

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

Chelsea Health and Wellness Foundation,
Petitioner,

v

MTT Docket No. 14-001671

Scio Township,
Respondent,

Tribunal Judge Presiding
David B. Marmon

and

City of Dexter,
Dexter Downtown Development Authority,
and Michigan Department of Treasury,
Intervening Respondents.

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Chelsea Health & Wellness Foundation (“CWF”) appeals the March 2014 Board of Review’s denial of a requested charitable exemption from property taxation under MCL 211.7o of parcel number HD 08-06-455-001.

After various preliminary motions, including cross motions for Summary Disposition, a hearing on this matter was held on January 4, 5, 6, 7, 8, 11, 12 and 13, 2016. Petitioner was represented by Joanne B. Faycurry, Marcy L. Rosen, and Matthew Kennison of Schiff Hardin, PLC. Respondent Township of Scio (“Scio”) was represented by John L. Etter of Reading, Etter & Lillich, Intervening Respondents City of Dexter and Dexter Downtown Development Authority (“Dexter”) were represented by Scott E. Munzel of Scott E. Munzel PC, and Intervening Respondent Michigan Department of Treasury, (“Treasury”) was represented by Adam P. Sadowski, Assistant Attorney General. Petitioner called 16 witnesses, marked 368 exhibits, and caused 115 of those exhibits to be admitted into evidence, as well as 1 exhibit marked by Treasury. Respondents cumulatively called 5 witnesses, and had 29 exhibits admitted into evidence. Scio neither marked, nor offered exhibits; Dexter marked 39 Exhibits, introduced 17, all of which were admitted, and caused 12 of Petitioner’s marked exhibits to be admitted as well. Treasury listed 22 exhibits, but did not introduce any, although one of its exhibits was introduced into evidence by Petitioner. Post-hearing briefs were ordered and received from all

parties. Based on the evidence, testimony, briefs of each party ordered at the close of hearing and filed on March 17, 2016, as well as Petitioner's Reply Brief filed on March 31, 2016, along with the case the file, the Tribunal finds:

The subject properties shall be granted an exemption, under MCL 211.7o for the 2014 and 2015 tax years in the amount of 0%.

The subject property's true cash values ("TCV"), state equalized values ("SEV") and taxable values ("TV") for the tax years at issue shall be as follows:

Parcel Number: HD 08-06-455-001

Year	TCV	SEV	TV
2014	\$10,344,200	\$5,172,100	\$5,172,100
2015	\$10,648,400	\$5,324,200	\$5,254,853

PETITIONER'S ADMITTED EXHIBITS

The following were admitted as Petitioner's exhibits:

P-4 Brochures describing various programs¹

P-6 Community Programs Flyer Fall 2014²

P-7 Community Programs Flyer Winter 2014³

P-8 Community Programs Flyer Spring/Summer 2014⁴

P-9 Community Programs Flyer Spring/Summer 2015⁵

P-10 Community Programs Flyer Winter/Spring 2015⁶

P-26 Membership Card for Dexter Wellness Center⁷

P-27 Management Agreement dated 9/5/13 between CWP and Power Wellness Management LLC, ("PWM")⁸

P-28 Management Agreement dated 12/10/14 between CWP and PWM⁹

P-38 MFA certification criteria and other information¹⁰

¹ January 6, 2016 transcript, ("T.3") p. 122

² January 11, 2016 transcript, ("T.6") p. 58

³ T.6 p. 58

⁴ T.6 p. 58

⁵ T.6 p. 58

⁶ T.6 p. 58

⁷ January 5, 2016 transcript, ("T.2") p. 131

⁸ T.2 p. 93

⁹ T.2 p. 93

¹⁰ T.3 p. 79

- P-41 CWF Scholarships Memo¹¹
P-55 Financial Report 2013-2014¹²
P-72 Village of Dexter Master Plan excerpt¹³
P-78 Dexter Village Update, Fall 2014¹⁴
P-79 Emails between Chris Garfield and Etter's office re: United Methodist Retirement Communities¹⁵
P-80 Brochure for The Cedars ¹⁶
P-81 Tribunal stipulation for *United Methodist Retirement Communities v Webster Twp.*, MTT Docket No. 417146 entered July 10, 2013¹⁷
P-82 Webster Twp. BSA page for United Methodist Retirement Communities¹⁸
P-83 Shawn Keough report to council dated March 24, 2013¹⁹
P-84 DDA Meeting document, dated 10/08/2013²⁰
P-85 Letter dated 10/31/13 co-signed by Shawn Keough to Steve Brouwer re: future tax revenue to the DDA²¹
P-86 Email from Shawn Keough re: closed session meeting dated 10/29/13²²
P-87 Emails from Shawn Keough to Donna Dettling re: closed session dated 10/29/13²³
P-88 Email from Keough to Steve Brouwer dated January 8, 2014²⁴
P-89 Letter from Keough to Michale Finney of MEDC dated 10/23/13²⁵
P-90 email from Dettling to Keough with financial consequences to Dexter, and the DDA²⁶

¹¹ T.2 p. 41

¹² T.6 p. 182

¹³ January 12, 2016 transcript ("T.7") p. 109

¹⁴ T.7 p. 71

¹⁵ T.7 p. 71

¹⁶ T.7 p. 71

¹⁷ T.7 p. 71

¹⁸ T.7 p. 71

¹⁹ T.7 p. 71

²⁰ T.7 p. 71

²¹ T.7 p. 71

²² T.7 p. 71

²³ T.7 p. 71

²⁴ T.7 p. 71

²⁵ T.7 p. 71

²⁶ T.7 p. 71

- P-91 BSA tax sheets for Scio Twp. for 3045 Broad St. from 2000 to 2015²⁷
- P-92 Notice of Continuation and Subpoena Duces Tecum for Shawn Keough²⁸
- P-93 Dexter's goals and objectives for FY 2014-2015
- P-94 DWC sign in sheets for meeting held 10/14/14 and 6/9/15²⁹
- P-95 Letter from Heydlauff to Rep. Gretchen Driskell dated 4/2/2015³⁰
- P-96 Article in Dexter Leader re: award from Rep. Driskell from Michigan Fitness Foundation to City of Dexter re: Silver Award for Promoting Active Communities.³¹
- P-97 Email from Heydlauff "Greetings and News from Dexter Wellness Center" dated 5/01/14³²
- P-98 City of Dexter web page/Dexter Community Wellness Initiative³³
- P-99 Email re: and copy of unsigned grant agreement³⁴
- P-104 Anonymous list of Next Steps participants, referring professional and condition³⁵
- P-105 CWF Scholarship Inquiry Flowchart³⁶
- P-113 Corporate membership brochure³⁷
- P-114 Member Intake Form-- Medical History³⁸
- P-115 2015 Scholarship list & data
- P-127 Community Activities Table 2013-2015³⁹
- P-128 Calendar of Events⁴⁰
- P-129 List of donations⁴¹
- P-132 Wellness Center Community Advisory Team Minutes for April 16, 2013⁴²

²⁷ T.7 p. 71

²⁸ T.7 p. 71

²⁹ T.7 p. 71

³⁰ T.7 p. 71

³¹ T.7 p. 71

³² T.7 p. 71

³³ T.7 p. 71

³⁴ T.7 p. 71

³⁵ T.3 p. 131

³⁶ T.2 p. 41

³⁷ T.3 p. 147

³⁸ T.3 p. 112

³⁹ T.2 p. 51

⁴⁰ T.6 p. 53

⁴¹ T.6 p. 49

⁴² T.6 p. 48

- P-133 Wellness Center Community Advisory Team Minutes for May 21, 2013⁴³
- P-143 Dexter Wellness Coalition Year 3 Plan for Strong Community – Dread Strong!⁴⁴
- P-145 Emails re: Banner in Monument Park dated June 20, 21 2013⁴⁵
- P-146 Letter from Courtney Nicholls to CWF supporting initiatives dated 6/6/13⁴⁶
- P-165 Affidavit of James Merte⁴⁷
- P-173 Transcript of Cindy Cope deposition⁴⁸
- P-179 Chris Renius Deposition Transcript⁴⁹
- P-181 178 Photos of subject property⁵⁰
- P-185 Agreement between CWF and Trinity Health⁵¹
- P-186 CWF history blurb from website⁵²
- P-189 CWF restated Articles of Incorporation⁵³
- P-190 CWF Amended By-laws⁵⁴
- P-193 Press release announcing subject’s certification from MFA ⁵⁵
- P-194 British Medical Journal article determining the comparative effectiveness of exercise vs drug interventions on mortality⁵⁶
- P-200 Safe Routes to School materials⁵⁷
- P-201 Farm to School/School Garden materials⁵⁸
- P-210 Special Message from Gov. Snyder regarding Health & Wellness dated 9/14/2011⁵⁹

⁴³ T.6 p. 48

⁴⁴ January 13, 2016 transcript, (“T.8”) p. 57

⁴⁵ T.8 p. 76

⁴⁶ T.8 p. 65

⁴⁷ T.6 p. 222

⁴⁸ T.3 p. 147

⁴⁹ T.7 p. 159

⁵⁰ T.2 p. 127

⁵¹ January 4, 2016 transcript (“T.1”) p. 62

⁵² T.1 p. 65

⁵³ T.1 p. 72

⁵⁴ T.1 p. 72

⁵⁵ T.3 p. 136

⁵⁶ January 7, 2016 transcript (“T.4”) p. 93

⁵⁷ January 8, 2016 transcript (“T.5”) p. 129

⁵⁸ T.5 p. 131

⁵⁹ T.2 16

- P-211 Gov. Snyder's 175 page report dated 1/24/14 Reinventing Michigan's Health Care System⁶⁰
- P-212 Membership page, Dexter Wellness Center⁶¹
- P-225 Amenities Chart comparing subject with other local facilities, attached to affidavit of Chris Renius, Affidavit, and other exhibits⁶²
- P-228 31 Photos of subject⁶³
- P-229 (P. 003015-003376 only) Shawn Keough correspondence, deposition⁶⁴
- P-230 Health Fitness Assessment spreadsheets, attached as Exhibit C to Affidavit of Amy Heydlauff⁶⁵
- P-240 Michigan 4 x 4 plan from Michigan Dept. of Community Health⁶⁶
- P-245 Property Ground Lease & Transfer Agreement to U of M⁶⁷
- P-246 List of referring physicians to Next Steps program⁶⁸
- P-248 Curriculum Vitae of Amy Heydlauff⁶⁹
- P-249 Faycurry letter to Munzel with attachments⁷⁰
- P-250 Financial Report ending March 31, 2015⁷¹
- P-252 Photo of trainer assisting member⁷²
- P-255 Governor's Press Release re: Michigan Health Endowment Health Board, SB 61⁷³
- P-256 Five Healthy Towns Foundation News announcement dated April 10, 2015⁷⁴
- P-257 Dexter Community Wellness Initiative 2012-2013⁷⁵
- P-258 Dexter Community Wellness Coalition Year 2 Plan 2014⁷⁶

⁶⁰ T.2 p. 29

⁶¹ T.2 p. 43

⁶² T.2 p. 135 as to chart only; T.7 p. 159 re: balance of exhibit

⁶³ T.2 p. 99

⁶⁴ T.7 p. 77

⁶⁵ T.2 p. 14

⁶⁶ T.2 p. 24

⁶⁷ T.1 p. 102

⁶⁸ T.3 p. 148

⁶⁹ T.1 p. 58

⁷⁰ T.1 p. 73

⁷¹ T.6 p. 189

⁷² T.6 p. 73

⁷³ T.2 p. 79

⁷⁴ T.4 p. 64

⁷⁵ T.1 p. 155

⁷⁶ T.1 p. 157

- P-259 Dexter Wellness Coalition Year 3 Plan⁷⁷
- P-260 Chelsea Wellness Coalition Plan Year 2 (July 1 2013- June 30 2014)⁷⁸
- P-261 Chelsea Wellness Coalition Proposal Year 3 2014-2015⁷⁹
- P-262 Grass Lake Community Wellness Initiative 2012-2013 Comprehensive Plan⁸⁰
- P-263 Grass Lake Community Wellness Initiative⁸¹
- P-264 Grass Lake Coalition 2015 Wellness Initiative⁸²
- P-265 Grass Lake Coalition Year 4 Plan- 2016⁸³
- P-266 Manchester Community Comprehensive Wellness Plan 2012-2015⁸⁴
- P-267 Manchester Community Comprehensive Wellness Plan 2013-2016⁸⁵
- P-268 Manchester Wellness Coalition Comprehensive Wellness Plan Year 3⁸⁶
- P-269 Manchester Wellness Coalition Year 4 Plan⁸⁷
- P-270 Stockbridge Area Wellness Coalition 2012 Comprehensive Plan⁸⁸
- P-271 Stockbridge Area Wellness Coalition Year 2 Plan 2013-2014⁸⁹
- P-272 Stockbridge Area Wellness Coalition Year 3 Plan 2014-2015⁹⁰
- P-273 Stockbridge Area Wellness Coalition Year 4 Plan 2015-2016⁹¹
- P-276 Thank you letter to Amy Heydlauff on behalf of Michigan Health Endowment Health Board dated 11/19/15⁹²
- P-290 Prescription Pad/Referral for health care providers referring to Petitioner's programs⁹³
- P-295 Chelsea Community Hospital Wellness Activities June 30, 2010⁹⁴

