

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**LESLEY S. WESTERVELT, C/O
SAIL MARTHA'S VINEYARD, INC.**

v.

**BOARD OF ASSESSORS OF
THE TOWN OF OAK BLUFFS**

Docket No. F334981

Promulgated:
September 29, 2021

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 Oak Bluffs ("appellee" or "assessors") to abate a tax on certain real estate in Oak Bluffs, owned by and assessed to Lesley S. Westervelt, C/O Sail Martha's Vineyard, Inc. ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2018 ("fiscal year at issue").

Commissioner DeFrancisco heard this appeal. Chairman Hammond and Commissioners Good, Elliott, and Metzger joined him 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.

John J. Kettlewell, Executive Director, for the appellant.

MacGregor Anderson, Principal Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

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

The appeal pertains to a 0.326-acre parcel of land located in the town of Oak Bluffs, improved with a four-bedroom, two-bathroom, single-family residence, with an address of 1 Concord Avenue ("subject property"). The appellant purchased the subject property on May 25, 2017 for \$700,000. It was assessed for \$615,900 for the fiscal year at issue. The appellant does not dispute the valuation but argues that the subject property was exempt from real estate taxation pursuant to G.L. c. 59, § 5, Clause Third ("Clause Third") for the fiscal year at issue.

Information relevant to the Board's jurisdiction is summarized in the following chart:

Assessed value	Tax assessed Tax rate	Abatement application application filed	Date denied	Petition filed with Board
\$615,900	\$4,822.50 \$7.83 per \$1,000	01/29/2018	02/01/2018	04/25/2018

The parties acknowledged that the appellant did not file with the appellee the list, statements and affidavit required by G.L. c. 59, § 29 ("Form 3ABC") and a true copy of the report required by G.L. c. 12, § 8F to be filed with the Attorney General's Division of Public Charities ("Form PC"). However, the appellant did not acquire the subject property until May 25, 2017. As will be

discussed in the Opinion below, the Board found and ruled that no Form 3ABC or Form PC listing the subject property was required to be filed with the appellee for the fiscal year at issue.

Based on the facts in the preceding two paragraphs, and as will be discussed further in the Opinion, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellant presented its case through the testimony of John Kettlewell, the Executive Director of the appellant, as well as the submission of documents.

The appellant is recognized as a nonprofit organization pursuant to Internal Revenue Code section 501(c)(3). According to its Articles of Organization, the purpose of the appellant is as follows:

To promote, study, research, educate and fund projects, enterprises, and undertakings designed or otherwise constructed to reaffirm the island character and maritime heritage of Martha's Vineyard through programs and activities in the regional school system and the broader community that refocuses attention to the ocean and waterfront of today and in history, and to foster vocational programs for the training of the community in the science of seamanship and navigation.

Mr. Kettlewell testified that the foremost part of the appellant's charitable mission is to provide sailing education to approximately 400 to 500 students each summer. He testified that every student attending school on Martha's Vineyard may attend the appellant's summer sailing program for free, and he stated that the appellant provides the equivalent of more than \$100,000 of

free lessons each year. These programs operate from the appellant's boathouse, which is located across the street from the subject property.

Mr. Kettlewell testified that, prior to owning the subject property, the appellant had a very difficult time finding summer housing for seasonal teaching staff, who are mostly college aged and do not typically live on the island. Mr. Kettlewell testified that the appellant has a very detailed curriculum and high standards for its staff and thus hires skilled staff from a wide range of locations, including Europe. He further testified that the cost of summer rentals on Martha's Vineyard is prohibitive to many prospective employees, so it had become very difficult to hire staff without offering them free housing. Staff typically arrive without cars, necessitating daily coordination of pick ups and drop offs in places scattered across the island in order to get staff to and from work. Mr. Kettlewell testified that the need to shuttle staff became problematic for the appellant, because the instructors needed to begin work at eight in the morning, but they were often staying some distance from the work site.

