

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

HAVENSIDE CORPORATION

v.

**BOARD OF ASSESSORS OF
THE TOWN OF TISBURY**

Docket No. F347297

Promulgated:
September 24, 2024

This is an appeal 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 Tisbury ("appellee" or "assessors") to abate taxes on a residential housing complex for senior residents owned by and assessed to Havenside Corporation ("appellant") for fiscal year 2022 ("fiscal year at issue").

Chairman DeFrancisco heard the appeal. He was joined by Commissioners Good, Elliott, Metzger, and Bernier in the decision for the appellant.

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.¹

Lucinda Kirk, manager, for the appellant.

Jeffrey T. Blake, Esq., for the appellee.

¹ This citation is to the regulation in effect prior to January 5, 2024.

FINDINGS OF FACT AND REPORT

Based on testimony and documentary evidence submitted during the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2021, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of the property located at 145 Main Street in Tisbury, ("Havenside" or "subject property"), which consisted of a four-building campus containing twenty-nine apartments. Havenside operates as a housing complex for senior residents of Martha's Vineyard.

The appellant is a Massachusetts non-profit entity organized under G.L. c. 180. It is exempt from federal income taxes under Internal Revenue Code § 501(c)(3). The appellant timely filed its Form 3ABC and Form PC for the fiscal year at issue with the assessors. The assessors timely issued to the appellant a tax bill, valuing the subject property at \$1,325,300, upon which a tax was due of \$12,099.91, inclusive of a Community Preservation Act surcharge. The appellant timely paid this tax, without incurring interest. On January 31, 2022, the appellant timely filed an abatement application with the assessors, which was deemed denied on April 30, 2022. The appellant seasonably filed an appeal with

the Board on July 29, 2022.² Based on the foregoing, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

The appellant presented its case through the testimony of its manager, Lucinda Kirk, and the submission of documents.

Havenside was constructed in 1966 for the purpose of providing affordable housing to year-round senior residents of Martha's Vineyard. In 1973, founder Margaret Love and her brother Robert donated the subject property to the Episcopal Diocese of Massachusetts. In 1991, the Episcopal Diocese created a separate non-profit corporation to administer Havenside. Although the Episcopal Diocese remains affiliated with the appellant and the subject property, the appellant has more recently been governed by a board of directors.³

To apply to live at Havenside, individuals must have been year-round residents of Martha's Vineyard for at least two years and be at least 65 years of age. The rents for the subject property are set between 1/2 to 1/3 of market rents in the area and are at or below the appellant's total operating costs.

² While the petition was stamped as having been docketed by the Board on August 15, 2022, the envelope containing the petition bore a United States Postal Service postmark of July 29, 2022. Pursuant to G.L. c. 58A, § 7, the Board considered the date of the postmark to be the date of filing.

³ The appellant's bylaws provide that at least one seat on the board is appointed by the Bishop of the Diocese, three seats are appointed from each of the Episcopal parishes on Martha's Vineyard, and the remaining five seats may be appointed from the larger Martha's Vineyard community.

Ms. Kirk testified to the current critical need for affordable housing on Martha's Vineyard for senior residents. She observed that housing has become the most important social justice issue on Martha's Vineyard because of the critical lack of affordable options for residents, particularly for senior citizens. She cited by way of illustration that, in prior years, the appellant had to advertise to attract tenants to Havenside. However, she testified that the subject property currently has 165 qualifying individuals or couples on its waiting list, with a minimum five to seven-year expected wait for a unit. In fact, many qualifying couples will never gain entry to the subject property because of the limited supply of units that can accommodate couples.

Ms. Kirk testified that for the fiscal year at issue, the appellant received \$331,717 in rental payments from Havenside residents - roughly \$950 per month, per unit - as well as \$8,674 from residents for heating costs, approximately \$25 per month, per unit. She testified that the appellant subsidized heating costs during that time by expending an additional \$20,078. The appellant is constantly making capital improvements at the subject property, including a \$76,000 repaving project for the parking and sidewalk areas and \$10,000 project for repairing a balcony at one of the subject property buildings. The appellant funds these and other capital projects from its own resources, using a bank line of credit and income from its investment trust. The appellant receives

no government subsidies to help defray the costs of managing and maintaining Havenside.

