

## Wisconsin Association of Homes and Services for the Aging, Inc.

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January 30, 2008

To: Members, Wisconsin Senate

From: John Sauer, Executive Director  
Tom Ramsey, Director of Government relations

Subject: Senate Bill 403-- A "Rent-Use" Fix Requested for All Non-Profit Residential Housing Providers

The Wisconsin Association of Homes and Services for the Aging (WAHSA) represents not-for-profit long-term care providers throughout the State who own, operate and/or sponsor nursing homes, assisted living facilities and HUD Section 202 Supportive Housing for the Elderly apartment complexes and offer over 300 community service programs ranging from Alzheimer's support, child and adult day care, home care and hospice to Meals on Wheels. WAHSA members employ over 38,000 individuals who provide compassionate care and service to over 45,000 elderly and persons with a disability in Wisconsin.

Senate Bill 403 is of particular concern to the over 8,000 tenants of the 92 senior housing apartment complexes WAHSA members operate. Their concerns are NOT with what SB 403 does: the bill clarifies and ensures that low-income housing remains exempt from property taxes. The concerns of those 8,000+ senior housing tenants, whose average age is 83.6 years old, are what SB 403 does **not** do.

Current law, under s. 70.11, Wis. Stats., prohibits tax-exempt property owners who lease a part of their property from using any of the leasehold income generated by that property for any purpose other than **maintenance and/or construction debt retirement**. This is referred to as the "rent use" leasehold income restriction. SB 403 would exempt low-income housing providers, and only low-income housing providers, from these "rent use" restrictions, allowing those providers to utilize their leasehold income to cover a variety of project costs other than maintenance and/or construction debt retirement. The remaining *Columbus Park* residential housing providers would not be afforded that opportunity under SB 403; they would continue to be prohibited from using leasehold income for any purpose other than maintenance and/or construction debt retirement. Included in that grouping are benevolent nursing homes, community-based residential facilities (CBRF), residential care apartment complexes (RCAC), adult family homes (AFH), "housing for older persons" affiliated with a not-for-profit nursing home, CBRF and/or RCAC, domestic abuse shelters, shelters for the homeless, transitional housing facilities, residential facilities for the treatment and housing of AODA clients, and residential housing for persons with permanent disabilities. While WAHSA members believe low-income housing providers deserve the SB 403 exemption from the Chapter 70 "rent use" restrictions, they also believe all residential housing providers deserve that same exemption.



**WAHSA members, therefore, urge the members of the Senate to support an amendment to SB 403 being offered by Senator Mary Lazich which would maintain the SB 403 provisions exempting low-income housing providers from property taxation but would eliminate the “rent use” restrictions on all residential housing providers, including low-income housing providers. Passage of this amendment would permit all residential housing providers to use the leasehold income they generate for purposes other than maintenance and/or construction debt retirement. The amendment only would address the “rent use” restrictions on residential housing providers; it would not alter the benevolence standards they must meet to remain exempt from property taxes.**

It would be inaccurate for WAHSA members to state that if SB 403 were to pass in its current form, all other residential housing providers other than low-income housing providers would lose their tax-exempt status. However, as noted in the attached December 2007 *In Business: Madison* article, “The War to Remain Tax Exempt,” some local assessors are challenging the tax-exempt status of some residential housing providers on the basis of how they expend their leasehold income. That is why SB 403 was introduced: to protect low-income housing providers from such scrutiny. If SB 403 in its current form were to pass, low-income housing providers would be spared further uncertainty in this area. But what about the other residential housing providers? If a local assessor is willing to challenge the tax-exempt status of a residential housing provider based on their use of leasehold income without the passage of any intervening legislation, as we are seeing today, why would that assessor refrain from assessing that property for property taxes if SB 403 were to pass? Indeed, wouldn’t an assessor be expected to make the argument that the Legislature has determined only low-income housing providers warrant the exemption from the “rent use” restrictions and all other residential housing providers must adhere to those restrictions or face an assessment for property taxes? That, obviously, is the concern of the “other” residential housing providers and the reason we support Senator Lazich’s amendment.

**Question: Do you believe it is appropriate for long-term care organizations to use some of the leasehold income generated by their senior housing tenants to offset the MA losses of their campus nursing home?** Many organizations do just that; if SB 403 were to pass in its current form and assessors were to begin to strictly enforce the “rent use” restrictions, this practice either would be eliminated or the organization would face the loss of its property tax exemption. If this practice were to be eliminated, how many nursing homes might be forced to close and how might nursing home access be affected? If these organizations were to lose their tax-exempt status, how many tenants would suddenly become eligible for the Homestead tax credit and what impact would that have on the state budget?

