

NO. A07-0468

State of Minnesota
In Supreme Court

Under the Rainbow Child Care Center, Inc., Petitioner,
Respondent,

v.

County of Goodhue, Respondent,

Relator.

RELATOR'S BRIEF

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).

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STATEMENT OF LEGAL ISSUES

Issue I: Does Under the Rainbow Child Care Center Inc. qualify for tax exempt status as an institution of purely public charity under Minn. Const. Art. 10 §1 and Minn. Stat. §272.02 Subd 7 (2004)?

The Tax Court held: Yes

STATEMENT OF THE CASE

These cases involve a property tax dispute regarding the classification of property as of January 2, 2004 and January 2, 2005 for taxes payable in the years 2005 and 2006. At issue is whether the Under the Rainbow Child Care Center, Inc. (hereinafter Center) located in Red Wing, Goodhue County, Minnesota, is entitled to tax exempt status under Minn. Const. Art. 10 §1 and Minn. Stat. §272.07 Subd. 7 for those years.

The Tax Court cases were tried on September 13, 2006 in Red Wing, Goodhue County, Minnesota, The Honorable George Perez presiding.

There were no stipulations by counsel.

The following witnesses testified for the Center: Michelle Finholdt, Chair of the Center's Board of Directors, James Welsch, Member of the Center's Board of Directors, and Patrick Gannon, Child Care Resource and Referral Center, Rochester, Minnesota. The following witnesses testified for Goodhue County: Duane Walbridge, retired employee of the office of the Goodhue County Assessor, Chris Reich, Goodhue County Social Services, Connie Minnick, Goodhue County Social Services, Michelle Finholdt, Chair of the Center's Board of Directors, and

James Welsch, Member of the Center's Board of Directors.

Post trial briefs and Proposed Findings of Fact were filed with the Tax Court by September 21, 2006. Reply briefs were filed with the Tax Court by October 18, 2006.

The Tax Court issued its Findings of Fact, Conclusions of Law, Order for Judgment and Judgment on January 18, 2007, and it was filed with the Tax Court on the same date. (A-5).The Order was filed in Goodhue County District Court on January 24, 2007.

In its Findings of Fact, Conclusions of Law, Order for Judgment and Judgment the Tax Court found that the Center qualified for tax exempt status for the January 2, 2004, and January 2, 2005, assessment years as an institution of purely public charity under Minn. Const. Art. 10 §1 and Minn. Stat. §272.02, Subd. 7 (2004). The Tax Court found that the Center met North Star¹ factors 1, 2, 4, 5, and 6. The Tax Court found that the Center had not met North Star factor 3.

On February 28, 2007 Goodhue County filed its Petition for Writ of Certiorari to this Court. (A-22) This Court issued its Writ of Certiorari to the Tax Court (A- 23).

¹ North Star Research Institute v. County of Hennepin, 236 N.W.2d 754 (Minn. 1975).

STATEMENT OF FACTS

1. The Center is a Minnesota Corporation. The Center has sufficient interest in the property to maintain the petition. The Tax Court had jurisdiction over the subject matter of the action and parties. (A-25, 34)
2. The Center owns the land and building at 555 Technology Drive, Red Wing, Goodhue County, Minnesota. The property identification number is 55-893-0030. Its market value as of January 2, 2004 payable 2005 was \$457, 700. Its market value as of January 2, 2005 payable 2006 was \$503,500. These values are for land and building. (A- 34)
3. The Goodhue County Assessor classified the land and building as commercial for the applicable tax years. The Center has been subject to property tax in Goodhue County. (A- 34)
4. The subject property is located near the Menards and WalMart stores, near the Fairview Red Wing Medical Center, and has access from the subject property onto a newly constructed four lane roadway in a developing area of Red Wing. (Tr. at 42, 89-90)
5. The Center operates a state licensed daycare at the subject location. The Center operates a day care for infants, toddlers, preschool and school age children. The Center's licensed capacity is 70. (A-32,33)
6. Michelle Finholdt testified that the Center was incorporated in 1995 as a "501(c)(3)" corporation.(Tr. At 6) The Center's Articles of Incorporation were offered and received. (A-25) The Center did not offer an Internal Revenue Service (IRS) Determination Letter granting 501(c)(3) status, or a Minnesota Department of Revenue Certificate of Exempt Status, for the applicable assessment years. Michelle Finholdt testified that the Center is a non-profit corporation. (Tr. At 6)
7. Article II of the Articles of Incorporation states as follows: "Purpose. The corporation is organized exclusively for charitable, scientific, literary or educational purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code, as amended. To the extent consistent with the above general purposes, the specific purposes of this corporation are to provide care of children away from their home within the meaning of Section 501(k) of the Internal Revenue Code, as amended." (A-25)
8. Prior to its current location at 555 Technology Drive, Red Wing, Minnesota, the Center had leased space from the Vocational-Technical School in Red

Wing and Michelle Finholdt owned a building on South Service Drive in Red Wing that she leased to the Center as a "triple net lease". (Tr. at 22-23, 155-156)

