

PROPERTY TAX EXEMPTION FOR LAND TRUSTS in MASSACHUSETTS

presented by

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*Sponsored by the Massachusetts
Land Trust Coalition*

“There is no shortage of creativity on the part of non-profit entities—most of them well-intentioned—to obtain tax exempt status for their real estate on the theory that it is held for conservation purposes.”

--Mass. Association of Assessing Officials,
Sept. 2008 Newsletter

MISTER BOFFO by Joe Martin



News
Item:
State
begins
to
challenge
property
tax
exemption
for
some
land
trust
parcels

OUTLINE

Property tax exemption for land trusts:

Why is this important?

Why is it important now?

First Principles

What does it mean to be tax-exempt from a state and federal perspective?

Your Charter: aim for consistency throughout

Purposes

Practices

Property Tax Exemption: Implementation

Public Access

Public Benefits

Why is this important now?



Why is this important?

- Lands owned in fee simple (outright) by land trusts, not conservation restrictions or other interests
- Mass. land trusts have enjoyed an undeserved presumption of property tax exemption: Burden of proof is on the land trust, not on the Assessors
- Land trusts have been able to take on new parcels without regard to property tax consequences
- Land trusts are maturing, have acquired large portfolios
- Loss of exemption could pose existential threat

Why is it important *now*?

- Spate of recent cases rejected at Appellate Tax Board
- ATB relying on public access as short cut to occupancy
- Change in Dept. of Revenue attitudes;
No Court of Appeals or SJC cases
- Desperate need for more local revenues
- By our success, land trusts have become a target

First Principles

Forget what we have all assumed for so long.
Get back to basics.



501(c)(3) is the GOLD Standard
for land trusts in the eyes of the IRS

BUT,

Does not guarantee property tax exemption

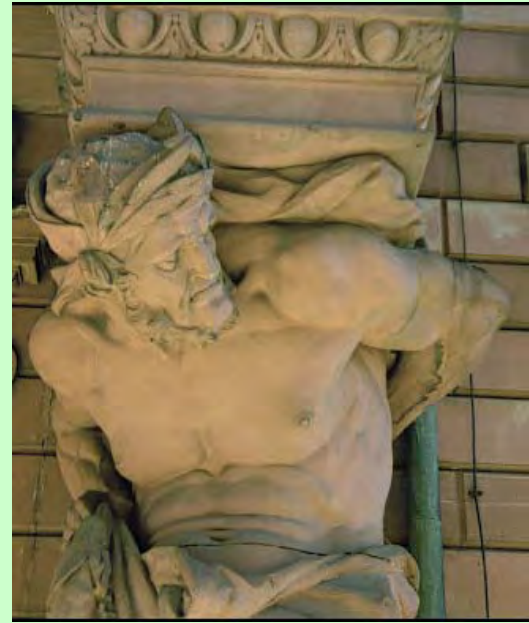
MUST MEET THE TESTS!

ALL THE TESTS!

Where do land trusts fit in as charities?

- Advancement of education and science
- Lessening a burden of government

*Land trusts
help to
shoulder the
burden of
government
in preserving
open space*



How do we know that our open space protection work lessens a burden of government?

IRS says so:

“By preserving ecologically significant undeveloped land, the organization is enhancing the accomplishment of express national policy of conservation of the nation’s unique natural resources.”

1976 Revenue Ruling by IRS (76-204, 1976-1 C.B. 152)

State: Mass. Department of Revenue

M.G.L. Chapter 59, Section 5 (clause 3)

Exempt from local property tax if a parcel is:

- (1) Owned by or held in trust for a charitable organization
- (2) Occupied by it or its officers for the purposes for which it is organized
- (3) income or profits may not be used or distributed for non-charitable purposes to its shareholders or its members

NOTE: exemption is parcel-specific, not a blanket for an exempt organization

CRUX of the Problem:

How do land trusts prove the negative? Are we “doing something” by leaving it alone?

*How can we occupy a parcel for conservation?
ATB says public access required*

Occupancy = “an active appropriation to the immediate use of the charitable cause for which the owner was organized”

- -225 Mass. 418 (1917)

EVOLUTION OF OPEN SPACE

PERCEPTION by Mass. taxing authorities

“Where a property is owned by a corporation whose charitable purposes include the preservation of natural resources, we think the simple act of maintaining that property in its natural condition would satisfy the occupancy requisite.”

