

**PT 04-34**  
**Tax Type: Property Tax**  
**Issue: Charitable Ownership/Use**

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

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**LITTLE ANGELS**  
**PARENT ARC,**  
**APPLICANT**

v.

**ILLINOIS DEPARTMENT**  
**OF REVENUE**

**No. 03-PT-0053**  
**(01-16-3204)**  
**P.I.N.S: 06-08-302-005**  
**06-08-302-003**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Allen Lefkowitz of Allen A. Lefkowitz & Associates, on behalf of the Little Angels Parent ARC (the “applicant”); Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

**SYNOPSIS:** This matter raises the issue of whether real estate identified by County Parcel Index Numbers 06-08-302-005 and 06-08-302-003 (collectively the “subject property”) qualifies for exemption from real estate taxation for 80% of the 2001 assessment year under 35 **ILCS** 200/15-65(c). The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (the “Board”) on May 29, 2002. Dept. Group Ex. No. 1, Document A. The Board reviewed the applicant’s Complaint and recommended to the Department that the subject property be exempt as of March 14, 2001. Dept. Group Ex. No. 1, Document B. The Department then issued its initial determination in this matter on May 15, 2003,

which denied the requested exemption *in toto* on grounds that the subject property is not in exempt ownership and not in exempt use.

Applicant filed an appeal to this denial and later presented evidence at a formal evidentiary hearing, at which the Department also appeared. Following a careful review of the record made at that hearing, I recommend that the Department's initial determination be affirmed.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Group Ex. No. 1.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. *Id.*
3. The subject property is located in Elgin, IL and located immediately adjacent to the Little Angels residential facility ("the residential facility"). Dept. Group Ex. No. 1, Document B; Applicant Ex. No. 11.
4. The residential facility is a family owned, for-profit, long-term skilled pediatric nursing home that provides care to children and young adults with profound developmental disabilities and complex medical needs. Tr. p. 42.
5. The applicant, itself, is an Illinois not-for-profit corporation that, per its Articles of Incorporation and by-laws, is organized for purposes of: (a) promoting the general welfare of the developmentally disabled who reside at the facility; (b) fostering the development of programs on behalf of those residents; (c) establishing and carrying out a developmental training program for young adults who are developmentally disabled; (d) encouraging research related to developmental disabilities; (e) advising

and aiding parents of children with developmental disabilities; and, (f) engaging in such other activities, including fundraising, that promotes the welfare of the developmentally disabled. Applicant Ex. Nos. Applicant Ex. No. 16, 17.

6. The applicant's by-laws further state, *inter alia*, that:

ARTICLE I  
MEMBERSHIP

Section 1. Every parent/legal guardian with a developmentally disabled son/daughter who is (a) a client of the Little Angels Parents ARC developmental training center<sup>[1]</sup> and/or (b) a resident of the Little Angels long term nursing care facility shall automatically be a member of the corporation. Other relatives and interested individuals may apply for membership. Membership may be obtained on application to any officer of the corporation or to the Membership Committee subject to approval of the board of Directors. A two-thirds vote by the Board of Directors shall be required for membership.

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ARTICLE II  
FEES

Section 1. There shall be no membership dues.

Section 2. It is recognized that any fees for services rendered to clients of the Little Angels ARC [developmental training center] are typically paid by the Illinois Department of Public Aid. In rare instances, some fees may be paid by a third party funding source on behalf of a client and where such funds are available. [sic]. In any event and regardless of the foregoing, any fee for any and all services shall be either waived or reduced based on an individual client's ability to pay. In no case shall services be refused due to an inability to pay.

Applicant Ex. No. 17.

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1. This developmental training facility was located in space that the applicant leased from a church throughout most of 2001. However, the applicant purchased the subject property with the intention of constructing a new developmental training facility on it. Applicant Ex. Nos. 2, 11. *See*, Findings of Fact 12-14, *infra*, at p. 6.

