

Questions and Answers

Preswick Glen, Inc. Real Property Tax Exemption

Updated October 2006

"If the Town Board or Preswick Glen had documentation supporting the exemption, they would have produced it within 24 hours of my challenge at the April 20, 2005 Town Board meeting to cut me off at the knees and shut me up"
Jerome Donovan, 9/7/2005, Town Board meeting.

What is Preswick Glen?

Preswick Glen is an independent retirement community for senior citizens over 60 years old who **"do not require Continual Health Care Services..."** (Preswick Offering Plan). It will be located adjacent to the Presbyterian Home on Clinton Road. The first phase of the project construction has begun. When completed, the project will include 84 apartments and 40 cottages and cost approximately \$40 million dollars.

According to Preswick Glen, Inc., reservations for more than 70% of the units have been made. Occupancy permits for individual living units are expected to be requested beginning next year — 2007. At that time, the Town Assessor and Town Board have stated that they will review the project's real property tax status. The property is currently exempt from ALL Real Property Taxes by virtue of a **2004 Municipal Services Agreement** authorized by the town.

Who would live at Preswick Glen and how much does it cost?

Seniors over 60 years of age, who as noted, do not need health care, have sufficient financial resources and no longer wish to maintain a household. Preswick Glen is not a licensed health care facility.

Residents must pay a partially refundable entry fee of \$50,000 to \$231,000 and monthly rents of \$2,100 to \$2,700. At today's interest rates, an individual would need savings of more than \$500,000 to generate the minimum monthly rental. The Offering Plan provides no assurance of continued residency if an individual runs out of money.

Note: The median income of seniors 65-74 years of age in New Hartford is \$32,807.

Preswick is part of the Presbyterian Home which provides recognized tax-exempt services like skilled nursing care, assisted living and subsidized apartments. Shouldn't Preswick Glen also be exempt?

Notwithstanding the charitable tax status of the Presbyterian Home, there is no statute, legal precedent or opinion that supports exemption of a **housing project designed to serve the affluent.** The project is beyond the traditional confines of religious, educational or charitable purposes intended by the law and is directed toward economic ends not supported by history or practice.

In 2005, then town attorney, Vincent Rossi, Jr. stated that, *"it's not clear-cut that Preswick Glen is entitled to a tax exemption."* However, in 2003 and 2004, the same

town attorney billed residents more than \$3,500 for researching case law and opinion of counsel, "supporting the town's point-of-view as to the exemption." To date, neither the Town Board nor its legal counsel has shared this so-called supporting information. Again, in 2005, the Town Board denied a Freedom of Information Request (FOIL) for this information citing Attorney/Client privilege. The taxpayers of New Hartford paid for the research, they ought to have access to it! If the Town Board and town attorney don't have any documents or opinions supporting the agreement, why won't they just admit it? What are they hiding? Who are they protecting?

Why should I care?

Property tax exemptions can cause severe financial pressures on local governments. The Preswick exemption results in:

1. loss of taxable value of property in New Hartford (we should be growing our tax base);
2. a shift in the property tax burden at the town, county and school district levels to remaining taxpayers;
3. a precedent for future projects, costing millions more in lost revenue;
4. a "lifetime tax holiday" higher wealth senior citizens, who simply choose to downsize;
5. the transfer of wealth from younger taxpayers struggling with mortgage payments, college tuitions and the escalating tax burden of living in Oneida County and New York State to high net worth seniors. and
6. cutting private developers out of the senior retirement housing market.

Paraphrasing from a state Supreme Court Appellate Division ruling on the last point, the purposes for which Preswick Glen is organized are indistinguishable from the purposes of commercial real estate companies, with the exception that it is intended to serve senior citizens. *Presbyterian Residence Center vs. City of Rochester, Dec. 15, 1978.*

What kind of numbers are we talking about?

Based on estimated taxable assessed valuation of 15 million dollars for Phase I of the project, (determined by the Town Assessor and Town Comptroller in 2000), the tax loss in the first year would be more than \$500,000 at current tax rates. In the first 10 years assuming no change in tax rates and minimum payments under the MSA, the total tax loss would exceed \$5 million.

The Municipal Services Agreement, (MSA) which contains the tax exemption, calls for \$55,000 payments annually for years 1-5, split: 50% town, 25% school, 25% county. Years 6-10 payments of \$60,000 annually or 2% of gross rental receipts, whichever is greater with same proportional split. Payment continues to increase gradually over next twenty years with 2% of gross rental receipts after 30 years.

In an O-D article in April 2006, Preswick CEO Ray Garrett pegged updated construction cost at \$27M, and overall project cost of approximately \$40M. In light of these updated costs one should expect the estimated assessed real property valuation of the

project to be substantially higher given that the project's estimated tax assessment is 6 years old?