9. The Center's fees are derived from fees received directly from children and families. The Center also receives child care assistance payments from Goodhue County, Minnesota and Pierce County, Wisconsin. The center also receives fees from the Prairie Island Indian Community. (Tr. at 17). These are payments for child care services. The Center also receives payments for children and families who qualify for the Minnesota Department of Education Food Program. (Tr. at 13).Child care assistance payments are made on a voucher entitled Minnesota Child Care Assistance Programs Payment Vouchers. There is a line for provider signature at the end of the form. Prior to the signature line the form states: "I declare under penalty of law that I have examined the claims on this voucher, that the claim information on the voucher is correct, and that the services claimed have been provided." (A-40).
10. The Center's day care rates are market based. (A-105, Tr. at 13) The weekly rates at the Center based on Exhibit 6 (A-33) are higher than Learning Circle, Inc., His Kid's Child Care and Angel Care for infants; higher than Learning Circle, Inc., His Kid's Child Care for toddlers; higher than Learning Circle, Inc. His Kid's Child Care, and Angel Care for pre-school; and higher than His Kid's Child Care for school age. The Center's daily rates are \$7.00 less than Learning Circle, Inc. and \$12.00 less than Angel Care in this category.
11. The Center provided no evidence of scholarships or grants to needy children. The Center provides no ongoing service for children and families unable to pay. The Center has taken debtors to Conciliation Court. (Tr. at 157-160)
12. The Center provided summary documentation that it has had grants, donations, fundraisers, and volunteer work for the assessment years in question.(A-20,30,31). The volunteer work is primarily provided by Michelle Finholdt's parents. (Tr. at 32-33). The volunteer work was not valued on the Center's federal Form 990 income tax returns for 2003, 2004, and 2005 at the line provided on Schedule 4 Form 990 Part VI Line 82b. (A-44,68,92)

Center Exhibit 2 (A-29) shows the following:

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Grants	\$5,396	\$500	-0-	\$5,201

Fundraisers	\$2,845	\$2,015	\$2,724	\$2,221
Garage Sale	\$1,065	\$1,026	-0-	-0-
Individual Donations	-0-	-0-	-0-	\$60
Volunteer Time	\$31,331	\$6,156	\$5,532	\$2,484

13. The Center has the services on its Board of Directors of James Welsch, CPA. (Tr. at 36). Mr. Welsch organizes the Center's financial information and provides it to an accounting service for tax preparation. He then reviews the returns before they are filed. (Tr. at 142)
14. The Center offered the following exhibits which were received by the Court: (1) Articles of Incorporation; (2) Charitable Contributions; (3) Cost of Volunteer Labor; (4) 2003-2006 Grants and Fundraisers, (5) Three Non-Profit Child Cares; (6) Four Non-Profit Child Cares.(A-25-33) The titles given to the exhibits were contained within the Transcript of the Tax Court trial. (Tr. at 3).² The Center did not offer a certified financial statement, or a financial statement prepared pursuant to generally accepted accounting principles, or the federal Form 990 income tax returns for 2003, 2004 and 2005.
15. Goodhue County offered the Center's federal Form 990 income tax returns for 2003, 2004 and 2005 and they were received into evidence. (A-44, 68, 92) Goodhue County offered the Assessor's Field Card (A-34), Licensed Providers (A-36), Voucher (A-40), and Provider rates (A-43), which were received into evidence.
16. There are six child care centers in Goodhue County licensed by the State of Minnesota, four of which are in Red Wing. There are over 100 Goodhue County licensed daycares and home day cares. (Tr. at 75, A-36)
17. Chris Reich, Goodhue County Day Care Licensor, testified that she knew of no shortage of spaces for prospective daycare clients. (Tr. at 135)
18. Connie Minnick, Goodhue County Social Services, testified that child care assistance payments are made on behalf of qualified families for daycare services rendered. A family co-pay is required. (Tr. at 114-115) Day care

² Exhibits 2, 3, 4, 5, 6 were prepared for this litigation (A-25-33).

centers, such as the Center, are paid a higher rate for infants for a longer period than county licensed day cares. (Tr. at 119) A child could be absent up to ten days and payments would continue. (Tr. at 121-122)

19. The Center's employees, including Michelle Finholdt, are compensated and receive benefits. (Tr. at 23-24)
20. The Center paid a "triple net lease" to Michelle Finholdt individually for the use of a previous day care facility on South Service Drive. Michelle Finholdt became the owner of this building in 1996 for \$64,000-\$69,000 and sold it to the wife of a member of the Board of Directors of the Center for \$200,000 in December, 2004. Michelle Finholdt testified that she retained the profit from this sale. The property is not currently used as a day care. (Tr. 155-157)
21. The Center's 2003, 2004 and 2005 federal Form 990 income tax returns show the following: (A-44,68,92)

	<u>2003</u>	<u>2004</u>	<u>2005</u>
Program Service Revenues	\$415,627	\$488,457	\$513,821
Program Service Expenses	\$388,757	\$456,337	\$488,558
Depreciation	\$ 23,527	\$ 19,216	\$ 16,329
Real Estate Taxes	\$ 3,020	\$ 5,344	\$ 16,260
Excess or Deficit for year	\$ -5,187	\$-16,410	\$ -7,952

The Center offered no documentation that would show either a profit or loss for the relevant assessment years.

22. The Goodhue County Assessor had previously denied the Center's request for tax exemption as a "seminary of learning". The instant Petitions to Tax Court resulted. (A-1, 3). These cases were tried only on the issue of "purely public charity" under Minn. Const. Art. 10 sec. 1 and Minn. Stat. §272.02, Subd. 7. (A-5)
23. On January 18, 2007 the Tax Court issued its Finding of Fact, Conclusions of Law, Order for Judgment and Judgment. Goodhue County then initiated an appeal to this Court (A-5, 22, 23)

ARGUMENT

By a decision dated January 18, 2007, the Tax Court issued its Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment finding that the Center was entitled to a property tax exemption under Minn. Const. Art. 10 §1 and Minn. Stat. §272.02 Subd. 7 for assessment years beginning January 2, 2004, and January 2, 2005, and ordering Goodhue County to issue refunds for taxes paid during those years.

