

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

DEC 02 2016

Montana Tax Appeal Board

William T. Bliss,

Appellant;

v.

State of Montana,
Department of Revenue,

Respondent.

CASE No: PT-2016-3

**Findings of Fact,
Conclusions of Law, Order,
and Opportunity for Judicial
Review**

-
1. Before the Board is Appellant William T. Bliss' appeal from the Cascade County Tax Appeal Board decision denying Bliss' appeal of Respondent State of Montana, Department of Revenue's valuation of Bliss' 15.89 acre property known by geocode 02-3134-26-4-04-01-0000; legal description S26, T21 N, R02 W, IN SE/4 MK 8A.

ISSUE

2. Whether DOR properly valued and classified the property.
3. Bliss argued that the land is overvalued, and that it should be classified agricultural instead of tract land.
4. DOR responds that Bliss' argument is not supported by any evidence for a value or classification different than DOR's assessment and

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classification, and that absent an application and evidence from the taxpayer, statute prohibits DOR from granting agricultural classification.

FINDINGS OF FACT

5. The record includes all materials submitted to the Cascade County Tax Appeal Board (CTAB), the transcript of their hearing, and additional materials submitted by the parties, as well as the transcript of the hearing before this Board.
6. The property consists of 15.89 acres of land with no improvements directly southwest of the intersection of Simms Ashuelot Road and North Fort Shaw Road, north of Fort Shaw, Cascade County. (Ex. C.)
7. DOR assessed the property at \$60,891 for the 2015-2016 tax cycle and classified it as tract land. (Ex. C.) For the 2008-2014 tax cycle, the property was assessed at \$42,315 after the Cascade County Tax Appeal Board granted a reduction from DOR's 2009 valuation of \$58,747. (MTAB Hrg. Transcr. 72:10-73:8; 81:7-13; Ex. F.)
8. Bliss filed an informal classification and appraisal review (AB-26) with DOR on August 17, 2016 requesting a reduced value. DOR denied the request on November 5, 2016. (Ex. A.)
9. Bliss appealed DOR's AB-26 decision to the CTAB on November 23, 2015, requesting a valuation of \$23,845. The CTAB denied the appeal on January 14, 2016. (Ex. B)

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10. Bliss appealed the CTAB decision to the Board on February 11, 2016. (MTAB Appeal.)
11. The Board conducted a hearing at 600 North Park Avenue, Helena at 1:00 PM on July 14, 2016 at which the following appeared:
 - a. William T. Bliss, self-represented taxpayer;
 - b. Michele Crepeau, attorney for DOR;
 - c. Jeanine Crouch, DOR residential agricultural appraiser, as witness for DOR; and
 - d. Jason Boggess, DOR Region 2 manager, as witness for DOR.
12. The following exhibits were admitted:
 - a. Bliss exhibits;
 - i. 1 to 4 – aerial photos of the area;
 - ii. 5 to 7A – ground photos of the property;
 - iii. 8 – spreadsheet labeled “Land Model Sales Information” (3 pages);
 - iv. 8A – property record card for subject property;¹
 - v. 8B – cadastral website² printout (3 pages);

¹ In producing this document (a.k.a. Ex. C) for discovery, DOR incorrectly labeled it as confidential. DOR counsel Crepeau brought this error to the Board’s attention and noted that the document is not confidential. (MTAB Hrg. Transcr. 69:21-70:15.)

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- vi. 9 – utility costs list compiled by Bliss;
- vii. 10 – spreadsheet labeled “DOR Versus Cascade County Treasurer Subject Property Land Value Also Shows Change of Value Versus Time for 10, 20, and 25 years in Avg % increase, noncompounded;”
- viii. 10A – spreadsheet labeled “comparison of land value increases, DOR and Cascade County Treasurer;”
- ix. 11 – screenshots of Cascade County tax records (4 pages);
- x. 12 – graph labeled “Subject Property Assessed Value Change Versus Time;”
- xi. 12A (**sealed**) – DOR’s “Land Valuation Model” (3 pages);
- xii. 12B – graph and spreadsheet labeled “SQFT MODEL”;
- xiii. 12C – map of rural area around Great Falls (11” x 17” sheet);
- xiv. 13 – letter from United States Department of Agriculture (5 pages plus addendum by Bliss);
- xv. 14 – letter from Smoot Honey Co., Inc.;
- xvi. 15 – handwritten letter to Bliss from Roy Hall regarding grazing;

