STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

United Methodist Retirement Communities,
Petitioner,

v

MTT Docket No. 15-003171-R

City of Chelsea,
Respondent.

Tribunal Judge Presiding
David B. Marmon

ORDER GRANTING PETITIONER'S MOTION FOR LEAVE TO SUPPLEMENT MOTION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On December 7, 2016, Respondent filed a motion requesting that the Tribunal enter summary judgment its favor in the above-captioned case. More specifically, Respondent contends that Petitioner cannot prove that it is entitled to an exemption on its real property claimed under MCL 211.7o(1), MCL 211.7r, or MCL 211.7(o)(8).

On January 6, 2017, in response to Respondent's Motion, Petitioner, United Methodist Retirement Communities ("UMRC"), filed a Cross-Motion for Summary Disposition, claiming that as a matter of law, it is entitled to an exemption for its real property under MCL 211.7o(1), MCL 211.7r, or MCL 211.7(o)(8). On January 25, 2017, Respondent filed a response to Petitioner's Cross-Motion. In said response, Respondent rebutted Petitioner's interpretation of case law, as well as certain factual statements. On February 14, 2017, Petitioner filed a Motion for Leave to Supplement Motion for Summary Disposition, to which Respondent filed a response opposing leave. Petitioner alleges that Respondent portrayed Petitioner and its activities in a false light. While Respondent opposed the Motion for Leave, correctly stating that TTR 225(6) limits pleadings to a single response, the Tribunal has the discretion to grant a motion allowing an additional response. As Petitioner's supplement provided the Tribunal with further

enlightenment of Petitioner's position, the Tribunal accepts Petitioner's supplement to its Cross-Motion.

The Tribunal has reviewed the Motion, Cross Motion, responses, and the evidence attached to these pleadings and finds that granting Respondent's Motion for Summary Disposition and denying Petitioner's Motion for Summary Disposition is warranted at this time.

RESPONDENT'S CONTENTIONS

In support of its Motion, Respondent contends that Petitioner's addition to realty known as Glazier Commons should not be exempt under MCL 211.7o(1), because residents of Glazier Commons, per Petitioner's application process, were hand-selected based upon their ability to pay, and relative good health. Respondent argues that this is the precise fact pattern found in *Michigan Baptist Homes v. City of Ann Arbor,*[1] which was held up as an example in the Supreme Court's *Wexford* decision,[2] as a non-charitable way to run a nursing home. Respondent further contends that Petitioner fails to provide any charitable or benevolent care under its charitable/benevolent policy unless a resident meets criteria quoted from that policy:

> (1) "Live in a Chelsea Retirement Community Assisted Living residence for at least 3 1/2 years (42 months) AND"
>
> (2) "Expend all of their assets including all real estate towards their care at Chelsea Retirement Community AND"
>
> (3) "Apply and be approved for Medicaid benefits AND"
>
> (4) "Disclose all assets and income (failure to disclose assets and income will constitute ineligibility for benevolent care support)."[3]

Respondent calculates that to be eligible for benevolent care under this policy, a resident would have to expend $325,000 before they could qualify for selection into this program. Even within the benevolent program, Methodist ministers and their surviving spouses have a preference over other residents. Respondent contends that because of its stringent financial requirements for admission into Glazier Commons, found in Petitioner's application for admission, Petitioner not

[1] *Michigan Baptist Homes v. City of Ann Arbor,*396 Mich 660; 242 NW2d 749 (1976).
[2] *Wexford Medical Group v. City of Cadillac*, 474 Mich 192, 208; 713 NW2d 734 (2006).
[3] Respondent's Exhibit 5, Attachment F, p. UMRC 168.

only fails Wexford Factor 3 regarding non-discrimination; its activities are not charitable in nature. Therefore, Petitioner is not entitled to an exemption under MCL 211.7(o)(1).

Respondent also contends that as a matter of law, Petitioner cannot qualify for an exemption under MCL 211.7r, as it is not used for hospital or public health purposes. Relying upon *Rose Hill*,[4] as well as several other pre *Wexford* cases, Respondent argues that the use of the facility must be of a nature where it serves the health of the population or community as a whole, and that Glazier Commons was built and tailored to care for residents who pay significant sums to live there. Respondent, again relying upon Petitioner's application and brochure, states that no medical services are provided. At an additional fee, ancillary services are provided, which do not benefit the general public. Rather such services only benefit the fortunate few with the financial wherewithal to become residents. Accordingly, Respondent contends that Petitioner, as a matter of law cannot qualify under MCL 211.7r.

Finally, Respondent contends that the Glazier Commons Building cannot be grandfathered in as exempt under MCL 211.7o(8), as it did not exist on January 10, 2007. In support of this contention, Respondent argues that the plain wording of the statute requires the Tribunal to look backward instead of forward when determining what real and personal property *was* previously exempt and then carry that exemption forward. The statute does not contemplate what property *could* or *would be* exempt in the future and limits the improvements to those in existence through its use of the word, "the." Quoting *Ameritech Mich v PSC*,[5] Respondent states, "It is a maxim of statutory construction that every word of a statute should be read in such a way as to be given meaning, and a court should avoid a construction that would render any part of the statute surplusage or nugatory."

In its response to Petitioner's Cross-Motion for Summary, Respondent disputes Petitioner's characterization of Glazier Commons as a mere extension of Towsley Village, which is an exempt facility. In support of this contention, Respondent attached an aerial photograph of the entire facility, as well as a map provided by Petitioner, both which show a large, separate building connected by a small corridor. Respondent also notes that Petitioner has separate admissions criteria for Glazier Commons, and a different level of care than Towsley Village, which provides memory care.

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[4] *Rose Hill Center v Holly Twp*, 224 Mich App 28; 568 NW2d 332 (1997).
[5] *Ameritech Mich v PSC (In re MCI)*, 460 Mich 396; 596 NW2d 164 (1999).

