



October 26, 2016

Ms. Heather Provencio,
Kaibab National Forest Supervisor
Williams, Arizona
FAX: +1 (928) 635-8208

Dear Ms. Provencio,

RE: Grand Canyon Housing Foundation "non-profit," "charity" funding of the Town of Tusayan's new, foot-in-the-door housing development is nothing more than a "pay to play" scheme for the private benefit of Tusayan developers in continued pursuit of their proposed, massive new Grand Canyon National Park-harming development.

Forest Service granting of a "road maintenance agreement" easement for Tusayan's new housing development facilitates this scheme.

Executive Summary

Developers Elling Halvorson and Gruppo Stilo of Italy (hereafter combined as "Stilo") continue pursuing a massive new development immediately bordering Grand Canyon National Park in Tusayan, a town with a total population of 558. Stilo proposes to build nearly 2,200 new housing units and up to three million square feet of new commercial space.

Stilo's Tusayan development is currently stymied because it depends on a rejected, lynch pin easement from the U.S. Forest Service. The Forest Service has denied Stilo this lynch pin easement and acknowledged that "there is significant evidence the proposal is not in the public interest."¹

An application to the Internal Revenue Service (IRS) has now been presented from the Grand Canyon Housing Foundation for charitable non-profit status to support the Housing Authority of the Town of Tusayan to provide subsidized private housing on property donated to the Town of Tusayan by Stilo. The property donated by Stilo is

¹ Correspondence, from Heather Provencio, Forest Supervisor, Kaibab National Forest; to Craig Sanderson, Mayor, Town of Tusayan; March 4, 2016.

located within two Stilo-owned properties, Kotzin and Ten-X, requiring the problematic, denied Forest Service easement. The easement from the Forest Service is necessary because both Kotzin and Ten-X are inholdings within Forest Service property that cannot be developed without Forest Service easement. Full possession and use of the Stilo-donated property by the Town of Tusayan for public housing contractually requires the Town's continued pursuit of and successful securing of the problematic, denied Forest Service easement for Stilo.

Stilo acknowledges that the Town of Tusayan is "a total, company-owned community"² owned by Stilo. Everyone of the five members of the Tusayan Town Council is a Stilo employee. Stilo has provided \$500,000 to create and fund the "charitable" Grand Canyon Housing Foundation. **The Board of Directors of the Grand Canyon Housing Foundation, the Board of Directors of the Grand Canyon Housing Foundation-funded Housing Authority of the Town of Tusayan, and the five Tusayan Town Council members are all the same Stilo employees.** These Stilo employees will be doling out the Grand Canyon Housing Foundation's "charitable" Stilo money for Stilo employees via a sham "charitable" organization obligated to providing Stilo principals with their coveted prize, a Forest Service lynch pin easement to Stilo properties.

The Grand Canyon Housing Foundation does not qualify as a public charity. The Grand Canyon Housing Foundation fails to fulfill Internal Revenue Code requirements to qualify for Section 501(c)(3) status for several very concrete reasons. These reasons include:

1. The Internal Revenue Code definition of "charitable" for "relief of the poor...or underprivileged"³ is not consistent with Grand Canyon Housing Foundation's eligibility criteria for its recipient Stilo employees with "maximum \$250,000 per year, gross income"⁴ eligible for receipt of Grand Canyon Housing Foundation "charitable" gifts in the form of "affordable" housing.;
2. Grand Canyon Housing Foundation's subsidies do not benefit the entire public or a segment of the general public called a "charitable class"⁵ as defined by and required by Internal Revenue Code regulations and other legal authority.⁶;

² Correspondence, from Elling and Barbara Halvorson, to Citizens of Tusayan, January 24, 2012.

³ Internal Revenue Service Internal Revenue Manual, Part 7. Ruling and Agreements, Chapter 25. Exempt Organizations Determinations Manual, Section 3. Religious, Charitable, Educational, Etc., Organizations, 7.25.3.5 Charitable Organizations - Definition.

⁴ DEPARTMENTAL GUIDELINES for the HOUSING AUTHORITY OF THE TOWN OF TUSAYAN, Section 103B. HOUSEHOLD QUALIFICATION, ELIGIBILITY AND PRIORITY, May 5, 2016.

⁵ Rev. Rul. 75-196, 1975-1 C.B. 155.

⁶ Columbia Park & Recreation Association v. Comm'r, 88 T.C. 1 (1987)
http://www.ileagle.com/decision/19878988atc1_189/COLUMBIA%20PARK%20%20RECREATION%20ASS'N,%20INC.%20v.%20COMMISSIONER

3. Grand Canyon Housing Foundation serves primarily to further the private interests of the Stilo owner-principals. The Stilo owner-principals' goals "facilitate"⁷ and "induce"⁸ the Town of Tusayan to provide desirable annexation and zoning for Stilo and to force the Town of Tusayan to "fully cooperate in pursuit of such [Forest Service easement] approvals, including acting as applicant or co-applicant at no out-of-pocket costs to the Town."⁹

Stilo accomplishes its desired private benefit by assuring that the "charitable" subsidized housing, for Kotzin, "shall occur only upon the U.S. Forest Service Final Approval."¹⁰ For Ten-X, Stilo codifies the supremacy of its desired benefit by assuring "use of the Property shall not exceed twenty (20) single family residential units until such time as housing density on the Property may be increased upon obtaining U.S. Forest Service Final Approval."¹¹

Grand Canyon Housing Foundation's contribution to the accomplishment of these Stilo private benefits are not an "insubstantial part" of the organization's activities as required by Internal Revenue Code and the Treasury Regulation thereunder.¹² The benefit to Stilo principals of these private benefits is not "insubstantial" as established by court ruling.¹³

With all Directors of Grand Canyon Housing Foundation being Stilo employees, control of this organization by the organization's funders and Directors' employers is obvious. In Internal Revenue Code parlance, the Stilo contributors are called "disqualified persons." A "disqualified person" includes any substantial contributor to an organization.¹⁴ Here the supporting organization (Grand Canyon Housing Foundation for the Housing Authority of the Town of Tusayan) is controlled by "disqualified persons," which invites strict IRS scrutiny of the activities of the Grand

⁷ PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF TUSAYAN, an Arizona municipal corporation and STILO DEVELOPMENT GROUP USA, LP

⁸ SECOND AMENDMENT TO PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF TUSAYAN, an Arizona municipal corporation and STILO DEVELOPMENT GROUP USA, LP This Second Amendment to Pre-Annexation and Development Agreement (the "Second Amendment") is entered into as of the 1st day of June, 2016 ("Effective Date"), by and between the TOWN OF TUSAYAN, an Arizona municipal corporation (the "Town") and STILO DEVELOPMENT GROUP USA, L.P.

⁹ PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF TUSAYAN, an Arizona municipal corporation and STILO DEVELOPMENT GROUP USA, LP

¹⁰ Kotzin Special Warranty Deed with Reverter, recorded March 11, 2014.

¹¹ SPECIAL WARRANTY DEED WITH REVERTER (Second Town Housing Parcel- TenX.).

¹² Reg. § 1.501(c)(3)-1(c)(1).

¹³ Gen. Couns. Mem. 37789 (Dec. 18, 1978).; *American Campaign Academy v. Comm'r*, 92 TC 1053, 1078 (1989).; Rev. Rul. 76-206, 1976-1 C.B. 154.; and *Columbia Park & Recreation Association v. Comm'r*, 88 T.C. 1 (1987).

¹⁴ § 4949.

Canyon Housing Foundation to ensure that such "disqualified persons" are not being personally benefitted by the activities of the nonprofit.

