

STATE OF MAINE
KENNEBEC, SS

STATE BOARD OF PROPERTY TAX REVIEW
DOCKET NO. 2004-007

MANFRED ZORN,

Petitioner

v.

TOWN OF LUBEC,

Respondent

DECISION

INTRODUCTION

This matter came before the State Board of Property Tax Review (hereinafter the "Board") on appeal by Manfred Zorn from the denial of the assessors¹ to abate a tree growth penalty assessed against the property based on Mr. Zorn's failure to file within one year of purchasing the property either a sworn statement indicating that a new forest plan and harvest plan has been prepared or a statement from a licensed forester that the land is being managed in accordance with a plan prepared by the previous owner. 36 M.R.S.A. section 574-B(3). A taxpayer's failure to make the appropriate filings must result in withdrawal of the property from tree growth classification and assessment of a penalty. 36 M.R.S.A. §581. The Board convened on September 13, 2005 to consider the matter. Present on behalf of the Board were Guy Chapman, Harry Hodson, Walter H. Foster, Earl G. Sherwood, and Panel C Chair Charles Lane, Esq. The Town was represented by Robert Miller, Esq. The taxpayer presented his case on his behalf.

¹ In the Town of Lubec the Selectmen act as the assessors.

DISCUSSION

The subject property consists of 283 acres and was purchased by Mr. Zorn by warranty deed from Stanley T. Sekula as Trustee of Cecelia H. Sekula Revocable Trust dated January 16, 2002 (Town Exhibit. #1). At the time Mr. Zorn purchased the property it was classified as tree growth. The prior owner had applied for tree growth classification of the 283 acres on March 6, 1995. On the tree growth application and the deed from Sekula to Zorn the property is identified by making reference to Map 5 Lot 41 on the Town's tax maps (Town Exhibits #1 and #5). The tree growth application indicates the property includes 283 acres. Mr. Zorn does not dispute this description of the property. After purchasing the classified property he did not file anything with the Town. Thereafter on February 2, 2004 Mr. Zorn was notified that a tree growth penalty had been assessed against the property in the amount of \$40,843.50 based on the full acreage. (Town Exhibit #7).

Pursuant to 36 M.R.S.A. § 583 assessments or denials of applications for tree growth classification are subject to the abatement procedures set forth in 36 M.R.S.A. section 841. Section 841 provides that a taxpayer may file an application for an abatement of taxes within 185 days of commitment to correct any illegality, error or irregularity in assessment. Mr. Zorn timely applied for an abatement of the supplemental assessment for a penalty. After conducting a hearing the assessors granted a partial abatement of \$6,624.60. (Town Exhibit #13). Mr. Zorn was refunded that amount. Thereafter Mr. Zorn timely appealed to the Board.

At the hearing before the Board Mr. Zorn admitted that he received correspondence from the Town regarding his tree growth property and that he never did file anything within the year from the date he purchased the property or thereafter.² Although he argued that the penalty was excessive, he did not offer any evidence to support that contention. The Town nonetheless presented, among other things, an appraisal report composed by Kimberley Lord that Mr. Zorn had previously presented to the assessors in support of his application for abatement.(Town Exhibit #11A). Mr. Zorn took the opportunity presented by the Town and argued that the appraisal supported his request for an abatement.

In these proceedings before the Board the assessors are presumed correct. Chase v. Town of Machiasport 721 A.2d 636 (Me. 1998). It is the taxpayer therefore that shoulders the burden to prove that the assessment is "manifestly wrong". The Board "determine[s] the matter [before it] in the same manner as if the appeal had been taken directly from the assessors decision...to the state board. CMP v. Town of Moscow 649 A.2d 320 (Me. 1994). Here in the matter of Zorn the assessors determined that the penalty should be \$34,281.90 and it is that amount that is presumed correct and under appeal to the Board.³

² Petitioner's Exhibit # 2a is correspondence from the assessors' agent to Mr. Zorn dated June 3rd and that relates to another parcel other than Map 5 Lot 41. The correspondence notifies Mr. Zorn that he must "re-apply for the tree growth tax program" within one year from the date that he purchased the property. The Board notes that even though the June 3, 2002 correspondence does not relate to the subject property, the Town, in any event, is not required to notify Mr. Zorn of his obligation to file documentation within one year of purchasing classified tree growth property.

³ Pursuant to the provisions of 36 M.R.S.A. §581 the penalty is calculated based on the value of the property as of April 1st just preceding the withdrawal. The Town considered the property withdrawn from tree growth classification as of January 16, 2003 i.e. one year after Mr. Zorn had purchased the property inasmuch as Zorn did not make the appropriate filing within that time period as required by section 574-B(3). Consequently, the value of the property as of April 1, 2002, according to the assessors, was relevant in determining the amount of the penalty. Mr. Zorn was assessed the penalty because he owned the property described in Map 5 Lot 41 as of April 1, 2002.

The Board finds and Zorn admits that he did not file either a sworn statement indicating that a new forest plan had been prepared or a statement by a licensed forester that the land is being managed in accordance with a plan prepared by the previous owner. Mr. Zorn argues that he had pressing business matters that distracted him from making such filings. The provisions of section 574-B(3), however, require that a landowner "must" make such a filing within one year of purchasing the property. Pursuant to statutory rules of construction, "'shall' and 'must' are terms of equal weight that indicate a mandatory duty, action or requirement." 1 M.R.S.A. § 71(9-A). If the landowner fails to timely file the appropriate documentation then the property must be withdrawn from tree growth classification and a penalty be assessed. 36 M.R.S.A. § 581. The Board has previously determined that a taxpayer's failure to make a timely filing under section 574 due to pressing personal concerns did not absolve the taxpayer from paying a withdrawal penalty based upon the mandatory language of that section. Samuel L. and Minna A. Pachowsky v. Town of Clinton, SBPTR Docket no. 2001-005 decided February 19, 2002. Accordingly Mr. Zorn's failure to file that which is required by section 574-B(3) does not absolve him from paying a withdrawal penalty in the amount of \$34,281.90.

Secondly, with regard to the amount of the penalty, the Board notes that Mr. Zorn has not carried his burden to prove the assessment manifestly wrong inasmuch as he presented no evidence with regard to the amount of the penalty. Furthermore to the extent that Mr. Zorn may argue that the appraisal submitted by the Town supports his claim that the penalty is excessive the Board notes that it is unable to evaluate the credentials of the appraiser as she did not incorporate her credentials in the report. Secondly, the appraiser states that three comparable sales are the best available and yet

she does not adequately describe how she obtained nor how she compared those sales to the subject property. Had she testified at the hearing then the Board could ask her questions. However, the report, in the form it was presented to the Board, is not, in and of itself persuasive.

CONCLUSION

Based on the foregoing the Board finds that Mr. Zorn has failed to meet his burden to prove that the tree growth penalty assessed against his property is manifestly wrong. The Board therefore by its vote of 4-1 denies the appeal.

Any party wishing to appeal this decision must file a petition for review in the Superior Court within thirty (30) days of receipt of this decision, pursuant to 5 M.R.S.A. §§ 11001-11008. If this decision is not appealed it will become binding on the parties at the end of the thirty day period.

Dated: 09/21/05

Charles A. Lane
Charles Lane, Esq.
Chairman, Panel C
State Board of Property Tax Review