⁷⁷ T.1 p. 158

⁷⁸ T.1 p. 159

⁷⁹ T.1 p. 160

⁸⁰ T.1 p. 161

⁸¹ T.1 p. 144

⁸² T.1 p. 162

⁸³ T.1 p. 164

⁸⁴ T.1 p. 166

⁸⁵ T.1 p. 168

⁸⁶ T.1 p. 172

⁸⁷ T.1 p. 172

⁸⁸ T.1 p. 177

⁸⁹ T.1 p. 180

⁹⁰ T.1 p. 181

⁹¹ T.1 p. 182

⁹² T.2 p. 78

⁹³ T.3 p. 121

⁹⁴ T.1 p. 201

- P-296 Chelsea Community Hospital Wellness Activities 2011, 2012⁹⁵
- P-297 Chelsea Community Hospital Wellness Activities 2013⁹⁶
- P-298 Chelsea Community Hospital Wellness Activities 2014⁹⁷
- P-300 St. Joseph Mercy Chelsea 2015 Community Needs Assessment⁹⁸
- P-308 Report of Community Wellness Activities supported by grants⁹⁹
- P-311 Washtenaw County Public Health 2014 Annual Report¹⁰⁰
- P-323 Chelsea Community Hospital 2012 Community Health Needs Assessment¹⁰¹
- P-339 Email dated 12/09/2013 from Shawn Keough¹⁰²
- P-341 Slide of CWF's vision, mission and values¹⁰³
- P-354 St. Louis Center flyer¹⁰⁴
- P-356 2014 Community Update¹⁰⁵
- P-360 Letter from DWC Investments to Amy Heydlauff dated 6/27/13¹⁰⁶
- P-361 Scoring checklist for MFA certification, dated 5/6/15¹⁰⁷
- P-363 Redacted physician's approval form¹⁰⁸
- P-364 Curriculum Vitae of Ann Kittendorf¹⁰⁹
- P-365 Dexter Ordinance # 2010-05 to promote safe access for pedestrians, bicyclists¹¹⁰
- P-366 Manchester Ordinance No. 284 to encourage walking, bicycling¹¹¹
- P-367 Degrees, certifications of staff¹¹²
- T-17 (Marked by Treasury) Petitioner's Ad for Massage Therapy Workshop Week¹¹³

⁹⁵ T.1 p. 203

⁹⁶ T.1 p. 203

⁹⁷ T.1 p. 203

⁹⁸ T.1 p. 196

⁹⁹ T.1 p. 203

¹⁰⁰ T.1 p. 235

¹⁰¹ T.1 p. 196

¹⁰² T.7 p. 69

¹⁰³ T.1 p. 108

¹⁰⁴ T.1 p. 231

¹⁰⁵ T.1 p. 77

¹⁰⁶ T.3 p. 62

¹⁰⁷ T.3 p. 73

¹⁰⁸ T.3 p. 130

¹⁰⁹ T.4 p. 91

¹¹⁰ T.5 p. 65

¹¹¹ T.5 p. 65

¹¹² T.6 p. 24

¹¹³ T.2 p. 50

PETITIONER'S CONTENTIONS

Petitioner contends that it meets the requirements under MCL 211.7o, as well as under case law for the subject property, with a small exception for a leased area, to be exempt from property taxation. Petitioner did not contest the subject's True Cash Value, and other than the exemption issue, did not contest the subject's state equalized value or taxable value. Petitioner's contentions as to the resulting state equalized value and taxable value are as follows:

Parcel Number: HD-08-06-455-001

Petitioner's contentions		
Year	SEV	TV
2014	\$233,700	\$233,700
2015	\$233,700	\$233,700

PETITIONER'S WITNESSES

Amy Heydlauff

Petitioner's first witness was Amy Heydlauff, who testified for two and one half days. She clarified that Petitioner changed its name in 2015 to The 5 Healthy Towns Foundation.¹¹⁴ She has a Master's Degree in Health Services Administration from the University of Michigan, and is a Registered Nurse.¹¹⁵ She discussed her CV, background, experiences and career in healthcare and healthcare administration prior to working with Petitioner.¹¹⁶ For the years at issue, and currently, she is the Chief Operating Officer of Petitioner, and is a voting member of its Board of Directors.¹¹⁷ She testified that she is also on the Board of Directors of Silver Maples of Chelsea, a non-profit retirement community, of which Petitioner is a 50% owner.¹¹⁸

Among the highlights of her testimony, she gave an overview as Petitioner's CEO of the many activities that further CWF's stated vision and mission, including the four elements of "eat better, move more, avoid unhealthy substances, and connect with others in healthy ways."¹¹⁹ She testified as to comprehensive wellness plans CWF put forth as part of its 5 Healthy Towns initiatives.¹²⁰ She discussed how Petitioner funds numerous programs, which are termed

¹¹⁴ T.1 p. 35

¹¹⁵ T.1 p. 36-40

¹¹⁶ T.1 p. 35-57

¹¹⁷ T.1 p. 53-54

¹¹⁸ T.1 p. 56

¹¹⁹ T.1 p. 104

¹²⁰ T.1 p. 127-184

“interventions” which support its vision. For example, CWF funded Safe Routes To School,¹²¹ a Bike Lending Program, installation of bike racks and various exercise programs throughout Chelsea, Dexter, Manchester, Grass Lake and Stockbridge to encourage area citizenry to move more. For the same towns, CWF funded various programs to improve nutrition such as Healthy Cooking classes,¹²² Farm to School Gardens program,¹²³ Michigan Farm to School programs and Farmer’s markets. In support of its vision of helping the 5 towns avoid unhealthy substances, Petitioner funded the SRSLY program aimed at preventing and reducing youth substance abuse,¹²⁴ along with the Big Red Barrel Program, allowing for the safe disposal of unused medication.¹²⁵ As for its fourth element of having people connect with others in a healthy way, Petitioner sponsored various classes and physical activities.

On cross, Heydlauff responded as follows to a question regarding the difference between a wellness center and a recreation facility:

Q: So – okay. Well, let’s say, just for a couple of instances, let’s say the track. Is there something different about the track in the Dexter Wellness Center, because it’s in a medically-integrated facility versus a track in another indoor facility?

A: I would say the difference is not in the building or the – the assets of the building, the equipment of the building, the difference is in the way that we use the building and those assets. That’s the difference between some other kind of facility and a medically-integrated facility.¹²⁶

She also testified as follows concerning guest passes to the subject:

Q: Okay. Well, what is the intent of a guest pass then?

A: For people to become aware of the facility, learn what's available, learn what kinds of programming is available, and learn what quality of staffing is available. They may be a visitor and so they're coming with a friend or a relative who they're staying with or visiting with and we want to be able to accommodate our -- our members in our community in that way, but it is not intended for long-term use.

Q: Okay. Is it fair to say it's a marketing item?

A: No, I don't think that's fair.

Q: Why not?

A: Because -- because our goal is for people to have awareness of the facility so that we can increase membership, so that we can have more people in our

¹²¹ T.1 p. 125

¹²² T.1 p. 240

¹²³ T.2 p. 203

¹²⁴ T.1 p. 184

¹²⁵ T.1 p. 208

¹²⁶ T.3 p. 21

community taking advantage of the opportunities that are afforded in our Wellness Centers. That's our goal. It helps us meet our mission. All of our efforts are focused at having as many people in our community exposed to as many opportunities for health and wellness as possible. Those guest passes allow us to do that with people who may not be members of the facility.¹²⁷

Regarding occupancy, Heydlauff testified that she has her own mailbox at the facility, as well as keys to the facility and unrestricted access.¹²⁸ Moreover, all of the furniture and equipment present at the facility is owned by Petitioner.¹²⁹ Regarding the profitability of CWF and its centers, Heydlauff testified that neither the Stockbridge, nor Manchester center were ever likely to break even.¹³⁰ Regarding fees at the subject, Heydlauff testified that previously, CWF has charged an enrollment fee and a reactivation fee equal to \$200-400,¹³¹ but eliminated that fee to “eliminate barriers.”¹³² She also testified that people who have lower incomes, and lower education levels, have a tendency to have poorer health, so those are exactly the kind of people that are the most difficult to reach.¹³³

Cindy Cope

Ms. Cope testified that she is a senior director, employed by Power Wellness Management to oversee the Chelsea Center, as well as Manchester and Stockbridge centers, and to offer operational support to subject Dexter Center.¹³⁴ She testified regarding her educational and training background in fitness and exercise at Central Michigan University and Chelsea Community Hospital.¹³⁵ She previously worked at Chelsea Center when it was part of Chelsea Community Hospital.¹³⁶ She testified that PWM also managed Washtenaw Community College Wellness Center.¹³⁷ Regarding occupancy, she testified that she is frequently at Dexter Center, and has observed Petitioner's employees Amy Heydlauff and Matt Pegouskie at the Dexter center, and has observed their offices.¹³⁸

¹²⁷ T.3 p. 93-94

¹²⁸ T.2 p. 85

¹²⁹ T.3 p. 96-97, Heydlauff's response to question from bench.

¹³⁰ T.2 p. 204

¹³¹ P-173, p. 001613 Cindy Cope deposition; Rate card, Exhibit P-112 (Cope dep. Exhibit 13).

¹³² T.2 p. 97

¹³³ T.2 p. 40

¹³⁴ T.3 p. 98-99

¹³⁵ T.3 p. 99

¹³⁶ T.3 p. 102

¹³⁷ T.3 p. 103

¹³⁸ T.3 p. 105-106

As to various programs, Cope testified regarding health fitness assessments performed at all of the wellness centers, including Dexter.¹³⁹ She also testified regarding the Next Steps program, and described the various types of activities designed for various medical conditions.¹⁴⁰ As to the subject's certification, she testified regarding the requirements to receive Medical Fitness Association Certification¹⁴¹

Regarding Petitioner's scholarship program, Cope testified regarding the evolution of the scholarships program, and had the following exchange on direct examination:

Q: . . . In 2014, if an applicant for scholarship applied, got the scholarship, wanted to continue for additional months on scholarship, and couldn't afford to pay, would that person be turned away necessarily?

A: No. The scholarship guidelines was a work in progress. It changed regularly for about a six-,eight-month period. Every time we would just -- we'd have discussions and then it would change, but the documents didn't necessarily reflect all of the changes. So, it even -- it even changed from this version. It became -- and I don't even know what the date was, but within that time frame it included half off your dues on a regular -- on an ongoing basis. So depends on what time of the year in 2014. I don't know how to answer that question.

Q: Well, are you aware of anybody who had applied for a scholarship, got [the] scholarship and then asked to continue the scholarship and was -- and was refused?

A: No, I'm not aware of that.¹⁴²

As to the subject of health care assessments performed by Petitioner, Cope testified that roughly half of new members complete a health assessment.¹⁴³

Scott Broshar

Mr. Broshar was Petitioner's third witness. As to his background, he is the owner of Absolute Title Co., and serves on the Board of Directors of Petitioner.¹⁴⁴ Broshar testified regarding Petitioner's mission to create long term cultural shift regarding wellness.¹⁴⁵

Mr. Broshar testified as follows regarding Petitioner's priorities:

We have to determine each year how much money we spend of our \$25 million initial funding. We spend it based on the investment -- investment returns that we have. There are a lot of different options on -- we could spend -- if we felt that

¹³⁹ T.3 p. 108-112

¹⁴⁰ T.3 p. 118-131

¹⁴¹ T.3 p. 131-134

¹⁴² T.3 p. 139-140

¹⁴³ T.3 p. 187-188

¹⁴⁴ T.4 p. 8

¹⁴⁵ T.4 p. 10-11

there was strategy that would permanently fix health and wellness in our five communities, we could spend the \$25 million now, have it be done. And if that was going to permanently fix health and wellness in the communities, I think the Board would do it. I don't think we've ever come up with a way that we would permanently fix health and wellness in our communities. So we have to look each year at how much we're going to spend and we've got some mandatory IRS guidelines that we need to be spending five percent. So our five percent minimum shows that if we spend this amount of money, we will spend, for instance, on the - - on the first chart, approximately \$24 million, \$25 million over 20 years. Over 40 years we'd spend \$50 million. At the end of 50 years, we'd still have essentially our initial investment available to continue spending in perpetuity. If we were to spend more than the five percent, go up to 8 percent, we would have spent about \$31 million in the first 20 years and \$46 million over 40 years, and at the end of that 40-year period, we'd only have \$6 million available to continue to try to improve. The final [chart] is we spend everything in ten years, we would end up spending \$32 million total on community health, and we'd have nothing left to sustain the Foundation, which would be great if we thought that community health would be perfect in ten years, but I don't believe that's the case.¹⁴⁶

Broshar went on to testify regarding the wellness centers having the biggest impact of all of Petitioner's activities on health in the community:

We have -- we have about -- somewhere in the neighborhood of 400,000 visits per year to the Wellness -- to each of the Wellness Centers that -- the larger two. And we have lots of other -- with the coalitions, they have lots of other activities that they propose and they conduct. None of them reaches that number of people, so it's the single biggest impact on the community. It doesn't negate the impact that the other interventions have, but it's the single biggest that we have.¹⁴⁷

Anne Kittendorf, M.D.

