STATE OF MINNESOTA | TAX COURT

COUNTY OF LAKE | REGULAR DIVISION

Lake View Memorial Hospital, Inc.,

Petitioner,

vs.

County of Lake,

Respondent.

ORDER DENYING CROSS-MOTIONS FOR SUMMARY JUDGMENT

File No: 38-CV-14-443

Filed: February 7, 2018

This matter came before the Honorable Bradford S. Delapena, Chief Judge of the Minnesota Tax Court, on the parties' cross-motions for summary judgment.

Kenneth D. Butler, Attorney at Law, represents petitioner Lake View Memorial Hospital, Inc.

Russell H. Conrow, Lake County Attorney, represents respondent Lake County.

The issue in this case is whether real property petitioner Lake View Memorial Hospital, Inc., owns and operates as an outpatient primary-care clinic is exempt from property tax. The parties have filed cross-motions for summary judgment. We deny both motions.

Based upon all the files, records, and proceedings herein, the court now makes the following:

ORDER

1. Petitioner Lake View Memorial Hospital, Inc.'s, motion for summary judgment is denied.

2. Respondent Lake County's motion for summary judgment is denied.

IT IS SO ORDERED.

BY THE COURT,

Bradford S. Delapena, Chief Judge
MINNESOTA TAX COURT

DATED: February 7, 2018

MEMORANDUM

Petitioner Lake View Memorial Hospital, Inc., ("Hospital") is a public hospital exempt from taxation.[1] *See* Minn. Const. art. X, § 1; Minn. Stat. § 272.02, subd. 4 (2016). The question is whether Lake View Clinic ("Clinic"), an affiliated outpatient primary-care facility located approximately 175 feet from Hospital,[2] is exempt as "auxiliary property" of Hospital.

The record consists of the parties' Stipulation of Facts and the deposition transcript of Hospital's chief executive officer, Greg Ruberg.[3] Relying on these materials, the parties have filed cross-motions for summary judgment.

I. FACTUAL BACKGROUND

Before 2008, Superior Health Clinic ("Superior Health") operated in the building now occupied by Clinic.[4] In 2008, Hospital acquired Superior Health's business, rebranding it Lake

[1] Stipulation of Facts ¶ 60.

[2] Stip. ¶¶ 5, 18, 25.

[3] Pet'r's Mem. Supp. Summ. J. 1 (filed Oct. 9, 2017); Resp't's Mem. Supp. Summ. J. 1 (filed Oct. 9, 2017); Deposition of Greg Ruberg (July 12, 2017), at 4.

[4] Stip. ¶¶ 10, 14.

View Clinic.[5] In 2012, Hospital acquired the clinic building as well.[6] Hospital and Clinic are now wholly owned subsidiaries of a third entity, St. Luke's.[7]

Following the 2008 acquisition, Superior Health employees became Hospital employees, to whom Hospital's employment and administrative policies are applicable.[8] Superior Health physicians became Hospital employees, who "do not have private practices."[9] As Hospital employees, Clinic physicians may be called upon to assist at Hospital.[10] Clinic radiology staff are cross-trained to operate Hospital equipment.[11]

Before 2008, Superior Health operated independently of Hospital.[12] Since the acquisition, Hospital's chief executive officer "is responsible for" Clinic.[13] Hospital's maintenance staff now cover Clinic's maintenance.[14] Although Clinic and Hospital share phone and computer systems,[15] their billing systems remain separate.[16] Clinic billing operators, however, can provide back-up support for Hospital's billing system when necessary.[17]

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[5] Stip. ¶ 14.

[6] Stip. ¶ 20; Ruberg Depo. 6.

[7] Stip. ¶ 19.

[8] Stip. ¶¶ 15, 16; Ruberg Depo. 18.

[9] Stip. ¶ 45.

[10] Ruberg Depo. 18.

[11] Stip. ¶ 31; Ruberg Depo. 20-21.

[12] Ruberg Depo. 10.

[13] Stip. ¶ 48.

[14] Stip. ¶ 58.

[15] Stip. ¶ 59.

[16] Stip. ¶ 43.

[17] Stip. ¶ 43.