- *Mass. Dept. of Revenue (Letter File #94-699)*

“Simply preserving property in its natural state is not enough to satisfy the requirement of “occupying” the property within the meaning of the statute...”

- *Mass. Dept. of Revenue (Letter File #2005-406)*

Conflicting Messages ?

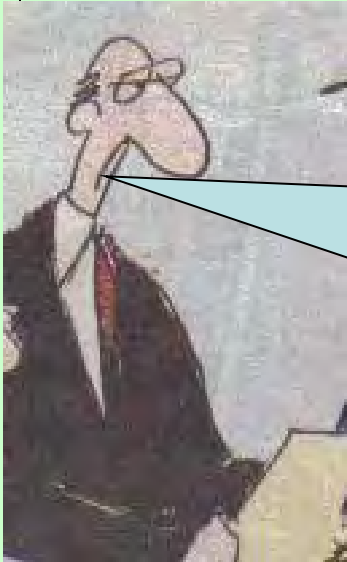
- Open space may be occupied by a charitable organization provided its use is consistent with the organization's charitable purpose Wheaton College v. Norton (232 Mass. 141 (1919) (maintenance by a college of woods and open space for the health and enjoyment of students)
- Massachusetts General Hospital v. Somerville, 101 Mass. 319 (1869) (Open land used for walking and recreation by patients and as a buffer with neighborhood)

Versus

- simply keeping the land open . . . is not enough to satisfy the requirement of “occupying” the property within the meaning of the statute.? ***Nature Preserve, Inc. v. Assessors of Pembroke*** (ATB, 2000)

In the absence of demonstrable “active appropriation” to conservation use, assessors and tax agents are beginning to default to public access as a means test to decide if a parcel is worthy of exemption from local taxes.

ATB reasons:



Public access = public occupation = charitable use for an indefinite class of people = exempt property. Voila!

Property tax exemption occupancy test =

Firm, logical connection and consistency among your land trust's mission, purposes, by-laws, policies and their implementation as they pertain to any given parcel of land that you own

Need to go back and re-examine what you say you are doing and intending to do in light of what you have actually been doing; assess need to amend purposes and policies to fit practices

Example: “advancement of science” purpose; so....are you ever going to do or sponsor any research?

Samples of Purposes *(handout menu)*

(comparative analysis of Mass. land trusts)

- *Protect land and water resources*
- *Education*
- *Science*
- *Planning (Land Use)*
- *Recreation*
- *Land Management/Stewardship*
- *Scenery*
- *Other*

Practices to establish OCCUPANCY

***Affirmative actions** you can take to provide clear evidence of your intent to preserve land:*

- Two years to establish “occupancy”
- Plan how your property will be used, how you will provide public access, education, scientific research, recreation, etc.
- Put plans in place; keep a careful written record of all meetings, preparations, field work, grant writing – dates, times, individuals involved
- Plan for educational and/or scientific excursions that the public will be invited to attend; keep copies of notices, flyers, ads, etc.
- Make the property inviting to attend: trail markers, signs, educational markers, benches
- Review your town’s Open Space Plan to determine whether it needs to be more specific such as identifying priority lands that you intend to purchase
- Know local, regional and state protection plans, NHESP maps, ACEC maps, greenways, blueways, etc. – be prepared to show that your property is located within, abuts or has a relationship to the priorities on established plans or maps

Appendix 1. Public Benefits of Mass Audubon Sanctuary Land

Sanctuary: Dead Neck Sampson's Island

- Human Health
 - Protects Clean Water for human health (contains groundwater protection zones (I, II, III) or surface water protection zones (A, B, C))
 - Provides Clean Air for human health
 - Provides passive recreation opportunities to promote physical fitness
 - Provides opportunities for spiritual renewal/mental health

- Public Interests Protected Under the Massachusetts Wetlands Protection Act
 - Protection of public and private water supply
 - Protection of ground water supply
 - Flood control
 - Storm damage prevention
 - Prevention of pollution
 - Protection of land containing shellfish
 - Protection of fisheries
 - Protection of wildlife habitat

