

STATE OF MAINE  
KENNEBEC, ss.

BOARD OF PROPERTY TAX REVIEW  
DOCKET NO. 2008-016

DALE HENDERSON LOGGING, INC.,

Petitioner

v.

DECISION

TOWN OF STEUBEN,

Respondent

This is an appeal by Petitioner Dale Henderson Logging, Inc. (DHL) from the refusal by Respondent Town of Steuben to abate a penalty, imposed as a supplemental assessment for tax year 2006, upon concluding that a parcel of land owned by DHL had been involuntarily withdrawn from tree growth. The Board heard the appeal on July 16, 2009, with Board members Allan L. Smith and Lowell Sherwood and Board Chairman Eric E. Wright present. Timothy A. Pease represented DHL and called Dale Henderson, the company's principal, and Lee Bennett as witnesses. Jackie Robbins, the assessor's agent for the Town testified and presented the Town's case. At the conclusion of the evidence the Board deliberated and, by a vote of 2-1, dismissed the appeal for want of jurisdiction.

#### I. BACKGROUND

36 M.R.S. §§ 571-584-A (1990 & Supp. 2008) is the Maine Tree Growth Tax Law. The law provides that, upon acquiring property

enrolled in tree growth, “within one year of the date of transfer, the new landowner must file” either “[a] sworn statement indicating that a new forest management and harvest plan has been prepared” or “[a] statement from a licensed professional forester that the land is being managed in accordance with the plan prepared for the previous owner.” 36 M.R.S. § 574-B(3)(A), (B) (Supp. 2008). In 2000, the first paragraph of 36 M.R.S. § 581(1) provided that “[i]f the assessor determines that land subject to this subchapter no longer meets the requirements of this subchapter, the assessor must withdraw the parcel from taxation under this subchapter.” When that occurs, “the assessor shall impose a penalty upon the owner.” *Id.* § 581(3). One established reason for withdrawing property from tree growth is the failure to file a section 574-B(3) statement. *Kendall v. Town of Perry*, No. 2008-004, at 2 n.1 (BPTR Dec. 30, 2008); *Campbell v. Town of Brownville*, No. 2006-003, at 2, 3-4 (BPTR Sept. 15, 2006) (failure to file statement “automatically” causes withdrawal); *Dale Henderson Logging, Inc. v. City of Old Town*, No. 94-05, at 4 (BPTR Sept. 20, 1995) (listing ways in which property is considered removed or withdrawn from tree growth).

Dale Henderson has been in the business of buying and selling large tracts of land in Downeast Maine for some 30 years. In 2000, when he acquired the property in issue, his company owned 26,000 acres in the Town of Steuben. The subject parcel, of 1921 acres as depicted on Map 17, Lot 007 of the Town’s tax maps, was in tree growth. At the time,

paper mills were shutting down, creating less of a demand for forestry products. The company had a forester on-site who was responsible for filing the required forestry plans; she was transitioning to a new position. Henderson testified that he “had his hands full,” and no section 574-B(3) statement was filed with the Town.

For reasons the record does not make clear, for some years after Henderson acquired Lot 007 the Town did not withdraw the parcel from tree growth. Then, following the Town’s commitment of taxes for tax year 2006, Henderson received a supplemental assessment that increased the tax due on Lot 007 more than three-fold, to \$23,562.86. He asked Lee Bennett, a foreman, to determine why the tax bill had increased so dramatically. Bennett learned that no section 574-B(3) statement had been filed. Henderson was aware of the requirements of section 574-B(3). The company told the Town it would have a new forestry plan prepared immediately, which was done. The company took the position that the failure to file a new plan had been an oversight, which it believed was obvious given the size of the parcel. The increased assessment represented a penalty imposed for withdrawal of the property from tree growth.