Services provided by Hospital and Clinic partly overlap, with both facilities offering radiology and laboratory testing.[18] Clinic's laboratory, however, provides fewer services than Hospital's, thus requiring some procedures to be performed at Hospital.[19] Clinic likewise offers some exclusive services, namely, pre-employment back examinations, mammography, and Telehealth services focused on endocrinology and psychiatry.[20]

II. SUMMARY JUDGMENT

Summary judgment is proper only where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03; *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). Summary judgments are to be granted with caution and are not intended as a substitute for trial. *Lundgren v. Eustermann*, 370 N.W.2d 877, 882 (Minn. 1985); *Sauter v. Sauter*, 244 Minn. 482, 485, 70 N.W.2d 351, 353 (1955). "The substantive law identifies which facts are material." *Bond v. Comm'r of Revenue*, 691 N.W.2d 831, 836 (Minn. 2005) (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986)). A fact is material for purposes of summary judgment, "if its resolution will affect the outcome of the case." *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

III. SUBSTANTIVE STANDARDS

The Minnesota Constitution provides that "public hospitals ... shall be exempt from taxation." Minn. Const. art. X, § 1. Public hospitals are by statute exempt from property tax. Minn. Stat. § 272.02, subd. 4 ("All public hospitals are exempt.").

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[18] Stip. ¶¶ 30, 36, 38.

[19] Stip. ¶ 38.

[20] Ruberg Depo. 21, 41.

A. Public Hospital Exemption

To qualify for the public hospital exemption, a hospital: (1) "must [offer] free access to the public without discrimination"; and (2) "should be operated for the benefit of the public in contradistinction to being operated for the benefit of a private individual, corporation, or group of individuals." *State v. Browning*, 192 Minn. 25, 28-29, 255 N.W. 254, 255-56 (1934). With respect to the second requirement, the Supreme Court long ago explained:

> [O]perated for the benefit of the public means operated without an intent to make a private profit. It is not thereby meant that the institution must dispense charity or that it may not charge a fee for services rendered. Operated for the benefit of the public does mean that the receipts shall not be substantially more than the disbursements so that a profit results.... The controlling feature is whether the institution was built, organized, and/or is maintained with an intent to make a private profit, not whether there happens to be a profit in any given year.

Id. at 29, 255 N.W.2d at 256; *see also State v. H. Longstreet Taylor Found.*, 198 Minn. 263, 266, 268, 269 N.W. 469, 470-71 (1936) (recognizing public hospital exemption where non-profit entity that operated tuberculosis sanatorium had since its creation "been engaged in the activities for which it was organized[] and ha[d] at all times been operated at a loss.").

The Supreme Court has explained that Minnesota's public hospital exemption was intended to provide a reciprocal benefit to institutions operated for the public good:

> [I]t is important to inquire how such institutions may best and most successfully be encouraged. The encouragement ought not to be limited to mere formal acts of recognition or praise on the part of the state or people, but to broad acts of such potentiality as will result in substantial benefit and assistance to them.

H. Longstreet Taylor Found., 198 Minn. at 268, 269 N.W. at 471 (internal quotation marks and citation omitted). Accordingly, the exemption is not properly granted to entities acting for private benefit. *Browning*, 192 Minn. at 29, 255 N.W. at 256 ("Surely [the exemption] was not intended to exempt from taxation the numerous private hospitals ... throughout the state owned by one or more individuals with a view to making a private profit.").

B. Auxiliary Property

The public hospital exemption "is not limited to buildings actually used as hospitals." *Chisago Health Servs. v. Comm'r of Revenue*, 462 N.W.2d 386, 388 (Minn. 1990). Instead, it "applies to any property 'devoted to and reasonably necessary for the accomplishment of' public hospital purposes." *Id.* (quoting *State v. Fairview Hosp. Ass'n*, 262 Minn. 184, 187, 114 N.W.2d 568, 571 (1962)). The supreme court has explained that "[t]he test, in a sense, measures the degree to which the auxiliary facilities and the public hospital are functionally interdependent." *Id.* at 390. We first discuss auxiliary property generally, then medical clinics in particular.

