

Franklin County Legal Journal

Vol. 33, No. 17

October 23, 2015

Pages 120 - 158

Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

KEYSTONE RURAL HEALTH CENTER, INC., Appellant
vs. BOARD OF ASSESSMENT AND REVISION OF TAXES OF
FRANKLIN COUNTY, Appellee,
FRANKLIN COUNTY, Intervenor,

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, CIVIL ACTION NO. 2012 – 1481, Parcel No.
02-1C-124A, TAX ASSESSMENT APPEAL

HEADNOTES

Tax Assessment Appeal

1. In a tax assessment appeal from the Board of Assessment and Revision of Taxes, the Court’s standard of review is de novo. *Green v. Schuylkill Cnty. Bd. of Assessment Appeals*, 772 A.2d 419, 425 (Pa. 2001) (citing *Deitch Co v. Bd. of Property Assessment*, 209 A.2d 397, 402 (Pa. 1965)).

2. In order to obtain a charitable exemption as a purely public charity, the onus is on the taxpayer to satisfy the constitutional and statutory requirements as well as the appropriate county assessment law. *See Guthrie Clinic, Ltd. v. Sullivan Cnty. Bd. of Assessment Appeals*, 898 A.2d 1194, 1197 – 99 (Pa. Cmwlth. 2006).

3. Under the test created by the Supreme Court in *Hospital Utilization Project v. Commonwealth (HUP)*, an entity can satisfy the constitutional standard if it (1) advances a charitable purpose; (2) donates or renders gratuitously a substantial portion of its services; (3) benefits a substantial and indefinite class of persons who are legitimate subjects of charity; (4) relieves the government of some of its burden; and (5) operates entirely free from private profit motive. *See HUP*, 487 A.2d 1306, 1317 (Pa. 1985).

4. The constitutional standard set forth in *HUP* is a threshold burden for a taxpayer. *See Mesivtah Eitz Chaim of Bobov, Inc. v. Pike Cnty. Bd. of Assessment Appeals*, 44 A.3d, 9 (Pa. 2012).

5. In order to obtain charitable exemption as a purely public charity, the entity must satisfy the requirements of the Institutions of Purely Public Charity Act (Act 55) by proving that it (1) advances a charitable purpose;¹ (2) operates free from private profit motive;² (3) donates or render gratuitously a substantial portion of its services;³ (4) benefits a substantial and indefinite class of persons who are legitimate subjects of charity;⁴ and (5) relieves the government of some of its burden.⁵ *See* 10 P.S. § 375.

6. In order to qualify for a tax exemption under the Consolidated County Assessment Law “the entire revenue derived by the entity is applied to support the entity and to increase the efficiency and facilities of the entity, the repair, and the necessary increase of grounds and buildings of the entity and for no other purpose.” 53 Pa.C.S. § 8812(a)(3)(i). The entity must further establish that “[t]he property of purely public charities is necessary to and actually used for the principal purposes of the institution and not used in such a manner as to compete with commercial enterprise.” 53 Pa.C.S. § 8812(a)(3)(ii).

7. In tax exemption cases “the facts are of critical importance because it has been held by our Supreme Court that prior decisions based on then-current information and facts have

1 10 P.S. § 375(b).
2 10 P.S. § 375(c).
3 10 P.S. § 375(d).
4 10 P.S. § 375 (e).
5 10 P.S. § 375(f).

limited value as precedent.” *School Dist. Of City of Erie v. Hamot Medical Center of City of Erie*, 602 A.2d 407, 409 – 10 (Pa. Cmwlth. 1992) (citing *G.D.I. Plaza Corp. v. Council Rock School Dist.*, 526 A.2d 1173 (Pa. 1987)).

8. “In order to satisfy its burden of establishing that the [organization] donates or renders gratuitously a substantial portion of its services, the [organization] must demonstrate that it makes a bona fide effort to service those persons who are unable to afford the usual fee or medical care.” *Lehigh Area Sch. Dist. v. Carbon Cnty. Bd. of Assessment*, 708 A.2d 1297, 1303 (Pa. Cmwlth Ct. 1998).

9. The HUP Court and its progeny confirm there is no “magic number” for determining whether a portion of services rendered gratuitously is substantial, the numbers in the instant matter are significant. *See HUP*, 487 A.2d 1306, 1317 (Pa. 1985); *Lehigh Area Sch. Dist. v. Carbon Cnty. Bd. of Assessment*, 708 A.2d 1297, 1303 (Pa. Cmwlth Ct. 1998).

10. To determine whether an entity donates or renders gratuitously a substantial portion of its services, the Court must look at the totality of the circumstances. *See HUP*, 487 A.2d 1306, 1316 n. 9 (Pa. 1985).

11. A medical entity that provided uncompensated goods or services which represented 19.8% of total operating costs in 2011 and 16.1% of total operating costs in 2012, provided wholly gratuitous services to 7% of patients in 2011 and 12% in 2012, and provided discounts to individuals based upon their income, can satisfy its burden that it renders gratuitously a substantial portion of its services pursuant to the HUP test.

12. The Supreme Court created a three part test to determine whether an entity operates entirely free from private profit motive under the HUP standard. *See Wilson Area Sch. Dist. v. Easton Hosp.*, 747 A.2d 877, 880 (Pa. 2000); *see also City of Washington v. Bd. of Assessment Appeals of Washington Cnty.*, 704 A.2d 120 (Pa. 1997); *Margaret Seneca Place v. Bd. of Property Assessment, Appeals and Review, Cnty. of Allegheny*, 640 A.2d 380 (Pa. 1994).

13. To determine whether an entity has a private profit motive under the constitutional standard set forth in HUP, the first step is to determine whether the utilization of revenue is made with the expectation of a reasonable return or some non-monetary benefit. *Wilson Area Sch. Dist. v. Easton Hosp.*, 747 A.2d 877, 880 (Pa. 2000).

14. To determine whether an entity has a private profit motive under the constitutional standard as set forth in HUP, the second step is to determine “whether the utilization of the revenue ultimately supports or furthers the eleemosynary nature of the charitable entity.” *Wilson Area Sch. Dist. v. Easton Hosp.*, 747 A.2d 877, 880 (Pa. 2000).

15. To determine whether an entity has a private profit motive under the constitutional standard as set forth in HUP, the third step is to determine “whether the utilization of the revenue inures, directly or indirectly, to any private individual related to the charitable entity or related organizations.” *Wilson Area Sch. Dist. v. Easton Hosp.*, 747 A.2d 877, 880 (Pa. 2000).

16. Where an entity establishes that it has no shareholders, the members of the board of directors do not receive compensation for their services, and upon dissolution of the entity all assets go to a tax exempt organization under § 501(c)(3) of the Internal Revenue Code of 1986, it has proven that utilization of revenue is not made with the expectation of a reasonable return or some non-monetary benefit.

17. Where all finances and revenues are applied in furtherance of a charity’s mission, and the organization provides fair market value and not excessive compensation, the entity has satisfied its burden that the utilization of revenue ultimately supports or furthers the eleemosynary nature of the charitable entity.

18. Where compensation to physicians and the chief executive officer of a medical entity are within fair market value and not excessive, the revenue of the facility is being used to

support or further the eleemosynary nature of the charitable entity.

19. Physician incentive compensation, when based on the physician's productivity does not, in isolation, evidence a private profit motive. *See Guthrie Clinic, Ltd. v. Sullivan Cnty. Bd. of Assessment Appeals*, 898 A.2d 1194, 1197 n. 4 (Pa. Cmwlth. 2006).

20. Incentive based compensation for physicians is not explicitly prohibited by the *HUP* test where there is a disconnect between productivity by individual physicians and revenue generated to the institution. *See generally Guthrie Clinic, Ltd. v. Sullivan Cnty. Bd. of Assessment Appeals*, 898 A.2d 1194, 1199 – 1200 n. 8 - 10 (Pa. Cmwlth. 2006).

21. An on-call physician who receives partial incentive based compensation based upon the RVUs generated by a nurse midwife is not evidence of a private profit motive by the institution.

22. The salary of the Chief Executive Officer of a medical entity is not evidence of a private profit motive when the salary is within fair market value and is not excessive.

23. Pursuant to Act 55, an “institution must operate entirely free from private profit motive.” 10 P.S. § 375(c).

24. In order to satisfy the “free from private profit motive” prong of Act 55, “[n]either the institution's net earnings nor donations which it receives inure to the benefit of private shareholders or other individuals, as the private inurement standard is interpreted under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3))” 10 P.S. § 375(c)(1).

25. A medical institution that has no shareholders, the board of directors is not compensated for its services, and the articles of incorporation explicitly provide that no part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its Section 501(c)(3) purposes satisfies the requirements of 10 P.S. 375(c)(1).

26. In order to satisfy the “free from private profit motive” prong of Act 55, the institution must apply or reserve all revenue, including contributions, in excess of expenses in furtherance of its charitable purpose or to funding of other institutions which meet the provisions of this subsection and subsection (b). 10 P.S. § 375(c)(2).

27. In order to satisfy the “free from private profit motive” prong of Act 55, compensation, including benefits, of any director, officer or employee must not be based primarily upon the financial performance of the institution. 10 P.S. § 375(c)(3).

28. Where a medical entity provides incentive based compensation to physicians based upon work productivity of the individual physician and not the financial performance of the institution, the salaries of the physician are within the fair market value and not excessive, and the salaries of the executives are within the fair market value and not excessive, the institution can meet its burden pursuant to 10 P.S. § 375(c)(3).

29. In order to satisfy the “free from private profit motive” prong of Act 55, the governing body of the institution of purely public charity must have adopted as part of its articles of incorporation or, if unincorporated, other governing legal documents, a provision that expressly prohibits the use of any surplus funds for private inurement to any person in the event of a sale or dissolution of the institution of purely public charity. 10 P.S. § 375(c)(4).

30. In order to qualify for a real estate tax exemption pursuant to Act 55, “the institution must donate or render gratuitously a substantial portion of its services.” 10 P.S. § 375(d)(1).

31. Where a medical entity published its written policy (to provide goods or services to all who seek them without regard to their ability to pay for what they receive) on the homepage

of their website, listed the policy on the “about us” section of the website, published the information on outreach posters, brochures, and in their waiting room, the entity has published the policy in a reasonable manner as required by 10 P.S. § 375(d)(1)(i)(B).

Appearances:

Thomas A. Bowen, Esq., *Attorney for Appellant*

Donald A. Wieand, Esq., *Attorney for Appellant*

Jerrole A. Sulcove, Esq., *Attorney for Franklin County*

Elliott B. Sulcove, Esq., *Attorney for Chambersburg Area School District*

OPINION

Before Zook, J.

Before the Court is Appellant’s (Keystone Rural Health Center, hereinafter “Keystone”) *Petition and Appeal from the Decision of the Board of Assessment and Revision of Taxes of Franklin County* (hereinafter “Petition”). The Court conducted a bench trial on February 10, 2015, and February 11, 2015. The matter is now ready for decision.

PROCEDURAL HISTORY

This case began with Keystone’s filing of the *Petition* on April 13, 2012. On April 19, 2012, Franklin County filed a *Notice of Intervention*. That same date, the Chambersburg Area School District (hereinafter “CASD”) filed a *Notice of Intervention*. On July 5, 2012, the Borough of Chambersburg (hereinafter “Borough”) filed a *Notice of Intervention*.

On April 25, 2013, Keystone filed a *Praecipe for Non-Jury Trial List*. On May 22, 2013, CASD filed a *Motion to Strike Trial Listing and to Schedule a Case Management Conference*.⁶ By Order dated June 12, 2013, the Court⁷ granted CASD’s *Motion to Strike* and set the matter for a status/scheduling conference on August 27, 2013.⁸ On August 19, 2013, the parties submitted a *Joint Proposed Case Management Dates of the Parties*, which was approved by the Court by *Order* dated August 22, 2013.

In the *Order* of August 22, 2013, the Court set a deadline of February 3, 2014 for completion of discovery. In addition, said *Order* provides that Keystone shall “identify and submit curriculum vitae and expert reports of all expert witnesses intended to testify at trial not later than March 3, 2014.” The *Order* further set forth the following trial schedule: 1) settlement

⁶ The basis for CASD’s *Motion to Strike* was the fact that discovery had not been conducted, which constituted a violation of the local rules of court.

⁷ All orders issued on or before March 20, 2014, were issued by then President (now Senior) Judge Douglas W. Herman.

⁸ By *Order* dated July 30, 2014, the Court rescheduled the status/scheduling conference to August 30, 2014.

conference to be held on or about May 15, 2014; 2) a pretrial conference to be held on or about Monday, June 30, 2014, at 11:00 a.m.; and 3) trial to be held on July 10 & 11, 2014.