PETITIONER'S CONTENTIONS

In support of its response, and Cross-Motion, Petitioner contends that it is entitled to an exemption for Glazier Commons pursuant to MCL 211.7r, in that it is used for public health purposes. In support, Petitioner relies upon the *Wexford* ruling as it pertains to §7r. Petitioner also relies upon two Tribunal decisions for the proposition that nursing homes are entitled to an exemption under §7r. Petitioner relies heavily upon a document referred to as an affidavit acknowledged by its CFO and Vice-President, Stephen Fetyko, which sighted 24 different kinds of charitable activities undertaken by Petitioner,[6]and which it contends allows the subject to meet the public health use requirement found in §7r. Petitioner also contends that Glazier Commons is only a single wing of Petitioner's assisted living facility that cannot be separated from Petitioner as a whole for the determination of tax exemptions. Further, Petitioner argues that it is impermissible to separate out the Glazier Commons building from the parcel as a whole. Petitioner also refuted Respondent's arguments concerning prior case law, distinguishing cases, or noting that they have been vacated.

Petitioner also argued that it was entitled to an exemption under MCL 211.7(o)(8), the Home For The Aged exemption. Petitioner contends that there is no dispute that Petitioner is both a 501(c)(3) not for profit corporation and owns and operates a licensed assisted living facility. There is also no dispute that the UMRC assisted living facility was being treated as exempt from the collection of taxes on the effective date of the amendatory act that added subsection MCL 211.7o(8) (January 10, 2007), or that the assisted living facility has been treated as exempt since December 31, 2004 and there has been no transfer of ownership of the assisted living facility. Thus, independent of any other basis, Petitioner is exempt from property taxation under MCL 211.7o(8). Further, Petitioner contends that Respondent has no legal support for the proposition that all real and personal property of the exempt entity must have existed prior to the dates set out in the statute and, therefore, any additions or improvement to that property that are not a renovation or "constructed out of the shell of a prior building" are not exempt. Factually, Petitioner argues that Glazier Commons is not a separate assisted living facility from Towsley Village, which are licensed under a single Home for the Aged license, and that Glazier Commons is not a separate building. Is support of this statement, Petitioner claims that (1)

[6] Fetyko affidavit, ¶26, subparagraphs a-x.

Glazier Commons was made part of the previously existing site plans approved by the City of Chelsea; (2) it did not require a new site plan; (3) no new tax parcel number was required; (4) it did not result in a new address; and (5) it is not licensed as a new or separate home for the aged. Rather, Glazier Commons is merely a site improvement.

Petitioner also contends that it qualifies for the charitable exemption under MCL 211.7o(1). It claims that Petitioner provides Public Health Charity Care, open to residents and non-residents alike. Examples of this charity includes its public support groups, education events, seminars, open houses, site for allied health training, CPR training, immunizations, preventative medicine, and disease screening, public wellness fairs, shuttle stops, and public electric car charging stations. Petitioner again relies upon its affidavit of Stephen Fetyko in support of these contentions. As to its benevolence care policy, which it claims to be just one of many charitable programs it runs, Petitioner states, "In fact, Petitioner's benevolence care policy states that it only provides charity care to UMRC residents, Methodist Ministers and their spouses/widows," rather than all individuals over the age of 60. "When the "group" is defined correctly, it is clear that Petitioner does not discriminate within this group as required by factor three of the *Wexford* test."[7]

Petitioner then reiterates that it is a charity, stating:

> Respondent's implied argument that charging for services means that UMRC is not a charitable organization in "spirit or application" is so baseless that it is offensive. *Petitioner has been providing charitable care to its residents and the city of Chelsea for the past 110 years.* [Emphasis in original]. To claim that Petitioner is not a charitable organization "in spirit" misrepresents the facts of this case. As we described above, over the past three years, 8-12% of Petitioner's assisted living residents have had some or all of their care paid for by Petitioner. Fetyko Aff. ¶19. Petitioner provided nearly 2 million dollars in financial assistance and Petitioner also had paper thin operating margins in 2014 and 2015. Fetyko Aff. ¶l9, Exhibit 19. Further, any margin is reinvested to enhance existing programs or to expand services offered, enabling Petitioner to serve more individuals in the community. Fetyko Aff. ¶6. Even though these facts alone are sufficient to show Petitioner's charitable spirit, Petitioner's charitable spirit is also evidenced through Petitioner's financial support of Petitioner's Public Health Charity Care. Fetyko Affidavit ¶26. Lastly, Petitioner's overall nature is clearly charitable as evidenced by Petitioner's receipt of contributions from donors totaling $1,888,668 in 2014, $4,196,057 in 2015 and $7,211,865 through September 30, 2016. Fetyko Aff. ¶5. Obviously, Petitioner is a charitable organization in spirit and in application.[8]

[7] Petitioner's Brief in Support of Cross Motion, p. 27.
[8] Petitioner's Brief in Support of Cross Motion, p. 27-28.

In its Brief attached to its Motion for Leave to Supplement its Cross-Motion for Summary Disposition *Instanter,* Petitioner again relies upon a document titled Affidavit of Stephen Fetyko. Petitioner argues that it is just like the nursing homes in *Father Murray,*[9] *Henry Ford*[10] and the mental health facility in *Rose Hill,* that were found exempt under MCL 211.7r by the Tribunal. Petitioner also claimed that its other charitable activities include:

- hosting Alzheimer's public support groups monthly open to residents and nonresidents;
- hosting public Alzheimer educational events;
- hosting "lunch and learn" events;
- hosting allied health training for healthcare and social workers;
- hosting and collaborating with Michigan's Alzheimer's Disease Research Center ("MAD RC");
- providing CPR training, immunizations, preventative medicine, and disease screening to the community; and
- participating in a semi-annual public wellness fair,

All take place at Glazier Commons. Petitioner goes on to claim that Respondent falsely states that residents of Glazier Commons do not receive care paid for by Petitioner. Again, relying upon an affidavit by Fetyko, it claims that 8-12% pf UMRC's residents receive some or all of their care paid for by Petitioner. It then set forth dollar amounts which went directly to Glazier Commons' residents.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[11] In this case, both parties move for summary disposition under MCR 2.116(C)(10).

Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.[12] In the event, however, it is determined

[9] *Father Murray Nursing Center v City of Centerline*, 15 MTT 507 (2006).
[10] *Henry Ford Continuing Care Corp v City of Roseville* 8 MTT 334 (1993).
[11] See TTR 215.
[12] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied.[13]

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.[14] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[15] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[16] Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.[17] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[18]

CONCLUSIONS OF LAW

The Tribunal has carefully considered both parties' motions under MCR 2.116 (C)(10), along with responses and finds that granting Respondent's Motion and denying Petitioner's Motion is warranted.

Exemption under MCL 211.7o(8)

Respondent and Petitioner filed cross motions, each alleging that there was no issue of material fact as to whether Petitioner qualifies for an exemption under MCL 211.7o(8). That section reads as follows:

> (8) Real and personal property owned and occupied by a nonprofit corporation that meets all of the following conditions is exempt from the collection of taxes under this act:
>
> (a) The nonprofit corporation is exempt from taxation under section 501(c)(3) of the internal revenue code, 26 USC 501.
>
> (b) The nonprofit corporation meets 1 of the following conditions:

[13] See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).
[14] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[15] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[16] *Id.*
[17] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[18] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

(i) Is a skilled nursing facility or home for the aged, licensed under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, or is an adult foster care facility licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737. As used in this subparagraph:

(A) "Adult foster care facility" means that term as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.

(B) "Home for the aged" means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(C) "Skilled nursing facility" means that term as defined in section 20109 of the public health code, 1978 PA 368, MCL 333.20109.

(ii) Provides housing, rehabilitation services, diagnostic services, medical services, or therapeutic services to 1 or more disabled persons. As used in this subparagraph, "disabled person" means that term as defined in section 7d.

(c) The nonprofit corporation meets either of the following conditions:

(i) *The real and personal property of the nonprofit corporation was being treated as exempt from the collection of all taxes under this act on the effective date of the amendatory act that added this subsection.*

(ii) *The real and personal property of the nonprofit corporation had been treated as exempt from the collection of all taxes under this act on December 31, 2004* and there has been no transfer of ownership of that property during the period of time beginning the last day the property was treated as exempt until the effective date of the amendatory act that added this subsection. As used in this sub-subparagraph, "transfer of ownership" means that term as defined in section 27a. [Emphasis added].

Respondent does not dispute that Towsley Village, which shares the parcel with the subject property is exempt, and was exempt for the relevant time. Nor does Respondent dispute that Petitioner is a 501(c)(3) corporation. Rather, Respondent argues that because Glazier Commons, the real property at issue in this appeal, was not in existence until 2013, it cannot meet the requirements of §7o(8)(c), and thus, its exemption status cannot be “grandfathered” in. We agree. There are two possible interpretations of the highlighted portion of the statute. Subsections (i) and (ii) could be read to mean *any* real or personal property owned by the taxpayer and formerly treated as exempt qualifies, or *the specific property* at issue was formerly

treated as exempt. As exemption statutes are strictly construed,[19] the latter reading makes more sense, and avoids situations where an institution has carte blanche to use its exemption status to build and operate a facility outside the scope of what is normally considered exempt under Michigan law. For instance, the owner of a facility found to be previously exempt could argue that a new facility in a different city in Michigan is also exempt.

Petitioner argues that Glazier Commons is not a separate facility from Towsley Village; rather, "Towsley and Glazier are wings of *one* building."[20] However, a map provided in Petitioner's brochure, as well a satellite photograph show Glazier Commons to be a large, separate building, with its own shape and footprint, attached to Towsley Village by the smallest of corridors.[21] Petitioner also argues that it shares the same license, mailing address and the same parcel. However, Petitioner's brochure shows that applicants for memory care in Towsley Village undergo a separate evaluation from those for assisted living in Glazier, and that the facilities are described separately, and are priced separately.[22]

Petitioner states:

> Neither the statute nor any case law suggests that an entity exempt pursuant to MCL 211.7o(8) cannot make improvements to its existing exempt facility and lose the exemption as a result. Petitioner should not lose the tax exemption given to it by the legislature simply because it wishes to improve its property, allowing Petitioner to serve more members of the community, abide by its mission to maintain up-to-date health care facilities, and to provide a higher quality of care.[23]

Aside from the fact that Petitioner stretches the idea of what constitutes an improvement,[24] it is important to note that Respondent *did not* remove the exemption for Towsley Village. Rather, Respondent did not extend the exemption to Glazier Commons, a brand new building with its own footprint, built on the same parcel. A review of the record card for parcel # 8104006-06-11-480-006 shows an assessment with a true cash value of $3,106,600 and assessed value of $1,553,300. The assessor's calculations for true cash value show the use of an income

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[19] *Retirement Homes of the Detroit Annual Conference of the United Methodist Church Inc* v *Sylvan Twp*, 416 Mich 340, 348; 330 NW2d 682 (1982).
[20] Petitioner's Brief attached to Cross Motion, p. 21 (Emphasis in original).
[21] Respondent's Exhibit 2, attached to its Response in Opposition.
[22] Respondent's Exhibit 1, attached to its Response in Opposition.
[23] Petitioner's Cross Motion, p. 22.
[24] The Glazier Commons addition of 57,968 square feet is a bit more than a new coat of paint and some cut piled carpeting.

capitalization approach for 66 units; the number of units available at Glazier Commons.[25] Accordingly, Petitioner's complaint of a loss of tax exemption is without foundation.

As to Petitioner's implied argument that there is no authority for exemptions applying to only a portion of a disputed parcel, the Tribunal disagrees. In the area of uncapping, the Michigan Court of Appeals has ruled that because *property is not synonymous with parcel* under the General Property Tax Act, a parcel's taxable value may be partially uncapped.[26] As §7o(8) also uses the term property, rather than parcel, the logic behind the Court of Appeals' decision in *Forest Hills* applies here as well. In the exemption field, MCL 211.7dd(c) defines principal residence in a manner that may only include a portion of a dwelling, and hence only a portion of a parcel. Moreover, MCL 211.7r also relied on by Petitioner and discussed below, specifically excludes from exemption, "excess acreage not utilized for hospital or public health purposes," without making any distinction as to parcel. Again, the term parcel is not found in §7o(8). Finally, if the law requires the Tribunal to find that an exemption must apply "all or nothing" to a parcel, then the exempt status of Towsley Village would also have to be decided, even though its exempt status was not disturbed by the Respondent.

