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# Evangelical Lutheran Good Samaritan Society v. Bd. Of Equal. Of Ada Appellant's Brief Dckt. 43697

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IN THE SUPREME COURT OF THE STATE OF IDAHO

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EVANGELICAL LUTHERAN GOOD )  
SAMARITAN SOCIETY, )

Petitioner-Respondent, )

v. )

BOARD OF EQUALIZATION OF ADA )  
COUNTY, )

Respondent-Appellant, )

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Supreme Court Docket No. 43697  
Ada County No. CV-2013-9169

Supreme Court Docket No. 43698  
Ada County No. CV-2014-13941

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Appeal from the District Court of the Fourth Judicial District  
for Ada County

Honorable Steven Hippler, District Judge presiding

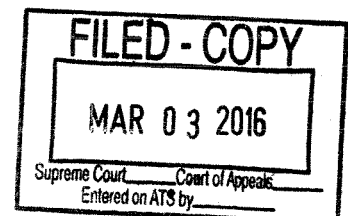
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**APPELLANTS BRIEF**

**JAN M. BENNETTS**  
ADA COUNTY PROSECUTING ATTORNEY  
**GENE A. PETTY**  
**CLAIRE S. TARDIFF**  
Deputy Prosecuting Attorneys  
200 W. Front Street, Rm 3191  
Boise ID 83702  
Telephone: (208)287-7700  
Facsimile: (208) 287-7719  
Email: [civilpfiles@adaweb.net](mailto:civilpfiles@adaweb.net)  
*Attorneys for Respondent-Appellant*

**PHILLIP OBERRECHT**  
**GREENER BURKE SHOEMAKER**  
**OBERRECHT, PA**  
950 W. Bannock Street, Ste. 950  
Boise, ID 83702  
Telephone: (208) 319-2600  
Facsimile: (208) 319-2601  
Email: [poberrecht@greenerlaw.com](mailto:poberrecht@greenerlaw.com)  
*Attorney for Petitioner-Respondent*

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## I.

### STATEMENT OF THE CASE

#### A. Nature of the Case.

In this appeal, Ada County questions the District Court's decision granting The Evangelical Lutheran Good Samaritan Society, Inc. ("Society") a charitable property tax exemption under Idaho Code § 63-602C.

#### B. Course of Proceedings.

In 2012, Society applied to Ada County for charitable and religious property tax exemptions for a skilled nursing home in Boise, Idaho named Good Samaritan Society—Boise Village ("Boise Village"). Ada County denied the application, and Society appealed to the Idaho Board of Tax Appeals. The Idaho Board of Tax Appeals held a hearing and issued a decision holding that Society did not qualify for a charitable or religious property tax exemption. Society then appealed to the District Court. Subsequently, Society applied for charitable and religious tax exemptions for 2013 that were again denied by Ada County. Society appealed that denial directly to the District Court, and the two cases were consolidated.

Society then applied for a 2014 property tax exemption, which was also denied by Ada County. Society appealed that decision to the District Court. The parties stipulated, and the District Court agreed, that the 2014 appeal would be stayed pending final resolution of the 2012 and 2013 tax exemptions, and that the final decision for the 2012 and 2013 tax years would also apply to 2014. *See* Stipulation for Stay of Proceedings.

A trial was held by the District Court in this case on November 10, 12, 13, 14, 17 and 19, 2014. The District Court overturned the decision of the Idaho Board of Tax Appeals and held that Society was entitled to a full charitable property tax exemption and a partial (12.3%) religious tax exemption. *See* District Court Decision.<sup>1</sup>

Ada County timely appealed the grant of a full charitable property tax exemption, but it did not appeal the partial religious property tax exemption. *See* Notice of Appeal. Society did not cross-appeal the judgment that granted only a partial religious property tax exemption. Therefore, the only issue before the Supreme Court of Idaho is whether Society is entitled to a charitable property tax exemption.

### **C. Statement of Facts**

#### **1. Society's Corporate Structure.**

Society is a North Dakota non-profit corporation that operates approximately 240 facilities, including skilled nursing facilities, home care facilities, independent housing, and assisted living.<sup>2</sup> Tr.p.115,LL.9-20; Ex.31, GSS2876. It is the ninth largest nursing home company in the United States. Tr.p.746,LL.9-15. It operates skilled nursing facilities in twenty-four states, including four in Idaho. Tr.p.47,L.25-p.48,L.2, p.48,LL.3-9. Society also owns an insurance company incorporated in the Cayman Islands, called Good Samaritan Society

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<sup>1</sup> The District Court issued its Findings of Fact and Conclusions of Law on May 5, 2015, which is referred to herein as "District Court Decision."

<sup>2</sup> It has approximately 29 separate corporations through which it provides low-income housing. Tr.p.476,L.21-p.477,L.10; Ex.31, GSS2876.

Insurance Limited, Inc.<sup>3</sup> Ex.19, GSS2740; Ex.31, GSS2876. Each facility is operated separately as an unincorporated operating unit. Tr.p.309,LL.1-8; Ex.319, AC2227.

## 2. Boise Village.

Boise Village is a 96-bed skilled nursing facility owned by the Society.<sup>4</sup> Tr.p.307,LL.4-9; Ex.319, AC2222; p.127,LL.12-25. Boise Village administers skilled nursing care twenty-four hours a day, seven days a week, under a doctor's order. Tr.p.152,LL.4-6. In 2012 and 2013, Boise Village expected everyone admitted to pay for the services they received.<sup>5</sup> Ex.301,p.37;Tr.p.637,LL.4-12. Boise Village charges rates similar to other nursing facilities in Ada County, and its income produces a profit.<sup>6</sup> *Id.*; Ex.320, AC3088; Tr.p.311,LL.11-17. According to Society, Boise Village is expected to operate on a self-sufficient basis. Tr.p.127,LL.12-25, p.307,LL.4-9, p.483,LL.23-25; Ex.319, AC2222; Ex.103, GSS2599.

Boise Village is one of 79 skilled nursing facilities in Idaho, and one of ten in Boise.<sup>7</sup> Tr.p.589,L.24-p.590,L.20. There is no shortage of skilled nursing care or beds in Boise. *Id.* To be admitted to a skilled nursing facility, a person must need nursing care and assistance with

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<sup>3</sup> It also has a controlled foundation that is a Minnesota non-profit corporation. Ex. 31, GSS2876.<sup>3</sup>

<sup>4</sup> Society provided no evidence that Boise Village was donated to it. *See* Tr.p.166,LL.14-21.

<sup>5</sup> Society's 2012 property tax exemption states that all of Boise Village was used for this business or commercial purpose 365 days. Tr.p.312,L.3-p.313,L.13; Ex. 320, AC3091-92. According to its staff, Boise Village is a "business open to the public" and "a self-sustaining business entity." Tr.p.656,LL.2-21.

<sup>6</sup> Boise Village operates like a for-profit skilled nursing business. Tr.p.711,LL.16-23, p.736,LL.11-14, p.795,LL.8-16.

<sup>7</sup> The licensing process is the same for all skilled nursing facilities in Idaho. Tr.p.595,L.8-p.597,L.10. Also, Idaho does not have additional requirements for a dementia unit or traumatic brain injury unit. Tr.p.595,L.8-p.597,L.10; Tr.p.604,L.23-p.606,L.5. Other skilled nursing facilities in Idaho accept individuals with traumatic brain injuries, Alzheimer's and dementia, and handicaps. *Id.*



daily living, such as getting dressed, grooming, toileting, mobility, and moving around. Tr.p.592,L.19-p.593,L.16.

Boise Village cares for residents who need post-acute care,<sup>8</sup> and residents with long-term disabilities,<sup>9</sup> brain injuries<sup>10</sup>, Alzheimer's, dementia, and memory issues.<sup>11</sup> Boise Village also provides therapies, such as occupational therapy, physical therapy, speech therapy, and restorative therapy. Tr.p.151,LL.20-21, p.178,L.18-p.179,L.13, p.188,LL.9-12; Ex.53, Tr.p.288,L.11-289,L.4.

In addition to such care, Boise Village provides residents with housekeeping, laundry services, and environmental services, and has a kitchen and main dining area where meals are served three times a day. Tr.p.152,LL.4-6, p.179,L.20-p.180,L.6, p.181,LL.2-7; Ex.45A

Most of its residents pay through government programs such as Medicaid, Medicare managed care, and Veteran's Administration. Tr.p.292,LL.10-1, Tr.p.292,L.23-p.293,L.2, Tr.p.292,LL.18-22. The other residents pay with private funds. *Id.*

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<sup>8</sup> In its Syringa 1 unit, Boise Village provides post-acute care to residents who have been released from a hospital and need therapy services and skilled nursing services to get their strength back. Tr.p.170,LL.8-24. It also offers outpatient therapy. *Id.* The residents in Syringa 1 are covered by Medicare, managed care, private pay, and Veteran's Administration. Tr.p.292,LL.10-17. Seventy-eight skilled nursing facilities in Idaho provide rehabilitation care. Tr.p.595,LL.3-5.

<sup>9</sup> In its Hoeger House unit, it provides care to residents with long-term disabilities. Tr.p.176,LL.12-19. Boise Village also provides long-term care to residents in its Syringa 2 unit. Tr.p.177,L.21-p.178,L.1. These residents are also mostly covered by Medicaid. Tr.p.292,L.23-p.293,L.2. Sixty-nine skilled nursing facilities in Idaho provide long-term care, including eight in Boise. Tr.p.597,L.22-p.598,L.4.

<sup>10</sup> In its Eagle unit, Boise Village cares for residents with brain injuries. Tr.p.172,LL.5-17. These residents are all covered by Medicaid. Tr.p.292,LL.18-22.

<sup>11</sup> Boise Village provides care to residents with Alzheimer's, dementia, cognitive disabilities, and memory issues in its Harbor Care unit. Tr.p.175,L.19-p.176,L.1. These residents are mostly covered by Medicaid. Tr.p.293,LL.3-8.

### **3. Boise Village Financials.**

Boise Village's operating revenue was \$8,682,596, \$9,736,870, \$9,836,951 in 2011-2013. Tr.p.766,L.8-14; Ex.349F. Overall, 87%, 90% and 94% of its revenue came from state and federal government programs during 2011-2013, respectively, including Medicaid, Medicare, managed care, and Veterans' Administration. Tr.p.766,L.15-p.767,L.17; Ex.349F. Medicaid was overwhelmingly Boise Village's largest source of revenue during 2011-2013. Tr.p.766,L.12-18; Ex.349F.

