MEMORANDUM

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HAGOPIAN MEMO NO. 3

TO: MEMBERS, SPECIAL COMMITTEE ON TAX EXEMPTIONS, Wisconsin Legislative Council Special Committee On Tax Exemptions For Residential Property (*Columbus Park,* 2003 WI 143), 2003 WI Act 195, 2003 SB 512

FROM: GREGG C. HAGOPIAN, Assistant City Attorney

DATE: November 30, 2004

RE: **PILOT's; Appraisals From Benevolents Exempt Under 70.11(4); Other States; Statutory Changes; Ten Acres**

A. INTRODUCTION.

The "Notice" for our December 20, 2004 meeting calls for our Committee to further analyze:

1. **Methods of documenting value of residential property owned by benevolent associations that is currently exempt.** Below, I offer the possibility of the DOR revising its § 70.337 Report Forms to get better data and/or the Legislature enacting a new law requiring appraisals from those who seek, or wish to continue, their benevolent exemption.
2. **Creating a definition of "benevolent association."** I continue to believe that this is the ultimate solution. The Legislature could create a definition that would eliminate abuse of the benevolent exemption: (a) in the senior-housing market (see, "Government-5 Benevolent Retirement Home for the Aged Legislative Taskforce Report" for proposed legislation that would tax high-end units while exempting other nonprofit senior housing); and (b) in "low-income family housing" by, in either case, establishing reasonable household-income limits such that the exemption would only go to the truly needy. That would be fair when considering the many low to mid-income people who, directly or indirectly, must pay taxes.
3. **Constitutional issues regarding PILOT's.** A large portion of this memo addresses this and offers suggestions as to how the Legislature can enact legislation to mandate PILOT's from benevolent associations.
4. **Determining if certain types of housing should be exempt from § 70. 11's preamble's rent-use requirement.** This memo suggest that the Legislature create

new exemptions for nonprofit Medicaid nursing homes and for truly charitable entities. The Legislature could expressly negate the "rent-use" requirement for those categories.

As per my Memo No. 1 to this Committee (October 20, 2004), the lack of a statutory definition of "benevolent," the Supreme Court's dual line of cases concerning that term (the *St. Joe's* line versus the *Milwaukee Protestant Home* line), and resulting Court fights over the years concerning what that term means or should mean, all form the root of the problem that the Legislature has been struggling with for over a decade, and that our Committee, like committees before us (also spanning over a decade), must try to solve.

Conceptually, the solution is easy. Define "benevolent" and reword 70.11 so that the property tax falls on those of sufficient means, while those who lack sufficient means get exemption. That is fair.

However, history has shown that, while conceptually easy, and generally agreeable (by even those Committee members with divergent viewpoints), the above is, politically, very difficult to do. That difficulty is enhanced by the growth of a nonprofit industry involving health issues and seniors <u>who are not destitute</u>. Moreover, there is a woeful lack of meaningful data to work with.

Hence, as an alternative, the Legislature could mandate PILOT's from all "benevolent associations" currently exempt under 70.11(4) (including "benevolent retirement homes for the aged") but no PILOT's would be required from nonprofit nursing homes that accept and serve Medicaid residents, and no PILOT's would be required from nonprofit facilities that serve a truly charitable purpose with no requirement of remuneration – these would be the "special needs" type parcels of the type envisioned by all Committee members as charitable (i.e. homeless shelters, battered spouse shelters, etc.).

Afterall, if the State of Wisconsin pays PILOT's on properties it owns, and if *public* housing authorities pay PILOT's on properties it owns, then there is good precedent, and good public policy, to require benevolent associations to pay PILOT's as well.

This memo, as indicated, addresses the PILOT issue, explains how the Legislature can gather better information about the benevolent exemption, offers insight on the laws of certain other states, suggests statutory changes, and highlights why the Legislature should not expand on the 10-acre limitation now in § 70.11(4).

B. <u>PILOT's FROM BENEVOLENT ASSOCIATIONS.</u>

As discussed in my Memo No. 2, dated October 12, 2004, recent legal developments regarding partial taxation, I believe, have eroded once firmly-held, black-and-white notions of the Uniformity Clause.

