budget Meeting of the Franciscan Communities’ Board of Directors,” dated May 22, 2007, state that “[T]he primary measure of performance has been operating EBITDA.” “Price increases by [Franciscan] Community were discussed. It was noted that the organization will be closely monitoring local markets throughout the year to ensure that competitive street rates are being charged to prospective residents.” “The meeting began with a prayer.” Tr. pp. 2100-2103, 2125-2126; Int. Ex. No. 32.

18. FC’s minutes of a “Meeting of the Board of Directors” dated February 12, 2008 under the section entitled “Campus Success Plans” state that VL has completed the \$100,000 per month expense reductions resulting from reductions in staff, overtime and expenses. “A major area of focus going forward continues to be on sales and census growth. Management reported that two new sales counselors have been added and productivity standards are being closely monitored across all service lines.” “The planning for the Chapel renovation is

continuing to move forward with funding sources coming from Victory Lakes.”

“The meeting began with a prayer.” Tr. pp. 2105-2107, 2125-2126; Int. Ex. No. 33.

19. FC’s Form 990, “Return of Organization Exempt from Income Tax,” Schedule A, “Compensation of the Five Highest Paid Employees,” for year ending June 30, 2007, shows Ms. Riggs, Executive Director at VL, receiving compensation of \$140,855 and contributions to employee benefit plans of \$54,933. Tr. pp. 1346-1349, 2109, 2133; Int. Ex. No. 25.

20. The “Amended and Restated Bylaws” of FC, amended as of July 1, 2001, state that its purposes, *inter alia*, are as follows: d) to adopt policies and procedures designed to address the needs of its residents for protection against the financial risks associated with the later years of life, including procedures for waiver and reduction of entrance fees, assignment of assets or fee for services based upon the individual resident’s ability to pay and the financial resources of the Corporation, and; h) to function as an integral part of the apostolate of the religious institute known as the Franciscan Sisters of Chicago, and to act in accordance with the applicable principles of the Code of Canon Law and the Ethical and Religious Directives for Catholic Health Care Services, as from time to time adopted, approved and confirmed by appropriate authority of the Roman Catholic Church. Tr. pp. 1972-1973, 1982-1989, 2232-2236; App. Ex. No. 43.

21. The “FSCSC System Policy” on the “Gift of Care Program” describes the following policy: Franciscan Communities provides a “Gift of Care” for new and existing residents after all other resources have been exhausted. Receipt of

benefits under the Gift of Care Program by new and existing residents of Franciscan Communities is subject to the separate financial resources available at each community. Tr. pp. 913-920, 1242-1247, 2046-2047; App. Ex. No. 17.

22. Procedures for applying for the Gift of Care program state that new and existing residents will be considered for the Gift of Care Program based on the following criteria as listed by priority: (a) the availability of financial assistance funds; (b) the resident's and/or guarantor's total assets; (c) the resident's and/or guarantor's ability to obtain third party reimbursement; (d) date of original contract with Franciscan Communities to identify resident seniority; (e) date of Gift of Care application. Resident applications will be reviewed in the priority in which they are received. "All applicants must have investigated all third party financial assistance programs. No resident shall be eligible for the Gift of Care Program if they fail to participate in a third party financial assistance program for which they are qualified. If Medicaid funds are available, the applicant must be signed up for that program." Tr. pp. 913-920, 983-986, 1242-1247; App. Ex. No. 17.

23. Procedures for applying for the Gift of Care Program state that in order for a Gift of Care to be awarded, the local Community must have financial assistance funds available or expect to have financial assistance funds available during the period of time in which those funds would be needed. "There is no guarantee that such financial assistance funds will be available at the time of application or any time thereafter." Franciscan Communities reserves the right to withdraw financial assistance if funds become depleted. Tr. pp. 913-920, 1242-1251, 1314-1315; App. Ex. No. 17.

24. Form letters are attached to the “FSCSC System Policy” on the “Gift of Care Program.” There are two financial assistance rejection letters, for “lack of financial assistance funds” and “not qualified.” The form letter for “lack of financial assistance funds” states that “[R]egretfully, we have exhausted the assistance funds available at this time. However, the Corporate Review Committee has determined that you qualify for the Gift of Care Program and will place your name on the waiting list.” “We deeply regret that you may have to leave Franciscan Communities if financial assistance funds do not become available. Unfortunately, we do not have unlimited financial resources available to serve those in need.” Tr. pp. 913-920; App. Ex. No. 17.
25. A brochure advertising the Gift of Care Program states that “[A]cceptance into the Gift of Care Program depends on both financial need and the level of financial assistance funds currently available within the community. There may be a waiting list of applicants for the program.” “If funding is not available, or a resident does not qualify for the Gift of Care Program, the local Franciscan Community will offer assistance in finding other appropriate options.” Tr. pp. 920-922, 1782-1783; App. Ex. No. 19.
26. The minutes of the March 8, 2007 meeting of the “Corporate Gift of Care Review Committee” show 7 applications for Gift of Care assistance, with 4 applications approved. “DG” received a Gift of Care of \$2,000 per month effective March 7, 2007 through June 30, 2008. “EM” received a Gift of Care of \$5,500 per month through June 30, 2008. “TV” received a Gift of Care of \$6,400 per month, effective March 7, 2007 through June 30, 2008. “PS” received a Gift of Care in the amount of \$1,500 per month through June 30,

2008, after an asset spend down of \$10,000 in existing assets. “VL” received a Gift of Care “to be determined” after she “spent down” “\$45,000 of available \$55,000 in savings.” The Committee requested that applicants “AM” and “GP” provide additional information. Tr. pp. 991-994, 1824-1834, 1843-1846; Int. Ex. No. 11.

27. The minutes of the October 15, 2007 meeting of the “Corporate Gift of Care Review Committee” show 6 applications for Gift of Care assistance, with 2 approvals. “NM” received a Gift of Care of \$3,388 per month through June 30, 2008. “PZ” received a Gift of Care for \$4,206 per month through June 30, 2008. Two residents, “AT” and “GP,” were denied Gifts of Care assistance at that time because they had not exhausted all third party payer sources prior to application. “Should Medicaid benefits not be approved, [their] application[s] may be resubmitted for reconsideration.” The request for assistance by resident “ME” was held pending the sale of her home. Additional information was requested from resident “RP.” Tr. pp. 995-995, 1838-1842; Int. Ex. No. 12.

28. In the assisted living units in 2007, four residents received Gifts of Care, totaling \$100,482. In the continuing care center, eight residents received Gifts of Care totaling \$419,812. Tr. pp. 1152-1158; App. Ex. Nos. 30, 31 and 40.

29. Franciscan Sisters of Chicago (hereinafter “FSC”) was founded by Josephine Dudzik, later known as Mother Mary Theresa, on December 8, 1894, in Chicago. There are 48 Sisters in the community. Tr. pp. 76-77, 79, 115-116, 121, 930-932, 1626; App. Ex. Nos. 2 and 24.

30. FSC is a pontifical institute of religious women reporting to the Pope. FSC was approved and recognized as a religious institute by the Pope in 1936. FSC is

part of the Roman Catholic Church. People who have been chosen and called to take either vows or promises in religious institutes that are recognized by the Church participate in “religious life.” The purpose of religious life is to “enable the individuals to pursue holiness in witness within the Church to the holiness the whole church seeks to pursue.” Tr. pp. 120-122, 126-129, 294, 489-490, 496-497, 545-546, 557-558; App. Ex. No. 3.

31. There was no Catholic continuing care retirement facility in Lake County when FC purchased VL. Tr. pp. 161-163, 2021.

32. Employees at VL are known as “associates.” Associates are not required to be Catholic, but must agree that while working on the property, to work in the manner and spirit of the Franciscan Sisters. Many associates are not Catholic. A course on Catholic principles and ministry was available to associates on-line, but was not mandatory. A nonreligious person would have been able to be an associate at VL as long as they agreed to perform their service in the manner and spirit of the Franciscan Sisters. Associates are not required to attend religious ceremonies but are instructed to “recognize” the seven Catholic holy days, “in some manner.” No associates were terminated for failing to adhere to the Franciscan Sisters’ mission in 2007. Tr. pp. 176, 187-188, 318, 784, 789, 894, 1573-1575, 1597-1598, 1619-1621, 1647-1648, 2012-2013, 2018-2020, 2110-2111, 2133-2138, 2137-2149, 2319-2321.

33. New associates were hired at VL in 2007. Associates normally go through an orientation, known as “missioning” which introduces the associates to the mission and history of the Franciscan Sisters and what it means to be a Catholic healthcare organization. Missioning is the Sisters’ way of saying to associates

that they are trusted to carry on the Sisters' ministry and to thank associates for doing the work that the Sisters cannot do individually. Although there were new associates hired in 2007, there were no missioning ceremonies at VL in 2007. Tr. pp. 708-709, 784, 862-863, 1475-1476, 1536-1542, 1646-1648.

34. Associates are evaluated every year and the evaluations address certain values consistent with the mission of FSC, including respect, dedication, stewardship, joy and service. Tr. pp. 721-724, 863-864.

35. Ms. Riggs, Executive Director of VL, was "commissioned" in the chapel at VL on February 12, 2007. This ceremony took approximately 2 hours. "Commissioning" is a formal ceremony, including a mass, where the Sisters delegate the responsibility for day-to-day operations of the community to a layperson who will have ultimate responsibility for the community. This was the only commissioning ceremony at VL in 2007. Ms. Riggs is not Catholic. Approximately 60 people attended Ms. Riggs' ceremony. At the end of the ceremony, Sister Diane Marie Collins asked Ms. Riggs to carry on the ministry and mission of care for the elderly. Tr. pp. 944-948, 1475-1476, 1646-1647.

36. No Franciscan Sisters lived at VL in 2007. No priest lived at VL in 2007. Tr. pp. 324, 794, 2309-2310.

37. Prior to the Franciscan Communities' purchase of the subject property, there was a room designated as a "chapel," but used as a multi-purpose or great room for meetings, education, book fairs, parties, an arts and craft fair and for outside groups. In 2007, the Sisters asked that those activities cease in the room and that the room be used for reflection and worship. In 2007, Catholic mass was held in the chapel for residents and their families. There were also Protestant

services, nondenominational services, bible studies, rosary prayer, communion services and remembrance services for those who had recently died. Tr. pp. 736-737, 848-850, 1379-1380, 1494-1496.

38. VL issued a monthly “Pastoral Care Benchmarking” report in 2007. In January, 2007, the report shows the following “Worship Opportunities Provided:” 4 “Sunday Christian Worship Services” held in the chapel of the continuing care center; 4 “Sunday Lutheran Worship Services,” “communion offered twice a month,” held in the health and fitness center of the independent living apartments; 4 “Sunday Catholic Communion Services” held in the chapel of the continuing care center; 2 “Monday Christian Worship Services” held in the dining room of the assisted living apartments; 4 “Wednesday Christian Prayers” held in the chapel of the continuing care center; 1 “Wednesday Roman Catholic Mass” held in the chapel of the continuing care center. This report also shows that “Roman Catholic Communion” is offered to each Catholic in the continuing care center weekly and daily by the local parish upon request and “Bus transportation to & from church on Sunday offered weekly for independent living and assisted living residents.” The report contains similar information for all months of 2007. Tr. pp. 738-743, 861, 1379-1380; App. Ex. No. 15.

39. The “Pastoral Care Benchmarking “ report also shows the following “Spiritual Enrichment Programs” for January 2007: 8 “Sunday Hymn Sings” held in the “memory care areas;” 1 “Sunday Hymn Sing” held in the dining room of the assisted living apartments; 4 “Bible Studies” held in the independent living building; 12 (3/week) “Bible Studies” held in the chapel, for residents in the continuing care center; 4 “Bible Studies” held in the assisted living building; 5

“Rosary Prayers” held in the independent living building; 12 (3/week) “Rosary Prayers” held in the chapel for residents in the continuing care center; 4 “Rosary Prayers” held in the assisted living building; 1 “Grief Support Group” meeting; 1 “Alzheimer’s Support Group” meeting. The hymn sings and Bible studies are directed toward the level of functioning and understanding of the participants. The report contains similar information for all months of 2007. Tr. pp. 743-750, 861, 1379-1380; App. Ex. No. 15.

CONCLUSIONS OF LAW: CHARITABLE EXEMPTION

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

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

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

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore,

Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

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

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

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

- (a) institutions of public charity
- (b) ***
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for exemption, the applicant provides affirmative

evidence that the home or facility is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) ***

35 ILCS 200/15-65. Illinois courts have consistently refused to grant relief under section 15-65 of the Property Tax Code absent appropriate evidence that the subject property is owned by an entity that qualifies as an "institution of public charity" and that the property is "exclusively used" for purposes that qualify as "charitable" within the meaning of Illinois law.⁴ 35 ILCS 200/15-65.

At the evidentiary hearing, FC took the position that the applicable statutory subsection was 35 ILCS 200/15-65(a), "institutions of public charity," and proceeded to apply the guidelines articulated in Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"). However, under a broad reading of 35 ILCS 200/15-65(c), FC met some of the threshold requirements of an "old people's home" and "organization providing [for] ... educational, social and physical development," and this subsection must also be considered. FC is a non-profit organization under Section 501(c)(3) of the Internal Revenue Code. App. Ex. No. 37; Int.. Ex. No. 25. FC's "Amended and Restated Bylaws" state that one of its purposes is "[T]o adopt policies and procedures designed to address the needs of its residents for protection against the financial risks associated with the later years of life, including procedures for waiver and reduction of entrance fees, assignment of assets or fee for services based upon the individual resident's ability to pay

⁴ On December 6, 2007, the Department issued its "Denial of Non-homestead Property Tax Exemption" to Franciscan Communities finding that the "property is not in exempt use." The Department did not dispute that the subject property was owned by a charitable organization, and accordingly, Franciscan Communities' status as a charitable organization was not at issue in this hearing.

and the financial resources of the Corporation.” Tr. pp. 1972-1973, 1982-1989; App. Ex. No. 43.

Assuming, *arguendo*, that the above provision in FC’s Bylaws conforms to the requirements of 35 ILCS 200/15-65(c), this does not signify “*ipso facto*” that the subject property is used for a charitable purpose. In Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273, 287 (2004) the Supreme Court held that even if an applicant met the requirements of 35 ILCS 200/15-65(c), the applicant still “must comply unequivocally with the constitutional requirement of exclusive charitable use.” Therefore, the following conclusions are applicable under an analysis of either 35 ILCS 200/15-65(a) or (c).

In Korzen, the Court articulated the criteria and guidelines for resolving the constitutional question of exclusive charitable use of property. These guidelines are (1) the organization’s funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (2) the organization has no capital, capital stock or shareholders and does not provide gain or profit in a private sense to any person connected with it; (3) the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government; (4) the charity is dispensed to all who need and apply for it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the exclusive (primary) use of the property is for charitable purposes. Korzen at 156-157.

Courts consider and balance the criteria and guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State’s burden. DuPage County Board of Review v. Joint Com’n on Accreditation of HealthCare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1965). Based

on the evidence and testimony presented at the evidentiary hearing, I conclude that Victory Lakes is not exclusively used for charitable purposes.

At the evidentiary hearing, Applicant caused to be admitted into evidence a newsletter, called “The Common Thread,” dated/issued “Fall, 2006.” Ms. Riggs, who was Executive Director of VL in 2007, testified that the newsletter is a publication of FC and that this edition announced the addition of VL to the Franciscan Communities. Tr. pp. 936-937. The newsletter states that VL, located in Lindenhurst, Illinois, is “[S]ituated on a natural environment of 38 acres of beautiful prairie land in northwest Lake County...” The Village of VL provides residents with a “uniquely tranquil and secluded setting where a variety of care and services can meet the need of all seniors.” “The community features 40 spacious, independent living garden homes and 100 independent living apartments” and 60 assisted living apartments. The long-term care center consists of 120 beds, 40 of them dedicated for general long term care, 40 for Alzheimer’s/dementia and 40 certified for Medicare.” App. Ex. No. 26.

“Like other Franciscan Communities, the Village at Victory Lakes features a wide assortment of excellent amenities to help its residents enjoy the fullness of their lives.” “Residents [at VL] enjoy the convenience of onsite banking, a beauty salon/barbershop, chapel, country store and library just outside their doors.” “They also have easy access to an arts and crafts room, game room, computer/media center, café, health and fitness center, multipurpose great room, as well as space to stroll outdoors on the beautifully landscaped grounds and courtyard with winding walking paths.” “The community also has a lovely patio and gazebo area for residents and their guests to take a breath of fresh air and to enjoy Mother Nature at her finest.” The newsletter also states that “[I]f you’re looking for a spacious home, come tour our two- and three-bedroom prairie style garden

homes.” “They include a private patio and attached garage. Our roomy one- and two-bedroom apartments feature a full kitchen, individual climate control and full course meals in our elegant dining room.” App. Ex. No. 26.

Following is a consideration of the Korzen factors and whether the subject property, as described above, was used for charitable purposes in 2007.

Korzen factor (1): The organization’s funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter.

With respect to this Korzen factor, the Applicant has failed to prove that the majority of VL’s funds were derived from public and private donations. VL’s “Statement of Operations” for the twelve months ending December 31, 2007 shows “Net Resident Service Revenue” of \$15.6 million, which was 99.3% of “Total Operating Revenue” of \$15.7 million. App. Ex. No. 39. Ms. Riggs testified that VL did not receive “much money” from donations in 2007. There were no fund-raising drives or activities. Tr. pp. 885-886. There was a tree of life in the lobby of the continuing care center where people could make donations in honor of or in memory of residents or community members. Some donations were received through this “process.” Tr. p. 886. Mr. Wiberg, Controller at VL in 2007, testified that there were almost no donations or gifts given to VL in 2007. When asked if there “[M]ight have been a thousand dollars in all,” he replied, “[C]orrect.” Tr. p. 1100.