Mr. Kettlewell testified that purchasing the subject property and using it to house the appellant's teaching staff has been invaluable in fulfilling the appellant's charitable purposes. As Mr. Kettlewell explained, the subject property's location across the street from the appellant's boathouse means that staff can

easily arrive in time for the start of the workday, may return there to eat lunch, and can even work after normal hours when necessary. Also, by offering rent-free housing to prospective instructors, the appellant is able to attract high-quality instructors.

At all relevant times, seasonal staff occupied the subject property for the months of June through September. The appellant also used the subject property for occasional staff meetings. According to Mr. Kettlewell, the appellant used the subject property to store the appellant's sailing equipment and records, even when the subject property was not occupied for staff housing. Mr. Kettlewell testified that, without the use of the subject property, the appellant would need to rent storage space, some of it climate controlled, for its equipment and records.

During several months of the fiscal year at issue, the appellant rented the subject property to a local resident for housing. Mr. Kettlewell testified that the appellant charged the resident below-market rent, which income was used to fund the appellant's educational programming, and that in return, the resident was required to perform certain maintenance and to monitor the subject property. Mr. Kettlewell further testified that, at all times, the keys to the subject property were held at the appellant's office and by the appellant's Director of Programming to access all parts of the subject property, particularly the

storage area, which is entered by a separate door from the subject property's residential area.

The Board found credible Mr. Kettlewell's testimony that the appellant's high standards necessitated hiring from a wide geographical area of locations. The Board found that the use of the subject property for staff housing enabled the appellant to hire quality staff regardless of residency or access to transportation. Moreover, having staff located across the street from the appellant's sailing program was also convenient for the appellant, as it facilitated staff arriving to work on time and being available for meetings both before and after the sailing program day. The subject property thus greatly enhanced the appellant's ability to provide a quality program. Therefore, the Board found that the appellant's use of the subject property was in furtherance of its charitable purpose.

Although the principal use of the subject property as staff housing and for staff meetings was seasonal, this use was consistent with the appellant's charitable purposes. The appellant's dominant purpose is to provide instruction in sailing, an activity that is offered only seasonally in New England. The appellant's ancillary use of the subject property outside of the sailing season supported its charitable mission. The appellant utilized the basement and outdoor portions of the subject property for storage of its sailing equipment and program records, and it

retained keys to the subject property allowing it to access the storage area at all times. The Board found that the ancillary uses of the subject property for storage and staff meetings, in conjunction with its dominant use as staff housing, together supported a finding that the appellant occupied the subject property for its charitable purpose during the fiscal year at issue.

The Board additionally found that the off-season rental of the subject property, at a below-market rent that was applied to its sailing program, was not in the nature of a commercial use. The resident was required to perform certain maintenance and to monitor the subject property, and the arrangement served to preserve the subject property for the appellant's use in its sailing program.

Therefore, and as will be further explained in the Opinion, the Board found and ruled that the appellant occupied the subject property for charitable purposes within the meaning of Clause Third during the fiscal year at issue. Accordingly, the Board issued a decision for the appellant in the instant appeal and ordered abatement in full in the amount of \$4,822.50.

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OPINION

1. Jurisdiction

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 or by another charitable organization or organizations or its or their officers for the purpose of such other charitable organization or organizations.

Clause Third further provides that a charitable organization:

shall not be exempt for any year in which it omits to bring in to the assessors the list, statements and affidavit required by section twenty-nine¹ and a true copy of the report for such year required by section eight F of chapter twelve² to be filed with the division of public charities in the department of the attorney general.

