**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**THOMAS JEFFERSON MEMORIAL  v. BOARD OF ASSESSORS OF THE**

**CENTER AT COOLIDGE POINT, INC. TOWN OF MANCHESTER-BY-THE-SEA**

Docket Nos.: F325113, F325602 Promulgated:

 March 29, 2018

These are appeals 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 Manchester-By-The-Sea (“appellee”) to abate a tax on certain real estate, located in the Town of Manchester-By-The-Sea, owned by and assessed to Thomas Jefferson Memorial Center at Coolidge Point, Inc. (“TJMC” or “appellant”) under G.L. c. 59, §§ 11 and 38, for fiscal years 2014 and 2015 (“fiscal years at issue”).

Commissioner Chmielinski heard the appeals. He was joined by Chairman Hammond and Commissioners Scharaffa, Rose and Good in allowing the Post-Trial Motion to Dismiss for Lack of Jurisdiction in the appeal for fiscal year 2014 and in the decision for the appellee for fiscal year 2015.

 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.

*Jillian B. Hirsch, Esq., Darian M. Butcher, Esq.,  William E. Halmkin, Esq., Richard L. Jones, Esq. and Judith G. Edington Esq.* for the appellant.

 *Anthony M. Ambriano,* Esq.,for the appellee.

**FINDINGS OF FACT AND REPORT**

On the basis of a Statement of Agreed Facts, as well as testimony and exhibits entered into evidence at the hearing of these appeals, the Appellate Tax Board (“Board”) made the following findings of fact.

On January 1, 2013 and January 1, 2014, the relevant assessment dates for the fiscal years at issue, the appellant was the owner of two contiguous parcels of real property, one identified by the assessors as Book 32998, Page 298, Parcel Identification number 0004-00000-00012 and located at 9 Coolidge Point (“improved parcel”) and the other identified by the assessors as Book 32998, Page 298, Parcel Identification number 0003-00000-00001 (“vacant parcel”) in Manchester-By-The-Sea (collectively “subject properties”).

The improved parcel is a 10.7-acre parcel of land with a Gregorian-style brick house that was built in 1968 (“Brick House”) and an adjacent detached three-car garage that has been converted into a conference center (“Conference Center”). The landscape is comprised of lawn, garden, woods, coastal waterfront access, and a tidal stream lined by stone walls and stone riprap that is designed to contain the outflow and inflow from the Clarke Pond watershed. The Brick House was designed to resemble, in part, President Jefferson’s residence in Williamsburg, Virginia, with wooden shutters and a fireplace in each room. However, Dr. Catherine Coolidge Lastavica (“Dr. Lastavica”), who together with her late husband, John Lastavica, founded TJMC, had the Brick House built to serve as her personal residence. As such, the interior of the Brick House is modern, with a kitchen and bathrooms, and it complied with the relevant code requirements that were in effect at the time of its construction, including electrical service requirements. The Brick House contains a library and it is furnished with period furniture and displays various pieces of Jefferson memorabilia and portraits by 18th century artists Robert Feke, George Chalmers and Gilbert Stuart. The Brick House is not registered as a historic building.

The vacant parcel is an abutting 4.5-acre parcel of unimproved land comprised mainly of wooded hill and coastal waterfront access.

1. Facts related to jurisdiction

*a. Fiscal year 2014*

On December 27, 2013, the appellee mailed out the actual tax bill for fiscal year 2014. The assessors valued the improved parcel at $4,622,100 and assessed a tax thereon, at the rate of $10.45 per thousand, in the total amount of $49,025.46.[[1]](#footnote-1) That same fiscal year, the assessors valued the vacant parcel at $2,489,000 and assessed a tax thereon, also at the rate of $10.45 per thousand, in the total amount of $26,400.20.[[2]](#footnote-2) The appellant paid the taxes late and incurred interest in the amount of $159.82 plus a demand fee of $5.00 for the 4th Quarter taxes for the improved parcel, and it paid interest in the amount of $86.07 and a demand fee of $5.00 for the 4th Quarter taxes for the vacant parcel. On January 30, 2014, the appellant filed Applications for Abatement for both properties as well as Statutory Exemption Forms 1B-3 for both subject properties with the appellee.[[3]](#footnote-3) On April 29, 2014, the appellee denied the appellant’s Applications for Abatement. On July 23, 2014, the appellant filed Petitions Under Formal Procedure with the Board for both subject properties.