As the only dispute under this issue is legal, rather than factual in nature, the Tribunal finds that Summary Disposition in favor of Respondent is warranted under Michigan law, and therefore, denying an exemption to Petitioner for Glazier Commons under MCL 211.7o(8) is warranted.

Next, both parties contend that the property's exemption status under MCL 211.7r should be decided based on each parties' Motion under MCR 2.116(C)(10).

Public Health Exemption Under MCL 211.7r

MCL 211.7r states as follows:

211.7r Certain clinics.

Sec. 7r.

> The real estate and building of a clinic erected, financed, occupied, and operated by a nonprofit corporation or by the trustees of health and welfare funds is exempt from taxation under this act, if the funds of the corporation or the trustees are derived solely from payments and contributions under the terms of collective

[25] The record card is attached as Respondent's Exhibit 3 to its Brief in Support. The number of units in Glazier Commons is reflected in Petitioner's on-line home page for that facility.
[26] *Forest Hills Co-operative v City of Ann Arbor,* 305 Mich App 572,611-613; 854 NW2d 172 (2014).

> bargaining agreements between employers and representatives of employees for whose use the clinic is maintained. *The real estate with the buildings and other property located on the real estate on that acreage, owned and occupied by a nonprofit trust and used for hospital or public health purposes is exempt from taxation under this act, but not including excess acreage not actively utilized for hospital or public health purposes and real estate and dwellings located on that acreage used for dwelling purposes for resident physicians and their families.* [Emphasis added].

It is uncontested that Petitioner is a non-profit corporation. Per *Oakwood Hospital v STC*,[27] non-profit corporation is synonymous with "nonprofit trust." The issue here is to whether or not Glazier Commons uses the facility for public health purposes. Pre-*Wexford* authority makes a distinction between private health purposes and public health purposes. In *Rose Hill Center Inc v Holly Twp*,[28] the Michigan Court of Appeals adopted a dictionary definition of public health purposes:

> *The American Heritage Dictionary: Second College Edition* defines "public health" as [t]he art and science of protecting and improving community health by means of preventative medicine, health education, communicable disease control, and the application of the social and sanitary sciences.[29]

In *Rose Hill*, the Court of Appeals upheld a Tribunal decision that a treatment facility for mental health patients qualified for an exemption under MCL 211.7r, even though the facility was not licensed under a public health statute.

A case discussing whether or not private medical care meets this definition is the Court of Appeals decision in *ProMed Healthcare v Kalamazoo*.[30] The Court of Appeals actually held that the Petitioner was not entitled to an exemption on real or personal property under §7r because it did not own the real estate.[31] However, the Court of Appeals did comment that a typical family medical practice could not qualify under either 7o or 7r, stating,

> we would in effect be granting tax-exempt status to every doctor's office in the state, as well as every organization offering health- related services, as long as those organizations are structured as nonprofit corporations and maintain policies of offering some "appropriate" level of charity medical care to indigent persons. We

[27] *Oakwood Hospital v STC*, 385 Mich 704, 708; 190 NW2d 105 (1971).
[28] *Rose Hill Center Inc v Holly Twp*, 224 Mich App 28; 568 NW2d 332 (1997).
[29] *Id*., at 33.
[30] *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).
[31] *Id*., at 497-498.

> cannot conclude that the Legislature intended M.C.L. § 211.7o and 211.7r to create such a result.[32]

The Supreme Court rejected *ProMed's* reasoning that to grant a charitable exemption to Petitioner would open the floodgates. The Supreme Court stated:

> The *ProMed* Court also reasoned that to allow *ProMed* a charitable exemption, it "would in effect be granting tax exempt status to every doctor's office in the state, as well as every organization offering health-related services, as long as those organizations are structured as nonprofit corporations and maintain policies of offering some 'appropriate' level of charity medical care to indigent persons." ProMed,supra at 500–501. We reject that reasoning for two reasons. Most importantly, the Court inappropriately based its statement on its subjective fear of the outcome of applying the clear statutory language, rather than simply applying the language of the statute itself, which says nothing about an "appropriate" level of care. And even if the Court's concern were relevant, we find it somewhat overblown in that it is doubtful that any significant number of profitable medical institutions would forgo their for-profit status in exchange for property tax exemption. In any event, the charitable institution exemption has been in place for over 100 years, and we discern no sign of rampant abuse of it. Nor, apparently, has the Legislature because it has not altered the exemption in any significant way since we first interpreted it in 1897.[33]

While ruling upon the exemption found under §7o, The Supreme Court in *Wexford* stated the following concerning §7r:

> Petitioner also argued that it was entitled to the exemption offered under MCL 211.7r to organizations serving a "public health purpose." Because we find that petitioner is exempt as a charitable institution under MCL 211.7*o*, there is no need to delve any further. Thus, we leave further examination of the meaning of "public health purpose" for another day. *We do, however, vacate the part of the Court of Appeals judgment that held that petitioner did not qualify for this exemption.*[34]

While arguably *obiter dictum*, it is unusual for a court to take an action such as vacating a lower court's decision "in passing." Yet, no analysis was put in place to guide future litigants, courts or tribunals on this issue. Interestingly, the Court of Appeals had consolidated *Wexford* with *McLaren Regional Medical Center v City of Owosso*,[35] relied on it part by Respondent, which

[32] *Id*., at 500-501.
[33] *Id.*, footnote 10.
[34] *Id*., at 221, (emphasis added).
[35] *McLaren Regional Medical Center v City of Owosso, (*on remand*)* 275 Mich App 401; 738 NW2d 777 (2007).

was also vacated. On remand, the Court of Appeals in *McLaren* also declined to rule on the issue of an exemption under §7r.[36]

Since the Supreme Court's vacating of two lower court's decisions under MCL 211.7r, the appellate courts have not ruled on the meaning of "public health purpose" under §7r. While the Supreme Court chose not to elaborate on what "public health purpose" means, its explicit disapproval of *ProMed's* floodgates rationale for its finding that a typical medical practice cannot be exempt under either §7o or §7r is no longer viable. Left undisturbed, (or at least not exfoliated) by *Wexford* is the Court of Appeals' 1997 holding in *Rose Hill*.