Dr. Kittendorf was Petitioner's fourth witness. She is a practicing family physician, and a faculty member of the University of Michigan medical school.¹⁴⁸ She is also on Petitioner's Board.

Dr. Kittendorf testified regarding the comparative impact of prescribing exercise versus a statin:

So let's say over -- over two years I -- I advise 100 people to go to the Wellness Center, 50 take me up on it, and 25 end up having sustained lifestyle benefit from that. Okay? So 25 out of 100 is a fourth, so that means I've had to counsel 100 people to positively impact 25 people, which means my number needed to treat is four. And we know by evidence that exercise, when we're thinking about things

¹⁴⁶ T.4 p. 11-12

¹⁴⁷ T.4 p. 16

¹⁴⁸ Curriculum Vitae, Exhibit P-364.

like preventing heart disease or heart attack, exercise is as effective as putting people on a statin medication. So I'm able to influence more people's health through exercise.¹⁴⁹

As to referring patients to the subject, Dr. Kittendorf also agreed that it is important to refer her patients to a medically integrated facility because "it provides a different layer of oversight and protections for our participants as well as helping the community at-large."¹⁵⁰

Dr. Kittendorf testified as to the benefits of the Next Steps program. In illustrating the program's benefits, she gave an example of an elderly patient becoming stronger through "pre-hab" and was able to get home within a week of surgery, saving health care dollars. She further testified:

And I am firmly convinced it's because he went into surgery with a much better health profile due to his muscle strengthening and balance strengthening that he had. So in and of itself, I know that that saved the system thousands and thousands of dollars. But if we're talking about an elderly person with a hip fracture, not only is there a 50 percent mortality rate for patients who fall and have a fracture within six months, but on top of that the healthcare costs are astronomical, I would guesstimate \$100,000 for an elderly person who falls and breaks a hip, and then often long-term costs because they often end up in long-term care facilities.¹⁵¹

Counsel had the following exchange on Direct Examination with Dr. Kittendorf regarding the Governor's Four-by-Four Plan:

Q: . . . "The consequences of obesity are Type 2 diabetes, heart disease, arthritis, stroke and dementia. Currently in Michigan 2.5 million adults and 400,000 children are obese, many of whom already show signs of chronic illnesses. Unnecessary suffering is being caused by obesity, which is mainly driven by sedentary lifestyles and unhealthy eating habits." Do you agree with that?

A: One hundred percent, yes.

Q: And then the paragraph just below that, next to the chart says, "According to the CDC, 75 percent of total healthcare expenditures are associated with treating chronic diseases. If Michiganders reduced their BMI rates to lower levels and achieved an improved status of health, the State could save over \$13 billion annually in unnecessary healthcare costs." Do you agree with that?

A: Yes. Critical information . . . I'll just mention we have a looming crisis with our baby boomers aging, and making sure it's critically important for us to engage in wellness and infrastructure and community health and wellness and opportunities such as what our Foundation is doing. As we have this massive influx, age brings

¹⁴⁹ T.4 p. 51-52

¹⁵⁰ T.4 p. 69

¹⁵¹ T.4 p. 76-77

illness in and of itself. So these numbers are very scary and they're bound to get scarier without intervention, so¹⁵²

Dr. Kittendorf summed up her direct testimony with a narrative that captured how, in her mind, the Wellness Center is integrated into the community to accomplish its mission, weaving in its programs to meet the four elements of its mission.¹⁵³

Hon. Patrick J. Conlin

The Hon. Patrick J. Conlin of the Washtenaw Circuit Court gave testimony as Petitioner's fifth witness. Judge Conlin testified that he was on the Board of Trustees of Chelsea Community Hospital for 10 years, and was Chairman of the Board at the time that Chelsea merged with St. Joseph Mercy Health System.¹⁵⁴

Judge Conlin testified that there was resistance to having St. Joseph Mercy Health System, a Catholic institution taking over Silver Maples, which was 50% owned by the United Methodist Retirement Community, and 50% by Chelsea Community Hospital. Assigning Chelsea's interest to Petitioner as part of the merger provided a work around. Further, Judge Conlin testified that Petitioner does not benefit from any cash surplus earned by Silver Maples, nor does it remain a guarantor on Silver Maples' debt.¹⁵⁵

Judge Conlin testified that there were similar concerns by the U of M Family Practice that ownership by a Catholic hospital might limit its practice in the areas of women's health and family practice. Consequently, Petitioner wound up with a ground lease where the U of M Family Practice medical office building sits on the former Chelsea Hospital grounds.¹⁵⁶

Andrew Eisenberg, M.D.

Petitioner's sixth witness was Andrew Eisenberg, M.D., an Oncologist with 37 years of experience, educated at the University of Michigan.¹⁵⁷ Dr. Eisenberg also testified that exercise in a supervised and community setting has proven more effective in terms of patient compliance in the prevention and treatment of cancer.¹⁵⁸ Dr. Eisenberg stated:

There are studies that have shown that a supervised exercise program is more effective than just telling somebody, "Go out and exercise." You know, the problem

¹⁵² T.4 p. 102-104

¹⁵³ T.4 p. 117-121

¹⁵⁴ T.4 p. 140-141

¹⁵⁵ T.4 p. 141-144

¹⁵⁶ T.4 p.144-148

¹⁵⁷ T.4 p. 153

¹⁵⁸ T.4 p. 167

with people with -- that are sick or have an illness, they don't always comply with what the recommendations are. You know, if I prescribe a pill, and the patient doesn't take it, it doesn't do them any good. If I just tell somebody "Go out and exercise", and they don't do it, then it's not going to do them any good. So compliance is an issue, and if there is a supervised program, there's evidence to suggest that compliance is better, and the person is more likely to benefit.¹⁵⁹

In support, of his testimony, Dr. Eisenberg cited several articles from medical journals.¹⁶⁰

Peggy Cole

For its seventh witness, Petitioner called Peggy Cole. Ms. Cole is the Development Director with St. Louis Center, which is a Residential community in Chelsea for developmentally disabled children and adults.¹⁶¹ Ms. Cole testified regarding the receipt of funding from Petitioner for the St. Louis Center for wellness activities and its residents have been able to use the Chelsea Center.¹⁶²

Paul Hillegonds

As its eighth witness, Petitioner called Paul Hillegonds, a long-time member of the state House, and former Speaker of the House. Currently, Mr. Hillegonds is the President of the Michigan Health Endowment Fund.¹⁶³ Mr. Hillegonds testified regarding the creation of the Michigan Health Endowment Fund, P.A. 4 of 2013.¹⁶⁴ He described what he believed PA 4 of 2013 to mean:

Q: Mr. Hillegonds, would you tell me what you believe that to mean?

A: Well, it does, with the references to how we would benefit health and wellness, really gives, I think, the Board members broad latitude on how we will focus and where we will focus our efforts to benefit health and wellness in children and seniors. And in fact, we're going through strategic planning presently. I have talked with legislators who enacted the law. I wasn't around when the law was enacted. But I think those who were involved hope that we will be a partner of the State in its public health priorities, not an arm of the State. We are not there to replace budget cuts, for example, but we are to work with the State on mutual priorities we have. And I would say the focus in my work so far has been more of a preventative nature to -- one of the -- one of the mandates of the law is that we reduce healthcare costs, and -- and focus on the health of Michigan citizens. And our sense is that a good way to reduce healthcare costs is to do preventative work such as health and

¹⁵⁹ T.4 p. 157-158

¹⁶⁰ T.4 p. 160-161

¹⁶¹ T.4 p. 164

¹⁶² T.4 p. 165-168

¹⁶³ T.4 p. 171

¹⁶⁴ T.4 p. 172-173

wellness, fitness programs, access to healthy food so that we prevent things that happen later like diabetes.

Q: Would obesity also be a chronic condition that you would include along with diabetes?

A: Very definitely. Obesity is identified as one of our more unfavorable comparisons with other states. It is a priority of the Department of Health and Human Services. And in the listening tour that our Board did around the State, is a priority of communities, a concern, especially childhood obesity.¹⁶⁵

Finally, Mr. Hillegonds testified that the Michigan Constitution¹⁶⁶ sets forth the state's role in public health and general welfare.¹⁶⁷

Jo Mayer

As its ninth witness, Petitioner called Jo Mayer, who is a member of the Stockbridge Area Wellness Coalition.¹⁶⁸ Ms. Mayer testified that the Stockbridge Coalition was offered \$200,000 by Petitioner and decided to use all of it to fund a wellness center. She pointed out that Stockbridge has a high incidence of obesity, and the resulting heart disease and diabetes. She testified that 80% of Stockbridge was overweight or had high blood pressure, and the community had a very large unmet need for such a facility.

Wayne Beyea

For its tenth witness, Petitioner called Wayne Beyea. Mr. Beyea teaches planning law at MSU School of Planning, Design and Construction and testified regarding his involvement with the Safe Routes to School program, and its benefits to safety and fitness. He gave the following summary of the program:

The Safe Routes to School program, in a nutshell, is to try to promote kids to safely walk, bike, and -- as they term it -- "roll" to school safely. It's a -- it's a home-to-school type of a program. It involves assisting communities develop action plans. It involves extensive amounts of outreach, which includes survey of parents and students doing walking audits in the communities; community engagement for input and data analysis; and putting together an action plan that addresses both what they call infrastructure and noninfrastructure type of recommendations. The infrastructure recommendations are to help develop sidewalks and bike paths and other physical amenities in the community. The noninfrastructure is to develop programs that will help educate and encourage kids, and with parents, to walk safely

¹⁶⁵ T.4 p. 175-176

¹⁶⁶ Const 1963 Art IV Section 51

¹⁶⁷ T.4 p. 183-184

¹⁶⁸ T.5 p. 8

to school. One of the several outcomes of the Safe Routes to School program is also for health and fitness as well, so that kids are prepared in the classroom after walking to school.¹⁶⁹

Beya testified that Petitioner had been instrumental in facilitating contact and discussion between communities and his organization in implementing this program. He testified that Petitioner provided over \$1 million in funding.¹⁷⁰

He also testified concerning the Sustainable Built Environment Initiative:

One of the aspects of a -- of a Sustainable Built Environment is to be able to provide access for individuals of all abilities to be able to walk and bike and access public facilities, parks, et cetera. So the accessibility aspect that we look at, particularly in the Stockbridge plan, was the connections with the schools, the parks, municipal facilities -- such as libraries -- and how we could make the experience walkable and accessible with -- with paths and sidewalks that met federal and state requirements.¹⁷¹

Beya praised Petitioner for its assistance and effectiveness in helping to get this initiative enacted and funded in various communities.