On September 5, 2014, the appellee filed a Motion to Dismiss for Lack of Jurisdiction. The appellant subsequently filed a Motion to Amend Petition to add, in the alternative, that the appeal was being filed under G.L. c. 59, § 5B. On the basis of the record then before it, the Board initially denied the appellee’s Motion to Dismiss for Lack of Jurisdiction and granted the appellant’s Motion to Amend Petition on October 6, 2014. The Board held a hearing on December 14 and 15, 2015 and January 26, 2016. On March 18, 2016, the appellee filed a Post-Trial Motion to Dismiss for Lack of Jurisdiction.

On the basis of these facts, and as will be further explained in the Opinion, the Board found and ruled that it did not have jurisdiction to hear and decide the appeal for fiscal year 2014. Accordingly, the Board allowed the appellee’s motion and issued a decision for the appellee for fiscal year 2014.

*b. Fiscal year 2015*

For fiscal year 2015, the assessors valued the improved parcel at $4,701,700 and assessed a tax thereon, at the rate of $10.84 per thousand, in the total amount of $52,495.42.[[4]](#footnote-4) That same fiscal year, the assessors valued the vacant parcel at $2,489,000 and assessed a tax thereon, also at the rate of $10.84 per thousand, in the total amount of $27,790.18.[[5]](#footnote-5) The appellant timely paid the taxes due on the subject properties without incurring interest. On January 8, 2015, the appellant filed a Petition Under Formal Procedure with the Board pursuant to G.L. c. 59, § 5B. On January 29, 2015, in accordance withG.L. c. 59, § 59, the appellant timely filed Applications for Abatement as well as Statutory Exemption Forms 1B-3 for the subject properties with the appellee, which the appellee denied by vote on February 12, 2015. On March 31, 2015, the appellant filed a Motion to Consolidate the appeals for fiscal year 2014 and fiscal year 2015, which the Board allowed.

On the basis of these facts, the Board found that it had jurisdiction to hear and decide the appeal for fiscal year 2015.

2. Facts relating to TJMC’s claim of exemption

The subject properties are owned by TJMC, an entity recognized as a “private foundation” and thus exempt from Federal income tax under Internal Revenue Code § 501(c)(3) (“Code 501(c)(3) organization”). TJMC does not have employees but instead retains the services of independent contractors when needed, including a housekeeper and a property caretaker.

Dr. Lastavica and her late husband, John Lastavica, founded TJMC on September 29, 2011. TJMC was organized under Massachusetts law as a so-called “member charitable organization,” with its sole member being Vingo Trust III, another private foundation, which was established by Dr. Lastavica, John Lastavica, and John Hughes. Dr. Lastavica served as the chairman of TJMC.

Pursuant to its Articles of Organization, TJMC was organized to “promote on-going research and collaboration to advance knowledge of our nation’s history, its polity and the economic system which derived therefrom, while fostering an understanding and appreciation of the scholars, artists, philosophers and others who helped shape the Early Republic.” According to these same Articles of Organization, the methods by which TJMC achieves its charitable purposes are by “sponsoring programs of independent study, exhibits, lectures and receptions, as well as collaboration with other like-minded organizations.”

In its first mission statement (the “Original Mission Statement”), approved by TJMC’s Board of Directors on February 2, 2012, TJMC further articulated its purpose, stating in pertinent part:

[TJMC] will make these facilities available to other organizations for use in ways which are consistent with the Vision of [TJMC], thereby providing a conducive environment for these organizations to foster educational programs and discussions between and among (1) scholars, (2) teachers in the fields of history, philosophy, government and other related disciplines and (3) the general public.

On June 19, 2014, TJMC’s Board of Directors voted to approve a revised mission statement (the “Revised Mission Statement”), which stated TJMC’s commitment to (1) environmental conservation efforts, including preserving historically significant open spaces; (2) operating a public house museum and conference center; and (3) promoting the ideas of the scholars, teachers and organizations that make use of its facilities.

Attorney David Fitts, who was involved in the early discussions of the development of the TJMC Conference Center and serves as the President and member of the Board of Directors of TJMC, testified at the hearing of these appeals. Attorney Fitts testified that TJMC was formed as an alter ego of Vingo Trust III, and Vingo Trust III contributed the subject properties to TJMC. Attorney Fitts testified that, while TJMC received some small gifts from other donors, Vingo Trust III was, in essence, the “sole contributor” to TJMC.

 The subject properties are subject to conservation restrictions held by the Essex County Greenbelt Association, Inc. (“Essex County Greenbelt Association”), dated May 28, 1999 and recorded with the Southern Essex District Registry of Deeds. Dr. Lastavica voluntarily conveyed the conservation restrictions to the Essex County Greenbelt Association in October, 1999, prior to the incorporation of TJMC. However, for calendar years 2012, 2013 and 2014, TJMC’s federal tax returns do not list conservation efforts as a charitable activity, nor do its Applications for Statutory Exemption for calendar years 2013 or 2014 make any mention of conservation as a charitable activity. Further, although watershed restoration work was performed to preserve the sea wall and to protect the shore line at the subject properties, an invoice for this work entered into the record indicated that the work was performed in June through September, 2011 and billed directly to “John and Kitty Lastavica.” Because the work was completed prior to the incorporation of TJMC, the Lastavicas directed the bill to Vingo Trust III, not the appellant, for payment.

