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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Canterbury-on-the-Lake, a/k/a
St. Luke's Episcopal Health Ministries,
Petitioner,

v

Waterford Township,
Respondent,

and

Michigan Department of Treasury,
Intervenor-Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 19-000752

Presiding Judge
Patricia L. Halm

ORDER PARTIALLY GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

ORDER PARTIALLY GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

ORDER PARTIALLY GRANTING INTERVENOR-RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER 2.116(C)(10)

ORDER DENYING INTERVENOR-RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER 2.116(C)(8)

ORDER GRANTING RESPONDENT'S MOTION FOR COSTS AND FEES

INTRODUCTION

The issue in this case is whether real property known as Canterbury-on-the-Lake (the subject property), owned by St. Luke's Episcopal Health Ministries[1] (Petitioner), is exempt from the levy of ad valorem property taxes under Sections 7o(1), 7o(8), 7r, and

[1] St. Luke's Health Ministries is listed as the owner of the subject property on the property's Property Record Card. See Respondent's Exhibit 2.

7s of the General Property Tax Act[2] (GPTA) for the 2019 tax year.[3] Property taxes have been assessed against the subject property by Waterford Township (Respondent).

The Michigan Department of Treasury (Treasury) filed a Motion to Intervene in this matter, asserting that it has a monetary interest in its outcome. The Tribunal granted Treasury's Motion, naming it as Intervenor-Respondent.

On October 23, 2020, Petitioner, Respondent, and Treasury, each filed Motions for Summary Disposition. On November 13, 2020, Petitioner filed responses to Respondent's and Treasury's Motions. Also on that date, Respondent and Treasury filed responses to Petitioner's Motion.

The Tribunal has reviewed the Motions, the Responses, and the evidence submitted, and finds that the parties' Motions for Summary Disposition, under MCL 211.7o(1), are denied because there are genuine issues of material fact. Therefore, the question of whether the subject property is eligible for a property tax exemption under MCL 211.7o(1) will proceed to hearing. Further, Petitioner's Motion for Summary Disposition, as it pertains to MCL 211.7o(8) and MCL 211.7s, is denied. However, Petitioner's Motion as it pertains to MCL 211.7r is partially granted.

The Tribunal further finds that granting Respondent's and Treasury's Motions for Summary Disposition under MCL 2.116(C)(10), as it pertains to MCL 211.7o(8) and MCL 211.7s, is warranted. Finally, as it pertains to MCL 211.7r, the Tribunal finds that partially granting Respondent's and Treasury's Motions for Summary Disposition under

[2] MCL 211.1 *et seq*.
[3] Pursuant to the Tribunal's June 17, 2020 Order, the 2020 tax year was severed from this appeal and assigned MOAHR Docket No. 20-002314.

MCL 2.116(C)(10) is warranted. However, Treasury's Motion for Summary Disposition under MCR 2.116(C)(8) is denied.

PETITIONER'S MOTION FOR SUMMARY DISPOSITION

In its Motion for Summary Disposition (Petitioner's Motion), Petitioner contends that St. Luke's Episcopal Health Ministries founded Canterbury Health Care, Inc. (Canterbury) as a Michigan nonprofit corporation in 1991 and that Canterbury is the actual Petitioner in this case.[4] Petitioner contends that Canterbury has been recognized as a § 501(c)(3) nonprofit corporation since 1992. Per Canterbury's Mission Statement, it "was founded on the tenets of the Episcopal Church and shall continue to promote and support spiritual, loving, gracious health care and housing for seniors and others in need, consistent with its Episcopal heritage."[5]

To that end, the subject property, known as Parcel No. 13-16-126-007, contains an integrated housing facility used to provide a "continuum of care" to senior citizens and others in need. The property is located at 5601 Hatchery Road in Waterford Township, and contains 40 acres of land and five buildings. While the buildings are totally independent, they are "physically interconnected through a common area known as the Community Center."[6] The five buildings include:

a. Southminster, which is comprised of seventy-four (74) independent living apartments for senior citizens;
b. The Leas, which contains forty (40) assisted living apartments.
c. The Meadows, which contains thirty-two (32) Home for the Aged licensed memory care apartments;
d. The Pavilion, which consists of one-hundred twenty-eight (128) skilled nursing licensed long-term care and rehabilitation beds; and
e. The Community Center includes St. Luke's Chapel, which is open to the public for worship and where religious services are held by other

[4] Petitioner's Motion at 2.
[5] Petitioner's Exhibit 1: Restated Articles of Incorporation (Restated Articles), Article 2.1.
[6] Petitioner's Motion at 5.

> religious denominations . . . The Community Center is similarly open to the public for various community functions.[7]

In its Motion, Petitioner argues that the subject property is exempt from property taxes under four provisions of the GPTA. Specifically, Petitioner argues that the subject property is exempt as: (1) a nonprofit, charitable institution under MCL 211.7o(1); (2) a nonprofit corporation that is a skilled nursing facility or home for the aged under MCL 211.7o(8); (3) a nonprofit trust using its property for public health purposes under MCL 211.7r; and (4) a house of public worship under MCL 211.7s. Petitioner further argues that there is no genuine issue of material fact as to whether it qualifies for these exemptions and, as such, it is entitled to judgment as a matter of law under MCL 2.116(C)(10).

Petitioner's MCL 211.7o(1) Argument

Under MCL 211.7o(1), "[r]eal 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 property tax. Petitioner argues that pursuant to *Wexford Medical Group v Cadillac,*[8] it is entitled to this exemption.

In *Wexford*, the Michigan Supreme Court revised the test used to determine whether a claimant qualifies for a property tax exemption under MCL 211.7o(1).[9] Under *Wexford*, this test contains the following three factors:

1. The real estate must be owned and occupied by the exemption claimant;
2. The exemption claimant must be a nonprofit charitable institution; and

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[7] *Id*. at 5-6.
[8] *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).
[9] These revisions were necessary given the 1980 amendments to MCL 211.7o. See 1980 PA 142.

3. The exemption only exists when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.[10]

Petitioner asserts that it owns and occupies the subject property and therefore there is no dispute that it meets the first factor of the revised test.

To determine whether a claimant is a nonprofit charitable institution as required by the second factor, the *Wexford* Court provided an additional six-part test. This test requires that:

> (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.[11]

Petitioner asserts that it meets the first two parts of this six-part test because, pursuant to its Restated Articles of Incorporation, "[it] is organized as a nonprofit

[10] *Wexford* at 203.
[11] *Id*. at 215.

corporation and it operates and acts exclusively for charitable purposes . . . ."[12]

As for the third part of the *Wexford* test, Petitioner asserts that it does not discriminate in providing its services. Petitioner explained that over half of its skilled nursing residents are indigent and receive support via Medicaid. Petitioner provides this care "in spite of the low or negative margin associated with the Medicaid program" because it "is committed to serving the needy elderly population . . . ."[13] Those wishing to reside at the subject property are not denied admission based on an inability to pay. Applicants are only denied admission when there is a lack of space or when Petitioner is unable to provide the care needed. "Accordingly, Petitioner meets the third *Wexford* factor because it provides services to the elderly population without discrimination; Petitioner serves any and every person in need of its charitable services up to its capacity in each of its facilities."[14]

Petitioner also relies on Michigan's Supreme Court's decision in *Baruch SLS, Inc v Tittabawassee Twp*[15] in asserting that it meets the third *Wexford* test. In *Baruch*, the Court established a "reasonable relationship" test to use in determining whether a claimant offers its charity on a discriminatory basis. Under this test, the question to be asked is "whether the restrictions or conditions the institution imposes on its charity bear a reasonable relationship to a permissible charitable goal."[16] According to Petitioner:

> [T]he *Baruch* Court noted it is impractical for a retirement home to be required to serve the elderly population generally "without restriction," remarking that, "if an institution cannot serve everyone who could benefit from the service (as most cannot), surely it will have to select its beneficiaries in some manner," thus rejecting the conclusion in previous

[12] Petitioner's Brief in Support of its Motion for Summary Disposition (Petitioner's Brief) at 12.
[13] Petitioner's Brief at 12.
[14] *Id*. at 13.
[15] *Baruch SLS, Inc v Tittabawassee Twp*, 500 Mich 345; 901 NW2d 843 (2017).
[16] *Id*. at 360.

> cases that a charitable institution must "allocate[] its services using an arbitrary metric, such as a lottery or first-come, first-serve[.]"[17]

Petitioner also cites the dissent in *United Methodist Retirement Communities, Inc v City of Chelsea*, wherein Justice Markman opined that "*Baruch* held that institutions are not precluded from receiving a charitable exemption merely because they are governed by standards for determining which persons - among the general population they purport to serve - will qualify for their services."[18]

Addressing the fourth part of the *Wexford* test, Petitioner asserts that it brings "people's minds and hearts under the influence of education or religion" because it was founded on the tenets of the Episcopal Church. In addition, as a continuing care retirement community and skilled nursing facility, Petitioner operates to relieve people's bodies from disease, suffering, or constraint. Petitioner explained that it offers wellness programs designed to relieve the needs of its residents, including "fitness classes, technology seminars, story-telling, in-house movies, bingo, dog visits, crafts and manicures."[19]

The fifth part of the *Wexford* test provides that a claimant "can charge for its services as long as the charges are not more than what is needed for its successful maintenance."[20] Petitioner argues that it meets this part of the test because "[t]he base rental for all four Canterbury facilities are set at amounts no more than necessary in order for Petitioner to maintain its services, considering the existing and anticipated

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[17] Petitioner's Brief at 11, citing *Baruch* at 355.
[18] *United Methodist Retirement Communities, Inc v City of Chelsea*, 503 Mich 1025; 926 NW2d 572 (2019).
[19] Petitioner's Brief at 14.
[20] *Wexford* at 203.

resources of the Petitioner."[21] Petitioner explained that, under *Baruch*, an analysis of a claimant's fees should be made under the fifth part of the test, and not the third part.

Finally, Petitioner argues that it meets the sixth part of the *Wexford* test because its Articles of Incorporation clearly show that its overall nature is charitable. Petitioner has been exempt from federal income taxes as a 501(c)(3) corporation since 1992. Also, since that time, Treasury has exempted Petitioner from sales and use taxes. For those who need financial assistance in paying the monthly rental payment, Petitioner has a **"**Good Samarian Fund." In addition, Petitioner has a Scholarship Fund for high school seniors who have volunteered at the facility.

Because Petitioner meets all six parts of the *Wexford* test, Petitioner contends that it is a charitable institution. Therefore, Petitioner meets the second factor of the revised test.

The third and final factor in the revised test is the requirement that the property be occupied by the claimant solely for the purposes for which the claimant was incorporated. According to Petitioner, it meets this factor because it "only uses its real or personal property in furtherance of and consistent with its stated organizational purpose as a charitable continuing care retirement community."[22]

Respondent's Response to Petitioner's MCL 211.7o(1) Argument

In its Response to Petitioner's Motion for Summary Disposition (Respondent's Response), Respondent argues that Petitioner discriminates in who it serves and that it selects its residents based on "health and wealth."[23] In support of this argument,

[21] *Id*. at 15.
[22] *Id*. at 15.
[23] Respondent's Response at 1.

Respondent also relies upon *Baruch* wherein the Court held that the third factor "is intended to exclude organizations that discriminate by imposing purposeless restrictions on the beneficiaries of the charity. We clarify that *Wexford* factor three accomplishes this goal by banning restrictions or conditions on charity that bear no reasonable relationship to an organization's legitimate charitable goals."[24]

To determine Petitioner's charitable goal, Respondent turned to the Mission section of Petitioner's Restated Articles, which state that Petitioner's purpose is "to promote and support spiritual, loving, gracious health care and housing for seniors and others in need, consistent with its Episcopal heritage."[25] Respondent then turned to Petitioner's claim of charity.

According to Petitioner, "[a]pplicants are not denied admission . . . based on an inability to pay."[26] However, Respondent argues that the confidential data that Petitioner requests of its applicants indicates otherwise. Specifically, the application requires:

> [A]n extensive listing of assets, income, debts, and expenditures along with a statement attesting it is true, notarization, and the signatures of two witnesses - requirements that are found nowhere else in the application. Combined with the fact that it costs tens of thousands of dollars to simply live at the property and that cost is advertised up front, there is no need to deny people for inability to pay when the application itself serves to weed out those who would be unable to pay the tens of thousands of dollars a year to live at the property.[27]

In addition, Petitioner did not provide "a single shred of evidence" that it ever admitted anyone who could not pay. "Not denying those who have the inability to pay without any evidence of actually *admitting* those who could not pay simply confirms that

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[24] *Baruch* at 357.
[25] Petitioner's Exhibit 1, Section 2.1.
[26] Petitioner's Brief at 13.
[27] Respondent's Response at 3-4.

the purposefully erected barriers to entry are working."[28] It is true that those who are fortunate enough to become residents can be assisted through the Good Samaritan Fund. However, disbursements from this Fund come with a variety of restrictions and are only available to those who have lived at the subject property for at least five years. The fact that only one resident a year received assistance during the relevant period of time also confirms that the barriers to entry are working.

As for Petitioner's claim regarding charity provided to its Medicaid patients, Respondent argues that this service is only provided in the skilled nursing area, meaning that three-fourths of the subject property's living area is excluded. Moreover, Petitioner recoups more for Medicaid beds ($491 per day) than it does for any other skilled nursing bed, even private pay. Respondent argues that Petitioner provided no evidence that it is losing money providing services to Medicaid patients.

In summary, Respondent asserts that under *United Methodist, Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*[29], and *Michigan Baptist Homes & Development Co v Ann Arbor*,[30] Michigan Courts have made it "clear that selecting for health and wealth is fatal to a claim under MCL 211.7o(1) and that is exactly what occurs at the subject property."[31] Therefore, Petitioner's restrictions do not reasonably relate to its charitable purpose, as required under *Baruch*.

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[28] *Id*. at 4.
[29] *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340; 330 NW2d 682 (1982).
[30] *Michigan Baptist Homes & Development Co v City of Ann Arbor*, 396 Mich 660; 242 NW2d 749 (1976).
[31] Respondent's Response at 5.

Respondent also argues that, overall, Petitioner is not a charitable entity. In determining whether Petitioner provides charity, or a gift, Petitioner's actions must be examined. By selecting residents based on health and wealth, Petitioner excludes those who need its services the most. This is not charitable.

For these reasons, Respondent argues that Petitioner does not occupy the subject property for the purpose on which it was founded and, therefore, Petitioner fails the third and sixth factors of the *Wexford*.

Treasury's Response to Petitioner's MCL 211.7o(1) Argument

In its Brief in Opposition to Petitioner's Motion for Summary Disposition (Treasury's Response), Treasury acknowledges that Petitioner's Restated Articles state that Petitioner was formed for charitable purposes. However, Treasury argues that the Restated Articles do not specify what the charitable purpose is and includes language only meant to meet the Internal Revenue Code's requirements for a § 501(c)(3) corporation. "A nonprofit corporation's property cannot be granted a tax exemption simply because it declares itself a charity, it must show what its charitable purpose is and what activities it conducts on the property it claims as exempt to further such charitable purpose."[32]

To that end, Treasury referenced the "significant" costs Petitioner charges residents to live at the subject property. In 2018, Southminister residents paid an average annual rent that ranged from $25,224 to $42,732. The Leas residents paid between $53,784 and $80,808, depending on the care plan. Residents of the Pavilion paid between $93,440 and $160,235, depending on the method of payment, while

[32] Treasury's Response at 5.

residents of The Meadows paid either $72,000 or $78,000, depending on the type of room. Treasury acknowledged that Petitioner may charge fees for its services; however, these fees may not be more than necessary for its successful maintenance.

Citing *Retirement Homes*, Treasury argues that while a charitable organization may place restrictions on its charity, its charity must still be a gift to the population it purports to serve. "In other words, a retirement community that funds its operations from monthly fees which residents are expected to pay for all of the benefits and services they receive, is not a charitable gift."[33]

Petitioner's MCL 211.7o(8) Argument

Under MCL 211.7o(8), real and personal property owned and occupied by a nonprofit corporation is exempt from property taxes if it meets **all** of the following:

(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:

(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.

[33] *Id*. at 8.

(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.]

According to Petitioner, there is no question that it is incorporated as a nonprofit corporation and that it has § 501(c)(3) status. Therefore, Petitioner meets the requirements of MCL 211.7o(8)(a).

As for MCL 211.7o(8)(b), Petitioner asserts that it meets these requirements as it operates The Meadows, which contains 32 home for the aged, licensed memory care apartments. Petitioner also operates a licensed skilled nursing facility in The Pavilion, which contains 128 long term care and rehabilitation beds. The buildings known as Southminster and The Leas “also qualify as homes for the aged since Petitioner provides personal care services to those residents.”[34]

[34] Petitioner’s Brief at 18.

