

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

NEW ENGLAND FORESTRY
FOUNDATION, INC.

v.

BOARD OF ASSESSORS OF
THE TOWN OF HAWLEY

Docket No. F306063

Promulgated:
January 28, 2013

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the appellee, Board of Assessors of the Town of Hawley ("assessors" or "appellee"), to abate a tax on certain real estate located in the Town of Hawley owned by and assessed to New England Forestry Foundation, Inc. ("NEFF" or "appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2010.

Commissioner Egan heard this appeal. Chairman Hammond and Commissioners Scharaffa, Rose and Mulhern joined her in the decision for the appellee.

These findings of fact and report are made pursuant to the appellant's request under G.L. c. 58A, § 13 and 831 CMR 1.32.

Ray Lyons, Esq. for the appellant.

Richard Desmarais, assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2009, the relevant assessment date for fiscal year 2010 ("fiscal year at issue"), NEFF was the assessed owner of a single lot of land located in the Town of Hawley ("subject property"). For the fiscal year at issue, NEFF timely filed a Form 3ABC with the assessors on February 25, 2009. The appellee nonetheless valued the subject property at \$11,800 and assessed a tax thereon, at the rate of \$14.65 per \$1,000, in the total amount of \$172.87. The appellant timely paid the tax due. On November 18, 2009, the appellant applied in writing for abatement to the appellee. On February 18, 2010, the appellant's abatement request was deemed denied. On May 18, 2010, the appellant seasonably filed a Petition Under Formal Procedure with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction over the instant appeal.

The subject property is a 120-acre parcel of forest land, located at the end of Stetson Road, a dead-end road, identified on the assessors Map 10 as Lot 3 and known as the Stetson-Phelps Memorial Forest. The subject property

is primarily forested and bordered on two sides by the Commonwealth of Massachusetts Department of Conservation and Recreation's Kenneth Dubuque State Forest. The subject property was originally part of a larger 134-acre tract of property. In 1999, the prior owners, Muriel Shippee and Edward Phelps, sold the subject property to NEFF and sold the remaining portion of the 134-acre tract, consisting of a house, barns and approximately 20 acres of vacant land, to private owners. NEFF has a conservation restriction on the vacant land, currently owned by Stephen and Susan Kimball, to prevent future development of the property.

There are two points of access to the subject property: from the east by Stetson Road, a paved single-lane, public way; and from the west by a gated, wooded road that runs from the Kenneth Dubuque State Forest. NEFF maintains a 10-year Forest Management Plan for the subject property, through to the year 2016, which states that the public access to the subject property is by Stetson Road. The appellant initially applied for and received classification of the subject property under G.L. c. 61 as forest land. Starting with the fiscal year at issue, NEFF claimed that it owned and managed the subject property in furtherance of its charitable purpose and thus applied for tax-exempt status for the subject property.

NEFF presented its case-in-chief through the testimony of Christopher Pryor, its Conservation Monitor and Forester, and of Whitney Beals, its Director of Land Protection, and through the submission of exhibits. The appellee presented its case-in-chief through the testimony of Richard Desmarais, its chairman, and of Virginia Gabert, its administrative assistant, and through the submission of exhibits.

NEFF of Littleton, Massachusetts is a nonprofit corporation organized pursuant to G.L. c. 180. NEFF is a member of the Massachusetts Land Trust Coalition, Inc., a nonprofit organization that provides support services to nonprofit conservation land organizations across Massachusetts. Founded in 1944, NEFF has a corporate and charitable purpose and mission that centers upon the protection of forest lands, providing information to private forest owners about managing their forest responsibly and to the general public about forestry and forest science. According to its Restated Articles of Organization, NEFF's purposes are as follows:

- promoting, supporting and practicing forest management policies and techniques to increase the production of timber in an ecologically and economically prudent manner;

- providing educational services and programs to woodland owners;
- supporting and advancing scientific understanding of environmental issues;
- educating the public about forest management, including providing practical demonstrations to enhance, protect, develop, and market forest resources and forest products and habitat and water resources protection; and
- protecting, managing, and conserving open space and forest lands.

At all relevant times, NEFF held and enforced conservation restrictions on 41 properties in Massachusetts, covering about 3,000 acres in 30 towns. NEFF also raised and maintained an endowment fund for the funding of its monitoring and enforcement of its conservation restrictions. NEFF claimed that it owned and managed the subject property for the same purposes that the Commonwealth of Massachusetts Department of Fish and Game and Department of Conservation and Recreation held its properties, and in this manner, NEFF maintained that it reduced the burden on government.

