

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	
)	DOCKET NO.: PT-2010-29
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW
CHARLES & JULIE SWANSON,)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondents.)	

Statement of the Case

This is an appeal by the Department of Revenue (DOR) from a holding of the Ravalli County Tax Appeal Board classifying a building at 1752 Mountain View Orchard Road in Corvallis as agricultural. The building is located on the Swanson Mountain View Apple Orchard property, parcel 13-1565-14-4-01-03-0000, owned by Charles and Julie Swanson. The DOR was represented by Amanda Myers, Tax Counsel, and Debra Reesman, Ravalli County Area Manager for the DOR. Taxpayers were represented by Charles and Julie Swanson and their son, Lucas Swanson. From the evidence presented at the hearing held in Helena on August 23, 2011, the Board now enters the following:

Issue

The issue in this matter is whether the building at 1752 Mount View Orchard Road is classified as agricultural or commercial. The value of the building and the land on which it is situated is not disputed. The DOR argues that the building is a commercial warehouse because it has loading docks, commercial insulation, air

conditioning, a cider press and the equipment for washing, sorting, grading and storage of the apples in refrigerated rooms. The Taxpayers argue the building is agricultural as it is ancillary to the apple orchards and is necessary for the immediate handling and processing of the fruit they grow and for storing it until distribution to local markets. They further argue it is no different in function than the old apple building in use until 2009 which has always been classified agricultural. If the building is commercial, the land under it will have a higher value and lower exemption rate which will generate higher taxes than if it is agricultural.

Evidence Presented

1. The Swanson farm, “Mountain View Orchard”, contains over 400 acres and is classified agricultural by the DOR (DOR Exhibit C, Property Record Card.)
2. It has been operated as an orchard for over 100 years by four generations of the Swanson family. (Testimony, L. Swanson.)
3. In 2009, the Swansons built a new apple processing building across the road from their old one with larger capacity for cleaning and storing the apples to accommodate their expanding apple production and to modernize their processes. (Testimony, L. Swanson.)
4. The DOR placed a value of \$408,859 on the building and classified it as commercial, although the old facility has been classified agricultural. Taxpayers filed a timely request for an informal review on September 8, 2010.(DOR Exhibit A, Form AB-26.)
5. The DOR reviewed the construction cost records with the Taxpayers and reduced the value to \$349,359 but retained the commercial classification. (DOR Exhibit A, DOR Letter of March 29, 2011.)

6. Taxpayers filed a timely appeal with the Ravalli County Tax Appeal Board on March 30, 2011, contesting only the classification. (DOR Exhibit B, Property Tax Appeal Form.)
7. Following a hearing, the CTAB granted the Swansons' appeal. (DOR Exhibit B, CTAB Letter of June 24, 2011.)
8. The DOR filed a timely appeal with this Board on July 18, 2011 asking that the CTAB holding be overturned. (Appeal Form.)
9. The DOR argues that the new building is different from the old building in that it has loading docks, commercial insulation, air conditioning, a cider press, a conveyor belt that is used to wash, sort and grade the apples before they are packed and stored in large refrigerated rooms, and viewing windows that separate the walk-in public from the operations. There is also a potential distillery. (Testimony, Ms. Reesman.)
10. The DOR also argues the quality and cost of the construction exceeds that of an agricultural outbuilding as it is prefabricated steel building with in-floor heat, wash room, office and refrigeration. Only by classifying it as commercial can the full value of the building be captured in the state computer system. (Testimony, Ms. Reesman.)
11. Photos and descriptions of distribution warehouses, cold storage units and warehouses were presented. (DOR Exhibit G.)
12. Photos of cherry processing and storage buildings which also contain washing, sorting and packing equipment and are classified as commercial, were presented. (DOR Exhibit H.)
13. Excerpts from the DOR's appraisal manual describing various agricultural buildings such as barns, silos and granaries, were presented. (DOR Exhibit J.) Prefabricated steel buildings are included, described as "multipurpose structures . .