Finally, Petitioner argues that it meets the requirements of MCL 211.7o(8)(c) "because it[]s real property was fully exempt from taxation until 1997."[35] Petitioner contends that thereafter the subject property was partially exempt pursuant to a Stipulation for Entry of Consent Judgment. Petitioner explained that it was unable to find a copy of the Consent Judgment and that it asked Respondent several times for the subject property's assessment records for the relevant time periods, only to be told that Respondent does not possess these records. Given this, Petitioner contends that Respondent cannot rebut the evidence that the subject property was previously exempt from property taxes.

Respondent's Response to Petitioner's MCL 211.7o(8) Argument

In its Response, Respondent asserts that in making its claim under MCL 211.7o(8), Petitioner relies on documents that do not contain the statements Petitioner attributes to them and do not prove that Petitioner qualifies for the exemption. Under the statute, Petitioner must have been exempt from property taxes on either: (1) the effective date of the amendatory act that added Subsection (8); or (2) December 31, 2004. Respondent asserts that Subsection (8)'s effective date was January 8, 2007, the date it was signed into law.

In support of its claim, Respondent explained that Petitioner submitted incomplete copies of its corporate minutes and an affidavit. The corporate minutes state only that there was a discussion about an exemption and about accepting an offer to stipulate. There is no record that an agreement was ever reached. Moreover, these discussions occurred in April and October 1996, well before the dates specified in the

[35] *Id*. at 19.

statute.

Respondent contends that Petitioner's affidavit is equally problematic in that the affiant was unable to remember the tax year under appeal or the docket number. Moreover, the affidavit does not state that the appeal specifically involved the subject property. Given this, Respondent asserts that Petitioner failed to submit any relevant evidence as to this exemption claim.

Finally, Respondent asserts that even if the subject property was exempt in the mid-1990s, it was clearly not exempt on the dates specified in the statute. Respondent asserts that the subject property's Property Record Cards provide the requisite proof. For the relevant date of December 31, 2004, a property's exempt status would be reflected on its 2005 Property Record Card. In this case, the subject property's 2005 Property Record Card does not contain any indication of an exemption.

As for the other relevant date, January 8, 2007, Respondent explained that to determine whether a property is exempt as of that date, the property's 2007 and 2008 Property Record Cards should be examined. In this case, the subject property's 2007 and 2008 Property Record Cards do not indicate that the property was exempt.

In addition, Respondent submitted an affidavit signed by the assessor confirming that the subject property has never been exempt, either partially or entirely, from ad valorem property taxes. Because there is no evidence that any part of the subject property was exempt on either of the relevant dates, Respondent argues that Petitioner's exemption claim under MCL 211.7o(8) must be denied.

Treasury's Response to Petitioner's MCL 211.7o(8) Argument

In its Response, Treasury argues that the two pieces of evidence offered by Petitioner, being the corporate minutes from April 1996 and an affidavit from Petitioner's former counsel, do not prove that the subject property was exempt on either December 31, 2004, or on January 10, 2007.[36] Instead, the corporate minutes include a discussion of "proposed" assessments for 1997, without indicating what type of exemption is being considered. In addition, the affidavit, even if admissible,[37] concerns the time period of the mid-1990s and is irrelevant to the relevant statutory dates. Finally, Treasury argues that because Petitioner was unable to rebut Respondent's assessor's deposition testimony, Petitioner's MCL 211.7o(8) exemption request should be denied.

Petitioner's MCL 211.7r Argument

Petitioner asserts that it is also exempt under MCL 211.7r, which states in part that:

> 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.]

Petitioner argues that "[t]he term 'nonprofit trust' as used in MCL 211.7r includes Michigan nonprofit corporations."[38] Petitioner cites *Oakwood Hospital Corp v State Tax Commission*[39] in support of this argument.

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[36] It is Treasury's position that MCL 211.7o(8)'s effective date is January 10, 2007, the date Public Act 681 of 2006 was filed with the Secretary of State.
[37] Treasury argues that the affidavit is inadmissible under MCR 2.119(B).
[38] Petitioner's Brief at 20.
[39] *Oakwood Hospital Corp v City of Dearborn and Michigan State Tax Commission,* 385 Mich 704; 190 NW2d 105 (1971).

According to Petitioner, in *Wexford*, the Court "broadly defined 'public health purposes' under MCL 211.7r as performing 'work benefiting the public.'"[40] Petitioner asserts that it uses the subject property for public health purposes "since it is a charitable home providing a continuum care of needs for the aged and chronically ill."[41]

Petitioner contends that the residents of Southminister and The Leas are similar to the patients in *Rose Hill Ctr, Inc v Holly Twp*[42] in that they receive prescription and dispensation of medication services through Petitioner's Wellness Clinic, and they have access to rehabilitation programs. Residents of The Leas also receive basic medication management and administration services. Like the petitioner in *Rose Hill*, Petitioner provides services to mentally ill patients, as the residents of The Meadows are cognitively impaired, suffering from Alzheimer's and other forms of dementia. Finally, Petitioner asserts that its property is used for public health purposes given that almost half of its residents live in The Pavilion, a skilled nursing facility. Moreover, "over half of Petitioner's skilled nursing residents are deemed indigent and receive support for their care via Medicaid."[43] Some of these residents come from other facilities and hospitals, "some of which refuse to or are unable to care for these individuals . . . This provides an immense benefit to the public . . . [and] eases the greater community and government burden of caring for the poor."[44]

Petitioner also relies on *United Methodist*, wherein the Court found the property known as "Towsley Village" exempt from property tax as it was used solely to provide

[40] Petitioner's Brief at 20, citing *Wexford* at 202.
[41] Petitioner's Brief at 21.
[42] *Rose Hill Center, Inc v Holly Twp*, 224 Mich App 28; 568 NW2d 332 (1997).
[43] Petitioner's Brief at 22.
[44] *Id*. at 22-23.

care for those with progressive dementia. Petitioner argues that because the care provided in Towsley Village is similar to that provided by Petitioner at The Meadows and The Pavilion, these facilities are exempt.

Respondent's Response to Petitioner's MCL 211.7r Argument

It is Respondent's position that Petitioner does not provide public health services. In support of this argument, Respondent noted that all of Petitioner's residential contracts state that Petitioner does not provide medical services and that residents are required to utilize outside medical providers. Other services offered by Petitioner are at a cost to the residents. According to Respondent, these facts are almost identical to those in *United Methodist* in which the exemption claim was denied. Moreover, all services offered by Petitioner are offered solely to its residents and not the community at large.

Turning to the cases cited by Petitioner, Respondent asserts that Petitioner's case law is either incorrectly cited or that Petitioner cited irrelevant language. In its citation to *Wexford*, Petitioner stated that the Court "defined public health purposes under MCL 211.7r as performing 'work benefitting the public.'"[45] Respondent argued that Petitioner's quote actually misconstrues what happened in that case. According to Respondent, the Court declined to address the petitioner's claim under MCL 211.7r, leaving "further examination of the meaning of 'public health purpose' for another day."[46]

Respondent was also critical of Petitioner's citation from *Rose Hill,* arguing that Petitioner omitted the Court's definition of "public health." Specifically, in *Rose Hill* the

[45] Petitioner's Brief at 20.
[46] *Wexford* at 221.

Court defined "public health" as "the 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."[47] In addition, Respondent asserted that Petitioner's comparison of the facts in *Rose Hill* to those in this case is meaningless as the issue before the Court in *Rose Hill* was different. In *Rose Hill*, the only issue considered by the Court was the petitioner's failure to be licensed under the Public Health Code.

As for Petitioner's citation to *United Methodist*, Respondent contends that the Towsley Village facility was not an issue in that case and, as a result, there was no finding regarding its exemption status. In addition, Petitioner failed to note that the property at issue in *United Methodist*, Glazier Commons, "only provides a high-end residence to those who can afford it, rather than care to the community at large, and therefore does not meet the public health purposes requirement."[48]

Treasury's Response to Petitioner's MCL 211.7r Argument

In its Response, Treasury discussed the reasons given by Petitioner in support of its position that the subject property is used for public health purposes. These include:

> 1) the resident's access to the wellness clinic; 2) access to rehabilitation programs (physical, occupational and speech) and medication management and administration services provided to Southminster and Leas residents; 3) providing services to cognitively impaired patients; and 4) accepting Medicaid skilled nursing patients at the Pavilion.[49]

Treasury argues that these services do not qualify the subject property as a public health facility as they are provided to Petitioner's residents and not to the public

[47] *Rose Hill* at 33.
[48] *United Methodist* at *5.
[49] Treasury's Response Brief at 12.

at large. In addition, the Wellness Clinic is not staffed with Petitioner's physicians and nurses. Instead, the Clinic is utilized by visiting health care practitioners when they visit their patients who reside at the facility. The general public is not permitted to use the Clinic. Moreover, in *The Wellness Plan v City of Oak Park,*[50] "the Court of Appeals rejected petitioner's argument that the fact it provides a high volume of services to Medicaid patients means those services are for 'public health purposes' but also noted that 'petitioner is still offering medical services on an individual basis, not unlike any other doctor's office, for which Medicaid provides reimbursement.'"[51]

Petitioner's MCL 211.7s Argument

Petitioner's final argument is that it qualifies for a property tax exemption under MCL 211.7s, which states:

> Houses of public worship, with the land on which they stand, the furniture therein and all rights in the pews, and any parsonage owned by a religious society of this state and occupied as a parsonage are exempt from taxation under this act. Houses of public worship includes buildings or other facilities owned by a religious society and used predominantly for religious services or for teaching the religious truths and beliefs of the society.

In support of this claim, Petitioner cites *Institute in Basic Life Principles v Watersmeet Township,*[52] wherein Michigan's Court of Appeals stated: "Under the language of this statute, petitioner's property is exempt from taxation provided that petitioner is a religious society and provided that the property is used predominantly for religious services or for teaching the religious truths and beliefs of the society."[53] "[A]n

[50] *The Wellness Plan v City of Oak Park*, unpublished per curiam opinion of the Court of Appeals, issued December 14, 2004 (Docket No. 249587).
[51] Treasury's Response Brief at 13.
[52] *Institute in Basic Life Principles v Watersmeet Township*, 217 Mich App 7; 551 NW2d 199 (1996).
[53] *Id*. at 13.

association or organization qualifies as a 'religious society' for purposes of the house of public worship tax exemption if its predominant purpose and practice include teaching religious truths and beliefs."[54]

Petitioner asserts that it meets the requirements of this exemption "because St. Luke's Chapel is a religious society which is open to the public for worship."[55] In addition, the Chapel is used by other religious groups for services and activities without restriction. According to Petitioner, it is affiliated with the Episcopal Diocese of Michigan and "is considered a religious institution fully recognized as such by Bishop Wendell N. Gibbs, Jr., the tenth Bishop of the Episcopal Diocese of Michigan."[56]

Respondent's Response to Petitioner's MCL 211.7s Argument

In its Response, Respondent argues that Petitioner is not a "religious society" as its "predominate purpose and practice" does not include "teaching religious truths and beliefs." Instead, Petitioner's predominate purpose is the operation of a residential living facility. Respondent does not dispute that there are religious activities held in St. Luke's Chapel; however, Respondent describes the Chapel as being "a portion of a building and not a legal entity or religious society as claimed by Petitioner."[57] According to Respondent, "[t]he fact that Petitioner is recognized by the Episcopal Diocese of Michigan is not relevant and neither is the fact that other services not hosted by Petitioner occur at the property as the focus is on the owner and the predominate purpose of that entity."[58]

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[54] *Id*. at 14.
[55] Petitioner's Brief at 24.
[56] *Id*. at 24.
[57] *Respondent's Response* at 14.
[58] Respondent's Response at 14.

Treasury's Response to Petitioner's MCL 211.7s Argument

In its Response Brief, Treasury argues that Petitioner has not established that it is a religious society. Treasury cites Petitioner's Restated Articles, which state that its purpose is to "operate and serve as the governing body for retirement centers which may encompass nursing, assisted living, and independent care facilities in the State of Michigan."[59] And while the Restated Articles state that Petitioner is "based on the tenets of the Episcopal Church," the Articles do not state a purpose of holding public worship services or teaching the Episcopal Church's religious truths or beliefs. Given this, Petitioner has not established that it is incorporated as a religious society.

Treasury also argues that any religious activities held at the subject property are incidental to the property's predominate use. Moreover, the chapel is marketed to the residents as an amenity, much like the other non-religious amenities offered by Petitioner.

RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

In its Motion for Summary Disposition (Respondent's Motion), Respondent cites Petitioner's website which describes the subject property as being "comprised of 'over 40 lush, wooded acres'" fronting on Clam Lake.[60] The property is a "sprawling complex" with 232,743 square feet. The property has "beautiful gardens, walking paths, and a covered lakeside pavilion with seating," as well as "outdoor game and entertainment spaces, including a putting green, bocce ball court, shuffleboard, and [a] screened

[59] Petitioner's Exhibit 1.
[60] Respondent's Motion at 1, citing https://www.canterburyonthelake.com/schedule-virtual-tour/.

'Summer House.'"[61] "Premier" services are offered, including chef-prepared, restaurant-style dining, in addition to other services, such as transportation and 24-hour security.

The buildings on the subject property include:

> A reception area, community center, independent living at the Southmister apartments, assisted living at The Leas, short term rehabilitation at The Pavilion Health and Rehabilitation Center as well as long term skilled nursing care at the same location. The property also has a memory care facility known as The Meadows. While nominally divided into separate areas, each of the sections is connected via a covered hallway system such that it is one continuous building.[62]

Respondent described the Community Center as being a two-story building located next to the subject property's main reception area. As described by Petitioner, the Community Center is "in the heart of the facility." The first floor of the Community Center contains Petitioner's office space, a gift shop, a beauty salon and spa, the Wellness Clinic, and a restaurant (The Pub). The second floor contains "an additional dining room, three rooms that can be rented, a library area, and a space referred to as a chapel/cultural center/chaplain office."[63] There is no living space in this building.

The building known as "Southminster" has 75 independent living apartments, including nine studio apartments, 21 one-bedroom apartments, 33 one-bedroom apartments, each with a den, and 12 two-bedroom, two-bath apartments.[64] These apartments have fully equipped kitchens and washers and dryers. For an extra charge, a person can have a dishwasher or microwave installed. All apartments, but for the studio apartments, have a deck or patio, an exterior storage unit, and an uncovered parking spot.

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[61] https://www.canterburyonthelake.com
[62] Respondent's Motion at 1.
[63] *Id*. at 2.
[64] *Id*.

In 2018, the annual cost for a studio apartment ranged from $22,548 to $26,256, with the average cost being $25,224. The annual cost for a one-bedroom apartment ranged from $30,852 to $33,420, with the average cost being $31,956. The cost for a one-bedroom apartment with den ranged from $35,208 to $39,552, with the average cost being $38,124. The cost of a two-bedroom apartment ranged from $41,412 to $45,708, with the average cost being $42,732. These costs also include all utilities, basic DIRECTV, Wi-Fi, housekeeping every other week, and a $215 monthly dining allotment. Additional meals and other services, such as access to a beauty salon, may be obtained for an extra fee.

A person wishing to live at Southmister must sign a lease and pay a one-time, non-refundable application fee and a security deposit. Applicants must be at least 62 years old and "must be able to verify to [Petitioner] that [he or she has] sufficient financial resources to pay the Security Deposit, Monthly Fee, and any additional charges incurred when [he or she] first move[s] into Canterbury."[65] To that end, a person applying to live at Southminster must complete a "Confidential Data Application," which includes detailed information about the applicant's financial status, including their assets, income, and liabilities. "This document must be sworn to as true, notarized, and witnessed by two individuals – a requirement not found anywhere else in the application process."[66]

The building known as The Leas is an assisted living area available to those who need help with bathing, dressing, grooming, medication, and personal maintenance.

[65] Respondent's Exhibit 6: Senior Living Apartment Lease Agreement, § 9.1.1 Eligibility.
[66] Respondent's Motion at 7.

This building is described by Petitioner as “the community for premier assisted living in Waterford, MI.”[67]

The Leas contains 41 apartments, some of which are studio apartments that may or may not have kitchenettes, and one-bedroom apartments. All of the apartments are unfurnished. The base rates for these apartments varies from $4,482 to $5,841 per month and includes three meals a day, utilities, basic DIRECTV, Wi-Fi, weekly housekeeping and laundry, basic medication management, twice weekly bathing assistance, and general access to a personal care team. Residents are offered the same services offered to the residents of Southminister, such as access to the beauty salon, for an extra fee.

