

STATE OF MAINE  
KENNEBEC, SS.

STATE BOARD OF  
PROPERTY TAX REVIEW  
DOCKET NO. 95-007

BROWER, DENIS & POWERS,	)	
	)	
Petitioner	)	
	)	
v.	)	DECISION
	)	
TOWN OF STARKS,	)	
	)	
Respondent	)	

This matter came before the State Board of Property Tax Review (hereinafter "the Board") on the appeal of Petitioner, Brower, Denis and Powers, from the decision of the Town of Starks' Selectmen denying an application for tree growth classification pursuant to the Tree Growth Tax law, 36 M.R.S.A. § 521, et seq. The subject property is indicated on the Town of Starks tax map as lots 10, 11, 12, 14, 16, and 17. Each lot is over 10 acres in size. Lot 5 was withdrawn by the Petitioner.

Public hearing in this matter was held on March 16, 1995. Board members Phillip Johnson, Chair, Mary Nelson, Bertrand Turmel and Richard Auger participated. The hearing was concluded on said date. The Petitioner thereafter admitted that it had not paid the current year taxes on the subject property. Pursuant to 36 M.R.S.A. § 843(4), the Board then suspended public deliberations until such time that the Petitioner paid its taxes. The Board reconvened on April 20, 1995 to publicly deliberate. Respondent confirmed that the Petitioner's taxes were paid in full. The Board then considered Respondent's motion to re-open the evidentiary hearing. The Board chair denied Respondent's motion based upon the

fact that the evidence sought to be presented was readily available to the Respondent on or before 3/16/95, the date on which evidence was closed in this matter. The Board thereafter entered into public deliberations in this matter. Respondent had no objection to Board member Mary Nelson not being present.

On or about March 15, 1994 , petitioner, Brower, Denis and Powers, filed an application for classification and valuation of land as tree growth property with the Town of Starks. The Town denied the Petitioner's application on or about June 3, 1994. On or about July 18, 1994, by petition dated July 12, 1994, Brower, Denis and Powers filed an appeal with the Board seeking a review of the Town's denial of its application for tree growth classification.

The Petitioner was represented by Hal S. Weisberg, Esq. The Respondent was represented by the 1st Selectman of the Town of Starks, Anita Reichenback. Kevin McCarthy, a licensed forester, testified on behalf of the Petitioner. His testimony revealed that Mr. McCarthy prepared a forest management and harvest plan for the Petitioner for the purpose of complying with 36 M.R.S.A. § 574-B.

Pursuant to developing the plan for the Petitioner, Mr. McCarthy researched at the Department of Inland Fisheries and Wildlife whether the property sought to be classified as tree growth encompassed any areas of significant wildlife habitat. His research revealed that the most current information relative to identification of wildlife habitat within the relevant property consisted of a 1975 map developed by the Northern Regional Planning Commission which designated deer wintering yards in the Town of Starks. An examination of said map in relation to the relevant

property revealed no deer wintering areas within said property. Mr. McCarthy testified that the Department of Inland Fisheries and Wildlife's 1975 map was the most current map of the Department and in fact an update of the map was in the process of being completed. Mr. McCarthy testified that he certified to the Town pursuant to Petitioner's application that Petitioner was following the recommendations of his prepared plan for each parcel. Pursuant to a request of the Town, Mr. McCarthy on behalf of the Petitioner, forwarded copies of the forest management plan for each subject parcel. The Petitioner was under no statutory or regulatory obligation to forward such information.

Respondent asserts that there exists a deer wintering area encompassed within the subject property which was not revealed by the Petitioner and therefore its request for the tree growth classification should be denied.

Respondent presented no law or evidence to support its position.


Pursuant to 36 M.R.S.A. § 574-B, an applicant for tree growth classification is required to submit a forest management and harvest plan prepared by a licensed professional forester, together with a statement from said forester that the landowner is managing the subject property according to the plan as required by said § 574-B(1). Pursuant to 36 M.R.S.A. § 573 (3-A) said plan "must include the location of water bodies and wildlife habitat identified by the Department of Inland Fisheries and Wildlife." The existence of water bodies and/or wildlife habitat does not preclude tree growth classification (see 36 M.R.S.A. § 573(3); (3-A)).

Based upon the evidence presented, the Board finds that Petitioner has met its burden of proving that it has complied with its obligation pursuant to 36 M.R.S.A. § 574-B in its application for tree-growth classification.

Based upon the foregoing facts, the Board by vote of 3-0 overturns the decision of the Town of Starks denying the Petitioner's application for classification and valuation of its land as tree growth.

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 the decision is not appealed, it shall become binding on the parties at the end of the 30-day period.

Dated: 6/12/95

  
Phillip Johnson, Chair  
Panel A  
State Board of Property Tax Review