



DATE: February 25, 2022
TO: Planning & Development Committee
FROM: Ben Shaiken, Director of Government Relations, The Alliance
RE: H.B. 5168 An Act Concerning Property Tax Exemptions for Property Used for Charitable Purposes

Good afternoon Senator Cassano, Representative McCarthy Vahey, Senator Hwang, Representative Zullo and distinguished members of the Planning & Development Committee:

I am Ben Shaiken, Director of Government Relations at the Connecticut Community Nonprofit Alliance (The Alliance). The Alliance is the statewide advocacy organization representing nonprofits. Community nonprofits provide essential services to over half a million individuals and families in Connecticut every year, improving the quality of life in communities across the State.

The Alliance urges you to support H.B. 5168 An Act Concerning Property Tax Exemptions for Property Used for Charitable Purposes. We thank the members of this Committee for unanimously supporting H.B. 6103 last year and look forward to working again on this proposal in 2022.

Nonprofits are explicitly exempt from federal, state, and local taxes for good reason: they provide essential services to residents, so government doesn't have to. Nonprofits feed the hungry, house the homeless, support people with intellectual/developmental disabilities, treat people with mental health and substance abuse needs, provide arts and culture that make our communities vibrant, and much more.

Nonprofits exist for public benefit and must operate for specific charitable, educational, or religious purposes. The mission of nonprofits is to improve the health and well-being of our local communities, enhance the quality of life and serve the public good. In exchange, nonprofits are exempt from property, income, and sales tax, and have access to tax-deductible contributions from individuals and corporations. This social compact dates back more than 100 years.

But unfortunately, some local assessors have been denying tax exemption applications for charitable property owned and operated by Connecticut's nonprofit organizations.

H.B. 5168 proposes several changes to the existing exemption statutes to clarify the legislature's intent to exempt from property taxes group homes for people with disabilities, substance abuse treatment centers, homeless shelters, domestic violence programs, and other residential programs. This bill is **not an expansion** of any exemption and does not propose an additional exemption. For municipalities already following the law, there would be no fiscal impact.

The bill also proposes changes to the current process for determining exemptions, and adds language to, in cases where a charitable exemption denial could not have happened except by ignoring the law, allow nonprofits to collect legal fees from towns if they have been wrongly denied an exemption.

The legislature has granted broad authority to 169 municipal assessors to interpret complicated state statutes and their accompanying jurisprudence. If it intends to continue to grant this authority without reform, then it should pass these provisions of H.B. 5168 to standardize the determination process and to provide a disincentive to the few towns that are issuing vexatious denials rather than implementing the law.

The testimony below goes into detail about the situation facing Connecticut's charitable nonprofits and the solutions proposed in H.B 5168.

Nonprofits are still being wrongfully assessed, impacting programs.

Charitable nonprofits are exempted from local property tax by Section 12-81 of the Connecticut General Statutes. Subsection (7)(a)¹, which exempts the property owned by "a corporation organized exclusively for... charitable purposes." But **despite this statute, some tax assessors are taxing nonprofits for property that is exempt.**

The Alliance has analyzed the exemption status of almost 300 properties owned by nonprofits and in charitable use across nearly 100 municipalities and found that **at least 44 charitable properties across 23 towns have been denied tax exemption by local assessors** as recently as this month. An additional 137 properties have received no response at all yet from assessors, despite applying for exemption in November.

This is following a **unanimous State Supreme Court decision** in September 2021 in Rainbow Housing Corporation, et al v. Town of Cromwell² **that clarified and reaffirmed the exemption of charitable property.**

Critical funding is diverted away from direct service provision to people in need when nonprofits, burdened by years of state budget cuts, are forced to choose between costly litigation and paying taxes on property that is exempt by state law.

In a survey we conducted in 2018³, one nonprofit stated *"Funding for the program is already below program expenses and is subsidized by fundraising. A tax payment will further decrease our funding and make sustaining the current program model difficult going forward."*

People who depend on community services would have nowhere to turn if funding is redirected away from direct care to taxes. These cuts would come at a time when the demand for community services is increasing. Nonprofits told us:

¹ https://www.cga.ct.gov/current/pub/chap_203.htm#sec_12-81

² <https://www.jud.ct.gov/external/supapp/Cases/AROCr/CR338/338CR52.pdf>; Concurring Opinion: <https://www.jud.ct.gov/external/supapp/Cases/AROCr/CR338/338CR52A.pdf>. The concurring opinion (from one Justice) agrees the property in question is exempt but disagrees the Court can say the statute is ambiguous and thus reference legislative history in its decision, and therefore suggests dictionary definitions of the word "temporary."

³ <https://ctnonprofitalliance.org/wp-content/uploads/2018/05/Summary-of-Nonprofit-property-tax-survey.pdf>

- *“Having to pay taxes could literally force the close-down of our residential programs. There is no other source of revenue for taxes.”*
- *“We cannot afford to pay property tax and continue individualized services to the DDS population.”*
- *“We had paid almost \$50,000 in taxes. \$50,000 is the equivalent of 25,000 meals or one case manager.”*
- *“We have no dollars for anything but direct service. This will lead to more homeless men not getting housed - which will be a domino effect.”*

Residential services are being targeted.

Many nonprofits that provide residential supports and services to Connecticut’s most vulnerable residents are being targeted to receive tax bills.

According to C.G.S. § 12-81(7)(B)⁴, subsidized low-income housing is not exempt from property taxes. This language was added to the law in 1975 and applies to property known then as “project housing,” now referred to as “low-income housing developments.” In 2003, because some assessors were using this statute to tax services provided by nonprofits, the **legislature passed a law to specifically exempt different types of residential services provided by nonprofits from property taxes**. The statute currently reads:

“(B) On and after July 1, 1967, housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income shall not constitute a charitable purpose under [subsection A]. **As used in this subdivision, “housing” shall not include** real property used for **temporary housing** belonging to, or held in trust for, any corporation organized exclusively for charitable purposes and exempt from taxation for federal income tax purposes, **the primary use of which property is one or more of the following: (i) An orphanage; (ii) a drug or alcohol treatment or rehabilitation facility; (iii) housing for persons who are homeless, persons with a mental health disorder, persons with intellectual or physical disability or victims of domestic violence; (iv) housing for ex-offenders or for individuals participating in a program sponsored by the state Department of Correction or Judicial Branch; and (v) short-term housing operated by a charitable organization where the average length of stay is less than six months.** The operation of such housing, including the receipt of any rental payments, by such charitable organization shall be deemed to be an exclusively charitable purpose;”

Some assessors have contented in public hearings, exemption denials and in ensuing court cases that the current law means that as soon as the average length of stay in one of these settings is more than six months (or some other durational limit they can determine within their discretion), the property is no longer tax-exempt.

⁴ https://www.cga.ct.gov/current/pub/chap_203.htm#sec_12-81

The State Supreme Court explicitly rejected this argument. Their decision states⁵:

“In light of the objectives animating P.A. 03-270 and the foregoing legislative history, we conclude that **the term 'temporary' does not have an inflexible or fixed durational limitation; instead, the durational limitation will vary depending on the particular purpose of the charitable organization and the needs of the residents** who fall within the categories enumerated in § 12-81 (7) (B). **So long as a resident’s stay is impermanent, transitional, and in furtherance of one of the enumerated categories of charitable purposes, it is ‘temporary’ within the meaning of § 12-81 (7) (B).**

...

“The durational limits attaching to the term “temporary” may vary depending on the purpose of the charitable organization and the needs of the residents being served, and **our construction of the statute is consistent with the intent of the legislature** to exempt from taxation real property used exclusively for charitable purposes enumerated in § 12-81 (7) (B) (i) through (v).”

Despite this decision, denials of these programs continue. Our recent analysis has found **at least seven new denials of residential programs** since the decision was issued in September, some occurring as recently as this month.

That’s why we support the language in Section 1 of H.B. 5168, that provides technical and clarifying changes to statute to:

1. Remove the word “temporary,”
2. Change the word “and” in between subdivisions (iv) and (v) to “or,”
3. Add definition to the term “subsidized housing.”

These changes clarify that group homes and other kinds of residential services provided by nonprofits are tax exempt and will, if passed, prevent attempts to wordsmith the word “temporary” and nullify the fact that different assessors define the term differently, despite a clear directive from the State Supreme Court.

The process of determining tax exemption is broken.

We also support the provisions of H.B. 5168 that address process-related changes to the law.

The Charitable Tax Exemption Application Form:

Nonprofits are required to fill out a form in each town every four years to be granted their exemption. Often, community nonprofits own and operate exempt property across many municipalities. Despite best practice, different municipalities use different forms for this purpose.

Some municipalities have also begun requiring organizations share data that is protected by patient privacy laws like HIPAA (e.g.: the names of each person receiving treatment in a residential program) and/or asking for information that has no relation to the statutory requirement for exemption (e.g.: the salaries of the 10 highest paid employees). Even the standard form that the statewide association

⁵ <https://www.jud.ct.gov/external/supapp/Cases/AROCr/CR338/338CR52.pdf> at 10

suggests assessors use includes questions that have no bearing on their legal duty (e.g.: “List any other Connecticut Municipality that has DENIED the organization an exemption...”)⁶.

We support the provisions in Section 2 of H.B. 5168 that standardize the practice of determining exemptions across the State. The bill would direct the Office of Policy and Management to create a form that requires nonprofits provide only the information that an assessor is required by law to analyze when making an exemption determination. Once the form is developed, the bill requires its use in each municipality.

We are also hopeful this provision will eliminate the disagreement that exists today among assessors. Our recent analysis shows that while denials are certainly widespread, they do not represent the majority opinion of assessors. Of the 295 properties we’ve analyzed, 44 properties in 23 towns have been denied exemption, but 114 properties in 54 towns have had their exemptions approved.

Requiring the state to produce the form, in consultation with The Alliance and the Assessor’s association, will mean that all assessors can use all use a rubric set by the boundaries of the law to determine whether the organization applying, and the property’s use is charitable.

Notice of Approval or Denial:

Section 2 of the bill also requires assessors provide a detailed reason for their denial of a charitable property tax exemption in writing at the time the denial is issued. The Committee has wisely narrowly applied this provision to properties claiming charitable exemption only. We support this language because if passed, nonprofits will know if they were denied because of an error or a missed deadline or an actual dispute over the use of their property without having to pay a lawyer and go to court.

We have found 46% of properties have not yet received any answer from municipalities regarding their application as of this week, despite filing for their exemptions by November 1 and the fact that Boards of Assessment Appeals begin meeting in March. Our members report that it is common practice for assessors to send nothing but a tax bill if the exemption is denied (and, to send nothing at all if it is approved). We are supportive that H.B. 5168 addresses at least part of this challenge.

There needs to be a disincentive for municipalities ignoring the law.

While this is certainly not widespread, **some municipalities are aggressively and vexatiously pursuing charitable tax-exempt properties**, making it difficult, costly, and confusing for nonprofits to be granted the exemption which they are entitled to by law.

Charitable nonprofits struggle to find the resources to fight these denials in court, and those who have been engaged in years-long legal battles report spending well over \$100,000. Even as they ultimately prevail, they are only compensated by a return of the taxes they paid under protest. Many other organizations choose to just pay taxes, because fighting a wrongly issued denial is not worth the legal fees.

For a municipality, the only downside to aggressively litigating these cases, even when denials have been issued on shaky legal grounds, is that if they ultimately lose, they no longer collect the tax.

⁶ <https://caao.com/wp-content/uploads/2016/03/M-3-CAAO-with-housing.pdf> Question 20

That’s why we support Section 3 of H.B. 5168, which would, *in the very small minority of cases where charitable property has been denied and that denial could not have been reached except by an assessor ignoring the law*, allow a judge to award a nonprofit the reimbursement of its costs pursuing the case, including their legal fees. We understand this proposal will be controversial, but we struggle to think of a solution short of this measure to disincentive municipalities from engaging in vexatious denials of tax exemptions.

Nonprofits are always willing to work with municipalities to ensure their properties and the people served in them are welcomed into their communities—to be “good neighbors.” They often go to great lengths, well beyond their statutory and contractual obligations, to work closely with emergency services and others.

We look forward to working with this Committee and other stakeholders to continue to design a bill that can solve this problem without opening the door to abuse by anyone—municipalities or property-owners.

