Land Use Law and the Impulse From a Vernal Wood: The *Mohonk Trust* Case

by David Sive

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When I am asked to designate one of the court cases litigated over 55 years of practice as the most satisfying, I generally choose the *Mohonk Trust* case.[1] In that case, I was able to combine strategic skills gained from many years of litigating with a cause to which I had long been devoted, that of wild land preservation. The case provided an unusual, but in my view, entirely apt, coupling of legal principles and English romantic poetry.

I. Background, Argument, Appeals, and Decision

The Mohonk Preserve (it changed its name from Trust to Preserve in 1978) is a land preserve located about 75 miles northwest of New York City. It is part of a stunning uplift of quartzite conglomerate, which forms the Shawangunk Mountains. The Preserve and surrounding state lands contain a rare combination of flora and fauna, much of it at the limits of its geographic range. It is, in the words of New York State's highest court, "one of the most beautiful lands of New York State."[2] Adjoining the Preserve Lands is the Mohonk Mountain House, a privately owned resort well-known to thousands of guests and conferees that have visited there since the 1870s.

Beginning several decades ago, members of the Smiley family, owners of the Mountain House, created a nature trust (the Mohonk Trust) and began to donate or sell—at just a tiny fraction of its value—land to the Trust. By the late 1970s, the Trust totaled approximately 5,000 acres, and the Trust lands surrounded the Mohonk Mountain House resort lands. (The successor Mohonk Preserve now has over 7,000 protected acres in this vicinity.) Carriage roads and foot trails give access to the preserve lands. The lands are also accessible by other public trails and roads. Equally important, they are maintained as a wild forest, as noted by the New York State Court of Appeals. Schools and nearby colleges have used the lands "as an essential part of their curricula in courses of biology, zoology and forestry."[3] Scientific studies have been conducted, and, as also noted by the court, the members of the public have used the lands for "rock climbing, backpacking, camping, bird watching and nature hikes."[4]

Basic to the Trust's purposes has been the exemption of the Trust's lands from real property taxes.

For many years prior to 1974, the lands of the Trust were granted exemption from real property taxes by the assessor for the town of Gardiner. For the tax year 1976, however, Gardiner's assessor denied the exemption. He determined that the Trust's use, maintenance, and operation of its lands did not satisfy the basic criterion set forth in §1 of Article XVI of the New York State Constitution and §421(now changed to §420-a) of the State's Real Property Tax Law. The operative language of the Constitution and §421 (now in §420-a) provided an absolute exemption from real property tax for:

> [Lands] owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, moral or mental improvement of men, women or children or cemetery purposes, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes.[5]

Because of my law firm's specialization in environmental and related matters, the firm and the late Prof. William

Author's Note: I would like to thank my son, Walter Sive, attorneys Jessica Albin and Victoria Shiah of Sive, Paget & Riesel, and officers of the Mohonk Preserve for their assistance with this Article.

1. Mohonk Trust v. Board of Assessors of the Town of Gardiner, 47 N.Y.2d 476, 392 N.E.2d 876, 418 N.Y.S.2d 763, 9 ELR 20551 (N.Y. 1979).
2. *Id.*
3. *Id.*
4. *Id.*
5. Real Property Tax Law §421-a, now at §420-a, with slight modifications.

Ginsberg of Hofstra Law School, of counsel to the firm, were retained to appeal the denial of exemption.

Rather than taking an appeal to the Appellate Division of the court, which if taken would be an appeal on the record of evidence in the proceeding in which the exemption had been denied, we determined to file a new petition to the Assessor for exemption. In the new proceeding, the Trust would be permitted, under New York's Real Property Tax Procedure Law, to interpose new evidence and arguments. We filed a new petition for exemption, which the assessor rejected.

From the very commencement of our efforts, the new proceeding seemed to be the best course to satisfy the grounds for exemption from real property taxation by the town of Gardiner and other municipalities. The opportunity to develop evidence and arguments in a trial court was both challenging and tantalizing. The trial would allow extensive presentation of evidence and argument as to how the words "charitable" and "educational" and "the moral improvement of men, women or children" should be interpreted.

The preparation for the trial of the proceeding, in this case by the Ulster County State Supreme Court (the trial court), followed our usual practice of preparation of witnesses and oral arguments and organizing documentary evidence and briefs. From the very first, we determined that the evidence would consist of the testimony of a witness intimately familiar with the Trust lands, its flora and fauna, and the description of the Trust's permitted activities. In addition, of equal or perhaps of greater importance, we would adduce testimony by qualified expert witnesses, as well as legal arguments concerning the meaning and permissible interpretation of the terms "charitable," "educational," and "moral improvement of men, women or children."