Mr. Pryor testified to NEFF's charitable purposes, which he described as: to demonstrate sustainable forestry

practices to other private landowners, what he termed "forest stewardship"; to protect wildlife habitat; to protect water quality; to educate the public about sustainable forestry practices; and to provide scientific research about sustainable forestry practices. He testified that the public receives a benefit from sustainably managed forests through the wood products that are produced, as well as the protection of wildlife habitat, recreational opportunities and the protection of scenic areas.

Mr. Pryor next testified to NEFF's management of the subject property. He explained that NEFF purchased the subject property in 1999 and that NEFF included it in its booklet of foundation forests, the so-called NEFF Community Forest booklet, which it updated in 2008. He testified that this booklet is distributed to all NEFF members "as well as any member of the public that may ask for one." Mr. Pryor then explained that the subject property was under a management plan, and NEFF's primary goal in this plan was to demonstrate sustainable forestry practices to other private landowners in the area. In furtherance of this goal, Mr. Pryor stated that NEFF managed timber and collected some income from the harvesting of the timber from the subject property, which it added to its endowment.

Mr. Pryor testified that, between calendar years 2000 and 2009, NEFF collected about \$24,000 from the sale of timber products from the subject property.

Mr. Pryor further testified that, starting in 2005, NEFF began to hold a so-called "precut educational walk" through some of its properties before it harvested its timber. It was unclear from his testimony how many walks occurred at the subject property, but he mentioned only one scheduled walk. He stated that notice of this walk was expected to be mailed to all abutters of the subject property, as well as members of NEFF "in the immediate area" of the subject property, and that notice of the walk would be posted on NEFF's website and in a local newspaper. Mr. Pryor testified that between zero to twenty people typically attended an NEFF precut educational walk on one of NEFF's properties, and that they usually lasted between one and two hours, depending on questions posed by attendees and how far they wanted to walk.

Mr. Pryor next testified to the public's usage of the subject property. He testified that the subject property was open for public recreation. He stated that a group called the Canary Kats maintained an active snowmobile trail through the subject property. He further testified that members of the public also used the subject property

for hiking and hunting. A photograph was entered as an exhibit, which Mr. Pryor testified depicted a sign posted on a tree at the Stetson Road entrance of the subject property. The sign in the photograph identified the subject property as the Stetson-Phelps Pine Ridge Farm and specified that it was owned and managed by NEFF for the following purposes: "Forest Products; Wildlife Habitat; Biological Diversity; [and] Educational Opportunities." Another sign, which Mr. Pryor testified was located at the entrance to the subject property, identified NEFF as the owner of the property and stated: "We invite respectful public visits."

Mr. Pryor contended that NEFF's ownership and management of the subject property brought many benefits to the general public. He maintained that these benefits included recreational and scenic opportunities, as well as improved water quality. When asked about scenic opportunities, Mr. Pryor admitted that those would be limited to hikers on the trails through the subject property. Another benefit Mr. Pryor cited was the public's education on sustainable forestry practices. He further testified that NEFF's use and management of the subject property supported numerous wildlife species, because the various forest types, including hardwood and softwood,

provided a diversity of habitats to one area. He also testified that the subject property served as a buffer to the abutting Dubuque Forest, because some wildlife species required larger forested blocks for their habitat.

Mr. Pryor further testified that another of NEFF's goals was the protection of water and air quality, wildlife habitat, and scenic and recreation values. NEFF contended that maintaining the subject property in its "natural" condition was an important part of NEFF's charitable purposes, because it protected the water resources and land for the public's enjoyment, including recreational opportunities for hunters and hikers.

Photographs were entered into evidence depicting the entrance to the subject property from Stetson Road. These photographs showed the end of the paved portion of Stetson Road and its continuation into what Mr. Pryor called "a dirt or gravel road," covered in leaves, which lead into the subject property. Another picture depicted Stetson Road as it passed through the Ken Dubuque State Forest; there was a gate across the road. Mr. Pryor testified that the gate was installed to limit vehicular access along the subject property's roads, so as to prevent rutting and erosion and the consequent negative impacts to water quality. Another picture showed a grassy parking area with

one parked car. Mr. Pryor testified that NEFF did not maintain a larger paved or groomed parking area because, first, a larger parking area was already maintained at nearby Ken Dubuque State Forest and NEFF "didn't feel that [the subject] property had enough public use to warrant improving our parking area here," and second, NEFF had encountered problems with public access: "A lot of our remote properties with parking areas invite dumping of trash, kids going in and partying and leaving trash behind, and other vandalism, in terms of - you know, cutting down trees and other things like that."