Brett Pedersen

Mr. Pederson was called by Petitioner as its eleventh witness. Mr. Pedersen is an assistant principal at Mill Creek Middle School in Dexter, and a group fitness instructor at the subject.¹⁷² He testified regarding Petitioner's Yoga in the Park program.¹⁷³

Matthew Pegouskie

As its twelfth witness, Petitioner called Matthew Pegouskie. Mr. Pegouskie has worked for Petitioner for a number of years, described his past duties, and is currently its Community Investment Manager.¹⁷⁴ He described Petitioner's involvement with various community programs, including Safe Routes to School, and its adoption in some of the communities covered in "5 Healthy Towns." Pegouskie presented a power-point slide show illustrating the Safe Routes to School program. He also testified regarding many other community programs in which

¹⁶⁹ T.5 p. 16

¹⁷⁰ T.5 p. 22

¹⁷¹ T.5 p. 24

¹⁷² T.5 p. 31

¹⁷³ T.6 p. 33-38

¹⁷⁴ T.5 p. 40-50

Petitioner was involved with throughout the five towns. Importantly, he testified that he has an office at the subject property, at which he spends on average, 8 hours per week.¹⁷⁵

Jeffrey Wallace

The thirteenth witness called by Petitioner was Jeffrey Wallace, the village manager of Manchester. Manchester is one of the “5 healthy towns” serviced by Petitioner.¹⁷⁶ Wallace testified that he is on the Board of CWF, and described various programs and activities sponsored by Petitioner. Some of the programs involving Manchester were detailed by Wallace as follows:

They do a lot of different programs. They have for the last four years. They help the four issues that we deal with, which is the Eat Better, Move More, Connect with Others, and to make healthy lifestyle choices. And so within that, almost all the programs we have fit into one of those four. We have gazebo concerts. We try to bring people together. That's under the Connect with Other People. Under the Eat Better, we have the Farmer's Market, which they've supported and work with. We also have the Healthy Chef's program, and that's through our Manchester High School, where kids that are not involved in other programs learn to eat healthy, cook healthy, and also learn to use that, and it's been integrated a little bit into the school with lunches and the little events they do. SRSLY is for the kids to make better choices. It used to be called "Manchester Voices," and now it's part of SRSLY. Also, a lot of different things have come out of that. The Red Barrel program came out of that also. That is at our Village Hall where the sheriff's department is. We had a great solution to a problem we had in our community where people didn't know where to go with unused drugs when they had them. Just recently, three months' worth, we had 30 pounds of narcotics that were turned in. It was amazing.¹⁷⁷

Angela Sargent

Angela Sargent, of PWM and director of the subject property was Petitioner's fourteenth witness. Ms. Sargent testified regarding the qualifications, certificates and degrees of PWM's staff at the subject property.¹⁷⁸ Sargent testified that Ms. Heydlauff maintains an office at the facility and has regularly observed Ms. Heydlauff's presence throughout the facility.¹⁷⁹ She also testified that Petitioner's healthcare advisory committee regularly meets at the subject, and that

¹⁷⁵ T.5 p. 140

¹⁷⁶ T.5 p. 156

¹⁷⁷ T.5 p. 157-158

¹⁷⁸ T.6 p. 10-24; 39-44

¹⁷⁹ T.6 p. 25-27

Board members have been at the Dexter Wellness Center 633 times on Board business since it opened.¹⁸⁰

Sargent testified as to her understanding of the scholarship policy:

So there are two pathways in which they can receive a scholarship; one is through our Next Steps Program, which is an eight-week program. If they complete that, then they would qualify for one additional month and then 50 percent off dues after that, or they can also just join through general membership, they would receive two months and then 30 percent dues thereafter.

Q: And, "For thereafter," is there a point at which that terminates?

A: As long as they meet the usage requirements, there would be -- no --

Q: Okay. What are the usage requirements?

A: They have to meet minimally two times a week.

Q: Why do you impose that -- why does the Foundation impose that requirement; if you know?

A: Well, there's studies that show that regular exercise and attendance is helpful for their health; and then there's also, you know, if they're not using it, we would want someone else to take advantage of it.

Q: Now, if somebody missed a day or even two days for various reasons, you know, in an accident, lost their job, whatever the reason may be, if that person missed one day or two days of the required sessions that they have to attend, would they be kicked out of the program?

A: No.

Q: Do you know of anybody who has been kicked out of the program for that reason?

A: No.

Q: By the "Program," I mean the scholarship program?

A: Correct.

Q: Now, if somebody were to come into the Dexter Wellness Center after the two months of free membership under the general membership, and said, "I can't afford the 50 percent. I just don't have the money"; is it your understanding that that person would not be permitted to participate in the scholarship program?

A: No, we would work with them.

Q: Do you know whether the scholarship program has a provision for extenuating circumstances?

A: No.

Q: You don't know whether they have that?¹⁸¹

¹⁸⁰ T.6 p. 28

¹⁸¹ Testimony of Amy Sargent, T.6, p. 29-30

A: Oh, I -- yes, there are -- yes, if –

Q: So if I were to use, as an example, somebody came in and said, "I just can't afford to pay the 50 percent. I got this situation where I lost my job, I got medical bills, I can't afford it." In your mind, would that be an extenuating circumstance?

A: We would work with them, yes.¹⁸²

Sargent also testified regarding the Medical Fitness Association certification and its requirements for the facility and its staff.¹⁸³ The bulk of Ms. Sargent's testimony concerned the various programs and classes which were offered at the subject property.

Brian Hummert, CPA

For its fifteenth witness, Petitioner called Brian Hummert. Mr. Hummert testified to his educational and occupational background, and his current title as CEO of Power Wellness Management.¹⁸⁴ He testified about the design of the subject property, which he was familiar with, having worked with the architect, as well as special features that may differentiate it from a commercial facility. Some of those differences are more handicapped spaces closer to the Center, and a porte-cochere allowing for drop off of deconditioned persons; double-entry doors, space for wheel chairs, wider hallways, ADA compliant lockers, towel service, ADA compliant showers. Two or three pools set to different temperatures for aquatic exercise, and assisted changing rooms are another difference. The walk/jog track was designed so that users can walk in pairs, and can use walkers. The track is longer, so it has less turns per mile and is cushioned. Other differences concern types of equipment, cleanliness standards and staff training.¹⁸⁵

As to training, Hummert testified that a certified medically integrated wellness center is different from a traditional gym or fitness facility. In order to be certified by the MFA, a wellness center must have, among other things, at least three clinical fitness programs for people with chronic medical conditions such as heart disease, pulmonary disease, cancer, chronic pain, orthopedic and/or neurological problems, cerebrovascular disease "stroke", sports injury prevention and rehabilitation neutral counseling, among others. It must offer preventative programs to members, as well as the community at large, especially the disabled population.¹⁸⁶ It

¹⁸² T.6 p. 30-33

¹⁸³ T.6 p. 36-39

¹⁸⁴ T.6 p. 137

¹⁸⁵ T.6 p. 140-149

¹⁸⁶ T.6 p. 160; 162-163; P-361 at 7

must also offer certain types of programming for people with chronic illnesses and other health conditions.¹⁸⁷

Hummert also testified regarding the Next Steps program. Regarding the program's price versus cost, he testified that it costs the facility \$220 per participant, even though participants are only charged \$99.¹⁸⁸ Hummert was also examined regarding whether the Dexter facility loses money, to which he answered in the affirmative.¹⁸⁹ He testified that the subject suffered a loss of \$916,000 for the fiscal year ending March 31, 2014,¹⁹⁰ and \$758,000 for the fiscal year ending March 31, 2015.¹⁹¹

James Merte

Petitioner's sixteenth and final witness was James Merte, the Scio Township assessor. Mr. Merte gave his opinion that Petitioner occupies the subject property in furtherance of its charitable mission.¹⁹²

RESPONDENT'S ADMITTED EXHIBITS

The following Exhibits were admitted:

- D-1 (Marked by Dexter) Amy Heydlauff Deposition, vol 1-3¹⁹³
- D-6 Cindy Cope deposition exhibits¹⁹⁴
- D-7 Deposition Transcript of Angela Sargent¹⁹⁵
- D-8 Exhibits for Deposition Transcript of Angela Sargent¹⁹⁶
- D-11 Floor plan of subject¹⁹⁷
- D-14 Silver Maples of Chelsea Amendment to Articles of Incorporation¹⁹⁸
- D-15 Chelsea – Area Wellness Foundation 2013-14 Financial Report¹⁹⁹
- D-16 Chelsea – Area Wellness Foundation 2014-15 Financial Report²⁰⁰

¹⁸⁷ T.6 p. 160; P-361 at 7

¹⁸⁸ T. 6 p. 163-164

¹⁸⁹ T.6 p. 182-183

¹⁹⁰ T.6 p. 183-184

¹⁹¹ T.6 p. 185

¹⁹² T.6 p. 226

¹⁹³ T.2 p. 236

¹⁹⁴ T.3 p. 168

¹⁹⁵ T.6 p. 120

¹⁹⁶ T.6 p. 120

¹⁹⁷ T.2 p. 141

¹⁹⁸ T.2 p. 166

¹⁹⁹ T.2 p. 176

²⁰⁰ T.2 p. 177

- D-20 Emails between Amy Heydlauff and Peg Bravo²⁰¹
- D-22 Article by Angela Sargent regarding opening of subject²⁰²
- D-26 Grant expenditures²⁰³
- D-27 Market Study for Wellness Center in Dexter, July 2010²⁰⁴
- D-33 Purchase & Sale Agreement between DWC Investments and Petitioner dated 8/7/2013²⁰⁵
- D-37 Snap Fitness website fitness score²⁰⁶
- D-38 Liberty Athletic Club website re: Personal Training²⁰⁷
- D-39 YMCA website re: personal training, fitness assessment²⁰⁸
- D-40 BSA records for Silver Maples of Chelsea²⁰⁹
- P-34 Grand Opening Flyer for subject²¹⁰
- P-44 FY 2014 Annual Operations Report²¹¹
- P-45 FY 2015 Annual Operations Report²¹²
- P-51 Overhead View of 1st floor of subject²¹³
- P-52 Overhead view of 2nd floor of subject²¹⁴
- P-107 List of Community Programs for Chelsea & Dexter centers Winter 2013²¹⁵
- P-108 List of Community Programs for Chelsea & Dexter centers Winter 2014²¹⁶
- P-109 List of Community Programs for Chelsea & Dexter centers Winter 2014²¹⁷
- P-110 List of Community Programs for Chelsea & Dexter centers Fall 2014²¹⁸

²⁰¹ T.2 p. 249

²⁰² T.2 p. 250

²⁰³ T.2 p. 191

²⁰⁴ T.2 p. 251

²⁰⁵ T.2 p. 172

²⁰⁶ T.8 p. 29

²⁰⁷ T.8 p. 31

²⁰⁸ T.8 p. 33

²⁰⁹ T.8 p. 36

²¹⁰ T.3 p. 23

²¹¹ T.3 p. 47

²¹² T.3 p. 47

²¹³ T.3 p. 54

²¹⁴ T.3 p. 54

²¹⁵ T.2 p. 237

²¹⁶ T.2 p. 237

²¹⁷ T.2 p. 237

²¹⁸ T.2 p. 237

P-112 Rate Card of Dexter Wellness Center²¹⁹

P-136 Completer Analysis for Dexter Wellness Plan²²⁰

P-138 2013 Dexter Wellness Center Marketing Plan²²¹

RESPONDENT'S CONTENTIONS

Respondents contend that Petitioner does not meet the occupancy requirement, nor the six factors required to qualify as a charity under *Wexford Medical Group v City of Cadillac*.²²² Respondents' contentions as to true cash value, state equalized value and taxable value are as follows:

Parcel Number: HD-08-06-455-001

Year	TCV	SEV	TV
2014	\$10,344,200	\$5,172,100	\$5,172,100
2015	\$10,648,400	\$5,324,200	\$5,254,853

RESPONDENTS' WITNESSES

Shawn Keough

Respondent's first witness was Shawn Keough, the Mayor of Dexter once it became a city, and Village President prior to Dexter's cityhood. He is also part of the Board of the Dexter Development Authority.²²³ Mayor Keough testified as to the history of the property, the expenses incurred by Dexter and the DDA in providing storm sewers and Brownfield clean-up, and the expectations that the resulting property would be a positive return for the city on its investment. When asked about his frustration with the developer, (who also serves on the DDA), Keough testified:

I have expressed frustration that the DDA has operated in good faith throughout the six years or so leading up from when the property was first conceived as a concept to when the redevelopment actually took place and that through all of the different twists and turns of this, that their investment to do something good and redevelop a property is going to result -- which is in furtherance of their mission to create TIF capture in the Downtown Development Authority could possibly

²¹⁹ T.2 p. 181

²²⁰ T.6 p. 200

²²¹ T.6 p. 199

²²² 474 Mich 192; 713 NW2d 734 (2006)

²²³ T.7 p. 11

result in the largest building that's been built in Dexter in, I can't even tell you how long, being off the tax rolls. So, yeah.²²⁴

David Haffey, CPA

Respondents' second witness was David Haffey, who opined that it was a simple business decision to expand market rather than provide charity for Petitioner to provide their services at a loss.²²⁵ He also testified that non-profits are a small part of his practice, with only 5-10% in terms of gross annual billings, and that he does tax returns for 6 to 10 non-profits every year.²²⁶

