

BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU

SOUTHEAST ALASKA LAND TRUST

Appellant,

vs.

CITY AND BOROUGH OF JUNEAU
ASSESSOR

Appellee,

Appeal of CBJ Assessor Decisions:
2016-03-29 Email
2016-07-28 Letter

DECISION ON APPEAL

I. Introduction

This appeal seeks Assembly review of the CBJ Assessor's decision denying Appellant Southeast Alaska Land Trust ("SEAL Trust") a charitable purpose property tax exemption under AS 29.45.030(a)(3), with respect to 14 parcels of property.¹ Both parties were represented by counsel.² Based on careful review and consideration of the agency record, the parties' briefing, and the oral arguments presented at a February 1, 2017 hearing, the Assembly³ sets aside the Assessor's

¹ The initial Notice of Appeal filed April 18, 2016, challenged the Assessor's decisional March 29, 2016 email. [R. 98-102] On August 15, 2016, following a stay of the appeal to facilitate the parties' further exchange of information and resolution efforts, SEAL Trust filed a revised Notice of Appeal which added the Assessor's July 28, 2016 letter to the decision being challenged. We consider this formal, more comprehensive July document to be the Assessor's final decision (hereafter "Assessor Decision").

² Attorney Lael Harrison represented the Appellant and Assistant Municipal Attorney Robert Palmer represented the Assessor.

³ Seven of nine Assembly members participated in this appeal.

charitable purpose legal conclusion and remands this matter for further proceedings consistent with this decision.⁴

II. Appeal Issues Stipulated to by the Parties

1. Whether the SEAL Trust has a nonprofit charitable purpose.
2. Whether each of SEAL Trust's 14 properties are being used for an exempt purpose.

III. Statement of the Case

The facts in this appeal are largely undisputed. SEAL Trust is an Alaska non-profit corporation "organized exclusively for educational, scientific, and charitable purposes within the meaning of §501(c)(3) of the United States Internal Revenue Code" with its "purposes [being] "to conserve Alaska's lands and natural and cultural resources for the benefit of the general public." [R. 74; 30; 50-55] The Assessor has also not challenged SEAL Trust's statement that the subject properties:

"were acquired for the purpose of protecting natural resources, habitat, and open natural space as well as for public recreation, scientific study, and education . . . [and that] [a]ll of the 14 parcels are presently being conserved in their natural, undeveloped condition and provide natural habitat for wildlife as well as open space for public recreation, scientific study, and education, furthering SEAL Trust's conservation purposes and mission."⁵

Thirteen of the lots abut⁶ the Mendenhall Wetlands State Game Refuge ("Refuge") and the other lot buffers Montana Creek. [R. 402-403]

From 2011 through 2015, SEAL Trust applied for and was granted the community purpose exemption under CBJ 69.10.020(8), an optional local exemption under State law that the Assessor

⁴ As required by CBJ 01.50.140(b)(4), the parties were given the opportunity to review and file written objection to the Assembly's proposed decision. Only the Appellee filed an objection, which the Assembly considered prior to adopting its proposed decision without modification.

⁵ Opposition Brief of CBJ Assessor ("Assessor's Brief") at 2 [citing SEAL Trust at R. 402]

⁶ The Assessor's Brief indicates that twelve of these thirteen parcels are located "*within*" the Refuge, while the SEAL Trust refers to all thirteen of these lots being "*adjacent*" to the Refuge. Cf. Assessor Brief at 4, 6 and SEAL Trust Brief at 3-4.

indicated would have also been granted in 2016, had SEAL Trust applied for it.⁷ Instead, in 2016 SEAL Trust applied for the charitable purpose exemption in AS 29.45.030(a)(3), which exempts from taxation “property used exclusively for non-profit religious, charitable, cemetery, hospital, or educational purposes.”

The Assessor denied the application concluding SEAL Trust did not have a nonprofit charitable purpose because recreational facilities are required to qualify recreational use as a charitable purpose, and land preservation alone, is not a charitable purpose.⁸ The Assessor further concluded that even if a charitable purpose could be established, denial was appropriate because there was “no evidence of any use, let alone charitable use of the parcels.”⁹ Quoting the Appellant, the Assessor added, “SEAL Trust does not keep records of who actually used the parcel and how often the parcel was used.”¹⁰

IV. Standard of Review and Burden of Proof

This administrative appeal is governed by CBJ 01.50. The Assembly’s decision “may affirm, modify or set aside the [Assessor’s] decision in whole or part.”¹¹ The Assembly may also “remand any issue to the agency.”¹²

The Assessor’s interpretation of the charitable purpose exemption presents primarily a question of law. We concur with the parties that the substitution of judgment standard applies to questions of law, whereby deference is not given to the Assessor’s interpretation of law.¹³ Rather

⁷ Assessor Decision at 2.