1. Auxiliary Property Generally

Property is "devoted to" an institution's tax-exempt purpose when it is used to further that purpose. *See, e.g.*, *State v. Carleton Coll.*, 154 Minn. 280, 286, 191 N.W. 400, 403 (1923); *see also Christian Bus. Men's Comm. of Minneapolis v. State*, 228 Minn. 549, 554, 38 N.W.2d 803, 808 (1949) ("In order for any institution to qualify for tax exemption ... [,] there must be a concurrence of *ownership* of the property by an institution of the type prescribed by the constitution and a *use* of the property for the purpose for which such institution was organized."). In *Carleton College*, for example, the state sought to tax, among other things, off-campus dormitories and a 260-acre farm immediately adjacent to the school's main campus. 154 Minn. at 282, 191 N.W. at 401. The college claimed that the facilities were constitutionally exempt educational property under the auxiliary-property doctrine. *Id.* at 281, 191 N.W.2d at 401. The court took for granted that the off-campus dormitories were "buildings and grounds devoted to the use of the college." *Id.* at 286, 191 N.W. at 403. It noted that the college's objectives in acquiring and operating the adjacent farm were "to secure an attractive setting for the college campus ... , to interest and keep students in touch with rural activities, to furnish means of employment to some self-supporting students, and to supply the dormitories with the necessary milk." *Id.* at 282,

191 N.W. at 401. The court ruled that, "except as to incidental matters," the farm was "wholly devoted to present legitimate purposes of the institution." *Id.* at 287, 191 N.W. at 403.

To satisfy the auxiliary-property doctrine, property must also be "reasonably necessary" to the exempt institution's purpose. *Chisago*, 462 N.W.2d at 388-89. Auxiliary property "need not be 'essential' or 'indispensable' to the accomplishment of an exempt purpose." *Id.* at 388 (quoting *Fairview Hosp. Ass'n*, 262 Minn. at 187, 114 N.W.2d at 571). In addition, "[t]he term necessity is to be given a reasonable, natural, and practical interpretation in the light of modern conditions." *Id.* at 389 (internal quotation marks and citation omitted). The supreme court has "rejected a 'reasonably necessary' test based predominantly on economic necessity," and has instead "applied the reasonably necessary test in a functional sense." *Id.* at 389.

Applying the auxiliary-property doctrine, courts have found the following types of non-clinic property to be non-taxable under the public hospital exemption:

Facilities providing laundry and collection services. In *Community Hospital Linen Services, Inc. v. Commissioner of Taxation*, 309 Minn. 447, 245 N.W.2d 190 (1976), a group of public hospitals created two nonprofit cooperative associations to provide members with laundry and collection services. *Id.* at 448-49, 245 N.W.2d at 191. The cooperatives' property was devoted to the hospitals' purposes because the cooperatives "were organized solely for and devoted exclusively to serving the needs of the member hospitals," and because "[n]o part of any surplus realized by [their] operations inures to the benefit of any person or entity other than the member hospitals." *Id.* at 456, 245 N.W.2d at 195. The property was reasonably necessary because the cooperatives served member hospitals "in necessary and essential ways." *Id.* at 456, 245 N.W.2d at 195.

Below-market lodging for patients and others. In *Abbott-Northwestern Hospital, Inc. v. County of Hennepin*, 389 N.W.2d 916 (Minn. 1986), a public hospital owned and operated a six-story lodging facility to provide below-market accommodations "to four categories of individuals: (1) preadmission patients; (2) outpatients; (3) medical personnel attending medical seminars offered by the hospital ... ; and (4) family members of patients." *Id.* at 917-18. The court noted that "[t]he hospital's purpose in operating the [facility] is to provide close, clean, cheap, comfortable, and controlled overnight accommodations" for qualifying persons, and that its "major advantage over hospital rooms is cost containment." *Id.* at 918. In addition, "the facility was reasonably necessary in this modern age for the accomplishment of its purpose of furnishing health care services to patients." *Id.* at 919.

Facilities necessary for accreditation. In *Naeve Health Care Association v. County of Freeborn*, No. C6-92-541, 1993 WL 35164 (Minn. T.C. Feb. 11, 1993), a public hospital owned and operated two off-campus properties, a physical therapy facility and a psychiatric/psychological facility. 1993 WL 35164, at *3-4. "[T]he two properties further the hospital's purpose of providing medical care in the area." *Id.* at *4. The court further found that "[i]t is reasonably necessary to provide physical therapy on an outpatient basis," and that the physical therapy facility was "required for the hospital to function because the Joint Commission of Accreditation for Hospitals ... requires a physical therapy unit in order to be accredited." *Id.* "In order to function, the hospital must have at least one psychiatrist." *Id.*; *see also id.* at *5 (noting that the hospital sought "exemption for facilities that are reasonably necessary for its accreditation and operation").[21]

[21] We treat *Naeve* as a non-clinic case because the court commented: "[T]his case does not involve a medical clinic." 1993 WL 35164, at *5.