According to the Town, it committed property taxes for 2006 on October 2, 2006.<sup>1</sup> The company did not apply for an abatement as it

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<sup>1</sup> Dale Henderson Logging’s Information Sheet states the commitment date was October 3<sup>rd</sup>. The difference is meaningless. And as we describe

could have within 185 days, 36 M.R.S. § 841(1)(1<sup>st</sup> ¶) (Supp. 2008), because as in years past the Town classified lot 007 as tree growth. Subsequently the Town assessed a supplemental tax. Robbins, after speaking by telephone with a Town representative during her testimony, testified that the supplemental, penalty tax was assessed, and committed, on August 24, 2007. On October 9, 2007, DHL applied for an abatement of the penalty assessment for Lot 007. The Assessors denied the application. The company did not appeal but instead applied for abatement of the supplemental tax by letter dated March 26, 2008, addressed to the Town's "Municipal Officers," pursuant to *id.* § 841(1)(2<sup>nd</sup> ¶). The Assessors denied this request and so notified DHL on April 4, 2008.

Rather than appeal that denial, the company in response sent a letter to the Town on April 9, 2008, emphasizing that the March 26<sup>th</sup> application had been addressed to the Town's "Municipal Officers," a term which under two statutes relied on by DHL does not include assessors of a town.<sup>2</sup> Although DHL recognized that "one or more of the

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presently, the October 2006 commitment is not the one that is of consequence in this case.

<sup>2</sup> The company cited 30-A M.R.S. § 2001(10)(A), (B) (1996 & Supp. 2008), defining "Municipal officers" as "[t]he selectmen or councillors of a town" or "[t]he mayor and aldermen or councillors of a city," and 36 M.R.S. § 501(4) (1990), defining "Municipal officers" as "the mayor and aldermen of cities, the selectmen of towns and the assessors of plantations." *See also* 1 M.R.S. § 72(12) (1989 & Supp. 2008) ("Municipal officers" are "the mayor and aldermen or councillors of a city, the selectmen or councilors of a town and the assessors of a plantation").

Assessors may also serve as Selectmen”<sup>3</sup> it “nevertheless” asked that the selectmen consider its application. If the second letter is treated as separate application, it was deemed denied by inaction after 60 days, on June 9, 2008.<sup>4</sup> See *Ferguson v. Town of Otisfield*, No. 91-66, at 1 (BPTR Apr. 5, 1994) (deemed denial in tree growth case); *Filaroska v. Town of Vienna*, No. 90-44, at 1 (BPTR Oct. 25, 1991) (same). The company appealed to the Board on August 6, 2008.

Robbins took the position before the Board that when one enrolls land in tree growth, the number of parcels one owns is not in issue. She testified that when one has the advantage of lower taxes for property in tree growth, a municipality’s loss in tax revenues has to be made up by others. While the tax consequences of withdrawal are severe, taxpayers with property in tree growth have to know their obligations and should be responsible for a failure to meet them. Robbins also pointed out that in the present matter DHL received the benefit of several years of tree growth tax rates for Lot 007 when it should not have.

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<sup>3</sup> We take official notice pursuant to 5 M.R.S. § 9058 (2002), see *Town of Waldo v. Maine Revenue Services*, No. 2007-001, at 3-4 (BPTR Jan. 25, 2007), that the Town has had both a board of selectmen and a board of assessors, with different members. 2007-2008 MAINE MUNICIPAL DIRECTORY 206.

<sup>4</sup> The 60<sup>th</sup> day was June 8, 2008, a Sunday, which by operation of 36 M.R.S. § 153(2) (1990), and see also M.R. Civ.P. 6(a), extended the deemed denied period to the next day. See *Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 7 n.4 (BPTR Apr. 11, 2002); *Carroll v. Town of Cornish*, No. 2001-002, at 5 n.3 (BPTR Nov. 30, 2001) (Order on Jurisdiction).

## II. DALE HENDERSON LOGGING'S CONTENTIONS

Dale Henderson Logging does not of course raise any issue concerning the original assessment of the property as tree growth. 36 M.R.S. § 578 (Supp. 2008). For this reason, the October 2, 2006, commitment date is not the one that matters. Nor does DHL contest that a penalty must be imposed once property is withdrawn from tree growth, *id.* § 581(3), or contend that the Town improperly calculated the penalty in this case. *Id.* § 581(3)(A), (B). See generally *Gray v. Town of Sedgwick*, No.2005-005 (BPTR Aug. 23, 2006). Its arguments are more fine-tuned, directed only at the supplemental, penalty assessment in August 2007.

