

Proof of Publication

State of Nebraska)
) ss.
County of Dodge)

Kathy Lodl, being first duly sworn, deposes and says she is the Publisher of the Hooper-Scribner Rustler Sentinel, a weekly legal newspaper having a bona fide circulation of more than 300 copies published in Hooper, Nebraska; and said newspaper has been published for at least 52 consecutive weeks prior to publication of attached notice; that said publication is of general circulation; that attached notice was published

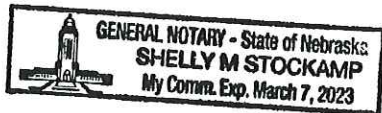
one (1) times on

April 24, 2019

Kathy Lodl
(Signature)

Subscribed to me in my presence and sworn to before me this
24th day of April, 2019

Shelly M. Stockamp
Notary Public



Publication Fee \$ 954

NOTICE OF PUBLIC HEARING
A Public Hearing of the Dodge County Board of Equalization will be held on May 8, 2019 at 10:05 A.M. in the County Board Room #301, 3rd floor of the Courthouse located at 435 N. Park, Fremont Nebraska to hear testimony of support, opposition, suggestions or observations with regards to the tax exemption status of the following: exemption to VSL Hooper, LLC on Grandview Heights Lots 13-21 in Hooper, NE (parcel #270074165). Questions may be directed to the County Assessor at 402-727-3918.
Fred Mytty
Dodge County Clerk
ZNEZ

Agenda Item # 27.
Date 5-8-2019

NEW

Agenda Item # 27
Date 5-8-2019

File with Your County Assessor on or Before December 31

Exemption Application

for Tax Exemption on Real and Personal Property by Qualifying Organizations

Read instructions on reverse side.

FORM
451

Failure to properly complete or timely file this application will result in a denial of the exemption.

Name of Organization VSL Hooper, LLC	County Name Dodge	Tax Year 2019
Name of Owner of Property VSL Hooper, LLC	State Where Incorporated Nebraska	
Street or Other Mailing Address of Applicant 20220 Harney St.	Total Actual Value of Real and Personal Property \$722,748.00	Parcel ID Number 270074165, 0027725.1
City Elkhorn	State NE	Zip Code 68022-2063
Contact Name Brian Stuhr		Phone Number 402-895-3932
Email Address bstuhr@vhsmail.com		

Type of Ownership
 Agricultural and Horticultural Society
 Educational Organization
 Religious Organization
 Charitable Organization
 Cemetery Organization

Name	Title of Officers, Directors, or Partners	Address, City, State, Zip Code
Jack Vetter	CEO	20220 Harney Street, Elkhorn, NE. 68022
Glenn Van Ekeren	President	20220 Harney Street, Elkhorn, NE. 68022
Brian Stuhr	CFO	20220 Harney Street, Elkhorn, NE. 68022

Legal description of real property and general description of all depreciable tangible personal property, except licensed motor vehicles:

See attached Schedule A



Property described above is used in the following exempt category (please mark the applicable boxes):
 Agricultural and Horticultural Society
 Educational
 Religious
 Charitable
 Cemetery

Give a detailed description of the use of the property:

See attached Schedule B

All organizations, except for an Agricultural and Horticultural Society, must complete the following questions.

Is all of the property used exclusively as described above? YES NO

Is the property used for financial gain or profit to either the owner or owner or organization making exclusive use of the property? YES NO

Is a portion of the property used for the sale of alcoholic beverages? YES NO
If Yes, state the number of hours per week _____

Is the property owned or used by an organization which discriminates in membership or employment based on race, color, or national origin? YES NO

Under penalties of law, I declare that I have examined this exemption application and, to the best of my knowledge and belief, it is correct and complete. I also declare that I am duly authorized to sign this exemption application.

sign here Brian Stuhr CFO 12/19/18
Authorized Signature Title Date

Retain a copy for your records.

For County Assessor's Recommendation

Approval

Approval of a Portion

COMMENTS: Meets all requirements of NE Statute 77-202.
Approved for 2019.
Abbie Phurshill 4-11-2019

Schedule A

LEGAL DESCRIPTION OF REAL PROPERTY

Lots 13, 14, 15, 16, 17, 18, 19, 20 and 21 in Grandview Heights Addition to the Village of Hooper, Dodge County, Nebraska as platted and recorded.