Residents of The Leas may take advantage of three additional care plans, but at an extra cost. For example, “Annual Plan A” care rates range from $58,248 to $74,556. However, “‘[n]o skilled nursing services are provided as part of the’ contract and the individual must move to the skilled nursing area at the property or ‘relocate to an outside facility’” if a resident requires care greater than that provided at The Leas. [68]

Like Southminster, residents of The Leas are required to sign a lease that includes a non-refundable application fee and a security deposit. A Confidential Data Application is also required. Residents must be at least 62 years old and must also verify that they have sufficient financial resources to pay the security deposit, monthly fees and any additional charges incurred.

[67] https://www.canterburyonthelake.com
[68] Respondent’s Motion at 5.

The building known as The Pavilion is a skilled nursing facility. Residents of The Pavilion must sign a 13-page Health Center Admission Agreement and pay a deposit. The Pavilion contains semi-private and private rooms, with 128 beds. Of the 128 beds, 80 are Medicaid certified, with 60 of these beds also being certified for Medicare patients. The 2018 daily room rate varied depending on the type of payment, and ranged from Medicaid beds at $263 per day or $95,995 annually, to Medicare beds at $491 per day or $179,215 annually. Private pay residents paid $310 daily or $113,150 annually. The room charges include all utilities, basic DIRECTV, telephone, Wi-Fi, three meals a day plus snacks, daily housekeeping, and weekly laundry services. In addition, residents of The Pavilion are offered the same general amenities offered to residents of Southminister and The Leas, at an extra charge.

In the event that a resident cannot pay The Pavilion's charges, the resident must apply for Medicaid. If there are no Medicaid beds available, the resident will be discharged and relocated to another Medicaid certified Health Center. A resident may also be discharged for non-payment.

The building known as The Meadows is used to care for residents who have Alzheimer's or other cognitive impairment. This building contains 30 memory care apartments, 28 of which are for single-tenant occupancy. The remaining apartments are known as "companion suites" and contain two studio units connected by a shared bathroom. All apartments have access to a secured courtyard and a three-season porch.

Those residing in The Meadows must sign a Residency Agreement and pay a one-time, $2,000 non-refundable community fee. A Confidential Data Application is also

required. In 2018, the monthly rent for a single-tenant apartment was $6,500, while those residing in a "companion suite" were charged $6,000. The monthly rental charge includes all utilities, Wi-Fi, television, all meals, housekeeping, and laundry services. Residents can be discharged for non-payment or for a medical reason.

Respondent's MCL 211.7o(1) Argument

Respondent contends that Petitioner is not a charitable institution. In support of this argument, Respondent relies, in part, on Petitioner's Restated Articles of Incorporation. According to Respondent, "[t]he only specific enumerated purposes [of the Restated Articles] are the ownership and operation of retirement centers with a continuum of care - not *charitable* retirement centers."[69] Petitioner's Restated Articles contain nine "Purposes and Powers," the first power being "[t]o operate and act exclusively for charitable or other exempt purposes."[70] The second purpose is to "among other purposes, operate and serve as the governing body for retirement centers, which may encompass nursing, assisted living and independent care facilities in the State of Michigan."[71] The only *specific* purpose enumerated is to own and operate retirement centers with a continuum of care. This purpose does not require the retirement center to be charitable.

Moreover, Petitioner's "Mission," which is not the same as its legal purpose, states that Petitioner was "founded on the tenants of the Episcopal Church and shall continue to promote and support spiritual, loving, gracious health care and housing for seniors and others in need, consistent with its Episcopal heritage."[72] Respondent

[69] Respondent's Motion at 12.
[70] Petitioner's Exhibit 1.
[71] *Id*.
[72] *Id*.

argues that while Petitioner pays the salary of a Deacon who provides religious services at the subject property, the Restated Articles do not state a purpose related to the teaching of religious truths or beliefs.

In arguing that Petitioner is not a charitable organization, Respondent cites the Michigan Supreme Court's decision in *Wexford,* wherein the Court affirmed the following definition of "charity" as originally set forth in *Retirement Homes*:

> [Charity] * * * [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.[73]

The Court then established a six-factor test that must be utilized when determining whether an institution is charitable under MCL 211.7o. However, Respondent argues that "those factors need not be addressed when the cases used to determine the base definition [of charity] indicate that Petitioner is not charitable."[74] These cases are *Michigan Baptist* and *Retirement Homes*. According to Respondent:

> *Wexford* is, at its core, a case that took the definition of charity that was outlined in *Michigan Baptist* and defined in *Retirement Homes*, affirmed that definition was correct, and then set forth factors that can be analyzed to determine if the claimant meets that charitable definition. In doing so, the *Wexford* court affirmed that both *Retirement Homes* and *Michigan Baptist* are valid, precedential cases. That must be considered in this case due to the fact that the subject property is a retirement facility similar to those at issue in the precedential cases.[75]

In *Michigan Baptist,* there were two facilities at issue: one received an exemption (Botsford Home), while the other (Hillside Terrace) did not. Respondent argues that the

[73] *Wexford* at 211.
[74] Respondent's Motion at 17.
[75] Respondent's Motion at 17.

difference between these two properties, and the reason why one was exempt while the other was not, was the process by which each facility selected its residents. At Botsford Home, applicants who were unable to pay in full and who would otherwise be without care were accepted as residents. At Hillside Terrace, residents were selected based on their health and ability to pay. The *Wexford* Court explained that the selection process for Hillside Terrace "did not comport with the legislative intent behind the charitable exemption statute,"[76] while the selection process at Botsford Home was a "gift" within the meaning of "charity."

In *Retirement Homes,* the facilities at issue included an apartment complex that "operated in conjunction with a licensed nursing home and a licensed home for the aged."[77] Occupants of the apartment complex were selected based on their good health, their ability to live independently, and their ability to pay the monthly charge. Residents who became unable to pay the monthly charge were required to relocate to one of the other facilities and apply for government assistance. "The Court noted that not making a profit did not automatically qualify the claimant for an exemption and that moving residents who could not pay 'lifted the petitioner's burden of charity.'"[78]

Respondent argues that comparing the facilities at issue in *Retirement Homes* and *Michigan Baptist* to the subject property clearly shows that Petitioner is not charitable and that there is no "gift" under the definition of charity. According to Respondent, the process Petitioner utilizes to select its residents is even more stringent than in cases in which the exemption was denied.

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[76] *Wexford* at 209.
[77] *Wexford* at 209.
[78] Respondent's Motion at 16-17, citing *Wexford* at 210.

In addition, Respondent argued that the "charity" offered by Petitioner via its Scholarship Fund is not really "charity." This Fund awards scholarships to a number of high school seniors who have volunteered at the subject property. To qualify for a scholarship, the senior must: (1) submit an application to be a volunteer and be accepted into the program on or before the July 15 of the start of the applicant's senior year of high school, (2) volunteer a minimum of 12.5 hours each month from August to April, with a minimum of 100 hours, and (3) submit a scholarship application in January. The scholarship application consists of a formal essay, three letters of recommendation, transcripts, and a summary of the applicant's volunteering effort.

Respondent argues that because an applicant is required to volunteer a minimum of 100 hours at the subject property, if granted a $1,000 scholarship, the applicant would, in essence, have been paid $10 an hour for the time volunteering. Given this, "[t]he scholarship is barely disguised compensation and, even then, the scholarship is not funded by Petitioner, but by *proceeds from the gift shop at the subject property* . . . ."[79] [Emphasis in original.] This is not a "gift" but compensation for the volunteers' time and effort.

Moreover, a scholarship is not guaranteed even if a student meets all of the requirements. Petitioner bases the amount of the scholarships on the previous year's proceeds from the Gift Shop. In 2016, Petitioner awarded three $1,000 scholarships. In 2017, four $1,000 scholarships were awarded, and in 2018, three $1,000 scholarships were awarded.

[79] Respondent's Motion at 18.

According to Respondent, the Good Samaritan Fund (the Fund), which provides residents with financial assistance in paying the monthly rental payment, is even less charitable due to the qualification process. Applications for assistance are accepted each year from January through April, with recipients being notified in June whether they qualify. The application "requires a disclosure of assets, income, and liabilities on a document that requires notarization and two witnesses - the only time a witness or affidavit is required during the application process."[80] In addition, income tax statements for the three previous years, a three-page medical history form, and "a three page form titled 'determination of living unit occupancy' that screens what tasks a resident can and cannot perform" is also required.[81] To qualify for assistance, the resident must be:

- At least 85 years old;
- Have assets totaling less than $10,0000;
- Be living in a studio or one bedroom apartment;
- Be living in the assisted or independent living areas (others excluded)[82];
- "***Must*** be a current resident at Canterbury-on-the-Lake a minimum of five (5) years[;]" and
- The award will not exceed 50% of monthly rent (excluding service plans) or 70% of resident's income (whichever is greater).[83] [Emphasis in original.]

According to Respondent, a five-year resident of Southminster would have to have spent a minimum of $112,740 at the subject property to qualify for assistance, while a five-year resident of The Leas would have to have spent a minimum of $268,920. Even if a resident receives assistance from the Fund, the resident still has to

[80] *Id*. at 18.
[81] *Id*.
[82] It is noted that assistance is only available to those living at Southminster and The Leas; therefore, 50% of the living areas are automatically excluded.
[83] Respondent's Motion at 8.

pay a portion of the basic room fee plus the fee for other essentials, such as medical expenses.

The decision whether to provide assistance from the Fund is in the sole discretion of Petitioner's Board of Directors and is contingent upon the availability of funds. According to data provided by Petitioner, no disbursements were made in 2016, at which time the Fund had a balance of $322,268. In 2017, the fund's 2017 balance was $317,730 and disbursements of $2,269 was made to a resident in May and June, for a total disbursement of $4,538.[84] In 2018, the Fund balance was $312,893 and monthly disbursements of $2,269 were made to a resident for the period July through December.[85] Finally, Respondent argues that for the 2016 through 2018 tax years, Petitioner cared for 560 residents and provided financial assistance to only one resident during this time.

In summation, Respondent argues that Petitioner is not a charitable organization as defined in *Wexford*. Instead, Petitioner, like Hillside Terrace, provides an "attractive retirement environment for those among the elderly who have the health to enjoy it and who can afford to pay for it."[86] "Petitioner's mission is to provide 'health care and housing for seniors and others in need' but clearly falls short of that in practice."[87]

Petitioner's Response to Respondent's MCL 211.7o(1) Argument

In its Response to Respondent's Motion for Summary Disposition (Petitioner's Response), Petitioner argues that Respondent failed to mention several amenities available to residents of Southminster and The Leas. These include "access to the

[84] *Id*. at 9.
[85] *Id*. at 10.
[86] *Michigan Baptist* at 671.
[87] Respondent's Motion at 22.

health care navigator, a supportive individual who helps with doctor's appointments or moving a resident to another area of the building for additional care."[88] In addition to access to various rehabilitation programs, these residents also "have access to the on-site Wellness Clinic, which provides basic health services such as blood pressure checks, nurse checkups, and where visiting physicians see patients."[89] Also, residents of Southminster and The Leas wear pendants that access an emergency call system.

As for The Meadows, Petitioner argues that Respondent failed to acknowledge that this is a secured, licensed facility and that there is a Licensed Practical Nurse (LPN) and a Registered Nurse (RN) on Staff. Respondent also failed to mention that The Pavilion provides skilled nursing care to its residents twenty-four hours a day, seven days a week. "Skilled nursing care is a high level of medical care that must be provided by licensed health professionals for persons requiring rehabilitation from an illness or injury or long term care for patients who need a high level of care on a continuous basis due to their medical condition."[90] More than half the residents of The Pavilion are indigent and receive support through Medicaid. "Despite the low or negative margins associated with the Medicaid program, Petitioner is committed to providing this care based on its ongoing mission, which greatly eases the community and government burden of caring for the poor."[91]

Petitioner explained that it does not run credit checks on its potential residents and that there is no minimum amount of resources required. "Furthermore, Petitioner does not turn away those applicants who cannot afford to stay in the independent or

[88] Petitioner's Response at 4-5.
[89] *Id*. at 5.
[90] *Id*. at 6.
[91] *Id*. at 7.

assisted living facilities, rather, Petitioner assists those individuals with limited assets in figuring out their plan to stay at Petitioner's facilities by reviewing family supplement and Medicaid options."[92] While Petitioner has the ability to evict a resident for nonpayment, it has never done so. Petitioner further explained that it does not discriminate in who receives assistance from the Good Samaritan Fund and that every resident who applied for assistance was approved.

Petitioner argued that while Respondent attempts to paint it as a wealthy, profitable organization, it operated at a net loss in 2017 and 2018. In fiscal year 2017, Petitioner's loss equaled $596,255. This loss was offset by investment income of $422,150 and charitable contributions of $126,407. In fiscal year 2018, Petitioner's loss equaled $2,693,254, for a combined 2017-2018 loss of $3,838,066.[93]

In response to Respondent's argument that Petitioner is not a charitable institution, Petitioner argues that Respondent wrongly suggests that *United Methodist* is a valid precedent and fits Petitioner's facts on all squares. Petitioner argues that while the retirement community in *United Methodist* is similar to the subject property, the Court's analysis only applied to one part of that facility, Glazier Commons. The other part of the facility, Towsley Village, whose residents require specialized care due to memory issues like dementia, was exempt from property taxes. "Consequently, the *United Methodist* Court's analysis and ultimate determination the Glazier Commons facility did not qualify for the charitable exemption cannot be applied to Petitioner's

[92] *Id*. at 7.
[93] Petitioner's Response at 8-9.

skilled nursing home facility (The Pavilion), or its memory care facility (The Meadows)."[94]

Petitioner further argues that *United Methodist* is an unpublished opinion and is, therefore, not binding. Moreover, the *United Methodist* Court "did not discuss the second requirement of the statute nor involve the application of the six (6) *Wexford* factors . . . ."[95] Petitioner asserts that the Court's decisions in *Wexford* and *Baruch* provide the most recent published authority.

Petitioner also criticizes Respondent's use of *Baptist Homes* and *Retirement Homes*, arguing that these cases are nearly a half-century old and, as such, did not apply the three-part test set forth in *Wexford*, instead applying the previous four-part version. In addition, Petitioner argues that in Respondent's Motion for Summary Disposition, Respondent characterized the *Wexford* factors as being merely "guidelines" and, thus, ignores the law.

Petitioner addressed Respondent's analysis of *Baptist Homes*, arguing that its comparison of the subject property to the Hillside Terrace facility is incorrect. Petitioner argues that, in fact, the subject property actually resembles the Bach Home facility and, as such, qualifies for the charitable exemption. In this argument, Petitioner relies upon the Court's statement that the "overriding criteria for admissibility to the Bach Home is the applicant's inability to live without supervision."[96] [Emphasis added by Petitioner.] Also, like the Bach Home facility, Petitioner accepts Medicaid patients not only from within its community, but from hospitals and other facilities that do not accept Medicaid.

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[94] *Id*. at 15.
[95] *Id*. at 16.
[96] *Id*. at 17, citing *Michigan Baptist Homes* at 674.

Petitioner asserts that it differs from the Hillside Terrace facility as it does not have the same "health and financial limitations on admission," and there is no "minimum" amount of resources required to become a resident at the subject property.

In *Retirement Homes,* only one part of the property was at issue*,* that being the independent living facility. Petitioner argues that "Respondent inappropriately attempts to take the analysis specific to the independent living facility in the *Retirement Homes* case, and apply it to Petitioner's entire community comprised of five (5) interconnected facilities, which provide different types of care."[97]

Petitioner contends that it provides a significant amount of charitable "gifts" and that these gifts are not limited to the Good Samaritan Fund and the Scholarship Fund. Petitioner argues that Respondent's attempt to narrow the focus to these two funds and the size of these funds ignores the larger picture. Petitioner's other gifts include: (1) providing below-cost health care services to its Medicaid and Medicare residents; (2) lessening the burdens of government by providing health care to all those in its facilities by treating patients with mental illnesses who cannot care for themselves, assisting the elderly who cannot live alone, providing emergency call pendants, a health care navigator, on-site Wellness Clinic, and rehabilitation programs; (3) providing spiritual support and religious activities through St. Luke's Chapel; and (4) pouring any financial gains back into the organization. "It is clear Petitioner is not generating a profit from its operations, is providing a service to the government by lessening its burdens and caring

[97] Petitioner's Response at 20.

for the elderly and infirm, and is not being compensated fully by the government for its services."[98]

Petitioner contends that the fact that it charges those who are able to afford its services does not bar it from being considered a charitable institution as, pursuant to *Wexford*, "a nonprofit corporation will not be disqualified for a charitable exemption because it charges those who can afford to pay for its services as long as the charges approximate the cost of the services."[99] Because Petitioner does not charge more than the costs of its services and no private person benefits from its financial situation, it meets the legal requirements of a charitable institution.