2. Clinics as Auxiliary Property

Special concerns arise when public hospitals assert that medical clinics they operate qualify as exempt "auxiliary property." According to the Minnesota Supreme Court, the public hospital exemption "was not intended to exempt from taxation the numerous private hospitals ... owned ... with a view to making a private profit." *Browning*, 192 Minn. at 29, 255 N.W. at 256. Correspondingly, the court has not allowed the auxiliary-property doctrine to exempt from taxation hospital-run clinics operated for private benefit (even when operated by a public hospital).

In *City of Springfield v. Commissioner of Revenue*, 380 N.W.2d 802 (Minn. 1986), the supreme court affirmed the tax court's decision "holding that a medical clinic owned and operated by the city and used by physicians to provide medical services to the public on a fee-for-service basis was not exempt from real property taxes." *Id.* at 802. Troubled by recent failures to recruit physicians to the area, the City of Springfield purchased an existing medical clinic to allow the three physicians currently working in the city "to practice in one facility." *Id.* at 803. These physicians set their fees in conjunction with the hospital board. *Id.* at 803, 805. The financial arrangements between the physicians and the hospital were as follows:

> [T]he hospital retains 40 percent of the gross accounts receivable generated by the practices and the physicians receive 60 percent of their practice's gross accounts receivable. The hospital absorbs any loss if the amount of the clinic's accounts receivable actually collected is less than the amount needed to meet operating costs. Any profits are retained by the hospital.

Id. at 803.

The city argued that the clinic was exempt as public property used exclusively for a public purpose under Minn. Stat. § 272.02, subd. 1(7), and as auxiliary property of a public hospital under Minn. Stat. § 272.02, subd. 1(3). *Id.* at 804. With respect to the first issue, the tax court concluded that "although public property, the clinic was not used exclusively for a public purpose because

the physicians located in the clinic provided medical services to patients on a fee basis, not unlike doctors practicing medicine in a private clinic." *Id.* at 803.

The supreme court agreed that the city's purchase and operation of the clinic served a public purpose: "Certainly, assuring that adequate medical care is made available to the community is a public purpose ...." *Id.* at 805. This, however, was not sufficient:

> Although the public may benefit from the operation of a municipal clinic, it cannot be ignored that the physicians are conducting their *private* medical practices in the facility. Their services are not rendered free of charge. The hospital board and the physicians practicing in the clinic annually set the fees for the services provided through the clinic and ... the physicians receive 60 percent of their respective gross accounts receivable.

Id. The court thus concluded that the clinic property "was not being used exclusively for a public purpose." *Id.* It further concluded that the property did not qualify for the public hospital exemption because it was not auxiliary property reasonably necessary for the hospital to accomplish its purposes. *Id.* at 805-06.

In *Chisago Health Services*, the supreme court again expressed concern that the auxiliary-property doctrine should not exempt (essentially) for-profit clinics from taxation. 462 N.W.2d at 390-91. In *Chisago*, a public hospital district and a group of private physicians merged into a new entity (CHS), which subsequently operated: (1) the Chisago Lakes Hospital; (2) "the Hospital Annex, an addition to the Hospital which includes an outpatient medical clinic"; and (3) the Wyoming Clinic, an ambulatory care facility approximately seven miles away from the hospital. *Id.* at 387. After the merger, the private physicians who formerly practiced in the Annex became CHS employees. *Id.* These physicians now staffed the Annex and the Wyoming Clinic. *Id.* Their compensation was established by CHS and was "designed to take into consideration: (1) tenure; (2) productivity measured by services generated; and (3) market compensation for physicians practicing in similar specialty areas." *Id.* at 387-88.

The court emphasized that "[t]he reorganization came about because of radical changes in the nature and delivery of health care, changes which have particularly affected rural hospitals," and was

> designed to ensure unified planning with physician involvement, to offer better quality and cost control, and to encourage the physicians to develop specialty programs for the Hospital. The new program, too, would help reduce the risk of competition from Twin Cities clinics and physicians, while at the same time enabling the District to do a better job of providing an integrated health care program to the communities it served.