How does this affect the school district which is confronted with rising double-digit employee health insurance costs and Oneida County which has enacted the highest local sales tax in the state?

Both will lose millions of dollars, yet neither raised objection to the Agreement according to information obtained under the Freedom of Information Act. In fact, information provided by the school district indicates the district wasn't aware that the 2004 Agreement was executed until 3 months later. Further, the project changed materially from the "conceptual" plan presented to school district officials in 2001 when Preswick was seeking a PILOT (payment-in-lieu-of-taxes) agreement through the Oneida County Industrial Development Agency. The PILOT agreement was not pursued because the agency was not receptive and there were objections raised at an "informational" meeting held by the Town Board the same year.

The Agreement says parties to the agreement, "...desire to minimize the hardships on the retired, elderly and other taxpayers." What is so bad about that?

By any measure, a transfer of more than a half a million dollars a years in property taxes (Phase 1 of the project alone) to low and middle income residents, including those who are retired and elderly, creates a hardship. Affluent retired seniors are not "exempt" from supporting our schools or town and county governments.

Doesn't the Town Assessor determine whether property is exempt from taxation based on State Laws?

Yes. In fact, in 2001, the assessor told Preswick Glen management that based upon partial project information submitted, an exemption would be **DENIED**. At that point, Preswick sought tax relief through the Oneida County Industrial Development Agency, (OCIDA) and subsequently the town via a MSA.

Why would the Town Board enter into a Municipal Services Agreement (MSA) to grant an exemption if Preswick --- as it contends --- qualified for the exemption pursuant to the Real Property Tax Law?

Town Board Members who voted to approve the exemption in 2004 have asserted that the MSA obtains monies that the town might not otherwise receive for municipal services. This assumes that Preswick is eligible, in whole or in part, for a NYS property tax exemption.

As noted above, a reservation was raised by the Town Assessor (2001) and more recently (May 2005) by then Town Attorney Rossi over Preswick's eligibility. If Preswick were placed on the tax roll, its annual combined town, school and county taxes would

exceed \$500,000 for just Phase I. Payments under the MSA would amount to only \$55,000 in the first year.

In the Agreement itself, the Town questioned Preswick Glen's entitlement to exemption, stating that it "is subject to reasonable dispute..."

The only supporting documentation found in the record and attached to the Agreement is a copy of an IRS Revenue Ruling (79-18), which addresses federal income tax exemptions for charitable organizations. This ruling is not germane to the question of NYS real property tax status which is controlled by state law, NOT the Internal Revenue Service, (IRS).

State courts have ruled that not-for-profit corporations that operate housing projects for the elderly do not per se qualify the property as an exempt charitable use: *Appellate Div. 4th Dept. – Presbyterian Residence Center Corp. vs. Assessor City of Rochester*. NYS Office of Real Property Services (ORPS) Opinions of Counsel, Vol. 6, # 33 and Vol. 10, #100 are instructive on this point. These opinions are heavily relied on by state courts when adjudicating Real Property exemption disputes. Opinions can be viewed by going to: <http://www.orps.state.ny.us/legal/opinions/index.cfm>

Why would Preswick enter into a Municipal Services Agreement if they were exempt for paying for the services contained in the agreement?

Presbyterian Home and Preswick Glen, Inc. were simply trying to "beat the clock." By entering into the agreement, they believed they are shielded from any state court rulings adverse to their contention that the project is tax-exempt.

Presbyterian Home and Preswick would have us believe they are simply being good neighbors. A good neighbor would come forward and defend its actions, not stonewall town taxpayers and hang the Town Board out to dry.

Is there any supporting case law, statutory authority or precedent for housing projects like Preswick?

Neither the town board nor Preswick have offered any legal precedent granting local taxing jurisdictions the power to waive the real property tax obligations of a planned retirement community designed for upper income and high net worth senior citizens.

As noted, in 2003 and 2004, attorney Rossi billed town residents more than \$3,500 for researching case law and opinion of council "supporting the town's point-of-view as to the exemption." To date, neither the Town nor Presbyterian Home have shared this so-called supporting information despite repeated requests. On August 4, 2005, the town board denied a FOIL request for this information which leads to the question: "Do they have any?"

Preswick's CEO has said, "There is no way to thoroughly test (the eligibility of the exemption) until it (Preswick) exists." The Town attorney says, "It's (Presbyterian Home) a good organization that does good things and we're not giving them anything

they're not entitled to." If you can't test, you can't judge eligibility! The burden is on the applicant (Preswick) to demonstrate its exempt tax-status. Until such time as Preswick can demonstrate it adheres to the conditions set forth in the RPTL, sec. 420-a, the project should be assessed and entered on the tax rolls once occupancy occurs in 2007.

