

## Taxable Status of Property Owned by a Non-Profit Conservation Organization

*Prepared for the 2015 Massachusetts Municipal Association Annual Meeting*

The Supreme Judicial Court (“SJC”) recently decided a case with important implications for determining whether a property qualifies for a charitable exemption from local real estate taxes under G.L. c.59, §5, Clause 3. In New England Forestry Foundation, Inc. v. Board of Assessors of the Town of Hawley, 468 Mass. 138 (2014), the SJC reversed the Appellate Tax Board’s (“ATB”) decision that New England Forestry Foundation, Inc. (“NEFF”), a non-profit conservation organization, was not entitled to an exemption from real estate taxes for a parcel of undeveloped forest land.

Previously, in order to qualify for a charitable exemption, a charitable organization had to demonstrate that it actively uses its land for its charitable purpose. In New England Forestry Foundation, the Court broadened this standard for non-profit conservation organizations requiring only that NEFF demonstrate that it “occupies” or “holds” its land for conservation purposes. The Court reasoned that although NEFF holds the land in its natural condition, NEFF’s “use” of the property results in the protection of wildlife habitat, air and water quality, and by engaging in sustainable forestry, NEFF’s activities benefit the wider public and lessen the burden on government to protect natural resources. The Court was also influenced by the fact that NEFF does not exclude the public from its lands. Based on the SJC’s decision, it is now possible for non-profit conservation organizations holding land in its natural state to be entitled to a tax exemption under Clause 3, even if the organization does not actively “use” the property in question.

NEFF and similar conservation organizations own land within many communities across the Commonwealth. It is essential that Assessors receiving applications from these organizations for tax exempt classification are aware of the holding in this case. Upon receipt of an application for a charitable exemption, therefore, municipalities should consider not only whether an organization maintains a non-profit status, but also the specific actions that are being undertaken at such a property. For example, upon receipt of an application from a conservation organization, municipalities should determine whether the organization has a conservation plan, practices sustainable forestry and whether the “occupation” of the property lessens the burdens to government to protect natural resources. If it is determined that the organization’s “use” of the property furthers these purposes, the property may qualify for tax exemption under G.L. c. 59, §5, Clause 3.

Please contact Attorney Thomas W. McEnaney with further questions by email at [tmcenaney@k-plaw.com](mailto:tmcenaney@k-plaw.com) or at 617.556.0007.

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