

NEW ENGLAND FORESTRY FOUNDATION (NEFF) vs. BOARD OF ASSESSORS OF HAWLEY¹

Massachusetts Supreme Judicial Court. Boston MA. May 15, 2014.

APPEAL from a decision of the Appellate Tax Board.

The Supreme Judicial Court granted an application for direct appellate review.

Douglas Hallward-Driemeier, Ropes & Gray for the plaintiff NEFF.

Rosemary Crowley for the defendant Town of Hawley

The following submitted briefs for amici curiae:

James F. Sullivan for Massachusetts Association of Assessing Officers,
Robert H. Levin, for Massachusetts Land Trust Coalition, Inc., & Land Trust Alliance,
Gregor I. McGregor & Luke H. Legere for Massachusetts Association of
Conservation Commissions, Inc., & The Compact of Cape Cod Conservation Trusts,
Robert E. McDonnell, Patrick Strawbridge for Nature Conservancy, & MassAudubon,
Lisa C. Goodheart, et al for The Trustees of Reservations.

SJC Justices Present: Ireland, C.J., Spina, Cordy, Botsford, Gants, Duffly, & Lenk, JJ.

SPINA, J. writing the unanimous decision in favor of NEFF:

This case comes to us on direct appellate review from a decision of the Appellate Tax Board (board). The taxpayer, New England Forestry Foundation, Inc. (NEFF), is a nonprofit corporation organized under G.L. c. 180. NEFF is the record owner of a 120-acre parcel of forest land in the town of Hawley. In 2009, NEFF applied to the board of assessors of Hawley (assessors) for a charitable tax exemption on the parcel under G.L. c. 59, § 5, Third (Clause Third). The assessors denied NEFF's application, and NEFF appealed to the board. The board likewise denied the application on the basis that NEFF had failed to carry its burden to show that it occupied the land in Hawley for a charitable purpose within the meaning of Clause Third. NEFF again appealed, and both NEFF and the assessors filed applications for direct appellate review. We granted the parties' applications, and we reverse the board's decision. [FN2]

1. *Background.* The taxpayer, NEFF, is a Massachusetts nonprofit corporation organized under G.L. c. 180, and it has received tax-exempt status from the Federal government under 26 U.S.C. § 501(c)(3) (2006). NEFF was incorporated in 1944 and pursues the mission of "providing for the conservation and ecologically sound management of privately owned forestlands in New England, throughout the Americas and beyond."

The property at issue in this case is a 120-acre parcel of forested land known as the Stetson-Phelps Pine Ridge Farm (Hawley forest). According to NEFF, the farm and its surrounding land had been in Shippee's family for generations, and she sold the land to NEFF in order to ensure that it would not be developed. The land owned by NEFF constitutes the Hawley forest and is abutted on two sides by the Kenneth Dubuque Memorial State Forest, which is owned and maintained by the Department of Conservation and Recreation.

In a letter to the assessors, NEFF explained that it subsequently applied for a full property tax exemption under Clause Third, rather than accepting the reduced taxation under G.L. c. 61, due in part to the administrative costs of preparing for and filing for G.L. c. 61 status on all its properties because G.L. c. 61, § 2, requires renewal every ten years.

The board denied NEFF's request for an exemption on the basis that NEFF had failed to carry its burden to show that it occupied the land in Hawley for a charitable purpose within the meaning of Clause Third. Specifically, the board concluded that NEFF was not carrying

¹ This version of the NEFF decision was edited for length and annotated by Mark H. Robinson, for ease of reading by laypeople with limited time to devote to this important case. For the full decision, [click here](#).

"Clause Third" is shorthand for property tax exemption for eligible charities

NEFF is a 501c3 land trust operating in New England. It changed its enrollment from Ch. 61 (small taxes) to Ch. 59.5.3 (tax exempt) for its forest land in Hawley.

Hawley assessors claimed NEFF's land was not tax-exempt because not enough education, research or public access.

Condensed and annotated 2014 SJC decision on NEFF v. Hawley re: land trust property tax exemption

out a charitable purpose within the meaning of the statute because forest management is not a traditional charitable purpose and because the benefits of NEFF's activities in the Hawley forest do not inure to a sufficiently large and fluid class of persons due in part to NEFF's insufficient efforts to promote the use of the land by the public.