7. Audited financial statements reveal the following information about the applicant's sources of revenue the period January 1, 2001 through December 31, 2001:

Source	Amount	% of Total
<b>Revenues</b>		
Public Aid Revenue for Developmental Training Program ("DTP") <sup>2</sup>	\$ 477,591.00	63%
Harley Owners Owner's Run <sup>3</sup>	\$ 219,402.00	29%
General Donations	\$ 23,399.00	3%
Memorial Donations	\$ 9,215.00	1%
Knights of Columbus Grants	\$ 5,855.00	1%
Interest Income	\$ 7,220.00	1%
Loss on Investment Income from Little Angels	\$ (4,925.00)	-1%
Other Unspecified Income from Little Angels	\$ 973.00	0%
Other Unspecified Income from Developmental Training Programs	\$ 19,188.00	3%
<b>Total Revenues</b>	<b>\$ 757,918.00</b>	<b>100%</b>

Applicant Ex. No. 3.

8. These statements also reveal the following information about the expenses applicant incurred during the same period:

Expense	Little Angels <sup>4</sup>	DPT <sup>5</sup>	Total	% of Total
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2. The Developmental Training Program provides therapeutic and other services to the developmentally disabled residents of the Little Angels residential facility. See, Findings of Fact 15-17, *infra* at pp 6-7.

3. The Harley Owner's Run is an annual fundraising event. The proceeds from this event benefit the Little Angels Parents ARC developmental training center. Applicant Ex. No. 1; Tr. pp. 15-22, 31, 69.

4. The expenses in this column are the applicant's own expenses, as those expenses are reported on the referenced financial statements.

<b>Program Expenses</b>				
Medical Care	\$ 13,803.00	\$ 387,962.00	\$ 401,765.00	50%
Activities	\$ 2,179.00	\$ 24,548.00	\$ 26,727.00	3%
Habitation	\$ 0.00	\$ 4,214.00	\$ 4,214.00	1%
Dietary & Food	\$ 0.00	\$ 245.00	\$ 245.00	<1%
Housekeeping	\$ 2,821.00	\$ 9,664.00	\$ 12,485.00	2%
Laundry	\$ 0.00	\$ 1,466.00	\$ 1,466.00	<1%
Maintenance	\$ 2,039.00	\$ 2,811.00	\$ 4,850.00	1%
Depreciation	\$ 78,240.00	\$ 2,434.00	\$ 80,674.00	10%
<b>Total Program Expenses</b>	<b>\$ 99,082.00</b>	<b>\$ 433,344.00</b>	<b>\$ 532,426.00</b>	<b>67%</b>

<b>Management &amp; General Expenses</b>	<b>Little Angels</b>	<b>DPT</b>	<b>Total</b>	<b>% of Total</b>
Outside Services	\$ 0.00	\$ 2,906.00	\$ 2,906.00	<1%
Office Supplies	\$ 4,463.00	\$ 1,915.00	\$ 6,378.00	1%
Bereavement Expenses	\$ 614.00	\$ 0.00	\$ 614.00	<1%
Postage	\$ 223.00	\$ 121.00	\$ 344.00	<1%
Telephone	\$ 0.00	\$ 1,668.00	\$ 1,668.00	<1%
Copier Expense	\$ 0.00	\$ 736.00	\$ 736.00	<1%
Professional Fees	\$ 10,460.00	\$ 0.00	\$ 10,460.00	1%
Legal	\$ 3,870.00	\$ 0.00	\$ 3,870.00	<1%
Repairs & Maintenance	\$ 0.00	\$ 902.00	\$ 902.00	<1%

5. The expenses in this column are the expenses that the applicant incurs in connection with operating the DPT, as those expenses are reported on the referenced financial statements.