We thank the Committee raising this important bill and respectfully request your support for H.B. 5168.

Ben Shaiken
bshaiken@ctnonprofitalliance.org

Attachments:

Appendix A: What nonprofit property is exempt from property taxes?

Appendix B: What did the State Supreme Court decide in *Rainbow Housing, et al v. Town of Cromwell*?

Appendix C: State Supreme Court Majority and Concurring opinions in *Rainbow Housing, et al v. Town of Cromwell*

Appendix D: Amicus Brief from *Rainbow Housing, et al v. Town of Cromwell* from Attorney General William Tong & Solicitor General Clare Kindall

Appendix A: What nonprofit property is exempt from property taxes?

As previously mentioned, charitable nonprofits are exempted from local property tax by C.G.S. § 12-81 of the Connecticut General Statutes. Subsection (7)(a), which exempts the property owned by “a corporation organized exclusively for... charitable purposes.” The Connecticut Supreme Court has laid out a simple test⁷ for assessors to determine what does and does not constitute “charitable”:

1. **The corporation must be organized exclusively for charitable purposes.** The Court has held that, “Charity embraces anything that tends to promote the well-doing and the well-being of social man.”
2. **The organization must not be self-supporting.** This means the organization must rely on or expect private philanthropic support and cannot rely exclusively on fees for its services.
3. **The organization must relieve a state burden.** This means the organization must give “something to the state in return for the privilege [of being tax exempt], either by relieving it of a financial burden or by pursuing a publicly mandated moral obligation.”

In its Rainbow Housing decision⁸, the State Supreme Court reaffirmed this definition.

This test is important because it means that in Connecticut, not all nonprofit corporations are exempt from property taxes. Nonprofits must prove they meet the requirements of this test, which are more restrictive than federal Internal Revenue Service and state Department of Consumer Protection requirements for receiving the corporate designation as a “nonprofit.”

Our members have reported receiving tax bills for day and employment programs for people with intellectual/developmental disabilities, outpatient behavioral health treatment facilities, arts and culture organizations, and more, all of which would clearly meet the requirements of this test.

According to C.G.S. § 12-81(7)(B)⁹, subsidized low-income housing is not exempt from property taxes. This language was added to the law in 1975 and applies to property known then as “project housing,” now referred to as “low-income housing developments.” In 2003, the legislature passed a law to specifically exempt different types of residential services provided by nonprofits from property taxes. The statute currently reads:

“(B) On and after July 1, 1967, housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income shall not constitute a charitable purpose under [subsection A]. As used in this subdivision, “housing” shall not include real property used for temporary housing belonging to, or held in trust for, any corporation organized exclusively for charitable purposes and exempt from taxation for federal income tax purposes, the primary use of which property is one or more of the following: (i) An orphanage; (ii) a drug or alcohol treatment or rehabilitation facility; (iii) housing for persons who are homeless, persons with a mental health disorder, persons with intellectual or physical disability or victims of domestic violence; (iv) housing for ex-offenders or for individuals participating in a program sponsored by the state Department of Correction or Judicial Branch; and (v) short-term housing operated by a charitable organization where the average length of

⁷ St. Joseph’s Living Center v. Town of Windham <https://law.justia.com/cases/connecticut/supreme-court/2009/290cr33.html> at 10

⁸ <https://www.jud.ct.gov/external/supapp/Cases/AROCr/CR338/338CR52.pdf> at 6

⁹ https://www.cga.ct.gov/current/pub/chap_203.htm#sec_12-81

stay is less than six months. The operation of such housing, including the receipt of any rental payments, by such charitable organization shall be deemed to be an exclusively charitable purpose;”

Appendix B: What did the State Supreme Court decide in Rainbow Housing, et al v. Town of Cromwell?

This case follows the denial of property tax exemption for a group home for men with mental health needs owned and operated by Gilead Community Services and Rainbow Housing called “Valor Home.” In 2015, the Town of Cromwell denied their tax-exempt status after years of granting it. The trial judge ruled in favor of Rainbow Housing in summary judgement and the Town of Cromwell appealed. The appeal was forwarded directly to the Supreme Court, which heard oral arguments in late 2020 and issued their opinion in September 2021.¹⁰

The State Supreme Court ruled 5-0 with one concurring opinion that Valor Home was tax exempt. The majority ruled that when the legislature wrote “temporary housing” was exempt in statute in 2003, they did not mean that an average length of stay of less than six months, or any other arbitrary durational limit constituted “temporary housing.”

The Court also established, based on their reading of [P.A. 03-270](#), a test for assessors to determine whether property is “temporary.” From the majority decision (with internal references removed):¹¹

"In light of the objectives animating P.A. 03-270 and the foregoing legislative history, we conclude that the term 'temporary' does not have an inflexible or fixed durational limitation; instead, the durational limitation will vary depending on the particular purpose of the charitable organization and the needs of the residents who fall within the categories enumerated in § 12-81 (7) (B). **So long as a resident's stay is impermanent, transitional, and in furtherance of one of the enumerated categories of charitable purposes, it is 'temporary' within the meaning of § 12-81 (7) (B).**

...

“[Cromwell] contends that a specific, defined time limitation must be read into the statute by judicial construction in order to avoid absurd and unworkable results. **We disagree.** As discussed previously, the durational limits attaching to the term “temporary” may vary depending on the purpose of the charitable organization and the needs of the residents being served, and **our construction of the statute is consistent with the intent of the legislature** to exempt from taxation real property used exclusively for charitable purposes enumerated in § 12-81 (7) (B) (i) through (v). We see nothing absurd or unworkable from this conclusion.”

In plain language, the Court ruled that so long as the housing is impermanent, transitional and in serves one of the purposes laid out in § 12-81 (7) (B)¹², then it is “temporary housing,” even if the people served there had resided there for longer than some fixed durational limit.

¹⁰ In October, Gilead was awarded an historic \$5 million in damages by a federal jury for Cromwell’s discriminatory actions related to their attempt to open a different program. The Town’s denial of tax exemption for Valor Home as it related to the controversy surrounding the establishment of that new program was found to be in violation of federal anti-discrimination laws, as well.

¹¹ <https://www.jud.ct.gov/external/supapp/Cases/AROCr/CR338/338CR52.pdf> at 10

¹² An orphanage, a drug or alcohol treatment facility, housing for people who are homeless, people with a mental health disorder, people with intellectual or physical disabilities or victims of domestic violence, housing for ex-offenders or for people participating in a program sponsored by the state Department of Correction, and short-term housing where the average length of stay is less than 6 months.

The Court also restated and affirmed the test from St. Joseph's Living Center for determining whether a property's use is charitable, referenced above in Appendix A.

The majority was joined by Chief Justice Robinson in a concurring opinion¹³, which agreed that Valor Home was tax exempt but disagreed that the existing law was ambiguous enough for the other justices to refer to legislative history and intent. In order for a Court to look past the plain language in the law and to the legislative history to determine the legislature's intent, it must first conclude that the language in statute is ambiguous. The majority made that determination and was therefore able to read the legislative debate and public hearing testimony about P.A. 03-270 to draw their conclusions. But C.J. Robinson disagreed. He looked at the dictionary definition of "temporary" and determined it was not ambiguous. Because he was therefore forbidden from reading the legislative history, he wrote of several other areas in the law where permanent residency tests exist.

¹³ <https://www.jud.ct.gov/external/supapp/Cases/AROCr/CR338/338CR52A.pdf>

RAINBOW HOUSING CORPORATION ET AL. *v.*
TOWN OF CROMWELL
(SC 20506)

Robinson, C. J., and McDonald, D'Auria, Mullins,
Kahn and Ecker, Js.

Argued December 11, 2020—officially released September 1, 2021*

Procedural History

Appeal from the decision of the defendant's Board of Assessment Appeals upholding the denial of the plaintiffs' claim for a certain real property tax exemption, and for other relief, brought to the Superior Court in the judicial district of Middlesex and transferred to the judicial district of New Britain, where the court, *Hon. Arnold W. Aronson*, judge trial referee, who, exercising the powers of the Superior Court, granted the plaintiffs' motion for summary judgment and rendered judgment thereon, from which the defendant appealed. *Affirmed.*

Proloy K. Das, with whom were *Kari L. Olson* and, on the brief, *Joseph D. Szerejko* and *Chelsea R. Sousa*, for the appellant (defendant).

Pascal F. Naples, with whom, on the brief, were *Timothy S. Hollister* and *Lilia N. Hrekul*, for the appellees (plaintiffs).

Elliott B. Pollack, *Michael J. Marafito* and *Johanna S. Katz* filed a brief for Connecticut Community Non-Profit Alliance, Inc., as amicus curiae.

Cody N. Guarnieri filed a brief for MARC Community Resources, Inc., as amicus curiae.

Lloyd L. Langhammer filed a brief for the town of Colchester et al. as amici curiae.

Cody N. Guarnieri filed a brief for Adelbrook Community Services, Inc., as amicus curiae.

William Tong, attorney general, and *Clare E. Kindall*, solicitor general, filed a brief for the state of Connecticut as amicus curiae.

Kathleen M. Flaherty filed a brief for Connecticut Legal Rights Project, Inc., et al. as amici curiae.

Brian C. Courtney filed a brief for the Corporation for Independent Living as amicus curiae.

John F. Sullivan, assistant town attorney, filed a brief for the town of Manchester as amicus curiae.

Opinion

ECKER, J. General Statutes § 12-81 (7)¹ generally exempts from taxation real property owned by a tax-exempt charitable organization and used exclusively for charitable purposes; see General Statutes § 12-81 (7) (A); but excludes from that exemption “housing subsidized, in whole or in part, by federal, state or local government” General Statutes § 12-81 (7) (B). The subsidized housing exclusion contains an exception for “temporary housing” used primarily for certain enumerated charitable purposes, including “housing for . . . persons with a mental health disorder” General Statutes § 12-81 (7) (B) (iii). This appeal requires us to determine whether the trial court correctly determined that property used for a residential mental health treatment program was tax exempt under § 12-81 (7) on the grounds that it does not provide housing subsidized by the government and that any housing provided is temporary. We affirm the judgment of the trial court.

The following facts, as stipulated by the parties, are undisputed. The plaintiffs, Rainbow Housing Corporation (Rainbow Housing) and Gilead Community Services, Inc. (Gilead), are both tax-exempt charitable organizations for federal tax purposes and subsidiaries of Connecticut Institute for the Blind, Inc., doing business as Oak Hill, an entity organized to provide support to people with disabilities. Rainbow Housing owns a residential property at 461 Main Street in Cromwell known as Valor Home, which it leases to Gilead for the purpose of providing “a broad range of high quality health care and recovery support services to individuals with the goal of supporting the individual’s independent living in the community.” Gilead pursues this goal at Valor Home through its “[s]upervised [a]partment [program],” which is an “intensive, community-based [program] designed to serve a specific cohort of clients ([eighteen] years of age and older) with severe mental illness, with or without co-occurring disorders, needing a supportive supervised living environment, [who] are not able to function in the milieu of a traditional group home setting.”

Valor Home houses up to five men at a time, all of whom pay a monthly rental fee. The Department of Mental Health and Addiction Services (department) helps fund Valor Home’s supervised apartment program. Pursuant to Gilead’s contract with the department, Valor Home provides, among other services, “psychiatric clinical services” and “community-based skill building instruction and other rehabilitative activities,” including, but not limited to, “[t]eaching, coaching and assisting with daily living activities,” “[a]ssistance with location and access of safe, affordable housing of [the resident’s] choice, [and] providing education and support regarding tenant rights and responsibilities” Overall, Gilead receives approximately 75 percent of its

funding from the department and “relies [on] donations from the public to make up the difference.”

Prior to 2017, the defendant, the town of Cromwell, granted Valor Home a property tax exemption under § 12-81 (7). In 2017, the plaintiffs filed a timely and complete quadrennial renewal form, otherwise known as an M-3 application. See General Statutes § 12-81 (7) (A) (ii). In the M-3 application, the plaintiffs represented that Valor Home was exempt from taxation on the October 1, 2017 grand list because “[t]he primary use of [the] property is not housing” but, instead, to “[p]rovide support services for . . . clients with mental illness.” Shawna Baron, the assessor for the defendant, denied the plaintiffs’ application for a property tax exemption.²

The plaintiffs timely filed an appeal with the defendant’s Board of Assessment Appeals (board) pursuant to General Statutes §§ 12-89 and 12-111 (a). The board denied the plaintiffs’ appeal, and the plaintiffs filed the present action in the Superior Court pursuant to General Statutes §§ 12-89, 12-117a and 12-119, claiming that the defendant improperly denied their application for a property tax exemption. Both the plaintiffs and the defendant moved for summary judgment and stipulated to the relevant facts and related exhibits.