- Protects Priority Conservation Land Identified by Government Agency
 - BioMap (Core, Critical Supporting Landscape)
 - Priority Habitat (NHESP)
 - Local Open Space & Recreation Plan
 - Historic Resource landscape inventories
 - State-designated Forest Reserve
 - State-designated Forest Legacy Areas
 - State-designated Area of Critical Environmental Concern (ACEC)
 - Flood Hazard Zones
 - Groundwater Protection Districts
 - Watershed Protection Districts
 - Certified vernal pools
 - Coldwater Fisheries Resources
 - Protects or Enhances Abutting or Nearby Gov't. Conservation Holding

- Provides research opportunities for scientists studying natural ecological processes

- Climate Change Mitigation and Adaptation
 - Stores carbon
 - Absorbs atmospheric carbon
 - Protects vegetation along cold water stream
 - Provides flood storage
 - Provides for migration of salt marsh system as sea level rises
 - Provides migration corridors for organisms adapting their ranges to climate change
 - Vegetative buffers to climate extremes (drought, storms)
 - Provides natural communities for understanding the impacts of climate change

Mass Audubon has developed a checklist of the public benefits of its sanctuaries as part of its ecological assessment reports

- Provides migration corridors for organisms adapting their ranges to climate change
- Vegetative buffers to climate extremes (drought, storms)
- Provides natural communities for understanding the impacts of climate change

- Habitat and Biodiversity
 - Protects known rare (federal or state listed) species of plants and animals.
 - Protects habitat for rare species
 - Protects species listed in the State Wildlife Action Plan (including those not state- or federally-listed)
 - Protects high quality examples of natural communities

- Working Landscapes and Human Communities
 - Protects high quality agricultural soils
 - Enhances viability of working landscape (farms, forestry)
 - Preserves key elements of host community's "sense of place"
 - Protects visual/aesthetic qualities
 - Reduces or eliminates potential future demands for community services (school, police, fire, water & sewer connection)
 - Supports or enhances nearby property values
 - Provides educational opportunities for visitors

- Landscape Connections
 - Links to other protected land
 - Part of long distance passive recreation trail

- Economic benefits of the ecosystem (Ecosystem Services)
 - Waste assimilation
 - Nutrient regulation
 - Soil retention and formation
 - Pollination
 - Local food or fiber production

ISSUE FOR LAND TRUSTS

- Is a land trust due its statutory exemption where it owns a property for protection purposes, but has not provided public access because
 - (1) the property does not easily lend itself to public access because of terrain or the nature of the flora, or
 - (2) the property is not appropriate for public access because of the presence of an endangered or threatened species or the presence of critical or fragile habitat susceptible to damage by the presence of the public requires that the public be precluded from the property, or
 - (3) the property provides some other critical benefit that is not consistent with public access (e.g., preservation of a local farm)

Outreach to Assessors

What to do *BEFORE* you get a tax bill:

- Create spreadsheet of your property inventory and resource protection benefits
- Collect all assessing data on your lands (*field cards*)
- Analyze the values (*some just out of whack*)
- Meet with assessing staff: introduce the land trust, its activities, ask to have the valuation of LT lands explained
- Seek reductions in value: (*reduce your value as a target*)
 - Formulaic; seek to use residual values
 - Abatement process
 - Consider placing parcel(s) under one of the chapter 61 land statutes or under a Conservation Restriction or Charitable Trust

Outreach to Assessors

Analysis of a land trust property inventory:

Established 1983

Now, largest private landowner in town

Owens 103 parcels, total 304 acres

Assessed valuation = \$27,000,000

Average value per LT acre = \$89,000

If all taxed = \$159,000 property taxes / year

Residual value per acre = \$12,000

If assessed as residual land = \$3,600,000

Response to Assessors

What to do *AFTER* you get a tax bill:

- Seek professional legal advice from the start
- Review FAQs, other briefings on MLTC website
- Try informal meeting, ask relief (see below)
- Abatement
- Formal response
- Let MLTC know



ASSESSORS OFFICE

Box 2012
Tel: (508) 349-7004 ext 15
E-mail: assess@bro-ma.gov

Brookline, MA 02666
Fax: (508) 349-5506
bro-ma.gov

March 17, 2009

Brookline Conservation Trust
Box 327
Brookline, MA 02652-0327

ATTENTION: LINDA E. MURPHY, ASST. TREASURER

RE: CARRS LN., LOT 2, PLAN BOOK 627, PAGE 7

Dear Ms. Murphy:

We are in receipt of the Form 1B-3 which you filed on behalf of the Brookline Conservation Trust for an exemption from the Fiscal Year 2010 Real Estate tax for the property on Carr's Lane shown as Lot 2 on Plan Book 627, Page 7.