Many long-term care organizations use a portion of the leasehold income generated by their senior housing tenants to establish a “benevolence fund” to ensure that tenants who run out of funds in their apartments or in the campus assisted living facility are not forced to leave (in fact, IRS Revenue Rulings prohibit s. 501 (c)(3) “homes for the aged” from discharging tenants who run out of funds unless the financial viability of the organization is threatened by this prohibition). If SB 403 were to pass in its current form, this practice also would be jeopardized. Is that the route we wish to take?

Please accept the compromise offered by Senator Lazich which would benefit both low-income housing providers as well as all other residential housing providers.

# The war to remain tax exempt

## Why some nonprofits are losing tax-exempt status on residential properties

By Jessica VanEgeren

When Attic Angel Prairie Point, Inc. decided to build a senior living community in the city of Madison, it went through the typical steps required with any construction project. Like other developers, it first touched base with the

city of Madison. Its reason, however, was different.

Attic Angel needed assurance that the project would be granted tax-exempt status, essentially freeing up hundreds of thousands of dollars for maintenance costs

and to keep housing costs low.

"We were told it would be exempt, so we proceeded with the feasibility study, broke ground and started to market the project," said Mary Ann Drescher, the group's president. "Then we received word

### INTERVIEWEES



Dave Cieslewicz  
City of Madison



Michael Kurth  
City of Madison



Mary Ann Drescher  
Attic Angel Prairie Point Inc.



Steven Schooler  
Porchlight Inc.



Frank Staniszewski  
Madison Development Corp.



Frank Staniszewski, president of Madison Development Corp., stands in front of one of the nonprofit's residential properties on East Washington Street.

The property is one of a growing number awaiting a decision from the city of Madison on whether or not it can maintain or receive tax-exempt status.

that things had changed.”

Before construction was completed, the city of Madison sent out a tax bill. Attic Angel sued, but eventually ended up dropping the case. The uncertainty was too much for the residents, Drescher said.

Consequently, the cost to live at Prairie Point jumped \$300 to \$400 a month, depending on the size of the unit. Last year, Prairie Point paid \$360,000 in property taxes.

“It’s really difficult when the rules shift in the middle of the game,” Drescher said. “But this isn’t a game. People are relying on us. My major concern is still the inequity in all of this. Not all senior centers are being taxed.”

Other nonprofit organizations across the city of Madison have found themselves in similar situations. After years of enjoying tax-exempt status on their residential properties, a state Supreme Court ruling has cast a more stringent interpretation on state law.

Consequently, discontent is mounting in Madison’s nonprofit community and lawsuits are piling up. Some nonprofit leaders charge that the city is arbitrarily picking and choosing which organizations it will allow to continue to operate without paying taxes on residential properties. And that is breeding resentment.

“There is a difference in being the leader of the charge, which the city clearly is, and maintaining the status quo,” said Steven Schooler, the executive director of Porchlight, Inc. “There is no reason they need to be leading the charge.”

As nonprofit organizations grapple with how to pay the piper, expansion efforts have been stalled, new construction projects called off, and newly incurred costs passed along to unsuspecting tenants, many of whom are living on fixed incomes or low wages.

Madison Mayor Dave Cieslewicz said he is well aware of the mounting frustration. He and city staffers have twice met with nonprofit officials since August, most recently in mid-November, to discuss the situation. Additionally, the city is working closely with state Rep. Mark Gottlieb to rework numerous components of state law to rectify the situation, he said.

Until that happens, city officials claim they have no wiggle room when it comes



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to upholding the law.

"There is not a whole lot of room for interpretation. Our attorney is doing nothing but following the law," Cieslewicz said. "The friction here is not between the city and the nonprofit organizations. We are simply applying the law as it was handed down by the [state] Supreme Court. The friction here is between the nonprofit organizations and the state."

**ROOT OF THE PROBLEM**

Every even-numbered year, a nonprofit must file a report on its property, essentially reapplying for tax-exempt status. This is why some nonprofit organizations are receiving property tax bills sooner than others.

The overall shift in how the city of Madison is now reviewing such reports is rooted in a lawsuit that was settled roughly five years ago. In that case, the state Supreme Court ruled that a nonprofit must pay taxes on its residential property if its tenants could not apply for, and receive, tax-exempt status on their own.

That means leasing space to another nonprofit is okay. However, renting space to college students or low-income residents may no longer keep a nonprofit off a city's tax base.

"That ruling has generated a lot of anxiety in the nonprofit world," said Michael

**"At some point, the city is going to own a lot of properties" — Doug Strub, Meridian Group Inc.**

Kurth, Madison's chief assessor. "It wasn't a major issue before, but now we have legal precedence with the high court ruling strictly on the topic."

Kurth added that there are two other problematic provisions within the law.

First, the law dictates that the money collected from tenants can only be spent for maintenance costs or to pay off a building's construction costs. Money cannot be funneled into other programs or used for new construction projects.