The plaintiffs claimed that Valor Home was exempt from taxation under § 12-81 (7) because the plaintiffs are organized exclusively for charitable purposes, Valor Home is used exclusively for the plaintiffs’ charitable purpose of serving individuals with severe mental illness, Valor Home does not provide government subsidized housing or low and moderate income housing, and the housing provided is temporary, transitional, and impermanent. In support of their motion for summary judgment, the plaintiffs submitted the affidavit of Dan Osborne, the chief executive officer of Gilead, who averred that “[o]ccupancy at [Valor Home] is temporary and transitional insofar as the individuals who live at [Valor Home] . . . live there [only] until they no longer need the services provided by Gilead. There is no specific term by which an individual must leave [Valor Home]; the term is entirely dependent [on] the individual’s treatment progress. Once the individuals are capable of living more independently through the services and supports [provided] by Gilead, they move out of [Valor Home].”

In its motion for summary judgment, the defendant argued that Valor Home was not tax-exempt under § 12-81 (7) because it provides housing that is subsidized in part by the department and because the housing is not limited to a finite length of time and, therefore, is not temporary. In support, the defendant relied on the stipulated fact that Valor Home is funded by the department and an affidavit from Baron explaining that she had “determined that [Valor Home] does not qualify for a charitable tax exemption pursuant to . . . § 12-81 (7)

because [the] plaintiff[s] failed to establish that [Valor Home] is used for eligible temporary housing.”

The trial court held a hearing on the motions for summary judgment, at which counsel for both parties assured the court that there were no disputed factual issues and that the sole question was whether Valor Home was exempt from taxation under § 12-81 (7) as a matter of law. Following the hearing, the court granted the plaintiffs’ motion for summary judgment and denied the defendant’s motion. This appeal followed.³

On appeal, the defendant renews the claims raised below, namely, that Valor Home is not tax-exempt under § 12-81 (7) because it provides subsidized housing that is not limited to a finite length of time and, thus, is not temporary. After amici curiae filed their briefs,⁴ the defendant filed a supplemental brief in which it adopted a new claim, raised for the first time by the amicus curiae town of Manchester. Specifically, the defendant claims that the plaintiffs were not aggrieved by the denial of their M-3 application because they failed to provide the assessor with sufficient information to demonstrate that Valor Home was exempt from taxation under § 12-81 (7).

I

We first address the defendant’s claim that the plaintiffs were not aggrieved by the denial of their M-3 application because they failed to provide sufficient information to demonstrate that Valor Home qualified for a property tax exemption under § 12-81 (7). The defendant points out that, “[i]n response to the application questions regarding the average stay of residents at the property, rents, amount of income received from rent, and whether the rent was subsidized by the government, the plaintiffs answered ‘N/A,’ ” and “[n]one of the supporting documentation required in conjunction with the application was supplied” The defendant contends that, in light of the plaintiffs’ failure to provide the assessor with this information, the plaintiffs were not aggrieved by the denial of their application pursuant to our holding in *J.C. Penney Corp., Inc. v. Manchester*, 291 Conn. 838, 970 A.2d 704 (2009).⁵ We disagree.

Aggrievement is a component of standing, which is essential to invoke the subject matter jurisdiction of the trial court. See, e.g., *Andross v. West Hartford*, 285 Conn. 309, 321, 939 A.2d 1146 (2008). Statutory aggrievement under §§ 12-89, 12-117a and 12-119 “exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation.” (Internal quotation marks omitted.) *Id.*, 322. Although the defendant failed to preserve its aggrievement claim in the trial court, we will review it because it implicates the trial court’s subject matter

jurisdiction. See *Perez-Dickson v. Bridgeport*, 304 Conn. 483, 506, 43 A.3d 69 (2012).

Contrary to its claim on appeal, the defendant stipulated below that the plaintiffs filed a “timely” and “complete M-3 application” and that “Rainbow [Housing] is aggrieved by the decision of the assessor to deny their request for a tax exemption of the subject property and by the decision of the board affirming the denial of the tax exemption.” The parties cannot confer subject matter jurisdiction by agreement, and, therefore, the conclusory portion of the stipulation stating that the plaintiffs are “aggrieved” is of no consequence to the present appeal, but the “parties can stipulate to facts to allow [the] finding of aggrievement” *Fox v. Zoning Board of Appeals*, 84 Conn. App. 628, 637, 854 A.2d 806 (2004); see also *Jones v. Redding*, 296 Conn. 352, 364, 995 A.2d 51 (2010) (parties stipulated to facts on which “the legal conclusion of aggrievement” was based). That is what occurred here when the parties stipulated to the fact that the plaintiffs’ M-3 application was “complete,” meaning that it contained all of the information necessary for the assessor to ascertain whether Valor Home was entitled to a property tax exemption under § 12-81 (7). Having so stipulated, the defendant cannot now challenge that fact for the first time on appeal. We therefore reject the defendant’s claim that the trial court lacked subject matter jurisdiction.

II

On the merits, the defendant contends that the trial court improperly rendered summary judgment in favor of the plaintiffs because Valor Home provides government subsidized housing that is not temporary in nature and, thus, does not qualify for tax-exempt status under § 12-81 (7). We need not decide whether Valor Home provides “housing subsidized, in whole or in part, by federal, state or local government” within the meaning of § 12-81 (7) (B) because we conclude that Valor Home’s housing is “temporary” and therefore qualifies for the exemption on that basis.

The scope of the charitable exemption in § 12-81 (7) is a question of statutory construction, over which we exercise plenary review. See, e.g., *Tannone v. Amica Mutual Ins. Co.*, 329 Conn. 665, 671, 189 A.3d 99 (2018). In addition to the usual rules of statutory construction that apply generally; see General Statutes § 1-2z; our analysis of § 12-81 (7) also is governed by the rule of strict construction applicable to statutory provisions granting tax exemptions. See *St. Joseph’s Living Center, Inc. v. Windham*, 290 Conn. 695, 707, 966 A.2d 188 (2009). “It is . . . well established that in taxation cases . . . provisions granting a tax exemption are to be construed strictly against the party claiming the exemption, who bears the burden of proving entitlement to it. . . . Exemptions, no matter how meritori-

ous, are of grace [Therefore] [t]hey embrace only what is strictly within their terms. . . . We strictly construe such statutory exemptions because [e]xemption from taxation is the equivalent of an appropriation of public funds, because the burden of the tax is lifted from the back of the potential taxpayer who is exempted and shifted to the backs of others. . . . [I]t is also true, however, that such strict construction neither requires nor permits the contravention of the true intent and purpose of the statute as expressed in the language used.”⁶ (Citations omitted; internal quotation marks omitted.) *Id.* Despite this rule of construction, we define “a charitable use or purpose . . . rather broad[ly] and liberal[ly].” *Id.*, 715. The definition of a charitable use or purpose is not “restricted to mere relief of the destitute or the giving of alms but comprehends activities, not in themselves self-supporting, which are intended to improve the physical, mental and moral condition of the recipients and make it less likely that they will become burdens on society and more likely that they will become useful citizens.” (Internal quotation marks omitted.) *Id.*, 715–16. Thus, “[c]harity embraces anything that tends to promote the well-doing and the well-being of social man.” (Internal quotation marks omitted.) *Id.*, 716.

We begin our analysis with the statutory scheme governing charitable property tax exemptions. Section 12-81 (7) (A) provides that property used for “scientific, educational, literary, historical or charitable purposes” is “exempt from taxation.” Subdivision (B) of § 12-81 (7) creates an exclusion to this tax exemption for “housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income [which] shall not constitute a charitable purpose under this section.” The same provision carves out an exception to this exclusion for five specified categories of temporary housing. Specifically, subdivision (B) provides that, “[a]s used in this subdivision, ‘housing’ shall not include real property used for temporary housing belonging to, or held in trust for, any corporation organized exclusively for charitable purposes and exempt from taxation for federal income tax purposes, the primary use of which property is one or more of the following: (i) An orphanage; (ii) a drug or alcohol treatment or rehabilitation facility; (iii) housing for persons who are homeless, persons with a mental health disorder, persons with intellectual or physical disability or victims of domestic violence; (iv) housing for ex-offenders or for individuals participating in a program sponsored by the state Department of Correction or Judicial Branch; and (v) short-term housing operated by a charitable organization where the average length of stay is less than six months. The operation of such housing, including the receipt of any rental payments, by such charitable organization shall be deemed to be an exclusively charitable purpose”

General Statutes § 12-81 (7) (B). Thus, subsidized housing or low and moderate income housing falls within the scope of the charitable exemption only if it is “temporary” and primarily used for one of the five enumerated charitable purposes.

It is undisputed that Valor Home provides treatment and services for “persons with a mental health disorder” General Statutes § 12-81 (7) (B) (iii). The parties dispute whether Valor Home provides “housing subsidized, in whole or in part, by . . . state . . . government” and, if so, whether the housing is “temporary” within the meaning of § 12-81 (7) (B) (iii). For purposes of this appeal, we will assume, without deciding, that Valor Home provides housing subsidized in part by the department. We nonetheless conclude that the housing is “temporary” and, therefore, exempt from taxation under § 12-81 (7) (B) (iii).

The word “temporary” is not defined in the statutory scheme, so we look to the “commonly approved usage of the language” General Statutes § 1-1 (a). The word “temporary” means “lasting for a time only: existing or continuing for a limited time: impermanent, transitory” Webster’s Third New International Dictionary (2002) p. 2353; see also Oxford American Dictionary and Language Guide (1999) p. 1038 (defining “temporary” as “lasting or meant to last only for a limited time”). Subsidized housing is “temporary” if it is limited in duration, impermanent, or transitory.

We conclude that the term “temporary housing” in § 12-81 (7) (B) is ambiguous because it refers to housing that is “limited in duration” and “impermanent” but does not specify the *length* of the durational limitation imposed. Indeed, only one of the five exceptions in § 12-81 (7) (B) contains an explicit durational limitation, namely, the fifth, catchall provision for “short-term housing operated by a charitable organization where the average length of stay is less than six months.” General Statutes § 12-81 (7) (B) (v). There is no defined time limitation for temporary subsidized housing provided (1) by orphanages, (2) by drug or alcohol treatment or rehabilitation facilities, (3) for the homeless, mentally ill, disabled, or victims of domestic violence, and (4) by programs for ex-offenders. The use of a finite durational limitation for “short-term housing,” but the omission of such a limitation for “temporary housing,” indicates that the legislature intended the terms “short-term” and “temporary” to have different meanings.⁷ See, e.g., *C. R. Klewin Northeast, LLC v. State*, 299 Conn. 167, 177, 9 A.3d 326 (2010) (“[t]he use of the different terms . . . within the same statute suggests that the legislature acted with complete awareness of their different meanings . . . and that it intended the terms to have different meanings” (internal quotation marks omitted)). Because the term “temporary,” as used in the statute, imposes no fixed durational limitation, its

meaning in this context is not plain and unambiguous. We therefore turn to extratextual sources of legislative intent.

The legislature adopted the charitable tax exemption pertaining to “real property used for temporary housing” in 2003. See Public Acts 2003, No. 03-270, § 1 (P.A. 03-270). As explained by Senator Eileen M. Daily, the purpose of P.A. 03-270, § 1, was “to help clarify two conflicting court decisions in terms of property taxes for housing for orphanages, drug or alcohol treatment or rehab, homeless [intellectually challenged] or mentally ill individuals, people participating in correction or [J]udicial [B]ranch recovery programs, and charitable organizations where the length of stay is less than six months.”⁸ 46 S. Proc., Pt. 13, 2003 Sess., p. 4069. Thus, P.A. 03-270 was intended to clarify that charitable “properties [that] are utilized for transitional housing purposes shall be deemed [nontaxable].” 46 H.R. Proc., Pt. 21, 2003 Sess., pp. 7002–7003, remarks of Representative Andrea L. Stillman.