The appellant employs a full-time manager who is on site at the subject property for approximately 40 hours each week, Monday through Friday. The manager provides many services to the residents, including coordinating the various amenities and programs that the appellant offers its residents. Ongoing services provided by the manager include: administering health and hospice care in conjunction with the Vineyard Nursing Association and the Island's Elder Service Department; distributing prepared foods delivered from the Island Grown Initiative, fresh produce bags supplied by the Vegan Society, and bread delivered from a local bakery; coordinating free subscriptions to the Martha's Vineyard Times; organizing regular social and community events and community meals at the subject property; providing outreach and transportation to social activities and programs on Martha's Vineyard; cleaning, maintenance, and running errands; managing a community composting program for residents; and coordinating a subsidy program for fuel pumps and solar credits. The manager also provides personal services as needed to the residents, including technology assistance and mediating family issues.

The appellant contends that it occupies the subject property in furtherance of its charitable purpose -- fulfilling a critical need for affordable housing on Martha's Vineyard for senior

citizens of modest resources who do not qualify for government housing assistance but cannot otherwise afford to own or rent housing in their community. The Board found, and the appellee did not dispute, that the operation of the subject property provided affordable housing and social and health services to a segment of the population in need of these services and was thus a charitable endeavor. However, the appellee contended that the individual residents, not the appellant, occupied the subject property in a traditional landlord-tenant arrangement, in contravention of the exemption at G.L. c. 59, § 5, cl. 3 ("Clause Third").

However, because the appellant had an active presence at the subject property, particularly by providing many services to the residents, the Board found that the individual residents of Havenside did not have exclusive occupancy of the subject property. For the reasons explained more fully in the Opinion below, the Board found that the appellant, a charitable organization, occupied Havenside in furtherance of its charitable purpose as required by Clause Third. Therefore, the Board found and ruled that the subject property qualified for the Clause Third exemption from property tax for the fiscal year at issue.

Accordingly, the Board issued a decision in favor of the appellant in this appeal and ordered abatement in the full amount of the tax assessed.

OPINION

Pursuant to G.L. c. 59, § 2, "all property, real and personal, situated within the commonwealth . . . unless expressly exempt, shall be subject to taxation." Clause Third provides an exemption for "real estate owned by or held in trust for a charitable organization and occupied by it or its officers for the purposes for which it is organized."

The Board first analyzed the nondeterminative factors traditionally considered in establishing whether an organization qualifies as a charity, including whether it provides low-cost or free services, its fee structure, and whether it offers its services to a sufficiently "fluid" group of beneficiaries. See **New Habitat, Inc. v. Tax Collector of Cambridge**, 451 Mass. 729, 732-733 (2008). The lengthy waiting list for qualifying residents, together with Ms. Kirk's un rebutted testimony that there is a great demand in the community for affordable housing for middle-class senior residents, demonstrated that the appellant was offering its services to a sufficiently inclusive section of the community's residents. Havenside lessened the burdens of government by providing housing to senior residents of moderate means who might otherwise be displaced from their community because of their inability to afford housing costs. See, e.g., **Franklin Square House v. Boston**, 188 Mass. 409, 411 (1905) (exemption granted to property owned by a corporation organized "to provide a home for working

girls at moderate cost"). Furthermore, the appellant directly provided or arranged a variety of social and wellness services to its residents, which reduced the strain on local health services. See **Mary Ann Morse Healthcare Corp. v. Assessors of Framingham**, 74 Mass. App. Ct. 701, 702 (2009).

The Board found, and the appellee does not dispute, that the appellant's operation of Havenside was a charitable endeavor. However, a decisive factor in determining occupancy in charitable housing cases, and the issue that the appellee here challenges, is whether the appellant had a simple landlord-tenant relationship with its residents or whether the appellant had a sufficient presence at the property to satisfy the Clause Third occupancy requirement. Compare **Charlesbank Homes v. City of Boston**, 218 Mass. 14, 15 (1914) (denying exemption because residents were "strictly tenants") with **Island Elderly Housing, Inc. v. Assessors of Tisbury**, Mass. ATB Findings of Fact and Reports 1997-119 (granting exemption to owner of an affordable housing property because the services provided to residents by the owner established more than a mere landlord-tenant relationship).

