



**THE COMMONWEALTH OF MASSACHUSETTS**

***Appellate Tax Board***

*Leverett Saltonstall Building, Government Center  
100 Cambridge Street  
Boston, Massachusetts 02202*

(617) 727-3100

(617) 727-6234 FAX

**Docket Nos. F298001-F298007 (FY2008)  
F302371-F302377 (FY 2009)  
F307611-F307617 (FY2010)  
F310647-F310653 (FY2011)**

**ROMAN CATHOLIC ARCHBISHOP  
OF BOSTON, a CORPORATION SOLE  
Appellant**

**BOARD OF ASSESSORS OF THE  
TOWN OF SCITUATE  
Appellee**

**ORDER**

As agreed by the parties and ordered by the Appellate Tax Board (the "Board"), the Board bifurcated the hearing of these appeals into two phases: (1) an exemption phase and (2) a valuation phase. A hearing on the exemption phase was held on September 21, 2011, at which the Board heard testimony from three individuals<sup>1</sup> and received into evidence documents offered by both parties. On the basis of this evidence, the Board now makes the following findings and rulings with respect to the exemption issue:

1. Appellant Roman Catholic Archbishop of Boston (the "RCAB"), a Corporation Sole, organized under Chapter 506 of the Acts of 1897, is a religious organization that owns seven parcels of real estate in the town of Scituate (the "subject properties"). One of the parcels, 27-31 Hood Road, is improved with the St. Francis X. Cabrini Parish Church (the "Church"), as well as the Parish center/gymnasium and parking lot. Another one of the parcels, 78 Mann Hill Road, is improved with a parsonage or rectory. The remaining five parcels are

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<sup>1</sup> Both parties issued subpoenas to two of these witnesses, Mr. and Mrs. Rogers, who are self-described "Vigilers" as defined, *infra*.

not improved with any buildings. The Board of Assessors of Scituate (the “assessors”) assessed real estate taxes on the subject properties for fiscal years 2008 through 2011 (the “fiscal years at issue”) as summarized in the following two tables:

<u>Address</u>	<u>Assessors' Parcel</u>	<u>Improvements (if any)</u>	<u>FY2008 (\$)</u>	<u>FY2009 (\$)</u>
27-31 Hood Road	28-23-4F	Church, Parking Lot & Parish/Gym	3,239,600	2,082,700
78 Mann Hill Road	22-11-6	Rectory	598,000	604,500
0 Hatherly Road	28-22-12F	None	204,500	186,400
0 Hatherly Road	28-22-10	None	204,100	186,000
0 Hatherly Road	28-22-6	None	102,800	92,300
0 Mann Hill Road	27-7-2	None	109,100	77,300
Rear Mann Hill Road	27-7-1	None	81,800	77,300

<u>Address</u>	<u>Assessors' Parcel</u>	<u>Improvements (if any)</u>	<u>FY2010 (\$)</u>	<u>FY2011 (\$)</u>
27-31 Hood Road	28-23-4F	Church, Parking Lot & Parish/Gym	2,026,700	1,984,700
78 Mann Hill Road	22-11-6	Rectory	561,600	529,500
0 Hatherly Road	28-22-12F	None	171,400	155,400
0 Hatherly Road	28-22-10	None	171,000	156,000
0 Hatherly Road	28-22-6	None	84,800	77,300
0 Mann Hill Road	27-7-2	None	68,300	66,800
Rear Mann Hill Road	27-7-1	None	68,300	66,600

2. Prior to fiscal year 2006 during RCAB’s ownership, the assessors did not tax the Church and the subject properties and considered them exempt from real estate taxes under G.L. c. 59, § 5, cl. 11 (“Clause 11”)<sup>2</sup> and G.L. c. 59, § 5, cl. 3 (“Clause 3”).<sup>3</sup> RCAB’s appeals of the fiscal year 2006 and 2007 real estate tax assessments have been resolved and are not before the Board. With respect to the fiscal years at issue, RCAB appeals from the assessors’ denials of RCAB’s applications to grant exemptions from real estate taxation for the subject

<sup>2</sup> Clause 11 provides in pertinent part that the following property shall be exempt from taxation:

Houses of worship owned by, or held in trust for the use of, any religious organization . . . and each parsonage so owned, or held in irrevocable trust, for the exclusive benefit of the religious organizations, . . . but such exemption shall not . . . extend to any portion of such house of religious worship appropriated for purposes other than religious worship or instruction. The occasional or incidental use of such property by an organization exempt from taxation under the provision of 26 USC Sec. 501(c)(3) of the Federal Internal Revenue Code shall not be deemed to be an appropriation for purposes other than religious worship or instruction.