Insurance	\$ 1,747.00	\$ 7,200.00	\$ 8,947.00	1%
Dues & Subscriptions	\$ 0.00	\$ 225.00	\$ 225.00	<1%
Licenses & Fees	\$ 369.00	\$ 5,318.00	\$ 5,687.00	1%
Advertising	\$ 0.00	\$ 2,193.00	\$ 2,193.00	<1%
Vehicles	\$ 470.00	\$ 5,115.00	\$ 5,585.00	1%
Utilities	\$ 0.00	\$ 4,573.00	\$ 4,573.00	1%
Equipment Rental	\$ 572.00	\$ 0.00	\$ 572.00	<1%
Rent <sup>6</sup>	\$ 0.00	\$ 24,000.00	\$ 24,000.00	3%
Fundraising Expense	\$ 83,906.00	\$ 0.00	\$ 83,906.00	11%
Recruiting Expense	\$ 7,982.00	\$ 0.00	\$ 7,982.00	1%
Bank Charges	\$ 8,925.00	\$ 0.00	\$ 8,925.00	1%
Staff Appreciation Party	\$ 5,862.00	\$ 0.00	\$ 5,862.00	1%
Special Events Expense	\$ 3,978.00	\$ 0.00	\$ 3,978.00	0%
Employee Benefits	\$ 18,887.00	\$ 0.00	\$ 18,887.00	2%
Miscellaneous Expense	\$ 62.00	\$ 0.00	\$ 62.00	<1%
Contributions	\$ 1,100.00	\$ 150.00	\$ 1,250.00	<1%
Depreciation	\$ 53,460.00	\$ 0.00	\$ 53,460.00	7%
<b>Total Mg't. &amp; General</b>	<b>\$ 206,950.00</b>	<b>\$ 57,022.00</b>	<b>\$ 263,972.00</b>	<b>33%</b>
<b>Total Expenses</b>				
Total Program Expenses			\$ 532,426.00	
Total Mgt & General			\$	

6. This rent was paid on a leasehold that was the former site of the applicant's developmental training program. The exempt status of this leasehold is not at issue in this case. See, Finding of Fact 14, *infra* at p. 6.

			263,972.00	
<b>Total Expenses</b>			<b>\$ 796,398.00</b>	
<b>Reconciliation:</b>				
Total Expenses			\$ 796,398.00	
Total Revenues			(\$ 757,918.00)	
<b>Deficit</b>			<b>(\$ 38,480.00)</b>	

*Id.*

9. The Internal Revenue Service determined that the applicant qualifies for tax exempt status under Section 501(a) of the Internal Revenue Code, as an organization described in Section 501(c) (3) thereof, on April 28, 1993. Applicant Ex. No. 5.
10. The Department issued applicant an exemption from Illinois use and related sales taxes on grounds that it “is organized and operated exclusively for charitable purposes,” within the meaning of Section 3-5(4) of the Use Tax Act (35 ILCS 105/1-1, *et seq.*), on August 1, 2003. Applicant Ex. No. 6; Administrative Notice.
11. The applicant obtained ownership of the subject property via a warranty deed dated March 14, 2001. Applicant Ex. No. 4.
12. The subject property was vacant and unimproved at the time the applicant purchased it. Tr. p. 30.
13. The applicant purchased the subject property with the intent of constructing a new facility that would contain the Little Angels Parents ARC developmental training center (the “DTC”). Applicant Ex. No. 11.
14. The applicant had been operating the DTC in space that it had leased from St. James AME Church in Elgin, IL prior to the date that it purchased the subject property. Applicant Ex. No. 9; Tr. p. 52-54.

15. The DTC, itself, provides physical, occupational and speech therapies, together with other related services, that assist developmentally disabled residents of the Little Angeles residential facility to improve their functional capacities. Tr. pp. 50-52, 76-77.
16. The DTC provides these services to the residents pursuant to contracts that it negotiates with the residential facility.<sup>7</sup> Tr. pp. 67-68.
17. The contracted services, themselves, are funded through Medicaid payments made to the residential facility, which, pursuant to its contract with the DTC, pays the DTC for the services that DTC provides. Applicant Ex. No. 3; Tr. pp. 67.
18. On July 27, 2001, the applicant obtained a building permit to begin constructing its new DTC on the subject property. It began actual construction shortly thereafter and received its final certificate of occupancy for the DTC on October 25, 2002. Applicant Ex. Nos. 12, 13, 14; Tr. pp. 61-62.

## **CONCLUSIONS OF LAW:**

### **I. CONSTITUTIONAL AND STATUTORY CONSIDERATIONS**

Article IX, Section 6 of the Illinois Constitution of 1970 provides 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.

Pursuant to Constitutional authority, the General Assembly enacted Sections 15-15-65(a) and 15-65(c) of the Property Tax Code (35 **ILCS** 200/1-1, *et seq.*) which, in relevant part, provide for exemption of the following:

#### **200/15-65. Charitable purposes**

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7. The applicant did not submit any of these contracts into evidence.