Background

Grand Canyon National Park "calls development plans a major threat to Grand Canyon."¹⁵ "[T]he parks' facilities are overwhelmed," the Park supervisor says.¹⁶

The threat continues. The Los Angeles Times reports,

"Thwarted for more than 20 years by a number of issues, including lack of water, the developers led campaigns to incorporate Tusayan as a city, giving it control of development within its boundaries, and to elect city officials who either work for the developer or a partner."¹⁷

In addition, the Stilo development threat makes worse the fact that the Park already needs hundreds of millions of dollars just to cover current deferred maintenance. Cronkite News reports,

"The National Park Service said Monday that there's close to \$11.5 billion in deferred maintenance in the nation's parks, more than \$516 million of it due at facilities in Arizona.

Most of the state's amount [\$516 million in deferred maintenance] was attributable to a backlog of projects at Grand Canyon National Park, which needs \$329 million in roads, water systems and other improvements, according to the report."¹⁸

The report covered by Cronkite News is the National Park Service's, September 30, 2014, "NPS Deferred Maintenance by State and by Park, Facility Management Software System.

Extraction of local well water to the level necessary for Stilo's development will harm the seeps and springs of Grand Canyon National Park and the Havasupai. "Montgomery and Associates (1998),¹⁹ Kessler (2002),²⁰ and USGS (2007)²¹ establish

¹⁵ "Park service calls development plans a major threat to Grand Canyon," Julie Cart, Los Angeles Times, July 7, 2014.

¹⁶ "Grand Canyon National Park Airport To Expand," Felicia Fonseca, Associated Press, Huffington Post, November 2, 2011.

¹⁷ "Park service calls development plans a major threat to Grand Canyon," Julie Cart, Los Angeles Times, July 7, 2014.

¹⁸ "National Parks maintenance backlog: \$11.5 billion," Miranda Leo, Cronkite News, March 23, 2015.

¹⁹ Montgomery & Associates, Inc., 1998. Supplemental Assessment of the Hydrologic Conditions and Potential Effects of Proposed Ground Water Withdrawal, Coconino Plateau Groundwater Sub-Basin, Coconino County, Arizona. 85 p., in Appendix of the Final Environmental Impact Statement for Tusayan Growth, Kaibab National Forest.

²⁰ Kessler, 2002. Grand Canyon Springs and the Redwall-Muav Aquifer: Comparison of Geologic Framework and Groundwater Flow Models, Northern Arizona, December 2002.

the connectivity between the water pumped at Tusayan and the Grand Canyon National Park springs. They establish that “additional pumping of groundwater from the Redwall-Muav aquifer can significantly impact the seeps and springs below the South Rim.” (Kessler [2002] summarizing Montgomery and Associates [1998])

Havasupai Falls will also be harmed by the Stilo/Tusayan development. The Park says,

"Grand Canyon springs and seeps are extremely important ecologically to the park's plants and animals, and nurture a high percentage of the park's ecological diversity. These water resources are dependent on the R-aquifer. In a recently published study for the potential Airport water-well development, Montgomery and Associates validated previous studies that identify current and projected decreases of flows to water sources within the Grand Canyon and Havasu Creek on the Havasupai Reservation due to water wells and extraction in Tusayan."²²

Stilo's destructive development plan is completely dependent on the Forest Service's granting of an easement to Stilo's property across Kaibab National Forest lands. No federal easement for Stilo's development, no damage to Grand Canyon National Park and to Havasupai Falls.

Stilo's new tax-exempt "charity" scheme seeks to circumvent, the Forest Service's March 4, 2016, rejection of Stilo's direct request for the easement. The Forest Service stated in its March 4, 2016, rejection of Stilo's request for easement:

"The development that would be enabled by authorization of the proposed use of NFS lands could substantially and adversely affect Tribal lands and the Grand Canyon National Park."

"... it would be premature for FS to process an application which may create perpetual rights until/unless the serious concerns raised by the Tribes, Park and public are addressed by the applicant."

Further, the Forest Service stated...

"36 CFR 251.54(e)(1)(v) provides that the proposed use must not unreasonably interfere with the use of adjacent non-National Forest System lands. The FS received written comments from the National Park Service (NPS) through the Principal Deputy Assistant Secretary of the Interior for Fish Wildlife and Parks which pointed out that potential impacts to the Outstanding Universal Value of the Grand Canyon National Park (GCNP), either from the roads that would be authorized by easement or the reasonably foreseeable

²¹ Bills, D.J., Flynn, M.E., and Monroe, S.A., 2007, Hydrogeology of the Coconino Plateau and adjacent areas, Coconino and Yavapai Counties, Arizona: U.S. Geological Survey Scientific Investigations Report 2005-5222, 101 p., 4 plates.)

²² Correspondence, from Grand Canyon National Park Superintendent David V. Uberuaga, National Park Service, Grand Canyon, Arizona 86023-0129, to Tusayan Town Planner Richard Turner, Tusayan, Arizona 86023; February 25, 2014.

development on the two private properties that would be enabled by the roads and other facilities, are of concern. The GCNP also raised concerns in a meeting regarding impacts on infrastructure that they share with the Town of Tusayan. The NPS was concerned that any activity that would result in significant increases in visitation or occupation near the Park would affect the Park's capacity to absorb the additional use.

Consequently, because your proposal does not meet the above minimum requirements for initial screening under 36 CFR 251.54(e)(1), your proposal cannot receive further evaluation and processing. See 36 CFR 251.54(e)(2). Moreover, even if the proposal passed initial screening, which it does not, the proposal would then proceed to "second-level screening" to ensure that the proposal meets all of 5 additional criteria. See 36 CFR 251.54(e)(5)(i)-(v).

Based on information received in the record, I have determined that the Tusayan proposal is deeply controversial, is opposed by local and national communities, would stress local and Park infrastructure, and have untold impacts to the surrounding Tribal and National Park lands. For example, the current fresh water conveyance system serving the Park is marginally capable of meeting their needs and could not absorb the additional needs of the connected development.

Water would then have to be secured from other sources potentially impacting the Park. Given the information above, even if your proposal were to proceed through to second-level screening, based upon the record before me, I find that the proposal would be rejected as there is significant evidence the proposal is not in the public interest, 36 CFR 251.54(e)(5)(ii)."

Stilo's destructive, proposed massive development plan remains completely dependent on the US Forest Service's granting of this rejected lynchpin easement across Kaibab National Forest lands to Stilo's inholding properties. No federal easement, no damage to Grand Canyon National Park and to Havasupai Falls.

In the near future, the Forest Service will receive a request for a "road maintenance agreement" from the Town of Tusayan to service a few proposed off the grid homes in an attempt to begin piecemeal development of Stilo's Kotzin and Ten-X properties. We have already addressed the fact that the Town of Tusayan's request for a "road maintenance agreement" is nothing more than an attempt at piecemeal circumvention of the March 4, 2016, Forest Service rejection of Tusayan's June 5, 2014, easement application for the massive, Grand Canyon-threatening Tusayan/Stilo development. We addressed this fact in correspondence to the Kaibab National Forest dated September 6, 2016.

Please see the attached new Internal Revenue Service application for non-profit status for the Grand Canyon Housing Foundation. The Grand Canyon Housing Foundation is the primary Stilo funding instrument for the Housing Authority of the Town of Tusayan which intends to provide pass through "charity" subsidy for new private home ownership. Development of these new subsidized private homes depends upon the "road maintenance agreement." Development of these new subsidized private homes are in turn contractually dependent on the overturning of the March 4, 2016,

Forest Service rejection of Stilo's earlier attempt at securing a new public road easement for access and utilities to their inholdings.²³

The Grand Canyon Housing Foundation is a sham "charitable" corporation aimed at continuing efforts to contractually encumber the Town of Tusayan in pursuit of Stilo's coveted Forest Service easement.

