

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF MONTANA,	)	DOCKET NO.: PT-2001-3
	)	
Appellant,	)	
	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
BOTTRELL FAMILY	)	ORDER and OPPORTUNITY
INVESTMENTS, LLC,	)	<u>FOR JUDICIAL REVIEW</u>
	)	
Respondent.	)	

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The above-entitled appeal was heard on March 1, 2002, in the City of Helena, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

The Department of Revenue (DOR), represented by Randy Pierson, Agricultural Valuation Specialist and Vicki Nelson, Commercial Appraiser, presented testimony in support of the appeal. Bottrell Family Investments, LLC, (the Taxpayer) represented by Jerry Thomas, Director of Business Development and Kevan Bryan presented testimony in opposition to the appeal. In addition to testimony, exhibits were received in evidence. The Department of Revenue is the appellant in this proceeding and, therefore, has the burden of proof. Based on the evidence

and testimony, this Board finds that the appeal of the DOR is affirmed.

**STATEMENT OF THE ISSUE**

The issue before the Board is to determine the appropriate property classification for the subject property. The property classifications at issue are Class Three property pursuant to MCA §15-6-133 and Class Four pursuant to MCA §15-6-134.

**FACTUAL BACKGROUND**

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded the opportunity to present evidence, oral and documentary.

2. The subject property is described as Lots 1-5, 11, 13-19, Block 1, Lots 1-8, Block 2 & Lots 1-3, Block 3, of the Gable Subdivision, 2<sup>nd</sup> Filing. The total area comprises 56.28 acres. (Exhibit A)

3. The DOR has established the property as commercial, Class Four, with a total market value of \$1,411,368. (Exhibit A)

4. The Taxpayer purchased the property on November 28, 2000 from the Big Sky Economic Authority, F/N/A Montana Tradeport Authority.

5. Big Sky Economic Authority, F/N/A Montana Tradeport Authority is an arm of local government.

6. The Taxpayer appealed the DOR determination of Class Four, commercial property to the Yellowstone County Tax Appeal Board on August 10, 2001, stating "*Classify land for valuation, assessment and taxation as agricultural land.*"

7. The Yellowstone County Tax Appeal Board granted the taxpayer's appeal on November 8, 2001, stating, "*Based on the evidence in testimony presented, this Board feel (sic) the land has not become commercial and should be classified as agricultural. This Board so order (sic) the land to be classified agricultural.*"

8. The DOR appealed that decision to this Board on November 15, 2001, stating, "*The nature of the proof adduced at the hearing was insufficient from a legal and a factual standpoint, to support the Boards decision.*"

#### **DOR'S CONTENTIONS**

The subject property was subdivided and developed with sewer, water, paved streets, fire hydrants, street lights, fiber optic cable, landscaping and underground sprinklers prior to year 2000 by Big Sky Economic Trade Authority, a tax-exempt entity.

Big Sky Economic Trade Authority sold the property to Bottrell Family Investments LLP on November 28, 2000 in an amount that exceeds the DOR's appraised value. Prior to the sale, the DOR classified the property as Class Four commercial.

The DOR removed the tax-exempt status in 2001. The removal of the tax-exempt status was the only change to the property with respect to taxation.

The Taxpayer requested the DOR change the property classification from a commercial status to agricultural. The DOR denied this request based on the physical changes that occurred to property, i.e. subdividing and installation of infrastructure.

The DOR indicated that the property would not qualify as Class Three agricultural, even though this type of activity is allowed to occur as stated in the "Declaration of Restriction of Transfers and Conveyances". (Exhibit C)

In the determination of Class Four property, the DOR referenced:

?? **MCA §15-6-133. Class three property -- description -- taxable percentage.** (c) The land may not be devoted to a commercial or industrial purpose.

?? **MCA §15-6-134. Class four property - description - taxable percentage.** (1)Class four property includes:  
(g)(ii) vacant commercial lots

?? **MCA §15-7-202. Eligibility of land for valuation as agricultural.**  
(1)(b)(i) (b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership are eligible for valuation, assessment, and taxation as agricultural land if 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. A parcel of land is presumed to be used primarily for raising agricultural products if 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. The owner of land that is not presumed to be agricultural land shall verify to the department that the land is used primarily for raising and marketing agricultural products.

(B) the land is not devoted to a residential, commercial, or industrial use.

?? **15-8-201. General assessment day.** (1) The department shall, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. (2) The department shall assess property to: (a) the person by whom it was owned or claimed or in whose possession or control it was at midnight of the preceding January 1.