On January 17, 2014, Franklin County filed a *Motion to Compel Discovery*, which included a *Motion to Strike Objections*, several *Motions to Compel Production of Documents*, and a *Motion to Compel Answers to Interrogatories*. On January 23, 2014, Franklin County filed a *Contested Motion for a Status Conference*. The basis for the County's request for a status conference with the Court involved what the County believed to be dilatory discovery conduct on the part of Keystone. *Contested Mot. for Status Conference*, at ¶ 16. Keystone contested the County's request for a status conference, as well as the County's description of the discovery issue(s). By Order dated February 6, 2014, the Court issued a *Rule* upon Keystone to show cause why a status conference should not be held; the Court also issued a separate Order and Rule that same date directing Keystone to answer the County's *Motion to Compel Discovery*.

On February 10, 2014, Keystone filed its *Response to Intervenor, Franklin County's, Motions to Compel Discovery*. On February 24, 2014, Keystone filed its *Answer to Rule to Show Cause Regarding Franklin County's Contested Motion to Compel Discovery* as well as an *Answer to Rule to Show Cause Regarding Intervenor, Franklin County's Contested Motion for Status Conference*. On March 20, 2014, on the Court's own motion, the above captioned matter was re-assigned to the docket of the Undersigned for all future proceedings.

By Order⁹ dated March 21, 2014, the Court scheduled a status conference for April 16, 2014 to address any outstanding discovery issues. By Order dated March 26, 2014, the Court scheduled a settlement conference for May 19, 2014. On March 31, 2014, the parties filed a *Stipulation* of record setting forth an agreement between the parties to limit certain presentations of evidence as well as corresponding limits on discovery.

The status conference occurred as scheduled on April 16, 2014. By Order of the same date, the Court: 1) dismissed Franklin County's *Motion to Compel Discovery* as moot; 2) directed Keystone to provide certain discoverable documents pursuant to CASD's *First Set of Requests for Production of Documents* by April 25, 2014; 3) ordered the completion of all depositions by May 30, 2014; 4) directed the Taxing Authorities to identify their joint expert witness not later than June 30, 2014;¹⁰ 5) set a deadline of July 18, 2014 for all pre-trial motions; 6) set a pre-trial conference for July 29, 2014; 7) continued trial in this matter until September 2, 2014, with a second day reserved for September 5, 2014; and 8) provided that no further

⁹ This and all subsequent orders were executed by the Undersigned.

¹⁰ The *Order* also required disclosure of their expert's report to Keystone by the same date.

continuances of trial would be granted in the absence of extraordinary cause.

On July 18, 2014, CASD filed a *Motion for Summary Judgment*.¹¹ On July 21, 2014, Keystone filed a *Motion in Limine Re: Expert Witness and Reports*. In the *Motion*, Keystone sought to preclude the testimony of any expert witness by the Taxing Authorities due to their failure to identify and/or submit a report of any expert in compliance with this Court's *Order* of April 16, 2014. The Taxing Authorities did not file a written response to the Keystone's *Motion in Limine*; however, the Taxing Authorities did file a *Pretrial Memorandum* on July 24, 2014, in anticipation of the pretrial conference. In that *Memorandum*, the Taxing Authorities confirmed that they would not be calling an expert witness to testify at trial. See *Pretrial Mem. of Appellee Franklin Cnty. Bd. of Assessment and Revision of Taxes, Franklin Cnty., Chambersburg Area Sch. Dist. and Borough of Chambersburg*, at § VII. Keystone filed its *Pretrial Memorandum* on July 25, 2014.

The pretrial conference occurred as scheduled on July 29, 2014. During the pretrial conference,¹² Keystone raised the specter of presenting an additional expert to testify at trial in this matter; specifically, Keystone averred that such expert would be necessary to respond to arguments raised by CASD in their *Motion for Summary Judgment*. CASD responded that it is Keystone's burden to prove their tax-exempt status, and that they should have anticipated the argument raised by CASD in seeking summary judgment.

By *Order* dated July 29, 2014, the Court directed, among other things: 1) Keystone to file a motion seeking admission of additional expert testimony not later than August 6, 2014;¹³ 2) the Taxing Authorities to respond to said motion not later than August 15, 2014; 3) Keystone to file an answer to CASD's *Motion for Summary Judgment* not later than August 18, 2014; 4) set oral argument on CASD's *Motion for Summary Judgment* for October 8, 2014; and continued trial until December 29 & 30, 2014.

On August 6, 2014, Keystone filed its *Motion for Leave to Introduce Additional Expert Testimony*. On August 15, 2014, the Taxing Authorities filed their *Response to Appellant's Motion for Leave to Introduce Additional Expert Testimony* (hereinafter "Response"). On August 19, 2014, Keystone filed an *Answer to Intervenor School District's Motion for Summary Judgment and a Brief of Appellant in Opposition to Intervenor School District's Motion for Summary Judgment*. By *Order* filed August 20, 2014, the Court rescheduled trial to February 10, and 11, 2015.¹⁴

¹¹ This *Motion* was joined by Franklin County and the Borough.

¹² Per local practice, the pre-trial conference proceeding was not held on the record.

¹³ The actual *Order* indicates a deadline of August 6, 2013; this is obviously a typographical error.

¹⁴ This *Order* was dated August 12, 2014. The Court rescheduled trial for February 10 & 11, 2015 due to the unavailability of one or more of Keystone's necessary witnesses for the December 2014 trial dates.

On August 29, 2014, the Taxing Authorities filed a *Reply Brief of Intervenor Chambersburg Area School District, Franklin County, and the Borough of Chambersburg, and of Appellee Franklin County Board of Assessment and Revision of Taxes in Support of Motion for Summary Judgment*. Keystone filed a *Sur-Reply Brief of Appellant in Opposition to Intervenor School District's Motion for Summary Judgment* on September 15, 2014. On September 23, 2014, the Court entered an *Opinion and Order of Court* granting Keystone's *Motion for Leave to Introduce Additional Expert Testimony*. On October 14, 2014, Keystone filed three separate *Praecipes to Substitute*.¹⁵

On November 4, 2014, the Court on its own motion continued generally the pretrial conference scheduled for November 12, 2014, pending the Court's decision on the *Motion for Summary Judgment*. The Court entered an *Opinion and Order* on November 17, 2014, denying the *Motion for Summary Judgment* and scheduled a final pretrial conference for December 10, 2014, at 1:30 p.m.. The Court held the final pretrial conference as scheduled and confirmed the trial dates for February 10, and 11, 2015.¹⁶

On December 19, 2014, the Taxing Authorities filed a *Motion to Preclude the Testimony of Clifford Simmons CPA and to Exclude Untimely Produced Documents*. Keystone filed an *Answer to Taxing Authorities Motion to Preclude the Expert Testimony of Clifford Simmons CPA and to Exclude Certain Documents* on January 2, 2015. Contemporaneously with their *Answer*, Keystone filed a *Memorandum of Law in Opposition to Taxing Authorities Motion to Preclude Expert Testimony and Exclude Certain Documents*. The Court entered an *Opinion and Order* on January 7, 2015, denying the Taxing Authorities *Motion to Preclude and Exclude*.

On January 20, 2015, the Court entered an *Amended Pretrial Conference Order*.¹⁷ On January 30, 2015, the parties filed a *Stipulation* relating to the admissibility and authenticity of numerous exhibits. The *Stipulation* provides:

[F]or the purposes of this proceeding, under both the constitutional standard and statutory standards required as an Institution of Purely Public Charity (1) Appellant advances a charitable purpose, (2) Appellant benefits a substantial and indefinite class of persons who are legitimate subjects of charity, and (3) Appellant relieves government of some of its burden.

¹⁵ These *Praecipes* simply replaced exhibits attached to other filings.

¹⁶ The Court set aside a potential third day for March 5, 2015; however, this date was ultimately not used.

¹⁷ This *Order* added the contact information of Donald E. Wieand, Esq., the co-counsel of Keystone. The *Order* also provided that Clifford Simmons and Robert J. Cepielik shall testify as expert witnesses, removes them from Keystone's fact witnesses list, and removes Gary Martin from Keystone's fact witness list.

*Stipulation ¶ 3.*¹⁸

The Court conducted a bench trial as scheduled on February 10 and 11, 2015. At the time of trial, Keystone was represented by Thomas A. Bowen, Esq., and Donald E. Wieand, Esq.. Jerrold A. Sulcove, Esq., represented the Franklin County Board of Assessment and Revision of Taxes as well as Franklin County. The Chambersburg Area School District was represented at trial by Elliott B. Sulcove, Esq.. Prior to trial, the Borough of Chambersburg¹⁹ settled with Keystone.

On February 10, 2015, the Court heard testimony from Joanne Cochran,²⁰ Gary Martin,²¹ Patrick W. O'Donnell,²² Samuel King,²³ Linda Baer,²⁴ Cheri Rinehart,²⁵ and John J. Mcelwee, Jr.²⁶ On February 11, 2015, the Court resumed with testimony by John J. Mcelwee, Jr., followed by Keystone's expert witnesses, Robert J. Cepielik and Clifford Simmons. At the conclusion of trial the Court, by an *Order* dated February 11, 2015, addressed the admission of numerous exhibits and set a briefing schedule for the parties.

On March 23, 2015, *Transcript of Proceedings of Appeal Hearing (Day One)* (hereinafter "*Tr. Day 1*") and *Transcript of Proceedings of Appeal Hearing (Day Two)* (hereinafter "*Tr. Day 2*") of the bench trial were lodged; they were filed on March 30, 2015. On April 1, 2015, the remaining Taxing Authorities filed a *Post Hearing Memorandum Pursuant to the Court's Order of February 11, 2015* (hereinafter "*Taxing Authorities' Brief*"). Contemporaneously with the filing of the *Taxing Authorities' Brief*, the Taxing Authorities filed their proposed *Findings of Fact and Conclusions of Law Pursuant to the Court's Order of February 11, 2015*. On May 1, 2015, Keystone filed a *Post Hearing Memorandum* (hereinafter "*Keystone's Brief*") contemporaneously with their *Proposed Findings of Fact and Conclusions of Law*.

On June 1, 2015, Keystone filed a *Motion to Correct Hearing Transcript*. The same date, the Court entered an *Order* directing the Taxing Authorities to respond to the *Motion* within ten days. The Taxing Authorities filed a timely *Response of the Taxing Authorities to the Motion of Appellant Keystone Rural Health Center Inc. to Correct Hearing Transcript* on June

¹⁸ The *Stipulation* also describes the subject property and that the property was used and occupied by Keystone and was necessary to and actually used for the principal purposes of Keystone.

¹⁹ Prior to trial, the Borough of Chambersburg was represented by Melissa L. Kelso, Esq..

²⁰ Joanne Cochran is the Chief Executive Officer of Keystone Rural Health Center. *Tr. Day 1*, 5:5 – 8.

²¹ Gary Martin is the Chief Assessor of Franklin County. *Tr. Day 1*, 76:1 – 10. Mr. Martin was the only witness called by the Taxing Authorities. *Tr. Day 1*, 74:24 – 75:2.

²² Patrick W. O'Donnell is the President and Chief Executive Officer of Summit Health and the Chambersburg Hospital. *Tr. Day 1*, 83:5 – 15.

²³ Samuel King is the Chairman of the Board of Directors of Keystone Rural Health Center. *Tr. Day 1*, 106:11 – 12.

²⁴ Linda Baer is the Director of Human Resources of Keystone Rural Health Center. *Tr. Day 1*, 118:19 – 21.

²⁵ Cheri Rinehart is the President and Chief Executive Officer of the Pennsylvania Association of Community Health Centers. *Tr. Day 1*, 151:22 – 152:1.

²⁶ John J. Mcelwee, Jr. is the Vice President of Keystone Rural Health Center. *Tr. Day 1*, 165:4 – 6.

