

NO. A06-0153

State of Minnesota
In Supreme Court

Croixdale, Inc.,

Relator,

v.

County of Washington,

Respondent.

RELATOR'S BRIEF AND APPENDIX

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STATEMENT OF THE CASE

Realtor, Croixdale, Inc. (“Croixdale”), is a 501(c)(3) nonprofit corporation that owns and operates a senior housing facility in the City of Bayport, in Washington County. The facility, which was completely rebuilt starting in 2003, includes 43 residential units of assisted living and 10 units of memory care (“Assisted Living Unit”).

Croixdale undertook a massive capital campaign to help fund the \$18 million rebuilding project. Donations totaling approximately \$10.5 million were pledged, and approximately \$9 million of those pledges have been collected to date. Croixdale used the donated funds for the construction and, as a result, has been able to reduce the amount it needs to charge its residents for housing and care. Croixdale also provides additional assistance to its most needy residents through the proceeds of a \$1.5 million endowment.

In this action, Croixdale seeks a property tax exemption with regard to the Assisted Living Unit, pursuant to the portion Minn. Stat. § 272.02 that provides that “institutions of purely public charity” are exempt from real property taxation. Respondent Washington County disputes whether Croixdale qualifies for such an exemption. Following a three-day trial, the Tax Court (The Honorable Sheryl Ramstad) erroneously determined that only three of the six *North Star* factors that are routinely considered in deciding cases under Section 272.02 weigh in favor of finding that Croixdale’s Assisted Living Unit operates as an institution of purely public charity. On that basis, the Tax Court went on to conclude that the Assisted Living Unit is not exempt.

Croixdale now seeks review of the Tax Court ruling pursuant to Rule 116 and Minn. Stat. § 271.10.

STATEMENT OF THE ISSUE

Whether an assisted living facility that (a) utilizes millions of dollars of charitable donations to reduce charges to residents to the point necessary to allow it to continue to operate at a break even level, (b) charges its residents considerably below the market rate for comparable housing and services, (c) serves an economically disadvantaged population, (d) provides additional subsidy to its most needy residents, and (e) provides a reduced cost housing and care alternative for its nursing home eligible residents, qualifies as a purely public charity exempt from property taxes under Minn. Stat. § 272.02, subd. 7?

The Tax Court held in the negative.

Skyline Preservation Found. v. County of Polk, 621 N.W.2d 727 (Minn. 2001)

North Star Research Institute v. County of Hennepin, 306 Minn. 1, 236 N.W.2d 754 (1975)

Care Institute, Inc.-Roseville v. County of Ramsey, 612 N.W.2d 443 (Minn. 2000)

Rio Vista Non-Profit Housing Corp. v. Ramsey County, 277 N.W.2d 187 (Minn. 1979)

Minn. Stat. § 272.02

STATEMENT OF FACTS

Croixdale is a community-based, 501(c)(3) nonprofit, charitable entity providing assistance for Bayport and St. Croix Valley senior residents in need. T. 14-16; Exs. 1, 2, 8, 9, 10 and 17.¹ From its inception, Croixdale has lived up to its mission of meeting the physical, emotional, recreational, social, religious and other needs of the elderly and handicapped people of Washington County on a nonprofit basis. T. 14; Exs. 4 and 5.

Community-based charity has supported Croixdale and its residents since 1956, when Croixdale's predecessor - Washington County Association for Senior Citizens, Incorporated - started planning for a senior residence. Ex. 4. Donations built the original assisted living facility, which opened in 1961. (*Id.*) Donations were critical for building the independent living units in 1981. T. 64; Ex. 4. Croixdale charged below market rents, and consistently operated at a loss. T. 17-18 and 83; Ex. 3. To stay open, Croixdale obtained annual donations to cover operating losses, typically from the Katherine B. Andersen Fund ("Andersen Fund"), a charitable fund having historic connections to Croixdale. T. 17-19 and 83; Ex. 4.

At the end of the 1990's, Croixdale faced numerous obstacles to its existence. T. 20-22; Ex. 4. The Andersen Fund informed the Croixdale Board of Directors (the "Board") in 2000 that it would stop funding operating losses. T. 23; Ex. 5. Croixdale needed to improve its financial and operational management process to remain viable as it struggled to provide the increasing amounts of care needed by its residents. T. 20-21;

¹ Citations in this Brief to the Transcript will be in the form "T. ___." Citations to Trial Exhibits will be in the form "Ex. ___." Citations to documents in Relator's Appendix will be in the form "A. ___."

Exs. 4 and 5. The facility was outdated and occupancy rates were falling. T. 19-20 and 22; Exs. 4 and 5. Croixdale had limited options: either close the doors, or change the operation and the facility. T. 22 and 83.

The Board realized that it had to make Croixdale sustainable over the long term or Croixdale would cease to exist as a housing facility for community seniors in need. T. 22 and 98; Ex. 4. With that in mind, the Board elected to affiliate Croixdale with Presbyterian Homes and Services (“Presbyterian Homes”), a nonprofit senior housing provider. T. 19 and 74-80; Exs. 4, 5 and 12. Furthermore, when Croixdale became affiliated with Presbyterian Homes, the Board made it clear that the management and operation of Croixdale had to be structured to provide high quality housing and service to physically and economically needy residents of the community at the most affordable cost and price possible. T. 83. Management assistance and planning support furnished by Presbyterian Homes at nearly *de minimis* charges upgraded the operation of the facility. T. 31-32, 74-76, 85-86 and 99.

In addition to affiliating with Presbyterian Homes, the Board completed an evaluation of Croixdale and a community needs analysis. T. 19-23 and 85-87; Exs. 4 and 5. The Andersen Fund sponsored a study to offer strategies for improving the operation and the services provided to residents. T. 22. The recommendations included rebuilding Croixdale. T. 22-25. The Board evaluated alternatives for remodeling and rebuilding the facility. T. 20-27. Remodeling proved impractical, however, so the Board decided to rebuild the facility. T. 26-27; Ex. 4.

The rebuilding project focused upon two objectives: (1) to provide a high-quality facility that would meet market and resident needs and demands; and (2) to keep debt levels low so that the charges to the low and moderate income persons who are the clientele of Croixdale could also be low. T. 35-37, 52-55, 67 and 337-338. The costs to construct and operate a facility adequate to meet the first objective were substantial. T. 22-28 and 50; Exs. 4 and 5. Accordingly, in order to meet the second objective, the Board determined that it needed capital contributions to offset construction costs. T. 35; Exs. 4 and 5.

The cost of building and operating the new facility were considered with respect to the amount of debt needed to build the facility and the income needed to service that debt. T. 35 and 93-96; Ex. 13. Croixdale determined that the capital raised through charitable contributions would directly reduce the monthly debt service costs that would have to be assessed to each unit. T. 89, 91-93, 139-140 and 332-333. With that in mind, the Board set out to raise \$8 million through charitable contributions and \$9.5 million through loan proceeds. T. 95 and 332-333; Exs. 4 and 33.

The capital campaign to raise the needed charitable donations targeted local foundations and charities. T. 28; Exs. 4 and 5. The Board concurrently established a separate endowment fund of \$1.5 million and a benevolence program ("Mission Benevolence") to use the annual investment proceeds of that fund to provide direct assistance to those residents who could not otherwise afford Croixdale. (*Id.*).