Boise Village's income produces a profit. Ex.320, AC3088; Tr.p.311,LL.11-17. The District Court found that that Boise Village's net operating revenue in 2012 and 2013 was \$1,143,346 and \$497,802, respectively.<sup>12</sup>

### **4. Residents Are Required to Pay.**

Boise Village charges all of its residents, and its residents are required to pay.<sup>13</sup> Tr.p.277,L.23-p.278,L.1, p.311,LL.18-25; Ex.320, AC3088. According to Brian Davidson, Boise Village's administrator, "we like to get payment for all of our residents that reside at the facility." *Id.* He also testified he is not aware of Boise Village ever admitting a resident knowing he or she was never going to pay. Tr.p.299,LL.17-25. If a resident does not personally

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<sup>12</sup> Testimony was presented at trial showing that Boise Village's profit may have been even higher, totaling \$537,513, \$1,651,289, and \$946,010 during 2011-2013, respectively. Tr.p.773,L.5-p.774,L.8, Tr.p.767,L.18-p.768,L.23. These profits totaled \$3,134,812 during those years. *Id.* Tr.p.771,L.20-p.774,L.15; Ex.349G.

<sup>13</sup> Boise Village provides a packet of information to prospective and new residents that describes the services it provides. Ex.49; Tr.p.289,LL.15-19. This document does not say that Boise Village offers free skilled nursing care or has a sliding fee scale, nor does it encourage people without money to come for care. Tr.p.290,L.7-p.291,L.4.

pay, Boise Village seeks payment from either the government or family. Tr.p.278,LL.2-7. Boise Village does not have a sliding fee scale. Tr.p.291,LL.5-7.

At times, residents are admitted to Boise Village who have too much money to qualify for Medicaid; this is called being “over-resourced.” Tr.p.305,LL.3-20. Boise Village charges those residents the private pay amount until they run out of money (less than \$2,000 in assets) and qualify for Medicaid. *Id.* At that point, Medicaid will pay for their care for the rest of their stay at Boise Village. *Id.*

### **5. State and Federal Government Payments.**

Boise Village receives payments from Medicaid, Medicare and the Veteran’s Administration. Tr.p.304,LL.1-7. These programs pay based upon the level of care that Boise Village residents need. Tr.p.640,L.13-p.641,L.5. Private pay residents also pay based upon acuity.<sup>14</sup> *Id.*

Idaho Medicaid is a government insurance program that reimburses skilled nursing facilities for their allowable costs, including nursing, room and board, administrative staff, janitorial staff, insurance, cotton balls, etc. Tr.p.612,L.10-p.614,L.18. Medicaid pays a daily rate based upon the facility’s costs and is adjusted for acuity.<sup>15</sup> Tr.p.616,L.10-p.617,L.9. The

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<sup>14</sup> As of November 11, 2014, Boise Village had 91 residents and only approximately 9 of those were private pay. Tr.p.293,LL.9-14.

<sup>15</sup> In addition to the daily rate payments, Medicaid also makes an additional payment to Idaho skilled nursing facilities based upon how many Medicaid residents it has, called the Upper Payment Limit. Tr.p.782,L.16-784,L.16; Ex.349I. These payments are permitted under current state and federal law, and Boise Village received these payments in 2012 and 2013. Tr.p.851,L.18-p.852,L.22. Society asserts that without this additional payment, it would “not be making money and serving Medicaid.” Tr.p.842,LL.6-25; Ex.33.

daily rate Medicaid paid Boise Village is the highest of the 14 skilled nursing facilities in a 25 mile radius.<sup>16</sup> Tr.p.789,LL.5-20; Ex.349L.

In addition to the daily rate, Medicaid also pays a special rate when a person has an extraordinary need, such as a specialized wheelchair or ventilator. Tr.p.617,LL.11-20. Boise Village requested and was paid \$6,876 in special rates in 2012 and 2013 for its residents' specialized wheelchairs.<sup>17</sup> Ex.316A; Tr.p.619,L.3-p.321,L.21.

On average, Boise Village charged its Medicaid residents more than those who paid with private funds.<sup>18</sup> Medicaid payments totaled \$106,131.05 and \$107,758.95 per resident per year in 2012 and 2013, respectively. Medicare payments to Boise Village were even higher than the Medicaid payments, totaling \$149,474.80 and \$144,737.10 per resident per year in 2012 and 2013, respectively. Tr.p.785,LL.11-25; Ex.349J.

Idaho Medicaid pays skilled nursing facilities more than a facility's costs, which results in a profit from Medicaid residents. Tr.p.838,LL.7-22. In 2012, Boise Village earned a profit of \$49.84 per Medicaid resident per day, totaling \$18,191.60 annually. Ex.32, GSS3281;

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<sup>16</sup> Boise Village's higher rate is due, at least in part, to its higher costs. See Tr.p.853,L.6-p.854,L.17; Ex.96. Other facilities in the Boise area have a lower Medicaid rate but higher acuity, including three facilities in 2012 and six facilities in 2013. *Id.*

<sup>17</sup> These special rates were paid at \$12.18 and \$10.74 per day for ten months, totaling \$6,876. Ex.316A; Tr.p.619,L.3-p.321,L.21.

<sup>18</sup> Medicaid paid Boise Village \$290.77 and \$295.23 per resident per day in 2012 and 2013, respectively. Tr.p.787,L.7-p.788,L.13; Ex.349K. This is more than the rate Boise Village charged its private pay residents. *Id.* These Medicaid payments include both the Medicaid daily rate and net upper payment limit payment. Tr.p.768,LL.15-18.

Tr.p.837,L.17-p.838,L.6. Boise Village has a higher percentage of Medicaid residents than most nursing homes in the Boise area.<sup>19</sup>

## **6. Boise Village Donations.**

Boise Village is only minimally supported by cash donations and those donations do not reduce the fees it charges its residents. Ex.320, AC3088; Tr.p.291,L.24-p.292,L.2, p.310,L.24-p.311,L.5. Over 99% of Boise Village's revenue came from charging people for services. Tr.p.793,LL.20-24.

According to Society, Boise Village received cash donations totaling \$18,785 in 2011, \$19,526 in 2012 and \$50,896.43 in 2013.<sup>20</sup> Exhibit 84,p.4. These donations were approximately 0.5% of Boise Village's total revenue in 2011-2013, respectively.<sup>21</sup> Tr.p.311,LL.6-10,

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<sup>19</sup> Of the 14 skilled nursing facilities in a 25 mile radius, Boise Village had second highest percentage of Medicaid residents in 2011 and 2013, and third highest 2012. Ex.24A; Tr.p.790,L.11-p.791,L.15, p.849,L.24-850,L.7; Ex.349M. Its Medicaid residents were 73.4%, 72.1%, and 76.1% of its total residents in 2011-2013, respectively. Ex.24A.

<sup>20</sup> Boise Village received the following donations: unrestricted gifts of cash of \$715 in 2012 and \$2,948 in 2013. Tr.p.243,L.8-p.244,L.15; unrestricted cash bequests of \$0 in 2012 and \$873 in 2013. Tr.p.245,LL.3-9. Ex.28, GSS2817; miscellaneous fundraiser revenue of \$1,343 in 2012 and \$49 in 2013. Tr.p.245,LL.10-18; restricted operating cash gifts expended of \$15,168 in 2012 and \$9,916 in 2013. Tr.p.246,LL.2-23; unrestricted gifts of cash from foundation of \$2,300 in 2012 and \$3,164 in 2013. Tr.p.246,L.24-p.247,L.10. According to Society, Boise Village received the following donations in 2013: \$4,320 for donor restricted property gifts of cash. Tr.p.239,L.18-p.240,L.7; donor restricted property donations of \$27,000. Tr.p.240,LL.13-20; donor restricted operating donations \$2,200. Tr.p.240,L.21-p.241,L.3; donor restricted endowment for staff donations of \$200. Tr.p.241,L.15-p.242,L.6; Ex.28,GSS2814; and interest on scholarship donations of \$226.43. Tr.p.242,LL.9-17; Ex.28, GSS2814. Society presented evidence in its balance sheet of Boise Village's donor restricted gifts, the balances of those accounts as of December 31, 2012, and the increase in those balances during 2013. Ex.28, GSS2814; Tr.p.239,L.8-p.242,L.21. No evidence was presented that the account balances as of December 31, 2012 were donations received in 2011 or 2012.

<sup>21</sup> Boise Village's operating revenue was \$8,682,596, \$9,736,870, \$9,836,951 in 2011-2013. Tr.p.766,L.8-14; Ex.349F.

p.793,LL.11-15; Ex.349N; Ex.320,AC3088; Ex.319, AC2226; Ex.301,p.39. For-profit skilled nursing facilities commonly receive in-kind donations as well.<sup>22</sup> Tr.p.708,L.20-p.710,L.6.

#### **7. Boise Village Admissions Process.**

Boise Village's admissions policies and procedures are similar to for-profit skilled nursing facilities. Tr.p.682,L.11-p.685,L.23. Boise Village staff asks potential residents how they are going to pay the bill, and it considers a person's ability to pay in its decision to admit that person. Tr.p.636,LL.2-7. Before people can be admitted to Boise Village, a payment source must be identified, and staff must verify that the services will be covered by the payor. Tr.p.624,L.11-p.628,L.6; Ex.89, GSS21-23. Boise Village staff must collect payment for self-pay residents and the private portion owed by Medicaid-pending residents. *Id.*

The Boise Village administrator is responsible for a screening process that ensures payment sources are established prior to admission and that staff explain the payment expectations. Tr.p.276,LL.12-21; Ex.339, AC1157 and 1160. The administrator is also responsible for ensuring that staff escort a new resident to the business office for collection of payment and to obtain additional financial information. Ex.339, AC1160; Tr.p.277,LL.15-22.

When people seeking admission to Boise Village do not have a way to personally pay the bill, Boise Village staff ask questions to determine whether they qualify for Medicaid. Tr.p.291,LL.8-15, p.636,L.8-p.637,L.3. To be admitted, they must answer these questions to Boise Village's satisfaction, and Boise Village admits the person if it thinks they qualify for

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<sup>22</sup> Examples of these donations include a resident's family relandscaping the yard, a Rotary club barbecuing salmon, a Lions club building a gazebo, and American Legion constructing a flag pole for a facility's veterans. *Id.* Donations to for-profits also have included wheelchairs, clothing, and televisions. *Id.*

Medicaid. *Id.* Boise Village is usually successful in getting those residents approved by Medicaid. *Id.* It assists residents with the Medicaid process, including helping them complete Medicaid applications. *Id.*; Tr.p.633,LL.13-15.

For-profit skilled nursing facilities also admit people they believe will qualify for Medicaid and are usually successful in getting those residents approved. Tr.p.698,L.18-p.700,L.12. In addition, for-profit skilled nursing facilities require that a payor source be identified prior to admission. Tr.p.682,L.11-p.685,L.23, p.696,L.17-p.698,L.5.

