

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 NOS.: PT-2013-9
	)	through PT-2013-11
Appellant,	)	
	)	
-vs-	)	
	)	
DAVID F. & PATRICIA A. WOOD,	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW
Respondents.	)	ORDER and OPPORTUNITY
	)	<u>FOR JUDICIAL REVIEW</u>
	)	

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This appeal was heard on February 20, 2014 in accordance with an order of the Montana Tax Appeal Board (Board). The notice of the hearing was duly given as required by law. The Department of Revenue (DOR) was represented by Tax Counsel Amanda Myers and Appraisers Brian Connolly, Nicholas Harris and Janis Douma. The Taxpayers, David and Patricia Wood were represented by Attorney Royal Aubrey Davis. Mr. Wood presented evidence in opposition to the appeals.

The duty of the Board, having fully considered the exhibits, evidence and all matters presented, is to determine whether the Department set the appropriate classifications and valuations for the subject property and improvements. The two specific issues before this Board are first, whether the agricultural property is correctly classified for 2013 and, second, whether the DOR used an appropriate percent-complete valuation for the home on the subject property, which was under construction for tax year 2013.

## Summary

In this appeal by the DOR of a decision by a County Tax Appeal Board, this Board held a *de novo* hearing, while incorporating the evidence presented at the county tax appeal board. § 15-2-301, MCA.

Based on a preponderance of the evidence, this Board modifies the valuation found by the Lewis and Clark County Tax Appeal Board to uphold the DOR classification of the subject land as non-qualified agricultural land and upholds the value of the improvements as 90% complete.

## Evidence Presented

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.

1. The subject property is described as follows:

PT-2013-9: Land & improvements located upon 64.87 acres in Section 34, Township 11 North, Range 5 West, Geocode 05-1993-34-2-01-01-M000, County of Lewis and Clark, State of Montana.

PT-2013-10: Land only located upon 23 acres in Section 34, Township 11 North, Range 5 West, Geocode 05-1993-34-4-01-30-AG00, County of Lewis and Clark, State of Montana.

PT-2013-11: Land & improvements located upon 38.18 acres in Section 34, Township 11 North, Range 5 West, Geocode 05-1993-34-1-01-60-0000, County of Lewis and Clark, State of Montana. (Appeal Forms.)

2. The DOR uses agricultural land classification based on productivity to determine a tax value for the subject land. The Department designated the subject land as non-qualified agricultural land. For tax year 2013, the DOR appraised the subject properties as follows:

PT-2013-9: Land at \$6,731 and improvements at \$628.

PT-2013-10: Land at \$1,329.

PT-2013-11: Land at \$3,297 and improvements at \$83,587 (90 percent complete). (DOR Administrative Status Questionnaire.)

3. The Taxpayers appealed the DOR appraisals to the Lewis and Clark County Tax Appeal Board on May 26, 2013 asking that all parcels under appeal be designated together as grazing land, and for a reduction to 53 percent-complete on the valuation of the residence located upon the 38.38 acres (Appeal Forms.)

4. A hearing was held before the Lewis and Clark County Tax Appeal Board on August 7, 2013. The county board granted grazing land designation on the combined parcels, and found the residence to be 53 percent complete. The county tax appeal board also noted that, in the future, the Taxpayers should allow DOR access into their home for appraisal. (Appeal Forms.)

5. DOR appealed the decisions of the county board to this Board on September 6, 2013, stating that the county tax appeal board's decisions violated statutory law and administrative rule. (DOR Notice of Appeal, September 6, 2013.)

6. The Montana Tax Appeal Board accepted the appeal, set a hearing in the matter, and held that hearing on February 20, 2014.

7. In 2010, Mr. Wood filed an application for tax relief for beetle-killed timber. Upon review, the DOR granted relief for certain property, but also determined that certain properties had been improperly classified. This appeal stems from the DOR's re-classification of those properties.

8. The Woods own four contiguous parcels of land, two owned by David Wood and two owned by David and Patricia Wood. As a result of the different ownership, the DOR does not aggregate the parcels into a single parcel large

enough to be classified as grazing land. The DOR has classified the two parcels at issue in this case as non-qualified agricultural land.

9. Section 15-7-202(1)(b), MCA, permits aggregation of contiguous parcels for agricultural valuation “under one ownership,” defined in the Montana administrative rules as identical title. These administrative rules specify that the parcels owned by a single taxpayer cannot be aggregated with property belonging to that taxpayer and a spouse. ARM §42.20.615(2)(b)(i).

10. Ms. Douma testified that she and Ms. Tice from the Department met with Mr. Wood, and that an application for agricultural classification was mailed to the Taxpayers but that a completed form was never submitted by Mr. Wood. Taxpayer testified that he was assured by another DOR employee the classification would be fixed, and was not notified that change in title may adversely affect classification. DOR testified it is bound by law and rule to the outcomes at issue in this appeal.

11. Mr. and Mrs. Wood have resided in the home on the property since 1999 while they work to complete construction on the residence (1999 percent-complete worksheet, Taxpayers’ Exh. 2.) The DOR had previously valued the residence as partially completed, at 53 percent complete, and increased the percent complete on the residence for tax year 2013 to 90 percent.

12. When reviewing the reclassification of property, the DOR attempted to view the interior of the Wood’s home to assess a completed percentage for the home, but was not allowed to enter the home by Mr. Wood who stated that his pets may bite the assessor and that the home was not tidy. (CTAB transcript.)

