

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

AUG 17 2018

Montana Tax Appeal Board

JOAN LESLIE CAMPBELL,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE No: PT-2017-37

FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER,
AND OPPORTUNITY FOR JUDICIAL
REVIEW

1. Before the Board is Appellant Joan Leslie Campbell's appeal from the Flathead County Tax Appeal Board decision denying Campbell's appeal of Respondent State of Montana, Department of Revenue's (DOR) valuation of Campbell's 1.66-acre property known by geocode 07-3834-06-4-02-10-0000; legal description Tract 2CAA of COS 18609 S06, T27 N, R21 W, in N½SE¼.

ISSUE

2. Whether DOR properly valued and classified the property.
3. Campbell argued that the land and improvements are overvalued, and the parcel should be classified agricultural instead of tract land.

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4. DOR responds that Campbell's argument is not supported by any evidence for a value or classification different than DOR's assessment and 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 Flathead 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 1.66 acres of land with a one-bedroom ranch style home, a garage and a small pole frame barn. (Ex. E.)
7. For the 2017-2018 tax cycle, DOR classified the property as tract land and assessed it at \$142,700; \$53,998 for the land and \$88,702 for the buildings and improvements. (Ex. E.)
8. Campbell filed an informal classification and appraisal review (AB-26) with DOR on August 2, 2017 requesting a reduced value. DOR denied the request on September 13, 2017. (Ex. C.)
9. Campbell appealed DOR's AB-26 decision to the CTAB on October 12, 2017, requesting a value of \$15,000 for the land and \$50,000 for the buildings and improvements. The CTAB denied the appeal on December 11, 2017. (Ex. F.)

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10. Campbell appealed the CTAB decision to this Board on December 26, 2017. (MTAB Appeal.)
11. The Board conducted a hearing at 600 North Park Avenue, Helena at 1:00 PM on May 15, 2018 at which the following appeared:
 - a. Christopher Van Twest, representative and spouse of the taxpayer;
 - b. Winnifred Storli, witness and mother-in-law of the taxpayer;
 - c. Dave Burleigh, attorney for DOR;
 - d. Dawn Cordone, DOR Region 1A Area Manager, as witness for DOR;
and
 - e. Todd Schmidt, DOR appraiser, as witness for DOR.
12. The following exhibits were admitted:
 - a. Campbell exhibits;
 - i. 1 – Campbell’s Reply to DOR’s First Combined Discovery Requests;
 - ii. 1-a – copies of materials Campbell submitted to CTAB;
 - iii. 1-b – Campbell’s written statement of argument on appeal and attachments;
 - iv. 1-c – copies of a Buy-Sell Agreement between Christopher J. Van Twest and Ralston House Properties Ltd. dated 5 March 2017; two Buy-Sell Agreements between Joan Leslie Campbell

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- and Ralston House Properties Ltd. dated 27 December 2017;
and a Buy-Sell Agreement between Winnifred Storli and
Ralston House Properties Ltd. dated 5 March 2018;
- v. 1-d – copy of Agricultural Lands Classification Application
submitted by Ralston House Properties Ltd. dated 4 April 2018;
 - vi. 1-e – copies of Montana Corporate Income Tax Returns (Form
CIT) and U.S. Income Tax Return of a Foreign Corporation
(Form 1120-F) for Ralston House Properties Limited for years
2014 – 2016;
 - vii. 1-f – real estate listing advertisement of a duplex property
located at 1306 5th Ave. in Kalispell;
 - viii. 1-g – copies of emails between Campbell’s representative and
DOR employee Amanda Farnsworth;
 - ix. 1-h – Copy of the first page of the Lake County Kings Point
Zoning Regulations Resolution 649;
 - x. 2 – DOR Responses to Campbell’s Discovery Questions;
 - xi. 3 – Campbell’s Reply to DOR’s First Combined Discovery
Requests;
- b. DOR Exhibits;
- i. A – Classification and Appraisal Notice for subject property;
 - ii. B – photos of subject property (1 page);

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- iii. C – AB-26 request and Determination Letter;
- iv. D (**sealed**) – Assessment Information Packet;
- v. E – CTAB determination and denial letter;
- vi. F (**sealed**) – Land Model (CALP); and
- vii. H (demonstrative) – parcel map.

Valuation of Improvements

- 13. Campbell argued that the improvements should have been valued at \$50,000 using an income approach to value instead of the comparable sales approach that the DOR used to reach a value of \$88,702. MTAB Hrg. Transcr. 6:10-13.
- 14. Campbell introduced a copy of a real estate listing for a duplex located in Kalispell described as “Strong investment/income property.... Excellent ROI, Cap rate near 6%.” Ex. 1-f.
- 15. Campbell rents the property to tenant Sheryl Eaglewoman for \$500 a month, and provided copies of tax returns for Ralston House Properties Limited showing reported rental income for the years, 2014-2016. Ex. 1-e.
- 16. Campbell argued that using the 6% capitalization rate, taken from the real estate listing, and the monthly rental rate of \$500, the market value

