COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

SPRINGFIELD RESCUE MISSION **v.** **BOARD OF ASSESSORS OF THE CITY OF SPRINGFIELD**

Docket No. F331730

Promulgated:
September 25, 2019

This is an appeal filed by Springfield Rescue Mission ("appellant" or "Mission") under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the City of Springfield ("assessors" or "appellee") to abate a tax on real estate located at 10 Mill Street in the City of Springfield ("subject property") for fiscal year 2016 ("fiscal year at issue").

Commissioner Elliott heard this appeal and was joined by Chairman Hammond and Commissioners Scharaffa, Rose, and Good in the decision for the appellant. Chairman Hammond heard the assessors' motion for reconsideration or in the alternative a motion for rehearing, and he allowed a rehearing on the limited issues of whether the subject property was exempt and whether the actual tax bill for the fiscal year at issue was improperly issued to the appellant rather than the assessed owner of the subject property. Chairman Hammond and Commissioner Elliott presided at

the rehearing and they were joined by Commissioners Rose, Good, and Metzer in the renewed decision for the appellant.

These findings of fact and report are made on the Board's own motion under G.L. c. 58A, § 13 and 831 CMR 1.32.

Ronald Willoughby and *Fred Batchelder, pro se* for the appellant.

Anthony M. Ambriano, Esq. and *Patrick Greenhalgh*, Esq., assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits introduced by the parties, the Appellate Tax Board ("Board") makes the following findings of fact.

I. INTRODUCTION

The principal issues raised in this appeal are whether the assessors overvalued the subject property and whether they properly imposed a tax on the Mission for the fiscal year at issue. Resolution of the latter issue depends on whether, among other issues, the subject property qualifies for the exemption under G.L. c. 59, § 5, Clause Eleventh ("Clause Eleventh") as property used for religious worship or instruction. The several sub-issues that affect the determination of the Mission's qualification for the Clause Eleventh exemption include whether the Mission owned the subject property as of the relevant qualification date and the extent to which the assessors may dictate whether the Mission and

its activities are religious in nature and circumscribe those portions of the subject property that they deem are used for religious purposes.

The Mission, which has served the spiritual and physical needs of the less fortunate in the City of Springfield ("City") since 1892, received a real estate tax bill for the first time in its existence after being forced out of its longtime home to make way for the MGM casino project in the City. The $213,436.48 tax bill was not anticipated by the Mission, because it had never been taxed on its property, and it had been assured that its involuntary relocation to a new facility would be at no cost to the Mission.

The tax bill was well beyond the Mission's means, and it had no opportunity to budget for it. The Mission receives no government funding and is dependent on private donations to keep its doors open to serve its community. In order to pay the tax bill and preserve its right of appeal, the Mission was forced to secure an interest-bearing loan, which remains outstanding. The Mission timely paid the tax and timely filed its abatement application with the assessors and its appeal to the Board, giving the Board jurisdiction over this appeal.

The Mission could not afford the services of counsel and prosecuted this abatement action *pro se*, through its Executive Director, Ronald Willoughby ("Mr. Willoughby"), and its volunteer accountant, Fred Batchelder ("Mr. Batchelder"). Both Mr.

Willoughby and Mr. Batchelder testified at the hearing of this appeal and the Board found their testimony to be credible.

The Mission's representatives initially challenged the assessment on the ground that there was no support for the amount assessed because certain renovations done by a prior owner were not complete as of the relevant date and no renovation costs were available. As detailed below, the Mission's valuation argument is meritorious.

However, of even greater consequence was that an entity whose property had always been exempt from real estate tax was subject to a one-time tax of $213,436.38 and that the tax bill had been issued to the Mission and not the assessed owner. The Board held additional hearings after the initial valuation hearing to determine whether the Mission was properly taxable on the subject property. Following are the Board's determinations.

II. THE MISSION

According to the records of the Massachusetts Secretary of State ("Secretary"), the Mission is a "church corporation" with a date of organization in Massachusetts of October 22, 1954. In its Articles of Organization filed with the Secretary, the purposes for which the Mission was formed are:

> The promotion of Christianity and the amelioration of the condition of poor and fallen humanity by holding religious services and radio broadcasts; distributing Christian literature; providing food, clothing, lodging and other aid for unfortunate persons; and in connection

therewith to maintain appropriate buildings for these purposes.

The work of the Mission predates its 1954 incorporation. As stated in its Annual Report admitted into evidence:

> The goal of the Springfield Rescue Mission, since 1892, is to meet the physical and spiritual needs of the hungry, homeless, addicted, and poor by introducing them to Christ and helping them apply the Word of God to every area of their lives.

The Mission is a member of the Association of Gospel Rescue Missions, an organization with the following purpose:

> Our commitment is to the preeminence of the gospel of Jesus Christ and bringing people to salvation, which is dependent on clearly stating, believing and living under the authority of God's word. The gospel and biblical truth, presented with clarity and excellence, should permeate everything we do in our missions.

According to the unrebutted testimony of Mr. Batchelder, the Mission holds religious services at the subject property morning, afternoon, and evening, six days per week. In addition to services, the Mission offers Bible classes, pastor's classes, and prayer meetings at the subject property. The Mission employs full- and part-time staff, including resident assistants, board members, and chaplains, as well as volunteers to perform, among other activities, religious teaching, preaching, and counseling. According to documentation offered by the Mission, its chaplains are "empowered by the Holy Spirit of God to teach the inspired Word of God to residents to effect positive, permanent godly changes and apply the Word of God to every area of their lives."

As part of its ministry, the Mission provides food, clothing, and shelter to the poor, homeless, and addicted, and it is these individuals who worship, pray, and receive religious instruction at the subject property. The Mission is also open to any members of the public who wish to worship or participate in religious study at the subject property.

