

STATE OF MAINE  
KENNEBEC, SS.

STATE BOARD OF PROPERTY TAX REVIEW  
DOCKET Nº: 91-43

CHARLES S. GLEASON, et al., )  
Petitioners )  
vs. )  
TOWN OF SOUTHPORT, )  
Respondent )

DECISION

FACTS

1. Petitioners are of Wareham, Commonwealth of Massachusetts.
2. Respondent is a body politic located in Lincoln County, State of Maine.
3. This appeal is from the refusal by Respondent's Assessors to classify certain real estate located in the Town of Southport as "open space land" pursuant to 36 M.R.S.A. §§1101, et seq.
4. The property in question, hereinafter described as the "subject property", is designated on the Southport Assessor's Map No. 37 as Lots Nos. 20 and 23. The owners of record are the Petitioners Charles S. Gleason and Elizabeth H. Gleason, husband and wife, and their 5 adult children, to wit: William Harper Gleason, Pamela G. Swearinger, Susan E. So, Robert C. Gleason and Amy L. Gleason.
5. On or about March 21, 1991, the Petitioners applied to the Southport Assessors for classification of all of the subject property as Open Space under 36 M.R.S.A. §§ 1101, et seq. The application alleged that a public benefit would result from: (1) the "conserving (of) scenic resources" and (2) the "preserving (of) wildlife/habitat." The applicants also indicate that the parcel consisted of 10 acres, with 9 acres to be classified as open space. Attached to the application was a list of 9 "factors" (See Petitioners' Exhibit 9) supplied by the Petitioners for consideration in support of their application. One of the factors listed was: "Land is under conservation easement with the Boothbay Region Land Trust "[Note: the letter of transmittal (Petitioners' Exhibit 10) accompanying the application stated that Petitioners' attorney would be sending a copy of the easement to the Assessors. It was never received by the Assessors.] A copy of the easement is a part of the record of these proceedings as Petitioners' Exhibit 14.
6. On March 28, 1991 the Southport Assessors denied Petitioners' application. In support of their decision the Assessors stated "...[w]e are advised by our State Certified Assessor

that to classify your land as Open Space would be a minimum benefit to the general public and of no significant value to the people of the Town of Southport." Petitioners' Exhibit 1.

7. By letter dated July 15, 1991, Petitioners appealed the Assessors' denial to the State Board of Property Tax Review.

#### DECISION

1. On March 17, 1992 the Board met for a view of the subject property and later conducted a hearing on the appeal in the Southport Municipal Building. After receiving testimony from Charles S. Gleason, Petitioner, and the Town's three Selectmen/Assessors, Eugene A. Huskins, Mary L. Koskala, and Gerald L. Gamage, and after extensive deliberations, the Board adopted the following Motion by a 3-1 vote:

Motion: That the decision of the Assessors of the Town of Southport to deny the Petitioner's application for classification of their property as Open Space under 36 M.R.S.A. §§ 1101, et seq. be reversed; and that the Petitioners' application be approved, subject to the following conditions:

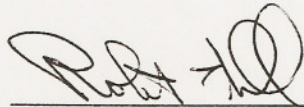
1. That the Petitioners file with the Assessors a plan of the property excluding 2 lots each containing a minimum of 30,000 square feet and 150 feet of shore frontage for each of the 2 buildings presently located on the property;
  2. That the open space classification shall be limited to those areas of the property encumbered by the conservation easement and not included in the 2 aforementioned lots;
  3. That the aforementioned plan shall describe in detail the exact location of the conservation easement as it relates to the subject property. (Note: The Motion was made by Board Member Zeiner, seconded by Board Member Auger. Voting in the affirmative were Board Members Zeiner, Auger and Miller. Board Member Drigotas voted against the Motion. Board Member Poulin attended the view and the early part of the hearing, but had to leave before the Motion was made.)
2. In support of its decision the Board reached the following conclusions in determining that a public benefit will be provided by the classification of the subject property as open space:
    - a. The conservation easement encumbering the subject

property under paragraph H of 36 M.R.S.A. §1109-(3) as a factor determinative of public benefit;

- b. The Board finds that the property does not qualify under any of the other factors established under 36 M.R.S.A. §1109 (3).
- c. The fact that the conservation easement specifically prohibits public access to the property does not in itself make that portion of the property under the easement ineligible for classification as open space.
- d. The property in question is located in a "Residential District" and the Shoreland (Overlay) Zone as established under the Southport "Revised Development Planning Ordinance." The minimum residential lot size for the subject property is 30,000 square feet with 150 feet of shore frontage and lot width per dwelling unit. See Respondent's Exhibit 2, page 117.
- e. Under 36 M.R.S.A. §1109-(3) for each house on the subject property lots with a minimum of 30,000 square feet and 150 feet shore frontage and width as established under the Town's Zoning Ordinance must be excluded from the Open Space classification.

Any party wishing to appeal this Decision must file 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 no appeal is filed within said 30 day period, this Decision shall become final and binding on the parties.

Dated: April 16, 1992



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Robert E. Miller, Chairman  
State Board of Property Tax Review