I. STANDARD OF REVIEW

The principal issue in this appeal is whether the Tax Court properly interpreted and applied Minn. Const. Art. 10 §1 and Minn. Stat. §272.02 Subd. 7 to grant a property tax exemption to the Center for assessment years of January 2, 2004, and January 2, 2005. This Court must review Tax Court decisions pursuant to Minn. Stat. §271.10 to determine if the Tax Court had jurisdiction, whether the Order of the Tax Court was justified by the evidence, was in conformity with the law, and to determine if errors of law were committed.

Goodhue County contends that the Tax Court's decision to order final judgment was not justified by the evidence and was not in conformity with the law. Goodhue County further contends that there were errors of law committed. Goodhue County contends that the Tax Court's decision should be reversed by this Court.

II. BURDEN OF PROOF

All property is taxable unless the property is by law exempt from

taxation. Minn. Stat. §272.01 Subd. 1.

Statutory provisions exempting property from taxation are to be strictly construed and exemption from taxation is the exception. ILHC of Eagan LLC v. County of Dakota, 693 N.W.2d 412 (Minn, 2005). The burden of proof rests with the party seeking the exemption. Care Institute, Inc. – Roseville v. County of Ramsey, 612 N.W.2d 443 (Minn. 2000). Each case must be decided on its own facts. Mayo Foundation v. Commissioner of Revenue, 236 N.W.2d 767 (Minn. 1975).

The basis of tax exemptions is the accomplishment of public purposes and not the favoring of particular persons at the expense of taxpayers generally. In re Petition of Board of Foreign Missions of Augustana Synod, 22 N.W. 2d 642 (Minn. 1946); Camping and Education Foundation v. State, 164 N.W. 2d 369, 372 (Minn. 1969).

The Center did not meet its burden of proof that it is entitled to the tax exemption pursuant as provided in the Minnesota Constitution and Minn. Stat. §272.02, Subd. 7. (2004)

III. FOR THE CENTER TO BE ENTITLED TO A TAX EXEMPTION IT MUST BE A PURELY PUBLIC CHARITY PURSUANT TO MINN. CONST. ART. 10 §1 AND MINN. STAT. §272.02 SUBD. 7

The Minnesota Constitution provides that "[t]axes shall be uniform upon the same classes of subjects and shall be levied and collected for public purposes, but *** institutions of purely public charity *** shall be exempt from

taxation except as provided in this section.” Minn. Const. Art. 10, §1. Minn. Stat. §272.02 Subd. 7 states that institutions of purely public charity are exempt from taxation.

Minn. Const. Art. 10, §1 further states that the “[p]ower of taxation shall never be surrendered, suspended, or contracted away,” and that “[t]axes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes...”

Minn. Stat. §272.02 Subd. 7 does not define what is or is not an institution of purely public charity. This Court has established a six factor test to help determine whether an organization is an institution of purely public charity. North Star Research Institute v. County of Hennepin, 236 N.W. 2d 754 (Minn. 1975).

As a preliminary matter, this Court, in the past, has defined purely charitable institutions as “[a]n institution organized for the purpose of rendering aid, comfort, and assistance to the indigent and defective, open to the public generally, conducted without a view to profit, and supported and maintained by benevolent contributions.” State v. Bishop Seabury Mission, 95 N.W.2d 882 (Minn.1903). This Court has also stated in State v. Willmar Hosp., Inc., 412 N.W.2d 564, 566 (Minn.1942) that “purely” means “wholly,” “solely,” and “exclusively.”

More recently, this Court has stated that:

“The legal meaning of the word ‘charity’ has a broader significance

than in common speech and has been expanded in numerous decisions. Charity is broadly defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons by bringing their hearts under the influence of education or religion, or relieving their burden from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.” Junior Achievement of Greater Minneapolis v. State, 135 N.W. 2d 881, 885 (Minn. 1965).

This Court has also held that a worthwhile objective, alone, does not justify classification as an institution of purely public charity. SHARE v. Commissioner of Revenue, 363 N.W. 2d 47, 50 (Minn. 1985).

IV. FOR THE CENTER TO SEEK A “PURELY PUBLIC CHARITY” TAX EXEMPTION THE NORTH STAR FACTORS MUST BE APPLIED

This Court has held that the North Star factors are guidelines. Not every factor must be met for an institution to qualify for the exemption. Care Institute, Incorporated–Maplewood v. County of Ramsey, 576 N.W. 2d 734 (Minn. 1998). That case held that the Supreme Court will affirm the Tax Court if there is sufficient evidence in the record upon which the Tax Court could have reasonably based its decision.

At trial, Goodhue County did not stipulate that the Center met any of the requirements of the North Star Factors.

A. North Star Factor 1:

Whether the stated purpose of the undertaking is to be helpful to others without expectation of material reward.

1. Center Did Not Meet Its Burden of Proof

Goodhue County contends that the Center did not meet its burden of proof in regard to this factor. Goodhue County contends that to meet its burden of proof in regard to Factor 1, the Center should have offered to the Tax Court an Internal Revenue Service (IRS) Determination Letter granting to the Center 26 U.S.C. 501(c)(3) status for the applicable assessment years. No such document was offered or received into evidence. A Minnesota Department of Revenue Certificate of Exempt Status was not offered by the Center.