Finally, Petitioner takes issue with Respondent's focus on the "niceties" of the facility. Petitioner argues that there is no requirement that the facility be dingy or unappealing simply because of its charitable population. "Respondent's idea that Petitioner should deny its residents enjoyment, comfort or relaxation within its unique premises, or Respondent's suggestion that such amenities evidence something non-charitable is ludicrous and unsupported by the law."[100]

Respondent's MCL 211.7o(8) Argument

As previously discussed, MCL 211.7o(8) sets forth several requirements that must be met to qualify for the tax exemption. Respondent agrees that Petitioner meets the requirements of MCL 211.7o(8)(a) and that its skilled nursing facility meets the requirements of MCL 211.7o(8)(b). However, Respondent asserts that Petitioner does not meet the requirements of MCL 211.7o(8)(c). Under this provision, the nonprofit

[98] *Id*. at 24.
[99] *Wexford* at 217.
[100] Petitioner's Brief at 25.

corporation claiming the exemption must have been: (1) exempt from property taxes on January 10, 2007; or (2) exempt from property taxes on December 31, 2004, with no transfer of ownership between that date and January 10, 2007.

According to Respondent, the subject property was on the tax rolls (i.e., not exempt) on December 31, 2004. Moreover:

> The subject property has never been exempt from *ad valorem* taxation and there can be no dispute that [it] was [not] exempt in 2004 or in 2007 as the property record cards, tax bills, and evidence clearly show it was taxable. There is absolutely no merit to this argument and Petitioner, having paid the summer and winter tax bills every year since the property was acquired, knew that there was no basis for this argument but nonetheless raised it in a filed legal document signed by its Attorney of record.[101]

Petitioner's Response to Respondent's MCL 211.7o(8) Argument

Petitioner argues that:

> Respondent states, without authority, that the Legislature's intent behind this condition was "to specifically restrict this exemption provision to the real and personal property that was on the rolls as exempt either as of January 10, 2007 or December 31, 2004." Contrary to Respondent's assertion, a claimant's satisfaction of the third condition is not limited to showing its property was "on the rolls as exempt" as of January 10, 2007, or December 31, 2004. The statute does not require a claimant's property to have been treated as exempt from the collection of taxes *by the tax assessor*. In other words, a claimant may satisfy the third condition of the statute if it can show claimant's property was treated as exempt from the collection of taxes *by the Tax Tribunal*.[102] [Citation omitted.]

Petitioner also argues that contrary to Respondent's assertions, historically, the subject property has been exempt from property taxes. According to Petitioner, the subject property was entirely exempt from property taxes until approximately April 1996. In the mid-1990s, a Consent Judgment was entered that held The Pavilion and The Leas exempt, while Southminster was subject to tax. The Meadows did not exist at that

[101] Respondent's Motion at 25.
[102] Petitioner's Response at 26.

time. The Consent Judgment was attested to by Petitioner's previous Attorney, Ms. Joanne Faycurry.

Respondent's MCL 211.7r Argument

Respondent argues that to qualify for a property tax exemption under MCL 211.7r, the subject property must be: (1) a qualifying clinic; (2) a hospital; or (3) used for public health purposes. It is Respondent's position that the subject property does not meet any of these criteria.

First, Respondent argues that the subject property is not a qualifying clinic because it must be maintained for the owner's employees. In this case, the subject property is maintained for paying residents and not for Petitioner's employees. In addition, to be a qualifying clinic, the funds must be derived solely from payments and contributions made pursuant to a collective bargaining agreement. According to information received during discovery, the total employee contribution was $4,454.42, compared to Petitioner's 2019 revenue of $20,046,340. Clearly, these funds are not sufficient to cover Petitioner's costs.

Second, Respondent argues that the subject property is not a hospital. Pursuant to the Southminster Independent Living Agreement, Petitioner "has no contractual duty or other obligation to monitor your daily health status or provide any health services."[103] Moreover, the Agreement states that Petitioner "is not responsible for furnishing or paying for, nor does your monthly fee include, any health care items or services such as physician services, private duty nurse, hospital care, rehabilitative services, hearing aids, eyeglasses, dentures, canes, crutches, wheelchairs, medications, or medical

[103] Respondent's Exhibit 3: Paragraph 12.16.

supplies."[104] The memory care agreement includes a similar statement. Finally, Respondent notes that Petitioner's own website states that The Pavilion's skilled nursing area "is ***not*** like a hospital."[105] [Emphasis added by Respondent.]

Third, Respondent argues that the subject is not used for public health purposes. Respondent cites *Rose Hill*, in which the Court provided the following definition of "public health purposes": "The 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."[106] In this case, Petitioner does not serve the general public. Instead, its services are limited to those who can afford to reside at the property.

In addition, Respondent relies upon *Healthlink Medical Transportation Services v City of Taylor and Wayne,*[107] wherein the Court held that "medical services offered on an individualized basis are not 'for public health purposes.'"[108] Respondent argues that any medical assistance provided by Petitioner is provided to its residents and not to the general public.

Respondent contends that Petitioner has repeatedly noted that it does not provide medical services.

> Even in the skilled nursing area Petitioner "shall assist you in obtaining the services of a substitute physician or provider at your expense" and the same is true for dental care. At most, the services contractually obligated from Petitioner consist of a "medical director" who "***may*** be available to perform services for you" and Petitioner "will not be responsible for the

[104] *Id*; Paragraph 6.2
[105] Respondent's Motion at 27, citing https://www.canterburyonthelake.com/health-services/(FAQs).
[106] *Rose Hill* at 33.
[107] *Healthlink Medical Transportation Services v City of Taylor,* unpublished per curiam opinion of the Court of Appeals, issued February 15, 2005 (Docket No. 249969).
[108] *Id.* at *2.

> cost of medical treatment by the Medical Director."[109] [Emphasis added by Respondent.]

For an extra cost, additional care plans may be obtained.

Respondent argues that the facts of *United Methodist* are similar to those in this case. In *United Methodist*, the residents required "health care and other services in addition to those provided" by the petitioner.[110]

Petitioner's Response to Respondent's MCL 211.7r Argument

Petitioner argues that Respondent's position that Petitioner is not a clinic and therefore does not qualify for an exemption under MCL 211.7r is irrelevant because Petitioner never claimed it was a clinic. Neither has Petitioner claimed to be a hospital. Instead, Petitioner asserts that it qualifies for an exemption under MCL 211.7r because the subject property is owned and occupied by a nonprofit trust and is used for public health purposes.

Petitioner contends that while Respondent cites *Rose Hill*, it did not apply the holding from that case. Instead, Respondent relied on unpublished Court opinions, asserting that Petitioner must provide "medical services." Petitioner argues that this is not true and that it does not need to provide medical services to qualify for an exemption under MCL 211.7r.

In support of this argument, Petitioner cites *Wexford,* wherein the Court defined "public health purposes" as performing "work benefitting the public."[111] In addition, in *Rose Hill*, the Court utilized a dictionary definition and defined "public health" as "the art and science of protecting and improving community health by means of preventative

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[109] Respondent's Motion at 28.
[110] *United Methodist* at *1.
[111] Petitioner's Response at 29, citing *Wexford* at 29.

medicine, health education, communicable disease control, and the application of the social and sanitary sciences."[112]

Petitioner asserts that, like the property in *Rose Hill,* the subject property is utilized for public health purposes. Residents of Southminster and The Leas receive "prescription and dispensation of medication" services, and they have access to rehabilitation programs. In addition, Petitioner is staffed by LPNs and RNs who provide basic medication management and administration to residents of The Leas. At The Meadows, Petitioner provides services to mentally ill patients, just like the patients in *Rose Hill*. Residents of The Pavilion, the majority of whom receive support through Medicaid, receive skilled nursing care. Because it supplies a high level of medical care to those unable to care for themselves, Petitioner asserts that it serves a public health purpose under MCL 211.7r.

Respondent's MCL 211.7s Argument

As provided by MCL 211.7s, houses of public worship and parsonages owned by a religious society are exempt from property tax. In this case, the subject property does not include a parsonage. As explained by Respondent, "the Deacon only has an office at the property and does not reside at the property."[113] It is also Respondent's position that the subject property does not include a house of public worship and for these reasons, does not qualify for an exemption under MCL 211.7s.

In support of this position, Respondent relies upon the Court's decision in *Institute in Basic Life Principles.* In that case, the Court set forth the following two-factor

[112] *Rose Hill* at 33.
[113] Respondent's Brief at 30, FN 151.

test to use in determining whether property is exempt under MCL 211.7s: (1) the claimant must be a religious society; and (2) the property must be "used predominantly for religious services or for the teaching the religious truths and beliefs of the society."[114] The Court held that an organization qualified as a "religious society" under MCL 211.7s if "its predominant purpose and practice include teaching religious truths and beliefs."[115]

In ascertaining Petitioner's "predominant" purpose, Respondent examined both Petitioner's actions and its Restated Articles. Of the nine purposes listed in the Restated Articles, none involved the teaching of religious truths and beliefs. Respondent argues that Petitioner's assertion that it is "organized and operated exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) and 170(c)(2) of the Internal Revenue Code"[116] is a red herring and is only included to obtain a federal tax exemption.

Respondent further argues that while Petitioner asserts that its "mission" is "founded on the tenets of the Episcopal Church and shall continue to promote and support spiritual, loving, gracious health care and housing for seniors and others in need, consistent with its Episcopal heritage," nothing makes this teaching a predominant purpose of Petitioner. Instead, "Petitioner's predominate purpose is the management and operation of the subject property as a senior living center."[117] Respondent cites the Court's decision in *Self Realization Meditation Healing Centre v Charter Twp of Bath*[118] in support of this argument.

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[114] *Institute in Basic Life Principles* at 14.
[115] *Id*.
[116] Respondent's Brief at 31.
[117] *Id*. at 31-32.
[118] *Self Realization Meditation Healing Centre v Charter Twp of Bath;* unpublished opinion per curiam of the Court of Appeals, issued June 21, 2011 (Docket No. 297475).

Petitioner's Response to Respondent's MCL 211.7s Argument

Petitioner asserts that it is clearly a religious society as its predominant purpose and mission is to "continue to promote and support spiritual, loving, gracious health care and housing for seniors and others in need, consistent with its Episcopal heritage."[119] To that end, Petitioner is affiliated with the Episcopal Diocese of Michigan and recognized as a religious institution by the Church's Bishop. Moreover, Petitioner's purposes are not limited to those listed in Section 2.2 of the Restated Articles, as Petitioner is also organized "to do such things and perform such acts to accomplish its purposes that are not forbidden by Section 501(c)(3) of the Code, with all the powers conferred on nonprofit corporations by the laws of the State of Michigan."[120]

Petitioner further asserts that it never argued that the entire property is exempt under MCL 211.7s, only that St. Luke's Chapel is exempt. St. Luke's Chapel's predominate activity is teaching religious truths and beliefs and plays an integral part in fulfilling Petitioner's mission. In addition to an Episcopal service held every Sunday and a Catholic mass every Monday, other religious services are held at the Chapel. The Chapel is open to the public and there are no restrictions on its use. For these reasons, Petitioner asserts that it is a religious society and that St. Luke's Chapel is a house of public worship, qualifying Petitioner for an exemption under MCL 211.7s.

TREASURY'S MOTION FOR SUMMARY DISPOSITION[121]

[119] Petitioner's Exhibit 1.
[120] *Id*.
[121] Because both Respondent and Treasury have moved for Summary Disposition, contending that the subject property is not tax exempt, many of the arguments made by Respondent were also made by Treasury. In an attempt to avoid repetition, many of those arguments are not repeated in this section of this Order.

Treasury's description of the subject property is similar to that of Respondent. In addition, Treasury describes Southminster as a place "for residents who need minimal to no assistance with activities for daily living and the services provided by Petitioner are more hospitality as opposed to direct care."[122] [Footnote omitted.] "The Leas is an assisted living facility and is staffed 24 hours with care givers to assist residents with activities of daily living and medication administration."[123] Residents of The Leas are charged a basic rent, with additional charges for various additional care plans. Included in the rent is a $660 monthly meal charge. The Meadows "is the newest facility, which opened in 2018 and is licensed as a Home for the Aged."[124] "While the Meadows has direct care staff available, they are not certified nursing assistants . . . In order to live at the Meadows, residents are required to submit a $4,000-$5,000 non-refundable community fee."[125] Finally, The Pavilion is a licensed skilled nursing facility where certified nursing assistants care for the residents. "Most of the Pavilion's residents come from hospital admissions, but both short-term rehabilitation and long-term care are offered."[126] Petitioner offers a Wellness Clinic, which is not open to the general public and is used mostly by residents of The Leas and Southminster. The Wellness Clinic is used by local practitioners to attend to their patients who reside at the subject property.

A Confidential Data Application is required to become a resident of the subject property. Petitioner considers the financial disclosure portion of the application to be "of

[122] Treasury's Brief in Support of its Motion for Summary Disposition (Treasury's Motion) at 2-3.
[123] *Id*. at 3.
[124] *Id*. at 4.
[125] *Id*.
[126] *Id*.

utmost significance to both you as a future resident and to [Petitioner]."[127] Admission is determined by the Executive Director and/or the Accounting Director.

> While a minimum amount of resources is not "required" to become a resident, it is not typical for Petitioner to receive applications for the Leas or Southminster from prospective residents who do not have the resources to afford the cost of living. If Petitioner were to receive an application from a prospective resident who did not have the resources necessary to afford the monthly rent to live at Southminster or the Leas, Petitioner would still assist them with planning to see if the family can provide assistance, or if their health is such that they would require a level of care where Medicaid would cover their stay.[128] [Footnote omitted.]

Treasury explained that the Good Samaritan Fund provides some financial assistance to current residents. However, revenue for the Fund is provided entirely by private donations, solicited a number of ways by Petitioner. For example, funds are obtained through an annual Mother's Day campaign, an annual golf outing and gala, and employee donations. Treasury asserts that the Fund is not widely used, having provided assistance to only one resident during each of Petitioner's 2016, 2017, 2018, and 2019 fiscal years.

Finally, Treasury addressed Petitioner's Scholarship Fund, providing much the same information as Respondent.

Treasury's MCL 211.7o(1) Argument

Treasury does not dispute that Petitioner is a nonprofit corporation. However, it is Treasury's position that Petitioner "does not occupy or use the property for benevolent or charitable purposes." Instead, Petitioner "operates an upscale retirement community offering a continuum of assistance levels to its residents that are able to afford it."[129]

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[127] Treasury's Motion at 5, citing Exhibit I: Confidential Data Application at 1.
[128] Treasury's Motion at 5-6.
[129] *Id*. at 8.

This "attractive retirement community" is one whose lowest living option "still requires a resident to have sufficient resources to afford $22,548 in annual rent for a third-floor studio apartment."[130] Treasury argues that while "Petitioner offers a nice place to spend one's retirement, it does not provide 'charity' or a 'gift' to the elderly community at large,"[131] and therefore does not qualify for an exemption under MCL 211.7o(1).

Treasury asserts that *Baptist Homes* is a case directly on point in determining whether Petitioner provides charity or a gift. As previously discussed, in that case the issue was whether a home for the aged known as "Hillside Terrace" should be granted a charitable property tax exemption. In rendering its decision, the Court compared Hillside Terrace to a similar property known as the "Anna Botsford Bach Home," or Bach Home. The Court Stated:

> The Bach Home was endowed by and is partially financed through charitable contributions. Annual operating deficits are met by withdrawals of principal and interest from its endowment fund, and by annual contribution drives. None of the Bach Home residents pays the actual cost of her care, and the various payment plans there in effect were not designed with that goal in mind. The overriding criteria for admissibility to the Bach Home is the applicant's inability to live without supervision. To be contrasted with Hillside Terrace's rigid health and financial requirements is the Bach Home policy of giving priority to those applicants who are unable to obtain comparable care elsewhere.[132]

The Court summed it up by saying:

> On this record, it appears that the management of Hillside Terrace does not serve the elderly generally, but rather provides an attractive retirement environment for those among the elderly who have the health to enjoy it and who can afford to pay for it. Plaintiff's health and financial limitations on admission cannot be said to benefit the elderly as a general proposition.