Photographs admitted into evidence further support the spiritual nature of the subject property. The façade of the building includes a large cross and a sign reading "Jesus Cares." Interior photographs show Biblical quotations in large print stenciled on the walls.

The assessors' efforts to rebut this evidence of the religious character of both the Mission and the subject property were without foundation in fact or law. First, the assessors attached to their brief an affidavit of an assessor concerning his post-hearing inspection of the subject property, which took place some four years after the relevant qualification date. The Board would ordinarily strike the affidavit as in violation of basic hearsay and relevancy principles; however, the affidavit reveals the assessors' fundamental misunderstanding of the Clause Eleventh exemption.

The affidavit reflects that, based on the assessor's review of certain blueprints in the City's possession and his inspection, the assessor determined that only the dining hall, which accounts

for seven percent of the subject property, "hosts religious services." The assessors therefore maintain that because the remaining space, which includes classrooms, a learning center, a kitchen, dormitories, various check-in areas, a donation center, a laundry, and offices, do not host religious services, the subject property is not exempt under Clause Eleventh.

As discussed in the Opinion below, the Clause Eleventh exemption is not nearly as narrow as the assessors claim. Rather, property whose dominant purpose is religious worship or religious instruction is exempt, including those parts of the property whose use is connected with and accompanies and supplements such religious use.

Moreover, as also discussed in the Opinion below, the assessors' attempt to determine the extent of the subject property that they feel is necessary for the Mission's religious worship and instruction infringes on long-established Massachusetts principles prohibiting government interference and intrusion into the protected activities of religious organizations.

Further, the assessors' reliance on a certificate of occupancy and a "conditional approval" sheds no light on the use of the subject property. Despite the assessors' argument to the contrary, references to a "human service facility" in the certificate of occupancy and to a sixty-bed "educational group facility" in the conditional approval are inapposite to the

question of whether the subject property is used for religious worship or instruction; if anything, the "educational" reference underscores the abundant evidence offered by the Mission concerning the religious education activities at the subject property.

The Board finds that the Mission opens its doors to the needy and welcomes them into the subject property as a place of worship, prayer, religious instruction, and counseling. The evidence reveals that the Mission is dedicated to bringing the word of God to those it serves for the purpose of changing their lives forever. The Mission tends to the physical needs of those it serves by providing food, clothing, and shelter, but the alleviation of physical needs is in furtherance of and secondary to its religious ministry of attempting to bring salvation and spiritual wellbeing to those it serves.

The assessors erred by limiting the qualifying space within the subject property to just the dining hall, which they claim is the only area capable of hosting religious worship. Because the Mission's only educational activities were religious in nature, the Board finds that the learning center and classrooms are used for religious instruction within the meaning of Clause Eleventh. Moreover, because the evidence establishes that the overriding purpose of the Mission is to bring religion into the hearts and minds of those it serves at the subject property through worship

and religious instruction, the other areas within the subject property are also connected with and supplement religious worship and instruction. Check-in areas, a laundry, a kitchen, a donation center, offices, storage rooms, and other areas are all necessary for the Mission to carry out its religious ministry. Because the Mission has established that its overriding purpose is religious worship and instruction, that all of the areas within the subject property are connected with its religious purposes, and that no part of the subject property has been appropriated for a non-religious use, there is no legal basis for the assessors to parse out those areas it deems unsuitable for worship or instruction. The Board therefore finds and rules that the dominant purpose of the subject property is religious worship or instruction or uses connected with such worship or instruction.

III. THE RELOCATION

For many years, the Mission owned and occupied property at 19 Bliss Street ("Bliss Street property") in the City, where it conducted its religious activities and offered food, clothing, and shelter to those in need. As it happened, the Mission's Bliss Street property was included in the area designated and approved for the MGM casino project in the City. Accordingly, the City required the Mission to vacate its Bliss Street property.

According to the uncontroverted testimony of Mr. Batchelder, the Mission was assured that they would be relocated to a new

facility "at no cost to us." The crux of the plan was for an MGM-related entity, Blue Tarp Redevelopment, LLC ("Blue Tarp"), to acquire a property for the Mission and, at Blue Tarp's expense,[1] renovate the property so that the Mission could conduct its activities at the new location. Blue Tarp agreed to transfer this property to the Mission in exchange for the Bliss Street property.[2]

The purchase and sale agreement dated May 21, 2013 between Blue Tarp and the Mission ("Agreement") provides the details of the relocation plan. Under the Agreement, the Mission agreed to sell the Bliss Street property to Blue Tarp in consideration of the transfer by Blue Tarp to the Mission of the fee interest in a "new location." The specifications for the new location are spelled out in the Agreement and the parties identified the subject property as the new location, subject to certain contingencies including Blue Tarp's acquisition of the subject property. As of the date of the Agreement, Blue Tarp had already entered into a purchase and sale agreement for the purchase of the subject property from Orr Realty Group.

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[1] Blue Tarp also paid for the Mission's legal counsel in connection with the real estate transactions.

[2] Reference was made at the hearings that Blue Tarp may have treated the transaction as an Internal Revenue Code § 1031 "like-kind exchange." However, Blue Tarp was not a party to these proceedings and neither party produced any documentation or other information concerning Blue Tarp's tax treatment of the exchange.

Blue Tarp agreed, at its own expense, to ensure that the subject property would be properly permitted for the Mission's current use and to "construct a new rescue mission" that would allow the Mission "to functionally operate in a manner similar" to the Mission's ministry in accordance with mutually agreed upon plans and specifications.