In applying a definition equating public health purposes with community health purposes, the Court of Appeals stated:

> In the instant case, the tribunal found that petitioner was engaged in the provision of services to mentally ill patients. These services include psychiatric evaluation and diagnosis, the prescription and dispensation of medication, and rehabilitation and reintegration programs. Petitioner is staffed by a psychiatrist, psychiatric nurses, and social workers and provides twenty-four-hour care to its patients. Petitioner is open to mentally ill adults without regard to race, religion, or sex. Petitioner accepts patients covered by Medicare and Medicaid, as well as by private sources.
>
> After considering these facts, we believe that petitioner can reasonably be considered to be operating a facility for "public health purposes." The tribunal's decision constitutes a reasonable interpretation of the statute and is therefore entitled to deference.[37]

Interestingly, the Court of Appeals was silent as to any benefit to the community at large. A review of the Tribunal decision appealed in *Rose Hill* concentrates on the health aspects of care available at the facility, along with its non-profit status and apparent "open-door" policy, rather than on any benefit provided to the community at large.[38] The Tribunal relied upon its earlier decision in *Brookcrest Nursing Home Inc v City of Grandville,*[39] where a nursing home was deemed to qualify as exempt under MCL 211.7r. Subsequently, the Tribunal has also held that a nursing home qualifies as exempt under the same statute. See *Henry Ford Continuing Care Corp*

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[36] *Id*., footnote 4.
[37] *Rose Hill,* 224 Mich App at 33-34.
[38] *Rose Hill Center v Holly Twp*., 8 MTT 530 (1995).
[39] *Brookcrest Nursing Home Inc v City of Grandville,* 5 MTT 1 (1986).

v *City of Roseville,*[40] and *Father Murray Nursing Center v City of Centerline*.[41] In both cases, the Tribunal focused on the facility's similarity in purpose to a hospital. The Tribunal stated in *Father Murray*, "[t]hus, it is clear that while Petitioner is not a hospital in the strictest sense of the word, it provides the same services that hospitals with long-term care units provide."[42]

Respondent has cited several other pre-*Wexford* cases dealing with other organizations where the Tribunal and the courts have rejected exemptions under MCL 211.7r. In *Healthlink Medical Transp Services v City of Taylor,*[43] the Michigan Court of Appeals affirmed the Tribunal's denial of an exemption for an ambulance company. The Court of Appeals also rejected an exemption claim of an HMO in *The Wellness Plan v City of Oak Park.*[44] In both cases, the court distinguished between providing individual health care as their primary purpose, rather than community health care. Petitioner argues that the subject is neither a medical transport service, nor an HMO. The Tribunal agrees, and finds these cases inapposite.

Petitioner relies upon the *Rose Hill, Henry Ford,* and *Father Murray* for the proposition that an entity that provides medical services on an individualized basis can be exempt under MCL 211.7r. However, in *Rose Hill, Henry Ford,* and *Father Murray*, while all petitioners provide *individual* health care, each Petitioner had an open door policy.[45] In *Rose Hill*, the Tribunal found that Petitioner accepts Medicare and Medicaid patients.[46] In *Henry Ford*, the Tribunal held that MCL 211.7r is not limited to charitable institutions. However, the Tribunal noted that "in addition to private pay patients, Medicaid and Medicare patients are admitted."[47] Similarly, in *Father Murray*, the Tribunal found that Petitioner was mandated to care for the poor.[48]

A significant difference between subject and the facilities in *Rose Hill, Henry Ford,* and *Father Murray* is that Glazier Commons is designed for senior citizens who are *medically stable*,

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[40] *Henry Ford Continuing Care Corp v City of Roseville*, 8 MTT 334 (1993).
[41] *Father Murray Nursing Center v City of Centerline* 15 MTT 507 (2006).
[42] *Id*., at 529-530.
[43] *Healthlink Medical Transp Services v City of Taylor*, unpublished per curiam opinion of the Michigan Court of Appeals, Docket No 249969, (Feb. 15, 2005).
[44] *The Wellness Plan v City of Oak Park*, unpublished per curiam opinion of the Michigan Court of Appeals, Docket No 249587 (Dec 14, 2004).
[45] The Tribunal is not necessarily bound by its own prior decisions. However, the common thread of an open door policy can be found, which makes these institutions a resource to the public at large, rather than only to the well-heeled.
[46] *Rose Hill*, 8 MTT 530 at p. 3.
[47] *Henry Ford*, 8 MTT 334 at p. 7
[48] *Father Murray*, 15 MTT at 526.

and declares in its application that "[t]he Assisted Living service is not a nursing home service or a medical plan."[49] Specifically, in the cases listed above, the Tribunal examined the facility to determine if its services were similar to those offered at a hospital. While such services are readily available at Glazier Commons, they are *a la carte* and accompanied by separate charges on top of the standard charges for living there.

While not articulated in these decisions, the very existence of an open door facility that treats and cares for chronically ill persons contributes to community health. Without the availability of such facilities to treat the chronically ill, the infirm, or the mentally ill, a community's health would suffer if such persons had no alternative but to possibly wander the streets or go to jail. In the present case, Respondent sets forth Petitioner's admissions policy to Glazier Commons, which requires a large amount of money to open the door to care. Individuals with enough capital to meet its admissions requirements would also have alternatives to wandering the streets, or becoming public charges.