The subject properties are contiguous with certain property owned and preserved for public use by the Trustees of Reservations, a Massachusetts land trust. They are also contiguous with a property owned by Dr. Lastavica, on which her current personal residence is located. Access to the subject properties is by a private road that is marked by two signs, one stating “No Trespassing Recorded Video Surveillance In Use” and the other stating “Visitors by appointment.” Another sign at the subject properties announces, “Private property, No trespassing.”

Dr. Lastavica testified that she and her husband had resided at the Brick House when it was first constructed in 1968 and that many of the Brick House’s furnishings, including the period pieces and artwork, are actually her personal property, which are currently “on loan” to the appellant. However, the appellant offered no formal documents to reflect any loan arrangements. Dr. Lastavica also testified that TJMC paid the insurance premiums for insuring her furnishings. The second floor of the Brick House is used to store some of Dr.  Lastavica’s personal effects, and a portion of the Conference Center is used to store Dr. Lastavica’s personal snow removal equipment.

In a document provided to the appellee, dated April 17, 2014, Attorney Fitts indicated that “the Property also recently became open to the public on Mondays from 2 p.m. to 4 p.m. by appointment” for tours of the Brick House. While there is no charge for visiting the subject properties, the tours of the Brick House are restricted to the first floor, as the second floor comprises the residence of a person who, with Dr. Lastavica’s permission, lives there rent-free. There are no records of the daily operations of the subject properties, including its tours, and Dr. Lastavica is not generally at the subject properties during the hours when tours are available to be scheduled. When there are no tours or events taking place, the Brick House is closed. The Brick House had not been renovated or reconfigured from when it was used as the personal residence of Dr. Lastavica and, as of the date of the hearing of these appeals, the Brick House was not in compliance with American Disability Association (“ADA”) standards.

The evidence showed that a limited number of events took place at the subject properties during the time periods relevant to these appeals. During fiscal year 2014 (spanning July 1, 2013 through June 30, 2014), 6 events were booked, but ultimately only 4 events occurred at the subject properties.[[6]](#footnote-6) Of these 4 events, 2 were sponsored by TJMC and the remaining 2 were hosted by outside groups that TJMC allowed to rent space at the subject properties:

* July 11, 2013: TJMC sponsors the first Jefferson Annual Lecture at 9 Coolidge Point, with tickets at $75 per person and approximately 80 attendees;
* July 28, 2013: TJMC allows the Massachusetts Society for the Grandchildren of the American Revolution to hold its retreat at the subject properties, with approximately 50 attendees;
* August 13-14, 2013: TJMC allows the Massachusetts Historical Society to hold its conference called “Old Towns, New Country: The First Years of a New Nation” at 9 Coolidge Point, with approximately 10 secondary-school teachers and educators in attendance; and
* May 8, 2014: TJMC sponsors a lecture entitled “Reducing the Risk for Tick Borne Infections” at 9 Coolidge Point, with tickets at $100 per person and 28 attendees.

During fiscal year 2015 (spanning July 1, 2014 through June 30, 2015), TJMC hosted the following 8 events at the subject properties, 4 of which were sponsored by TJMC with the remaining 4 being hosted by outside groups that TJMC allowed to rent space at the subject properties:

* July 14, 2014: TJMC allows painter Adele Ervin to lead a retreat for about 10 local artists, who visited the subject properties to paint the landscape;
* July 17, 2014: TJMC sponsors the second Jefferson Annual Lecture at 9 Coolidge Point, with tickets at $100 and approximately 80 attendees. Guests attending the lecture were allowed to tour the first floor of the Brick House;
* August 2, 2014: TJMC allows the Linzee Family’s Foundation to hold a retreat at the subject properties, with 45 attendees;
* August 21, 2014: TJMC allows a Manchester Summer Chamber Music concert at the subject properties;
* March 26, 2014: TJMC hosts a rescheduled lecture by Theodore Stebbins entitled “Discovering Meaning in the American Portrait” at 9 Coolidge Point, with 19 attendees;
* April 23, 2015: TJMC hosts an event to play the video from Theodore Stebbins’ lecture at the Brick House, with 12 attendees;
* June 8, 2015: TJMC organized educational tours of the subject properties for a group of homeschooled children, with 20 attendees; and
* June 18, 2015: TJMC allows Gold Coast Mortgage Services, Inc. to utilize the subject properties for its annual outing, with 40 attendees.