Blue Tarp and the Mission further agreed that, within thirty days of Blue Tarp taking title to the subject property, Blue Tarp would execute and deliver a deed to the subject property to an unidentified "escrow agent" and the Mission would execute and deliver a deed to the Bliss Street property to the escrow agent. The deeds were to be held in escrow until: (1) a certificate of occupancy was issued for the subject property; (2) all permitting, licensing, and other governmentally required documentation necessary for the Mission's operation were issued; and (3) the issuance of an architect's certification that all work at the subject property was in compliance with applicable building codes, laws, and regulations. Once those conditions were satisfied, the escrow agent was authorized to record the previously executed deeds to the Bliss Street property and the subject property.

Blue Tarp acquired title to the subject property for $2.3 million by deed dated and recorded in the Hampden County Registry of Deeds ("Registry") on December 1, 2014. Blue Tarp executed a deed to the subject property in favor of the Mission on December

30, 2014 and the Mission executed a deed to the Bliss Street property in favor of Blue Tarp on January 7, 2015. In accordance with the Agreement, the deeds were delivered to the escrow agent and held in escrow pending Blue Tarp's completion of work on the subject property and its securing of the necessary permits. Upon completion of the work and the issuance of the necessary permits, the deeds were both recorded in the Registry on October 30, 2015 at 1:05 pm.

On the basis of these findings and as more fully described in the Opinion below, the Board finds and rules that there was a transfer of title to the subject property effective when Blue Tarp executed the deed to the subject property in favor of the Mission on December 30, 2014 and delivered the deed to the escrow agent. The Board finds that Blue Tarp and the Mission both intended to transfer their respective properties when they executed and delivered the deeds to the escrow agent. Both parties had an interest in having the deeds take effect on delivery to the escrow agent; it would make little sense for Blue Tarp to incur the significant expense of rehabilitating the subject property in the absence of an executed and effective deed to the Bliss Street property, and the Mission would not have transferred the Bliss Street property to Blue Tarp in the absence of an executed and effective deed to the subject property so that it could continue its ministry. Putting aside any escrow requirements for a like-

kind-exchange under Code § 1031, the use of an escrow arrangement benefitted both parties: Blue Tarp was assured that it had title to the Bliss Street property prior to incurring the expense of renovations to the subject property and the Mission was assured of a new, properly permitted location suitable for its ministry while continuing to conduct its religious activities at the Bliss Street property during the renovations.

As detailed in the Opinion below, a transfer of an executed deed to an escrow agent pending completion of conditions effects a passage of title as of the date of transfer to the escrow agent where the parties intend that title passes. The Board finds and rules that the parties intended title to their respective properties to pass when they executed and delivered the deeds to the escrow agent. Accordingly, the Board finds and rules that the Mission was the owner of the subject property within the meaning of Clause Eleventh as of the July 1, 2015 qualification date.

IV. ASSESSMENT AT ISSUE

For the fiscal year at issue, preliminary bills for the subject property were issued for the first and second quarters to Blue Tarp in the amount of $12,588.62 each, based on the tax due for the preceding fiscal year when the subject property was a vacant, former Cadillac dealership. The bills were due on August

3, 2015, and November 2, 2015, and were apparently paid on behalf of Blue Tarp.[3]

Notwithstanding the fact that Blue Tarp was the assessed owner of the subject property, the City issued its third- and fourth-quarter "actual tax bills" to the Mission in the amount of $106,718.19 each for a total of $213,436.38. The tax bills were issued to the Mission without any prior notice or an explanation of how the assessors determined an assessed value of $6,181,700 for a property that Blue Tarp purchased for $2.3 million just one month prior to the January 1, 2015 assessment date.

V. BOARD PROCEEDINGS

At the initial hearing of this appeal, the assessors maintained that they relied on G.L. c. 59, § 2A ("§ 2A"), which the City adopted in 1996, to arrive at the assessed value. Section 2A provides that "buildings and other things erected on or affixed to land" between January 2 and June 30 of the year preceding the fiscal year at issue ("lookback period") are deemed to be part of the real estate as of January first. Using building permits issued to Blue Tarp in connection with Blue Tarp's proposed renovation of the subject property, the assessors totaled up all of the estimated

[3] There appears to have been some confusion on the part of Blue Tarp, the City, or both regarding payment of the second-quarter bill. "MGM Resorts" and "Sarah Orlov, Atty." are separately listed on the assessors' payment history as each paying the second quarter bill, one on October 30, 2015 - the day the deeds were recorded - and one on November 2, 2015. The City issued two refunds and then a "reversal," presumably of one of the refunds.

costs listed on the permits and added the total to Blue Tarp's $2.3 million acquisition cost to arrive at the assessed value of $6,181,700.

There are several flaws in the assessors' valuation methodology. The most obvious deficiency is that there is unrebutted evidence that the renovations at the subject property were nowhere near completed as of June 30, 2015, the close of the lookback period.

The Mission introduced the City's own Code Enforcement Department records showing that, on June 29, 2015, just one day prior to the end of the lookback period, the City "passed with conditions" the "structural/rough framing" of the subject property's renovations. Subsequent references show that the "structural/rough framing" had to be re-inspected on July 10, 2015 and there are several other inspections - some failed, some passed with conditions - after the end of lookback period. Although an occupancy permit was issued on August 17, 2015 - approximately seven weeks after the end of the lookback period - the City's records show a failed inspection on August 25, 2015, a "passed with conditions" inspection on September 1, 2015, and a final passed inspection on September 17, 2015.

Further, another document from the City's Code Enforcement Department was introduced, this time by the assessors, showing that an application for a building permit was filed on June 24,

2015 and issued on July 2, 2015 for ductwork and grills for HVAC and kitchen exhaust. The permit itself was therefore issued after the close of the lookback period and the work was not complete until August 21, 2015.

