No. 108
In the Matter of Richard E. Gordon et al.
Appellants,
v.
Town of Esopus et al.,
Respondents.
(And Three Other Related Proceedings.)

David D. Hagstrom, for appellants.
Peter F. Matera, for respondents.

LIPPMAN, Chief Judge:

This appeal concerns whether land certified by the Department of Environmental Conservation (DEC) as managed forest land under Real Property Tax Law § 480-a is to be assessed as vacant land or as forest land.

Taxpayer petitioners commenced tax review proceedings against the Town of Esopus, its Assessor, and its Board of Assessment Review (collectively, the Town) to challenge the taxable assessed value of their land on the assessment rolls for the years 2002 through 2005. The Town argues that the land at issue should be deemed vacant land, a determination that would allow the land to be assessed for tax purposes based on its present potential for development, its "highest and best" use. The taxpayer petitioners, pointing out that the land has been certified as managed forest land by the DEC pursuant to the Real Property Tax Law every year since 1978, argue that the land, like any other parcel of land being put to a particular use, must be assessed for tax purposes based on its current use (RPTL 302 [1]).

The Appellate Division, with two Justices dissenting, ruled in the Town's favor (59 AD3d 896 [3d Dept 2009]). We granted the petitioner taxpayers leave to appeal and now reverse. We agree with petitioners and conclude that forest land certified as such by the DEC under RPTL 480-a is used, for real property tax assessment purposes, as forest land and must be assessed based on that use (RPTL 302 [1]).

Petitioners own approximately 108 acres of land situated along the Hudson River in the Town. Beginning in 1978 and annually since then, the DEC has certified approximately 104 of petitioners' 108 acres as "forest land" pursuant to RPTL 480-

a. Under the RPTL, "forest land" is defined as

> "land exclusively devoted to and suitable for forest crop production through natural regeneration or through forestation and shall be stocked with a stand of forest trees sufficient to produce a merchantable forest crop within thirty years of the time of original certification"

(RPTL 480-a [1] [f]). The process of obtaining forest land certification from the DEC is somewhat involved. A property owner must submit, on an annual basis, an application to the DEC that includes a "commitment" that "the owner of a certified eligible tract" will be committed "to continued forest crop production for the next succeeding ten years under an approved management plan" (RPTL 480-a [1] [b]). An "approved management plan" is a plan approved by the DEC for an "eligible tract" that contains "requirements and standards to ensure the continuing production of a merchantable forest crop selected by the owner" (RPTL 480-a [1] [a] [i]). An "eligible tract" is defined as a "tract of privately owned forest land of at least fifty contiguous acres, exclusive of any portion thereof not devoted to the production of forest crops" (RPTL 480-a [1] [e]).

Once the DEC concludes that a tract is an "eligible tract," it sends a certificate of approval to the owner (RPTL 480-a [2] [a]), and the owner files that certificate with the clerk of the county in which the tract is situated. If the tax assessor is "satisfied that the requirements of this section are met," the assessor "shall approve the application" (RPTL 480-a

[3] [b]), though the tax assessor's approval power does not include the authority to second-guess the DEC's certification of a parcel of land as "forest land" (Matter of Clove Dev. Corp. v Frey, 63 NY2d 181, 183-184 [1984] [a tax assessor "has no power to make a determination whether property is an 'eligible tract' for forest land tax exemption" because the authority to make that determination has been "committed exclusively" to the DEC by the Legislature]). The owner "shall continue" to receive the tax benefits of forest land certification thereafter "upon receipt by the assessor of a certified commitment" each year, "so long as the certification of the eligible tract shall not be revoked by" the DEC (RPTL 480-a [3] [b]).