26 U.S.C. Sec. §501(c)(3) and 508 contain the requirements for recognition as a §501(c)(3) organizations.

Goodhue County is not arguing that the Center does not have 26 U.S.C. §501(c)(3) status. Based on the evidence produced at trial, the County could not make that determination. Goodhue County maintains that there is not sufficient documentation in the record for the Center's case in chief, other than conclusory testimony, to make such a determination. The granting of an exemption from property tax is a serious matter. The Internal Revenue Code also provides that donations to valid organization are deductible by the donor. The Center has not produced adequate documentation to show that they are eligible for such treatment This is an issue when addressing Factor 2.

The Center's Articles of Incorporation were offered by the Center and received. That document was dated October 24, 1995, eight years before the first year for which tax exemptions in these cases were sought. (A-25)

Goodhue County contends that the Tax Court should have gone beyond the Articles of Incorporation to the reality of the Center's operation. To do so, would have required more than reviewing the Articles of Incorporation and the summary exhibits.

Goodhue County offered the Center's 2003, 2004 and 2005 Federal Form 990 returns and they were received into evidence. (A -44, 68, 92) The Center's exhibits did not amount to a certified financial statement, a financial statement prepared pursuant to generally accepted accounting principles, an annual report to the Minnesota Attorney General, or federal tax returns. It is undisputed that the Center has the volunteer services of James Welsch, CPA. Mr. Welsch arranged for professional preparation of the Center's federal Form 990 tax returns. (Tr. at 11)

The Tax Court reviewed the Center's Articles of Incorporation and concluded that all the North Star Factors other than Factor 3 had been satisfied. (A-14) The County maintains that the actual practice of the entity must also be in conformity with its stated mission. Franciscan Sisters of Little Falls v. Commissioner of Revenue, Dkt. No. 4772 (Minn. Tax Ct. Jan. 7, 1988).

The Tax Court found that the Center was organized as a nonprofit corporation. (A-8). The Tax Court stated that the Center had not posted a profit in each of the three taxable years of 2003, 2004 and 2005. (A-15) The Tax Court further found that the Executive Director, Michelle Finholdt, was compensated \$29,000 in 2005. (A-9)

Goodhue County contends that there was no credible evidence placed in the record by the Center which would support the issue of whether the Center is a nonprofit corporation and whether or not it posted a profit in 2003, 2004, and 2005. The record of the Center's case is devoid of any documentation on these issues.

Review of the federal Form 990 income tax returns for the applicable years reveal the following:

In 2003 Michelle Finholdt was compensated \$43,389 as the Chairperson of the Board of Directors; in 2004, the assessment year in which the Center first sought exemption, Michelle Finholdt was compensated \$23,172 as Chairperson of the Board of Directors; in 2005, the second assessment year in which the Center sought exemption, Michelle Finholdt was compensated \$29,380 as Chairperson of the Board of Directors. (A-47, 71, 96). Michelle Finholdt testified that she is an employee of the Center and gets a salary as Executive Director. (Tr. 23-24) Michelle Finholdt testified that she works 30 hours per week. (Tr. at 9)

In regard to the issue of material reward, the County sets out the exchange between Goodhue County and Michelle Finholdt during the time that she was the Center's witness at trial. Goodhue County asked her if the previous Center location on South Service Drive had been sold before the Center moved into the subject property. The exchange was as follows:

Q. Since that time, you have moved to your new facility?

A. Correct

Q. Did you lease the facility on South Service Drive?

A. We were leasing space from that location. So we pulled out of our lease at that point.

Q. Somebody else owned the building?

A. Correct. (Tr. at 21-22)

Later in the trial, Goodhue County called Michelle Finholdt as a witness. The following exchange occurred:

Q. I just asked Mr. Welsch a question about the house on South Service Drive. Under the Rainbow was leasing the house from you, is that correct?

A. Correct.

Q. When did you get on the title of that house, when did you own it.

A. I bought the house in 1996.

Q. Who did you buy it from?

A. Evaline Thorn, I believe. It was a chiropractor's office.

Q. How much did the daycare pay you every month?

A. 1,000, 1,300, I don't remember exactly. It's been a few years back now.

Q. That was income to you, income to you personally?

A. Income to me?

Q. Yes

A. If that's how you define it. I made house payments on it.

Q. You paid payments to Mr. Thorn?

A. To a mortgage company.

Q. Then you sold it, is that right?

A. Correct.

Q. Who did you sell it to?

A. To Shelly Muelken.

Q. Is she married to David Muelken?

A. She is.

Q. He is on your board, is that right?

A. Correct.

Q. Had you made any major improvements to the house between the time you bought it and sold it to Muelkens?

A. When we first purchased it, there was some improvements made to it.

Q. Are Muelkens using it for a day care?

A. No.

Q. How much did you buy it for?

A. Let's see. Back in 1996, I couldn't tell you exactly. I'm guesstimating 64,000, 69,000. I don't recall.

Q. Then did the Muelken's pay approximately \$200,000 for it?

A. Correct

Q. What did you do with the difference between those two, put it back into your day care facility?

A. No.

Q. Where did it go?

A. It was our personal. It went into my family. It was a personal transaction. (Tr. at 155-158)

The Center did not meet its burden of proof for this factor. The Center did not submit documentation in its case which would substantiate its non-profit status. It did not submit credible financial information to show that it had or had not posted a profit or loss for the assessment years in question. The Chairperson of the Board of Directors was paid \$43,389 the year prior to the first year for which exemption was sought. The Chairperson of the Board of Directors, after leasing a building owned by her to the Center on a “triple net lease” made a profit of approximately \$130,000-140,000 within seven years. The Chairperson kept the profit. She sold the building to the wife of a member of the Center’s Board of Directors. The Tax Court’s decision was not justified by the evidence and was not in conformity with the law. There were errors of law committed.