Second, the law puts a 10-acre limit on the amount of property a nonprofit can own within a single municipality. That point led Future Madison to file suit against the city earlier this year.

"The main thing is, if the law doesn't change, there are going to be a heck of a lot more nonprofit organizations that we are going to have issues with," Kurth said.

**THE IMPACT**

Meridian Group Inc. manages three

separate properties for Future Madison. In all, the three affordable housing developments total 34 acres.

Doug Strub, who manages the properties through Meridian Group Inc., said the buildings were purchased, cleaned up, and rented out under the premise that if it provided a needed commodity for the city — affordable housing — it would not have to pay property taxes.

Earlier this year, Future Madison received a notice it will be taxed on some of its properties. Strub estimated the bills could amount to roughly \$180,000. The city lumped the three properties together, giving them tax-exempt status on 10 of their more than 30 acres of property, as required by law. In the past, the city had granted each property a tax exemption.

"We have separate entities that it has treated as three separate entities for years," Strub said. "The city is picking and choosing how this law is applied."

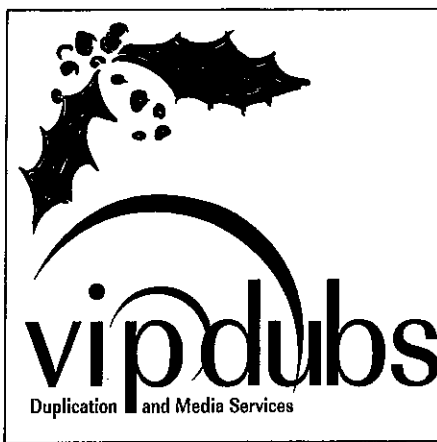
Cieslewicz said the city is working to rework the "10-acre limit" section of the law with Future Madison properties in mind. Specifically, the city would like the law changed so that a nonprofit can receive tax exemptions on up to 30 acres of residential property.

The mayor added that the city also wants the language of the law expanded to broaden the permitted rent-use restrictions and to provide a more clearly defined definition of "low-income" tenants.

"We emphatically disagree with the state law," Cieslewicz said. "Which is why we are working to craft the solutions."

In the meantime, applications are piling up as the city waits to see if lawmakers can find time to address the issue by the end of the legislative session in May.

It doesn't appear such a solution will come from Gottlieb's office. Denise Solie, one of Gottlieb's legislative aids, said there is little chance the lawmaker will intro-



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duce a bill in the imminent future.

"At some point, the city is going to own a lot of properties," Strub said. "I think they were waiting to get bailed out (by the legislators), but that got nixed."

### THE WAITING GAME

Two property reports in the city's "undecided" pile belong to Madison Development Corp.

It's a roughly \$50,000 decision. Madison Development Corp. had been paying about \$36,000 a year for the past 15 years on its 40-unit apartment within a tax incremental finance – or TIF – district on East Washington Avenue.

Frank Staniszewski, the nonprofit's president, said he was bound by the TIF agreement to pay taxes on the property through 2006.

On Dec. 31, 2006, it also repaid a \$320,000 note, which was loaned by the city to help finance the project.

"Since we were no longer bound by the TIF agreement, we were able to file for tax exemption under the state statute," he said. "Under the previous interpretation of

the statute, we believed the property would qualify for exemption."

Madison Development Corp. also applied for tax exemption on a recent four-unit, \$800,000 addition it made on its West Mifflin Street lot.

"We don't want to pay taxes on them, but we are very close to the end of the year, and we haven't heard anything yet," Staniszewski said. "The city is just sitting on them. We were told it was in a state of flux."

The indecision has stalled plans to add 12 more units to its East Washington property. Staniszewski said the only way the nonprofit can absorb the tax bills would be by raising rents.

It currently charges its tenants, most of whom are college students and low-income individuals and families, \$100 to \$200 a month less than the current market value on its units.

Madison Development Corp. owns roughly 200 housing units around the city and collects \$1.5 million annually through rent. Of that amount, more than half is spent on mortgage payments.

### SAFE GROUND?

Porchlight Inc. owns and operates 240 housing units across Madison, providing shelter for 300 to 400 households a year. Roughly 90% of those tenants earn \$21,000 or less annually, which is 30% less than the median Dane County income, said Schooler, the nonprofit's executive director.

"So far, the city has not challenged us. However, this year we are somewhat concerned," Schooler said.

"I think we are at a lower risk because we are more involved in case management, but the city could come in and and say, 'You are a landlord.' Paying taxes on our properties would be a budget buster for us."

Schooler fears that if the law isn't changed, many low-income housing developments will disappear, forcing more needy people into shelters or to life on the streets. The trend runs counter to every city discussion about the pressing need for affordable or emergency housing. "This situation turns our mission of reducing homelessness on its head," he said. ■



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