

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**WESTFIELD MUSEUM, INC.**

**v. BOARD OF ASSESSORS OF THE  
CITY OF WESTFIELD**

Docket No. F339218

Promulgated:

January 30, 2023

This is an appeal 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 City of Westfield ("assessors" or "appellee") to grant an exemption from real estate tax under G.L. c. 59, § 5, Clause Third ("Clause Third") for real estate located at 360 Elm Street in the City of Westfield ("subject property") owned by and assessed to Westfield Museum, Inc. ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2019 ("fiscal year at issue").

Chairman DeFrancisco heard the appeal. Former Chairman Hammond and Commissioners Good, Elliott, and Metzger joined him in the decision for the appellee.

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

*Mark J. Esposito, Esq., for the appellant.*

*Meghan R. Briston, Esq., for the appellee.*

### **FINDINGS OF FACT AND REPORT**

Based on an Agreed Statement of Facts, as well as testimony and exhibits submitted during the hearing of the appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2018, the valuation and assessment date for the fiscal year at issue, and on July 1, 2018, the qualification and determination date for exempt status under Clause Third for the fiscal year at issue, the appellant was the assessed owner of the subject property. The assessors valued the subject property at \$222,700 and assessed a tax thereon at the rate of \$37.94 per \$1,000.00. In accordance with G.L. c. 59, § 57A, the appellant timely paid the tax due without incurring interest.

On January 28, 2019, in accordance with G.L. c. 59, § 59, the appellant timely filed its abatement application with the assessors. The application was deemed denied by the assessors on April 28, 2019. On July 25, 2019, the appellant timely filed its Petition with the Board. Based on the foregoing, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The subject property, which was and remains classified for industrial use, consists of an industrial building ("subject building") - known as the Westfield Whip Manufacturing Building - situated on a 0.315-acre parcel of land in Westfield. The subject building contains approximately 10,000 square feet of usable area with 2 floors, a finished attic, and an unfinished basement. It was built in 1887, and during the horse-drawn carriage era, approximately 85 percent of all carriage whips were made in the factory. With the advent of the automobile, the industry declined dramatically, though whips are still manufactured in the subject building and sold on a limited basis.

The appellant is a Massachusetts Chapter 180 charitable corporation and a non-profit organization recognized under section 501(c)(3) of the Internal Revenue Code. The appellant purchased the subject property in 2013 with the stated intention of converting it into a public museum, with a focus on educating the public about the history of whip manufacturing in Westfield. The appellant's restated Articles of Organization dated June 29, 2012, state that its purpose is:

To provide a venue for the presentation, display and interpretation of, and educational programs with respect to, collected historical artifacts of the City of Westfield, including, without limitation, the development and maintenance of a museum relating to history and culture and to Westfield's contributions to

the industrial revolution with a focus on whip manufacturing through, among other methods, a working museum.

As of the date of the hearing of this appeal, the appellant had not opened the museum or offered any educational programs to the public on the property. Further, the public does not have access to the building, which would require the appellant to meet accessibility requirements that the appellant has not taken steps to meet. Regardless, in support of its argument for exemption, the appellant emphasized that: its board meetings have been held in the building; a "non-profit organization" occasionally provides art therapy to veterans in the building; and historic whip making supplies, records, and machinery are stored in the building in anticipation of their use in the museum.

The assessors allowed partial exemption under Clause Third for fiscal years 2015 and 2016, treating 45 percent of the subject property as a "for profit" manufacturing business - based on limited manufacturing of whips on the premises - while exempting the remainder of the property relying on the appellant's stated intention to prepare and open the museum. The "removal language" of Clause Third allows exemption for a 2-year period from the time a property is purchased by a charitable organization, during which time the property is made ready for occupancy by the organization.

As of fiscal year 2017, the 2-year period had expired, and the assessors, aware that the appellant had not opened the museum or even taken the requisite steps to modify the subject building for use as a museum, determined that the appellant had not satisfied the occupancy requirement of Clause Third. The assessors therefore denied subsequent applications for tax exemption including the application for 2019, the fiscal year at issue.

In sum, the appellant did not open a museum or use the subject property to offer educational programs to the public as intended. Further, and for the reasons discussed in the Opinion below, the uses to which the property was put do not qualify the property for exemption under Clause Third. Consequently, the Board found and ruled that the appellant did not occupy 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 appellee in this appeal.