During the legislative hearings on P.A. 03-270, the legislature heard testimony from representatives of various charitable organizations regarding the deleterious effects that property taxation has had, or would have, on “transitional shelters and treatment programs” that receive federal, state, or local funding. Conn. Joint Standing Committee Hearings, Finance, Revenue and Bonding, Pt. 1, 2003 Sess., p. 22. The testimony during these hearings emphasized the transitional and impermanent nature of the housing provided by charitable organizations, as well as the fact that housing was secondary or integral to the charitable purpose. For example, Margaret J. Slez, the attorney for Isaiah 61:1, Inc., a federally and state funded nonprofit community justice agency, testified: “[W]e are in no way an established abode under any definition under the [G]eneral [S]tatutes. We are in fact—our clients are there for a period of time that runs from maybe three to six months, maybe [one] year.” *Id.*, p. 24. Attorney Slez urged the legislature to exempt from taxation “transition[al] housing” and “rehabilitative housing” *Id.*, p. 25.

Similarly Reverend Richard Schuster, executive director of St. Luke’s Community Services, Inc., a nonprofit organization that provides shelter for the homeless and persons with acquired immune deficiency syndrome and psychiatric disabilities, testified that his charitable organization provides more than “just . . . a bed and a meal.” *Id.*, p. 41. Rather, St. Luke’s Community Services, Inc., provides a range of treatment and rehabilitative services to help its clients “reach their full potential. Get back on their feet, get back out in society.” *Id.* The provision of housing and services is “purposely designed to meet the needs of these populations in a way that is both healthier and more productive for the client and at a cost savings to both the state and local

government.” *Id.*, 40, remarks of Reverend Shuster.

The testimony at the legislative hearing revealed that the average length of a resident’s temporary stay varied depending on the charitable organization’s purpose, the nature of the services provided, the treatment and/or rehabilitative goals, and the resident’s progress toward those goals. For example, the Bridgeport Rescue Mission, a nonprofit organization that provides faith based addiction services, operates a residential program that lasts for twelve months. *Id.*, p. 120. At Operation HOPE, Inc., a nonprofit center for the homeless, the average length of residency is one to three years, depending on the ability of the individual resident to live independently. *Id.*, pp. 93, 96. Despite the disparity between these lengths of time, the legislative record reflects an intent to include them within the meaning of the term “temporary,” provided that the resident’s occupancy falls within the scope of the charitable purpose of the organization. See *id.*, p. 74, remarks of Senator John McKinney (“I define permanent housing as ‘housing.’ I don’t define staying in a drug or rehabilitation center for [sixty] days as ‘housing.’”).

In light of the objectives animating P.A. 03-270 and the foregoing legislative history, we conclude that the term “temporary” does not have an inflexible or fixed durational limitation; instead, the durational limitation will vary depending on the particular purpose of the charitable organization and the needs of the residents who fall within the categories enumerated in § 12-81 (7) (B).⁹ So long as a resident’s stay is impermanent, transitional, and in furtherance of one of the enumerated categories of charitable purposes, it is “temporary” within the meaning of § 12-81 (7) (B). For example, an orphanage with the charitable purpose of serving the needs of minor children without parental guardians may house children for days, weeks, months, or many years. Nonetheless, if a child’s stay is impermanent and transitional (i.e., intended to transition the child to a more stable or permanent living environment, such as foster care or adoption), and in furtherance of the orphanage’s charitable purpose, the housing is “temporary” under § 12-81 (7) (B). Once the child attains the age of majority and the charitable purpose of the orphanage no longer is being served, then the durational limitation has been reached, and any further stay cannot be considered “temporary” under the statute. The same principle applies to the other specific categories of housing enumerated in § 12-81 (7) (B) (i) through (v).

The defendant contends that a specific, defined time limitation must be read into the statute by judicial construction in order to avoid absurd and unworkable results.¹⁰ We disagree. As discussed previously, the durational limits attaching to the term “temporary” may vary depending on the purpose of the charitable organization and the needs of the residents being served, and

our construction of the statute is consistent with the intent of the legislature to exempt from taxation real property used exclusively for the charitable purposes enumerated in § 12-81 (7) (B) (i) through (v). We see nothing absurd or unworkable resulting from this conclusion.¹¹ See, e.g., *Tayco Corp. v. Planning & Zoning Commission*, 294 Conn. 673, 686, 986 A.2d 290 (2010) (“[W]e construe a statute in a manner that will not thwart its intended purpose or lead to absurd results. . . . We must avoid a construction that fails to attain a rational and sensible result that bears directly on the purpose the legislature sought to achieve.” (Internal quotation marks omitted.)). Furthermore, “[w]e are not in the business of writing statutes; that is the province of the legislature. Our role is to interpret statutes as they are written. . . . [We] cannot, by [judicial] construction, read into statutes provisions [that] are not clearly stated.” (Internal quotation marks omitted.) *Thomas v. Dept. of Developmental Services*, 297 Conn. 391, 412, 999 A.2d 682 (2010); see also *Vaillancourt v. New Britain Machine/Litton*, 224 Conn. 382, 396, 618 A.2d 1340 (1993) (“[w]e are not permitted to supply statutory language that the legislature may have chosen to omit”). The term “temporary” does not have a specific, defined time limitation, and “[t]he task of promulgating such a limitation lies with the legislature, not with the court.” *State v. Obas*, 320 Conn. 426, 436, 130 A.3d 252 (2016). Accordingly, we decline the defendant’s invitation to graft a specific durational limitation onto the term “temporary” in § 12-81 (7).

With this statutory framework in mind, we address whether the trial court properly rendered summary judgment in favor of the plaintiffs. We begin by examining the charitable purpose of the plaintiffs, as reflected in their foundational documents. See footnote 9 of this opinion. According to Rainbow Housing’s amended and restated certificate of incorporation, and its amended and restated bylaws, its charitable purpose is “to identify, prepare and establish residential facilities for persons with mental illness” Similarly, among Gilead’s charitable purposes is to “provid[e] a broad range of high quality health care and recovery support services in the home and community to improve mental health and physical well-being, with the goal of supporting the individual’s independent living in the community, all without regard to race, color, creed, national and ethnic origin, disability, sexual preference, or socioeconomic status”

In furtherance of this purpose, the plaintiffs operate the supervised apartment program at Valor Home “to serve a specific cohort of clients ([eighteen] years of age and older) with severe mental illness, with or without co-occurring disorders, needing a supportive, supervised living environment, [who] are not able to function in the milieu of a traditional group home setting.” Valor Home “offers [twenty-four] hour, [seven] days per

week, on-site supervision for clients who need intensive supervision and support in order to improve or maintain functioning in the community.” Valor Home’s “programs effectively blend the provision of [twenty-four] hour staffing with increased privacy and opportunities for education and life skill supports (shopping, money management, cooking, laundry, home cleaning, etc.) with an apartment style arrangement of the facility.” “The philosophy of the [s]upervised [a]partment [p]rograms places emphasis on a consumer-driven recovery-oriented treatment approach,” with the recognition that “empowerment and the ability to instill a hope of recovery are key treatment concepts, and are essential to [clients’] successful transition into the community.” Valor Home’s “primary goals are to provide opportunities for community living to individuals who would otherwise require a long-term hospitalization or other more restrictive settings. Other goals include decreasing the number and duration of hospital stays, developing and maintaining satisfying personal relationships, and empowering individuals to take responsibility for managing their own lives to live an optimum life in the community with the least amount of professional support in the least restrictive setting.”

As we discussed previously, the plaintiffs submitted the affidavit of Gilead’s chief executive officer, Osborne, in support of their motion for summary judgment. Osborne averred that occupancy at Valor Home “is temporary and transitional insofar as the individuals who live at [Valor Home] . . . live there [only] until they no longer need the services provided by Gilead. There is no specific term by which an individual must leave [Valor Home]; the term is entirely dependent [on] the individual’s treatment progress. Once the individuals are capable of living more independently through the services and supports [provided] by Gilead, they move out of [Valor Home].”

This evidence was sufficient to meet the plaintiffs’ burden of establishing that the housing provided by Valor Home is “temporary” within the meaning of § 12-81 (7) (B) (iii) because it is impermanent, furthers the plaintiffs’ charitable purpose of providing treatment to men with severe mental illness, and is designed to “successful[ly] transition [residents] into the community.” Once the residents meet the program’s goal and are capable of living more independently, “they move out of [Valor Home].” Because the plaintiffs satisfied their burden of production, the defendant was required to “substantiate its adverse claim by showing that there is a genuine issue of material fact *together with the evidence disclosing the existence of such an issue.*” (Emphasis in original; internal quotation marks omitted.) *Squeo v. Norwalk Hospital Assn.*, 316 Conn. 558, 593–94, 113 A.3d 932 (2015); see also *Romprey v. Safeco Ins. Co. of America*, 310 Conn. 304, 320–21, 77 A.3d 726 (2013) (“the rule that the party opposing summary

judgment must provide evidentiary support for its opposition applies only when the moving party has first made out a prima facie case for summary judgment”). “It is not enough . . . for the opposing party merely to assert the existence of . . . a disputed issue. . . . Mere assertions of fact, whether contained in a complaint or in a brief, are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court [in support of a motion for summary judgment]. . . . As a general rule, then, [w]hen a motion for summary judgment is filed and supported by affidavits and other documents, an adverse party, by affidavit or as otherwise provided by . . . [the rules of practice], must set forth specific facts showing that there is a genuine issue for trial, and if he does not so respond, summary judgment shall be entered against him.” (Citations omitted; internal quotation marks omitted.) *Squeo v. Norwalk Hospital Assn.*, supra, 594.

The defendant failed to produce any evidence to contradict or rebut the plaintiffs’ evidence demonstrating that the housing provided by Valor Home is temporary.¹² In the absence of such evidence, no disputed issues of material fact existed. See, e.g., *Farrell v. Farrell*, 182 Conn. 34, 39, 438 A.2d 415 (1980) (“[G]eneral averments will not suffice to show a triable issue of fact. . . . Indeed, the whole summary judgment procedure would be defeated if, without any showing of evidence, a case could be forced to trial by a mere assertion that an issue exists.”). Accordingly, the trial court properly rendered summary judgment in favor of the plaintiffs.

The judgment is affirmed.

In this opinion McDONALD, D’AURIA, MULLINS and KAHN, Js., concurred.

* September 1, 2021, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

¹ General Statutes § 12-81 provides in relevant part: “The following-described property shall be exempt from taxation . . . (7) (A) Subject to the provisions of sections 12-87 and 12-88, the real property of, or held in trust for, a corporation organized exclusively for scientific, educational, literary, historical or charitable purposes or for two or more such purposes and used exclusively for carrying out one or more of such purposes or for the purpose of preserving open space land, as defined in section 12-107b, for any of the uses specified in said section, that is owned by any such corporation, and the personal property of, or held in trust for, any such corporation, provided (i) any officer, member or employee thereof does not receive or at any future time shall not receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiary of its strictly charitable purposes, and (ii) in 1965, and quadrennially thereafter, a statement shall be filed on or before the first day of November with the assessor or board of assessors of any town, consolidated town and city or consolidated town and borough, in which any of its property claimed to be exempt is situated. Such statement shall be filed on a form provided by such assessor or board of assessors. The real property shall be eligible for the exemption regardless of whether it is used by another corporation organized exclusively for scientific, educational, literary, historical or charitable purposes or for two or more such purposes;

“(B) On and after July 1, 1967, housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income shall not constitute a charitable purpose under

this section. As used in this subdivision, 'housing' shall not include real property used for temporary housing belonging to, or held in trust for, any corporation organized exclusively for charitable purposes and exempt from taxation for federal income tax purposes, the primary use of which property is one or more of the following: (i) An orphanage; (ii) a drug or alcohol treatment or rehabilitation facility; (iii) housing for persons who are homeless, persons with a mental health disorder, persons with intellectual or physical disability or victims of domestic violence; (iv) housing for ex-offenders or for individuals participating in a program sponsored by the state Department of Correction or Judicial Branch; and (v) short-term housing operated by a charitable organization where the average length of stay is less than six months. The operation of such housing, including the receipt of any rental payments, by such charitable organization shall be deemed to be an exclusively charitable purpose"

² Rainbow Housing paid more than \$3100 in property taxes under protest in July of 2018, pending the outcome of its appeal from the assessor's denial.