As Respondent points out in its brief, the cost to live at Glazier Commons as of March 3, 2015, when the property opened, was a *daily* rate of $242 for a standard suite, which is the cheapest option available, and went as high as $262 a day for a deluxe suite.[50] Thus, on an annual basis, the cheapest option available to a single resident for the 2015 calendar year would run more than $88,000, while the most expensive option would cost a resident more than $95,000.[51] A second person could stay in the room for an additional $100 a day, or an additional $36,500 for 2015. As of January l, 2016, the rate for a standard suite increased to $259 a day, while the cost for a deluxe suite increased to $279 a day, and the cost to have a second tenant in the room increased to $125 a day.[52] This increased the yearly cost for a single resident to between $94,535 and $101,835. This figure does not take into account a variety of ancillary services that UMRC offers to its residents at an additional cost, including personal care services such as assistance with bathing, dressing, grooming, and excursions.[53]

In order to apply to live at the subject property, a potential resident must complete and submit a personal health profile, a physician's confidential medical report, along with income and

[49] Respondent's Exhibit 5, p. 5, ¶4.1.
[50] Rate charts, Respondent's Exhibit 6.
[51] *Id*., assuming the resident stayed for 365 days during 2015.
[52] *Id*.
[53]Respondent's Exhibit 5, p. 15-18.

expense, asset and liability data and other financial disclosures.[54] The financial disclosure asks a potential resident to disclose the value of all real estate assets, supported by a bank appraisal or tax assessment, as well as all stocks, bonds, mutual funds, trusts, money market/savings accounts, cash on hand, certificates of deposit, and IRAs or other annuities.[55] Applicants are also asked to break down their total monthly income into no less than five separate categories and explain their guaranteed and other income while at the same time disclosing their monthly debts and expenses broken down into separate categories. Applicants must then confirm that they have listed "all of [their] income and assets" as well as disclose if they plan to make any future commitment of funds and then explain the destination, amount, and duration of that commitment. The application also states that, if the application is accepted, the applicant:

> will be required to agree not to transfer or otherwise give away my assets, including any assets [the applicant] hold[s] jointly or in common with others, for less than fair market value, until I leave the community, and to use my assets for payment of my stay at the [Subject Property] until the assets are exhausted or until I leave the Community.[56]

When considering an applicant, UMRC notes that "[a]pplicants must have financial resources in accordance with the current screening process and guidelines."[57] Furthermore, a "resident may be transferred or discharged only ... for nonpayment of his or her stay ...."[58] In other words, a resident must undergo a wallet biopsy before acceptance.

Significantly, the last line of the application states that an election "not to complete or disclose financial information ... [or] failure to disclose assets and income *will* constitute ineligibility for benevolent care support."[59]

To these written policies found in Petitioner's application process, Petitioner has responded with a purported affidavit by Stephen Fetyko which states in part that "UMRC has not denied a person applying to live at its assisted living for the sole reason that he or she could not pay the standard costs to live at the subject property."[60] In fact, there are two separate documents submitted by Petitioner titled Affidavit of Stephen Fetyko; one attached to Petitioner's Cross

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[54] Respondent's Exhibit 7.
[55] Respondent's Exhibit 7, p. 3-4.
[56] Respondent's Exhibit 7, p. 4.
[57] Respondent's Exhibit 5, p. 21.
[58] Respondent's Exhibit 5, p.22.
[59] Respondent's Exhibit 6, p. 35.
[60] "Affidavit of Stephen Fetyko" ¶20.

Motion, and one attached to its attachment to its Motion to Supplement. While so titled, *neither document is actually signed, physically or electronically, nor otherwise affirmatively agreed to by Mr. Fetyko.* Nor is either document's contents sworn to, or subscribed to on its face. Instead, each document ends with a signed statement by a notary that Mr. Fetyko "acknowledged" the instrument. The Tribunal finds that mere "acknowledgement" does not bestow legitimacy. Further, we find that these documents are not truly affidavits, as required by the Supreme Court in prosecuting and defending (C)(10) Motions per *Smith v Globe Life Ins Co*, and *Quinto v Cross and Peters Co*. While the Tribunal can find no requirement *per se* that a signature must appear on an affidavit, MCR 2.119(B)(1)(c) specifies that the document "Show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit." The fact that the purported affidavits are unsigned, without a signature blank, and without any attestation as to the truth of the contents of the document, Petitioner fails to make such an affirmative showing. While formalities such as signing a document under oath are sometimes not strictly reserved, the reason such formalities exist is to insure that a potential witness has acted with a certain modicum of solemnity required when signing and swearing to the truth of a document, and can in fact testify to the assertions contained in the document. Petitioner's complete failure in this regard fails to show what Mr. Fetyko could competently testify to.[61]

These documents also conflict with the definition of affidavit found in Black's Law Dictionary, which states, "A voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths, such as a notary public."[62] Accordingly, Petitioner has failed to put forth anything more than its counsel's bald assertions rebutting Petitioner's own application requirements, thus failing to establish the existence of an issue of a material fact.

Even if Fetyko had bothered to sign the affidavits, the claims contained within these documents conflict with Petitioner's own stated written policies. Accordingly, the Tribunal holds that Petitioner has failed to rebut its own admissions policy, which requires an applicant to pledge to agree to be liable for payment, "for all amounts due under the Agreement,"[63]as well as its so called benevolent policy, which only applies to residents still living after 42 months. It

[61] Also of note is MCR 2.115(H), which provides a procedure when facts are only known by an individual whose affidavit cannot be procured. This also implies that an affidavit must be signed and sworn to.
[62] Black's Law Dictionary, p 62, 8th Ed, 2004 West, a Thomson Business, St. Paul, MN.
[63] Respondent's Exhibit 5, p. UMRC 145.

therefore follows that Petitioner in its Glazier Commons facility only provides a high end residence to those who can afford it, rather than care to the community at large, and does not meet the public health purposes requirement. Accordingly, as there is no issue of material fact, the Tribunal finds that granting summary disposition in favor of the Respondent is warranted as to Petitioner's exemption claim under MCL 211.7r.

Exemption Claim under MCL 211.7o(1)

The last exemption statute at issue in this appeal is the Charitable Exemption found in MCL 211.7o(1).

MCL 211.7o(1) states:

> (1) Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.