10, 2015. The Court will address the *Motion to Correct Hearing Transcript* in this Decision.²⁷

FINDINGS OF FACT

After hearing in this matter, the Court makes the following findings of fact:

1. In 2011 and 2012, Keystone held title to Parcel No. 02-1C-124A (hereinafter the “Subject Property”) located at 830 Fifth Avenue, Chambersburg, PA²⁸ containing a two-story brick medical building. Stipulation ¶ 4; *see also* Taxing Authorities Ex. H; Taxing Authorities Ex. I; Tr. Day 1, 78:2 – 11.
2. The Subject Property consists of a 3.07 acre site. Taxing Authorities Ex. H; Tr. Day 1, 78:12 -13.
3. The Subject Property contains a 52,000 square foot building. Tr. Day 1, 15:10 – 16;— *see also* Stipulation ¶ 4.
4. The common level ratio for 2012 was 13.1%. Tr. Day 1, 79:2 – 4.
5. The common level ratio for 2013 was 14.2%. Tr. Day 1, 79:5 – 6.
6. The common level ratio for 2014 was 14.8%. Tr. Day 1, 79:7 – 8.
7. The common level ratio for 2015 is 14.5%. Tr. Day 1, 79: 9 – 10.
8. The assessed value of the Subject Property from 2012 – 2015 is \$781,300. Tr. Day 1, 78:17 – 79:1.
9. The implied market value is determined by dividing the assessed value by the applicable common level ratio. Tr. Day 1, 79:11 – 14.
10. The implied market value of the Subject Property in 2012 was \$5,964,122. Tr. Day 1, 79:11 – 14.
11. The implied market value of the Subject Property in 2013 was \$5,502,133. Tr. Day 1, 79:15 – 17.
12. The implied market value of the Subject Property in 2014 was \$5,314,965. Tr. Day 1, 79:18 – 19.
13. The implied market value of the Subject Property in 2015 is \$5,388,276. Tr. Day 1, 79:20 – 21.
14. Keystone is a non-profit corporation incorporated under the laws of the Commonwealth of Pennsylvania. Keystone Ex. 9(a).
15. Keystone is a tax exempt organization under § 501(c)(3) of the

²⁷ *See infra* Discussion Part IV.

²⁸ The Court notes that the *Stipulation* lists the property at 530 Fifth Avenue; however, upon review of the record, it is clear that the Subject Property is located at 830 Fifth Avenue. *See Tr. Day 1, 78: 6 – 11; see also* Keystone Ex. 10(c).

Internal Revenue Code. Keystone Ex. 13.²⁹

16. Keystone holds a sales and use tax exemption under Pennsylvania law. Keystone Ex. 14 (a) – (c); *see also Tr. Day 1*, 23:18 – 24.

17. Keystone is a federally qualified health center (FQHC) under § 330 of the Public Health Service Act. *Tr. Day 1*, 9:17 – 25, 10:13 – 25.

18. Keystone was founded by Joanne Cochran and Tammy Zuroweste in 1986. *See Tr. Day 1*, 5:11 – 12, 6:4 – 8:17.

19. Summit Health is the holding/parent company of the Chambersburg Hospital and the Waynesboro Hospital. *Tr. Day 1*, 83:17 – 22.

20. FQHCs serve an underserved area or population.³⁰ Franklin County has been determined to have an underserved population. *Tr. Day 1*, 11:15 – 19, 13: 7 – 9.

21. Keystone has a 13 member Board of Directors; more than 51%³¹ of the members are users of the Keystone Rural Health Center. *Tr. Day 1*, 17:22 – 18:8; *see also* Keystone Ex. 9(b).

22. Under Keystone’s Bylaws, all members of its Board of Directors are required to reside in Keystone’s service area. Keystone Ex. 9(b)(i) art. III § 2; Keystone Ex. 9(b)(ii) art. III § 2.

23. FQHCs are precluded from having any employees or dependents of employees serving on its Board of Directors. Keystone does not have any employees or dependents of employees serving on its Board of Directors. *Tr. Day 2*, 11:23 – 12:4.

24. Under Keystone’s Bylaws in effect during 2011, Summit Health was entitled to name two (2) Directors from the class of Directors who utilized Keystones services and one (1) Director from the class of Directors who did not utilize Keystone’s services. Keystone Ex. 9(b)(ii) art. III § 2(c).

25. Under Keystone’s Bylaws, as modified January 26, 2012, Summit Health was no longer entitled to appoint any Directors to Keystone’s Board. *Tr. Day 1*, 22:7 – 24.

26. Keystone does not have any shareholders. *Tr. Day 1*, 35:19 – 20.

27. The members of the Keystone Board of Directors do not receive any compensation for their services. *Tr. Day 1*, 35:21 – 23; *see also* Keystone Ex. 9(b)(i) Art. III § 5; Keystone Ex. 9(b)(ii) Art. III § 5.

28. Keystone is mandated by the Federal Department of Health and

²⁹ Keystone Ex. 13 is a letter from Cindy Westcott, Manager, EO Determinations, of the Internal Revenue Service. This letter, dated August 12, 2009, states that a determination letter was issued in December 1988 declaring that Keystone is exempt from Federal Income Tax. The determination letter is attached to Keystone Ex. 13.

³⁰ An area or population must be determined to be underserved by the Pennsylvania Department of Health; after which the Federal Government must also determine it to be underserved. *Tr. Day 1*, 11:20 – 12:6.

³¹ This is a requirement of all FQHCs. *See* Keystone Ex. 9(b).

Human Services (HHS) to adopt a collections policy for delinquent accounts. *Tr. Day I*, 71:7 – 12.

29. Keystone has adopted a formal collections policy. *Tr. Day I*, 56:16 – 24; Keystone Ex. 25(b).

30. Keystone has never brought legal proceedings against anyone over a delinquent account. *Tr. Day I*, 72:5 – 6.

31. Keystone served 47,146 patients in 2011 and 44,941 patients in 2012. *Tr. Day I*, 28:11 – 14; Keystone Ex. 20(a) at 4; Keystone Ex. 20(b) at 4.

32. Keystone's Mission is to improve the health and quality of the people and communities it serves. This is done by:

- a. Providing quality compassionate primary medical, dental, behavioral, and social services to anyone, especially those who need it most;
- b. Coordinating care with other providers to provide a full range of services their patients need;
- c. Promoting and supporting healthy lifestyles;
- d. Collaborating with others to promote affordable access and breaking down language and cultural barriers; and
- e. Advocating for their patients and the medically underserved. *Tr. Day I*, 25:24 – 26:8; Keystone Ex. 10(a); Keystone Ex 10(b).

33. The specific purpose of Keystone is to

provide health care services through the ownership and operation of one or more federally qualified health centers to meet the physical and mental health care needs of the communities served by [Keystone], especially the medically underserved, without regard to race, religion, sex, ethnicity or ability to pay.

Keystone Ex. 9(b)(i) art. I, § 3(a); Keystone Ex. 9(b)(ii) art. I, § 3(a); *see also* Keystone Ex. 10(b).

34. The Subject Property is home to Keystone Women's Care (OB/GYN), Keystone Pediatrics, Keystone Internal Medicine, Keystone Pharmacy, Keystone HIV Program, Keystone Dental Care, and Keystone Walk-In Care. *Tr. Day I*, 15: 23 – 16: 10; Keystone Ex. 10(c).

35. In 2011 and 2012, Keystone provided medical care through the following medical practices:

- a. Family medicine;
- b. Behavioral health;

- c. Dental care;
- d. Women’s care (OB/GYN);
- e. Pediatrics
- f. Cardiology;³²
- g. Pharmacy;
- h. Internal medicine;
- i. Walk-In care;
- j. Infectious diseases and HIV program;
- k. Crisis Intervention. *Tr. Day 1, 13:12 – 17:15*; see also Keystone Ex. 10(c).

36. Joanne Cochran testified that Keystone’s Pharmacy is very small.³³ *Tr. Day 1, 52:15 – 20.*

37. Keystone’s Pharmacy operates under a program that offers medication at discounted prices for individuals who qualify. *Tr. Day 1, 17:6 – 8.*

38. Keystone’s pharmacy sells some over the counter medication as well as some non-medication items, such as cough drops and minor first aid remedies. *Tr. Day 1, 52:15 – 22.*

39. The target market for Keystone’s Pharmacy is Keystone’s patients; however, Keystone’s employees use the pharmacy, and it is open to the general public. Keystone has never advertised the pharmacy to the general public. *Tr. Day 1, 70:15 – 71:6.*

40. Keystone offers a sliding fee scale to its patients based upon their family income and size. *Tr. Day 1, 26:13 – 24*; see also Keystone Ex. 10(b); Keystone Ex. 10(c); Keystone Ex. 24(c); Keystone Ex. 57(b) (xii).

41. If a patient has income up to 100% of the poverty guidelines, the patient is eligible for a discount up to 80% off the normal charge of services. *Tr. Day 1, 178:2 – 7.*

42. If a patient has income between 100% and 200% of the poverty guidelines, the patient is eligible for a discounted rate. *Tr. Day 1, 178:7 – 9.*

³² The Cardiology practice was sold to Summit Health in 2012 because the compensation of the cardiologists was very high and Keystone could not afford to keep the practice. *Tr. Day 1, 38:16 – 39:8.*

³³ Ms. Cochran testified that “it’s a very very small pharmacy. Probably as big as half of [Courtroom 2 of the Franklin County Courthouse] or maybe a quarter.” *Tr. Day 1, 52:18 – 20.* Pursuant to Pa.R.Evid. 201, the Court takes judicial notice of the size of Courtroom 2 of the Franklin County Courthouse. The Court did not measure Courtroom 2 for purposes of this decision; however, the Court’s personal benchbook contains the measurements of the Courtroom for use during any hearing. The Courtroom dimensions are 38 ½ feet by 28 feet.

43. In 2011, 6,768³⁴ of Keystone’s patients were at or below the federal poverty guideline. Keystone Ex. 20(a) at 9.
44. In 2011, 10,317³⁵ of Keystone’s patients had income between 100% and 200% of the federal poverty guideline. Keystone Ex. 20(a) at 9.
45. In 2012, 9,298³⁶ of Keystone’s patients were at or below the federal poverty guideline. Keystone Ex. 20(b) at 11.
46. In 2012, 12,002³⁷ of Keystone’s patients had income between 100% and 200% of the federal poverty guideline. Keystone Ex. 20(b) at 11.
47. Migrant workers have a federal grant that provides assurance and therefore have no cost to the worker. *Tr. Day 1*, 73:17 – 25.
48. In 2011, Keystone saw 2,867 migrant workers at the Migrant Health Center. Keystone Ex. 20(a) at 10.
49. In 2012, Keystone saw 2,768 migrant workers at the Migrant Health Center. Keystone Ex. 20(b) at 13.
50. Keystone’s sliding fee policy is published on Keystone’s website, posted in waiting rooms, and in brochures, in English and Spanish, that are provided at registration. *Tr. Day 1*, 27:11 – 14, 178:14 – 20; *see also* Keystone Ex 10(b); Keystone Ex. 10(c); Keystone Ex. 24(c).
51. Keystone does not turn away individuals if they are unable to pay any fee. *Tr. Day 1*, 72:11 – 13, 178:11 – 13.
52. In 2009 the Keystone Board of Directors approved a three percent matching retirement program for frontline employees.³⁸ *Tr. Day 1*, 37:2 – 8.
53. In 2011 and 2012 there was a pension plan for senior management that was funded only through employee contributions. *Tr. Day 1*, 37:12 – 19.
54. In 2014 the Board of Directors approved a contribution 3% matching program for senior management and highly compensated employees. *Tr. Day 1*, 59:13 – 60:9.
55. In 2010 Keystone and Summit Health entered into a Community Benefit Grant Agreement (hereinafter “CBGA”). *Tr. Day 1*, 37:20 – 38:6; *see* Keystone Ex. 28(a).

56. In 2011 Summit Health gave Keystone \$1.5 million as part of the

34 Out of 47,146 patients. Keystone Ex. 20(a) at 9. This figure represents approximately 14.36% of Keystone’s patients in 2011.

35 Out of 47,146 patients. Keystone Ex. 20(a) at 9. This figure represents approximately 21.88% of Keystone’s patients in 2011.

36 Out of 44,941 patients. Keystone Ex. 20(b) at 11. This figure represents approximately 20.69% of Keystone’s patients in 2012.

37 Out of 44,941 patients. Keystone Ex. 20(b) at 11. This figure represents approximately 26.7% of Keystone’s patients in 2012.

38 This plan did not include highly compensated employees. *Tr. Day 1*, 37:2 – 8.

CBGA. *Tr. Day 1*, 38:13 – 14.

57. In 2012 Summit Health gave Keystone \$750,000 as part of the CBGA. *Tr. Day 1*, 38:15 – 16.

58. Summit Health loaned an employee to Keystone as part of the CBGA; that employee was John J. McElwee, Jr., now the Vice President of Keystone.³⁹ *Tr. Day 1*, 39:9 – 13, 61:6 – 8; *see also* Keystone Ex. 28(a).

59. Keystone does not grant any kind of discretionary bonuses to physicians or other employees. *Tr. Day 2*, 6:9 – 11.

60. The Keystone Board of Directors has never made a discretionary bonus award. *Tr. Day 2*, 6:12 – 14.

61. Keystone has never increased its compensation to the physicians or management or employees in order to avoid an operational surplus. *Tr. Day 2*, 6:18 – 21.

62. The Court found the expert testimony and report of Robert J. Cepielik, CPA, credible. *Tr. Day 2*, 30:20 – 78:16; Keystone Ex. 57(b).

63. The Court found the expert testimony and report of Clifford Simmons, CPA, CVA, credible. *Tr. Day 2*, 79:1 – 147:9; Keystone Ex. 58(b).