Courts and this Board have noted that "occupancy" under Clause Third 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 objects.

Assessors of Boston v. The Vincent Club, 351 Mass. 10, 14 (1966); see also ***Rockridge Lake Shores Property Owners' Association v. Assessors of Monterey***, Mass. ATB Findings of Fact and Reports 2001-581, 587.

The appellant's charitable purpose was to fulfill a critical housing need for senior residents of Martha's Vineyard who otherwise struggled to afford to live in their community. In reversing the Board in a similar appeal involving a taxpayer's provision of housing as its charitable purpose, the Appeals Court provided guidance on the occupancy requirement: "We note, first, that occupancy need not be exclusive, and that the occupancy test for property tax exemption is nowhere so described." ***Mary Ann Morse Healthcare Corp.***, 74 Mass. App. Ct. at 706. Particularly when the charitable purpose of the organization is to provide housing, the issues of the organization's occupancy and its residents' privacy is "less than congruent": "The board's emphasis on Morse's use of the property to provide residences -- and a certain level of residential privacy -- for the recipients of its services amounts to penalizing Morse for performing the charitable function that constitutes its mission." ***Id.***

The Appeals Court further noted that in resolving previous Clause Third appeals pertaining to comparable "shared possession" arrangements, the Supreme Judicial Court has held that, "in the absence of exclusive possession by tenants, the owner is considered the 'occupant.'" *Id.* at n.7 (citing ***M.I.T. Student House, Inc. v. Assessors of Boston***, 350 Mass. 539, 542 (1966) (finding occupancy by the entity providing the dormitory for needy college students) and ***Franklin Square House***, 188 Mass. at 410-411 (same for the entity providing a moderate cost "home for working girls"))).

In the present appeal, there is no showing that the residents' use of the subject property was to the exclusion of the appellant. Rather, the appellant established that the use of the subject property by its residents was concurrent with its own and enabled the appellant to achieve its charitable mission. See, e.g., ***Sisters of Providence a/k/a Sisters of Providence, Inc. v. Assessors of West Springfield***, Mass. ATB Findings of Fact and Reports 2013-769, 781-82 (residence by occupants was "consistent with the service mission and purposes of the appellant, the charitable organization that owned the property") (citing ***Bridgewater State University Foundation v. Assessors of Bridgewater***, 463 Mass. 154, 158-9 (2012)); ***Trimount Foundation, Inc. v. Assessors of Newton***, Mass. ATB Findings of Fact and Reports 2019-1. The strict reading of the occupancy requirement proposed by the appellee would thwart the appellant's ability to meet the very goal for which it was

organized. See **Mary Ann Morse Healthcare Corp.**, 74 Mass. App. Ct. at 706.

Additionally, by providing an array of managerial, social, and support services through its full-time employee, the appellant further demonstrated its occupancy of the subject property. These services, as well as the bulk of heating costs and all capital improvements, were provided by the appellant from its own resources. The instant appeal is thus distinguishable from **Unquity House Corporation v. Assessors of Milton**, Mass. ATB Findings of Fact and Reports 2021-22, 36-37, *aff'd*, 102 Mass. App. Ct. 1109 (2023), where the residential lease “placed only the usual burdens of a landlord” on the taxpayer and any further services, including rental assistance, “were rendered by other unaffiliated entities.”


The Board found and ruled that the appellant met its burden of demonstrating that the subject property was owned and occupied by a charitable organization in furtherance of its charitable purposes throughout the fiscal year at issue. The Board therefore ruled that the subject property was exempt from taxation under Clause Third.

Accordingly, the Board issued a decision for the appellant in this appeal and granted abatement in the full amount of the tax assessed for the fiscal year at issue.

THE APPELLATE TAX BOARD

By: 
Mark J. DeFrancisco, Chairman

A true copy,

Attest: 
Clerk of the Board