As the financial data indicates, VL receives the great majority of its funding from residents or the government for providing independent, assisted and continuing care to seniors. VL received 99% of its revenue from billing for services. In Riverside Medical Ctr. v. Dept. of Revenue, 324 Ill. App. 3d 603 (3rd Dist. 2003), the court noted that 97%

of Riverside's net revenue of \$10 million came from patient billing. According to the court, "this level of revenue is not consistent with the provision of charity." *Id.* at 608.

Similarly, in Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647 (1st Dist. 1998), Alivio argued that 59% of its revenue was from patient fees and 25% was derived from charitable contributions. The court found that Alivio was not a charitable institution. As the above cases indicate, the exchange of services for payment, at the level enjoyed by VL, is not a "use" of property that has been recognized by Illinois courts as "charitable." Charity is an act of kindness or benevolence. "There is nothing particularly kind or benevolent about selling somebody something." Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4th Dist. 2008), *cert granted* 229 Ill. 2d 694 (2008) (hereinafter "Provena Covenant").

Mr. Truesdale, Corporate Controller for FSCSC, testified that one of the benefits for VL of being part of the Franciscan Communities, is that if one of the Communities has a challenging year where they are not performing as well as they should, "and maybe generating a cash shortfall," the other Communities have the opportunity to provide assistance. Tr. pp. 1222-1223. Mr. Allison, CEO and President of FSCSC and President of FC, testified that "there are corporate resources that exist." "[W]e use our corporate resources to fund the operation of Victory Lakes, amongst others, and fund the losses that occur at Victory Lakes in terms of providing care." Tr. p. 1987. Mr. Allison was then asked on cross-examination whether there were any "asset transfers" to Victory Lakes in 2007. He replied: "I cannot answer that with certainty." Tr. p. 2152.

Counsel for the Applicant stated in closing argument that "money was transferred and will be transferred." "Money's transferred from the sisters." Tr. p. 3094. No documentary evidence was admitted showing any asset transfers from FC to VL in 2007.

Further, it is unclear from the record what authority FC has to shift assets among its Communities, if this is, in fact, taking place. Nor is there any evidence in the record that the transfers of funds, if they occurred, were initiated for any charitable purpose.

Having an operating income derived almost entirely from contractual charges goes against a charitable identity. Small v. Pangle, 60 Ill. 2d 510, 517 (1975). In the instant case, the high level of revenue earned by VL from the services provided to seniors indicates that the primary use of the subject property is not to provide charity, “but to provide a certain enhanced lifestyle to the elderly who can afford to pay for it.” Wyndemere Retirement Comm. v. Dept. of Revenue, 274 Ill. App. 3d 455 (2d Dist. 1995). VL is not benefiting an indefinite number of persons. VL is, in fact, benefitting seniors who can afford and choose to pay for the services that VL offers, with payments intended by the Applicant to reflect “competitive street rates.” Int. Ex. No. 32. The Applicant has failed to prove that the majority of its funding is from public and private charity and VL’s use of the subject property is not consistent with this characteristic of a charitable organization.

Korzen factor (2): The organization has no capital, capital stock or shareholders, and does not provide gain or profit in a private sense to any person connected with it.

Franciscan Communities, Inc. is sponsored by the Franciscan Sisters of Chicago and is a division of the Franciscan Sisters of Chicago Service Corporation. FSCSC was established in 1988 to manage and create high quality senior care services. Since its inception, FSCSC has grown to become the eighth largest non-profit provider of continuing care retirement services in the country, as well as the largest Catholic provider of such services. App. Ex. Nos. 20 and 26. Franciscan Communities is exempt in the

State of Illinois from sales and use taxes. Franciscan Communities does not have shareholders and does not pay dividends. Tr. p. 1209; App. Ex. No. 36.

However, based on the testimony admitted at the evidentiary hearing, I conclude that VL does provide gain or profit to persons and organizations connected with it. FC's "Fiscal 2007 Budget" states as follows: "The primary measure of financial performance in Fiscal 2007 is operating EBITDA. If this target is met, and is supplemented by a moderate amount of investment savings, the system will report a significant improvement in financial performance in Fiscal 2007." App. Ex. No. 48. FC's minutes of a "Special Budget Meeting of the Franciscan Communities' Board of Directors," dated May 22, 2007, state that "[T]he primary measure of performance has been operating EBITDA. The organization has seen significant improvements in this area." Int. Ex. No. 32.

Mr. Truesdale testified that operating EBITDA is "earnings before interest, taxes, depreciation, and amortization." It is the cash flow that would be available to pay interest, depreciation and amortization. Tr. pp. 1319-1320. VL's "Statement of Operations" for the twelve months ending December 31, 2007 shows EBITDA as \$1.5 million. App. Ex. No. 39. Since EBITDA is FC's "primary measure of performance," I conclude that VL was a "good acquisition" for FC and, in fact, contributed \$1.5 million in earnings to FC in 2007. Int. Ex. No. 29.

35 ILCS 200/15-65 proscribes the granting of a charitable exemption when property is used with a "view to profit." In that regard, it must be noted here that VL had EBITDA of \$1.5 million in 2007 when it was approximately 20% to 30% under-occupied. Mr. Allsion testified that VL was 70% occupied in 2006 when FC purchased VL. Tr. pp. 2023-2024. "Occupancy Percentages" for June 31, 2007 (which would include the last six months of 2006) show 75% occupancy for independent living

apartments, 83% occupancy for independent living homes, 85% occupancy for assisted living units and 79% occupancy for the continuing care facility. Int. Ex. No. 24.

There is considerable evidence in the record that VL was purchased by FC with a “view to profit.” FSCSC’s minutes of a “Special Meeting of the Board of Directors” dated January 3, 2006, before the July 13, 2006 purchase of the subject property, in the section of the minutes entitled “The Village at Victory Lakes” state as follows: “ ‘JK’ reported that there are two important areas to consider when reviewing an acquisition: market and financial.” “All agreed that strategically the Village at Victory Lakes was a good acquisition based on location/market area.” “In order to achieve a break-even position, both marketing efforts and monthly rates will need to increase.” Int. Ex. No. 29. FSCSC’s minutes of a “Special Meeting of the Board of Directors” dated January 9, 2006, in the section entitled “The Village at Victory Lakes,” state that “[A] lengthy discussion ensued regarding FSCSC’s marketing efforts, strengths, structure and those who oversee the marketing function.” Int. Ex. No. 30.

FC’s minutes of its “Annual Meeting of the Board of Directors,” dated May 7, 2007 state that VL has examined the possibility of transitioning their therapy staff to Alliance Rehab and outsourcing the services. Preliminary estimates indicate a positive revenue increase of \$400,000 per year, after expenses. Int. Ex. No. 31. FC’s minutes of a “Special Budget Meeting of the Franciscan Communities’ Board of Directors,” dated May 22, 2007, state that “[P]rice increases by [Franciscan] Community were discussed. It was noted that the organization will be closely monitoring local markets throughout the year to ensure that competitive street rates are being charged to prospective residents.” Int. Ex. No. 32. FC’s minutes of a “Meeting of the Board of Directors” dated February 12, 2008 under the section entitled “Campus Success Plans” state that VL has completed

the \$100,000 per month expense reductions resulting from reductions in staff, overtime and expenses. “A major area of focus going forward continues to be on sales and census growth. Management reported that two new sales counselors have been added and productivity standards are being closely monitored across all service lines.” Int. Ex. No. 33. FC’s “Fiscal 2008 Budget,” which includes data for July through December, 2007, shows “initial rate increases following acquisition” for VL.⁵ Tr. pp. 1352-1353; Int. Ex. No. 26.

One of Ms. Rigg’s “Specific Tasks/Duties” according to her “Position Description” was to prepare an annual operating budget, including “analyzing the structure of resident charges and recommending timely raises in rates in order to create the necessary income to continue to provide resident care.” App. Ex. No. 28. Mr. Allison was recruited by the Franciscan Sisters to assist them because they were frustrated with the losses that continued at FSCSC and the communities. “They wanted someone to come in and turn the operation around.” He testified that he was “a turnaround person,” and he was brought in for his specialties. Tr. pp. 1953-1954.

The Property Tax Code allows exemptions for “charitable purposes” when the property is “exclusively” used for charitable purposes and not used with a view to profit. 35 ILCS 200/15-65. The term “exclusive use” refers to the primary use for which property is used, and not to the property’s secondary or incidental purpose. Midwest Physicians Group Ltd. v. Department of Revenue, 304 Ill. App. 3d 939 (1st Dist. 1999).

⁵ FC’s “PTAX-300, “Application for Non-homestead Property Tax Exemption,” states that “[T]he fees charged [by VL] are the lowest possible to sustain the facility.” App. Ex. No. 49. There is no support in the record for this statement. VL’s Statement of Operations” for the twelve months ending December 31, 2007 shows operating EBITDA, FC’s “primary measure of performance,” as \$1.5 million. This positive cash flow occurred while VL was approximately 80% occupied. Int. Ex. No. 24.

With regard to the “exclusive” use of the property at issue in this case, it must be noted that there is no mention of charitable use of the subject property in any of the minutes of Board meetings, discussed above. This omission from the minutes shows that charitable use was not even a topic for consideration by the Boards of FC and FSCSC, as reflected in the minutes. The Common Thread newsletter announcing FC’s purchase of VL states that “we” are “very pleased with the growth we’ve seen in recent years” and describes the purchase as part of “our strategic plan.” App. Ex. No. 26. There is not only no mention in the newsletter that charitable assistance is available at VL, but the newsletter does not mention, in any way, that “charity” has any connection whatsoever to the subject property.

Charitable use was also not one of the “two important areas” to consider when reviewing an acquisition. VL was a “good acquisition” based on its location and market area, but there is no consideration recorded in the minutes as to the potential for charitable use of the property at this location and in this market. The minutes discuss marketing efforts, monthly rates, marketing functions, positive revenue increases, discussion of price increases, monitoring local markets to ensure competitive street rates, expense reductions, sales and census growth and the addition of two new sales counselors. The “Fiscal 2008 Budget” notes initial rate hikes following acquisition. Ms. Riggs is responsible, *inter alia*, for recommending “timely rate raises.” Mr. Allison was hired to “turn the operation around.” It is not unreasonable to find that these terms, purposes and strategies resemble those commonly associated with for-profit entities. The documents admitted at this hearing, including the minutes, budget and job descriptions of the officers, show that, prior to and in 2007, VL gave very little consideration to using this property for, primarily, charitable purposes.

FC's Form 990, "Return of Organization Exempt from Income Tax," Schedule A, "Compensation of the Five Highest Paid Employees," for year ending June 30, 2007, shows Ms. Riggs, Executive Director at VL in 2007, receiving compensation of \$140,855 and contributions to employee benefit plans of \$54,933. Tr. pp. 1346-1349, 2109, 2133; Int. Ex. No. 25. The Executive Director of FC received compensation of \$168,954 and contributions to employee benefit plans of \$65,892 for the same time period. Int. Ex. No. 25.

Mr. Allison testified that VL determined compensation for its associates and executives in 2007 by comparing salaries to the "Mercer Study." "Mercer is a known capital research firm that provides bands of compensation in terms of what percentile various people are in versus peers in their industry." It provides a "peer group analysis." Tr. pp. 2029-2036, 2132-2133. Sister Francis Clare testified that Mercer does research of comparable institutions for FC. "They do the whole layout of the whole process, go through the philosophy with us, and then actually help us to set up the compensation for our associates." Sister testified that Ms. Riggs' salary was required to fall within the [Mercer] ranges. Tr. pp. 2835-2838. The Mercer Study was not offered into evidence by the Applicant.

Mr. Wiberg, who was Controller at VL in 2007, was not asked his salary when he testified. The only other significant testimony in the record regarding salaries paid at VL in 2007 was Mr. Allison's testimony that "[W]e have a range of salaries that go from just above minimum wage to registered nurses that we're compensating at roughly \$30 per hour." According to Mr. Allison, \$30 per hour is "substantially below market." Tr. p. 2031. Again, the Applicant failed to provide documentation of any authority that these

witnesses profess to base their testimony on regarding the issue of salaries paid to employees.

“The employees of a charitable institution are not compelled to perform free services in order that the institution may be charitable.” Yates v. Board of Review, 312 Ill. 367 (1924). “The payment of reasonable salaries to necessary employees for services actually rendered does not convert a nonprofit enterprise into a business enterprise.” 86 Ill. Admin. Code §130.2005(h). The problem in the instant case is that no documentary evidence was presented at the evidentiary hearing by the Applicant to support the testimony about the Mercer Study or that the salaries paid at VL were substantially below market. I am unable to conclude from the testimony that VL does not provide unreasonable profit and gain in a private sense to persons connected with it.

In addition, there was considerable testimony at the evidentiary hearing regarding the “management fee” that Victory Lakes either paid, or did not pay, to either FSCSC or FC in 2007. The management fee appears to be similar to the fee paid by a condominium association to a commercial management company for managing the condominium property. The testimony at the evidentiary hearing regarding the management fee that FC or FSCSC charged VL was confusing and contradictory. I am unable to determine the facts regarding the management fee and the testimony must be construed against the Applicant and in favor of taxation in this matter.

For example, Sister Diane Marie Collins, General Minister of the Franciscan Sisters of Chicago, was asked on direct examination if there was a management fee for FSCSC’s “involvement” at VL. She testified that “no, there would not” be a management fee. “Not that I know of.” Tr. p. 196. On cross examination, she was asked if the controller at VL would “know better than you if management fees were charged by

[FSCSC] to Victory Lakes in 2007?” She replied: “Yes, I’m sure that person would know better than me.” Tr. p. 328.

Mr. Wiberg, who was the Controller at VL in 2007, testified that FC received “substantial” management fees from VL in 2007. At Mr. Wiberg’s deposition on March 16, 2009, he was shown an “Exhibit 10,” which was admitted as Intervenor’s Ex. No. 22 at the evidentiary hearing. This “Key Drivers” report for year ending June 30, 2007, (which included the last 6 months of 2006) showed a “Finance Charge” paid by VL in the amount of \$1,715,976. Mr. Wiberg was asked at his deposition what the figure represented and he replied that it was “a management fee from the corporate office.” He was then asked if “[T]hat is a management fee paid by Victory Lakes to Franciscan Communities?” He replied: “That is correct.” He was asked what the fee was for. He replied that the fee was for “all the corporate help,” “running payroll,” “and their advice,” “CFO controller’s advice to me, and whatever. It’s just—it’s just a management fee.” Tr. pp. 1107-1108.

At the evidentiary hearing on May 15, 2009, Mr. Wiberg testified that he was “correct” that Franciscan Communities did charge a management fee for advice and payroll services but he testified that the \$1,715,976 figure was not for management fees. “That should just be finance fees from the bank.” Tr. p. 1103. The management fee charged by FC was a monthly charge. When asked where the actual monthly charge for management fees would be reflected on the page in the “Key Drivers” report, Mr. Wiberg testified that he was “not sure.” “We didn’t use this page very often.” Tr. p. 1092. When Mr. Wiberg was asked if he remembered how much the management fee was, he replied “[I]t was – it was substantial.” Tr. p. 1131.

Further, Mr. Allison testified that FSCSC is funded, in part, by management fees. And the management fee “currently approximates 5% of revenues.” Tr. p. 2073. FSCSC has a “Growth and Development” Department, which is concerned with “growth and development of the mission for doing things in the Franciscan way.” Tr. p. 2113. Apparently, FSCSC’s growth and development is funded by the management fees that FSCSC collects from FC which FC, in turn, collects from the individual communities it manages, such as VL. “Growth” refers to FSCSC’s assistance to other religious orders, including helping the Brothers of the Holy Cross launch a community on the Notre Dame campus and the Sisters of Mercy who are also “putting together” a continuing care retirement community. “Development” included one project in 2007. “That was ‘The Clare’ at Water Tower, and our head of growth and development helped oversee -- over saw the Graystone people who were actually developing the building.” Tr. pp. 2112-2114; App. Ex. No. 5. It is reasonable to conclude from this testimony that management fees collected by FC from VL and other Communities are used by FSCSC for growth and development of FSCSC’s interests.

Sister Mary Francis Clare Radke, Chairman of the Board of FSCSC since 1993 and Chairman of FC since 2001, testified that FC’s funding “is the money that they receive as a group for the services that they render.” She testified that FC pays management fees to FSCSC. The management fee is for services rendered by FSCSC to the various sites, including information technology, financial oversight, nursing oversight, risk management. “And we are compensated through the management fee.” Tr. p. 2287. Sister testified that 3% of VL’s revenues were charged as management fees in 2007, but that VL did not pay the fees because “they were operating at a loss.” Sister testified that in 2008, the management fee was raised to 3.5%, but again, according to

Sister, VL could not pay the fees because they were operating at a loss. Tr. pp. 2288-2289.

When Sister was asked where the 5% management fee came from that “another witness” had previously testified about, she stated that the 5% was the “current fee that we charge as a management fee.” Tr. pp. 2288-2290. On cross examination, Sister testified that her belief that management fees were not paid by VL in 2007 was based on quarterly reports she received that were prepared by the CFO’s office. According to Sister, VL’s nonpayment of management fees did not show up in the consolidated statements for FC, which were admitted in evidence at the hearing, because it was a “minor detail.” Tr. pp. 2372-2374. Whatever “quarterly reports” Sister was referring to that showed that VL did not pay management fees in 2007 were not produced at the hearing. Tr. p. 3240. Neither Mr. Wiberg nor Mr. Allsion testified that management fees were not paid by VL in 2007.

The Franciscan Communities’ “Fiscal 2008 Budget,” which includes the last six months of 2007 shows “FSCSC Shared Expenses” for 2008 of \$4,773,000. “This amount is equivalent to 3.5% of budgeted revenues.” The Budget contains the following note: “Shared expenses as a percentage of revenues will need to increase to five percent in order for FSCSC to be fairly reimbursed for services provided.” The “Actual 2007” “FSCSC Shared Expenses” for Victory Lakes, according to this document were \$309,000 and the shared expenses were budgeted in 2008 for VL at \$580,000. There is no mention in this document that VL’s shared expenses were not paid in 2007 and the “Actual 2007” figure would certainly appear to indicate that VL paid its “share” of FSCSC’s expenses in 2007. Int. Ex. No. 26.

