

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	DOCKET NO.: PT-2011-14
)	
Appellant,)	FACTUAL BACKGROUND,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
GARY R. SPAULDING,)	FOR JUDICIAL REVIEW
)	
Respondent.)	
)	

Statement of Case

The Department of Revenue (DOR) appealed a decision of the Jefferson County Tax Appeal Board (CTAB) relating to the decision concerning the Gary Spaulding (Taxpayer) property with a legal description of Parcel 000, M&B tract of Certificate of Survey 135418, F278A in SE4SE4 of Section 8 and W2SW4 of Section 9, Township 9N, Range 3W. The DOR argues the CTAB decision is in direct contradiction to existing statutes which govern classification and valuation of property as agriculture land and seeks a reversal of said decision.

The Department of Revenue classified the subject property as non-qualified agricultural land, and valued it accordingly. The Taxpayer contends that the property should be classified and valued as agricultural property, with a significantly lower taxable value. The Taxpayer appealed the classification and valuation of his property, and the Jefferson County Tax Appeal Board held a hearing in the matter. Gary R. Spaulding & Mary Spaulding represented the Taxpayer at the hearing. Mark Bumgarner, DOR lead appraiser, Jon Kinzle,

area manager, Kevin Hodge, agriculture appraiser and Sallie Keener, appraiser, presented testimony and evidence in opposition to the appeal. The CTAB ruled in favor of the Taxpayer, and the Department appealed. The State Tax Appeal Board (Board) set the matter to be heard on the record without objection by the parties. The record includes the materials submitted to the CTAB, the transcript of the hearing, and additional material submitted to this Board pursuant to the scheduling order in this matter.

The duty of this Board, having fully considered the exhibits, evidence, submissions and all matters presented, is to determine the appropriate market value for the property based on a preponderance of the evidence.

Issue

The issue before this Board is whether the Jefferson County Tax Appeal Board appropriately set the classification and value of the subject land for tax year 2009.

Summary

Based on a preponderance of the evidence, the Board reverses the decision of the Jefferson County Tax Appeal Board.

Evidence Presented

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 an opportunity to present evidence, oral and documentary.
2. The subject property being considered is described as follows:

A tract of land containing 68.0 acres more or less in portions of the SE4SE4 of Section 8, and the W2SW4 of Section 9, Township 9 North, Range 3 West, Jefferson

County, Montana. GEO Codes 51-1785-08-4-01-05-0000.
(DOR Exh. C, Property Record Card.)

3. A classification appeal on the subject property was heard by this Board in 2007. The decision at that time denied the Taxpayers' appeal to change the classification to agricultural land. (*Gary and Mary Spaulding, South Hills Ranch, v. The Department of Revenue*, PT-2006-6 (June 6, 2007)).
4. The Department of Revenue assessed this property as non-qualifying agricultural land for tax year 2009. (DOR Exh. C.)
5. The Taxpayers submitted an Application for Agricultural Classification of Lands (AB-3) on June 5, 2011 and was denied a change in classification by the DOR because the land did not meet the minimum qualification of 30 Animal Unit Months (AUMs). (DOR Exh. A.)
6. The Taxpayers filed an appeal with the Jefferson County Tax Appeal Board on July 8, 2011, appealing the classification of the land based upon use, production and grazing benefit. (DOR Exhibit D).
7. The Jefferson County Tax Appeal Board held a hearing on November 21, 2011. The CTAB issued a decision approving a change of the Taxpayers' classification to non-qualified agricultural land. (DOR Exhibit B).
8. The DOR appealed the CTAB decision to this Board on December 22, 2011, arguing the CTAB decision is in direct contradiction to the existing statutes which govern classification and valuation of property as agricultural land. (DOR Notice of Appeal.)
9. The Taxpayers testified the property is being used for agricultural purposes by the grazing of horses. (Spaulding Testimony.)
10. The Taxpayer submitted a property assessment completed by Cameron Clark, an MSU Extension Agent for Madison and Jefferson Counties,

reflecting the opinion that the grazing carrying capacity of the land is 42 AUMs. (CTAB Exh. 5.)