#### **8. Boise Village Admissions Agreement.**

Boise Village residents must sign an admission agreement that is similar to agreements used in for-profit nursing homes. Ex.105; Tr.p.628,L.14-p.629,L.11, p.679,L.24-682,L.10. In this agreement, residents agree to promptly pay for care.<sup>23</sup> Tr.p.629,LL.15-20, p.632,LL.1-3; Ex.105, GSS6. In exchange for payment, Boise Village agrees to provide room and board, nursing care, food, an activities program, housekeeping, laundry services, social services, and other services required by law. Tr.p.630,L.9-p.631,L.17. Ex.105, GSS5.

In its admission agreement, Boise Village also imposes late payment charges of 10% per year when accounts are not paid timely. Tr.p.633,L.22-p.634,L.21; Ex.105, GSS9. Residents will be liable for collections costs on past due accounts, including attorney fees and court costs.

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<sup>23</sup> In this agreement, a person whose payor source is Medicaid agrees to apply for Medicaid and timely provide all requested information to the Medicaid case worker. Ex.105, GSS7; Tr.p.632,L.8-p.633,L.19. Boise Village would seek to remove residents if they qualify for a resource to pay for their care, such as Medicaid, and refused to cooperate in seeking that resource. Ex.301,p.38. If Medicaid is denied, the entire self-pay amount is due immediately. Tr.p.633,LL.18-20; Ex.105, GSS7.

*Id.* Boise Village also reserves the right to transfer or discharge a resident for failure to pay. Tr.p.634,L.22-p.635,L.17; Ex.105, GSS10.

For-profit skilled nursing facilities likewise require residents to sign agreements that obligate them to pay, give the facility a right to collect, explain what services will be provided in exchange for the fees charged, allow interest to be charged on overdue accounts, and give the facility a right to discharge residents for non-payment. Tr.p.679,L.24-682,L.10.

### **9. Volunteers.**

To carry out its activities programs and other functions, Boise Village has volunteers who contribute a significant number of hours.<sup>24</sup> Tr.p.345,L.18-p.348,L.24; Ex.70. Volunteers do not reduce staffing or the fees charged to residents at Boise Village. Tr.p.480,LL.2-7. They do not provide nursing care, hand out medications, or change bandages. Tr.p.374,LL.4-10. Instead, the majority of volunteers assist with activities.<sup>25</sup> Tr.p.374,LL.11-13.

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<sup>24</sup> Volunteers include students of all ages, including elementary students, junior high students, and high school students. Tr.p.375,L.24-p.376,L.7. Boy Scout and Girl Scout troops are counted as volunteers. Tr.p.374,L.14-p.375,L.8, p.376,LL.21-23. Each member of a Boy Scout or Girl Scout troop and each member of a choir is counted as a separate volunteer. *Id.*; Tr.p.375,LL.16-23. Some volunteers are students who are required to do a service learning project. Tr.p.361,L.17-p.364,L.22. When a pastor or church group goes to Boise Village they are counted as volunteers. Tr.p.375,LL.9-15. Despite the vulnerable population at Boise Village, it does not run a criminal background check on its volunteers and some of its volunteers come from the Drug Court program. Tr.p.343,LL.20-24, p.377,LL.12-17. Society attempts to assign a financial value to the volunteer hours, ranging from minimum wage of \$7.25 per hour, to \$16.13 per hour, to \$22.14 per hour. Tr.p.308,LL.7-18, p.360,L.13-p.361,L.2; Ex.319, AC2226.

<sup>25</sup> For-profit skilled nursing facilities also have people who volunteer because they care about the residents. Tr.p.601,L.25-p.602,L.11, p.703,L.9-p.705,L.25. These volunteers assist with a variety of activities, including helping with art and music, gardening with the residents, assisting with Bingo, wheeling people to and from functions, and spending time with residents. *Id.* Volunteers come from many organizations, including churches, colleges, Boy Scout troops,



## 10. Other Uses of Boise Village.

Boise Village has been used as an observation site for pet therapy dogs,<sup>26</sup> a training site for Idaho Health and Welfare surveyors,<sup>27</sup> and offers space to non-profit organizations, at no charge. Tr.p.365,LL.19-p.367,L.9. Society did not establish the frequency of these activities or that they occurred in 2012 or 2013. *Id.* Boise Village also hosts a county fair and Thanksgiving dinner that is open to the public, but it did not establish that the public participated in those events during 2012 or 2013. Tr.p.367,L.10-p.368,L.15. Boise Village has assisted area non-profit organizations with events and activities. Tr.p.368,L.16-p.371,L.14. Again, Boise Village failed to show how frequently this occurs or that it took place in 2012 or 2013. *Id.*

In the past, Boise Village has been used for weddings, memorial services, and board meetings for the ministry to the aged, at no expense; but it did not show how frequently this occurs.<sup>28</sup> Tr.p.212,L.23-p.213,L.10. Boise Village has also been a clinical site for nursing students, dieticians, and occupational therapy.<sup>29</sup> Tr.p.212,LL.5-18. It has also provided CPR training. Tr.p.212,LL.19-22. Society provided no evidence that it served as a clinical site or provided CPR training during 2012 and 2013.

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schools, and civic groups, such as Rotary, Kiwanis, Lions, American Legion, and veterans organizations. *Id.*

<sup>26</sup> Various other facilities in Idaho also provide pet therapy so their residents can engage with animals. Tr.p.598,LL.10-23.

<sup>27</sup> Idaho Health and Welfare has also trained surveyors at other skilled nursing facilities, including for-profit nursing facilities in the Boise area. Tr.p.607,L.23-p.608,L.3; Ex.349L.

<sup>28</sup> Boise Village has had resident and staff meetings and special holiday gatherings in the main dining area but did not establish how often this occurs. Tr.p.181,LL.2-7, p.183,L.18-p.184,L.9.

<sup>29</sup> It is fairly typical that for-profit skilled nursing facilities have nursing students. Tr.p.706,L.1-p.707,L.14.

## 11. Boise Village Collections Process.

According to Society, the proper and timely collection of all accounts receivable is an important business function. Ex.339, AC1153; Tr.p.275,L.23-p.276,L.4. This takes a concerted team effort. *Id.* There is no minimum amount that must be owed before an account will go through Society's collections process. Tr.p.646,LL.5-16. Society has collections teams at both its national office and at Boise Village which collaborate monthly on overdue accounts. Tr.p.641,L.9-p.644,L.16.

Society's national office collection team sends collection letters to residents when accounts are 10, 30, and 60 days overdue. *Id.* When an account is 40 days overdue, the administrator gets involved and will call the resident or responsible party.<sup>30</sup> *Id.* Overdue accounts are also sent to a collection agency. Tr.p.644,L.25-p.645,L.7. According to Society's policy, when an account is 60 days past due, it will send a certified letter with a notice of transfer or discharge. Ex.339, AC1166; Tr.p.280,L.19-p.281,L.11.

Society also hires attorneys to write demand letters stating that if the account is not paid litigation may be filed against the resident. Tr.p.644,LL.17-24. Society's policy also says that it may initiate legal action when other steps in the collection process have been followed and properly documented. Ex.339, AC1167; Tr.p.281,LL.20-25. In 2012, Boise Village's administrator and office manager filed a small claims case in Ada County to enforce an

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<sup>30</sup> The administrator is responsible for overseeing the accounts receivable and collections activities at Boise Village. Tr.p.273,LL.13-21. He is personally involved in the collections process. *Id.* He is responsible for ensuring successful follow through on every accounts receivable. Tr.p.275,LL.14-17; Ex.339, AC1153.

admission agreement and collect on a \$2,990.99 bill. Tr.p.649,L.13-p.651,L.9; Ex.328A, GSS1262-63; Ex.347B.

Society also makes payment arrangements and has people sign promissory notes agreeing to pay overdue bills. Tr.p.645,L.14-25. If a person can only afford to pay \$10 per month on their bill, Society will create a payment plan and require that person to pay \$10 per month. Tr.p.655,LL.5-20. Boise Village has, in fact, had accounts where people could only afford to pay \$10 per month and they were required to pay that amount. *Id.*

The collections process at Boise Village is similar to for-profit skilled nursing facilities. Tr.p.685,L.24-p.690,L.19. To collect on overdue accounts, for-profit skilled nursing facilities also send letters, make phone calls, hire collection agencies and attorneys, and file small claims cases. *Id.*

## **12. Charitable Allowances and Other Expenses.**

Boise Village provided information on four “charitable allowances” during 2012 and 2013 totaling \$38,286.63.<sup>31</sup> Ex.51, GSS2095-2098; Tr.p.194,L.18-p.197,L.8. These “charitable allowances” were only given after a resident was admitted, after the bill was incurred, and after Society determined the person could not pay the bill.<sup>32</sup> Tr.p.295,L.17-p.299,L.1. Society provided no evidence that Boise Village provided a “charitable allowance” at the time of admission.

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<sup>31</sup> The largest of these “charitable allowances” was \$25,331.87. Ex.51, GSS2095. Society was unsuccessful in its attempts to collect this debt and initially determined that it was bad debt. Ex.328A, GSS1271; Tr.p.653,L.5-p.655,L.4. This was subsequently changed to a “charitable allowance.” Ex.51, GSS2095; Ex.328A, GSS1271.

<sup>32</sup> The American Institute of Certified Public Accountants Guide defines “charity” as services provided with no expectation of payment. Tr.p.762,L.22-p.763,L.10.

According to Society's policies, a "charitable allowance" can only be approved after admission if all of the collection policies have been followed, which may include sending letters, making phone calls, sending the account to a collection agency or attorney, and assisting with appeals of government medical assistance denials. Tr.p.303,LL.8-25; Ex.50, GSS1025. For-profit skilled nursing homes write these accounts off as bad debt because the facility was not been able to collect. Tr.p.695,LL.7-14. Boise Village's charitable allowances were less than 0.5% of its operating revenue in 2011-2013. Tr.p.793,L.25-p.795,L.7; Ex.349O.

Boise Village spent money on items it claims to be charitable. It purchased specialty mattresses that help prevent pressure sores and skin issues for some of its residents, totaling \$2,370 in 2012 and \$9,530 in 2013. Tr.p.197,L.9-p.199,L.8. Medicare and Medicaid did not reimburse Boise Village for these costs, but Society provided no evidence that Medicaid or Medicare residents used these mattresses. *Id.* In 2012 and 2013, Boise Village spent \$2,803.06 to provide Christmas presents, some dental care and glasses, and art framing for some of its residents.<sup>33</sup> Ex.54, GSS2755. Boise Village provided scholarships to six of its employees to help them continue their nursing education in the amounts of \$11,140 and \$3,000 in 2012 and 2013, respectively. Ex.55,GSS2759; Tr.p.204,LL.8-18. As part of the scholarship application, the employee has to explain how the course of study will benefit the Society. Ex.55, GSS2761; Tr.p.288,LL.3-10.