Mr. Pryor testified that the subject property was closed to the public during a timber harvesting, which typically occurred at NEFF's properties "maybe on[c]e every ten to twenty years; sometimes more often, sometimes less, depending on the condition of the property." He testified that a timbering operation could last three to six months.

Finally, Mr. Pryor testified to the information on the subject property disseminated by NEFF. In addition to the NEFF Community Forest booklet, the appellant submitted into evidence a printout of an NEFF website page that showed information on the subject property, including directions to the property and a map. Mr. Pryor addressed a pamphlet entered into evidence concerning a property owned by NEFF

in Vermont. The pamphlet described the "interpretive points" along the trail, installed by NEFF, to educate visitors about the forest and sustainable forestry practices. He testified that NEFF had not prepared a similar report for the subject property, explaining that, when NEFF receives a grant for this type of project, it chooses properties that receive a lot of public usage "so we could reach more people and get more bang from our buck in terms of education."

On cross-examination, Mr. Pryor explained that membership into NEFF is a minimum of \$40, and that there were approximately a thousand members total in NEFF; he did not have information as to how many of those members were from Massachusetts. Mr. Pryor also admitted that NEFF's webpage conveying information about NEFF's properties, including the subject property, was not functioning as of the time of the hearing, explaining that the webpage was experiencing "one big glitch" that NEFF staff was trying to fix. The missing information included maps depicting hiking trails through the subject property. Mr. Pryor testified that a map of the subject property depicting trails was on display at the Town Hall offices. Finally, Mr. Pryor admitted that "active forest management" often appears to be inactive: "We do not manage or have an

activity on the property every year or maybe even every ten years. You know, the realities of forest management are so that you may go long periods of time with perceived inactivity, but that is actually just all part of our forest management plan and our intent of managing the property."

Next, NEFF presented the testimony of Mr. Beals, its Director of Land Protection. Mr. Beals testified to NEFF's charitable purposes. He first described the educational programs engaged in by NEFF. Mr. Beals identified newsletters previously published by NEFF that listed stewardship activities engaged in by NEFF, including public talks, Community Forest Discovery Days, and the establishment of a network of volunteer forest stewards. He further testified to some of NEFF's educational publications that NEFF made with funds obtained through grants, including a pamphlet on invasive exotic plants that was funded through the U.S. Department of Agriculture. Mr. Beals further testified to NEFF's involvement in initiatives with other charitable foundations, including the Aggregation Project, which he explained was a partnership with seven other Massachusetts land trusts whereby they pooled various conservation restrictions on private properties that private landowners had either

donated or sold for no more than 75% of the appraised value. Another initiative mentioned was the North Quabbin Woods project funded by the Ford Foundation, whereby the organizations promoted sustainable forestry in local economically depressed areas. Mr. Beals testified that foresters, as well as the University of Massachusetts and other state agencies, turned to NEFF as a resource for conservation projects throughout the state.

Mr. Beals stated that NEFF realized a total of \$281,436 from the sale of timber during 2008 from all of its properties, which was a typical amount of yearly timber income for NEFF. Mr. Beals testified that this income funded approximately 20 to 30 percent of NEFF's operating budget.

Next, the assessors presented their case-in-chief. Virginia Gabert, an administrative assistant with the assessors, first presented a statement on behalf of the appellee. She testified that no evidence had been provided to the assessors from the appellant indicating that NEFF occupied and used the subject property in an active and ongoing basis in order to fulfill its mission to educate, through practical demonstration, conservation and sound management of forest lands. She also testified that no evidence had been provided to the assessors to indicate

that NEFF's use of the subject property benefited a large and indefinite class of beneficiaries. She cited the lack of signage on the property and the lack of active links on NEFF's website indicating how the public could access the property.