The issue of the management fees paid by VL to FC for management of the property at VL is directly related to the Korzen factor that considers whether the subject property provides gain and profit in a private sense to other persons or organizations. The contradictory and inconsistent testimony about the dollar amount of the management fees, and the lack of documentary evidence in the record showing that the fees were not paid by VL in 2007, if they were, in fact, not paid, prevents me from determining the specific facts about this important and relevant issue. It is definitely unclear from the record whether 3% or 3.5% or 5% is a reasonable fee for the services performed by FSCSC for the Applicant on the subject property.

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). The issue of the management fees must be construed against the Applicant in this case. The word that leaps out from the record is that the fees were “substantial,” as Mr. Wiberg testified. Without legally sufficient evidence in the record putting the “substantial” management fees into any perspective as to reasonableness, I must conclude that VL provides gain and profit, in a private sense, to FC and FSCSC, who according to the testimony, are “compensated” for their services through the management fees. The deficiencies in the evidence and the inconsistencies in the testimony, with regard to the issue of whether VL provides gain or profit in a private sense to persons connected with it, force me to conclude that VL’s use of the subject property is not consistent with this characteristic of a charitable organization.

Korzen factor (3): The benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government.

Illinois courts have consistently refused to grant charitable exemptions to retirement homes that charge entrance and up front fees because these fees prevent “an indefinite number of persons” from benefitting from the home. In Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149, 158 (1968), where prospective residents paid a “Founder’s Fee” of \$6,250 to \$25,000 and a monthly charge from \$175 to \$375, the Supreme Court stated that the Founder’s Fee and monthly charges, *inter alia*, were “certainly sufficiently restrictive to prevent our saying that the property is used for the benefit of an indefinite number of people...” In People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91, 101 (1968), where candidates for admission paid a mandatory \$4,000 entry fee, the Supreme Court stated that the defendant’s insistence upon the payment of a sizeable admission fee, *inter alia*, constitutes a serious impediment to the tax exempt status it was seeking. The Court could not “reconcile” the entrance fee “with our requirements of the application of benefits to an indefinite number of persons...” In Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273, 293 (2004) where Eden charged up front entrance fees ranging from \$65,000 to \$76,900 for a duplex unit or a \$5,000 security deposit for a rental unit, the Supreme Court noted that “most certainly, the benefits derived are only for persons who can pay the substantial entrance fees.”

Similarly, in Wyndemere Retirement. Comm. v. Dept. of Revenue, 274 Ill. App. 3d 455, 460 (2d Dist. 1995), the court denied a sales tax exemption to a retirement community whose funding was “provided by the substantial entrance and monthly fees charged to those who can afford to avail themselves of Wyndemere’s services.” In Plymouth Place, Inc. v. Tully, 54 Ill. App. 3d 657, 661 (1st Dist. 1977), where candidates for admission paid an initial “Foundation Fee” which was “rarely below \$10,000” plus

monthly fees, the court stated that the fact that most applicants are required to pay a substantial Foundation Fee clearly represents an obstacle to the receipt of benefits.

In Good Samaritan Home v. Dept. of Revenue, 130 Ill. App. 3d 1036 (4th Dist. 1985), the home charged up front the prepaid cost of construction of a retirement cottage, which ranged from \$36,000 to \$58,000, and then amortized the prepaid costs over the term of the rental agreement. The unused balance of the prepaid rent was refundable if the resident terminated occupancy of the unit. Good Samaritan Home argued that its plan was distinguishable from founder's fee requirements because the unused balance of its required prepayment was refundable. The court stated that "[T]he Home's argument ignores the fact that residents of the cottages with prepaid rent requirements must not only be able to initially afford the prepayment of rent, which is substantially more than many of the 'founder's fees,' but also will not have the financial use of the sums of prepaid rent." "We conclude that the fact that most applicants are required to pay a substantial amount of 'prepaid rent' clearly represents an obstacle to the receipt of the benefits offered by the Home." *Id.* at 1041.

Ms. Riggs testified that in 2007, VL offered three types of services. VL had independent living apartments and garden homes, where people lived independently but had the services of a continuing care retirement community; assisted living units, which provided people with assistance with activities of daily living and medication monitoring; and a skilled nursing facility, known as the "continuing care center," which included a special Alzheimer's unit, rehabilitation facilities, Medicare program and general long-term care. VL was certified to take Medicaid patients in October, 2007. Twelve beds in the continuing care center were Medicaid certified. Tr. pp. 867-869, 871-872, 881. Testimony and documentary evidence at the hearing showed conclusively that VL

charged substantial entrance and up front fees in the independent living units, assisted care units and the continuing care center in 2007.

Independent Living Units: Ms. Riggs testified that for admission into independent living units, there was an age requirement, health requirement and a financial requirement, including an entrance fee and a monthly fee. Tr. p. 869.

“Monthly Service Packages,” effective July 1, 2007, for “prairie style garden homes” in the “traditional” style were as follows: 2 bedrooms (1,000 sq. ft.) required a 90% “refundable entrance fee” of \$244,186 and a “monthly service package” of \$1,248.⁶ These homes increased in entrance fee and monthly fee at 5 different levels up to a 3 bedroom unit with extra storage (1,185 sq. ft.), which required a 90% refundable entrance fee of \$289,360 and a monthly service package of \$1,479. Monthly service packages for “prairie style garden homes” in the “classic” style were as follows: 2 bedrooms (1,200 sq. ft.) required a 90% refundable entrance fee of \$281,077 with a monthly service package of \$1,497. These homes increased in entrance fee and monthly fee at 3 different levels up to a 3 bedroom unit with extra storage (1,420 sq. ft.) which required a 90% refundable entrance fee of \$332,608 and a monthly service package of \$1,771. The monthly service package for a “second person” in traditional or classic style units was \$348 additional. Tr. pp. 964-967, 1786-1787; Int. Ex. No. 4. A bill dated January 31, 2007 for “BG” a resident of the independent living garden homes, shows, *inter alia*, a charge for real estate tax (\$344), “barber/beauty misc” (\$42), “guest meals-cottage” (\$54), housekeeping service (\$113) and “interest on unpaid balance” of \$52.93, representing 1% of the unpaid balance. Tr. pp. 1067-1070; Int. Ex. No. 19.

⁶ All residents in independent living units paid a portion of the real estate tax for the subject property in their monthly service package in 2007. Tr. pp. 1063-1066, 1859-1861; Int. Ex. Nos. 16, 17 and 18.

Monthly service packages, effective July 1, 2007, for independent living unit apartments were as follows: a studio apartment (472 sq. ft.) required a 90% refundable entrance fee of \$127,596 and a monthly service package of \$1,630. The monthly service packages for the apartments contain 13 different floor plans with each floor plan increasing in square footage, entrance fee and monthly fee. The most expensive floor plan is the “2 bedroom deluxe” (951 sq. ft.) unit which requires a 90% refundable entrance fee of \$252,525 and a monthly service package of \$2,445. Individual garages are \$88/month extra. The monthly service package for a “second” person in the apartments was an additional \$667/month. Tr. pp. 964-967, 1786-1787; Int. Ex. No. 4. A bill dated January 31, 2007, for “LE,” a resident of an independent living garden apartment shows, *inter alia*, charges for garage rental (\$81.50), second garage rental (\$81.50), cable television (\$19.00) guest meals-apartments (\$75.60), real estate tax (\$195.28), second person fee (\$634.00), country store charges (\$7.26), “FAXES charge” (\$6.00), and “Activities Fee” (\$24.00). Tr. pp. 1064-1065; Int. Ex. No. 17. It is reasonable to conclude from the bills for the independent living units that VL operates as a fee-for-services business venture.

Section 4(G) of the Residency Agreement for the independent living units, entitled “Residents Who Become Unable to Pay,” states that, in keeping with FC’s mission, it is “our policy that this Agreement will not be terminated solely because of your financial inability to continue to pay the monthly service fee or other charges. If you present facts which, in our sole discretion, justify special financial consideration, we will give careful consideration in subsidizing in part or in whole the monthly service fee and other charges payable by you under the terms of this Agreement, so long as such subsidy

can be made without impairing our ability to attain our objectives while operating on a sound financial basis.” Int. Ex. No. 8.

Section 4(G) also notes that “[I]f we determine to provide you with any financial assistance or subsidy, you agree we may charge such amounts against the refund of the resident deposit, including interest income lost as a result of applying a portion of the resident deposit to pay such amounts. Furthermore, we may require you to move to a smaller and/or less expensive residence. The cost of any such financial assistance provided in excess of the refundable portion of the resident deposit shall be accrued and remain your obligation and the obligation of your estate. Tr. pp. 1802-1803; Int. Ex. No. 8.

Pursuant to the clear language of Section 4(G), VL protects its continuing stream of income from the residents living in the independent living units by the provision in the Residency Agreement that any financial assistance shall be deducted from the 90% refundable portion of the resident’s deposit and may eventually be an obligation of the resident’s estate. Int. Ex. No. 8. It is noted that 10% of each entrance fee is apparently retained by VL, according to the “90% Refundable” Fee Schedule and “Monthly Service Package,” and is, therefore, not available to any resident if financial assistance is needed. Accordingly, any financial assistance paid by VL to independent living residents is more in the nature of a loan than charity. Financial assistance paid by VL to independent living residents would be coming out of the resident’s funds, rather than VL’s. Moreover, no entrance fees were waived for independent living residents in 2007. Tr. pp. 967, 1057, 1101-1102. By not waiving entrance fees, VL ensures that it has a source of financial assistance for independent living residents, in the unlikely chance that assistance is ever

needed by them. Thus, this assistance does not reflect any charitable giving on the part of VL.

While Sister Francis Clare testified that the “Gift of Care” is considered “almsgiving” “because we give the money without getting anything in return” (Tr. pp. 2387-2388), the requirements of Section 4(G) of the Residency Agreement for repayment of any financial assistance is not “almsgiving.” On the contrary, VL is getting paid for the use of the property by residents. The requirements of Section 4(G) are “lacking in the warmth and spontaneity indicative of charitable impulse.” Korzen at 158.

The “Residency Agreement” for independent living units also states that “we” require that you be capable of independent living and have assets and income which are sufficient to meet ordinary and customary living expenses after occupancy. To confirm this representation, applicants had to submit a confidential data profile, including all personal financial data, including assets, liabilities, and a listing of “regular monthly income” from social security, pension, dividends, interest, mortgage/rental income, IRA income and trust income. Int. Ex. No. 8.

FC’s Bylaws list one of its purposes as “to adopt policies and procedures designed to address the needs of its residents for protection against the financial risks associated with the later years of life, including the procedures for waiver or reduction of entrance fees, assignment of assets or fee for services based upon the individual resident’s ability to pay and the financial resources of the Corporation.” App. Ex. No. 43. Counsel for the Applicant asked Mr. Allison if he had an understanding of what was meant by the phrase in the Bylaws, “fees for services might be connected or based upon the individual resident’s ability to pay.” Mr. Allison testified that the “individual resident’s ability to pay is obviously part of accepting a resident into a community, understanding what

resources did they have to bring into the apostolate.” “So we make an assessment before we accept residents into each of the communities as to their ability or inability to pay. We then make decisions amongst a group of people to admit the resident into each of our communities.” According to his testimony, the decision to admit is not necessarily based upon the resident’s ability to pay. “It is just examining their ability to pay or their inability to pay.” Tr. pp. 1983-1984. Mr. Allison testified that the language in the Bylaws did not have an impact on the admittance of a resident to the facility. Tr. p. 1985.

Mr. Allison’s testimony is not supported by testimony and evidence of record regarding admissions to the independent living units in 2007. Ms. Riggs was asked if entrance fees were waived for new residents in the independent living units in 2007. She replied: “No. Not to my knowledge.” Tr. p. 967. Mr. Wiberg was asked how many new independent living residents in 2007 did not have to pay entrance fees. He responded “[N]one.” Tr. p. 1057. He later repeated this testimony stating that all new residents had to pay an entrance fee in 2007 and the entrance fee was not waived for any resident in independent living in 2007. Tr. pp. 1101-1102. Sister Francis Clare testified that FC’s ministry “was to give service to whoever is in need.” Tr. p. 2321. When she was asked whether the entrance fees charged for the independent living units would be “difficult to afford for the poor,” she responded “[Y]es.” Tr. pp. 2353-2354. Although Mr. Allison’s testimony was that admission is not based on a resident’s ability to pay, in 2007, every resident admitted into the independent living units had the ability to pay the substantial up front entrance fees.⁷

⁷ On June 3, 2009, Sister Francis Clare was asked if any entrance fees were waived for independent living units in 2007. She responded: “I don’t know.” Tr. p. 2359. When Sister was called as a rebuttal witness on June 10, 2009, she testified that one independent living resident at VL, “Mrs. I,” told her at a ceremony after June 3, 2009 that VL had waived \$16,000 in entrance fees for her in 2007. Sister testified that the waiver of the \$16,000 in entrance fees was not part of the Gift of Care program. “It was out of our financial resources.” Tr. p. 2863. According to the testimony, the determination to waive the fees was made

In Good Samaritan Home, the court noted that residents of the cottages with prepaid rent requirements must not only be able to initially afford the substantial amount of prepaid rent, but also will not have the financial use of the sums of prepaid rent. *Id.* at 1041. In other words, these residents must initially put up a substantial sum of money to enter the facilities and they must have the means, and be prepared, to live without the “financial use” of this money for the term of their residency. This is not indicative of charitable use of property because an “indefinite number of persons” would not be able to put up the money, and then live without the money, and therefore would never be able to enjoy the benefits of the retirement home.

VL has the same requirements for residents in its independent living units as Good Samaritan Home had. Section 7(A) of the Residency Agreement⁸ states that a resident does not have any proprietary interest in VL or its assets or properties by virtue of the Agreement. Section 4(B) of the Residency Agreement for independent living units states that the 90% refundable deposit is VL’s property for use in accordance with the terms of the Agreement and not subject to the claims of creditors of the resident. It is clear from the Agreement that the “purpose” of the resident deposit is “to generate investment income to contribute to the operating income of the Community and to help pay for operating and capital costs.” Interest income generated from the investment of the

“locally.” “If we find a resident that would like to come in and the discussion is held, then we often do waive that part of that entrance fee.” Tr. p. 2864. Sister’s testimony is in direct conflict with the testimony of Ms. Riggs and Mr. Wiberg that no entrance fees were waived in 2007. Ms. Riggs and Mr. Wiberg worked “locally” at the subject property in 2007. Sister was asked, but did not know, how much “Mrs. I” paid in entrance fees in 2007, after the purported \$16,000 reduction. Tr. p. 2866. No documentary evidence was admitted to support the \$16,000 waiver of entrance fees for “Mrs. I.”

⁸ Victory Health Services owned the subject property prior to its purchase by FC. Victory Health Services had an existing “Residency Agreement” with residents. After FC purchased the property, each current resident was asked to agree to honor their Residency Agreement with FC. New residents coming in after the purchase by FC signed a revised Residency Agreement with FC. The revised Residency Agreement was substantially the same as the former Residency Agreement. Tr. pp. 1799-1802.

resident deposit will be paid to VL for the benefit of the community. At FC's "sole discretion," VL's resident deposits may be used to pay for project development costs, start up deficits, interest expense, debt retirement, costs of future expansions and other purposes that FC deems appropriate. Int. Ex. No. 8. Thus, not only are the VL residents unable to use their substantial deposit money, they do not benefit from any accrual of interest on these funds. Rather, the Applicant uses the deposit as it wishes and the interest accrued thereon for its own benefit. Similar to the residents of the cottages in Good Samaritan Home, residents at VL must put up a substantial entrance fee and be prepared to live without the "financial use" of this money for the terms of their residency. Putting up this amount of money, without the future use of it, is clearly an obstacle for an "indefinite number of people" who would wish to avail themselves of VL's benefits.

Further, the "90% refundable entrance fees" were returned to residents when the units were resold, not when the resident left the unit. If the resident moved permanently from independent living to assisted living or the continuing care facility, the entrance fee was not refunded until the resident left the VL campus or died. Tr. pp. 1057-1058, 1101-1102, 1126-1127, 1234.

In addition to the entrance fees, which were paid upon admission, residents also paid a "monthly service fee" on the first day of each month. The monthly service fee included dining services, housekeeping, utilities including basic cable, security and emergency systems, maintenance, transportation, social, educational and wellness programs and property taxes. Additional services on a "fee-for-service" basis included guest meals, catering, barber and beauty services, "tray service," additional resident meals, parking, additional housekeeping, laundry services for personal items, and personalized transportation. Int. Ex. No. 8.

The “Residency Agreement” also states that residency may be terminated for certain medical and nonmedical reasons. “Nonmedical reasons” include the following, *inter alia*: if you file for protection under the bankruptcy laws of the United States, under any chapter; or you convey all your assets for the benefit of creditors; or you involuntarily file for bankruptcy law protection; or if you fail to pay the monthly service fee or other amounts owed to us when due unless other mutually satisfactory arrangements have been made. Int. Ex. No. 8.

There was testimony at the evidentiary hearing that beginning in 2007, different options were offered for entrance fees and monthly service fees for new residents in the independent living units. Mr. Truesdale testified that some alternatives were made available to the residents to meet their personal needs. “They could choose an entrance fee as low as \$60,000 and have a certain monthly service fee, or they could have a larger entrance fee with a smaller monthly service fee.” “Some of those options would include a lower entrance fee, but only 50% of that entrance fee would be refundable, but there would be a larger monthly service fee that would accompany that entrance fee.” He testified that “[I]n addition to the change in the entrance fee structure, there were units that were made available with no entrance fees strictly on a rental agreement.” Tr. pp. 1231-1232.