### A. Argument Based on the Second Paragraph of 36 M.R.S. § 841(1)

Dale Henderson Logging's application for abatement of the supplemental, penalty tax invokes the second paragraph of 36 M.R.S. § 841(1) (Supp. 2008), which provides:

The municipal officers, either upon written application filed after one year but within 3 years from commitment stating the grounds for an abatement or on their own initiative within that time period, may make such reasonable abatement as they consider proper to correct any illegality, error or irregularity in assessment, provided the taxpayer has complied with section 706. The municipal officers may not grant an abatement to correct an error in the valuation of property.

The company's argument here is that it applied for abatement of the property tax between one and three years from commitment, but this is true only as measured from the October 2, 2006, commitment. Yet DHL

had no reason to seek an abatement after that commitment, for the Town had assessed Lot 007 as tree growth, which is just what DHL wanted. Although both parties in their Information Sheets listed October 2006 as the commitment date “for taxes in the year in which the assessment is being appealed,” the date of the commitment in October 2006 actually is of no moment. It was not until testimony was taken that the Board learned, and so was able to focus on, the key date here—the commitment date of the supplemental assessment on August 24, 2007.

With this in mind, the initial problem—whether the March 26 and April 9, 2008, letters are treated as one application or two<sup>5</sup>—is that DHL’s application for abatement was premature. For an application for abatement to be considered under the second paragraph of section 841(1), it must be filed *between* one and three years after commitment. The company made its application on March 26, 2008 (and followed with another letter on April 9<sup>th</sup>), before one year had passed from the commitment of the supplemental tax on August 24, 2007. The application thus was not properly before the Town.

In addition, while both paragraphs of section 841(1) allow assessors to grant an abatement “to correct any illegality, error or irregularity in assesment,” the second paragraph, unlike the first,

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<sup>5</sup> The Board did not address in deliberations whether DHL’s letters to the Town should be treated as one application or two or if, depending on how that issue is viewed, DHL’s appeal to the Board was timely, and that is just as well. For that would lead to consideration of several issues that we need not resolve in the current appeal. *See also* n.13, below.

specifies that “[t]he municipal officers may not grant an abatement to correct an error in the valuation of property.”<sup>6</sup> Tree growth property is taxed according to its current use rather than fair market value, *see id.* § 578—this is where the tax benefit for tree growth comes from—and the assessment of a penalty for the withdrawal of property from tree growth is based on the fair market value of the property. *Id.* § 581(3).

Appeals in tree growth penalty cases thus remain valuation cases subject to the abatement processes of section 841(1). *E.g.*, *KeyBank National Assn. v. Town of Phippsburg*, No. 2006-002, at 7 (BPTR Dec. 11, 2006); *Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 13 (BPTR Oct. 23, 2002). Likewise, withdrawal penalties are based on the valuation of the property in issue. An application for abatement of a withdrawal penalty is based on an asserted error in valuing the property—precisely what the second paragraph of section 841(1) prohibits. *See Goldstein v. Town of Georgetown*, 1998 ME 261, ¶ 10, 721 A.2d 180, 182 (errors leading to overvaluation do not constitute an

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<sup>6</sup> The second paragraph is addressed to the municipal officers, not the assessors of a municipality, because it does not call for a review of the “valuation” of property. The second paragraph thus does not have a municipal officer act as an assessor. Selectmen as such have no assessing authority. *See* 36 M.R.S. § 703 (1990) (if municipality does not choose assessors, selectmen are the assessors and must be sworn as assessors); *Inhabitants of Athens v. Whittier*, 122 Me. 86, 88, 118 A. 897, 898 (1922) (tax warrant signed by “selectmen” may be corrected to show they acted as “assessors”); *Jordan v. Hopkins*, 85 Me. 159, 160-61, 27 A. 91, 92 (1892) (selectman chosen at town meeting at which no assessors were selected cannot act as assessor when not sworn as assessor); *Inhabitants of Dresden v. Goud*, 75 Me 298, 299 (1883) (selectmen must be sworn as assessors to legally assess).

illegality). The second paragraph of section 841(1) therefore does not aid DHL.<sup>7</sup>

B. Argument Based on an Amendment of 36 M.R.S.A. § 581(1)

By its petition for assessment review, Dale Henderson Logging repeated the contention it had made to the Town that an amendment (actually two amendments) by the 123<sup>rd</sup> Legislature to section 581(1) should apply to its case, thus requiring the Town to have given it notice that a penalty tax was to be assessed for tax year 2006. To understand this argument it is necessary to trace the history of section 581(1). When first enacted, the first paragraph of 36 M.R.S. § 581(1) (1990) provided (emphasis added):

If the assessor determines that land subject to this subchapter no longer meets the requirements of this subchapter, the assessor *may* withdraw the parcel from taxation under this subchapter. The owner of land subject to this subchapter may at any time request withdrawal of any parcel, or portion thereof, from taxation under this subchapter by certifying to the assessor that the land is no longer to be classified under this subchapter.