The capital campaign was a tremendous success. Croixdale received pledges totaling \$10.5 million and has collected over \$9 million of that total. T. 36; Ex. 6. With

the help of those donations, the old facility was demolished and a new facility, including an independent living wing and the Assisted Living Unit, were rebuilt at a total cost of \$18 million. T. 55, 91 and 150-152; Exs. 13, 25 and 33. The charitable donations reduced the debt incurred in connection with the construction of the new facility and, at the same time, reduced the current and future burden of servicing that debt. T. 89, 91-93, 328 and 332-339; Exs. 13 and 33.

With respect to the Assisted Living Unit, the effect of the capital campaign as planned was to reduce debt service by at least \$650 a month per unit. T. 332-334; Ex. 33. The capital campaign exceeded by the equivalent of \$11,000 per unit the projections used when the project was developed. Ex. 33. Thus, the effect of the capital campaign is even greater than the \$650 reduction in monthly charges. T. 333-334.

In accordance with Croixdale's articles and mission as a nonprofit provider of charity to elderly persons needing housing and care, the Board planned resident fees only high enough to cover operating expenses, including debt service. T. 56; Exs. 5 and 13. Fees are set with a singular goal: to operate at a break even level after application of the benefit of the capital campaign. T. 56, 67, 88-89, 91 and 96. Thus, the fee setting process incorporates the benefit of the capital campaign that paid half the cost of the facility. T. 57, 88-91, 98, 159-160 and 169-170.

Croixdale uses that approach in establishing the amount that it charges for housing and for the basic program of care and services that it provides to each assisted living resident. T. 132. When the Assisted Living Unit was reopened in 2004, after demolition and rebuilding, charges were set with respect to the project proforma, which established

break even income targets. T. 151-152, 159-160 and 169-170; Ex. 13. Subsequent budgeting and rate setting has kept charges at a break even level. (*Id.*)

All Assisted Living Unit residents need care and services because they can no longer live on their own. T. 163-164 and 185-187. Every assisted living resident has a place to live, and receives a specified number of meals, amount of basic services, and basic level of personal care. T. 185-187 and 395-397. The individual care needs vary for the residents. T. 185-187 and 395-398. Croixdale's pricing system tailors the amounts charged for increased levels of care to the actual cost of providing the extra care. T. 252-254 and 397-398. Accordingly, all residents receive a basic package, but residents who receive additional care pay an additional charge. (*Id.*) The basic charge is established with respect to a consistent core package of housing, service and care T. 399-402.

Croixdale's Assisted Living Unit serves the demographic of low to moderate income individuals in need of daily care. T. 100-101, 177-178 and 371-372; Ex. 33. With respect to income and assets, Croixdale's resident population is clearly at the lower end of the range. (*Id.*) As of December 2004, 90% of the residents of the Assisted Living Unit were considered very low income. Ex. 33.

Approximately 28 percent of the Assisted Living Unit residents receive governmental assistance through Washington County, as of May 2005. T. 339. These residents have extremely limited financial resources. The amount paid by government, together with the amount these individuals are able to pay on their own, is less than Croixdale's break even rates. T. 104-105, 136, 155-157 and 166-167; Ex. 20. Croixdale

could abandon these financially disadvantaged individuals and fill all the spaces in the Assisted Living Unit with persons who can afford the quoted rates, but Croixdale makes the affirmative choice to serve these most needy seniors in the community. T. 103-105, 158 and 192-193.

The 2005 budget shows that the gap between the break even budget amount for the Assisted Living Unit and the amount paid by or on behalf of the residents who receive government assistance is nearly \$193,000. T. 155-156; Ex. 20. As noted above, Croixdale has a Mission Benevolence program that it uses to help cover the shortfall between payment by these individuals and the quoted and reduced rates. T. 29-30, 91 and 156-158; Ex. 20. Mission Benevolence is used to fund “shortages for people who are viewed as falling between the cracks of the county, state or federal system of reimbursements.” T. 91, 156 and 338; Ex. 5.

The endowment for Mission Benevolence currently stands at \$1.6 million. T. 30. Those funds were provided by donations made in connection with the capital campaign, by prior donations, and by funds on hand. T. 63-64 and 103-104; Ex. 25. For 2005-2006, Croixdale plans to use \$80,000 from Mission Benevolence to cover a portion of the \$193,00 revenue shortfall related to residents who are unable to pay. T. 156 and 168. That is all of the money that is available from the annual proceeds of the endowment. T. 166 and 240-241. To make up the difference, Croixdale has to undertake risky depreciation practices (*i.e.*, not establishing reserves for future capital expenditures) and/or eventually raise more charitable donations. T. 105-108 and 157-158.

Croixdale does not require people to move out when they run out of money and when payments on their behalf do not cover the break even budget amounts Croixdale charges. T. 158. Croixdale strives to fill the resulting gap with real dollars. Failing to fill the gap and not achieve break even cash flow jeopardizes the viability of Croixdale. T. 90 and 97-98. Nevertheless, Croixdale elects to take that risk to insure it meets these residents' needs. T. 105. Without the support of Mission Benevolence Croixdale's ability to serve these most economically-challenged seniors would decline. T. 338.

Croixdale provides the daily needs for care for all the Assisted Living Unit residents, whether a person cannot remember to take medication, lacks the physical capacity to bathe him or herself, cannot cook a meal without risk of injury, or is even more severely dependent T. 163-164; Ex. 21. Croixdale is one of three assisted living facilities in the general Croixdale area capable of providing a level of care adequate for nursing home eligible residents. T. 281-283. Twenty-five Assisted Living Unit residents are nursing home eligible. T. 181-191; Ex. 23.

Croixdale was rebuilt to provides a place to live and care for all its residents, including those on government assistance and those who are nursing home eligible. T. 189-191. Without Croixdale, including its willingness to support those who cannot afford the break even rates, these individuals would need to live elsewhere, and could reside in a nursing home, where the cost, including the cost to government, would soar. T. 108.

Croixdale is structured as a nonprofit to provide charitable services and is not designed to generate a profit. Ex. 1. Croixdale's articles and governing documents

prohibit net income or net earnings from being distributed or otherwise inuring to the benefit of any member of Croixdale or any individual. (*Id.*) Upon dissolution, any assets may only be distributed to a nonprofit entity for use for charitable purposes. (*Id.*)

Every year from 1990 through 2004, Croixdale had a substantial operating loss from operations. Ex. 3. In 2002 and 2004, despite significant losses from operations, Croixdale had gains due to the capital campaign, which Croixdale used to construct the facility. Exs. 3, 6 and 25. Croixdale continues receiving donations to the capital campaign and applies the funds to debt relief. Ex. 25.

Croixdale's 2005-2006 budget will show an approximately \$404,000 GAAP loss. T. 89, 157 and 167. Although the budget has a goal of achieving positive cash flow in the amount of \$25,000, that positive cash flow results from carrying unfunded annual depreciation of \$574,000. T. 89-90 and 152.

STANDARD OF REVIEW

The Supreme Court reviews Tax Court decisions to determine whether the Tax Court lacked jurisdiction, whether the Tax Court's decision is supported by the evidence or was not in conformity with the law, and whether the Tax Court committed any other error of law. Minn. Stat. § 271.10, subd. 1; *Skyline Preservation Found. v. County of Polk*, 621 N.W.2d 727, 731 (Minn. 2001). Where issues of fact are not in dispute, the Supreme Court reviews "for an error in the Tax Court's application of law," which is "a question of law subject to de novo review." *Skyline*, 621 N.W.2d at 731.