<sup>3</sup> Clause 3 provides in pertinent part that the following property shall be exempt from taxation:

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.

properties under Clause 11 or, as more recently averred in its amended petition, Clause 3.

3. On October 5, 2004, RCAB issued a so-called "Order of Suppression" which is a decree by RCAB under the authority of Roman Catholic Canon Law that dissolved St. Francis X. Cabrini Parish (the "Parish"), as of October 29, 2004. In furtherance of the Order of Suppression, RCAB successfully secured and closed the Parish center/gymnasium and the rectory but was unable to secure and close the Church because, on October 26, 2004, a group of parishioners (the "Vigilers") entered the Church without RCAB's permission and seized and occupied it.<sup>4</sup> Despite RCAB's repeated demands to the Vigilers for them to vacate the Church, they continue to occupy it. The Vigilers do not use or occupy any other portions of the subject properties except for occasional use of the parking lot. As of October, 2004, RCAB ceased providing religious worship, instruction, and related activities to the parishioners at the Church and stopped using the subject properties for religious worship, instruction, or related activities. RCAB continues to pay for the utilities and any real estate taxes associated with the Church and subject properties.

4. On December 15, 2005, the Vigilers established a non-profit organization, recognized under Internal Revenue Code § 501(c)(3), called The Friends of St. Francis X. Cabrini, Inc. ("The Friends"). The Articles of Organization state that "[t]he purpose of The Friends . . . is to be a vital, loving and effective faith community, inspired by the Holy Spirit and committed to the spiritual enrichment of its parishioners through the teachings of our risne [sic.] lord and savior, Jesus Christ." Notwithstanding the stated purposes in its Articles of Organization, the undisputed testimony establishes that the primary purpose of The Friends is to prevent RCAB from securing the Church and to cause RCAB and the Vatican to re-open the Parish as a fully functioning parish. In furtherance of this purpose, the Vigilers' dominant and near exclusive use of the Church consists of them occupying and guarding the Church despite the express demands of RCAB for them to leave and permanently vacate the Church. The Friends are not otherwise engaged in charitable activities as an organization even though individual Vigilers may perform some charitable acts on their own.

5. The relevant Form 3 ABCs filed by RCAB with the assessors for the fiscal years at issue state, under the penalties and pains of perjury, that the Church and the subject properties were not leased to or used by any other organization. There is no lease, trust or other such agreement between RCAB and the Vigilers or The Friends with respect to the subject properties.

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<sup>4</sup> According to the uncontroverted testimony offered at the hearing by one of the Vigilers, Jon Rogers, a Vigiler was able to gain access to the Church through an entrance that had been inadvertently left unsecured. In the words of Mr. Rogers: "[RCAB] changed [the locks] that Tuesday [instead of waiting until Friday as promised] in an absolute underhanded attempt to keep us out. Unfortunately [for RCAB] as they changed the locks [on] the doors, they had bungee-corded one of the emergency fire bars open."

6. In addition to their aforesaid dominant use of the Church, the Vigilers or The Friends conduct a 45-minute lay-lead service at the Church on Sundays. According to the undisputed testimony, these services do not qualify as official Roman Catholic religious services or masses. No priest officiates at these services, and no description of the services was offered. RCAB and/or the Vigilers' former Parish priest have labeled the Vigilers' or The Friends' actions as being, among other things, "illegal, immoral, sinful, and heresy." The testimony also describes the lay-lead services and any other uses as "miniscule" compared to the Vigilers' and The Friends' dominant use.