In brief, Stilo has given a few acres of land to the Town of Tusayan for the development of a few "charity" subsidized, private houses. But the land cannot be fully and safely developed without the Town's assistance to help Stilo secure Stilo's coveted lynch pin Forest Service easement.

Stilo cannot create a new public road without the Town of Tusayan's blessing. This is the reason for such a complicated scheme.

Funding for the charity-subsidized private housing development comes from Stilo via a new "charity" organization "controlled" by Stilo's own employees/Council members. These same employees charged with doling out Stilo's donated funds are themselves eligible for the gifts that they will be doling out.

In donating \$250,000 for the new "non-profit," Mr. Elling Halvorson, himself, admits that Tusayan "has been a total, community-owned community." And if "the Town Council's actions [Stilo property annexation and re-zoning for the Halvorson/Stilo development] are supported by the voters, [he would] form a non-profit entity..."²⁴ Gruppo Stilo admits that it will match Halvorson's \$250,000 because "[a]ny new development in Tusayan by Stilo will require quality, sustainable housing for our employees and the town's residents."²⁵

From Halvorson:

"...Tusayan, for the past 50 years, has been a total, company-owned community. During that period of time, there has been little significant change in opportunity for the average citizen. Fifty years ago, people lost their 'homes' when they lost their Job or retired and the same is still true today. On top of that, living standards over this period of time have seen little change. I see no opportunities in the future for improvement of these situations except for the bold actions that the Town Council has taken with annexation and rezoning. Everyone in Tusayan should be proud and happy for the action of your Town Council. Their approval of the development agreement for annexation and

²³ PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF TUSAYAN, an Arizona municipal corporation and STILO DEVELOPMENT GROUP USA, LP.; SECOND AMENDMENT TO PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF TUSAYAN, an Arizona municipal corporation and STILO DEVELOPMENT GROUP USA, LP.

²⁴ Correspondence, from Elling and Barbara Halvorson, to Citizens of Tusayan, January 24, 2012.

²⁵ Correspondence, from Vittorio Bianchi and Federico Pellicoli, Gruppo Stilo, to Tusayan Town Council, November 13, 2013.

rezoning can bring each person In Tusayan an opportunity for a brighter future. That opportunity may be:

1. To own a home,
2. To have more year-round employment,
3. To have Increased salaries, and/or
4. To own a business...

For years, my wife Barbara and I have had a passion to assist deserving locals with down payments for housing...We are therefore committed to deposit \$250,000 US dollars into an interest-bearing account fo the benefit of the citizens of Tusayan who are not presently landowners...

On May 15, 2012, each of you will have the opportunity to vote to support the acts of your Town Council on the annexation and re-zoning which will enable the opportunities I have discussed here.

When the Town Council's actions are .supported by the voters. I will form a non-profit entity called "Tusayan Housing Alliance"...²⁶

And from Gruppo Stilo:

"Stilo has shown its commitment to bring new housing opportunities to Tusayan supporting the campaign for Tusayan's incorporation and committing 40 acres of private land to be transferred to the town as part of the 2011 Pre-Annexation Development Agreement with Tusayan.

We are pleased to say as part of our future development plans, we are committed to match Mr. and Mrs. Halvorson's donation of up to \$250,000 upon their formation of the aforementioned non-profit entity and deposit of their contribution.

Any new development in Tusayan by Stilo will require quality, sustainable housing for our employees and the town's residents."²⁷

Stilo has successfully, contractually encumbered the Town of Tusayan to pursue annexation and lynch pin Forest Service easement for Stilo's massive proposed development.

The Pre-Annexation and Development Agreement between the Town of Tusayan and Stilo states:

"5. Infrastructure to Kotzin and TenX sites

²⁶ Correspondence, from Elling and Barbara Halvorson, to Citizens of Tusayan, January 24, 2012.

²⁷ Correspondence, from Vittorio Bianchi and Federico Pellicioli, Gruppo Stilo, to Tusayan Town Council, November 13, 2013.

(a) Necessary Applications. No later than one-hundred and eighty (180) days after Final Town Approval, Stilo shall diligently file for all required approvals to provide all Necessary Infrastructure to develop Kotzin and TenX, and Stilo agrees at its costs to take the necessary steps to expedite U.S. Forest Service review of applications for U.S. Forest Service approvals for Necessary Infrastructure. Town agrees to fully cooperate in pursuit of such approvals, including acting as applicant or co-applicant at no out-of-pocket costs to the Town.

(b) Definition of "Necessary Infrastructure". For purposes of this Agreement, "Necessary Infrastructure" shall mean the infrastructure defined in Section 5 (e) of this Agreement and the infrastructure needed to develop Kotzin or TenX site as contemplated by the PCD zoning, including specifically a paved road (as depicted on *Exhibit C1 and C2* consisting of at least two lanes or such larger capacity as may be required by traffic studies, main water line sized to provide service to the permitted uses, electrical service, telephone service, and a sanitary sewer solution involving treatment acceptable to the Arizona ADEQ Designated Planning Agency for the Stilo Properties, the Northern Arizona Council of Governments ("NACOG")...²⁸

The Second Amendment to Pre-Annexation and Development Agreement between the Town of Tusayan and Stilo states,

"This Second Amendment to Pre-Annexation and Development Agreement (the "Second Amendment") is entered into as of the 1st day of June, 2016 ("Effective Date"), by and between the TOWN OF TUSAYAN, an Arizona municipal corporation (the "Town") and STILO DEVELOPMENT GROUP USA, L.P., an Arizona Limited Partnership ("Stilo"). For purposes of this Second Amendment, Stilo and the Town are herein referred to collectively as the "Parties." ...

3. Infrastructure to Kotzin and TenX sites. Section 5(d), 5(e)(i), 5(e)(ii) and 5(e)(iii) of the First Amendment shall be deleted and replaced with the following:

(e)...(ii) If the approval of the Forest Service Application is rejected, or administratively or judicially appealed, the Town shall agree to seek judicial review and/or to intervene in the proceedings utilizing counsel selected by Stilo and approved by the Town, which approval shall not be unreasonably withheld, conditioned or delayed, at Stilo's cost. In addition, the Town will support Stilo in any independent attempt to seek judicial review or intervene in any such proceedings.

4. Transfer of Parcels to Town for Housing. Section 7(a), 7(a)(ii), 7(a)(iii), 7(g), 7(g)(i), 7(g)(ii) and 7(g)(iii) of the First Amendment shall be deleted in its entirety and replaced with the following:

²⁸ PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF TUSAYAN, an Arizona municipal corporation and STILO DEVELOPMENT GROUP USA, LP

(a) Transfer of Forty Acres to Town for Housing. In order to induce the Town to enter into the Prior Agreement (including the annexation of TenX and the approval of zoning of the Stilo Parcels) and the First Amendment and in order to assist the Parties in meeting the housing needs of the community, Stilo has designated forty (40) acres to be transferred in fee simple ownership to the Town for the purpose of providing housing and employment opportunities within the Town. The First Town Housing Parcel and the Second Town Housing Parcel (as defined herein) shall collectively be referred to as the "Town Housing Parcels." ...

G. The Town and Stilo are entering into this Agreement pursuant to the provisions of A.R.S. § 9-500.05 in order to facilitate the annexation of TenX and the proper municipal zoning designations and development of the Properties by providing for, among other things:

(i) conditions, terms, restrictions and requirements for the annexation of TenX by the Town;

(ii) conditions, terms, restrictions and requirements for the future construction and installation of public/private infrastructure improvements; and (iii) other matters related to the annexation and development of the Properties.²⁹

The newly proposed "charity" subsidized housing is also contractually subordinated to Stilo's successful securing of the annexation and the lynch pin Forest Service easement to Stilo's developable inholdings, Kotzin and Ten-X.