Mr. Truesdale’s testimony regarding the alternative entrance fee requirements was not supported by Ms. Riggs. Ms. Riggs, who worked at VL in 2007 and had “oversight” of the marketing department, did not “recall” if “the Sisters” provided a 50% refundable entrance fee in addition to the 90% refundable fee in 2007. In fact, Ms. Riggs did not “recall” “whether the Sisters changed the options at all in 2007 in terms of the amount of entrance fees one would have to pay to enter Victory Lakes.” She was also asked if [the

entrance fees] could have changed and you would not be aware of that.” She responded: “I believe I would be aware.” Tr. pp. 865, 1786-1789. Mr. Truesdale, after testifying to the alternative entrance fees in 2007, was asked on cross-examination if it was true that in 2007, there were no new residents of independent living units who did not pay entrance fees. He replied: “I wouldn’t know, you know, whether there was or was not.” Tr. p. 1312.

The indefinite, unsupported testimony does not allow me to determine the specific facts regarding the alternative entrance fees in 2007 and this must be construed against the Applicant in this case and in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). It must be noted again that occupancy in the independent living units in 2007, as discussed above, was 75% for independent living apartments and 83% for independent living homes. From the minutes of the Board’s meetings after the purchase of the subject property, it is evident that FC sought to charge “competitive street rates” to prospective residents. Int. Ex. No. 32. Therefore, it is not unreasonable to assume that if entrance fees were lowered in 2007, it was done for marketing, rather than charitable, purposes.

Assisted Living Units: The assisted living units had age, health and financial requirements. Ms. Riggs testified that in 2007, the assisted living facility was licensed as a “shelter care facility” because there were no assisted living regulations in the State of Illinois. Residents entering into either the independent living units or the sheltered care facility in 2007 were given a geriatric assessment tool that helped VL determine where the residents’ needs could be met “most appropriately least restrictively.” The sheltered care facility was for residents who were not a safety risk for either themselves or others. Tr. pp. 870-874.

Residents in assisted living units paid a substantial up front fee upon admission. The basic monthly fee for assisted living service at VL “is based on the size of the suite and a comprehensive assessment that determines an appropriate level of care for the individual resident.”⁹ “Monthly fees” effective January 1, 2006, for the assisted living unit at VL begin at \$3,881 for a “studio” with level I services with increases at various levels to a monthly fee of \$4,741 for an “alcove” with level II services.¹⁰ Prior to admission, one month’s fee must be paid in advance in addition to one month’s fee to cover the security deposit. If more than one person entered into a contract for a unit in assisted living, the second person would pay an additional fee of \$648/month. The least amount that a resident in assisted living would have to pay up front in 2007 was \$7,762, which was composed of the \$3,881 monthly fee for a studio unit and the \$3,881 security deposit. Int. Ex. No. 5. Similar to the entrance fees charged for the independent living units, the up front costs required for entry into the assisted living units at VL prevented an “indefinite number of persons” from benefitting from VL’s services in that unit.

A bill dated January 31, 2007, for “JA,” a resident of an assisted living unit shows, *inter alia*, charges for garage rental (\$81.50), cable television (\$19.00), real estate tax (\$121.85) and “barber/beauty misc.” (\$123.40). Int. Ex. No. 16. A bill dated January 31, 2007 for “GB,” a resident of an assisted living unit shows, *inter alia*, charges for garage rental (\$15.00), real estate tax (\$255.05) and “guest meals-cottage” (\$30.00). Int.

⁹ All residents in assisted living units paid a portion of the real estate tax for the subject property in their monthly service package in 2007. Tr. pp. 1063-1066, 1859-1861; Int. Ex. Nos. 16, 17 and 18.

¹⁰ The rates in the assisted living schedule were in effect when VL was owned by the Village of Victory Lakes in 2006. Ms. Riggs could not “be sure” if the rates from 2006 were identical to the rates charged by FC in 2007. She testified that these rates were “probably” contained within a folder that was given to prospective residents of assisted living in 2007. Tr. p. 970. FC asked to have admitted into evidence a document entitled “Assisted Living Rates and Service Packages,” effective July 1, 2007. The Intervenor’s objection to the admission of this document, which contained July 1, 2007 rates, was sustained because the document had not been turned over to the Intervenor upon request in discovery. (App. Ex. No. 35, in the record for an offer of proof only).

Ex. No. 18. It is reasonable to conclude from the bills for the assisted living units that VL operates as a fee-for-services business venture.

Mr. Truesdale did not “recall” if security deposits were required for assisted living residents in 2007. Tr. p. 1312. Ms. Riggs was asked if the security deposit was waived or reduced for any resident in assisted living in 2007. She replied: “Not to my knowledge.” Tr. p. 971. She also testified that, to the best of her knowledge, no resident applied for a waiver or reduction of the security deposit. Tr. p. 1794. Ms. Riggs also testified that the monthly charges were not reduced for any new resident in 2007. Tr. p. 970.

In 2007, the admission process for the assisted living units for new residents required an application, an assessment of the resident’s functional needs and financial screening, which required residents to list their assets and monthly income. Tr. pp. 957-958. The residency agreement for the assisted living units states that the contract may be terminated upon 30 days written notice if the resident fails to comply with the terms of the contract, however the resident shall not be entitled to a prorated refund of any advance payment of the monthly standard rate. If the resident’s failure to comply with the contract terms relates to payment of charges and rates, the resident will be given 30 days written notice of delinquency of payments and 15 days to cure the delinquency prior to the termination of the contract. Tr. pp. 981-982, 1806-1812; Int. Ex. No. 9.

In VL’s independent living units, space is allocated based on the size of the unit, the entrance fee and the monthly charges. In the assisted living units, space is allocated based on the size of the suite and the monthly charges. In Wyndemere Retirement Comm. v. Dept. of Revenue, 274, Ill. App. 3d 455, 460 (2d Dist 1995), the court noted that the “variance in charges based on the size of the unit is also a factor indicative of

noncharitable use.” In Small v. Pangle, 60 Ill. 2d 510, 517 (1975), the court noted that the variance of the monthly charges, based upon the size and location of the room, “smacks” as being indicative of a noncharitable use.

In Methodist Old Peoples’ Home v. Korzen, 39 Ill. 2d 149 (1968), the Court noted that the Founder’s Fee and monthly service charge were based on the size and location of the quarters to be assigned, “corresponding in principle with the type of rate structure one would find in a commercially operated cooperative multiple dwelling property.” The fact that the “old peoples’ home” allocated living space from the standpoint of desirability of location and size on the basis of the Founder’s Fee and monthly charges paid by a resident, seemed to the Supreme Court to be “lacking in the warmth and spontaneity indicative of a charitable impulse.” “Rather, it seems more related to the bargaining of the commercial market place.” *Id.* at 158.

Likewise, VL’s variance in charges based on the size of the unit or suite and the fees charged also “smacks” of noncharitable use. As recognized by Korzen, this variance in charges based on size and desirability of the suite is what one would normally find in a commercially operated multiple dwelling property. FC’s management fee, discussed previously, which is assessed on VL residents, is similarly characteristic of a charge assessed on residents of commercially operated multiple dwelling property. In considering these characteristics of VL, it is not reasonable to conclude that the subject property is “primarily” used for charitable purposes.

Continuing Care Center: A pamphlet¹¹ for the “continuing care center” lists the “basic daily fee” in the beginning of 2007 at \$167 for intermediate care and \$197 for skilled, Alzheimer and respite care. An additional daily charge was assessed for private

¹¹ This pamphlet was developed by the previous owner of VL, but was used by Ms. Riggs until she received revised marketing materials from FC, after FC purchased the property. Tr. pp. 1794-1795.

rooms. Private-pay residents in the continuing care center also were required to disclose their financial information, including income from all sources, indebtedness and whether “lack of funds” were a “concern for you.” A 30-day deposit at \$197/day, or \$5,910 in total, was due from private payers and held in escrow until discharge. This was the minimum up front fee that would be charged to private-payers in the continuing care center.¹² Tr. pp. 974-976; Int. Ex. No. 6.

Mr. Truesdale was asked if it was true that in 2007, an up front, 30 day deposit, was required for all private payors in the continuing care center. He replied: “I believe that to be true.” Tr. p. 1312. Mr. Truesdale testified that VL was “prohibited” from charging a security deposit for Medicare and Medicaid admittees into the continuing care center. Tr. pp. 1322-1333. Therefore, legal restraints, rather than charity, determined whether a security deposit was charged for the continuing care center. The “Payor Mix” for the continuing care center shows that, for year ending June, 2007, 71.4% of admittees into the continuing care center were “private pay” and, as the testimony indicates, these residents were required to pay the minimum up front fee of approximately \$6,000. Int. Ex. No. 22. VL first became Medicaid certified in October, 2007, and less than 1% of admittees in 2007 into the continuing care center were Medicaid patients. Tr. pp. 1322-1323; Int. Ex. No. 24.

“Respite Care” in the continuing care center offered a family taking care of a patient at home “an interval of relief from the demands of day to day care.” “It is an opportunity to restore personal strength so that quality care can continue at home.”

¹² Ms. Riggs testified that there was a residency contract for the continuing care center. This contract was not turned over to Intervenor in discovery. Intervenor requested an adverse inference that had the contract been produced, it would not have supported the Applicant’s case. Tr. pp. 1865-1870, 2182-2183.

Respite Care was available in the continuing care center for a period of 24 hours to 30 days and in the assisted living center for periods of 1 week to 30 days. Int. Ex. No. 6.

On February 1, 2007, VL raised the rates in the continuing care center. The “List of Charges” for the continuing care center after that date shows “room and board” charges depending on the following levels of care: intermediate \$191; intermediate-private room \$264; skilled \$226; skilled-private room \$302; large private room \$343; respite care \$226; Alzheimer’s \$226; assisted living \$142. There are “ancillary charges” for, *inter alia*, equipment, oxygen, beauty shop, activities, escort service, physical therapy, speech therapy, occupational therapy, nursing services and supplies, laundry services and dietary services.¹³ Tr. pp. 976-978, 1771-1777; Int. Ex. No. 7. It is reasonable to conclude that FC received payment for all services that were provided to residents on the subject property.

It is clear from the record in this case that an “indefinite” number of persons did not derive benefits from the independent living units which charged substantial entrance fees and monthly service charges, or from the assisted living units which charged substantial security deposits and monthly service charges, or from the continued care center which charged a 30-day up front deposit to 71% of its admittees in addition to the daily charge. These up front costs, due upon admittance to VL’s units, are “sufficiently restrictive” for me to conclude that VL was not used for the benefit of an indefinite number of persons in 2007. The up front fees cannot be “reconciled” with the Korzen guideline that benefits of a charitable institution be derived by an indefinite number of

¹³ The Illinois Administrative Code, Title 77, “Public Health,” Subchapter c, “Long-Term Care Facilities,” Section 300.630, “Contract Between Resident and Facility,” requires that a contract shall specify the services and the charges for the services that may be provided to supplement the daily contract rate. 77 Ill. Adm. Code § 300.630(n)

persons and the up front fees are an “obstacle” to the receipt of benefits in any of the units.

The Korzen factor at issue also requires a consideration of whether VL’s benefits reduce a burden on government. “The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them and a consequent relief, to some extent, of the burdens upon the state to care for and advance the interests of its citizens.” School of Domestic Arts and Sciences v. Carr, 322 Ill. 562 (1926). There is no credible evidence in the record of this case showing that VL reduces any burden on government.

Mr. Allison testified that state law provides for a spend-down of an individual’s resources before they are able to access state aid. “So part of [VL’s financial] review is to understand what an individual’s resources are in their ability and how long it will take them to deplete their resources before they will have to apply for state aid.” “By spending down resources, it allows for the individual to support and sustain himself [with] those resources until those resources are exhausted before applying for state aid.” “So it benefits the state by utilizing the resources rather than having – using state aid to provide for the individuals.” Tr. pp. 2040-2042. Mr. Allison also testified that VL’s financial screening of potential residents before admission helps VL to understand “what the assets were of the individual and are of the individual and if they made transfers out to deplete their assets and moved them to someone else and leave the individuals to our care and the care of the state.” “So we do due diligence, and I believe it is a big benefit to the state in terms of doing that underwriting.” Tr. pp. 2048-2049.

Mr. Truesdale testified that “the fact” that residents are able to live in the assisted living and independent living areas longer before they need to go to the nursing home

“preserves their resources; it’s less expensive to live in an independent living unit or an assisted living unit compared to the cost of living in a nursing home.” “So it preserves their assets.” Tr. pp. 1226-1228. He was then asked how this benefits the community. He replied that it helps VL be “good stewards” of the resources of the residents, “to ensure that we are able to extend those resources, and, when they get to the nursing home, they exhaust their resources quicker and then be on the state Medicaid program, and they will be a burden on state government.” Tr. pp. 1230-1231. Counsel for the Applicant echoed Mr. Truesdale’s arguments in his closing argument. According to Counsel, VL was “trying to preserve people’s assets so that they didn’t become a burden on government under Public Aid and that’s what the evidence shows a continuing care retirement center does do.” A continuing care retirement facility “provides for things that allow you to stay healthier longer and therefore to stay off the Public Aid rolls.” Tr. pp. 3001-3002.

There is no question that VL’s residents have significant financial resources which they are able to commit to their care, by virtue of the fact that they turn over to FC a sizeable amount of money for a living space that they will never own, in addition to paying monthly fees. Each of VL’s “Resident Resource Guides” for independent living, assisted living and the continuing care center state that “[W]e” hope you enjoy your active lifestyle in our beautiful surroundings.” App. Ex. Nos. 20, 21 and 22. VL is selling an “active lifestyle,” which can be enjoyed by the residents in the “beautiful surroundings” on the subject property. Even assuming, for purposes of argument, that some proportion of the elderly spend down and divert their assets in order to receive subsidized care, it is pure speculation, and there is no evidence in the record, that would allow me to conclude that VL residents would spend down or divert their assets and put

at risk the “active lifestyle” in “beautiful surroundings” that they are able to afford and enjoy at VL.

There is also no evidence in the record to support any of the Applicant’s other arguments that VL reduces a burden on government. There is no “fact” in the record that shows or proves that residents live longer in independent living units or assisted living units. There is no evidence in the record that residents at VL are spending down their assets more slowly at VL than they would be if they lived in their own apartments, or lived in for-profit retirement homes, or lived any other place for that matter. Mr. Truesdale was asked specifically if he knew how many persons at VL were kept off Medicaid because of VL. He did not know. Tr. p. 1315. This is understandable because, based on this record, the idea that VL keeps residents off Medicaid, is pure speculation.

Intervenors caused to be admitted into evidence a series of letters from the daughter of a resident at VL written to VL’s “Accounting” Department with a “cc” on 3 of the 5 letters to Mary Riggs. In the April 27, 2007 letter, the daughter states she is enclosing a check for \$3,030, but that her mother’s funds have almost run out. “Please note that I have made requests from Mary Riggs and it turns out that I have to make other arrangements for my mother’s care for the future. I am taking care of this right now.” On April 30, 2007, the daughter remitted \$2,076 but noted that her mother’s funds are now “minimal.” On June 24, 2007, the daughter remitted \$2,030 and stated that she had applied for Medicaid and she was “making arrangements with Winchester House in Libertyville to take over my mother’s care.” On July 23, 2007, the daughter remitted \$1,591 and noted that her mother’s application for Medicaid was approved “and she was transferred to Winchester House on the morning of Monday, July 23, 2007.” Int. Ex. No. 13. Ms. Riggs testified that this resident was encouraged to go to a Medicaid facility. Tr.

pp. 1004-1005. VL did not provide any financial assistance, including charity, to this resident at a time when, according to the testimony, VL was under-occupied and VL had advance knowledge that the resident's own funds were depleting quickly. So, rather than keeping this resident at the subject property using "charity" funding and off of Medicaid and thereby not "a burden on Public Aid," VL did the exact opposite.¹⁴

There is simply nothing of fact in the record which would lead me to conclude that the federal and state government would have an increased burden if FC did not own and operate Victory Lakes. I am unable to conclude from the record that the benefits derived from VL are for an indefinite number of persons or that VL reduces a burden on government. VL's use of the subject property is not consistent with this characteristic of a charitable organization.

Korzen factor (4): Charity is dispensed to all who need and apply for it.

Before determining whether charity was dispensed to all who needed and applied for it in 2007 at VL, it is necessary to look at what charity was actually dispensed on the subject property.

Mr. Wiberg discussed "contractual allowances" which are subtracted from "Resident Service Revenue" on VL's "Statement of Operations" to arrive at "Net Resident Service Revenue." "A contractual allowance is typically the differential between what our charges would be and what payment is." A Gift of Care, *inter alia*, is included in the contractual allowances. Tr. pp. 1149-1150. The "contractual allowances" for year-end December 31, 2007 were \$1,814,749, according to the "Statement of Operations." App. Ex. No. 30. The Applicant caused to be admitted into evidence a document entitled "Monthly Invoice Summaries-2007" which breaks down the

¹⁴ VL did not become Medicaid certified until October, 2007. Tr. pp. 1322-1323.

contractual allowances into their different components. The contractual allowances on this document are \$2,288,074. App. Ex. No. 40. The discrepancy between the contractual allowances in the “Statement of Operations” and the “Monthly Invoice Summary-2007” is approximately \$474,000.

Mr. Truesdale testified that FC considered all of the components in the contractual allowances to be charitable. Tr. p. 1259. He testified that his “belief” is that the discrepancy of \$474,000 was due to “the billing software for the previous owner may not have accurately reflected all the discounts as contractual allowances.” “Those discounts might – would potentially be reported on the first line as resident service revenue being netted against that amount as opposed to showing separately as a contractual allowance.” Tr. pp. 1339-1340. If the components of the contractual allowances were all, in fact, charitable, and the discussion below will conclude that they are not, it should be noted that there is a \$474,000 discrepancy between VL’s “Statement of Operations” and the documents admitted at the hearing which purported to show the breakdown of the components of VL’s charitable expenditures. Following is a discussion of the components of the “contractual allowances.”