64. “Medical Director” at Keystone is a clinical administrative position that is compensated in two tiers. Medical Directors in the first tier complete approximately 200 hours per year of medical director services and are paid \$25,000. Medical Directors in tier two complete approximately 100 hours per year of medical director services and are paid \$12,500. *Tr. Day 2*, 118:3 – 120:9.

65. Keystone’s Medical Directors fees in 2011 and 2012 were within fair market value standards and were not excessive. *Tr. Day 2*, 121:7 – 13.

66. In 2011 Keystone’s payor mix consisted of:

Net Patient Service Revenue		Percentage of Patients
Medicare	18.2%	13.1%
Medicaid	35.4%	21.7%
Commercial Insurance	36.4%	44.7%
Self-Pay (Uninsured)	10.0%	20.5%

Tr. Day 1, 175:9 – 176:25; Keystone Ex. 18(a) at 12; Keystone Ex. 18(b) at 13.

³⁹ Summit Health paid Mr. McElwee’s salary of \$225,000.

67. In 2012 Keystone’s payor mix consisted of:

Net Patient Service Revenue	Percentage of Patients	
Medicare	9.9%	9.9%
Medicaid	40.2%	23.4%
Commercial Insurance	41.0%	48.0%
Self-Pay (Uninsured)	8.9%	18.7%

Tr. Day 1, 175:9 – 176:25; Keystone Ex. 18(b) at 13.

68. In 2011 Keystone provided uncompensated care aggregating approximately \$5.9 million.⁴⁰

2011 Medicare Uncompensated Care	\$1,317,000
2011 Medical Assistance Uncompensated Care	\$3,140,000
2011 Other Uncompensated Care	\$0
2011 Write-offs-Commercial and Self-Pay Uncompensated Care	\$1,462,000
Total	\$5,919,000

Tr. Day 2, 53:11 – 18; see also Keystone Ex. 57(b) at 8; Keystone Ex. 57(b)(ii).

69. In 2012 Keystone provided uncompensated care aggregating approximately \$4.5 million.⁴¹

2012 Medicare Uncompensated Care	\$462,000
2012 Medical Assistance Uncompensated Care	\$2,591,000
2012 Other Uncompensated Care	\$0
2012 Write-offs-Commercial and Self-Pay Uncompensated Care	\$1,476,000
Total	\$4,529,000

Tr. Day 2, 53:11 – 18; see also Keystone Ex. 57(b) at 8; Keystone Ex. 57(b)(ii).

70. The adjusted cost per visit by Medicare patients in 2011 was \$142.21. *Tr. Day 1*, 173:15 – 22; see also Keystone Ex. 19(a).

71. The maximum reimbursement per visit by Medicare for Medicare

⁴⁰ This number was calculated by Robert J. Cepielik, CPA. To achieve this calculation, Mr. Cepielik aggregated the uncompensated care provided through the Medicare program, the care provider to members that participated in the medical assistance or Medicaid program that was uncompensated, and the accounting records at uncollected services and write-offs. *Tr. Day 2*, 54:2 – 14. These numbers were obtained through an “independent estimate [by Mr. Cepielik] utilizing the financial records of [Keystone], so it was a combination of records, including financial statements and counter records, Medicare, Medicaid cost reports, and other correspondence between the Medicare and Medicaid programs and the organization which indicated rates for particular services.” *Tr. Day 2*, 54:15 – 22.

⁴¹ This number was calculated by Robert J. Cepielik, CPA, in the method discussed *supra* Findings of Fact ¶ 68 n. 35.

patients in 2011 was \$109.24. *Tr. Day 1*, 173:23 – 25; see also Keystone Ex. 19(a).

72. Keystone lost approximately \$30⁴² per Medicare patient visit in 2011. *Tr. Day 1*, 174:2 – 4.

73. Keystone lost slightly less than the \$30 per Medicare patient visit in 2012. *Tr. Day 1*, 174:5 – 7.

74. In 2011 Keystone had total revenue, gains, and other support of \$27,212,723 and total expenses of \$29,866,844. Keystone Ex. 18(b) at 5.

75. In 2011 Keystone received \$2,840,099 in revenue from grants. Keystone Ex. 18(b) at 5.

76. In 2011 Keystone suffered operating losses of \$2,654,121. *Tr. Day 1*, 170:21 – 25; see also Keystone Ex. 18(b) at 5.

77. In 2011, 3% of Keystone's operating expenses was \$896,000. *Tr. Day 2*, 53:11 -14.

78. In 2011, 5% of Keystone's operating costs were \$1.49 million. *Tr. Day 2*, 62:11 – 13.

79. In 2011 Keystone provided uncompensated goods or services which represented 19.8%⁴³ of Keystone's total operating costs. *See Tr. Day 2*, 53:11 – 18; Keystone Ex. 18(b) at 5; Keystone Ex. 57(b) at 8; Keystone Ex. 57(b)(ii).

80. In 2011, 92% of Keystone's patients paid either no fee or a fee less than 100% of the cost of services rendered. *Tr. Day 2*, 58:11 – 14; see also Keystone Ex. 57(b) pg. 9.

81. In 2011, 91% of Keystone's patients paid either no fee or a fee less than 90% of the cost of services rendered. *Tr. Day 2*, 58:23 – 59:2; see also Keystone Ex. 57(b) at 10.

82. In 2011, approximately 7% of encounters at Keystone were wholly gratuitous. *Tr. Day 2*, 56:22 - 24.

83. In 2012 Keystone had total revenue, gains, and other support of \$26,606,784 and total expense of \$28,191,918. Keystone Ex. 18(b) at 5.

84. In 2012 Keystone suffered operating losses of \$1,585,134. *Tr. Day 1*, 170:21 – 25; *see also* Keystone Ex. 18(b) at 5.

85. In 2012, 3% of Keystone's operating expenses was \$845,000. *Tr. Day 2*, 53:11 – 14.

⁴² The Court notes the exact number is \$32.97 per visit.

⁴³ The Court performed this calculation by dividing the total uncompensated care figure by the total operating expenses. *See supra* Findings of Fact ¶¶ 68, 74.

86. In 2012, 5% of Keystone’s operating expenses was \$1.41 million. *Tr. Day 2*, 62:11 -13.
87. In 2012 Keystone provided uncompensated goods or services which represented 16.1%⁴⁴ of Keystone’s total operating costs. *See Tr. Day 2*, 53:11 – 18; Keystone Ex. 18(b) at 5; Keystone Ex. 57(b) at 8; Keystone Ex. 57(b)(ii).
88. In 2012, 91% of Keystone’s patients paid either no fee or a fee less than 100% of the cost of services rendered. *Tr. Day 2*, 59:8 – 14; see also Keystone Ex. 57(b) at 9.
89. In 2012, 89% of Keystone’s patients paid either no fee or a fee less than 90% of the cost of services rendered. *Tr. Day 2*, 59:14 – 17; see also Keystone Ex. 57(b) at 10.
90. In 2012, approximately 12% of encounters at Keystone were wholly gratuitous. *Tr. Day 2*, 56:23 – 25.
91. Total Relative Value Unit (RVU) is a measurement created by the Medicare program to weigh the amount of work and resources that goes into anything a physician does.⁴⁵ *Tr. Day 1*, 96:10 – 15; *Tr. Day 2*, 94:13 – 22.
92. RVUs are comprised of three components. *Tr. Day 2*, 95:25 – 96:15; Keystone Ex. 58(b) at 13.
- a. Work Relative Value Units (WRVU) is considered the physician work component of the service. *Tr. Day 2*, 95:25-96:15; Keystone Ex. 58(b) at 13.
 - b. Practice Expense (PE) is the overhead factor for the overhead of any provider practice. *Tr. Day 2*, 96:11 – 13; Keystone Ex. 58(b) at 13.
 - c. The third component is Malpractice Expense (ME). *Tr. Day 2*, 96:11 – 13; Keystone Ex. 58(b) at 13.
93. Keystone uses RVUs in their compensation structure, including a base compensation and total RVU threshold with an adjustment. *Tr. Day 2*, 99:7 – 9.
94. Keystone’s physicians do not have non-compete provisions in their employment contracts. *Tr. Day 2*, 111:22 – 112:11; *see generally* Taxing Authorities Ex. A.
95. By 2011, nationally, more than 60% of physician compensation numbers were partially or totally based on relative value unit

⁴⁴ The Court performed this calculation by dividing the total uncompensated care figure by the total operating expenses. *See supra* Findings of Fact ¶¶ 69, 83.

⁴⁵ RVU is a measure that is standard through the medical services industry regardless of the geographical location. *Tr. Day 1*, 98:19 – 21.

methodology.⁴⁶ *Tr. Day 2*, 97:5 – 25; *see also* Keystone Ex. 58(b).

96. Keystone uses RVUs as a method of determining physician incentive compensation. *Tr. Day 1*, 96:13 – 15.

97. Keystone's employment contracts set a base salary and then provide incentive compensation based on RVUS and tied to the base salary itself. *Tr. Day 1*, 127:6 – 10.

98. Physicians receive \$10 - \$20 per RVU after the physicians have reached a qualifying RVU level. *Tr. Day 1*, 127:11 – 18, 188: 7 – 11.

99. Each practice⁴⁷ can have a different threshold RVU level before incentives are paid. *Tr. Day 1*, 128:4 – 12.

100. Medicare has established a productivity standard for FQHC's that requires a minimum of 4,200 patient encounters annually per full time equivalent (FTE) physician.⁴⁸ *Tr. Day 1*, 171:17 -19; *Tr. Day 2*, 87:15 – 21; *see also* Keystone Ex. 58(b).

101. RVUs are calculated based on work unit and not on revenue to Keystone. *Tr. Day 1*, 99:5 – 10.

102. 35% of the RVUs generated by nurse midwives during deliveries at the Women's Care (OB/GYN) unit are spread among eligible physicians in the Women's Care (OB/GYN) unit. *Tr. Day 1*, 136:13 – 16.

103. A physician at the Women's care (OB/GYN) unit is always on call during a delivery conducted by a nurse midwife. While on call, the physician needs to be in proximity to the hospital and therefore is limited during that period of time as to what they can do, and where they can go. *Tr. Day 1*, 137:5 – 16.

104. A physician is often standing in and performing the duties which generate RVUs for nurse midwives at the Women's Care (OB/GN) unit. The physicians do not directly⁴⁹ generate RVUs for these duties. *Tr. Day 1*, 137:5 – 16.

105. The more RVUs generated by a physician does not necessitate more revenue for the institution. *Tr. Day 1*, 186:16 – 188:3.

106. Keystone's Amended Articles of Incorporation provide:

upon dissolution of [Keystone], the Board of Directors shall, after paying or making provision for the payment of all liabilities of the corporation, and subject to any applicable requirements of any federal laws or regulations,

⁴⁶ Clifford Simmons, CPA, testified that he obtained this information from the AMGA and MGMA surveys for 2011. *Tr. Day 2*, 97:5 – 10.

⁴⁷ *See supra* Findings of Fact ¶ 35 for list of practices.

⁴⁸ For dentists the requirement is 2,600 encounters per year. *Tr. Day 1*, 171:17 – 19.

⁴⁹ The Physicians earn 35% of the RVUs generated by the nurse midwives in these instances. *See supra* Findings of Fact ¶ 102.

dispose of all of the assets of the corporation exclusively for the purposes to the corporation (a) to Chambersburg Hospital Health Services, if such corporation exists and is exempt from tax under Section 501(c)(3) of the Internal Revenue Code, or (b) otherwise, to such organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes as shall at the time qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine, or (c) to the Federal Government, or to a state or local government, for a public purpose.

Tr. Day 1, 20:11 – 21:4; see also Keystone Ex. 9(a).

107. Keystone’s Articles of Incorporation provide that the purpose of the corporation is:

To enhance the health of individuals and families within the community, with an emphasis on the medically underserved. The medically underserved include migrant and seasonal farm workers and their families, the uninsured, the economically disadvantaged and those with inadequate access to needed health services.

Keystone Ex. 9(a).

108. Keystone’s Articles of Incorporation provide:

No part of the net earning of the corporation shall inure to the benefit of, or be distributable to its members, trustees, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its Section 501(c)(3) purposes.

Tr. Day 1, 20:4 – 10; Keystone Ex. 9(a).

109. None of Keystone’s net earnings, donations, or other monies or revenues it receives inure to the benefit of any director employee or officer of the organization.⁵⁰ *Tr. Day 2, 13:3 – 6.*

110. All of Keystone’s finances and revenues are applied in furtherance of its mission. *Tr. Day 1, 35: 13 – 15; Tr. Day 2, 13:7 – 9.*

111. In the last 10 years, compensation mechanisms for physicians,

⁵⁰ The Court notes that the transcript explicitly reads “employee or the office or the organization;” however, it is clear from the context that it relates to employee or officer of the organization. *Tr. Day 2, 13:3 – 6.*

including those at non-profit hospitals, have evolved away from fixed guaranteed employment contracts to performance driven employment contracts. *Tr. Day 2*, 91:13 – 23.