The Kotzin Special Warranty Deed with Reverter, recorded March 11, 2014, states,

"SUBJECT TO the following conditions and restrictions:

1. Development Agreement. This Special Warranty Deed With Reverter has been recorded as required by that Pre-Annexation and Development Agreement by and between Grantor and Grantee dated as of the 1st day of July, 2011 recorded on November 9, 2011 as instrument number 3610450 in the official records of Coconino County, Arizona and that the. First Amendment thereto dated as of January 22, 2014 recorded on March 11, 2014 as instrument number 3687289 (the "Development Agreement").
2. Use Restriction. The use of the Property shall be limited and restricted to public housing or "other public purposes," and shall occur only upon the U.S. Forest Service Final Approval. For purposes of this Special Warranty Deed with Reverter, "other public purposes" includes such use as a park or

²⁹ SECOND AMENDMENT TO PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF TUSAYAN, an Arizona municipal corporation and STILO DEVELOPMENT GROUP USA, LP

other Town facility and may include the transfer of any or all of the Property to a Town Housing Authority defined in A.R.S. § 36-1401 in order to allow the town to finance, construct and develop additional housing. The parties acknowledge that incidental use of a residence for a purpose permitted in a residential zoning district, such as a home occupation, shall be permitted.

3. Reverter. Subject to the provisions of Section 4 below, title to all or a portion of the Property shall revert to Grantor or the then assignee of Grantor's rights hereunder if the use restriction of this Special Warranty Deed With Reverter set forth in Section 2 is violated (a "Reversion Triggering Event").³⁰

The Ten-X Special Warranty Deed with Reverter (Second Town Housing Parcel-TenX) states,

"2. Restrictions. The use of the Property shall not exceed twenty (20) single family residential units until such time as housing density on the Property may be increased upon obtaining U.S. Forest Service Final Approval [FOR THE LYNCH PIN EASEMENT];..."³¹

The Grand Canyon Housing Foundation is not a qualifying public charity.

The Internal Revenue Code's definition of "charitable" for "relief of the poor...or underprivileged"³² is not consistent with Grand Canyon Housing Foundation's eligibility criteria for its recipient Stilo employees with "maximum \$250,000 per year, gross income"³³ eligible for receipt of Grand Canyon Housing Foundation "charitable" gifts.

The Grand Canyon Housing Foundation has filed with the IRS a Form 1023 "Application for Recognition of Exemption as Public Charity" under Section 501(c)(3) of the Internal Revenue Code (Application). Section Part IV of the Application requires a "Narrative Description of Your Activities." Grand Canyon Housing Foundation provides this description in its Grand Canyon Housing Foundation, Inc. (EIN 81-0965314) Supplemental Descriptions to Application for Recognition of Exemption Under Section 501(c)(3), Form 1023 (Supplemental Descriptions to Application).

Part IV in the Supplemental Descriptions to the Application states,

"GCHF expects to financially support the Housing Authority's construction, sale, and/or leasing of affordable housing to Tusayan residents...In

³⁰ Kotzin Special Warranty Deed with Reverter, recorded March 11, 2014.

³¹

³² Internal Revenue Service Internal Revenue Manual, Part 7. Ruling and Agreements, Chapter 25. Exempt Organizations Determinations Manual, Section 3. Religious, Charitable, Educational, Etc., Organizations, 7.25.3.5 Charitable Organizations - Definition.

³³ DEPARTMENTAL GUIDELINES for the HOUSING AUTHORITY OF THE TOWN OF TUSAYAN, Section 103B. HOUSEHOLD QUALIFICATION, ELIGIBILITY AND PRIORITY, May 5, 2016.

furtherance of its purpose, GCHF will receive and distribute charitable funds to provide subsidies and/or grants to Tusayan residents to develop, construct, or purchase affordable housing within the Town of Tusayan. GCHF will select grant recipients through a process established by the Housing Authority..."

The "process established by the Housing Authority" is found in the May 5, 2016, DEPARTMENTAL GUIDELINES for the HOUSING AUTHORITY OF THE TOWN OF TUSAYAN (Guidelines). Section 103.4 of the Guidelines states,

" Section 103 HOUSEHOLD QUALIFICATION, ELIGIBILITY AND PRIORITY:

103.4 Additional Eligibility Criteria: To purchase a Housing Unit, applicants shall meet the requirements for being a Qualified Household in this Section 103, and these additional Eligibility Criteria...

B. Income Limits: Owner occupied units are subject to a Household Income Limit range of a minimum of \$12,400 to a maximum \$250,000 per year, gross income."

The Internal Revenue Manual Section 7.25.3.5. (02231999) Charitable Organizations - Definition states:

"...Reg. 1.501(c)(3)-1(d)(2) provide that the term "charitable" is used in IRC 501(c)(3) in its generally accepted legal sense and includes relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of government; promotion of social welfare."

The Grand Canyon Housing Foundation will not serve for "relief of the poor and distressed or of the underprivileged." In fact, the Grand Canyon Housing Authority's tax-exempt money will pass through to the Housing Authority of the Town of Tusayan for recipients with a "maximum \$250,000 per year, gross income."

Grand Canyon Housing Foundation's subsidies do not benefit the entire public or a segment of the general public called a "charitable class"³⁴ as defined by and required by IRS regulation and legal authority.³⁵

The Grand Canyon Housing foundation through its supported organization, the Housing Authority of Tusayan, plan to provide "charity" subsidies limited to Tusayan residents, employed or retired from employment in a "total, company-owned

³⁴ Rev. Rul. 75-196, 1975-1 C.B. 155.; "Disaster Relief: Meaning of 'Charitable Class', What is meant by charitable class?" IRS, March 19, 2016; <https://www.irs.gov/charities-non-profits/charitable-organizations/disaster-relief-meaning-of-charitable-class>.

³⁵ Columbia Park & Recreation Association v. Comm'r, 88 T.C. 1 (1987) http://www.ileagle.com/decision/19878988atc1_189/COLUMBIA%20PARK%20%20RECREATION%20ASS'N,%20INC.%20v.%20COMMISSIONER

community."³⁶ This plan is not consistent with the Internal Revenue Code and other legal authority.³⁷ The general public is not Stilo employees or retirees.

The Application ("Part VI. Your Members and Other Individuals, and Organizations That Receive Benefits from You") requires disclosure of charitable giving limitations that may preclude the general public inconsistent with IRS code. In Supplemental Descriptions to Application, Grand Canyon Housing Foundation attempts to explain how their "charitable" subsidizes qualify for tax-exempt status when essentially all recipients are limited by employment to one employer.

The Supplemental Descriptions to Application state:

"Line 1a. [from the Application, Part VI.] Any person(s) within the class of people to be served by the Housing Authority may be eligible for a grant from the GCHF...

"Line 1b. [from the Application, Part VI.] In carrying out its exempt purpose, GCHF may also provide assistance directly to the Housing Authority to further the Housing Authority's mission to provide affordable housing and homeownership opportunities to qualified Tusayan residents as defined within the Housing Authority's Guidelines."

The definition of this "class of people" according to the Grand Canyon Housing Foundation is found in the May 5, 2016, DEPARTMENTAL GUIDELINES for the HOUSING AUTHORITY OF THE TOWN OF TUSAYAN. The Guidelines state,

"Section 103 HOUSEHOLD QUALIFICATION, ELIGIBILITY AND PRIORITY
103.2 Qualified Household Defined. To be considered a "Qualified Household" under these Guidelines, all of the following criteria must be met:

A. At least one member of the Household must either [be]:

1. A Resident and meet the applicable Employment Requirement described below; or,
2. Be Disabled, met the Employment Requirement, and have been a Resident within the boundaries of the Town of Tusayan; or,
3. Retired, provided that only persons who meet the Employment Requirement for at least consecutive 10 years immediately prior to becoming retired shall be considered.