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[130] *Id*. at 10.
[131] *Id*. at 10-11.
[132] *Michigan Baptist* at 674.

> Furthermore, we cannot presume that the Legislature intended to grant the claimed exemptions to these relatively favored individuals while at the same time granting only limited property tax relief to the less affluent elderly who rent or own modest homes.[133]

Treasury also relied upon *United Methodist* in support of its position that Petitioner does not offer charity or a gift. Treasury contends that the property in *United Methodist* is similar to that in this case and, as in this case, residents were required to submit their financial and medical information. Citing the deposition of Rochelle Rothwell, who was previously Petitioner's Executive Director and CEO, Treasury argues that "[w]hile Petitioner hasn't rejected a prospective resident due to lack of resources, they typically don't see applicants that lack such resources."[134]

As for Petitioner's Good Samaritan Fund, Treasury argues that any assistance from this Fund does not come from Petitioner's funds and is instead funded by private donors and Petitioner's employees. Moreover, this assistance is provided on a discriminatory basis given that it is only offered to those who have lived there at least five years, are at least 85 years old, and have no more than $10,000 in assets. "Petitioner is not providing a reduced rent or waiver of other charges to residents who need financial assistance, it is using funds it raised from private sources to supplement the normal monthly rent for such residents."[135]

Treasury also discounts the assistance provided through the Scholarship Fund, arguing that it is not charity, or a gift given to the community at large. Instead, this program constitutes "disguised compensation, to attract high school students to volunteer their time and/or labor at the subject property. It is not a gift to the high school

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[133] *Michigan Baptist* at 671.
[134] Treasury's Motion at 12.
[135] *Id*. at 13.

students receiving the scholarship and it is not a gift to the elderly community at large."[136]

Petitioner's Response to Treasury's MCL 211.7o(1) Argument[137]

In its response to Treasury's Motion for Summary Disposition (Petitioner's Response to Treasury), Petitioner argues that Treasury relied on a case, *Michigan Baptist*, which is a half-century old and contains an outdated analysis. In doing so, Treasury equates the subject property to *Michigan Baptist's* property known as Hillside Terrace, arguing that the subject property is "an attractive high-end retirement community to those fortunate enough to afford it."[138] Petitioner argues that this is simply not true and that the subject property actually resembles the Bach Home facility. This is because: (1) the majority of Petitioner's residents cannot live alone without supervision; (2) Petitioner accepts Medicaid patients from a variety of sources, "including for-profit nursing homes which no longer accept those patients once they are on Medicaid"[139]; (3) more than half of the residents of the Pavilion are indigent and receive financial support. Therefore, residents of the Pavilion cannot be compared to those of Hillside Terrace, who were able to purchase a life-care contract; and (4) Petitioner does not have the same health and financial limitations as Hillside Terrace.

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[136] *Id*.
[137] As noted in Footnote 122, Respondent's and Treasury's Motions for Summary Disposition contained many of the same arguments. While acknowledging Petitioner's responses to the arguments made by Treasury that are repetitive of Respondent's, the Tribunal, in an attempt to avoid further repetition, will not repeat all of the duplicative responses.
[138] Petitioner's Response to Treasury at 14, citing Treasury's Motion at 10.
[139] *Id*. at 15.

As for the Good Samaritan Fund, "Petitioner has the ability to and has waived certain criteria to make sure a resident receives the assistance they need in order to be cared for."[140]

Petitioner argues that Treasury also relied upon an unpublished opinion of the Court of Appeals, specifically *United Methodist*. Because it was not published, the Court's decision in *United Methodist* is not binding. In addition, in citing this case, Treasury "inappropriately attempts to take the analysis specific to one type of facility,"[141] the assisted living facility known as Glazier Commons, and apply it to Petitioner's entire property, which is comprised of five facilities that provide different types of care. Petitioner pointed out that "the court described the Glazier Commons facility as 'not a nursing home service or a medical plan' and its residents generally 'require health care and other services' in addition to those provided by petitioner to residents."[142] Petitioner argues that Court's analysis in *United Methodist* does not apply in this case.

In addition, Petitioner argues that *United Methodist* did not discuss the "second requirement of the statute" or application of the *Wexford* factors. In doing so:

> The *United Methodist* court applied a faulty application of the charitable exemption, essentially creating a new means not supported by Supreme Court precedent by which to determine whether an organization is "charitable." Although there was no dispute the claimant in the *United Methodist* case was using its property for the same purposes for which it was incorporated, the court astonishingly was able to reach the conclusion the claimant's property was not being used solely for charitable purposes even though it essentially conceded those very purposes likely qualified the organization as a "charitable institution" under the *Wexford* and *Baruch* criteria. This wrongly nullifies the second element of *Wexford's* three-part test and makes *Wexford's* six (6) factor analysis and makes the *Baruch* supplement meaningless.[143]

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[140] *Id*. at 16.
[141] *Id*. at 17.
[142] *Id*. at 17, citing *United Methodist* at *3.
[143] *Id*. at 18-19.

Petitioner asserts that it meets all of the *Wexford* tests and that Treasury's focus on the Good Samaritan Fund and the Scholarship Fund ignores the other "gifts" that it provides.

Treasury's MCL 211.7o(8) Argument

In pertinent part, MCL 211.7o(8) provides a property tax exemption for property owned and occupied by a § 501(c)(3) nonprofit corporation that is licensed as either a skilled nursing facility or a home for the aged. In addition, the property must have been exempt from property taxes: (1) "on the effective date of the amendatory act that added this subsection,"[144] being January 10, 2007; or (2) on December 31, 2004, with no transfer of ownership between that date and January 10, 2007.

Treasury argues that in its mended Petition, Petitioner contends that the subject property was exempt between December 31, 2004, and "the relevant timeframe." However, Respondent's assessor, Ms. Paula Moore, testified during her deposition that she is not aware of the subject property ever being exempt. In addition, Treasury argues that The Meadows is the part of the subject property that is licensed as a home for the aged and that this facility was not completed until 2018, after the relevant dates. For these reasons, Treasury argues that the subject property is not entitled to a property tax exemption under MCL 211.7o(8).

Petitioner's Response to Treasury's MCL 211.7o(8) Argument

In its Brief, Petitioner argues that the subject property has historically been treated as exempt. Petitioner cites its corporate minutes and Ms. Faycurry's affidavit,

[144] MCL 211.7o(8).

which discussed a Stipulation for Entry of Consent Judgment in which The Pavilion and The Leas were exempt from property taxes. Petitioner argues that because Respondent's assessor does not remember the Consent Judgment does not nullify the fact that it existed.

Treasury's MCL 211.7r Argument

While MCL 211.7r exempts "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," it does not exempt "excess acreage not actively utilized for hospital or public health purposes . . . ."[145] Treasury argues that Petitioner's MCL 211.7r exemption claim fails because Petitioner did not specify which portion of the subject property is exempt under this statutory provision. Moreover, Treasury contends that Petitioner failed to properly plead this exemption claim as it failed to provide any factual allegations that the subject property is either a hospital or used for public health purposes.

Treasury argues that the only portion of the subject property that provides skilled nursing care and accepts both Medicaid and Medicare patients is The Pavilion. However, The Pavilion is not a hospital nor is it used for public health purposes. Citing *The Wellness Plan,* Treasury argues that simply accepting Medicaid patients does not make The Pavilion a facility used for public health purposes.

Petitioner's Response to Treasury's MCL 211.7r Argument

In its Brief, Petitioner argues that it meets the requirements of MCL 211.7r "because it uses its property for public health purposes" and it is "a charitable home

[145] MCL 211.7r.

providing a continuum of care of needs for the aged and chronically ill."[146] As in its Response to Respondent's Motion, Petitioner cites the care it provides to the residents of its various locations, i.e., independent and assisted living residents have access to rehabilitation services and receive assistance with their prescription medicines. Petitioner also reiterated that almost half of its residents live in The Pavilion, Petitioner's skilled nursing facility, and that the majority of these residents are indigent and receive support through Medicaid. For these reasons, Petitioner uses the subject property for public health purposes, just like the petitioner in *Rose Hill*.

Treasury's MCL 211.7s Argument

Citing *Institute in Basic Life Principles,* Treasury asserts that "[t]he statute exempts property from taxation if the following elements are met: 1) the petitioner is a religious society and 2) the property is used predominantly for religious services or teaching of religious truths and beliefs of the society."[147] Under these parameters, Petitioner is not entitled to an exemption because it has not established that it is a religious society.

In its Petition, Petitioner states that it is "affiliated with the Episcopal Diocese." However, Treasury argues that Petitioner's Restated Articles of Incorporation paint a different picture. Specifically, while the Restated Articles state that Petitioner is "founded on the tenets of the Episcopal Church," its corporate purpose does not include holding public worship services or teaching the religious truths or beliefs of the Episcopal church. Instead, according to the Restated Articles, Petitioner's purpose is to operate

[146] Petitioner's Response to Treasury at 25.
[147] Treasury's Brief at 16.

retirement homes with varying levels of care. Treasury contends that any religious services held at the subject property are incidental given Petitioner's main purpose of providing a continuum of care retirement home.

In support of this position, Treasury cites *Michigan Christian Campus Ministries v Mount Pleasant*.[148] "In affirming the denial of the exemption, "the Court found that the Tax Tribunal correctly determined that the substance of the property was to provide living quarters for selected students and even though it was used for religious functions akin to a house of worship, the functions were ancillary to the residential function."[149] The Court stated that "although religious services are conducted at times, use of the property as a residence for college students is continuous."[150]

Petitioner's Response to Treasury's MCL 211.7s Argument

In its Brief, Petitioner argues that its affiliation with the Episcopal Diocese of Michigan means that it is a religious society, as does its recognition by Bishop Wendell N. Gibbs, Jr. In addition, Petitioner explained that St. Luke's Chapel is an integral part of its facilities. Petitioner argues that its purposes are not limited to those in Article 2.2 of its Restated Articles, as it is also organized "to do such things and perform such acts to accomplish its purposes that are not forbidden by Section 501(c)(3) of the Code, with all the powers conferred on nonprofit corporations by the laws of the State of Michigan."[151]

In response to Treasury's "ancillary" argument, Petitioner argues that *Michigan Christian* is not applicable in this case because it has never claimed that its residential

[148] *Michigan Christian Campus Ministries Inc v City of Mount Pleasant*, 110 Mich App 787; 314 NW2d 482 (1981).
[149] Treasury's Brief at 17-18, citing *Michigan Christian* at 793.
[150] *Michigan Christian* at 793.
[151] Petitioner's Response to Treasury at 28, citing Petitioner's Exhibit 1, Article 2.2-9.

facilities are exempt under MCL 211.7s. Moreover, St. Luke's Chapel is not used for housing; it only has a religious purpose. Therefore, St. Luke's Chapel's religious functions are not ancillary to any other function.

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.[152] In this case, Petitioner moves for summary disposition under MCR 2.116(C)(10), while Treasury moved for summary disposition under MCR 2.116(C)(8) and (C)(10). Respondent also moved for summary disposition; however, Respondent did not specify the ground upon which it is relies. From Respondent's arguments it appears that Respondent's motion is made under MCR 2.116(C)(10); therefore, it will be adjudicated as such.

MCR 2.116(C)(8)

Motions under MCR 2.116(C)(8) are appropriate when "[t]he opposing party has failed to state a claim on which relief can be granted." The Court of Appeals has held that:

> A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. Under this subrule "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." When reviewing such a motion, a court must base its decision on the pleadings alone . . . Summary disposition is appropriate under MCR 2.116(C)(8) "if no factual development could possibly justify recovery." [153] [Citations omitted.]

MCR 2.116(C)(10)

[152] See Michigan Tax Tribunal Rule (TTR) 215.
[153] *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2 633 (2003).

Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues about 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 "when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law."[154] [Citation omitted.]

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.[155] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[156] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[157] 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.[158] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[159]

CONCLUSIONS OF LAW

[154] *Lowrey v LMPS & LMPJ, Inc,* 500 Mich 1, 5; 890 NW2d 344 (2016).
[155] *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[156] *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[157] *Id.*
[158] *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[159] *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

The GPTA provides "[t]hat all property, real and personal, within the jurisdiction of this state, **not expressly exempted**, shall be subject to taxation."[160] [Emphasis added.] Because Petitioner is attempting to establish membership in an already exempt class, it is Petitioner's burden of proof to establish by a preponderance of the evidence that it is entitled to each exemption.[161]

MCL 211.2(2) provides, in pertinent part, that "[t]he taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding." Thus, a property's tax status is determined each year on tax day.

MCL 211.7o(1)

Petitioner first claims that the subject property is exempt from property taxes under MCL 211.7o(1), which provides that:

> 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.

As explained in *Wexford*, this means that:

1. The real estate must be owned and occupied by the exemption claimant;
2. the exemption claimant must be a nonprofit charitable institution; and
3. the exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.[162]

In this case, the parties do not dispute that the subject property is owned and

[160] MCL 211.1 *et seq*.
[161] *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).
[162] *Wexford* at 203.

occupied by Petitioner. Therefore, Petitioner meets the first requirement.

Petitioner argues that it meets the third requirement as "it only uses its real or personal property in furtherance of and consistent with its stated organizational purpose as a charitable continuing care retirement community."[163] Petitioner further argues that its "actual, total and immediate use of its property is entirely consistent with and in furtherance of the charitable purposes for which it was incorporated and which its organizational documents provide are its charitable purposes . . . being the very same purposes under which it qualifies for exemption as a charitable institution . . . ."[164]

However, in spite of Petitioner's assertions, a question remains as to its incorporated purpose. As indicated, St. Luke's Episcopal Health Ministries (Petitioner) is listed as the subject property's owner. In spite of this, the Restated Articles of Incorporation filed with Petitioner's Motion for Summary Disposition are those of Canterbury Health Care, Inc. In its Motion for Summary Disposition, Petitioner states that it founded Canterbury in 1991, leading one to believe that these are two separate entities. If they are two separate entities, Petitioner's Restated Articles of Incorporation are not in the record. If, in fact, Canterbury's Restated Articles of Incorporation are Petitioner's Restated Articles, questions remain as to the purpose for which Petitioner was incorporated.

For analytical purposes only, let's assume that Canterbury's Restated Articles are those of Petitioner. A review of these Restated Articles shed no light on Petitioner's true purpose for owning the subject property. Article II of the Restated Articles contain

[163] Petitioner's Brief at 15.
[164] Petitioner's Brief at 15-16.

both a Mission (Article 2.1) and Purposes and Powers (Article 2.2).[165] Pursuant to Article 2.1, Petitioner's "Mission" is to "promote and support spiritual, loving, gracious health care and housing for seniors and others in need, consistent with its Episcopal heritage." According to the *Merriam-Webster* online dictionary,[166] "promote" is defined, in pertinent part, as "to contribute to the growth or prosperity of; to help bring (something, such as an enterprise) into being." "Support" is defined as to "promote the interests or cause of; to assist; to pay the costs of; to keep something going."[167] Thus, the Restated Articles do not contain any indication that Petitioner's purpose is to actually *operate* or *provide* housing and care to those in need.

Pursuant to Article 2.2, Petitioner is "organized and operated exclusively for charitable, religious and educational purposes . . . ."[168] However, this statement appears to be nothing more than a catch-all phrase widely used by nonprofit corporations; it does not get to the heart of Petitioner's real purpose. This is especially true considering that the statement includes "educational" purposes, something Petitioner never indicated it was involved in, nor did it claim an exemption as an educational institution, under MCL 211.7n. In addition, Article 2.2-1 states that Petitioner shall operate "exclusively for charitable or other exempt purpose," while other provisions relate to the "furtherance of [Petitioner's] charitable purposes." Again, these statements lack specificity and do not shed any light on Petitioner's true purpose.

The only specific Purposes and Powers that even remotely relate to providing

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[165] Petitioner's Exhibit 1.
[166] *Merriam-Webster Dictionary*, <http;www.meriam-webster.com/dictionary> (assessed December 3, 2021).
[167] *Id.*
[168] Petitioner's Exhibit 1.

housing and care for the elderly and infirm are Articles 2.2-2 and 2.2-3. Article 2.2-2 states that Petitioner shall "operate and serve as the governing body for retirement centers, which may encompass nursing, assisted living and independent care facilities in the State of Michigan," while Article 2.2-3 states that "[w]hen acting as the governing body for a nursing or assisted living facility, to establish credentialing policies for providers on site and, when warranted and when consistent with applicable law, exclude or limit the activities of providers of such facility." In other words, Petitioner's stated purpose is to act as a governing body, not to actually *provide* health care and housing for seniors and others in need.

