COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

GIVE THEM SANCTUARY, INC.	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF MONSON**
Docket Nos.: F310589 F310590		Promulgated: March 11, 2013

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 Monson ("assessors" or "appellee") to abate taxes on certain real estate in Monson owned by and assessed to the appellant, Give Them Sanctuary, Inc. ("appellant" or "GTSI"), under G.L. c. 59, §§ 11 and 38 for fiscal year 2011 ("fiscal year at issue").

Commissioner Chmielinski heard these appeals and was joined in the decisions for the appellee by Chairman Hammond and Commissioners Scharaffa, Rose, and Mulhern.

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

Raymond A. Blanchette, Esq. for the appellant.

Mark J. Beglane, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits submitted during the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2010, GTSI was the assessed owner of a 4.33-acre parcel of land located on Boston Road West in Monson, identified for assessing purposes as Parcel 001-002B ("Boston Road property"). Also on that date, GTSI was the assessed owner of a 15.8-acre parcel of land located on Stafford Road in Monson, identified for assessing purposes as Parcel 101-020 ("Stafford Road property"). For the fiscal year at issue, the assessors valued the Boston Road property at $81,300, and assessed taxes thereon, at a rate of $14.43 per thousand, in the total amount of $1,208.35.[1] The assessors valued the Stafford Road property at $100,800, and assessed taxes thereon, at a rate of $14.43 per thousand, in the total amount of $1,454.89.[2] The appellant paid the assessed taxes, and although the payment incurred interest, it was not fatal to the Board's jurisdiction because the amount of tax assessed was $3,000 or less. *See* G.L. c. 59, § 64.

[1] This amount includes a Community Preservation Act ("CPA") surcharge.
[2] This amount includes a CPA surcharge.

The issue presented in these appeals was whether the Boston Road property and the Stafford Road property (together, "subject properties") qualified for exemption from taxation under G.L. c. 59, § 5, Third ("Clause Third"), either 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 as "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." *See* G.L. c. 59, § 5, Third. GTSI was organized on January 1, 2008, as a Massachusetts non-profit corporation with a principal office at 379 Silver Street in Wilbraham, Massachusetts ("379 Silver Street"). According to its Articles of Organization, GTSI's purpose was to "[p]rovide shelter and healthy habitat for wild animals, foster health and welfare of domestic animals, [and] aid abused persons who are in need of sanctuary." GTSI was exempt from federal income taxes under Internal Revenue Code § 501(c)(3).

In 2009, GTSI acquired the subject properties, and thereafter, sought to have them exempted from real estate taxes. The appellant timely filed Form 3 ABC, Form PC, and an Application for Statutory Exemption for the fiscal year at issue with the assessors. The appellant's Application for Statutory Exemption was denied by vote of the assessors on

December 16, 2011, and the assessors sent the appellant notice of their denial the following day. The appellant timely filed its petitions with the Board on March 16, 2011. On the basis of the foregoing, the Board found that it had jurisdiction to hear and decide these appeals.

At all times relevant to these appeals, Laura Allard was the President of GTSI, while her husband, Dr. Jeffrey Allard, was its Treasurer. Dr. Allard testified at the hearing of these appeals that GTSI was organized for the purpose of preserving habitats and providing shelter and other services to dogs and other domestic and wild animals, including bats suffering from "white nose" disease. To this end, Dr. Allard testified that GTSI maintained two dog kennels to provide shelter to dogs at 379 Silver Street, which was the location of its principal office and also the Allard's personal residence. The Boston Road property abuts 379 Silver Street.

Dr. Allard further testified that GTSI also provided assistance to dogs by paying for dog food, kennel boarding, and veterinary care for dogs whose owners could not afford such expenses. The appellant entered into evidence its credit card receipts, which showed payment for these expenses.

Dr. Allard also testified that the organization had a "people component," although he did not elaborate.[3]

Dr. Allard described the following actions performed by GTSI in connection with the subject properties: GTSI engaged New England Environmental, Inc. to conduct a "wildlife habitat assessment" of the subject properties; it allowed a group of Boy Scouts to camp out on the Stafford Road property on at least one occasion; it removed garbage and some "invasive" plants such as Poison Ivy and Asian Bittersweet from the subject properties; it planted Elm trees and "wetland plants" such as witch hazel on the subject properties; and it cleared vines from existing trails on the subject properties.