B. To purchase or lease a "housing Unit or leasing a Housing Unit, or a room therein, meet the Employment Requirement, as defined herein, immediately prior to submitting an application...

Section 104 HOUSEHOLD APPLICATION PROCESS AND VERIFICATION...

104.1 The HATT will establish priorities for the Wait List as follows:

³⁶ Correspondence, from Elling and Barbara Halvorson, to Citizens of Tusayan, January 24, 2012.

³⁷ Rev. Rul. 75-196, 1975-1 C.B. 155.; Columbia Park & Recreation Association v. Comm'r, 88 T.C. 1 (1987).

- A. First Priority: Qualified Households who make their "primary residence" within the boundaries of the Town of Tusayan and satisfy the Employment Requirement within the boundaries of the Town of Tusayan, and both Residency and Employments shall be at least for five (5) years...

Section 108 OWNERSHIP LOTTERIES...

108.3 Lottery Order...

- B. Applications that are certified as complete shall qualify in the lottery according to the following Criteria:...
 - 2. An additional entry in the lottery shall be awarded to households that can demonstrate compliance with the Employment Requirement at least three (3) consecutive calendar years of full-time employment within the boundaries of the Town of Tusayan within the previous five (5) calendar years.

Section 109 EXCEPTIONS, APPEALS AND GRIEVANCES...

109.2 Exception Procedure...

- C. Standards for Review of Exception applications: Applicants desiring an Exception should demonstrate and the HATT Board must find that the Exception meets one or more of the following review standards:...
 - 2. Promotes or recognizes long term commitment of the Applicant to residency, employment and community involvement within the boundaries of the Town...

Section 204 DEFINITIONS

PURPOSE: The purpose of this Section is to define words, terms and phrases contained within these Housing Guidelines...

Employment Requirement: The Employment Requirement is met if at least one individual in a Household is a full time employee for a single employer, and has worked at least a total of 3120 hours during the last twenty-four (24) consecutive months as a Resident within the boundaries of the Town..."

The Grand Canyon Housing Foundation's attempt at defining its "class of people" consistent with the Internal Revenue Code's definition of "charitable" fails. Charitable exemption under Internal Revenue Code Section 501(c)(3) is available only if an organization conducts activities that benefit the entire public or a segment of the general public called a "charitable class." The class must be broad enough to warrant the conclusion that the activity serves broad public interest rather than a private interest.³⁸ Tax-exemption must be denied if the beneficiaries of activities of the

³⁸ Rev. Rul. 75-196, 1975-1 C.B. 155.

organization are specifically named individuals or organizations with limited memberships.

IRS defines, "charitable class" as,

"A *charitable* class is a group of individuals that may properly receive assistance from a charitable organization. A charitable class must be either large enough that the potential beneficiaries cannot be individually identified, or sufficiently indefinite that the community as a whole, rather than a preselected group of people, benefits ...men a charity provides assistance. For example, a charitable class could consist of all individuals located in a city, county, or state. This charitable class is large and benefits to it benefit the entire geographic community.

If the group of eligible beneficiaries is more limited, such as employees of a particular employer, the group of individuals eligible for disaster assistance (the class) must be indefinite. Otherwise, the charitable class would consist of a pre-selected group of people, which is prohibited..."³⁹

As an example, an organization created to award scholarships to a national fraternity was deemed to have a large enough charitable class to warrant tax exemption, whereas an organization could not offer scholarships to the members of a local fraternity as the charitable class was too small.⁴⁰

Another example involves the town of Columbia, Maryland. Columbia "is a large, private development of residential, commercial, and industrial real property," a town at build out of approximately 110,000. The Columbia Park & Recreation Association, a non-profit Maryland organization, attempts "[t]o aid, promote, and provide for the establishment, advancement and perpetuation of any and all utilities, systems, services and facilities" within Columbia, Maryland. The developers, Howard Research & Development Corporation, "[a]dditionally, and in furtherance of these goals...transferred 1,400 of Columbia's 14,600 acres to petitioner [Columbia Park & Recreation Association] without receiving any consideration in exchange."

Columbia Park & Recreation Ass'n, Inc. v. Commissioner, states:

"Development Corp.[Howard Research & Development Corp.] intended to and did develop Columbia as a community that offered a new living style: "a job opportunity for every residence; a dwelling for every job situation: houses and apartments in a wide variety of size and cost, and a chance to live, work, shop and play in the same place." Petitioner [Columbia Park & Recreation Association] was created in an effort to achieve some of these goals. Additionally, and in furtherance of these goals, the Development Corp. transferred 1,400 of Columbia's 14,600 acres to petitioner without receiving any consideration in exchange..."

³⁹ "Disaster Relief: Meaning of 'Charitable Class', What is meant by charitable class?" IRS, March 19, 2016; <https://www.irs.gov/charities-non-profits/charitable-organizations/disaster-relief-meaning-of-charitable-class>.

⁴⁰ Rev. Rul. 56-403, 1956 C.B. 307; Priv. Ltr. Rul. 201017067.

"Petitioner contends, that because of its size and diversity, its purpose must be understood from the benefit it provides through its overall operations. We have carefully considered the scope of petitioner's operations and agree that the magnitude of its operations cannot be ignored. The estimated 110,000 residents of Columbia represent a cross-section of economic, social, and racial classes. They are served by petitioner which integrates these different classes while nourishing human growth. This, however, is incidental to petitioner's primary purpose, which is to promote the common good and social welfare of the residents of Columbia. Petitioner is an integral part of the development and was created to serve Columbia, its residents, and property owners. As petitioner's articles demonstrate, Columbia and its residents are the justification for petitioner's existence. Accordingly, any benefit to the community as a whole is merely incidental and relatively insubstantial. Columbia approximates the size of Manhattan, and has the second largest population in the State of Maryland. It is a new experiment in city planning where its developers sought to balance social goals and private profit. Columbia, despite its size, has remained a private development designed to offer its residents a new living style: a job opportunity for every resident; a dwelling for every job situation; houses and apartments in a wide variety of sizes and cost; and a chance to live, work, shop, and play in the same place. This new lifestyle could not be offered in its entirety without the creation of petitioner or a similar organization. Indeed, petitioner was organized by the developers of Columbia as an integral part of the development, and it so functions. Accordingly, we find that petitioner was created as the component necessary for molding the social and physical environment desired for the development.

We emphasize that the term "charity," from a legal perspective, is comprised of four principal divisions: (1) Relief of poverty; (2) advancement of education; (3) advancement of religion; and (4) other purposes (not falling within any of the preceding divisions) that are beneficial to the public or the community at large. See *Eastern Kentucky Welfare Rights Org. v. Simon*, 506 F.2d 1278, 1287 (D.C. Cir. 1974); *Mellon Bank, N.A. v. United States*, 590 F.Supp. 160, 163 (W.D. Pa. 1984); *Green v. Connally*, 330 F.Supp. 1150, 1157 (D.D.C. 1971); 2 Restatement, Trusts 2d, sec. 368 (1977).

Petitioner contends that the size of the development it benefit is so large that it qualifies under the "catch all" category of "charitable," i.e., a benefit to the public or the community at large. In essence, petitioner argues that its size causes it to be inherently charitable. We find this argument unpersuasive. Petitioner benefits what is merely an aggregation of homeowners and tenants bound together in a structural unit formed as an integral part of a plan for the development of real estate. We do not perceive such a group of people as the "community at large" within the "charitable" context because it lacks a sufficient public element. To hold otherwise would negate the requirement that petitioner must serve a public rather than a private interest. Sec. 1.501(c)(3)-1(d)(1)(ii), Income Tax Regs.