2. *Application of G.L. c. 59, § 5, Third.* As a threshold matter, the assessors argue, as the board held, that a Clause Third exemption is not available to NEFF in part because the Legislature intended G.L. c. 61 to be the extent of the tax benefit afforded to private landowners holding undeveloped forest land.

a. *General Laws c. 61, "Classification and Taxation of Forest Land and Forest Products."* General Laws cc. 61, 61A, and 61B, together set forth a reduced-taxation scheme for land privately held as forest, agricultural, or recreational land. The assessors argue that the enactment of this statutory scheme demonstrates a legislative intent to provide for reduced taxation, but not a complete exemption, for privately held, undeveloped forest land.

The assessors argue that such a result demonstrates that the Legislature could not have intended Clause Third to apply to land-conservation organizations because Clause Third does not, by its terms, help to ensure that land is held in its undeveloped state as does G.L. c. 61.

Although Clause Third does not protect land from development, this does not defeat the application of Clause Third to NEFF or any other land-conservation organization. General Laws c. 61 and Clause Third serve distinct purposes. General Laws c. 61 is part of a broader statutory scheme animated by conservationist values that expressly creates a program of incentives to encourage conservation by private landowners, whether charitable corporations or otherwise.

In contrast, Clause Third does not seek to encourage charitable organizations to pursue particular substantive policy goals or charitable activities. Rather, **if a corporation qualifies as a "charitable" enterprise within the meaning of the statute, Clause Third exempts the organization's property from taxation based on the theory that property held for philanthropic, charitable, religious, or other quasi-public purposes in fact helps to relieve the burdens of government.**

Therefore, a charitable organization makes a sufficient "in-kind" contribution to the community that its property may be exempt from taxation without offending the notions of fairness and proportionality inherent in the system of taxation in the Commonwealth.

The Legislature never stated that c. 61 should serve as the only source of a property tax benefit for nonprofit conservation organizations. Indeed references to nonprofit land-conservation organizations in c. 61 demonstrate a view of these organizations as assisting municipalities in carrying out the purposes of the statute rather than acting as private landowners who must be encouraged to preserve land in its undeveloped state. **Therefore, we conclude that the board erred in holding that c. 61 precludes NEFF from eligibility for a Clause Third property tax exemption.**

3. *Property tax exemption under G.L. c. 59, § 5, Third.* Clause Third provides an exemption from taxation of real property when such property is held by a "charitable organization" and "occupied by [the organization] or its officers for the purposes for which it is organized." G.L. c. 59, § 5, Third. Qualification for a tax exemption under Clause Third is a two-pronged test.

SJC says land trusts are not limited to using reduced taxation programs like Ch. 61; they can claim exemption

SJC discusses the property tax exemption tests

Exemption statutes are strictly construed, and the burden lies with the party seeking an exemption to demonstrate that it qualifies according to the express terms or the necessary implication of a statute providing the exemption. **We conclude that the board erred in denying NEFF a property tax exemption and that NEFF is a charitable organization that, during the relevant tax year, occupied its parcel in Hawley for its charitable purposes within the meaning of G.L. c. 59, § 5, Third.**

Charity must be for the public, indefinite numbers of people

a. Charitable purpose requirement. The text of Clause Third defines a charitable organization as "a literary, benevolent, charitable or scientific institution or temperance society incorporated in the commonwealth" or a trust created for the same purposes. An organization's legal status as a charitable corporation or its exemption from Federal taxation under § 501(c)(3) of the United States tax code is not sufficient to satisfy this requirement. An organization must prove that "it is in fact so conducted that in actual operation it is a public charity."

In the context of the property tax exemption, we have long recognized that "charity" may constitute more than "mere alms giving." The dominant purpose of a charitable organization must be to perform work for the public good, not merely its own members. As Justice Gray, writing for the court in 1867, stated, in the legal sense, a charity is "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 by otherwise lessening the burdens of government."