Id. at 388. There was no dispute that the hospital itself was "exempt from property taxes as a 'public hospital.' " *Id.* at 387. Despite its obvious sympathy with the reorganization's objectives, however, the supreme court rejected CHS's claim that the Annex and the Wyoming Clinic were exempt from taxation as auxiliary property. *Id.* at 390-91.

The court concluded that the case was controlled by *Springfield*: "Here, as in *Springfield*, the District has devised a plan to attract physicians and patients to its Hospital and to remain competitive with neighboring health care providers; but, as in *Springfield*, this purpose, though it makes good economic sense, does little to advance a tax exemption." *Id.* at 390. The court specifically rejected CHS's contention that its clinic physicians did not practice for private gain:

> Petitioner seeks to distinguish *Springfield* on the grounds the physicians in that case received a fixed percentage of gross accounts while the CHS physicians are on a fixed salary. This distinction loses much of its force, however, because ... the CHS physicians' salaries take into account an individual doctor's productivity measured by the services he or she generates. *In other words, there is a substantial nonpublic aspect to the way in which the physicians practice in the medical clinic facilities.*

Id. (emphasis added). Ultimately, the supreme court ruled that the tax court had not erred "in treating the CHS reorganization as primarily one to enhance the Hospital's economic viability, not its functional purpose." *Id.* It thus affirmed the lower court's denial of the public hospital exemption. *Id.* at 391.

The supreme court ended its analysis of CHS's public-hospital exemption claim with the following comments, which we find pertinent here:

> The difficulty with granting tax exemption to auxiliary properties which help an exempt institution to survive or to prosper financially is two-fold. First, it is difficult to know where to draw the line; almost any auxiliary facility can be found to improve the financial well-being of a hospital. Secondly, these exemptions, because they are exceptions to the requirement of uniform taxation, tend to give an unfair competitive advantage to the exempted facility over similar facilities privately operated.

Id. at 390-91.

IV. ANALYSIS

Petitioner contends that it is entitled to summary judgment because Clinic is devoted to the purposes of a public hospital and is reasonably necessary owing to the functional interdependence between Hospital and Clinic.[22] The County argues that it is entitled to judgment because Clinic satisfies neither prong of the auxiliary-property test.[23]

We approach the parties' summary judgment motions with several points in mind. First, when the supreme court last decided a clinic case almost 30 years ago, it commented that "old distinctions between hospitals and doctors' clinics are being blurred and their respective services tend somewhat to overlap." *Chisago*, 462 N.W.2d at 390. Intervening changes in the healthcare industry presumably erode these distinctions even further, yet are important because "[t]he term necessity is to be given a reasonable, natural, and practical interpretation in the light of modern conditions." *Id.* at 389 (internal quotation marks and citation omitted). Second, we have limited guidance applying the auxiliary-property doctrine to clinics, because *Chisago* and *Springfield* are the supreme court's only medical clinic cases. Third, when a clinic is asserted to be exempt

[22] Pet'r's Mem. Supp. Summ. J. 4-10.

[23] Resp't's Mem. Supp. Summ. J. 4-5.

auxiliary property, "it is difficult to know where to draw the line," and an incorrect determination can confer an unfair competitive advantage. *Chisago*, 462 N.W.2d at 390-91. Finally, although *Chisago* clarified that reasonably necessity focuses on the degree to which facilities are "functionally interdependent," *id.* at 390, the supreme court has not had an opportunity to elaborate the meaning of that term.[24]

A. Devoted to Public Hospital Purposes

To qualify for the public hospital exemption, an institution must operate in the public interest: "[t]he controlling feature is whether the institution was built, organized, and/or is maintained with an intent to make a private profit ...." *Browning*, 192 Minn. at 29, 255 N.W. at 256. To qualify as exempt auxiliary property, a facility must be "devoted to ... the accomplishment of public hospital purposes." *Chisago*, 462 N.W.2d at 388 (internal quotation marks and citation omitted). Under controlling precedent, we must ask: (1) whether Clinic operated on a not-for-profit basis (consistent with Hospital's public purpose); and (2) whether Clinic's physicians were compensated consistent with that purpose.