Under these provisions, a charitable organization must timely file a Form 3ABC and Form PC to qualify for the Clause Third exemption. See ***Samson Foundation Charitable Trust v. Assessors of Springfield***, Mass. ATB Findings of Fact and Reports 2004-150, 153-54 (timely filing with the assessors of Form 3ABC and Form PC are jurisdictional prerequisites to action by the assessors and review by the Board) (citing ***Children's Hospital Medical Center v. Assessors of Boston***, 388 Mass. 832, 837 (1983)). To be timely under G.L. c. 59, § 29, the filing with the assessors of the Form 3ABC must be on or before March 1 of the preceding fiscal year. There is no explicit deadline for filing with the assessors a copy of the Form PC. However, a sensible reading of Clause Third suggests

¹ Form 3ABC

² Form PC

that the deadline for filing the Form PC is the same as that for filing the Form 3ABC. This reading is supported by the training manual from the Division of Local Assessment, offered into evidence by the appellee. According to Section 2.3.3.2, the "Annual Return" section of the manual, the Form PC is filed with the assessors at the same time as the Form 3ABC, which the manual refers to as an organization's "property" or "annual" return:

A charitable organization owning property on January 1 that it claims is exempt for the fiscal year that begins on the next July 1 must file a property return with the assessors in order to receive an exemption ... If the organization is required to be registered with, and report annually to, the Public Charities Division of the Attorney General's Office, **it must also include a copy of its most recent report with the annual return.** (emphasis added)

The deadline for the appellant to file the annual Form 3ABC and Form PC for the fiscal year at issue was March 1, 2017. The appellant did not acquire the subject property until May 20, 2017, after the March 1 deadline for filing the Form 3ABC and Form PC; therefore, compliance with a filing requirement as to the subject property would have been impossible. The Board has previously ruled that when a charitable corporation acquires a property after the March 1 filing date for the Form 3ABC and Form PC but before the July 1 date used to determine qualification for exemption pursuant to G.L. c. 59, § 5, "the corporation's failure to include property acquired after the relevant date for filing the Form 3ABC will not deprive the Board of jurisdiction." **Healthtrax Int'l et al. v.**

Assessors of Hanover and South Shore YMCA, Mass. ATB Findings of Fact and Reports 2001-366, 386, *aff'd*, 56 Mass. App. Ct. 1116 (2002) (Decision under Rule 1:28). In the instant appeal, the Board found and ruled that the absence of a Form 3ABC and Form PC listing the subject property for the fiscal year at issue did not deprive the Board of jurisdiction over the instant appeal.

Moreover, Section 2.3.3.1, the portion of the manual pertaining to an organization's initial application for exemption mentions only the corporation's organizational documents and a description of the organization's activities and its use of the property in question. There is no mention of the necessity to file a Form 3ABC or Form PC where, as here, an organization is filing its initial application for exemption.

Accordingly, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

2. Exemption

A taxpayer claiming exemption under Clause Third must demonstrate that the property is owned and occupied by a charitable organization in furtherance of the organization's charitable purpose. See ***Jewish Geriatric Services, Inc. v. Assessors of Longmeadow***, Mass. ATB Findings of Fact and Reports 2002-337, 359, *aff'd*, 61 Mass. App. Ct 73 (2004) (citing ***Assessors of Hamilton v. Iron Rail Fund of Girls Club of America***, 367 Mass. 301, 306 (1975)). The parties to this appeal agreed, and the Board found,

that the appellant qualifies as a charitable organization for purposes of Clause Third. The issue here is whether the appellant occupied the subject property in furtherance of its charitable purpose. The appellant bears the burden of proving this element. See ***Jewish Geriatric Services, Inc. v. Assessors of Longmeadow***, Mass. ATB Findings of Fact and Reports 2002-337, 351, *aff'd*, 61 Mass. App. Ct. 73 (2004) (citing ***Assessors of Hamilton v. Iron Rail Fund of Girls Club of America***, 367 Mass. 301, 306 (1975)).

The facts of this appeal are similar to ***The Sterling and Francine Clark Art Inst., Inc. v. Assessors of Williamstown***, Mass. ATB Findings of Fact and Reports 2015-581, which pertained to a residential property owned by a supporting organization of Williams College and used to house visiting scholars. The housing was located directly across the street from the taxpayer's museum galleries and libraries. The taxpayer provided free housing and the use of its resources to the visiting scholars, in return for their participation in lectures, conferences, symposia, and workshops, and regular interactions with students and faculty of Williams College. ***Id.*** at 2015-584, 585. The Board there found that the visiting scholars program furthered the educational purpose of Williams College, and the provision of housing to the scholars was key to the success of the program:

Given the small stipend, if any, awarded to the visiting scholars, along with the comparatively short duration of the scholarships, the Board concluded that it would have

been extremely difficult to entice prominent arts scholars from around the world to come to Williamstown in the absence of guaranteed free housing.