Moreover, there was no credible evidence of the actual renovation costs incurred by Blue Tarp during the lookback period, let alone the impact on value of those renovations. Because the Mission did not know how much Blue Tarp had spent on renovations, the Mission made repeated attempts to secure that information in preparation for the Board hearing. Those attempts were fruitless. The Mission filed public records requests with the City and made numerous inquiries of Blue Tarp; the City informed the Mission that they had no records and Blue Tarp ignored the Mission's requests.

The lack of records concerning renovation costs or when those costs were incurred put the Mission in an untenable position. Although the assessors themselves have no record of actual costs incurred by Blue Tarp or the state or value of the renovations as of the end of the lookback period, they called upon the Mission to prove the assessors' value was wrong in a situation where the Mission had no access to relevant information, no control over the renovations, or any occasion to inquire as the renovations were ongoing since they had no expectation that they would receive a tax bill five months later based on Blue Tarp's estimated costs.

Given that the assessors had no documents regarding Blue Tarp's actual renovation costs and the overwhelming evidence that the renovations were incomplete as of the end of the lookback period, the assessors' valuation based on total estimated costs as reflected in building permits issued to Blue Tarp is fundamentally flawed. When asked at the initial hearing how the assessors could use prospective estimated costs as a basis for the subject assessment when only Blue Tarp knew the actual costs that it incurred and, as of June 30, 2015, only structural and rough framing work had commenced, the assessors' witnesses had no response.

Moreover, while renovation costs may be some indication of value, they are not conclusive. Section 2A allows assessors to treat "buildings and other things erected on or affixed to land" during the lookback period as being part of the real estate as of January 1. It is the value of improvements added during the lookback period that is included in the January 1 value of the property, which may or may not be best approximated by the actual costs of those improvements. In any event, the assessors' use of estimated costs based on building permits does not provide an adequate basis to value any improvements made as of the end of the lookback period.

In addition to the valuation issue, the facts presented at the initial hearing brought to light the additional issue of why

the Mission, whose property was not taxed either before or after the fiscal year at issue, was being taxed at all. The Board therefore scheduled further hearings to determine on what basis the tax was assessed to the Mission.

The assessors objected to the subsequent hearings on the ground that the Mission's petition did not explicitly raise the exemption issue. However, under G.L. c. 59, § 7, the Board may consider "any issue of fact or contention of law not specifically set out in the petition" so long as it determines that "equity and good conscience so require." The Board finds and rules that equity and good conscience require it to address the exemption issue, particularly because the Mission was proceeding *pro se* and the Mission's property has consistently been exempt both before and after the fiscal year at issue. The exemption and legal title issues raised by the facts of this appeal are not easily analyzed by non-lawyers and they have a direct bearing on the issue of whether the one-time tax bill issued to the Mission was legally justified.

The assessors argued that the subject property did not qualify for an exemption for the fiscal year at issue because: (1) the Mission did not own the property as of the July 1, 2015 qualification date; and (2) the Mission did not file with the assessors the "list, statements and affidavit" required under G.L.

c. 59, § 29 ("Form 3ABC") that is a jurisdictional prerequisite to an exemption under G.L. c. 59, § 5, Clause Third ("Clause Third").

With regard to the first issue, as detailed in the Opinion below, the owner of property for purposes of qualifying for the exemptions under the clauses of G.L. c. 59, § 5, including Clause Eleventh, is the holder of legal title to the property. Because the Mission held legal title to the subject property as of the July 1, 2015 qualification date, the later recording of the deed is no consequence to the subject property's qualification under Clause Eleventh.

As to the second issue, the assessors filed a motion to dismiss the Mission's exemption claim on the ground that the Mission failed to file a Form 3ABC for the fiscal year at issue.[4] The Mission acknowledged that it has never filed, or been required to file, a Form 3ABC and the assessors have consistently treated the Mission's property as exempt for the years prior to and after the fiscal year at issue. It is not clear why the assessors

[4] The assessors also raised in their motion the Mission's failure to file with the assessors, as required by Clause Third, a copy of the report required to be filed with the attorney general under G.L. c. 12, § 8F ("Form PC"). Because the assessors make no mention of the Mission's failure to file a Form PC in their later filed post-hearing brief, they appear to have abandoned this argument. In any event, Section 8F specifically provides that it does not "apply to any property held for any religious purpose by any public charity, incorporated or unincorporated," and the Form PC instructions state that organizations that hold property for religious purposes are not required to file a Form PC.

considered the filing of the Form 3ABC a jurisdictional prerequisite for the fiscal year at issue when they had routinely granted an exemption in the absence of a Form 3ABC.[5]

The assessors' long-established practice of granting an exemption to the Mission's property without the filing of a Form 3ABC was correct. Unlike the charitable exemption under Clause Third, there is no requirement under Clause Eleventh to file a Form 3ABC. Accordingly, because the subject property qualifies for the Clause Eleventh exemption, the Mission was not required to file a Form 3ABC and the Board therefore denied the assessors' motion to dismiss.

VI. BOARD'S ULTIMATE FINDINGS

The Board finds and rules that the dominant purpose of the subject property as of the July 1, 2015 qualification date for the Clause Eleventh exemption was religious worship or instruction, or uses connected with religious worship or instruction, and that no part of the subject property had been appropriated for purposes other than religious worship or instruction, all within the meaning of Clause Eleventh. The Board further finds that the Mission held legal title to the subject property as of the July 1, 2015

[5] The Board specifically asked the assessors to address this issue in their post-hearing brief. In response, the assessors did not offer an explanation but maintained that they exempted the subject property for the tax year following the fiscal year at issue because "it was owned by [the Mission] as of July 1, 2016 and occupied as of that date for charitable purposes."

qualification date and therefore qualified for the Clause Eleventh exemption for the fiscal year at issue. The Board therefore finds and rules that the subject property is exempt from real estate tax under Clause Eleventh. Accordingly, the Board's Decision is for the appellant and an abatement is granted in the amount of $213,436.38.