11. The DOR testified and presented several exhibits justifying the method used by the DOR and required by the legislature that was used in determining a lower AUM for the subject property. (Testimony Hodge, DOR Exhs. D, E, and F, CTAB Exhs. E, F, G, H, I, J, K, and L.)
12. The DOR testified the Taxpayer's calculation of AUM carrying capacity does not use the statutory formula while the DOR's calculations do. (Bumgarner Testimony.)

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.)
2. "It is the duty of the department of revenue to accomplish the classification of all taxable lands." (§15-7-101(1)(a), MCA.)
3. "It is the duty of the department of revenue to implement the provisions of § 15-7-101, 15-7-102, and this section by providing for a general and uniform method of classifying lands in the state for securing an equitable and uniform basis of assessment of lands for taxation purposes." (§15-7-103(1)(a), MCA.)
4. All lands must be classified according to their use or uses. (§15-7-103(2), MCA.)
5. The legislature has directed that bona fide agricultural land be classified and assessed at its productivity value. (§15-7-202, MCA, et seq.)
6. Class three property includes parcels of land of 20 acres or more but less than 160 acres under one ownership that are actively devoted to agriculture and that are not eligible for valuation, assessment, and taxation as agricultural land under § 15-7-202 (1)(a), MCA, because of the minimum

acreage requirements. Those properties are considered to be “nonqualified agricultural land.” (§15-6-133(1)(c), MCA.) Actively devoted means “land primarily used for raising and marketing products that meet the definition of agricultural in §15-15-101.”

7. The department shall change the classification and valuation of land from class three, as defined in §15-6-133, MCA, to class four, as defined in §15-6-134, MCA, when:
 - (a) the land contains covenants or other restrictions that prohibit agricultural use or the cutting of timber, other than that required as part of a timber management plan or a conservation easement;
 - (b) the agricultural land does not meet the eligibility requirements in 15-7-202, MCA; (ARM 42.20.156(1).)

8. If the land is used primarily to raise and market livestock, the land must be capable of sustaining a minimum number of animal unit months of carrying capacity. The minimum number of animal unit months of carrying capacity must equate to \$1,500 in annual gross income as determined by the following criteria. (ARM 42.20.625(11).)
 - (a) Beef cows are owned to produce calves, usually one calf per year.
 - (b) The calf is the annual product produced from the grazing land via the beef cow.
 - (c) Calf prices have averaged approximately \$1.00 per pound. Weaning weights for calves are typically 500 pounds. The average revenue produced by one cow/calf pair is \$500. Three sold calves from three cow/calf pairs would generate \$1,500 in income.
 - (d) Based on a 10-month grazing season (typical), 30 AUM are required to generate \$1,500 (3 cow/calf pair X 10 months = 30 AUM).
 - (e) For the reappraisal cycle ending December 31, 2014, the Montana State University-Bozeman's Department of Agricultural Economics and Economics determined the minimum number of animal unit months of carrying capacity to be 30 animal unit months. For subsequent reappraisal cycles, the minimum number of animal unit months of carrying capacity needed to equate to \$1,500 in annual gross income for each cycle will be determined by the Montana State University-Bozeman's Department of Agricultural Economics and Economics for the base year for each cycle. The base year for each cycle will be established by administrative rule.
 - (f) One animal unit (AU) is assumed to consume 915 pounds of dry herbage production per month from native grazing land. The carrying capacity may be based on the information obtained from the NRCS soil survey. If a soil survey

does not exist, the carrying capacity may be based on an estimate by the NRCS, the county agricultural extension agent, or the department. Based on the manner in which the NRCS measures dry herbage production and the lost forage consumption due to grazing livestock and other causes, the per-acre per-year dry herbage production consumed is 25% of the NRCS estimate for the midpoint between the normal and unfavorable precipitation year estimates on nonirrigated grazing land. On nonirrigated domestic grazing land, the department shall increase the estimated nonirrigated native grazing land carrying capacity by 50% (1.5). The department shall use the following formula, based on NRCS soil survey information, to calculate the carrying capacity for nonirrigated native grazing land, which does not exhibit significant overgrazing or weed infestation:

- (i) per-acre per-year dry herbage production multiplied by 0.25 equals the per-acre per-year dry herbage production consumed by livestock;
- (ii) per-acre per-year dry herbage production consumed by livestock divided by 915 pounds of dry herbage production consumed per-month per-animal unit equals the animal unit months per acre (AUMs/acre); and
- (iii) livestock acres grazed multiplied by AUMs/acre equals the total AUMs.

