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## OPINION

CONSERVATION LAW

### A Question Of Public Trust

SJC Decision Upholds Value Of Conservation

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SPECIAL TO BANKER & TRADESMAN

On May 15, the Massachusetts Supreme Judicial Court unanimously ruled that cities and towns in Massachusetts could not tax land owned by conservation groups.

The town of Hawley had assessed the New England Forestry Foundation (NEFF) taxes on the Stetson Phelps Memorial Forest. While the amount in dispute was relatively minor – \$173 – the potential impact was significant. Most conservation groups rely on donations to support the purchase and maintenance of land, and many are small, with limited resources. Having to pay real estate taxes



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could have a devastating effect on their ability to continue to preserve open space.

Encouraging acquisition of open space has been widely recognized for many decades, and having to weigh the potential tax liability associated with an acquisition or gift could likely impede a land trust's willingness to hold or acquire such parcels.

In addition, the past few decades have seen the advent of user-friendly and aesthetically pleasing subdivisions, with

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otherwise developable land preserved as open space. Many towns are ill-equipped or prohibited from holding title to that open space. Local land trusts have filled that void. Those land trusts may be hesitant to continue that preservation if they faced potential tax liabilities. By not having a conduit to hold those parcels, controlled subdivisions with large open space components could become scarce, reverting back to the post-World War II style of subdivisions.

The SJC decision settled a significant issue in land preservation: whether "passive" preservation of open space was of significant enough benefit to the public to justify tax exemption. The town of Hawley asserted that NEFF had an obligation to encourage public use of the open space. NEFF's position was that clean air and green space are a sufficient public benefit to justify tax exempt status.

The SJC determined that by protecting open space from development and open-

ing it up for hiking and hunting, sufficient public purposes were served and real estate taxes could not be assessed. Specifically, the SJC stated that "by holding land in its natural pristine condition and thereby protecting wildlife habitats, filtering the air and water supply and absorbing carbon emissions combined with engaging and sustainable harvest to ensure the longevity of the forest, NEFF engages in charitable activities of the type that may benefit the general public."

The SJC clearly defended the public purpose of land preservation, which will greatly assist land trusts and other organizations whose purpose is to preserve open space. This decision should also permit effective estate planning by land owners who wish to secure large parcels of land used for public purposes. ■

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