The basic requirement that something either be all taxed or all exempt (see, e.g., *Gottlieb v. City of Milwaukee*, 33 Wis. 2d 408, 147 N.W.2d 633 (S.Ct. 1967)) is a dated concept that has eroded, and that is blind to modern day realities. For example:

1. **The Legislature *already* allows or mandates taxed-in-part**.

a. Legislature taxes exempt property in part where there is UBIT. Wis. Stat. § 70.1105. See, *Deutsches Land, Inc. v. City of Glendale,* 225 Wis.2d 70, 591 N.W.2d 583 (S. Ct. 1999) ¶¶29-32.

b. Legislature taxes some property due to leasing parts of the same. Wis. Stat. § 70.11 preamble. *Deutsches Land.*

c. Legislature taxes exempt property over certain acreage limits.

(1) 70.11(4), benevolent associations, 10 acres. But, 30 acres for property owned by religious associations used for educational purposes.
(2) 70.11(3), colleges and universities, 80 acres.
(3) 70.11(5), ag. fairs, 80 acres.
(4) Etc.

d. Legislature taxes some *portions of property* depending on use.

(1) 70.11(4m), doctor's offices, health and fitness centers, commercial space within hospital not exempt.
(2) 70.11(4m), hospital exemption for residential property is limited to dormitories of 12 or more units housing student nurses enrolled in state accredited nursing school affiliated with hospital.
(3) 70.11(9), veterans memorial halls taxed in part depending on whether part is used for pecuniary profit.

e. Legislature mandates PILOT's on certain exempt parcels.

(1) Redevelopment Authorities. 66.1333(12).
(2) Public Housing. 70.11(18) and 66.1201(22).
(3) State-owned property. 70.119[1].
(4) UW Hospitals and Clinics Authority. 70.11(38). 70.119.
(5) DNR. 70.114(4).

f. Legislature allows for service charges against parcels (including exempt parcels). 66.0627.

g. See, Jack Stark, The Uniformity Clause of the Wisconsin Constitution, Marquette Law Review, Vol. 76, No. 3, (Spring, 1993), p. 607 (in reality, TIF law amounts to partial exemption). Yet, TIF law is constitutional. *Sigma Tau Gamma Fraternity House v. City of Menomonie*, 93 Wis. 2d 392, 288 N.W.2d 85 (1980).

[1] Also, SWIB, 70.115.

h. Testimony of Rick Olin before Committee on Nov. 8, 2004, *really*, Wisconsin's lottery and gaming credit amount to partial exemption.

2. **The Supreme Court *already allows taxed-in-part*.**

a. In the *Deutsches Land* case, the Supreme Court allows taxed in part, depending on the property owner's ability to meet its § 70.109 burden of proof establishing precisely how each portion of a particular property is owned and used by an exempt organization for an exempt purpose. See, also, *Alonzo Cudworth Post No. 23 v. City of Milwaukee*, 42 Wis. 2d 1, 165 N.W.2d 397 (S.Ct. 1969) (court analyzes how parts of property are used regarding partial exemption analysis). *FH Healthcare Development, Inc. v. City of Wauwatosa*, 2004 WL 1822401 (Wis. App., Aug. 17, 2004), ¶¶30 and 31 (taxed in part is possible). *Saint Joseph's Hospital of Marshfield, Inc. v. City of Marshfield*, 2004 WL 1946144 (Wis. App., Sept. 2, 2004)[2], ¶7 and fn.2 and fn.6 (Court seems to accept undisputed 2% exemption), ¶28 (Court assumes partial exemption is appropriate when only part of use of property is exempt use), ¶34 (Court rules for partial exemption).

b. The Supreme Court in *Columbia Hospital Association v. City of Milwaukee,* 35 Wis.2d 660, 151 N.W.2d 750 (S.Ct. 1967), even allowed a duplex to be taxed such that one unit of the duplex was exempt and the other unit was taxed.

3. **Assessors throughout the State of Wisconsin *already* grant partial exemptions.** For example, certain facilities in the City of Milwaukee (as referenced by the Supreme Court in the *Deutsches Land* case) are taxed in part. For example, facility X is taxed on its restaurant and banquet hall operations, but exempt on those operations actually used by the exempt owner for exempt purposes. See, *Deutsches Land,* ¶48.

Practical, Not Absolute Uniformity is Required.