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<sup>33</sup> Exhibit 54 shows a total of \$3,402.95 for these items, but this includes expenses and employee assistance for a spouse's medical emergency that occurred in 2014. The 2014 expenses are not relevant to the 2012 and 2013 tax years at issue in this case.

Boise Village claimed that in 2013 it spent \$7,000 to purchase a wheelchair for one of its long-term Medicaid residents. Tr.p.211,L.14-p.212,L.4. All of its wheelchairs, including this \$7,000 purchase, are part of the special add-on rates paid by Idaho Medicaid. Tr.p.237,L.19-p.238,L.9.

### **13. Money From Boise Village to Society.**

Prior to 2013, Society took funds from its campuses to assist its facilities that were having financial problems, to develop new locations, and to replace buildings at other locations. Tr.p.467,L.7-p.469,L.14; Ex.28, GSS2814. During that time, Society transferred \$1,386,530.80 from Boise Village for these purposes. *Id.* In 2013, Society consolidated the cash from all of its facilities into the Society's business account; Boise Village had \$5,537,145.46 in that account as of December 31, 2013.<sup>34</sup> Tr.p.468,LL.10-12, p.469,LL.15-24. According to Society's Vice President of Finance, the "[n]ational campus is, essentially, a bank." Tr.p.469,LL.21-24.

Boise Village's profit goes into the Society's business account, and Society uses the funds in this account to invest in new locations and to help Society's other centers that are struggling financially. Tr.p.470,L.23-p.471,L.15, p.495,LL.12-22. In addition, in 2013, \$185,275.63 from Boise Village's accounts with accumulated interest earned on donations and unrestricted gifts were swept into a national account held by Society.<sup>35</sup> Ex.28, GSS2812. Other

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<sup>34</sup> Some of Boise Village's expenses are paid out of this account. Tr.p.493,L.4-p.495,L.2.

<sup>35</sup> This includes \$49,487.92 from an account with interest earned on donor restricted property donations. Tr.p.227,LL.22-25, p.228,LL.8-17, p.434,L.16-p.435,L.5. Likewise, Boise Village's account with \$15,924.10 from interest on donor restricted operations was swept into a national account. Tr.p.229,L.19-p.230,L.5. Also, \$86,860.62 from interest earned on Boise Village's general endowment were consolidated with the national account. Tr.p.232,L.11-p.233,L.4. In

funds from Boise Village have been transferred to the national organization. This includes \$2,068,781.21 from its Helping Hands depreciation account and \$226,988.57 from its general Helping Hands account. Tr.p.436,L.17-p.437,L.9, p.437,LL.10-25; Ex.28, GSS2812.

#### **14. Society's Financials.**

Society's operating revenue was \$949,461,000, \$954,007,000, and \$972,643,000 in 2011-2013, respectively. Tr.p.752,LL.9-19; Ex.349A. Its excess of revenue over expenses<sup>36</sup> was \$21,321,00, \$23,320,000, and \$710,000 in 2011-2013, respectively.<sup>37</sup> *Id.* In 2012, Society's total assets increased by \$100,261,000 to \$1,656,209,000. Ex.308, GSS2517. In 2013, its total assets increased by \$84,274,000 to \$1,740,483,000. Ex.31, GSS2871; Tr.p.473,LL.3-12. Society's unrestricted net assets increased by \$21,590,000 in 2011, \$32,619,000 in 2012, and \$7,714,000 in 2013. Ex.308, GSS2519; Ex.31, GSS2873; Tr.p.473,LL.13-23.

Approximately 96% of Society's operating revenue during 2011-2013 came from charging for services, what Society calls its housing and services revenues. Tr.p.754,L.20-p.756,L.24; Ex.349B; Tr.p.758,LL.4-20. During 2011-2013, approximately 61% of Society's housing and services operating revenue came from government programs. Tr.p.758,LL.4-20; Ex.349D. Approximately 69% of the residents in Society's skilled nursing facilities are covered by federal and state programs, providing approximately 69% of Society's total skilled nursing revenues. Tr.p.486,LL.3-11; Ex.103, GSS2608. Residents pay either from private sources or the

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addition, \$33,002.99 of unrestricted gifts were transferred to the national account. Tr.p.233,L.15-p.234,L.6.

<sup>36</sup> The excess revenue over expenses gives a full picture of the Society for each year. Tr.p.753,LL.11-14.

<sup>37</sup> According to the national consolidated financial statements, excess revenue over expenses is a performance indicator for Society. Tr.p.752,L.20-p.753,L.4.

cost of their care is reimbursed by state and federal government programs. Tr.p.484,LL.1-8; Ex.103, GSS2600.

Society's unrestricted donations and donations released from restrictions were approximately 1% of its operating revenues during 2011-2013. Tr.p.754,L.20-p.756,L.24; Ex.349B. Its total restricted and unrestricted donations were approximately 2% of its operating revenue during 2011-13. Tr.p.759,L.2-p.761,L.12; Ex.349E.

Since 2011, Society has been expanding and remodeling its existing facilities in hope that in future years those investments will increase revenue at those locations. Tr.p.474,L.20-p.475,L.21. Society spent cash on property additions including replacement of facilities, expanding facilities, and remodeling in the amount of \$107,544,000 in 2011, \$77,617,000 in 2012, and \$101,132,000 in 2013. Tr.p.474,LL.3-14; Ex.31, GSS2875; Ex.328, GSS2521.

These investments include dozens of remodels and expansions for post-acute rehabilitation facilities in order to increase the number of Medicare and managed care residents. Tr.p.474,L.20-p.475,L.8, p.484,LL.13-17; Ex.103, GSS2605. According to Society, the operating margins are better with Medicare and profitability has increased because Society has more Medicare residents. Tr.p.485,LL.9-14; Ex.103, GSS2606. Society's 2011 net operating income was one of the best operating results it has ever achieved, and a significant contribution to those financial results was growth in Medicare revenue by approximately \$19,000,000. Tr.p.484,L.22-p.485,L.3; Ex.103, GSS2605.

## 15. Society's Operations.

Society claims that it provides benefits to the community. It claims this includes providing payroll in small rural areas. Tr.p.102,L.19-p.103,L.14. Some facilities offer clinics related to parish nursing. *Id.* Facilities also offer space to religious and non-profit organizations at no charge. *Id.* Society sends out free newsletters on topics of interest to seniors. Tr.p.103,L.17-p.104,L.4. It also encourages its facilities to be active in the community. Tr.p.104,LL.5-7. Society stated that it has invested in technology that monitors residents' daily living behaviors and activities, called Living Well at Home. Ex.21, GSS2730-31; Tr.p.111,L.19-p.112,L.23.

Society provided total annual grants of \$100,000 to its facilities to meet a need in the local communities between 2010 and 2013. Tr.p.105,LL.3-9. During this time, Society made only one grant to one of its four facilities in Idaho. Ex.22, GSS3181; Tr.p.121,L.17-p.122,L.4. That grant was for \$2,000 to Boise Village in 2013 for mneme therapy.<sup>38</sup> Ex.22, GSS3181; Tr.p.107,LL.14-16. Part of the mneme therapy provided at Boise Village is a free art class to residents and members of the community. Tr.p.205,L.8-p.206,L.14. Society provided no information on how many people from the community took part in this program during 2012 or 2013. Tr.p.293,L.25-p.294,L.22.

Society also asserts that it assists during natural disasters by making the Salvation Army and Red Cross telephone numbers available and by facilitating people's donations to those

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<sup>38</sup> Mneme therapy is art or music that stimulates the senses. Tr.p.186,LL.7-17.



organizations. Tr.p.109,L.14-p.110,L.2. Society provided no evidence that this occurred between 2011 and 2013.

Society collects donations from its residents and staff and forwards those donations to a hospital in Bangladesh and Zimbabwe, and a senior center and soup kitchen in Colombia. Tr.p.108,LL.1-17; Ex.23. It calls this Project Outreach. *Id.* Society provided no evidence that any of these donations were from the Society itself.

## II.

### ISSUE PRESENTED ON APPEAL

Whether The Evangelical Lutheran Good Samaritan Society, Inc. qualified for a 2012 and 2013 property tax exemption for Boise Village under Idaho Code §63-602C.

## III.

### STANDARD OF REVIEW

“Interpretations of requirements for charitable exemption from property tax are questions of law over which this Court exercises free review.” *Housing Southwest v. Washington County*, 128 Idaho 335, 337, 913 P.2d 68, 70 (1996) (citing *Owyhee Motorcycle Club, Inc. v. Ada County*, 123 Idaho 962, 964, 855 P.2d 47, 49 (1993)). “Statutes granting tax exemptions must be strictly construed against the taxpayer and in favor of the state.” *Id.* at 337-338, 913 P.2d at 70-71. An exemption is never presumed, “nor can a statute granting a tax exemption be extended by judicial construction to create an exemption not specifically authorized.” *Id.* at 338, 913 P.2d at 71.

**IV.**  
**ARGUMENT**

Society seeks a charitable property tax exemption under Idaho Code § 63-602C, which provides, in pertinent part:

The following property is exempt from taxation: property belonging to any fraternal, benevolent, or charitable limited liability company, corporation or society, the World War veteran organization buildings and memorials of this state, used exclusively for the purposes for which such limited liability company, corporation or society is organized; provided, that if any building or property belonging to any such limited liability company, corporation or society is leased by such owner or if such limited liability company, corporation or society uses such property for business purposes from which a revenue is derived which, in the case of a charitable organization, is not directly related to the charitable purpose for which such charitable organization exists, then the same shall be assessed and taxed as any other property . . . .

This statute has two initial requirements. “In order to be granted an exemption the organization must first prove that it is a charitable organization, and, secondly, that the claimed exempt property is used *exclusively for charitable purposes.*” *Evangelical Lutheran Good Samaritan Soc’y v. Bd. of Equalization of Latah County*, 119 Idaho 126, 131, 804 P.2d 299, 304 (1990).

The Idaho Supreme Court in *In re Appeal of Sunny Ridge Manor*, 106 Idaho 98, 675 P.2d 813 (1984) identified eight (8) criteria for determining whether an organization is charitable. The Court stated:

A number of factors must be considered: (1) the stated purposes of its undertaking, (2) whether its functions are charitable (in the sense just discussed), (3) whether it is supported by donations, (4) whether the recipients of its services are required to pay for the assistance they receive, (5) whether there is general public benefit, (6) whether the income received produces a profit, (7) to whom the assets would go

upon dissolution of the corporation, and (8) whether the “charity” provided is based on need.

*Id.* at 100, 815. See also *Coeur d’Alene Pub. Golf Club v. Kootenai Bd. of Equalization*, 106 Idaho 104, 675 P.2d 819 (1984).