A recent Appellate Tax Board decision in *Brookline Conservation Trust v. Board of Assessors of Brookline* denied a property tax exemption under Massachusetts General Laws Chapter 59, Section 5, Clause 3 to the appellant. The Board held that "... simply keeping land open and allowing its natural habitat to flourish is not sufficiently charitable." (You can find the decision in its entirety in "Current Developments in Municipal Law -- 2008 Appellate Tax Board Decisions" published by the Massachusetts Department of Revenue Division of Local Services. This publication is on-line at http://www.mass.gov/Ador/docs/dls/mlfb/lawseminar/2008_Book2A_AppellateTaxCase.pdf.) I have enclosed an article on this decision that was published by the Division of Local Services in the January/February issue of its "City & Town" newsletter. The last sentence of this article states the following: "Access to and substantial use by the general public of the land is generally required for a land conservation organization to qualify for a property tax exemption as a charitable organization." In light of this statement, it appears that the property you are applying for does not qualify for a charitable exemption.

I printed the deeds and plan for this property and visited the site on February 27, 2009. I found no signs indicating the location of and access to this property and identifying it as being owned by The Brookline Conservation Trust and available for use by the general public. Furthermore, neither the deeds nor the plan appear to indicate the right to an easement over 3 Carrs Ln. (Lot 1 on Form Book 627, Page 7) to access this property.

Conservation Trust

March 17, 2009

Page 2

We invite you or a representative of The Brookline Conservation Trust to meet with the Board of Assessors to discuss this matter before action is taken on the application. The next meeting is scheduled for Tuesday, March 24, 2009 at 9:30 a.m. Please let me know if you or someone else will attend. If a representative of the Trust is unable to attend this meeting, we will notify you of the next scheduled meeting. The Board must act on your application no later than **MAY 26, 2009**.

According to our records, The Brookline Conservation Trust owns three other parcels which abut the property on Carrs Ln. (The parcel ID numbers are 50-151, 50-213 and 50-260.) The total area for all four parcels is approximately 14.05 acres which meets the minimum five-acre requirement for classification as recreational land under General Laws Chapter 61B. Please note that Chapter 61B was revised by the legislature on March 22, 2007, in Chapter 394 of the Acts of 2007. The "Taxpayer's Guide to Classification and Taxation of Recreational Land in Massachusetts" published by the Massachusetts Department of Revenue has not yet been updated to reflect the revisions, so I am sending you a form entitled "Property Owner's Acknowledgement of Rights and Obligations under Classified Recreational Land Program" which has been revised and which includes the same information as the Taxpayer's Guide. The deadline for filing for classification under Chapter 61B for Fiscal Year 2011 is **October 1, 2009**. (The deadline for Fiscal Year 2010 was October 1, 2008.) Please contact our office if you would like an application mailed to you.

Another option would be for the Trust to file for a conservation restriction as outlined in General Laws Chapter 184, Sections 31 and 32. Land encumbered by a conservation restriction would most likely see a reduction in its fair market value, thereby reducing, **but not eliminating**, the Real Estate tax assessment.

