**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**WAYLAND ROD & GUN CLUB, INC.   v.     BOARD OF ASSESSORS OF THE**

 **TOWN OF WAYLAND**

Docket No. F330237     Promulgated:

 September 13, 2018

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 Wayland (“assessors” or “appellee”) to abate a tax on certain real estate, located in the Town of Wayland, owned by and assessed to Wayland Rod & Gun Club, Inc. (“WRGC” or “appellant”) under G.L. c. 59, §§ 11 and 38, for fiscal year 2016 (“fiscal year at issue”).

Chairman Hammond heard this appeal. He was joined in the decision for the appellee by Commissioners Scharaffa, Rose, Chmielinski, and Good.

 These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

*Stephen A. Garanin,* Club President,for the appellant.

*Mark J. Lanza,* Esq.,for the appellee.

**FINDINGS OF FACT AND REPORT**

On the basis of the testimony and exhibits entered into evidence at the hearing of this appeal, the Appellate Tax Board (“Board”) made the following findings of fact.

On January 1, 2015, the relevant assessment date for the fiscal year at issue, the appellant was the assessed owner of a 15.34-acre parcel of land improved with a 1,530-square-foot building located at 4 Meadow View Road in Wayland (“subject property”). For the fiscal year at issue, the assessors valued the subject property at $1,050,000, and assessed a tax thereon, at the rate of $17.34 per thousand, in the total amount of $18,462.90, inclusive of a Community Preservation Act surcharge.

The issue in this appeal was whether the subject property was exempt from tax under G.L. c. 59, § 5, Cl. Third (“Clause Third”) as property owned and occupied by a charitable organization. The record showed that the appellant timely filed its Form 3ABC and a copy of its Form PC with the assessors. On January 28, 2016, the appellant timely filed an Application for Abatement with the assessors. By vote of the assessors on March 14, 2016, the assessed value was reduced to $381,000, and notice of the decision was sent to the appellant on March 16, 2016. Not satisfied with this abatement, the appellant filed its appeal with the Board on June 10, 2016. Based on the foregoing, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The subject property spans more than 15 acres, most of which are wooded, with grassy areas surrounding the improvements. The improvements on the subject property consist of a two-story brick building (“subject building”). The first floor of the subject building contains a large meeting room, and is used as the WRGC’s lodge. The second floor contains a six-room apartment, which is used as the caretaker’s residence. WRGC has always had a resident caretaker on the premises, in order to provide maintenance for the subject property as well as for security purposes, particularly during hours of darkness. The record indicated that the current caretaker, Paul Ramsey, receives free lodging at the subject property in exchange for his work but he is not otherwise compensated.

The basement level of the subject building, though unfinished, has an indoor firing range, with two shooting positions. In addition, there is an outdoor firing range at the subject property, with five shooting positions.

The appellant was founded as the Waltham Rod and Gun Club in 1928. It was renamed to its current name in 1960. WRGC is a Massachusetts non-profit organization. According to its Restated Articles of Organization, filed with the Massachusetts Secretary of State, its purposes are:

[T]o support conservation and preservation of the environment, open space and wild habitat; to promote and provide education of the sports of hunting, fishing, archery, and shooting; to cooperate and assist in the enforcement of fish and game laws; to introduce and assist in the passing of laws that may affect favorably the above; to promote more cordial relations between sportsmen and landowners; and to do such other things as the members attending a meeting may decide on by a vote... and [t]o carry on any other activity in support of and to benefit the above purposes as may be carried on by an organization described in Section 501(c)(3) of the Internal Revenue Code and by a corporation organized under Chapter 180 of the Massachusetts General Laws.

The Restated Articles of Organization also provide that

[t]he house and grounds of the [WRGC] are available for use by any municipal, civic, fraternal or charitable organization associated with the Town of Wayland upon written request, subject to such regulations as shall be made by the Board of Governors of the [WRGC]. For safety reasons, this privilege shall not include use of the firing range unless associated with a [WRGC] function or otherwise approved by the Board of Governors.