Dr. Allard also testified that in the future, GTSI hoped to build dog kennels on the subject properties, and that he believed zoning would allow for such structures. However, the appellant offered no written plans, applications for permits, blueprints, estimates or quotes from builders or contractors, or other documentary evidence to show that actions had been taken to begin the removal of the appellant's charitable activities to the subject properties, nor did the appellant offer evidence to establish that such removal would occur within two years of the appellant's purchase of the subject properties.

[3] In his post-trial brief, the attorney for the appellant indicated that the appellant had cleared campsites for homeless people on the subject properties. However, the Board found no evidence in the record to support that assertion.

Pictures of the subject properties were entered into evidence, including a picture which showed a "bat house" mounted in a tree. The pictures also showed various signs on the subject properties, some of which showed the name, logo, and address of GTSI, while others stated "Posted: Private Property," and "Warning: No Trespassing. No Hunting, Fishing, or Trapping. Private Property of Laura and Jeffrey Allard. Will Prosecute Offenders." Dr. Allard testified that some of the signs had been posted by the previous owners of the subject properties, though obviously not the ones bearing the names of GTSI or Laura and Jeffrey Allard.

Principal Assessor Ann Murphy testified for the assessors. She testified that the assessors conducted periodic drive-by inspections of the subject properties. Based on those inspections, she testified that the subject properties were vacant, left in a completely natural state with no improvements, and that there was no evidence of dogs or other animals being provided services on the subject properties. She also testified that there were no parking improvements on the subject properties; parking was limited to dirt shoulders on the side of the road along the perimeter of the subject properties.

Based on the foregoing testimony and the documentary evidence presented at the hearing of these appeals, the Board found that the subject properties were maintained by GTSI

primarily as conservation land, and that GTSI did not actively occupy the subject properties in furtherance of its charitable purposes. There was virtually no evidence that activities aiding the health or welfare of either animals or people took place on the subject properties. Moreover, the Board found that allowing the Boy Scouts to make a limited use of the subject properties was incidental and ancillary to GTSI's stated charitable purposes.

Further, although Dr. Allard testified that GTSI intended to build kennels on the subject properties, the Board found that his bare statements of intent were insufficient to qualify the subject properties for exemption under Clause Third's two-year removal provision. The appellant offered no evidence whatsoever showing that it had taken affirmative steps to commence the transfer of its animal-care operations to the subject properties, let alone evidence to establish that it would do so within two years from the date of its purchase of the subject properties. Accordingly, the Board found that there was insufficient evidence in the record to show that GTSI purchased the subject properties with the intent to move its charitable operations onto them within two years.

For the above reasons, and as explained more fully in the following Opinion, the Board found that the appellant did not occupy the subject properties for the charitable purposes for

which GTSI was organized, nor did the appellant purchase the subject properties "with the purpose of removal thereto." *See* G.L. c. 59, § 5, Third. Accordingly, the Board found that the subject properties were not exempt from taxation under Clause Third, and it issued decisions for the appellee. Because the Board found that the appellant did not occupy the subject properties for its charitable purposes or manifest sufficient intent to do so within two years of the dates of purchase of the subject properties, the Board made no findings as to whether GTSI constituted a "charitable organization" for purposes of Clause Third.

OPINION

All property, real and personal, situated within the Commonwealth is subject to local property tax, unless expressly exempt. G.L. c. 59, § 2. General Laws c. 59, § 5, lists the classes of property that are exempt from taxation, and 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[.]" G.L. c. 59, § 5, Third. It also provides an exemption for "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." ***Id.***

It is well established that a taxpayer claiming that its property is exempt under Clause Third has the burden of proving that it comes within the terms of exemption. *See* ***Town of Norwood v. Norwood Civic Assn.***, 340 Mass. 518, 525 (1960) (citing ***American Inst. for Economic Research v. Assessors of Great Barrington,*** 324 Mass. 509, 512-14 (1949)). "Any doubt must operate against the one claiming tax exemption, because the burden of proof is upon the one claiming an exemption from taxation to show clearly and unequivocally that he comes within the terms of the exemption." ***Boston Symphony Orchestra v. Assessors of Boston***, 294 Mass. 248, 257 (1936).