Id. at 2015-592. The Board thus ruled that the use of the property for housing was consistent with and in furtherance of the organization's charitable purposes. **Id.** See also **Bay Path College v. Assessors of Longmeadow**, Mass. ATB Findings of Fact and Reports 2001-552 (providing housing for the athletic trainer, who was trained in first aid and could quickly respond to health issues arising on the adjacent athletic fields, was essential to the efficient operation of the college's athletic program and thus in furtherance of the college's charitable purpose).

In the instant appeal, the Board found that the appellant fulfills its charitable mission primarily by providing sailing education each summer from the boat house located directly across the street from the subject property. The appellant's high standards often necessitate its hiring from distant locations, yet the cost of housing on the island would be prohibitive to potential staff if they were responsible for paying for their own summer rentals. The Board found that providing rent-free housing to the staff, most of whom come for the summer without their own vehicles, benefitted the appellant by enabling it to hire quality staff regardless of their residency. Moreover, being housed across the street from the appellant's boathouse enabled staff to start work on time, as well as easily attend meetings before and after work,

without the need to coordinate pick ups and drop offs across the island, as was the appellant's dilemma before its ownership of the subject property. Because providing housing enabled the appellant to hire staff based on skill and experience rather than location, and helped facilitate the appellant's operations, the subject property greatly enhanced the appellant's ability to provide a quality program. The Board thus found and ruled that the appellant's ownership and occupation of the subject property advanced its charitable mission.

The Board further found that the seasonal nature of the subject property's dominant use as staff housing did not affect its exemption qualification. Massachusetts courts and this Board have previously found seasonal property to be charitable when the organization's charitable endeavor is also seasonal. For example, in ***Iron Rail Fund of Girls Club of America***, 367 Mass. at 307, the Supreme Judicial Court recognized that the property's traditional, seasonal use as a summer camp or vacation home operated by a subsidiary of Girls Clubs of America qualified the property for charitable exemption: "Iron Rail had established a pattern of seasonal use which, at least in past years, entitled it to the exemption." The Board in ***American Youth Hostels, Inc. v. Assessors of West Tisbury***, Mass. ATB Findings of Fact and Reports 2018-178, similarly ruled that a hostel operating seasonally on Martha's Vineyard, which provided a low-cost, educational travel experience

from late May through mid-October, qualified for charitable exemption, notwithstanding the fact that the property was not operated year-round.

The Board here likewise found that the seasonal nature of the appellant's use of the subject property did not jeopardize its charitable exemption status. Massachusetts courts have stressed that the "dominant use" of the property must contribute to the promotion of the charitable purpose for which the organization was created, and that courts must defer to the organization in determining "the extent of property required and the specific uses of the land that will best promote those purposes." ***New England Forestry Foundation***, 468 Mass. at 155; ***Assessors of Dover v. Dominican Fathers Province of St. Joseph***, 334 Mass. 530, 540-41 (1956). Applying these principles, the facts here support a finding that the dominant purpose of the subject property - housing the appellant's seasonal sailing instructors - enabled the appellant to hire professional staff from any location, and it provided a further benefit to the appellant by having staff readily available to work. The subject property thus contributed to the provision of a high-quality sailing program.