The above supports that the Uniformity Clause is not as strict as it seems.

The Supreme Court said that the Uniformity Clause requires practical uniformity – not absolute, and that practicality is viewed "under the circumstances." *Norquist v. Zeuske,* 211 Wis.2d 241, 564 N.W.2d 748 (S. Ct. 1997), fn 6. Practicality is a good notion for this Committee to apply in crafting a legislative recommendation given the circumstances we face. See, also, *Noah's Ark Family Park v. Bd. of Review, V. of Lake Delton*, 216 Wis. 2d 387, 573 N.W.2d 852 (S.Ct. 1998) (¶19, Supreme Court recognizes that perfect uniformity of taxation is not obtainable).

Uniformity is Equal Protection – Rational Reasons Exist.

Moreover, uniformity-clause analysis *is* equal-protection anaylsis. See *Knowlton v. Bd. Of Supervisors,* 9 Wis. 378 (1859) and *S.C. Johnson v. Town of Caledonia,* 206 Wis. 2d 292, 557 N.W.2d 412 (Ct. App. 1996) (overruled in part by *Nankin v. Village of Shorewood,* 2001 WI 92, but not with respect to the Court's effectively equating uniformity with equal protection). See,

[2] A Petition for Supreme Court review has, I understand, been filed in this case.

also: *Telemark Development,* infra; and *DeBruin v. Town of Ashippun Bd. Review, 213 Wis. 2d 485, 570 N.W.2d 911 (unpublished 1997).* Thus, there can be differences in the legislative treatment of affected classes, so long as there exists a rational reason for the differences.

Rational reasons do exist.

(a) "Benevolent Associations" under 70.11(4) is the only category of exemptions under 70.11 that has caused this much problem. No other 70.11 exemption category: has necessitated multiple special committees to "study the problem" and recommend change; has been the subject of so many DOR or Legislative Audit Bureau recommendations to reign in the exemption to eliminate abuse (real or perceived); or has been the subject of so many bills offering change. For over 34 years (since the 1969 *Milwaukee Protestant Home* decision defining "benevolent" as caring for the elderly, without alms-giving, and only when the elderly can afford to pay for the care), Wisconsin has been forced to live with a term with uncertain meaning. For over a decade, numerous legislative committees have tried to solve the problem.[3] Given that unique characteristic of this class, and those unique circumstances, the Legislature can treat it differently by adopting a practical solution. *Norquist v. Zeuske*.

(b) Testimony before this Committee and other legislative committees in the past has focused on the unfairness of well-off persons living in exempt space while those who are less fortunate pay tax (either directly to government, or indirectly to the landlord). No other exemption category has presented this clear dichotomy. Mandating PILOT's helps to correct this unfairness currently in the tax system.

(c) No other 70.11 exemption category suffers from the stark lack of clarity as does the "benevolent" exemption. Thus, this category is more prone to abuse and anomaly. Mandating PILOT's helps to correct this unfairness currently in the tax system.

(d) Government, at every level, is now faced with bad budgets. Committee testimony at our Nov. 8, 2004 meeting demonstrated that there is a lack of accountability concerning the economic impact of property-tax exemptions. The State simply does not have good data to know how much is effectively being "given away" each year.

Taxation and exemption are within the Legislature's sole province. WI Constitution, Art. VIII, Section 5. *Wisconsin Central R. Co. v. Taylor Co.,* 52 Wis. 37, 8 N.W. 833 (1881). *Atty. Gen. v. Winnebago Lake & Fox River Plank Road Co.,* 11 Wis. 35 (1860). Courts cannot grant exemptions if the Legislature has not provided exemption. *Greenwald's Estate,* 17 Wis. 2d 533, 117 N.W.2d 609 (1962). What property is exempt is soley the province of the Legislature, not the Courts. *Nash Sales v. City of Milwaukee,* 198 Wis. 281, 224 N.W. 126

[3] See Hagopian Memo No. 1 and July 15, 2000, Government-5 Report, Benevolent Retirement Home for the Aged Legislative Taskforce for legislative history and commonlaw analysis.