Christopher Renius

As its third witness, Respondents called Christopher Renius, the assessor for the City of Dexter, as well as other jurisdictions in Lenawee, Monroe and Washtenaw counties. Renius testified as having achieved a level III certification.²²⁷ Renius opined that the facilities at Washtenaw Community College, the downtown Ann Arbor YMCA and Liberty fitness all had similar utility as the subject.²²⁸ He also concluded that the rates charged by these three facilities were similar to the rates charged by Petitioner at the subject property.²²⁹ Finally, he opined that the subject was taxable.²³⁰ On cross examination, he answered "I don't know if I do or not" to the question of whether or not he had the expertise in evaluating a tax exemption for the subject under MCL 211.7o.²³¹

Courtney Nicholls

Dexter's City Manager was called as Respondents' fourth witness. Rather than being called upon for her experience in running the City of Dexter and a member of the Michigan Local Government Managers Association,²³² she was called upon for her experience as a consumer of work out facilities, and as a member of Snap Fitness. Ms. Nicholls testified

²²⁴ T.7 p. 77-78

²²⁵ T.7 p. 122

²²⁶ T.7 p. 121

²²⁷ T.7 p. 124-125

²²⁸ T.7 p. 128

²²⁹ T.7 p. 131

²³⁰ T.7 p. 132

²³¹ T.7 p. 143

²³² T.8 p. 24

regarding the facilities and programs at Snap Fitness, including its fitness assessment, as well as what she found on line regarding Liberty Fitness and the YMCA.²³³

Donald Darnell

Mr. Darnell was Respondent's fifth and last witness. Darnell testified that he is an attorney, a member of the Dexter DDA, and of the Dexter Twp. Zoning Board of Appeals. He also testified that he is a member of the Dexter Wellness Center.²³⁴ He testified that he pays \$115 per month for a membership at the subject for him and his wife, which he thinks "it's a big number."²³⁵

FINDINGS OF FACT

1. The subject is a 46,000 square foot fitness center located at 2810 Baker Road and is classified as commercial.
2. The subject contains areas identified as a gymnasium, two swimming pools, running track, aerobic and yoga studios, areas for free weights, weight machines, and cardiovascular equipment, a bicycle spinning area, and corresponding locker rooms. It also contains a child care area, massage rooms, small cafeteria area, and a conference room.
3. Petitioner also owns three other fitness centers; a facility in Chelsea, as well as smaller facilities in Manchester and Stockbridge.
4. For tax year 2014, the state equalized and taxable values were on the tax roll for \$5,172,100.
5. For tax year 2015, the state equalized value was on the tax roll for \$5,324,200 assessed value and \$5,254,853 taxable value.
6. As to valuation of the subject, Petitioner filed a Motion to withdraw Count III of its Petition concerning valuation on June 6, 2014, and said Motion was granted by the Tribunal on July 21, 2014.
7. Petitioner was formed as a result of the take-over of Chelsea Community Hospital by Trinity Health Systems.

²³³ T.8 p. 26-33

²³⁴ T.8 p. 80

²³⁵ T.8 p. 83-84

8. Petitioner was given a \$25 million endowment as part of this merger, along with interest in Silver Maples, a retirement community, as well as lessor of a ground lease upon which sits a medical office.
9. Petitioner has a Board of Directors, and four full-time employees.
10. The subject property is owned by Petitioner.
11. The subject property is managed by Power Wellness Management LLC, which runs the facility and provides employees to work at the subject.
12. PWM also manages other centers throughout the country, including other centers owned by Petitioner.
13. Petitioner owns the furniture and equipment at the facility, and has a small amount of office space used exclusively by two of Petitioner's employees.
14. Petitioner's employees are on site at the subject property on average, 8 hours per week.
15. Since it opened, CWF's Board Members have been on site at the subject 633 times on board business.
16. Petitioner received acknowledgement from the Internal Revenue Service that it qualifies under the United States Tax Code as a 501(c)(3) charitable foundation.
17. Petitioner does not employ any medical personnel in their capacity as medical professionals.
18. Petitioner engages in various charitable activities in the area of wellness, for the geographic area described as Chelsea, Dexter, Manchester, Stockbridge and Grass Lake.
19. Petitioner's mission is to create a culture of wellness and foster sustainable improvements in the health of our communities through stewardship of our resources, innovative and collaborative grants, and engagement of our residents in the pursuit of healthy life choices.
20. Petitioner's stated vision is "[a]s healthiest communities in the mid-west, we choose to eat better, move more, avoid unhealthy substances and connect with others in a healthy way."
21. Petitioner's stated mission is to create a culture of wellness and foster sustainable improvements in the health of our communities through stewardship of our resources, innovative and collaborative grants, and engagement of our residents in the pursuit of healthy life choices.

22. For 2013-2014, Petitioner spent \$2,600,750 for the Chelsea center, \$2,161,091 for the subject Dexter center, \$177,074 for the Manchester center, and \$208,292 for the Stockbridge center. Out of total expenses for the fiscal year of \$6,852,681, Petitioner expended \$5,147,207 (75.1%) directly on the four centers.
23. For 2014-2015, Petitioner spent a total of \$7,803,221, of which \$5,421,316 (69.47%) was directly spent on the four centers, compared to \$1,001,226 (12.83%) spent on awarded grants.
24. The subject has been certified by Medical Fitness Association (“MFA”) as a medically integrated wellness center.
25. To be MFA certified, a facility must also offer certain types of programming for people with chronic illnesses and other health conditions.
26. Through its Next Steps program, Petitioner offers programs for people with chronic illnesses and conditions.
27. Petitioner’s 50% ownership interest in the Silver Maples Retirement Community, as well as its ownership of a ground lease for a clinic were part of the merger between Chelsea Community Hospital and Trinity Health, and are incidental to Petitioner’s operation.
28. Medical testimony in this case established that exercise in a supervised and community setting has proven more effective in terms of patient compliance in the prevention and treatment of cancer.
29. The Governor’s Four-by-Four Plan states that 75% of \$2.2 Trillion U.S. healthcare spending goes to treat chronic conditions.
30. Chronic conditions such as type II diabetes, heart disease, arthritis, stroke and dementia are consequences of obesity.
31. Currently in Michigan 2.5 million adults and 400,000 children are obese, many of whom already show signs of chronic illnesses.
32. Obesity is mainly driven by sedentary lifestyles and unhealthy eating habits.
33. The state and federal government suffers a burden when its population is “de-conditioned” in the form of higher Medicaid costs, and lost productivity.
34. During 2013 and 2014, the membership fees charged for membership at the subject were \$69/month/individual, \$46/month for each additional adult family member, and

\$35/month for each child. For a family of four, the monthly charges to use the Property are \$185.

35. Previously, CWF has charged an enrollment fee and a reactivation fee equal to \$200-400.

36. Petitioner's rates are generally market rates when compared to comparable fitness centers in the area.

37. Petitioner's scholarship program has evolved, but requires recipients to use the facility twice a week, and ultimately, only gives a 50% discount over the regular fee.

38. The subject suffered a loss of \$916,000 for the fiscal year ending March 31, 2014, and \$758,000 for the fiscal year ending March 31, 2015.

CONCLUSIONS OF LAW

Where a tax exemption is sought, because tax exemptions upset the desirable balance achieved by equal taxation, they must be narrowly construed. *Michigan United Conservation Clubs v Lansing Twp*²³⁶ See also *Michigan Baptist Homes & Dev Co v City of Ann Arbor*.²³⁷ Petitioner is a non-profit organization recognized as such by the IRS under Section 501(c)(3) of the Internal Revenue Code. While having this recognition is a prerequisite to receiving a charitable exemption from property taxation, it is not the only requirement. Respondents have raised the overarching question in this case as to whether or not one can run a charity in a business-like manner and remain a charity under MCL 211.7o. The corollary to that question is whether or not a charity can remain in business if it is not professionally run.

MCL 211.7o(1) states:

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

“Own and occupy”

The term “occupied” occurs twice in this definition. Per *Liberty Hill*²³⁸ its use as part of the phrase of “owned and occupied” is a separate requirement from its later occurrence from “occupied . . . solely for the purposes for which that . . . institution was incorporated.” Should

²³⁶ 423 Mich 661, 665; 378 NW2d 737 (1985)

²³⁷ 396 Mich. 660, 669–670; 242 NW2d 749 (1976)

²³⁸ 480 Mich 44 (2008)

Petitioner fail to meet either occupancy test, it cannot qualify for an exemption under section 7o(1).

The occupancy requirement was one of the subjects of cross motions for Summary Disposition. The fact in this case giving rise to the occupancy issue is that Petitioner hired Power Wellness Management (“PWM”), a “for profit” professional management company to manage this facility, as well as similar facilities, both profit and non-profit. In denying both sides’ motions, the Tribunal stated in its December 22, 2015 Order:

Because exemption statutes are strictly construed, and *Liberty Hill* based its decision on the lack of “physical occupancy,” the Tribunal holds that the use of a so called agent in the form of a separate “for profit” management company fails to satisfy the first “occupy” requirement of 7o(1) as set forth in *Liberty Hill*. PWM is not an “employee, member, or volunteer” of Petitioner. Rather, it is a separate, autonomous “for profit” corporation. The Tribunal declines to extend the definition of occupancy to include agents under these circumstances. As to whether or not Petitioner satisfies the regular physical presence requirement through other means, the Tribunal holds that this is a question of fact that requires a hearing to resolve. Accordingly, each party’s Motion for Summary Disposition on the basis of occupancy per the *Liberty Hill* requirement is denied.

After 8 days of hearing, the Tribunal finds that Petitioner meets this requirement. *Liberty Hill* states in relevant part:

The dissent would hold that a charitable institution may occupy property by using it without maintaining a physical presence there. Such an interpretation leads to one of the following two unsatisfactory conclusions: (1) a charitable institution can occupy property without actually being physically present or (2) a charitable institution need only use the property sporadically or perhaps even once to occupy it. Neither of these conclusions is consistent with proper meaning of the term “occupy.” Rather, a charitable institution must maintain *a regular physical presence* on the property to occupy the property under MCL 211.7o. [Emphasis added].

Accordingly, the gravamen of the occupancy requirement is maintaining a *regular physical presence*.

Respondents argue that the main occupier is PWM which manages and staffs the facility. While it is true that PWM also occupies the facility, and it is also true that the Tribunal has found that PWM’s agency with Petitioner is not enough to establish occupancy under *Liberty Hill*, the Tribunal does not hold that Petitioner must establish *exclusive* occupancy. Adoption of such a holding would prevent any charity from using professionals to manage their enterprises. No case

has been cited, nor does the Tribunal hold that there is a prohibition against a charity using outside professionals to achieve its goals. Despite Respondent's arguments to the contrary, charities need not be amateurishly run in order to be exempt under §7o.

At hearing, Matthew Pegouskie, an employee of Petitioner testified that he has an office at the subject property, at which he spends on average, 8 hours per week.²³⁹ Amy Heydlauff testified that she has her own mailbox at the facility, as well as keys to the facility and unrestricted access. Angela Sargent, of PWM and director of the subject property testified that Ms. Heydlauff maintains an office at the facility and has regularly observed Ms. Heydlauff's presence throughout the facility.²⁴⁰ Sargent also testified that Petitioner's healthcare advisory committee regularly meets at the subject, and CWF Board Members have been at the facility on Board business 633 times since it opened in 2013.²⁴¹ Finally, Petitioner maintains a regular physical presence in that all of the furniture and equipment present at the facility is owned by CWF, rather than PWM.²⁴²

Respondents also argue that Petitioner's presence is inadequate to meet *Liberty Hill* because it is confined to a couple of cubicles in the administrative area. The Tribunal finds this argument unpersuasive, and akin to a quantitative test strongly rejected by the Supreme Court in *Wexford*.²⁴³ Further, none of the Respondents have cited a single case for the proposition that office size matters in meeting the occupancy requirement. To the contrary, four cases describing minimal occupancy were approvingly cited by the Supreme Court in *Liberty Hill*.²⁴⁴ Accordingly, the Tribunal holds that Petitioner meets the occupancy requirement under *Liberty Hill*, and MCL 211.7o.

“Nonprofit charitable institution”

The second requirement under §7o is that the claimant be a nonprofit charitable institution. The six tests laid out to determine whether a corporation is a charitable institution are

²³⁹ T.5 p. 140

²⁴⁰ T.6 p. 25-27

²⁴¹ T.6 p. 28

²⁴² T.3 p. 96-97, Heydlauff's response to question from bench.

²⁴³ While the Supreme Court in *Wexford* explicitly rejected a quantitative test for the amount of charity necessary to qualify, the decision's stated rationale makes clear that no quantitative test can found anywhere in §7o.