³ The defendant appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

⁴ On October 28, 2020, we invited amici curiae to file briefs that address the following question: "Did the trial court [correctly] conclude that the plaintiffs, [which] operate a supervised apartment program that includes services rendered by contract with the [department] for men who suffer from severe mental illness, were entitled to a municipal property tax exemption under . . . § 12-81 (7) because the subject property was not 'housing subsidized, in whole or in part, by . . . state . . . government' and qualified as 'temporary housing' under the statute?" In response, the following entities filed briefs as amici curiae: Connecticut Community Non-Profit Alliance, Inc., Connecticut Legal Rights Project, Inc., Connecticut Fair Housing Center, Adelbrook Community Services, Inc., MARC Community Resources, Inc., the Corporation for Independent Living, the towns of Colchester and Manchester, and the state of Connecticut.

⁵ In *J.C. Penney Corp., Inc. v. Manchester*, supra, 291 Conn. 838, we held that, when an appeal under § 12-117a "call[s] in question the valuation placed by assessors [on] . . . property . . . the trial court performs a two step function. The burden, in the first instance, is [on] the plaintiff to show that he has, in fact, been aggrieved by the action of the board in that his property has been overassessed." (Emphasis omitted; internal quotation marks omitted.) Id., 844. If the taxpayer fails "to file with the assessors a list of his taxable property and furnish the facts upon which valuations may be based," then the taxpayer is not "aggrieved by an assessment based" on the information available to the assessors. (Emphasis omitted; internal quotation marks omitted.) Id., 845. "Only after the court determines that the taxpayer has met his burden of proving that the assessor's valuation was excessive and that the refusal of the board of [assessment appeals] to alter the assessment was improper . . . may the court then proceed to the second step in a § 12-117a appeal and exercise its equitable power to grant such relief as to justice and equity appertains" (Internal quotation marks omitted.) Id., 844-45.

The plaintiffs in the present case do not call into question the valuation of their property; instead, they claim that Valor Home is completely exempt from taxation and seek relief under §§ 12-89 and 12-119, in addition to § 12-117a. We need not decide whether our holding in *J.C. Penney Corp., Inc.*, applies outside of the valuation context because we resolve the aggrievement issue on other grounds.

⁶ As we observed in *St. Joseph's Living Center, Inc. v. Windham*, supra, 290 Conn. 695, the rule of strict construction of tax exemption statutes has not always been applied in cases involving "educational, scientific or charitable organizations." Id., 708 n.22. To the contrary, the property of such organizations historically "was treated rather uniformly as being subject to 'a rule of nontaxability.'" Id., quoting *Arnold College for Hygiene & Physical Education v. Milford*, 144 Conn. 206, 210, 128 A.2d 537 (1957). The reasoning of this line of cases relied on the "view that such exemptions were 'not merely an act of grace on the part of the [s]tate . . . [but stood] squarely on [s]tate interest. To subject all such property to taxation would tend rather to diminish than increase the amount of taxable property. Other conditions being equal, the happiness, prosperity and wealth of a community may well be measured by the amount of property wisely devoted to the common good' *Yale University v. New Haven*, 71 Conn. 316, 332, 42 A. 87 (1899). Our approach to such statutes reflected this understanding: 'Conse-

quently, [General Statutes (1949 Rev.) § 1761 (7), a functionally identical predecessor of § 12-81 (7)] does not come within the rule that tax exemption statutes must be construed strictly against the taxpayer.’ *Arnold College for Hygiene & Physical Education v. Milford*, supra, 210; see also *Loomis Institute v. Windsor*, 234 Conn. 169, 176, 661 A.2d 1001 (1995) (articulating and following more liberal rule of construction applied to educational institutions).” *St. Joseph’s Living Center, Inc. v. Windham*, supra, 708 n.22. It is unclear “precisely why this approach has seemingly become extinct, nor is it particularly clear whether it is applicable beyond the educational context.” *Id.* Because the parties have not asked us to clarify the rule of construction applicable to § 12-81 (7), we do not resolve the conflict between the modern trend of strict construction and the historical trend of liberal construction in this regard.

⁷ The defendant contends that the term “temporary” is “appropriately confined to a specified, limited period of time” and relies on certain statutes that variously define the term as ranging in duration from seventy-two hours to three years. See, e.g., General Statutes § 5-196 (25) (defining “temporary position” in State Personnel Act, General Statutes § 5-193 et seq., as “a position in the state service which is expected to require the services of an incumbent for a period not in excess of six months”); General Statutes § 8-68i (defining “temporary” for purposes of “emergency housing on a temporary basis” as “the period of time needed to find housing, not exceeding thirty days”); General Statutes § 20-126c (a) (6) (defining “temporary dental clinic” as “a dental clinic that provides dental care services at no cost to uninsured or underinsured persons and operates for not more than seventy-two consecutive hours”); see also 8 C.F.R. § 2.142 (F) (2) (ii) (B) (2020) (defining “temporary services or labor” as “limited to one year or less, but in the case of a one-time event could last up to 3 years”). The wide disparity in the various time periods identified in these statutes reinforces our conclusion that the term “temporary” is ambiguous with respect to the length of the durational limitation imposed.

⁸ It is not clear which two conflicting cases Senator Daily had in mind, but the chronology suggests that they are *Fanny J. Crosby Memorial, Inc. v. Bridgeport*, 262 Conn. 213, 811 A.2d 1277 (2002), overruled by *St. Joseph’s Living Center, Inc. v. Windham*, 290 Conn. 695, 707, 966 A.2d 188 (2009), and *Isaiah 61:1, Inc. v. Bridgeport*, 270 Conn. 69, 851 A.2d 277 (2004), the latter of which was pending on appeal in this court at the time of Senator Daily’s statements. In neither of these cases did we address the meaning of the term temporary housing in subdivision (B) of § 12-81 (7), and, therefore, our holdings in these cases are not pertinent to the issue on appeal.

⁹ An organization’s charitable purpose often can be ascertained “by examining [its] foundational documents,” such as its charter, certificate of incorporation or bylaws. *St. Joseph’s Living Center, Inc. v. Windham*, supra, 290 Conn. 714.

¹⁰ The defendant also relies on subsequent legislative history, arguing that failed legislative attempts to remove the word “temporary” from subdivision (B) of § 12-81 (7) demonstrate “that, if the legislature had intended for the statute to provide an exemption for housing subsidized by state government that was not clearly temporary, it knew how to do it.” See Substitute Senate Bill No. 928, 2019 Sess.; Senate Bill No. 419, 2016 Sess. We are “reluctant to draw inferences regarding legislative intent from the failure of a legislative committee to report a bill to the floor, because in most cases the reasons for that lack of action remain unexpressed and thus obscured in the mist of committee inactivity.” *In re Valerie D.*, 223 Conn. 492, 518 n.19, 613 A.2d 748 (1992); see also *Schneidewind v. ANR Pipeline, Co.*, 485 U.S. 293, 306, 108 S. Ct. 1145, 99 L. Ed. 2d 316 (1988) (“[t]his [c]ourt generally is reluctant to draw inferences from Congress’ failure to act”). Regardless, the failed legislative attempts to delete the term “temporary” from subdivision (B) of § 12-81 (7) do not help to illuminate the term’s meaning.

¹¹ The defendant argues that municipal assessors will “have no reliable or practical metric to apply if an applicant [for a charitable exemption] is not committed to a fixed and limited period of time of residency.” We reject this claim because the charitable purpose of an organization, as reflected in its foundational documents, will provide municipal assessors with a reliable and practical metric by which to determine whether a period of residency is temporary within the meaning of § 12-81 (7) (B). See footnote 9 of this opinion.

¹² In its supplemental brief, the defendant claims that the housing provided by Valor Home is not temporary because “[a] review of the state voter records shows that at least two residents at Valor Home have voted from

that address for several years dating back to at least 2013.” This evidence was not presented to the trial court and cannot be considered for the first time on appeal. See *State v. Edwards*, 314 Conn. 465, 478, 102 A.3d 52 (2014) (“we cannot consider evidence not available to the trial court to find adjudicative facts for the first time on appeal”); *U.S. Bank National Assn. v. Eichten*, 184 Conn. App. 727, 756, 196 A.3d 328 (2018) (appellate courts “do not consider evidence not presented to the trial court”).

The defendant also claims that summary judgment was improper because “[t]he plaintiffs refused to provide the [defendant] with any evidence as to how long residents reside at Valor Home” Practice Book § 17-47 provides that, “[s]hould it appear from the affidavits of a party opposing the motion that such party cannot, for reasons stated, present facts essential to justify opposition, the judicial authority may deny the motion for judgment or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.” As we explained in *Dorazio v. M. B. Foster Electric Co.*, 157 Conn. 226, 253 A.2d 22 (1968), “[a] party cannot successfully oppose a motion for summary judgment by merely averring that the [opposing party] has exclusive knowledge about certain facts or that affidavits based on personal knowledge are difficult to obtain. Under § 301 [the predecessor to § 17-47], the opposing party must show by affidavit precisely what facts are within the exclusive knowledge of the moving party and what steps he has taken to attempt to acquire these facts.” *Id.*, 230; see also *Bank of America, N.A. v. Briarwood Connecticut, LLC*, 135 Conn. App. 670, 676–77, 43 A.3d 215 (2012) (trial court properly rendered summary judgment in favor of plaintiff because defendant’s request for continuance was not timely filed and “did not comply with the requirements of Practice Book § 17-47”). The defendant did not seek a continuance or discovery in accordance with the requirements of § 17-47, and, therefore, we reject the defendant’s claim.

ROBINSON, C. J., concurring in the judgment. I agree with the majority’s decision to affirm the judgment of the trial court, which rendered summary judgment in this tax appeal in favor of the plaintiffs, Rainbow Housing Corporation (Rainbow Housing) and Gilead Community Services, Inc. (Gilead), on the ground that they provide temporary housing within the meaning of General Statutes § 12-81 (7) (B).¹ I agree with the majority’s ultimate conclusion that Valor Home, which is a residence for adults with mental illness that Rainbow Housing owns and leases to Gilead to operate, provides temporary housing. I write separately, however, because I respectfully disagree with the majority’s analysis insofar as it concludes that § 12-81 (7) (B) is ambiguous under our well established principles of statutory construction.² I conclude that the statutory language of § 12-81 (7) (B), and particularly the definition of “temporary,” is clear and unambiguous, with whether a facility meets that definition being a highly fact sensitive question for the trier. Because the facts in this tax appeal were stipulated, meaning that the defendant, the town of Cromwell, did not establish the existence of a genuine issue of material fact as to the temporary nature of the housing provided by Valor Home, I join with the majority in affirming the judgment of the trial court.

As noted by the majority, whether Valor Home’s housing is “temporary” within the meaning of § 12-81 (7) (B) presents an issue of statutory construction, which is a question of law over which we exercise plenary review. See, e.g., *Boisvert v. Gavis*, 332 Conn. 115, 141, 210 A.3d 1 (2019). It is well settled that we follow the plain meaning rule pursuant to General Statutes § 1-2z in construing statutes “to ascertain and give effect to the apparent intent of the legislature.” (Internal quotation marks omitted.) *Sena v. American Medical Response of Connecticut, Inc.*, 333 Conn. 30, 45, 213 A.3d 1110 (2019); see *id.*, 45–46 (stating plain meaning rule).

We begin with the text of the statute. Section 12-81 (7) (A) provides that, with certain exceptions, property used for “charitable purposes” is exempt from taxation. However, § 12-81 (7) (B) provides in relevant part that “housing subsidized, in whole or in part, by federal, state or local government . . . shall not constitute a charitable purpose under this section. . . .” The statute then provides that the term “housing” does “not include real property used for *temporary housing* belonging to, or held in trust for, any corporation organized exclusively for charitable purposes and exempt from taxation for federal income tax purposes, the primary use of which property is one or more of the following . . . (iii) housing for persons who are homeless, persons with a mental health disorder, persons with intellectual

or physical disability or victims of domestic violence . . . and (v) short-term housing operated by a charitable organization where the average length of stay is less than six months. The operation of such housing, including the receipt of any rental payments, by such charitable organization shall be deemed to be an exclusively charitable purpose” (Emphasis added.) General Statutes § 12-81 (7) (B). Because it is undisputed that Valor Home provides treatment and services for “persons with a mental health disorder,” and we assume, without deciding, that Valor Home is subsidized in part by the Department of Mental Health and Addiction Services, the sole question before us is whether Valor Home provides “temporary” housing so as to qualify for a property tax exemption under § 12-81 (7) (B).