ADDRESS OF REAL PROPERTY

400 East Birchwood, Hooper, Nebraska 68031

DEPRECIABLE TANGIBLE PERSONAL PROPERTY

400 East Birchwood, Hooper, Nebraska 68031 is a nursing home facility commonly known as Hooper Care Center. A general description of the tangible personal property is all tangible personal property located at 400 East Birchwood, Hooper, Nebraska 68031 and used in conjunction with the operation of Hooper Care Center. This includes, without limitation, the property identified on the attached pages, and all beds, furniture (except furniture owned by the residents); fixtures, linens, bedding, kitchen equipment and utensils, cleaning equipment, food and drug inventories, window shades and drapes, screens, awnings, stoves, water heaters, refrigerators, freezers and lawn and garden equipment.



Schedule B



DESCRIPTION OF USE OF THE PROPERTY

Give a detailed description of the use of the property.

The real property is used by VSL Hooper, LLC ("Owner") as a skilled nursing facility known as Hooper Care Center. The property is licensed by the State of Nebraska as a Skilled Nursing Facility. The property consists of residential units, a common dining room, a multipurpose room, an activities area, business offices, nurses' station, and lounge areas.

The Owner respectfully submits that its use of the real property in question meets the requirements for property tax exemption as set forth in Neb. Rev. Stat. § 77-202 and 350 Neb. Admin. Code § 40-002.03. It is established law in Nebraska that the operation of a nursing home on a nonprofit basis is a charitable use qualifying the owner for real and personal property tax exemption. *Ev. Lutheran Good Samaritan Soc. V. Cty. of Gage*, 181 Neb. 831, 151 N.W.2d 446 (1967); *Bethesda Found. v. Cty. of Saunders*, 264 N.W.2d 574, 200 Neb. 574 (1978).

Neb. Rev. Stat. § 77-202 and 350 Neb. Admin. Code § 40-005.01 provide that five criteria must be met for an exemption to be allowed. Those criteria are listed below, along with a brief explanation as to why the Owner meets each of those five criteria. Although there is a great deal of overlap among the first three criteria, they will nonetheless be addressed separately.

1. The property must be owned by an educational, religious, charitable, or cemetery organization. (Section 40-005.02).

The first criterion relates to ownership; it requires that the owner of the property in question be a charitable organization. Both Neb. Rev. Stat. § 77-202(d) and 350 Neb. Admin. Code § 40-005.01C define a charitable organization to mean "an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons." The Owner clearly qualifies as a charitable organization under this definition.

A. The Owner is organized exclusively for charitable purposes.

The Owner is a Nebraska nonprofit limited liability company with a single member

primary purpose of the Owner and Vetter Senior Living is to own and operate nonprofit nursing homes and other facilities for the elderly. The Certificate of Organization of the Owner and the Articles of Incorporation of Vetter Senior Living both state their purposes as follows:

"The purposes for which the Company is formed are exclusively for charitable, religious or educational purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent federal tax laws. Without limiting the generality of the foregoing but subject to the limitations of the foregoing, the corporation's purposes shall include the following:

A. To acquire, build, own, manage and operate nonprofit homes for the physical, psychological, and spiritual care of elderly persons, without restriction as to race, creed, or color; said homes being described by various names, including but not limited to the following: old folks' homes, nursing homes, care homes, extended care facilities, senior citizens' homes, rest homes, convalescent homes and homes for the aged; to construct, own, operate, and maintain general or special facilities upon a nonprofit basis for the medical care and treatment of patients without restrictions as to race, creed, color or age, and to engage in contracts or agreements for the construction, ownership, operation and maintenance of facilities with municipalities, counties, states, or other governmental subdivisions for any lawful or legal purpose; to construct, own, operate and maintain extended care facilities for the convalescence of patients or for the care, education, or treatment of mentally retarded or otherwise handicapped persons without restriction as to race, creed, color, or age.

