

## **WHAT EVERY LAND TRUST IN MASSACHUSETTS OUGHT TO KNOW ABOUT CHALLENGES TO PROPERTY TAX EXEMPTION (but never bothered to ask until now)**

### **NEFF v. Town of Hawley argued before the state supreme court last month? What is this all about?**

Until about eight years ago, the exemption of land owned by conservation land trusts was standard practice in our state. Then some local assessors began questioning some small, seemingly-private land trusts and sending them a tax bill (Brookline, Bourne, Plymouth, etc.) Appeals by the land trusts failed. The Mass. Land Trust Coalition decided there should be a test case and a precedent set by the highest court in the state (SJC). The New England Forestry Foundation, a well-established regional land trust, was encouraged to challenge a \$178 tax bill it received from the tiny Town of Hawley in W. Mass. on a forest it owns adjoining a state forest. The SJC took it on appeal last year, heard arguments in Jan. 2014. A ruling is expected this spring.

### **What will it mean if Hawley wins?**

It depends on how the SJC decision is worded, but it could require assessors to actively consider sending tax bills on all or some of the land trust parcels in their town. Assessors do not make policy, but generally like more new things to tax, as a way to keep others' taxes from rising. Without mitigation, many land trusts could be hampered in budgeting or forced to shut down, if faced with an annual tax bill in the thousands to hundreds of thousands.

### **What if NEFF wins?**

Again, depending on how the decision is crafted, it should at least provide a land trust with the benefit of the doubt that its work is considered traditionally charitable and that conservation of land is a sufficient public purpose for exemption. Court cases like this in other states in recent years have been decided in our favor.

### **What is the Mass. Land Trust Coalition doing about this?**

MLTC, the statewide coordinating body for local and regional land trusts, has devoted great energy and resources to this issue since it arose. MLTC has provided guidance for land trusts working with assessors, presented workshops on the issue, raised funds for NEFF's defense, and helped NEFF to secure a strong team of attorneys to provide extensive briefs for the SJC. Briefs were filed on behalf of NEFF, MLTC, MACC, The Compact, MassAudubon, The Trustees of Reservations, The Nature Conservancy, and Land Trust Alliance.

### **Can you explain the actual legal issue for the layperson?**

Property tax exemption law in Mass. was set up 150 years ago, long before land conservation was even dreamed of as a public activity. Charities then and since were instructed to own and occupy land for their charitable purpose, if they wanted tax exemption. That worked fine for schools, hospitals and churches. How does a conservation charity occupy its land for conservation? Some assessors think that means opening it formally for public use. Failing that, what does the "active appropriation" of the land (another definition of "occupy") mean? Evidence of scientific research and education on the land helps. But some lands need to be left alone for conservation to have meaning. Some are fragile (rare species, wetlands), some are working (farms), some are dangerous (eroding cliffs, waterfalls).

### **If the decision is unfavorable to land trusts, can't we just get the legislature to fix this for us?**

Depending on how the decision is modulated, MLTC would consider legislative amendments to the General Laws (Ch. 59) regarding property tax exemption. Legislative success is not a given. Municipalities may lobby against exempting land trust properties, if they perceive this as a potential windfall.

### **What might a modulated decision look like?**

One in which conservation of land is deemed a charitable use worthy of exemption, but with some evidence of bona fide intent to conserve being shown. For instance, does the parcel have "barriers to exit," such as a conservation restriction or charitable trust overlay on it? Is it or can it be opened with a trail? Does it have a sincere management plan? Does it figure into town or state resource planning?.....Stay tuned.