With respect to a ruling on a request for an exemption under Minn. Stat. § 272.02, subd. 7, the Supreme Court will affirm if, after an independent review of the record, there

is sufficient evidence in the record upon which the Tax Court could reasonably base its conclusion. *Care Institute, Inc.-Maplewood v. County of Ramsey*, 576 N.W.2d 734, 738 (1998). The Supreme Court is not bound by a decision of the Tax Court, however, and will overrule the Tax Court if the evidence as a whole does not reasonably support the decision. *Bond v. Comm’r of Revenue*, 691 N.W.2d 831, 835-36 (Minn. 2005) (citing *Lewis v. County of Hennepin*, 623 N.W.2d 258, 261 (Minn. 2001)). Even if there is evidence to support the factual findings of the Tax Court, the Supreme Court may reverse the Tax Court decision “if, upon reviewing the entire evidence, it is left with a firm conviction that a mistake has been made.” *Montgomery Ward v. County of Hennepin*, 482 N.W.2d 785, 788 (Minn. 1992).

ARGUMENT

I. WHEN ALL OF THE RELEVANT FACTORS ARE PROPERLY CONSIDERED, CROIXDALE PLAINLY QUALIFIES FOR A PROPERTY TAX EXEMPTION AS AN INSTITUTION OF PURELY PUBLIC CHARITY.

The Tax Court erred in failing to recognize that Croixdale qualifies for a property tax exemption. When the relevant factors are considered with an eye toward the purpose behind the rules governing property tax exemptions for charities – especially when those factors are considered **together** rather than in isolation – the only reasonable conclusion that can be reached is that Croixdale is a tax exempt institution of purely public charity. Croixdale does not operate like a “for profit” entity and cannot in any way be characterized as a “subterfuge for the accommodation of a select few.” Rather, Croixdale has used millions of dollars in charitable donations to allow it to provide assisted living

(i.e., housing and services) to low to moderate income individuals who are in need of daily care. Moreover, Croixdale budgets to break even (not to make a profit) and uses funds from its Mission Benevolence Fund to subsidize residents who are without other adequate sources of payment. Neither of those actions are the behavior of a profit-driven operation. Rather, those are the actions of a fiscally responsible charity that desires to be around for the long term, which is an important consideration when one is talking about operating an assisted living facility.

That is a point that was apparently lost on the Tax Court, since the Tax Court expressed concern that Croixdale was not operating at a loss. What the Tax Court failed to recognize is that an assisted living facility has an obligation to its residents to operate in a fiscally prudent manner so as to assure its long term viability. Residents and their families are obviously looking for a facility that is going to be around for the duration of the residents' lives. In that respect, an assisted living facility that cannot sustain itself over the long haul does a tremendous disservice to its residents. Accordingly, far from being used as a means to disqualify Croixdale from receiving a tax exemption, Croixdale's prudent financial approach should be applauded.

As discussed in the following sections of this brief, the Tax Court's ruling is unsupported by the evidence and is based upon a misapplication of the relevant law. In particular, the Tax Court's ruling is an exercise of form over substance and appears to reflect an unhealthy desire to blindly uphold the interests of the taxing authority at a time when all levels of government are seeking additional sources of revenue rather than a desire to fairly analyze the totality of the circumstances of this particular case through the

prism of the various analytical factors that this Court has previously identified. This Court should, therefore, reverse the decision of the Tax Court and reiterate the importance of collectively analyzing all of the relevant factors where an exception is sought under Minn. Stat. § 272.02.

A. **The North Star Factors Must be Considered in Relation to One Another and in Relation to the Fundamental Question that They are Intended to Help Answer.**

Pursuant to Minn. Stat. § 272.02, “institutions of purely public charity” are exempt from property taxation. Although the statute does not define what constitutes a charity, this Court has adopted a broad definition:

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, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.”

In re Petition of Junior Achievement of Greater Minneapolis, Inc. v. State, 271 Minn. 385, 390, 135 N.W.2d 881, 885 (1965) (quoting 15 Am. Jur. 2d *Charities* § 3).

The purpose of providing a property tax exemption to charitable organizations is “to foster and facilitate delivery of charitable services by private institutions.” *Skyline*, 621 N.W.2d at 732. In addition to noting that salutary purpose, this Court has further noted that the rules governing such exemptions “should not be interpreted in a manner that frustrates the very purpose of exemption.” *Id.* Yet the Tax Court ignored that important directive in this case by applying the so called *North Star* factors in a manner

that elevated form over substance and that failed to give due weight to the overwhelming evidence of charitable benefits provided by Croixdale.

In *North Star Research Institute v. County of Hennepin*, this Court identified various factors it has reviewed when considering whether a particular entity is entitled to a real estate tax exemption as an institution of purely public charity:

- (1) Whether the stated purpose of the undertaking is to be helpful to others without immediate expectation of material reward;
- (2) Whether the entity involved is supported by donations and gifts in whole or in part;
- (3) Whether the recipients of the “charity” are required to pay for the assistance received in whole or in part;
- (4) Whether the income received from gifts and donations and charges to users produces a profit to the charitable institution;
- (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; and
- (6) Whether dividends, in form or substance, or assets upon dissolution are available to private interests.

306 Minn. 1, 5-6, 236 N.W.2d 754, 757 (1975). The Court later added a subfactor to factor number five, asking the institution seeking exemption to show that its activities lessen the burden on government. *Worthington Dormitory, Inc. v. Comm’r of Revenue*, 292 N.W.2d 276, 280 (Minn. 1980).

Notwithstanding the numerous subsequent decisions that separately discuss the various individual factors in detail, a review of the text of the *North Star* decision reveals that this Court intended the six factors identified therein to be mere examples of some of

the considerations that could affect the determination of whether to allow an exemption in a particular case. 306 Minn. at 5-6, 236 N.W.2d at 757. There is nothing in *North Star* or its progeny to suggest that the various factors identified by the Court were intended to constitute a rigid test. To the contrary, in a case issued the same day as *North Star*, the Court expressly observed that “[e]ach case must be decided on its own particular facts and it is not essential that every factor mentioned in our decisions be present before an institution qualifies for an exemption.” *Mayo Foundation v. Comm’r of Revenue*, 306 Minn. 25, 236 N.W.2d 767, 773 (1975) (emphasis added). Similarly, in a recent decision involving assisted living, the Court explained that “[a]n organization may still qualify for an exemption even if all six [*North Star* factors] are not met.” *Care Institute, Inc.-Roseville v. County of Ramsey*, 612 N.W.2d 443, 447 (Minn. 2000).

The foregoing statements about the *North Star* factors not establishing a rigid set of requirements are consistent with this Court’s previously noted directive about not interpreting the exemption rules in a manner that will frustrate the purpose behind providing an exemption for charitable institutions (*i.e.*, “to foster and facilitate delivery of charitable services by private institutions”). *See Skyline*, 621 N.W.2d at 732. In considering the separate *North Star* factors, courts must be careful not to lose sight of what this Court has identified as “the fundamental consideration underlying the six factors” – *i.e.*, “whether individual profits are realized and whether the charity is a subterfuge for the accommodation of a select few.” *Id.* at 735 (citing *North Star*, 306 Minn. at 6, 236 N.W.2d at 757).

