

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ATLANTIC UNION COLLEGE

v.

**BOARD OF ASSESSORS OF
THE TOWN OF LANCASTER**

Docket Nos. F324281-F324292,
F326402-F326413,
F329370-F329381

Promulgated:
November 17, 2020

These Revised Findings of Fact and Report are promulgated by the Appellate Tax Board ("Board") simultaneously with its reinstated decisions on remand, pursuant to G.L. c. 58A, § 13 and 831 CMR 1.32. These appeals were originally filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Lancaster ("appellee" or "assessors") to abate taxes on certain parcels of real estate located in Lancaster owned by and assessed to Atlantic Union College ("appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal years 2014, 2015, and 2016 ("fiscal years at issue").

The issue in these appeals was whether twelve parcels of real estate ("subject property") that formed part of the campus of Atlantic Union College were exempt from tax under G.L. c. 59, § 5, Cl. Third ("Clause Third") for the fiscal years at issue. Commissioner Rose heard the original appeals, which were decided in favor of the appellant.

The assessors subsequently appealed to the Massachusetts Appeals Court ("Appeals Court"). After concluding that the Board failed to "'state adequate reasons in support of its decision so as to permit meaningful appellate review,'" the Appeals Court vacated the Board's decisions and remanded these appeals to the Board for additional consideration and explanation. See ***Atlantic Union College v. Assessors of Lancaster***, Mass. App. Ct. No. 19-P-142, Memorandum and Order Under Rule 23.0 (August 13, 2020) (quoting ***Blakeley v. Assessors of Boston***, 391 Mass. 473, 476 (1984)). Specifically, the Appeals Court directed the Board to explain whether it considered "each of the twelve parcels separately or whether the board instead reviewed the campus as a whole," and to state its basis for using its chosen methodology. ***Id.***

Chairman Hammond was joined in the reinstated decisions for the appellant by Commissioners Good, Elliott, Metzger, and DeFrancisco.

David G. Saliba, Esq. for the appellant.

Ellen M. Hutchinson, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

The facts, as summarized below, are based on the record submitted during the hearing of these appeals, and much of the following was stated by the Board in its original Findings of Fact and Report:

At all times relevant to these appeals, the appellant was a private liberal arts college affiliated with the Seventh-day Adventist Church. The appellant's entire campus consisted of about thirty parcels, including the subject property. The subject property was used as follows: two parcels were parking lot or storage areas; one parcel was a combination of classrooms, a cafeteria, and residences; and the remaining nine parcels were student and faculty housing. The appellant was incorporated in 1883 and has had a lengthy history of exemption from taxation pursuant to Clause Third. In May of 2011, the appellant suspended its bachelor of arts degree program after losing its accreditation because of financial hardship. The appellee began to tax the subject property in fiscal year 2013. Other parcels within the Atlantic Union College campus, such as academic buildings, remained exempt during the fiscal years at issue.

The record showed that the appellant continued to provide certain programs during the suspension period. First, the Thayer Performing Arts Center ("TPAC") continued to accept students into its music and performing arts programs under the auspices of the

college. The Northeast Evangelism Training School ("NETS"), a certificate program designed to teach students the techniques and strategies of conducting Bible studies, evangelism, and healthy-living education, which began operating in 2013, also continued to operate during the relevant time periods. The Adult Education Program also continued operating during this time. Finally, the Teach Out Program, which began shortly after accreditation ceased at the college, enabled nursing students who were in the process of completing their degrees to continue their studies at neighboring Wachusett Community College while some of them continued to live on campus. The appellant also provided some professors and others who were employed by the appellant, as well as some students engaged in the Teach Out Program, with continued living quarters on campus during the relevant time periods.

Additionally, the evidence indicated that the appellant's academic office was in continual operation to assist current students by providing housing, distributing transcripts, and providing other business functions. Moreover, the appellant continued to actively maintain the entire campus, including the subject property, by paying for all utilities, insurance, landscaping, security, and other building maintenance issues. In fact, the record showed that the appellant expended more than \$3 million between 2011 and 2015 for building repairs, maintenance, insurance, labor and additional expenses.

Most importantly, however, the evidence showed that the appellant never lost its charter during the relevant time periods, and that college administration and facilities departments, along with its Board of Trustees, actively worked towards regaining accreditation during the suspension period. The appellant continually strove to reopen and took active steps towards that goal, including communications with the Massachusetts Department of Education and the New England Association of Schools and Colleges, as well as holding monthly Board of Trustees meetings. The record showed that in June of 2013, the Massachusetts Department of Education's Board of Higher Education granted conditional approval to the appellant to offer certain bachelor's degree programs. The appellant regained full accreditation and began admitting new students into its bachelor's degree programs in August of 2015.