Although the Restated Articles of Organization reference I.R.C. § 501(c)(3), the appellant is not designated as a charitable organization under I.R.C. § 501(c)(3). The record showed that the appellant applied to the Internal Revenue Service (“IRS”) for such designation in 2006 but was rejected. Instead, in 2016, the IRS granted the appellant tax-exempt status under I.R.C. § 501(c)(4). That section applies to:

Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

I.R.C. § 501(c)(4).

Information entered into the record indicated that, during the period relevant to this appeal, WRGC had approximately 170 members. Prospective members must pay a $200, non-refundable application fee. Thereafter, annual fees are $100 for individual memberships, $160 for family memberships, and $60 for senior memberships. The outdoor shooting range is open for shooting approximately 28 hours per week. WRGC members use the lodge for meetings.

WRGC offered programs and events for non-members as well as members, most of them related to firearms safety and proficiency. According to materials appended to the appellant’s Application for Abatement, the firing range at the subject property is used by non-members approximately 17% of the time. The lodge is not open to the public as a general matter, but may be used by non-members upon request.

The record indicated that WRGC opened the subject property to various non-profit groups, such as the Boy Scouts, Wayland Police and Fire Department, the United States Fish and Wildlife Service, and AWARE (Arming Women Against Rape & Endangerment). WRGC did not charge civic or charitable groups for the use of the subject property.

The record also showed that WRGC used the subject property to host charitable events, such as the “Santa’s Ride,” held in conjunction with the Wayland Police Department, which served cookies and hot beverages and also functioned as a food drive, as well as a “Turkey Shoot” and “Spring Ham Shoot,” which offered gift certificate prizes for “Lucky Shooters” and also functioned as a canned food drive for a local food pantry. There was no evidence in the record indicating the specific dates of these events, nor how many members of the public were in attendance for them. Similarly, there was no indication in the record as to the frequency of ongoing programs open to the public.

The appellant contended in this appeal that the subject property was continuously open to, and in fact used by, the public for general recreational activities such as hiking, fishing, or dog walking. However, the record did not indicate how the appellant made the public aware that it was welcome to use the subject property during the period relevant to this appeal.

To the contrary, photographs taken by the assessors during a site visit in October of 2015 showed several large signs discouraging public entrance upon the subject property. Specifically, a large, red sign on the gated entrance to the subject property stated: “Private Range: Members Only, Sign in at Clubhouse. Police Take Notice.” An additional sign mounted to a tree stated “CAUTION – Firearms in Use – KEEP OUT,” with another sign below stating “POSTED: Private Property. Hunting, fishing, trapping for any purpose is strictly forbidden. Violations will be prosecuted.”[[1]](#footnote-1) Moreover, there was no evidence in the record documenting the frequency of use of the subject property by the public for general recreational purposes.

Ellen Brideau, who testified on behalf of the assessors at the hearing of this appeal, explained the reasons for the partial abatement for the fiscal year at issue. She explained that, based on observations made by the assessors during the aforementioned site visit, several changes were made to the subject property’s record card to more accurately reflect its condition and amenities. For example, Ms. Brideau testified that the assessors increased the depreciation on the subject building, thereby lowering its value.

In addition, the assessors encouraged the appellant to seek classification as recreational land under G.L. c. 61B, § 1 (“Chapter 61B”). Such classification is available for parcels of land exceeding five acres in size and meeting other qualifications, such as being maintained in a substantially natural or wild state and used primarily for recreational purposes. Classification under Chapter 61B results in the land being taxed at a substantially reduced rate. The appellant heeded the assessors’ advice, and applied for and received Chapter 61B classification for the subject property for the fiscal year at issue, which further reduced the assessment.