B. North Star Factor 2:

Whether the entity is supported by donations and gifts in whole or in part.

The Center did not meet its burden of proof in regard to Factor 2.

Compliance with Factor 2 could be shown by documentation showing the value of the contribution, property or service donated; documentation that would show the use of the donation; documents that can be used to prove that the required donations occurred, including certified financial statements, financial

statements prepared in accordance with generally accepted accounting principles, Federal Form 990 and its accompanying schedules or sworn statements from donors. Instead, the Center offered Exhibits 2, 3 and 4 (A-29, 30, 31). Goodhue County contends that the amounts noted are not wholly credible. They are not significant when compared to the land and construction costs and the revenue generated by the Center. The Tax Court is required to look at the actual practice of the entity.

The Center's federal income tax returns for 2003, 2004 and 2005 (A-43, 69, 92) show as follows:

2003 FORM 990

government contributions (grants)	\$5,396
net income from special events	\$3,910
total revenue	\$425,203

On Schedule 4 Form 990 part VI Line 82b Donated Services the Center states: "Unable to value"

Attached to the Form 990 (A-43) is a form entitled "Charitable Organization Annual Report". Only one page of that document states that if the organization files a Form 990 "you may skip this page". This form is not completely filled out.

2004 FORM 990

government contributions (grants)	\$500
net income from special events	\$1,997
total revenue	\$464,520

On Schedule 4 Form 990 Part VI Line 82b Donated Services the

Center states: "Unable to value".

Attached to the Form 990 (A-68) is a form entitled "Charitable Organization Annual Report". Only one page of the document states that if the organization files a Form 990 "you may skip this page." The form is not completely filled out.

2005 FORM 990

government contributions (grants)	-0-
net income from special events	\$2,724
total revenue	\$517,259

On Statement 4 Form 990 Part VI Line 82b - Donated Services the Center states: "Unable to value."

Attached to the Form 990 (A-92) is a form entitled "Charitable Organization Annual Report". Only one page of the document states that if the organization files a Form 990 "you may skip this page." The form is not completely filled out.

The Charitable Organization Annual Report states at page one: Attach a charitable organization financial statement. If revenues exceed \$350,000, financial statement must be audited, certified and prepared in accordance with generally accepted accounting principles. Please refer to Minnesota Statutes Sec. 309.53 (2002)

In contrast to federal Form 990, the Center at Exhibit 2 (A-29) states the following:

2003

volunteer time	\$31,331
fund raisers (net profit)	\$2,845
garage sale	\$1,065

2004

volunteer time	\$6,156
fund raisers (net profit)	\$2,015
garage sale	\$1,026

2005

volunteer time	\$5,532
fund raisers (net profit)	\$2,724
garage sale	-0-

The only individual donation that the Center shows is for \$60 in 2006. (A-29)

Further, Exhibit 2 is in direct contradiction to the tax returns.

	<u>2003</u>	<u>2004</u>	<u>2005</u>
<u>Exhibit 2 (A-29):</u>			
Total enrollment billed	386,863	468,073	496,644
<u>Form 990 (A-44, 68, 92):</u>			
Program service revenue	415,627	488,457	513,821
Part VII			
tuition	390,710	463,554	489,760
field trips		485	

Goodhue County further contends that the Center's Exhibit 3 (A-30) is a summary, non-itemized statement of volunteer hours.

Donations should be documented. Presumably, a donation for service must include the name of the individual or corporation rendering the

service, a description of the service rendered, including the amount of time donated, and a per hour rate ascribed to the donation.

The calculation for volunteer work, the County contends, is done with many assumptions, minimal documentation, and most importantly, is in direct contradiction to the tax returns.

The land and construction costs, and the revenue generated by the facility, leads the County to the conclusion that donations are not significant in comparison. See Westbrook Health Center v. County of Cottonwood, File No. CX-03-128 (Minn. Tax Ct. December 14, 2004). In that case the Tax Court found donations comprised the majority of the taxpayer's gross income and exceeded its net income over the period.

The issue of whether payments of child care assistance by units of government is a "donation" arises. The Tax Court references this program in its Order. (A-20)

Goodhue County contends that child care assistance payments are not "charity" or "donations". Rather, they are payments to the Center for services rendered. The child's parent(s) must qualify for the assistance payments. There is a co-pay requirement. The provider must sign a voucher to be paid that indicates that it is being paid for services. The Center charges a market based fee to the families. There are no scholarship or grant programs for needy children. The Center staff is paid salaries and benefits.

