

YEARS REVIEW

Independently Publishing to Serve the Legal Community

August 28, 2014

Conservation Trust Exempt from Property Tax

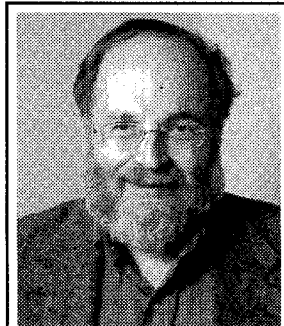
Squarely confronting an issue for the first time that it deferred in 2001, the Law Court has held that a land trust in York County, which promotes conservation of local natural resources and free public access to those resources, is exempt from local property taxes as a benevolent and charitable institution within the meaning of 36 M.R.S. § 652(1)(A).

Written by Associate Supreme Court Justice Warren Silver, the decision affirms a judgment entered by Superior Court Justice Paul Fritzsche that vacated the State Board of Property Tax Review's determination that the local municipality correctly denied the trust a charitable exemption and appropriately applied valuation methods under the Maine Tree Growth Tax Law and the Farms and Open Space Tax Law. Neither the Superior Court nor the Law Court reached the valuation issues.

Although the holding is limited to the circumstances of the Francis Small Heritage Trust, Inc., there is no doubt that the decision will have a significant impact. The need for a uniform view of the property tax status of local land trusts is well-illustrated by the disparate treatment the Trust received from the two towns whose boundaries it straddles: the Town of Limerick has treated the Trust as exempt for the past seven years, but the Town of

Limington, appellant in the recent case, has refused to apply the exemption. The recent decision, however, firmly holds open a door that in the past might have swung in either direction — even for land conservation trusts that provide excellent public access.

Rob Levin, one of the attorneys representing conservation groups that participated in the case as *amici*, predicted the decision could also have national impact. Maine is now one of only two states with a decision from the state's highest court upholding the tax-exempt status of a land conservation trust, he said. The other state is Massachusetts, whose Supreme Judicial Court spoke on the issue in May of this year in a decision that the Law



David Lourie

Court discusses at length.

Portland attorney David Lourie represented the Trust. Lourie said he was "very pleased" with the result, saying "it took a long time." The Trust began requesting the exemption in 2007, Lourie explained, but didn't appeal the Town's denial until after paying the 2009 and 2010 assessments. Lourie became involved on the last day of the hearing before the State Board.

—see PROPERTY TAX page 2

Court Examines Notice to Abutters in MDEP Case

On July 2, 2014, Superior Court Justice Joyce A. Wheeler vacated an agency decision of the Maine

restoring passenger rail service to Maine, and overseeing the operation of passenger rail services here.

Property Tax continued from page 1

"Justice Fritzsche got it right," he commented. "The State Board was out to lunch on the facts and the law." Despite being "disappointed" when the Town appealed the Superior Court's ruling, Lourie acknowledged the usefulness of having the Law Court take a clear stand on the availability of the charitable exemption for conservation groups. He also noted that the Trust will receive interest on the taxes paid in 2009 and 2010 at the rate of 7% per annum.

Lourie praised the contributions made throughout the appellate process by *amici curiae*, Maine Coast Heritage Trust and the Land Trust Alliance, Inc. In addition to Levin, Karin Marchetti Ponte of Mount Desert also represented the two *amici*.

Levin said that he "couldn't be happier" about the decision, which he called "well-reasoned and well-written. He gave full credit to the Trust for "pushing the issue," and said "everyone's feeling good" about the decision.

Leah Rachin, who represented the Town, understandably expressed a different mood, saying that she was "disappointed, having spent three years on the case." However, noting the recurrent nature of tax status issues for land trusts, she added, "it's nice to have clarity and an answer." Rachin practices with Bergen & Parkinson in Kennebunk.

Addressing the thicket of arguably applicable statutes that the parties bushwhacked through, she said, "Nobody was saying that the Trust wasn't doing very good things, but from the Town's point of view, the Legislature has already provided substantial tax relief under the Open Space Law, up to 95%." In the Trust's case, however, that relief was substantially reduced by a further requirement that for forested open space, the lowest assessment was that available under the Tree Growth Law.

The Trust owns more than 1,400 acres in the vicinity of Sawyer Mountain in northern York County and manages 308 additional acres. Its property in Limington consists of eleven contiguous parcels of land, three of which the Town has historically taxed pursuant to the Tree Growth Law, with eight parcels classified as open space land. The open space properties are all protected by third-party, 'forever-wild' conservation easements.

The Trust properties are used and operated as conserved wildlife habitat, with free public access 365 days a year for hunting, fishing, cross-country skiing, snowmobiling, hiking, mountain biking, etc.. The Trust sponsors a local Boy Scout Troop, local schools use the properties for field trips and environmental education, and the Trust has engaged in joint research and public education activities with public entities.

Past Law Court decisions have denied the § 652(1)(A) exemption to a wildlife refuge that provided only limited

access, and a related "scientific institution or organization" exception under § 652(1)(B) to another wildlife preserve that partnered with the University of Maine for research purposes. In 2001, the court declined to reach the issue of whether land conservation alone was sufficient to make an organization "benevolent and charitable" within the meaning of § 652(1)(A). Because taxation is the rule, the Trust had the burden of showing "that it [fell] 'unmistakably within the spirit and intent of the act creating the exemption.' ..."

The decision emphasizes the "*quid pro quo*" rationale underlying the "charitable and benevolent" exception. Thus, the court explained, the "pecuniary benefit" of a property tax exemption recognizes that the "benevolent institution's" activities assist the government in providing services that the government might otherwise be expected to provide. Wrote Justice Silver: "This '*quid pro quo*' factor, although not controlling, is one courts should consider in determining whether the charitable exemption applies." In this context, the Law Court pointed to Justice Fritzsche's finding that in the area around Sawyer Mountain, "the Trust essentially operates its properties in the manner of a state park."

Emphasizing that the Legislature has expressed a strong public policy in favor of the conservation of natural resources, the Law Court also noted that appellate courts in other jurisdictions have concluded that land conservation, coupled with public access, is a charitable purpose that confers a public benefit, including the recent Massachusetts decision, which also applies a "*quid pro quo*" rubric. Against this background and "under the circumstances of this case," the Law Court held "the Trust is organized and conducted for benevolent and charitable purposes within the meaning of section 652(1)(C)(1)."

The court rejected the Board's conclusion that the Trust did not qualify for the exemption because its Articles of Incorporation permitted logging, farming, "and other compatible commercial activities." In fact, the court said, the Articles spoke only in terms of protecting such "appropriate uses." The fact that the Trust held conservation easements on a local commercial farm did not mean it owned that farm, the court further concluded, and planned tree harvesting activities had an educational purpose incidental to the Trust's overall mission.

The Law Court also was unpersuaded by the Board's further analysis that the Legislature had already provided ample tax relief for the Trust pursuant to the Open Space Law. There was no indication, the court reasoned, that the Legislature intended the Open Space Law to somehow "preempt or otherwise displace" the longstanding benevolent and charitable institution provision. The statutes might overlap with respect to a given organization, but they did not conflict.

The decision *Francis Small Heritage Trust Inc.*, MLR#231-14, is summarized in this issue at p. 7.

—Kathy Hooke, kathyh@mainelawyersreview.com