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of the improvements should be \$50,000. MTAB Appeal Form, MTAB Hrg. Transcr. 6:11-12, Ex. D.¹

17. Dawn Cordone, Area Manager for the DOR, testified that the DOR values single family residences using the comparable sales approach with a default to the cost approach. MTAB Hrg. Transcr. 25:12-13. Ms. Cordone testified that the DOR does not maintain income and expense information to create income models for single family residences and the DOR cannot do an income valuation using only the income and expense of the subject property. MTAB Hrg. Transcr. 25:14-19.
18. Ms. Cordone testified that the property listed in DOR taxpayer's exhibit 1-f (also Ex. F) is a duplex and the DOR could consider using an income model for multifamily units to determine its market value. MTAB Hrg, Transcr. 37:19-21. However, she also testified that the DOR cannot use information from one real estate listing, in reference to taxpayer's exhibit 1-f (also Ex. F), to determine possible income valuations for taxpayer's property. MTAB Hrg. Transcr. 26:1-6.
19. Ms. Cordone explained that the DOR determines market value for single family residences through a mass appraisal process wherein the DOR verifies market sales through realty transfer certificate recordings and makes a comparison of comparable sales to similar subjects. MTAB Hrg. Transcr. 26:12-15.

¹ The MTAB appeal form filed on December 26, 2017, states that the monthly rent is \$500. During the hearing taxpayer's representative stated that the monthly rent is \$600, but taxpayer did not appear to provide any direct testimony to clarify the discrepancy. The Board will use the monthly rent of \$500 taken from taxpayer's MTAB appeal form which was signed by taxpayer.

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20. Ms. Cordone testified that the DOR determined that while the comparable sales approach represented the best market value for the property under appeal, the cost approach to value, which was within \$2,000 of the comparable sales approach, also supported the DOR's final determination of value. Ex. E, MTAB Hrg. Transcr. 27:3-28:5.
21. The DOR introduced a Comparable Sales Report which shows what adjustments were made to the comparable sales to make them similar to the subject property, for example adjustments are made for differences in square footage, the quality of construction and the condition of the properties. Ex. E, MTAB Hrg. Transcr. 28:15-20. The DOR uses multiple regression analysis to calculate adjusted sales prices as a result of the adjustments that are made between the comparable sales and the subject property. MTAB Hrg. Transcr. 28:21-23. Lastly, the DOR does a weighted estimate of the adjusted sales prices to determine the market value of the subject property. Ex. E, MTAB Hrg. Transcr. 29:1-3.
22. Todd Schmidt, an appraiser with the DOR, testified that in preparation for this appeal he reviewed the DOR's information for the property, the size of the building, the size of the lot, and determined that the DOR's information about the property is accurate. MTAB Hrg. Transcr. 42:10-25. He testified that the property is a single-family residence that does not meet the minimum statutory requirements to be classified as agricultural property. MTAB Hrg. Transcr. 43:4-11.
23. Mr. Schmidt opined that he is confident the comparable sales value reached by the DOR is an accurate estimate of fair market value for Campbell's property because the DOR's Comparable Sales Report shows

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that they are similar properties by square footage, land mass, the age and grade of the improvements, and neighborhood location. MTAB Hrg. Transcr.43:12-21.

Classification as Tract Land

24. Campbell argued the DOR should have classified the land as agricultural and not tract land. MTAB Appeal Form. Campbell's argument is based primarily on the fact that the adjacent property is classified as agricultural and supported by the fact that Campbell's tenant is using the property as a small farmstead. *Id.*
25. Campbell offered into evidence email correspondence wherein DOR employee Amanda Farnsworth confirms that the parcel directly adjacent to Campbell's property under appeal had an assessed value of \$139 in 2017 because it was incorrectly classified as agricultural land. Ex. 1-g. Campbell's representative argued that on principles of equity similar properties should be classified similarly – thus the DOR should classify Campbell's property as agricultural on an equitable basis so that it matches the classification of the adjoining parcel as they share similar characteristics. MTAB Hrg. Transcr. 7:22-2.
26. Campbell's representative acknowledged that the property does not meet the acreage requirement for agricultural classification but argues that the tenant could meet the income threshold for agricultural classification. MTAB Appeal Form. Campbell introduced a Certificate of Filing from the Secretary of State showing that the tenant, Ms. Eaglewoman has filed "Domystic Farm" as an Assumed Business Name with the Secretary of

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State's office. Ex. 3 p.4. Campbell also introduced one page of Ms. Eaglewoman's tax returns for 2016 and 2017 showing she reported \$694 and \$4,381 in farm income respectively. Ex. 3 p. 5-6. Campbell also introduced an inventory of the animals living on the property "1 heifer, 13 sheep, 10 goats, 1 donkey, 10 hogs, poultry", and photos to substantiate their existence. Ex. 3, p3, 7-16.

27. Campbell's representative agreed that Ms. Eaglewoman has to bring feed in, from off the property, to feed the animals living on the property. MTAB Hrg. Transcr. 20:1-2.