Ms. Gabert then offered several items of correspondence between her office and NEFF regarding the assessors' requests for further information as to the purportedly charitable occupation and use of the subject property by NEFF. By a letter dated November 4, 2009, Ms. Gabert explained to NEFF that no application for exemption for NEFF was on file. Ms. Gabert enclosed a copy of an application with the letter, and requested that NEFF "specifically provide information showing that the property is actively being used for your stated charitable purposes." NEFF responded by remitting a copy of an application for exemption, which the assessors received on November 24, 2009, in which NEFF described its corporate purposes, generally, as being to increase the production of timber through its practices of forest management; to educate the public, through practical demonstration, on forestland use and management; and to promote better methods in the protection, development and marketing of forest resources and products. By letter dated December 1,

2009, the assessors explained to NEFF that the information contained in its application for exemption was not sufficient to demonstrate its entitlement to an exemption. In particular, NEFF needed to provide them with Forms 3 ABC, 990 and PC, its articles of incorporation and its charter or organization by-laws, as well as information proving that an ongoing, charitable use was the principal use of the subject property: "the organization can not just passively own the land." By a third letter, dated February 26, 2010, the assessors acknowledged receipt of NEFF's Forms 3ABC, 990 and PC for the subject property, but reminded NEFF that it still had not received the other information requested by its December 1, 2009 letter, including NEFF's articles of organization, charter or organization by-laws, as well as a description of the charitable activities and NEFF's regular, active use of the property.

Finally, by letter dated March 31, 2010, NEFF responded to the assessors' requests for additional documentation. NEFF classified its charitable purposes as (1) to educate the public about the benefits of providing clean water, wildlife habitats, and recreational opportunities through its conservation activities; (2) to educate the public about the benefits of sustainable forest

management by demonstrating its harvesting methods; and (3) protecting forest lands for the purposes of saving open space "and advancing the science of silviculture." The letter noted that the next timber harvest at the subject property was "planned for some time between 2010 and 2012." Before the harvest, NEFF would invite town officials, abutters and the public for a pre-harvest tour to explain the operation and why it is being performed, then "[i]f there is sufficient interest, we also conduct post-harvest tours to discuss the results."

Ms. Gabert testified that the assessors had requested information regarding how NEFF was publicizing that the subject property was open to the public. Ms. Gabert explained that the subject property is located at the end of a dead end road, "just beyond a privately owned parcel that occupies both sides of the road and gives the appearance that the road is their driveway" as Stetson Road approaches and passes between the Kimball's house and garage. Ms. Gabert testified that there were no signs along the road indicating a public access to the subject property.

On the basis of its subsidiary findings, the Board ultimately found little evidence to support a charitable exemption for the subject property. As will be explained

in the Opinion, the Board found that forest management was not a traditionally charitable endeavor; therefore, the Board was required to examine whether NEFF's ownership and occupation of the subject property served a sufficiently large or fluid class of beneficiaries and did not merely benefit a limited class of beneficiaries.

The Board first looked to whether NEFF occupied the subject property for its stated charitable purposes. While Mr. Beal testified to large initiatives occurring across the country involving other charitable foundations, he offered little detail as to NEFF's particular work in those areas. NEFF presented at best vague testimony of what it deemed "active management" of the subject property, with evidence of only one public activity, a pre-cut educational walk, which would be publicized merely to abutters of the subject property and NEFF members "in the immediate area." The Board thus found that NEFF did not occupy the subject property in furtherance of its stated charitable purpose.

The Board next looked to how available the subject property was to the public. The appellant failed to prove that it had made sufficient effort to inform the public that the subject property was open for public recreation. The subject property's entrance was at the end of a dirt road passing between private buildings, which appeared to

be an extension of a private driveway. Moreover, the subject property's public availability was not well marked with signs; in fact, the gate across its access along Stetson Road and the lack of a paved driveway specifically discouraged public usage. The Board found that inclusion in NEFF's narrowly distributed Community Forest booklet did not sufficiently publicize the subject property's availability for public usage, and as admitted by NEFF, there was no information on NEFF's website on the subject property's existence and its availability for usage by the community. The Board thus found that the subject property did not appear to be open for public usage, it was not easily accessible to the public, and NEFF failed to sufficiently inform the public that the subject property was available for general usage.

On the basis of these findings of fact, the Board found that the subject property was not owned and occupied by a charitable organization in furtherance of a charitable purpose under the exemption at issue. As a result, the Board found and ruled that the subject property was not exempt from real estate tax. The Board therefore issued a decision for the appellee in this appeal.