² <http://svc.mt.gov/msl/mtcadastral/>

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- xvii. 15A – spreadsheet labeled “Updated list of requested PRC’s and RTC’s sent to DOR early 6-8-16;”
- xviii. 16 – cadastral printout of property record card for Flemings’ rural agricultural land (3 pages);
- xix. 17 – cadastral printout of property record card for Bymasters (4 pages);
- xx. 18 – cadastral printout of property record card for McLeslies (4 pages);
- xxi. 19 – cadastral printout of property record card for Flemings’ farmstead land (5 pages);
- xxii. 19A –cadastral printout of property record card for Hitchcocks rural agricultural land (7 pages);
- xxiii. 20 – cadastral printout of property record card for Hitchcocks farmstead land (3 pages);
- xxiv. 21 – cadastral printout of property record card for Wadsworth land (3 pages) and property record card for same property (2 pages);
- xxv. 22 – property record card for Davis property (2 pages);
- xxvi. 23 (**sealed**) – realty transfer certificate for Vernon to Dormady transfer, signed June 3, 2011; and
- xxvii. 24 – excerpt from Mont. Code Ann. § 15-7-202 (2 pages); and

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- b. DOR Exhibits;
 - i. A – AB-26 form (6 pages);
 - ii. B – CTAB appeal form (3 pages);
 - iii. C – property record card for subject property;³
 - iv. D (**sealed**) – spreadsheet labeled “Land Model Sales Information” (2 pages);
 - v. E – screenshots from ORION software of subject property (2 pages); and
 - vi. F – spreadsheet of historical property values.

Valuation as Tract Land

- 13. Bliss argued that the land was overvalued because his property assessment rose at a faster rate than nearby properties valued under the same model.
- 14. Bliss submitted screenshots from the Cascade County Treasurer’s software showing values related to the land. (Ex. 11.) From these numbers he created a graph showing the percentage change in valuation compared to their historical values. (Ex. 12.)
- 15. Bliss successfully appealed the DOR’s valuation for the 2008 appraisal cycle, and the CTAB reducing the assessment of the property from

³ In producing this document (a.k.a. Ex. 8A) for discovery, DOR incorrectly labeled it as confidential. DOR counsel Crepeau brought this error to the Board’s attention and noted that the document is not confidential. (MTAB Hrg. Transcr. 69:21-70:15.)

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\$58,747 in 2009 to \$42,315 in 2010, a 27% reduction. (MTAB Hrg. Transcr. 20:5-7; Ex. F.)

Agricultural Classification

16. Bliss argued that the land should be classified as agricultural, and that DOR “should also assume the responsibility for contacting the new property owner to see if it’s continued use is going to be the same as it was.” (MTAB Hrg. Transcr. 96:7-12.)
17. The Board asked DOR’s appraiser witness, Jeanine Crouch, how a taxpayer could can change a property’s classification to agricultural. She stated that the first step is to submit an application.⁴ (MTAB Hrg. Transcr. 91:16-21.)
18. Bliss admitted that he had not submitted an application. (MTAB Hrg. Transc. 63:3-7.)
19. Bliss introduced three exhibits to support an agricultural classification:
 - a. a letter from Mark Jensen of the Smoot Honey Co., Inc. stating that the company “had bees” on the land for years and estimated “significantly more than \$2,000 of agricultural production value for Smoot Honey Company in any given year,” (Ex. 14.);
 - b. a letter from Roy Hall expressing interest in leasing the land for grazing purposes, (Ex. 15.);

⁴ See Mont. Code Ann. § 15-7-202(5); Mont. Admin. R. 42.20.615.

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- c. a letter and “Abbreviated 156 Farm Record” from Jill Lorang of the United States Department of Agriculture, Farm Service Agency, (Ex. 13.).
20. DOR objected to all the letters as hearsay and for a lack of foundation.
21. On cross examination, Bliss admitted that he offered no receipts to substantiate the purported agricultural activity, and that the Smoot letter was the only evidence supporting his argument for agricultural classification. (MTAB Hrg. Transcr. 63:8-23.)
22. Upon questioning by the Board, Bliss stated that he is paid by Smoot “in kind product,” not monetarily. (MTAB Hrg. Transcr. 46:2-3.)
23. Bliss presented only hearsay evidence lacking foundation that the land is used for agricultural purposes. Moreover, there is no evidence that Bliss or a lessee of his markets sufficient agricultural products produced by the land, and Bliss is compensated in product not money.
24. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

CONCLUSIONS OF LAW

25. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
26. The Board has jurisdiction over this case and its order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-301.