One component of VL’s “charity” is what it calls “market discounts.” For the independent living units, VL takes the difference between the actual monthly rate that the resident was paying for the unit “versus what the market rate would have been, had they come in today [in 2007].” Tr. p. 1167; App. Ex. No. 33. The market rate would be the rate for the unit that the resident was currently living in. Tr. p. 1168. The total differential in the independent living units between the actual monthly rate and the market rate for 2007 was \$181,476, and this total was included as “market discounts” in

the contractual allowances of \$2,288,074 in Applicant's Ex. No. 40, VL's summary of its charitable expenditures.¹⁵ FC considers this differential to be "charity."

I find no support in Illinois case law that holds that this "market discount" constitutes charity. It should be noted that Applicant's Ex. No. 33, the supporting schedule for this "charity," shows some residents with an actual room and board charge higher than the "market rate." There was no testimony that this differential was refunded to residents who are obviously overpaying FC for room and board, based on the "market rate." The "market discount" as "charity" is comparable to Best Buy selling a television set for \$950 on Friday and finding out that their competitor sold it for \$1,000 on Monday. The \$50 difference that Best Buy "lost" is not charity. Best Buy did not make a \$50 contribution to the purchaser, the competitor or society. "For a gift (and, therefore, charity) to occur, something of value must be given for free." Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 751 (4th Dist. 2008). The "market discounts" are not something of value given for free.

Applicant's Ex. No. 32 shows a summary of VL's "Medicare Residents" for 2007. The document shows "gross charges" of \$4.9 million, which are the amounts that the resident would have been charged if they were "private pay" patients. It must be noted here that the \$4.9 million in "gross charges" represents VL's billing to private pay patients. There was no testimony at the hearing as to the cost of the services that were included in "gross charges" or whether "gross charges" included a mark-up on VL's cost and what this mark-up percentage was. Since VL had operating EBITDA of \$1.5 million in 2007 and this represented approximately 9.6% of VL's Operating Revenue (App. Ex.

¹⁵ Mr. Truesdale testified that he did not "believe" that this market discount was included in the contractual allowances in the "financials." This may account for some of the \$474,000 discrepancy between the contractual allowances as stated in the "financials" and as detailed in App. Ex. No. 40.

No. 39), it is not unreasonable to conclude that “gross charges” included a mark-up or factored in-profit.

Subtracted from “gross charges” in Applicant’s Exhibit No. 32 is, first, “coinsurance,” of \$349,000, which is the portion that Medicare requires the resident to pay, and, second, the actual Medicare payment received by VL of \$3.2 million. For the year 2007, gross charges of \$4.9 million less coinsurance and the Medicare payment received equaled \$1,324,490, (the “Medicare differential”) and VL considers this amount to be a charitable expenditure included in its contractual allowances in Applicant’s Ex. No. 40. Tr. pp. 1164, 1343. The differential of \$1,324,490 was, by far, the largest amount of VL’s “charitable expenditures,” constituting 58% of VL’s total contractual allowances of \$2,288,074. It must be noted again that the record in this case does not show whether this “Medicare differential” included a mark-up on VL’s costs, and if so, how much this mark-up was.

Illinois courts have consistently rejected the argument that unreimbursed costs of Medicare and Medicaid constitute charitable care. In Riverside Medical Ctr. v. Dept. of Revenue, 342 Ill. App. 3d 603 (3rd Dist. 2003), Riverside argued, as does VL, that the institution’s charity care also included “discounted care to patients through Medicare, Medicaid and private insurance.” Riverside claimed to provide this care at 50% of actual cost. The court stated that it was “unpersuaded” by Riverside’s arguments that the unreimbursed amounts constituted charitable care. The court was “confident that these discounts are not charitable and do not warrant a finding in favor of Riverside.” *Id.* at 610. A similar argument was advanced in Alivio Medical Ctr. v. Dept. of Revenue, 299 Ill. App. 3d 647 (1st Dist. 1998), where Alivio argued, *inter alia*, that 78% of its patient fees came from Medicaid reimbursement and 2% came from Medicare reimbursement.

The court found that Alivio was not a charitable organization and its use of the property was not charitable. Based on the established case law in Illinois, I am unable to conclude that VL's Medicare differential of \$1,324,490, which is based on VL's charges to private pay patients rather than VL's cost of providing this service, constituted a charitable expenditure.

The contractual allowances also include charitable expenditures made under the Gift of Care Program. The "FSCSC System Policy" on the "Gift of Care Program" describes the following policy: FC provides a Gift of Care Program for new and existing residents after all other resources have been exhausted. Receipt of benefits under the Gift of Care Program by new and existing residents of Franciscan Communities is subject to the separate financial resources available at each community. Tr. pp. 913-920, 1242-1247, 2046-2047; App. Ex. No. 17.

Procedures for applying for the Gift of Care Program state that new and existing residents will be considered for the Gift of Care based on the following criteria as listed by priority: (a) the availability of financial assistance funds; (b) the resident's and/or guarantor's total assets; (c) the resident's and/or guarantor's ability to obtain third party reimbursement; (d) date of original contract with Franciscan Communities to identify resident seniority;¹⁶ and (e) date of Gift of Care application. Resident applications will be reviewed in the priority in which they are received. "All applicants must have investigated all third party financial assistance programs. No resident shall be eligible for the Gift of Care Program if they fail to participate in a third party financial assistance

¹⁶ One could reasonably infer that this provision makes it more difficult for new residents to receive the Gift of Care, as consideration is given to those residents who have paid for services for a longer period of time.

program for which they are qualified. If Medicaid funds are available, the applicant must be signed up for that program.” Tr. pp. 913-920, 983-986, 1242-1247; App. Ex. No. 17.

Applicant’s Ex. No. 31 gives a listing of “Gift of Care” recipients in the assisted living units in 2007. This Gift of Care would apply to the resident’s room and board charges. Tr. pp. 1159-1161. This exhibit shows four recipients of Gifts of Care in 2007 totaling \$100,482, and this amount is included in VL’s summary of its charitable expenditures.¹⁷ App. Ex. No. 40.

Mr. Wiberg testified with regard to a document entitled “Victory Lakes Care Center,” which shows “all of the individuals at the [continuing care center] that would have received a Gift of Care or a draw down for the entire calendar year 2007.” Tr. p. 1155; App. Ex. No. 30. The Applicant considers “draw downs” to be charity. Mr. Truesdale provided an explanation for “draw downs.” “In addition to the Gift of Care, there is a Gift of Care for residents that were drawing down on their entrance fee. Those are residents that have the inability to pay for their current services, but under the terms of their residency agreement, they have a refund of their entrance fee coming, to 90% of the entrance fee that they might have put down or whatever percentage applied to their specific residency agreement.” “We allow that resident to apply that portion of the refundable entrance fee against their current charges.” Tr. pp. 1256-1257. “The reason that the entrance fee [draw down] is charitable is under the terms of the residency agreement, the resident is not entitled to the refundable portion of their entrance fee until they have vacated their unit, their unit has been resold, and potentially they’ve left the

¹⁷ App. Ex. No. 40 also contains “life care discounts” in the amounts of \$95,524 in the assisted living units and \$31,019 in the continuing care center. “The life care discounts represent benefits that the residents had in their residency agreement when they moved into independent living that gave them certain [financial] benefits when they moved into assisted living or the nursing home.” Tr. p. 1257. Mr. Truesdale testified that life care discounts are not considered charity. “Those are the terms of the residency agreement that the resident came in under.” Tr. pp. 1263, 1341.

campus.” “So in essence we have refunded their resources before they were entitled to it.” Tr. pp. 1259-1260.

The total entrance fee draw down, as listed in VL’s summary of its “charitable expenditures” is \$128,647.¹⁸ App. Ex. No. 40. I note that this “charity” actually consists of a resident using the refundable portion of the entrance fee that the resident paid to FC upon entering the facility, against their current charges. This is the resident’s own money. As Mr. Truesdale noted, the draw down is “their resources.” FC is not contributing any money to this resident although FC is allowing the resident to take and use his own money earlier than the residency agreement allowed, for the purpose of paying FC for services and use of the VL property. I find no support in any case in Illinois for concluding that this draw down constitutes charity on the part of FC. It is comparable to a homeowner using his equity in his home before selling it. The mortgagor does not consider this “charity.”

Allowing residents to take “their” own money early is an accommodation. It is not charity. This is certainly true since even the draw down is limited to only 90% of the entrance fee. Once the entrance fee is paid, the resident automatically loses, and FC retains, 10% of that money along with any interest that accrues on the entire entrance fee over the time that VL retains the funds.

Applicant’s Exhibit No. 30, the back-up for Gift of Care recipients in the continuing care center, shows 8 Gift of Care recipients in 2007. The amount of the Gift of Care in 2007 for the continuing care center was \$419,812.¹⁹ Tr. pp. 1152-1158. The

¹⁸ I am unable to reconcile this total with the monthly statements in App. Ex. No. 30, which constitute the back up for the draw downs in App. Ex. No. 40.

¹⁹ App. Ex. No. 40, Applicant’s summary of its charitable expenditures, shows this total to be \$426,429. In March, 2007, VL included a \$500 “CCRC Reduction” in its Gift of Care total. In March, 2007, VL excluded a \$500 “CCRC Reduction” from its Gift of Care total. In April, 2007, VL excluded \$1,000 in “CCRC Reductions” from its Gift of Care total but included \$5,042.10 designated as “Room Rate

total Gift of Care for the continuing care center and the assisted living units was \$520,294 (\$419,812 plus \$100,482). Twelve residents received a Gift of Care. The subject property contains 140 independent living units, 60 assisted living apartments and 120 beds in the continuing care center. If one resident occupied each space at 100% occupancy, VL had space for 320 residents. VL provided a Gift of Care to 12 of these 320 residents, less than ½ of 1%.

In fact, the Gift of Care is applied against the resident's bill. For example, if a resident is billed by VL for \$4,000 in monthly service charges, the Gift of Care is applied against that charge. However, similar to the "gross charges" that VL used to calculate its Medicare differential, there is no evidence of record as to whether the "monthly service charges" includes FC's mark-up on its services and, if so, what this mark-up percentage was. Even after the reduction in the bill for Gift of Care, FC may still be profiting from the resident. The Notes to FC's Financial Statements state that "[C]harity Care provided by the Corporation is measured as charges foregone based on established rates..." App. Ex. No. 38. The Gift of Care amounts represent FC's foregone revenue, but not the foregone cost to FC. In Provena Covenant Medical Center v. Dept. of Revenue, 384 Ill. App. 3d 734, 759 (4th Dist. 2008), the court recommended that charity be measured by cost. Measuring charity by foregone revenue is "the illusion of charity." *Id.* at 760.

The Gift of Care of \$520,294 represents less than 1/3 of 1% of VL's "Resident Service Revenue" of \$17.4 million for the twelve months ending December 31, 2007. App. Ex. No. 30. "To be charitable, an institution must give liberally." Provena

Reduction \$57.93/Day" in its Gift of Care total. There is no evidence of record as to what constitutes CCRC Reductions or Room Rate Deductions.

Covenant at 750. Based upon its own financial statements, I cannot conclude that FC has given “liberally.” The disparity between FC’s Gift of Care and its “Resident Service Revenue” is so extreme that it is disingenuous to maintain that the primary use of this property is to provide charity. This is especially applicable when one considers that in 2007, the occupancy rate at VL was 75% for the independent living apartments, 83% for the independent living homes, 85% for assisted living units and 79% for the continuing care facility. Int. Ex. No. 24. Thus, while the subject property had many available units, the Applicant did not provide units in any significant number to those who could not meet the financial requirements. In order to obtain an exemption for charitable use, an organization is required to prove that its primary purpose is charity. The figures showing FC’s Gift of Care for 2007, both in terms of dollars and in terms of persons receiving assistance, fall far short of meeting the primary purpose standard.

VL’s argument as to why it meets the Korzen guideline that charity is dispensed to all who need and apply for it is that, according to the testimony, all residents who requested Gift of Care assistance in 2007 received it. Ms. Riggs could not recall how many individuals applied for charitable assistance in 2007, but “100 percent” were approved. Tr. pp. 878, 1794-1795.

This statement by Ms. Riggs is not exactly correct. Requests for Gift of Care were first reviewed by Ms. Riggs and a controller. They would then present the requests to the Gift of Care Review Committee which included the chief financial officer, legal counsel and the vice president of operations. Tr. pp. 1821-1822. The minutes of the March 8, 2007 meeting of the “Corporate Gift of Care Review Committee” show 7 applications for Gift of Care assistance, with 4 applications approved. According to the minutes, Applicant “DG” received a Gift of Care of \$2,000 per month effective March 7, 2007

through June 30, 2008. “EM” received a Gift of Care of \$5,500 per month through June 30, 2008. “TV” received a Gift of Care of \$6,400 per month, effective March 7, 2007 through June 30, 2008. “PS” received a Gift of Care in the amount of \$1,500 per month through June 30, 2008, after asset spend down of \$10,000 in existing assets. “VL” received a Gift of Care “to be determined” after she “spent down” “\$45,000 of available \$55,000 in savings.” The Committee requested that applicants “AM” and “GP” provide additional information. Tr. pp. 991-994, 1824-1834, 1843-1846; Int. Ex. No. 11.

The minutes of the October 15, 2007 meeting of the “Corporate Gift of Care Review Committee” show 6 applications for Gift of Care assistance, with 2 approvals. According to the minutes, Applicant “NM” received a Gift of Care of \$3,388 per month through June 30, 2008. “PZ” received a Gift of Care for \$4,206 per month through June 30, 2008. Two applicants, “AT” and “GP,” were denied Gifts of Care assistance at that time because they had not exhausted all third party payer sources prior to application. “Should Medicaid benefits not be approved, [their] application[s] may be resubmitted for reconsideration.” The request for assistance by applicant “ME” was held pending the sale of her home. Additional information was requested from applicant “RP.” Tr. pp. 995-995, 1838-1842; Int. Ex. No. 12.

The names of five residents²⁰ requesting Gift of Care in 2007, and not receiving it, as shown in the minutes of the March 8, 2007 and October 15, 2007 meetings, do not appear in Applicant’s Ex. No. 30, which lists all individuals residing in the continuing care center who received the Gift of Care in 2007 or in Applicant’s Ex. No. 31, which lists all residents residing in the assisted living units that received the Gift of Care in 2007. If 100% of the residents who requested a Gift of Care received it, as Ms. Riggs

²⁰ The five residents are GP, AM, ME, AT, GP.

testified, they did not receive it in 2007, which is the year at issue in these proceedings. Tr. pp. 1824-1842. And as discussed previously, resident “AM,” who requested a Gift of Care according to the minutes of the March 8, 2007 Gift of Care Committee, did not receive assistance and, instead, moved to Winchester House in July, 2007, when her application for Medicaid was approved. Int. Ex. No. 13.

VL’s argument that charity is provided to all who need and apply for it also fails to recognize that VL financially screens all applicants before they are admitted onto the subject property. Accordingly, the population on the subject property has already met VL’s stringent financial requirements for living there. The likelihood that these residents will ever need financial assistance is minimal, by Applicant’s design, as can be inferred by the substantial up front fees paid by the residents. In addition, if the residents of independent living have to eventually and permanently move to assisted living or continuing care, they will not be asking for FC’s financial assistance because they can draw down their own 90% refundable entrance fees.

Charging fees and rendering benefits to persons not poverty-stricken does not destroy the charitable nature of an organization, but this is only true to the extent that the organization also admits people who need and seek the benefits offered but are unable to pay. Small v. Pangle, 60 Ill. 2d 510 (1975). There was no evidence or testimony at the hearing that charitable assistance was provided to any applicant who appeared through VL’s financial screening to be unable to afford to live on the property. The record in this case does not show that VL admitted any residents in 2007 who were unable to pay for its services. VL’s financial screening of applicants, which allowed VL to have to provide some degree of charitable assistance to only 12 residents, results in a reasonable conclusion that VL does not dispense charity to all who need and apply for it, and that

VL is not “exclusively” using the property for charitable purposes. The Korzen criteria that a charitable organization dispense charity to all who need and apply for it is “more than a guideline.” It is an “essential criteria” and it “goes to the heart of what it means to be a charitable institution.” Provena Covenant at 750. VL’s use of the subject property is not consistent with this characteristic of a charitable organization.

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

The record shows conclusively that VL and FC placed several obstacles in the way of those who needed and would have availed themselves of its “charitable” benefits in 2007.

Ms. Riggs testified that “for a short time” after FC purchased the subject property, she continued to use marketing materials from the previous owner, Victory Health Services. Tr. pp. 928-930, 1778-1780. These marketing materials do not mention that financial assistance is available. The marketing materials obviously do not mention the Applicant’s Gift of Care Program because the materials were developed by Victory Health Services, the prior owner of VL. App. Ex. No. 23; Int. Ex. No. 3. Ms. Riggs testified that after FC purchased the property, she received the Gift of Care brochure, but she could not be certain when she received it. Tr. p. 1781. She testified that FC eventually changed the prior owner’s marketing materials. She was then asked “[A]nd when they changed the material, did they include in it a Gift of Care brochure?” She responded: “That’s my assumption, yes.” Tr. pp. 1785-1786.

The Gift of Care brochure, admitted into evidence as Applicant’s Ex. No. 19, was printed in August of 2005, before FC purchased the subject property. It lists all of FC’s

“locations” but it does not list VL. Tr. pp. 920-921; App. Ex. No. 19. Ms. Riggs testified that she used a Gift of Care brochure that had VL listed as one of FC’s locations. The Gift of Care brochure that Ms. Riggs used, which according to her testimony listed VL as a Franciscan Community, was not offered into evidence. No explanation was given as to why the Applicant would cause to be admitted into evidence a Gift of Care brochure, which did not mention VL, when there was alleged to be a brochure available that included VL.