#### TAXPAYER'S CONTENTIONS

The subject property qualifies as agricultural property as determined by the Yellowstone County Tax Appeal Board for the reason that the property's use is agricultural, its size is greater than 20 acres and it has generated more than \$1,500 worth of agricultural product, pursuant to **MCA §15-7-202.** (1)(b)(i) *...taxation as agricultural land if the **land is used primarily** for raising and marketing, as defined in subsection (1)(c)...* (emphasis added). The income is supported by a letter from Herman Fox, lessor of the property, in which he states "*...I farmed this land in year 2000 through consent from the Big Sky*

*Economic Development Authority. I harvested hay on this land for a value of \$2,300 plus pasture of about \$630...". (Exhibit 5)*

*Mr. Bryan's written testimony (exhibit 5), "...In summary, we believe that the Montana legislature allows for ag valuation and assessment covering a wide range of situations. Our property currently qualifies under the restrictions presented by statute. We fully support taxation as commercial property any lots that are sold for development. We also support taxation on any remaining property left unsold as soon as it fails to meet the land size and gross income test as provided in Title 15, MCA. We simply find no basis to tax anything on what may happen..."*

The Taxpayer contends that the DOR's consideration of the "highest and best use" concept would adversely affect agricultural land in and around urban areas.

#### **BOARD'S DISCUSSION**

The Taxpayer contends that because the subject property is used for agricultural purposes, has met the income test in 2000, and no lots have been sold, it qualifies as Class Three agricultural. In addition, if this property is deemed to be commercial, similarly situated agricultural properties located near or adjacent to subject or property surrounding expanding cities would have higher taxes forced upon them. The Taxpayer's representatives would have this Board believe that if the "highest and best use" concept were applied, higher taxes would

be imposed upon those property owners. The Statute is clear in the valuation of agricultural property, MCA §15-7-201.

**Legislative intent -- value of agricultural property. (1)**

*Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.*

Consider the following scenario of adjacent properties:

<b>Property</b>	<b>Subject</b>	<b>A</b>
Size	58 Acres	58 Acres
Zoning	Industrial/ Commercial	Agricultural
Subdivided	Yes - 24 lots	No
Internal Infrastructure	Yes	No
Current Use	Agricultural	Agricultural

Assuming that the market supports that the highest and best use for both properties is commercial subdivision, the legislature has protected the owner of property A from outside forces as stated in MCA §15-7-201. The subject property on the other hand has gone through significant changes that removed it from an agricultural classification and put itself in direct competition with other commercial subdivisions.

The DOR determined that the subject property is commercial, Class Four, and subject to MCA §15-8-111. **Assessment**

**-- market value standard -- exceptions.** (2) (a) 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.

The highest and best use analysis is a key component when establishing market value. The Appraisal of Real Estate, 11<sup>th</sup> Edition, defines highest and best use as:

"The reasonably probable and legal use of vacant land or improved property, which is physically possible, appropriately supported, financially feasible, and results in the highest value."

After determining the highest and best use of a property, the analysis allows the appraiser the ability to identify property that is comparable to the property being appraised.

**MCA §15-1-101. Definitions.** (e) The term "comparable property" means property that:

- (i) has similar use, function, and utility
- (ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and
- (iii) has the potential of a similar highest and best use.

Property A in the above scenario without similar characteristics to the subject clearly is not comparable. The Taxpayer's representative made reference to surrounding tracts of land that resembled Property A.

Both parties agree that the subject property as of 1/1/2001 was subdivided, zoned for commercial development, and ready for



development. Both parties also agreed that, as of January 1, 2001, a potential purchaser could have obtained a building permit and could have begun commercial development on an individual lot. The fact that there have been no sales transactions does not alter the classification. The speculative uses for this property has been established, not only by a purchase price, which exceeded \$2,000,000, but more importantly, by the physical changes that have occurred. The fact that income is generated from agricultural activity merely allows the owner to reduce operating expenses. This agricultural activity is purely an interim use.

It is this Board's opinion that the current agricultural use does not warrant a change in the property classification.

#### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction over this matter in accordance with Section 15-2-301, MCA.
2. The subject property is classified as Class Four in accordance with Section 15-6-134. Class four property -- description -- taxable percentage.
3. The Board shall give an administrative rule full effect unless the Board finds a rule arbitrary, capricious or otherwise unlawful. Section 15-2-301(4), MCA.
4. The appeal of the DOR is hereby granted and the decision of

Yellowstone County Tax Appeal Board is reversed.

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**ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the property in question is properly classified as Class Four property pursuant to Section 15-6-134 MCA. The appeal of the DOR is granted.

DATED this 19th day of March, 2002.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

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GREGORY A. THORNQUIST, Chairman

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JEREANN NELSON, Member

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MICHAEL J. MULRONEY, 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 19th day of March, 2002, 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:

Bottrell Family Investments, LLP  
P.O. Box 80248  
Billings, MT 59108

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

Appraisal/Assessment Office  
Yellowstone County  
P.O. Box 35013  
Billings, Montana 59107-5013

Elwood Hannah, Chairman  
Yellowstone County Tax Appeal Board  
2216 George Street  
Billings, Montana 59102

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DONNA EUBANK  
Paralegal