OPINION

All property, real and personal, situated within the Commonwealth is subject to local tax, unless expressly exempt. G.L. c. 59, § 2. General Laws c. 59, § 5 lists the classes of property which shall be exempt from taxation. Specifically, § 5, Clause Third, exempts from taxation all "personal property of a charitable organization, . . . and real estate owned by . . . and occupied by it or its officers for the purposes for which it is organized" G.L. c. 59, § 5, Clause Third (hereinafter "Clause Third"). While public policy permits reasonable tax exemptions, "taxation is the general rule" and therefore "statutes granting exemptions from taxation are strictly construed." ***Animal Rescue League of Boston v. Assessors of Bourne***, 310 Mass. 330, 332 (1941).

In the instant appeal, the appellant is recognized as a charitable corporation pursuant to G.L. c. 180. However, the Board has repeatedly found that an organization's charitable-exemption status "is not dispositive in determining whether its property qualifies for the Massachusetts property tax exemption." ***Jewish Geriatric Services, Inc. v. Assessors of Longmeadow***, Mass. ATB Findings of Fact and Reports 2002-337, 358-9, *aff'd*, 61 Mass. App. Ct. 73 (2004) (citing ***H-C Health Services v.***

Assessors of South Hadley, 42 Mass. App. Ct. 596, rev. denied, 425 Mass. 1104 (1997)). "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)). "The burden of establishing entitlement to the charitable exemption lies with the taxpayer." **Western Massachusetts Lifecare Corp.**, 434 Mass. at 101 (citing **New England Legal Foundation v. Assessors of Boston**, 423 Mass. 602, 609 (1996)). "Any doubt must operate against the one claiming a tax exemption." **Boston Symphony Orchestra v. Assessors of Boston**, 294 Mass. 248, 257 (1936).

Traditionally, in determining whether a charitable organization's occupation of a parcel of property qualified for the Clause Third exemption, Massachusetts courts and the Board have focused on several factors, which include, but are not limited to: "whether the organization provides low-cost or free services to those unable to pay[;] whether

it charges fees for its services and how much those fees are[;] whether it offers its services to a large or 'fluid' group of beneficiaries and how large and fluid that group is[;] whether the organization provides its services to those from all segments of society and from all walks of life[;] and whether the organization limits its services to those who fulfill certain qualifications and how those limitations help advance the organization's charitable purposes." ***New Habitat, Inc. v. Tax Collector of Cambridge***, 451 Mass. 729, 732-33 (2008) (citing ***Mary Ann Morse Healthcare Corp. v. Assessors of Framingham***, 74 Mass. App. Ct. 701, 703 (2009)).

In ***New Habitat, Inc.***, the Supreme Judicial Court offered a new "interpretive lens" through which to view Clause Third exemption claims. ***Mary Ann Morse Healthcare Corp.***, 74 Mass. App. Ct. at 703. Specifically, ***New Habitat, Inc.*** "conditions the importance of [the above] previously established factors on the extent to which 'the dominant purposes and methods of the organization' are traditionally charitable." ***Id.*** (quoting ***New Habitat, Inc.***, 415 Mass. at 733). In other words, "[t]he closer an organization's dominant purposes and methods are to traditionally charitable purposes and methods, the less significant these factors will be in [the] interpretation

of the organization's charitable status . . . [t]he farther an organization's dominant purposes and methods are from traditionally charitable purposes and methods, the more significant these factors will be." **Mary Ann Morse Healthcare Corp.**, 74 Mass. App. Ct. at 705.

The court in **New Habitat, Inc.**, quoting a long-standing charitable-exemption precedent, characterized the "traditional objects and methods" of a Clause 3 charity as follows:

"A charity in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either **by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.**"

New Habitat, Inc., 451 Mass. at 732 (quoting **Jackson v. Phillips**, 96 Mass. 539, 14 Allen 539, 556 (1867) (emphasis added)).

NEFF maintained that it provided "educational" activities to the public, by means of distributing information and inviting the public to come and learn about sustainable forestry at the subject property. "[A]n educational institution of a public charitable nature falls within" the exemption provided by Clause Third. **Lasell**

Village, Inc. v. Assessors of Newton, 67 Mass. App. Ct. 414, 419 (2006) (quoting **Cumington Sch. of the Arts, Inc. v. Assessors of Cumington**, 373 Mass. 597, 602 (1977)). In order to be exempt under Clause Third as an educational institution, the organization: (1) must "make a contribution to education;" and (2) education or the advancement of education must be the institution's "dominant activity." **Cumington Sch. of the Arts, Inc.**, 373 Mass. at 603. A contribution to education may include providing a general benefit to society. See, e.g., **Boston Symphony Orchestra**, 294 Mass. at 255 (recognizing that fulfilling a general purpose to educate the public in the knowledge of music might well be charitable by advancing the culture); **Molly Varnum Chapter, D.A.R. v. Lowell**, 204 Mass. 487, 493 (1910) (recognizing preservation of historical data concerning Revolutionary War for education of the public is a charitable purpose); **Massachusetts Society for the Prevention of Cruelty to Animals v. Boston**, 142 Mass. 24, 27 (1886) (recognizing education of public on issues of animal cruelty as charitable).