Preswick's approach is analogous to a homeowner telling the assessor that his assessment should be cut in half without offering any proof of value and the assessor simply granting the request. In your dreams!

On April 28, 2005, then Town Councilman Donald Backman writing on behalf of the Town Board in a guest column in the Observer-Dispatch said Preswick was entitled to the exemption because Sec. 420-a of the RPTL exempts property if used for "religious, charitable, hospital, educational or moral or mental improvement of men or women."

As Paul Harvey would say, "Now here's the rest of the story." Councilman Backman left out the fact that for a housing project to be exempt pursuant to section 420-a, **"a large percentage of the tenants must be in need of and receive a real and substantial charitable benefit."** This is known as the "exclusive use" test of the state law. Preswick doesn't meet that test.

But Councilman Backman said the Town Board got information on similar projects in approximately 10 other towns, which supported the Board's decision.

The Town's "comparable" projects -- supplied by Preswick Glen -- are NOT similar. Each of the sponsoring not-for-profit organizations are "Charitable Retirement Communities," serve low and moderate-income individuals or provides subsidized housing. Each provides real and substantial charity to its tenants as required by state law. Preswick Glen does not serve low-income individuals nor offer subsidized housing.

The New Hartford Town Board did not require a demonstrative level of charity care. In addition, neither Preswick's Certification of Incorporation filed with the NYS Secretary of State's Office nor its Offering Plan filed with the Office of the Attorney General includes provision for a "Benevolent Fund" to support residents who exhaust their resources. Which leads one to ask: did the town board members ever read these documents?

Councilman Backman is the first sitting member of the Town Board to lose a contest for re-election. (Republican Primary, 2005). He was a vocal defender of the Preswick exemption, even writing the Observer-Dispatch guest editorial cited above. Property reassessment and his blind defense of the Preswick exemption likely sealed his political fate. Who's next? Councilman Waskeiwicz and Woodland both of whom voted for the exemption will face the voters in 2007.

What's the "Continuum of Care" stuff I hear about?

Continuum of care refers to the progression of health care needs at various stages of aging.

According to Preswick Glen, admission to the retirement community does not “guarantee” subsequent care at either the Presbyterian Home assisted living or skilled nursing facilities, rather “priority access.”

This is simply a marketing device to attract the “healthy and wealthy,” score a competitive advantage over others and guarantee a steady stream of “private pay” clients for Presbyterian Home’s licensed health care services. Individuals and couples financially capable of affording an apartment or cottage will be “Private Pay,” unlikely to neither exhaust their resources, be eligible for Medicaid nor be subsidized otherwise.

Tax abatements are now and should continue to be reserved for low and moderate-income seniors, not high asset seniors who in the words of Preswick’s advertisement would, ***“Leave to others the hassles of home maintenance and worrisome spring-cleaning tasks like yard maintenance and window cleaning.”***

Do townhouse and apartment complexes like Oxford Heights, Sherman Oaks or Oxford Towne that offer alternative housing to middle and high-income seniors pay property taxes?

You bet!

The apartments and cottages at Preswick should be no different. By law, like property must be treated alike. Only those residents that are means tested or otherwise subsidized qualify under recognized statutes and opinions of the state Office of Real Property Services, (ORPS).

How likely is it that the Town Board will listen to taxpayers and rescind this exemption?

From April 20, 2005, when the exemption challenge was made through the end of their term on December 31, 2005, the Town Board under Supervisor Humphreys stonewalled requests for:

- a public meeting with Preswick Officials
- an independent opinion from the state - ORPS
- disclosure of its legal research allegedly supporting the exemption.

In addition, Preswick Glen management has offered no public defense for the exemption. They have basically hung the Town Board out to dry. In fact, they have rejected requests to amend their Offering Plan to disclose the impact a termination of the tax exemption would have on project financing, entrance fees and monthly service fees. Preswick’s Board of Trustees has a moral and ethical obligation to do so.

Town Board members had so little confidence in what they were executing that they insisted on an Indemnity Clause holding the town harmless for any expenses for defending the validity of the agreement or the tax exemption. If sued, Preswick Glen, Inc. will be required to pay the legal fees of the town for defending the exemption.

At the May 4, 2005 Town Board meeting, in response to a citizen’s question asking what action the Board would take in light of recent disclosures over the validity of the

exemption and its fairness to other taxpayers, the board collectively said NONE!. Further, then Supervisor Humphreys said that a citizen would have to sue the town to terminate the MSA. Not one council member dissented.