In the present case, the Tax Court focused too rigidly upon the separate *North Star* factors and lost sight of “the fundamental consideration.” When the various factors are considered together (rather than in isolation), with an eye toward determining whether Croixdale is an actual charity or a mere subterfuge for the benefit of a select few, Croixdale’s qualification for a property taxation exemption is beyond dispute. Having concluded that Croixdale is supported by donations and gifts, and that its organizational structure does not allow for profits to accrue to individuals (or entities), the Tax Court failed to consider the portions of the evidence that showed how those donations and gifts accrued to the benefit of Croixdale’s residents and failed to credit the fact that Croixdale’s actions are substantially more consistent with operating a charitable facility than with operating a commercial enterprise.

B. The Tax Court Failed to Give Proper Weight to the Overwhelming Evidence that Croixdale Operates as a Purely Public Charity.

Having concluded that Croixdale is supported by donations and gifts, and that its organizational structure does not allow for profits to accrue to individuals (or entities), the Tax Court failed to fully consider the portions of the evidence that showed how those donations and gifts accrued to the benefit of Croixdale’s residents. The fundamental character of Croixdale having been established, the question becomes whether the *North Star* analysis reveals Croixdale as a charitable activity providing the benefit of the charity it received to build the facility, in a manner qualifying for exemption, or as a commercial enterprise.

The Tax Court found that Croixdale satisfied *North Star* Factors 1 and 6, which focus directly upon the purpose and structure of the operation. By concluding that Croixdale satisfied Factor 1, the Tax Court recognized that Croixdale's sole purpose is "to be helpful to others without immediate expectation of material reward." *North Star*, 306 Minn. at 6, 236 N.W.2d at 757. Similarly, by concluding that Croixdale satisfied Factor 6 -- which concerns whether dividends or assets of the operation are available to private interests -- the Tax Court correctly determined that Croixdale's legal structure coincides with its stated purpose of furthering charitable objectives without delivering profits to individuals or others from ownership of the charity.

The Tax Court's observation as it analyzed Factor 1 that Croixdale's Board has consistently affirmed the mission to help older people live longer and has provided for an operation in accordance with that mission (A. 14) is critical because it establishes the fundamental nature of Croixdale. Throughout the fund raising, planning, budgeting and operational process, Croixdale's Board continually made sure that the benefit of the millions of charitable dollars it raised accrued to the Croixdale residents in fulfillment of the stated mission. Croixdale is not a commercial senior housing provider. Croixdale is not a nonprofit entity in name only, where the legal structure is merely a means to avoid paying taxes. Croixdale raised millions of charitable dollars from the community to build a facility that provides care for those who need it. There is no business venture here. The only beneficiaries of Croixdale's operations are seniors in need and the community at large. In no way can it be said that Croixdale is structured as a "subterfuge" to accommodate "the needs of a select and favored few" or that some person or corporation

“gains a profit or commercial advantage as the immediate and intended direct consequence of the ‘charity.’” See *North Star*, 306 Minn. at 6, 236 N.W.2d at 757.

The Tax Court’s findings with regard to the second *North Star* factor are also extremely important, particularly in light of its findings with regard to Factors 1 and 6. Factor 2 concerns whether the entity is supported by donations and gifts, in whole or in part. The Tax Court had no choice but to find that Croixdale satisfied that factor, since the evidence of charitable donations in this case is impossible to disregard. Faced with a failing facility, Croixdale obtained over \$9.0 million of charitable donations to pay half the cost of providing the new facility. Without those donations, the facility would not exist.

Although it found in favor of Croixdale on Factor 2, the Tax Court failed to consider how that finding relates to the other factors. What does it mean to conclude that the donations are sufficient to satisfy Factor 2? If the activity is indeed supported by donations, then the application of those donations becomes critical to determining whether the activity is indeed a purely public charity or has some other kind of character.

The record clearly establishes that the millions of dollars of donations that Croixdale raised were used to rebuild the facility in order to keep its doors open. More specifically, the donations have been used to reduce debt service and annual operating costs, which directly benefits Croixdale’s residents by allowing Croixdale to charge those residents substantially less per month. In this respect, Croixdale differs significantly from the assisted living facilities this Court recently considered for exemption under

§ 272.02. *Care Institute-Roseville*, 612 N.W.2d 443; *Care Institute-Maplewood*, 576 N.W.2d 734; *Community Mem'l Home v. Douglas County*, 573 N.W.2d 83 (Minn. 1997).

In the two *Care Institute* cases and the *Douglas County* case, there was evidence of only minimal donations or gifts to support the facility. See *Care Institute-Roseville*, 612 N.W.2d at 445; *Care Institute-Maplewood*, 576 N.W.2d at 739; *Douglas County*, 573 N.W.2d at 87. None of the facilities could satisfy Factor 2. They lacked the resources from donations or gifts that could be used to provide substantial charity to recipients. Not only did the facilities fail Factor 2, but not being supported by donations or gifts, they had little they could provide to their residents on a charitable basis. Instead of being supported by donations or gifts, they were supported by income from, or paid on behalf of, their residents. At best, they could apply income from residents and third-party payers to provide housing with services to the residents.

The contrast between the substantial role of charitable donations in Croixdale's operations and the essentially non-existent role of charitable donations in the operations of the facilities in the two *Care Institute* cases and the *Douglas County* case could not be more striking. Croixdale directly applies the massive donations of the capital campaign to provide a high quality facility with the objective of meeting market needs and demands with debt levels as low as possible so that charges to residents can be low. T. 35, 89, 91, 95-96 and 337-38. Using charitable donations, Croixdale reduced the debt needed for the new facility and the continuing burden of servicing that debt. T. 89, 91-93 and 336-39. The reduced debt service lowered the operating costs of Croixdale, as compared to the operating costs if no capital campaign were in place. T. 336-37. Then, in accordance

with Croixdale's Articles and its charitable mission, Croixdale sets the fees it charges its residents only high enough to cover operating expenses, including debt service. T. 56 and 96. Break even rents and fees are established only after the application of the donations of the capital campaign reduced the amount borrowed to build the facility. T. 88-89, 91-96, 151-52, 159-60 and 169-70.

Croixdale only needs to recover half of the actual cost of the facility from residents. Donations pay for the other half. The benefit of the capital campaign donations are applied each and every year through the budgeting process. T. 151-52. The continuous application of the direct benefit of the capital campaign distinguishes Croixdale from the facilities in the two *Care Institute* cases and the *Douglas County* case. The Tax Court, however, failed to recognize the significance of the donations when it analyzed the remaining *North Star* factors. Having found that Croixdale satisfied Factor 2, the Tax Court erred by not recognizing the implications of that finding. That error is particularly glaring when it is viewed in combination with the Tax Court's separate affirmative findings as to *North Star* Factors 1 (charitable purpose) and 6 (no pecuniary benefit).

The affirmative finding with respect to Factor 2, together with the findings that Croixdale satisfied Factors 1 and 6, necessarily impact the entire *North Star* analysis, particularly where the extent of the benefit provided by charitable donations is as significant as it is in this case. The Tax Court's analysis failed to consider Factors 3, 4 and 5 in this context, and the Tax Court's findings and conclusions as to those factors are not reasonably supported by the evidence. To reach its ultimate conclusion that

Croixdale is not an institution of purely public charity, the Tax Court had to disregard much of the evidence, apply the law inconsistently with this Court's precedent, and reason in an incomplete manner.