The record in this case shows that Ms. Riggs “assumed” that the Gift of Care brochure was included with the marketing materials sent to prospective residents. The Gift of Care brochure admitted into evidence by the Applicant does not list VL as a location where the Gift of Care is available. The record does not allow me to conclude that the general public, including prospective residents at VL, would know that charitable assistance was available at VL in 2007, and this is a significant obstacle in the way of anyone who wished to reside at VL in 2007, but could not afford the substantial fees. I cannot recommend an exemption based on Ms. Riggs’ “assumption.” The testimony and the evidence on this matter does not constitute the type of clear and convincing evidence required to show entitlement to an exemption based on the charitable use of property.

When new residents moved into VL, they were given a resource guide. A brochure entitled “Independent Living Resident Resource Guide” was presented to residents as they moved into the independent living units. Tr. pp. 927-928, 1783-1784; App. Ex. No. 22. A brochure entitled “Assisted Living Resident and Family Resource Guide” was presented to new residents and families in the assisted living unit. Tr. pp. 924-926, 1783-1784; App. Ex. No. 21. A brochure entitled “Skilled Nursing & Long-Term Health Care Resident and Family Resource Guide” was presented to each resident

and family when a patient was admitted to the continuing care center. Tr. pp. 923-924, 1783-1784; App. Ex. No. 20. Each of the resource guides has pocket sections in the back where additional materials could be inserted. The pocket sections in each of the guides admitted into evidence are empty. Ms. Riggs did not “remember specifically” what was inserted in the pockets. Tr. p. 927.

In all three guides, under the section entitled “Gifts and Donations,” “residents, family members and friends” are advised as to how they can show their “appreciation and support” and “gratitude” to FC. But none of the three resource guides mention the Gift of Care Program or that any financial assistance is available. In fact, the guide for the skilled nursing section states that “[I]f you do not cooperate in the Medicaid application process and subsequently run out of funds, the community cannot guarantee your occupancy.” App. Ex. No. 20. As discussed previously, the record does not show how prospective residents at VL and the general public were advised of the Gift of Care Program in 2007. The record also does not show how a resident moving into VL in 2007, or a current resident at VL in 2007, who had passed the financial entrance requirements, would have been advised of the Gift of Care Program. This is an obstacle in the way of any resident or prospective resident who would avail themselves of VL’s charitable assistance in 2007.

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

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

The record in this case does not show that the “general public” knew that the Gift of Care was available at VL in 2007. The record in this case does not show that FC advertised the Gift of Care in any of its brochures to residents moving into the property or currently living on the property in 2007. The Applicant has not shown that its Gift of Care Program was widely disseminated or that all of its prospective or existing residents were made aware of the availability of financial assistance, let alone encouraged to apply for it.²¹ These are obstacles to receiving benefits. A charity dispenses charity and does not obstruct the path to its charitable benefits. Eden Retirement Center v. Dept. of Revenue, 213 Ill. 273, 287 (2004).

FC’s “Fiscal 2007 Budget” lists “financial assistance (charity)” as budgeted for \$360,000 for all Franciscan Communities in 2007. Tr. pp. 2066-2068; App. Ex. No. 48. There is no information in the “Fiscal 2007 Budget” as to how this \$360,000 in “financial assistance (charity)” was determined. There was no testimony at the hearing as to whether the financial assistance is a percentage of budgeted revenue or whether it is based on the occupancy or vacancy rates at the Franciscan Communities or whether it is based on EBITDA. There was no testimony as to the standard or benchmark that FC

²¹ Sister Francis Clare testified on direct examination that FC’s “charity care policy” was put on VL’s website. When asked how she knew this she stated: “I know because it was reported back that the changes were made.” Tr. p. 2856. On cross-examination, Sister stated that “SK” advised her “in writing” that the website had been updated. She did not know the date of the writing. When asked if the update occurred in 2007, she responded, “[I] would have to say I don’t know.” Tr. pp. 2874-2875. On redirect, Sister testified that she relied on reports that she received from SK regarding the website in 2007. Tr. p. 2891. No copy of the 2007 website was offered into evidence by the Applicant. No “writing” from SK was offered into evidence by the Applicant.

used in budgeting for financial assistance. Without a standard or benchmark, I cannot determine if the Gift of Care truly represents “charity” on the part of FC. “... [T]he Korzen factor that charity be dispensed ‘to all who need it’ is not limited to the past but also requires an assessment of future policy.” Wyndemere Retirement Comm. v. Dept. of Revenue, 274 Ill. App. 3d 455, 460 (2d Dist. 1995). There is no evidence in the record as to how the budget for financial assistance was determined. Therefore, whether FC will provide a sustainable level of financial assistance in the future is pure speculation. *Id.* at 458.

In addition, the brochure advertising the Gift of Care Program states that “[A]cceptance into the Gift of Care Program depends on both financial need and the level of financial assistance funds currently available within the community. There may be a waiting list of applicants for the program” “If funding is not available, or a resident does not qualify for the Gift of Care Program, the local Franciscan Community will offer assistance in finding other appropriate options.” Tr. pp. 920-922, 1782-1783; App. Ex. No. 19.

Procedures for applying for the Gift of Care Program state that in order for assistance to be awarded, the local Community must have financial assistance funds available or expect to have financial assistance funds available during the period of time in which those funds would be needed. The procedures state specifically that “[T]here is no guarantee that such financial assistance funds will be available at the time of application or any time thereafter.” Franciscan Communities reserves the right to withdraw financial assistance under several circumstances including, *inter alia*, funds designated for this purpose become depleted. Tr. pp. 913-920, 1242-1251, 1314-1315; App. Ex. No. 17.

Form letters are attached to the “Franciscan Sisters of Chicago Service Corporation System Policy” on the “Gift of Care Program.” There are two financial assistance rejection letters, for “lack of financial assistance funds” and “not qualified.” The form letter for “lack of financial assistance funds” states that “[R]egretfully, we have exhausted the assistance funds available at this time. However, the Corporate Review Committee has determined that you qualify for the Gift of Care Program and will place your name on the waiting list.” “We deeply regret that you may have to leave Franciscan Communities if financial assistance funds do not become available. Unfortunately, we do not have unlimited financial resources available to serve those in need.” Tr. pp. 913-920; App. Ex. No. 17.

While, as discussed previously, FC dispensed approximately \$520,000 in Gift of Care at VL in 2007, the record in this case supports a conclusion that there is nothing firm about the Gift of Care Program. Importantly, there is no information in the record as to how the Gift of Care funding is determined. The documents concerned with the Gift of Care make it clear that funds are limited and there is “no guarantee” that the amount funded in 2007 will be dispensed again. There is “no guarantee” that financial assistance will be available to a resident when requested. If a resident received a Gift of Care, there is “no guarantee” that the Gift of Care will be available “at any time thereafter.” Because of the overwhelmingly speculative nature of the Gift of Care, it is difficult to consider it as a factor which governs the operation of the subject property. *Id.* at 458.

The speculative nature of the Gift of Care Program is obviously an obstacle in the way of those needing assistance. In any given year, the number of residents at VL needing assistance from FC may exceed the budgeted and available amounts, and this could occur as FC enjoyed the substantial financial benefits of the property tax exemption

that they are requesting from this tribunal. The “no guarantee” provisions, which clearly limit the number of people who may receive assistance and the speculative nature of the dollar amount of assistance available, force me to conclude again that FC places obstacles in the way of those who would avail themselves of VL’s charitable benefits. The Korzen criteria that a charitable organization place no obstacles in the way of those needing assistance is also “more than a guideline.” It is an “essential criteria” and it “goes to the heart of what it means to be a charitable institution.” Provena Covenant at 750. VL’s use of the subject property is not consistent with this characteristic of a charitable organization.

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

I have balanced the above considerations against factors showing some charitable use of the subject property in 2007. Monthly in 2007, each of the Franciscan Communities, including VL, compiled social accountability statistics which were then compiled into a “Social Accountability Summary” report. Ms. Riggs testified that this report shows the total number of people who may have been impacted through one of the avenues of social accountability. Tr. p. 907. Mr. Truesdale testified that the report showed “what we provide to the community in addition to Victory Lakes, the community at large, Lindenhurst, etc., to meet some of the service needs.” Tr. p. 1294.

The report shows that in 2007, 8,265 residents, associates or members of the greater community were impacted through VL’s social accountability. VL associates volunteered 1,341 hours doing some kind of community service in 2007. These hours would have a dollar value (at \$14/hour, according to the report) of \$18,774. In 2007, 4,372 volunteer hours were contributed to VL. Tr. pp. 899-908; App. Ex. No. 16.

Volunteers from VL walked in “Relay For Life,” held in Antioch, which helped to raise money for the American Cancer Society. Volunteers at VL spent time with residents, helped them get back and forth to chapel and scheduled activities and assisted with filing in VL’s offices. Some home-schooled children came to Victory Lakes and did crafts with the residents. Tr. pp. 723, 891.

The Social Accountability Report also shows that in 2007, 1,627 hours of free space was used at VL for community events without charge. Ms. Riggs testified that Kiwanis Club met at VL, and “[T]here may have been other community groups, who came in, held meetings at our facility without charge for a total of 1,627 hours.” Ms. Riggs did not “recall” if a dollar amount was assigned to the hours used for community events. However, the report assigns a dollar value of \$1.09 to each hour of space used for community events without charge. VL’s 1,627 hours would have a value, according to this calculation, of \$1,773. Tr. pp. 908-909; App. Ex. No. 16.

The Social Accountability Reports also shows that cash donations from FSCSC to VL were \$554. Cash donations from associates to VL were \$390. In-kind donations by FSCSC to VL were \$1,331. In-kind donations by associates to VL were \$363. Tr. pp. 909-910, 1292-1295, 1504-1505; App. Ex. No. 16.

Ms. Jeanette Lindish, Vice-President of Mission Integration and Pastoral Care for FSCSC, testified that social accountability encourages “our communities to take time, money, people, resources from the bottom line, if you will, of Victory Lakes or from any Franciscan Communities and offer them in service to the community outside of our doors.” Tr. pp. 1504-1505. Mr. Truesdale testified that the value of all services provided by VL in the Social Accountability Report “approximates \$10,000.” Tr. p. 1295. It is unclear how he arrived at this total.

Further, the statute which allows exemption from property taxes for charitable use requires that the property not be leased or otherwise used with a view to profit. 35 ILCS 200/15-65. Applicant's PTAX-300 states that "[E]lderly residents are also able to access multiple amenities without leaving the premises, such as a bank, beauty salon, barber shop, computer center, county (sic) store, health and fitness center, and library. App. Ex. No. 49. Similarly, "The Common Thread" newsletter, which announced the addition of VL to Franciscan Communities, states that residents enjoy the convenience of onsite banking, a beauty salon/barbershop, country store and library just outside their doors. App. Ex. No. 26. It was elicited in testimony that there was a café on the subject property in 2007. Tr. p. 2389.

There was no testimony or evidence at the evidentiary hearing as to who operates these "amenities" located on the subject property. There was no testimony at the evidentiary hearing as to whether the space for these amenities was leased or rented to businesses to operate them. There was no testimony at the evidentiary hearing as to whether the space for the amenities was leased or rented for a profit. No leases or rental agreements were offered into evidence. VL's "Statement of Operations" for December 31, 2007 shows "Other Revenue" of \$114,887. App. Ex. No. 39. No explanation was offered at the hearing as to the components of "Other Revenue," and whether this account included leasing or rental income from the bank, the café, the county store or any of the other amenities located on the subject property. Because FC had the burden of proof to show that it was entitled to an exemption for charitable purposes, the lack of testimony and evidence on the issue of VL's "Other Revenue" must be construed against them.

Counsel for the Applicant stated in his opening argument that "case law would allow" "a one hundred percent exemption of the property." Tr. p. 13. However, there is

no testimony in the record or information in the PTAX-300 with regard to the actual space used at VL for the amenities described above. If I had concluded that any part of this property was entitled to an exemption for charitable purposes, I would have had to recommend that the exemption be denied for one hundred percent of the property because I am unable to carve out the areas used for the bank, the country store, the café, the beauty shop, the barber shop and the other areas mentioned above.

The six Korzen factors require a determination of whether charity is the primary use of the property or rather whether it is a secondary or incidental use. 35 ILCS 200/15-65 of the Property Tax Code requires that the subject property be “exclusively” used for charitable purposes. An “exclusively” charitable purpose need not be interpreted literally as the entity’s sole purpose; it should be interpreted to mean the primary purpose, but not a merely incidental purpose or secondary purpose or effect. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987).

In 2007, Victory Lakes failed to satisfy six of the six Korzen factors, used to determine whether an entity is used “exclusively” for charitable purposes. VL earned \$17.4 million in revenue from providing its services in 2007 and provided, in the best case scenario, \$528,294 in charity care to 12 residents. This, along with a consideration of all the facts relating to the operation of the subject property in 2007, establishes that the Applicant’s charity on this property represents an incidental act of beneficence that is legally insufficient to establish that Victory Lakes “exclusively” uses its property for charitable purposes. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956). It is clear from the record in this case that Victory Lakes’ facilities are accessible only to those who have the substantial funds to lease the space and pay for the services provided.

Illinois courts have determined that these factors do not constitute a charitable purpose sufficient to qualify for the requested exemption.

The primary purpose of Victory Lakes is not to provide charity, but to provide a certain enhanced lifestyle to seniors who can afford to pay for it. Wyndemere Retirement Comm. v. Department of Revenue, 274 Ill. App. 3d 455 (2d Dist. 1995). The record in this case does not allow me to conclude that the exclusive use of the subject property is for charitable purposes and accordingly, I recommend that the Department's determination denying the exemption for charitable purposes be affirmed.

CONCLUSIONS OF LAW: RELIGIOUS EXEMPTION

The provisions of the Property Tax Code that govern religious exemptions are found in Section 15-40. Section 200/15-40(a) exempts property used exclusively for religious purposes, school and religious purposes or orphanages as long as the property is not used with a view to profit. Section 15-40(b) exempts property that is owned by churches, religious institutions or religious denominations and that is used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents, and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, including the convents and monasteries where persons engaged in religious activities reside. The statute states specifically that “[A] parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when persons who perform religious related

activities shall, as a condition of their employment or association, reside in the facility.”
35 ILCS 200/15-40.

Victory Lakes is a “housing facility” that is owned by a religious institution, Franciscan Communities. No Franciscan Sister, minister or priest lived on the subject property in 2007. Tr. pp. 324, 794, 2309-2310. Ms. Elizabeth Heffernan, Director of Mission Integration and Pastoral Care at VL, resides in Wisconsin. Tr. p. 685. Ms. Jeanette Lindish, Vice-President of Mission Integration and Pastoral Care for FSCSC, worked at the corporate offices in Homewood, Illinois. Tr. p. 1645. Accordingly, the subject property was not exclusively used for “religious purposes” under subsection (b) of the statute in 2007 because no person who performed religious related activity resided on the facility as a condition of their employment. In fact, no person who performed religious related activity resided on the subject property, for any reason, in 2007. Therefore, if the subject property qualifies for exemption under Section 15-40 of the Property Tax Code, it must qualify under subsection (a) as property used “exclusively” for religious purposes.

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 Illinois legislature intended to confer. Exempting the subject property for religious purposes under subsection (a) would require

an extraordinarily liberal reading and interpretation of the religious exemption statute which, as noted above, must be strictly construed in favor of taxation and against exemption. The record in this case shows conclusively that Applicant is unable to meet the requirements of Section 15-40(a), except for the chapel located in the continuing care center on the subject property.

Section 15-40(a) 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 determined in the instant case is what use constitutes the “exclusive” use of the subject property. 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). Property satisfies the exclusive-use requirement of the property tax exemption statutes if it is primarily used for the exempted purpose, even though it may also be used for a secular or incidental purpose. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983).

The record in this case shows that the exclusive use of the subject property in 2007 was to provide housing to seniors. FC’s Form 990, “Return of Organization Exempt from Income Tax” states that “[t]he primary exempt purpose of Franciscan

Communities, Inc. is to provide independent living, assisted living and nursing care to seniors.” Int. Ex. No. 25. When residents moved into VL, they were given a resource guide. A brochure entitled “Independent Living Resident Resource Guide” was presented to residents as they moved into the independent living units. Tr. pp. 927-928, 1783-1784; App. Ex. No. 22. A brochure entitled “Assisted Living Resident and Family Resource Guide” was presented to new residents and families in the assisted living unit. Tr. pp. 924-926, 1783-1784; App. Ex. No. 21. A brochure entitled “Skilled Nursing & Long-Term Health Care Resident and Family Resource Guide” was presented to each resident and family when a patient was admitted to the continuing care center. Tr. pp. 923-924, 1783-1784; App. Ex. No. 20. Each of the resource guides contains information “to guide you as you settle into your new residence.” In each of the resource guides, the President and CEO of FSCSC welcomes the residents “as you make your new home at Franciscan Communities.”

The residences on the subject property include 140 independent living apartments and garden homes, 60 assisted living apartments, and 120 beds in the continuing care center. App. Ex. No. 26. Residents live in the independent living apartments and homes, assisted living apartments and continuing care center 24 hours/day, 7 days/week, 365 days/year. It is abundantly clear that the subject property is used primarily and exclusively to provide housing to seniors.

The requirements for living on the subject property, as discussed previously, are that residents sign a residency agreement, provide financial information showing that they can afford to live on the subject property, pay a security deposit or entrance fee up front and then pay a monthly service charge while in residence. There is no requirement that residents be Catholic to live on the subject property. There is no evidence in the

record as to how many of the residents are Catholic. There is no testimony or evidence in the record that residents have to be religiously inclined to reside on the subject property. Applicant's PTAX-300, "Application for Non-homestead Property Tax Exemption" states that Victory Lakes is open to aged persons of all races, faiths and backgrounds, "and even those of no faith." "Victory Lakes is open to persons of all religious and non-religious backgrounds." App. Ex. No. 49.