“An organization seeking to exempt it[s] property from taxation must satisfy the requirements set forth in *Appeal of Sunny Ridge Manor* and *Coeur d’Alene Golf Club* in order to qualify for such an exemption.” *Bogus Basin Recreational Ass’n v. Boise Cnty. Bd. of Equalization*, 118 Idaho 686, 687-688, 799 P.2d 974, 975-976 (1990).

**1. The Supreme Court of Idaho Has Previously Held that Society is Not Entitled to a Charitable Property Tax Exemption.**

The Supreme Court of Idaho applied these factors in its *Evangelical Lutheran Good Samaritan Society* decision and concluded that Society was not entitled a charitable property tax exemption. 119 Idaho 126, 131, 804 P.2d 299, 304. In that case, this Court stated that “[o]ne of the factors most frequently looked at by courts in determining if a retirement center is a charitable corporation is the amount of fees required of the residents.” *Id.* at 132, 804 P.2d at 305. This Court stated that the fees charged by an organization is “a factor is of great importance and should be weighted accordingly,” and that “there is nothing charitable in providing housing at the same or comparable rates as housing available from the private sector or commercial retirement centers.” *Id.* at 132, 804 P.2d at 305 (citation omitted). The Court stated that “Society had never provided housing at a reduced cost to any resident and the revenue collected by the Society from its residents has substantially exceeded costs and expenses for the past several years.” *Id.*

Society continues to operate the same way at Boise Village. In 2012 and 2013, Boise Village expected everyone admitted to pay for its services. Ex.301,p.37; Tr.p.637,LL.4-12. Boise Village charged rates similar to other nursing facilities in Ada County, and the revenues collected from its patients has substantially exceeded the costs and expenses for the past several years. Ex.301,p.37; Ex.320, AC3088; Tr.p.311,LL.11-17, p.637,LL.4-12.

At trial, Ada County presented other reasons why Society is not entitled to a charitable property tax exemption. Boise Village collects against patients who do not pay their bills on time.<sup>39</sup> According to Society's internal policies and contracts with its patients, it may discharge a patient for not paying timely. Ex.105, GSS10; Ex.339, AC1166; Tr.p.280,L.19-p.281,L.11; p.634,L.22-p.635,L.17.

Following the Idaho Supreme Court's reasoning, analysis, and holding in *Evangelical Lutheran Good Samaritan Society*, this Court should again conclude that Society is not a charitable organization and does not use Boise Village exclusively for charitable purposes.

**2. Society is Not a Charitable Organization Under the *Sunny Ridge* Analysis.**

***a. Society Does Not Function Like a Charitable Organization.***

Society does not function as a charitable organization. At Boise Village, Society expects all residents to pay for the services received. Ex.301,p.37;Tr.p.637,LL.4-12. Prior to admission, Boise Village screens people to determine their ability to pay for services and to identify a

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<sup>39</sup> The collections process is similar to for-profit skilled nursing facilities. Tr.p.685,L.24-p.690,L.19. It has collections teams at both its national office and at Boise Village that regularly collaborate on overdue accounts. Tr.p.641,L.9-p.644,L.16. To collect on overdue accounts, for-profit skilled nursing facilities send letters, make phone calls, hire collection agencies and attorneys, and file litigation. *Id.*

payment source.<sup>40</sup> Tr.p.636,LL.2-7, p.276,LL.12-21, p.624,L.11-p.628,L.6; Ex.89, GSS21-23; Ex.339, AC1157 and 1160. Before people can be admitted to Boise Village, a payment source must be identified; and staff must verify that the services will be covered by the payor. Tr.p.624,L.11-p.628,L.6; Ex.89, GSS21-23. If a resident is “over-resourced” with too much money to qualify for Medicaid, Boise Village will charge that resident the private pay rate until that person runs out of money (less than \$2,000 in assets) and qualifies for Medicaid, which then pays the bill for the remainder of the resident’s stay. *Id.* Tr.p.305,LL.3-20. In its admission agreement, Society reserves the right to transfer or discharge a resident for failure to pay. Tr.p.633,L.22-p.635,L.17; Ex.105, GSS9-10.

Society’s collection efforts and policies and procedures also show that Society does not function like a charitable organization.<sup>41</sup> According to Society, the proper and timely collection of all accounts receivable is an important business function. Ex.339, AC1153; Tr.p.275,L.23-p.276,L.4. Society’s collection teams at its national office and at Boise Village collaborate monthly on overdue accounts. Tr.p.641,L.9-p.644,L.16. These employees send collection

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<sup>40</sup> Boise Village requires residents to sign an admission agreement similar to agreements used in for-profit nursing homes. Ex.105; Tr.p.628,L.14-p.629,L.11, p.679,L.24-682,L.10. Under the agreement, Boise Village will provide room and board, nursing care, food, an activities program, housekeeping, laundry services, social services, and other services required by law; in exchange for such services, the resident shall promptly pay. Tr.p.629,LL.15-20, p.630,L.9-p.631,L.17, p.632,LL.1-3,Ex.105, GSS5-6. The admission agreement further provides for a late charge of 10% per year when accounts are not paid timely, states that residents will be liable for collections costs on past due accounts, and reserves the right for Boise Village to transfer or discharge a resident for failure to pay. Tr.p.633,L.22-p.635,L.17; Ex.105, GSS9-10.

<sup>41</sup> Society’s collection procedures are similar to for-profit skilled nursing facilities, which also send letters, make phone calls, hire collection agencies and attorneys, and file small claims cases to collect on overdue accounts. Tr.p.685,L.24-p.690,L.19.

letters, call the resident or responsible party, and send overdue accounts to a collection agency.<sup>42</sup> Tr.p.641,L.9-p.644,L.16; Tr.p.644,L.25-p.645,L.7. Society hires attorneys to write demand letters stating that if the account is not paid litigation may be filed against the resident. Tr.p.644,LL.17-24. Society's policies state that it may initiate legal action to collect on accounts. Ex.339, AC1167; Tr.p.281,LL.20-25. In 2012, Boise Village's administrator and office manager filed a small claims case in Ada County to enforce an admission agreement and collect on a residents bill. Tr.p.649,L.13-p.651,L.9; Ex.328A, GSS1262-63; Ex.347B.

Boise Village claims that certain expenses it incurred in 2012 and 2013 make it charitable; but these are insignificant when compared to its overall nursing home operation and revenues. This includes specialty mattresses totaling \$2,370 in 2012 and \$9,530 in 2013 that were not reimbursed by Medicare and Medicaid. Tr.p.197,L.9-p.199,L.8. But there is no evidence that Medicaid or Medicare residents used these mattresses. In 2013, Boise Village spent \$7,000 to purchase a wheelchair for a long-term Medicaid resident. Tr.p.211,L.14-p.212,L.4. However, it appears that Idaho Medicaid reimbursed Boise Village for this \$7,000 purchase as part of its special add-on rates. Tr.p.237,L.19-p.238,L.9; Ex.316A. Boise Village also purchased for its residents Christmas presents, some dental care and glasses, and art framing totaling \$2,803.06 in 2012 and 2013. Ex.54, GSS2755. It also provided educational

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<sup>42</sup> Furthermore, there is no minimum amount that must be owed before an account will go through Society's collections process. Tr.p.646,LL.5-16. Society makes payment arrangements and has people sign promissory notes agreeing to pay overdue bills. Tr.p.645,LL.14-25. If a person can only afford to pay \$10 per month on their bill, Society will create a payment plan and require that person to pay \$10 per month. Tr.p.655,LL.5-20. Boise Village has had residents who could only afford to pay \$10 per month and required them to pay that amount. *Id.*

scholarships to certain employees totaling \$11,140 and \$3,000 in 2012 and 2013, respectively.<sup>43</sup> Ex.55, GSS2759; Tr.p.204,LL.8-18. These amounts are nominal when compared to Boise Village's profits and the fees it charges its residents.<sup>44</sup>

For these reasons, Society's functions are not charitable, and Society fails this element of the *Sunny Ridge* analysis.

***b. Boise Village is Only Minimally Supported by Donations, and It Does Not Provide a General Public Benefit.***

“[T]he requirement of donations is an important factor, because charitable donations reduce the cost of the service provided, either to the public generally as direct beneficiaries of the service or to taxpayers who would otherwise bear the burden.” *Housing Southwest*, 128 Idaho at 339, 913 P.2d at 71 (citing *Owyhee Motorcycle Club, Inc. v. Ada Cnty.*, 123 Idaho at 965, 855 P.2d at 50.) “The question of whether a corporation provides a general public benefit is closely connected to the question of whether a corporation is supported by donations.” *Id.*

“For a corporation's uses to be considered charitable it is essential that they provide some sort of general public benefit.” *Housing Southwest*, 128 Idaho 335, 339, 913 P.2d 68, 72 (1996) (citation omitted). “If the general public does not receive a direct benefit from a corporation's donations, then the question presented by the ‘general public benefit’ factor is whether the corporation fulfills a need which the government might otherwise be required to fill.” *Id.* The Court in *Housing Southwest* concluded that when an organization is supported by government

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<sup>43</sup> As part of the scholarship application, the employee has to explain how the course of study will benefit the Society. Ex.55, GSS2761; Tr.p.288,LL.3-10.

<sup>44</sup> Boise Village charged each of its residents more than \$100,000 per year. Tr.p.785,LL.11-25; Ex.349J. The District Court found that that Boise Village's net operating revenue in 2012 and 2013 was \$1,143,346 and \$497,802, respectively.

funds, such organization does not perform a function which might otherwise be the obligation of the government; thus, there is no general public benefit. *Id.*

“In *Housing Southwest*, this Court held that the alleged charity did not provide a general public benefit because Housing Southwest relied so heavily on taxpayer money.” *Community Action Agency v. Bd. of Equalization of Nez Perce County*, 138 Idaho 82, 86-87, 57 P.3d 793, 797-798 (2002). “Because Housing Southwest was largely funded by the public, it did not provide a general public benefit.” *Id.* “This Court held that because Housing Southwest was funded by government loans and grants, rather than private donations, it was not a charitable corporation.” *Community Action Agency*, 138 Idaho at 86, 57 P.3d at 797.

Boise Village is only minimally supported by cash donations and those donations do not reduce the costs it charges its residents for services. Ex.320, AC3088; Tr.p.291,L.24-p.292,L.2, p.310,L.24-p.311,L.5. Of its total revenue during 2011-2013, approximately 0.5% was from cash donations, whereas 99% came from charging people for services. Ex.84, p.4; Ex.349N; Ex.320,AC3088; Tr.p.311,LL.6-10, p.793,LL.11-15, p.793,LL.20-24; Ex.319, AC2226; Ex.301,p.39.