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<sup>7</sup> Dale Henderson Logging argues that it would have the right to go to the municipal officers after a year from the date of commitment because the assessors committed an illegality, error, or irregularity by not notifying it of its failure to have filed either statement required by 36 M.R.S. § 574-B(3) before Lot 007 was withdrawn from tree growth. This argument is dependent upon an amendment to *id.* § 581(1), to which we now turn our attention. As we will presently explain, the amendment to section 581(1) creating the requirement of notice is not retroactive and does not apply to the present case. Thus, we have no occasion to decide whether the failure of assessors to notify a taxpayer that it had not filed a section 574-B(3) statement before they withdraw property from tree growth is an illegality, error, or irregularity from which the taxpayer may seek relief under the second paragraph of section 841(1).

The use of the word “may” in the first of these two sentences gave assessors discretion to determine if a penalty tax should be assessed upon withdrawal of land from tree growth. See 1 M.R.S. 71(9-A) (1989 & Supp. 2008) (“‘May’ indicates authorization or permission to act”). The permissive language of the statute did not, however, instruct assessors how or when to apply their discretion.

In 1991 the “may” in the first sentence was changed to “must.” P.L. 1991, ch. 546, § 8. This amendment removed the standardless discretion of the previous version of the statute. “Must” is equatable with “shall.” See 1 M.R.S. § 71(9-A) (“‘Shall’ and ‘must’ are terms of equal weight that indicate a mandatory duty, action or requirement”).<sup>8</sup> Under the new iteration of section 581(1), as well 36 M.R.S. § 581(3) (Supp. 2008) (“[i]f land is withdrawn from taxation under this subchapter, the assessor shall impose a penalty upon the owner”), the Board uniformly held that it was incumbent upon assessors to impose penalty assessments when land was withdrawn from tree growth, *Fowler v. Town of Lubec*, 2004-002, at 5 (BPTR Dec. 21, 2005); *Richmond v. Town of*

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<sup>8</sup> We have twice noted that “shall” or “must” are not always mandatory, *Pachowsky v. Town of Clinton*, No. 2001-005, at 6 n.3 (BPTR Feb 19, 2002); *Town of Standish v. State of Maine, Bureau of Revenue Services*, 99-031, at 3 (BPTR Jan. 12, 2000), citing *Givertz v. Maine Medical Center*, 459 A.2d 548, 554 (Me. 1983), and *Rogers v. Brown*, 135 Me. 117, 118, 190 A. 632, 633 (1937); and see also *Inhabitants of Sandy River Plantation v. Lewis and Maxcey*, 109 Me. 472, 476, 84 A. 995, 996 (1912), but the terms are mandatory, as in the present case, “when such language is ‘of the very essence of giving notice’ or if the rights of the interested parties would be prejudiced,” *Seider v. Board of Examiners of Psychologists*, 1998 ME 78, ¶ 5, 710 A.2d 890, 892, quoting *Givertz*, 459 A.2d at 554, or when a statute specifies a consequence for failing to adhere to its commands. *Hann v. Merrill*, 305 A.2d 545, 550 (Me. 1972).

*Moscow*, No. 2004-004, at 1, 3-4 (BPTR Nov. 13, 2005); *Zorn v. Town of Lubec*, No. 2004-007, at 4 (BPTR Sept. 21, 2005), and this was true whether the withdrawal was inadvertent or unintentional, or not. *Pierce v. Maine Revenue Services*, No. 2006-007, at 7 (BPTR Feb. 13, 2007); *Pachowsky v. Town of Clinton*, No. 2001-005, at 8 (BPTR Feb. 19, 2002).