112. There was a period of approximately ten years where Joanne Cochran, while acting as the Chief Executive Officer of Keystone, did not receive a salary from Keystone. *Tr. Day 1*, 68: 4 -7.

113. In 2009, Joanne Cochran, entered into an employment agreement with Keystone which provided for an annual salary of \$195,887. Taxing Authorities Ex. A at 824 – 826.

114. Effective October 1, 2010, Joanne Cochran’s salary was increased from \$225,000 to \$250,000 annually. *Tr. Day 1*, 48:12 – 21; Taxing Authorities Ex. A at 698 – 701.

115. Effective January 1, 2012, Joanne Cochran’s salary was increased from \$250,000 to \$275,000 annually. *Tr. Day 1*, 50:10 – 51:2; Taxing Authorities Ex. A. at 698 – 701.

116. In 2011 and 2012, the compensation paid to Keystone’s Chief Executive Officer, Joanne Cochran, was within fair market value. *Tr. Day 2*, 125:6 – 12; *see also* Keystone Ex. 58(b).

117. In 2011 and 2012, the compensation paid by Keystone to its physicians was within fair market value standards and was not outside of the reasonable ranges. *Tr. Day 2*, 112:19 – 25; *see also* Keystone Ex. 58(b).

118. Keystone did not have any operational earnings or profits in either 2011 or 2012. *Tr. Day 1*, 30:6 – 11; Keystone Ex. 18(a); Keystone Ex. 18(b).

119. Keystone had an operational deficit in 2011 and 2012. *Tr. Day 1*, 30:6 – 8.

CONCLUSIONS OF LAW

Before the Court is Keystone’s appeal from the Franklin County Board of Assessment. In a tax assessment appeal from the Board of Assessment and Revision of Taxes, the Court’s standard of review is *de novo*. *Green v. Schuylkill Cnty. Bd. of Assessment Appeals*, 772 A.2d 419, 425 (Pa. 2001) (citing *Deitch Co v. Bd. of Property Assessment*, 209 A.2d 397, 402 (Pa. 1965)). Specifically, Keystone is seeking real estate tax exemption as an institution of purely public charity. *See Petition and Appeal from the Decision of the Board of Assessment and Revision of Taxes of Franklin County*, ¶¶ 7 – 9. In order to obtain a charitable exemption as a purely public charity, the onus is on Keystone to satisfy the constitutional

and statutory requirements as well as the appropriate county assessment law. See *Guthrie Clinic, Ltd. v. Sullivan Cnty. Bd. of Assessment Appeals*, 898 A.2d 1194, 1197 – 99 (Pa. Cmwlth. 2006).

The Pennsylvania Constitution provides that the “General Assembly may by law exempt from taxation...[i]nstitutions of purely public charity, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the purposes of the institution.” Pa. Const. art. 8, § 2(a)(v). In *Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306, 1317 (Pa. 1985) (hereinafter “HUP”), the Supreme Court created a five part test to determine if an entity qualifies as a “purely public charity” under the Pennsylvania Constitution. *Id.* Under the HUP test, an entity can satisfy the constitutional standard if it (1) advances a charitable purpose; (2) donates or renders gratuitously a substantial portion of its services; (3) benefits a substantial and indefinite class of persons who are legitimate subjects of charity; (4) relieves the government of some of its burden; and (5) operates entirely free from private profit motive. *Id.* This is a threshold burden. See *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike Cnty. Bd. of Assessment Appeals*, 44 A.3d 3, 9 (Pa. 2012) (hereinafter “Mesivtah”).

If Keystone satisfies the constitutional standard as set forth in HUP, Keystone must then establish that they meet the relevant statutory requirements. See *Mesivtah*, 44 A.3d 3, 9 (Pa. 2012). The relevant statutory requirements are found in the Institutions of Purely Public Charity Act.⁵¹ 10 P.S. §§ 371 – 385. In order to satisfy these requirements, Keystone must prove that it (1) advances a charitable purpose;⁵² (2) operates free from private profit motive;⁵³ (3) donates or render gratuitously a substantial portion of its services;⁵⁴ (4) benefits a substantial and indefinite class of persons who are legitimate subjects of charity;⁵⁵ and (5) relieve the government of some of its burden.⁵⁶ See 10 P.S. § 375.

If Keystone is able to satisfy the requirements of Act 55, it must finally prove that it is eligible for a tax exemption under the Consolidated County Assessment Law. See *Guthrie Clinic, Ltd. v. Sullivan Cnty. Bd. of Assessment Appeals*, 898 A.2d 1194, 1198 (Pa. Cmwlth. 2006); see also 53 Pa.C.S. §§ 8801 – 8868. In relevant part, Keystone would be required to show that “the entire revenue derived by the entity is applied to support the entity and to increase the efficiency and facilities of the entity, the repair, and the necessary increase of grounds and buildings of the entity and for

⁵¹ This statute is commonly referred to as “Act 55.” The Court will use these terms interchangeably.

⁵² 10 P.S. § 375(b).

⁵³ 10 P.S. § 375(c).

⁵⁴ 10 P.S. § 375(d).

⁵⁵ 10 P.S. § 375 (e).

⁵⁶ 10 P.S. § 375(f).

no other purpose.” 53 Pa.C.S. § 8812(a)(3)(i). Keystone would also be required to prove that “[t]he property of purely public charities is necessary to and actually used for the principal purposes of the institution and not used in such a manner as to compete with commercial enterprise.” 53 Pa.C.S. § 8812(a)(3)(ii). As discussed above, the burden is on Keystone to prove every element required under the *HUP* test, Act 55, and the Consolidated County Assessment Law. The Court will discuss these standards in detail below.

Additionally, in conducting its analysis, the Court is mindful that in tax exemption cases “the facts are of critical importance because it has been held by our Supreme Court that prior decisions based on then-current information and facts have limited value as precedent.” *School Dist. Of City of Erie v. Hamot Medical Center of City of Erie*, 602 A.2d 407, 409 – 10 (Pa. Cmwlth. 1992) (citing *G.D.I. Plaza Corp. v. Council Rock School Dist.*, 526 A.2d 1173 (Pa. 1987)).

DISCUSSION

I. Does Keystone satisfy the Constitutional Standard (HUP TEST) as an Institution of Purely Public Charity?

For the reasons discussed below, the Court finds that Keystone has satisfied the Constitutional Standard (*HUP* Test) as an institution of purely public charity.

a. Does Keystone Advance a Charitable Purpose under the HUP Test?

The parties have stipulated that Keystone advances a charitable purpose for purposes of the *HUP* test. See *Stipulation* ¶ 3. Therefore, the Court finds that Keystone has met its burden to prove that it advances a charitable purpose under the constitutional standard.

b. Does Keystone Donate or Render Gratuitously a Substantial Portion of its Services?

The Taxing Authorities argue that Keystone has failed to produce any expert testimony regarding Keystone donating or rendering gratuitously a substantial portion of its services. See *Taxing Authorities Brief* at 28 – 29. The Court finds that this assertion is rather specious as the Court heard a significant amount of testimony by Robert Cepielik relating to this

factor.⁵⁷ See generally *Tr. Day 2*, 40 – 76. While the *HUP* test and Act 55 tests are not equivalent, they are significantly intertwined. Perhaps most importantly, the Taxing Authorities point to no authority that the Court must hear expert testimony on this factor. Furthermore, the Court heard from numerous other witnesses regarding whether Keystone donates or renders gratuitously a substantial portion of its services. See generally *Tr. Day 1*; *Tr. Day 2*. Further, the Supreme Court has clarified that to determine whether the portion donated or rendered gratuitously is substantial, the Court must look at the totality of the circumstances. See *id.* at 1316 n. 9.⁵⁸ The key element of the test is whether the portion is substantial.

In *Lehighton Area Sch. Dist. v. Carbon Cnty. Bd. of Assessment*, the Commonwealth Court addressed the standard from *HUP*, stating that “in order to satisfy its burden of establishing that the [organization] donates or renders gratuitously a substantial portion of its services, the [organization] must demonstrate that it makes a bona fide effort to service those persons who are unable to afford the usual fee or medical care.” *Lehighton Area Sch. Dist. v. Carbon Cnty. Bd. of Assessment*, 708 A.2d 1297, 1303 (Pa. Cmwlth Ct. 1998). The Court stated that “the charitable organization must show that it provides services to someone who cannot afford to pay, and the determination as to whether the services donated by the organization are ‘substantial’ is to be made based on the totality of the circumstances.” *Id.* at 1303. In *Lehighton*, the organization was a hospital which “donated medical services to the elderly indigent, uninsured, and underinsured.” *Id.* In that case, 63% of the hospital’s patients were Medicare and Medicaid patients, and the hospital maintained an open admission policy wherein “no person ha[d] ever been denied treatment because of an inability to pay.” *Id.* Upon review of the total revenue and total charity in 1995, the Commonwealth Court found that “the six percent [of revenue] donated by the Hospital [was] substantial in light of the factors discussed in th[e] opinion.”⁵⁹ *Id.* at 1304 n. 9.

If a patient at Keystone has an income up to 100% of the federal poverty guideline, the patient is eligible for a discount up to 80% of the normal charge for services. See *supra* Findings of Fact ¶ 41; *Tr. Day 1*, 178:2 – 7. In 2011, 6,768, or 14.36% of Keystone’s patients had incomes at or below the federal poverty guideline. See *supra* Findings of Fact ¶ 43; 57 The Court notes that Mr. Cepielik was deemed an expert in forensic accounting and in regard to the accounting tests in Act 55. *Tr. Day 2*, 40:8 – 11. Mr. Cepielik testified that “[f]rom an accounting perspective the challenge with the *HUP* test as an accountant is that the *HUP* test doesn’t have quantifications and measurements outlined in the *HUP* test.” *Tr. Day 2*, 41:1 – 4. However, as the tests are related, it is apparent that most of Mr. Cepielik’s testimony relating to Act 55 is relevant to the Court’s *HUP* analysis.

58 The Court also stated that “the word ‘substantial’ does not imply a magical percentage. It must appear from the facts that the organization makes a bona fide effort to service primarily those who cannot afford the usual fee.” *HUP*, 487 A.2d 1306, 1316 n. 9 (Pa. 1985).

59 The Court also held that a charitable organization “need not forgo available government payments which cover part of its costs; nor is it required to provide wholly gratuitous services.” *Lehighton Area Sch. Dist. v. Carbon Cnty. Bd. of Assessment*, 708 A.2d 1297, 1303 (Pa. Cmwlth Ct. 1998).

Keystone Ex. 20(a) at 9. In 2012, 9,298, or 20.60% of Keystone’s patients had incomes at or below the federal poverty guideline. *See supra* Findings of Fact ¶ 45; Keystone Ex 20(b) at 11.

Similarly, if a patient has an income between 100% and 200% of the federal poverty guideline, the patient is eligible for a discounted rate.⁶⁰ *See supra* Findings of Fact ¶ 42; Tr. Day 1, 178:7 – 9. In 2011, 10,317, or 21.88% of Keystone’s patients had incomes between 100% and 200% of the federal poverty guideline. *See supra* Findings of Fact ¶ 44; Keystone Ex. 20(a) at 9. In 2012, 12,002, or 26.7% of Keystone’s patients had income between 100% and 200% of the federal poverty guideline. *See supra* Findings of Fact ¶ 46; Keystone Ex. 20(b) at 11.

Furthermore, migrant workers do not pay any costs for services rendered by Keystone. *See supra* Findings of Fact ¶ 47; Tr. Day 1, 73:17 – 25. In 2011, Keystone saw 2,867 migrant workers; in 2012, Keystone saw 2,768 migrant workers. *See supra* Findings of Fact ¶ 48 - 49; Keystone Ex. 20(a) at 10; Keystone Ex 20(b) at 13.

In 2011, 13.1% of Keystone’s patients had Medicare and 21.7% had Medicaid. *See supra* Findings of Fact ¶ 66; *see also Tr. Day 1*, 175:9 – 176:25; Keystone Ex. 18(a) at 12; Keystone Ex. 18(b) at 13. In 2012, 9.9% of Keystone’s patients had Medicare and 23.4% had Medicaid. *See supra* Findings of Fact ¶ 67; *see also Tr. Day 1*, 175:9 – 176:25; Keystone Ex. 18(b) at 13.

