

STATE OF MAINE
KENNEBEC, SS.

STATE BOARD OF PROPERTY TAX REVIEW
DOCKET NUMBER: 92-96

Lauris M. & Charlene S. Bailey,)
)
 Petitioner)
)
 v.)
)
 Town of New Sharon,)
)
 Respondent)

DECISION

This matter came before the State Board of Property Tax Review (hereinafter Board) on the timely appeal by Lauris M. and Charlene S. Bailey from the refusal by the Town of New Sharon to abate a penalty assessed under the Maine Tree Growth Tax Law [36 M.R.S.A. §§ 571-584-A (1990)]. The property which is the subject of this appeal is located at the intersection of Bailey Hill Road and the New Sharon/ Farmington town line. The property is designated as Map R-2, Lots 1 and 1A on the Town of New Sharon tax maps. Pursuant to 36 M.R.S.A. § 583, appeal from the refusal to abate a tree growth penalty is directly to this Board.

Hearing was convened on July 13, 1993, before five members of the Board. Lauris Bailey appeared on behalf of the Petitioners. Selectmen James Smith and Howard Bailey and County Commissioner Fred Marky appeared on behalf of the Town.

The subject property is comprised of over ninety acres of land located on both the north and south sides of Bailey Hill Road, which was granted tree growth status in 1973. Fronting on Bailey Hill Road are four acres, surrounding the Petitioners' house, which the Petitioners excluded from the original application for tree growth status. The Petitioners' house is located on the north side of Bailey Hill Road. In 1989, site work was begun for construction of a house for the Petitioners' son on the south side of Bailey Hill Road, across the road from the Petitioners' house. In 1991, the Town of New Sharon notified the Petitioners that one acre of land, on the south side of Bailey Hill Road, previously classified as tree growth, had been withdrawn, due to the change in use to a house lot. Accordingly, a withdrawal penalty was assessed.

The Petitioners assert that the town has assessed a withdrawal penalty in error, since the one acre lot on the south side of Bailey Hill Road was never classified as tree growth. The Petitioners argue that the four acres excluded from tree growth in the 1973 application consisted of three acres on the north side of Bailey Hill Road and one acre on the south side of Bailey Hill Road.

The Town of New Sharon argues that the Petitioners' tree growth property is in two parcels, one on either side of Bailey

Hill Road. The Town states further, that the four acres of land, designated in 1973 as excluded from tree growth, are all located in the parcel on the north side of Bailey Hill Road. In support of this position, the Town notes that in 1973, when the Petitioner's tree growth application was filed, property divided by a public road was considered two parcels, for which separate land schedules had to be filed. See 36 M.R.S.A. § 574.

The Petitioner bears the burden of proving that the acreage in question was not withdrawn from tree growth classification and therefore, no penalty should be assessed. In this case, the Petitioner attempts to meet that burden by asserting the acre was never classified.

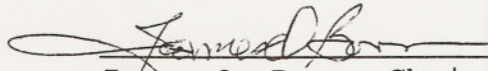
The maps submitted in evidence by the Petitioners are ambiguous. The Petitioners' 1993 application for tree growth classification does not show the designation of land left open on the south side of the road. While both the Petitioners and the Town of New Sharon acted in good faith, the Petitioner has the burden of showing that the Town is wrong.

Based upon the evidence before the Board, it is reasonable to conclude the one acre on which the Petitioners' son built a house was originally classified as tree growth but has since been withdrawn as a result of the change in use. Therefore, by a vote of

5-0, the Board hereby denies the appeal of the Petitioners.

Any party wishing to appeal this Decision must file a Petition for Review in the Superior Court within (30) days of the date of receipt of this Decision, pursuant to 5 M.R.S.A. §§11001-11008. If this Decision is not appealed, it shall become binding on the parties at the end of said 30-day period.

Dated: October 29, 1994


James O. Born, Chair
State Board of Property
Tax Review