Columbia was planned as a new town and is referred to as a city. We agree that Columbia resembles a city in both geographic size and population and that it operates, to a large extent, like a city. Nevertheless, Columbia has remained nothing more than a private development, albeit a massive one. We should not be guided merely by petitioner's size because qualitative not quantitative factors are more determinative of the charitable purpose of an organization. The size of an organization is meaningless if it is not fully integrated with a public element. Mere size does not transform an otherwise noncharitable, private organization to a "charitable" one. If Columbia were a development of greatly reduced size with a small population, it would be easier to see why petitioner does not qualify as a "charitable" organization within the meaning of section 501(c)(3). The results do not change with petitioner's size. To the extent that Columbia is owned and controlled by the homeowners and residents within its boundaries, free from any governmental or other outside influence, we find that it is an unusually large aggregation of private interests.

Were petitioner operating primarily for a public rather than private interest, the people financing its operation would not have a right, based upon property ownership, to receive the benefits it offers. On the contrary, once financed, petitioner would offer its facilities and service programs primarily to those in need regardless of their place of residence. Unlike the instant case, no quid pro quo exists in an organization that is operating primarily for a public purpose.

Another important factor which serves to undercut petitioner's position is the fact that petitioner's method of financing is dissimilar from typical public organizations. Petitioner does not solicit or receive voluntary contributions from the public. Rather, its source of revenue is from the members whom it serves. Petitioner thus lacks this normal trait of a section 501(c)(3) organization or, more specifically, an organization which operates primarily for a public interest.**footnote" ...

Operational Test

In further support of his adverse determination, respondent argues that petitioner fails the operational test because it engages primarily in activities that further a nonexempt purpose by substantially serving the private interest of its owner/members. Petitioner maintains that any benefit resulting to the residents of Columbia is merely incidental to the benefit to the community as a whole. We agree with respondent.

In order to satisfy the operational test, an organization must engage extensively in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3). Sec. 1.501(c)(3), Income Tax Regs; *Copyright Clearance Center v. Commissioner*, 79 T.C. 793, 803-804 (1982); *Retired Teachers Legal Fund v. Commissioner*, 78 T.C. 280, 289 (1982). The existence of a substantial nonexempt purpose, even if coexisting with an exempt purpose, precludes qualification under section 501(c)(3). Sec. 1.501(c)(3)-1(c)(1), Income Tax Regs.; *Better Business Bureau v. United States*, 326 U.S. 279, 283 (1945); *Christian Manner International v.*

Commissioner, 71 T.C. 661, 668 (1979). Whether the operational test has been satisfied is a question of fact. *Christian Stewardship Assistance v. Commissioner*, 70 T.C. 1037, 1042 (1978); *Pulpit Resource v. Commissioner*, 70 T.C. 594, 602 (1978). We find that petitioner does not satisfy the operational test but rather operated for the substantial nonexempt purpose of providing comfort and convenience to Columbia's residents....

Apparently, petitioner interprets the "private benefit" element of section 1.501(c)(3)-1(c)(2), Income Tax Regs., to be present only if one of its board members or officers derives some prohibited benefit. We disagree with this interpretation. Section 1.501(a)-1(c), Income Tax Regs., provides that a private interest exists if any person having a private or personal interest in petitioner's activities is the focus of petitioner's benefit.

We find it difficult to accept petitioner's contention that the residents and property owners do not have a personal interest in petitioner and the "new life style" petitioner was organized to provide. Petitioner's operations are controlled by the residents and property owners of Columbia. In addition, residents' advisory committees participate in formulating petitioner's budget and defining its goals and policies. Moreover, a substantial number of petitioner's activities are solely for the purpose of providing the "new life style" promised to the residents of the development. We, therefore, find that the residents and property owners of Columbia are the intended beneficiaries of petitioner's facilities and services and that they have a personal interest in petitioner's activities...⁴¹

In summary, IRS Code states:

"(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."⁴²

Grand Canyon Housing Foundation serves primarily to further the private benefit goals of the Stilo owner-principals. The Stilo owner-principals' goals to "facilitate"⁴³ and to "induce"⁴⁴ the Town of Tusayan to provide desirable

⁴¹ *Columbia Park & Recreation Association v. Comm'r*, 88 T.C. 1 (1987)

⁴² Treas. Reg. Section 501(c)(3)-1(d)(1)(ii).

⁴³ PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF TUSAYAN, an Arizona municipal corporation and STILO DEVELOPMENT GROUP USA, LP

⁴⁴ SECOND AMENDMENT TO PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF TUSAYAN, an Arizona municipal corporation and STILO DEVELOPMENT GROUP USA, LP This Second Amendment to Pre-Annexation and Development Agreement (the "Second Amendment") is entered into as of the 1st day of June, 2016 ("Effective Date"), by and between the TOWN OF TUSAYAN, an Arizona municipal corporation (the "Town") and STILO DEVELOPMENT GROUP USA, L.P.

annexation and zoning for Stilo and to force the Town of Tusayan to "fully cooperate in pursuit of such [Forest Service easement] approvals, including acting as applicant or co-applicant at no out-of-pocket costs to the Town."⁴⁵

For more than two decades Stilo has been supremely focused on building a mega-development in Tusayan on the south rim of Grand Canyon National Park. In 1999, in spite of the lack of a sustainable water source, Stilo successfully convinced federal authorities that their development should proceed.

In 2000, however, Stilo's plan was rejected by local, county ballot initiative.⁴⁶ In 2010, Stilo then successfully promoted incorporation of the Town of Tusayan in an election limited to Tusayan voters.⁴⁷ Most Tusayan residents are Stilo employees in this "total, company-owned community."⁴⁸

Two of the current Directors of the Grand Canyon Housing Foundation and the Housing Authority of the Town of Tusayan, Al Montoya and John Reuter, were even recipients of cash bonuses from Stilo, \$8,500 and \$2,000 respectively, for their work for Stilo in achieving Stilo's incorporation ballot victory.⁴⁹ These Directors still work for Stilo, as do all other Directors.

Organizations exempt from taxation under § 501(c)(3) must be "organized and operated exclusively for religious, charitable, scientific... or educational purposes..."⁵⁰ For an organization to be considered operated exclusively for one or more of these purposes, it must operate to benefit a public, not a private, interest. Section 501(c)(3) further states that no part of the net earnings of a §501(c)(3) organization may "inure to the benefit" of any private shareholder or individual.⁵¹ "Exclusively" has been interpreted to mean all but an "insubstantial part" of an organization's activities must be for religious, educational, charitable or other appropriate § 501(c)(3) purposes.⁵² Thus, to the extent a §501(c)(3) organization, or an organization seeking § 501(c)(3) status, provides more than an insubstantial benefit to individuals or entities by serving private interests over public interests, the organization can lose or be denied tax-exempt status.

⁴⁵ PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF TUSAYAN, an Arizona municipal corporation and STILO DEVELOPMENT GROUP USA, LP

⁴⁶ "\$330 M project to develop Grand Canyon area defeated," Tucson Citizen, November 10, 2000.

⁴⁷ "Tusayan incorporation passes this time," Arizona Daily Sun, March 10, 2010.' "Tusayan 'bonuses' follow election," Cyndy Cole, Arizona Daily Sun, March 9, 2011.; "The Post Incorporation Payday," Grand Canyon Watchdog, March 8, 2011.

⁴⁸ Correspondence, from Elling and Barbara Halvorson, to Citizens of Tusayan, January 24, 2012.

⁴⁹ State of Arizona Coconino County Political Committee Campaign Finance Report, filed February 24, 2011.; "Tusayan 'bonuses' follow election," Cyndy Cole, Arizona Daily Sun, March 9, 2011.; "The Post Incorporation Payday," Grand Canyon Watchdog, March 8, 2011.

