

appeared on behalf of the Department of Revenue ("DOR"). Testimony was taken, arguments were heard, and the matter was deemed submitted to the Board for decision.

At the hearing it came out that DARLOA had filed an AB-26 petition along with its Application for Tax Exemption. The proper venue for the consideration of an AB-26 is with the local appraisal office since it is a request for an informal review. Tracy Lame, for the DOR, stated that when she realized an AB-26 form was enclosed with the appeal, she forwarded it to the Missoula County Appraisal Office for their consideration. Accordingly, this opinion deals only with the issue of tax exemption and is not meant to preclude any review or appeal on the related, but separate, issue of valuation.

This is a direct appeal of a department decision pursuant to Section 15-2-302, MCA. By consent of the parties, the hearing was held as an informal proceeding under Section 2-4-604, MCA.

FINDINGS OF FACT

1. DARLOA is the duly constituted organization of landowners of the subdivision known as Double Arrow Ranch near Seeley Lake in Missoula County. The initial phase of

the subdivision was done in the mid-70's and there were a total of eight phases completed over the ensuing years.

2. Under the plan of development the landowners' association became the owner of the several and various "common areas" throughout the subdivision. Only two are involved in this hearing: one is a 16.42 acre common area in Phase 6 known as the Trail Creek Addition. While it is mostly open space, there is a small, historical cabin on the premises as well as an open air pavilion suitable for picnicking and other outdoor activities. The other common area involved in this appeal is approximately 9 acres in Phase 7 of the Drew Creek Addition. It is mostly open space and is often locally referred to as "the ski hill" since it is used for sledding in the winter due to the gradient of the terrain. There is a small building on the property that at one time served as the office of DARLOA, although it no longer has that use. It is currently rented to an organization known as Arrowhead Owners Association.

3. The testimony of Mr. Jack Piippo at the hearing indicated that these "common areas" were primarily limited in use to the member/owners of DARLOA and their guests.

3. DARLOA, through its Treasurer Joanne Wallenburn, made separate applications to the Department of Revenue for exemption of the two "common areas" at issue in this appeal. In the portion of the form requesting the "type" of exemption claimed, the applicant checked the square denoting "Community Services" with both applications.

4. The "community services" exemption to real property taxation is contained in Section 15-6-209, MCA. It provides for an exemption for buildings and appurtenant land up to three acres if the owner is a lodge of a "nationally recognized fraternal organization"; is an organization that provides services to senior citizens; or primarily furnishes facilities without charge "for public meetings and entertainments."

5. Most of the allowable exemptions for property taxation in Montana are contained in Title 15, chapter 6, part 2 entitled "Tax-Exempt Property". The list of properties that qualify for property tax exemption are contained in this subsection of the Montana Code Annotated.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-302 MCA.
2. The presumption in Montana law is that privately-owned real property and improvements thereon are subject to property taxation. Section 15-6-101, MCA. There are a limited number of exemptions provided in statute, primarily in Chapter 6 of Title 15, Montana Code Annotated. To qualify for an exemption the taxpayer must show that his property clearly meets the terms and conditions of exemption set forth in the statute. Statutes of exemption will be strictly construed by reviewing courts. Old Fashion Baptist Church v. Dept. of Revenue, 206 Mont. 451, 671 P.2nd 625 (1983).
3. The two "common areas" that are the subject of this appeal do not meet the "community services" exemption of Section 15-6-209, MCA. The exemption is for a building and appurtenant land not exceeding 3 acres, and each of these properties are well in excess of 3 acres. Of the other terms supplied in the statute, the only one that could remotely apply to appellants' situation is where they would furnish a building

without charge "for public meetings and entertainments." However, it does not seem that the small buildings on the properties would be suitable for such use and there was no indication that they have been used in that fashion.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the "common area" properties owned by the Double Arrow Landowners' Association shall be included in the tax rolls of Missoula County and the appeal to this Board of the decision by the DOR is hereby denied.

Dated this 15th day of September, 2006.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

KAREN E. POWELL, Chairman

JOE R.ROBERTS, Member

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 15th day of September, 2006, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Double Arrow Landowners' Association
P.O. Box 307
Seeley Lake, Montana 59868

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, MT 59620

Missoula County Appraisal Office
Attn. Mr. Ronald D. Pierson, Appraiser
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Missoula, MT 59808-1707

DONNA EUBANK
Paralegal