Even where there were bits and pieces of testimony that might support the conclusions of the Tax Court, those conclusions are not supported by the evidence taken as a whole. Indeed, given the extensive evidence of Croixdale's charitable purpose and structure and of the import role of charitable donations in Croixdale's operations, there can be no doubt in the present case as to the proper resolution of the "fundamental consideration" that underlies the *North Star* factors." See *Skyline*, 621 N.W.2d at 735 (citing *North Star*, 306 Minn. at 6, 236 N.W.2d at 757). Croixdale simply cannot reasonably be characterized as a "subterfuge" to accommodate "the needs of a select and favored few." Thus, the Tax Court's decision must be reversed.

II. THE TAX COURT FAILED TO PROPERLY ANALYZE SEVERAL OF THE *NORTH STAR* FACTORS, BOTH INDIVIDUALLY AND IN COMBINATION.

As explained in the preceding section, the Tax Court neglected to consider the *North Star* factors in combination and with an eye toward the ultimate question that underlies those factors. Instead, the Tax Court became bogged down in an overly narrow analysis of three of the individual factors – Factors 3, 4 and 5. Those factors should not be considered in isolation. Fairness dictates that any analysis of those factors be tempered by the Tax Court's conclusive determinations concerning (a) Croixdale's indisputable charitable purpose, (b) the absence of any improper pecuniary gain, and (c) the massive amount of charitable gifts and donations that Croixdale raised and used.

Even when viewed in isolation, however, Factors 3, 4 and 5 do not support the Tax Court's conclusion that Croixdale is not an institution of purely public charity.

A. **The Tax Court's Analysis of the Third *North Star* Factor is Fatally Flawed.**

The third *North Star* factor asks “whether the recipients of the ‘charity’ are required to pay for the assistance in whole or in part.” 306 Minn. at 6, 236 N.W.2d at 757. That factor needs to be assessed to determine whether people will benefit from the organization's activities to an extent greater than if the organization were merely providing a service as part of the private market. *Skyline*, 621 N.W.2d at 733. In the present case, the Tax Court mistakenly concluded that Croixdale did not satisfy Factor 3 because the court failed to consider the effect that the extensive charitable donations raised during Croixdale's capital campaign have on what residents of the Assisted Living Facility pay. Additionally, the Tax Court mischaracterized or simply disregarded the evidence and imposed peculiar requirements on Croixdale that effectively frustrate the lesson of the *Skyline* case that the tax exemption “not be interpreted in a manner that frustrates the very purpose of the exemption.” *Id.* at 732.

In *Rio Vista Non-Profit Housing Corp. v. Ramsey County*, this Court stated that “[t]he fact that a purely public charity receives some remuneration from those it benefits does not deprive the institution of its charitable exemption.” 277 N.W.2d 187, 192 (Minn. 1979). Thus, the proper question under Factor 3 is whether the recipients pay *all* the cost of the service they receive or only *part* of the cost. *Care Institute-Roseville*, 612 N.W.2d at 449. An analysis of the amount paid by the recipients relative to the value of

the benefits they receive must be made in each case to determine the answer to that question. *Rio Vista*, 277 N.W.2d at 192.

The fact that residents of an assisted living facility pay something for the housing and services they receive does not mean that Factor 3 cannot be satisfied. In *Rio Vista*, for instance, the Supreme Court concluded that the provider of low income family housing satisfied Factor 3 because its tenants "received the housing at considerably less than market value or cost." 277 N.W.2d at 192. In that case the critical consideration was that somebody else (the Federal government) was paying rent on behalf of the tenants. *Id.*

By design, the amounts that Croixdale charges the residents of the Assisted Living Unit are set at a level just high enough to service the debt required after the application of the millions of dollars of charitable donations raised in the capital campaign. The entire purpose of the capital campaign was to enable Croixdale to set rates as low as possible. The over \$9 million of charitable contributions to the capital campaign produced a benefit of \$650, or more, for each resident, each and every month. Thus, *all residents* pay for only a part of what they receive.

Each Assisted Living Unit resident receives housing and a basic level of care. Residents receiving essentially the same level of care pay the same amount for the care. Residents receiving additional care pay an additional amount. A place to live is fundamental to the activity. Croixdale's rate setting applies the benefit of the capital campaign to that component of the cost of Croixdale. All residents pay less than the full

cost of what they receive when the housing is included. For individuals on government assistance, Croixdale accepts an even lesser payment.

Many Croixdale residents cannot afford even the rates already reduced by the capital campaign. Approximately 28 percent of the residents of the Assisted Living Unit receive governmental assistance through Washington County. T. 339. The total amounts paid to Croixdale with respect to each of these residents is less than the already reduced rates paid by other residents. T. 155-157 and 166-167; Ex.20. Unlike the situation in the *Douglas County* case, however, the acceptance of these residents in exchange for a below break even payment is more than a mere “business decision” to fill rooms. *See Douglas County*, 573 N.W.2d at 87. The evidence in the record shows that Croixdale could fill the spaces occupied by these persons with individuals who are capable of paying privately. T. 192-193. Nevertheless, in accordance with its charitable character, Croixdale makes the affirmative choice to serve these most needy of seniors in the community. T. 193.

For the 2005-2006 budget year, the difference between what is paid by and on behalf of the residents on government assistance and the break even rates is \$193,000. T. 166-167 and 241; Ex.20. Investment proceeds of Croixdale’s \$1.6 million Mission Benevolence Fund are applied, to the extent available, to fill this gap. *Id.* However, those proceeds are only sufficient to cover \$80,000 of the gap. T. 156. As a matter of policy and practice Croixdale accepts the loss above that amount and permits the residents to continue living at Croixdale. T. 157; Ex. 20.

Furthermore, although governmental rent assistance is not a donation for purposes of Minn. Stat. § 272.02, subd. 7, from the perspective of the residents who receive it, rent

assistance means they do not have to pay all of the cost of the service. From Croixdale's perspective, the consequence of accepting these residents is the inability to recover enough revenue to cover costs. Moreover, a portion of the government payments are for care, not housing. T. 155; Ex. 20. Although disregarded by the Tax Court, all of this tends to further show that Croixdale residents do not pay *all* of the cost of the Assisted Living Unit.

Rather than recognizing the fact that -- for all of the foregoing reasons -- residents of the Assisted Living Unit do not pay for all of the benefits that they receive, the Tax Court unfairly focused upon Croixdale's threat to evict one resident who did not pay in concluding that Croixdale did not satisfy the third *North Star* factor and does not qualify as a purely public charity. The Tax Court's narrow reliance on that one incident not only reflects that court's failure to give due consideration to the ample proof of Croixdale's charitable nature under the other *North Star* factors, but also reflects that court's general failure to consider the evidence as a whole.

First, there was overwhelming evidence showing that the amount paid by and on behalf of many residents is not enough to cover either the costs of operating the facility or Croixdale's standard rates. T. 104-05, 136, 155-57 and 166-67. Second, the evidence plainly shows that, far from undertaking a purely commercial posture, Croixdale identifies the Mission Benevolence program in its residency agreement with each resident and states that it will work with and support residents who do not have enough money to pay for Croixdale. T. 242-43; Ex.26. Third, in the one instance relied on by the Tax Court, funds presumably available for payment were not paid to Croixdale by the third

party payor. T. 215-217. The responsible party apparently misappropriated the funds. Croixdale reported the situation three times as it understood relevant law required. *Id.* Croixdale also addressed a letter to the third party payor saying that funds needed to be paid. Ex.24. Ultimately, the matter was resolved without an eviction. T. 215-17. Croixdale proceeded as a responsible operator and manager. The *North Star* factors do not contemplate that charities must provide service to those who simply withhold payment. One incident where Croixdale dealt with a payment problem, does not convert Croixdale from a charity into something else. No precedent requires that the service must be provided for free, without respect to willingness and ability to pay.