Under § 1-2z, we first must determine whether § 12-81 (7) (B) is ambiguous. “The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation.” (Internal quotation marks omitted.) *Commissioner of Public Safety v. Freedom of Information Commission*, 312 Conn. 513, 527, 93 A.3d 1142 (2014). In other words, a statute is considered plain and unambiguous when “the meaning . . . is so strongly indicated or suggested by the [statutory] language . . . that . . . it appears to be *the* meaning and appears to preclude any other likely meaning.” (Emphasis in original; internal quotation marks omitted.) *Ledyard v. WMS Gaming, Inc.*, Conn. , n.6, A.3d (2021). In interpreting statutes, words and phrases are construed according to their “commonly approved usage” General Statutes § 1-1 (a); see e.g., *State v. Panek*, 328 Conn. 219, 227–29, 177 A.3d 1113 (2018). As discussed by the majority, “‘temporary’ means ‘lasting for a time only: existing or continuing for a limited time: impermanent, transitory’ Webster’s Third New International Dictionary (2002) p. 2353; see also Oxford American Dictionary and Language Guide (1999) p. 1038 (defining ‘temporary’ as ‘lasting or meant to last only for a limited time’).” Part II of the majority opinion. Neither the parties nor the majority presents an alternative interpretation for the meaning of “temporary” other than its plain meaning. Instead, the majority concludes that, because the statute provides a durational limitation for short-term housing and is silent regarding a durational limitation for temporary housing, the statute is ambiguous. I respectfully disagree with the majority’s conclusion as to the statute’s ambiguity.

First, the majority points out that § 12-81 (7) (B), in enumerating the exceptions to the general exclusion of subsidized housing from tax exempt status, provides a time limit only for “short-term housing,” which, as defined in the statute, means an average stay of less than six months in duration. See General Statutes § 12-81 (7) (B) (v). The majority suggests that such an inclu-

sion indicates that the legislature intended the phrases “short-term” and “temporary” to have different meanings. I agree that the meaning of “short-term” is distinct from the previously discussed meaning of “temporary” based on the plain wording of the statute. An inclusion of a time limit for “short-term” housing but not for “temporary” housing, however, does not render the word “temporary” ambiguous. Indeed, it demonstrates that, had the legislature intended to provide a durational limitation for “temporary” housing, rather than just “short-term” housing, it could have done so. See, e.g., *DeNunzio v. DeNunzio*, 320 Conn. 178, 194, 128 A.3d 901 (2016) (common principle of statutory construction is that, when legislature expresses list of items, exclusion of item is deliberate); *Stafford v. Roadway*, 312 Conn. 184, 194, 93 A.3d 1058 (2014) (“[i]t is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so” (citation omitted; internal quotation marks omitted)). It is clear from the plain text of the statute that “temporary” housing encompasses residential mental health programs, drug rehabilitation programs, and orphanages, in contrast to “short-term” housing, which is specifically limited in duration, and addresses a broad, catchall category of temporary housing.

Second, I disagree with the majority’s conclusion that the statute’s silence as to a durational time limit for “temporary” housing is evidence of its ambiguity. This court has “made clear that [t]he fact that . . . relevant statutory provisions are silent . . . does not mean that they are ambiguous.” (Internal quotation marks omitted.) *State v. Orr*, 291 Conn. 642, 653–54, 969 A.2d 750 (2009); see, e.g., *id.*, 654 (statute’s silence about whether it permits in-court testimony by social worker “should not be skewed as to indicate ambiguity” because it is not susceptible to more than one plausible interpretation); *Manifold v. Ragaglia*, 272 Conn. 410, 419, 862 A.2d 292 (2004) (“[statutory] silence does not . . . necessarily equate to ambiguity”). I recognize that, in limited circumstances, this court has found a statute ambiguous as a result of its silence. However, this case does not present such a circumstance. “[S]ilence may render a statute ambiguous when the missing subject reasonably is necessary to effectuate the provision as written.” *State v. Ramos*, 306 Conn. 125, 136, 49 A.3d 197 (2012); see also *Stuart v. Stuart*, 297 Conn. 26, 37, 996 A.2d 259 (2010) (silence as to standard of proof rendered statute ambiguous because there was “more than one plausible interpretation of its meaning”). In contrast, § 12-81 (7) (B) is not silent as to its subject and therefore does not fall within this first instance of ambiguity created by silence.

I also acknowledge that “the legislature’s silence as to the scope of a term may render the statute ambiguous. See *Thomas v. Dept. of Developmental Services*,

297 Conn. 391, 400, 999 A.2d 682 (2010) ([W]e note that the lien provision is silent with respect to its scope. Although [statutory] silence does not . . . necessarily equate to ambiguity . . . we conclude that this silence renders the provision ambiguous with respect to its scope because there is more than one plausible interpretation of its meaning. . . .)” (Internal quotation marks omitted.) *State v. Ramos*, supra, 306 Conn. 137. In *Thomas*, the statute was silent as to an employer’s rights under the lien provision for future workers’ compensation claims. See *Thomas v. Dept. of Developmental Services*, supra, 396. No such ambiguity exists here. Instead, the silence of § 12-81 (7) (B) as to a specific duration for temporary housing does not render the text of the statute susceptible to more than one plausible reading. See *State v. Ramos*, supra, 138–39 (statutory silence as to effect of untimely filed motion did not render statute ambiguous). Rather, the statutory silence simply requires this court to apply the plain and unambiguous meaning of the word “temporary” to the facts of this case in order to determine whether Valor Home provides temporary housing to its residents.

Because the language of § 12-81 (7) (B) is clear and unambiguous, the only remaining question is whether, as a factual matter, Valor Home’s residential program provides temporary housing within the common usage of the term.³ Under the plain meaning of the statute, whether a charitable program provides temporary housing leads to a fact intensive inquiry. I note that the record in this case consists of stipulated facts, under which there is no genuine issue of material fact. Valor Home provides housing for up to five men at a time, each of whom pays a monthly rental fee. Valor Home provides its residents with a myriad of services, including psychiatric clinical services, skill building instruction, and rehabilitative activities. Gilead’s chief executive officer, Dan Osborne, states in his affidavit that “[o]ccupancy at [Valor Home] is temporary and transitional insofar as the individuals who live at [Valor Home] . . . live there [only] until they no longer need the services provided by Gilead. There is no specific term by which an individual must leave [Valor Home]; the term is entirely dependent [on] the individual’s treatment progress. Once the individuals are capable of living more independently through the services and supports [provided] by Gilead, they move out of [Valor Home].” I agree with the majority’s observation that “[t]he defendant failed to produce any evidence to contradict or rebut the plaintiffs’ evidence demonstrating that the housing provided by Valor Home is temporary.” Part II of the majority opinion.

I emphasize that a more developed factual record might well have led to a different conclusion in this case. For example, the record does not contain any evidence regarding how long residents generally stay at Valor Home. It also does not contain any evidence

concerning whether Valor Home’s residents act in a manner consistent with living somewhere on a more than temporary basis, such as using its address to register to vote.⁴ Cf. *Hicks v. Brophy*, 839 F. Supp. 948, 951 (D. Conn. 1993) (“[F]actors [to determine domicile] include the place where civil and political rights are exercised, taxes paid, real and personal property (such as automobiles) located, driver’s and other licenses obtained, bank accounts maintained, and places of business or employment. . . . Other factors are also relevant, such as whether the person owns or rents his place of residence, how permanent the residence appears, and the location of a person’s physician, lawyer, accountant, dentist, stockbroker” (Citations omitted.)); *Litvaitis v. Litvaitis*, 162 Conn. 540, 546, 295 A.2d 519 (1972) (“[t]o constitute domicile, the residence at the place chosen for the domicile must be actual, and to the fact of residence there must be added the intention of remaining permanently; and that place is the domicile of the person in which he has voluntarily fixed his habitation, not for a mere temporary or special purpose, but with the present intention of making it his home” (internal quotation marks omitted)).

Based on the limited factual record in this case, I conclude that Valor Home provides temporary housing to its clients within the meaning of the plain language of § 12-81 (7) (B). I, therefore, agree with the majority’s conclusion that the trial court properly rendered summary judgment in favor of the plaintiffs.

Accordingly, I concur in the judgment of the court affirming the trial court’s judgment.

¹ General Statutes § 12-81 provides in relevant part: “The following-described property shall be exempt from taxation . . . (7) (B) On and after July 1, 1967, housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income shall not constitute a charitable purpose under this section. As used in this subdivision, ‘housing’ shall not include real property used for temporary housing belonging to, or held in trust for, any corporation organized exclusively for charitable purposes and exempt from taxation for federal income tax purposes, the primary use of which property is one or more of the following: (i) An orphanage; (ii) a drug or alcohol treatment or rehabilitation facility; (iii) housing for persons who are homeless, persons with a mental health disorder, persons with intellectual or physical disability or victims of domestic violence; (iv) housing for ex-offenders or for individuals participating in a program sponsored by the state Department of Correction or Judicial Branch; and (v) short-term housing operated by a charitable organization where the average length of stay is less than six months. The operation of such housing, including the receipt of any rental payments, by such charitable organization shall be deemed to be an exclusively charitable purpose”

² I also note my agreement with part I of the majority opinion, in which the majority concludes that, because the parties stipulated that the plaintiffs’ M-3 application was “complete,” the defendant cannot now challenge that fact for the first time on appeal.

³ I note that, prior to the enactment of § 1-2z, this court addressed latent ambiguity arising from the application of an otherwise unambiguous statute by referencing the legislative history of the statutory provision. “When application of the statute to a particular situation reveals a latent ambiguity in seemingly unambiguous language . . . we turn for guidance to the purpose of the statute and its legislative history” *University of Connecticut v. Freedom of Information Commission*, 217 Conn. 322, 328, 585 A.2d 690 (1991); see also *State v. Courchesne*, 262 Conn. 537, 564–65, 572, 816 A.2d

562 (2003); *Conway v. Wilton*, 238 Conn. 653, 665, 680 A.2d 242 (1996).

However, after the passage of § 1-2z, this court has recognized that such an approach is no longer appropriate. “Prior to the enactment of § 1-2z, this court sometimes turned to the legislative history of a statutory provision that, although clear on its face, contained a latent ambiguity when the statute was applied to the facts of the case” *State v. Ramos*, supra, 306 Conn. 144 n.4 (*Palmer, J.*, concurring); see also *Envirotest Systems Corp. v. Commissioner of Motor Vehicles*, 293 Conn. 382, 391 n.8, 978 A.2d 49 (2009) (“the legislature responded to *Courchesne* by passing § 1-2z . . . and rejected, in toto, this [court’s] method of interpretation” (citation omitted)); *Envirotest Systems Corp. v. Commissioner of Motor Vehicles*, supra, 392 n.8 (“the statutory construction principles set forth in *Courchesne* . . . have been rejected”).

As Justice Palmer reiterated in his concurrence in *Ramos*, “we are directed by § 1-2z not to consider extratextual sources in determining the outcome of the present case because [the statute] is not ambiguous on its face with respect to the issue presently before the court.” *State v. Ramos*, supra, 306 Conn. 148 (*Palmer, J.*, concurring). I agree with Justice Palmer that § 1-2z has the potential to limit this court’s ability to ascertain legislative intent accurately, which presents an impediment that is “troubling” in light of a latent ambiguity as is present in this case. *Id.* (*Palmer, J.*, concurring). Thus, under the interpretation regime of § 1-2z, when an ambiguity arises in application, so too does a fact intensive inquiry for the court. This case is illustrative of this potentially difficult point. Instead of looking to the legislative history for further guidance as to the application of the word “temporary” in this context, it appears that we are bound to apply the seemingly plain meaning of the word temporary to the facts in the record. See *id.*, 140–41.