Charity must help do things that gov't would otherwise do

NEFF's purposes are traditionally charitable within the meaning of Clause Third and the definition of charity. First, NEFF's charitable programs and activities, both in Hawley and throughout New England, are of the sort that their benefit inures to an indefinite number of people. Historically, the "benefit" provided by land held as open space or in its natural state has been measured by the direct access of people to that land for such purposes as recreation, scenic views, or education.

However, as the science of conservation has advanced, it has become more apparent that properly preserved and managed conservation land can provide a tangible benefit to a community even if few people enter the land. For example, the climate change adaptation advisory committee of the Executive Office of Energy and Environmental Affairs has identified the conservation of large forested blocks of land as an effective means of contributing to "ecosystem resilience" in the face of rising temperatures and more severe storms because forests naturally absorb carbon and other harmful emissions.

Non-profit land conservation protects resources, as gov't desires

Additionally, open space land naturally absorbs and helps dissipate stormwater runoff without the need for drainage systems that are required in paved and developed areas. Furthermore, forest land helps to clean the air by filtering particulates naturally, and it regulates and purifies the fresh water supply by stabilizing soils that store water over time and filter contaminants. Such benefits may extend beyond the parcel of land itself. Consequently, NEFF's activities are not of the sort that inure only to a limited group of people such as the organization's own members. [FN10] **Therefore, by holding land in its natural pristine condition and thereby protecting wildlife habitats, filtering the air and water supply, and absorbing carbon emissions, combined with engaging in sustainable harvests to ensure the longevity of the forest, NEFF engages in charitable activities of a type that may benefit the general public.** [FN11]

Moreover, NEFF's work in Hawley, and throughout Massachusetts, is traditionally charitable in the sense that it assists in lessening the burdens of government. Conservation and

Conservation is a public purpose

environmental protection are express obligations of the government in Massachusetts. Article 97 of the Amendments to the Massachusetts Constitution provides a right of the people to "clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment" and identifies as a "public purpose" the government's protection of people in their right to the conservation, development, and utilization of natural resources. **Therefore, the safeguarding of natural resources and basic environmental quality in the Commonwealth is a duty of the government.**

Land trusts are cited in many laws as gov't partners

More broadly, too, NEFF and other conservation organizations that align their missions with the conservation goals of the State have been identified as essential partners in Statewide conservation efforts. For example, a number of statutory schemes make nonprofit land-conservation organizations the partners of municipalities in conservation and land use programs:

[CPA statute]: G.L. c. 44B, § 12 (a) (permitting municipalities to appropriate funds for purchase of open space "community preservation" lands so long as lands are encumbered by conservation restrictions held by another government entity or nonprofit organization);

[CR statute]: G.L. c. 184, §§ 31-33 (permitting conservation restrictions to be held by government entity or by charitable corporation or trust with conservationist purpose);

[Forestry taxation]: G.L. c. 61, § 8 (permitting municipality to assign to nonprofit conservation organization its right of first refusal to purchase land from private landowner intending to remove land from forest classification).

NEFF's work helps the public and the gov't

Furthermore, the contribution that privately held forest land can make to improving air and water quality and mitigating the effects of erosion, rising temperatures, and other ecosystem disruptions assists the government by reducing the cost associated with safeguarding air and water supplies and responding to the effects of pollution. [FN14]

Moreover, we are not alone in recognizing conservation organizations as serving a traditionally charitable purpose by lessening the burdens of government. For example, in California, which, like Massachusetts has a strong public policy in favor of environmental protection, and which has adopted the definition of "charity" first set forth by this court in 1867 at least one appellate court has recognized that property used exclusively as a nature preserve to protect native plants or animals may qualify as charitable because it lessens the government's burden to preserve ecological communities and native flora and fauna. **Therefore, because NEFF's stated mission and land conservation activities are of the sort to inure to an indefinite number of people and lessen the burdens of government, NEFF pursues traditionally charitable purposes and activities within the meaning of Clause Third.**

Use of tax-exempt land is important to show occupancy...

b. Occupancy requirement. In order to qualify for a charitable tax exemption, NEFF must do more than satisfy the charitable status requirement. It must also show that it "occupies" the Hawley Forest in furtherance of its charitable purposes. Occupancy is "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."