The Tax Court's analysis of the third *North Star* factor contains additional errors as well. For example, in refusing to acknowledge that Croixdale qualifies as an institution of purely public charity, the Tax Court mistakenly relies upon the fact that every resident who receives any benefit from the Assisted Living Unit is required to enter into a residency agreement. A. 18. That residency agreement establishes the respective rights and duties of Croixdale and the residents. Ex.26. It protects each resident's right of possession to the home at Croixdale. *Id.* There is nothing onerous about having the residents execute such an agreement. On the contrary, **Minnesota law requires that Croixdale have a written lease with the residents.** Minn. Stat. § 504B.111. Failure to have written leases could subject Croixdale to criminal penalties. *Id.* Thus, the Tax Court's conclusion that the residency agreement somehow makes Croixdale a commercial entity is plain error.

The Tax Court also erred in denying Croixdale a charitable exemption on the basis of the fact that individuals receive Mission Benevolence only as a last resort and must complete a formal application and provide extensive financial information. A. 18-19. Using a formal application and requiring the recipients of this direct additional charitable subsidy to demonstrate financial need is a merely a sound fiscal practice. Any approach other than targeting this limited charitable resource to those in greatest need would be irresponsible. Good management practices do not make Croixdale a commercial endeavor.

The Tax Court also erroneously faulted Croixdale because, for half of the residents who receive Mission Benevolence assistance, the monthly benefit is just ten percent of the "rent." A. 19. A ten percent subsidy is not insignificant, especially where it enables a person to continue living at their residence and receive needed care. Moreover, for the half of the Mission Benevolence recipients not mentioned by the Tax Court, the benefits received are self-evidently substantial. The assistance is \$391 a month for one person and over \$600 a month for the others. Ex. 17. Even an endowment now at \$1.6 million can only produce a finite amount of proceeds. The residents who need Mission Benevolence, but cannot be served, remain at Croixdale. *Id.*; *see also* T. 103-05, 158 and 192-93.

Finally, in addition to all of the foregoing errors and mischaracterizations, the Tax Court unfairly disregarded the results of two studies that demonstrate that Croixdale residents pay less than the charges at other assisted living facilities. A. 19-20. One study compared the prices at Croixdale with the price the actual market establishes for a facility

with the same attributes. Ex. 30. The other study compared prices charged at Croixdale to those at each assisted living facility in the Croixdale market and near market areas.

Ex. 34. The studies confirmed that Croixdale offers assisted living and memory care at less cost to residents than the market value and the cost in the market of an equivalent program of housing with services. Exs. 30 and 34. Rather than addressing the actual conclusions of those studies, however, the Tax Court attempted to discredit the studies by making the erroneous assumption that the studies were nothing more than simple rent comparisons when the studies actually carefully accounted for those services that are important in the context of assisted living and memory care.

The market pricing study used information and detailed data regarding the features *and services* of 18 other facilities in the general area of Croixdale to develop a pricing model. Ex. 30. The study determined how much Croixdale would charge if Croixdale set its prices consistently with the price in the market for an equivalent assisted living with memory care facility, giving attention to relative service, staffing, age and overall size of the facility. The study also controlled for variations in the size of the residential units.

Compared to the price the market established for what Croixdale provides to its residents, Croixdale charges significantly less. T. 272-80; Ex. 30. For 2005, for the 43 assisted living units in total, the under pricing was \$600,000. T. 280; Ex. 30. For the 10 memory care units, the under pricing was an additional \$140,000. *Id.*

The facility by facility comparison study reached the same result. T. 393-94; Exs. 32 and 34. The study first defined the market area for Croixdale by identifying five

other assisted living facilities in the immediate market area. *Id.* To broaden the analysis, the study also identified 15 facilities in the near market area. *Id.* The study then compiled detailed data regarding each facility, including rates, room size and number, occupancy, acceptance of residents on public assistance, and the specific services (meals, 24 hour staffing, laundry, linen, housekeeping assistance, transportation, and personal care) included in the facility's basic charge, before making adjustments so that a comparison of the price at each facility for a *consistent* package of the essential assisted living services and features could be made. T. 400-04; Exs. 32 and 34.

The comparison of the adjusted fees demonstrated that Croixdale charges less for assisted living than four of the five other facilities in the immediate market area charge (by amounts ranging from \$67 to \$340 a month). T. 405-412; Ex. 34. Similarly, in the larger near-market area, after adjustment, Croixdale charges less than 10 of the 15 assisted living facilities (by amounts ranging from \$107 to \$2,672 a month). T. 413; Ex. 34. Each of the facilities that charges less than Croixdale either suffer from significant occupancy problems (indicating a problem with management, programming or services) or were shown to be clearly inferior. T. 410-11 and 414-17.²

Rather than deal with the results, the Tax Court discounted the studies based upon the inaccurate conclusion that they did not adequately address the services provided by

² The facility by facility study did not make pricing adjustments for memory care because services are generally standardized. T. 420. With respect to memory care, Croixdale charges from \$502 to \$1,047 a month less than the seven higher priced facilities in the larger market area, and \$177 a month less than the higher priced facility in the immediate market. Ex. 34. The charge at one similarly priced facility included only minimal personal care, and one of the lower priced facilities has a twenty percent vacancy rate. *Id.*

the facilities and the real estate amenities available at the facilities. A. 20. Contrary to the Tax Court's mistaken conclusion, both studies carefully considered and addressed services and focused in particular on the matters relevant for assisted living and memory care as housing *with* services. Exs. 30 and 34.

For example, the market pricing study analyzed the facilities with respect to the number of services each provides at no extra cost in addition to the basic minimum that they all provide. T. 264-65; Ex. 30. Meanwhile, with respect to the comparison study, it is the Tax Court who focused on the wrong matters. Specifically, the Tax Court failed to acknowledge the importance of assisted living as a package of housing with services and that the services analyzed in the comparison study are the ones that matter for assisted living. T 395-96, 417-19 and 436-37. Instead, the Tax Court tried to discredit the study because the study allegedly did not place enough emphasis on structural real estate amenities that are not important in the assisted living context, including such items as location, access to transportation, size of common areas and amenities, and the availability of guest and party/meeting rooms. A. 20.

Assisted living with memory care is not conventional housing. It is about helping people who cannot live on their own. Conventional real estate analysis simply misses the mark. T. 417-19 and 435-37. It makes no sense to consider such amenities as large common areas and access to a library, because they are simply not used by assisted living residents, who are "extremely frail people." T. 436-37. The comparison study did consider relative condition and the most important physical features of each residential unit, such as the unit size and the presence of kitchenettes and private bathrooms.

T. 413-15; Ex. 34. More importantly, the evidence established that the study considered the price comparison factors that matter the most for seniors and their families when they select an assisted living facility. T. 419, 435-437. These are the critical items in the assisted living market. T. 400 and 403.

The Tax Court also faults the pricing study for not distinguishing between profit and nonprofit facilities. A. 19. That particular criticism makes no sense, however. By not limiting itself to for profit facilities, the study compared Croixdale to the entire market and took an approach less favorable to Croixdale. Nevertheless, the Tax Court penalized Croixdale for showing the benefit to residents in a manner that actually made it more difficult for Croixdale to qualify for exemption. Such sloppy analysis should not be permitted to stand.