²⁴⁴ *Detroit Young Men's Society v Detroit*, 3 Mich 172 (1854), *Webb Academy v Grand Rapids*, 209 Mich 523 (1920), *Gull Lake Bible Conference Ass'n v Ross Twp.*, 351 Mich 269 (1958), *Oakwood Hosp Corp v STC* 374 Mich 524 (1965)

contained in *Wexford Medical Group v. City of Cadillac*.²⁴⁵ A claimant must meet all six of these tests in order to qualify as a nonprofit charitable institution. A failure to meet any of the six tests disqualifies a claimant from being considered a charitable institution and receiving a property tax exemption under §7o. The tests are as follows:

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

While the Supreme Court describes six discreet factors, in practice these factors usually overlap and are often different facets of the same attributes. Nonetheless, an analysis of whether an organization qualifies as a charitable institution requires a discussion of each of these factors, which also provide a proper frame work in which to discuss Petitioner’s relevant attributes. In reviewing the six factors found in *Wexford*, the Tribunal holds while Petitioner meets factors 1, 2, 4, 5 and 6, it fails to meet test 3. While failure to meet any of these tests is dispositive, the Tribunal’s analysis of each factor is set out below for clarity and completeness for judicial review.

(1) A “charitable institution” must be a nonprofit institution.

It is uncontested that Petitioner meets this first test. Petitioner’s Restated Articles of Incorporation state in relevant part:

The purposes for which the Corporation is organized are:
a. To operate exclusively for the purposes set forth in Section 501(c)(3) of the Internal Revenue Code²⁴⁶

²⁴⁵ 474 Mich 192, 215; 713 NW2d 734 (2006)

²⁴⁶ Exhibit P-189

Petitioner also received an approval letter from the Internal Revenue Service dated April 28, 2009 confirming its 501(c)(3) status.²⁴⁷ Accordingly, Petitioner meets the first test.

(2) A “charitable institution” is one that is organized chiefly, if not solely, for charity.

Respondents argue that the word “charity” is not found in Petitioner’s Articles or Bylaws. While true, the Tribunal does not find that omission to be dispositive. The Revised Articles of Incorporation and the Bylaws of Petitioner both state its purpose is:

To support significant, measurable, and sustainable improvements in the health and wellness of residents in the Service Area and in furtherance of the development of strategies to ensure access to health services to those in need.²⁴⁸

While not using the word “charity”, this purpose is clearly a charitable one.

While the articles bear relevance to whether the use of the property qualifies as charitable, they are not definitive. In *Mich Baptist Homes Dev Co v City of Ann Arbor*,²⁴⁹ the Supreme Court looked beyond a petitioner’s articles of incorporation, which announced “benevolent, charitable and general welfare purposes,” concluding that the facts did not support this characterization. Similarly, in *Association of Little Friends v. Escanaba*,²⁵⁰ Petitioner was organized in part as a preschool. The Court of Appeals held that the Tribunal must consider the charitable or benevolent nature of Petitioner’s activities, and not focus strictly upon what is stated in the Articles of Incorporation. Accordingly, the Tribunal must look beyond Petitioner’s organizing documents to determine whether Factor 2 has been met.

Supporting Factor 2 is its creation story, as well as many of its activities. Petitioner was created by the merger of two hospitals, Chelsea Community Hospital, and Trinity Health – Michigan d/b/a Saint Joseph Mercy Health System.²⁵¹ That agreement created CWF as a separate entity from Chelsea Hospital, and endowed it with \$25,000,000 “to be used for health and wellness initiatives and other community based initiatives within the service area”²⁵²

Petitioner’s vision and mission are stated in its 2014 Community Update. Under “Our Vision,” this document states, “[a]s healthiest communities in the mid-west, we choose to eat

²⁴⁷ Exhibit P-198

²⁴⁸ Exhibits 189 and 190

²⁴⁹ 396 Mich 660, 671; 242 NW2d 749 (1976)

²⁵⁰ 138 Mich App 302, 310; 360 NW2d 602 (1984)

²⁵¹ Exhibit P-185

²⁵² Id., p. 002035

better, move more, avoid unhealthy substances and connect with others in a healthy way.”²⁵³

Under “Our Mission,” the document states:

To create a culture of wellness and foster sustainable improvements in the health of our communities through stewardship of our resources, innovative and collaborative grants, and engagement of our residents in the pursuit of healthy life choices.²⁵⁴

Petitioner called 16 witnesses at hearing that testified to Petitioner’s charitable activities. CWF’s first witness, Amy Heydlauff, CEO of Petitioner gave an overview of many activities that further its stated vision and mission. She testified as to comprehensive wellness plans it put forth as part of its 5 Healthy Towns initiatives.²⁵⁵ CWF funds numerous programs, which it calls “interventions” which support its vision. For example, it funded Safe Routes To School, funded a Bike Lending Program, funded installation of bike racks and various exercise programs throughout Chelsea, Dexter, Manchester, Grass Lake and Stockbridge to encourage area citizenry to move more. For the same towns, CWF funded various programs to improve nutrition such as Healthy Cooking classes, Michigan Farm to School programs, Farmer’s markets. In support of its vision of helping the 5 towns avoid unhealthy substances, it funded the SRSLY program aimed at preventing and reducing youth substance abuse, along with the Big Red Barrel Program, allowing for the safe disposal of unused medication. As for its fourth element of having people connect with others in a healthy way, Petitioner sponsored various classes and physical activities.²⁵⁶ The Tribunal finds that all of these activities are charitable, and support Petitioner’s claim that it is organized chiefly, if not solely for charity.

Respondents argue that other activities engaged in by Petitioner, unrelated to running the facility disqualify Petitioner from this factor. Specifically, Respondent argues that owning 50% of a non-profit retirement home disqualifies Petitioner, as does its ownership of land upon which a medical office building sits, along with its role of guarantor in the transaction that formed Petitioner in the first place, disqualify it from being organized chiefly, if not solely for charity.

The testimony of the Hon. Patrick J. Conlin, Judge of the 22nd Circuit Court was decisive in undermining this argument. Judge Conlin testified that he was on the Board of Trustees of

²⁵³ P-356, p. 006402, T.1 p. 103-104

²⁵⁴ Exhibit P-356, p. 006402

²⁵⁵ T.1 p. 127-184

²⁵⁶ Exhibits P-257 through P-275. See also testimony of Jeffrey Wallace, T.5 p. 157-158.

Chelsea Community Hospital for 10 years, and was Chairman of the Board at the time that Chelsea merged with St. Joseph Mercy Health System. He testified that there was resistance to having St. Joseph Mercy Health System, a Catholic institution taking over Silver Maples, which was 50% owned by the United Methodist Retirement Community, and 50% by Chelsea Community Hospital. Assigning Chelsea's interest to Petitioner as part of the merger provided a work around. Further, Judge Conlin testified that Petitioner does not benefit from any cash surplus earned by Silver Maples, nor does it remain a guarantor on Silver Maples' debt.²⁵⁷ Judge Conlin testified further that there were similar concerns by the U of M Family Practice that ownership by a Catholic hospital might limit its practice in the areas of women's health and family practice. Consequently, Petitioner wound up as holder of a ground lease where the U of M Family Practice medical office building sits on the former Chelsea Hospital grounds.²⁵⁸ These instances of ownership or guaranty are not central to Petitioner's mission, but were merely incidental to the merger.

Of central importance to Petitioner, and to this proceeding is Petitioner's chief activity of funding what it terms health and wellness centers, and which Respondent refers to as recreation centers. (The Tribunal will refer to these buildings as "centers"). As is evident from Petitioner's financial statements, an overwhelming amount of Petitioner's expenditures for fiscal years 2013-2014, and 2014-2015 are for the four centers, including the subject property. For 2013-2014, Petitioner spent \$2,600,750 for the Chelsea center, \$2,161,091 for the subject Dexter center, \$177,074 for the Manchester center, and \$208,292 for the Stockbridge center. Out of total expenses for the fiscal year of \$6,852,681, Petitioner expended \$5,147,207 (75.1%) directly on the four centers. This does not include indirect expenses for management and the like. In contrast, Petitioner spent only \$751,178 in grants awarded, (10.96%).²⁵⁹ Similarly, for 2014-2015, Petitioner spent a total of \$7,803,221, of which \$5,421,316 (69.47%) was directly spent on the four centers, compared to \$1,001,226 (12.83%) spent on awarded grants.²⁶⁰ Clearly, Petitioner spends the overwhelming majority of its expenditures on the four centers. Accordingly, activity at the centers is central to Factor 2.

²⁵⁷ T.4 p. 141-144

²⁵⁸ T.4 p.144-148

²⁵⁹ P-55, p. 001548

²⁶⁰ P-250, p. 002812

Respondents claim that the physical lay-out of the subject²⁶¹ and equipment present at the subject conclusively show that the subject property is nothing more than a recreation center, perhaps more upscale than some of its private competition, but essentially offering the same opportunities as Snap Fitness, Liberty Fitness, and the local YMCA.²⁶² Dexter's City Manager Courtney Nicholls testified regarding the facilities and programs at Snap Fitness, including its fitness assessment, as well as what she found on line regarding Liberty Fitness and the YMCA.²⁶³ This conclusory testimony failed to contradict the testimony of Brian Hummert, CEO of PWM, who testified as to what a wellness center provides over a gym. Some of those differences are more handicapped parking spaces closer to the Center, and a porte-cochere allowing for drop off of deconditioned persons; double-entry doors, space for wheel chairs, wider hallways, ADA compliant lockers, towel service, ADA compliant showers. Two or three pools set to different temperatures for aquatic exercise, and assisted changing rooms are another difference. The walk/jog track at the subject was designed so that users can walk in pairs, and can use walkers. The track is longer, so it has less turns per mile and is cushioned. Other differences concern types of equipment, cleanliness standards and staff training.

While the physical facility may have some relevance as to whether a building is charitable under §7o, the Tribunal holds that the physical facility itself is not determinative as to whether it should be considered charitable. If this were not so, no office building could ever be exempt, even if used to administer a charity, hospital, or school. A public non-profit and a private for profit hospital may have identical facilities, yet the former may be charitable, while the latter would not be classified as such. Even residences may or may not be charitable, depending upon their usage.²⁶⁴ The factors that are used to determine whether or not a piece of property is charitable concern how the facilities are used and administered. Similarly, a for-profit, or private camp ground, or retreat may or may not be exempt, depending upon its policies and usage.²⁶⁵

²⁶¹ P-51 and P-52

²⁶² Exhibits D-37, D-38 and D-39.

²⁶³ T.8 p. 26-33

²⁶⁴ *Oakwood Hosp v STC*, 374 Mich 524; 132 NW2d 634 (1965).

²⁶⁵ See for example, *Gull Lake Bible Conference Ass'n v. Ross*, 351 Mich 269; 88 NW2d 264 (1958).

In the present case, Petitioner has shown that the subject is a medically integrated wellness center, certified by the Medical Fitness Association (“MFA”).²⁶⁶ A certified medically integrated wellness center is different from a traditional gym or fitness facility. In order to be certified by the MFA, a wellness center must have, among other things, at least three clinical fitness programs for people with chronic medical conditions such as heart disease, pulmonary disease, cancer, chronic pain, orthopedic and/or neurological problems, cerebrovascular disease “stroke,” sports injury prevention and rehabilitation neutral counseling, among others. It must offer preventative programs to not only members, but to the community at large, especially the disabled population.²⁶⁷ It must also offer certain types of programming for people with chronic illnesses and other health conditions.²⁶⁸

Petitioner claims that the activities at the centers are overall charitable. In support, Petitioner points to the testimony of Jo Mayer, who is a member of the Stockbridge Area Wellness Coalition.²⁶⁹ Ms. Mayer testified that the Stockbridge Coalition was offered \$200,000 and decided to use all of it to fund a wellness center. She pointed out that Stockbridge has a high incidence of obesity, and the resulting heart disease and diabetes. She testified that 80% of Stockbridge was overweight or had high blood pressure, and the community had a very large unmet need for such a facility. Amy Heydlauff testified that neither the Stockbridge, nor Manchester center were ever likely to break even.²⁷⁰ There was also testimony regarding activities such as senior swim, and the Next Steps program, an 8 week long medically integrated fitness program with various health challenges. Access to this program comes from referrals from Physicians and other medical practitioners.²⁷¹ Brian Hummert, testified that it costs the facility \$220 per participant, even though participants are only charged \$99.²⁷²

Petitioner further bolstered its case with the testimony of Anne Kittendorf, M.D., a practicing family physician, and a faculty member of the University of Michigan medical

²⁶⁶ The MFA is not just a trade group – it has roughly 1,300 members including prominent hospitals such as Scripps in California, Northwestern Medicine in Chicago, Rush Hospital, Loyola, and Cleveland Clinic, among others. These prominent hospitals are recognizing that the industry needs a place for their patients and people with chronic disease to go. Jan 11 Tr. at 153.