Perhaps most importantly, is the fact that Keystone does not turn away individuals, even if they are unable to pay a reduced fee. *See supra* Findings of Fact ¶ 51. Additionally, Keystone publicizes said information in waiting rooms, their website, and in brochures that are provided at registration. *See supra* Findings of Fact ¶¶ 50 - 51; *see also Tr. Day 1*, 27:11 – 14, 178:14 – 20; Keystone Ex. 24(c). While Keystone does have a collections policy, Keystone has never sued any individual over a failure to make a payment. *See supra* Findings of Fact, ¶¶ 28 – 30. Keystone is mandated as a FQHC to have a formal collections policy. *See supra* Findings of Fact ¶ 28. Further, in 2011, Keystone provided wholly gratuitous services to at least 7% of patients, and 12% in 2012. *See supra* Findings of Fact ¶¶ 82, 90.

While the *HUP* Court and its progeny confirm there is no “magic number” for determining whether a portion is substantial, the numbers in the instant matter are significant. *See HUP*, 487 A.2d 1306, 1317 (Pa. 1985); *Lehigh Area Sch. Dist. v. Carbon Cnty. Bd. of Assessment*, 708 A.2d 1297, 1303 (Pa. Cmwlth Ct. 1998). Keystone provided uncompensated goods or services in 2011, which represented 19.8% of Keystone’s operating costs

⁶⁰ It is unclear from the record exactly what this discounted rate is; however, it is clear that the rate is discounted.

and in 2012 represented 16.1% of Keystone’s operating costs. *See supra* Findings of Fact at ¶¶ 79, 87; *see also HUP*, 487 A.2d 1306, 1317 (Pa. 1985); *Lehigh Area Sch. Dist. v. Carbon Cnty. Bd. of Assessment*, 708 A.2d 1297, 1303 (Pa. Cmwlth Ct. 1998). These numbers are significantly more impressive than the 6% in *Lehigh*.

Based upon the overwhelming evidence presented, the Court finds that Keystone donates or renders gratuitously a substantial portion of its services.

c. Does Keystone Benefit a Substantial and Indefinite Class of Persons who are Legitimate Subjects of Charity?

The parties have stipulated that Keystone benefits a substantial and indefinite class of persons who are legitimate subjects of charity for purposes of the *HUP* test. *See Stipulation* ¶ 3. Therefore, the Court finds that Keystone has met its burden to prove that it benefits a substantial and indefinite class of persons who are legitimate subjects of charity under the constitutional standard.

d. Does Keystone Relieve the Government of Some of its Burden?

The parties have stipulated that Keystone relieves the government of some of its burden for purposes of the *HUP* test. *See Stipulation* ¶ 3. Therefore, the Court finds that Keystone has met its burden to prove that it relieves the government of some of its burden under the constitutional standard.

e. Does Keystone Operate Entirely Free from Private Profit Motive?

Clearly, the most contentious aspect of this appeal is whether Keystone operates entirely free from private profit motive as required by the *HUP* test. *See HUP*, 487 A.2d 1306, 1317 (Pa. 1985). The Supreme Court has addressed this factor in multiple instances and developed a sub-test to determine whether an entity is entirely free from private profit motive. *See Wilson Area Sch. Dist. v. Easton Hosp.*, 747 A.2d 877, 880 (Pa. 2000); *see also City of Washington v. Bd. of Assessment Appeals of Washington Cnty.*, 704 A.2d 120 (Pa. 1997); *Margaret Seneca Place v. Bd. of Property Assessment, Appeals and Review, Cnty. of Allegheny*, 640 A.2d 380 (Pa. 1994). In *Easton*, the Supreme Court created a three prong test to determine whether the fifth prong of the *HUP* test is met. *Wilson Area Sch. Dist. v. Easton Hosp.*, 747 A.2d 877, 880 (Pa. 2000).

The first prong is to determine “whether the utilization of revenue

is made with the expectation of a reasonable return or some non-monetary benefit.” *Wilson Area Sch. Dist. v. Easton Hosp.*, 747 A.2d 877, 880 (Pa. 2000). In the instant matter, the Amended Articles of Incorporation provide that upon dissolution of Keystone, any assets remaining go to Chambersburg Hospital Health Services if it exists and is a tax exempt organization under § 501(c)(3) of the Internal Revenue Code of 1986.⁶¹ See *supra* Findings of Fact ¶ 106; *Tr. Day 1*, 20:11 – 21:4; see also Keystone Ex. 9(a). Furthermore, the members of Keystone’s Board of Directors do not receive compensation for their services. See *supra* Findings of Fact ¶ 27. As Keystone has no shareholders, and upon dissolution of the corporation all assets go to a tax exempt organization under § 501(c)(3), it is clear to the Court that Keystone’s revenue is not being used with the expectation of a reasonable return or some non-monetary benefit. See *supra* Findings of Fact ¶ 26; see also *Tr. Day 1*, 35:19 – 20.

The second inquiry is “whether the utilization of the revenue ultimately supports or furthers the eleemosynary nature of the charitable entity.” *Wilson Area Sch. Dist. v. Easton Hosp.*, 747 A.2d 877, 880 (Pa. 2000). John McElwee, the Chief Financial Officer of Keystone, testified that all of Keystone’s finances and revenues are applied in furtherance of Keystone’s mission.⁶² See *supra* Findings of Fact ¶ 110; see also *Tr. Day 2*, 13:7 – 9. Furthermore, the Court found the testimony of Clifford Simmons credible, and that Keystone’s compensation to physicians and CEO Joanne Cochran were within fair market value and not excessive.⁶³ See *supra* Findings of Fact ¶¶ 63, 116 – 117. Based upon the evidence presented, it is clear that Keystone’s revenues are utilized to support and further the eleemosynary nature of Keystone.

The third inquiry is “whether the utilization of the revenue inures, directly or indirectly, to any private individual related to the charitable entity or related organizations.” *Wilson Area Sch. Dist. v. Easton Hosp.*, 747 A.2d 877, 880 (Pa. 2000). Keystone’s articles of incorporation explicitly provide that

No part of the net earning of the corporation shall inure to the benefit of, or be distributable to its members, trustees, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay

61 If Chambersburg Hospital Health Services either does not exist or is not a tax exempt organization under § 501(c)(3) of the Internal Revenue Code of 1986, any assets would go to an organization operated exclusively for charitable, educational, religious, or scientific purposes that qualifies under § 501(c)(3) of the Internal Revenue Code of 1986 or to a governmental entity for a public purpose. See *supra* Findings of Fact ¶ 106; See also Keystone Ex. 9(a).

62 This sentiment was echoed by Joanne Cochran, the Chief Executive Officer of Keystone. See *supra* Findings of Fact ¶ 110; see also *Tr. Day 1*, 35:13 – 15.

63 The mere fact that Joanne Cochran’s salary was significantly increased in a short period of time is irrelevant; the relevant inquiry is whether Ms. Cochran’s salary was excessive. Mr. Simmons made it quite clear, based upon his research, that Ms. Cochran’s salary, even after her significant raises, was within fair market value and not excessive. See *supra* Findings of Fact ¶¶ 115 - 116.

reasonable compensation for services rendered and to make payments and distributions in furtherance of its Section 501(c)(3) purposes.

See supra Findings of Fact ¶ 108; see also Tr. Day 1, 20:4 – 10; Keystone Ex. 9(a). However, the Taxing Authorities assert that Keystone’s revenues indirectly inure to private individuals related to Keystone, namely their employee physicians.

The Taxing Authorities principal argument that Keystone does not operate entirely free from a private profit motive is based on the fact that the physicians receive incentive-based compensation based on relative value units (“RVUs”). *See generally Taxing Authorities’ Brief* at 5 – 25. In support of this, the Taxing Authorities cite to *Guthrie Clinic, Ltd. v. Sullivan Cnty. Bd. of Assessment Appeals*, 898 A.2d 1194, 1197 – 99 (Pa. Cmwlth. 2006).

In *Guthrie Clinic*, the Commonwealth Court affirmed the trial court’s denial of a tax exemption. In that case, the Chief Financial Officer of Guthrie Clinic testified that while physician compensation is not based on Guthrie’s financial performance, if a physician produces an outstanding amount the physician receives a higher salary, Guthrie’s employment contracts included a non-competition clause, Guthrie offered a profit-sharing plan, which consisted of discretionary contributions made by the Board of Directors, and a bonus program allowed the Board to give bonuses to employees at its discretion. *Id.* at 1197, 1199.

The Taxing Authorities suggest that *Guthrie Clinic* holds that “physician incentive compensation, when based on productivity, evidenced a private profit motive and failure to meet the fifth prong of the HUP test and the requirements of Section 375(c) of Act 55.” *Taxing Authorities Brief* at 6. The fault in this assertion is that the Commonwealth Court made no such holding in *Guthrie Clinic*. The Commonwealth Court’s inquiry in *Guthrie Clinic* was to determine if the trial court abused its discretion⁶⁴ in finding that Guthrie’s compensation system was evidence of a private profit motive. *See Guthrie Clinic, Ltd. v. Sullivan Cnty. Bd. of Assessment Appeals*, 898 A.2d 1194, 1197 n. 4 (Pa. Cmwlth. 2006). The Commonwealth Court found that “a reasonable mind could consider the credited evidence adequate to support the trial court’s conclusion that Guthrie would use profits to increase the compensation of its physician shareholders.” *Guthrie Clinic, Ltd. v. Sullivan Cnty. Bd. of Assessment Appeals*, 898 A.2d 1194, 1200 n. 10 (Pa. Cmwlth. 2006). Additionally, the Court found that Guthrie did not provide

⁶⁴ “In a tax assessment appeal, our scope of review is limited to determining whether the trial court abused its discretion or committed an error of law or whether its decision is supported by substantial evidence.” *Guthrie Clinic, Ltd. v. Sullivan Cnty. Bd. of Assessment Appeals*, 898 A.2d 1194, 1197 n. 4 (Pa. Cmwlth. 2006) (citing *ENF Family Partnership v. Erie Cnty. Bd. of Assessment Appeals*, 861 A.2d 548 (Pa. Cmwlth. 2004).

a definition for “productivity” for determining bonuses. *See Id.* at 1200 n. 9 (“Guthrie offers no explanation regarding the meaning of “productivity”; for example, whether it is hours worked, patients seen, revenue raised or referrals to other Guthrie facilities.”).

The facts in the instant matter are easily distinguished from those presented in *Guthrie Clinic*. Here, the physician incentive based compensation program is based on the Total Relative Value Units (RVUs) generated by the physician. *See supra* Findings of Fact ¶¶ 91 – 93; *see also Tr. Day 1*, 96:10 – 15; *Tr. Day 2*, 94:13 – 96:20; Keystone Ex 58(b). The RVU system is a measurement created by the Medicare program to weigh the amount of work and resources that goes into anything a physician does. *See supra* Findings of Fact ¶¶ 91 – 93; *see also Tr. Day 1*, 96:10 – 15; *Tr. Day 2*, 94:13 – 96:20; Keystone Ex 58(b). The financial status of the patient, and therefore the possible revenue generated from the patient, is irrelevant to physician incentive compensation because the RVU is a work unit.⁶⁵ *See supra* Findings of Fact ¶ 101. In fact, there are numerous situations where Keystone suffers losses when a physician produces RVUs. *See supra* Findings of Fact ¶¶ 72 - 73. Unlike in *Guthrie*, Keystone has a very clear definition of productivity, basing their payment system on Medicare’s own RVU system. *See supra* Findings of Fact ¶ 91.

Additionally, unlike in *Guthrie*, the physicians at Keystone do not receive discretionary bonuses and do not have non-compete clauses. *See supra* Findings of Fact ¶¶ 59, 60, 94. Keystone does not have any physicians on the board of directors, any shareholders, or a profit sharing/pension plan where there is a discretionary employer contribution.⁶⁶ *See supra* Findings of Fact ¶¶ 23, 59, 60, 94; *Guthrie Clinic, Ltd. v. Sullivan Cnty. Bd. of Assessment Appeals*, 898 A.2d 1194, 1199 – 1200 n. 10 (Pa. Cmwlth. 2006). It is clear that incentive based compensation, where there is a disconnect between productivity by individual physicians and revenue generated to the institution, is not explicitly prohibited by the HUP test. *See generally Guthrie Clinic, Ltd. v. Sullivan Cnty. Bd. of Assessment Appeals*, 898 A.2d 1194, 1199 – 1200 n. 8 - 10 (Pa. Cmwlth. 2006). In the instant matter it is quite clear that the number of RVUs generated by physicians does not necessarily generate revenue for the institution. *See supra* Findings of Fact ¶¶ 72 - 73.