Further evidence of the Tax Court's sloppy approach to the two studies offered by Croixdale and to the fourth *North Star* factor can be seen in the Tax Court's statement that Croixdale relied on a comparison with **ten** other assisted living facilities to show that the Assisted Living Unit residents pays substantially below market rates. A. 20. Actually, Croixdale relied on a comparison with **twenty** other assisted living facilities -- five in the immediate market area and 15 in the near market area. Ex. 34. Given the Tax Court's unexplained erroneous statement, it is not clear that the Tax Court even considered all of the evidence.³

³ One other comment by the Tax Court should also be noted. In support of its conclusion that Croixdale did not satisfy Factor 3, the Tax Court said that there was testimony that Croixdale's rents are within the range of market rents for similar types of facilities, without identifying that testimony or accounting for the large amount of

For each of the foregoing reasons, the Tax Court's conclusion regarding the fourth *North Star* factor and Croixdale's qualification for a property tax exemption should be set aside.

B. The Tax Court Improperly Concluded that Croixdale's Charitable Activities Produce a Profit.

The Tax Court erroneously concluded that Croixdale does not satisfy the fourth *North Star* factor, *i.e.*, that income from gifts, donations and charges not produce a profit. The court confused positive cash flow with "profit" and, in narrowly analyzing Factor 4, simply failed to give any weight to the fact that its own separate findings under Factors 1, 2 and 6 demonstrate that Croixdale operates and is structured as a nonprofit charity.

In addressing Factor 4, the Tax Court acknowledged that Croixdale suffered a loss *from operations* every year from 1990 through 2004, but observed that Croixdale had a total gain in ten of those years. A. 22. That observation distorts the entire story of Croixdale. During the 1990's, the only way Croixdale survived was through an annual cash donation to sustain the operation. T. 16-19. The net gain in 1996 was a slim \$10,712. Ex. 3. From 1997 through 2000 Croixdale suffered an annual loss each year, even with credit for non-operating income. *Id.* Croixdale was failing and learned in 2000 that it would no longer receive the critical annual donation to operations. T. 23;

contrary testimony. A. 20. Moreover, that particular remark sets up an unrealistic standard for obtaining a tax exemption. If the standard is that the charitable service must be provided at a price completely outside the range of charges in the market, then only the absolutely lowest cost provider would even be eligible to satisfy Factor 3. Such a standard patently violates the principles set forth in the *Skyline* and *North Star* cases.

Ex. 5. In short, the Tax Court's characterization of Croixdale as profitable from 1990-2000 is clearly erroneous.

The Tax Court's substantial reliance upon the excess of revenue over expenses "after depreciation" in 2004 is also clearly erroneous. A. 22. Croixdale's statement of activities in its audited financial statement does not show a "profit" in 2004. Ex.25. Although the statement of activities portion of that statement shows several million dollars of revenues in excess of expenses after depreciation, the excess revenues are *entirely attributable to the donations to the capital campaign* to build the new facility. *Id.* The audited financial statement confirms that, except for the capital campaign contributions, Croixdale operated at a loss in 2004 both before *and* after depreciation. *Id.* Construction of the new facility was in progress during 2004 and the capital campaign was collecting donations. Exs. 4-6. The same can be said of the other two years after 1996 where Croixdale had total gain. *Id.* Because it is undisputed, that Croixdale applied all of the proceeds of the capital campaign to the cost of constructing the new facility (and, thereby, to reducing the per unit cost to each resident), the purported "profit" in 2004 was plainly used to achieve the charitable mission and cannot provide a basis for concluding that Croixdale is not an institution of public charity.

The Tax Court also erroneously relied on the estimate of a modest positive cash flow of \$25,000 in 2006 as establishing that gifts, donations and charges produce a profit. A. 22. The court seems to have confused positive cash flow with "profit." Croixdale's positive cash flow for 2006 *only* results from not funding depreciation. T. 89-90, 152, 157 and 167. Even if Croixdale's income from all sources exceeds expenses, Croixdale

has a depreciating capital asset (*i.e.*, the facility itself) and must subtract depreciation under Generally Accepted Accounting Principles (“GAAP”) when determining its profits. *See, e.g.*, 26 USC 167-186; Financial Accounting Standards Board Statement No. 93 (issued August 1987). Surely, the fourth *North Star* factor does not contemplate that the entity will violate fundamental accrual-based accounting rules.⁴

The 2006 budget simply shows that Croixdale will have enough revenue to pay its bills, provided Croixdale does not fund depreciation. Unfunded depreciation is a grave concern, however. T. 89-90 and 168. Croixdale has a significant capital asset and will eventually need capital infusions. T. 168. Failing to post reserves against that eventuality leaves Croixdale at risk for the future and should not be a requirement to qualifying for a property tax exemption.

The Tax Court’s reliance on the 2003 financing proforma is similarly misplaced. A. 22. That document does project that Croixdale will eventually achieve positive cash flow, which is necessary for the project to be feasible. T. 93-98, 328-37; Ex. 33. Donations only funded a portion of the cost of constructing the new facility. Croixdale had to borrow the balance of the cost and, in order to do so, had to demonstrate that it

⁴ There seems to be some confusion in the Tax Court’s analysis between “profit” and “positive cash flow.” For simplicity, assume that Croixdale has income from rents of \$100, other non-operating income (including donations) of \$100, for total income of \$200. Assume further that Croixdale has expenses of \$150, resulting in positive cash flow of \$50. If Croixdale has depreciating capital assets, which it does, it must subtract depreciation under GAAP in determining its profit or loss. If the depreciation is \$75, Croixdale would have positive cash flow of \$50, but a net loss of \$(25). Even the Tax Court recognizes that Croixdale only shows a “profit” by ignoring depreciation, which is not permitted by GAAP, and by including in revenues donations that are committed to reducing the building debt.

will be able to service the debt. T. 328-37; Ex.33. Furthermore, Croixdale cannot continue providing housing with services if the budget does not provide adequate revenue to pay the bills.

Croixdale learned from its past experience with annual operating losses. Croixdale's most important charitable sponsor made it clear that funding annual operating losses was not acceptable. T. 23. Accordingly, Croixdale developed a financing proforma and the objective of achieving break even operations. Any other approach would have been improvident. Charitable institutions need to plan and budget for sustainability, not for their own demise, particularly where they are providing housing and services for elderly persons in need of personal care. The courts should not apply the *North Star* factors in such a manner as to deny exemption to nonprofits that operate in a manner that promotes survival over the long term.

Croixdale demonstrated that its planning process looked beyond simply opening up a new facility. Positive cash flow enables Croixdale to sustain the facility. Even if Croixdale has an operating surplus in a future year, Croixdale cannot distribute any "profits" to any individuals or investors. *See AACCC v. County of Dakota*, 454 N.W.2d 912, 915 (Minn. 1990) (even where there may be profits, the critical concern is whether "any profits realized are used for furthering the objectives of the organizations in future years and not for private gain"). Croixdale can only use its funds for furthering its mission. The record convincingly demonstrated that the entire financing program, from the capital campaign through the annual budgeting, is designed, managed and operated

for the singular purpose of sustaining the organization's mission. No evidence suggests a future deviation from that path.