Ms. Heffernan, Director of Mission Integration and Pastoral Care on the subject property, testified that it was not her job to "force" the Sisters' religion or mission on residents. "[I]f people want to take up on that and embrace that, that's certainly their option." Tr. p. 701. In the year 2007, one resident at VL expressed an interest in converting to Catholicism, but did not go through the Rights of Christian Initiation process. Tr. pp. 201-202, 794-799. Sister Diane Marie testified that the Sisters "evangelize by example" and that a resident "would be able to see what a person who believes in Jesus Christ and lives the gospel, how do they act, how do they give service, how do they minister." By observing this example, a person might convert to the Catholic faith. Tr. pp. 198-199.

The Applicant is asking for a religious exemption for 320 residences on the subject property when the people residing in the residences may be indifferent, or even hostile, toward religion. This puts the Applicant in the very unique position of asking for a religious exemption for 320 residences in which, according to the Applicant, there may be no religious activity because the residents may be non-religious. It would be unreasonable to conclude that the subject property is primarily used for religious purposes when the evidence and testimony in the record shows no connection or

association between “religion” and the 320 residences and the residents residing on the subject property.

There can be only one primary use of property. The religious exemption statute, 35 ILCS 200/15-40, requires that an exemption be given only if the use claimed for exemption is the exclusive use of the property. The legislatively mandated requirement that property be “exclusively” used for the exemption claimed cannot be disregarded and the fundamental and primary use of the property cannot 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). VL may have more than one use but the question of whether it is entitled to exemption for religious purposes must be determined from its primary use. The evidence and testimony clearly indicate that the subject property’s primary use is as a residence for seniors. I cannot recommend an exemption for religious purposes for 320 residences at VL when the record is devoid of any evidence or testimony showing the religious use of these residences.

Counsel for the Applicant cited decisions of courts of other states regarding tax exemptions on facts comparable to the instant case. However, the numerous decisions of the Illinois courts in this matter provide me with a comprehensive background for deciding the issue presented and I see no reason to rely on decisions from other jurisdictions that are based on a different statutory and constitutional framework. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968).

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.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911), (hereinafter McCullough). Several years later, the Illinois Supreme Court explained that its pronouncement in McCullough “was not stated as inclusive of everything that might in the future be regarded as a use for religious purposes but as illustrative of the nature of such use.” People ex rel. Carson v. Muldoon, 306 Ill. 234, 238 (1922). However, if public worship, Sunday schools and religious instruction are “illustrative of the nature of [religious] use,” it must follow that “religious use” has a determinable nature and that to be a religious use, the activity must somehow resemble the activities in Deutsche Gemeinde. Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 767 (4th Dist. 2008).

Although some of the Applicant’s use of the subject property may constitute religious use as defined in McCullough, I am unable to conclude that the property, other than the chapel, 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. There is no testimony or evidence in the record as to the religious use of the 320 residences on the subject property. The Applicant did present testimony and evidence at the hearing regarding religious use of various areas of the subject property, excluding the 320 residences. There was no testimony at the hearing, and I am unable to conclude, that any specific identifiable area at VL, other than the chapel, was used exclusively for religious purposes in 2007. Sister Diane Marie testified that, other than the chapel, “[T]here are no

designated religious spaces” at Victory Lakes. Tr. p. 210. The property tax exemption is based on space used and the statute requires that the space be exclusively used for the exemption claimed.

Franciscan Sisters of Chicago was founded by Josephine Dudzik, later known as Mother Mary Theresa Dudzik, on December 8, 1894, in Chicago. App. Ex. Nos. 2 and 24. FSC is a pontifical institute of religious women reporting to the Pope. FSC were approved and recognized as a religious institute by the Pope in 1936. Tr. pp. 120-122. People who have been chosen and called to take either vows or promises in religious institutes that are recognized by the Church participate in “religious life.” The purpose of religious life is to enable the individuals in the community to pursue holiness in witness within the Catholic Church. Tr. pp. 126-129, 294, 489-490, 496-497, 545-546, 557-558; App. Ex. No. 3.

A “charism” is a spirit that impels a person to perform a certain mission or ministry. Mother Mary Theresa’s charism statement was that she felt the misery and suffering of others and felt that she could not love Jesus or gain heaven unless she cared for the needs of her brothers and sisters. The charism of FSC is to meet the needs of seniors and the infirm. App. Ex. No. 49. This charism is implemented through the Sisters’ ministries. Tr. pp. 129-135, 625, 694, 1202. Those in the Catholic Church who have taken on a charism, who have been recognized within the life of the Church as having a special competency, have an enhanced responsibility to carry on the mission or ministry of the charism. Tr. pp. 474-475. From a Catholic perspective, the service that is engaged in through the charism of FSC is an essential work of the Church. From a Catholic perspective, it is a religious activity. According to the Catholic Church, what is done by nature of religious inspiration is religious work. Tr. pp. 487-488, 1361.

In 1965, the Catholic Church issued a decree, entitled “Perfectae Caritatis,” which guided the Church in implementing the vision of the Second Vatican Council. Chapter 47, entitled “Decree on the Up-To-Date Renewal of Religious Life,” describes the obligation of those in religious life to live their life in accord with their commitment to poverty, chastity and obedience in a spirit of service within the Church. Franciscan Sisters of Chicago profess vows of poverty, chastity and obedience. Tr. pp. 224-225. The decree describes how those who are living in religious life should express their religious commitments in a manner that is governed by charity, in the sense of service, nurtured by prayer and then expressed in the life of the Church, committed to its mission. Tr. pp. 554-563, 2194; App. Ex. No. 9.

Ms. Riggs testified that a pamphlet entitled “The Venerable Servant of God, Mother Mary Theresa, OSF,” which contains information on FSC’s foundress, Mother Mary Theresa, was given to each employee at VL. Ms. Riggs “believed” that the pamphlet was also “available for residents.” Tr. pp. 930-931; App. Ex. No. 24. Ms. Riggs testified that there were “several” crosses throughout the community. Tr. p. 847. Sister Diane Marie testified that when “we go into a community, we take with us two things that we place in the community.” These two things are a photograph of Mother Mary Theresa and the San Damiano cross, “which is a Franciscan cross that spoke to St. Francis.” The San Damiano cross is an artistic rendering of the cross attributed to St. Francis of Assisi. Tr. pp. 217, 759-760. Ms. Lindish testified that the “majority” of their “religious art” was placed in the entranceway of the independent living and assisted living apartments and in the entranceway to the continuing care center, “where people would first walk in our doors.” “Religious art” included pictures of Jesus, Mother May Theresa, pictures of the heritage of the Franciscan Sisters, and a “Tau” cross, which is a

symbol of the Franciscan order. Tau and San Damiano crosses were also placed “in some of the common areas where people gather in community.” Crosses and religious symbols were provided in offices and private spaces, if requested. Tr. pp. 1370-1372.

People of various faiths often place religious symbols or religious art in their entranceways or living spaces. For example, people of the Jewish faith often attach a mezuzah to the doorpost of their residence, as commanded in Deuteronomy. Webster’s New World Dictionary, p. 855 (3d. ed. 1988)(definition of mezuzah). This “religious art” may reflect the personal spiritual beliefs of the owner but it does not indicate, in and of itself, that the residence is used for religious purposes and no exemption is provided for such a residence in the Property Tax Code. Similarly, the religious art displayed at VL reflects the spirituality of the Franciscan Sisters of Chicago. It does not, however, reflect the spirituality of the residents, who may have no religious affiliation, and it does not indicate that the 320 residences are used for religious purposes. My research indicates no reported case in Illinois where the hanging of religious art or artifacts in entranceways, offices and private spaces constituted public worship, Sunday school or religious instruction. McCullough, *supra*. If such were the case, every home or business operation that displayed religious art, which reflected the personal religious belief of its resident or business owner, would qualify for the property tax exemption. I cannot conclude that Illinois legislators intended such an extreme result.

Ms. Lindish was asked if any art or religious objects were placed in the residents’ rooms. She responded: “The residents’ rooms are their private spaces, and they are certainly – we ask them if there is anything we can provide for them or help them get that they want, but we don’t insist that a cross goes into every resident’s room because residents have to live there and it should be comfortable for them.” Tr. p. 1372. This

testimony by Ms. Lindish echoes my argument, above, as to why the 320 private residences on this property cannot reasonably be exempted for religious purposes. There is no requirement that residents be religiously inclined in their “private space.” Residents live in this private space and they may be “comfortable” with no religious art, and no religion, in their residence. The record is devoid of any evidence that putting religious art in the entryways of the residences or in the offices and private spaces at VL makes a resident living at VL “religious.” The record is devoid of any evidence that putting religious art in the entryway of the residences indicates that the 320 residences are being used for religious purposes.

Ms. Heffernan testified that she is employed full-time at VL to carry out the mission, values and vision of the Franciscan Sisters.²² Tr. pp. 701-703. She testified that as part of Franciscan Communities’ pastoral care standards, VL issued a monthly “Pastoral Care Benchmarking” report in 2007. In January, 2007, the report shows the following “Worship Opportunities Provided” at VL: 4 “Sunday Christian Worship Services” held in the chapel of the continuing care center; 4 “Sunday Lutheran Worship Services,” “communion offered twice a month,” held in the health and fitness center of the independent living apartments; 4 “Sunday Catholic Communion Services” held in the chapel of the continuing care center; 2 “Monday Christian Worship Services” held in the dining room of the assisted living apartments; 4 “Wednesday Christian Prayers” held in the chapel of the continuing care center; 1 “Wednesday Roman Catholic Mass” held in the chapel of the continuing care center. This report also shows that “Roman Catholic

²² Ms. Riggs testified in cross examination, without objection from the Applicant, that beginning in 1988, when VL was owned by a not-for-profit health organization, “a full-time staff member of the nursing home was dedicated to the spiritual needs of the residents.” VL did not have assisted living or independent living units at that time. Tr. pp. 951-952.

Communion” is offered to each Catholic in the continuing care center weekly and daily by the local parish upon request. Bus transportation to and from church on Sunday is offered weekly for independent living and assisted living residents. The report contains similar information for all months of 2007. Tr. pp. 738-743, 861, 1379-1380; App. Ex. No. 15.

The “Pastoral Care Benchmarking “ report also shows the following “Spiritual Enrichment Programs” for January 2007: 8 “Sunday Hymn Sings” held in the “memory care areas;” 1 “Sunday Hymn Sing” held in the dining room of the assisted living apartments; 4 “Bible Studies” held in the independent living building; 12 (3/week) “Bible Studies” held in the chapel, for residents in the continuing care center; 4 “Bible Studies” held in the assisted living building; 5 “Rosary Prayers” held in the independent living building; 12 (3/week) “Rosary Prayers” held in the chapel for residents in the continuing care center; 4 “Rosary Prayers” held in the assisted living building; 1 “Grief Support Group” meeting; 1 “Alzheimer’s Support Group” meeting. The hymn sings and the Bible studies are directed toward the level of functioning and understanding of the participants. The report contains similar information for all months of 2007.²³ Tr. pp. 743-750, 861, 1379-1380; App. Ex. No. 15.

It is reasonable to conclude, and there is no evidence to the contrary, that the health and fitness center in the independent living apartments is used primarily as a health

²³ Ms. Riggs testified in cross-examination, without objection from the Applicant, that residents at Victory Lakes engaged in Bible studies, Catholic mass, church services of other Christian faiths, “residents’ private prayer,” “residents’ group prayer” and sacraments on the subject property prior to the acquisition by Franciscan Communities.

and fitness center. Religious activities held in the health and fitness center, such as the “Sunday Lutheran Worship Services,” would be an incidental use of this space. The primary use of the space, and not the incidental use, is controlling in determining whether property is exempt from taxation. I cannot recommend an exemption for the hours on Sunday that Lutherans worship in the health and fitness center. The record in this case does not support an exemption for the entire property, including the 320 residences, upon the basis of the religious use of the health and fitness center on Sunday.

It also is reasonable to conclude that the dining room in the assisted living apartments is used primarily as a dining room for residents in assisted living. Religious activities, held in the dining room, such as “Monday Christian Worship Service,” would be an incidental use of this space. The primary use of the space, and not the incidental use, is controlling in determining whether property is exempt from taxation. I cannot recommend an exemption for the dining room in the assisted living apartments for the hours on Monday that it is used for Christian worship. The record in this case does not support an exemption for the entire property, including the 320 residences, upon the basis of the religious use of the dining room on Mondays.

“Sunday Hymn Sings” are held in the “memory care areas.” Ms. Heffernan testified that there are two memory care areas, one on each of the first floor and second floor of the continuing care center. Tr. p. 744. There is no evidence in the record as to whether the memory care areas are used for other purposes. It is Applicant’s burden to prove primary use and the record does not establish the primary use of the memory care areas. Therefore, I cannot conclude that the memory care areas are entitled to exemption under the Property Tax Code.

There was no testimony or evidence admitted at the hearing that showed that the activities in the “Pastoral Care Benchmarking” report occurred in any of the 320 residences, for which the Applicant is seeking an exemption. There is no testimony or evidence in the record as to how many residents participated in any of these activities. Based on the evidence of record, it seems reasonable to conclude that some residents participate in no religious activities on the subject property. Yet the Applicant is seeking a religious exemption for all 320 residences. The record is devoid of any evidence that religious activities held in the health and fitness center of the independent living residences, the dining room of the assisted living apartments or the memory care areas in the continuing care center make the residents living in those areas “religious” or indicate that the individual residences in those areas, which Ms. Lindish referred to as “private spaces,” are being used for religious purposes. Tr. p. 1372.

Prior to the Franciscan Communities’ purchase of the subject property, there was a room designated as a chapel, but it was used as a multi-purpose or great room for meetings, education, book fairs, parties, an arts and craft fair and for meetings of outside groups. In 2007, the Sisters asked that those activities cease in the room and that the room be used for reflection and worship. In 2007, Catholic mass was held in the chapel for residents and their families. There were also Protestant services, nondenominational services, bible studies, rosary prayer, communion services and remembrance services for those who had recently died. Tr. pp. 736-737, 848-850, 1379-1380, 1494-1496. Ms. Riggs was “commissioned” in the chapel at VL on February 12, 2007. This ceremony took approximately 2 hours. “Commissioning” is a formal ceremony, including a mass, where the Sisters delegate the responsibility for day-to-day operations of a community to a layperson who will have ultimate responsibility for the community. This was the only

commissioning ceremony at VL in 2007. Ms. Riggs is not Catholic. Approximately 60 people attended Ms. Riggs' ceremony. Tr. pp. 944-948, 1475-1476, 1646-1647.

VL's actual use of the chapel determines whether the chapel is used for an exempt purpose. "Intention to use is not the equivalent of use." Skil Corp v. Korzen, 32 Ill. 2d 249, 252 (1965). However, exemptions have been allowed where property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11 (1924). Adapting and developing a property for an eventual exempt use can be sufficient to satisfy the actual use requirement. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2d Dist. 1987).

Testimony in the record indicates that the chapel was in the process of development and adaptation for exempt use in 2007. Ms. Riggs testified that after FC purchased VL, "we made [the chapel] more of a sacred space." She testified that the chapel continues to be "made more sacred." Tr. p. 848. Sister Mary Francis testified that a Chapel Committee was formed "soon after the acquisition." The Committee was formed "early on," because we knew that the whole process would take us a long time." Tr. pp. 2223-2224. FC's minutes of a "Meeting of the Board of Directors" dated February 12, 2008 (after the year at issue in this case) under the section entitled "Campus Success Plans" state that "[t]he planning for the Chapel renovation is continuing to move forward with funding sources coming from Victory Lakes." Int. Ex. No. 33.

Based on the evidence and testimony presented at the evidentiary hearing, I conclude that the chapel in the continuing care center on the subject property should be exempt from real estate taxes for the entire 2007 tax year. The renovation of the chapel, which began "soon after acquisition," in 2006, indicates that VL had gone beyond the

mere intention of converting the chapel and was in the actual process of developing and adapting the chapel, located in the continuing care center, for exempt religious use in 2007. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2d Dist. 1987).²⁴

There was considerable testimony at the evidentiary hearing that the operation at Victory Lakes is, in itself, a religious activity, according to the Catholic Church. Sister Diane Marie testified that the principles established at the Second Vatican Council, which began in 1963 and ended in 1968, apply to FSC and to the property at VL in 2007. Tr. pp. 244-245. The “Catechism of the Catholic Church,” “approved by the Pope in Rome,” applied to the “Franciscan Sisters of Chicago as it related to their activities in 2007.” Tr. pp. 248-249. Father Place testified that VL had “to be run in accordance with the Code of Canon Law in 2007.” Tr. p. 2310. He testified with regard to specific canons in the Code of Canon Law that applied to FSC and the subject property in 2007. Tr. pp. 500-504, 517-518. For example, Canon 675 pertains to religious institutes, such as FSC. This Canon describes the way in which the apostolic activity of religious institutes is to be carried forward. According to this Canon, the work that is done by a religious institute is done in the name of and by the mandate of the Church. Tr. pp. 513-514.

The “Ethical and Religious Directives for Catholic Health Care Services,” issued by the National Conference of Catholic Bishops, provides a framework both as to vision and guidance for Catholic health care ministries in the United States. Tr. pp. 2523-2529;

²⁴ Applicant’s Exhibit No. 24 indicates that the chapel is located in the continuing care center on the subject property. There is no testimony in the record as to the dimensions of the chapel and Applicant’s PTAX-300 does not contain the dimensions of the chapel. Accordingly, this Recommendation cannot give, with any specificity, the dimensions of the space to be exempted and cannot give the County Assessor any direction as to the space to be exempted, other than to say that the space is the chapel located in the continuing care center, and that this chapel was in the process of being developed for exempt religious use beginning January 1, 2007.