TJMC has advertised certain TJMC-hosted events online via its website at <http://jeffersonmemorialcenter.org>. The website, which was launched on June 24, 2013, invites proposals for events to be mailed or made via telephone. Visitors to the website can sign up to receive news from TJMC. TJMC also maintains a Facebook page, which it launched on April 12, 2015. TJMC has maintained an e-mail list since October, 2013, and as of December 3, 2015, there were approximately 330 contacts on that list.

Many of the events that took place at the subject properties during the fiscal years at issue, particularly those hosted by third parties, were not open to the public. Six of the 7 events that TJMC hosted were advertised as “reservations limited,” and TJMC charged attendees upwards of $100 for admission. For events hosted by outside parties, TJMC usually charged a fee to the host organization, which, according to its Petition, was typically “in the range of a few hundred dollars, based on the size of the organization and the support required by contractors retained by [TJMC].” Elizabeth Brown Mulholland, a member of the Board of Directors of TJMC, in an e-mail dated October 15, 2014 to Attorney Fitts, voiced her concerns that TJMC had produced “very little programming and only to a very small part of the public” and “I just don’t think it is sustainable over time with TJMC in its current iteration.”

On the basis of the evidence, the Board found and ruled that the appellant failed to meet its burden of proving that its activities at the subject properties qualified it as a “charitable organization” for purposes of G.L. c. 59, § 5, Third (“Clause Third”). First, the various “no trespassing” signs underscore that the subject properties are essentially private, unless guests are specifically invited by the appellant.

With respect to the Brick House, its tours are available only for its ground floor, as its second floor is used as a private residence by a person unrelated to TJMC. The second floor is also utilized as storage space for Dr. Lastavica’s personal effects. Moreover, only 1 event occurred at the Brick House during the fiscal years at issue.

With respect to the Jefferson memorabilia located at the Brick House -- period furniture and artwork that were purportedly “on loan” to the appellant from Dr. Lastavica -- there are no documents to memorialize this arrangement and no credible evidence that the appellant, as opposed to Dr. Lastavica, had rights to them. Further, TJMC failed to demonstrate that it engaged in historic preservation given that it failed to show that the Brick House had any historic significance. The Brick House was constructed in 1968 to serve as Dr. Lastavica’s personal residence and has a modern interior; it is neither a replica of Jefferson’s home nor is it even registered as a historic building. Accordingly, the Board found that the Brick House did not further the appellant’s charitable purpose of educating the public on the life and times of Thomas Jefferson; rather, the Brick House is essentially private property with limited historic significance, to which a small number of people are invited to enter on a sporadic basis.

Regarding the Conference Center, as recognized by Ms. Mulholland, its programming was extremely limited. There were just 12 events held between July 1, 2013 and June 30, 2015, and only 6 of those events were sponsored by TJMC; the remainder were conducted by third parties in exchange for a rental fee. Furthermore, the events were available only to a small sector of the public and many events had no connection to TJMC’s stated charitable goals of promoting history, education or the arts.[[7]](#footnote-7) On the basis of the Conference Center’s limited use and availability for charitable purposes and its use in part to store Dr. Lastavica’s personal property, the Board found and ruled that the dominant use of the Conference Center was not for charitable purposes.

With respect to the appellant’s argument that it engaged in conservation activities as the subject property, the Board noted several flaws. First, the Articles of Organization of TJMC make no mention whatsoever of any conservation purposes, nor have they been amended to include conservation as a corporate purpose. Similarly, none of TJMC’s Returns of Private Foundation for calendar years 2012, 2013 or 2014, or its Applications for Statutory Exemption for fiscal year 2014, make any mention of conservation purposes. Moreover, while the revised mission statement does make a nondescript reference to conservation and historic preservation, TJMC nonetheless failed to demonstrate any specific conservation activities that took place on the subject properties, such as active trail maintenance or wildlife preservation. The Board found that mere compliance with conservation restrictions, which were in effect before TJMC took title to the subject properties, was not an active appropriation of the subject properties for conservation purposes, but instead more akin to maintaining the subject properties as a buffer zone around Dr. Lastavica’s private property. Also, while the watershed restoration was an active use of the subject properties, the undisputed facts establish that this work was performed prior to TJMC’s ownership of the subject properties, not paid for by TJMC, and therefore it cannot add to TJMC’s claim for charitable exemption.