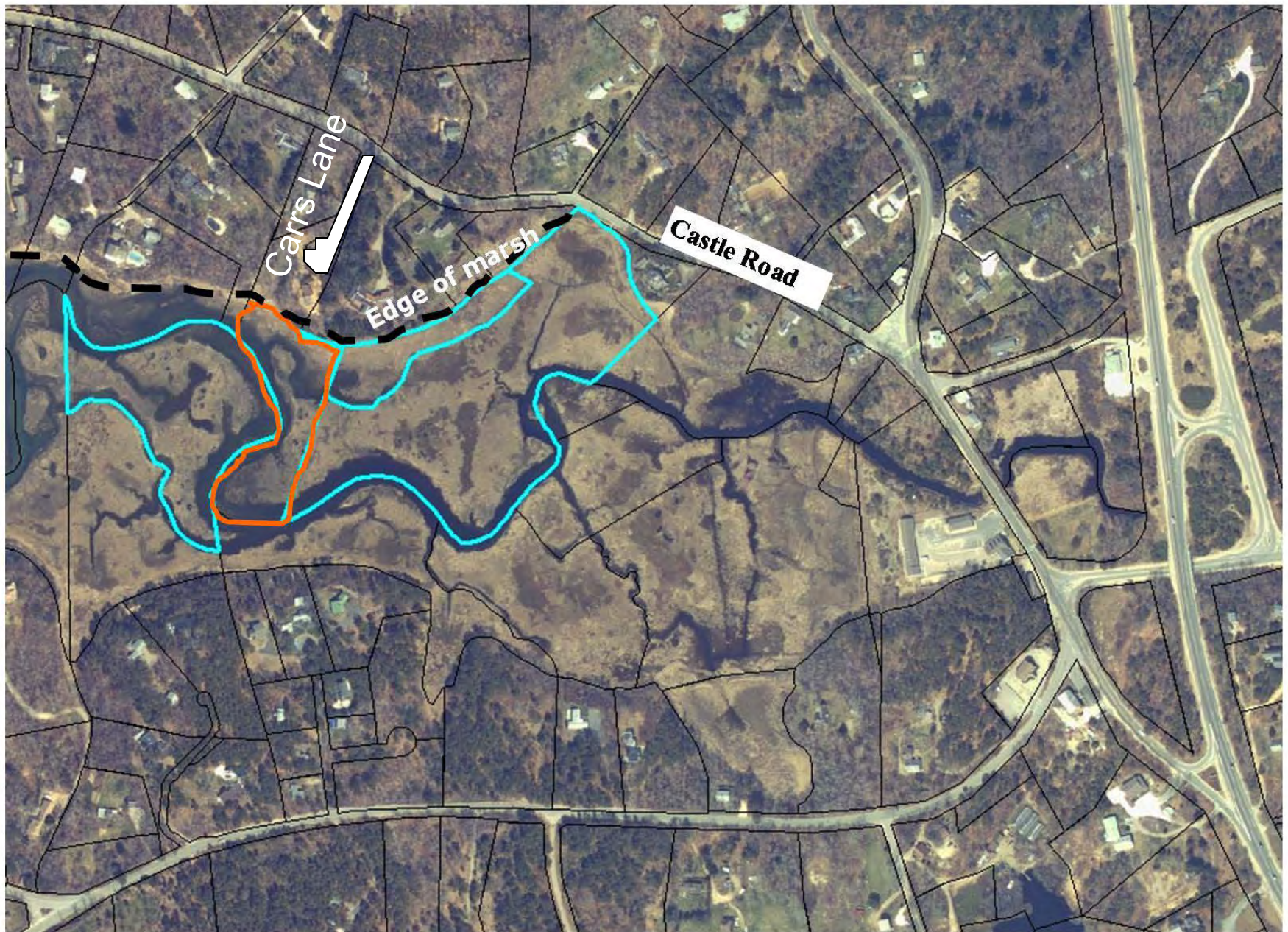
Thank you for your understanding in this matter. Please contact me or Linda Maloney, the Deputy Assessor if you have any questions or need any further information.

Sincerely,

Frances M. Coco
Assistant Deputy Assessor

Enclosures

The Letter you do not want to receive!



Conservation Trust fee simple properties, upper tidal :

MA Source: MassGIS, 2003 parcel data layer

New England Forestry Foundation v. Town of Hawley Board of Assessors (2010)

The Hawley MA
(pop. 336)
Assessors denied
NEFF's claim of
exemption for the
134-acre Stetson-
Phelps Memorial
Forest after NEFF
stopped paying
PILOT under Ch. 61



*Stetson Road, a public way, leads to the
NEFF Memorial Forest past this house*

ATB Docket No. F306063; decision pending as of March 2011

Where do we go from here?

- MLTC monitor ATB cases and collect reports from the field
- DOR guidance or intervention? Unlikely
- Legislative fix? Unlikely
- Find a worthy appeal and pursue it to SJC for clarity



For More Information

Visit the Massachusetts Land Trust Coalition
website: www.MassLand.org

For more written materials and briefing articles



Massachusetts Land Trust Coalition
www.MassLand.org