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[24] The tax court has decided a handful of clinic cases since the supreme court filed *Chisago* in 1990. Two of these cases, *Allina Medical Clinics v. County of Meeker*, No. C0-02-256 et al., 2005 WL 473908 (Minn. T.C. Feb. 18, 2005), and *Ridgeview Medical Center v. County of Carver*, No. C3-00-590, 2001 WL 1359835 (Minn. T.C. Oct. 25, 2001), are of questionable value here, because each involved a remote facility. The clinic in *Allina* was 45 miles away from the nearest affiliated hospital. 2005 WL 473908, at *5. In *Ridgeview*, the clinic was 13 miles from its affiliate. 2001 WL 1359835, at *1. A third case, *Westbrook Health Center v. County of Cottonwood*, No. CX-03-128, 2004 WL 3021372 (Minn. T.C. Dec. 14, 2004), involved a hospital and clinic "physically attached and enclosed under one roof." 2004 WL 3021372, at *3, *5. Here, in contrast, we have a detached clinic located on the hospital's campus. Because we cannot on the existing record decide this case under controlling supreme court precedent, we need not address the pertinence of the foregoing tax court cases.

1. Not-for-profit Operation

The record discloses little about the entities that own and operate Clinic. The parties have stipulated: (1) that "[i]n 2010, ... Lake View Hospital and Lake View Clinic, became wholly owned subsidiaries of St. Luke's in Duluth";[25] (2) that petitioner "is a Minnesota non-profit corporation, 501(c)(3), operating Lake View Hospital ....";[26] (3) that Hospital "is a public hospital under Minnesota Law";[27] (4) that "Petitioner considers Lake View Clinic a department of the hospital";[28] and (5) that "[t]he President/Chief Executive Officer of Lake View Hospital, Greg Ruberg, is also responsible for Lake View Clinic." [29]

On this record, we are unable to determine whether Clinic was "devoted to" Hospital's public purpose—whether Clinic was operated "with an intent to make a private profit ...." *Browning*, 192 Minn. at 29, 255 N.W. at 256. The record does not indicate whether Clinic itself is a non-profit entity, was operated on a non-profit basis, or even whether Clinic has a separate corporate existence. We have no articles of incorporation or by-laws for any entity.[30] We have no organizational charts or evidence detailing formal authority either within Clinic or among the entities that operate it. Although the parties have stipulated that Hospital's chief executive officer, Mr. Ruberg, was "responsible for Lake View Clinic," the record neither discloses the relationship among the entities that operate Clinic nor describes the source and extent of Mr. Ruberg's asserted

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[25] Stip. ¶ 19.

[26] Stip. ¶ 7.

[27] Stip. ¶ 60.

[28] Stip. ¶ 25.

[29] Stip. ¶ 48.

[30] The supreme court has examined an entity's articles of incorporation to determine whether it was organized and maintained on a non-profit basis. *See, e.g.*, *Cmty. Hosp. Linen Servs.*, 309 Minn. 449-50, 245 N.W.2d at 191-92; *H. Longstreet Taylor Found.*, 198 Minn. at 264-65, 269 N.W. at 469-70.

authority to direct Clinic operations. Finally, we have no financial statements indicating whether Clinic operated on a not-for-profit basis during the period in question.

We could perhaps *infer* that Hospital possessed the formal authority to control Clinic, and that it exercised that authority to ensure Clinic operated on a not-for-profit basis. Because not-for-profit operation is a fact critical to our determination, however, we decline to make this inference on an incomplete record, and therefore conclude that neither party is entitled to a judgment as a matter of law. A robust record is particularly important here, where an incorrect ruling would "tend to give an unfair competitive advantage to the exempted facility over similar facilities privately operated." *Chisago*, 462 N.W.2d at 391.

2. Physician Compensation

In both of its clinic cases, the supreme court placed particular emphasis on physician compensation. In *Springfield*, the court ruled that the clinic did not qualify as exempt auxiliary property, in part, because "the physicians are conducting their *private* medical practices in the facility." 380 N.W.2d at 805. In *Chisago*, likewise, the court noted that physician compensation took productivity into consideration and thus commented that "there is a substantial nonpublic aspect to the way in which the physicians practice in the medical clinic facilities." 462 N.W.2d at 390. Plainly, then, detailed information regarding physician compensation is material to determining whether a clinic qualifies as exempt auxiliary property. More specifically, there must be evidence allowing the court to determine the criteria used to set physician pay and whether physician compensation at a clinic is comparable to that received by public hospital physicians or, instead, is akin to that earned by private practitioners.

