

FLOYD W. AND NORMA N. HARDISON,)
)
 Petitioners)
)
 v.)
)
 TOWN OF WALTHAM,)
)
 Respondent)

DECISION

This matter comes before the State Board of Property Tax Review (hereinafter "Board") on appeal by Floyd W. and Norma M. Hardison (hereinafter "Petitioners") from the denial by the Town of Waltham of their request for an abatement on the assessment of a penalty under 36 M.R.S.A. §§ 571, et seq., Maine's Tree Growth Tax Law. The appeal was timely filed pursuant to 36 M.R.S.A. § 583.

Hearing was held in Augusta, Maine, on October 8, 1991, before four members of the Board. The petitioners appeared on their own behalf. Representing the Town of Waltham were Stephen A. Jordan, 1st Selectman and Chief Assessor, and Thomas D. Hardison, 2nd Selectman and Assessor.

On September 20, 1990, the Petitioners purchased from E.K. Jordan & Sons of Waltham a parcel of land, approximately 5.06 acres, as a means of right of way to an abutting 80 acre parcel owned by the petitioners. Prior to their purchase of the 5.06 acres, said parcel was classified under the Tree Growth Tax Law as part of a larger tract. On September 30, 1990, two acres of the subject parcel were sold to the petitioners' son, Ronald

Hardison. Both transactions were recorded in the Hancock County Registry of Deeds on October 1, 1990.

The Selectmen of the Town of Waltham, who also act as assessors, determined that the subject parcel (5.06 acres) had been removed from Tree Growth Classification as no parcel of less than 10 acres can be so classified. Therefore, the petitioners are subject to penalties under 36 M.R.S.A. §581-A. The petitioners do not dispute the fact that a penalty is owed by them. As stated in Property Tax Bulletin #19 dated April 1, 1990, produced by the State of Maine Bureau of Taxation, entitled "Maine Tree Growth Tax Law":

"11 c. Parcels of less than 10 forested acres resulting from sale of classified land shall be withdrawn from classification. The penalty resulting from such sale is to be assessed against the new owner of the resulting parcel."

In the Town's Response, dated March 13, 1991, Rolf Hellum, Chairman of the Assessors, explains that the selectmen inquired of the Hardisons as to their intended use of the land before determining the penalty. Mr. and Mrs. Hardison replied that they sought access to their abutting land of 80 acres, and that they had sold two acres to their son who might put a house on it someday. The selectmen/assessors then figured the penalty on the basis of the total sale price of \$5,060.00. Subsequently, upon advice of a Bureau of Taxation representative, Mr. Hellum recalculated the penalty, by assessing the two acres as a house lot and the balance of 3.06 acres as wildland at \$275.00 per acre. This wildlands rate is that which is applied consistently to like property in the vicinity of the subject land.

The petitioners disagree with this assessment. They argue that the Tax Penalty must be assessed against the original purchase when the land was first withdrawn from Tree Growth classification. They further contend that such assessment must be based on the property's use at the time of sale. The petitioners argue that the selectmen are wrong in classifying the 2 acres which they sold to their son on September 30, 1990, as a house lot, since other lots in the Town of Waltham of equal or lesser size are assessed as wildland at a rate of \$275.00 per acre.

In support of their argument, the petitioners cite Property Tax Bulletin #19 , as referenced above:

"11 f. Fair Market Value - Fair market value at the time of withdrawal is the assessed value of comparable property which is not valued on a current use basis in the municipality adjusted by the municipality's certified assessment ratio."

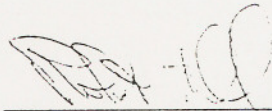
From the evidence presented at hearing, it is clear that lots of land, very similar to the subject property and in the same area, are assessed by the Town as wildland and not as house lots. Significantly, the subject property itself was assessed as wildland for tax year 1991-1992. The testimony of the Selectmen confirmed that, contrary to many other municipalities, the Town's assessing practices do not encompass the concept of the so-called "phantom house lot". Consequently, the decision of 1st Selectman Hellum to assess the challenged penalty based upon that concept resulted in inequitable treatment of Mr. and Mrs. Hardison.

Therefore, it is the unanimous decision of the Board that the penalty shall be lowered, based upon the Fair Market Value of wildland, which in Waltham is assessed at \$275.00 per acre, on the entire parcel of 5.06 acres. The penalty shall be computed as follows:

\$275.00 per acre x 5.06 acres = \$ 1,391.50 (fair market value)
minus \$165.50 (Tree Growth Value) = \$ 1,226.00 x 28% penalty for
a total penalty of \$ 343.28.

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.

Dated: October 25, 1991



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