The lay testimony would be principally by the Trust's superintendent of the maintenance and protection of the Trust lands. As to the expert testimony, we determined to rely on three witnesses:

1. A professor of botany at the nearby State University of New York college at New Paltz, who frequently led groups of students on visits to and exploration of the Trust lands;
2. An official and leader of Outward Bound, who led frequent hikes and camping trips of students in schools, mostly from depressed urban areas, on the Trust property; and
3. A clergyman of the Riverside Church in Manhattan, whose sermons and related activities in the church dealt with the relation of nature and man; his sermons would provide a basis for interpretation of the key words of §421.

The trial by the Ulster County court took one day. The presentation of evidence proceeded much as we had planned. The trial judge seemed to listen to the testimony of the expert witnesses with some puzzlement. However, he overruled objections raised by the town's attorney to the admission of the evidence we adduced.

The judge rendered his decision denying our claims the day after the trial. He found for the town on the meaning of the statute. His decision rested, in part, upon a limited view of the educational provision in the Constitution and §421. He also held that an agreement between the Trust and the Mohonk Mountain House resort, permitting the resort's guests to hike on the trails and ride carriages on the roads leading from the hotel's lands, for which the resort paid fees to the Trust, was inconsistent with the Trust's charitable purposes.

We took an appeal on behalf of the Trust to the Appellate Division of the Supreme Court. It affirmed the trial court's judgment. We appealed to the Court of Appeals, the state's highest court. In addition to our brief on appeal, the Natural Resources Defense Council (one of the organizations I helped found) and other environmental groups, appearing as amici curiae, interposed a brief, supporting the positions of the Trust.

A short time after the oral argument, the Court of Appeals, in a unanimous opinion, reversed the lower court rulings. It stated:

> Clearly, the Trust land is not used for religious, hospital or cemetery purposes. We conclude that it is, however, used primarily for an assortment of "charitable . . . educational, [and] moral improvement of men, women or children" purposes, for we see no reason why these categories should not encompass lands used for environmental and conservation purposes which are necessary to the public good and which are open to and enjoyed by the public. . . .[6]

The Court of Appeals also ruled that the Trust did not lose its identity as "charitable" or "educational" or its role as an agent for the "moral or mental improvement of men, women or children" because a portion of the Trust's income came from the resort's guests using carriage roads and trails on the Trust lands. The Court of Appeals stated:

> Finally, we reject the suggestion that simply because the Smiley family may receive some benefits by reason of the fact that their hotel is adjacent to the Trust property, the Trust thereby is converted into a commercial organization. The Trust itself is plainly a nonprofit organization which serves an essential public need. Hence, in the absence of any indication that the Trust is merely a device used to shield a profit-seeking enterprise, which is not the case here, the fact that nearby landowners in fact do benefit by the existence and operation of the Trust is irrelevant to its tax-exempt status.[7]

6. 47 N.Y.2d 476.
7. *Id.*

II. The Legacy of the *Mohonk* Case in Wild Lands Preservation

From the very outset of our work on the claim that the Trust's use and operation of its lands was for exempt purposes, the case was one of deep personal interest to me, the firm, and Professor Ginsberg, as attorneys for the Trust, and to the Trust's Board of Trustees.

The origins of my interest in the subject matter of the case dated back to college days, when I was introduced to the writings of the Lake District poets, Wordsworth, Shelley, Keats, and Byron; to the poetry of Walt Whitman; and to nature writers, including John Muir and John Burroughs.

Foremost to me among the poets was Wordsworth. I shared with him his "intimations of immortality," found in nature.[8] From the beginning of the work for the Mohonk Trust, I felt that the interpretation of the terms "educational," "charitable," and "moral improvement of men, women and children" could be found in the poetry of Wordsworth.

To an appreciable extent, as the case proceeded, the arguments concerning the meaning of the term education became arguments of whether education could take place without a classroom (generally indoors), a designated teacher, students, and perhaps textbooks. I found in the writings and lives of Wordsworth and other poets the authority for the legal arguments we were making. And, looking for an appropriate citation of authority, I thought none was better than the one I incorporated formally into our briefs and oral argument.

> One impulse from a vernal wood
> May teach you more of man,
> Of moral evil and of good
> Than all the sages can.[9]

The principle—that wild lands are educational and serve to promote the moral improvement of men, women and children—may, I believe, be cited in cases similar to *Mohonk*; that is, where the decision turns on the application of real property tax exemptions for wild lands. I felt no bashfulness in incorporating the Wordsworth quotation in our briefs and the oral argument before the Court of Appeals.

The Court of Appeals found that the operation of the Trust Lands was educational and charitable and that the operation did promote the moral improvement of men, women, and children. The court stated:

> As it is, however, the Legislature has not seen fit to remove environmental and conservation purposes from the broad category of charitable, educational, or mental or moral improvement of man purposes within which they so neatly fit.[10]

The excerpt from Wordsworth is not quoted in the court's opinion. Nor was it rendered as part of the testimony of any of the expert witnesses, but it was submitted as part of our legal argument. It served, as well, as the authority for the opinion of the Riverside Church official, that the Mohonk Trust Lands promoted "the moral improvement of men, women or children."