Boise Village claims that it receives donations in the form of volunteer time.<sup>45</sup> The volunteers at Boise Village contribute a significant number of hours, and the majority of

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<sup>45</sup> Volunteers at Boise Village include students of all ages, including elementary students, junior high students, and high school students. Tr.p.375,L.24-p.376,L.7. Some volunteers are university students participating in a service learning project. Tr.p.361,L.17-p.364,L.22. Individual members of Boy Scout, Girl Scout troops and church groups are counted as volunteers. Tr.p.374,L.14-p.375,L.8, p.375,LL.9-15, p.376,LL.21-23. For-profit skilled nursing facilities similarly have volunteers from churches, colleges, Boy Scout troops, schools, and civic groups, such as Rotary, Kiwanis, Lions, American Legion, and veterans organizations.



volunteers assist with activities. Tr.p.345,L.18-p.348,L.24, p.374,LL.11-13; Ex.70. They do not provide nursing care, hand out medications, or change bandages. Tr.p.374,LL.4-10. Importantly, the volunteers at Boise Village do not reduce staffing or the costs charged to residents.<sup>46</sup> Tr.p.480,LL.2-7. The residents do not receive a financial benefit from these donations. See *Owyhee Motorcycle Club, Inc. v. Ada Cnty.*, 123 Idaho at 965, 855 P.2d at 50.

Boise Village charges rates similar to other nursing facilities in Ada County. Ex.301,p.37; Ex.320, AC3088; Tr.p.311,LL.11-17, p.637,LL.4-12. The Supreme Court of Idaho stated in the earlier *Evangelical Lutheran Good Samaritan Society* case, “there is nothing charitable in providing housing at the same or comparable rates as housing available from the private sector or commercial retirement centers.” 119 Idaho at 132, 804 P.2d at 305.

At Boise Village, 87%, 90% and 94% of its revenue came from state and federal government programs during 2011-2013, respectively, including Medicaid, Medicare, managed care, and Veterans’ Administration.<sup>47</sup> Tr.p.766,L.15-p.767,L.17; Ex.349F. Medicaid was

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Tr.p.601,L.25-p.602,L.11, p.703,L.9-p.705,L.25. Those volunteers assist with a variety of activities, including helping with art and music, gardening with the residents, assisting with Bingo, wheeling people to and from functions, and spending time with residents. *Id.*

<sup>46</sup> The District Court stated, “while not providing direct care to the residents, the volunteers free up the clinical staff to focus on direct care duties, thereby indirectly extending resident care.” District Court Decision at 33. This does not appear to be supported by the record in this case, and appears to be contrary to the testimony at trial. Tr.p.480,LL.2-7.

<sup>47</sup> Nationally, Society is also supported by government funds and does not provide a general public benefit. During 2011-2013, approximately 96% of Society’s operating revenue was from housing and services revenue. Tr.p.754,L.20-p.756,L.24,p.758,LL.4-20;Ex.349B. Of that revenue, approximately 61% came from government programs. Tr.p.758,LL.4-20; Ex.349D. In addition, approximately 69% of residents in Society’s skilled nursing facilities are covered by federal and state programs. Tr.p.486,LL.3-11; Ex.103, GSS2608.

overwhelmingly Boise Village's largest source of revenue during 2011-2013.<sup>48</sup> Tr.p.766,L.12-18; Ex.349F.

Idaho Medicaid reimburses skilled nursing facilities more than their costs, which results in a profit from Medicaid residents.<sup>49</sup> Tr.p.838,LL.7-22. In 2012, Boise Village earned a profit of \$49.84 per Medicaid resident per day, totaling \$18,191.60 annually. Ex.32, GSS3281; Tr.p.837,L.17-p.838,L.6. Boise Village's Medicaid residents were 73.4%, 72.1%, and 76.1% of its total residents in 2011-2013, respectively. Ex.24A. Thus, it earned a profit on the vast majority of its residents.

In this case, the District Court did not follow the cases cited above. The District Court stated that "Boise Village residents are the most vulnerable—the poor, elderly, disabled and

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<sup>48</sup> Of the 14 skilled nursing facilities in a 25 mile radius, Boise Village had the second highest percentage of Medicaid residents in 2011 and 2013, and the third highest 2012. Ex.24A; Tr.p.790,L.11-p.791,L.15, p.849,L.24-p.850,L.7; Ex.349M. Idaho Medicaid pays a skilled nursing facility a daily rate for each Medicaid resident. The daily rate paid to Boise Village is the highest of the 14 skilled nursing facilities in a 25 mile radius. Tr.p.789,LL.5-20; Ex.349L. Boise Village's higher rate is due, at least in part, to its higher costs. See Tr.p.853,L.6-p.854,L.17; Ex.96. On average, Medicaid paid Boise Village \$290.77 and \$295.23 per resident per day in 2012 and 2013, respectively. Tr.p.787,L.7-p.788,L.13; Ex.349K. These Medicaid payments to Boise Village totaled \$106,131.05 and \$107,758.95 per resident per year in 2012 and 2013, respectively. All of Boise Village's residents in its traumatic brain injury unit were covered by Medicaid, and most of the residents its long-term care and dementia units were covered by Medicaid as well. Tr.p.292,LL.18-22.

<sup>49</sup> Idaho Medicaid reimburses skilled nursing facilities for property taxes. Tr.p.621,L.24-p.622,L.15, p.778,L.5-p.780,L.2. It would reimburse Boise Village for a large portion of the property taxes at issue in this case. Tr.p.781,L.23-p.782,L.11. Boise Village paid \$176,808 and \$173,424 in property taxes during 2012 and 2013, respectively. *Id.* Medicaid would reimburse Boise Village \$108,077 and \$115,430 for those property taxes. *Id.*

infirm—who would otherwise be an obligation of government.”<sup>50</sup> District Court Decision at 41. “Not only is it fulfilling a government obligation through the care provided to its residents, it enriches the public as a whole.” *Id.* at 42. “Boise Village provides care to people whom the government would otherwise be required to provide care for if Boise Village did not.”<sup>51</sup> *Id.* at 18.

The District Court also stated:

While the donations do not reduce the direct cost of skilled nursing and related services at Boise Village, due to the [] nature of a skilled nursing facility and the modern day method of government reimbursement for services provided, it would be rare that donations would affect the cost of services in this way because daily rates are generally paid at rates set by the government...In the context of this case, however, the primary concern should neither be the amount of donations nor whether they directly reduce the cost of services. Rather, the relevant inquiry is whether the use of the donations is for a public benefit. Here, the donations received by Good Samaritan Society and Boise Village are invested back into operations and this Court finds the very operation of Boise Village provides our community with a significant benefit.

District Court Decision at 33.

The District Court’s analysis does not comply with Idaho case law. In *Housing Southwest*, the Court held that a non-profit corporation that provided low-income housing to seniors and disabled persons based on need did not provide a general public benefit because it was supported by federal tax dollars without private donations. 128 Idaho at 339, 913 P.2d at 72. The Court in *Housing Southwest* rejected the argument that providing housing to low-income

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<sup>50</sup> The District Court also stated, “[t]his Court has little doubt that the government could not provide an equivalent level of care to these same residents at a lower cost in a facility of its own.” *Id.* It is unclear to Ada County how this statement is supported by the record.

<sup>51</sup> In addition, the District Court stated, “[t]hat care would likely be more expensive if provided directly by the government rather than through reimbursements to Boise Village through government payments.” *Id.* It is unclear to Ada County how this statement is supported by the record.

seniors and disabled persons meets a need that might otherwise have to be met by the government. It declared such argument to be “circular in that the need Housing Southwest meets *is in fact being met by government through tax-supported FHA subsidies.*” *Id.* (emphasis added). In holding that a corporation supported by federal tax dollars does not provide a general public benefit, the Court concluded that “the burden is merely shifted from one group of taxpayers to another, and government is not relieved of an obligation it would otherwise have.” *Id.* at 339-340, 913 P.2d at 72-73. As such, the corporation was not eligible for a charitable property tax exemption.

Following *Housing Southwest*, the Idaho Supreme Court in *Community Action* again held that a facility was not entitled to a charitable property tax exemption where “[t]he operation of the housing project survives primarily on government subsidies.” 138 Idaho at 86, 57 P.3d at 797. Although the corporation in *Community Action* received some private donations, the Court found that such donations “lessen the burden on the government only nominally.” *Id.* at 87 57 P.3d at 798. Balancing all the relevant factors, the Court concluded that the organization was not entitled a charitable property tax exemption. *Id.*

In the present case, the need for skilled nursing care is being met by the government through the Medicaid, Medicare, managed care, and Veteran’s Administration. Nearly all of Boise Village’s revenue from 2011-2013 came from these state and federal government programs. Tr.p.766,L.15-p.767,L.17; Ex.349F. In fact, “Boise Village received more revenue on average for its Medicaid residents than its private pay residents.” District Court Decision at 19; *see also* Tr.p.787,L.7-p.788,L.13; Ex.349K.

At trial, Society pointed to a few ancillary activities and claimed it should qualify based upon these activities.<sup>52</sup> However, these are not services that the government would otherwise have to provide.

Society charges all of its residents rates similar to those charged in other nursing facilities in Ada County, it requires payment from all of its residents, and it collects against overdue accounts. Its donations do not reduce the fees charged to the residents at Boise Village. In addition, it is well-established under Idaho law that an organization which relies on government funds does not relieve the government of an obligation it might otherwise be required to fulfill and, therefore, does not provide a general public benefit. *See Housing Southwest*, 128 Idaho at 339, 913 P.2d at 72; *Community Action*, 138 Idaho at 86, 57 P.3d at 797. Society is like the corporations in *Housing Southwest* and *Community Action*. By relying on government funds, Society is not relieving an obligation of the government. For these reasons, Society is not supported by donations, and it does not provide a general public benefit.

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<sup>52</sup> Society claims that it benefits the community by providing payroll in small rural areas; offering clinics related to parish nursing; and providing space at facilities to religious and non-profit organizations at no charge. Tr.p.102,L.19-p.103,L.14. Society also sends out free newsletters on topics of interest to seniors; encourages its facilities to be active in the community; and invested in Living Well at Home, a technology that monitors residents' daily living behaviors and activities. Tr.p.103,L.17-p.104,L.4, p.104,LL.5-7, p.111,L.19-p.112,L.23; Ex.21, GSS2730-31. Society also states that it assists during natural disasters by making the Salvation Army and Red Cross telephone numbers available and by facilitating people's donations to those organizations, but provided no evidence that this occurred between 2011 and 2013. Tr.p.109,L.14-p.110,L.2. Between 2010 and 2013, Society provided total annual grants of \$100,000 to its facilities to meet a need in the local communities, including \$2,000 to Boise Village in 2013 for an art class. Tr.p.105,LL.3-9; Ex.22, GSS3181. Society provided no information on how many people from the community took part in these programs during 2012 or 2013. Tr.p.293,L.25-p.294,L.22. Society also collects donations from its residents and staff to support its Project Outreach in foreign countries, but provided no evidence that such donations were from the Society itself. Tr.p.108,LL.1-17; Ex.23.