App. Ex. No. 7. The Directives state in Part 1, entitled “The Social Responsibility of Catholic Health Care Services,” that “the biblical mandate to care for the poor requires us to express this in concrete action at all levels of Catholic health care.” “This mandate prompts us to work to ensure that our country’s health care delivery system provides adequate health care for the poor.” “In Catholic institutions, particular attention should be given to the health care needs of the poor, the uninsured and the underinsured.” Tr. pp. 2342-2344, 2384-2387; App. Ex. No. 7. The Directives state that “[I]n accord with its mission, Catholic health care should distinguish itself by service to and advocacy for those people whose social condition puts them at the margin of our society and makes them particularly vulnerable to discrimination: the poor; the uninsured and underinsured; children and the unborn; single parents; the elderly; those with incurable diseases and chemical dependencies; racial minorities; immigrants and refugees.” Tr. p. 2530.

The Directives’ focus on care for the poor and elderly, “whose social condition puts them at the margin of our society,” and “vulnerable to discrimination” does not appear to be particularly relevant to the operation at VL in 2007. Sister Mary Francis testified that the entrance fees for the independent living residences would be difficult to afford for the poor. Tr. p. 2353. According to “The Common Thread,” “the Village at Victory Lakes features a wide assortment of excellent amenities to help its residents enjoy the fullness of their lives.” App. Ex. No. 26. It is difficult to conceive of the residents at VL as having a social condition that puts them at the margin of our society.

Employees at VL are known as “associates.” Associates at VL are not required to be Catholic, but must work in the manner and spirit of FSC while on the subject property. A nonreligious person would have been able to be an associate at VL as long as the person agreed to perform their service in the manner and spirit of FSC. Many associates

are not Catholic. A “great number” of associates were employed at VL prior to the purchase by FC and remained at VL after the purchase. A course on Catholic principles and ministry was available on-line, although not mandatory, for associates. Associates, themselves, are not required to attend religious ceremonies but are instructed to “recognize” the seven Catholic holy days, “in some manner.” No associates were terminated for failing to adhere to FSC’s mission in 2007. Tr. pp. 176, 187-188, 318, 784, 789, 894, 1573-1575, 1597-1598, 1619-1621, 1649, 2110-2111, 2133-2138.

New associates were hired at VL in 2007. Associates may go through an orientation, known as “missioning” in which they are instructed as to the mission and history of FSC and what it means to be a Catholic health care organization. Missioning is the Sister’s way of saying to associates that they are trusted to carry on the Sisters’ ministry and to thank associates for doing the work that the Sisters cannot do individually. However, there were no missioning ceremonies at VL in 2007. Tr. pp. 708-709, 784, 862-863, 1475-1476, 1536-1542, 1646-1648. Associates are evaluated every year and the evaluations address certain values consistent with the mission of FSC, including respect, dedication, stewardship, joy and service. Tr. pp. 721-724, 863-864.

Sister Diane Marie testified that the “care of the aged and the sick and the spreading of God’s teaching are all religious activities which are mandated by the Roman Catholic Church and scripture.” Tr. p. 302. The property at VL “furthers the mission of the Church because it provides us with an opportunity to perform religious activities that are mandated by the Catholic Church.” Tr. pp. 310-311. “Everything that we do, everything that is done in any of our entities, is religious and charitable.” “They are done in service to God’s people.” “They are part of the way that we carry out our faith in God.” Tr. p. 299.

Ms. Heffernan testified that service to the residents at VL in 2007 allowed her to fulfill her personal Catholic faith and mission. “There is just a sense of -- there’s just a good sense you have when you know you’ve helped somebody.” Tr. pp. 756-757. Ms. Heffernan testified that according to the Catholic faith, one of the ways that she, personally, can obtain salvation is by serving the residents at VL. “Serving anyone in need” is a way for her to obtain salvation. Tr. p. 757. Ms. Heffernan testified that, “as a Catholic Christian,” she lives out her faith at home, in her own residential community, and in her recreational activities, as well as at work at VL. Tr. pp. 789-790.

Ms. Heffernan testified that first-year seminarians from Mundelein Seminary volunteered at VL, beginning in September 2007. The seminarians were introduced “to what it’s like caring for people, not only seniors, but also people recovering from illness.” Tr. p. 712. Ms. Heffernan helped the seminarians establish “a pastoral presence, a certain level of comfort.” Seminarians led a “special little reflection just while they’re getting the food ready” in the dining room during Advent. Tr. pp. 713-714.

Ms. Lindish testified that she tries in all of her actions “with everyone that I meet to be an example of Christ’s love to others.” “So when I walk through the community, when I do any conversation with people, when I serve in any role that I might have the opportunity to serve in, it’s to be in the presence of Christ to the people that I interact with and serve.” “So [VL] gives me the opportunity to carry on that ministry in the name of the Sisters, but also to live out my own personal faith.” Tr. pp. 640-641. “The religious purpose for me is to be Christ’s presence to people.” Tr. p. 642. Ms. Lindish visited VL in December, 2007, to celebrate the Franciscan traditions of Christmas and to tell stories to groups of residents and associates of the beginnings of the tradition of the Christmas crèche as started by St. Francis. Tr. p. 1558.

Sister Mary Francis testified that “all activities that are a part of the sponsorship and the mission of the Franciscan Sisters of Chicago are considered religious activities by the Catholic Church.” The activities at VL are a way of fulfilling the Sisters’ mission “because it’s a continuation of the mission that was begun by Jesus himself in the healing mission and continued through our foundress who, herself, took in the elderly and gave care to them, so that’s been an integral part of our mission for 114 years.” Tr. pp. 2303-2304.

Father Place testified that Jesus “gave witness to the presence of the reign of God by his ministry of healing.” “So if you look at the gospel stories, the most – the most consistent activity that Jesus did was healing [of] body, mind and spirit.” “So that essential to our identity coming from Jesus, the essential identity of those who are his followers, is to carry forth his mission, and his was a mission of healing of body, mind and spirit.” Tr. pp. 426-427. The very earliest example of Christ’s healing mission was in the Acts of the Apostles where Jesus’ Apostles “gathered and they prayed over those who were sick and anointed them to bring healing.” Tr. p. 430. Father’s opinion that “Victory Lakes was pursuing a religious purpose as understood by the Catholic Church” was dependent on an understanding of the theology of the Church and how the ministries of the Church have developed over time. Tr. p. 431. Father testified that VL is “part of the Church and is recognized by the local Church as one of the ministries of the Church by the Archdiocese of Chicago.” Tr. p. 507. Father believes that VL is church property. Tr. p. 528.

I find the testimony of Sister Diane Marie, Ms. Heffernan, Ms. Lindish, Sister Mary Francis and Father Place, with regard to the Catholic Church’s characterization of its activities at VL, to be credible and made in good faith. I am confident that these

witnesses believe that they will attain salvation by serving the residents at VL, that they believe that the operation of VL is a religious activity or purpose according to the teachings of the Catholic Church, and that they believe that the performance of religious activities are mandated by the Catholic Church and scripture in order to obtain salvation. I do not question the witness's belief structure and I do not question whether their conduct conforms to the standards or purposes of the Catholic Church.

However, the testimony discussed above is strikingly similar to the testimony elicited in Fairview Haven v. Dept. of Revenue, 153 Ill. App. 3d 763 (4th Dist. 1987), where members of the Apostolic Christian Church of America (hereinafter "Apostolic Church") sought a religious and charitable exemption for 16 independent living units and an intermediate care facility that housed 49 residents. The court noted that one of the basic tenets of the Apostolic Church "is that salvation is accomplished through faith and Christian witness." "Therefore, everyone has a duty to preach the gospel and do Christian service works." *Id.* at 768. Similarly, in the instant case, Father Place testified that an "essential identity" of those who are Christ's followers is that they carry forth his mission of healing of body, mind and spirit. Tr. pp. 426-427.

In Fairview Haven, there was testimony that the Apostolic Church created avenues through which members could show their faith by accomplishing Christian service works. Fairview Haven was apparently one such "avenue," "and the motivating factor behind Fairview's operation was to provide an opportunity to help the elderly and fulfill the tenets of the Apostolic Church." *Id.* at 768. Similarly, in the instant case, Sister Diane Marie testified that VL furthers the mission of the Catholic Church because it provides "us" with an opportunity to perform religious activities that are mandated by the

Church. Tr. pp. 310-311. Ms. Lindish testified that VL gives her the opportunity to live out her own personal faith. Tr. pp. 640.641.

In Fairview Haven, all policies, rules and regulations of Fairview had to subscribe to the beliefs of the Apostolic Church and be reflected in the operation of the nursing home. A member of Fairview's Board of Directors testified that Fairview was "an integral part of the Church, governed by the Church, and maintained by it." "It proclaimed the good news, so [it] served a religious purpose." *Id.* at 768. Similarly, in the instant case, there was ample testimony that VL was governed by the principles established at the Second Vatican Council, the Catechism of the Catholic Church, the Code of Canon Law, and the Ethical and Religious Directives for Catholic Health Care Services. Father Place testified that Victory Lakes is part of the Church and is recognized by the local Church as one of the ministries of the Church by the Archdiocese of Chicago. Tr. p. 507.

In Fairview Haven, the court found that the Department's determination that Fairview was not exempt for religious purposes was supported by the evidence. The court noted that it was not contested that the operation of Fairview provided an opportunity for members of the Apostolic Church to carry out Christian service work and care for the elderly. The court then succinctly stated the following: "However, operation of the nursing home was not necessary for these religious purposes, which could have been accomplished through other means." *Id.* at 774.

Similarly, whereas the existence and operation of VL may provide an opportunity for religious activities, VL, itself, is not necessary for the fulfillment of the Sisters' mission, and it is not necessary for the performance of religious activities, mandated by the Church in order to attain salvation. The faithful could conceivably attain salvation by

ministering to the homeless elderly who spend their nights in cardboard boxes on Lower Wacker Drive. Ms. Heffernan testified that she can obtain salvation by serving anyone in need. Tr. p. 757. She testified that she lives out her faith at home, in her residential community and in her recreational activities. Tr. pp. 789-790. Ms. Lindish tries to be an example of Christ's love with everyone that she meets, when she walks though the community, when she converses with people. Tr. pp. 640-641. The testimony of the witnesses shows conclusively that religious acts can be accomplished, and salvation obtained, through means other than VL.

Ms. Lindish testified that she worked out of the corporate offices in Homewood, Illinois. Tr. p. 1645. She visited VL on 8 to 12 occasions in 2007. Tr. pp. 1614-1617. Sister Diane Marie testified that she lived at the Sisters' Motherhouse in Lemont, Illinois. Tr. p. 64. She visited VL on 1 to 5 occasions. Tr. p. 314. Sister Francis Clare lived at the Sisters' Motherhouse. Tr. p. 2191. Father Place was asked the following question: "You have never been to Victory Lakes, have you?" He responded: "No sir, I have not." Tr. p. 2648. Similar to Fairview Haven, the testimony shows that the existence and operation of VL is not necessary for salvation. The testimony of the witnesses as to the number of their visits to the subject property forces me to conclude that religious acts can be accomplished, and salvation attained, in other locations.

In Fairview Haven, the court noted that the practice of charity, kindness to other persons and in particular to the aged, and the practice of all virtues are encouraged by religious organizations. "[H]owever, it cannot be stated that they are religious purposes within commonly accepted definitions of the word." *Id.* at 774. Similarly, in the instant case, Sister Diane Marie testified that "everything that we do, everything that is done in any of our entities, is religious and charitable. Tr. p. 299. "Whether it's emptying the

bedpan, whether it's getting a bill out to a family, whatever, it is a religious activity." Tr. p. 358. VL's PTAX-300, "Application for Non-homestead Property Tax Exemption" states that "[R]eligion permeates the atmosphere at Victory Lakes." Sister Mary Francis testified that "everything that occurs at Victory Lakes is a religious activity." Tr. p. 2323.

In Faith Builders Church v. Dept. of Revenue, 378 Ill. App. 3d 1037, 1046 (4th Dist. 2008), the court noted that "[I]n a sense, everything a deeply religious person does has a religious purpose." "But if that formulation determined the exemption from property taxes, religious identity would effectively be the sole criterion." This "formulation" was echoed by Ms. Riggs in her testimony. She worked at VL for 21 years, both before and after the acquisition by FC. She testified that she was "engaged in Christ's ministry of caring for the aged and infirm prior to the acquisition" by FC. Tr. pp. 1013-1014. And she continued to manage the property after acquisition. Her testimony, reflecting her religious purpose in working at VL both before and after acquisition by FC, cannot be the "sole criterion" for exemption under the Property Tax Code.

In Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 767 (4th Dist. 2008), where the court denied a religious exemption to a hospital, the court stated that if "religious purpose" meant whatever one did in the name of religion, it would be an unlimited and amorphous concept. Exemption would be the rule, and taxation would be the exception. *Id.* at 766. In Provena Covenant, the court noted that "religious purpose" within the meaning of 735 ILCS 200/15-40(a) has to be narrower than "Christian service," or else "religious purpose" would mean everything (and therefore nothing). *Id.* at 767. The Illinois Property Tax Code does not provide an exemption for religious identity. The Illinois Property Tax Code does not provide an exemption for religious motivation. The Legislature required "religious use" for

exemption of property under 735 ILCS 200/15-40. Religious identity, religious motivation and religious spirit are not synonymous with, and are legally insufficient to establish, religious use.

The court in Provena Covenant then stated that if “public worship, Sunday schools, and religious instruction” are illustrative of the nature of religious use, it must follow that “religious use” has a determinable nature and that to be a religious use, the activity must somehow resemble public worship, Sunday schools and religious instruction. “We do not see how medical care resembles public worship, Sunday school, or religious instruction.” *Id.* at 767. Similarly, in the instant case, the Applicant has failed to prove that leasing 320 residences to financially secure seniors “resembles” public worship, Sunday school or religious instruction. Without religious use, respondent is not entitled to an exemption under 35 ILCS 200/15-40(a).

Victory Lakes was required to prove that the religious use of the subject property was primary. If the operation of the property is businesslike and more characteristic of a place of commerce than a facility used primarily for religious purposes, then property is not exempt from taxation under Section 200/15-40(a). Faith Builders Church v. Dept. of Revenue, 378 Ill. App. 3d 1037, 1046 (4th Dist. 2008).

Mr. Allison testified that VL is the only Catholic continuing care retirement facility in Lake County. According to his testimony, this was a factor in the decision to purchase the subject property. “The Sisters wanted to continue their mission and extend their mission to Lake County.” Tr. p. 2021. FSCSC’s minutes of a “Special Meeting of the Board of Directors” dated January 3, 2006, before the July 13, 2006, purchase of the subject property, in the section of the minutes entitled “The Village at Victory Lakes” state as follows: “ ‘JK’ reported that there are two important areas to consider when

reviewing an acquisition: market and financial.” “All agreed that strategically the Village at Victory Lakes was a good acquisition based on location/market area.” “In order to achieve a break-even position, both marketing efforts and monthly rates will need to increase.” Int. Ex. No. 29. Thus, it appears that market and business concerns directed this purchase. Mr. Wiberg, who worked at Victory Lakes before and after the acquisition by FC, testified that he was in favor of the ownership change. “They knew the business better than the [former owners].” Tr. p. 1054.

In 2007, Victory Lakes earned 99.3% of its revenue from residents or the government for providing independent, assisted, and continuing care to seniors. App. Ex. No. 39. Franciscan Communities’ primary measure of financial performance is operating EBITDA. Int. Ex. No. 32. VL’s “Statement of Operations” for the twelve months ending December 31, 2007 shows EBITDA as \$1.5 million. App. Ex. No. 39. VL paid “substantial” management fees to FC in 2007. Tr. p. 1131. This fee is characteristic of a charge assessed on the residents of a commercially operated multiple dwelling property. VL’s entrance fees and monthly service charges are based on the size and desirability of the apartments and suites, similar to what one would find in a commercially operated multiple dwelling property. I do not question the economic or practical necessity of these provisions, but they do suggest a business relationship more than a religious one. Applicant has failed to prove that it used any “religious” type of benchmark to evaluate its success on the subject property. The operation of the property may have satisfied certain individuals’ religious aspirations, but this is not the basis for an exemption under the Property Tax Code. Based on the record in this case, I conclude that Victory Lakes more resembles a business with some religious overtones than property used exclusively for religious purposes.

The statute which allows exemption from property taxes for religious use requires that the property not be leased or otherwise used with a view to profit. 35 ILCS 200/15-200-40(a). As discussed previously in this Recommendation for Disposition, the record in this case shows that the subject property also contains a bank, beauty salon, barber shop, computer center, country store, health and fitness center, library and café. There was no testimony at the evidentiary hearing that these amenities were used for religious purposes. There was no testimony at the evidentiary hearing as to whether the space for these amenities was leased or rented to businesses to operate them. There was no testimony at the evidentiary hearing as to whether the space for the amenities was leased or rented for a profit. No leases or rental agreements were offered into evidence. VL's "Statement of Operations" for December 31, 2007 shows "Other Revenue" of \$114,887. App. Ex. No. 39. No explanation was offered at the hearing as to the components of "Other Revenue," and whether this account included leasing or rental income from the bank, the café, the county store or any of the other amenities located on the subject property. Because FC had the burden of proof to show that it was entitled to an exemption for religious purposes, the lack of testimony and evidence on the issue of VL's "Other Revenue" must be construed against them.

The record in this case includes extensive oral and documentary evidence. This Recommendation is based on the record in this case and relevant Illinois authority. 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). In the instant case, the Applicant has failed to prove, and the record does not support, Victory Lakes' entitlement

to a charitable exemption or a religious exemption, except for the chapel in the continuing care center on the subject property.

For the above stated reasons, it is recommended that the Department's determination which denied the exemption from 2007 real estate taxes on the grounds that the subject property was not in exempt use for charitable or religious purposes should be affirmed, except for the chapel in the continuing care center, which was in the process of development and adaptation for exempt religious use in 2007. Lake County Parcels, Property Index Numbers 06-03-100-047, 052 and 053, should not be exempt from 2007 real estate taxes, except for the chapel in the continuing care center, which should be exempt for the entire 2007 assessment year.

ENTER:

Date: November 4, 2009

Kenneth J. Galvin