⁸ See Assessor Decision at 3-5.

⁹ Assessor Decision at 5.

¹⁰ Assessor Decision at 5.

¹¹ CBJ 01.50.140(a).

¹² *Id.*

¹³ *Fairbanks N. Star Borough v. Dena Nena Henash*, 88 P.3d 124, 128 (Alaska 2004); Assessor Brief at 10-11; SEAL Trust Brief at 2.

we are to apply our independent judgment and adopt the rule of law most persuasive in light of precedent, reason and policy.¹⁴

To the extent we review a factual finding of the Assessor, we agree with the Assessor that the substantial evidence standard applies. As defined by the Alaska Supreme Court, “[s]ubstantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.”¹⁵

The burden of proof is on SEAL Trust, both as the appellant in this administrative appeal, and as the taxpayer seeking a tax exemption.¹⁶

V. The Charitable Purpose Exemption Law

The charitable purpose exemption originates in the Alaska Constitution, Article IX §4:

The real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation . . .

This mandatory exemption is codified in Alaska Statutes 29.45.030:

(a) The following property is exempt from general taxation:

...
(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes.

The Alaska Supreme Court has interpreted the charitable purpose exemption to require a two-part analysis: “first, whether there is a nonprofit, charitable purpose, and second, whether the property is being exclusively used for an exempt purpose.”¹⁷

Neither the Constitution nor the Alaska Statutes defines “charitable purposes.” Citing to this lack of a definition, in charitable purpose tax exemption cases the Alaska Supreme Court has

¹⁴ *Id.*

¹⁵ Assessor’s Brief at 10 (citing *Williams v. Ketchikan Gateway Borough*, 295 P.3d 374, 375 (Alaska 2013) (internal citations omitted).

¹⁶ CBJ 01.50.070(b); *Dena Nena Henash*, 88 P.3d at 129.

¹⁷ *Dena Nena Henash*, 88 P.3d at 130.

approvingly repeated the following statement as “typifying the ‘broad scope’ given to [the terms ‘charity’ and ‘charitable’]:

It is quite clear that what is done out of good will and a desire to add to the improvement of the moral, mental, and physical welfare of the public generally comes within this meaning of the word ‘charity.’ To crowd out coarseness, cruelty, brutality from social man undoubtedly results in this this betterment.”¹⁸

The Court has gone on to observe:

“We later characterized this statement as ‘the broad common law definition of “charity”’ . . . This definition provides some guidance, but it does not purport to specify prerequisites for eligibility. It provides only a general framework for determining eligibility. Applying this framework, we have concluded that properties used for a youth summer recreational camp, a youth hostel, and a church radio station were being used for charitable purposes.”¹⁹

CBJ Code 69.10.020(1) incorporates into local law the mandatory State law exemptions, including the charitable purpose exemption, by a single generic reference to “property exempted by state or federal law.”

CBJ 69.10.005, the Definition section, includes some phraseology from Alaska case law:

Property used exclusively means

...

2) For charitable use, that property owned by a nonprofit charitable corporation and which is used only for the purpose of improving the moral, mental and physical welfare of the public generally.

VI. FINDINGS AND CONCLUSIONS

A. WHETHER SEAL TRUST HAS A NONPROFIT CHARITABLE PURPOSE.

The first issue we are asked to review is the Assessor’s conclusion that the SEAL Trust failed to show it had a nonprofit charitable purpose. The Assessor Decision provides:

In summary, I cannot find a charitable purpose based on recreational use or land preservation because the evidence submitted by SEAL Trust describes that public use is prohibited in all or portions of the parcels and describes that there are no

¹⁸ *Dena Nena Henash*, 88 P.3d at 132 (Alaska 2004)(citing *Matanuska-Susitna Borough v. King’s Lake Camp*, 439 P.2d 441, 445 (Alaska 1968) (citation omitted).

¹⁹ *Id.*

recreational facilities. Furthermore, state law does not authorize land preservation as an exemption, and exemptions are strictly construed. Ultimately the legislature is uniquely suited to determine if land protection efforts confer significant economic and social benefit to warrant exempting those parcels from taxation. As evidenced by AS 29.45.062, the legislature reached a different determination.