²⁶⁷ T.6 p. 160; 162-163; P-361 at 7

²⁶⁸ T.6 p. 160; P-361 at 7

²⁶⁹ T.5 p. 8

²⁷⁰ T.2 p. p. 204.

²⁷¹ Exhibit P-4

²⁷² T. 6 p. 163-164

school.²⁷³ Dr. Kittendorf testified regarding the comparative impact of prescribing exercise versus a statin:

So let's say over -- over two years I -- I advise 100 people to go to the Wellness Center, 50 take me up on it, and 25 end up having sustained lifestyle benefit from that. Okay? So 25 out of 100 is a fourth, so that means I've had to counsel 100 people to positively impact 25 people, which means my number needed to treat is four. And we know by evidence that exercise, when we're thinking about things like preventing heart disease or heart attack, exercise is as effective as putting people on a statin medication. So I'm able to influence more people's health through exercise.²⁷⁴

Dr. Kittendorf also agreed that it is important to refer her patients to a medically integrated facility because "it provides a different layer of oversight and protections for our participants as well as helping the community at-large."²⁷⁵ As to the benefits of the Next Steps program, she gave an example of an elderly patient becoming stronger through "pre-hab" and was able to get home within a week of surgery, saving health care dollars. She further testified:

And I am firmly convinced it's because he went into surgery with a much better health profile due to his muscle strengthening and balance strengthening that he had. So in and of itself, I know that that saved the system thousands and thousands of dollars. But if we're talking about an elderly person with a hip fracture, not only is there a 50 percent mortality rate for patients who fall and have a fracture within six months, but on top of that the healthcare costs are astronomical, I would guesstimate \$100,000 for an elderly person who falls and breaks a hip, and then often long-term costs because they often end up in long-term care facilities.²⁷⁶

Andrew Eisenberg, M.D., an Oncologist with 37 years of experience, educated at the University of Michigan,²⁷⁷ also testified that exercise in a supervised and community setting has proven more effective in terms of patient compliance in the prevention and treatment of cancer.²⁷⁸ Dr. Eisenberg stated:

There are studies that have shown that a supervised exercise program is more effective than just telling somebody, "Go out and exercise." You know, the problem with people with -- that are sick or have an illness, they don't always comply with what the recommendations are. You know, if I prescribe a pill, and the patient doesn't take it, it doesn't do them any good. If I just tell somebody "Go out and exercise", and they don't do it, then it's not going to do them any good.

²⁷³ Curriculum Vitae, Exhibit P-364

²⁷⁴ T.4 p. 51-52

²⁷⁵ T.4 p. 69

²⁷⁶ T.4 p. 76-77

²⁷⁷ T.4 p. 153

²⁷⁸ T.4 p. 167

So compliance is an issue, and if there is a supervised program, there's evidence to suggest that compliance is better, and the person is more likely to benefit.²⁷⁹

In support, of his testimony, Dr. Eisenberg cited several articles from medical journals.²⁸⁰

Petitioner also argues that Petitioner's health fitness assessments, and risk stratifications creates access to persons over 50, and persons with higher risk stratifications. The Tribunal finds that the business of owning and funding these facilities is consistent with Petitioner's overall mission of "eat better, move more, avoid unhealthy substances and connect with others in a healthy way," which are charitable goals, and thus meet Wexford Factor 2.

(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.

The discussion above under Factor 2 is also relevant in determining whether the subject meets Factor 4. The analysis under Factor 2, along with additional analysis set forth below convinces the Tribunal that Factor 4 has also been met by Petitioner.

The Tribunal heard uncontroverted testimony by Dr. Kittendorf, as well as by Dr. Eisenberg, that supervised exercise as found in the Next Steps program relieves suffering and disease constraint. The Tribunal has already ruled in its December 22, 2015 opinion, that because Petitioner is not a medical institution and employs no medical professionals, it does *not relieve people's bodies from disease, suffering or constraint*, as that term has been defined by previous precedent, and the Tribunal is reluctant to extend that phrase outside of the healthcare setting. That phrase originated in the 1867 case of *Jackson v Phillips*,²⁸¹ and was describing medical care using the vernacular from the mid-19th century. However, after 8 days of hearing, it is the Tribunal's conclusion that Petitioner's activities *otherwise lessen the burdens of government*.

Respondent argues that the subject is nothing more than a recreational center, and that recreation is not a charitable purpose. As discussed above under Factor 2, Petitioner's activities are broader than providing a gym. Further, Respondent's argument that there is no governmental duty to provide recreation, (i.e., the gun club cases),²⁸² while true, is off target. The government

²⁷⁹ T.4 p. 157-158

²⁸⁰ T.4 p. 160-161

²⁸¹ 96 Mass (14 Allen) 539 (1867)

²⁸² *North Ottawa Rod & Gun Club v. Grand Haven Twp*, unpublished opinion per curiam of the Court of Appeals issued August 21, 2007 (Docket No. 268308); *Bridgeport Gun Club v. Bridgeport Twp*, 19 MTT 59 (2011).

does suffer a burden when its population is “de-conditioned” in the form of higher Medicaid costs, and lost productivity. As former Michigan House Speaker Paul Hillegonds testified, the Michigan Constitution²⁸³ sets forth the state’s role in public health and general welfare.²⁸⁴

These observations have spurred Michigan’s governor to put forth his Four-by-Four plan, which sets forth three of the same four healthy behaviors as Petitioner’s vision.²⁸⁵ Counsel had the following exchange on Direct Examination with Dr. Kittendorf regarding this plan:

“The consequences of obesity are Type 2 diabetes, heart disease, arthritis, stroke and dementia. Currently in Michigan 2.5 million adults and 400,000 children are obese, many of whom already show signs of chronic illnesses. Unnecessary suffering is being caused by obesity, which is mainly driven by sedentary lifestyles and unhealthy eating habits.” Do you agree with that?

A: One hundred percent, yes.

Q: And then the paragraph just below that, next to the chart says, “According to the CDC, 75 percent of total healthcare expenditures are associated with treating chronic diseases. If Michiganders reduced their BMI rates to lower levels and achieved an improved status of health, the State could save over \$13 billion annually in unnecessary healthcare costs.” Do you agree with that?

A: Yes. Critical information . . . I’ll just mention we have a looming crisis with our baby boomers aging, and making sure it’s critically important for us to engage in wellness and infrastructure and community health and wellness and opportunities such as what our Foundation is doing. As we have this massive influx, age brings illness in and of itself. So these numbers are very scary and they’re bound to get scarier without intervention, so²⁸⁶

The Four-by-Four Plan also mentions that 75% of the \$2.2 Trillion the U.S. spends on healthcare goes to treat chronic conditions.²⁸⁷

Clearly, prevention of a healthcare apocalypse as the boomer generation ages, and younger generations suffer from obesity is a problem that the state, as well as the Federal government will be burdened with in the form of Medicare and Medicaid expenses, as well as lost productivity. Centers such as the subject that address the non-covered ailment of de-conditioning help reduce the burden of government. Accordingly, Petitioner meets the test under *Wexford* Factor 4.

²⁸³ Const 1963 Art IV Section 51

²⁸⁴ T.4 p. 183-184

²⁸⁵ Exhibit P-240

²⁸⁶ T.4 p. 102-104

²⁸⁷ P-240 p. 003469

(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.²⁸⁸

Respondents argue that Petitioner discriminates on the basis of the ability to pay. Petitioner charges fees for membership to use the subject center. During 2013 and 2014, the fees were \$69/month/individual, \$46/month for each additional adult family member, and \$35/month for each child. Previously, CWF has charged an enrollment fee and a reactivation fee equal to \$200-400,²⁸⁹ but eliminated that fee to “eliminate barriers.”²⁹⁰ For a family of four, the monthly charges to use the Property are \$185. These rates were and are generally market rates when compared to comparable fitness centers in the area.²⁹¹ CWF introduced no evidence to show that the rates charged to its members were “substantially less or indeed less at all than the market rates.”

A charity is not required to give away its services. It is entitled to charge for them, which will be discussed in detail regarding Factor 5. The test under Factor 3 is *whether or not the rates are a barrier preventing it from serving any person who needs the particular type of charity offered*. Petitioner argues that its guest program, where free passes are liberally handed out meets Factor 3. However, said passes are limited to three uses a year per customer.²⁹² Accordingly, guest passes are inadequate to meet Factor 3.

Petitioner presented evidence of an evolving scholarship program. In its written scholarship policy dated 4/23/14, an individual providing a doctor’s note stating the health

²⁸⁸ The Tribunal notes that Factor 3 as it is currently understood under case law may in the near future be substantially modified. The Supreme Court on April 1, 2016, directed the Clerk to schedule oral argument on whether to grant application or take other action in *Baruch SLS, Inc v. Tittabawassee* SC Docket No. 152047. The Order states:

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

Rather than speculate as to what the Supreme Court will finally hold, the Tribunal analyzes Factor 3 in this Final Opinion and Judgment as it is currently understood.

²⁸⁹ P-173, p. 001613 Cindy Cope deposition; Rate card, Exhibit P-112 (Cope dep. Exhibit 13).

²⁹⁰ T.2 p. 97, testimony of Amy Heydlauff

²⁹¹ Affidavit of Chris Renius, City of Dexter Assessor, and attached study of fitness center market, attached as Exhibit P-225, and Exhibit D-1, p. 225-6 Heydlauff deposition

²⁹² T.3 p. 43

benefit of a membership at the center and who has income at or below 200% of poverty guidelines, (with proof), will be allowed to enroll in the Next Steps Program at no cost for 8 weeks. After the expiration of the Next Step program, an applicant may enroll as a member at one half the usual rate for the next 3 months, provided that they use the center a minimum of twice a week. The policy goes on to state that usage will be monitored, and if the member does not meet the twice a week requirement, the membership will be terminated.²⁹³ A flowchart of the program was also provided, that allows for 2 months at the Next Steps program, plus an additional free month, or 2 free months of General Membership. After the expiration, additional months are allowed at 50% off the rate, with on-going review of usage, and an annual review of financial need.²⁹⁴

As to what program was in effect in 2014, the following exchange on Direct Examination between counsel and Cindy Cope is illustrative of the confusion:

Q: . . . In 2014, if an applicant for scholarship applied, got the scholarship, wanted to continue for additional months on scholarship, and couldn't afford to pay, would that person be turned away necessarily?

A: No. The scholarship guidelines was a work in progress. It changed regularly for about a six-,eight-month period. Every time we would just -- we'd have discussions and then it would change, but the documents didn't necessarily reflect all of the changes. So, it even -- it even changed from this version. It became -- and I don't even know what the date was, but within that time frame it included half off your dues on a regular -- on an ongoing basis. So depends on what time of the year in 2014. I don't know how to answer that question.

Q: Well, are you aware of anybody who had applied for a scholarship, got [the] scholarship and then asked to continue the scholarship and was -- and was refused?

A: No, I'm not aware of that.²⁹⁵

Assistant Director Angela Sargent testified as to her understanding of the scholarship policy:

So there are two pathways in which they can receive a scholarship; one is through our Next Steps Program, which is an eight-week program. If they complete that, then they would qualify for one additional month and then 50 percent off dues after that, or they can also just join through general membership, they would receive two months and then 30 percent dues thereafter.

²⁹³ Exhibit P-41

²⁹⁴ Exhibit P-105

²⁹⁵ T.3 p. 139-140

Q: And, "For thereafter," is there a point at which that terminates?

A: As long as they meet the usage requirements, there would be -- no --

Q: Okay. What are the usage requirements?

A: They have to meet minimally two times a week.

Q: Why do you impose that -- why does the Foundation impose that requirement; if you know?

A: Well, there's studies that show that regular exercise and attendance is helpful for their health; and then there's also, you know, if they're not using it, we would want someone else to take advantage of it.

Q: Now, if somebody missed a day or even two days for various reasons, you know, in an accident, lost their job, whatever the reason may be, if that person missed one day or two days of the required sessions that they have to attend, would they be kicked out of the program?

A: No.

Q: Do you know of anybody who has been kicked out of the program for that reason?

A: No.

Q: By the "Program," I mean the scholarship program?

A: Correct.

Q: Now, if somebody were to come into the Dexter Wellness Center after the two months of free membership under the general membership, and said, "I can't afford the 50 percent. I just don't have the money;" is it your understanding that that person would not be permitted to participate in the scholarship program?

A: No, we would work with them.

Q: Do you know whether the scholarship program has a provision for extenuating circumstances?

A: No.

Q: You don't know whether they have that?²⁹⁶

A: Oh, I -- yes, there are -- yes, if --

Q: So if I were to use, as an example, somebody came in and said, "I just can't afford to pay the 50 percent. I got this situation where I lost my job, I got medical bills, I can't afford it." In your mind, would that be an extenuating circumstance?