7. According to the undisputed testimony, the Friends have exhausted multiple levels of appeals within the Roman Catholic Church hierarchy to overturn the Order of Suppression. These appeals include petitions to the Congregation of Clergy and the Vatican Signatore. The testimony further indicates that the Friends have another appeal to re-open the Parish that is "underway."

8. Based on these subsidiary findings, the Board finds that, for the fiscal years at issue, RCAB is a religious organization which owns the Church and the subject properties but no longer occupies or uses them for religious worship or instruction or for related purposes. The Board further finds and RCAB concedes that RCAB does not hold the Church or the subject properties in trust for the Vigilers or The Friends. The Board also finds that neither The Friends nor the Vigilers are religious organizations as that term is used in Clause 11. They do not formally participate in any recognized, authorized, or sanctioned Roman Catholic religious activity, and any religious activity that occurred at the Church is incidental to their dominant and near exclusive purpose: to occupy and guard the Church so that RCAB cannot regain possession and to advocate for the Church's re-opening as part of a sanctioned Roman Catholic parish. Accordingly, and insofar as it may be question of fact, the Board finds that the Church and the subject properties do not qualify for the Clause 11 exemption because neither the Church nor the subject properties are used for religious worship, instruction, or related purposes within the meaning of Clause 11. Rather, RCAB essentially does not use the Church or the subject properties at all, and the Vigilers' and The Friends' dominant use of the Church is as unauthorized occupiers and guards.

9. The Board also finds that The Friends' dominant purpose – to occupy and guard the Church as part of a plan to re-open the Parish against the wishes of RCAB – is not a charitable purpose for purposes of Clause 3. Accordingly, and insofar as it may be a question of fact, the Board finds that the Church and the subject properties do not qualify for the Clause 3 exemption.

10. In making its ultimate findings that the Church and the subject properties are not exempt from real estate taxes for the fiscal years at issue under Clause 11 or Clause 3, the Board was guided by well-established legal principles,

including those pertaining to: (a) RCAB's burden of proof; (b) the applicability of the exemption under Clause 11; and (c) the applicability of the exemption under Clause 3.

(a) *Burden of Proof* - "Statutes granting exemptions from taxation are to be strictly construed." ***Children's Hospital Medical Center v. Board of Assessors of Boston***, 388 Mass. 832, 838 (1983). "A taxpayer is not entitled to an exemption unless he shows that he comes within the express words" of the statute granting the exemption. ***Animal Rescue League v. Assessors of Bourne***, 310 Mass. 330, 331 (1941). "Exemption from taxation . . . must be made to appear clearly before it can be allowed." ***Springfield Young Men's Christian Ass'n v. Assessors of Springfield*** 284 Mass. 1, 5 (1933). The taxpayer has the burden of establishing its entitlement to an exemption. ***New Habitat, Inc. v. Tax Collector of Cambridge***, 451 Mass. 729, 731 (2008). Any doubt must operate against the one claiming a tax exemption." ***Boston Symphony v. Assessors of Boston***, 295 Mass. 248, 257 (1935).

With these legal principals in mind, the Board rules that RCAB failed to demonstrate that, for the fiscal years at issue, the use or non-use to which it and The Friends or Vigilers put the Church and the subject properties fell within the parameters for granting exemption under Clause 11 or Clause 3.

(b) *Clause 11* - "[T]he exemption from [real estate taxation] was intended only for houses owned by or held in trust for, religious organizations that occupy and use them for worship." ***Evangelical Baptist Benev. & Missionary Soc. v. City of Boston***, 204 Mass. 28, 31 (1910). "The purpose of [Clause 11] was to exempt from taxation ordinary church edifices, owned and used in the usual way for religious worship." *Id.* "Real estate held by . . . religious institutions is not exempted from taxation unless used and appropriated for their distinctive purposes." ***Burr v. City of Boston***, 208 Mass. 537, 543 (1911). The religious use contemplated under Clause 11 must be the organizations' "dominant" use of the subject properties. ***Assessors of Boston v. Lamson***, 316 Mass. 166, 173 (1944). To qualify for the exemption under Clause 11, "the real estate itself must be occupied by the religious organization or its officers, for those purposes." ***Trustees of Chapel of Good Shepard v. City of Boston***, 120 Mass. 212, 213 (1876). The Clause 11 exemption does "not extend to separate [areas] used for purposes exclusively secular." ***William T. Stead Mem'l Ctr. of NY v. Town of Wareham***, 299 Mass. 235, 239 (1938).