The tax savings under RPTL 480-a are significant. An "eligible tract" is exempt from taxation "to the extent of eighty per centum of the assessed valuation" of the land (RPTL 480-a [4] [a]). However, if owners of certified forest land cease to abide by their ten-year "commitment" they are penalized significantly (see RPTL 480-a [7]). If the entire parcel certified as forest land is no longer used as such, the tax penalty is

> "computed by multiplying by two and one-half the amount of taxes that would have been levied on the forest land exemption entered on the assessment roll . . . for the current year and any prior years in which such an exemption was granted . . . not to exceed a total of ten years"

(RPTL 480-a [7] [d]). If only a portion of the parcel of certified forest land ceases to be used as such, the penalty

"shall be twice the amount determined under" RPTL 480-a (7) (d), though "only that portion of the tract that was actually converted to a use that precludes management of the land for forest crop production shall be used as the basis for determining the penalty" (RPTL 480-a [7] [e]).

The Legislature sought to enact RPTL 480-a in 1974 in an effort to preserve New York's forest land and to make the management of forest land more economical for property owners (see L 1974, ch 814; Matter of Honeoye Cent. School Dist. v Berle, 72 AD2d 25, 29-31 [4th Dept 1979], affd 51 NY2d 970 [1980]). The Legislature found that "lands presently devoted to growth of forest crops are often assessed at a level which renders continued dedication to such use uneconomical" (L 1974, ch 814). Because it believed that land "devoted to growth of forest products should be assessed at a level which recognizes this use rather than at a level reflecting devotion of the land to another purpose," the Legislature enacted RPTL 480-a "to provide a means by which present and future forest lands may be protected and enhanced as a viable segment of the state's economy and as an economic and environmental resource of major importance" (id.).

The effective date of RPTL 480-a was delayed, however (see L 1975, ch 68; L 1976, ch 422), and, between 1974 and 1976, the Legislature amended the statute. The most significant changes relevant to this appeal were that the 1974 version of

RPTL 480-a included a detailed assessment scheme that was abandoned in the 1976 version, and the 1974 law did not include the 80 percent tax exemption provided in the 1976 law (compare L 1974, ch 814 and L 1976, ch 526). These changes are retained in the statutory scheme that is in effect today.

The Town points to this legislative history and argues that the Legislature's decision to remove the assessment scheme from the 1976 law suggests that the Legislature intended forest land to be assessed not as forest land but as vacant land; that is, land that is unimproved such that it may be assessed for tax purposes based on its "highest and best" use. The Town urges that to consider forest land certified as such under RPTL 480-a as land being used as forest land for tax assessment purposes results in an effective "double dip" benefit for taxpayers that the Legislature did not intend, as the 80 percent tax exemption will apply to a discounted assessment value if the land is assessed as forest land.

We do not read the legislative history in the manner the Town suggests. The changes to RPTL 480-a between 1974 and 1976 do not reveal an altered purpose in enacting the statute; the purpose of protecting forest land and making the production of timber in New York a more economical enterprise remained the same. The 1974 version of RPTL 480-a, the 1976 version of the statute, and the current version of the law in force today all define "forest land" as land that is "devoted to and suitable for

forest crop production" (RPTL 480-a [1] [f]), and it is clear that the Legislature considered land "devoted to" forest crop production to be land that was used for that purpose (L 1974, ch 814 [the "legislature hereby finds and declares that lands presently devoted to growth of forest crops are often assessed at a level which renders continued dedication to such use uneconomical" (emphasis added)]). Moreover, forest land is recognized not only by the statute but also by relevant administrative authority as an established category of use, not some sort of taxpayer charade to reduce the assessed value of land. The Office of Real Property Services publishes an assessor's manual which has included classification 912 for forest land eligible for RPTL 480-a treatment (see generally Matter of Gordon v Town of Esopus, 31 AD3d 981 [3d Dept 2006]).

While it is certainly true that "an exemption statute is to be construed strictly against those arguing for nontaxability," a tax exemption statute's "interpretation should not be so narrow and literal as to defeat its settled purpose" (People ex rel. Watchtower Bible & Tract Socy. v Haring, 8 NY2d 350, 358 [1960]). In line with the clear legislative purpose in enacting RPTL 480-a, we conclude that land certified by the DEC as forest land pursuant to RPTL 480-a is used as forest land and must be assessed under RPTL 302 (1) as such for real property tax purposes.