A: We would work with them, yes.²⁹⁷

²⁹⁶ Testimony of Amy Sargent, T.6, p. 29-30

²⁹⁷ T. 6 p. 30-33

Director Amy Heydlauff also testified regarding the scholarship program, indicating that failure to use the facilities twice a week would be excused for extenuating circumstances.²⁹⁸ She also testified that CWF would consider keeping members on scholarship who make more than 200 times the poverty level.²⁹⁹ As to the importance of scholarships, Heydlauff stated:

As I said, we find a way. So our goal is to get as many people in the door as possible, and it doesn't matter what their circumstance is. Our goal is to get as many people in as possible. And it is -- it is actually -- actually -- actually, people who have lower incomes, and lower education levels, have a tendency to have poorer health, so those are exactly the kind of people that are the most difficult to reach, so we try -- in as many ways as possible -- to reduce those barriers to get those people in the door. They're the very hardest people to get into a program, so we want to make it as easy as possible for them to get into the program --³⁰⁰

Respondent points out that there were no scholarship recipients of any type on or before December 31, 2014.³⁰¹ Respondent also points out that those who do qualify for a scholarship are, unlike a general member, subject to a usage requirement of twice a week. The purported reason for this requirement, making sure that only those who will use the facility receive the scholarship as a better use of scholarship funds, is of questionable validity when there is an unlimited amount of scholarships available.³⁰² Finally, Respondent shares the observation that the written requirements of the current scholarship program, per Petitioner's Exhibits 41 and 105 state that someone can get two or three months of membership free, and then they will be offered a membership at the half-rate provided they continue to meet the financial and usage requirements. The public is not informed that if they cannot afford the half-rate, they may get another option.³⁰³

The issue under Factor 3 is not whether, or how many persons take advantage of Petitioner's scholarship program. Rather, the issue is whether Petitioner is offering its services on a discriminatory basis *by choosing who, among the group it purports to serve, deserves the services*. While Petitioner's CEO appears to the Tribunal to be genuinely interested in providing access to everyone, the evidence shows that persons with financial difficulties still have extra

²⁹⁸ T. 2 p. 38

²⁹⁹ T. 2 p. 38-39

³⁰⁰ T. 2 p. 40

³⁰¹ Exhibit P-115 shows no scholarships were given out in 2013 or 2014 at the Dexter facility.

³⁰² Testimony of Amy Heydlauff, T.3 p. 33

³⁰³ T.3 p.182

hoops to jump through to be able to overcome financial barriers to use the facility. The written policy places requirements upon scholarship members that are not present for those who can pay the fee. Not only must prospective scholarship applicants verify their financial status, they must use the facility at least twice a week, or be in danger of losing their ability to use the facility.

The policy itself does not provide for on-going free membership, but rather, a 50% rate. Originally, that discount was also time limited to two months. Although the time limitation has apparently been removed in the latest policy articulation, a 50% rate would likely continue to limit those among the group Petitioner purports to serve, deserves the services. As Amy Heydlauff testified, the poor tend to have poorer health.³⁰⁴

While it is laudable that Petitioner has eliminated the \$200 initiation fee, and expanded (at least in theory) discounted services, the Tribunal finds that Petitioner failed to meet its burden in proving that Petitioner *serves any person who needs the particular type of charity being offered*. Petitioner is correct in stating that Respondents have failed to show a single case in which a potential member was turned down or terminated for lack of payment. What cannot be proven is how many low income persons never bothered to apply for membership because its costs, and written policy were prohibitive. Regardless, the burden is on Petitioner to show that its policies do not discriminate against a particular group, in this case, low income persons. The Tribunal finds that the policies as written, and even in modified form as testified to, do not meet this burden for Factor 3.

Related to Factor 3 is Factor 5, which states:

(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.

The following quote from *Wexford* shows the interplay between Factors 3 and 5:

While “[a] corporation does not qualify for a tax exemption merely because it is structured to be nonprofit and in fact makes no profit,” “[b]y the same token, 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.”³⁰⁵

³⁰⁴ T.2 p.40

³⁰⁵ *Wexford*, at p. 210, quoting from *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc., v. Sylvan Twp.*, 416 Mich 340, 348–349, 330 NW2d 682 (1982)

Respondent argues, and Exhibit D-27 supports its claim that professionals set the pricing for membership at the subject property. This exhibit is a marketing study prepared by Meritage Health Strategies, which identified needs, demographics, etc. for the successful launching of a wellness center in Dexter. Again, Petitioner sought to run this charity in a business-like manner and used professionals to determine its market, and what the market will bear. However, the law does not require a charity to be poorly run, nor prohibits it from being well-run. Further, Amy Heydlauff testified how this data was put to use:

I think lots of models show that there is a curve at which people aren't willing to pay for a service. We're not willing to reach that point. Our goal is to have people in the centers using the centers for a health and wellness purpose. So what the market could bear, in this case, was the market for health and wellness services at our Wellness Center. We didn't want to put ourselves at a price point that potential members weren't willing to come to the Center, because our goal is to have as many people in the door as possible.³⁰⁶

Petitioner also argues, and its financial statements show that the Dexter facility loses money. Respondent counters that it plans to eventually make a profit, and will do so if its membership rises to a certain level. Respondents also called in David Haffey CPA to bolster this argument, and to indicate that losing money was part of a plan to expand market share.³⁰⁷ However, it was clear that Haffey's experience and expertise concerned "for profit" companies rather than charities.³⁰⁸ Accordingly, the Tribunal does not assign any weight to Mr. Haffey's opinion.

Respondents also argue that two of Petitioner's witnesses testified that Petitioner hoped to break even, or perhaps make a profit in the future to further its mission. The Supreme Court noted the following facts in *Wexford*:

Overall, petitioner suffered financial losses in 1999, 2000, and 2001 of \$575,000, \$731,000, and \$673,000, respectively. These losses were subsidized by its parent companies. And while petitioner's goal was to eventually become profitable, its agent testified that any surplus would be invested back into the organization in accord with its statement of purpose.³⁰⁹

The Court in *Wexford* had the following to say about charities making a profit:

Respondent argues that petitioner's goal of profitability negates its claim that it is a charitable institution. We find that argument hollow. Petitioner's bylaws do not

³⁰⁶ T. 2 p. 238

³⁰⁷ T.7 p. 122

³⁰⁸ T.7 p. 121

³⁰⁹ *Wexford*, p. 198

allow any individual to profit monetarily from the petitioner's clinic; thus, “profitability” has a different meaning for this institution than it would for an entity whose goal it was to reward its agents or shareholders with profits. And the idea that an institution cannot be a charitable one unless its losses exceed its income places an extraordinary—and ultimately detrimental—burden on charities to continually lose money to benefit from tax exemption. A charitable institution can have a net gain—it is what the institution does with the gain that is relevant. See *R. B. Smith Mem. Hosp.*, *supra* at 36, 41, 291 N.W. 213 (1940). When the gain is invested back into the institution to maintain its viability, this serves as evidence, not negation, of the institution's “charitable” nature.³¹⁰

As in *Wexford*, Petitioner’s witnesses testified that any money would be devoted back to mission spending.³¹¹

Respondent did not show, or indeed even argue that Petitioner’s charges were in excess of what is needed for successful maintenance. For instance, it failed to present evidence that Petitioner’s officers or trustees were over-compensated. Other than showing that its Board has free use of the facility, it failed to establish any compensation for the board member’s time and responsibility.

Recently, in an unpublished decision, the Court of Appeals reversed the Tribunal’s finding that Factor 5 was not met by Petitioner under similar circumstances to the present case, where operational losses were shown by the Petitioner, and Respondent relied upon the charges used by similar facilities. The Court of Appeals stated:

Respondent has not rebutted the other evidence noted previously, and the Tribunal’s focus on the testimony about other facilities was therefore misplaced. Petitioner’s evidence was sufficient.

Equally in error was the Tribunal’s speculative disregard of petitioner’s operating losses. On this point, the Tribunal justified ignoring those losses because petitioner incurred them in the early stages of operating Stone Crest. But the record does not support this conclusion. Rather, as already explained, the record reveals that increased participation in the income based program caused at least part of petitioner’s financial bleeding. Petitioner simply did not charge more than needed for its successful maintenance, and the Tribunal’s reasoning to the contrary is purely conjecture.³¹²

³¹⁰ *Wexford*, p. 217-218

³¹¹ Testimony of Amy Heydlauff, T.2 p.79; Testimony of Board Member Scott Broshar, T.4 p. 40-41, Anne Kittendorf, T.4, p. 121-122

³¹² *Baruch SLS Inc v Tittabawassee Twp*, [majority opinion], unpublished opinion per curium of the Court of Appeals, issued April 21, 2015 (Docket No. 319953), Slip Op p. 6-7. Application for Leave pending, Oral Argument Ordered April 1, 2016, SC Docket No. 152047

While an unpublished decision of the Court of Appeals is not *stare decisis*, and the above quote is *obiter dicta*, the reasoning in the majority opinion is persuasive and in line with *Wexford*. A charitable institution can take in more money than it spends. The relevant inquiry is what Petitioner does with any excess. Accordingly, the Tribunal finds that Petitioner prevails on Factor 5.

(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.

The sixth requirement under *Wexford* is not so much a requirement, as a declaration that there is no specific monetary threshold. Rather, if the overall nature of the institution is charitable, it is a charitable institution. In *Wexford*, the Court found that Petitioner qualified as a charitable institution, even though a very small percentage of persons it treated were treated without charge. Rather, the Court held that by its very mission, a hospital qualifies as a charitable institution. As with *Wexford*, Respondents have shown that scholarships for memberships are very limited. In fact, no one took advantage of Petitioner’s scholarship program in 2013, (its first partial year of existence), and few took advantage of the program in 2014. However, Petitioner has shown through the testimony of Angela Sargent, a wide usage of guest passes, along with memberships and equipment for the benefit of the Service Area, including: donations to Chelsea Community Schools, \$3,787;³¹³ 10 guest passes to Dexter Cooperative Preschool, \$100;³¹⁴ six-month membership to Chelsea Community Hospital annual auction, \$414, among others.³¹⁵ Amy Heydlauff testified that the subject also provides free meeting space for community organizations and programs such as senior health week programs during which occupational therapists were brought in to test seniors’ vision and reflexes to assess the appropriateness of their continuing to drive.³¹⁶ The subject also provides free facilities for Dexter High School health class students and their parents so that the students can meet their physical activity curriculum requirement.³¹⁷

³¹³ T.6 p. 96; P-129 (Quarterly Program Costs)

³¹⁴ T.6 96; P-129

³¹⁵ T.6 p. 96-97; P-129

³¹⁶ T.2 p. 57-59

³¹⁷ T.2 p. 67

Additionally, Petitioner provides access to its centers to a number of other nonprofit groups and organizations. For example, Peggy Cole, Director of the St. Louis Center, a Chelsea-based residential community for children and adults with developmental disabilities, testified that Petitioner funds its Fitness for Life program.³¹⁸ The Fitness for Life Program is a fitness program for the developmentally disabled, and as Ms. Cole testified, “it’s hard to express all of the benefits of Fitness for Life for the residents of St. Louis Center and people who don’t live there.”³¹⁹ Petitioner allows Fitness for Life participants to exercise at the subject’s sister facility in Chelsea completely free of charge.³²⁰ As other examples, the subject has provided use of the gymnasium to the SRSLY group, made the subject available to the Community Read program, and provided the Coalition space at the subject to conduct their meetings 10 times a year, all completely free of charge.³²¹ All of these are examples of charity provided by Petitioner, clearly bring it within Factor 6 if Factor 3 is not considered. However, the issue of Petitioner’s charges for the facility usage raise questions under Factor 3.

“ . . . occupation is solely for the purposes for which that nonprofit charitable institution was incorporated.”

The final requirement under MCL 211.7o is that the occupation is solely for the purposes for which that nonprofit charitable institution was incorporated. For the reasons stated under *Wexford* Factor 2, and 4, it is clear that the subject property is a key part of Petitioner’s mission. Accordingly, Petitioner meets this requirement. However, because Petitioner fails to meet Factor 3 under *Wexford*, the Tribunal holds that the subject is not exempt under MCL 211.7o for the years at issue.

JUDGMENT

IT IS ORDERED that the property’s state equalized and taxable values for the tax years at issue are as set forth in the Introduction section of this Final Opinion and Judgment.

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 as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of

³¹⁸ T.4 p.165

³¹⁹ T.4 p. 166

³²⁰ T.4 p. 168

³²¹ T.6 p. 115; T.5 p. 142

equalization. See MCL 205.755. 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.

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 Final Opinion and Judgment. 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 Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through June 30, 2015, at the rate of 4.25%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

By: David B. Marmon

Entered: April 6, 2016