On the basis of all of the evidence, the Board found that the appellant’s dominant function and use of the subject property was to offer a place for its members to gather, socialize, and use the subject property’s firing ranges. This use was not primarily for public, charitable purposes, but for the private, recreational use of the appellant’s members. As will be discussed further in the Opinion below, although the appellant provided evidence showing that it offered certain educational programming at the subject property and also allowed non-members, including various charitable organizations, to use the subject property, the record lacked specific information showing when, or how frequently, educational programming and use by the public occurred during the period relevant to this appeal.

Moreover, despite the appellant’s stated purposes of supporting “conservation and preservation of the environment, open space and wild habitat,” there was no indication in the record as to what steps the appellant took in furtherance of those purposes. Though the appellant maintained the subject property in a substantially natural and open condition, there was no evidence in the record showing active efforts on the part of the appellant to promote conservation and preservation at the subject property. There was nothing in the record to differentiate the use of the subject property in this respect from any other large, substantially natural parcel.

In addition, although the appellant contended that members of the public were welcome to, and did, make regular use of the subject property for fishing, hiking, dog walking, and other recreational activities, there was no indication in the record as to how the appellant advertised the availability of the subject property to the public, nor was there documentation of the frequency of such use of the subject property by members of the public. To the contrary, as shown on photographs introduced by the assessors, prominent signs displayed on the subject property during the period relevant to this appeal indicated that members of the public were prohibited from using the subject property.

 Accordingly, on the basis of the evidence, the Board concluded that the appellant failed to establish that it was a charitable organization for purposes of Clause Third or that it occupied the subject property in furtherance of its charitable purposes. The Board thus found and ruled that the subject property was not exempt from taxation under Clause Third, and it therefore issued a decision for the appellee in this appeal.

 **OPINION**

Clause Third provides in pertinent part that “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” is exempt from taxation. There is no dispute here that WRGC owns the subject property. Therefore, to qualify for the exemption, WRGC must prove that (1) it is a charitable organization and (2) it occupies the subject property in furtherance of its stated charitable purposes. *See* ***Jewish Geriatric Services, Inc. v. Longmeadow***, Mass. ATB Findings of Fact and Reports 2002-337, 351, *aff'd*, [61 Mass. App. Ct. 73 (2004)](http://www.lexis.com/research/buttonTFLink?_m=b91840ed6886fa8f70be638c5cc21a7b&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2008%20Mass.%20Tax%20LEXIS%2051%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=1&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b61%20Mass.%20App.%20Ct.%2073%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=b18cdd957cce18be102bc2543166f042) (citing [***Assessors of Hamilton v. Iron Rail Fund of Girls Club of America***, 367 Mass. 301, 306 (1975)).](http://www.lexis.com/research/buttonTFLink?_m=b91840ed6886fa8f70be638c5cc21a7b&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2008%20Mass.%20Tax%20LEXIS%2051%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=2&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20Mass.%20301%2cat%20306%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=c46d3072391ef06a1e1f0c2d9d56db89)

The burden of establishing entitlement to the charitable exemption lies with the taxpayer. ***New England Legal Found. v. Boston,*** 423 Mass. 602, 609 (1996). “Any doubt must operate against the one claiming an exemption, because the burden of proof is upon the one claiming an exemption from taxation to show clearly and unequivocally that he comes within the terms.” [***Boston Symphony Orchestra, Inc. v. Assessors of Boston***, 294 Mass. 248, 257 (1936).](http://www.lexis.com/research/buttonTFLink?_m=b91840ed6886fa8f70be638c5cc21a7b&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2008%20Mass.%20Tax%20LEXIS%2051%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=3&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b294%20Mass.%20248%2cat%20257%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=81cbdf0c2894689082d607d6c5d1bc30) “‘Exemption from taxation is a matter of special favor or grace. It will be recognized only where the property falls clearly and unmistakably within the express words of a legislative command.’” ***Mass. Med. Soc’y v. Assessors of Boston,*** 340 Mass. 327, 331 (1960) (quoting ***Boston Chamber of Commerce v. Assessors of Boston,*** 315 Mass. 712, 718 (1944)).