In the 2007 legislative session, section 581(1) underwent a series of changes. First, by P.L. 2007, ch. 425, § 1, the following language was added as a new second sentence to section 581(1):

Before withdrawing a parcel from taxation under this subchapter, if the sole reason the land does not meet the requirements of this subchapter is that the owner failed to file the sworn statement required under section 574-B, subsection 1, the assessor shall provide the owner with written notice by regular mail of the deadline to file the sworn statement and permit the owner at least 60 days to respond to that notice.

Contemporaneously, the Legislature amended the last sentence of section 581(1) by changing the first word of the sentence from “The” to “An,” P.L. 2007, ch.438, § 18, without including the language added by P.L. 2007, ch. 425, § 1. Both these amendments were effective September 20, 2007. Neither of the amendments took account of the other, thus creating inconsistent versions of section 581(1). It remained for the Legislature to meld the two, which it did by P.L. 2007, ch. 627, § 16 (effective July 18, 2008), so that section 581(1) now reads, in three sentences:

If the assessor determines that land subject to this subchapter no longer meets the requirements of this subchapter, the assessor must withdraw the land from taxation under this subchapter. Before withdrawing a parcel from taxation under this subchapter, if the sole reason the land does not meet the requirements of this subchapter is that the owner failed to file the sworn statement required under section 574-B, the assessor shall provide the owner with written notice by regular mail of the deadline to file the sworn statement and permit the owner at least 60 days to respond to that notice. An owner of land subject to this subchapter may at any time request withdrawal of any parcel, or portion thereof, from taxation under this subchapter by certifying to the assessor that the land is no longer to be classified under this subchapter.<sup>9</sup>

Dale Henderson Logging recognizes that “the amendment [the new second sentence of section 581(1)] may not have been in effect at the time of the supplemental assessment,” but argues that “it illustrates that the legislature did not intend that penalties be assessed for inadvertent failure to file a new forest management plan.” Petition for Assessment Review ¶ 9. This argument founders on a reading of P.L. 2007, ch. 627, § 96. Chapter 627 is entitled “An Act Concerning Technical Changes to the Tax Laws.” Section 96 of the Act concerns retroactivity:

Those sections of this Act that amend the Revised Statutes, Title 36, section 1752, subsection 11, paragraph B and section 1765 apply retroactively to September 20, 2007. That section of this Act that repeals and replaces Title 36, section 1811, first paragraph, applies retroactively to September 20, 2007. That section of this Act that repeals and re-

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<sup>9</sup> Note also that this version of section 581(1) refers to section 574-B generally, not merely section 574-B(1), as had P. L. 2007, ch. 425, § 1. It thus applies to section 574-B(3), at issue in the present case, as well as to sections 574-B(1) and (2).

places Title 36, section 2521-A applies to tax periods beginning on or after January 1, 2007. Those sections of this Act that reenact Title 36, section 5211, subsections 9 to 13 apply retroactively to June 7, 2007.

This unallocated section of the Act—meaning the Revisor of Statutes did not assign it a title and section number in the Maine Revised Statutes—demonstrates that the Legislature is fully capable of making new provisions of the tax laws retroactive when it wishes, and not otherwise.<sup>10</sup> P.L. 2007, ch. 627, § 16, which became the current 36 M.R.S. § 581(1), was not singled out for retroactive effect by the Legislature. Accordingly, the new second sentence of section 581(1) does not apply to this case because the withdrawal occurred before either September 20, 2007 (the effective date of P.L. 2007, ch. 425, § 1), or July 18, 2008 (the effective date of P. L. 2007, ch. 627, § 16).

We said in *Pierce*, No. 2006-007, at 4-5, that “the Legislature assuredly is able to require notice when it wants notice to be given. We cannot read into section 574-B(3) or section 581 [notice] requirements . .

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<sup>10</sup> Amendments to statutes generally do not have retroactive effect. See 1 M.R.S. § 302 (1989):

The repeal or amendment of an Act or ordinance does not affect any punishment, penalty or forfeiture incurred before the repeal or amendment takes effect, or any action or proceeding pending at the time of repeal or amendment, for an offense committed or for recovery of a penalty or forfeiture incurred under the Act repealed or amended. Actions and proceedings pending at the time of the passage, amendment or repeal of an Act or ordinance are not affected thereby.