Finally, the Tax Court's reliance on the future collection of outstanding capital campaign pledges is particularly inappropriate. A. 22. Those pledges were solicited for the capital campaign. Ex. 5. Upon receipt, they will be used to pay down the construction debt. T. 95. No evidence suggests Croixdale will use them for something different. As noted above, Croixdale's process is absolutely consistent with the analysis the Court established for considering how the institution applies any "profits" or surplus it might generate or accrue. *See AACCC*, 454 N.W.2d at 915. Additionally, under Croixdale's ongoing budgeting and rate setting, to the extent that the debt and, thereby, the operating costs are reduced, the benefit will be reflected in the rates charged to the residents.

In summary, the Tax Court's analysis of Factor 4 creates hurdles for exemption that conflict with good management practices that promote the continued existence of the charitable institution. Croixdale's fiscally prudent plan to use charitable donations to help build a new facility and simultaneously secure the long term existence of the facility through break even budgeting were wrongly interpreted by the Tax Court as making Croixdale something other than a charity. Well run nonprofit charitable institutions, which Croixdale is striving to be, should not be construed as anything other than purely public charities simply because they raise donations, budget and operate to have a stable long term economic future. Indeed, to do so would improperly frustrate the very purpose

of the exemption by discouraging the delivery of charitable services. *Skyline*, 621 N.W.2d at 732.

C. **The Tax Court's Analysis of Whether Croixdale Lessens the Burden on Government is Faulty.**

The Tax Court correctly found that Croixdale satisfies the first prong of the fifth *North Star* factor because, consistent with its charitable objective to “help older people live better, longer,” Croixdale restricts occupancy to elderly people in need of help.

A. 22-23. However, the Tax Court erroneously went on to conclude that Croixdale does not satisfy the subfactor of lessening the burden of government. *Id.* To reach that conclusion, the Tax Court had to ignore Supreme Court precedent and the nature of the benefits provided by Croixdale, as well as its own conclusion that Croixdale is supported by donations. In addition, the Tax Court mistakenly focused on the mechanics associated with providing the additional charity of Mission Benevolence, rather than focusing on the substance of that program and how it fits within Croixdale’s overall operation.

In the *Care Institute-Roseville* case, this Court recognized that a critical factor with regard to Factor 5 is the “long-term philosophy of providing services to the economically disadvantaged.” 612 N.W.2d at 449. Not all Croixdale residents are poor, but they are generally of modest means and the portion that is low and moderate income is large. T. 371-372; Ex. 33. A significant number of them are receiving government assistance. T. 339. Croixdale provides housing and care to all of these individuals at prices that reflect the benefit of the donations raised by the capital campaign and strives to provide additional assistance through a program initially funded by a \$1.5 million

endowment. Croixdale does this as a matter of policy, not as a prudent business decision. Croixdale does exactly what the Court in the *Care Institute-Roseville* case said is relevant for Factor 5.

By providing the residents on government assistance a place to live and receive care, Croixdale directly lessens the burden on government, just like the provider of housing in the *Rio Vista* case. In *Rio Vista*, this Court considered an exemption for a federally funded provider of low and moderate income family housing. 277 N.W.2d at 191. The Court observed that “it would be anomalous to hold that government objectives are not furthered by a nonprofit corporation which implements a federally created and funded program.” *Id.* Furthermore, the Court noted that “private organizations which assist the federal government in implementation of these projects do promote charitable objectives and lessen the burdens of government.” *Id.* Croixdale is just such an organization.

Croixdale is like other entities that lessen the burden on government. They provide a service that falls within the range of services provided by government. *Skyline*, 621 N.W.2d at 734. Although there is no assurance that if they did not provide that service, the specific individuals served would necessarily avail themselves of a government facility or service, Croixdale is taking care of seniors needing help with their daily lives and providing a place to live and care, at prices and costs subsidized by charity for the very same type of people that government is assisting. Accordingly, this Court should recognize that Croixdale satisfies the subfactor to Factor 5 and should reverse the Tax Court’s rejection of Croixdale’s request for a property tax exemption.

Inexplicably, in analyzing Factor 5, the Tax Court refused to recognize the capital campaign's effect of reducing the amount residents pay to live at Croixdale. A. 23. That refusal ignores the Tax Court's own findings with respect to Factor 2. With regard to Factor 2, the Tax Court held that Croixdale is supported by donations and expressly noted that "more than \$10 million in donated funds have been used by Petitioner to keep its doors open." A. 16. Furthermore, the Tax Court stated that "Petitioner used the donations to reduce its debt service and annual operating costs." *Id.*

As explained earlier in this brief, by substantially reducing the debt service, Croixdale was able to reduce the corresponding burden applicable to each unit and the price charged to each resident to break even. *See Argument supra* at 23. For each unit in the Assisted Living Facility the reduction in debt service due to the capital campaign is \$650 each month based on the projections used for the capital campaign. T. 332-34. The capital campaign exceeded projections, so the benefit is larger. Ex. 33. All residents receive the benefit and the Tax Court's suggestion that the benefit is merely hypothetical completely overlooks the essential effect of the massive charitable donations.

The Tax Court also unfairly dismissed the benefit of Mission Benevolence as enabling individuals to live at Croixdale who otherwise could not afford Croixdale. A. 23. In that regard, the Tax Court narrowly focused its attention on the fact that residents have to be out of money and have an existing relationship with Croixdale before they can receive Mission Benevolence assistance and on the fact that Croixdale does not actively market Mission Benevolence to the general public. *Id.* The Tax Court's analysis is misdirected.

The Tax Court's criticisms of the Mission Benevolence component mistakenly treat Mission Benevolence as the sole charitable component of Croixdale's operations, ignoring entirely the \$9.0 million of donations collected so far through the capital campaign. Furthermore, the Tax Court does not address the fundamental fact that, to the extent funds are available, Croixdale does provide Mission Benevolence assistance to those who need it. Mission Benevolence is important because, together with the benefits of the capital campaign, it enables Croixdale to help government as it provides its assistance to meet recipient's housing and care needs, but it is not the only element of Croixdale's charitable operation. The process for disbursing this additional aid to those also receiving government help does not diminish its value. Similarly, the fact that Croixdale does not advertise the assistance does not mean that the aid that is actually provided does not lessen the burden on government. Charity provided inconspicuously is no less charitable for lack of fanfare.

In summary, the law and the facts plainly demonstrate that Croixdale satisfies the fifth *North Star* factor, including the subfactor concerning lessening the burden on government. Accordingly, the Tax Court's contrary ruling should be set aside and Croixdale's request for tax exemption should be granted.

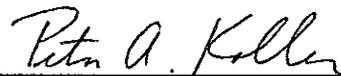
CONCLUSION

The Tax Court erred by applying the *North Star* factors in a manner that frustrates the purpose behind the property tax exemption and is not even internally consistent. In that regard, the Tax Court failed to give due weight to the strong evidence that Croixdale's efforts provide direct and significant benefit to those in need. Croixdale exists only to help those in need and does so as an institution of purely public charity. The Tax Court misapplied the law and its conclusion is not supported by the evidence as a whole. Accordingly, this Court should reverse.

Respectfully submitted,

MOSS & BARNETT
A Professional Association

Dated: February 21, 2006.

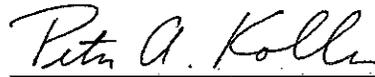
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Microsoft Word, in Times New Roman font, 13 point, and according to the word processing system's word count, is no more than 11,345 words, exclusive of the cover page, table of contents, table of authorities, signature block and this certification, and complies with the typeface requirements of Minn. R. Civ. App. P. 132.01.

Dated: February 21, 2006.



Peter A. Koller

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).