An organization will be considered a charitable organization for the purposes of Clause Third if “the dominant purpose of its work is for the public good and the work done for its members is but the means adopted for this purpose.” ***Harvard Community Health Plan v. Assessors of Cambridge,*** 384 Mass. 536, 544 (1981) (quoting ***Mass. Medical Soc’y,*** 340 Mass. at 332). Factors developed by the courts over the years to determine if an organization is charitable include:

whether the organization provides low-cost or free services to those unable to pay[;] whether it charges fees for its services and how much those fees are[;] whether it offers its services to a large or ‘fluid’ group of beneficiaries and how large and fluid that group is[;] whether the organization provides its services to those from all segments of society and from all walks of life[;] and whether the organization limits its services to those who fulfill certain qualifications and how those limitations help advance the organization’s charitable purposes.

***New Habitat, Inc. v. Tax Collector of Cambridge***, 451 Mass. 729, 732-33 (2008) (citations omitted).

In ***New Habitat***, the Supreme Judicial Court offered a new “interpretive lens” through which to view Clause Third exemption claims. *See* ***Mary Ann Morse Healthcare Corp. v. Assessors of Framingham***, 74 Mass. App. Ct. 701, 703 (2009). Specifically, ***New Habitat*** “conditions the importance of previously established factors on the extent to which ‘the dominant purposes and methods of the organization’ are traditionally charitable.” ***Mary Ann Morse Healthcare Corp.***, 74 Mass. App. Ct. at 703 (quoting ***New Habitat,*** 451 Mass. at 733). In other words, “[t]he closer an organization’s dominant purposes and methods are to traditionally charitable purposes and methods, the less significant these factors will be in [the] interpretation of the organization’s charitable status. . . . The farther an organization’s dominant purposes and methods are from traditionally charitable purposes and methods, the more significant these factors will be.” ***Mary Ann Morse Healthcare Corp.***, 74 Mass. App. Ct. at 705.

The court in ***New Habitat,*** quoting language from a mid-nineteenth century case, characterized the “traditional objects and methods” of a Clause Third charity as follows:

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.***

***New Habitat***, 451 Mass. at 732 (emphasis added). An important factor to be considered in determining if an organization is operating as a public charity is “‘whether it perform[s] activities which advance the public good, thereby relieving the burdens of government to do so.’” ***Home for Aged People in Fall River v. Assessors of Fall River,*** Mass. ATB Findings of Fact and Reports 2011-370, 400 (quoting ***Sturdy Memorial Foundation v. Assessors of North Attleborough,*** Mass. ATB Findings of Fact and Reports 2002-203, 224, *aff’d,* 60 Mass. App. Ct. 573 (2004)). In ascertaining an organization’s dominant purposes, it is necessary to look beyond the purposes recited in its articles of organization and examine whether 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) (citations omitted).

 Using these criteria, the Board found that WRGC’s purposes and activities did not constitute traditionally charitable objects or methods. In spite of the purposes recited in its Restated Articles of Organization, the record showed that during the relevant time period, WRGC’s dominant purpose was to offer a place for its members to gather, socialize, and make use of the subject property’s firing ranges. The Board found that these purposes were more recreational or social in nature, rather than educational or otherwise traditionally charitable. *See* ***Marshfield Rod & Gun Club, Inc. v. Assessors of Marshfield,*** Mass. ATB Findings of Fact and Reports 1998-1130, 1136 (finding that the property of an organization was not exempt under Clause Third when its primary use was to provide “a place for its members to go and shoot”); ***Massachusetts Youth Soccer Association, Inc. v. Assessors of Lancaster,*** Mass. ATB Findings of Fact and Reports 2012-660, 670 (finding that property of an organization whose primary purpose was to promote interest and proficiency in the game of soccer was not exempt under Clause Third); ***Skating Club of Boston v. Assessors of Boston,*** Mass. ATB Findings of Fact and Reports 2007-193, 211 (finding that the property of a skating club with a stated purpose of promoting “interest in the art of skating” was not exempt under Clause Third). Although WRGC also allowed non-members to use the firing range with prior approval, and it did at times open the subject property to use by various governmental and charitable organizations, the Board found that these purposes were ancillary to the appellant’s dominant purposes.