On the basis of the Board’s findings, the Board found and ruled that TJMC did not meet its burden of proving that the subject properties were entitled to an exemption for charitable or conservation purposes. Accordingly, the Board issued a decision for the appellee in the appeal for fiscal year 2015.

**OPINION**

*1. Jurisdiction for fiscal year 2014 appeal*

 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.

Where, as here, a tax bill is issued for property that is claimed to be exempt under Clause Third, a taxpayer has two procedural choices: (1) it may apply to the assessors for an abatement under G.L. c. 59, § 59; or (2) it may appeal directly to the Board under G.L. c. 59, § 5B. *See* ***Trustees of Reservations v. Assessors of Windsor,*** Mass. ATB Findings of Fact and Reports 1991-225.

The authority of the Board to hear and decide appeals relating to the assessment of taxes is derived solely by statute. *See* ***Stilson v. Assessors of Gloucester,*** 385 Mass. 724, 732 (1982).Accordingly, regardless of which procedural choice a taxpayer pursues, “[t]he case law is abundant in stern pronouncements requiring strict adherence by the taxpayer to the timelines and other procedural commands of the taxing statutes.” ***Tambrands, Inc. v. Commissioner of Revenue,*** 46 Mass. App. Ct. 522, 525 (1999).

The first method of challenging the denial of a claim of exemption under Clause Third is an appeal to the assessors under G.L. c. 59, § 59. The Board derives its authority to review the decisions of municipal boards of assessors from G.L. c. 59, §§ 64 and 65. Those statutes permit a taxpayer aggrieved by the assessors’ refusal to abate a tax on real property to file an appeal with the Board, provided that:

if the tax due for the full fiscal year on a parcel of real estate is more than $3,000,[[8]](#footnote-8) said ***tax shall not be abated unless the full amount of said tax due has been paid without the incurring of any interest charges on any part of said tax*** pursuant to section fifty-seven of chapter fifty-nine of the General Laws.

G.L. c. 59, § 64 (emphasis added).

 For the fiscal year 2014 appeal, the collective tax on the subject properties exceeded the $3,000 threshold and, as stipulated by the parties, the tax due was paid late, thereby incurring interest. However, if interest is incurred, a taxpayer nonetheless can appeal to the Board if it has made a timely payment of tax that is at least equal to the average tax for the three preceding years; this alternative is commonly referred to as the “three-year average provision.” G.L. c. 59, § 64; *see also* ***Assessors of New Braintree v. Pioneer Valley Academy, Inc***., 355 Mass. 610, 617 (1969). Under the facts of these appeals, TJMC did not meet the requirements of the three-year average provision. The Board thus found and ruled that it lacked jurisdiction to hear the appeal for fiscal year 2014 under the provisions of G.L. c. 59, §§ 59, 64 and 65.

The second method of challenging the denial of a claim of exemption under Clause Third is a direct appeal to the Board pursuant to G.L. c. 59, § 5B. Under § 5B, any taxpayer who is aggrieved by a “determination” of a board of assessors with respect to the eligibility or noneligibility of a corporation or trust for exemption under Clause Third may appeal directly to this Board within three months of that “determination.” The Board in ***Trustees of Reservations*** ruled that the “determination” from which the charitable entity appeals under § 5B is the mailing of the tax bill relating to the property that the entity claims is exempt under Clause Third. Mass. ATB Findings of Fact and Reports at 1991-235-37; *see also* ***Samson Foundation Charitable Trust v. Board of Assessors of the City of Springfield***, Mass. ATB Findings of Fact and Reports 2004-150, 158. The Appeals Court agreed that the determination date “will ordinarily be the date a local board of assessors mail[s] the fiscal year tax bills.” ***William B. Rice Eventide Home, Inc. v. Assessors of Quincy***, 69 Mass. App. Ct. 867, 876 (2007).

Under the facts of this appeal, the date of the assessors’ “determination” was December 27, 2013, the date of the mailing of the town’s third-quarter tax bills for fiscal year 2014. Pursuant to § 5B, TJMC would have had three months from that date, until March 27, 2014, to file its appeal with the Board. However, TJMC did not file the appeal for fiscal year 2014 until July 23, 2014, well beyond the three-month period of § 5B. Therefore, the Board does not have jurisdiction to hear and decide the appeal for fiscal year 2014 pursuant to § 5B.

Because the Board has no jurisdiction under either § 5B or §§ 64 and 65, the Board allowed the appellee’s Post-Trial Motion to Dismiss for Lack of Jurisdiction and issued a decision for the appellee for fiscal year 2014.