13. Brian Connolly of the DOR testified that, pursuant to §15-7-139, MCA, the DOR was authorized to set the percent complete of the Wood’s home, making his estimate based upon a discussion with Mr. Wood and the available outside inspection. Mr. Connolly further testified that, because Mr. Wood did

not allow DOR appraisers into his home, DOR was left with no other option than to use an estimate of interior completion based on the questions Mr. Woods answered about the interior finish. The result of their conversation was the 90 percent-complete determination.

14. Mr. Connolly submitted exterior photographs of the subject property with recently-installed siding and a newly constructed deck at the entrance to the dwelling. (DOR Exh. E.)

15. In response, the Woods contend that they are entitled to the 53 percent-complete valuation and submitted photographs of their home showing various views of uncompleted work. The Taxpayers' photographs were mostly close-up shots of partially completed portions of the main floor and the basement of the home. (Taxpayer Exh. 3.) The Taxpayers did not provide photographs of the kitchen, bath, or living area of the home or of any completed parts of the home.

16. Mr. Wood submitted a copy of a DOR worksheet for percent-complete from 1999 showing his home to be 53 percent complete. (Taxpayers' Exh. 2.)

### **Findings of Fact, Conclusions of Law and Board Discussion**

This Board holds the hearing *de novo* and, as such, the burden of evidence remains with the Taxpayer to prove the DOR has erred. As a general rule, the appraisal of the DOR is presumed to be correct and the Taxpayer must overcome this presumption. The DOR, however, should bear a certain burden of providing documented evidence to support its assessed values.

(*Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428 P. 2d 3, 7, *cert. denied* 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).)

The first issue presented is whether the DOR properly classified the subject property as non-qualified agricultural property with a higher tax value, than as grazing land as requested by the Taxpayers. 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(1995).)

Montana law states that ownership must be identical for parcels to be aggregated in order to meet the agricultural acreage requirements. (EP 9.) Since the ownership titles reflect different named owners, the parcels do not meet the legal definition for grazing land. We can find no evidence to support a change in the classification.

The second issue presented is whether the percent-complete value assigned by the DOR, and later modified by the Lewis and Clark County Tax Appeal Board, is valid.

In their complaint, Taxpayers argue that the conduct of the DOR appraisers is arbitrary and capricious in assigning a percent-complete without seeing the interior of the property. (Taxpayer Administrative Hearing Status Questionnaire, p. 4.)

We note that, without access to the improvements, the DOR has no option but to determine an improvement value from the limited information available to them, gathered by external inspection and interviewing Mr. Wood. Section 15-7-139(6), MCA, states "If a landowner or the landowner's agent prevents a person qualified under subsection (1) from entering land to appraise or audit property or fails or refuses to establish a date and time for entering the land pursuant to subsection (5), the department shall estimate the value of the real and personal property located on the land."

On appeal, Taxpayers provided 80 unlabeled photos selected to show unfinished components of the home (Taxpayers' Exh. 3), but Taxpayers'

photos did not include any views of finished areas such as the kitchen, living, or bath areas, thus not allowing an overall impression of the property improvements, nor a basis for gauging how complete the home is. Based solely on the photographs submitted by Taxpayers, the home does not appear to be habitable, lacking almost all interior finishing and furnishings, yet the Taxpayers testified that they have lived in it for more than 15 years. Further, the Taxpayer testified that the residence does have a working kitchen, bathroom and bedroom area not shown in the photos. The evidence clearly fails to present a comprehensive view of the improvements, which is necessary to this Board to determine the DOR erred in determining the percent-complete of the home.

Were the Board to take the 1999 worksheet (Taxpayers' Exh. 2) at face value for the purposes of this case we would be left to conclude that this home, having been lived in for over a decade, has no finished walls, no floor coverings, no cabinets, no working plumbing, electrical, or heating. Even the limited photos provided indicate these building systems are in place and functional.

In addition, Mr. Connolly submitted photographs demonstrating that siding has recently been installed (EP 14.) Those photos verified that the home has recently been sided and had a deck added to the exterior entry, which alone would justify an increase in the percent-complete over previous tax year estimates of 53 percent. Furthermore, the 53 percent figure is based on the assumption that no interior finish was in place, such as walls, floor and cabinets, but Mr. Wood told the DOR that portions of the home do have interior finish. Therefore, this Board finds that the Lewis and Clark County Tax Appeal Board erred in reducing the percent complete to 53 percent.

The Board concludes that the Taxpayers have not met their burden to show the DOR was incorrect to assign a percent-complete value for the home

of 90 percent. We find the Taxpayers failed to provide sufficient evidence to meet their burden of proof.

**ORDER**

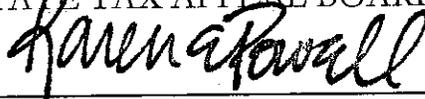
IT IS THEREFORE ORDERED by the Montana Tax Appeal Board that the agricultural property subject of this appeal is properly classified as non-qualifying agricultural land. It is further ordered that the subject property shall be entered on the tax rolls of Lewis and Clark County showing a percent-complete value for the improvements of 90 percent for the tax year in question.

The decision of the Lewis and Clark County Tax Appeal Board is hereby reversed.

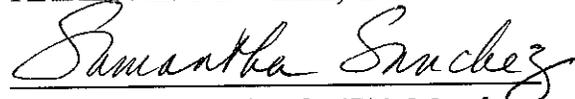
Dated this 2nd of April, 2014.

(SEAL)

BY ORDER OF THE  
STATE TAX APPEAL BOARD



KAREN E. POWELL, Chairwoman



SAMANTHA SANCHEZ, Member



DAVID L. McALPIN, 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 3<sup>rd</sup> day of April, 2014, 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:

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