- . used for feed, seed or grain storage, equipment storage and shops used for the maintenance and storage of equipment.” (DOR Exhibit J, p. 320.)
14. The DOR cited an opinion by the Montana Supreme Court, *Cherry Lane Farms of Montana v. Carter*, 153 Mont. 240 (1969) in support of holding a business creating and processing agricultural products to be commercial.
 15. Lucas Swanson, on behalf of the Taxpayers, argued that the building is an agricultural building qualifying under §15-1-101(d)(ii)(c), MCA, which states that improvements ancillary and necessary to the function of a bona fide farm, ranch or stock operation are not defined as commercial.
 16. Swanson testified that the new building incorporates all the functions of the old building, plus some functions that were performed outdoors or by additional equipment, such as refrigeration trucks. The building has ordinary, not commercial, insulation and a conveyor belt allowing for the indoor washing, grading and sorting of the apples, which are then packed and stored in refrigerated rooms. Without refrigeration, the apples become soft rapidly, and the market for them in Montana is not sufficient to consume them immediately so they must be stored and trucked to retailers around the state throughout the year. Additionally, they store cattle feed, fertilizer, apple saplings, and farm equipment in the building. (Testimony, L. Swanson.)
 17. Swanson further testified that the building also has a cider press to separate the juice from the pulp of culled apples that are too small or have a bruise or blemish which makes them unsuitable for sale, so the pressing is a salvage operation. The juice is not amended or processed in any way beyond pressing. The percentage of apples that are culls can range from 10 percent to as high as 80 percent if damaged by hail. The pulp is fed to their cows and the cider is sold wholesale to stores. There is no other use for the culled apples as there is no market for them in Montana, unlike Washington where grower coops market them to juice-making

companies. Pressing the apples on site is therefore typical of smaller apple growing operations. (Testimony, L. Swanson.)

18. The Swansons do not have a distillery, although distilled products are described on their web page. (DOR Exhibit L.) They hope to have one in the future, but it would be in the old apple building, not the one at issue in this appeal. (Testimony, L. Swanson.)
19. Charles Swanson testified that the building is not air-conditioned and the in-floor heat is required to keep the washing pipes from freezing and the work floor from icing during the washing process in late fall. The “viewing room” is a barrier inside the entry door with windows providing a view of the work floor, an OSHA requirement to keep the public away from the machinery. The Swansons do not sell retail by the pound to the public but do sell wholesale by the box. (Testimony, C. Swanson.)
20. Swanson further testified that they do not process apples from any other growers, do not rent out the building or its facilities, store feed or equipment for anyone else and receive no direct income from the use of the building. (Testimony, L. Swanson.)
21. The Taxpayers also presented several local examples of similar businesses with similar large buildings which are classified agricultural. One is another apple orchard a few miles from the Swansons with a building that performs the same washing, sorting, grading, boxing and pressing operations as the Swanson’s building and is classified as agricultural. A second example is a local dairy with a heated barn building housing the milk production and processing equipment, refrigerated storage tanks, an office, a compost processing operation that turns the cow manure into fertilizer by turning, pressing and bagging it for sale and a power generator that digests methane produced by the manure to create power

for use on the farm. The building is classified as agricultural. (Taxpayers' Exhibit 3, pp.11 – 13.)

22. Swanson pointed out that one of the two cherry processing buildings presented by the DOR as commercial is owned by a coop that handles cherries from many different growers and prepares them for sale. (Testimony, L. Swanson.)

PRINCIPLES OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301MCA.
2. Section 15-1-101 (1), MCA, states:

Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term “agriculture” refers to:

(1) the production of food, feed and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery , and horticultural crops that are raised, grown, or produced for commercial purposes;

3. Section 15-1-101,MCA, further states:

(1)(d)(i) The term “commercial”, when used to describe property, means property used or owned by a business, a trade or a corporation . . . or used for the production of income, except property described in subsection (1)(d)(ii).

(ii)The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

4. ARM 42.20.156 states:

(1) the department shall change the classification and valuation of land from class three, as defined in 15-6-133, MCA, or class ten, as defined in 15-6-143, MCA to class four, as defined in 15-6-134 MCA, when any of the follow criteria are met:

(e) the land contains a commercial or industrial structure or is used in direct support of commercial or industrial activities.

(i) Examples of a commercial or industrial structure include, but are not limited to: . . .

(D) a warehouse.

(3) the land will be valued at market value under class four instead of its productivity value when any of the criteria in (1) are met.

Board Discussion and Conclusions of Law

The issue in this case is whether the building used by the Swanson apple farm for the processing and storing of their apples is ancillary and necessary to their agricultural business of raising apples or is a commercial warehouse.

The DOR rests its case heavily on the introductory language of §15-1-101, MCA, that states “Except as otherwise provided. . .” and claims that the commercial warehouse exception in the regulations at ARM 42.20.156(1)(e)(i)(D) removes the building from the agricultural classification.

Much of the evidence was, therefore, focused on the size and quality of the structure, the presence of heat and refrigeration and conveyor belts. We find the DOR’s focus on the size and quality of the structure to be not relevant in determining classification of this structure. The appraisal manual definitions of commercial warehouses, on the one hand, and pre-fabricated steel agricultural buildings, on the other hand, have vague and overlapping descriptions that do not settle the issue as they focus on the physical attributes of the buildings, i.e., whether they have concrete floors, good wiring and rest rooms, while the statute itself focuses on the function of a building.