B. To provide relief to the poor and underprivileged.

C. To promote the social welfare.

D. To promote the public health.

E. To educate the public.

F. To make distributions to organizations that qualify as exempt organizations under section 501(c) of the Internal Revenue Code of 1986, or the corresponding sections of any future federal tax code."

that the owners of such facilities are charitable organizations if they operate on a nonprofit basis.

"Hospitals operated as nonprofit institutions are universally classed as charitable institutions." *Ev. Lutheran v. Cty. of Gage*, 151 N.W.2d at 449 (1967).

"Charity is defined as being something more than mere almsgiving or the relief of poverty and distress, and it has been given a significance broad enough to include practical enterprises for the good of humanity operated at a moderate cost to those who receive the benefits. A nursing home or home for the aged and infirm operated on a nonprofit basis is exempt from taxation as a charitable institution." *Ev. Lutheran Good Samaritan Soc'y v. Buffalo Cty. Bd. of Equalization*, 230 Neb. 135, 141, 430 N.W.2d 502, 505 (1988).

C. The IRS has recognized that Vetter Senior Living and the Owner are organized and operated for charitable purposes.

The United States Internal Revenue Service recognized Vetter Senior Living and the Owner as charitable organizations exempt from federal income taxes on November 20, 2014. Vetter Senior Living is a 501(c)(3) organization as described in the Internal Revenue Code of 1986, as amended (the "Code"). It qualified under Section 501 (c)(3) of the Code as a charitable organization. It is not a private foundation within the meaning of Section 509(a) of the Code by virtue of it being a publicly supported organization under Section 509(a)(2). The IRS treats the Owner as a part or division of Vetter Senior Living and therefore the Owner is included within the federal tax exemption of Vetter Senior Living.

D. The Owner is an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons.

It is indisputable that the Owner is faithfully carrying out its mission to provide for the physical, psychological, and spiritual care of elderly persons. For purposes of this application, the question then becomes whether the Owner is an organization which is "operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons" as required by 350 Neb. Admin. Code § 40-005.01C. The answer to that question is absolutely "Yes." In fact, the Owner is operated exclusively for all three

provided to the residents constitute the care and supervision which these residents are unable to provide for themselves. Caring for the physical needs of the residents is a primary function of the facility. The following are some of the services provided at the facility which each meet a specific physical need of its residents: nursing care; administration of medications; assistance with ambulation; assistance with bathing and dressing; provision of meals and food; laundering of clothes, linens and bedding; on-site rehabilitation; security service; and emergency assistance, to name a few. The Owner provides the residents with nursing care and assists them with the basic physical necessities of life such as dressing, walking, bathing and eating, and it is therefore without doubt operating for the physical benefit of those residents.

ii. Mental and social benefit.

The Owner also operates its facility for the mental and social benefit of the residents. Programs at the Owner's facility are also designed specifically to assist elderly residents deal with the aging process. The environment and support services are designed to assist the resident to enjoy a comfortable life style while maintaining as much dignity as possible. The services and environment provided at the facility contribute to the mental health of its residents. The dignity and independence enjoyed by the residents certainly assist them in maintaining a higher sense of self-esteem and a more positive outlook on their future and life in general. The Owner definitely provides such mental benefits to its residents.

There is also a wide range of social activities to keep the residents involved and socially active. There are movies, classes, lectures, arts, crafts and regular social gatherings. These activities foster a sense of community among the residents and provide them the opportunity for meaningful social interaction.

iii. Public or indefinite number of persons.

To qualify for exemption, the mental, social or physical benefits must be provided to the "public or an indefinite number of persons." The Nebraska Supreme Court has defined this requirement to mean "...a group of persons with a common characteristic, that is, a class, uncertain in number and composed from the public at large or a community." *Neb. State Bar Found. v. Lancaster Cty. Bd. of Equalization*, 237 Neb. 1, 16, 465 N.W.2d 111, 120-21 (1991). The services provided at the Owner's facility are generally available to elderly persons over the age of 65. That group obviously shares the common characteristic of advanced age. That group is also uncertain in number and composed from the public at large. The Owner is therefore

to incidental use." There are two aspects to this test. The property must be used for charitable purposes and the purpose must be exclusive.