*2. The subject properties do not qualify for the charitable*

 *exemption of Clause Third.*

Massachusetts Courts and this Board have historically understood that taxation is the rule and exemptions from taxation are the exception: “Normally all property of a taxable nature should contribute its proportionate share to the support of the State.” ***Boston Chamber of Commerce v. Assessors of Boston***, 315 Mass. 712, 716 (1944). Exemptions from property taxation thus “have generally been viewed with a ‘hostile eye,’ . . . as matters of special favor or grace to be recognized only where the property falls ‘clearly and unequivocally . . . within the terms of the exemption.’” ***Trustees of Boston University v. Assessors of Brookline***, 11 Mass. App. Ct. 325, 331 (1981).

 “A corporation claiming that its property is exempt under § 5, Third, has the burden of proving that it comes within the exemption, and that it is in fact operated as a public charity.” ***Town of Norwood v. Norwood Civic Association***, 340 Mass. 518, 525 (1960) (citing ***American Inst. for Economic Research v. Assessors of Great Barrington***, 324 Mass. 509, 512-14 (1949)). The mere fact that an entity claiming a property tax exemption is organized as a charitable corporation or has Code § 501(c)(3) status is not sufficient to establish it as a “charitable organization” for purposes of Clause Third. ***Western Massachusetts Lifecare Corp. v. Assessors of Springfield,*** 434 Mass. 96, 102 (2001). Nor are the stated purposes in its articles of organization sufficient to qualify it as a charity for purposes of Clause Third; rather, it must prove that “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).

 Courts and this Board have customarily considered a number of “non-determinative factors” in deciding whether an organization is charitable for purposes of Clause Third. ***New Habitat, Inc. v. Tax Collector of Cambridge,*** 451 Mass. 729, 732 (2008). How much weight any particular factor will be given depends on how close an organization’s “dominant purposes and methods are to traditionally charitable purposes and methods.” ***Id***. at 733 (citing ***Boston Chamber of Commerce v. Assessors of Boston***, 315 Mass. 712, 718 (1941)). “The farther an organization's dominant purposes and methods are from traditionally charitable purposes and methods, the more significant these factors will be.” ***Id***. (citing ***Boston Chamber of Commerce***, 315 Mass. at 718 (ruling that “the more remote the objects and methods become from the traditionally recognized objects and methods the more care must be taken to preserve sound principles and to avoid unwarranted exemptions from the burdens of government.”)) (other citation omitted).

Among the factors to consider in determining whether an organization is in fact occupying property in furtherance of its charitable purpose is whether the organization at issue offers its services or benefits “to a large and ‘fluid’ group of beneficiaries.”  *See, e.g.* ***New Habitat,*** 451 Mass. at 732 (quoting ***New England Legal Foundation v. Assessors of Boston,*** 423 Mass. 602, 609 (1996)). While charging a fee for services will not necessarily preclude charitable exemption, “the organization’s services must still be accessible to a sufficiently large and indefinite class of beneficiaries in order to be treated as a charitable organization.” ***Western Massachusetts Lifecare***, 434 Mass. at 105. In other words, it is necessary that “the persons who are to benefit are of a sufficiently large or indefinite class so that the community is benefited by its operations.” ***Harvard Community Health Plan, Inc. v. Assessors of Cambridge***, 384 Mass. 536, 543 (1981) (citing ***Children’s Hospital Medical Center v. Assessors of Boston***, 353 Mass. 35, 44 (1967), ***Assessors of Boston v. Garland School of Home Making***, 296 Mass. 378, 388-89 (1937), and 4 A. Scott, ***Trusts*** at 2897-2898 (3d ed. 1967)).

 The court in ***New Habitat,*** quoting a long-standing charitable-exemption precedent, 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 ofeducation orreligion, 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 (quoting ***Jackson v. Phillips,*** 96 Mass. 539, 556 (1867)).

While TJMC does not separately analyze the applicability of the charitable exemption to each of the two separate parcels of the subject properties, the Board recognized that the improved parcel and the vacant parcel function differently and therefore should be addressed separately.

 *a. improved parcel*

TJMC contends that it used the subject properties in furtherance of its charitable purpose of promoting patriotism, education of the public in the history of the Early Republic, and maintenance of historic public buildings. Fostering patriotism and educating the public concerning history can be charitable activities within the meaning of Clause Third. *See* ***Molly Varnum Chapter, D.A.R. v. City of Lowell***, 204 Mass. 487, 490-91 (1910). The organization in ***Molly Varnum*** had as its stated main purpose to “perpetuate the memory of those who helped achieve American independence, acquire and protect historical spots, preserve documents . . . fostering true patriotism and love of country.” The court held that these purposes qualified as charitable purposes and, consistent with those purposes, the taxpayer had assisted in the creation of a public library, maintained clubs and classes for the education of children, and contributed money to historical research. Therefore, the court concluded that the taxpayer in ***Molly Varnum*** demonstrated its entitlement to the exemption. ***Id***. at 494.