The Tax Court in the instant case stated: "However, the Minnesota

Supreme Court has recognized the definition of 'gifts and donations' may include governmental assistance payments in addition to traditional contributions derived from private sources. Rio Vista Non Profit Corporation v. County of Ramsey, 277 N.W. 2d 187, 191 (Minn. 1979). (A-10)

Goodhue County argues that the above-noted case is clearly distinguishable from the instant case. Rio Vista received both construction costs and rent assistance from the federal government. This Court concluded the existence of Rio Vista could be attributed to support from the federal government because the government guaranteed and funded in part the low interest construction loan and it also provided significant rent assistance. Rio Vista's services were clearly directed to needy persons. The tenants received housing at considerably less than market value or cost. Even in Rio Vista, this Court stated that the question was "close" .

The Tax Court, in the instant case, also cited Eyota Kid's Korner, Inc. v. County of Olmsted, File No. C5-92-1513 (Minn. Tax Ct., December 29, 1992).(A-16) The Tax Court stated: "Eyota Kid's Korner, similar to petitioner, met its operating expenses through tuition, grants and fundraisers. Fee payments... were reasonable and subsidized by public contributions."

The instant case can be clearly distinguished from Eyota. Eyota was tried on two issues, whether Eyota was (1) a "seminary of learning" and (2) if it was a purely public charity. The Tax Court found that evidence supported its finding that Eyota functioned as an educational institution. Eyota also provided

grant money to students who were unable to pay. The Tax Court was provided a computer summary of financial information from the Minnesota Attorney General's Office by Eyota.

The Center did not meet its burden of proof regarding Factor 2. The Center did not submit adequate documentation in its case which would substantiate donations, gifts, fundraisers, and volunteer time.

Even if the Center had produced adequate documentation, the donations, gifts, fundraisers, and volunteer time to the Center were minimal for the assessment years, compared to revenue and land and construction costs. Child care assistance payments are payments for services rendered, not donations. The Prairie Island Indian Community pays fees to the Center for services. The Center's federal Form 990 for the applicable years contradict the Center's exhibits as to the value of volunteer time.

In testimony, Michelle Finholdt stated that only one individual donation was received in 2006 for \$60. (Tr. At 31). Michelle Finholdt further stated that her father had put together Exhibit 3 (Tr. At 32). Her father did not testify at trial. When Michelle Finholdt was asked if the Center ever gave any donations to other charitable organization, she stated: "I don't believe that we have." (Tr. at 34).

Goodhue County maintains that the Tax Court decision that the Center met Factor 2 was not justified by the evidence, and was not in conformity with the law. Goodhue County contends that there were errors of law committed.

When you remove from revenue child care assistance payments, Prairie Island Indian Community fees, and remove from expenses volunteer time, the percentage of so called “contributions” to revenue is minimal.

C. North Star Factor 3

Whether the recipients of the charity are required to pay for the assistance received in whole or in part.

The Tax Court found that the third factor was not satisfied by the Center.

Goodhue County does take issue with the Tax Court's finding that the Center's charges are at or below market rate. (A-18)

Goodhue County contends that the Center did not produce documentation that shows the difference between the total cost of care and the total of all payments received. In particular, there was no documentation of the Center's decision to set charges below cost in order to achieve a charitable purpose.

The following exchange occurred between Goodhue County and Michelle Finholdt:

Q. When you were talking about what you charge individuals, I believe that you stated that Goodhue does a survey that's updated a couple of times a year, is that right?

A. I know for sure once a year.

Q. So a child is coming in on child care assistance, that is the amount you charge

the child is what Goodhue provided for?

A. We do not charge a child from Goodhue County any different that we would a child who is not with Goodhue County.

Q. The child that is able to pay, they pay the same amount that Goodhue County would provide for the child?

A. Correct. Goodhue County gets their portion. I'm not sure if I'm 100% understanding your question.

Q. You have a family that's able to pay with no involvement with Goodhue County child care assistance, do you charge them the same amount that Goodhue County would pay for that child if the child were on child care assistance?

A. Yes, we would. (Tr. at 27)

Connie Minnick, Goodhue County Social Services, testified about co-payments for child care assistance program. Ms. Minnick testified that a co-payment is calculated on the family's income. She testified that Minnesota has a sliding fee schedule for co-payment. She further stated that the co-payments could start at \$2 and go up to the cost of care. The co-payment would then be paid to Goodhue County Social Services. Goodhue County Social Services then reports to the State how much they are billing the parent. There is then a deduction of Goodhue County Social Services payment from the State to reimburse the County for the expenses they have paid (Tr. at 114-123)

The Center's own Exhibits 5 and 6 (A-32, 33) show that the Center's rates are above market and competitive in important areas.

Goodhue County contends that the Center's rates are market rate and not below. Further, Goodhue County argues that there is a "restriction" is for paying clients only.

This Court has previously stated that an organization must show that rates are "considerably less than market value or cost". Community Memorial Home at Osakis v. County of Douglas, 573 N.W.2d 83, 87 (Minn. 1997).

The Tax Court's finding regarding this issue of at market or below market was in error. The Tax Court failed to make a complete market value or cost analysis.

D. North Star Factor 4

Whether the income received from gifts, donations and charges to users produces a profit to the charitable institution.

The Tax Court found that no profits were shown by the Center in 2003, 2004, and 2005. (A-5, 15). The Tax Court mistakenly asserts in its Memorandum to Order that the Center submitted its tax returns to the Tax Court. (A-19) On the contrary, Goodhue County submitted the returns. (A-44, 68, 92) The Center did not meet its burden of proof in its case in chief. The Center submitted no documentary evidence that would show that it either produced a profit or did not produce a profit for the assessment years in question.

Compliance with this factor could include a financial statement, a certified financial statement, or a Federal Form 990. The Center did not even produce a statement of expenses. The Center did not show how any excess

revenues over expenses were directed back into a charitable purpose.