15-65. Charitable purposes. 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.

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(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 the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] 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) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

35 ILCS 200/15-65(a), (c).

It is a fundamental rule of statutory construction that where a general provision and a specific provision that both relate to the same subject exist, either in the same or another statute, the specific provision controls and should be applied. Tivoli Enterprises v. Zehnder, 297 Ill. App.3d 125 (2<sup>nd</sup> Dist. 1998); Illinois Power Company v. Mahin, 49 Ill. App. 3d 713 (4<sup>th</sup> Dist. 1977), *aff'd*. 72 Ill. 2d 189 (1978). Section 15-65(c) sets forth exemption requirements for the specific type of facility that is at issue herein, namely a facility for the developmentally disabled. Therefore, that statute, and not the relatively more general Section 15-65(a), is the controlling provision for present purposes.

It is also well settled that statutes exempting real estate from taxation are to be strictly construed in favor of taxation, with all doubts and debatable questions resolved against the applicant. People Ex Rel. Nordland v. the applicant of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Furthermore, the applicant bears the burden of proving that the property it is seeking to exempt falls within the appropriate statutory provision by a standard of clear and convincing evidence. *Id.*

In this case, the appropriate exemption statute requires, in relevant part, that the property in question: (a) be owned and operated by a duly qualified home for the developmentally disabled that, in turn, qualifies for exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code; (b) be operated pursuant to organizational documents that specifically 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[;]” (c) be “actually and exclusively used for charitable or beneficent purposes;” and, (d) not be leased or “otherwise used with a view to profit.” 35 ILCS 200/15-65, 65(c).

The warranty deed (Applicant Ex. No. 2) proves that the applicant owned the subject property as of March 14, 2001. Therefore, as a technical matter, the exemption that it presently seeks is limited to a maximum of 80% of the 2001 assessment year<sup>8</sup> that transpired on or after that date by operation of Section 9-195 of the Property Tax Code.<sup>9</sup>

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8. Section 1-155 of the Property Tax Code defines the term “year” for Property Tax purposes as meaning a calendar year. 35 ILCS 200/1-155.

9. Section 9-195 of the Property Tax Code states, in relevant part, that:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation

The applicant's organizational documents (Applicant Ex. Nos. 16, 17), together with its IRS determination letter, (Applicant Ex. No. 5) prove that it is organized for purposes of operating the type of facility for the developmentally disabled that Section 15-65(c) appears designed to exempt. Moreover, because its by-laws (Applicant Ex. 17) contain the waiver language that Section 15-65(c) specifically requires, the true sources of controversy herein involve application of the statutory exempt use requirements.

The first of these requirements is that the subject property must "actually and exclusively" be operated for purposes that qualify as being "charitable" or "beneficent" within the meaning of Illinois law; the second is that the property in question not be leased or otherwise used with a view to profit. Here, the fact that the subject property was being developed for a use that, save for a very restricted number of possible exceptions, was almost entirely for the benefit of a very limited number of persons in the first instance and "with a view to profit" in the second, proves that this property was not in exempt use during the period under review.

The word "exclusively," when used in Section 15-65 and other property tax 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. 1993).

"Charitable or beneficent purposes" are, by definition, those that benefit an indefinite number of people in a manner that persuades them to an educational or

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under this Code, that property shall be exempt from taxes from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

35 ILCS 200/9-195.

religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). They are also carried out by entities that: (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in its charter; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with it; and, (5) do 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. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2<sup>nd</sup> Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987)); or, (2) operates primarily in the public interest and lessens the State's burden. (DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, *supra*); Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1<sup>st</sup> Dist. 2000)).

Providing therapeutic and other needed services to the developmentally disabled undoubtedly serves the public interest. However, the fact that this applicant was developing the subject property for purposes of providing such services to a very limited

class of people is patently inconsistent with the definitional requirement that the “charity” must benefit an “indefinite number of people.” Crerar v. Williams, *supra*.

This class is limited to those developmentally disabled persons that reside at the Little Angels residential facility. The administrator of that facility, Shelly Lewis, specifically admitted to this limitation on cross-examination:

Q. [By Counsel for the Department] I believe you testified that there are no community clients being served by the Developmental Center other than those that are residents of the nursing home?