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27. “Assessment formulations are within the expertise of the State Tax Appeal Board and [courts] will not overturn their decisions unless there is a clear showing of an abuse of discretion.” *Northwest Land & Dev. of Montana, Inc. v. State Tax Appeal Bd.*, 203 Mont. 313, 317, 661 P.2d 44, 47 (1983) overruled on other grounds by *DeVoe v. Dep't of Revenue of State of Mont.*, 263 Mont. 100, 866 P.2d 228 (1993).

Burden of Proof

28. The taxpayer bears the burden of proving the error of DOR’s decision. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
29. However, DOR cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of their action. *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.

Assessment

30. “All taxable property must be appraised at 100% of its market value....”
Mont. Code Ann. § 15-8-111.
31. “[T]he Legislature intended the Department to utilize both the cost approach and the market data approach, depending upon the available market data, when it assesses property and estimates market value.”
Albright v. State By & Through State, 281 Mont. 196, 208, 933 P.2d 815, 823 (1997).

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32. “[F]or the taxable years from... (c) January 1, 2015, through December 31, 2016, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 2014.” Mont. Admin. R. 48.18.124.
33. To prevail in a challenge of DOR’s assessment the taxpayer must prove:
- (1) that there are several other properties within a reasonable area similar and comparable to his;
 - (2) the amount of the assessments on these properties;
 - (3) the actual value of the comparable properties;
 - (4) the actual value of his property;
 - (5) the assessment complained of;
 - (6) that by a comparison his property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of the similar and comparable properties, thus creating discriminations.

DeVoe v. Dep't of Revenue of Montana, 233 Mont. 190, 194, 759 P.2d 991, 993-94 (1988) (quoting *Maxwell v. Shivers*, 133 N.W.2d 709, 711 (Iowa 1965)).

Valuation as Tract Land

34. Bliss argues his property is overvalued because the percent increase in DOR’s assessment is greater than that of comparable properties in the same model.
35. Property values are neither assessed nor equalized based on percentage changes from prior years, but rather on market value as evidenced by sales, cost to build minus depreciation, or income. Mont. Code Ann. §

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15-8-111. Bliss' calculations are not legally determinative of market value.

36. Furthermore, any disproportionate rate of increase may be attributable to the property having been undervalued for some time and the reduction made in 2010 by CTAB when the assessment was reduced by \$16,432, more than one quarter of the land's total value.

Agricultural Classification

37. "Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural land if: (A) the land is used primarily for raising and marketing [agricultural products and], the owner or the owner's immediate family members, agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products produced by the land..." Mont. Code Ann. § 15-7-202(1)(b)(i).
38. "The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land." Mont. Code Ann. § 15-7-202(5). "The property owner of record or the property owner's agent must make application to the department in order to secure agricultural classification of the property owner's land if the contiguous ownership is less than 160 acres in size." Mont. Admin R. 42.20.615.
39. Bliss' failure to file an application for agricultural classification prevents DOR from classifying the land as agricultural. Moreover, Bliss

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failed to overcome the presumption that DOR properly classified the property, presenting only hearsay material without foundation.

* * *

40. Bliss presented no evidence to undermine DOR's valuation or support a revised valuation, failing specifically to show that his property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of similar and comparable properties.
41. DOR is prohibited by statute from granting an agricultural classification if the taxpayer has not applied for it.
42. Bliss presented no credible evidence that the land qualifies for agricultural classification, failing specifically to prove \$1,500 per year of gross income from the marketing of agricultural products produced from the tract of land.

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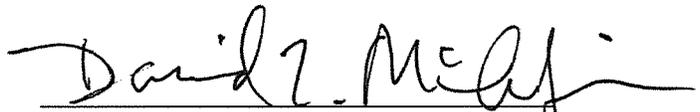
ORDER

43. William T. Bliss' appeal and complaint is **denied**.
44. DOR's assessed value of \$60,891 and classification as tract land for tax years 2015-2016 is upheld.

Notice: You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2).

Ordered December 2, 2016.

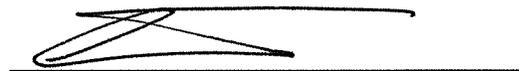




David L. McAlpin, *Chair*
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Certificate of Service

I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on December 2, 2016 to:

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MONTANA TAX APPEAL BOARD