Ownership and occupancy is not at issue. An issue in this case as set forth by Respondent is whether or not Petitioner is a nonprofit charitable institution, and whether the subject is occupied solely for the purposes for which it is incorporated. Crucial to resolving the non-profitable charitable institution issue under MCL 211.7o(1) is the Supreme Court's *Wexford* decision which sets forth six factors. Failure to meet any of these factors disqualifies a Petitioner for an exemption under §7o(1). The six *Wexford* Factors are as follows:

> (1) A "charitable institution" must be a nonprofit institution.
>
> (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.
> (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.
> (4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
> (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
> (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.

Factor (1) is not in dispute, as Petitioner has been incorporated as a nonprofit corporation,[64] and has received a designation from the Internal Revenue Service as a 501(c)(3) organization.[65] Nor are Factors (2), (4), or (5). Rather, Factors (3) and (6) are in dispute. Factor (3) reads:

> (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered**.**

As the law currently stands,[66] Respondent argues that Petitioner discriminates against those it purports to serve, (persons over 60 years of age), who only receive residency at Glazier Commons if they meet stringent financial criteria. Further, those residents are only eligible for benevolent care if they deplete all their assets by paying for their stay at Glazier Commons, and have lived there for 42 months, and even then, it is discretionary as to whether the residents will be awarded benevolent care. Respondent further argues that Petitioner discriminates within that group, giving preference to Methodist ministers and/or their surviving spouses.

Petitioner argues that it meets Factor (3) because it provides other charity in addition to its benevolent care policy, such as hosting seminars, support groups, training and the like, to the public at large. Again, this summary of activity is based upon the purported affidavit of Stephen Fetyko. Even assuming that these assertions are true, the main function of a 66 unit residential

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[64] Restated Articles of Incorporation, Petitioner's Exhibit 15 attached to its Cross-Motion.
[65] IRS Letter dated September 12, 1997, Petitioner's Exhibit 17 attached to its Cross-Motion.
[66] The Tribunal notes that Factor 3 as it is currently understood under case law may in the near future be substantially modified. The Supreme Court on April 1, 2016, directed the Clerk to schedule oral argument on whether to grant application or take other action in *Baruch SLS, Inc v Tittabawassee* SC Docket No. 152047. The Order states:

> The parties shall file supplemental briefs within 42 days of the date of this order addressing: (1) whether *Wexford Medical Group v City of Cadillac*, 474 Mich 192 (2006), correctly held that an institution does not qualify as a "charitable institution" under MCL 211.7o or MCL 211.9 if it offers its charity on a "discriminatory basis"; (2) if so, how "discriminatory basis" should be given proper meaning; (3) the extent to which the relationship between an institution's written policies and its actual distribution of charitable resources is relevant to that definition; and (4) whether, given the foregoing, the petitioner is entitled to a tax exemption.

The Tribunal also notes that the Supreme Court heard oral argument on this issue on December 8, 2016, and that a decision is likely to be imminent. It appears to the Tribunal that this *Wexford* factor is likely to be substantially modified, if not completely abrogated.

facility is to house residents. The Tribunal holds that any other activity for the general public is ancillary to the purpose of this building, rather than its central mission.

After arguing that it offers charity to the public, Petitioner then contradicts itself concerning who it purports to serve:

> In fact, Petitioner's benevolence care policy states that it only provides charity care to UMRC residents, Methodist Ministers and their spouses/widows, not all individuals over the age of 60. Exhibit 18. *That is, the "group" is not all individuals over the age of 60," but instead residents of Petitioner's assisted living facility, Methodist Ministers or their spouses/widows that have depleted their assets.* Exhibit 18. *When the "group" is defined correctly, it is clear that Petitioner does not discriminate within this group as required by factor three of the Wexford test.*[67]

Petitioner is correct to point out that defining the group *correctly* determines in part whether there is discrimination among that group. However, under this logic, a home for Billionaires that treats each Billionaire equally would meet the non-discrimination Factor, thus standing the non-discrimination factor on its head.[68] In any case, based upon its own marketing materials, Petitioner purports to serve the needs of Michigan's diverse aging population, rather than surviving residents.[69] Accordingly, per their own policy, they only bestow benevolent care upon a hand-picked group, rather than Michigan's diverse aging population. Even among this hand-picked group, Methodist clergy and their spouses get preferential treatment over lay persons.

In its Supplemental Brief, Petitioner submits another unsigned, unsworn affidavit from Stephen Fetyko, claiming that Petitioner spent $454,546 worth of financial assistance and free care to residents in its Glazier Commons addition. Again, if the Tribunal had an actual sworn statement contradicting Respondent's own policy, as opposed to something drafted by its attorney, and "Acknowledged" per the notary block, a question of fact would arise as to whether or not Petitioner ignores its own policy. As Petitioner failed to provide such a document, the

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[67] Petitioner's Cross Motion, p. 27.

[68] Under this same logic, one can imagine a retirement home exclusively for Klansmen arguing that it does not discriminate within that group. It is currently doubtful that any such organization would be entitled to §501(c)(3) status.

[69] See Petitioner's Exhibit 11, "A Community in Harmony" pamphlet; See also Respondent's Exhibit 1, p. 2. Which states in part:

> While much has changed over the last one hundred years, UMRC's commitment to its founders' charge remains steadfast. UMRC looks ahead to its second century with renewed purpose and dedication to its mission: to meet the changing needs of Michigan's diverse aging population by providing housing and related services with a Christian focus.

Tribunal is left without a question of fact on this issue, and holds that Respondent is entitled to Summary Disposition, as to Factor (3).

Respondent also argues that Petitioner's charitable nature under Factor (6) must be called into question because of its failure not to discriminate under Factor (3). The sixth *Wexford* Factor states as follows:

> (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.

This factor sums up the other five factors, and, per *Wexford's* direct holding, strikes down any quantitative test as to whether or not an institution is charitable. Specifically, the Supreme Court found that a non-profit medical facility by its very nature was charitable. The fact that an infinitesimally small percentage of free care was actually given out by the Petitioner in *Wexford* was not determinative of its charitable nature. The Tribunal finds that it does not have enough evidence to determine if Petitioner is overall a charitable institution as defined in Factor (6). Further, it is possible that Factor (3) may soon be done away with by the Supreme Court when it issues its forthcoming decision in *Baruch SLS.* However, §7o(1) has another requirement in addition to occupancy, and the *Wexford* Factors.

