COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Suffolk, ss. SJC-11432

NEW ENGLAND FORESTRY FOUNDATION, INC.

APPELLANT

V.

BOARD OF ASSESSORS OF THE TOWN OF HAWLEY

APPELLEE

On Appeal from a Final Decision of the Appellate Tax Board, No. F306063

BRIEF OF AMICUS CURIAE

MASSACHUSETTS ASSOCIATION OF ASSESSING OFFICERS

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STATEMENT OF INTEREST OF AMICUS CURIAE

Massachusetts Association of Assessing Officers

The Massachusetts Association of Assessing Officers ("MAAO") is a Massachusetts non-profit organization established in 1890 and incorporated in 1980 to promote the efficient and uniform administration of local tax laws.[1] The membership of the MAAO is comprised of Assessing Officers, members of Boards of Assessors and their Assistants from cities and towns across the Commonwealth of Massachusetts. Its members play a critical role in assuring that the Legislative property tax policy, as expressed through legislation and/or regulation, are implemented to achieve the desired legislative objective. Through its enactment of G.L. c. 61, entitled "Classification and Taxation of Forest Lands and Forest Products" the legislature has vested in the Assessors of the Commonwealth an administrative role in the preservation and conservation of forest lands in Massachusetts. The Assessor

[1] The MAAO is organized as and operated exclusively for charitable purposes within the provisions of G.L. c. 180 and 26 U.S.C. § 501 (c) (3).

members of the MAAO are tasked with the administration the real estate tax statutes. More specifically, the MAAO has a particular interest to ensure that local tax laws regarding Real Property taxation, exemptions, and classification, are administered fairly and in compliance with Massachusetts Legislative intent.

In this case the New England Forestry Foundation, Inc. ("NEFF" or "Appellant") advocates that the Court adopt a radical alteration to the G.L. c. 59, §5, Clause Third real estate tax exemption statute for charitable organizations; that is, a real property tax exemption depends soley on the nature of the entity that owns the property and is divorced from the use of the specific property at issue. Adoption of this radical "new way" to analyze the application of Clause Third real property charitable tax exemptions would have unintended consequences to the system of tax administration and the application of Clause Third exemptions as well as frustrate Neff's stated goal of preserving forest

land. Under Chapter 61, the legislature provided forest land owners a structure of reduced real estate property tax in exchange for the landowner agreeing to implement a ten year forest land management plan developed by a professional forester and approved by the state forester; and by the granting of a "right of first refusal" to the city or town where the land is located upon sale of the land. These provisions, administered by the assessor, allow cities and towns in the Commonwealth to monitor the entry and exit of property held as forest land. If the Court adopts the Appellant's erroneous contention that it is, and similarly situated forest land owners are, eligible to be exempt under Clause Third, simply for owning conservation or forest land, then cities and towns in the Commonwealth may lose the right to preserve forest land situated within its corporate limits. In addition, countless tax revenue[2] would be lost by the exit from the reduced

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[2] In 2008, the Executive Office of Energy and Environ Affairs issued a report on the "Assessment of The Forests of the Commonwealth" estimated that over three million acres of land were classified

tax structure under Chapter 61. The MAAO therefore requests this court to uphold the decision of the Appellate Tax Board and hold that the subject property located in the Town of Hawley is not entitled to an exemption pursuant to G.L. c. 59, § 5, Clause Third.

ISSUE PRESENTED

This Amicus brief will bear on the following issues:

1. Whether the Appellate Tax Board Correctly determined certain forest land owned by the Appellant, a land conservation organization did not qualify for charitable tax exemption pursuant to G. L. c. 59, § 5, Clause Third.

2. Whether the Appellate Tax Board correctly determined that the Appellant's purposes and activities do not fit into the

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as forest under the land use statute. http://www.mass.gov/eea/docs/dcr/stewardship/forestry/assessment-of-forest-resources-appendix.pdf at page 13.

established realm of traditional charities according to Massachusetts case law, that property was not sufficiently open to and accessible by the public to qualify for tax exemption, and the Appellant failed to demonstrate a sufficiently active appropriation of the subject property to achieve a public benefit.