A. The operation of a nursing facility on a nonprofit basis is the use of property for charitable purposes.

i. The provision of medical care is a charitable use.

To qualify for Nebraska property tax exemption, the Owner must demonstrate that it uses its property for charitable purposes. As indicated previously, Nebraska law has long recognized that the operation of medical facilities such as hospitals and nursing homes by a nonprofit organization is the use of property for charitable purposes.

"Hospitals operated as nonprofit institutions are universally classed as charitable institutions." *Ev. Lutheran v. Cty. of Gage*, 151 N.W.2d at 449.

"Charity is defined as being something more than mere almsgiving or the relief of poverty and distress, and it has been given a significance broad enough to include practical enterprises for the good of humanity operated at a moderate cost to those who receive the benefits. A nursing home or home for the aged and infirm operated on a nonprofit basis is exempt from taxation as a charitable institution." *Ev. Lutheran v. Buffalo Cty.*, 430 N.W.2d at 505.

Hospitals, nursing homes and assisted-living facilities are each included within the definition of "health care facility" found at Neb. Rev. Stat. § 71-413. Neb. Rev. Stat. § 71-432 requires that each health care facility must be licensed by the State of Nebraska before they can operate. The term "Skilled nursing facility" is defined at Neb. Rev. Stat. § 71-429, and the Owner's property is licensed by the State of Nebraska as a Skilled Nursing Facility.

ii. Operating a skilled nursing facility relieves the burdens of government and is a charitable use.

The use of property as a skilled nursing facility is a charitable use for yet another reason. If the Owner did not provide nursing care at its facility, the government would be forced to provide such treatment to its residents. The Owner therefore relieves the government from the burden of providing such treatment.

The Owner's facility is solely used as a skilled nursing facility licensed by the State of Nebraska. Not only is this the predominant use of the property, it is the only use of the property. No part of the facility is used by any other organization for any other purpose. The Owner therefore uses it exclusively for its charitable purposes.

3. The property must not be used for financial gain or profit to either the owner or user. (Section 40-005.05).

350 Neb. Admin. Code § 40-005.05 states that "[t]here is no financial gain or profit if no part of the income from the property is distributed to the owner, users, members, directors, or officers, or to private individuals." It should be noted that this is virtually the same requirement that must be met for a nonprofit organization to obtain and thereafter maintain its exemption from federal income taxes. As discussed below, no part of the income from the property is distributed to the Owner's officers or directors, and it therefore also meets this criterion.

A. The Owner's organizational documents prohibit private benefit.

Article 3.2.A. of the Owner's Certificate of Organization states that "[n]o part of the earnings of the Company shall inure to the benefit of any trustee, officer or manager of the Company, or any private individual..." Since its formation, the Owner's activities have been conducted strictly in accordance with this prohibition.

B. The Internal Revenue Service has found there to be no private benefit at Vetter Senior Living or the Owner.

In order to initially obtain, and to thereafter maintain federal tax-exempt status from year to year, the United States Internal Revenue Service must be satisfied that none of the assets of Vetter Senior Living or the Owner are used or held for private profit by either the managers, directors, officers, or other private persons. In granting federal tax exemption, the Internal Revenue Service has determined that the assets of the Owner are not used for the benefit of its managers, directors or officers, or of private individuals. If it had found any evidence of private benefit, the IRS would not have granted tax exempt status to Vetter Senior Living and the Owner.

C. Other evidence of no private benefit.

private capacity, such as the organization's founders, trustees, directors, officers, members or their families, entities controlled by these individuals, or any other persons having a persona and private interest in the activities of the organization." *The Law of Tax-Exempt Organizations*, Bruce R. Hopkins, p. 549 (Eleventh Edition, 2016).

In other words, a nonprofit corporation cannot pay its net income to its directors or officers in the way that a for-profit organization could pay dividends to its owners. As indicated previously, the Owner's organizational documents prohibit this type of benefit, and in fact there has been no such benefit, as evidenced by the Internal Revenue Service's approval of the Owner's operations.