A contribution to education may also include providing education to a relatively small class of individuals, so long as those receiving the benefit are drawn from an indefinite class of persons. **Assessors of Dover v.**

Dominican Fathers Province of St. Joseph, 334 Mass. 530, 539 (1956) (recognizing that seminary for training of priests that provided study of theology, Scripture and Latin, although not a specific benefit to the public at large, was charitable because education provided to an indefinite class of persons who change from year to year); ***Assessors of Boston v. Garland School of Home Making***, 296 Mass. 378, 386-89 (1936) (ruling that providing education in the principles of home making -- including courses on psychology, home nursing, literature, drama and current events - "is clearly educational" and, although not of benefit to the public at large, benefitted an indefinite class of persons).

Under the facts of the instant appeal, NEFF's purportedly educational endeavor consisted of promoting sustainable forestry practices to a limited class of beneficiaries - owners of forest lands and nearby property owners. The means by which NEFF purported to accomplish this education at the subject property was by hosting a one-time pre-cut walk, notice of which was reportedly to be disseminated to a very limited class of NEFF members "in the immediate area" and abutters of the subject property. The Board found that this education endeavor, offered on such a limited basis to such a limited class of

beneficiaries, was not sufficient in scope such that it could reasonably be considered to be of benefit to the public and not sufficiently akin to the activities specifically recognized as "education" in the above-cited cases.

Moreover, because the harvesting of timber occurred so infrequently at the subject property, the Board found that educating about sustainable forestry practices was not the dominant purpose of NEFF. Rather, the Board found that NEFF's dominant purpose was to maintain forest land, and any "educational" activities it provided were "minimal and at best ancillary to its primary purpose." **Massachusetts Youth Soccer Ass'n, Inc. v. Assessors of Lancaster**, Mass. ATB Findings of Fact and Reports 2012-660, 678 (citing **Lasell Village, Inc.**, 67 Mass. App. Ct. at 421-22; **Harvard Community Health Plan, Inc. v. Assessors of Cambridge**, 384 Mass. 536, 544 (1981)). Accordingly, for all of the above reasons, the Board ruled that the activities of NEFF at the subject property did not qualify as a "contribution to education" and thus were not traditionally charitable under the relevant Massachusetts case law.

The Board therefore ruled that, while promoting sustainable forestry practices may provide some public benefit, the activities of NEFF did not "bring the minds or

hearts [of persons] under the influence of education or religion," "reliev[e] their bodies from disease, suffering or constraint," "assist[] them to establish themselves in life," or "erect[] or maintain[] public buildings or works." *Id.* Therefore, NEFF's purposes and activities, though laudable, did not fit into the established realm of traditional charities according to Massachusetts case law.

"The more remote the objects and methods are from traditionally charitable purposes and methods the more care must be taken to preserve sound principles and to avoid unwarranted exemptions from the burdens of government.'" *New Habitat, Inc.*, 451 Mass. at 733 (quoting *Boston Chamber of Commerce v. Assessors of Boston*, 315 Mass. 712, 718 (1944)); see also *Massachusetts Medical Society v. Assessors of Boston*, 340 Mass. 327, 331-2 (1960). Therefore, in determining whether NEFF's activities at the subject property were in fact charitable for Clause Third purposes, the Board considered other factors, including whether NEFF's benefits were readily available to a sufficiently inclusive segment of the population, *Jewish Geriatric Services, Inc.*, Mass. ATB Findings of Fact and Reports at 2002-359 (citing *Western Massachusetts Lifecare Corp.*, 434 Mass. at 105), and whether NEFF's ownership and occupation of the subject property "perform[s] activities

which advance the public good, thereby relieving the burdens of government to do so.'" **Home for Aged People in Fall River v. Assessors of Fall River**, Mass. ATB Findings of Fact and Reports 2011-370, 400 (quoting **Sturdy Memorial Foundation v. Assessors of North Attleborough**, Mass. ATB Findings of Fact and Reports 2002-203, 224, *aff'd*, 60 Mass. App. Ct. 573 (2004)).