The Tax Court stated that Goodhue County had argued that depreciation was generating the Center's loss on its tax returns. (A-13). Goodhue County would assert that the Tax Court would have had no financial information concerning depreciation, or other issues, unless the County had brought it to the Tax Court's attention.

The Center did not meet its burden of proof to show that it produced a profit or loss in the years in question. In addition to failing to provide profit or loss documentation, the Center failed to provide any documentation to whether any "profits" were used to further the organization's charitable objectives. Skyline Preservation Foundation v. County of Polk, 621 N.W. 2d 727 (Minn. 2001) Goodhue County again maintains that the Tax Court's decision was not justified by the evidence, was not in conformity with the law, and errors of law were committed.

E. North Star Factor 5

Whether the beneficiaries of the charity are restricted or unrestricted and, if restricted, whether the class of persons to whom the charity is made available is one having a reasonable relationship to the charitable objectives.

The County contends that the Center did not meet its burden of proof regarding this factor.

The County maintains that the restriction imposed by the Center on "beneficiaries" would be that the Center has limited itself to fees paying children

and families. The Center's services are not available to those who cannot pay. The Center has no grant or scholarship program.

This factor also includes within it the issue of whether the Center is lessening the burden of government.

The Center's Exhibit 6 (A-33) shows that there are four child care centers in Red Wing, Minnesota. Since these tax petitions involve the whole of Goodhue County, presumably that document should have also made reference to child care centers in Zumbrota and Cannon Falls, but did not do so. The Center makes no reference to in-home day cares, although there are 100 throughout Goodhue County.

Goodhue County argues that the expert witness called by the Center to bolster its claim that the Center is lessening the burdens of government, Patrick Gannon, was not credible on this issue.

Firstly, Mr. Gannon's business is located in Rochester, Olmsted County, Minnesota. He admitted that he had had no ongoing contact with Goodhue County Social Services other than calls from Goodhue County to his business for child care referrals. (Tr. at 71-73). He stated on direct examination that the Center was one of only four child care centers that provide a center care option in Goodhue County. (Tr. at 67). That is incorrect. There are four child care centers in Red Wing and six in Goodhue County. (Tr. at 75) He further testified that he did not know of any non-profit child care centers that pay real estate taxes. (Tr. at 69) He further clarified this by limiting his testimony to

freestanding child care centers. (Tr. at 69)

On cross examination by the County the following exchange occurred:

Q Are you aware that on our Goodhue County day care provider list between the centers and the family day cares, there is at least 100 providers?

A. I haven't looked at the - I'm not aware of the number of family child cares specifically because we work in 20 counties, I can't recall the number. If you tell me it's 100, I don't have any reason to disagree with that.

Q. You testified that there were only four child care centers in Goodhue County, is that right?

A. I believe that I testified there were six centers in Goodhue County, four in Red Wing.

Q. Could I ask you why -- I'm looking now at Exhibit 6, which is the list of Red Wing centers, why centers in Cannon Falls and Zumbrota were not included on that list?

A. Only because this is a list of the ones in Red Wing.

Q. Are you aware of what licensed capacity is in either the Zumbrota or Cannon Falls facility?

A. I am not. (Tr. at 75)

...

Q. I believe that one of the last statements you made related to your knowledge of whether or not freestanding day cares paid property taxes or not.

Correct me if I'm wrong, were you just referring to Olmsted County at that point?

A. No.

Q. What counties were you referring to?

A. Specifically Freeborn County, which is one of the counties in our service delivery area, and Olmsted County. Those were two counties I was specifically referring to.

Q. What kinds of facilities are those, are they located in churches or freestanding on their own?

A. It's a mix. The one in particular I'm thinking about in Olmsted County is a freestanding building, and I don't know if I have information about the location of the one in Freeborn County, I believe its freestanding.

Q. Do you know the names of either of those day cares?

A. Yes. The one in Olmsted County is Civic League Day Nursery...

Q. What about Freeborn?

A. I don't know the location of the one in Freeborn.

Q. Do you know the name?

A. I don't have that readily available. I was talking to one of my staff about it recently. I could get it. (Tr. at 76-77)

Mr. Gannon testified on cross examination that he was aware that the State of Minnesota will pay a higher payment for infants for a longer period of time at state licensed day care centers as opposed to family day cares. (Tr. at 79)

Mr. Gannon testified that he had not personally visited the Center.

(Tr. at 83) Mr. Gannon testified that he personally had not taken any calls from Goodhue County specifically requesting a Spanish speaking provider. (Tr. at 84) Finally, Mr. Gannon stated that he did not bring any statistics with him regarding whether parents were able to find day care. (Tr. at 85)

The Tax Court found that the Center lessened the burden of government by providing day care services. (A-19). The Court stated that Goodhue County had argued that the State of Minnesota had not taken on the construction and management of child care centers. The Court further stated that Goodhue County argued that the government is merely providing a gratuitous entitlement to qualifying families without advancing the goal of preserving quality childcare within the state of Minnesota. (A-20).

Goodhue County did not advance the argument that the government is providing a gratuitous entitlement to qualifying families. Goodhue County is advancing the argument that there is a co-pay provision for child assistance payments. If the parent fails to pay the co-payment, there are consequences.

