

STATE OF MAINE
KENNEBEC, SS.

PROPERTY TAX REVIEW BOARD
DOCKET NO. 93-60

ROBERT AND GERALDINE)
KENDALL,)
)
Petitioners)
)
vs.)
)
TOWN OF PERRY,)
)
Respondent)

DECISION

This matter came before the State Board of Property Tax Review (hereinafter, the "Board") on the timely appeal by Robert and Geraldine Kendall from the denial by the Town of Perry 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 1993 tax year. The property which is the subject of this appeal is approximately 9.3 acres, fronting on Boyden Lake, in the Town of Perry. The property is a portion of a seventy-two acre parcel designated as Map 11, Lot 37 on the Perry tax maps. Petitioners are seeking reinstatement of open space classification, which had been granted in 1991 and withdrawn by the Town in 1993.

A hearing was held on May 12, 1994 before a quorum of five members of the Board. Robert Kendall, the taxpayer, testified for the Petitioners and Brenda Hunnewell, CMA, Assessors' Agent, testified for the Respondent.

Mr. Kendall testified that he had sought open space classification in order to protect a bald eagle nest located on the subject property. The property is not posted and people are free to look at the nest as long as the eagles are not disturbed. Petitioners' camp is only sixty-two meters from the nest, but officials of the Maine Department of Fish and Wildlife who monitor the site have not

told Petitioners the proximity of the camp will drive the eagles away. Petitioners do not use the camp during the critical incubation and hatching period in May.

Ms. Hunnewell testified that in 1993, after reading Property Tax Bulletin No. 18 on the Farm and Open Space Tax Law, she decided Petitioners' property did not meet the public benefit requirements and their 1990 application for open space classification had been approved in error. Therefore, she notified Petitioners the property was being removed from open space classification, without penalty. See Respondent's Exhibit No. 1. Because of the camp's proximity to the eagle nest without any agreement to protect the nest and the lack of permanent restrictions on the land, the subject property did not fit her interpretation of the public benefit requirement. In addition, because shoreline zoning restrictions already applied, open space classification was not available. Ms. Hunnewell explained that revocation of the subject property's open space status was the result of a change in her understanding of the law, not a change in the law.

The Board notes that under the Farm and Open Space Tax Law, a single factor may be determinative of public benefit. See 36 M.R.S.A. § 1109 (1990). The subject property is the site of an active eagle nest and therefore satisfies the public benefit requirement under subsection (K) which states in determining public benefit, "[t]he existence on the land of habitat for rare, endangered or threatened species" is a factor to be considered. The existence of an active eagle nest is sufficient to confer open space status on the area requiring protection. The Board also notes that in order to reclassify land previously classified as open space the assessor must follow a prescribed notification procedure and give the reasons for the reclassification. See 36 M.R.S.A. § 1110 (1990). Ms. Hunnewell reclassified the property because she changed her mind about the meaning of the public benefit qualification in the statute. The Board finds that an insufficient

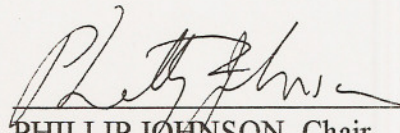
reason, in the absence of some intervening event or change in use, to meet the statutory requirement.

Therefore, by a 5-0 vote, the Board finds that the subject property meets the statutory requirements for open space classification under 36 M.R.S.A. § 1009 (K) (1990). The Board also finds that the 1991 grant of open space status was appropriate and that, since there was no intervening event or change in use, there is no justification for reclassification. The Town of Perry is hereby directed to reinstate the subject property's open space status. The 9.3 acres shall be valued by the Town as open space beginning with the 1993 tax year forward unless and until the property is withdrawn from open space and reclassified in accordance with to 36 M.R.S.A § 1110 (1990).

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: _____

1/3/95



PHILLIP JOHNSON, Chair
Panel A, State Board of Property Tax
Review