At the September 7, 2005 town board meeting, after five months of questioning and public scrutiny, the board agreed to authorize a public meeting with Preswick officials to discuss the exemption. This action was taken **ONLY** after an Orange County, New York, Supreme Court ruling (*Adult Home at Erie Station, Petitioner vs. Assessor and Board of Assessment Review of the City of Middletown and the Board of Education for Middletown Central School District, Respondents*), was disclosed that upheld state law and court precedents governing exemptions for not-for-profit housing facilities. Preswick does not and can not meet the requirement for exemption contained in state law, supported by precedents and upheld by this ruling. **As of October 2006, no meeting has been held.**

The judge in the Orange County case DID NOT change state law; his ruling reflected the law as it is and court precedents going back more than 25 years. The petitioner sought exemption under RPTL 422 (grants tax exemptions to low-income accommodations) and the Private Housing Finance laws. The court ruled consistent with precedent that the petitioner was not entitled to the exemption as it was organized under the not-for profit Corporation Law, not the Private Housing Finance Law. Preswick Glen is also organized under the NYS Not-for-Profit Corporation Law and will not provide housing to those with low-incomes. If an adult home (Orange Co. ruling) where 50% of its tenants receive a government subsidy doesn't qualify for a property tax exemption, how can Preswick which caters to affluent seniors who privately pay? **YOU BE THE JUDGE!** The ruling is being appealed by the petitioner. **An appeal does not change state law!**

Given Preswick management's disposition and the fact that the current town board led by Supervisor Reed has asked IRS for a re-determination of Preswick's federal tax status, it is unlikely such a meeting will occur any time soon, if at all. But if it does, town residents should have a field day asking town board members and officials (town assessor), Preswick Glen officials and board members, Oneida County officials and New Hartford School Board members to explain why Preswick doesn't have to comply with NYS Law.

What if the current Town Board fails to rescind the exemption or the Town Assessor fails to reject any Application for Exemption from Real Property Taxes that might be filed by Preswick Glen prior to seeking the issuance of occupancy permits in 2007?

As noted above, the Town Assessor and Town Board have stated that they will review the project's real property tax status when occupancy permits are requested.

Without clear and convincing legal authority for the exemption which neither the former or present Town Board has produced and are unlikely to -- this exemption is certain to be litigated.

Litigation could take years and the town, county and school district would have foregone hundreds of thousands of dollars of property tax revenue. Preswick would likely be

ordered to repay those taxes and the economic feasibility of the project itself could be put at risk?

The Town Board, Presbyterian Home and Preswick administration should mutually agree to terminate this agreement and then construct, if lawful, an agreement/exemption that reflects the true nature of the project.

Any exemption must be commensurate with a real and substantial level of charity care to Preswick residents. Only resident units that serve subsidized low or moderate-income individuals should be considered for a tax break.

Any agreement must also uphold the principle that like-use property is taxed the same and comply with the legislative intent of Section 420-a of the Real Property Tax Law and established case law. This time the school district and the county must be at the table.

The school board has not publicly stated a position on the Preswick tax exemption, yet school district taxpayers are the **BIGGEST LOSERS!**

As such, isn't it reasonable to expect that the school board would conduct an **INDEPENDENT** analysis of the issue and state its position on a project that will cost the school district taxpayers \$350,000+ a year? That's real money which could be used to reduce taxes, hire teachers, buy buses, minimize tax hikes or reduce debt.

If the school board thought Consumer Square or the New Hartford Shopping Center were under assessed it would file a lawsuit in state Supreme Court at the drop of a hat! In the case of Preswick Glen, it's not a case of under assessment, it's a case of a not-for-profit organization having secured a property tax exemption for which they are not entitled and for which YOU are being forced to subsidize.

Town Supervisor Earle Reed has stated that he believes Preswick would have to pay property taxes because the school district will suffer the biggest loss. He and the town board must take affirmative actions to rescind the exemption. Our children have too much to lose to let this exemption stand. If allowed, the only responsible course for the school district is to sue the town, Preswick Glen and its owner – the Presbyterian Home & Services, Inc.

Preswick Glen Inc., is clearly prepared to pay property taxes; otherwise its board of directors would not risk borrowing millions of dollars to begin construction with the tax issue unresolved.

How can I help?

- Call the supervisor and your councilman and ask them to have the courage to correct this mistake¹
- Request a copy of the exemption Agreement from your councilman.
- Request a copy of the Preswick Offering Plan²
- **Call on Preswick Glen administration to put the best interests of New Hartford taxpayers first.**
- Attend town board meetings and demand action.
- Attend a future Preswick-sponsored Information luncheon at the Yahnundasis and seek answers to the questions raised herein.
- **Write a letter to the editor – (150 word limit)³**
- Contact school board members and the County Executive⁴
- Talk to your neighbors
- E-mail: nhtaxgiveaway@aol.com for more information, AND
- Vote for town council and school board candidates who pledge to work to rescind the Preswick exemption.

This information represents the research, views and understandings of New Hartford resident Jerome Donovan.

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