



August 24, 2009

Ann P. Murphy, Principal Assessor
Town of Monson
110 Main Street
Monson, MA 01057

Re: Exemption Claim of Give Them Sanctuary, Inc.
Our File # 2009-963

Dear Ms. Murphy:

You have sought guidance in evaluating the claim of Give Them Sanctuary, Inc. to exempt status under G.L. c. 59, § 5, Clause 3 for 16 acres of real property donated to them on May 7, 2009. You have supplied the Articles of Incorporation, dated January 1, 2008 and the By-laws of even date. You have also submitted the Form PC filing for calendar year 2008, dated July 12, 2009.

The Articles describe the purposes of the entity, which is incorporated under G.L. c. 180: To “[p]rovide shelter and healthy habitat for wild animals, foster health and welfare of domestic animals, and abused persons who are in need of sanctuary.” The By-laws list an additional purpose to “conserve and protect natural spaces.” The By-laws, though not the Articles, prohibit private inurement, stipulate that upon dissolution the assets will be “distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code,” and place restrictions upon compensation of officers, directors, and employees. *See* Article 8 of the By-laws.

The Commissioner of Revenue does not determine the exempt status of property for local tax purposes. Property taxes in Massachusetts are assessed and collected by cities and towns, not by the state. The Board of Assessors of the Town of Monson, as the local tax administrator, has the authority to determine whether the property held by Give Them Sanctuary, Inc. is entitled to exemption under G.L. c. 59, § 5, Clause 3. However, we do offer the following advisory comments to assist you in determining the taxable status of the 16 acres of land owned by Give Them Sanctuary, Inc.

“[R]eal estate owned by a ‘charitable organization and occupied by it or its officers for the purposes for which it is organized’” is entitled to exemption from local property taxes. *See New Habitat, Inc. v. Tax Collector of Cambridge*, 451 Mass. 729, 731-32 (2008), *citing* G.L. c. 59, § 5, Clause 3. The Supreme Judicial Court in *New Habitat, Inc.* invoked the following definition to identify “the traditional objects and methods of charity[:]”

‘A charity, in the legal sense, may be more fully defined as a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or

religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.’

Id. at 732, quoting *Boston Symphony Orchestra, Inc. v. Assessors of Boston*, 295 Mass. 248, 254-55 (1936).

While the foregoing definition is not exhaustive, the more remote an organization’s purposes are from this traditional understanding of charitable activity, the greater the extent to which the organization’s status must be evaluated by reference to the “community benefit” test. See *Mary Ann Morse Healthcare Corp. v. Assessors of Framingham*, 74 Mass. App. Ct. 701, 703-705 (2009), citing *Western Mass. Lifecare Corp. v. Assessors of Springfield*, 434 Mass. 96 (2001). Under scrutiny for “community benefit,” “[a] purpose qualifies as charitable if it ‘is for the benefit of ‘the public at large or some part thereof, or an indefinite class of persons’” See *Connors v. Northeast Hospital Corp.*, 439 Mass. 469, 474 (2003)(Cites omitted.) “While there is no ‘precise number’ of persons who must be served in order for an organization to claim charitable status, and ‘at any given moment an organization may service only a relatively small number of persons,’ membership in the class served must be ‘fluid’ and must be ‘drawn from a large segment of society or all walks of life.’” *Western Mass. Lifecare Corp.*, 434 Mass. at 104 (Cite omitted.) “Selection requirements, financial or otherwise, that limit the potential beneficiaries of a purported charity will defeat the claim for exemption[,]” where the community benefit test is robustly applied. *Id.*

It is settled that “‘establishing one or more refuges for suffering or homeless animals and other charitable or benevolent acts for the welfare of animals is charitable.” *Animal Rescue League of Boston, Inc. v. Assessors of Bourne*, 310 Mass. 330, 331 (1941), quoted from *Animal Rescue League of Boston, Inc. v. Assessors of Pembroke*, (ATB No. F246649, 2000), Mass. ATB Findings of Fact and Report at 2000-96, 2000-101. Where the purposes of conservation and environmental preservation are present, public access to the land is important, lest the benefits be restricted to organizational members and not available to the public at large, in a manner inconsistent with the community benefit test. See *Forges Farm, Inc. v. Assessors of Plymouth*, (ATB No. F283127-129, 2007), Mass. ATB Findings of Fact and Report at 2007-197, 2007-1206. On the other hand, to the extent the purposes are to relieve human victims of abuse from suffering or constraint, the traditional understanding of charitable works is implicated, diminishing the weight accorded to the “community benefit” test. See *Mary Ann Morse Healthcare Corp.*, 74 Mass. App. Ct. 703-705.

In addition to being organized for charitable purposes, the claimant “must prove that it is in fact so conducted that in actual operation it is a public charity.” *Jacob’s Pillow Dance Festival, Inc. v. Assessors of Becket*, 320 Mass. 311, 313 (1946). Moreover, to qualify for exemption, the property must be occupied “directly for the fulfillment of [the corporation’s] charitable purposes.” *Boston Symphony Orchestra*, 294 Mass. at 255, citing *Burr v. Boston*, 208 Mass. 537, 543 (1911). Such occupancy means:

something more than that which results from simple ownership and possession. It signifies an *active appropriation to the immediate uses of the charitable cause* for which the owner was organized. ... [T]he nature of the occupation must be such as to contribute immediately to the promotion of the charity and physically to participate in the forwarding of its beneficent object. (Emphasis added).

Board of Assessors of Boston v. The Vincent Club, 351 Mass. 10, 14 (1966), quoting *Babcock v. Leopold Morse Home for Infirm Hebrew & Orphanage*, 225 Mass. 418, 421 (1917). The occupancy for charitable purposes must “contribute immediately to the promotion of the charity.” *Babcock*, 225 Mass. at 422.

G.L. c. 59, § 5, Clause 3 allows an exception to the requirement of occupancy for charitable purposes upon the acquisition of real estate “with the purpose of removal thereto, until such removal, but not for more than two years after such purchase....” Following the end of the two-year “removal” period, Give Them Shelter, Inc. must demonstrate that it is actively using the real property in question to further the objectives for which it was organized. In *Animal Rescue League of Boston, Inc. v. Assessors of Pembroke*, the Appellate Tax Board denied exemption after two years to an organization with purposes similar to those of Give Them Shelter, Inc. because the land was not being occupied for charitable purposes. The Board explained that

ARL acquired the subject property in its natural state and maintains it as such. There is no established animal shelter. Neither the home occupied by Mr. Powers nor the land left in its natural state was open to the public. Indeed, the public was denied access to the property given the prominent display of “No Trespassing” signs.

ARL does not offer educational programs at the site. There is no showing that activities in the nature of rescuing and rehabilitating injured animals occurred on the subject property, nor is there any indication that services are provided to the animals located on the property.

Mass. ATB Findings of Fact and Report at 2000-102. It is not sufficient for occupancy that land is being left in its natural state, particularly where public access is denied. *Id.*

The foregoing principles should assist the decision of the Board of Assessors of Monson as to whether and for how long the 16 acre parcel owned by Give Them Shelter qualifies for exemption under G.L. c. 59, § 5, Clause 3. In addition, you should consider whether the claimant meets the procedural requirements for exemption set forth at G.L. c. 59, § 5, Clause 3(b) in making your determination. Please do not hesitate to contact us if we can be of further assistance.

Very truly yours,



Kathleen Colleary, Chief
Bureau of Municipal Finance Law