(1929). *Kickers of Wisconsin, Inc. v. City of Milwaukee,* 197 Wis. 2d 675, 541 N.W.2d 193 (Ct. App. 1995). *Katzer v. City of Milwaukee,* 104 Wis. 16, 79 N.W. 745 (1899). Accordingly, the Legislature, can, if it wants, leave "benevolent associations" wholly exempt, or make them "wholly taxable," or take some other middle-of-the-road position to effectively exempt them in part.

Already the Legislature limits and qualifies the "benevolent exemption" (e.g. income-use test, tenant-identity test, 10-acre limit, etc.).

In *Noah's Ark Family Park v. Bd. of Review of Village of Lake* Delton, 216 Wis. 2d 387, 573 N.W.2d 852 (S.Ct. 1998), the Court (¶19) recognized that government can change by taking steps in a piecemeal approach without violating the Uniformity Clause.

Hence, in need of revenue, faced with an exemption category that is currently problematic, and having full control over taxation and exemption, the Legislature, as an alternative to eliminating the "benevolent association" exemption altogether, should be able to take the middle-of-the-road approach by requiring PILOT's[4].

(e) The Legislature can recognize that it is reasonable to expect private, tax-exempt entities to contribute toward the costs of and services provided by government (fire and police protection, snow and ice removal, salting, street lights, paved roads, etc.). See, e.g. Wis. Stat. § 66.1333(12) and § 66.1201(22) where the Legislature allows cities to charge annual PILOT's to, respectively, redevelopment authorities and *public* housing authorities as a contribution for "services, improvements or facilities furnished to" them. See Wis. Stat. § 70.119 where the Legislature allows cities to charge annual PILOT's to the State on State-owned properties for "water, sewer and electrical services and all other services directly provided by a municipality…"

(f) The Legislature can recognize that since it requires the State and *public* housing authorities to pay PILOT's, it is reasonable to require the same from *private* entities.

(g) The Legislature can take notice that the demographics in our society are changing. We are aging. And, there is widening gap between the have's and have-nots. Given that, and the potential for more and more property to come off the tax rolls as exempt under the current "benevolent association" exemption (something unique to this category of exemption because it encompasses low-income and senior housing), and the relief that PILOT's will effectively provide to those elderly and low-income persons who remain in their own home or apartment (i.e. PILOT's paid by exempt entities will mean that less of the tax burden will be shifted to them), the Legislature should be able to act to provide middle-of-the-

[4] See Wis. Stat. Sec. 59.57(2). "It is . . . declared to be the policy of this state . . . to preserve and enhance the tax base in counties and municipalities . . .." See, also, Wis. Stat. Sec. 70.109 (presumption against exemption).

road relief – leave the exemption, but mandate a PILOT. That is, mandating PILOT's brings more fairness to the tax system, helps to preserve a more ordered society, and helps to preserve governmental function.

(h) The Uniformity Clause, Art. VIII, Sec. 1, expressly allows the Legislature to exempt categories, and to provide "*reasonable exemptions."* Given the years of controversy regarding the "benevolent" exemption and over a decade's worth of attempts to ameliorate the situation, requiring PILOT's while allowing the exemption to continue is "reasonable."

The Legislature, in mandating the PILOT's, could, in legislative findings, articulate all of the above points, and cite the B. 1-3 examples above of taxed-in-part concepts *already allowed* under existing statutory and commonlaw.

The Legislature, in those articulated legislative findings, could also indicate that, given the circumstances surrounding the "benevolent association" exemption and the repeated attempts to study and fix "the problem" for over a decade, the Courts are urged to respect the commonlaw principle in Wisconsin that:

> "Where a tax measure is involved, the presumption of constitutionality is strongest. The courts have given recognition to the essentiality of taxation in preserving an ordered society, and there is implicit recognition in judicial decisions that the principle of absolute equality and complete congruity of the treatment of classifications is impossible and must be sacrificed in the interests of preserving the governmental function."

Telemark Development, Inc. v. Department of Revenue, 218 Wis. 2d 809, 581 N.W.2d 585 (Ct. App. 1998), rev. denied, 220 Wis. 2d 367, 585 NW.2d 158 (1998). See, also, *Norquist v. Zeuske*, *supra*, (S.Ct. 1997).

Again, since the Legislature already mandates that the State and *public* housing authorities, pay PILOT's, and such legislation has existed challenge-free for years, the Legislature should be able to mandate PILOT's for benevolent associations.