The facts of this appeal are similar to those of **Brookline Conservation Land Trust v. Assessors of Brookline**, Mass. ATB Findings of Fact and Reports 2008-679. In that appeal, the Brookline Conservation Land Trust, a recognized § 501(c)(3) organization, held three tracts of land, purportedly on behalf of the town for conservation purposes, namely the preservation of open space, which was reported to be an issue of high priority for the citizens. *Id.* at 682. The facts revealed, however, that the Brookline Conservation Land Trust was holding the properties in a very closed manner:

Contrary to appellant's contention, the subject properties do not appear to be open to the general public. The parcels are, in large part, barricaded with walls, fences, and chains, and "private" and "no trespassing" signs appear along the periphery of the subject properties. While portions of the property may not be completely barricaded, they are still not easily accessible by the public.

Id. at 692-93. Based on the closed manner in which the taxpayer maintained the property, the Board found that it held the properties "for the primary benefit of the immediate neighborhood in which the three parcels are located," as opposed to the public good. **Id.** at 692-93. Therefore, "[d]espite the fact that appellant was recognized as a supporting organization of the Town, and that the preservation of open space may have been recognized by the Brookline Conservation Commission as an important goal for the citizens of the Town," the Board ruled that the properties did not qualify for the Clause Third exemption. **Id.** at 695.

In the instant appeal, while there may be no "Private" or "No Trespassing" signs as there were in **Brookline Conservation Land Trust**, the subject property nonetheless did not appear to be open to the general public. The subject property lacked sufficient signage alerting the public to its availability for public usage. Information was not disseminated to the public on any wide scale; its inclusion on a very narrowly distributed Community Forest booklet and a broken link on a website did not constitute sufficient dissemination to the public of the subject property's availability.

Moreover, the subject property was not easily accessible. It was situated at the end of a dirt road that passed between a private house and barn, and thus its entry had the appearance of being a driveway within a private property. The gate across an access along Stetson Road prohibiting vehicular access, coupled with the lack of a paved driveway, which, as testified to by Mr. Beals, were specifically to discourage public usage, contributed to the subject property's perceived inaccessibility. "[T]he absence of public access to land has consistently proven fatal to a landowner's claim of charitable exemption." **Wing's Neck Conservation Foundation, Inc. v. Assessors of Bourne**, Mass. ATB Findings of Fact and Reports 2003-329, 343 (citing **Animal Rescue League v. Assessors of Pembroke**, Mass. ATB Findings of Fact and Reports 2000-96, *aff'd*, 54 Mass. App. Ct. 1113 (2002) and **Nature Preserve, Inc. v. Assessors of Pembroke**, Mass. ATB Findings of Fact and Reports 2000-796).

Finally, while the appellant contended that it publicized the public availability of the subject property and its pre-cut educational walk, the Board found that its efforts fell short of the publication necessary for a Clause Third property. "Merely listing the subject properties on a map as conservation land owned by appellant

is not an open invitation to the public to enter the properties," nor are invitations to a one-time event, targeted to immediate abutters and nearby members of NEFF as opposed to the community at large. **Brookline Conservation Land Trust**, Mass. ATB Findings of Fact and Reports at 2008-694.

NEFF countered that its involvement in the subject property promoted an environmental benefit, namely, the preservation of a habitat for diverse species. However, while the preservation of nature may be a laudable goal, "simply keeping land open and allowing its natural habitat to flourish is not sufficiently charitable. Appellant must demonstrate 'an **active appropriation** to the immediate uses of the charitable cause for which the owner was organized.'" (quoting **Assessors of Boston v. The Vincent Club**, 351 Mass. 10, 14 (1966) (emphasis added) (also citing **Babcock v. Leopold Morse Home for Infirm Hebrews & Orphanage**, 225 Mass. 418, 421 (1917))). Here, the evidence established that NEFF held the subject property in a seemingly closed manner and failed to demonstrate a sufficiently active appropriation of the subject property to achieve a public benefit.