STATEMENT OF THE CASE

The Amicus Brief adopts the statement of the case contained in the Brief filed by the Appellee, Board of Assessors of Hawley.

ARGUMENT

I. USING WELL ESTABLISHED PRECEDENT THE APPELLATE TAX BOARD CORRECTLY DETERMINED APPELLANT WAS NOT ENTITLED TO EXEMPTION UNDER G.L. C. 59. § 5, CLAUSE THIRD.

In administering tax statutes and case law in the cities and towns of the Commonwealth Assessors rely on the consistent application of valuation, tax reduction statutes and charitable exemption requests. The Appellate Tax Board ("ATB") correctly determined that the Appellant, New

England Forestry Foundation, Inc. was not entitled charitable exemption for the forest land owned in the Town of Hawley. The ATB applied well established precedent in its analysis of the Appellant's claim for exemption. In its Finding of Facts and Reports, the ATB reported that the "subject property was not owned and occupied by a charitable organization in furtherance of a charitable purpose" and accordingly the ATB ruled that that the subject property was not exempt from real property tax.

The ATB decision animated a long history of judicial interpretation of G.L. 59, § 5, Clause Third exemption cases that recognized that exemption under Clause Third is "matter of special favor or grace. It will be recognized only where the property falls squarely within the words of a legislative Command. Western Massachusetts Lifecare Corp. v Board of Assessors of Springfield, 434 Mass. 96, 102 (1991). Here NEFF had the "grave" burden of proving that it was entitled to tax exemption and any doubt must

operate against the entity seeking the exemption. Boston Symphony Orchestra, Inc. v Board of Assessors of the City of Boston, 294 Mass. 248, 257 (1933.

While acknowledging the important role conservation plays in our communities, the ATB found Appellant's claims for tax exemption failed to meet its "grave" burden of proving that it was entitled to such exemption. According to the Finds of Facts and Reports, the ATB thoroughly applying Clause Third and relevant case law:

- Not finding it dispositive for exemption purposes, that NEFF was a charitable corporation organized under G.L. 180, the ATB looked to the Appellant to "prove that it is in fact so conducted that in actual operation it is a public charity." Western Massachusetts Lifecare Corp. v Board of Assessors of Springfield, 434 Mass. 96, 102 (1991).
- The ATB looked to the Appellant's claim that its educational opportunities to its

members and the abutters to the subject property qualified it for exemption under Clause Third. The only educational opportunities offered by the Appellant, at the subject property were intended pre and post cut walks of the parcel, which were to occur only every ten or twenty years and as of hearing have never occurred. The ATB found the Appellant's educational opportunities were intended to be offered on such a limited basis to a limited class of beneficiaries that is was insufficient to be considered a benefit to the public. Assessors of Boston v. Garland School of Homemaking, 296 Mass. 378, 386-389 (1936).

- The ATB also determined that the Appellant's claim that the "preservation of the habitat for diverse species, while laudable, failed to demonstrate a sufficiently active appropriation of the property to achieve a public benefit. Assessors of Boston v. The Vincent Club, 351 Mass. 10, 14 (1966).

Finally, the ATB noted that the Legislature provided for favorable (reduced) tax treatment for forest land properties that are maintained in accordance with a forest management plan under G. L. c. 61, indicated that the legislature did not intend to exempt forest land completely from tax, but only to provide a reduced tax burden

II. THE STANDARD OF REVIEW

The Appellate Courts have granted the Appellate Tax Board great deference in reviewing its decisions limiting such review to questions of law.

> "Our review of any decision of the board is limited to questions of law." Towle v. Commissioner of Rev., 397 Mass. 599 , 601 (1986). "In general, we grant substantial deference to an interpretation of a statute by the administrative agency charged with its administration." Protective Life Ins. Co. v. Sullivan, 425 Mass. 615 , 618 (1997). However, statutory interpretation is ultimately for the court; "we review . . . de novo." Ibid. Wilde … v. BOA Holliston, 84 Mass. App. Ct. 102, 104 (2013).

In the matter before the Court, the ATB faithfully applied precedent and long established

legislative intent to the evaluation of the Appellant's claim and it must be affirmed.