Accordingly, the order of the Appellate Division should

be reversed, with costs, and the judgment of Supreme Court reinstated.

Matter of Richard E. Gordon, et al. v Town of Esopus, et al.

No. 108

SMITH, J. (dissenting):

The majority opinion contains a concise and fair summary of the argument I find dispositive in this case:

> "The Town points to this legislative history and argues that the Legislature's decision to remove the assessment scheme from the 1976 law suggests that the Legislature intended forest land to be assessed not as forest land but as vacant land; that is, land that is unimproved such that it may be assessed for tax purposes based on its 'highest and best' use. The Town urges that to consider forest land certified as such under RPTL 480-a as land being used as forest land for tax assessment purposes results in an effective 'double dip' benefit for taxpayers that the Legislature did not intend, as the 80 percent tax exemption will apply to a discounted assessment value if the land is assessed as forest land."

(majority op at 6).

This argument does not persuade the majority, but it does persuade me.

I acknowledge that if we simply apply general valuation principles to this land -- without considering the specific problem to which the Legislature was responding in RPTL 480-a, and the nature of the response it eventually chose -- it should be valued as forest land, not vacant land. As a general rule, the purpose of valuation is to determine the fair market value of

the property -- what a willing buyer would pay a willing seller (see New York State Office of Real Property Services, Uniform Assessment Standards 1.3 ["Value means market value -- the price a willing buyer would pay a willing seller in an arm's-length transaction"]). Here, the fair market value is obviously impaired by the fact that petitioners have committed themselves to use the property as forest land, and could not escape that commitment without a significant tax penalty. Thus, in principle, petitioners' appraiser was correct in saying that only sales of property subject to a similar impairment should count as "comparable" for valuation purposes.

But the picture changes when we examine the history of the statute. It seems that, in 1974, the Legislature was troubled by the practice of taxing authorities in doing essentially what the Town of Esopus proposes to do here -- valuing forest land as if it were vacant land, thus producing a relatively high value. The legislation that enacted the original version of RPTL 480-a contained a section entitled "Legislative findings and declaration of purpose," which said:

> "The legislature hereby finds and declares that lands presently devoted to growth of forest crops are often assessed at a level which renders continued dedication to such use uneconomical . . . [U]se of land for timber production is becoming increasingly economically unfeasible due to assessment practices which do not take into account the present use of the property being assessed. Lands devoted to growth of forest products should be assessed at a level which recognizes this use rather than at a level

> reflecting devotion of the land to another purpose."

(L 1974, ch 814, § 1).

Thus the Legislature's purpose in 1974 was to require a valuation approach similar to the one now required by the majority opinion -- valuing the land as forest land, not vacant land. The 1974 version of RPTL 480-a goes on for some pages to prescribe a rather complicated valuation procedure for lands certified as forest lands. Perhaps it was too complicated; in any event, as the majority mentions (majority op at 5), the Legislature repeatedly postponed the effective date of the 1974 legislation, and then took a very different approach in 1976: It threw out all the detailed provisions for valuing forest land, and simply gave forest land an 80 percent tax exemption, reflected in today's version of RPTL 480-a.

It seems obvious that the 1976 Legislature substituted the 80 percent exemption for what it had, in 1974, considered a fairer assessment procedure. But that substitution does not make sense unless the Legislature assumed that the valuations, before being reduced by the statutory exemption, would be the higher ones that made the Legislature act in the first place. If the Legislature expected forest land to be valued at the lower levels consistent with a restriction of land to forest use, why not base the tax on the whole of the lower value? Why tax only one fifth of it?

Finding no answer to this question, I conclude that the

legislative purpose is best served by allowing the Town to value the land as if it were vacant, and then to divide the resulting valuation by five. To divide the lower value by five is effectively to give the taxpayers twice what the Legislature intended to give them only once.

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Order reversed, with costs, and judgment of Supreme Court, Ulster County, reinstated. Opinion by Chief Judge Lippman. Judges Ciparick, Graffeo, Read, Pigott and Jones concur. Judge Smith dissents in an opinion.

Decided June 15, 2010