In mandating annual PILOT's imposed by the locality in which the benevolent owner's property exists, the Legislature could set a limit on the annual PILOT amount – no more than the amount that would have been levied as the annual tax of the particular municipality upon that parcel. This is the approach the Legislature took for the PILOT's imposed upon redevelopment authorities (66.1333(12)) and *public* housing authorities (66.1201(22)). So, the maximum amount of the annual PILOT would be the parcel's most recent equalized assessed value times the municipality's tax rate for that year. And, the Legislature could indicate that the exempt owner has the same rights to challenge its property assessment as taxable owners have under Wis. Stat. § 70.47.

Favorable Committee Testimony

The Committee, I believe, has already heard positive feedback regarding PILOT's.

At our first Committee meeting on September 28, 2004, Stephen Seybold of a community-based provider indicated that it paid PILOT's on two facilities in Wausau, and Rev. Risch said he pays PILOT's to the City of Racine, and Kyran Clark of Marquardt Village said he has been paying PILOT's for 24 years.

Earl Thayer, in his October 28, 2004 paper to this Committee, said, "All homes for the aged need to consider seriously using the 'good citizen' card of making PILOT or PMS payments, at least for the direct services that their facilities and residents utilize, such as fire and police protection, etc."

Tim Radelet, in his October 31, 2004 paper to the Committee, endorsed a scheme whereby the State would impose a 62-year-old-age limit for senior housing, a mechanism to tax luxury units, and a system to require State reimbursement to municipalities to give back what they lose due to exempt parcels being located within their borders. Per Mr. Radelet, "A system of state reimbursement would spread the burden equitably across all Wisconsin taxpayers." So, he suggests a PILOT with a twist. Rather than the owner paying the municipality, the State would reimburse the municipality for lost taxes.

John Sauer, in a legislative proposal to the Benevolent Retirement Home for the Aged Taskforce[5], said, retirement homes for the aged should be exempt, if, among other things, they "Publish fees or donations paid to local units of government for receipt of municipal services, such as police and fire protection, sewer, and water and garbage collection." That, I believe, contemplates PILOT's being paid.

PILOT's offer a compromise on the decades long debate. And, they consider, much better than current law, the interests of those low to mid-income persons presently paying property tax as well as those who currently enjoy exemption.

C. APPRAISALS, OR MORE MEANINGFUL DATA, FROM BENEVOLENTS.

In my Memo No. 2, I explained the Wis. Stat. §§ 70.337-16.425 scheme whereby owners report the value of their exempt parcels, and then, the DOR reports to the Legislature on how much the property-tax exemption is "costing" the State. That is, per 70.337, exempt owners, by March 31 of every even-numbered year, must file with the municipal clerk a DOR-report form regarding itself, its property, lease information, and the owner's opinion of value by checking off value ranges. A comprehensive report is then sent by the municipality to DOR. DOR then tabulates the data and prepares an estimate of the value of tax-exempt property in Wisconsin by 70.11 exemption category. DOR then provides the information to the Legislature in its "Summary of Tax Exemption Devices" prepared under 16.425(3).

[5] Computer line of "JRS, WAHSA, 3/21/00."

This general idea behind the legislative scheme is good and should be left in tact. However, § 70.337 itself and the 70.337-DOR-report forms need amendment to overcome the poor data and lack of accountability that we have been discussing at our Committee meetings.

Sec. 70.337(1) needs modification so that the DOR-prepared-report forms will exact meaningful data from owners that will be useful to the Legislature. The wide value ranges on the current forms (see 70.337(1)(f)) must be significantly narrowed. Other questions must be added to elicit much better data. For example, insurance value, whether recent appraisals exist, whether recent offers have been received or the parcel has been listed for sale, what the owner's specific opinion of value is, etc.

Meaningful data must be collected and explained to the Legislature.

Current 70.337(5) requires each person who must file a DOR-report form to "pay a reasonable fee that is sufficient to defray the costs to the taxation district of distributing and reviewing the forms…." and of the municipality reporting to the DOR. The governing body of the locality establishes this fee.

Perhaps 70.337(5) should be modified so that the State DOR sets the fee, with the fee also covering DOR's costs of analyzing and reviewing all the report forms it gets from the individual municipalities and of the DOR then presenting summarized data to the Legislature.