⁴ As the majority notes, the defendant could have sought such evidence pursuant to Practice Book § 17-47. See footnote 13 of the majority opinion.

SUPREME COURT
OF THE
STATE OF CONNECTICUT

S.C. 20506

RAINBOW HOUSING CORPORATION ET AL.
PLAINTIFFS-APPELLEES

v.

TOWN OF CROMWELL
DEFENDANT-APPELLANT

BRIEF OF AMICUS CURIAE
STATE OF CONNECTICUT

FOR THE AMICUS CURIAE
STATE OF CONNECTICUT:

WILLIAM TONG
ATTORNEY GENERAL

CLARE KINDALL
SOLICITOR GENERAL
OFFICE OF THE ATTORNEY GENERAL
165 CAPITOL AVENUE
HARTFORD, CT 06106
TEL. (860) 571-1258
EMAIL: Clare.Kindall@ct.gov

TABLE OF CONTENTS

STATEMENT OF ISSUES ii

TABLE OF AUTHORITIES iii

INTEREST OF AMICUS CURIAE..... 1

ARGUMENT 5

 I. Both Federal Jurisprudence and State Policy Require the State to Maximize
 State Community-Based Residential Programming..... 5

 II. State Community-Based Residential Programs Through Nonprofit Partners Are
 Neither Subsidized nor Permanent Housing. 7

CONCLUSION 10

STATEMENT OF ISSUES

The Court has requested amicus submissions to address the following question:

Did the trial court properly conclude that the plaintiffs, who operate a supervised apartment program that includes services rendered by contract with the state Department of Mental Health and Addiction Services for men who suffer from severe mental illness, were entitled to a municipal property tax exemption under General Statutes § 12-81 (7) because the subject property was not “housing subsidized, in whole or in part, by . . . state . . . government” and qualified as “temporary housing” under the statute?

The State, as amicus curiae, respectfully submits that the answer to the posed question is “yes.”

TABLE OF AUTHORITIES

Cases

Davis v. Shah, 821 F.3d 231 (2d Cir. 2016)..... 6

Isaiah 61:1 v. City of Bridgeport, 270 Conn. 69 (2004) 8

Messier v. Southbury Training School, 183 F.R.D. 350 (D. Conn. 1998)..... 6

Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581 (1999) 6

P.J. v. State Board of Education, 550 Fed. App'x 20 (2d Cir. 2013) 6

State Office of Prot. & Advocacy for Persons with Disabilities v. Connecticut, 706 F. Supp. 2d 266 (D. Conn. 2010)..... 6

United Church of Christ v. West Hartford, 206 Conn. 711 (1988)..... 8

Statutes

Federal

Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq* 6

20 U.S.C. § 1412(a)(5)(A)..... 6

Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 5

Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 5

State

Conn. Gen. Stat. § 1-2z 8

Conn. Gen. Stat. § 8-37r, *et seq* 9

Conn. Gen. Stat. § 12-81(2)..... 7

Conn. Gen. Stat. § 12-81(7)..... 1, 10

Conn. Gen. Stat. § 12-81(7)(A)..... 7, 8

Conn. Gen. Stat. § 12-81(7)(B)..... 1, 5, 7, 8

Conn. Gen. Stat. § 17a-210 3, 4

Conn. Gen. Stat. § 17a-227 3

Conn. Gen. Stat. § 17a-450 *et seq* 1

Conn. Gen. Stat. § 17a-451(d)..... 2

Regulations

28 C.F.R. § 35.130(d) 5

Other Authorities

Connecticut Department of Developmental Services, June 2020 Management Information Report at https://portal.ct.gov/-/media/DDS/mir/mir_June_2020_with_attachment.pdf, last visited on November 25, 2020 3

Connecticut Department of Developmental Services, Mission and Vision Statements at <https://portal.ct.gov/DDS/Media/Latest-News-2010/Mission-Statement>, last visited on November 25, 2020 3, 5

Connecticut Department of Mental Health and Addiction Services, Annual Statistical Report SFY 2019, located at <https://portal.ct.gov/-/media/DMHAS/EQMI/AnnualReports/Annual-Report-SFY2019.pdf> (last visited on November 25, 2020) 2, 9

Connecticut Department of Mental Health and Addiction Services, Assertive Community Treatment at <https://portal.ct.gov/DMHAS/Initiatives/Evidence-Based/ACT>, last visited on November 25, 2020 3

Connecticut Department of Mental Health and Addiction Services, Mission & Vision Statements and Overview at <https://portal.ct.gov/DMHAS/About-DMHAS/Agency/About-DMHAS>, last visited on November 25, 2020 5

Connecticut Department of Mental Health and Addiction Services, CRMHC housing subsidies at <https://portal.ct.gov/DMHAS/CRMHC/Agency-Files/CRMHC-Overview-of-Services>, last visited on November 25, 2020 3

Connecticut Department of Mental Health and Addiction Services Policy Statements no. 33 (effective March 12, 1993), found at https://portal.ct.gov/-/media/DMHAS/Policies/Individualized_TreatmentCPS33pdf.pdf, last visited on November 25, 2020 5

Connecticut Practice Book § 67-7 1

INTEREST OF AMICUS CURIAE

The State of Connecticut, particularly by and through the Department of Mental Health and Addiction Services (DMHAS) and the Department for Developmental Services (DDS), utilizes a comprehensive web of state facilities and nonprofit care providers to implement statutory mandates to address the needs of persons with behavioral health needs, addiction and intellectual disabilities.¹ DMHAS and DDS utilize both state-run facilities and nonprofit care providers to provide these services. The nonprofit care providers here are not providing housing subsidized by government agencies but rather are an integral part of the agencies' continuum of care in accord with their statutory mandates. If the state-contracted, nonprofit care providers were determined to be subject to municipal property taxes, contrary to the requirements of Conn. Gen. Stat. § 12-81(7), the State would be required to pay in commensurate measure the increase in costs to these nonprofit providers – and that cannot reflect the legislature's intention when it enacted Conn. Gen. Stat. § 12-81(7)(B).

The Department of Mental Health and Addiction Services is a health care agency whose mission is to promote the overall health and wellness of persons with behavioral health needs through an integrated network of holistic, comprehensive, effective, and efficient services and supports that foster dignity, respect, and self-sufficiency in those served. See *generally* Conn. Gen. Stat. § 17a-450 *et seq.* While DMHAS' prevention and health promotion services serve all Connecticut residents, its central mandate is to serve adults (18 years and over) with mental health and/or substance use disorders, who lack the means to obtain such services on their own. DMHAS also provides collaborative programs

¹ Pursuant to Practice Book § 67-7, the undersigned counsel wrote the entirety of this amicus brief and no party contributed to the cost of its preparation or submission.

for individuals with co-occurring mental health and substance use disorders, people in the criminal justice system, those with problem gambling disorders, pregnant women with substance use disorders, persons with traumatic brain injury and their families, and young adult populations transitioning out of the care of the Department of Children and Families.

DMHAS annually provides statewide behavioral health services to over 105,000 individuals through a combination of state-operated services and those provided by over 160 private not-for-profit contractors.² The DMHAS Commissioner is statutorily mandated to “coordinate with the community programs receiving state funds with programs of state-operated facilities for the treatment of persons with psychiatric disabilities or persons with substance use disorders, or both.” Conn. Gen. Stat. § 17a-451(d). For mental health residential programs, DMHAS has bed capacity in group homes, intensive residential, supervised apartments and transitional housing. DMHAS 2019 Statistical Report at 18. Almost all of the group homes, supervised apartments and transitional housing are operated by nonprofit corporations under contract with DMHAS. The Gilead program at issue here is part of the supervised apartment program with DMHAS.³

As part of its continuum of care, DMHAS provides direct housing subsidies, but only in a few targeted programs, with payments typically made to either a landlord or the individual being subsidized. The DMHAS Housing Services, as part of its regional health centers, assists persons receiving services to obtain housing and the finances to maintain that housing. While various programs may be managed at different points of time, they

² Connecticut Department of Mental Health and Addiction Services, Annual Statistical Report SFY 2019, located at <https://portal.ct.gov/-/media/DMHAS/EQMI/AnnualReports/Annual-Report-SFY2019.pdf>, (last visited on November 25, 2020) (“DMHAS 2019 Statistical Report”).

³ DMHAS funds similar residential options, primarily operated by nonprofit corporations under contract, for substance use disorders. DMHAS 2019 Statistical Report at 18.

include the Bridge or HAF Fund, offered through My Sisters Place, which provides loans to persons for security deposits and grants to persons to supplement other finances to ensure a safe, affordable residence.⁴ In contrast, the financial support received by Gilead under its contract with DMHAS is not a housing subsidy; rather, it is for a wide array of supportive services in a residential, community setting.

The Department of Developmental Services serves over 17,000 individuals with intellectual disabilities and adults diagnosed with Prader-Willi Syndrome. Conn. Gen. Stat. §§ 17a-210, 17a-227. DDS' mission is "to partner with the individuals we support and their families, to support lifelong planning and to join with others to create and promote meaningful opportunities for individuals to fully participate as valued members of their communities."⁵ Approximately 4,700 of those individuals are served in DDS residential programs, with a significant waiting list to participate in those programs. DDS has approximately 875 residential facilities throughout the state, with a tiny percent owned and operated directly by DDS (5%), and the remaining 95% mostly operated by nonprofit corporations.⁶ DDS primarily funds Community Living Arrangements (CLAs) with six or fewer residents; Continuous Residential Support (CRSs) with three or fewer residents; and Intermediate Care Facilities (ICFs) for individuals with higher medical needs. All three of these types of residential programs are integrated support programs for the individuals. These programs differ from the DDS Community Companion Homes (CCH) program,

⁴ See <https://portal.ct.gov/DMHAS/CRMHC/Agency-Files/CRMHC-Overview-of-Services> (CRMHC Housing Services) (last visited on November 25, 2020).

⁵ See <https://portal.ct.gov/DDS/Media/Latest-News-2010/Mission-Statement>, ("DDS Mission and Vision Statements") (last visited on November 25, 2020).

⁶ See DDS' June 2020 Management Information Report at https://portal.ct.gov/-/media/DDS/mir/mir_June_2020_with_attachment.pdf at 3, 22, (last visited on November 25, 2020).

where an individual served by DDS lives with a family that receives a stipend; Supported Living (SL) where the individual lives independently, with outside support services; and independent living. See generally Conn. Gen. Stat. § 17a-210.

Both DMHAS and DDS fund residential program facilities, run by nonprofit providers, that recently have had their property tax-exempt status either not renewed or revoked in numerous towns and cities, even though their status has not changed. In addition to the case at bar, DDS' group homes in Colchester were suddenly reclassified as not exempt from property tax and the Town has moved for property tax foreclosures.⁷ For some of those homes, DDS has an interest in the mortgages. Similar reclassifications of DMHAS and DDS group homes have occurred in Bloomfield, Bristol, Brooklyn, New Haven, New London and Waterbury.⁸ A number of nonprofit group homes were likewise denied tax-exempt status by their respective municipal taxing authorities.⁹

The State has a strong interest in the correct resolution of the legal issue presented here. To the extent that nonprofit providers for state programs for mental health and intellectual disabilities are subject to municipal property taxes, the State will be required to pay more in order to ensure that the programs remain financially viable. The imposition of

⁷ *Colchester v. Caring Community of Connecticut, Inc.*, KNL-CV-18-6037380-S; KNL-CV-18-6037385-S; KNL-CV-18-6048278-S; KNL-CV-20-6048279-S; KNL-CV-20-6048280-S; KNL-CV-18-6037381-S; KNL-CV-20-6048281-S. See *Caring Community of Connecticut v. Colchester*, HHB-CV-16-6037378-S. See also *Adelbrook Community Servs., Inc. v. Cromwell*, HHB-CV-19-6054579-S; *MARC Community Resources v. Cromwell*, HHB-CV-18-6045013-S, HHB-CV-18-6045014-S.

⁸ *CIL Realty, Inc. v. Bloomfield*, HHB-CV-18-6049193-S; *Adelbrook Community Servs., Inc. v. Bristol*, HHB-CV-19-6052659-S; *CIL Realty, Inc. v. Brooklyn*, WWM-CV-20-6019745-S; *CIL Realty, Inc. v. Cromwell*, HHB-CV-20-6062695-S; *CIL Realty, Inc. v. New Haven*, NNH-CV-19-6096626-S; *CIL Realty, Inc. v. New London*, KNL-CV-20-6046464-S; *CIL Realty, Inc. v. Waterbury*, UWY-CV-18-6043681-S.

