

STATE OF MAINE
KENNEBEC, SS.

STATE BOARD OF
PROPERTY TAX REVIEW
DOCKET NO. 95-008

PETER FORBES,)
)
 v.) DECISION
)
 TOWN OF SOUTHWEST)
 HARBOR,)

This matter came before the State Board of Property Tax Review (hereinafter "the Board") on the appeal of Petitioner, Peter Forbes, from the decision of the Town of Southwest Harbor denying an application for open space status pursuant to the Farm and Open Space Tax Law, 36 M.R.S.A. §§ 1101-1121. The subject property is indicated on the Town of Southwest Harbor tax map as Map 10 Lot 4 and is a 7.805 acre portion of a 8.723 acre waterfront property. The subject property relative to this appeal excludes .918 acres upon which rests the Petitioner's residence.

Public hearing in this matter was held on March 16, 1995. Board members Phillip Johnson, Chair, Mary Nelson, Bertrand Turmel and Richard Auger participated. Peter Forbes appeared and gave testimony on his own behalf. Mr. Larry Gardner, assessor for the Town of Southwest Harbor appeared and gave testimony on behalf of Respondent Town of Southwest Harbor.

Petitioner, Peter Forbes, filed an application for classification and valuation of land as open space land with the Town of Southwest Harbor on or about March 29, 1994. The Town denied the Petitioner's application on May 27, 1994. On July 25th by petition dated July 23, 1994, Peter Forbes filed a petition for assessment review with

the Board seeking a review of the Town' denial of his application for open space application.

At the hearing on March 16, 1995, the Petitioner testified about the current and past use of the property. The Petitioner's family has been in possession of the property since he was a young boy. Currently Mr. Forbes resides on the island with his family in a single family residence. The single family residence is listed in the National Registry of Historic Places and rests upon a .918 acre lot which is excluded from this petition. The property is subject to a perpetual conservation easement to the U. S. Department of the Interior dated March 1981. A conformed copy of the easement entered into evidence as part of Petitioner's Exhibit # 7 states within its text that the purpose of the easement is based upon an Act of Congress of January 19, 1929:

. . . providing for the establishment of Acadia National Park, in the State of Maine (and) . . . the Secretary of the Interior is authorized . . . to accept on behalf of the United States, lands, easements, and buildings lying within the bounds of Hancock County . . . in order to preserve the Acadia archipelago.

Except for limited exceptions as stated within said easement, petitioner's property , in furtherance of the goal of the easement, may not be developed or used for commercial purposes.

Petitioner testified that most of the island is subject to similar federal conservation easements and that approximately 40% of the island is assessed pursuant to tree growth.

Petitioner entered into evidence a memorandum dated 9-19-95 from the U.S. Department of the Interior, National Park Service, biological technician which stated that there existed on the subject property two rare coastal plant species.

Finally, as additional evidence of Petitioner's intent to preserve the land as undeveloped property, Petitioner testified that he was in the process of negotiating an agreement with the College of the Atlantic to utilize his property on an ongoing regular basis at its convenience as a research station and teaching classroom for their botany, biology and ecological curriculum.

Although the property is private, it is not posted and may be viewed from the harbor and the mainland.

In its response to Mr. Forbes' petition, the Town asserts that development of
- the land is unlikely, and therefore the land need not be protected from development
- by open space classification. In addition, the Town asserts that the property is subject
to the Shoreland Zoning Ordinance and therefore development on the property
- would be subject to set-back requirements which essentially would ensure the
integrity of the property's scenic character. Further, the Town argues that Petitioner
has not as of the date of the hearing executed an agreement with the College of the
- Atlantic. Finally, the Town asserts that said rare coastal plant species, that Petitioner
asserts are present on the property, are merely rare to the specific area and are not
classified as endangered or protected species. Generally the Town argues that by
finding for the Petitioner the Board would not be furthering the purpose of the
Open Space statute as defined in 36 M.R.S.A. § 1101.

The Farm and Open Space Tax Law, 36 M.R.S.A. §§ 1101-1121, provides for the classification of land as open space if such a restriction on the use of the land would provide a public benefit. In order to ascertain whether a public benefit would be conferred, the statute itemizes 14 factors (see 36 M.R.S.A. § 1109.3 A through N), any one of which may be determinative of a public benefit.

The Board finds that the conservation easement, the existence of which is to ensure the preservation and scenic beauty of the Acadia archipelago and surrounding Acadia National Park (36 M.R.S.A. § 1109.3(H)), the historic resource in Petitioner's residence, listed in the National Register of Historic Places (36 M.R.S.A. § 1109.3(N)), the existence or proximity of other public or private conservation lands protected by federal conservation easements (36 M.R.S.A. § 1109.3(I)), together with Petitioner's representation that he is in the process of negotiating an agreement with the College of the Atlantic to use the land at its convenience as a research and teaching classroom, all support a determination that said restrictions on the use of the land provide a public benefit as defined in 36 M.R.S.A. § 1109.

Due to the foregoing the Board by vote of 4-0 overturns the decision of the Town of Southwest Harbor denying the Petitioner's application for classification and valuation of land as open space land.

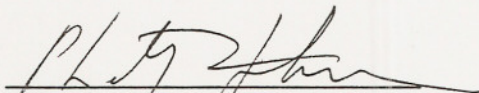
Inasmuch as the Petitioner does not seek an abatement of his 1994 taxes but rather asks only for reversal of the Town's denial of open space classification, the 7.805 acres described in Petitioner's application shall be valued by the Town as open

space commencing with the next succeeding tax year forward unless and until said land is withdrawn from open space classification.

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 said 30-day period.

Dated:

May 8, 1995


Phillip Johnson, Chair
Panel A

State Board of Property Tax Review