Current 70.337(6) provides that if the property-owner does not timely submit the DOR-report form, the municipality can appraise the owner's property at the owner's expense.

Perhaps, in addition to, or in lieu of, revised 70.337-DOR-report forms, exempt owners (or at least those exempt under 70.11(4) as benevolent associations[6]) could be required, as a condition to maintaining or seeking exemption, to obtain and submit an appraisal meeting certain USPAP standards. The Legislature could make the appraisal requirement compulsory on a one-time basis. Receiving the legislative grace of a property-tax exemption is an extremely valuable benefit in a world where the general maxim is death and taxes are certain. Hence, the cost and inconvenience of a one-time requirement to provide an appraisal should be more than outweighed by the possibility of effectively escaping all or most property-tax forever.

D. OTHER STATES.

At our November 8, 2004 Committee meeting, one of the members wondered how this exemption is treated in other states. Rebecca Boldt of the DOR did a limited "other-state" anaylsis for the Benevolent Retirement Home for the Aged Taskforce in 2000, and the Government-5 Report for that taskforce also contained an "other-state" analysis. I shall submit to the Legislative Council a copy of the Government-5 Report.

I shall also submit a 1992 paper, "The Impact of Exemptions on the Fairness of Property Tax Systems and the Special Problem of Residential Retirement Systems" written by C.B. McLean,

[6] Again, a carve-out could be added for nonprofit, Medicaid nursing homes, and for truly charitable facilities.

Jr., Counsel, North Carolina Property Tax Commission, which paper is relevant to the issues our Committee faces.

I understand that New Hampshire requires mandatory PILOT's from charitable, nonprofit housing projects (RSA 72:23-k), government housing projects (RSA 203:22), state property (RSA 481:14), and small power energy concerns. See, "Payments in Lieu of Taxes, The Concord, New Hampshire Proposal," by Michael J. Fedele (Concord, NH, 603-225-8550, mfedele@concord.com), presented at the 23rd Annual Legal Seminar of the International Association of Assessing Officers, San Antonio, 2002.

A November 18, 2004 newspaper article at www.post-gazette.com, "Nonprofits line up to aid city, foundation will decide which services to fund," indicates that "Pittsburgh nonprofits agreed to help the city dig out of its budget hole…" by collectively paying $6 million each year to help pay for City services. A spokesman for the nonprofits said, "'It's fair to say there was a willingness to want to help the city …"

E. STATUTORY CHANGES.

As I explained in my Memo No. 2, the Committee has many different options available to it. In the end, the Legislature must decide and determine the merits and feasibility (political, economic, and legal) of acting or not acting.

One way or another, I would suggest:

1. Removing the "benevolent association" (including "benevolent retirement home for the aged") category from 70.11(4) so that that exemption, or a substitute for it, may be isolated in separate categories not buried in sub (4).

2. Creating a clear and separate 70.11 exemption category for nonprofit facilities that serve a truly charitable purpose with no requirement of renumeration – the "special needs" type parcels of the type envisioned by all Committee members as charitable i.e. homeless shelters, battered spouse shelters, etc. Acreage limits, income-use limits, and "necessary for location and convenience of buildings" limits, would still be recommended to avoid potential abuse.

3. Creating a clear and separate 70.11 exemption category for nonprofit nursing homes that serve Medicaid residents. Again, acreage limits, income-use limits, and "necessary for location and convenience of buildings" limits, would still be recommended to avoid potential abuse.

4. Either: (a) dealing with all other "benevolents" that do not fit in any of the above categories by adopting a clear definition of "benevolent" and setting other type limits (income-based, etc.); or (b) easier, simply putting the "benevolent associations" in its separate 70.11 category and imposing a PILOT mandate like the Legislature already does for its own parcels (70.119), *public* housing authorities (70.11(18) and 66.1201(22), UW

Hospitals and Clinics Authority (70.11(38) and 70.119), redevelopment authorities (66.1333(12)), and the DNR (70.114(4)).

5. Regardless of whether a definition of "benevolent" is established when the benevolent exemption gets moved to a newly numbered 70.11 category, or whether the benevolent exemption remains undefined, keep the 10-acre limit and keep the rent-use restriction.