A. [By Ms. Lewis] That is correct. In our history, [we] have served occasional community clients, that is clients that had private trust funds.

Tr. pp. 76-77.

The applicant did not dispense any charity to these relatively few “community clients” because it is clear that they were, in fact, able to pay for the services they received. As such, they had no reason to avail themselves of any “charity” the applicant may have dispensed through effectuation of its written fee waiver policy. However, even if the applicant provided services to these “occasional” community clients without respect to their ability to pay, it is well established that incidental acts of “charity” are legally insufficient to prove that the subject property was “exclusively” used for “charitable” purposes, as required by Section 15-65. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987). Thus, the subject property was not “exclusively” or primarily used for “charitable” purposes during the period under review because it was being developed for uses that benefited only a certain, selected segment of the developmentally disabled population as a whole.

More importantly, the uses for which this property was being developed to benefit an entity, the Little Angels residential facility, which is privately owned and operated on a for-profit basis. Illinois case law has recognized that exempt use may be found where the use in question is “reasonably necessary” to achieve one or more specifically identifiable “charitable” purposes. Memorial Child Care v. Department of Revenue, 238 Ill. App. 3d 985 (4<sup>th</sup> Dist. 1992). However, it has yet to recognize exempt use in the context of adjuncts that serve the needs of private, for-profit entities. Indeed, the language in Section 15-65 that expressly bars exemption where the property is “otherwise used with a view to profit” (35 ILCS 200/15-65) negates such recognition.

It is true that the active adaptation and development of real estate can constitute exempt use in some circumstances. *Compare*, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was intended for religious use but completely vacant throughout the tax year in question held non-exempt) *with* People ex rel. Pearsall v. Catholic Bishop of Chicago 311 Ill. 11 (1924) (all portions of seminary property being actively developed for seminary-related purposes, except one tract which lie fallow throughout relevant tax year, held exempt); Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987) (part of medical facility that was under active construction during tax year in question held exempt). However, these circumstances are limited to ones wherein the adaptation and development causes the property to be used for one or more specifically identifiable “charitable” purposes. Weslin Properties, *supra*.

As an initial matter, it was legally impossible for the applicant to engage in any adaptation and development until it received its first construction permit on July 27,

2001. Furthermore, the subject property was not being developed for uses that qualify as “exclusively” or primarily “charitable” after that date. Rather, it was being developed for the non-exempt purpose of serving as the adjunct of a for-profit business throughout the period under review. Therefore, the subject property was not in exempt use, as required by 35 ILCS 200/15-65(c), throughout this period.

The fact that the Department determined that the applicant was exempt from paying Illinois Use and related sales taxes in 2003 does not alter any of the above analysis because this exemption, in and of itself, does not prove that the subject property was in exempt use. In re Application of Clark v. Marion Park, Inc., 80 Ill. App. 3d 1010, 1012-13 (2<sup>nd</sup> Dist. 1980), citing People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970). However, even if this exemption did establish the requisite exempt use, it is well established that each tax year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4<sup>th</sup> Dist. 1980). Therefore, an exemption issued in 2003 cannot prove anything about the purposes for which the applicant used the subject property during the period currently under review, which, I emphasize, is limited to the 80% of the 2001 assessment year that transpired on or after March 14, 2001.

Based on the above, the overall conclusion I must reach is that the subject property was not “actually and exclusively” used for the narrow set of purposes that Section 15-65(c) mandates as being necessary to qualify it for exemption from real estate taxation for that period. Therefore, the Department’s initial determination in this matter should be affirmed.

WHEREFORE, for all the aforementioned reasons, I recommend that:

- A. Real estate identified by Cook County Parcel Index Numbers 06-08-302-005 and 06-08-302-003 not be exempt from real estate taxes for 80% of the 2001 assessment year under 35 **ILCS** 200/9-185 and 35 **ILCS** 200/15-65(c); and,
- B. The taxes for this 80% of the 2001 assessment year be assessed against the applicant, which owned the subject property as of March 14, 2001.

Date: 9/9/2004

Alan I. Marcus  
Administrative Law Judge