OPINION

I. HOUSE OF WORSHIP UNDER CLAUSE ELEVENTH

In pertinent part, Clause Eleventh provides a real estate tax exemption for:

> Houses of religious worship owned by, or held in trust for the use of, any religious organization . . . and the pews and furniture . . . so owned, or held in irrevocable trust, for the exclusive benefit of the religious organization . . . but such exemption shall not, except as herein provided, extend to any portion of any such house of religious worship appropriated for purposes other than religious worship or instruction.

In ***Shrine of Our Lady of La Salette Inc. v. Assessors of Attleboro***, 476 Mass. 690 (2017), the Supreme Judicial Court examined the breadth of the Clause Eleventh exemption. The property at issue in ***La Salette*** was a religious shrine to which visitors came to express their religious devotion and participate in various religious activities. The issue raised in ***La Salette*** was whether Clause Eleventh provides an exemption for property that was not devoted exclusively to religious worship or instruction, including a welcome center that housed a cafeteria, bistro, and gift shop;

a maintenance building used for storage; a "safe house" leased to a third-party nonprofit corporation that used the leased area as protected space for battered women; and a wildlife refuge maintained by the Massachusetts Audubon Society as open space and walking trails available to the public for passive recreation. ***Id.*** at 693-95.

The court recognized that "a house of religious worship is more than the chapel used for prayer and the classrooms used for religious instruction" and includes spaces that are used for "purposes connected with" religious worship, "even if no religious worship occurs" in those spaces. ***Id.*** at 696-97. Included within the Clause Eleventh exemption are portions of property that are "connected with" religious worship and "accompany and supplement" the religious work of the religious organization. ***Id.*** at 697. *See also* ***Proprietors of the South Congregational Meetinghouse in Lowell v. City of Lowell***, 42 Mass. (1 Met.) 538, 541 (1840) (exempting church vestry and cellar, but not portions of property "used for purposes exclusively secular").

The court in ***La Salette*** applied a "dominant purpose test" to determine whether the purpose of disputed areas within a property is "religious worship or instruction or connected with religious worship or instruction (and therefore exempt from taxation) or whether its dominant purpose is something other than religious worship or instruction (and therefore has been 'appropriated for

purposes other than religious worship or instruction')". ***Id.*** at 698.

Applying the dominant purpose test, the court ruled that the welcome center and maintenance building were exempt under Clause Eleventh. ***Id.*** at 699-700. With respect to the welcome center, the court determined that the use of the welcome center to feed visitors and the poor[6] and even to raise money by selling religious articles and holding fundraisers was "connected with" religious worship and instruction and "accompany and supplement" the religious work of the shrine. ***Id.*** at 697. It was therefore not necessary that the welcome center be used exclusively for religious worship or instruction for it to be exempt under Clause Eleventh.

Further, the maintenance building was clearly not used at all for religious worship or instruction and yet the court found that it too was exempt. ***Id.*** at 699-700. The court considered the storage of vehicles, equipment, and inventory for the gift shop to be sufficiently connected with religious worship and instruction to warrant the Clause Eleventh exemption. ***Id.***

In contrast, the court denied the Clause Eleventh exemption to the safe house and the wildlife refuge. With respect to the safe house, the court noted that it was used by a third-party non-

[6] In addition to providing food and drink to the pilgrims visiting the Shrine, the cafeteria was also used "as a soup kitchen serving free meals to the poor." ***Id.*** at 693.

religious organization for a charitable, but not religious, use and the third-party's use was "permanent and exclusive" rather than "occasional or incidental." ***Id.*** at 700-01. Because the use of the safe house was of a charitable nature unconnected to the religious worship and instruction taking place at the shrine, the court held that the safe house was "appropriated for purposes other than religious worship and instruction" under Clause Eleventh. ***Id.*** at 701.

Similarly, in the case of the wildlife refuge, the court ruled that a third-party non-religious organization - the Massachusetts Audubon Society - was granted the "exclusive right and responsibility to manage" the sanctuary and perform conservation-related activities while allowing unrestricted public access. ***Id.*** at 702. Although noting that there were some spiritual aspects to the wildlife refuge, the court held that the "grant of access to the nonprofit organization, coupled with unrestricted public access rights, represents a 'permanent and exclusive' appropriation" of this portion of the shrine for purposes other than religious worship or instruction. ***Id.***

In contrast, in the present appeal, there is no portion of the subject property that has been appropriated for purposes other than religious worship or instruction. Unlike the safe house and wildlife refuge in ***La Salette,*** no portion of the subject property is used by anyone other than the Mission. Further, the testimony

of Mr. Willoughby and Mr. Batchelder together with the unrebutted documentary evidence concerning the purpose and operation of the Mission make clear that the dominant purpose of the entire subject property is religious worship or instruction or uses connected with religious worship or instruction. The Mission's core ministry is to bring God's word to the poor, hungry, homeless, and addicted people that it serves for the purpose of bringing about positive and permanent changes in their lives. The Mission therefore holds thrice-daily worship services six days per week as well as Bible and pastor's classes, prayer meetings, and counseling sessions. Worship and religious instruction are an integral part of everything that transpires at the subject property.

The Mission's provision of food, clothing, and shelter to those it serves is for the purpose of bringing those in need to an experience of God in their lives. By tending to their physical needs, the Mission seeks to put those it serves in a position to hear and appreciate the word of God, in much the same way that the provision of food and drink to religious pilgrims in ***La Salette*** was held to be connected with the religious work of the Shrine. ***Id.*** at 697 ("Pilgrims and visitors who spend hours at the Shrine need to eat and drink, so the cafeteria and bistro are 'connected with' religious worship, and 'accompany and supplement' the religious work of the Shrine.").