Though the appellant was a Massachusetts non-profit corporation and was recognized as a tax-exempt charitable organization by the Internal Revenue Service, organization as a charitable entity is not dispositive in determining eligibility for exemption under Clause Third. *See* ***Forges Farm, Inc. v. Assessors of Plymouth***, Mass. ATB Findings of Fact and Reports 2007-1197, 1204. The exemption embodied in Clause Third applies only if the real estate at issue is "occupied by [the charity] or its officers for the purposes for which it is organized." G.L. c. 59, § 5, Third. The Board has noted that "occupancy" under Clause Third means

> something more than that which results from simple ownership and possession. It signifies an active appropriation to the

> immediate uses of the charitable cause for which the owner was organized . . . . [T]he nature of the occupation must be such as to contribute immediately to the promotion of the charity and physically to participate in the forwarding of its beneficent objects.

Rockridge Lake Shores Property Owners' Association v. Assessors of Monterey, Mass. ATB Findings of Fact and Reports 2001-581, 587 (citing ***Assessors of Boston v. The Vincent Club***, 351 Mass. 10, 14 (1966)) (other citations omitted).

In the present appeals, the Board found and ruled that the appellant failed to show that it had used the subject properties to carry out its stated charitable mission of providing shelter and other services to animals and people. The subject properties were kept in a natural state, with few, if any improvements thereon. Further, virtually no evidence was presented that people or animals had been cared for or offered services by the appellant on the subject properties. In short, the appellant did not demonstrate any nexus between its stated charitable activities and the subject properties.

Although there was testimony that the appellant had allowed a group of Boy Scouts to make minimal use of the Stafford Road property, for purposes of Clause Third, "[i]t is the dominant use of the property that is controlling." ***Brockton Knights of Columbus v. Assessors of Brockton,*** 321 Mass. 110, 114 (1947). The Board found that allowing the Boy Scouts to make very

limited use of one of the subject properties was incidental and ancillary to the appellant's stated charitable purposes, and it therefore found and ruled that such use was insufficient to qualify as a charitable occupation of the subject properties for purposes of Clause Third.

GTSI contended that by taking steps to preserve the land as a shelter for wildlife, it advanced its charitable mission of "[providing] shelter and healthy habitat for wild animals." However, the Board has found in past appeals that maintaining land in its natural state and allowing its natural habitat to flourish will not qualify the property for the Clause Third exemption. "'[S]imply keeping the land open . . . is not enough to satisfy the requirement of 'occupying' the property within the meaning of the statute.'" ***Forges Farm, Inc.,*** Mass. ATB Findings of Fact and Reports at 2007-1207 (quoting ***Nature Preserve, Inc. v. Assessors of Pembroke,*** Mass. ATB Findings of Fact and Reports 2000-796, 808). Rather, there must be a more active use of the property in furtherance of a charitable organization's charitable purposes to qualify for the exemption provided by Clause Third. *See* ***Vincent Club***, 351 Mass. at 14.

The facts of these appeals were substantially similar to those in ***Animal Rescue League of Boston, Inc. v. Assessors of Pembroke,*** Mass. ATB Findings of Fact and Reports 2000-96, 98. At issue in that case was a large, heavily-wooded parcel of land

owned by charitable organization whose mission was to provide refuge and "relief of suffering of homeless animals," and other activities promoting the welfare of animals. ***Id.*** The only improvement on the parcel was a single-family residence which was occupied by the director of the charitable organization, but neither he, nor the organization, conducted activities relating to the organization's mission or provided services to animals on the property at issue. As in the present appeals, the organization in that case "asserted an intent to build a shelter at the subject property, [but had] taken no steps to do so." ***Id.*** The Board found in that case that the property at issue had been maintained in its "natural state . . . [with] no established animal shelter," and that the taxpayer had offered no evidence showing that "services [were] provided to animals located on the property." ***Id.*** at 102. It therefore ruled that the taxpayer failed to establish that the property was occupied in furtherance of its charitable purposes as required by Clause Third.