The instant appeal is also akin to **Forges Farm, Inc. v. Assessors of Plymouth**, Mass. ATB Findings of Fact and

Reports 2007-1197. That appeal pertained to land purported to be held for conservation purposes, specifically to reduce "use pressure" on a river watershed, which the taxpayer believed to be threatened by a nearby sewer treatment plant. As in the instant appeal, the assessors there maintained that the ownership of the property at issue did not benefit a sufficiently large and indefinite class of beneficiaries but merely benefitted the taxpayer and other surrounding landowners. The Board there made key findings similar to those made in the instant appeal:

[B]y Forges' own admission . . . the subject property was not accessible to the public. Rather, . . . [members of the public] would have to contact the officers of Forges Farm, Inc. in order to gain access. Although Forges claimed that it would allow access to those who contacted its officers, the land is not marked with any sort of sign indicating that access can be attained in this manner, and Forges has not made any other attempt to inform the public that the subject property is accessible.

Forges Farm, Inc., Mass. ATB Findings of Fact and Reports at 2007-1201, 1202.

The Board here similarly found that there was a lack of signage along Stetson Road, the public entry to the subject property, notifying the public that the subject property was open to public access, and its website also lacked information about the subject property. Further,

the taxpayer in Forges Farm offered no evidence of active appropriations at the subject property that furthered its organization's charitable purpose, including educational classes, the maintenance of trails or research conducted at that property. **Forges Farm, Inc.**, Mass. ATB Findings of Fact and Reports at 2007-1202. Here, NEFF offered minimal evidence of active appropriations, including testimony regarding just one pre-cut educational walk, which was reportedly advertised very minimally to abutters and neighboring NEFF members. As in **Forges Farm, Inc.**, NEFF's lack of publicity and active appropriations of the subject property were fatal to the appellant's claim to a Clause Third exemption.

A factor to be considered in determining if an organization is operating as a public charity is "whether it perform[s] activities which advance the public good, thereby relieving the burdens of government to do so." **Home for Aged People in Fall River**, Mass. ATB Findings of Fact and Reports at 2011-400 (quoting **Sturdy Memorial Foundation**, Mass. ATB Findings of Fact and Reports at 2002-224). "The fact that an organization provides some service that would, in its absence, have to be provided by the government, 'is frequently put forward as the fundamental reason for exempting charities from taxation.'" **Western**

Massachusetts Lifecare Corp., 434 Mass. at 102 (quoting **Cunningham Foundation**, 305 Mass. at 418). In the instant appeal, however, the Board found that NEFF failed to prove how its actions "advance[d] the public good, thereby relieving the burdens of government to do so." **Home for Aged People**, Mass. ATB Findings of Fact and Reports at 2011-403. While there may be some laudable benefits to educating landowners on sustainable forestry practices, no burden of government was alleviated and no other charitable purpose was achieved by means of NEFF's occupation of the subject property. "Thus, although many activities and services are commendable, laudable and socially useful, they do not necessarily come within the definition of 'charitable' for purposes of the exemption." **Western Massachusetts Lifecare Corp.**, 434 Mass. at 103. See also **Skating Club of Boston v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports 2007-193, 211 (ruling that the property of a figure skating club with a mission "to foster good feeling among its members and promote interest in the art of skating" and whose activities focused on developing elite skaters was not entitled to the Clause Third exemption).

Finally, G.L. c. 61A provides for favorable tax treatment for forest land that is maintained in accordance

with a forest management plan. The fact that Chapter 61A offers a reduction in real estate tax, as opposed to a full exemption, indicates that the Legislature did not intend to exempt forest land completely from tax, but only to provide a reduced tax burden.

Conclusion

"[A]lthough many activities and services are commendable, laudable and socially useful, they do not necessarily come within the definition of 'charitable' for purposes of the exemption." ***Western Massachusetts Lifecare Corp.***, 434 Mass. at 103. Particularly when an organization holds real estate for purposes that are more "remote" from the more traditionally charitable purposes, the Board must "avoid unwarranted exemptions from the burdens of government." ***New Habitat, Inc.***, 451 Mass. at 733 (quoting ***Boston Chamber of Commerce***, 315 Mass. at 718); see also ***Skating Club of Boston***, Mass. ATB Findings of Fact and Reports at 2007-211 (ruling that the property of a figure skating club with a mission "to foster good feeling among its members and promote interest in the art of skating" and whose activities focused on developing elite skaters was not entitled to the Clause Third exemption).

On the basis of all of the evidence and its findings of fact, the Board ultimately found and ruled that the appellant failed to meet its burden of proving that it occupied and used the subject property in furtherance of a traditional or an otherwise accepted charitable purpose within the meaning of Clause Third.

Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _____
Clerk of the Board