28. Dawn Cordone testified that the DOR did not receive an application from the taxpayer requesting the DOR classify the parcel as agricultural until April of 2018. MTAB Hrg. Transcr. 23:24-25.

29. Ms. Cordone testified that, under Montana law, if a parcel is under 20 acres, the land must produce \$1,500 of income in order to qualify for agricultural classification. MTAB Hrg. Transcr. 24:20-25:2. She explained that this means the land itself must produce the \$1,500 in feed that is being consumed by the animals to qualify for agricultural classification. *Id.* She used the example of everyone in Montana buying a heifer and butchering it at the end of the year to make \$1,500 to explain that it is the land itself that must generate the \$1,500 in income to obtain agricultural classification for their land, not the sale of farm animals who have been fed supplemental feed that was not produced on the land. *Id.*

30. Ms. Cordone testified that the filing of an Assumed Business Name with the Secretary of State's office is not something the DOR considers in the determination of a property's classification. MTAB Hrg. Transcr. 25:6-9.

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31. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

CONCLUSIONS OF LAW

32. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
33. 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.
34. "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

35. 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).
36. 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.

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Assessment

37. “All taxable property must be appraised at 100% of its market value....”
Mont. Code Ann. § 15-8-111.
38. “[F]or the taxable years from... (c) January 1, 2017, through December 31, 2018, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 2016.” Mont. Admin. R. 42.18.124(1)(d).
39. “Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.” MCA § 15-8-111(2)(a).
40. Under Montana law, the DOR can use a combination of approaches – i.e. the market data approach, the income approach, and the cost approach – to value a property. *Albright v. State*, 281 Mont. 196, 208 - 209 (Mont. 1997). The DOR does not have to use only one approach when it “appraises property and estimates market value.” *Id.* at 208.

Valuation of Improvements

41. Campbell argued that the DOR should use the income approach to value her property because the property is used as a rental to generate income.
42. As noted in *Albright*, the DOR has discretion to use any of the approaches to value a property to reach market value. The DOR does not use an income approach to value single family residences anywhere in Montana. This Board found nothing in the statutes, administrative

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rules or case law suggesting the DOR must use the income approach to value a single-family residence that is being used as a rental property.

43. The DOR's witnesses testified credibly that the comparable properties listed in the Comparable Sales Report were sufficiently similar to Campbell's property to determine a reliable market value for Campbell's property. In addition, the market value reached using the cost approach is within \$2,000 of the market sales approach, which corroborates the value found and gives this Board confidence that the DOR's market value is correct.

Agricultural Classification

44. Campbell argues her property is overvalued as tract land because the DOR's classified the neighboring parcel as agricultural land.
45. Land values are neither assessed nor equalized based on mistakes the DOR may have made to neighboring properties, but rather on the market value of each parcel of land as evidenced by sales. Mont. Code Ann. § 15-8-111. The DOR's mistake to classify one property as agricultural may not be used to make a legal determination that is also a mistake of a neighboring property.
46. "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

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raising of agricultural products produced by the land....” Mont. Code Ann. § 15-7-202(1)(b)(i).

47. “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.

48. The DOR is prohibited by statute from granting an agricultural classification if the taxpayer has not applied for it. Campbell’s failure to file an application for agricultural classification prevented the DOR from classifying the land as agricultural.

49. This Board declines to change the classification to agricultural land because Campbell 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 land itself.

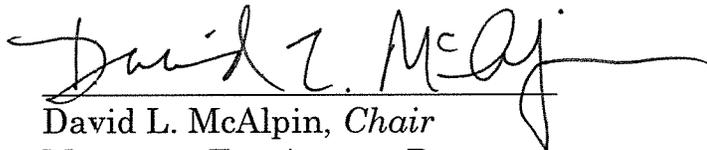
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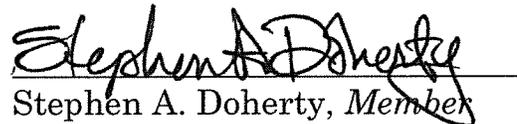
ORDER

IT IS HEREBY ORDERED that Joan Leslie Campbell's appeal is DENIED and the Department of Revenue's assessed value of \$142,700 and classification as tract land for tax years 2017-2018 is upheld.

Ordered August 17th, 2018.



David L. McAlpin, *Chair*
MONTANA TAX APPEAL BOARD



Stephen A. Doherty, *Member*
MONTANA TAX APPEAL BOARD



Valerie A. Balukas, *Member*
MONTANA TAX APPEAL BOARD

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Certificate of Service

I certify that I caused a true and correct copy of the foregoing

I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, and Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on August 17, 2018 to:

Joan Lewis Campbell
P.O. Box 249
Kalispell, MT 59903-0249

Dave Burleigh
Montana Department of Revenue
Legal Services Office
P.O. Box 7701
Helena, MT 59604-7701

Property Assessment Division
Montana Department of Revenue
P.O. Box 8018
Helena, MT 59604-8018



Lynn Cochran, Paralegal Assistant
MONTANA TAX APPEAL BOARD