F. HIGH-END SENIOR HOUSING, THE SPECIAL INTERESTS VS. GREATER PUBLIC.

The crux of the divergence of opinion in this Committee, and in past committees, I believe, is the tax-status of "nonprofit" senior residential facilities that serve those with money. Of course, we all (rich and poor alike) worry about getting old and the attendant burdens (financial and physical) associated with age. Yes, those entities provide a needed and valuable service to their constituencies. However, in a broad sense, with their IRS-permissible financial screening at the front end, and their IRS-permissible build-up of reserves using resident assets, which reserves fund their "no-kick-out" policy, really, those entities are a *defacto* co-op of moneyed people pooling their resources, through a corporate entity, for their own good[7]. That is self-benevolence, or members joining forces to care for themselves. They are the primary beneficiaries of their own benevolence[8]. And, while it is prudent and understandable to create and maintain those *defacto* "co-op's," especially given the aging of our society, and the status of health care and social security issues in America, our Committee must not forget the many more people who cannot join those "co-op's" because they cannot afford it (i.e., the people who have not appeared or testified before our Committee, but whose numbers are far greater than those who have).

G. ATTIC ANGEL'S PRAIRIE POINT, 10-ACRE REQUIREMENT.

Prairie Point.

The Attic Angel Association's website, www.atticangel.org, offers a description of its "newest neighborhood[9]" – an independent living project called "Prairie Point" "located on Madison's

[7] Sdf Attic Angel's marketing materials explain that the organization requires financial information from applicants, with regular updates from residents even after being admitted, so that the organization can "estimate how long a resident has the ability to pay the monthly fees…" so that the organization "does not overextend itself and place an undue financial burden…" upon itself. An "internal resident aid fund" (i.e. reserves, or pooled resident funds) is available for those who – despite being financially screened - need it. "Should a resident's financial resources become exhausted because of unexpected circumstances, the resident or residents would be subsidized in a highly confidential manner under the Resident Aid Fund. Attic Angel Place will not subsidize residents who have divested funds to the detriment of their ability to sustain themselves at Attic Angel Place."

[8] Besides the "self-benevolence" feature of the *defacto* "co-op's," one could argue that the possibility of large percentage returns of endowments paid amounts to impermissible private inurement to the "co-op" beneficiaries, who are the "beneficial owners" of their own units.

[9] According to a January 22, 2004 Capital Times article, at Attic Angel Place on Old Sauk Road, a one-bedroom apartment costs $1,406 per month plus a $25,000 entrance fee. More recent pricing information effective April 1, 2004 shows the following rates for apartments at Attic Angel Place: 1 bedroom (680 s.f.), $1,487 per month with a $25,500 entrance fee; 1 bedroom plus den (850 s.f.), $1,744 per month with a $30,000 entrance fee; 2 bedroom (975 s.f.), $2,001 per month with a $32,000 entrance fee; 2 bedroom with balcony (975 s.f.), $2,067 per month with a $32,500 entrance fee; and 2 bedroom plus den (1,145 s.f.), $2,259 per month with a $38,000 entrance fee.

desirable far west side, two blocks west of Old Sauk and Junction Roads." Phase 1 will have 59 homes, and is expected to be completed in Spring, 2005. Phase 2 will have 49 homes and is expected to be built from now through Summer, 2006. According to a June 20, 2004 Wisconsin State Journal article, the entire Prairie Point project is anticipated to eventually have 315 units (200 in two apartment buildings and, evidently, 115 in single-family homes and duplexes). Duplex units at the project range in size from 1,375 square feet to 2,300 s.f. The single-family homes are 2,325 s.f. with 3 bedrooms, 2.5 bathrooms, and a 2-car garage.

The website says, "With most of these homes reserved prior to building, our residents have had the opportunity to individualize the homes to suit their preferences and tastes, and these homes are gorgeous!"

The application for Attic Prairie Point calls for completion of a "Confidential Financial Statement," and a check for $1,000 for the application fee. The financial statement, besides soliciting information on social security, pensions, annuities, rental income, interest, dividends, real estate, and investments, indicates that updates of financial information "will be requested and required periodically" and requires the applicant to pledge that he or she "will not impair, by gift or otherwise, my ability to meet my financial obligations while I am a resident of any Association facility."