"Occupied solely for the purposes for which that nonprofit charitable institution was incorporated

Lastly, to qualify under MCR 211.7o(1), a taxpayer must show that it occupies the subject property solely for the purposes for which it was incorporated. Respondent argues that Petitioner has failed to demonstrate that the subject property is used for charitable purposes. Respondent relies upon *Michigan Baptist Homes & Dev Co v Ann Arbor*,[70] where a charitable organization failed to operate a particular facility in a charitable manner, and was thus denied an exemption.

Respondent alleges that Petitioner cannot prevail for an exemption under MCL 211.7o(1) because its activities in Glazier Commons are similar to *Michigan Baptist Homes Inc v City of Ann Arbor*,[71] and *Retirement Homes of the Detroit Annual Conference of the United Methodist*

[70] *Michigan Baptist Homes & Dev Co v Ann Arbor,* 396 Mich 660; 242 NW2d 749 (1976).
[71] *Michigan Baptist Homes Inc v City of Ann Arbor,* 396 Mich 660; 242 NW2d 749 (1976).

Church v Sylvan Twp.[72]The Supreme Court in its *Wexford* decision approvingly discussed these earlier precedents. As to *Michigan Baptist*, the Court in *Wexford* stated:

> Residents [at Hillside Terrace] were hand-selected by the establishment after an application process that asked them to fully detail their financial status and their health. Those who could not show sufficient means or who were in less than reasonably good health were, in large part, rejected.
>
> On the other hand, the other nursing home, the Anna Botsford Bach Home, was endowed by and partially financed through charitable contributions and annual charity drives. Rather than rely on resident fees for its maintenance, operational costs were paid using principal and interest from the endowment fund. *Id.* The Bach Home residents did not pay the full cost of their care, nor were they expected to. *Id.* And residents were accepted on the basis of their lack of ability to find care elsewhere, not on the basis of being in good financial and physical health.
>
> We found these differences critical and, thus, rejected the petitioner's equal protection claim that Hillside Terrace deserved the same tax exemption granted to the Bach Home. In light of the fundamental differences in the way the homes were run, we held that the city's decision to treat the entities differently was fully justified. Moreover, we found that Hillside Terrace, while purported to exist for benevolent, charitable, and general welfare purposes, was not actually furthering those objectives. Because of its selection process and resident-funded mechanism, we concluded that the home did not "serve the elderly generally," but, rather, "provide[d] an attractive retirement environment for those among the elderly who have the health to enjoy it and who can afford to pay for it." This structure for the nursing home, we held, did not comport with the legislative intent behind the charitable institution exemption statute. [Internal citations omitted].[73]

The Supreme Court in *Wexford* then discussed its earlier decision in *Retirement Homes*:

> The petitioner in *Retirement Homes* sought tax exemption as a charitable institution for the apartment complex it operated in conjunction with a licensed nursing home and a licensed home for the aged. While the two licensed care facilities had already been established as tax-exempt, the apartments were a new addition to the complex and had not yet been evaluated. We accepted the Tax Tribunal's finding that the apartment building was not entitled to tax exemption merely by virtue of its association with the tax-exempt properties, and, thus, had to be examined separately. We then looked closely at how the apartment component of the complex was operated and found that the apartments differed little from the nursing home in *Michigan Baptist, supra,* that was not tax-exempt. We observed the Tax Tribunal's findings that residents were admitted "on the basis of their health and ability to pay the monthly fee," which contradicted the petitioner's articles of incorporation. We

[72] *Retirement Homes of the Detroit Annual Conference of the United Methodist Church v Sylvan Twp*. 416 Mich 340; 330 NW2d 682 (1982).
[73] *Wexford*, 474 Mich at 208-209.

> also noted the tribunal's finding that "the apartments were merely 'a method whereby [the apartment] residents assure themselves a bed in a nursing home upon becoming disabled' and 'a convenient method of keeping a ready supply of prospective nursing home and old age home residents on hand' ".
> ***
> We noted that apartment residents who became unable to pay the monthly fee were relocated into areas of the retirement homes' complex that would entitle them to government assistance, which, consequently, lifted the petitioner's burden of charity. [Internal citations omitted].[74]

As described in its application process, Petitioner has a striking resemblance to Hillside Terrace, in *Baptist Homes*. Applicants must undergo a very complete financial physical, as well as medical certification before they are to be considered for Glazier Commons. It is also similar to the facility in *Retirement Homes.* Glazier Commons is on the same campus as Petitioner's independent living housing, and its skilled nursing facility. It shares a parcel and address with Towsley Village, its memory care unit. As in *Retirement Homes*, if the resident does qualify under the benevolent care policy, the resident may be asked to relocate to less expensive accommodations. As the Supreme Court found in *Michigan Baptist*, and *Retirement Homes*, the exhibits attached to each party's (C)(10) Motion support a holding that Petitioner does not occupy Glazier Commons solely for the purposes for which that nonprofit charitable institution was incorporated, which are "charitable, religious and educational purposes."[75] Therefore, Summary Disposition in favor of Respondent is warranted as to Petitioner's exemption for Glazier Commons under MCL 211.7o(1).

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Leave to Supplement its Cross Motion for Summary Disposition *Instanter* is GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that Petitioner's Cross Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that the case is DISMISSED.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

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[74] *Id*., at 209-210.
[75] Restated Articles of Incorporation, Petitioner's Exhibit 15.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[76] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[77] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[78] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[79]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[80] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[81] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[82]

By David B. Marmon

Entered: March 2, 2017

[76] See TTR 261 and 257.
[77] See TTR 217 and 267.
[78] See TTR 261 and 225.
[79] See TTR 261 and 257.
[80] See MCL 205.753 and MCR 7.204.
[81] See TTR 213.
[82] See TTR 217 and 267.