Similarly, the Taxing Authorities argue that *In re Appeal of Dunwoody Village*, stands for the proposition that employee compensation

⁶⁵ Patrick W. O’Donnell testified that “whenever a physician [incentive compensation system is] based on a relative value unit it doesn’t matter to the physician whether it’s an indigent patient, no patient, a patient with the best insurance as possible or Medicare patient, they are really going to get paid the same no matter what because it’s based on a work unit and not on revenue. It’s very much a disconnect from revenue.” *Tr. Day 1*, 99:5 – 10.

⁶⁶ The Court notes that in 2014 the Keystone board approved a retirement matching program for highly compensated employees. *See supra* Findings of Fact ¶ 54.

incentives related to the institution's financial or marketplace performance is not expended in furtherance of its stated charitable purposes. *Taxing Authorities' Brief* at 4 – 5; see also *In re Appeal of Dunwoody Village*, 52 A.3d 408, 422 – 23 (Pa. Cmwlth. 2012). The Court agrees with the Taxing Authorities' legal proposition; however, the Taxing Authorities application to the evidence presented herein is inherently flawed. The incentive based compensation program in *Dunwoody* related to executive compensation⁶⁷ and not employee compensation. *In re Appeal of Dunwoody Village*, 52 A.3d 408, 422 – 23 (Pa. Cmwlth. 2012). Most importantly for this comparison, the incentive based compensation program in *Dunwoody* was based on the financial performance of the institution. *Id.* at 423 (“CEO testified DVI's executives are compensated in part based on DVI's annual performance”).

Keystone's physicians may have an incentive based compensation program based on RVUs; however, the executives have fixed salaries. See *supra* Findings of Fact ¶¶ 58, 96, 113 – 116. Furthermore, the incentive based compensation to the physicians is not based on the financial performance of the institution. See *supra* Findings of Fact ¶¶ 101 - 105.

The Taxing Authorities further argue that the RVU system as applied to the Women's care (OB/GYN) is evidence of a private profit motive. See *Taxing Authorities Brief* at 11 – 12. However, on the evidence presented, the Court does not find this compensation structure to be evidence of a private profit motive. While the Women's Care (OB/GYN) practice physicians share 35% of the RVUs generated by nurse midwives, the physicians are required to be on call for these procedures. See *supra* Findings of Fact ¶¶ 102 - 103. By being on call, the physician is limited on where they go, and what they can do, i.e., they are ostensibly tied to their employment. See *supra* Findings of Fact ¶ 103. Most importantly, this compensation is not linked to the financial performance of the institution. Therefore, the Court finds that awarding 35% of the RVUs generated by the nurse midwives to eligible physicians of the Women's Care (OB/GYN) unit is not evidence of a private profit motive.

Additionally, the Taxing Authorities argue that the salary of Keystone's Chief Executive Officer, Joanne Cochran, is excessive and indicative of a private profit motive. See *Taxing Authorities Brief* at 21 – 25. As stated above, the Court finds the testimony of Clifford Simmons credible in that Ms. Cochran's salary is within fair market value and is not excessive. See *supra* Findings of Fact ¶ 116; Tr. Day 2, 125:6 – 12; see also Keystone Ex. 58(b). The Taxing Authorities challenge Mr. Simmons'

⁶⁷ In *Dunwoody*, the CEO had a maximum incentive compensation of 24%; CFO had maximum incentive compensation of 18-19%; and the institution provided its employees with a retirement and savings plan. *In re Appeal of Dunwoody Village*, 52 A.3d 408, 422 – 23 n.8. The Commonwealth Court found that these things combined to provide substantial evidence that Dunwoody Village was not applying all revenue in furtherance of its charitable goals; however, it does not state that either alone was sufficient. *Id.*

analysis as to how he approached these conclusions;⁶⁸ however, the Taxing Authorities failed to produce a competing expert to demonstrate that said information was not credible or that the analysis performed by Mr. Simmons was outside the norms of his profession. The Court did not hear any evidence to suggest that the testimony, report, and analysis of Mr. Simmons was flawed, untrustworthy, or incredible.

The Court made a determination, based upon the evidence presented, that Mr. Simmons' testimony and report are credible. Because Ms. Cochrane's salary is reasonable, compared to other non-profit institutions, the Court finds that her salary is not indicative of a private profit motive.

The Taxing Authorities further assert that the pharmacy Keystone operates at the subject property is evidence of a private profit motive. *See Taxing Authorities' Brief* at 24 – 25. However, this argument lacks merit. Keystone operates an admittedly small pharmacy that offers medications at discounted prices for qualified individuals. *See supra* Findings of Fact ¶¶ 36 - 39. While the pharmacy does sell some over the counter medication and some non-medication items, it has never been advertised to the general public. *See supra* Findings of Fact ¶¶ 38 - 39. As the pharmacy assists Keystone's primary purposes, and the evidence presented demonstrated that Keystone's pharmacy was not attempting to compete in the private sector, the Court finds that the existence of the pharmacy is not evidence of a private profit motive. *See supra* Findings of Fact ¶¶ 36 - 39.

Based on the totality of the evidence presented, as well as the factors discussed above, it is clear that Keystone does not have a private profit motive and has met the requirements of the constitutional standard to be designated as a purely public charity as set forth in *HUP*. *See HUP*, 487 A.2d 1306, 1317 (Pa. 1985).

II. Does Keystone Satisfy the Standard set Forth in the Institutions of Purely Public Charity Act (Act 55)?

As Keystone has met the constitutional (*HUP*) standard, the Court must now consider whether Keystone meets the statutory standard as set forth in 10 P.S. § 375. Act 55 requires that the taxpayer meet five different tests in order to qualify for a tax exemption. *See* 10 P.S. §375. The Court will address these factors in detail below.

a. Does Keystone Advance a Charitable Purpose as set forth in 10 P.S. § 375(b)?

The parties have stipulated that Keystone advances a charitable purpose for

⁶⁸ *See Taxing Authorities Brief* at 22 – 24.

purposes of the Institutions of Purely Public Charity Act. *See Stipulation ¶ 3*. Therefore, the Court finds that Keystone has met its burden to prove that it advances a charitable purpose under the Act 55 standard.

b. Does Keystone Operate Entirely Free From Private Profit Motive as set forth in 10 P.S. § 375(c)?

Under Act 55, an institution must operate entirely free from private profit motive. *See 10 P.S. § 375(c)*. There are four factors the Court must consider in order to determine whether Keystone is operating entirely free from private profit motive under Act 55.

(1) Does Keystone's net earnings or donations which it receives inure to the benefit of private shareholders or other individuals as the private inurement standard is interpreted under § 501(c)(3) of the Internal Revenue Code of 1986, as required by 10 P.S. § 375(c)(1)?

As discussed above, there are no shareholders in Keystone's organization. *See supra* Findings of Fact ¶ 26. Additionally, in 2011 and 2012 Keystone did not have any net earnings. *See supra* Findings of Fact ¶ 76, 84; *see also Tr. Day 2*, 51:23 – 25. Furthermore, the members of Keystone's Board of Directors do not receive compensation for their services. *See supra* Findings of Fact Findings of Fact ¶ 27. Keystone's Articles of Incorporation explicitly provide:

No part of the net earning of the corporation shall inure to the benefit of, or be distributable to its members, trustees, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its Section 501(c)(3) purposes.

See supra Findings of Fact ¶ 108; *see also Tr. Day 1*, 20:4 – 10; Keystone Ex. 9(a). Therefore, the Court finds that Keystone has met its burden that it does not have a private profit motive under 10 P.S. § 375(c)(1).⁶⁹

(2) Does Keystone apply or reserve all revenue, including contributions, in excess of expenses in furtherance of its charitable purpose or to funding of other institutions which meet the provisions of 10 P.S. § 375(b) and 10 P.S. § 375(c)?

Keystone's purpose is "to enhance the health of individuals and families

⁶⁹ The Court notes that the Taxing Authorities do not appear to be challenging this assertion. *See Taxing Authorities Brief* at 25 – 28.

within the community, with an emphasis on the medically underserved. The medically underserved include migrant and seasonal farm workers and their families, the uninsured, the economically disadvantaged and those with inadequate access to needed health services.” *See supra* Findings of Fact ¶¶ 32, 107. As discussed above, Keystone applies all revenue in furtherance of its mission. *See supra* Findings of Fact ¶ 110. Because Keystone applies all revenue, including contributions, in excess of expenses, in furtherance of its charitable purpose, it has satisfied its burden⁷⁰ under 10 P.S. § 375(c)(2).

(3) Does Keystone provide compensation, including benefits, of any director, officer, or employee based primarily upon the financial performance of the institution as prohibited by 10 P.S. § 375(c)(3)?

As discussed above, it is clear to the Court that the compensation issued to the employees of Keystone are not based primarily upon the financial performance of the institution. *See supra* Discussion Part I.e.. The Court heard a significant amount of evidence that Keystone’s executives and physicians are paid fair market value and the salaries are not excessive. *See supra* Findings of Fact ¶¶ 64, 113, 114. Furthermore, the physician incentive compensation scheme is not related to or based upon the financial performance of the institution and is dependent solely on the efforts of the individual physician. *See supra* Findings of Fact ¶ 101; *see also supra* Discussion Part I.e. Because the physician incentive based compensation program is based almost entirely⁷¹ on the physicians RVUs, the Court finds that Keystone has met their burden as to 10 P.S. § 375(c).

(4) Has the governing body of Keystone adopted as part of its articles of incorporation a provision that expressly prohibits the use of any surplus funds for private inurement to any person in the event of a sale or dissolution of the institution of purely public charity as required by 10 P.S. § 375(c)(4)?

Keystone’s amended articles of incorporation provide that upon dissolution of [Keystone], the Board of Directors shall, after paying or making provision for the payment of all liabilities of the corporation, and subject to any applicable requirements of any federal laws or regulations, dispose of all of the assets of the corporation exclusively for the purposes to the corporation (a) to Chambersburg Hospital Health Services, if such corporation exists and is

⁷⁰ The Court notes that the Taxing Authorities are not challenging this point. *See Taxing Authorities’ Brief* at 25 – 28.

⁷¹ Except for the Physicians at the Women’s Care (OB/GYN). *See supra* Findings of Fact ¶¶ 102 - 103. However, this compensation is not related to the financial performance of the institution.

exempt from tax under Section 501(c)(3) of the Internal Revenue Code, or (b) otherwise, to such organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes as shall at the time qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine, or 9c) to the Federal Government, or to a state or local government, for a public purpose.

See supra Findings of Fact ¶ 106; see also Tr. Day 1, 20:11 – 21:4; Keystone Ex. 9(a). Therefore, Keystone has satisfied the requirements located at 10 P.S. § 375(c)(4).

c. Does Keystone Donate or Render Gratuitously a Substantial Portion of its Services as set forth in 10 P.S. § 375(d)?

Pursuant to Act 55, there are seven different ways⁷² an organization can satisfy the requirement that it donates or renders gratuitously a substantial portion of its services. 10 P.S. § 375(d)(i) – (vii). Keystone asserts that they have established that they meet four of the seven methods to satisfy this requirement. *See Keystone’s Brief* at 30; see also Tr. Day 2, 63:15 – 22. Based upon this information, the Court will address the four methods that Keystone asserts have been established.⁷³

i. Does Keystone benefit the community by providing goods or services to all who seek them without regard to their ability to pay for what they receive as required by 10 P.S. § 375(d)(1)(i)?

In order to satisfy this requirement, Keystone must have: (A) a written policy to this effect; (B) published this policy in a reasonable manner; and (C) provide uncompensated goods or services at least equal to the 75% of the institution’s net operating income but not less than 3% of the institution’s total operating expenses. *See* 10 P.S. § 375(d)(1)(i)(A – C).

It is clear to the Court that Keystone has a written policy as required by 10 P.S. § 375(d)(1)(i)(A). *See* Keystone Ex. 57(b)(xii); *See also supra* Findings of Fact ¶ 40. Furthermore, it is clear that Keystone has published this policy in a reasonable manner. Keystone has listed this policy on the homepage of their website, listed this policy on the “about us” section of their website, published this information on outreach posters, on brochures,

⁷² Proving any one of the seven satisfies the requirements of 10 P.S. § 375(d).

⁷³ The inapplicable methods are located at 10 P.S. § 375(d)(ii), 10 P.S. § 375(d)(vi), and 10 P.S. § 375(d)(vii).

and in their waiting room. *See supra* Findings of Fact ¶ 50; see also Tr. Day 1, 27:11 – 14, 178:14 – 20; *see also* Keystone Ex 10(b); Keystone Ex. 10(c); Keystone Ex. 24(c). The Court finds that Keystone has published information relating to this policy in a reasonable manner as required by 10 P.S. § 375(d)(1)(i)(B).

