



# COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

## SJC Bolsters Land Preservation Efforts

JUNE 12, 2014

**Brian R. Beaton** – The Supreme Judicial Court’s recent decision in *New England Forestry Foundation, Inc. v. Board of Assessors of Hawley*, 468 Mass. 138 (2014), puts land preservation in the Commonwealth on terra firma. In *Hawley*, the Court reversed a decision of the Massachusetts Appellate Tax Board (“Tax Board”) denying the New England Forestry Foundation, Inc. (“NEFF”) tax-exempt status for a 120 acre parcel of forest land located in the Town of Hawley (“Hawley Forest”). The Court held that NEFF was entitled to a charitable tax exemption on the Hawley Forest pursuant to G.L. c. 59 § 5, Third (“Clause Third”). This decision should serve as a catalyst for further land conservation because it affirms the charitable nature of land preservation and provides a protocol for obtaining and maintaining tax-exempt property status.

NEFF is one of the largest conservation groups in New England and acquired the Hawley Forest in 1999. Subsequently, NEFF enrolled the Hawley Forest in the tax assessment program set forth under G.L. c. 61§ 2 (“Chapter 61”). The Chapter 61 program affords qualifying landowners a reduced tax burden while requiring that subject property remain undeveloped and maintained in accordance with a forest management plan. In 2009, NEFF applied to the Hawley Assessors Office pursuant to the Clause Third for a complete property tax exemption. The Clause Third is a mechanism by which the real property of a charitable organization may be exempt from taxation. The Assessor denied this request, and NEFF appealed the Assessor’s decision to the Tax Board. The Tax Board concluded that NEFF’s management of the Hawley Forest was not a charitable purpose under the Clause Third and denied the request. NEFF then appealed the Tax Board’s decision to the Court.

The Court applied a two-pronged test for qualification for a tax exemption under the Clause Third: (1) an organization seeking the exemption must be charitable; and (2) it must occupy the property in furtherance of its charitable purpose. Regarding the first prong, the Court concluded that preserving land and safeguarding natural habitats and resources are goals of the Commonwealth and therefore consistent with traditional charitable purposes, including those aimed in lessening the burdens of government. The Court acknowledged NEFF’s mission to provide for conservation and ecologically sustainable forestry management practices and protection of habitat, water and other natural resources, and held that these are charitable activities consistent with the Clause Third.

With respect to the second prong, the Court analyzed whether NEFF “occupied” the Hawley Forest in a manner consistent with its charitable purpose. The Tax Board had concluded that NEFF failed to sufficiently promote public access to the Hawley Forest, and as a result did not occupy the land for a charitable purpose. Reversing this decision, the Court rejected the requirement of affirmative steps to promote public access in order to qualify as a charitable purpose. The Court noted that a mandatory public access requirement may run counter to specific conservation goals such as preservation of sensitive habitats. Ultimately the Court concluded that NEFF satisfied both prongs set forth under the Clause Third and was entitled to a full property tax exemption on the Hawley Forest.

The Court’s ruling in *Hawley* provides significant benefits to charitable conservation organizations. The decision alleviates concerns about diversion of finances towards property tax liabilities and enables the deployment of additional financial resources towards land preservation and maintenance. Additionally, the decision supports the discretion of charitable conservation organizations in managing their land and offers a framework for achieving and maintaining tax-exempt property status for preserved land. A note of caution, however, for groups which seek to exclude the public from land. The Court established an enhanced burden in these instances whereby the charitable organization must demonstrate that public exclusion is necessary to enable it to complete its charitable purpose and its legitimate conservation objectives.