Notwithstanding the fact that the court's decision did not refer to the Wordsworth quote, I believe the Wordsworth principle may be regarded as an apt synthesis of the court's decision and may be likened to the principles stated by legal scholars. Wordsworth's statement concerning the "impulse from a vernal wood" reveals to us that the land of the Mohonk Trust is educational and that it provides us with opportunities for moral discovery and growth.

The foregoing points go to the substantive issue that was litigated, the meaning of the words of the statute. Equally significant is the court's allowance of the experts' opinions as admissible evidence and its presumed reliance on them.

In court proceedings, expert testimony on the beauty of a painting has been held proper for admission to a case. As well, expert testimony concerning the morality of a book or play is proper in an action to enforce a statute that seeks to ensure "decency." And, similarly, the *Mohonk* case provides authority for the acceptance of expert testimony to determine the meaning of the terms, "educational," "charitable," and "moral improvement of men, women or children" in real property tax exemption cases and, more generally, to determine the civic value of lands held in land preserves.

My firm and I have represented a number of environmental organizations in other cases concerning the value to society of lands held in a preserve and their corresponding exemption from real property taxes. However, the *Mohonk* case is probably one of the very few, if not the only one, to permit expert testimony addressed to the issue of whether areas of wild land promote morality. It is also the first instance I know of where a line of poetry stating a principle was applied in an important case.

A lawsuit requires a determination by a court of issues of law and of fact. The issues of law are determined on the basis of the governing statute and the meaning of the language of the statute or, if not governed by a statute, rules of the common law as determined by a court. In either case, the courts look to precedent for guidance. Attorneys interpose briefs and render oral arguments with their views of the governing law. Issues of fact fall into two basic categories: those of which proof is furnished by testimony from witnesses and from documentary proof, and those of which a court may take judicial cognizance. The latter does not require proof by the parties.

The *Mohonk Trust* case supports Wordsworth's statement of what may be taught, as a matter of impulse from a vernal wood. The case may be construed as judicial cognizance that an impulse from a vernal wood is educational, charitable if rendered freely and for the benefit of our moral growth. What is most satisfying about the *Mohonk* case is

8. A reference to Wordsworth's *Ode: Intimations of Immortality From Recollections of Early Childhood*, written in 1804.
9. William Wordsworth, The Tables Turned (1798).
10. 47 N.Y.2d 476.

that New York State's highest court has rendered a decision that is in concordance with Wordsworth's statement.

I trust this description of the case provides insight as to why I regard the *Mohonk Trust* case as so significant, and why I found it so satisfying. Indeed, it is one of my fondest memories of 55 years in the practice of law.

III. Postscript

It is interesting to note what has happened since the Court of Appeals rendered its judgment 32 years ago. The Mohonk Preserve has thrived and evolved as a center for nature discovery. It is now New York State's largest visitor- and member-supported nonprofit nature preserve, with over 150,000 annual visits. It has become the second most visited rock-climbing destination in North America, with over 50,000 climber visits. Over the last 25 years, the Preserve has served 100,000 area schoolchildren from more than 50 area elementary schools. Annually, over 500 college students and faculty from many universities use the Preserve as an outdoor classroom, living laboratory, and job training opportunity for aspiring conservationists.

Since the affirmation by the court of its tax-exempt status, the Preserve has made annual, voluntary, monetary, and community service contributions to the town of Gardiner and the other four municipalities in which it is located. Additionally, studies have revealed millions of dollars in positive economic benefit from the Preserve to the surrounding communities, in the form of tourism spending and corresponding sales tax public revenues. The conservation of 7,000 acres of watershed lands and mountainous forests also provides incalculable "ecosystem services" to the surrounding communities at no cost to the taxpayers, including clean water and air, habitat protection, and access to outdoor recreation.

Clearly, the *Mohonk Trust* case is "well-settled" law in New York State. Westlaw notes 42 citations of the case in New York and one in California. It has also been cited 13 times in "opinions of counsel" by the New York State Office of Real Property Services, in 28 commentaries referred to as "secondary sources," and in 22 "appellate briefs." Among the institutions that have benefited from the *Mohonk* precedent are the Cary Arboretum and its New York Botanical Gardens property, the Scenic Hudson Land Trust and its Fishkill Ridge property, and the Storm King Arts Center. *Mohonk* has been cited in cases outside the realm of land preservation by entities facing challenges to their claims that they served a charitable, educational, or moral purpose. Among these was the Symphony Space performing arts center in New York City.

In 2013, the Mohonk Preserve will celebrate its 50th anniversary as a public charity since being founded as The Mohonk Trust in 1963.

Finally, it should be noted that it remains important to protect the Mohonk Preserve and many other nature preserves from losing, by legislative action, their status as deductible entities, as affirmed by the courts. As part of the current debate on governmental financing, proposals are being made to abolish and limit such contributions. While I am confident we can ensure such efforts will not prevail, it will require strong advocacy to achieve this.