However, in addition to proving a charitable purpose, TJMC must also demonstrate “an active appropriation to the immediate uses of the charitable cause for which the owner was organized.” ***Assessors of Boston v. Vincent Club***, 351 Mass. 10, 14 (1966) (other citations omitted)). For example, in ***Children's Hospital Medical Center,*** 353 Mass. at 37, the hospital, a charitable corporation and, later, its successor in interest, owned a parcel of land, which was used as a central hospital laundry for a total of 7 Boston hospitals. The SJC found that “laundry work . . . is an indispensable feature of hospital operation,” and that such work was part of the hospital’s charitable purpose.  ***Id***. at 40-41. Therefore, the Supreme Judicial Court ruled that the hospital “occupied the property in connection with its charitable purpose,” and accordingly, the property qualified for the charitable exemption. ***Id***.

By contrast, TJMC failed to demonstrate how it occupied the improved parcel to advance patriotism, educate the public in the history of the Early Republic, or maintain historic public buildings during the relevant time period. No public events took place at the Brick House during the relevant time period. While some tours of the Brick House were offered, access to the Brick House was restricted to its first floor, because its second floor served as a private residence to an individual unrelated to TJMC. The second floor was also used as storage space for Dr. Lastavica’s personal belongings. The appellant did not maintain records of its tours, so the Board had no basis for determining how often tours were actually conducted on the premises or how many visitors attended the tours. *See* ***Jewish Geriatric Services, Inc. et al v. Assessors of Longmeadow***, Mass. ATB Findings of Fact and Reports 2002-337, 359 (in determining whether an organization is in fact charitable for Massachusetts real estate tax purposes, Massachusetts courts and the Board must consider whether the organization’s benefits are readily available to a sufficiently inclusive segment of the population). Finally, while it contains some period pieces, the Brick House has no historic significance; Jefferson never lived there, nor was it a replica of his house or even registered as a historic building. In fact, the memorabilia and period pieces are actually Dr. Lastavica’s private property that were purportedly “on loan” to the appellant, with no formal document memorializing any supposed agreement.

With respect to the Conference Center, the programming sponsored by TJMC or held by outside groups that rented space from TJMC were sporadic and often geared towards a very small audience or altogether closed to the public. As Ms. Mulholland acknowledged in her email, TJMC had produced “very little programming and only to a very small part of the public” during the tax years at issue. Moreover, many of the events conducted at the Conference Center were rentals by outside groups having no connection to American history –- for example, the Gold Coast Mortgage Services’ annual outing for its employees -- and therefore did nothing to further TJMC’s stated charitable purpose. The Board thus found insufficient evidence linking the appellant’s use of the subject properties to further its stated charitable purposes related to history or patriotism. *See* ***The Vincent Club***, 351 Mass. at 14 (quoting ***Babcock v. Leopold Morse Home for Infirm Hebrew & Orphanage***, 225 Mass. 418, 421 (1917)) (a charitable organization must demonstrate “an active appropriation to the immediate uses of the charitable cause for which the owner was organized”). Finally, Dr. Lastavica also used the Conference Center to store her personal belongings, which led the Board to conclude that the subject properties were used more as private property than for public charitable purposes.

Based on the evidence, the Board found and ruled that TJMC failed to actively appropriate the improved parcel for its stated charitable purposes of promoting patriotism, educating the public in the history of the Early Republic, or maintaining historic public buildings.

*b. vacant parcel*

The appellant also contended that it preserves open space and serves an environmental benefit for the public by preserving and maintaining conservation land. However, the appellant offered no evidence that it engaged in meaningful, active conservation or preservation efforts at the vacant parcel. First of all, the appellant did not include a conservation purpose in its Original Mission Statement, but instead approved a Revised Mission Statement on June 19, 2014, after the Supreme Judicial Court’s decision in ***New England Forestry Foundation, Inc. v. Assessors of the Town of Hawley***, (“***NEFF***”), 468 Mass. 138 (2014), which approved a charitable exemption for an organization based on its active conservation efforts on the property at issue in that case.