Section 15-1-101(1)(d)(ii), MCA, quoted in POL 3, states clearly and without exceptions that improvements ancillary to and necessary to a bona fide farm operation are not commercial. The question, therefore, is whether the building is

ancillary, that is, supportive and subordinate, and necessary to the operation of the farm and we are persuaded that it is.

It is clear from the uncontested evidence presented that the Mountain View Apple Orchard is an agricultural operation growing fruit and the building at issue is providing necessary support to the primary activities of that operation. Functions such as washing, grading, pressing and storing are often done by coops or wholesale purchasers in larger markets, such as Washington. The Swanson's farm is the largest apple grower in Montana, however, and they must perform those functions for themselves in order to sell their agricultural product in this market. The processes they perform are the minimum necessary to preserve the fruit or the juice until it can be sold wholesale to retail distributors.

In Montana, the Flathead Valley cherry growers have formed a Coop for processing and marketing their fruit. We can see a distinction between the facilities used by a coop that, as its sole business, processes the agricultural products of many growers, and the building here at issue that processes only the product of one farm.

To classify a building used on a farm as a commercial warehouse, it must serve a function not necessary to the running of the farm or ranch. If, for example, a wheat grower decided to process wheat into bakery goods and wholesale them to grocers or sell them at a roadside café, that would be a commercial undertaking not necessary to the production and sale of the wheat. If the Swansons received income directly from the use of the building by processing the fruit of other growers or renting out storage space or taking in farm machinery for repair, that would indicate a commercial use of the building. This is not the case, however, as the uncontradicted testimony of the Swansons indicates no uses other than those directly necessary to their agricultural operation of growing apples and raising cattle. We find that this building is used

exclusively for agricultural purposes necessary to the effective management of their apple orchard.

We note that another apple grower three miles from the Swansons with a smaller but identical apple-processing operation in a red barn is classified agricultural. The appearance of the Swanson building, its similarity to pre-fabricated steel commercial warehouses in the appraisal manual, and its cost should not control the classification of the property. An old wooden barn housing an antique business is no longer a barn for tax purposes.

The DOR stated that the value of the building was a significant factor and that only by classifying it as commercial could the Department capture its true value. The market value in this case, however, is arrived at by the cost method and is the same under either classification. It is a policy decision by the legislature to classify agricultural buildings differently than commercial structures, and in this instance, the building at issue clearly fits the statutory requirements for agricultural classification. Indeed, the statutory language treats agricultural property as a specific exception to the definition of commercial property and not, as the DOR suggested, the other way around.

The case cited to us by the DOR, *Cherry Lane Farms of Montana v. Carter*, 153 Mont. 240 (1969) is not relevant here as the issue in that case was whether a modern agribusiness egg producer was so different from a traditional agricultural egg operation that it should qualify for a statutory exemption as a “new industry” and be given favorable tax rates enacted as an incentive to encourage new industries in this state. The Court, relying on the testimony of the head of the Department of Agricultural Economics of Montana State University, who likened the facility to a greenhouse, held that it was. We see no similarity in facts or the legal framework which would affect this decision.

We affirm the decision of the Ravalli County Tax Appeal Board in granting the Mountain View Orchards an agricultural classification for the land and building at issue.

Order

IT IS THEREFORE ORDERED that Mountain View Orchards' land and building at issue be granted an agricultural classification. We affirm the decision of the Ravalli County Tax Appeal Board.

Dated this 6th day of September, 2011.

By order of the
State Tax Appeal Board

/s/ _____
KAREN E. POWELL, Chairwoman

/s/ _____
DOUGLAS A. KAERCHER, Member

/s/ _____
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 6th day of September, 2011, 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:

Charles & Julie Swanson	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
1775 Mountain View Orchard Road	<input type="checkbox"/> Hand delivered
Corvallis, Montana 59828	<input type="checkbox"/> Interoffice
	<input type="checkbox"/> Email

Amanda Myers	<input type="checkbox"/> U.S. Mail, postage prepaid
Tax Counsel	<input type="checkbox"/> Hand delivered
Department of Revenue	<input checked="" type="checkbox"/> Interoffice
Office of Legal Affairs	<input type="checkbox"/> Email
P.O. Box 7701	
Helena, Montana 59604-7701	

Debra K. Reesman	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
Ravalli County Appraisal Office	<input type="checkbox"/> Hand delivered
215 North Fourth Street Suite G	<input type="checkbox"/> Interoffice
Hamilton, Montana 59840	<input type="checkbox"/> Email

Ravalli County Tax Appeal Board	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
c/o Regina Plettenberg, secretary	<input type="checkbox"/> Hand delivered
215 South Four Street Suite C	<input type="checkbox"/> Interoffice
Hamilton, Montana 59840	<input type="checkbox"/> Email

/s/ _____
DONNA J. EUBANK, paralegal