Additionally, together with its dominant use, ancillary uses of a property can support a finding that property is appropriated in furtherance of an organization's charitable purposes. For example, in ***Shrine of Our Lady of La Salette Inc. v. Board of***

Assessors of Attleboro, the Supreme Judicial Court determined that additional uses of a property will not preclude exemption where the uses “normally accompany and supplement” the charitable purpose of the organization. 476 Mass. 690, 697 (2017) (citing ***Assessors of Framingham v. First Parish in Framingham***, 329 Mass. 212, 215 (1952)). The Court there found that the Shrine’s maintenance building, used to store Christmas decorations, the inventory for the gift shop, and the equipment used to maintain the property, “normally accompany[ies] and supplement[s]” the Shrine’s charitable purpose, in keeping with the requirements for exemption under G.L. c. 59, § 5, Clause Eleventh (“Clause Eleventh”).³ 476 Mass. at 697, 699. Likewise, the Board in the instant appeal found that the uses of the subject property for year-round storage of its equipment and records and to hold occasional meetings were ancillary uses that, together with its dominant use for staff housing, satisfied the statutory requirement that the subject property be used in furtherance of the appellant’s charitable purpose.

Finally, the fact that the subject property was rented during the off-season did not jeopardize its charitable status under the facts of this appeal. The Clause Third exemption will be denied

³ While specifically applicable to Clause Eleventh, the Board finds that this appeal is also instructive in interpreting a Clause Third appeal. Clause Eleventh exempts from tax houses of worship that are used for religious purposes. Analogous to Clause Third, Clause Eleventh excludes property “appropriated for purposes other than religious worship or instruction.”

where the organization's members derive a commercial benefit from the activity conducted at the property. See **Harvard Community Health Plan, Inc. v. Assessors of Cambridge**, 384 Mass. 536, 543 (1981). However, the fact that property generates some income does not necessarily preclude its charitable status. See **Shrine of Our Lady of La Salette**, 476 Mass. at 697-98 (gift shop and bistro that helped further the dominant religious purpose of the subject property found to be exempt, even though they generated some income).

During the fiscal year at issue, the appellant rented the subject property during the off-season to a local resident, charging a modest below-market rental fee. In return, the individual was responsible for performing certain maintenance and monitoring the subject property. The basement of the subject property continued to be used for storage of the appellant's records and equipment, and thus the appellant continued to appropriate the subject property for its charitable purpose. Moreover, the resident, who was acting as a caretaker, never had exclusive possession of the subject property, as would a lessee, as the appellant retained keys to access all areas of the subject property, including the basement through a separate entry. This below-market rental in return for performing certain maintenance and monitoring the subject property was akin to the rental arrangement in **Bay Path College**. In that appeal, the athletic

director paid a rent "well below the market rate" to live in a house on the college campus, and in return he was "required to monitor and patrol the property on a regular basis to create a presence on the all-women's campus, as well as to insure against hazards that could be caused by damaged or misplaced equipment."

Bay Path College, Mass. ATB Findings of Fact and Reports at 2001-557. The Board there found that "the athletic director's constant presence and monitoring furthers the charitable purposes of the women's College by insuring the maintenance of equipment and playing fields, as well as the safety of the campus against intruders." *Id.* at 2001-558. The lease was thus not deemed a commercial enterprise, and the property qualified for exemption under Clause Third.

Likewise, the Board here found that the below-market rental of the subject property during the off-season, in return for the resident performing certain maintenance and monitoring the property, was not a commercial enterprise, but instead the preservation of the appellant's assets that it used in its sailing program - the subject property itself as well as the items in its storage. The fact that the below-market rental income was applied to its sailing program further supported a finding that the subject property was used in furtherance of the appellant's charitable endeavor, not in a commercial enterprise. See ***Shrine of Our Lady of La Salette***, 476 Mass. at 698 ("The fact that money earned from

the cafeteria, bistro, and gift shop may help pay for the Shrine's expenses does not remove them from the realm of religious worship and instruction; even a church cannot live on prayer alone.")

Based on the foregoing, the Board found and ruled that the subject property qualified for the Clause Third exemption for the fiscal year at issue. Accordingly, the Board decided this appeal for the appellant and granted an abatement in the amount of \$4,822.50.

THE APPELLATE TAX BOARD

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

A true copy,

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