III. THE APPELLANT'S RADICAL ARGUMENT THAT: G.L. C. 59. § 5, CLAUSE THIRD REAL PROPERTY TAX EXEMPTIONS DEPEND SOLELY ON THE NATURE OF THE OWNER AND NOT ON THE PROPERTY AT ISSUE WOULD HAVE FAR REACHING AND ADVERSE CONSEQUENCES.

In the case before this court, the Appellant is seeking a radical turning away from the well established statutory requirements that a property owner must meet to be able to avail itself of a Charitable exemption under C. 59 § 5. Clause Third. If this Court rules for the Appellant, the current property tax scheme developed by the legislature would be turned on its head. The consequences would likely result in the loss of revenue for cities and towns, especially in rural communities comprised mostly of forested properties; a decrease in forest management planning; a reduced role for cities and towns abilitiy to promote conservation within its corporate limits; and, perhaps most importantly, a

decrease in conservation land throughout the Commonwealth of Massachusetts.

A. APPELLANT INCORRECTLY ASSERTS THAT INCORPORATION UNDER G.L. C. 180 AND Federal Status under 24 U.S.C. 501 (C)(3) AUTOMATICALLY INVESTS NEFF WITH "CHARITABLE ORGANIZATION" STATUS PURSUANT G.L. 59 § 5, CLAUSE THIRD PROPERTY TAX EXEMPTION.

The Appellant incorrectly posits that its status as a c. 180 non-profit corporation involved in conservation, somehow automatically entitles it properties, including the Hawley property, to tax exempt status under Clause Third. If this theory were adopted, then a sea-change would occur in the administration of exemption of tax under Clause Third attaching the tax exemption to the owner and not to the use of the particular property in question. Assessment and administrative problems would abound. Under the Appellant's rubric, a property's charitable exemption status would depend solely on the nature of the owner. This is an approach rejected in the very language of Clause Third.

Such a scheme of charitable tax exemption runs contrary to Massachusetts case law and legislative intent. The term "Charitable Organization" pursuant to Clause Third, is a term of art that is specific to Clause Third. In fact, the ATB has repeatedly found that an entity's Federal charitable status "is not dispositive in determining whether the property qualifies for the Massachusetts property tax exemption." Jewish Geriatric Services, Inc. v Assessors of Longmeadow, 62 Mass. App. ct. 73 (2004). Further, this court has held that, "The mere fact that the organization claiming exemption has been organized as a charitable corporation does not automatically mean that it is entitled to an exemption for its property…Rather the organization 'must prove that it is in fact so conducted that in actual operation it is a public charity." Western Massachusetts Lifecare Corp. v. Assessors of Springfield, 434 Mass. 96, 102 (2001) (quoting Jacob's Pillow Dance Festival, Inc. v. Assessors of Becket, 320 Mass. 311, 313 (1946). Dispensing with the requirement that an entity seeking a tax

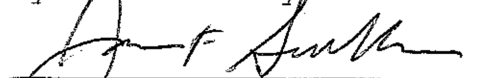
exemption prove that it is in fact engaging in a charitable activity in or on the subject parcel, would radically alter Clause Third analysis and tax administration throughout this Commonwealth. If the Appellant's theory is accepted by this court, an owner would not have to demonstrate use or occupation of property to achieve an exemption for that property.

CONCLUSION

For the foregoing reasons, this court should affirm the decision of the Appellate Tax Board and hold that the subject property located in the Town of Hawley is not entitled to an exemption pursuant to G.L. c. 59, § 5, Clause Third.

Respectfully submitted,

Massachusetts Association
of Assessing Officers
By its Attorney,



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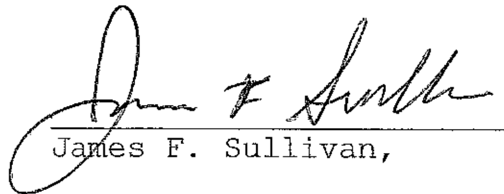
CERTIFICATE OF COMPLIANCE
(Pursuant to Rule 16(k))

The undersigned hereby certifies that the forgoing Brief is in compliance with Massachusetts Rules of Appellate Procedure, Rule 16(k).



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