A review of other cases involving petitioners who claimed a charitable exemption for properties similar to that of the subject property highlights the concern. For example, in *Michigan Baptist*, the petitioner's purpose was "[t]o acquire or erect, and to equip, conduct, and maintain on the broadest Christian principles of service to humanity, nursing and convalescent homes, and homes for the aged, or other institutions for the care of the mentally and physically handicapped, the sick, disabled, aged or destitute persons."[169]

In *Holland Home*, the petitioner was:

> [O]rganized … to own, provide, equip, conduct, maintain and operate, on Christian principles of benevolence and service to humanity, nursing and convalescent homes and homes for the elderly, for the care of persons who are aged or indigent or infirm, or have no satisfactory place in which to live, or are without means to provide for their support, and related purposes, but not for any purposes other than charitable and/or religious purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (or successor provision of similar import).[170]

[169] *Michigan Baptist* at 666.
[170] *Holland Home* at 401.

In *United Methodist*, the petitioner's purposes "include[d] the operation of residential retirement facilities for senior citizens, including those who have limited or no financial resources. According to its corporate bylaws, petitioner's mission is to 'promote the wellness, dignity, and independence of older adults by providing high quality and innovative residential and supportive services" to residents of its facility.'"[171]

Petitioner argues that its purposes are not limited to those in Article 2.2 of its Restated Articles, as it is also organized "to do such things and perform such acts to accomplish its purposes that are not forbidden by Section 501(c)(3) of the Code, with all the powers conferred on nonprofit corporations by the laws of the State of Michigan."[172] While it is true that the Restated Articles contain this language, this language lacks specificity and provides no insight into Petitioner's true purpose.

In addition to the question of whether the Restated Articles are those of Petitioner and, if so, for what purpose Petitioner is organized, there are questions as to whether Petitioner occupies the subject property for the purposes for which it is incorporated. In making this determination, the inquiry is "largely governed by the purposes set forth in its articles for its incorporation."[173] Because there are genuine issues of material fact regarding Petitioner's Articles of Incorporation, its purpose for being incorporated, and whether the subject property is occupied solely for this purpose, it cannot be determined whether Petitioner meets the third requirement of a charitable institution. In addition, because there are issues of fact regarding Petitioner's Articles of Incorporation, it cannot be determined whether Petitioner meets the second requirement, that of being a

[171] *United Methodist* at *1.
[172] Petitioner's Brief at 28, citing Article 2.2-9.
[173] *Gull Lake Bible Conference Ass'n v Ross Twp,* 351 Mich 269, 275; 88 NW2d 264 (1958).

charitable institution. For these reasons, the parties' Motions for Summary Disposition as it pertains to MCL 211.7o(1) is denied and this case will proceed to hearing on this exemption claim.

MCL 211.7o(8)

Under MCL 211.7o(8), real and personal property owned and occupied by a nonprofit corporation is eligible for a property tax exemption if certain requirements are met. In this case, the parties disagree as to whether Petitioner meets the requirement found in subsection (8)(c), which specifies that the subject property was either: (1) exempt from property taxes on the effective date of the amendatory act that added subsection 8; or (2) exempt from property taxes on December 31, 2004.[174] The second option has the additional requirement that ownership of the property could not have transferred between the last day the property was exempt until the effective date of the amendatory act that added subsection (8).

The amendatory act that added subsection (8) to MCL 211.7o was Public Act 681 of 2006. 2007 PA 681 was signed by Governor Granholm on January 8, 2007, and its effective date was January 10, 2007. Thus, to qualify for an exemption under MCL 211.7o(8), the subject property had to have been exempt from property taxes either on January 10, 2007, or December 31, 2004, with no transfer of ownership between December 31, 2004, and January 10, 2007.

[174] Pursuant to MCL 211.2, "[t]he taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day . . . ."

Petitioner asserts that it meets this requirement "because it[]s real property was fully exempt from taxation until 1997."[175] While Petitioner's Exhibit 28[176] supports Petitioner's contention that at least part of the subject property was exempt in the past, Petitioner does not explain how an exemption that existed "until 1997" is relevant to December 31, 2004, or January 10, 2007, the applicable statutory dates. In other words, the issue is not whether the subject property was **ever** tax exempt; the issue is whether the property was exempt on either of the relevant dates. An assertion that an exemption existed until 1997, a minimum of seven years prior to the statutory dates, is meaningless.

Petitioner further asserts that it requested the subject property's assessment history from Respondent, but that Respondent claimed it did not possess such records. It is unclear as to which documents Petitioner seeks as Respondent filed the subject property's 2004[177] through 2020 Property Record Cards with its Motion for Summary Disposition. Any records prior to that time are not relevant and would not have assisted Petitioner in establishing that it qualified for an exemption under MCL 211.7o(8).

Petitioner argues that Respondent failed to present any evidence that the subject property was not previously tax exempt. In making this argument, Petitioner ignores the fact that there is a substantial body of caselaw holding that it is Petitioner's burden of proof to establish entitlement to a tax exemption. It is not Respondent's burden to

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[175] Petitioner's Brief at 19.
[176] Petitioner's Exhibit 28, described as "Corporate Minutes April 1996," states that "Mr. Dieter advised the Committee that the Tax Assessor of Waterford Township has contacted him regarding the Township's intention **to begin** collecting property taxes from Canterbury on the Lake." [Emphasis added.]
[177] The statute specifies December 31, 2004, which is the Tax Day for 2005. Thus, the first pertinent Property Record Card is the subject property's 2005 card. The 2004 Property Record Card merely confirms that the property was not exempt on December 31, 2003.

disprove exemption eligibility. Having said that, by submitting the relevant Property Record Cards, the Tribunal finds that Respondent has proven that the subject property was not exempt on December 31, 2004, and January 10, 2007.

Finally, Petitioner is critical of Respondent's argument that it was the Legislature's intent "to specifically restrict this exemption provision to the real and personal property that was *on the rolls as exempt* either as of January 10, 2007 or December 31, 2004."[178] [Emphasis in original.] Instead, Petitioner argues that "a claimant may satisfy the third condition of the statute if it can show claimant's property was treated as exempt from the collection of taxes *by the Tax Tribunal*." [179]

It is true, given the process for filing an appeal with the Tribunal, that a Tribunal decision or consent judgment holding a property exempt would necessarily have to occur after a tax roll was finalized. It is also true that a Tribunal decision or consent judgment holding a property exempt on either of these dates would meet the statutory requirements, absent a transfer of ownership.

However, Petitioner failed to submit either a Tribunal decision or a consent judgment indicating that the subject property was exempt on either of the relevant dates. Instead, Petitioner submitted an affidavit[180] wherein the affiant asserted that she represented Petitioner in a dispute before the Tribunal in the mid-1990s and that the Tribunal entered a consent judgment holding the skilled nursing facility, and possibly the assisted living facility, exempt from property taxes. The Tribunal fails to see how a consent judgment entered in the 1990s is relevant to the property's tax status on the

[178] Petitioner's Response at 26.
[179] *Id*.
[180] See Petitioner's Exhibit 28.

relevant 2004 and 2007 dates. A consent judgment has no binding effect on future tax years. As such, the subject property's Property Record Cards, which do not indicate an exemption, are unrebutted. Therefore, the Tribunal finds that the subject property fails to meet the requirements of MCL 211.7o(8) and is not exempt under this statutory provision.

MCL 211.7r

To qualify for a property tax exemption under MCL 211.7r, the property must be: (1) owned by a nonprofit trust; (2) occupied by the nonprofit trust; and (3) used for hospital or public health purposes.[181] However, "excess acreage not actively utilized for hospital or public health purposes" is not exempt. Given this, the first step in determining whether Petitioner qualifies for an exemption under MCL 211.7r is ascertaining whether Petitioner is, in fact, a "nonprofit trust."

In *Oakwood Hospital,* Michigan's Supreme Court recognized that the statute does not define the term "nonprofit trust." After failing to find any caselaw in which the term was used, the Court held that the phrase, as it applies to MCL 211.7r, "is broad enough to include nonprofit corporations" engaged in hospital and public health service.[182] In this case, there is no dispute that Petitioner is organized as a nonprofit corporation and is, therefore, a nonprofit trust.

There is also no dispute that Petitioner occupies the subject property; therefore, Petitioner meets the second test.

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[181] Petitioner does not assert that the subject property is a clinic, the funds of which are "derived solely from payments and contributions under the terms of collective bargaining agreements between employers and representatives of employees for whose use the clinic is maintained" as provided for in the first sentence of MCL 211.7r. Therefore, this provision will not be considered.
[182] *Oakwood Hospital* at 708.

As to the third test, it must be determined whether the subject property is used either for hospital or "public health purposes." Petitioner does not assert that it is a hospital. Instead, Petitioner argues that it "uses its property for public health purposes since it is a charitable home providing a continuum care of needs for the aged and chronically ill."[183] In support of this argument, Petitioner relies on the Supreme Court's decision in *Wexford*. According to Petitioner, the "Court broadly defined 'public health purposes' under MCL 211.7r as performing 'work benefitting the public.'"[184] However, what the Court actually said was:

> While our courts have had occasion to examine the charitable institution and public health purpose statutes in the past, this case tests the boundaries of those decisions by presenting a more finely tuned question . . . [W]e are asked to calculate whether an institution exists for a "public health purpose" when it engages in some level of activities designed to benefit public health. Stated differently, we must determine in which instances an organization claiming to perform charity work or work benefiting the public health does so to an extent that would merit the respective tax exemptions, and, importantly, whether there are any concrete parameters that can be imposed to assist with these inquiries.
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> Because the Legislature chose not to define the terms "charitable institution," found in MCL 211.7*o*, or "public health purposes," found in MCL 211.7r, the specific meaning of these phrases has been the subject of decades of case law. [185]

Ultimately, the Court held that the petitioner was entitled to an exemption under MCL 211.7o and, as a result, declined to address whether the petitioner was entitled to an exemption under MCL 211.7r. In doing so, the Court stated that "we leave further examination of the meaning of 'public health purpose' for another day."[186] Thus, contrary to Petitioner's assertion, the Court did not broadly define the term "public health

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[183] Petitioner's Brief at 21.
[184] Petitioner's Brief at 20, citing *Wexford* at 202.
[185] *Wexford* at 202.
[186] *Wexford* at 221.

purposes." Furthermore, given the Court's decision not to address the petitioner's public health claim, the Tribunal finds that *Wexford* provides no guidance in this regard.

Because the *Wexford* Court chose not to address the issue, the following definition of "public health purpose" established by the Court in *Rose Hill* still controls: "The 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."[187] [Emphasis added.]

Given this definition, the critical question is whether a facility that provides care on an *individual* basis can be deemed to protect and improve *community* health. In *Rose Hill*, the Court held that it can. Subsequent decisions distinguished between entities whose primary purpose was to provide individual health care as opposed to community health care; however, those decisions are unpublished.[188]

For example, in 2004, the Court issued its decision in *The Wellness Plan*. In that case, the petitioner was a health maintenance organization that offered medical services to Medicaid patients pursuant to a contract with the Michigan Department of Community Health. In denying the petitioner's exemption claim, the Court held that petitioner's main purpose was to provide medical services on an individual basis, "not unlike any other doctor's office, for which Medicaid provides reimbursement."[189]

In 2005, the Court issued its decision in *Healthlink*. In that case, the petitioner operated an emergency medical transportation company (ambulance service). In

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[187] *Rose Hill* at 33, citing *The American Heritage Dictionary: Second College Edition.*
[188] There have been published cases, such as *ProMed* and *Trinity Health-Warde Lab, LLC v Pittsfield Township*, 317 Mich App 629; 895 NW2d 226 (2016), in which MCL 211.7r was an issue. However, these decisions were not based upon a determination of "public health purpose."
[189] *The Wellness Plan* at *2.

denying the exemption claim, the Court stated that "[o]ur conclusion is supported by recent decisions of this Court, which similarly concluded that medical services offered on an individualized basis are not for "public health purposes."[190] The Court relied on *The Wellness Plan* and *McClaren Regional Medical Center v City of Owosso*[191] in arriving at this conclusion.

In 2018, the Court issued its decision in *United Methodist*. In that case, the petitioner owned and operated the Chelsea Retirement Community, which provided "its residents with several senior living options along a continuum of care, including independent and assisted living apartments, a short-stay rehabilitation facility, and a specialized assisted living environment for residents living with all stages of memory loss."[192] As the Court explained:

> Petitioner provides assisted living apartments at "Towsley Village" and "Glazier Commons," both located within the Chelsea Retirement Community.
>
> Towsley Village is dedicated solely to those seniors in need of specialized memory care, including those with progressive dementia. Glazier Commons is designed for senior citizens who require 24–hour physical care or assistance.[193]

The Court noted that Glazier Commons was not a nursing home and that its residents required health care in addition to that provided by the facility. "The type of care provided to residents of Glazier Commons may include, among other things,

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[190] *Healthlink* at *2.
[191] *McClaren Regional Medical Center v City of Owosso*, unpublished opinion of the Court of Appeals, issued August 24, 2004 (Docket Nos. 244386, 250197). The Tribunal notes that, on appeal, the Supreme Court vacated this decision and remanded the case to the Court of Appeals for reconsideration given the Supreme Court's decision in *Wexford*. Ultimately, the Court of Appeals reversed the Tribunal's decision, finding that the petitioner qualified for a charitable exemption under MCL 211.7o(1). Given this, the Court declined to rule on the petitioner's MCL 211.7r claim. See *McClaren Regional Medical Center v City of Owosso* 275 Mich App 401; 738 NW2d 777 (2007).
[192] *United Methodist* at *1.
[193] *Id*.

dispensing of medications, bathing/showering, toileting and/or incontinence care, dressing/undressing, activities, and appointments within the facility."[194] At the time, the basic daily room rate was $242.

> In order to live at Glazier Commons, a potential resident must complete and submit a personal health profile, a physician's confidential medical report, and a confidential data and financial disclosure form. The financial disclosure form asks a potential resident to disclose the value of all real estate assets, as well as stocks, bonds, mutual funds, trusts, bank accounts, and annuities, and also asks potential residents to list their monthly income from various sources.[195]

For these reasons, it was the Court's opinion that "Glazier Commons is primarily a residential facility for those who can afford to pay the cost to live there . . . [the] Glazier Commons facility only provides a high-end residence to those who can afford it, rather than care to the community at large, and therefore does not meet the public health purposes requirement."[196]

In its Brief, Petitioner argues that "the *United Methodist* Court determined the building known as Towsley Village . . . was tax exempt.[197] In fact, the Court made no such determination. Towsley Village's exemption status was not appealed to the Tribunal and, as such, was not before the Court. Instead, the sole issue in *United Methodist* was the exemption status of Glazier Commons.

In addition to these unpublished cases, there are several pertinent Tribunal decisions to consider. While these decisions are not binding, they are instructive and persuasive. The Tribunal's decision in *United Methodist v City of Chelsea*[198] is of

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[194] *Id*.
[195] *Id*. at *2.
[196] *Id*. at *5.
[197] Petitioner's Brief at 21.
[198] *United Methodist v City of Chelsea*, (MTT Docket No. 15-003171-R), issued March 2, 2011. This is the Tribunal decision that was appealed to the Court of Appeals.

particular value as this decision included a lengthy discussion of previous Tribunal decisions involving "public health purposes."