In the present appeals, the Board found that RCAB terminated all official religious activity on the subject properties as of October, 2004. RCAB secured all of the improvements on the subject properties except for the Church which RCAB attempted to secure but did not because of the Vigilers' occupation. RCAB effectively ceased occupying and using the subject properties for religious worship and instruction as of that time.

The Board further found that the dominant use of the property by The Friends or Vigilers, who occupied and used the Church and the subject properties thereafter, was not for religious worship or instruction. Rather, their

use consisted primarily of occupying and guarding the Church so that RCAB could not regain possession, and attempting to influence RCAB and the Vatican to re-open the Church as part of a fully functioning parish. The other parcels which comprise the subject properties were essentially unused for any purposes and were not used for any purposes connected to religious worship or instruction.

On this basis, the Board rules that the Church and the subject properties were not occupied and used for religious worship or instruction as required under Clause 11, and they, therefore, are not entitled to the exemption from real estate taxes under Clause 11.

(c) *Clause 3* - "The exemption provided in [Clause 3] is available . . . if a charitable organization owns real estate and occupies it for its corporate purpose, or allows another charitable organization to occupy it for its purpose." ***Board of Assessors of Hamilton v. Iron Rail Fund of Girls Clubs of America, Inc.***, 367 Mass. 301, 306 (1975). In these appeals, the Board found that RCAB was not using or occupying the property for its charitable purpose; rather, the Order of Suppression and the other actions with respect to the Church and the subject properties demonstrated that RCAB no longer intended to use the Church and the subject properties for any purpose other than their eventual sale.

Moreover, notwithstanding its purpose stated in its Articles of Organization, The Friends' actual use of the Church and the subject properties - - to occupy and guard the Church in order to advance its cause of re-opening the Parish against the wishes of RCAB - - was not shown to be a recognized charitable purpose or one that is considered to be traditionally charitable in nature. See ***New Habitat, Inc.*** 451 Mass. at 732-33. It is the actual use to which the charitable organization puts the property that is dispositive for purposes of determining eligibility for exemption under Clause 3. See ***Meadowbrooke Day Care Center, Inc. v. Board of Assessors of Lowell***, 374 Mass. 509, 511-12 (1978); ***Cummington School of Arts, Inc. v. Board of Assessors of Cummington***, 373 Mass. 597, 603-05 (1977); ***Town of Milton v. Ladd***, 348 Mass. 762, (1965); ***Fisher School v. Assessors of Boston***, 325 Mass. 529, (1950).

On this basis, the Board rules that, for the fiscal years at issue, the Friends was not a charitable organization for purposes of Clause 3 and that its occupation of the Church was not a charitable purpose within the meaning of Clause 3. Accordingly, the Board rules that RCAB is not entitled to the exemption under Clause 3 for the Church and the subject properties.

11. Having found and ruled that the Church and the subject properties are not eligible for or entitled to the benefits of the real estate exemptions under Clause 11 or Clause 3, the exemption phase of the bifurcated hearing of these appeals is completed. The Board hereby ORDERS the parties to attend a status conference on Tuesday, January 31, 2012 at 10:00 am at the Board's offices in Boston, MA to determine an appropriate discovery and trial schedule for the valuation phase of these appeals.

**APPELLATE TAX BOARD**

*Thomas W. Hammond, Jr., Chairman*

*Frank J. Scharaffa, Commissioner*

*James D. Rose, Commissioner*

*Thomas J. Mulhern, Commissioner*

*Richard G. Chmielinski, Commissioner*

Attest: *Steven Douglas*, Assistant Clerk of the Board

Date: December 16, 2011  
(Seal)