The above quote from *The Law of Tax Exempt Organizations* also indicates that a nonprofit organization can receive income and produce goods and services without such activity constituting private benefit. Nebraska law also supports that position. A long-standing legal principle in Nebraska is that "financial gain or profit" is not present simply because the residents are charged for the services they receive. Even though the Owner charges its residents for the services they receive, Nebraska law provides that this does not constitute private benefit to the owner.

"The fact that patients who are able to pay are required to do so does not deprive a charitable institution of its eleemosynary character." *Ev. Lutheran v. Buffalo Cty.*, 430 N.W.2d at 505, citing *Ev. Lutheran v. Cty. of Gage*, 151 N.W.2d 446.

It is also well-established law that a nonprofit organization can pay for goods and services, including reasonable salaries to its officers and directors, without such activity constituting private benefit.

"A tax-exempt organization subject to the private inurement doctrine can, of course, make ordinary and necessary expenditures in furtherance of its operations without forfeiting its exempt status. This includes the payment of compensation for services rendered, whether to an employee or to a vendor, consultant, or other independent contractor. As a court observed, the law 'places no duty on individuals operating charitable [or, for that matter, other exempt] organizations to donate their services; they are entitled to reasonable

5. The property must not be owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. (Section 40-005.07).

The Owner does not discriminate in membership or employment based on race, color or national origin, or on any other basis. The Owner does not discriminate in its employment practices, in its admissions practices, in its operations or in any other way.

Article 3.1.A of the Owner's Certificate of Organization provides in part as follows:

"... the Company's purposes shall include the following: to construct, own, operate, and maintain general or special facilities upon a nonprofit basis for the medical care and treatment of patients *without restrictions as to race, creed, color or age*...to construct, own, operate and maintain extended care facilities for the convalescence of patients or the care, education, or treatment of mentally retarded or otherwise handicapped persons *without restriction as to race, creed, color or age.*" (Emphasis supplied)."

Furthermore, the Owner has in place policies which prohibit discrimination in respect of race, color, national origin, religion, disability, gender, marital status or ability to pay."

The Owner operates strictly in accordance with the nondiscrimination policies in its governing documents and policies. The Owner is proud of its record of nondiscrimination, and there is no question that it meets this requirement for Nebraska property tax exemption.

NOTE:

A copy of Vetter Senior Living's determination letter from the United States Internal Revenue Service follows this page. That letter is evidence that the IRS recognizes that Vetter Senior Living and the Owner are exempt from the payment of federal income tax as qualifying charitable organizations.



ROBERT L. LEPP
ATTORNEY
boblepp@mgwl.com

February 7, 2019

VIA E-MAIL: DEBBIE.CHURCHILL@DODGECOUNTY.NE.GOV

Ms. Debbie Churchill
Dodge County Assessor
435 North Park Avenue, Room 202
Fremont, NE 68025

RE: VSL Hooper, LLC Application for Property Tax Exemption (2019)
Our File No.: 18342-0046

Dear Ms. Churchill:

This law firm represents VSL Hooper, LLC which recently filed an Exemption Application (Form 451) with your office. You recently sent a list of questions to our client which request further information. A copy of that request letter is enclosed. VSL Hooper, LLC has requested that we respond to that request. The responses of VSL Hooper, LLC to your questions are as follows:

OWNERSHIP

1. Does the organization hold legal title to the building/parcel for which the exemption is sought? If not, does the organization hold equitable title under a land contract, lease-purchase agreement, deed of trust or some other instrument? Please describe the nature of the instrument.

RESPONSE: Yes.

2. If the organization holds equitable, but not legal title, will it obtain legal title at some point in the future? If so, describe the circumstances under which that will occur.

Ms. Debbie Churchill
DODGE COUNTY ASSESSOR
FEBRUARY 7, 2019

RESPONSE: The organization is NOT leasing the property.

EDUCATIONAL (If not applicable, please indicate N/A)

1. Describe the nature of any academic, technical or vocational subjects taught in the facility.

RESPONSE: N/A.

2. Are they taught year round? If not, what portion of the year are the courses taught?

RESPONSE: N/A.