Connie Minnick testified as follows: "If the parent doesn't make the co-payment to us, we also sent them at 15 day notice and also a notice to the provider. Any notice that is sent to the provider doesn't have the detailed information of why the parent is closing. If they pay no co-payment or corrective action is not taken within 15 days, their case will close. (Tr. at 122)

Goodhue County then asked the witness: "That means no more child care assistance?" Ms. Minnick answered: "No more child care assistance."

(Tr. at 123)

Obviously, the child care assistance program is of great benefit to community. Goodhue County continues to maintain that the child care assistance payments are made to the Center as payment for services, not as a donation. Because of the way in which the program is administered, child care assistance is not "charity."

There are many businesses who do good for the community and could argue that they lessen the burdens of government. Any business that accepts any type of government assistance could be in that category. Goodhue County would suggest the grocery store owner who accepts food stamps, or the medical or mental health clinic that accepts medical assistance could advance this argument. This does not convert the going business to a charity.

Goodhue County's position is that the child care assistance program is there for the benefit of families; they can arrange child care as needed; they can pay for services with dignity; and they can truthfully say that they are putting something back into the child care assistance program.

The County maintains that the Tax Court's decision was not justified by the evidence, was not in conformity with the law, and errors of law were committed.

F. North Star Factor 6:

Whether dividends, in form or substance, or assets upon dissolution are available to private interests.

The Tax Court found that the sixth factor was satisfied because the Petitioner's Articles of Incorporation state that upon dissolution all the corporation's assets must be distributed for use in a similar child care exempt organization or to a charitable organization exempt under Section 501 (c)(3) of the Internal Revenue Code. (A-21)

The County contends that compliance with this factor would be also need to be demonstrated through an Internal Revenue Service Determination Letter. Such letter was not offered by the Center.

The Center's Articles of Incorporation include Article XI, Dissolution.(A-27) That Article states as follows:

"Upon the dissolution of the corporation, the board of directors shall, after paying or making provisions for the payment of all of the corporation's liabilities, disposes of all of the corporation's assets exclusively for the purpose of the corporation in such manner as the board of directors shall determine, or to such organization or organizations organized and operated exclusively for charitable, educational, or scientific purposes as shall at the time qualify as an exempt organization or organizations under section 501(c)(3) of the Internal Revenue Code, as amended, or the corresponding provision of any future United States Internal Revenue Law), as the board of directors shall determine"

Goodhue County contends that this is a permissive statement, not a mandate.

Goodhue County further maintains that one needs to go past the Articles of Incorporation to the actual practice of the entity. Goodhue County again references the sale of the building on South Service Drive in Red Wing.

The County also contends that the Articles of Incorporation did not

contain mandatory language, such as a statement that (1) none of the assets shall benefit any private individual or business; (2) that upon dissolution all of the assets of the corporation shall be disposed of for charitable purposes; (3) that the operation of the Center shall not materially enhance, directly or indirectly, the private gain of any individual, except for reasonable compensation for the accomplishment of services rendered; and (4) that excess revenues, over expenses, if any, shall not be directed to any private interests.

The Center has not met its burden of proof. The documentation found in the Articles of Incorporation is not adequate. The Articles of Incorporation do not address the issue of "gain" on real property or personal property, or the increase in "net worth." The Tax Court's decision was not justified by the evidence, was not in conformity with the law, and there were errors of law committed.

CONCLUSION

The Center has not met its burden of proof for North Star factors 1, 2, 3, 4, 5 and 6. The Center is not a purely public charity pursuant to Minn. Const. Art. 10, §1, Minn. Stat. §272.02 Subd. 7 (2004).

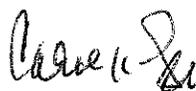
Recently, this Court addressed the burden of proof and North Star factors 3, 4, and 5 in Croixdale Inc. v. County of Washington, (A06-153) (Minn. January 25, 2007). Goodhue County maintains that this recent case fully supports its arguments.

The Tax Court erred in granting a tax exemption to the Center for

assessment years 2004 and 2005. The Tax Court's Findings of Fact were not supported by the evidence. The Tax Court's Conclusions of Law were not supported by the evidence and in conformance with the law. Errors of law were committed by the Tax Court. The Tax Court's Order should be reversed by this Court.

Respectfully Submitted,

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ADDENDUM TO BRIEF

M.S.A. Const. Art. 10, §1 (1976)

§1. Power of taxation; exemptions; legislative powers

Section 1. The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes, but public burying grounds, public school houses, public hospitals, academies, colleges, universities, all seminaries of learning, all churches, church property, houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation except as provided in this section. There may be exempted from taxation personal property not exceeding in value \$200 for each household, individual or head of a family, and household goods and farm machinery as the legislature determines. The legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to cash valuation. The legislature by law may define or limit the property exempt under this section other than churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities and seminaries of learning.

Minn. Stat. §272.02 Exempt Property.

Subdivision 1. Exempt property described. All property described in this section to the extent limited in this section shall be exempt from taxation.

Subdivision 7. Institutions of public charity. Institutions of purely public charity are exempt... (2004)

Supreme Court No. A-07-0468

STATE OF MINNESOTA

IN SUPREME COURT

Under the Rainbow Child Care Center, Inc.

Respondent,

CERTIFICATION OF BRIEF LENGTH

v.

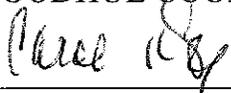
County of Goodhue, Respondent,

Relator.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, Subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 8,366 words. This brief was prepared using Microsoft Word 2002.

Dated: March 20, 2007

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