The next inquiry is whether Keystone provides uncompensated goods or services at least equal to 75% of the institution’s net operating income but not less than 3% of the institution’s total operating expenses. *See* 10 P.S. § 375(d)(1)(i)(C). In 2011 Keystone provided uncompensated goods or services of approximately \$5.9 million. *See supra* Findings of Fact ¶ 68. In 2012 Keystone provided uncompensated goods or services of approximately \$4.5 million. *See supra* Findings of Fact ¶ 62. In 2011 and 2012 Keystone had net operating losses, and no net operating income. *See supra* Findings of Fact ¶¶ 76, 84; see also Tr. Day 2, 51:23 – 25.

In 2011 Keystone’s total operating expenses were \$29,866,844; therefore, 3% of the total operating expenses is approximately \$896,000. *See supra* Findings of Fact ¶¶ 70, 77. Because Keystone provided uncompensated goods or services of approximately \$4.5 million in 2011, it clearly surpasses the requirement of 3% under Act 55. *See supra* Findings of Fact ¶ 68; see also 10 P.S. § 375(d)(1)(i)(C).

In 2012 Keystone’s total operating expenses were \$28,191,918; therefore, 3% of the total operating expenses is approximately \$845,000. *See supra* Findings of Fact ¶¶ 83, 85. Because Keystone provided uncompensated goods or services of approximately \$4.5 million in 2012, it clearly surpasses the requirement of 3% under Act 55. *See supra* Findings of Fact ¶ 69; *see also* 10 P.S. § 375(d)(1)(i)(C). Therefore, the Court finds that Keystone has met its burden to establish that it benefits the community by providing goods or services to all who seek them without regard to their ability to pay for what they receive as required by 10. P.S. § 375(d)(1)(i). While the Court finds that Keystone has met its burden under 10 P.S. § 375(d), the Court will nevertheless address the remaining methods for satisfying § 375(d).

ii. Does Keystone benefit the community by providing wholly gratuitous goods or services to at least 5% of those receiving similar goods or services from the institution as required by 10 P.S. §375(d)(1)(iii)?

In 2011, approximately 7% of encounters at Keystone were wholly gratuitous. *See supra* Findings of Fact ¶ 82; *see also* Tr. Day 2, 56:22 – 24; Keystone Ex. 57(b)(xii). In 2012, approximately 12% of encounters at Keystone were wholly gratuitous. *See supra* Findings of Fact ¶ 90; *see*

also *Tr. Day 2*, 56:23 – 25; Keystone Ex. 57(b)(xii). Because Keystone provided wholly gratuitous goods or services to more than 5% of those receiving similar goods or services from the institution in 2011 and 2012, Keystone satisfies the requirements located at 10 P.S. § 375(d)(1)(iii).

iii. Does Keystone benefit the community by providing financial assistance or uncompensated goods or services to at least 20% of those receiving similar goods or services from the institution if at least 10% of the individuals receiving goods or services from the institution either paid no fees or fees which were 90% or less the cost of goods or services provided to them, after consideration of any financial assistance provided to them by the institution as required by 10 P.S. § 375(d)(1)(iv)?

In order to satisfy this requirement, Keystone must provide financial assistance or uncompensated goods or services to at least 20% of those individuals receiving similar goods or services. *See* 10 P.S. § 375(d)(1)(iv). Additionally Keystone must provide at least 10% of the individuals receiving goods or services at 90% or less cost. *See id.*

In 2011, 92% of Keystone’s patients paid either no fee or a fee less than 100% of the cost of services rendered. *See supra* Findings of Fact ¶ 80; *see also Tr. Day 2*, 58:11 – 14; Keystone Ex. 57(b) at 9. In 2012, 91% of Keystone’s patients paid either no fee or a fee less than 100% of the cost of services rendered. *See supra* Findings of Fact ¶ 88; *see also Tr. Day 2*, 58:11 – 14; Keystone Ex. 57(b) at 9. Therefore, in both 2011 and 2012 Keystone satisfied the 20% discount threshold⁷⁴ under 10 P.S. § 375(d)(1)(iv).

In 2011, 91% of Keystone’s patients paid either no fee or a fee less than 90% of the cost of services rendered. *See supra* Findings of Fact ¶ 81; *see also Tr. Day 2*, 58:23 – 59:2; Keystone Ex. 57(b) at 10. In 2012, 89% of Keystone’s patients paid either no fee or a fee less than 90% of the cost of services rendered. *See supra* Findings of Fact ¶ 89; *see also Tr. Day 2*, 59:14 – 18; Keystone Ex. 57(b) at 10. Therefore, in both 2011 and 2012 Keystone satisfied the 10% discount threshold⁷⁵ and satisfied the community service requirements under 10 P.S. § 375(d)(1)(iv).

iv. Does Keystone benefit the community by providing uncompensated goods or services which in the aggregate are equal to at least 5% of the institution’s cost of providing goods or services as required by 10 P.S. § 375(d)(1)(v)?

In 2011, Keystone had a total operating cost of \$29,866,844 and

⁷⁴ By a significant margin of 72% in 2011 and 71% in 2012.

⁷⁵ By a noteworthy margin of 81% in 2011 and 79% in 2012.

provided uncompensated care aggregating approximately \$5,919,000. *See supra* Findings of Fact ¶¶ 68, 70. The 5% threshold of uncompensated goods or services in 2011 was approximately \$1.49 million. *See supra* Findings of Fact ¶ 78. Therefore, it is clear that in 2011 Keystone provided uncompensated goods or services which in the aggregate are greater than 5% of the institution's cost of providing goods or services.

In 2012, Keystone had a total operating cost of \$28,191,918 and provided uncompensated care aggregating approximately \$4,529,000. *See supra* Findings of Fact ¶¶ 69, 87. The 5% threshold of uncompensated goods or services in 2012 was approximately \$1.41 million. *See supra* Findings of Fact ¶ 86. Therefore, it is clear that in 2012 Keystone provided uncompensated goods or services which in the aggregate are greater than 5% of Keystone's cost of providing goods or services. Hence, the Court finds that Keystone satisfies the community service requirement located at 10 P.S. § 375(d)(1)(v).

d. Does Keystone Benefit a Substantial and Indefinite Class of Persons who are Legitimate Subjects of Charity as set forth in 10 P.S. § 375(e)?

The parties have stipulated that Keystone benefits a substantial and indefinite class of persons who are legitimate subjects of charity for purposes of the Institutions of Purely Public Charity Act. *See Stipulation* ¶ 3. Therefore, the Court finds that Keystone has met its burden to prove that it benefits a substantial and indefinite class of persons who are legitimate subjects of charity under the Act 55 standard.

e. Does Keystone Relieve the Government of some of its Burden as set forth in 10 P.S. § 375(f)?

The parties have stipulated that Keystone relieves the government of some of its burden for purposes of the Institutions of Purely Public Charity Act. *See Stipulation* ¶ 3. Therefore, the Court finds that Keystone has met its burden to prove that it relieves the government of some of its burden under the Act 55 standard.

Because the Court finds that Keystone has meet all the requirements for a real estate tax exemption under Act 55, the Court will next determine whether Keystone qualifies for a tax exemption under the Consolidated County Assessment Law.

III. Does Keystone Qualify for a Tax Exemption under the

Consolidated County Assessment Law?⁷⁶

In order to qualify for a tax exemption under the Consolidated County Assessment Law, Keystone must meet two requirements. See 53 Pa.C.S. § 8812(a)(3).

a. Is the Entire Revenue Derived by Keystone Applied to Support Keystone and to Increase the Efficiency and Facilities of Keystone, the Repair, and the Necessary Increase of Grounds and Buildings of Keystone and for no other Purpose as required by 53 Pa.C.S. § 8812((a)(3)(i)?

As discussed in great length above, the Court finds that the entire revenue derived by Keystone is applied to support Keystone and to increase the efficiency and facilities of Keystone. See *supra* Findings of Fact ¶ 110; see also *Tr. Day 2*, 13:7 – 9. Therefore, the Court finds that Keystone has met their burden that the entire revenue derived by the entity is applied to support the entity as required by the County Consolidated Assessment Law.

b. Is the Property of Keystone Necessary to and Actually Used for the Principal Purposes of Keystone and not used in Such a Manner as to Compete with Commercial Enterprise as Prohibited by 53 Pa C.S. §8812(a)(3)(ii)?

The parties have stipulated that the subject property “was used and occupied by Keystone, and the [p]roperty was necessary to and actually used for the principal purposes of [Keystone].” See *Stipulation* ¶ 4. Therefore, the only remaining question is whether the property is used in such a manner to compete with commercial enterprise.

It is clear to the Court that the subject property is not being used in such a manner to compete with commercial enterprise as prohibited by the County Consolidated Assessment Law. Keystone’s physicians do not have non-compete clauses in their employment contracts. See *supra* Findings of Fact ¶ 94. Furthermore, Keystone serves a medically underserved population and area. See *supra* Findings of Fact ¶ 20. It is unclear exactly what, if any, commercial enterprise it is competing against. There was no evidence presented that Keystone is competing against commercial enterprises in the area.

While Keystone does have a pharmacy located at the subject property, the Court finds that this pharmacy is not competing with similar commercial enterprise. See *supra* Findings of Fact ¶¶ 35 - 39. On the evidence before the Court, arguing that Keystone’s pharmacy is competing in the private sector against, for example, national retail pharmacies such

⁷⁶ 53 Pa.C.S. § 8812(a)(3).

as CVS, Rite-Aid, and Walgreens,⁷⁷ is comparable to a child's lemonade stand competing against Walmart. Most importantly, the pharmacy provides discount medications those who qualify and exists primarily to serve Keystone's patients. *See supra* Findings of Fact ¶ 37. Therefore, the Court finds that the subject property is not being used to compete with commercial enterprise as prohibited by the County Consolidated Assessment Law.

IV. Keystone's Motion to Correct Hearing Transcript.

Lastly, Keystone has filed a Motion to Correct Hearing Transcript, alleging fifteen different errors that should be corrected. The transcripts in this matter were lodged on March 23, 2015, and filed of record on March 30, 2015. Pursuant to 39th Jud. Dist. R. Jud. Admin 39-5000.17, "if no objections are made to the text after five (5) days the appropriate officer shall mark the transcript filed and it shall become a part of the official record." Keystone filed its Motion on June 1, 2015, over sixty days after the lodging of the transcripts. The Motion was filed significantly outside the time period for lodging objections to the text of the transcription. Therefore, the Court will enter an order denying all but two⁷⁸ of the alleged errors made in the transcript without prejudice to renewing the objections to the transcription pursuant to Pa.R.A.P. 1926 if a notice of appeal is filed by either party.

CONCLUSION

For the reasons discussed above the Court finds that Keystone has met its burden to prove that it is an institution of purely public charity under the *HUP* test,⁷⁹ Act 55,⁸⁰ and the Consolidated County Assessment Law.⁸¹

An appropriate order follows.

ORDER OF COURT

NOW THIS 19th day of June, 2015, based upon the forgoing Opinion, and after review and hearing on Keystone Rural Health Center, Inc.'s *Petition and Appeal from the Decision of the Board of Assessment and Revision of Taxes of Franklin County* and the Appellant's *Motion to*

⁷⁷ The Court takes judicial notice that CVS, Rite-Aid, and Walgreens, have pharmacies in the relevant geographical area.

⁷⁸ The Court will enter an Order granting the *Motion to Correct Hearing Transcript* insofar as correcting the date located on the cover page from February 10, 2014, to February 10, 2015, and February 11, 2014, to February 11, 2015. The Court notes that the Taxing Authorities bizarrely object to this correction while admitting that the dates listed on the transcripts as filed are incorrect. It is quite puzzling to this Court why the Taxing Authorities would object to the correction of something as fundamental as the dates of trial, all the while acknowledging that they are, in fact, incorrect.

⁷⁹ *See supra* Discussion Part I.

⁸⁰ *See supra* Discussion Part II.

⁸¹ *See supra* Discussion Part III.

Correct Hearing Testimony, and the Responses thereto,

IT IS HEREBY ORDERED that

1. The decision of the Board of Assessment and Revision of Taxes of Franklin County is **REVERSED**. The Appellant is granted a charitable exemption from liability from property taxes for the parcel designated as Parcel No. 02-1C-124A for the years 2011 and 2012;

2. Appellant's *Motion to Correct Hearing Testimony* is **GRANTED IN PART AND DENIED IN PART** as follows:

a. The Transcript dated February 10, 2014, is hereby corrected to reflect the date February 10, 2015;

b. The Transcript dated February 11, 2014, is hereby corrected to reflect the date February 11, 2015;

c. The balance of the Appellant's *Motion to Correct Hearing Testimony* is **DENIED**;

Pursuant to the requirements of Pa.R.Civ.P. 236 (a)(2), (b), (d), the Prothonotary shall immediately give written notice of the entry of this Order, including a copy of this Order, to each party's attorney of record, or if unrepresented, to each party; and shall note in the docket the giving of such notice and the time and manner thereof.