We conclude the Assessor's nonprofit charitable purpose determination was in error for the following reasons.

1. SEAL Trust's organizational documents reflect the twofold nonprofit purpose SEAL Trust asserts should qualify as charitable: conservation and public recreation.

SEAL Trust asserts it has a twofold nonprofit charitable purpose: conserving lands in Alaska with significant natural and cultural values for the benefit of the general public, and making that land open and available in its natural condition for public recreational use consistent with conservation. Without reaching the 'charitable' character question, we find these two nonprofit purposes are well documented in SEAL Trust's organizational documents and elsewhere in the record.²⁰

2. Recreational use can qualify as a charitable purpose under Alaska law.

The parties agree that recreational use can qualify as a charitable purpose under Alaska law, as recognized by the Alaska Supreme Court in the *Matanuska-Susitna Borough v. King's Lake Camp*.²¹ The disagreement is with the Assessor's statement, "I find that recreational use can be a charitable purpose *when recreational facilities are provided*."²²

3. The criteria the Assessor applied to determine whether SEAL Trust established recreational use as a nonprofit charitable purpose were flawed.

SEAL Trust's legal argument on this point has merit.²³ While there were recreational

²⁰ See [R. 30-34, 49]

²¹ See 430 P.2d 441 (Alaska 1968), Assessor Decision at 3 and SEAL Trust Brief at 9-11.

²² *Id.* (emphasis added)

²³ See SEAL Trust Brief, at 10-11, 10.

facilities in the *King's Lake Camp* case, and the court observed “it has frequently been held that the providing of recreational facilities, such as accommodations for campers, is a charitable use of the property,”²⁴ neither the Legislature nor the Alaska Supreme Court have dictated that facilities are *required* to establish public recreational use of land as a charitable purpose. We do not interpret the charitable purpose exemption to require recreational facilities either.

Because outdoor recreational activities like walking, hiking, birdwatching and wildlife viewing do not depend on the provision of facilities, facilities are but one consideration and not a prerequisite to finding a nonprofit charitable purpose based on recreational use. Noteworthy is that the Mendenhall Wetlands State Game Refuge is considered by the State to have a recreational purpose though, as SEAL Trust points out, it lacks facilities.²⁵

It also appears the Assessor put significant weight on the lack of signage indicating the undeveloped parcels were “available for public use.”²⁶ There is no bright line test that *requires* signage to be posted showing property is open to public use in order to find a nonprofit charitable purpose. Considering Alaska’s common law definition for finding a charitable purpose “does not purport to specify prerequisites for eligibility,”²⁷ we hold facilities and signage are factors to consider, but not legal prerequisites to finding outdoor recreational use as a nonprofit charitable purpose.

4. The finding in the Assessor’s charitable purpose analysis that public use is prohibited in all or a portion of the SEAL Trust parcels is not supported by substantial evidence.

We do not find substantial evidence in the record showing SEAL Trust prohibits public use

²⁴ *King's Lake*, 439 P.2d. at 446.

²⁵ See SEAL Trust Brief at n.63 and Reply Brief at 10.

²⁶ Assessor Decision at 3.

²⁷ *Dena Nena Henash*, 88 P.3d at 132.

of its properties. We therefore cannot uphold denial of SEAL Trust's nonprofit charitable purpose claim for that reason. The Assessor relies largely on a SEAL Trust comment that, "[t]o achieve its conservation purpose, allowing public access is not required, and in some cases may be prohibited in order to protect sensitive or important resources for the good of the entire community."²⁸ In light of the rest of the record, we do not find this statement constitutes *substantial evidence* that SEAL Trust does in fact prohibit public use of all or a portion of its property.

Rather, SEAL Trust described how each parcel can be accessed by the public and answered "yes" to whether members of the public could reasonably access each parcel without trespassing.²⁹ There is also nothing in the record showing the Assessor disputed these descriptions of dispersed footpaths and public access to the parcels.³⁰

5. Because SEAL Trust adequately established a nonprofit charitable purpose based on recreational use, we need not decide whether conservation *alone* is a charitable purpose under the Alaska Constitution 9.4 and AS 29.45.030(a).

We expressly decline to decide whether conservation alone is a charitable purpose under the Alaska Constitution 9.4 and AS 29.45.030(a). The answer is not ascertainable from the plain language of either the Constitution or the Statute, nor has the issue ever been addressed by the Alaska Supreme Court in interpreting the charitable purpose exemption. It is an undecided question under state law.