Like the property at issue in ***La Salette,*** the subject property is not a "typical" house of worship because it is "not a parish with a congregation." ***Id.*** at 698. Rather, the Mission welcomes those in physical and spiritual need from the streets of the City. By opening its doors to care for individuals' basic physical needs of food, shelter, and clothing, the Mission works toward its primary goal of providing spiritual enlightenment and healing to those it welcomes.

The record demonstrates that the Mission is a religious organization committed to effecting a change in the lives of those it serves through the incorporation of God's word into every aspect of their lives. The dormitories, kitchen, check-in areas, storage rooms, laundry, donation center, offices, and other areas that may help meet the physical needs of those it serves are therefore connected with, accompany, and supplement the religious worship and instruction that the Mission provides at the subject property.

In their effort to deny a Clause Eleventh exemption, the assessors misconstrued relevant case law. First, the assessors argued that the Clause Eleventh issue is "definitely decided" by virtue of the fact that the subject property was under construction as of the July 1, 2015 qualification date and was thus not used as a house of worship on that date. As an initial matter, this argument directly contradicts the assessors' determination of the assessed value of the subject property under § 2A, which was

predicated on all renovations being complete as of July 1, 2015. Moreover, in ***Trinity Church v. Boston,*** 118 Mass. 164, 165 (1875), the court explicitly rejected such an argument:

> It is not essential that the property thus exempt should be actually used, or should be in a condition to be actually used, for purposes of religious worship. Such a construction would exclude from the benefits of the statute all unfinished houses of worship . . . The occupation for religious purposes, which the statute contemplates, does not require the actual completion of the structure.

The assessors also failed to recognize the analysis employed by the court in ***La Salette*** by arguing that only "specific space used exclusively as a chapel or house of worship" qualifies for the Clause Eleventh exemption. Application of such a test would have disqualified much of the space that the court found was exempt in ***La Salette,*** including the welcome center and the maintenance building, and is clearly at odds with the court's dominant purpose test.

Further, the assessors attempt to limit the reach of the Clause Eleventh exemption by arbitrarily determining what constitutes religious worship and instruction, and where it is conducted at the subject property, treads on long-protected rights of religious organizations to be free from government intrusion and interference. *See, e.g.,* ***Walz v. Tax Comm'n of City of New York,*** 397 U.S. 664, 674-76 (1970) (recognizing that a "minimal and remote involvement between Church and state" must be maintained to

avoid the risk of forbidden "official and continuing surveillance leading to an impermissible degree of entanglement").

In Massachusetts, the practice of not taxing houses of worship began in the colonial period, long before the enactment of any express statutory exemption. ***All Saints Parish v. Inhabitants of Town of Brookline,*** 178 Mass. 404, 412 (1901). The first statutory exemption for houses of worship dates back to 1799. St. 1799, c. 49, § 2.

In furtherance of the principle of government restraint from interference with religious organizations, Massachusetts has recognized that the statutory text of Clause Eleventh and other analogous exemptions require that courts respect the exempt organizations' reasonable determination of what is required for their purposes. *See, e.g.,* ***Assessors of Dover v. Dominican Fathers Province of St. Joseph,*** 334 Mass. 530, 540-41 (1956) (ruling that "what lands are reasonably required, and what uses of land will promote the purposes for which the institution was incorporated, must be determined by its own officers. So long as they act in good faith and not unreasonably in determining to occupy and use the real estate of the corporation their determination will not be interfered with by the courts"). *See also* ***Emerson v. Trustees of Milton Acad.,*** 185 Mass. 414, 415 (1906); ***Massachusetts Gen. Hosp. v. Somerville,*** 101 Mass. 319, 322 (1869).

Comparing the requirements for exemption under Clauses Third and Eleventh highlights the government restraint required to be shown to religious organizations. An applicant for a Clause Third charitable exemption must annually file with the assessors a Form 3ABC and a copy of the Form PC that it filed with the attorney general. These forms require the applicant to provide sworn statements that itemize and describe its property, detail the property's uses and income, and describe the organization's purpose. These documents are then reviewed by the assessors who determine whether the property is being "utilized" for permissible charitable purposes. In contrast, Clause Eleventh has no such requirements, thereby preventing any routine or detailed government scrutiny of religious property, religious institutions, or religious purposes.

Further, the only exception to the Clause Eleventh exemption - portions of property that are "appropriated for purposes other than religious worship or instruction" - has been applied in only the clearest of circumstances. *See e.g.*, ***Proprietors of the South Congregational Meetinghouse***, 42 Mass. 538, 540-41 (denying exemption for space rented to retail stores for "exclusively secular" purposes); ***Evangelical Baptist Benevolent & Missionary Soc'y v. Boston***, 204 Mass. 28, 31-32 (1910) (denying exemption for "[v]ery spacious and valuable parts of the building . . . never

used for religious worship and [with] no relation to a religious use" that were used for income production).

In the present appeal, the Mission acted in good faith and reasonably determined that the entire subject property was necessary to carry out its religious worship and instruction. The assessors' argument to the contrary is not supported by credible evidence of record, ignores the Supreme Judicial Court's longstanding dominant-purpose test, and represents an unwarranted government intrusion into the religious affairs of the Mission. The Board finds that the assessors' post-hearing "inspection" of the subject property and their determination of what areas they deemed suitable for religious worship represent a clear example of the type of governmental intrusion and interference that has long been prohibited in the commonwealth.