3. Is there a curriculum? If so, what is the curriculum and describe it.

RESPONSE: N/A.

4. Has the curriculum been approved by any federal, state or local agency?

RESPONSE: N/A.

5. Does the instructor hold a teaching certificate or other certifications? If so, please describe.

RESPONSE: N/A.

CHARITABLE

1. Who may use the property? Are there restrictions based on fees or costs? What happens if someone can't pay?

RESPONSE: Generally, persons who are aged, infirm or suffering physical disability and who require skilled nursing services may use the property. The criteria for admission is the need for skilled nursing services. VSL Hooper, LLC's property is licensed by the State of Nebraska as a Skilled Nursing Facility, operated under the name Hooper Care Center.

Ms. Debbie Churchill
DODGE COUNTY ASSESSOR
FEBRUARY 7, 2019

2. Is there a benefit to society to have the property used in this way? Is this a service that government would have to provide or subsidize if this use of the property was not occurring?

RESPONSE: Yes, there is a benefit to society to have the property used as a skilled nursing facility. If VSL Hooper, LLC did not provide skilled nursing services to the residents, the government, at its expense, would be forced to provide such services to the residents. Furthermore, if these skilled nursing services were not made available by VSL Hooper, LLC, many of the residents would be forced to receive treatment in hospitals, which are generally more expensive than nursing homes. The government is therefore saved the greater expense of having to provide hospitalization for these residents. Case law in Nebraska, and many other states, recognizes that the government would be obligated to provide health care to its residents if that care was not provided by the private sector. In holding that an assisted living facility in Nebraska operated on a non-profit basis qualified for property tax exemption, the Nebraska Supreme Court noted that the applicant "performs services which the state is relieved pro tanto from performing." *Bethesda Foundation v. Buffalo County Board of Equalization*, 640 N.W.2d 398, 263 Neb. 454 (2002).

3. Is any of the property leased out? If so, for what reason?

RESPONSE: No.

4. Is there a meeting room or large area rented out for events? If so, what are the events?

RESPONSE: No.

5. Is there alcohol sales involved? If so, how many hours per week?

RESPONSE: No.

Please call me if you have any questions or if you require anything further. We look forward to receiving your recommendation, and we thank you for your assistance in this matter.

Very truly yours,



Debbie Churchill
Dodge County Assessor's Office
435 North Park Avenue Room #202, Fremont, NE 68025
Office: (402) 727-3911 Fax: (402) 727-3913

January 24, 2019

VSL Hooper LLC
% Jack Vetter CEO
20220 Harney St
Elkhorn NE 68022-2063



Re: 2019 Exemption Application Form 451

Good Day!

In reviewing the above form and data, it has been determined there is not enough information to make a recommendation on your 2019 Exemption Application. We would appreciate your addressing the following questions:

OWNERSHIP:

1. Does the organization hold legal title to the building/parcel for which the exemption is sought? If not, does the organization hold equitable title under a land contract, lease-purchase agreement, deed of trust or some other instrument? Please describe the nature of the instrument.
2. If the organization holds equitable, but not legal title, will it obtain legal title at some point in the future? If so, describe the circumstances under which that will occur.
3. Is the organization leasing the property and is it seeking exemption for its leasehold interest in the building/parcel? If so, provide a description of the terms and conditions of the lease agreement, including the owner of the property, the term of the lease and the rent charged.

EDUCATIONAL: (If not applicable, please indicate N/A)

1. Describe the nature of any academic, technical or vocational subjects taught in the facility.
2. Are they taught year round? If not, what portion of the year are the courses taught?
3. Is there a curriculum? If so, what is the curriculum and describe it.
4. Has the curriculum been approved by any federal, state or local agency?
5. Does the instructor hold a teaching certificate or other certifications? If so, please describe.

CHARITABLE:

1. Who may use the property? Are there restrictions based on fees or costs? What happens if someone can't pay?
2. Is there a benefit to society to have the property used in this way? Is this a service that the government would have to provide or subsidize if this use of the property was not occurring?
3. Is there any other information that should be noted? If so, for what reason?