On the basis of the evidence of record, the Board found, and now reiterates, that the subject property was occupied by the appellant in furtherance of its charitable educational purposes within the meaning of Clause Third during the fiscal years at issue. As directed by the Appeals Court, the Board herein clarifies that it formed this conclusion by looking at the subject property as a whole, rather than making a determination as to the occupancy of each of the twelve parcels individually. The Board selected

this approach as it was not only consistent with the actual use of the subject property, but eminently appropriate for making a determination of charitable exemption in the context of property comprising an integrated part of a college campus, as explained more fully in the Opinion below.

Accordingly, the Board reinstates its decisions for the appellant in these appeals, and grants abatements of the taxes at issue in full.

OPINION

Clause Third provides that real estate owned by a "charitable organization and occupied by it or its officers for the purposes for which it is organized" is exempt from taxation. G.L. c. 59, § 5, cl. Third. In the present appeals, there was no dispute between the parties that the appellant was a charitable organization for purposes of Clause Third or that it owned the subject property, and the Board so found. The primary issue was whether the appellant occupied the subject property in furtherance of its charitable educational purposes during the fiscal years at issue. The mandate of the Appeals Court in remanding these appeals to the Board was for the Board to explain whether, in making its determination as to occupancy, it viewed the twelve parcels comprising the subject property as a whole or individually, and to

state its reasons for so doing. See **Atlantic Union College**, Mass. App. Ct. No. 19-P-142, Memorandum and Order Under Rule 23.0.

As stated above, in making its determination as to occupancy, the Board viewed the subject property as a whole and an integrated part of a college campus, rather than as twelve separate parcels. First, the Board considered this approach to be appropriate as it was consistent with the subject property's actual usage. In **Trustees of Boston College v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports 2010-96, ("**Trustees of Boston College**") the Board considered whether certain parcels of land that had recently been acquired by a university were exempt under Clause Third. In that case, the Board treated contiguous parcels as one where the evidence showed that they were used in the same manner. *Id.* at 113. See also **Superior Realty Company, Inc. v. Assessors of Quincy**, Mass. ATB Findings of Fact and Reports 2016-436, 446-47 (treating two contiguous parcels comprising a parking lot and commercial building as a single economic unit consistent with their actual use).

More important, however, is the unique nature of college campuses, as alluded to by the Appeals Court in issuing its remand. "We recognize that college campuses may be unique in that they are cohesive properties that happen to comprise smaller contiguous parcels." **Atlantic Union College**, Mass. App. Ct. No. 19-P-142, Memorandum and Order Under Rule 23.0. The Board has previously

recognized the same unique attributes of property owned by a college in ***Trustees of Boston College***, along with the special considerations that must be made when evaluating such property.

In contrast, Boston College is a university which provides graduate and undergraduate education for some 14,500 students. On its two campuses, Boston College has numerous dormitories, classroom buildings, administrative buildings, dining halls, libraries, and athletic and research facilities. Its operations are necessarily more complex than those of the taxpayer in [the distinguished case], and the scope of uses which support its charitable purpose is correspondingly greater.

Trustees of Boston College, Mass. ATB Findings of Fact and Reports at 2010-125.

In this way, the present appeals are distinguishable from other exemption cases in which Courts or the Board have considered property owned by charitable institutions on an apportioned basis. In both ***Milton Hosp. & Convalescent Home v. Assessors of Milton***, 360 Mass. 63, 68-70 (1971), and ***Assessors of Worcester v. Knights of Columbus Religious Educ. Charitable and Benevolent Ass'n of Worcester***, 329 Mass. 532, 533-35 (1952), certain portions of property owned by charitable organizations, but privately leased to unrelated third parties, were found not to be "occupied" by the charitable organization for purposes of Clause Third. Notably, neither of these cases involved educational institutions, which have especially "broad discretion to determine the most advantageous uses of [their] property and how best to execute

[their] overall educational mission." **Trustees of Boston College**, Mass. ATB Findings of Fact and Reports at 2010-121 (citing **Emerson v. Trustees of Milton Academy**, 185 Mass. 414, 415 (1904)); see also **Wheaton College v. Town of Norton**, 232 Mass. 141, 146 (1919).