*c. Recipients of Society's Services are Required to Pay for the Assistance They Receive.*

Boise Village charges all of its residents for care, and its residents are required to pay. Tr.p.277,L.23-p.278,L.1; Ex.320, AC3088; Tr.p.311,LL.18-25. According to Brian Davidson, Boise Village's administrator, "we like to get payment for all of our residents that reside at the facility." *Id.* He also testified he is not aware of Boise Village ever admitting a resident knowing he or she was never going to pay. Tr.p.299,LL.17-25. If a resident does not personally pay, Boise Village seeks payment from either the government or family. Tr.p.278,LL.2-7. Before anyone can be admitted to Boise Village, a payment source must be identified and staff must verify that the services will be covered by the payor. Tr.p.624,L.11-p.628,L.6; Ex.89, GSS21-23. As explained above, Society employs a screening process to identify a payment source at the time of admission; assists residents with applying for Medicaid; and has collection teams which to pursue payment on overdue accounts. Tr.p.641,L.9-p.644,L.16. Approximately 96% of Society's operating revenue, and over 99% of Boise Village's revenue, came from charging people for services.

The District Court stated it "recognizes that Boise Village does not utilize a sliding fee scale, charges rates similar to comparable local skilled nursing facilities, typically receives payment, either by way of private pay or through the government, for services rendered, and realized modest revenue in 2012 and 2013 for its Medicaid residents." District Court Decision at 34-35. "Viewing these facts under the lens of Idaho law as it pertains to the fourth *Sunny Ridge* factor, the factor could appear to weigh against Good Samaritan Society." District Court

Decision at 35. The District Court was correct, these facts do weigh against Society. Rather than ending the analysis at this point, the District Court deviated from Idaho case law.

The District Court stated: “However, Idaho has not yet analyzed *Sunny Ridge* in the context of a skilled nursing facility or similar health care facility operating under current government reimbursement programs.” District Court Decision at 35. It stated, “[m]any jurisdictions recognize that such facilities’ receipt of government reimbursement does not destroy their otherwise charitable operation.” *Id.* at 35. The District Court then relied upon cases from Nebraska, Massachusetts, Minnesota, and the D.C. Circuit Court, which do not interpret Idaho’s charitable property tax exemption. It should also be noted that the cases cited from other jurisdictions all predate the *Sunny Ridge* decision establishing the charitable property tax exemption standards in Idaho. Thus, the District Court’s contention that things have changed since *Sunny Ridge* was decided is not supported by those cases.

The District Court then stated that this factor should be viewed “flexibly.” District Court Decision at 37 and 39. “With these government sources of payment, nearly everyone now has the ability to pay for services rendered at Boise Village.” District Court Decision at 37. “Thus, the fourth *Sunny Ridge* factor must be analyzed flexibly, looking not at whether the residents are required to pay for services rendered, but rather by looking at Boise Village’s policies with respect to residents who do not have the ability to pay, how rates are established, and other factors driving Boise Village’s reimbursement.” *Id.* “Most importantly, at least since 2003, no resident has ever been removed from Boise Village due to inability to pay.” *Id.* at 38. “Further, residents are not denied admission to Boise Village due to inability to pay.” *Id.* The District

Court concluded “that Good Samaritan Society satisfies the flexibly defined fourth *Sunny Ridge* factor.” *Id.* at 39

The District Court altered this element of the *Sunny Ridge* analysis. The Supreme Court of Idaho stated that this factor is “whether the recipients of its services are required to pay for the assistance they receive.” *In re Appeal of Sunny Ridge Manor*, 106 Idaho at 100, 675 P.2d at 815. Yet, the District Court stated it was “looking not at whether the residents are required to pay for services rendered,” but at the organization’s policies, how rates are established, and other factors driving reimbursement. District Court Decision at 37. The District Court did not properly interpret and apply this element of the analysis. It expanded the charitable property tax exemption requirements, rather than strictly construing them against the taxpayer, as required. *Housing Southwest.*, 128 Idaho at 337-338, 913 P.2d at 70-71.

The Supreme Court of Idaho has previously held that an organization must provide charity, and it is not enough to simply have a policy that permits charity. In *Evangelical Lutheran Good Samaritan Society*, the Court noted that Society’s “charter provides that no person will be denied residency because of his or her financial situation, nor be required to leave because of inability to pay.” 119 Idaho at 133, 804 P.2d at 306. Nevertheless, the Court found that no person who was unable to pay had ever been admitted as a resident. *Id.* at 128, 804 P.2d at 301. The Court held that if the only elderly persons residing in the facility are those that can pay the fees that are comparable to for-profit retirement centers “the organization is not entitled to tax exempt status.” *Id.* at 132, 804 P.2d 305. In *Community Action Agency*, the taxpayer argued that while the residents did pay rent, that they were not required to pay because it has never evicted any tenants. 138 Idaho at 86, 57 P.3d



797. The Supreme Court of Idaho did not agree. *Id.* In *Sunny Ridge Manor*, residents were advised that it was Sunny Ridge’s policy that once admitted, they would never be terminated based on financial reasons. 106 Idaho at 100, 675 P.2d at 815. The Court stated, however, that “[t]here is nothing to indicate that any of the elderly residents of Sunny Ridge have received services—financial or otherwise—for which they have not paid full value.” *Id.* at 103, 675 P.2d at 818. An organization does not meet this factor if its residents pay for the services they receive.

Even if the District Court were correct, that the focus should be “Boise Village’s policies with respect to residents who do not have the ability to pay,” Boise Village would fail that analysis as well. In its admission agreement, Boise Village reserves the right to transfer or discharge a resident for failure to pay. Tr.p.634,L.22-p.635,L.17; Ex.105, GSS10. Boise Village staff asks potential residents how they are going to pay the bill, and it considers a person’s ability to pay in its decision to admit that person. Tr.p.636,LL.2-7. Before people can be admitted to Boise Village, a payment source must be identified and staff must verify that the services will be covered by the payor.<sup>53</sup> Tr.p.624,L.11-p.628,L.6; Ex.89, GSS21-23.

It is important to note that the Supreme Court of Idaho has decided cases similar to the present case. In *Sunny Ridge Manor*, the property at issue was an old-age retirement center, where medical care was provided at no additional cost, and included a thirty-bed intermediate health care facility. 106 Idaho at 99-100, 675 P.2d at 814-815. In that case, the Supreme Court of Idaho for the first time established the charitable property tax exemption requirements, and it

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<sup>53</sup> Boise Village would seek to remove residents if they qualify for a resource to pay for their care, such as Medicaid, and refused to cooperate in seeking that resource. Ex.301,p.38.

has used that analysis to scrutinize every organization requesting a charitable property tax exemption since that time.

The District Court believed that government reimbursement should not affect an organization's charitable tax exemption statute, and cited cases from other jurisdictions in support. *See, infra*. However, as discussed in section IV.2.b. above, the Supreme Court of Idaho decided that very issue in its *Housing Southwest* and *Community Action Agency* decisions.<sup>54</sup>

The Supreme Court of Idaho has repeatedly held charitable organizations to the same standards. The factors from *Sunny Ridge* were established more than three decades ago, and have been applied to a variety of organizations. *See Student Loan Fund of Idaho, Inc. v. Payette County*, 138 Idaho 684, 69 P.3d 104 (2003) (nonprofit created to promote education for Idaho students); *Community Action Agency*, 138 Idaho 82, 57 P.3d 793 (2002) (low-income housing subsidized by the government); *Housing Southwest*, 128 Idaho 335, 913 P.2d 68 (1996) (low-income housing for senior citizens and the disabled); *Owyhee Motorcycle Club*, 123 Idaho at 962, 855 P.2d 47 (1993) (non-profit organized for the purpose of promoting the recreational use of motorcycles); *Bogus Basin Recreational Ass'n*, 118 Idaho 686, 799 P.2d 974 (1990) (non-profit ski area); *Evangelical Lutheran Good Samaritan Society*, 119 Idaho 126, 804 P.2d 299 (1990) (a retirement center that administered medication and gave medical support); *Coeur d'Alene*

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<sup>54</sup> “In *Housing Southwest*, this Court held that the alleged charity did not provide a general public benefit because Housing Southwest relied so heavily on taxpayer money. Because Housing Southwest was largely funded by the public, it did not provide a general public benefit.” *Community Action Agency*, 138 Idaho at 87, 57 P.3d at 798. Following *Housing Southwest*, the Idaho Supreme Court in *Community Action* again held that a facility was not entitled to a charitable property tax exemption where “[T]he operation of the housing project survives primarily on government subsidies.” *Id.* at 86, 57 P.3d at 797 (2002).

*Pub. Golf Club v. Kootenai Bd. of Equalization*, 106 Idaho 104, 675 P.2d 819 (1984) (public golf course). Modifying the *Sunny Ridge* standards because an organization operates a skilled nursing facility is unwarranted and would result in unequal treatment.

The Supreme Court of Idaho has stated that it will not limit the kinds of services that can be considered charitable, but it has held all organizations to the same standards. “In *Sunny Ridge*, this Court stated that, rather than seeking to determine a corporation’s charitable status solely by means of certain predetermined classifications of the services it provides, the courts look to the public nature of the benefits and services.” *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Ada County*, 123 Idaho 410, 423, 849 P.2d 83, 96 (1993). Holding all charitable organizations to the same standard is the only fair and just way to decide charitable property tax exemption cases. It is solely within the province of the Idaho Legislature to grant skilled nursing facilities their own property tax exemption.<sup>55</sup>

Where the fees charged are sufficient to cover the operating expenses, “it is difficult to view this as charitable.” *Owyhee Motorcycle Cycle Club*, 123 Idaho at 965, 855 P.2d at 48. The residents at Boise Village are required to pay for the services provided.

***d. Boise Village’s Services are Not Provided Based on Need.***

Society does not provide charity based upon need. Boise Village does not have a sliding fee scale. Tr.p.291,LL.5-7. It charges rates similar to other nursing facilities in Ada County. Boise Village provided information on four “charitable allowances” during 2012 and 2013 totaling \$38,286.63, or less than 0.5% of its operating revenue in those years. Tr.p.194,L.18-

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<sup>55</sup> Note that the Idaho Legislature enacted a separate exemption for hospitals. *See* Idaho Code § 63-602D.

p.197,L.8, p.793,L.25-p.795,L.7; Ex.3490; Ex.51, GSS2095-2098. These “charitable allowances” were only given after a resident was admitted, the bill was incurred, and Society had followed all of its collection policies. Tr.p.295,L.17-p.299,L.1, p.303,LL.8-25; Ex.50, GSS1025. There was no evidence that Boise Village provided a “charitable allowance” at the time of admission. For-profit skilled nursing homes write these accounts off as bad debt because the facility was not been able to collect. Tr.p.695,L.7-14. The “charitable allowances” approved by Boise Village are similarly bad debt.