. “that are not there,” quoting *KeyBank National Assn*, No. 2006-002, at 16. We also noted that “[i]t would be entirely possible to create a statutory regime exempting inadvertent withdrawals or failures to file the required statements when there was no intention that the use of the land be changed” and that “[i]t would be within the Legislature’s purview to soften the consequences” of not filing a timely section 574-B(3) statement. *Pierce*, No. 2006-007, at 7, 8.

By amending section 581(1) the Legislature now has changed the rules of the game. It has adopted a notice provision that gives a taxpayer the opportunity to correct a failure to file a timely section 574-B(3) statement, an approach more easily administered by assessors than having them decide the issue of withdrawal based on the peculiarities of each case whether a failure to file a statement was unintentional or inadvertent, or not. But this new notice regime is not retroactive to cases, like DHL’s, in which the withdrawal occurred before either September 20, 2007, or July 18, 2008.

### III. CONCLUSION AND APPEAL RIGHTS

The Board has repeatedly held that the failure of a taxpayer to make a timely request for abatement deprives us of jurisdiction to consider the merits of an appeal. *Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 56 (BPTR Nov. 14, 2000); *UAH Hydro Kennebec v. Town of Winslow*, Nos. 95-120 & 95-150, at 1 (BPTR May 16,

1997); *Friendly Ice Cream v. City of Brewer*, No. 97-011, at 2 (BPTR May 13, 1997); *Haskell v. Town of Phippsburg*, No. 96-004, at 2 (BPTR Mar. 5, 1996). The Board must dismiss an appeal over which it has no jurisdiction. *E.g.*, *Sayer v. Town of Canton*, No. 99-022, at 2 (BPTR Aug. 8, 2001); *Gregory*, No. 2000-001, at 68; *Chatfield v. Town of Rockport*, No. 91-56, at 3 (BPTR Apr. 21, 1995).<sup>11</sup>

The Board's deliberations raised the question whether DHL could refile its application. Based on this discussion,<sup>12</sup> Mr. Sherwood dissented. He believes this is a gray area and, having fully heard the contentions of the parties, believes all that a dismissal on jurisdictional grounds accomplishes is to put the parties through the process again, thus wasting time and expense.<sup>13</sup>

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<sup>11</sup> Because the Town did not receive a timely application for abatement, and so did not have jurisdiction over the appeal, it should have dismissed, not merely denied, the application. *Curtis v. Town of Sherman*, No. 2004-005, at 4 n.3 (BPTR Jan. 19, 2005) (Chairman's Order on Jurisdiction), *citing* *Martin v. Deschenes*, 468 A.2d 618, 619-20 (Me. 1983); *Littlefield v. Maine Central R.R. Co.*, 104 Me. 126, 131, 71 A. 657, 659 (1908).

<sup>12</sup> We observe, as we have before, that the Board is not bound by every comment its members may make during deliberations. *Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*, No. 2003-019, at 7 n.5 (BPTR Feb. 7, 2005); *B & B Properties v. City of Ellsworth*, No. 98-026, at 4 n.2 (BPTR Mar. 3, 1999), *citing* *McCullough v. Town of Sanford*, 687 A.2d 629, 630-31 (Me. 1996).

<sup>13</sup> This presupposes that a taxpayer clearly has the right to file a second or successive application for abatement. But on this point, *see* *Davis v. Town of Lamoine*, No. 2002-003, at 2-3 (BPTR Mar. 10, 2003) (although one does not necessarily have the right to apply twice for an abatement on the same property for a single tax year, where town denied a first application "as presented," it "reconsidered" its denial when taxpayers resubmitted their application); *Perkins v. Town of Kittery*, No. 97-002, at 2 (BPTR Mar. 11, 1997) (taxpayer may file only once for abatement for each tax year, and first denial is controlling);

Either party may appeal this Decision by filing a petition for review in the Superior Court within 30 days 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.

Date: September 1, 2009

Eric E. Wright

Eric E. Wright  
Chair, Panel B

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*Penobscot Bay Dev. Co. v. City of Belfast*, No. 90-41, at 3 (BPTR Oct. 25, 1991) (where first application for abatement was dismissed by city as untimely, but was filed without authorization, a second application is nonetheless invalid where city was not informed of lack of authorization).