⁵⁰ § 501(c)(3).

⁵¹ *Id.*

⁵² Reg. § 1.501(c)(3)-1(c)(1).

As mentioned earlier, **Stilo accomplishes its desired private benefit by assuring that the "charitable" subsidized housing, for Kotzin, "shall occur only upon the U.S. Forest Service Final Approval."**⁵³ And for Ten-X, Stilo codifies the supremacy of its desired benefit by assuring "use of the Property shall not exceed twenty (20) single family residential units until such time as housing density on the Property may be increased upon obtaining U.S. Forest Service Final Approval."⁵⁴

The securing of a Forest Service easement as a lynchpin for massive private development and the contractual encumbrance of a Town to act as an agent for such private benefit are nonexempt activities. Grand Canyon Housing Foundation's contribution to the accomplishment of these Stilo private benefits are not an "insubstantial part" of the organization's activities as required by the Internal Revenue Code.⁵⁵

Specifically, the applicable Treasury Regulations under Internal Revenue Code states the following with regard to what qualifies as "insubstantial":

26 CFR 1.501(c)(3)-1 - Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(c) Operational test -

(1) Primary activities. An organization will be regarded as *operated exclusively* for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

(2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words *private shareholder or individual*, see paragraph (c) of § 1.501(a)-1.

The private benefit to Stilo principals is not "insubstantial" as established by court rulings.⁵⁶ One of the cases, *American Campaign Academy v. Commissioner* [92 T.C. 1053 (1989)] is particularly illustrative:

"... To establish that it operates primarily in activities which accomplish exempt purposes, petitioner must establish that no more than an insubstantial part of its activities does not further an exempt purpose. Sec. 1.501(c)(3)-1(c)(1), Income Tax Regs.³ The presence of a single substantial nonexempt purpose destroys the exemption regardless of the number or importance of the exempt purposes. *Better Business Bureau v. United States*, [326 U.S. 279](#), 283

⁵³ Kotzin Special Warranty Deed with Reverter, recorded March 11, 2014.

⁵⁴ SPECIAL WARRANTY DEED WITH REVERTER (Second Town Housing Parcel- TenX.).

⁵⁵ Reg. § 1.501(c)(3)-1(c)(1).

⁵⁶ Gen. Couns. Mem. 37789 (Dec. 18, 1978).; *American Campaign Academy v. Comm'r*, 92 TC 1053, 1078 (1989).; Rev. Rul. 76-206, 1976-1 C.B. 154.; and *Columbia Park & Recreation Association v. Comm'r*, 88 T.C. 1 (1987).

(1945); *Copyright Clearance Center v. Commissioner*, [79 T.C. 793](#), 804 (1982).

When an organization operates for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests, the organization by definition does not operate exclusively for exempt purposes. Sec. 1.501(c)(3)-1(d)(1)(ii), Income Tax Regs.⁴ Prohibited private benefits may include an "advantage; profit; fruit; privilege; gain; [or] interest." *Retired Teachers Legal Fund v. Commissioner*, [78 T.C. 280](#), 286 (1982). Occasional economic benefits flowing to persons as an incidental consequence of an organization pursuing exempt charitable purposes will not generally constitute prohibited private benefits. *Kentucky Bar Foundation v. Commissioner*, 78 T.C. at 926. Thus, should petitioner be shown to benefit private interests, it will be deemed to further a nonexempt purpose under section 1.501(c)(3)-1(d)(1) (ii), Income Tax Regs. This nonexempt purpose will prevent petitioner from operating primarily for exempt purposes absent a showing that no more than an insubstantial part of its activities further the private interests or any other nonexempt purposes. Sec. 1.501(c)(3)-1(c)(1), Income Tax Regs.

Respondent contends that petitioner's activities substantially benefit the private interests of Republican party entities and candidates, thereby advancing a nonexempt private purpose. Petitioner counters that respondent erred in denying its exemption application by incorrectly applying the private benefit analysis of section 1.501(c)(3)-1(d)(1)(ii), Income Tax Regs., to persons other than a "private shareholder or individual" within the meaning of section 1.501(a)-1(c), Income Tax Regs. Section 1.501(a)-1(c), Income Tax Regs., defines the words "private shareholder or individual" as persons having a personal and private interest in the activities of the organization (hereinafter private shareholders or individuals are sometimes referred to as insiders). Alternatively, petitioner argues that the private benefits, if any, conferred on various Republican entities and candidates were incidental to the exempt public educational purposes its activities further.

...we have often observed that the prohibition against private inurement of net earnings appears redundant, since the inurement of earnings to an interested person or insider would constitute the conferral of a benefit inconsistent with operating exclusively for an exempt purpose. *Western Catholic Church v. Commissioner*, [73 T.C. 196](#), 209 n. 27 (1979), affd. in an unpublished opinion 631 F.2d 736 (7th Cir. 1980). See also sec. 1.501(c)(3)-1(c)(2), Income Tax Regs. In other words, when an organization permits its net earnings to inure to the benefit of a private shareholder or individual, it transgresses the private inurement prohibition and operates for a nonexempt private purpose.

The absence of private inurement of earnings to the benefit of a private shareholder or individual does not, however, establish that the organization is operated exclusively for exempt purposes. Therefore, while the private inurement prohibition may arguably be subsumed within the private benefit

analysis of the operational test, the reverse is not true. Accordingly, when the Court concludes that no prohibited inurement of earnings exists, it cannot stop there but must inquire further and determine whether a prohibited private benefit is conferred. See *Aid to Artisans, Inc. v. Commissioner*, 71 T.C. at 215; *Retired Teachers Legal Fund v. Commissioner*, [78 T.C. 280](#), 287 (1982).

Moreover, an organization's conferral of benefits on disinterested persons may cause it to serve "a private interest" within the meaning of section 1.501(c)(3)-1(d)(1)(ii), Income Tax Regs. *Christian Stewardship Assistance, Inc. v. Commissioner*, [70 T.C. 1037](#) (1978). See *Kentucky Bar Foundation v. Commissioner*, *supra*; *Aid to Artisans, Inc. v. Commissioner*, *supra*; see also *The Martin S. Ackerman Foundation v. Commissioner*, [T.C. Memo. 1986-365](#). In this connection, we use "disinterested" to distinguish persons who are not private shareholders or individuals having a personal and private interest in the activities of the organization within the meaning of section 1.501(a)-1(c), Income Tax Regs. ...

In contrast to the nonpartisan activities conducted by the organization in Rev. Rul. 76-456, *supra*, respondent determined and we find that petitioner conducted its educational activities with the partisan objective of benefiting Republican candidates and entities. Petitioner was incorporated by Jan W. Baran, General Counsel of the NRCC on January 24, 1986. In April 1986, petitioner stated in its Application for Recognition of Exemption that its training program was an outgrowth of the program run by the NRCC.

Petitioner's activities have been exclusively funded by the National Republican Congressional Trust. Two of petitioner's three initial directors had significant ties to the Republican party: Joseph Gaylord as Executive Director of NRCC and John C. McDonald as a member of the Republican National Committee. Petitioner's bylaws empowered this Republican majority of the board to "have general charge of the affairs, property and assets of the Corporation." ...

The questions whether an organization serves private interests within the meaning of [sec. 1.501(c)(3)-1(d)(1)(ii), Income Tax Regs.] and whether an organization's activities are conducted for private gain * * * may be resolved * * * by examining the definiteness and charitable nature of the class to be benefited and the overall purpose for which the organization is operated. [71 T.C. at 215.]