The record provides scant information regarding the compensation of Clinic physicians. The parties have stipulated only that "Lake View Clinic physicians are salaried employees of the

Hospital and do not have private practices."[31] Thus, the record contains no information concerning the criteria used to determine physician pay. *See id.* at 390 (indicating that certain criteria reveal the nonpublic character of physician pay).[32] It likewise contains no information that would allow us to compare the amount Clinic physicians are paid in comparison with local private physicians.

On this record, we cannot determine how physician compensation bears on the Clinic's possible status as auxiliary property. Consequently, we conclude that neither party is entitled to judgment as a matter of law concerning whether Clinic is "devoted to" Hospital's public purpose.

B. Reasonably Necessary

Auxiliary property "need not be 'essential' or 'indispensable' to the accomplishment of an exempt purpose ...." *Id.* at 388. "The term necessity is to be given a reasonable, natural, and practical interpretation in the light of modern conditions." *Id.* at 389 (internal quotation marks and citation omitted). It "measures the degree to which the auxiliary facilities and the public hospital are functionally interdependent." *Id.* at 390. Here, there is evidence of both functional interdependence and facility independence.

With respect to interdependence, Hospital and Clinic share a campus, some facilities, and some operational functions. Clinic occupies a building located approximately 175 feet from Hospital.[33] The common campus includes parking lots that can be used by patrons and staff of

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[31] Stip. ¶ 45.

[32] Mr. Ruberg testified on deposition that physician pay is "not based on how many patients they see." Ruberg Depo. 34. Perhaps jokingly, Ruberg added that petitioner would "manage" a doctor seeing too few patients. *Id.* Even if we were willing to infer from this exchange that petitioner does not use productivity as a factor in setting physician pay, there is no evidence about which factors petitioner *does* use.

[33] Stip. ¶ 5.

both facilities.[34] Since 2008, Clinic employees—including physicians—have been Hospital employees, to whom Hospital employment and administrative policies apply.[35] Hospital runs a cafeteria that staff of both facilities may use.[36] "Hospital maintenance staff operate mechanical rooms in both Hospital and Clinic." [37] "Petitioner operates one phone system and one computer system that are common between" Hospital and Clinic.[38] "Patients of the Hospital or Clinic can pay their bill at either facility." [39]

Although Hospital and Clinic have some departments in common, each also performs some unique patient services. Hospital has the following departments: "In-patient, Out-patient Clinic, Radiology, Rehabilitation, Laboratory, Pharmacy, Emergency Department, Administration, and Maintenance." [40] Clinic has the following service areas: "Radiology, Physical Therapy, Laboratory, Administration and Examination Rooms." [41] Clinic refers some patients to Hospital.[42] Although each facility has radiology, only Clinic performs mammography,[43] and only Hospital performs computerized tomography (CT) scans.[44] Although each facility has a laboratory, "[s]ome tests for Clinic patients must be performed at the Hospital Laboratory because of specialized

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[34] Stip. ¶¶ 6, 55-56.

[35] Stip. ¶¶ 14-16, 45.

[36] Stip. ¶ 57.

[37] Stip. ¶ 58.

[38] Stip. ¶ 59.

[39] Stip. ¶ 44.

[40] Stip. ¶ 24.

[41] Stip. ¶ 28.

[42] Stip. ¶ 54.

[43] Stip. ¶ 33.