The dominant use of the property must be "such as to contribute immediately to the promotion of the charity and to participate physically in the forwarding of its beneficent objects." Although extent of use is a factor, it is not decisive. However, if the charitable use of the property is "merely incidental" to a noncharitable use, the property will not be exempt from taxation.

...but the land trust's decision on use should be respected

We also have held that so long as the property is immediately appropriated to a use that furthers the organization's purposes, the courts shall defer to the organization's officers and directors in determining the extent of property required and the specific uses of the land that will best promote those purposes. The decisions of the organization will be entitled to deference so long as the directors act in good faith and not unreasonably in determining how to occupy and use the property at issue.

Conservation use should be different than private landowners leaving their land alone

The requirement contained in Clause Third that the charity "occupy" the land and the deferential rule can best be reconciled by considering the purpose of Clause Third. Clause Third recognizes the contribution a charity makes to the public either on, or through, its use of its property. Unlike a private landowner whose land ownership burdens the government by making use of a range of public services and benefits, the burden a charity's ownership of land places on the government may be offset by its use of the land in a manner that benefits the public and lessens the burdens of government.

Thus, it is fair and proportional to tax privately held land but to exempt those lands that are held charitably so long as the charity in fact uses the land in a manner that contributes to the community and reduces the burdens of government. The requirement that land be occupied for the organization's charitable purposes, then, is best understood as the Legislature seeking to ensure that the land is not being held as a private landowner would hold it but that it is being held as an entity would hold it for the public good.

In the case of open space or conservation land, this inquiry is complicated by the fact that both private and charitable landowners may have an incentive to hold land in an undeveloped state. As a result, even after an organization has demonstrated that it is a bona fide charitable organization within the meaning of Clause Third, it also must demonstrate that it occupies the parcel at issue in a manner less like a private landowner and more like an entity seeking to further the public good.

Not only should public access not be used as a guide for exemption, it may be harmful to conservation use

In the case of NEFF, the board approached this inquiry by focusing on the degree of public access NEFF encouraged and achieved at the Hawley forest and concluded that NEFF's promotion of public access was insufficient to demonstrate that it occupied the land for the benefit of the public. **However, Clause Third does not require imposing an affirmative duty to promote and facilitate public access on conservation lands in order to satisfy the occupancy requirement.** To impose this sort of duty exceeds the scope of the inquiry at the core of Clause Third's occupancy requirement. Additionally, in certain circumstances, such as in the case of a particularly fragile habitat or ecosystem, a public access requirement could operate to thwart the very conservation objectives an organization is seeking to achieve.

Therefore, we conclude that in a case such as NEFF's where the entry of the public onto the land is not necessary for the organization to achieve its charitable purposes, the promotion and achievement of public access is not required to demonstrate occupancy of the land in order to qualify for a Clause Third exemption. The right that is most central to the "bundle" of rights enjoyed by a private property owner is not the freedom from an obligation to invite visitors, it is the affirmative right to exclude others from one's property. Consequently, the appropriate inquiry begins with whether the entity takes affirmative steps to exclude the public from the land, such as through physical barriers, "no trespassing" signs, or actively patrolling the land.

If a charitable organization engages in such exclusion, the organization faces a heightened burden to show that such exclusion of the public is necessary to enable it to achieve its

charitable purposes. Although an organization may succeed in meeting this burden, it may do so only by presenting compelling facts demonstrating that the exclusion of the public is necessary to achieve a public benefit through other activities carried out on, or through use of, the land, such as when conservation activities may pose a danger to public safety or where the ecosystem is so fragile that any human presence could undermine the organization's conservation efforts.

Here, the evidence presented to the board demonstrated that NEFF did not take active steps to exclude the public from its land during the tax year in question. Consequently, where NEFF does not exclude the public from its land and offered evidence demonstrating how NEFF uses the land as a site on which it carries out sustainable forestry practices, the board erred in concluding that NEFF did not meet its burden to show that it occupied the Hawley forest within the meaning of Clause Third.

4. *Conclusion.* For the foregoing reasons, the decision of the Appellate Tax Board in denying NEFF's claim of exemption is reversed. *So ordered.*