In sum, and based on the record in its entirety, the Board finds and rules that the dominant purpose of the subject property was religious worship or instruction, or uses connected with religious worship or instruction, and that no part of the subject property had been appropriated for purposes other than religious worship or instruction within the meaning of Clause Eleventh.

II. OWNERSHIP REQUIREMENT UNDER CLAUSE ELEVENTH

A. THE DISTINCTION BETWEEN LEGAL AND RECORD TITLE

Clause Eleventh provides an exemption for houses of religious worship "owned by, or held in trust for the use of, any religious organization." Under G.L. c. 59, § 5 ("§ 5"), the date of determination as to ownership or other qualifying factors for purposes of any of its clauses, including Clause Eleventh, is July 1 of the fiscal year at issue.[7] Accordingly, the Mission must have owned the subject property as of July 1, 2015 in order to qualify for the Clause Eleventh exemption.[8]

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[7] There are several critical dates applicable to the annual real estate tax assessment process, as illustrated by the dates applicable to the fiscal year at issue:

- January 1, 2015: the date that governs the identity of the assessed owner and the valuation of the property for fiscal year 2016;
- June 30, 2015: the last day of the lookback period under § 2A; any increases in value resulting from new construction during the period from January 2, 2015 through this date may be treated as if present on January 1, 2015;
- July 1, 2015: the first day of fiscal year 2016 and the fiscal year 2016 qualification date for the exemptions under § 5, including Clause Eleventh;
- August 1, 2015 and November 1, 2015: the due dates for payment of the preliminary tax bills for fiscal year 2016; each preliminary bill is one-quarter of the tax assessed for the preceding fiscal year, 2015;
- December 2015: fiscal year 2016 actual bills are mailed, based on the value of the property on January 1, 2015 plus any additions under § 2A;
- February 1, 2016 and May 1, 2016: the due dates for payment of the fiscal year 2016 actual tax bills.

[8] Given the Board's determination that the Mission held legal title to the subject property as of July 1, 2015, we need not reach the issue of whether Blue Tarp or the escrow agent held the subject property in trust for the benefit of the Mission while Blue Tarp completed the renovation of the subject property for the benefit of the Mission.

The owner of property for purposes of the exemptions under § 5 is the holder of legal title. *See, e.g.*, ***Kirby v. Assessors of Medford,*** 350 Mass. 386, 390-91 (1966); ***Moscatiello v. Assessors of Boston,*** 36 Mass. App. Ct. 622, 623 (1994). However, the holder of legal title to property is not necessarily the owner shown in the records of the registry of deeds because the recording of a deed is not required to transfer legal title to real estate. *See* ***Jacobs v. Jacobs,*** 321 Mass. 350 (1947). The distinction between legal and record ownership is highlighted by the language used in G.L. c. 59, § 11 ("§ 11"), which provides that real estate taxes are to be assessed to the "person who is the owner on January first" and that the "person appearing of record" in the appropriate registry of deeds "shall be held to be the true owner." If the record ownership were the same as legal ownership, there would be no need to provide that the record owner is deemed to be the true owner for purposes of assessment.

The record owner of the subject property as of the January 1, 2015 assessment date under § 11 was Blue Tarp, having recorded the deed by which it acquired title to the subject property on December 1, 2014. Under § 11, the tax is assessed on the person who holds record title, and not on the real estate. Although the tax constitutes a lien on the real estate, the primary liability is on the person to whom the tax is assessed. *See* ***Webber Lumber Co. v. Show,*** 189 Mass. 366 (1905); Nichols, TAXATION IN MASSACHUSETTS (3d ed.

1938) 265. Where property is transferred after the assessment date, the assessed owner is still personally liable for the tax, although the lien remains on the real estate and the assessed owner may bring an action against the subsequent owner if the assessed owner pays the tax.[9] ***Webber*** 189 Mass. at 366.

Accordingly, Blue Tarp, as the assessed owner of record, was liable for the subject assessment. However, the assessors chose to issue to the Mission the actual tax bill for a tax that, were it due, Blue Tarp was obligated to pay. Further exacerbating this anomaly is that the assessed tax was based on G.L. c. 59, § 2A, which provides that improvements made through June 30 are "deemed part of such real property as of January first."

In fact, the tax assessed was not due at all. Although the holder of record title to the subject property on January 1, 2015 was Blue Tarp, as reflected on the actual tax bill for the fiscal year at issue, the holder of legal title and "owner" for purposes of Clause Eleventh on the July 1, 2015 qualification date was the Mission, allowing for exemption of the subject property under Clause Eleventh.

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[9] The assessors attached to their post-hearing brief a copy of an Internet news article in which the lawyer Blue Tarp paid to represent the Mission in connection with the real estate transfer opined that Blue Tarp and the Mission were each responsible for a share of the fiscal year 2016 real estate tax. This attempt to supplement the record with hearsay is improper. Moreover, any such adjustments would be a matter between the parties and would not affect the primary liability of Blue Tarp as the assessed owner.

B. OWNERSHIP AS OF THE JULY 1 QUALIFICATION DATE

Unlike § 11, which deems the owner of record as of January 1 to be the "owner" for purposes of assessment, the "owner" for purposes of qualification for the various clauses of § 5, including Clause Eleventh, has no such deemed ownership provision. Rather, the owner for purposes of the qualification for the exemptions under the clauses of § 5 is the holder of legal title. ***Kirby***, 350 Mass. at 390-91. The assessors maintain that the Mission did not own the subject property as of the July 1, 2015 qualification date, because as of that date: (1) record title was in Blue Tarp; and (2) the deed of the subject property from Blue Tarp to the Mission was not yet "delivered" to the Mission.