⁹ Upon information and belief, individual group homes in Berlin, Fairfield, Easton, Farmington, Norwich, Oxford, Plainville, Stratford, Westport & Wilton were denied municipal tax exemptions, from 2015 through 2020.

such taxes also chills the placement of community-based supportive programs. The State, as amicus curiae, respectfully requests this Court find that the housing subsidy exception to the municipal property tax exception does not include residential rehabilitative and supportive state programs, such as the programs funded by DMHAS and DDS.¹⁰

ARGUMENT

I. Both Federal Jurisprudence and State Policy Require the State to Maximize State Community-Based Residential Programming.

Federal law requires that persons with disabilities be integrated into the general community and not isolated in institutional care, the so-called “integration mandate.” While state law and jurisprudence does not so explicitly mandate, state policy at DMHAS and DDS reflects the same directive – to address the needs of each disabled individual at their level in the least restrictive manner and integrate them into the community.¹¹ The State’s programs thus seek to maximize community-based programming in the provision of services to individuals with disabilities.

Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132 and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 both require that mental health services be provided “in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). The “most integrated setting appropriate” is a

¹⁰ As noted above, DMHAS does have a few purely housing support programs. The State does not contend that apartments where an individual takes advantage of DMHAS’ Housing Assistance would be “exempt” pursuant to Conn. Gen. Stat. § 12-81(7)(B).

¹¹ See DMHAS Mission & Vision Statements and Overview at <https://portal.ct.gov/DMHAS/About-DMHAS/Agency/About-DMHAS> (“DMHAS operates on the belief that most people with mental illnesses and/or substance use disorders can and should be treated in community settings, and that inpatient treatment should be used only when absolutely necessary to meet the best interests of the patient.”) (last visited on November 25, 2020); DDS Mission and Vision Statements, found at <https://portal.ct.gov/DDS/Media/Latest-News-2010/Mission-Statement>, (last visited on November 25, 2020).

“setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.” *Davis v. Shah*, 821 F.3d 231, 262 (2d Cir. 2016), citing *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 607 (1999). This “integration mandate” is pursuant to the U.S. Supreme Court’s ruling in *Olmstead*, where the Court held that the provision of mental health services in an institutionalized setting when the recipients are capable and willing to live in a manner more fully integrated into the community constitutes a violation of Title II of the ADA, provided that such integration can be reasonably accommodated. *Olmstead*, 527 U.S. at 607.¹² Similar integration mandates apply to education for special education students, under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* The IDEA requires states to ensure, “to the maximum extent appropriate,” students with disabilities are educated with their nondisabled peers. 20 U.S.C. § 1412(a)(5)(A).

Moreover, the State has been sued in federal court to ensure that disabled individuals are integrated into the community to the extent possible and therapeutically beneficial. See, e.g., *P.J. v. State Board of Education*, 550 Fed. App’x 20 (2d Cir. 2013) (Connecticut’s special education system settlement requiring the integration of special education students into the classroom with their non-special education peers). See also *Messier v. Southbury Training School*, 183 F.R.D. 350 (D. Conn. 1998) (institutional disabled residents opposing community placement could not opt out of class action seeking community placement); *State Office of Prot. & Advocacy for Persons with Disabilities v. Connecticut*, 706 F. Supp. 2d 266 (D. Conn. 2010) (denying motion to dismiss ADA claim seeking greater community access for nursing home residents).

¹² The U.S. courts of appeals have recognized that risk of institutionalization “may support a valid claim under the integration mandate.” *Davis*, 821 F3d at 263 and cases cited therein.

The State has a strong interest in ensuring that community-based programs thrive. This background supplies context for interpreting the state statutes surrounding nonprofit partners providing state-supported programming for disabled individuals. If the Town's proposed statutory interpretation prevailed, it would be in direct conflict with and contrary to this integration mandate.

II. State Community-Based Residential Programs Through Nonprofit Partners Are Neither Subsidized Nor Permanent Housing.

If the State owned the properties where these community-based programs were operated, the State would not be required to pay municipal property tax. Conn. Gen. Stat. § 12-81(2). Nonprofit organizations that own property and use that property in accord with their charitable purposes likewise are not required to pay municipal property tax. Conn. Gen. Stat. § 12-81(7)(A). Nonetheless, the legislature provided an exemption to § 12-81(7)(A), and determined that “housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income shall not constitute a charitable purpose under this section.” Conn. Gen. Stat. § 12-81(7)(B) (emphasis added). The legislature then excluded from the definition of “housing” any real property “used for temporary housing,” that is owned or held in trust for a charitable organization which is exempt from federal income tax. *Id.* The exception to the exception continues, listing five uses of the property that would retain the exemption from municipal property tax, including

- (i) An orphanage; (ii) a drug or alcohol treatment or rehabilitation facility; (iii) housing for persons who are homeless, persons with a mental health disorder, persons with intellectual or physical disability, or victims of domestic violence; (iv) housing for ex-offenders or for individuals participating in a program sponsored by the state Department of Correction or Judicial Branch; and (v) short-term housing operated by a charitable organization where the average length of stay is less than six months.

Conn. Gen. Stat. § 12-81(7)(B). DMHAS and DDS community-based residential programs, such as the Supervised Apartment Program run by Gilead here, are clearly included within the express language of subsections (ii) and (iii) above. Statutory interpretations must begin with the text of the statute. The plain and unambiguous language above clearly does not include therapeutic programs for persons with a mental health disorder or with intellectual or physical disability as exceptions to the general exemption from municipal property taxes in Conn. Gen. Stat. § 12-81(7)(A). See Conn. Gen. Stat. § 1-2z.

Moreover, the purpose of DMHAS and DDS community-based residential programs, such as the Supervised Apartment Program run by Gilead here, is to “make it less likely that [the individuals it services] will become burdens on society and more likely that they will become useful citizens.” *Isaiah 61:1 v. City of Bridgeport*, 270 Conn. 69, 85 (2004), citing *United Church of Christ v. West Hartford*, 206 Conn. 711, 719 (1988). The purpose of the programs governs the analysis. *Isaiah 61:1*, 270 Conn. at 84, 85. Where, as here, the trial court found that the program’s purpose is rehabilitative and therapeutic, and not the provision of shelter, the property clearly is entitled to the exemption. See Appendix I at A87.

Gilead’s contract with DMHAS is attached as Exhibit 11 to the parties’ stipulation of facts, located in the Town’s Appendix II at A304-A315. This contract is typical of what is required for state community-based residential treatment programs. As explained at A308 ¶1, Gilead contracted with DMHAS to provide Assertive Community Treatment (ACT) for adults with “serious and persistent psychiatric disorders.” The treatments were required to be “community-based,” with performance measures that required review of individualized treatment plans every ninety days, for individuals to “successfully complete treatment” and

tracked admissions and discharges. See, e.g., A309-A311.¹³ DMHAS tracks all admissions and discharges as part of its annual reporting. See, e.g., DMHAS 2019 Statistical Report. This is clearly “temporary” housing for individuals with intellectual or physically disabilities that are being provided “a broad range of high quality health care and recovery support services to individuals with mental health disabilities” in accord with Gilead’s charitable purpose. Appendix I at A87 (internal citations omitted). It falls solidly within the exemption.

The Town contends that “subsidized housing” is different from “housing subsidized, in whole or in part, by . . . state . . . government,” and that the community-based residential program here was “housing subsidized” by the state and was not temporary. Town br. 5-6. Based on the undisputed material facts, the trial court correctly rejected these arguments.

The easiest way to demonstrate this is to compare the true housing subsidies offered by DMHAS,¹⁴ with the program at issue here. These actual housing subsidies may provide some or all of the funding necessary for an individual to obtain an apartment, including a security deposit as necessary and help with the rent. The DMHAS housing support programs are a tiny part of the complex web of state housing programs, and most of the state housing subsidies are managed by the Department of Housing (DOH), not DMHAS. See Conn. Gen. Stat. § 8-37r, *et seq.* In the rare instances where DMHAS provides a direct housing subsidy, the funds are typically paid directly to the individual or the individual’s landlord and are not grants to a program provider. Other than the obvious that the first step in any recovery or treatment program is safe housing, DMHAS’ direct

¹³ For background on DMHAS’ Assertive Community Treatment for Recovery see <https://portal.ct.gov/DMHAS/Initiatives/Evidence-Based/ACT>, (last visited on November 25, 2020).

¹⁴ See footnote 4, *supra*.

housing subsidies are not the same as its rehabilitative, therapeutic or supportive programs – rather, they simply are funds to ensure housing is obtained.

This is in direct contrast to the typical DMHAS or DDS residential, community-based rehabilitative and/or supportive program for the individual, such as the program here. The program’s goal is therapeutic, not shelter, and its placement within the community is consistent with state and federal policies to move away from institutional care whenever possible. As the trial court properly found, the supportive apartment living program is not “housing” for the treated individuals, but instead is providing a “structured program to address their issues.” Appendix I at A86-A87. Gilead’s contract with DMHAS confirms this. “Assertive Community Treatment” services require Gilead to assess, assist, develop recovery plans, instruct, provide psychiatric clinical services, provide vocational services, supervise, and collaborate with other community providers. Appendix II at A308-A310.

These programs are not intended to be permanent housing. Rather, DMHAS monitors its residential programs in terms of admissions and discharges. See DMHAS 2019 Statistical Report. The DMHAS contract with Gilead speaks in terms of “admission criteria” and “discharges.” See Appendix II at A308, A310-11. The trial court properly determined that “there is nothing in the stipulated facts to conclude that the treatment provided is anything but temporary.” Appendix I at A88.

CONCLUSION

The answer to the Court’s question to amicus curiae is “yes” because the trial court properly held that plaintiffs were entitled to a municipal property tax exemption under General Statutes § 12-81(7). State community-based residential programs are not “housing subsidized, in whole or in part, by . . . state . . . government” and qualify as “temporary housing” under the statute.

Respectfully submitted,

AMICUS CURIAE
STATE OF CONNETICUT

WILLIAM TONG
ATTORNEY GENERAL

BY: /s/ Clare E. Kindall
Clare E. Kindall, Solicitor General
Juris No. 415004
Office of the Attorney General
165 Capitol Avenue, Hartford, CT 06106
Tel.: (860) 808-5261
Cell.: (860) 571-1258
Email: clare.kindall@ct.gov

CERTIFICATION

Pursuant to Connecticut Practice Book § 67-2, the undersigned attorney hereby certifies that:

- (1) the electronically submitted brief and appendix have been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided;
- (2) the electronically submitted brief and appendix, and the paper filed brief and appendix, have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law;
- (3) the brief and appendix being filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically;
- (4) the brief complies with all applicable provisions of appellate procedure including the provisions of Conn. Practice Book § 67-2; and
- (5) a copy of the brief and appendix has been mailed, first class postage prepaid, this 25th day of November, 2020, to each counsel of record, other than counsel for non-participating appellees, in compliance with Practice Book § 62-7 at the following addresses:

Timothy S. Hollister, Esq.
Pascal Naples Esq.
Lilia N. Hrekul, Esq.
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103-1919

thollister@goodwin.com
pnaples@goodwin.com
lhrekul@goodwin.com

Kari L. Olson, Esq.
Murtha Cullina LLP
185 Asylum Street
Hartford, CT 06103

kolson@murthalaw.com

The Honorable Arnold W. Aronson
Judge Trial Referee
Judicial District of New Britain
20 Franklin Square
New Britain, CT 06051

(by first class mail only)

Amicus Curiae

Elliott B. Pollack, Esq.
Johanna S. Katz, Esq.
Michael J. Marafito, Esq.
Pullman & Comley LLC
90 State House Square
Hartford, CT 06103-3702

ebpollack@pullcom.com
jskatz@pullcom.com
mjmarafilo@pullcom.com

Amicus Curiae

Lloyd L. Langhammer, Esq.
Law Office of Lloyd L. Langhammer, LLC
38 Granite Street, New London, CT 06320

llanghammer@hotmail.com

/s/ Clare E. Kindall

Clare E. Kindall, Solicitor General