



May 18, 2006

Manuel D. Silva, Principal Assessor  
Board of Assessors  
Town of Wilbraham  
240 Springfield St.  
Wilbraham, MA 01095

Re: Falcon Housing Corp.  
28 Miles Morgan Ct.  
Our File No. 2006-111

Dear Mr. Silva:

I am writing in regard to your question whether certain real property of Falcon Housing Corp. ("FHC") qualifies for a property tax exemption. Based on the information you provided to us, it is our understanding that FHC is a not-for-profit, private association that provides affordable housing for low-income seniors. FHC owns property located at 28 Miles Morgan Ct. in Wilbraham for which it has applied for a charitable tax exemption. The property consists of 12 acres. On approximately 2 of the acres is a 3-story facility with 44 one-bedroom rental apartments and 3 community rooms. The apartments are rented at below fair market rates. The remaining 10 or so acres consist of conservation land and wetlands.

You have raised the question whether FHC is a tax-exempt organization. As you know, the requisites, which a charitable organization must satisfy in order to qualify for a tax exemption on real property, are set out in Chapter 59, Section 5, Clause Third of the General Laws. This provision allows an exemption from property tax assessment upon:

"real estate owned or held in trust for a charitable organization and occupied by it or its officers for the purposes for which it is organized or by another charitable organization or organizations or its or their officers for the purposes of such other charitable organization or organizations."

This statutory provision sets out three, discrete requisites, all of which must be satisfied in order for real property to qualify for exempt status. First, the organization must be a charity. Secondly, the charitable organization must own the property. And finally, the charitable organization or some other charitable organization must occupy the property for a charitable purpose.

According to the paperwork you submitted, FHC uses its property (i) to provide affordable, safe, sanitary housing to low-income seniors, and (ii) to make space available to non-profit volunteer groups. These activities would be considered charitable in nature. Providing living

quarters to needy persons and making space available to the public for community events are considered charitable uses of property.<sup>1</sup> Therefore, since the purposes and activities of FHC are charitable in nature, FHC would likely qualify as a charitable organization. In addition, FHC owns the property on which it conducts these activities. Thus, the issue here relates solely to the occupancy requirement.

Even if FHC is considered a charitable organization, it still must show that the occupancy of its property is in furtherance of its stated charitable purposes.<sup>2</sup> Here, FHC rents apartment units to qualifying low-income seniors. Where a charitable corporation rents dwelling units, the property is considered to be occupied by the tenants, not by the charitable corporation.<sup>3</sup> Therefore, FHC does not satisfy an essential Clause Third requisite for one of its charitable uses of the property.

The assessors, however, may be required to take into account any restrictions placed by governmental regulations on the actual income received by FHC. The Supreme Judicial Court has held that federal restrictions on rental income must be taken into consideration when valuing a parcel since the federal restrictions were a condition for financing and the project could not have been undertaken without this federal assistance.<sup>4</sup> The paperwork you submitted indicates that FHC built its elderly housing facility with funding from the Department of Housing and Urban Development. If FHC received government financing that placed restrictions on the amount that could be charged for rents, the assessors must take into consideration those restrictions in determining the property's value.

Further, FHC may be entitled to a partial charitable exemption. Where a charitable owner occupies property for a combination of charitable and non-charitable activities, the portion of the property occupied for charitable purposes is entitled to a partial exemption.<sup>5</sup> In addition to renting apartment units, FHC makes space in its facility available to non-profit volunteer groups. It is also possible that FHC uses a portion of the facility as its administrative offices, i.e., as the place where records are stored and officers conduct the organization's business, or for other activities in furtherance of its charitable purposes. Therefore, if you determine that these activities are sufficiently substantial, FHC will be entitled to a pro-rated exemption based on the percentage amount of the property used for those purposes.

In our view, however, whether FHC's charitable uses of the property are substantial enough that the property could be said to be occupied for charitable purposes is a determination that the board of assessors must initially make. To the extent that FHC disagrees with the determination made by the assessors, it may appeal to the Board of Assessors and the ATB, if necessary.

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1 See MIT Student House, Inc. v. Board of Assessors of Boston, 350 Mass. 539 (1966); Newton Centre Woman's Club v. City of Newton, 258 Mass. 326 (1927).

2 See Boston Lodge, B.P.O.E. v. City of Boston, 217 Mass. 176 (1914); Salem Lyceum v. City of Salem, 154 Mass. 15 (1891).

3 See Charlesbank Homes v. City of Boston, 218 Mass. 14 (1914); Lynn Hospital v. Board of Assessors of Lynn, 383 Mass. 14 (1981).

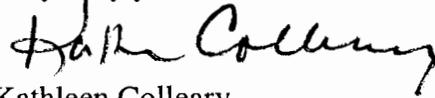
4 See Community Development Company of Gardner v. Assessors of Gardner, 377 Mass. 351 (1979); Truehart v. Board of Assessors of Montague, Appellate Tax Board Docket Nos. 198055, 198056, 198057 (April 21, 1999).

5 See Assessors of Worcester v. Knights of Columbus, 329 Mass. 532 (1952).

Page 3  
Mr. Silva

We hope that this information is helpful. If you have any additional questions concerning this matter, please do not hesitate to contact us.

Very truly yours,



Kathleen Colleary  
Chief, Bureau of Municipal Finance Law

KC/mcm