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## OPINION

"All property, real and personal, situated within the commonwealth ... unless expressly exempt, shall be subject to taxation." G.L. c. 59, §2. Clause Third provides such an exemption for property of a charitable organization, where the exempted property is defined as:

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 purposes of such other charitable organization or organizations; and real estate purchased by a charitable organization with the purpose of removal thereto, until such removal, but not for more than two years after such purchase.

Consistent with this explicit language, to claim an exemption pursuant to Clause Third, a taxpayer bears the burden of demonstrating that the property is both owned by a charitable organization and occupied by the organization in furtherance of its charitable purpose. See ***Lesley S. Westervelt, C/O Sail Martha's Vineyard, Inc. v. Assessors of The Town of Oak Bluffs***, Mass. ATB Findings of Fact and Reports 2021-297, 306 (citations omitted).

Here, there is no question as to the ownership of the property by the appellant. To qualify for the Clause Third exemption, however, an owner must demonstrate that it has a recognized charitable purpose, and that it occupies the property in

furtherance of that charitable purpose. See ***Home for Aged People in Fall River v. Assessors of Fall River***, Mass. ATB Findings of Fact and Reports 2011-370, 391; see also ***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)). If an organization fails to satisfy either of these requirements, the organization will not qualify for exemption under Clause Third.

The appellant challenged the assessors' denial of its application for exemption under Clause Third, arguing that it currently occupies the subject building in furtherance of its charitable purpose. As noted above, the appellant's Restated Articles of Organization state that its charitable purpose is "to provide a venue for the presentation, display, and interpretation of, and educational programs with respect to, collected historical artifacts of the City of Westfield," *i.e.*, to open and operate a museum that offers related educational programs to the public.

Education is generally recognized as a traditionally charitable purpose. "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.” ***Boston Symphony Orchestra, Inc. v. Assessors of Boston***, 294 Mass. 248, 254-55 (1936) (quoting ***Jackson v. Phillips***, 14 Allen 539, 556 (1867)).

In the instant case, however, the Board need not closely examine the validity of the appellant’s stated charitable purpose because the appellant failed to occupy the subject property for a charitable purpose as required by Clause Third.

Having acknowledged that the subject property had not been used as intended, the appellant focused on the current uses of the property in support of its claim for exemption. For example, the appellant noted its use of the subject property to store whip making artifacts and machinery, as well as historical records. Mere storage of these items, which may or may not later be used in furtherance of the appellant’s stated purpose of operating a museum and offering educational programs to the public, cannot be construed as presently satisfying the occupancy requirement of Clause Third. See, e.g., ***Thomas Jefferson Memorial Center at Coolidge Point, Inc. v. Assessors of Manchester By-The-Sea***, Mass. ATB Findings of Fact and Reports, 2018-89 (citing ***Assessors of Boston v. Vincent Club***, 351 Mass. 10, 14 (1966)) (noting the



requirement that an owner demonstrate "an active appropriation to the immediate uses of the charitable cause for which the owner was organized"). To hold otherwise might result in exemption under Clause Third for any taxpayer with a storage facility and indefinite plans to use stored items in a charitable endeavor at some future date.

Similarly, board meetings held by the appellant do not qualify as occupancy within the meaning of Clause Third in furtherance of the appellant's stated purpose of opening a museum and educating the public about the history of whip making in Westfield. While the topics discussed at the meetings are not known, no evidence was presented to demonstrate that the meetings' were in furtherance of the appellant's claimed charitable purpose.

Finally, the appellant pointed to occasional use of the subject property by another "charitable organization" that provided art therapy to veterans. While Clause Third recognizes use of property by another charitable organization for that organization's charitable purpose, the record in this appeal does not demonstrate such use. First, the appellant did not present evidence to establish that the entity providing art therapy qualified as a charitable organization for purposes of Clause Third. Likewise, no evidence was offered regarding the portion of the subject property used by the organization or the frequency and

terms of such use. Given this evidentiary record, the Board could not find qualifying use of the subject property.

Where the museum proposed by the appellant was not operational, the subject building was not open to the public, and current uses of the subject property did not otherwise sufficiently support a claim for exemption, the Board found and ruled that the appellant failed to establish that it occupied the subject property in furtherance of a charitable purpose within the meaning of Clause Third. Accordingly, the Board issued a decision for the appellee in this appeal.

**THE APPELLATE TAX BOARD**

By: /s/ Mark J. DeFrancisco  
Mark J. DeFrancisco, Chairman

A true copy,

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