These appeals are distinguishable from cases such as ***Emerson v. Trustees of Milton Academy***, 185 Mass. 414, 418 (1904) and ***Trustees of Boston College v. Assessors of Boston***, Mass. ATB Findings of Fact and Reports 2010-96, 125, which involved undeveloped land owned by educational institutions and used by students for informal recreational sports and other social and

leisure activities. It has long been recognized that it is within the charitable purpose of an educational institution to "provide liberally for the physical training, and the social, moral and aesthetic advancement of the pupils who are entrusted to its charge." ***Emerson,*** 185 Mass. at 418; *see also* ***Wheaton College v. Town of Norton,*** 232 Mass. 141, 148-9 (1919)***; Trustees of Boston College,*** Mass. ATB Findings of Fact and Reports at 2010-113. Thus, "[i]n the context of educational institutions . . . the range of uses which has qualified the property at issue for exemption is broad." ***Trustees of Boston College,*** Mass. ATB Findings of Fact and Reports at 2010-118. By contrast, here, the subject properties were not undeveloped land situated within a campus setting, but instead were more akin to conservation land, and the Board found and ruled that they were not occupied by the appellant in furtherance of its charitable purposes. *See* ***Forges Farm,*** Mass. ATB Findings of Fact and Reports at 2007-1208; ***Brookline Conservation Land Trust v. Assessors of Brookline,*** Mass. ATB Findings of Fact and Reports 2008-679, 706.

Additionally, Clause Third contains an additional exemption for "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." G.L. c. 59, § 5, Third. The relevant date for determining whether property is entitled

to a charitable exemption under Clause Third is July first of the taxable year. Therefore, the relocation provision does not create an automatic grace period for a charitable corporation that purchases property without material plans for its usage; instead, the corporation must establish that as of July first of the relevant tax year, it had the requisite intent for removal to the property within two years of its purchase. *See* ***Mt. Auburn Hospital v. Assessors of Watertown***, Mass. ATB Findings of Fact and Reports 2000-441, 462, *aff'd,* 55 Mass. App. Ct. 611 (2002).

In ***Mt. Auburn Hospital***, the Board found that the taxpayer had the requisite intent for removal under Clause Third's relocation provision. ***Id.*** at 450-53. The taxpayer in that case took affirmative steps which demonstrated the requisite intent to relocate its charitable activities to the property in question. ***Id.*** It formed a task force to evaluate its needs for physical facilities and later purchased the property at issue in response to the task force's recommendation to acquire additional facilities. ***Id.*** The taxpayer then took specific, concrete steps to implement usage of the property such as forming a "Project Coordinating Committee" and spending over $550,000 to plan the property's development.

Unlike the taxpayer in ***Mt. Auburn Hospital***, GTSI failed to demonstrate that it had taken affirmative steps to relocate its

charitable operations to the subject properties. GTSI proffered no estimates or quotes from builders or contractors, blueprints, applications for building permits or any other documentary evidence to suggest that it had commenced efforts to relocate its charitable operations to the subject properties, nor did it offer evidence establishing that it would do so within two years from the dates that it purchased the subject properties. The Board thus found and ruled that the subject properties were not exempt from taxation under Clause Third's two-year removal provision.

Lastly, the Legislature has addressed the taxation of unimproved land like the subject properties in statutes such as G.L. c. 184, §§ 31 and 32, which provide mechanisms for conservation land to be assessed at a reduced rate, and G.L. c. 61B, which provides that "recreational land," which includes land "retained in substantially a natural, wild, or open condition," may be assessed at a reduced rate. G.L. c. 184, §§ 31, 32; G.L. c. 61B. Because the Legislature has provided for the taxation of conservation land in statutory schemes outside of Clause Third, the Board found and ruled that land such as the subject properties that has been maintained in an essentially natural state, and which has not been actively "appropriated" towards a charitable organization's charitable purposes, does not come within the terms of the exemption

provided in Clause Third. ***Vincent Club***, 351 Mass. at 14. *See* ***Brookline Conservation Land Trust***, Mass. ATB Findings of Fact and Reports at 2008-705-6 ("[T]he Legislature has determined that, while conservation land should be afforded beneficial tax treatment, it nonetheless should be subject to tax and not exempt as a charitable organization property under [Clause Third]."); *see also* ***Forges Farm***, Mass. ATB Findings of Fact and Reports at 2007-1208 ("Private owners who wish to conserve land in its natural state are afforded property tax relief under statutes other than [Clause Third].").

On the basis of all of the evidence, the Board found and ruled that the appellant failed to meet its burden of proving that it occupied the subject properties in furtherance of its charitable purpose, and it further found and ruled that the appellant failed to prove that it purchased the subject properties for the purpose of moving its charitable operations to them within two years.

Accordingly, the Board found and ruled that the subject properties were not exempt from taxation under Clause Third, and issued decisions for the appellee in these appeals.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _____
Clerk of the Board