In addition, although the appellant cited the support of “conservation and preservation of the environment, open space and wild habitat,” as being among its purposes, and such purposes have been recognized as being traditionally charitable, the Board found that the appellant failed to show how it actively furthered these objectives. *Contrast* ***New England Forestry Foundation, Inc. v. Assessors of Hawley***, 468 Mass. 138, 141 (2014) (ruling that property maintained in a substantially natural condition, but that was owned by a charitable organization that hired an independent, licensed forester, created a forest management plan, conducted wildlife and vegetation inventories and oversaw the removal of poor-quality vegetation so as to promote the growth of healthy vegetation, was occupied in furtherance of that organization’s charitable conservation purposes). Accordingly, because its dominant purpose was not charitable, the Board found and ruled that the appellant was not a charitable organization for purposes of Clause Third.

Even assuming arguendo that the Board found that the appellant was a charitable organization for purposes of Clause Third, the appellant was still required to show that it occupied the subject property in furtherance of its charitable purposes. As stated above, although the appellant cited conservation and preservation of wildlife as being among its charitable purposes, it failed to show how it used the subject property in furtherance of those purposes. It is clear that “‘holding land in its natural pristine condition and thereby protecting wildlife habitats, filtering the air and water supply, and absorbing carbon emissions’ undoubtedly provides some benefit to the public in general.” ***Anna Harris Smith Foundation, Inc. v. Assessors of*** ***Pembroke***, Mass. ATB Findings of Fact and Reports 2015-123, 141 (quoting ***New England Forestry Foundation,*** 468 Mass. at 152). However, “[s]imply keeping the land open . . . is not enough to satisfy the requirement of ‘occupying’ the property within the meaning of the statute. Rather, there must be an ‘active appropriation to the immediate uses of the charitable cause for which the owner was organized.’” ***Forges Farm, Inc. v. Assessors of Plymouth,*** Mass. ATB Findings of Fact and Reports 2007-1197, 1207 (citations omitted). Similarly, although the appellant claimed that the subject property was continuously open for use by, and in fact frequently used by, members of the public for such activities as hiking, fishing, and dog walking, it did not demonstrate how it made the public aware of the availability of the subject property or what steps it took to promote use of the subject property by the public. On the contrary, as discussed above, the record showed that, as of the relevant dates of valuation, prominent signage posted on the subject property discouraged the public from entering onto it. As the evidence of record indicated that the primary use of the subject property was by members of WRGC as a gathering place to meet, socialize, and engage in target shooting, and the Board found that these were not charitable activities for purposes of Clause Third, the Board found and ruled that the appellant did not occupy the subject property in furtherance of charitable purposes.

On the basis of all of the evidence and its subsidiary findings and rulings, the Board ultimately found and ruled that the appellant failed to meet its burden of proving that it was a charitable organization for purposes of Clause Third and that it occupied the subject property in furtherance of charitable purposes within the meaning of Clause Third.

 Accordingly, the Board issued a decision for the appellee in this appeal.

 **THE APPELLATE TAX BOARD**

 **By: \_\_\_\_\_\_\_\_\_\_\_ Thomas W. Hammond, Jr., Chairman**

**A true copy,**

**Attest:**

 **Clerk of the Board**

1. Stephen Garanin, who is the President of WRGC, testified at the hearing that the signs photographed by the assessors have since been changed to signs merely cautioning the public that firearms are in use at the subject property. [↑](#footnote-ref-1)