BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE, OF THE STATE OF MONTANA, Appellant, -vs- NORMAN WINTERS, Respondent.	) DOCKET NO.: PT-2006-2)))))) FACTUAL BACKGROUND,) CONCLUSIONS OF LAW) ORDER and OPPORTUNITY) FOR JUDICIAL REVIEW)

The above-entitled appeal was heard on October 13, 2006, via telephone in accordance with an order of the State Tax Appeal Board (Board). The notice of the hearing was duly given as required by law. The Department of Revenue (DOR) was represented by Dallas Reese, Management Analyst and Kristina Todd, Region 6 Area Manager. The taxpayer, Norman Winters, representing himself, presented evidence in opposition to the appeal.

The duty of the Board is to determine the appropriate market value for the property based on a preponderance of the evidence.

Findings of Fact

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

The subject property is described as follows:

> Land only located in Golden Valley County, comprising 120 acres, Geocode 53-1913-13-4-02-01-0000 assessment code 7305000000. (AB-26).

The property is located in Golden Valley County, the south half of the southeast quarter and the northwest quarter of the southeast quarter, Section 13, Township 10 North, Range 21 East. Golden Valley CTAB hearing, 3.

Mr. Winters, owner of the subject property, filed for informal review of his tax assessment with the Department of Revenue for tax year 2004 due to a change in classification of his property from agricultural land to non-qualified agricultural land. The taxes on non-qualified agricultural land are higher than those on agricultural land. The Department of Revenue undertook a review but did not adjust Mr. Winters' property value. AB-26, signed July 5, 2005 by Kris Todd, DOR Exhibit 7.

Mr. Winters appealed his assessment to the Golden Valley County Tax Appeal Board (County Board). The County Board held a hearing on August 2, 2006. The County Board found in favor of Mr. Winters and determined that the State arbitrarily set criteria for agricultural land production at an unreasonable level for Golden Valley County. The County Board also determined that it was unfair for Mr. Winters' taxes to be seven times higher than similarly used land. The County Board noted that land use has not changed for 80 years, the carrying capacity was wrongly calculated, and the administrative rules were arbitrary. Golden Valley CTAB decision, August 2, 2006. The DOR appealed the decision of the Golden Valley County Tax Appeal Board.

Letter from Tracy Lame, Management Analyst, dated September 5, 2006.

During the hearing before this Board, Department of Revenue Management Analyst Dallas Reese testified that the 2001 legislature passed House Bill 609, which expanded the authority of the agricultural land advisory committee to make recommendations to the Department of Revenue relating to agricultural land valuation. Pursuant to that statute, the Department of Revenue implemented certain administrative rule changes based on recommendations by the agricultural land advisory committee.

Mr. Reese testified that the Department of Revenue implemented administrative rule 42.20.625 in 2004 which required that property less than 160 acres but greater than 20 acres have a grazing requirement of 30 AUM (animal unit month) or lease payments of at least $1500. The AUM requirement was a new addition to the administrative rule.

Mr. Reese testified that the Department sent a letter to a variety of landowners in September of 2004 notifying them of the change in the rules process and informing them that they may need to apply or reapply for agricultural classification of their property. DOR Exhibit 4

Mr. Winters submitted an Application for Agricultural Classification on September 11, 2004, which was denied by the Department on October 26, 2004, because the property ”doesn’t meet income requirements.” DOR Exhibit 6, Application dated September 11, 2004.

Mr. Reese testified that the subject property did not meet the 30 AUM requirement set forth in the new administrative rule. Under the FSA (United States Department of Agriculture Farm Service Agency) calculations, the land in question could sustain 24 AUM.

The Department of Revenue calculation indicated a 21.6 AUM capacity.

Mr. Reese explained how the Department calculated the carrying capacity based on soils of the subject property. Exhibits 8, 9 and 10 demonstrated the Department's calculation of the carrying capacity of the land based on the CRP calculations and the FSA maps and calculations.

Mr. Reese also testified that the Gissellback decision by this Board confirms the legality of the administrative rule.

Upon questions from the Board, Mr. Reese noted that the standards for determining whether land should be classified as agricultural are the same for any land under 160 acres. The only distinction is what sources of income will be acceptable to the Department of Revenue in determining the $1500 in income or the 30 AUM. The sources of income requirements are stricter for acreage under 20 acres. The Department ended their presentation.

Mr. Winters testified that he owns 120 acres of grazing land in Golden Valley County which was inherited from his aunt and father. The land does not have any improvements, is not fenced, and is leased to a neighbor for $1 per acre per year for grazing purposes. AB 26; Test. Winters. The property has been in the Winters family for over 80 years and the use has not changed in the past 80 years.

Mr. Winters received a letter requiring that all property less than 160 acres have an approved agricultural application on file with the local department of revenue office to be classified as agricultural land. Mr. Winters submitted a complete application for agricultural classification. DOR Exhibit 6.

After the denial of his agricultural classification application, Mr. Winters was subsequently assessed at a higher rate for the 2004 tax year. Mr. Winters noted that he wished to keep this piece of property and to pass it along to his daughter. He noted, however that the land does not support a $600 tax bill.

Testimony from Mr. Winters also indicated that there are no commercial or residential opportunities for the property at this time or in the foreseeable future. The property's sole use is for agricultural activities.

The Department of Revenue appraised the subject property at $5,548. The taxpayer contends that the value should be set at $50-60 per acre as in previous years with an agricultural classification. Golden Valley CTAB Tr. 3

Board Discussion

The issue presented is whether the property is properly classified as non-qualified agricultural land. This Board has the authority to review the classification of property. *See. e.g.* Farmers Union Central Exchange v. Department of Revenue, 272 Mont. 471; 901 P.2d 561.