In chronological order, the first case cited by the Tribunal in *United Methodist* was *Brookcrest Nursing Home Inc v City of Grandville*.[199] In that case, the Tribunal questioned whether the nursing home was used for public or private health purposes. The Tribunal found the answer depended upon whether the facility offered its services to members of the general public. Whether the facility accepted Medicaid and Medicare patients was also considered. Finally, the Tribunal found it "logical to infer that the Legislature intended public health purposes to include those entities that it licenses as public health facilities" and referred to the Public Health Code, which defined a "skilled nursing facility" as a "hospital long-term care unit, nursing home, county medical care facility, or other care facility . . . certified by the department to provide skilled nursing care."[200] In finding that the *Brookcrest* facility qualified for the exemption, the Tribunal held that "[i]t would be anomalous and analytically anemic to conclude that a facility regulated for public health services loses its character as such when taxed on the basis of whether it is used for public health purposes."[201]

The next Tribunal decision is that of *Henry Ford Continuing Care Corp v City of Roseville.*[202] In that case, both routine and skilled nursing care was provided on a 24-hour basis to patients who were sick, infirm, and unable to care for themselves. While

[199] *Brookcrest Nursing Home Inc v City of Grandville*, (MTT Docket No. 77220), issued August 4, 1986.
[200] MCL 333.20109.
[201] *Brookcrest.*
[202] *Henry Ford Continuing Care Corp v City of Roseville*, (MTT Docket No. 142360), issued November 19, 1993.

the facility admitted patients covered by Medicaid and Medicare, it did not admit patients who were unable to pay for its services. The Tribunal held that this did not mean that the facility was not operated for public health purposes, only that the petitioner was not a charitable institution.[203] The Tribunal explained that unlike MCL 211.7o, MCL 211.7r does not require the entity claiming the exemption to be charitable. Ultimately, the facility was determined to be used for public health purposes because it was advertised and marketed to the general public, Medicaid and Medicare patients were admitted, and admissions were not determined based on race, religion, color, national origin, sex, age, handicap, marital status, sexual preference or source of payment. In making this decision, the Tribunal found that "[t]he nursing services provided relate directly to their health and well-being; indeed, some eighty percent of hospital care involves the provision of nursing care, and in that respect, Petitioner's nursing home is similar to a hospital."[204]

As previously discussed, the facility in *Rose Hill* provided 24-hour care for mentally ill patients, did not discriminate in who received its services, and accepted Medicaid and Medicare patients. As described by the Tribunal in *United Methodist*, the Tribunal's decision in *Rose Hill*[205] "concentrate[d] 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."[206]

In *Father Murray Nursing Center v City of Centerline,*[207] the petitioner operated a

[203] The petitioner was, however, a nonprofit corporation.
[204] *Henry Ford*.
[205] See *Rose Hill Center Inc v Holly Township*, (MTT Docket No. 190724), issued March 29, 1995.
[206] *United Methodist* at 13.
[207] *Father Murray Nursing Center v City of Centerline,* (MTT Docket No. 293280), issued August 31, 2006.

skilled nursing facility, with RNs and LPNs providing 24-hour care. The petitioner did not discriminate in who received its services and patients were admitted on a first-come, first-serve basis. In addition, admission decisions were not based on the type of payment or the ability to pay, and Medicaid and Medicare payments were accepted. In holding that the facility was used for a public health purpose, the Tribunal held "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."[208]

In *United Methodist*, the Tribunal again addressed the issue of whether a facility that provides individual care can be deemed to protect and improve community health. In doing so, the Tribunal explained that while the petitioners in *Rose Hill, Henry Ford,* and *Father Murray* provided *individual* health care,

> [E]ach Petitioner had an open door policy . . . 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.[209]

In other words, because of their open door policies, these facilities are "a resource to the public at large, rather than only to the well-heeled."[210]

In this case, Petitioner argues that it uses the subject property for "public health purposes" because almost half of its residents live at The Pavilion and over half of The Pavilion residents are indigent and receive support from Medicaid.[211] While this is a

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[208] *Id*.
[209] *Id*.
[210] *Id*., FN 45.
[211] As discussed, whether a building/facility is eligible for an exemption under MCL 211.7r depends upon the specific use of that building/facility. Therefore, even if The Pavilion is eligible for this exemption, its exemption status does not extend to the remainder of the subject property, as Petitioner suggests.

factor to consider, this does not necessarily mean the facility is used for "public health purposes." As *The Wellness Plan* Court explained, Petitioner is reimbursed by Medicaid for those services.[212]

Moreover, Petitioner's claim of a public health purpose exemption for the entire subject property, based on the use of one of the property's buildings, is unfounded. To qualify for the exemption, "the real estate with the buildings" must be used for public health purposes. Excess acreage not actively used for this purpose and real estate and dwellings used for lodging purposes by resident physicians and their families are not exempt. In other words, this exemption does not necessarily apply to an entire parcel of property; it is not an all or nothing proposition. Given this, the use of each of the subject property's buildings must be considered.

As discussed, the subject property consists of one parcel of property with five buildings, each with its own specific use. These buildings include Southminster, The Leas, The Meadows, The Pavilion, and The Community Center. As would be expected, Petitioner's residents must sign numerous forms, or "move-in documents." In addition to these documents, residents of Southminster, The Leas, and The Meadows must sign a "Resident Application." This Application includes a detailed medical history and information about the applicant's activities, i.e., ability to bath, dress, groom, use the toilet without assistance, self-medicate, etc. The Application also requires the potential resident to provide confidential financial information, including equity in real estate, the value of stocks, bonds, etc., and monthly income. Residents of Southminster, The Leas and The Meadows are also required to sign leases. Residents of The Pavilion are not

[212] See *The Wellness Plan* at *2.

required to sign a lease. Instead, The Pavilion residents sign a "Health Center Admission Agreement."

Beginning with Southminster, this building contains 74 unlicensed, independent living apartments for those at least 62 years of age or older. These apartments are unfurnished. Petitioner argues that the residents of this facility are similar to those in *Rose Hill* as they receive "prescription and dispensation of medication" services through the on-site Wellness Clinic. The Wellness Clinic also offers basic services, such as those of visiting physicians, a visiting podiatrist, and other specialists, to Southminster residents. In addition, Southminster residents have access to "rehabilitation programs" such as physical, occupational, and speech therapies,[213] and access to a health care navigator, who is "a supportive individual who helps with doctor's appointments or moving a resident to another area of the building for additional care."[214] Southminster residents also wear a pendent that is linked to an emergency call system.

While the services offered through the Wellness Clinic may benefit some Southminster residents, the residents are not required to use them. Southminster residents are independent and allowed to have their own automobiles. Given this, Southminster residents are just as likely to continue to visit their own physicians' offices and utilize familiar pharmacies. Moreover, services offered by the Wellness Clinic are only available at an extra charge. According to the "Wellness Clinic Admission Preferences," "[a]ll services may not be covered by insurance or may require a co-payment to be provided by the resident or responsible party."[215] Residents are required

[213] Petitioner's Brief at 22.
[214] Petitioner's Response at 4-5.
[215] Respondent's Exhibits, Southminster's Move-In Documents.

to acknowledge "that the services of a Registered Nurse are available on occasion. If I should request the nurse to administer care a fee will apply."[216] While these services are made available to Southminster residents, simply providing access does not meet the requirements of "public health purposes."

The fact remains that the primary purpose of Southminster is to provide seniors with independent living apartments. Southminster was designed to give seniors "freedom, independence, and [the] ability to live the carefree, maintenance-free lifestyle" they want.[217] Much like any other apartment, each Southminster apartment has a kitchen, a bathroom, a washer and dryer, and parking. Small pets are welcome. As discussed, residents are required to sign a lease which is automatically renewed with one year terms. Pursuant to the lease, a one-time, non-refundable application fee is required, in addition to a security deposit. The lease contains other provisions similar to those found in a typical lease, such as the right to terminate the lease for non-payment. In 2018, rent ranged from $2,188 for a studio apartment to $3,458 for a two-bedroom apartment. Because Southminster is an independent living facility, it is not licensed for Medicaid or Medicare patients.

Petitioner argues that it "does not turn away those applicants who cannot afford to stay in the independent or assisted living facilities, rather, Petitioner **assists** those individuals with limited assets in figuring out their plan to stay at Petitioner's facilities by reviewing family supplement and Medicaid options."[218] [Emphasis added.] This statement is misleading. Petitioner may not have turned away an applicant, but

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[216] *Id*.
[217] Respondent's Exhibits at 556: screenshots of Petitioner's website.
[218] Petitioner's Response at 7.

Petitioner provided no evidence that it ever admitted a resident into Southminster, The Leas, or The Meadows who could not afford, at least for a foreseeable time, to pay the costs to live there.[219]

Finally, unlike Petitioner's other facilities, those applying to live at Southminster do not have to have a physical evaluation, because this would be a violation of fair housing laws. In this sense, Southminster's apartments are the same as any other apartment.

For these reasons, it cannot reasonably be concluded that Southminister is used for public health purposes. Like Glazier Commons, Southminster "only provides a high-end residence to those who can afford it, rather than care to the community at large, and therefore does not meet the public health purposes requirement."[220] And like Hillside Terrace, Southminster provides "an attractive retirement environment for those among the elderly who have the health to enjoy it and who can afford to pay for it."[221] Therefore, the Tribunal finds that Southminster is not exempt under MCL 211.7r.

The next building is known as The Leas. The Leas contains 41 assisted living apartments, available to those 62 years of age or older. Like Southminster, these apartments are unfurnished.

Petitioner again argues that the services offered at The Leas are similar to those offered in *Rose Hill*. Petitioner explained that residents of The Leas are also provided basic medication management and administration services. However, the Tribunal

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[219] This statement is qualified given that Petitioner did provide some financial assistance to one resident. However, as discussed, this assistance is only available to residents who, among other things, have resided at the subject property for at least 5 years.
[220] *United Methodist* at *5.
[221] *Michigan Baptist* at 671.

notes that The Leas' "Resident Admission Assessment Criteria" indicates that a resident of The Leas "[s]elf manages medications or takes no medications. May require medication reminders and monitoring."[222] Thus, in spite of Petitioner's assertions, it appears that very little assistance in medication management is actually provided. Finally, while residents of The Leas have access to the Wellness Clinic, they are charged for these services, just like residents of Southminster.

In actuality, The Leas is more like the *United Methodist* property known as Glazier Commons than the property in *Rose Hill*. The care provided at The Leas, like that at Glazier Commons, includes such things as dispensing medications, bathing/showering assistance, and dressing/undressing. Additional care plans are offered, but at a cost. In 2018, these care plans ranged from $372 to $893 per month.

Like Glazier Commons, The Leas was designed to care for senior citizens who require 24-hour care or assistance. At The Leas, this includes residents who have Alzheimer's and other forms of dementia. However, these residents are not contained in a locked, secure facility as are residents of The Meadows. Moreover, like Glazier Commons, The Leas is not a nursing home and skilled nursing care is not provided. According to The Leas' Admission Policy, residents who require 24-hour unscheduled *nursing* care will not be accepted. Moreover, residents of The Leas are required to acknowledge "that the services of a Registered Nurse are available on occasion. If I should request the nurse to administer care a fee will apply."[223] Finally, Section 6.2 of The Leas' Residency Agreement states that "[w]e are not responsible for furnishing or

[222] Respondent's 2nd set of Exhibits submitted on October 23, 2020, at 261.
[223] Respondent's Exhibits: The Leas Move-In Documents.

paying for, nor does your Monthly Fee include, any health care items or services such as physician services, private duty nurse, hospital care, rehabilitative services, hearing aids, eyeglasses, dentures, canes, crutches, wheelchairs, medications, or medical supplies."[224]

Pursuant to The Leas' lease, residents must pay an application fee and a security deposit. In 2018, the monthly fee for a studio apartment was $4,482, while the monthly fee for a one bedroom kitchenette was $5,841. If the fees are not paid, the agreement can be cancelled. However, Petitioner explained that if a resident of The Leas could no longer afford to live there, the resident would receive help in determining if he or she qualified for Medicaid. Because The Leas is not licensed under Medicaid, the resident would receive help transferring either to The Pavilion or another facility, if appropriate.

For these reasons, the Tribunal finds that The Leas, like Glazier Commons, is primarily a high-end, residential facility for those who can afford to pay the cost to live there. The Leas offers minimal health services to its residents, most of which come at an additional cost. The Leas offers no care to the community at large. Therefore, the Tribunal finds that The Leas is not used for "public health purposes" and is not exempt MCL 211.7r.

The next building is known as The Meadows. The Meadows is a licensed Home for the Aged, which Petitioner described as an assisted living level of license. The Meadows is a secure, locked facility, containing 32 furnished apartments available to those with cognitive impairments. According to Petitioner, "[t]he basic main difference

[224] Respondent's Exhibits.

[between The Leas and The Meadows] would be that it's a security setting, so it's a locked facility."[225] Residents of The Meadows are offered the same services that are offered to residents of Southminster and The Leas, i.e., access to a health care navigator and the Wellness Clinic, the opportunity to see a primary physician, specialists and ancillary services, including podiatry, optometry, etc., and access to physical, occupational and speech therapies, if needed.

Again, Petitioner argues that the services provided at The Meadows are similar to those provided by the petitioner in *Rose Hill* and that, like the petitioner in *Rose Hill*, it is open to mentally ill adults without regard to race, religion, or sex. Petitioner also argues that The Meadows is similar to the *United Methodist* facility known as Towsley Village, which provides services to seniors requiring specialized memory care. Petitioner contends that the Towsley Village property was held exempt by the *United Methodist* Court.[226]

In *Rose Hill*, the petitioner provided services to mentally ill patients and its facility was inspected and licensed as a mental health provider by the Michigan Department of Social Services. The services offered in *Rose Hill* included the prescription and dispensation of medication, rehabilitation and reintegration programs, and psychiatric evaluations and diagnosis. In comparison, Petitioner provides the residents of The Meadows with "protection, supervision, assistance and supervised personal care,"[227] and wellness services, "including the Wellness seminars and group physical exercise

[225] Petitioner's Exhibit 21.
[226] As discussed, the *United Methodist* Court did not rule on Towsley Village's tax exempt status as it was not appealed to the Tribunal. Given this, it is not necessary to discuss this part of Petitioner's argument further.
[227] Respondent's first set of Exhibits submitted on October 23, 2020: The Meadows Residency Agreement, Section 4.3, at 111.

programs."[228] Like residents of The Leas, The Meadows is "legally prohibited from admitting a Resident who requires continuous nursing care services."[229]

In *Rose Hill*, the petitioner was staffed by a psychiatrist, psychiatric nurses, and social workers and provided twenty-four-hour care to its patients.[230] In this case, Petitioner has "an RN and an LPN but the staff actually providing care to residents of The Meadows are not certified nursing assistants.[231] Moreover, Petitioner "is not responsible for furnishing or paying for, nor does the Resident's Monthly Fee include, any health care items or services such as physician services, private duty nurse, hospital care, rehabilitative services, hearing aids, eyeglasses, dentures, canes, crutches. wheelchairs, medications, including over the counter medications, pharmacy co-pays or other medical supplies."[232]

Those seeking to become a resident of The Meadows are required to sign the same Residency Agreement as those seeking to become residents of Southminster and The Leas. Potential residents must provide the same detailed medical history, assessment of activity level, and confidential financial data. In addition, potential residents of The Meadows must sign a lease. This lease includes late charges and the ability to discharge a resident who has defaulted on rental payments.

In 2018, rooms at The Meadows ranged from $6,000 per month for a semi-private room, to $6,500 for a private room. In addition to the monthly room fee, potential residents of The Meadows must pay a $2,000 nonrefundable community fee.

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[228] *Id*. at Section 4.6.
[229] *Id*. at Section 8.5.
[230] *Rose Hill* at 33.
[231] Petitioner's Exhibit 23.
[232] Respondent's first set of Exhibits submitted on October 23, 2020: The Meadows Residency Agreement, Section 6.2., at 112.

While Petitioner does not discriminate based on race, religion, or sex, it differs from *Rose Hill* in that The Meadows does not accept residents covered by Medicaid or Medicare. In other words, only those people who have the financial means to pay the nonrefundable community fee, the monthly rent, and all service fees are accepted as residents of The Meadows.

For these reasons, the Tribunal finds that The Meadows is not operated for public health purposes. Like Glazier Commons, residents of The Meadows "require health care and other services in addition to those provided" by Petitioner. Moreover, residents of The Meadows are required to pay for these services in addition to the monthly rent, as assistance from Medicaid and Medicare is not an option. Simply put, Petitioner offers a safe, high-end residence for those with cognitive issues who can afford to live there, rather than care to the community at large. Therefore, the Tribunal finds that The Meadows is not exempt MCL 211.7r.

The next building is known as The Pavilion. The Pavilion is a licensed, skilled nursing facility, meaning that skilled nursing care is required 24 hours a day, seven days a week. The Pavilion has 128 beds, 80 of which are certified under Medicaid. Of these 80 beds, 60 are also certified under Medicare. However, most of these 60 beds are occupied by Medicaid patients. The remaining 48 beds are certified under Medicare and are also available to private pay residents.[233] Medicaid patients are indigent and are typically long-term residents of The Pavilion, while Medicare patients are short-term residents and are typically at The Pavilion for rehabilitative services. According to Petitioner, most of The Pavilion's residents come from hospital admissions.

[233] Petitioner's Response at 6.

In 2017, 281 people were denied admission into The Pavilion; in 2018, the number was 325. Generally, admission was denied because of lack of a specific type of bed, i.e., a Medicaid bed, or because of Petitioner's inability to provide the necessary level of health care.

In 2018, the Pavilion's daily room rates were $263 for Medicaid, $310 for private pay, $439 for private insurances, and $491 for Medicare. According to Petitioner, there are very few private pay patients at The Pavilion. Petitioner contends that it incurs a financial loss from the care of its Medicaid patients.