1. EFFECT OF RECORD TITLE AS OF JULY 1, 2015

Regarding the state of record title, the assessors maintain that they are entitled to rely "exclusively on the records of the registry of deeds and probate" to determine ownership for assessment purposes. Because record title was in Blue Tarp as of July 1, 2015, the assessors maintain that the Mission cannot qualify for the Clause Eleventh exemption. This argument misses the mark for several reasons.

First, as discussed above, there is nothing in § 5 or Clause Eleventh that references record title. It is actual, legal ownership, not deemed ownership pursuant to a recorded deed, that

is the test for exemption qualification under § 5 and its various clauses, including Clause Eleventh.

Second, the assessors' reliance on G.L. c. 183, § 4 to argue that an unrecorded deed is not valid against any person other than the grantor and persons having actual knowledge does not support its position.[10] To the extent that G.L. c. 183, § 4 may have relevance to the issue of qualification for the Clause Eleventh exemption, the assessors had actual knowledge of the deed to the Mission prior to the issuance of the fiscal year 2016 actual tax bill to the Mission. When asked at the hearing how the assessors knew that the Mission was the owner of the subject property prior to issuing it a tax bill, one of the assessors responded: "We had a copy of [the] deed[] from the Registry of Deeds. We get them two times a month."

Prior to the issuance of the fiscal year 2016 actual tax bill, the assessors therefore had a copy of the deed of the subject property from Blue Tarp to the Mission dated December 30, 2014, a date well in advance of the Clause Eleventh qualification date. Although the cases construing "actual notice" for purposes of G.L. c. 183, § 4, which generally involve unrecorded mortgages, construe the actual notice requirement strictly (*see generally* ***Tramontozzi v. D'Amicis,*** 344 Mass. 514 (1962)), there is nothing in these cases

[10] The assessors' citation to G.L. c. 186, § 4 for this proposition is presumably a typographical error.

to suggest that a party holding a copy of a deed is not on actual notice of that deed. Accordingly, the Board finds and rules that the assessors had actual knowledge of the December 30, 2014 deed of the subject property to the Mission prior to the issuance of the fiscal year 2016 actual tax bill to the Mission and that the state of record title as of July 1, 2015 is therefore irrelevant to the Mission's qualification for the Clause Eleventh exemption.

2. DELIVERY OF THE DEED

It has long been recognized that delivery of a deed is "essential to its validity and a deed becomes effective only at the time of its delivery." *See, e.g.*, ***Lexington v. Ryder,*** 296 Mass. 566 (1937). It is equally well established that "it is not essential to the valid delivery of a deed that the grantee be present, and that it be made or accepted by him personally at that time." ***Hatch v. Hatch,*** 9 Mass. 307, 310 (1812). The deed may be delivered to "a stranger, for the use and benefit of the grantee, to have effect after certain event, or the performance of some condition." ***Id.***; *see also* ***Foster v. Mansfield,*** 44 Mass. 412, 414 (1841).

In those cases where an executed deed is delivered to a third person for the benefit of the grantee pending the completion of a condition or the occurrence of an event, courts look to the intent of the parties to determine whether the deed is effective as of the date of the delivery of the deed to the third person as opposed

to the date the event occurs or the condition is satisfied. For example, in ***Hatch*** the court noted that regardless of whether a writing that is delivered to an escrow agent is called a "deed" or an "escrow" "it will, nevertheless, be regarded and construed as a deed from the first delivery [to the escrow agent], as soon as the event happens, or the condition is performed, upon which the effect had been suspended, if this construction should be then necessary in furtherance of the lawful intentions of the parties." ***Id.*** at 310; *see also* ***Foster,*** 44 Mass. at 415.

In ***Band v. Davis,*** 325 Mass. 18 (1949), a property owner ("grantor") delivered a deed to his property to an escrow agent ("first delivery") for future delivery to the grantee on the condition that the grantee care for the grantor for the rest of the grantor's life ("second delivery"). ***Id.*** at 19-20. After the grantor's death, the escrow agent determined that the grantee had satisfied the condition of the escrow and delivered the deed to the grantee, who then recorded the deed. ***Id.*** at 20. The court held that it "is well settled that where the grantor delivers an instrument to a third person in escrow with instructions that it is to be delivered to the grantee named therein upon the happening of a certain condition," the escrow agent is authorized to deliver the deed to the grantee and the "second delivery is treated as relating back and taking effect as of the time of the first delivery." ***Id.*** at 21.

In the present appeal, the Agreement called for the parties to execute deeds to their respective properties and deliver them to the escrow agent within thirty days of Blue Tarp's acquisition of the subject property. Blue Tarp acquired the subject property on December 1, 2014 and executed its deed of the subject property to the Mission on December 30, 2014. In accordance with the Agreement and as recognized by the parties, both the deed of the subject property and the Mission's deed of Bliss Street were transferred to the escrow agent pending Blue Tarp's completion of the subject property's renovations and its securing of necessary permitting.

As detailed in the findings above, it was the intention of both Blue Tarp and the Mission that title to their respective properties be transferred at the time the deeds were executed and delivered to the escrow agent. Once the conditions of the escrow were satisfied and the deeds were recorded, the deeds took effect as of the first delivery to the escrow agent. ***Id.*** Because under the terms of the Agreement the transfer of the deeds to the escrow agent preceded the July 1, 2015 qualification date, the Mission held legal title to, and was therefore the owner of, the subject property for purposes of the Clause Eleventh exemption as of the qualification date.

III. CONCLUSION

On the basis of all the evidence of record and for the reasons detailed above, the Board finds and rules that the subject property is exempt from real estate tax under Clause Eleventh. Accordingly, the Board's Renewed Decision is for the appellant and an abatement is granted in the amount of $213,436.38.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _____
Clerk of the Board