The District Court stated that the *Sunny Ridge* factor of whether services are provided based upon need should be “evaluated expansively,” because Society receives government reimbursement. District Court Decision at 47. Government reimbursement is not new, but has been a longstanding part of the Supreme Court of Idaho’s analysis in previous charitable tax exemption decisions. *See Housing Southwest*, 128 Idaho at 339, 913 P.2d at 72; *Community Action Agency*, 138 Idaho 86-87, 57 P.3d 793 at 797-798. The District Court also said that under this factor it was “looking not just at whether financial need is identified and satisfied, but how the organization satisfies needs as a whole.” *Id.* Here, the District Court again expanded the *Sunny Ridge* analysis, and contradicted Idaho case law.

The Supreme Court of Idaho has “indicated that to maintain tax exempt status, an organization should provide charitable assistance in the form of reduced costs for those who need it.” *Owyhee Motorcycle Club*, 123 Idaho at 966, 855 P.2d at 48 (*citing Evangelical Lutheran Good Samaritan Society*, 119 Idaho at 133, 804 P.2d at 306)). An organization does not qualify for a charitable property tax exemption when it does not show how individuals having particular

needs for the types of services provided “are singled out for admission, or for assistance.” *Sunny Ridge Manor*, 106 Idaho at 103, 675 P.2d at 818.

Boise Village does not provide charity based upon need, instead it charges all of its residents the full costs of the services provided. Society fails to satisfy this *Sunny Ridge* factor.

*e. Boise Village’s Income Produces a Profit.*

“The fact that revenue has exceeded costs and expenses does not make this corporation a for profit corporation.” *Evangelical Lutheran Good Samaritan Society*, 119 Idaho at 132, n.2, 804 P.2d at 305. But, it is a factor to be considered by the court “as to whether the institution is operating similar to a for profit commercial corporation.” *Id.* This Court does not require a non-profit corporation to operate at a deficit. *Id.* Yet, the Supreme Court of Idaho has stated that “the accrual of *substantial* positive net revenue year after year, excluding donations, is suspect.” *Id.*

Boise Village earned substantial profits each of the last three years. In 2011, Boise Village earned a profit of \$537,513. Ex.320, AC3088; Tr.p.311,LL.11-17, p.773,L.5-p.774,L.8. The District Court found that that Boise Village’s net operating revenue in 2012 and 2013 was \$1,143,346 and \$497,802, respectively.<sup>56</sup> Its profits totaled at least \$2,178,661 over the last three years. The profits at Boise Village have not been used to reduce the burden on the residents at Boise Village. Instead, Society has used the profits generated at Boise Village to invest in new

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<sup>56</sup> Testimony was presented at trial showing that Boise Village’s profit may have been even higher, totaling \$537,513, \$1,651,289, and \$946,010 during 2011-2013, respectively. Tr.p.773,L.5-p.774,L.8, Tr.p.767,L.18-p.768,L.23. These profits totaled \$3,134,812 during those years. *Id.* Tr.p.771,L.20-p.774,L.15; Ex.349G.

properties and to support less successful facilities.<sup>57</sup> Society fails this element of the *Sunny Ridge* analysis.

***f. Remaining Elements.***

Society's stated purposes appear to be charitable, however, as shown above, it does not function like a charitable organization. Society is a non-profit organization and upon dissolution its assets would be distributed to a non-profit organization. Ex. 4, p. AC 7-8.

Based upon the *Sunny Ridge* analysis, Society does not qualify as a charitable organization under Idaho Code § 63-602C.

**3. Boise Village Is Not Used Exclusively for Charitable Purposes.**

Even if Society could show that it is a charitable organization, it does not qualify for a property tax exemption because it does not use Boise Village for qualifying purposes. In order for Society to be granted an exemption, it must show "that the claimed exempt property is used *exclusively for charitable purposes.*"<sup>58</sup> *Evangelical Lutheran Good Samaritan Society*, 119 Idaho at 131, 804 P.2d at 304.

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<sup>57</sup> During 2011-2013, Society took funds from its Boise Village to assist its facilities that were having financial problems, to develop new locations, and to replace buildings at other locations. Tr.p.467,L.7-p.469,L.14; Ex.28, GSS2814. Prior to 2013, Society transferred \$1,386,530.80 from Boise Village for these purposes. *Id.* In 2013, Society consolidated the cash from all of its facilities into the Society's business account; Boise Village had \$5,537,145.46 in that account as of December 31, 2013.<sup>57</sup> Tr.p.468,LL.10-12, p.469,LL.15-24. Boise Village's profit goes into the Society's business account, and Society uses the funds in this account to invest in new locations and to help Society's other centers that are struggling financially. Tr.p.470,L.23-p.471,L.15, p.495,LL.12-22.

<sup>58</sup> Society's use of Boise Village is also a prohibited business use under Idaho Code § 63-602C, which states, in part: "...if such limited liability company, corporation or society uses such property for business purposes from which a revenue is derived which, in the case of a charitable

Boise Village is a “business open to the public” and “a self-sustaining business entity.”<sup>59</sup> Tr.p.656,LL.2-21. In 2012 and 2013, Boise Village expected everyone admitted to pay for its services. Ex.301,p.37;Tr.p.637,LL.4-12. It charges rates similar to other nursing facilities in Ada County. *Id.*; Ex.320, AC3088; Tr.p.311,LL.11-17. As discussed thoroughly above, Boise Village collects against its residents who fall behind on their bills. Boise Village also reserves the right to transfer or discharge a resident for failure to pay. Tr.p.634,L.22-p.635,L.17; Ex.105, GSS10. Boise Village operates like a for-profit skilled nursing business.<sup>60</sup> Tr.p.711,LL.16-23, p.736,LL.11-14, p.795,LL.8-16. Society also earns a substantial profit from Boise Village. As discussed above, Boise Village earned a profit of at least \$2,178,661 over the last three years.

The Supreme Court of Idaho stated in the *Evangelical Lutheran Good Samaritan Society* decision,

We do not require a non-profit corporation to operate at a deficit, however, the accrual of *substantial* positive net revenue year after year, excluding donations, is suspect as noted by the trial court. The record reveals that a large portion of this positive revenue is used for investment purposes. While saving for a rainy day is admirable, we note that it is contrary to the charitable purpose of the Society. The fact that the Village is producing a substantial net positive revenue and that this excess revenue is used for investment purposes by the Society supports the trial court’s finding that the Village property is not being used exclusively for charitable purposes.

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organization, is not directly related to the charitable purposes for which such charitable organization exists, then the same shall be assessed and taxed as any other property...”

<sup>59</sup> According to Society’s 2012 property tax exemption application, all of Boise Village was used for this business or commercial purpose 365 days. Tr.p.312,L.3-p.313,L.13; Ex. 320, AC3091-92.

<sup>60</sup> Before people can be admitted to Boise Village, a payment source must be identified, and staff must verify that the services will be covered by the payor. Tr.p.624,L.11-p.628,L.6; Ex.89, GSS21-23. Boise Village requires its residents to sign an admission agreement similar to agreements used in for-profit nursing homes. Ex.105; Tr.p.628,L.14-p.629,L.11, p.679,L.24-682,L.10.

119 Idaho at 132, n.2, 804 P.2d 305.

During 2011-2013, Society took funds from Boise Village to assist its facilities that were having financial problems, to develop new locations, and to replace buildings at other locations. Tr.p.467,L.7-p.469,L.14; Ex.28, GSS2814. Prior to 2013, Society transferred \$1,386,530.80 from Boise Village for these purposes. *Id.* In 2013, Society consolidated the cash from all of its facilities into the Society's business account; Boise Village had \$5,537,145.46 in that account as of December 31, 2013.<sup>61</sup> Tr.p.468,LL.10-12, p.469,LL.15-24. Boise Village's profit goes into the Society's business account, and Society uses the funds in this account to invest in new locations and to help Society's other centers that are struggling financially. Tr.p.470,L.23-p.471,L.15, p.495,LL.12-22. In addition, in 2013, \$185,275.63 from Boise Village's accounts with accumulated interest earned on donations and unrestricted gifts were swept into a national account held by Society. Ex.28, GSS2812. Other funds from Boise Village have been transferred to the national organization. This includes \$2,068,781.21 from its Helping Hands depreciation account and \$226,988.57 from its general Helping Hands account. Tr.p.436,L.17-p.437,L.9, p.437,LL.10-25; Ex.28, GSS2812. According to Society's Vice President of Finance, the "[n]ational campus is, essentially, a bank." Tr.p.469,LL.21-24.

The way that Society operates Boise Village shows that it is not being used exclusively for charitable purposes. Also, Society's use of the profits from Boise Village to invest in other locations and to support struggling facilities, demonstrates that it is not using Boise Village exclusively for charitable purposes. Since Boise Village is not used exclusively for charitable

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<sup>61</sup> Some of Boise Village's expenses are paid out of this account. Tr.p.493,L.4-p.495,L.2.



purposes, it does not qualify for a charitable property tax exemption under Idaho Code §§ 63-602C.

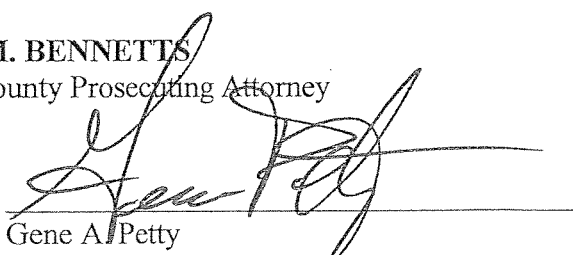
## VI. CONCLUSION

For the reasons stated above, Society is not entitled to a charitable property tax exemption. The Idaho Board of Tax Appeals and the Ada County Board of Equalization were correct in their decisions. The decision of the District Court should be reversed.

DATED this 3rd of March, 2016.

JAN M. BENNETTS  
Ada County Prosecuting Attorney

By:

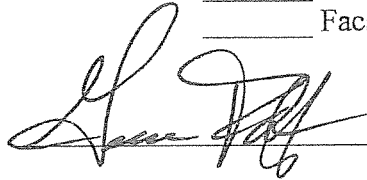
  
Gene A. Petty  
Deputy Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of March, 2016 I served a true and correct copy of the foregoing APPELLANT'S BRIEF to the following person(s) by the following method:

Phillip S. Oberrecht  
Attorney at Law  
950 West Bannock St. Ste 950  
Boise, Idaho 83701

- Hand Delivery
- U.S. Mail
- Certified Mail
- Facsimile



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