Moreover, here, there was no indication in the record that the appellant was leasing any portion of the subject property to third parties, or otherwise making an apportioned use of any of the twelve parcels comprising the subject property. Instead, the record showed that the subject property continued to be used and maintained as an integrated part of the entire college campus.¹

In sum, in light of the diverse operations that take place on college campuses, which are often sprawling properties comprised of separate parcels but which function as a single, integrated campus, the Board based its determination of occupancy of the subject property by viewing it as a whole rather than twelve separate parcels.

In viewing the subject property as a whole, the Board concluded that it was occupied by the appellant in furtherance of

¹ So, too, are these appeals distinguishable from **Shrine of Our Lady of La Salette, Inc. v. Assessors of Attleboro**, 476 Mass. 690, 700 (2017), a case in which certain portions of a sprawling campus owned by a religious charitable organization were held not to be exempt. That case did not involve exemption under Clause Third, but instead the much narrower exemption found in G.L. c. 59, § 5, cl. Eleventh ("Clause Eleventh"), which exempts only "houses of religious worship" to the extent they are used for "religious worship or instruction." As certain portions of the property at issue in that appeal were not being used for the aforementioned purposes, they were found not to be exempt under Clause Eleventh. *Id.*

the appellant's charitable educational purposes for the fiscal years at issue. Although the appellant temporarily lost its accreditation in May of 2011, the record showed that the appellant immediately and actively began efforts to restore its accreditation, ultimately achieving that goal in August of 2015. In addition, the record showed that, during the intervening period, the appellant continued to: house some students and faculty members; provide certain degree programs in conjunction with other charitable organizations; and secure and maintain the subject property along with the rest of the campus, all with an eye toward resuming full operations.

Courts and the Board have had occasion to consider exemption under Clause Third during such transitional periods for the owner-charitable organization. In ***Assessors of Hamilton v. Iron Rail Fund of Girls Clubs of America, Inc.***, 367 Mass. 301 (1975), the property under consideration was a charitable summer camp for girls that had been in operation for nearly twenty years prior to suffering a string of hardships, including a fire, that forced it to close temporarily. ***Id.*** at 304. It thereafter made efforts to secure the resources to resume its annual operations, but ultimately was unable to do so. The Court held that as of the relevant assessment date, the taxpayer intended to and was making active efforts to resume normal operations, and the Court held that the property was still occupied by the charitable organization

in furtherance of its charitable purposes, and thus was entitled to exemption. *Id.* at 307-308.

Similarly, in *Trustees of Boston College*, the property at issue had only recently been acquired by the college, and its long-term use was still being studied. The Board in that case found that the property at issue was exempt as the college occupied it with interim uses, such as passive recreation, overflow parking, and buffer space, and concluded that the "fact that these uses may have been temporary, or that Boston College's future plans for the subject property continued to evolve during the fiscal years at issue, did not warrant a finding to the contrary." *Trustees of Boston College*, Mass. ATB Findings of Fact and Reports at 2010-123.

In contrast, in *Babcock v. Leopold Morse Home for Infirm Hebrews and Orphanage*, 225 Mass. 418, 421 (1917), property owned by a charitable organization that had once been used to house orphaned children and the elderly was found not to be exempt, where, as of the relevant date of assessment, that charitable organization had ceased active operations with no plans to resume them. *Id.* at 422.

The present appeals are much more like the former cases than the latter. It would be illogical, for example, to suggest that exemption under Clause Third would be destroyed if a college dormitory suffered a flood and had to be shuttered temporarily for

repairs, and the Board saw no difference here between those circumstances and the appellant's temporary loss of accreditation. The record showed that the appellant immediately and actively undertook efforts to regain its lost accreditation, first obtaining conditional approval to resume offering bachelor of arts programs in 2013 before ultimately resuming full operations in 2015. Given its longstanding history of exempt use of the subject property, along with its earnest efforts to maintain the subject property and regain the ability to resume full operations, the Board concluded that the appellant's temporary loss of its accreditation did not defeat the exemption for the fiscal years at issue.

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In conclusion, the Board found that, considering the subject property as a whole, and as an integrated part of the appellant's college campus, the appellant continued to occupy the subject property in furtherance of its traditionally charitable educational purposes within the meaning of Clause Third for the fiscal years at issue. Accordingly, the Board reinstates its decision for the appellant in these appeals, and grants full abatement of the taxes at issue.

APPELLATE TAX BOARD

By: /s/ Thomas W. Hammond
Thomas W. Hammond, Jr., Chairman

A true copy:

Attest: /s/ William J. Doherty
Clerk of the Board