The Department contends classifying Mr. Winters' property as agricultural does not comport with the requirements of Rule 42.20.625 because the land does not produce $1500 in income or support sufficient AUM. Thus, the Department changed the classification of the property from agricultural land to non-qualified agricultural status. Mr. Winters contends that the land is used for agricultural purposes as required by statute and is properly classified as agricultural land.

It is the clear intent of the legislature that land used for agricultural purposes be granted agricultural classification. See §15-7-201, MCA. To determine whether

land is being used for agricultural purposes, the legislature set forth specific requirements based on the productivity and size of a property parcel.

The relevant statute states in part:

> **15-7-202. Eligibility of land for valuation as agricultural.** (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 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.

The statute continues with a discussion of certain exceptions, as well as the requirements for land less than 20 acres. Id.

The essence of the statute states that contiguous parcels of land greater than 20 acres used for raising and marketing agricultural products are eligible for classification as agricultural land. There is a presumption of an agricultural classification when income in the amount of at least $1500 is generated. Without requisite income, the owner must verify to the Department that the land is

used primarily for raising and marketing agricultural products before agricultural classification is granted.

In 2004, DOR implemented Rule 42.20.625, ARM to administer agricultural eligibility for parcels of land between 20 and 160 acres that do not have the requisite $1500 of income to be presumptively classified as agricultural land. Section 9 of Rule 42.20.625, ARM establishes that land must have a certain level of productivity before agricultural classification may be granted on parcels that do not meet the minimum income level of $1500. In relevant part, the rule states "if the land is used primarily to raise and market livestock the land must currently support 30 or more animal unit months of grazing carrying capacity, with cattle as the base." The rule further sets forth standards for soil analysis to determine AUM capacity.

In examining whether the subject property is properly classified, the state tax appeal board shall give an administrative rule full effect unless the board finds the rule arbitrary, capricious, or otherwise unlawful. Section 15-2-301, MCA. *See also*, § 2-4-305, MCA. In reviewing whether the administrative rule might be unlawful, we begin with the proposition that an administrative agency's interpretation of a statute under its domain is presumed to be controlling. Christenot v. St. 272 Mont. 396, 901 P.2d 545. (1995).

In this instance however, the production requirements set forth in the administrative rule go beyond the statutory intent and have, in essence, denied appropriate classification of the subject property even though the evidence demonstrates that the land is "used primarily for

raising and marketing agricultural products" as is required by §15-7-202(1)(b)(i), MCA.

The subject property is, without dispute, leased to a neighboring landowner and is being used as grazing land. The evidence demonstrates that the use of the land clearly falls within the statutory terminology of §15-7-202 and §15-1-101(definitions). *See also* §15-7-208, MCA and Rule 42.20.601, ARM.

In requiring classification of the subject property as non-qualified agricultural land pursuant to Rule 42.20.625, ARM, the administrative rule is in conflict with the statute and we cannot give it full effect in this matter. *See* Department of Revenue v. Estate of Dwyer, 236 Mont. 405, 771 P.2d 93 (1989). *See also* Bell v. State, 182 Mont. 21, 594 P.2d 331 (1979) (Administrative regulations are inconsistent with legislative guidelines if they engraft additional requirements on the statute that were not envisioned by the Legislature); §2-4-305, MCA.

Additionally, there is a requirement for the Board to consider the question of equalization of property taxation. *See* Dept. of Revenue v. St. Tax Appeal Bd., 188 Mont. 244, 613 P2d 691 (1980), followed in Devoe v. Dept. of Revenue, 233 Mont. 190, 759 P2d 991, 45 St. Rep. 1414 (1988).

In this instance, there is no question that the subject property is identical to surrounding properties used for agricultural purposes. As the evidence demonstrates, the land is without buildings, fences or other development. It is in use for the raising of agricultural products in the same method (and by the same organization) as neighboring properties. It is, in fact, indistinguishable from neighboring properties as there is no fence separating it from surrounding land. In addition,

the evidence demonstrated that no other use for the property is available or is likely to be available in the foreseeable future. The subject property, however, is classified in a separate manner, despite the ability for the landowner to "verify to the department that the land is used primarily for raising and marketing agricultural products" as required by §15-7-201(1)(b)(i), MCA.

Although the Department cites to the Board's Gissellback decision, it is not relevant to the question at hand. In that matter, the parcel in question was less than 14 acres. Thus, the factual issues and statutory requirements for the property are different than those at issue.

Based on the evidence, the Board hereby determines that the subject property is properly classified as agricultural land. The ruling of the Golden Valley Tax Appeal Board is upheld.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall be entered on the tax rolls of Golden Valley County in accordance with a classification as agricultural.

The decision of the Golden Valley County Tax Appeal Board is hereby affirmed.

Dated this 22nd day of January, 2007.

BY ORDER OF THE
STATE TAX APPEAL BOARD

//_____
KAREN E. POWELL, Chairwoman

//_____
SUE BARTLETT, 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 22nd day of January, 2007, 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:

Norman Winters
1710 Indian Gardens Drive
Clearlake, California 95422-9736

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

Tracy Lame
Property Assessment Division
Department of Revenue
Helena Montana 59620

Golden Valley County Appraisal Office
P.O. Box 10
Ryegate, Montana 59074-0010

Bob Lehfeldt, chairperson
Golden Valley County Tax Appeal Board
P.O. Box 75
Lavina, Montana 59046

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DONNA EUBANK
Paralegal