In ***NEFF***, the SJC pointed to several instances of the taxpayer’s active appropriation of the property towards its charitable conservation purposes, including: producing and disseminating awareness-raising materials; sponsoring educational programs for foresters; and the placement of the property under a forest management program using an independent outside consultant. ***Id***. at 158. NEFF’s staff included licensed foresters, and the taxpayer offered evidence showing that it engaged in sustainable forestry practices to track the effects of its land management. ***Id***. NEFF’s activities under its forest management plan included removal of “mature and poor quality” logs to “release good quality growing stock”; “[c]ombination strip cuts and patch cuts for wildlife and softwood regeneration”; and the layout of a “loop demonstration trail,” taking into consideration “erosion of fragile soils.” ***Id***. at 141. NEFF later updated its forestry plan and conducted a tree inventory, which resulted in a patch harvest of approximately 65 acres. ***Id.***

While the taxpayer in ***NEFF*** offered substantial evidence that it was actively engaging in conservation and educational programs at the subject property, thereby actively appropriating the property in furtherance of its charitable purpose, TJMC merely cited the watershed restoration work that was performed at the subject properties to preserve the sea wall. However, this work was performed for the Lastavicas and paid for by Vingo Trust III before the appellant even existed, and it therefore could not be credited to the appellant.

Aside from that work, the appellant’s only other argument was that it complied with the conservation restrictions impacting the vacant parcel. As the Board has previously found, the charitable exemption requires more than passively holding land in a natural state:

[A]lthough ‘holding land in its natural pristine condition and thereby protecting wildlife habitats, filtering the air and water supply, and absorbing carbon emissions,’ ***New England Forestry Foundation, Inc.,*** 468 Mass. at 152, undoubtedly provides some benefit to the public in general, the Trust did not demonstrate a pattern of consistent or concerted conservation or preservation efforts sufficient to distinguish it from any other private landowner who simply holds several acres of land in an undeveloped state. *See* ***id.*** at 156***.***

***Anna Harris Smith Conservation Trust, Inc. v. Assessors of Pembroke****,* Mass. ATB Findings of Fact and Reports 2015-123, 142. *See also* ***Wing’s Neck Conservation Foundation, Inc. v. Assessors of Bourne,*** Mass. ATB Findings of Fact and Reports 2003-329, 336 (“[A]lthough the conservation of open space for the benefit of the general public is a most laudable goal, [the evidence failed to establish that the organization in question] was in actual operation a charitable organization.”). Moreover, access to the subject properties is by a private road that is marked by two “no trespassing” signs, which give the impression that the subject properties are secluded properties used as buffer areas surrounding Dr. Lastavica’s abutting private residence. *See* ***Brookline Conservation Land Trust v. Assessors of Brookline***, Mass. ATB Findings of Fact and Reports 2008-679, 698. Accordingly, the Board found and ruled that the appellant failed to establish that it had actively engaged in conservation or preservation efforts on the subject properties in furtherance of its stated charitable purposes.

Conclusion

After considering the evidence of record, and applying the analysis set forth by relevant precedents, the Board found and ruled that TJMC did not meet the requirement of a “charitable organization” and that the subject properties were not “occupied” by it in furtherance of charitable purposes as contemplated by Clause Third. The Board therefore found and ruled that the subject properties were not exempt from tax under Clause Third.

Accordingly, the Board issued a decision for the appellee in the appeal for fiscal year 2015. The Board also dismissed the appeal for fiscal year 2014 for lack of jurisdiction.

 **THE APPELLATE TAX BOARD**

 **By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Thomas W. Hammond, Jr., Chairman**

**A true copy,**

**Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Clerk of the Board**

1. This amount includes a Community Property Act (“CPA”) surcharge of $724.51. [↑](#footnote-ref-1)
2. This amount includes a CPA surcharge of $390.15 [↑](#footnote-ref-2)
3. It is uncontested that TJMC timely filed Forms 3ABC and a copy of its Form PC with the assessors for each fiscal year at issue. [↑](#footnote-ref-3)
4. This amount includes a CPA surcharge of $1,528.99. [↑](#footnote-ref-4)
5. This amount includes a CPA surcharge of $809.42. [↑](#footnote-ref-5)
6. On January 23, 2014, TJMC sponsored a lecture on “The Makings of a Craftsman: An Inside Glimpse of a Furniture Maker’s World,” which was held at Dr. Lastavica’s personal residence because an interior flood caused by a burst pipe had prevented the event from being hosted at the Brick House. Also, in February 2014, Theodore Stebbins, curator of American Paintings at the Harvard University Art Museums, was scheduled to give a lecture at the Brick House, but the event was cancelled because of the flood damage to the Brick House. [↑](#footnote-ref-6)
7. For example, the appellant rented the subject properties for the Gold Coast Mortgage Services annual outing and the Linzee Family’s Foundation retreat. [↑](#footnote-ref-7)
8. An amendment to § 64, effective November 7, 2016 and therefore not applicable to these appeals, raised this amount to $5,000. *See* St. 2016, c. 218, § 149. [↑](#footnote-ref-8)