Claire Merkt, Prairie Point's Marketing Specialist, told me that, in addition to the $1,000 application fee, there is a $10,000 reservation fee to hold a duplex site, and a $15,000 reservation fee to hold a single-family site, and that, prior to "closing" on a home (whether a duplex unit or single-family unit), the occupant is typically required to pay 15-20% of the construction cost, with the balance due at closing. She said that the single-family homes and duplexes are being designed and built by the Hoffman Corporation, and that the typical base-price for the units (without owner-selected "upgrades") ranges from about $189,000 to the mid-$400,000's per unit. (The marketing materials show that a single-family unit, 2,325 s.f., lists at a base price of $446,000). Monthly fees are $340.

The marketing materials for Prairie Point say that there is "[n]o specific age requirement. However, as part of a Continuing Care Retirement Community, Prairie Point homes are designed with people 50+ in mind."

Attic Angel Prairie Point, Inc. v. City of Madison.

Currently, the City of Madison is in litigation with Attic Angel Prairie Point as to whether it should be exempt as benevolent. See, Dane County Circuit Court Case No.'s 2003-CV001617 and 2004-CV-002113, Judge Sumi.

The Prairie Point marketing materials describe the litigation:

> "**Currently in litigation with the city of Madison.**
> As you may be aware, Attic Angel Prairie Point, Inc. filed a lawsuit with the city of Madison in May, 2003. We are disputing the city's determination that our not-for-profit community should be charged property taxes. The primary area of disagreement is over

the total number of acres that can be granted an exemption. The city of Madison argues that it can be no more than 10 acres for related corporations, when the law and past practice indicates that each corporation is entitled to 10 acres. Our attorneys inform us that across the country, this is a source of ongoing dispute between municipalities and retirement housing providers. Since we filed suit, we have been paying property taxes in protest. Thought it's hard to predict how long our case may take, our attorneys estimate that it could be several years.

Not alone in the property tax debate.
It's important that you realize that Attic Angel is not alone in the property tax debate. The issue came to the forefront of the Wisconsin Legislature as it wrapped up its winter session in 2004. In Nov. 2003, a Wisc. Supreme Court ruling (*Columbus Park v. City of Kenosha*) ordered not-for-profit housing providers to pay property tax, unless they were predominantly providing services, such as are found in continuing care facilities, nursing homes or mental illness facilities. Recognizing the threat this placed on many providers to survive and continue their charitable mission, the legislature passed a bill (SB512) placing a moratorium on their tax collection, while the issue can be studied more closely. Ultimately, their goal will be to determine which benevolent not-for-profit housing providers should be granted property tax exemption. Attic Angel will continue to be an active voice in this issue."

10-Acre Issues.

Ms. Merkt indicated that the Attic Angel Prairie Point development is about 53 acres. I understand that Attic Angels also owns and operates other senior housing facilities in the City of Madison.

In the City of Milwaukee, a typical residential lot is 120 feet by 40 feet, which would yield 30 total lots in one City block. The City block would be 240 feet by 600 feet, or 144,000 square feet. Since an acre is 43,560 square feet, 144,000 square feet divided by 43,560 square feet equals 3.3 acres in a typical City of Milwaukee residential block.

Wis. Stat. § 70.11(4)'s 10-acre limit then would allow for an exemption of roughly THREE ENTIRE CITY BLOCKS (i.e. over 90 typical individual lots/single-family homes).

There has been testimony before our Committee that the ten-acre limit should be eliminated or expanded. However, as indicated, that limit seems generous enough (over THREE CITY BLOCKS worth of exemption).

H. CONCLUSION.

I look forward to our next Committee meeting and to working with all our members on these issues.

Personally, I feel our Committee and the Legislature should strive toward a solution that exempts nonprofit parcels owned and used for truly charitable purposes but that taxes nonprofit parcels used to house those with means. The tax system must be fair to the poor and middle-income people who do not live in nonprofit-owned housing, and who must, directly or indirectly, pay property taxes.

Other Submittals With This:

- Full Government-5 Benevolent Retirement Home for the Aged Legislative Taskforce Report
- C.B. McLean's 1992 paper

GCH
Attachment
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