[44] Stip. ¶ 30.

equipment at the Hospital." [45] Only Clinic "provides space for Telehealth services." [46] Clinic's physical therapy "is operated by Hospital Rehabilitation Physical Therapy staff," [47] and performs only a single service: pre-employment back-lifting evaluations,[48] a service not offered at Hospital.[49]

There is evidence that some Hospital and Clinic staff are cross-trained. Clinic radiology staff, for example, "are cross-trained to cover the Hospital Radiology Department." [50] Likewise, "Clinic Billing personnel can provide back-up support for Hospital." [51] Equivocal evidence indicates that laboratory technicians are capable of working in either facility's lab.[52] Mr. Ruberg testified that Clinic physicians "can cover our ER if we need to as—as an extra helper, kind of last minute. They also round on our patients—that's their patients that are in our hospital." [53]

Although the foregoing evidence indicates *some degree* of functional interdependence, the record does not disclose just *what degree*. There is no evidence, for example, indicating how many patients: (1) Clinic refers to Hospital; (2) Hospital refers to Clinic for mammographies; or (3) Clinic refers to Hospital for CT scans. There is no indication as to which laboratory tests can be performed only at Hospital, or how regularly Hospital's laboratory performs tests for Clinic patients. And although there is evidence that certain Hospital and Clinic staff are cross-trained,

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[45] Stip. ¶¶ 36, 38.

[46] Stip. ¶ 47.

[47] Stip. ¶ 34.

[48] Stip. ¶ 35.

[49] Ruberg Depo. 41.

[50] Stip. ¶ 31.

[51] Stip. ¶ 43.

[52] Ruberg Depo. 32-33 (commenting that "on the hospital side they [laboratory staff] can also support the clinic").

[53] Ruberg Depo. 18.

there is no indication of the frequency with which Clinic staff were actually called upon to work at Hospital, or vice versa. Nor is there evidence indicating how often Clinic physicians worked in Hospital's emergency room or made rounds in Hospital. The existing record consists largely of general (and sometimes even vague statements) about cross-training, and contains no useful quantification.

There is also evidence in the record indicating that Hospital and Clinic are functionally *independent*, rather than *interdependent*. The parties have stipulated that, immediately after petitioner acquired Superior Health's clinic business in 2008, "Petitioner continued operating a family practice clinic in the [Clinic] facility." [54] As previously indicated, Hospital and Clinic have a signification duplication of departments,[55] a duplication that promotes independence. The stipulation indicates, for example, that "Clinic Radiology has its own equipment and staff," [56] and "supports Clinic patient services." [57] Likewise, "Clinic Laboratory has its own staff and equipment," [58] and "provides medical testing for Clinic patients." [59] Finally, "Clinic Administration provides organizational support for Clinic operations." [60]

Beyond its inability to settle the question of functional interdependence, the record simply lacks other important evidence. The supreme court has repeatedly emphasized that "[t]he term necessity is to be given a reasonable, natural, and practical interpretation *in the light of modern*

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[54] Stip. ¶¶ 14, 18.

[55] Stip. ¶¶ 24, 28.

[56] Stip. ¶ 31.

[57] Stip. ¶ 32.

[58] Stip. ¶ 37.

[59] Stip. ¶ 36.

[60] Stip. ¶ 42.

conditions." *Chisago*, 462 N.W.2d at 389 (internal quotation marks and citation omitted) (emphasis added). The parties, however, submitted no *evidence* of "modern conditions" in the healthcare industry that might bear on the question of whether an adjacent medical clinic is "reasonably necessary" to the function of a public hospital. Such evidence would appear essential to proper resolution of this matter.[61]

The supreme court has also "rejected a 'reasonably necessary' test based predominantly on economic necessity," and has instead "applied the reasonably necessary test in a functional sense." *Id.* The court explained: "[I]f economic well-being were to be the test, the court would be required to weigh the competing economic interests of the currently volatile health care marketplace, thus placing the court in the position of legislating tax relief." *Id.* at 391. Not surprisingly, the court concluded that the Legislature "is the appropriate body to make such a determination." *Id.* (quoting *Share v. Comm'r of Revenue*, 363 N.W.2d 47, 53 (Minn. 1985)). Because the reasonably necessary test focuses on functional interdependence, *id.* at 390, evidence concerning such interdependence (or the lack thereof)—as distinguished from evidence of mere economic integration—is likewise crucial to decision.

V. CONCLUSION

On the existing record, neither party is entitled to judgment as a matter of law as to either the "devoted to" or the "reasonably necessary" prong of the auxiliary-property test. Accordingly, we deny each party's motion for summary judgment.

B.S.D

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[61] Although petitioner's submission makes numerous assertions about the contemporary healthcare system, *see, e.g.*, Pet'r's Mem. Supp. Summ. J. 4-5, none are supported by record evidence.