

STATE OF MAINE
KENNEBEC, SS.

STATE BOARD OF PROPERTY TAX REVIEW
DOCKET NO. 91-32

DANIEL and HEIDI GILE,)
Petitioners,)
)
v.)
)
TOWN OF LEBANON,)
Respondent.)

DECISION

This matter came before the State Board of Property Tax Review (hereinafter, the "Board") on the timely appeal by Daniel and Heidi Gile from the denial by the Town of Lebanon of their application for open space status under the Farm and Open Space Tax Law, 36 M.R.S.A. §§ 1101-1121 (1990) for the 1991 tax year. The property which is the subject of this appeal is approximately fifteen acres of land, a portion of a twenty acre parcel designated as Map R11, Lot 51A on the Lebanon tax maps.

A hearing was held on February 19, 1992 before a quorum of three members of the Board. Alan E. Shepard, Esq. represented the Town and Gilbert D. Zinck, Chairman of the Board of Selectmen testified for the Town. Daniel J. Gile, the taxpayer, appeared in his own behalf.

Petitioners allege the subject property meets the public benefit requirement of the Farm and Open Space Tax Law by providing public recreation opportunities and by preserving wildlife habitat and should, therefore, be granted open space status. The Town argues that the property does not meet the public benefit requirement of the Farm and Open Space Tax Law.

As evidence of the public benefit conferred by the subject property, Mr. Gile testified he maintains several cross country ski trails for public use. Mr. Gile invites his students to use these trails and provides a map for them. In some years as many as fifteen skiers have used the trails; during the last few years, because of poor snow conditions, only about eight people have used the trails. There is no sign and access to the trails is from a private, unpaved driveway located .3 miles off a main road. Mr. Gile also testified that, unlike many other landowners in the area, he does not post his land to prohibit hunting and does not limit public use of the property in any way.

Although he does not have a harvest plan, Mr. Gile considers himself a tree farmer. According to his testimony, he is thinning out trees to encourage undergrowth such as blueberry bushes which are beneficial to deer and other wildlife.

Testifying for the Town, Mr. Zinck argued the subject property is not known to the public

as a cross country ski area. According to Mr. Zinck there is a "Keep Out" sign at the entrance to the private driveway which provides access to the property. Mr. Zinck alleges the subject property is by no means unique in its opportunities for cross country skiing as the Town is dotted with abandoned roads and logging ways.

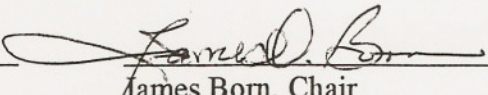
Mr. Zinck testified further that the subject property is assessed at \$7,500 (\$500 per acre) and that, at the current tax rate of \$20 per thousand, the tax amounts to \$150 per year. In Mr. Zinck's opinion, \$150 per year is not a tax burden that would force Petitioners to succumb to development pressure.

The Farm and Open Space Tax Law (36 M.R.S.A. §§ 1101-1121 (1990)) 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 fourteen factors, any one of which may be determinative of public benefit. See Id. § 1109 (3).

The Board does not find that any use or feature of the subject property rises to the level of benefit contemplated in section 1109 (3) of the Farm and Open Space Tax Law. The Board notes that the smaller the parcel of land, the more unique it needs to be in order to qualify as a public benefit. The Board finds that Petitioners have not offered evidence which distinguishes this property from other similar properties such that its preservation would confer a public benefit within the meaning of the Farm and Open Space Tax Law.

Therefore, by unanimous vote, the Board hereby affirms the decision of the Town of Lebanon denying Petitioners' application for 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 (1990). If this Decision is not appealed, it shall become binding on the parties at the end of said 30-day period.

DATED: May 11, 1995 
James Born, Chair
State Board of Property Tax Review