Upon finding that (1) the disadvantaged artisans receiving the benefits of the organization's purchases comprised a charitable class, (2) the organization's method of selecting handicrafts for purchase indicated no selectivity with regard to individual artisans to be benefited, and (3) the organization's overall purpose was to benefit disadvantaged communities, we declared the *Aid to Artisans* organization exempt. 71 T.C. at 215-216. See also *Goldsboro Art League, Inc. v. Commissioner*, *supra*; *Cleveland Creative Arts Guild v. Commissioner*, [T.C. Memo. 1985-316](#). Compare *St. Louis Science Fiction Limited v. Commissioner*, [T.C. Memo. 1985-162](#). Similarly, we have found that organizations which further exempt purposes through sponsoring legal or medical referral services did not confer private benefits so long as the referral

service was open to a broad representation of professionals and no select group of professionals were the primary beneficiaries of the service. *Kentucky Bar Foundation v. Commissioner, supra*. See also *Fraternal Medical Specialist Services, Inc. v. Commissioner, T.C. Memo. 1984-644*.

To prevail herein, petitioner must establish that the Republican entities and candidates benefiting from the employment of its graduates are members of a charitable class, and within that charitable class do not comprise a select group of members earmarked to receive benefits. With regard to the charitable nature of Republican entities and candidates, petitioner contends that because the Republican party is comprised of millions of individuals with like "political sympathies," benefits conferred by the academy on Republican entities and candidates should be deemed to benefit the community at large. We are not persuaded by petitioner's argument. ...

...we conclude that petitioner is operated for the benefit of private interests, a nonexempt purpose. Because more than an insubstantial part of petitioner's activities further this nonexempt purpose, petitioner has failed to establish that it operates exclusively for exempt purposes within the meaning of section 501(c)(3). Consequently, petitioner is not entitled to an exemption from taxation under section 501(a)."

Just like in this Tax Court ruling, Stilo is setting up a sham, non-qualifying "charity" to promote its own self interest. The Grand Canyon Housing Foundation, funded by Stilo, is contractually related to and contributes significantly to Stilo's goal of securing Forest Service easement critically necessary for the success of Stilo's proposed massive development.

With all Directors of Grand Canyon Housing Foundation being Stilo employees, control of this organization by the organization's funders and Directors' employers is obvious. In Internal Revenue Code parlance, the Stilo contributors are called "disqualified persons." A "disqualified person" includes any substantial contributor to an organization.⁵⁷ Specifically, Internal Revenue Code defines "disqualified person" as:

"26 U.S. Code § 4946 - Definitions...

(a)DISQUALIFIED PERSON...

(1)IN GENERAL For purposes of this subchapter, the term "disqualified person" means...a person who is—

(A) a substantial contributor to the foundation..."

Here, only "disqualified persons" control the supporting organization. In the Grand Canyon Housing Foundation's IRS application, the Foundation fails to even mention the relationship between Stilo and the Foundation's Directors.

The Grand Canyon Housing Foundation's, "Supplemental Descriptions to Application for Recognition of Exemption Under Section 501(c)(3), Form 1023, responsive to Grand Canyon Housing Foundation's Application for Recognition of

⁵⁷ 26 U.S. Code § 4946 - Definitions and special rules.

Exemption Under Section 501(c)(3) of the Internal Revenue Code, IRS Form 1023, states,

"Part IV Disqualified Person Test...You do not qualify as a supporting organization if you are controlled directly or indirectly by one or more disqualified persons ...other than foundation managers or one or more organizations that you support...

1c Do any persons who are disqualified persons...have any influence regarding your operations, including your assets or activities?

If "Yes," (1) provide the names of these disqualified persons, (2) explain how influence is exerted over your operations (Including assets and activities). and (3) explain how control is vested over your operations (including assets and activities) by Individuals other than disqualified persons...

Grand Canyon Housing Foundation's answer: "No"

The "No" response asserts that no disqualified persons, and thus no "substantial contributor" by IRS definition has any influence regarding Grand Canyon Housing Foundation's operations. This is a serious misrepresentation, as Grand Canyon Housing Foundation's funding comes from Stilo. Stilo is a "disqualified person" under the Internal Revenue Code. Stilo's funding for the Grand Canyon Housing Foundation is an acknowledged, explicit, quid pro quo dependent on (1) the Town of Tusayan's acceptance of a contract, the Pre-Annexation Development Agreement between Stilo and the Town of Tusayan, securing annexation of Stilo's two inholding development properties (Kotzin and Ten-X) and (2) contractually securing, via the Pre-Annexation Development Agreement, the Town of Tusayan's help for Stilo's procurement of the lynchpin Forest Service easement upon which Stilo's proposed massive develop depends.⁵⁸

Further, all of the Stilo-installed Directors of the Grand Canyon Housing Foundation's Board of Directors are Stilo employees. The "charity" subsidized private housing goal whose success is contractually subordinated to Stilo securing Stilo's lynchpin Forest Service easement upon which Stilo's proposed massive develop depends. The Town of Tusayan is a "total, company-owned community"⁵⁹ which is contractually obligated to Stilo to help Stilo procure the lynchpin Forest Service easement upon which Stilo's proposed massive develop depends. The contractually obligated, "total, company-owned community,"⁶⁰ the Town of Tusayan, is represented by Council Members who are all Stilo employees and are the same Stilo employees installed by Stilo to the Grand Canyon Housing Foundation Board of Directors.

The Grand Canyon Housing Foundation's Application, Part V. Compensation and Other Financial Arrangements With Your Officers, Directors, Trustees, Employees, and

⁵⁸ Correspondence, from Elling and Barbara Halvorson, to Citizens of Tusayan, January 24, 2012.; Correspondence, from Vittorio Bianchi and Federico Pellicoli, Gruppo Stilo, to Tusayan Town Council, November 13, 2013.

⁵⁹ Correspondence, from Elling and Barbara Halvorson, to Citizens of Tusayan, January 24, 2012.

⁶⁰ Correspondence, from Elling and Barbara Halvorson, to Citizens of Tusayan, January 24, 2012.

Independent Contractors...2a asks, "Are any of your officers, directors, or trustees related to each other through family or business relationships?"

Grand Canyon Housing Foundation answers, "Yes."

But in its Supplemental Descriptions to Application, Grand Canyon Housing Foundation only offers to the IRS:

"Line 2. The Directors of GCHF will be Tusayan Town Council members, who serve in addition to their duties as Council members...As the population of Tusayan is very small (558 according to the 2010 Census), it is possible that GCHF directors and/or its executive director may be related through familial or business relationships."

This is another serious misrepresentation as Grand Canyon Housing Foundation fails to mention to the IRS that Stilo employs all of the Stilo-installed Grand Canyon Housing Foundation Directors, all of whom are Town of Tusayan Council members representing Stilo's Town of Tusayan, Stilo's "total, company-owned community."⁶¹

Conclusion

The Grand Canyon Housing Foundation's so-called "charitable" infrastructure supporting the Town of Tusayan's piecemeal, housing development is nothing more than a "pay-to-play," scheme for the private benefit of Stilo. Stilo's scheme further obligates the Town of Tusayan to assist Stilo in circumventing the Forest Service's March 4, 2016, rejection of Stilo's request for easement to their Kotzin and Ten-X inholdings.

Now that Stilo's latest scheme is exposed, we expect the Forest Service will refuse to facilitate this scheme. Any new request to piecemeal circumvent the Forest Service's March 4, 2016, rejection of Stilo's request for easement must be rejected.

Please forward all communications regarding this matter to Dr. Robin Silver, Center for Biological Diversity, PO Box 1178, Flagstaff, AZ 86002; phone: (602) 799-3275; or email: rsilver@biologicaldiversity.org.

Sincerely,



Robin Silver, M.D.
Co-Founder and Board Member

⁶¹ Correspondence, from Elling and Barbara Halvorson, to Citizens of Tusayan, January 24, 2012.