6. We do not, however, interpret AS 29.45.062(a), which provides for the reduction in assessed value of property subject to a conservation easement, to prevent an otherwise qualified taxpayer, from receiving a charitable purpose exemption under AS 29.45.030(a).

Because both the taxpayer qualifications and the substantive requirements of these two

²⁸ [R. 403]

²⁹ [R. 404-405]

³⁰ SEAL Trust Brief at 4-5; SEAL Trust Reply Brief at 8.

statutory provisions are very different, we do not agree with Appellee's argument that AS 29.45.062(a) legally precludes a qualified taxpayer with a conservation easement from seeking to qualify for a charitable purpose exemption. No particular taxpayer status is required to obtain a reduced assessment on account of a conservation easement under that statute. In fact, the property can be use for entirely private purposes. The charitable purpose exemption, on the other hand, requires exclusive nonprofit charitable use of property for the broader public good. We see no legal reason why a nonprofit corporation could not seek to qualify for tax relief under either or both provisions.

B. WHETHER EACH OF SEAL TRUST'S 14 PROPERTIES ARE BEING USED FOR AN EXEMPT PURPOSE.

The charitable purpose exemption analysis requires a two-part inquiry: "first, whether there is a nonprofit, charitable purpose, and second, whether the property is being exclusively used for an exempt purpose."³¹ The Assessor answered the second prong of the exemption question in this summary fashion:

Even if there was a nonprofit, charitable purpose of each parcel, I cannot grant the exemption because SEAL Trust has not provided evidence of any use. Notably, SEAL Trust provided no evidence of any use, let alone charitable use of the parcels: "SEAL Trust does not keep records of who actually used the parcel and how often the parcel was used." Without evidence of actual charitable use, I cannot grant an exemption.³²

Having found SEAL Trust to have a nonprofit charitable purpose, and having reviewed the Assessor's findings with respect to the exclusive use test, we remand to the Assessor to take additional evidence on the question of whether each of SEAL Trust's 14 properties is being used for an exempt purpose, in keeping with the following findings:

³¹ *Dena Nena Henash at 130 Alaska 2004.*

³² Assessor Decision at 5

1. The Assessor is correct to require evidence of actual use of the property.

To the extent SEAL Trust urged that conservation alone should be a sufficient charitable purpose, it appears SEAL Trust believed that showing its parcels were *available* for public use was sufficient for satisfying the actual, exclusive use for exempt purposes.³³ However, Alaska law requires evidence of actual use for the exempt purposes, so on remand SEAL Trust must provide evidence that each of the subject parcels is actually used for conservation and public recreational purposes.

2. Records specifically identifying who used the property and/or how often the property was used are not required to show the property is actually and exclusively used for exempt purposes.

The exclusive use test requires analysis of whether the property is being used exclusively for a charitable purpose.³⁴ The Alaska Supreme Court has “interpreted ‘exclusive use’ to require that all uses of the property be for the ‘direct and primary’ exempt purpose.” The SEAL Trust’s charitable purpose is conservation and public recreation. When asked by the Assessor whether any commercial uses or other non-exempt uses occur on the parcel, SEAL Trust responded: “No commercial uses or other non-exempt uses occur on any of SEAL Trust’s 14 properties.”³⁵ The Assessor has not disputed this statement or identified *nonexempt* purposes for which the SEAL Trust property is used.

On remand, SEAL Trust must still show *actual use* of the 14 parcels for its exempt purpose. For this part of the analysis, we do not believe SEAL Trust’s failure to “keep records of who actually used the parcel and how often the parcel was used,” is fatal to satisfying the actual use test. Such

³³ See [R.400-401] and SEAL Trust Brief at 5.

³⁴ See *Dena Nena Henash*, 88 P3d. 124, 132 (Alaska 2004).

³⁵ [R. 404]

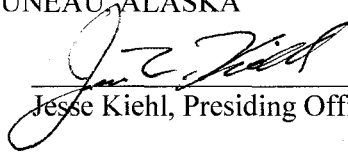
documentation might make it easier to prove actual use for exempt purposes, but is not a legal requirement.

To the extent SEAL Trust did not think it needed to show evidence of actual use at all, and that the Assessor appears to have found SEAL Trust's lack of specific records to be dispositive, on remand SEAL Trust should be given the opportunity to provide the Assessor with any reasonable form of evidence of actual use for public recreational purposes, on each of its 14 parcels.

DATED this 5th day of April 2017.

ASSEMBLY OF THE CITY AND BOROUGH
OF JUNEAU, ALASKA

By:



Jesse Kiehl, Presiding Officer