(ARM 42.20.625(11).)

9. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful.

(§15-2-301(4), MCA.)

Board Discussion and Conclusions of Law

The issue presented is whether the property can be classified as agricultural land. This Board has the authority to review the classification of property. *See, e.g., Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995).

In this case, the Board has already ruled on this issue concerning the subject property's classification once before. *See Gary and Mary Spaulding, South Hills Ranch, v. The Department of Revenue*, PT-2006-6 (2007). By law, however, a taxpayer has the opportunity to appeal the valuation or classification of their property once each appraisal cycle and the CTAB ruled in favor of the Taxpayer during a new appraisal cycle. *See §15-7-102(3)(a), MCA.*

The Department contends classifying the Taxpayers' property as agricultural property does not comport with the requirements of §15-6-133 & §15-7-202, MCA, because the land does not produce \$1,500 in income or support the legislatively imposed minimum AUM carrying capacity. The Taxpayer contends the land continues to be used for agricultural purposes as required by statute and the AUMs calculated by his evidence properly classifies the subject property 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 the parcel of property. We find the evidence shows this particular parcel is not productive enough to meet the minimum statutory criteria.

During the 2009 legislative session, the Legislature set a specific minimum production requirement of \$1,500 for any land to be considered agricultural for tax purposes. The Legislature now requires that grazing land can only be eligible for classification as agricultural land when the grazing land can sustain the minimum number of animal unit months and those "minimum number of animal unit months must equate to \$1,500 in annual gross income..." *See* §15-7-202(3), MCA. In this instance, there is insufficient evidence to demonstrate that the subject acreage can sustain the requirements under law.

The Taxpayers argues that the evidence submitted showed his property can sustain 42 AUMs, more than enough to justify agricultural classification. (*See* FOF 10). He fails, however, to use the formula set out and required by the Legislature. His 68 acre parcel of land must sustain 30 AUMs as set out in Montana statute and administrative rule. (*See* POL 6 & 8). The Department's

evidence demonstrates they have followed the legislative formula and the subject property can only sustain 14.2 AUMs. (*See* FOF 11). We see no evidence that the Department's calculations are incorrect. Taxpayer calculated an AUM carrying capacity without using the legislative formula. Thus, we cannot consider his calculations to be correct as a matter of law. Further, he failed to provide sufficient evidence to demonstrate that the land could carry the statutory minimum AUM required for agricultural valuation.

The subject property is, without dispute, being used as grazing land. We must look, however, to the specific statutory language to determine whether the land may be considered as agricultural land for tax purposes. It is the purview of the Legislature to set specific requirements for agricultural classification, and the Legislature has done so in a very specific manner. There is no methodology for a taxpayer, the DOR, or this Board, to allow for agricultural classification without conforming to the statutory requirements or a change to the law.

The Board finds the subject property does not meet the current statutory income or AUM requirement set by the Legislature. Therefore, the Board reverses the CTAB decision and sets the classification of the subject property as non-qualified agricultural land.

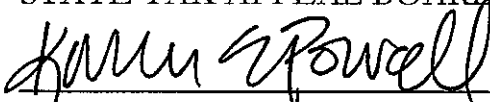
Order

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 Jefferson County in accordance with a classification as non-qualified agricultural land.

The decision of the Jefferson County Tax Appeal Board is hereby reversed.

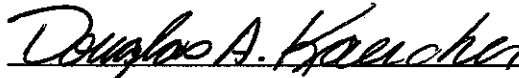
Dated this 2nd day of April, 2012.

BY ORDER OF THE
STATE TAX APPEAL BOARD



KAREN E. POWELL, Chairwoman

(SEAL)



DOUGLAS A. KAERCHER, Member



SAMANTHA SANCHEZ, 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 2nd day of April, 2012, 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:

Gary Spaulding
5974 Glass Drive
Helena, MT 59602-8833

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail

Mark Bumgarner
Silver Bow County Appraisal Office
155 W. Granite
Butte, MT, 59701-9256

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail
 Interoffice

Amanda L. Myers
Michelle R. Crepeau
Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail
 Interoffice

Michael Gilles
Chairman
Jefferson County Tax Appeal Board
P.O. Box 132
Basin, Montana 59631

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail


DONNA EUBANK
Paralegal