The Tribunal finds that, like the facilities in *Brookcrest*, *Henry Ford*, and *Father Murray*, The Pavilion is a licensed, skilled nursing facility that provides 24-hour care to those who are sick and unable to care for themselves. This care is provided by RNs and certified nursing assistants. Moreover, the long-term care offered by Petitioner is similar to that offered by the petitioners in *Brookcrest*, *Henry Ford* and *Father Murray*. Importantly, as in *Brookcrest*, *Henry Ford*, *Father Murray* and *Rose Hill*, Petitioner does not discriminate in who receives care. Petitioner has an open door policy, accepting Medicaid and Medicare patients from other Medicaid and Medicare facilities, hospitals, and its own facilities. Unlike Southminster, The Leas, and The Meadows, admission into The Pavilion is not limited to only those who can afford to live there. For these reasons, the Tribunal finds that The Pavilion is used for public health purposes and is exempt under MCL 211.7r.

The remaining building, known as the Community Center, is:

> Described by Petitioner as being "in the heart of the facility," this two story [building] is divided into discrete areas. The first floor includes office space for Petitioner, a gift shop, a beauty salon and spa operated by Petitioner, a wellness center, and a restaurant known as "the Pub." The second floor

> includes an additional dining room, three rooms that can be rented, a library area, and a space referred to as a chapel/cultural center/chaplain office. There are no living areas in this section of the property.[234] [Footnotes omitted.]

Petitioner provided no specific argument as to how the Community Center qualifies for a public health exemption under MCL 211.7r. The one area of this building used for health-related purposes, the Wellness Clinic, is not available to the general public. Instead, the Wellness Clinic is available for use only by Petitioner's residents, and is used primarily by the residents of Southminster and The Leas. The Wellness Clinic is not staffed by doctors or nurse practitioners. Instead, doctors and other local practitioners use the Clinic to see patients who live at the subject property. Given this, the Tribunal finds that the Community Center is not used for a public health purpose and does not qualify for exemption under MCL 211.7r.

Finally, there is no evidence that Petitioner's excess acreage is actively utilized for public health purposes. Therefore, only that portion of the acreage occupied by The Pavilion's structure is exempt.

MCL 211.7s

MCL 211.7s provides a property tax exemption for "[h]ouses of public worship, with the land on which they stand, the furniture therein and all rights in the pews, and any parsonage owned by a religious society of this state and occupied as a parsonage are exempt from taxation under this act." To qualify as a house of public worship, "the buildings or other facilities must be **owned** by a **religious society** and used **predominantly** for religious services or for teaching the religious truths and beliefs of

[234] Respondent's Motion at 2.

the society."[235] [Emphasis added.] In this case, Petitioner asserts that the portion of the Community Center, known as "St. Luke's Chapel," qualifies for this exemption. Petitioner employs a Deacon who, among other things, performs services at St. Luke's Chapel.

There have been several cases in which Michigan's Court of Appeals has addressed the issue of whether a petitioner is a "religious society" under MCL 211.7s, the first time being in *Institute in Basic Life Principles.* In that case, the Court explained that the statute does not define the term "religious society." After considering the statute and the Michigan General Corporation Act,[236] specifically MCL 450.186, the Court concluded "that an association or organization qualifies as a 'religious society' for purposes of the house of public worship tax exemption if its **predominant purpose and practice** include teaching religious truths and beliefs."[237] [Emphasis added.] In other words, to qualify for an exemption under MCL 211.7s, the entity that owns the property at issue must have as its **predominant purpose and practice** the teaching of religious truths and beliefs and the property must be used **predominantly** for religious services or for teaching the religious truths and beliefs of the owner.

In determining whether the petitioner in *Institute in Basic Life* met the definition of religious society, the Court considered the petitioner's purpose as set forth in its Certificate of Incorporation and its By-laws, and its actions in furtherance of that purpose. Ultimately, the Court held that the petitioner's predominant purpose was to teach religious principles and that this fell within the definition of religious society.

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[235] MCL 211.7s.
[236] MCL 450.1 *et seq*.
[237] *Institute in Basic Life Principles* at 14.

In *Prophetic Word Ministries, Inc v City of Saugatuck*,[238] the Court again considered the petitioner's bylaws. In finding that the petitioner was a religious society, the Court referred to these bylaws, which "indicate that [the petitioner's] mission includes establishing churches and ministries to win over those lost to Jesus Christ, to train and ordain all aspects of ministries, to have ministry schools, and to help underprivileged people."[239]

In *Self Realization Meditation Healing Centre v Bath Township*, the Court considered the petitioner's purpose as stated in its Articles of Incorporation. According to these Articles, the petitioner was organized:

> [T]o provide support to the general public and to those who are suffering on any level, to assist those who seek inner knowledge and personal growth in the pursuit of peace, health and happiness through meditation, yoga and spiritual living. The corporation is organized . . . for religious, charitable, scientific, literary and educational purposes . . . .[240]

After reviewing the Articles, the Court held that they did not confirm that the petitioner's nature was religious. Instead, the Court concluded that the Articles included a variety of other purposes.[241]

As discussed, it is unclear whether the Restated Articles of Incorporation submitted by Petitioner are those of Petitioner. Given this, Petitioner's status as a religious society cannot be definitively determined. However, if the Restated Articles are Petitioner's, the following analysis would apply.

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[238] *Prophetic Word Ministries, Inc v City of Saugatuck*, unpublished per curiam opinion of the Court of Appeals, issued April 17, 2014 (Docket No. 313706).
[239] *Id*. at *4.
[240] *Id*. at *1.
[241] The Tribunal recognizes that while "unpublished opinions of [the Court of Appeals] are not binding precedent . . . they may, however, be considered instructive or persuasive authority." *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010). In this case, the Tribunal finds the Court's decision instructive.

Article 2.2 of the Restated Articles sets forth Petitioner's Purposes and Powers, and states that Petitioner is "organized and operated exclusively for charitable, religious and educational purposes within the meaning of Section 501(c)(3) and 170(c)(2) of the Internal Revenue Code . . . ."[242] Importantly, of the nine specific Purposes and Powers listed, none include teaching religious truths and beliefs, or performing any type of activity related to religion. Instead, according to Article 2.2, Petitioner's main purpose is to "operate and serve as the governing body for retirement centers . . . ."

Petitioner's Mission, contained in Article 2.1, states that Petitioner was "founded on the tenets of the Episcopal Church"; however, that sentence goes on to state that Petitioner "shall continue to promote and support spiritual, loving and gracious health care and housing for seniors and others in need, consistent with its Episcopal heritage." There is no mention of teaching religious truths or beliefs in Petitioner's Mission.

Given this, the Tribunal cannot find that Petitioner's purpose and practice includes teaching religious truths and beliefs, let alone that its predominant purpose and practice is teaching religious truths and beliefs. Instead, like the petitioner in *Self Realization*, Petitioner has a variety of purposes, the predominate one being to "operate and serve as the governing body for retirement centers . . . ."

Even if Petitioner were held to be a religious society, the subject property does not meet the second requirement of MCL 211.7s, specifically that "the buildings or other facilities . . . [be] used predominantly for religious services or for teaching the religious truths and beliefs of the society." As discussed, only St. Luke's Chapel, which is located on the second floor of the Community Center, is used for religious services. The

[242] Petitioner's Exhibit 1.

remainder of the Community Center is used for a variety of other purposes, including offices for Petitioner, a beauty salon and spa, a restaurant, a library, etc. Therefore, it cannot be said that the Community Center is used **predominantly** for religious services or for teaching of religious truths and beliefs. Furthermore, because the other four buildings located on the subject property are used as residential facilities, these buildings are not used for religious services or for teaching religious truths and beliefs.

In its Motion, Petitioner asserts that St. Luke's Chapel is a religious society.[243] However, Petitioner provided no evidence that "St. Luke's Chapel" is organized as a separate entity. Petitioner did not submit St. Luke's Chapel's Articles of Incorporation or any documentation that would establish St. Luke's Chapel's purpose. Instead, the evidence indicates that St. Luke's Chapel is merely a chapel located on the second floor of the Community Center, and not a religious society. Moreover, even if it were established that St. Luke's Chapel is a religious society, St. Luke's Chapel does not own the subject property as required under MCL 211.7s. For these reasons, the Tribunal finds that Petitioner is not a religious society and is not entitled to an exemption under MCL 211.7s.

To summarize, the parties' MCR 2.116(C)(10) Summary Disposition Motions regarding the subject property's eligibility for a property tax exemption under MCL 211.7o(1) is denied as there remain genuine issues of material fact. This claim will proceed to hearing. In addition, Petitioner did not meet its burden of proof as to MCL 211.7o(8) and MCL 211.7s; therefore, Petitioner's Summary Disposition Motion is denied as to these claims. However, Respondent's and Treasury's Motions regarding

[243] Petitioner's Motion at 24.

MCL 211.7o(8) and MCL 211.7s are granted as to these claims as there are no genuine issues of material fact and they are entitled to judgment as a matter of law. Finally, Petitioner met its burden of proof in establishing that The Pavilion is exempt from property tax under MCL 211.7r. Petitioner did not meet its burden of proof as to the remainder of the subject property. Therefore, Petitioner's Summary Disposition Motion under MCL 211.7r is granted as to The Pavilion and denied as to the remainder of the subject property. Respondent's and Treasury's Motions regarding MCL 211.7r is denied as it pertains to The Pavilion; as to the remainder of the subject property, their Motions are granted as there are no genuine issues of material fact and, as such, they are entitled to judgment as a matter of law.

As to Treasury's Motion for Summary Disposition under MCR 2.116(C)(8), after examining Petitioner's Amended Petition in the light most favorable to Petitioner, the Tribunal finds that this Motion must be denied as the Amended Petition was legally sufficient.

Finally, in its Motion for Summary Disposition, Respondent asserts it is entitled to costs and attorney fees as Petitioner's MCL 211.7o(8)[244] claim is in clear violation of MCR 1.109(E). Under MCR 1.109(E)(5):

> The signature of a person filing a document, whether or not represented by an attorney, constitutes a certification by the signer that:
>
> (a) he or she has read the document;
>
> (b) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

[244] Respondent's Motion refers to Petitioner's claim under both MCL 211.7o(8) and MCL 211.7r. However, Respondent's discussion appears to concern only Petitioner's MCL 211.7o(8) claim and will be analyzed as such.

> (c) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

MCR 1.109(E)(6) provides that if a document is signed in violation of this rule, an appropriate sanction *shall* be imposed.

According to Respondent, there is no basis for Petitioner's MCL 211.7o(8) claim and "any reasonable inquiry would have confirmed that the property was not exempt at any point."[245] Respondent points out that Petitioner has owned the subject property since its original construction and has paid summer and winter property taxes each year since 1994. In addition, none of the documents submitted by Petitioner are relevant and none prove entitlement to the exemption.

In its Response to Respondent's Motion, Petitioner asserts that it did not violate MCR 1.109(E). As in its Motion, Petitioner relies upon its corporate minutes and the Stipulation for Consent Judgment in support of its MCL 211.7o(8) claim.

The Tribunal has considered Respondent's Motion, Petitioner's Response, and the case file and finds that, pursuant to Section 52 of the Tax Tribunal Act,[246] costs may be awarded at the Tribunal's discretion. However, as explained by the Court in *Walnut Creek Country Club v Lyon Township*,[247] neither the Tax Tribunal Act nor the Tribunal's Administrative Rules provide standards to utilize in determining when to award costs. The Michigan Court Rules and Administrative Procedures Act provide the Tribunal with some criteria in determining whether an award of costs is appropriate, but the Court of

[245] Respondent's Motion at 33.
[246] MCL 205.752.
[247] *Walnut Creek Country Club v Lyon Township*, unpublished per curiam opinion of the Court of Appeals, issued January 6, 2022 (Docket No. 351980).

Appeals has held that costs are entirely within the Tribunal's discretion, and it is not limited to circumstances where the requesting party shows good cause or the action or defense was frivolous.[248] The Tribunal is nevertheless generally hesitant to award costs, and usually reserves such action for cases in which frivolity or other good cause exists.

"A claim is frivolous when (1) the party's primary purpose was to harass, embarrass, or injure the prevailing party, or (2) the party had no reasonable basis upon which to believe the underlying facts were true, or (3) the party's position was devoid of arguable legal merit."[249] "A court must determine whether a claim or defense is frivolous on the basis of the circumstances at the time it was asserted."[250] "[A] claim is devoid of arguable legal merit if it is not sufficiently grounded in law or fact, such as when it violates basic, longstanding, and unmistakably evident precedent."[251]

In this case, Petitioner asserts that it met the statutory requirements "because it's real property was fully exempt from taxation until 1997."[252] However, MCL 211.7o(8) clearly and unambiguously provides three requirements that must be met for a property to be eligible for the exemption, one of which is that the property must have been exempt from property taxes on one of two specific dates. Petitioner provided no evidence that the subject property was exempt on either of these dates and continued to cling to its position that the property was exempt some seven years prior to the earliest statutory date.

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[248] See *Aberdeen of Brighton, LLC v Brighton*, unpublished per curiam opinion of the Court of Appeals, issued October 16, 2012 (Docket No. 301826), which noted that "[t]he term 'may' is permissive and is indicative of discretion." *Id*. citing *In re Forfeiture of Bail Bond*, 276 Mich App 482, 492 (2007).
[249] *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 266-267 (1996) citing MCL 600.2591(3)(a).
[250] *Meisner Law Group, PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 732 (2017).
[251] *Adamo Demolition Co v Dep't of Treasury*, 303 Mich App 356, 369 (2013) (quotation marks and citations omitted).
[252] Petitioner's Brief at 19.

Given these specific facts and circumstances, the Tribunal is persuaded that Petitioner had no reasonable basis upon which to believe that its MCL 211.7o(8) claim was sufficiently grounded in fact and warranted by existing law. Simply put, Petitioner's MCL 211.7o(8) claim was frivolous as it was devoid of any arguable legal merit. As such, Respondent has shown good cause to justify granting its request for costs and attorney fees as it relates to this claim.

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition as to MCL 211.7o(1), MCL 211.7o(8), and MCL 211.7s is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition as to MCL 211.7r is PARTIALLY GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition as to MCL 211.7o(1) is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition as to MCL 211.7o(8) and MCL 211.7s is GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition as to MCL 211.7r is PARTIALLY GRANTED.

IT IS FURTHER ORDERED that Intervenor-Respondent's Motion for Summary Disposition under MCR 2.116(C)(10) as to MCL 211.7o(1) is DENIED.

IT IS FURTHER ORDERED that Intervenor-Respondent's Motion for Summary Disposition under MCR 2.116(C)(10) as to MCL 211.7o(8) and MCL 211.7s is GRANTED.

IT IS FURTHER ORDERED that Intervenor-Respondent's Motion for Summary Disposition under MCR 2.116(C)(10) as to MCL 211.7r is PARTIALLY GRANTED.

IT IS FURTHER ORDERED that Intervenor-Respondent's Motion for Summary Disposition under MCR 2.116(C)(8) is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Costs and Fees is GRANTED.

IT IS FURTHER ORDERED that Respondent shall submit a bill of costs and attorney fees associated with its defense of Petitioner's MCL 211.7o(8) claim to the Tribunal and Petitioner within 14 days of the entry of this Order. Failure to comply with this Order will result in Respondent being held in default, as provided by TTR 231.[253]

IT IS FURTHER ORDERED that Petitioner may file a response within 14 days of the service of the bill of costs and attorney fees on Petitioner.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values (i.e., the exemption of The Pavilion under MCL 211.7r) as finally provided in this Partial Final Opinion and Judgment (PFOJ) within 20 days of the entry of the PFOJ, subject to the processes of equalization.[254] To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

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[253] See also MCL 205.732.
[254] See MCL 205.755.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this PFOJ. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this PFOJ. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2018, through June 30, 2019, at the rate of 5.9%, (ii) after June 30, 2019, through December 31, 2019, at the rate of 6.39%, (iii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (iv) after June 30, 2020, through December 31, 2020, at the rate of 5.63%, and (v) after December 31, 2020, through June 30, 2022, at the rate of 4.25%.

APPEAL RIGHTS

If you disagree with the PFOJ 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 Tribunal with the required filing fee within 21 days from the date of entry of the PFOJ. The fee for the filing such a motion in this case is $50.00. You are required to serve a copy of the motion 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. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

A claim of appeal must be filed with the Michigan Court of Appeals with the appropriate filing fee. If the claim is filed within 21 days of the entry of the PFOJ, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the PFOJ, it is an "appeal by leave." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is $100.00.

By Patricia L. Haem

Entered: January 18, 2022