

BEFORE THE MONTANA TAX APPEAL BOARD

JOHN A. RICHARDS,)	
)	DOCKET NO.: PT-2011-12
Appellant,)	
)	
- vs -)	
)	FINDINGS OF FACT,
THE DEPARTMENT OF REVENUE)	CONCLUSIONS OF LAW,
OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondent.)	

Statement of Case

This case now comes to us on remand, specifically to address the classification of an 18 acre portion of the 55 acres of land that were initially subject to appeal. The Montana Tax Appeal Board (MTAB) originally heard this matter on July 24, 2012 from the Taxpayer's appeal of the Missoula County Tax Appeal Board. This Board issued its final decision upholding the County Board on September 20, 2012.

John Richards (Taxpayer) appealed the full decision of this Board to the Montana Fourth Judicial District pursuant to § 15-2-303, MCA. By order dated March 24, 2014, District Court Judge Deschamps concluded the eighteen acres not actively used for the gravel pit were not commercial and remanded the case to MTAB for further proceedings. The remand directed that we determine the appropriate non-commercial classification of 18 acres of land within a 55-acre property with the following legal description:

Land only in Section 5, Township 14 North, Range 14 West,
Certificate of Survey 5720, Parcel 2, less Tract 2A, Certificate
of Survey 6049, County of Missoula, State of Montana.

Specifically, the Court's Opinion and Order stated:

“Based on the foregoing analysis, the Court Concludes that the CTAB and subsequently, the STAB, did not properly consider the evidence before it and committed clear legal errors prejudicing Mr. Richards' substantial rights. Therefore this matter must be remanded to the STAB to properly value, for 2011, the 18 acres covered by the gravel pit permit which were not actually also covered by the Reclamation Bond and so were not being physically operated as a gravel pit.” (Deschamps' March 24, 2014 Opinion and Order, p. 7-8).

Originally, the DOR reclassified 22.2 acres of the subject 55 acres of property as commercial (formerly agricultural) when it discovered the gravel pit during a routine inspection of the property. Taxpayer argued the land was properly classified as agricultural grazing land until all Montana gravel pits were reclassified as commercial, making an equal protection argument. DOR argued that the four acre pit and adjoining 18 acres were properly classified as commercial as both were part of the gravel pit operation and both were covered by the gravel pit permit.

Taxpayer appealed the DOR reclassification to the Missoula County Tax Appeal Board, which determined that the gravel pit and additional 18 acres covered by the permit associated with the gravel pit operation were properly classified as commercial. The Montana Tax Appeal Board affirmed the Missoula County Tax Appeal Board. Richards appealed this Board's decision to the District Court, arguing that the eighteen acres were not used commercially and, therefore, should be maintained as agricultural land for valuation purposes. The District Court ruled against the Taxpayer on his equal protection argument relating to the assessment of other gravel pits, and against the Taxpayer on discovery disputes with the DOR. The District Court remanded the case to this Board for review of the remaining 18 acres.

Issue

The only issue on remand is the proper classification of the remaining eighteen acres the Court concluded did not meet the legal definition as commercial property.

Montana law sets the standard for proper classification of agricultural land.

Section 15-7-202, MCA defines agricultural land:

- (1)(a) Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment and taxation as agricultural land each year that none of the parcels is devoted to a residential, commercial or industrial use.
- (b)(i) Contiguous parcels of land of 20 acres 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, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101 and if, except as provided in subsection (3), 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;
 - (B) the parcels would have met the qualification set out in subsection (1)(b)(i)(A) were it not for independent, intervening causes of production failure beyond the control of the producer or a marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

The District Court assumed the land's previous classification was agricultural under the 160-acre presumption set out in §15-7-202(a), MCA. "Presumably the land in question here meets the criteria of §15-7-202(a), MCA because it had been valued as agricultural and the balance of the larger 55-acre tract not encompassed by the gravel pit permit remains classified and valued as agricultural land." (Deschamps' March 24, 2014 Opinion and Order, p. 6-7). Under that presumption, no showing of actual agricultural usage is required.

The original case, however, did not address whether the 18 acres qualified for agricultural classification. As directed by the Court, this Board has reviewed the entire record of the case, and has also fully considered the briefs filed by both parties subsequent to the District Court's Opinion and Order. Due to the equal protection and discovery arguments pursued by the Taxpayer, he presented no evidence showing that the land would qualify as agricultural and the parcel subject to his appeal was not large enough to qualify for automatic designation as agricultural under §15-7-202(1)(a) MCA. The hearing record, therefore, was silent on the facts necessary to make the agricultural classification.

The Department conceded on remand that the subject eighteen acres were contiguous with other agricultural land which, taken together, does meet the 160 acre threshold to qualify as agricultural land under §15-7-202(1)(a), MCA.

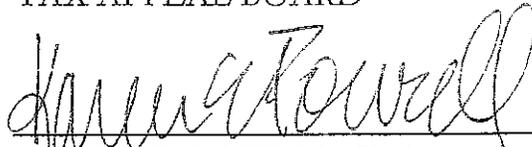
Because the District Court determined the parcel in question is not devoted to a residential, commercial, or industrial use, and the Department of Revenue noted that the 18 acre parcel is part of a larger agricultural parcel owned by Mr. Richards, the subject property qualifies for agricultural classification.

Order

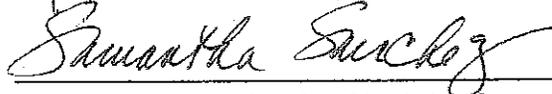
IT IS THEREFORE ORDERED by the Montana Tax Appeal Board that the subject 18 acres shall be entered on the tax rolls of Missoula County at a 2011 tax year value consistent with classification as agricultural land pursuant to §15-7-202 1(a), MCA.

Dated this 3rd day of November, 2014.

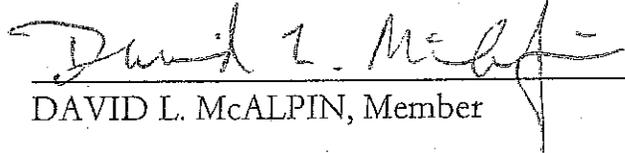
BY ORDER OF THE MONTANA
TAX APPEAL BOARD



KAREN E. POWELL, Chairwoman



SAMANTHA SANCHEZ, Member



DAVID L. McALPIN, Member

(SEAL)

Notice: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of November, 2014, a copy of the foregoing order was served on the parties hereto by the method indicated below and addressed as follows:

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