

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

HELEN BJELLAND/JAMES BJELLAND BYPASS TRUST,)	DOCKET NO.: PT-2009- 83, 84, 85, & 86
Appellants,)	
-vs-)	
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	FACTUAL BACKGROUND, CONCLUSIONS OF LAW ORDER and OPPORTUNITY FOR JUDICIAL REVIEW
Respondent.)	

Statement of the Case

Helen Bjelland/James M. Bjelland Bypass Trust (Taxpayers) appealed a decision of the Pondera County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR’s) valuation of their property. The subject property consists of multiple parcels all of which are located in Pondera County, Montana. Taxpayers claim the subject property productivity is too high as appraised by the DOR. The Taxpayers were represented by James M. Bjelland, Jr., at the hearing held before this Board on July 28, 2010 in Helena. The DOR was represented by C.A. Daw, Chief Legal Counsel and Dallas Reese, DOR Agriculture Specialist.

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

Issue

The issue before this Board is whether the Department of Revenue determined the proper productivity for the subject property for tax year 2009?

Summary

The Taxpayers in this action bear the burden of proof. Based on a preponderance of the evidence, the Board affirms the decision of the Pondera CTAB.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter. This matter was heard in Helena pursuant to §15-2-301(1), MCA.
2. The property in question is described in the following GEO codes:
 - 26-3860-03-4-04-04-0000
 - 26-3860-04-1-01-01-0000
 - 26-3860-10-1-01-01-0000
 - 26-3860-15-1-02-01-0000(Appeal forms.)
3. Helen Bjelland and Gary Bjelland, trustee of the James M. Bjelland Bypass Trust, gave written power of attorney to James M. Bjelland, Jr., to represent them in these proceedings. (Bjelland Testimony, Power of Attorneys.)
4. The Taxpayers filed multiple appeals with the CTAB on January 20, 2010. The reason for appealing is stated as: “No increase in appraisal value of ag land is justified.” (Appeal forms.)
5. A hearing was held on March 30, 2010 and the CTAB modified the DOR’s valuation on appeals PT-2009-83, PT-2009-84 and PT-2009-85 by lowering the valuation based on production history submitted from 1997 through 2008. (Appeal forms.)

6. The CTAB upheld the DOR's valuation on appeal PT-2009-86 stating "Based on the production history submitted from 1997 – 2008. We found in favor of the DOR as their appraised (*sic*) value is lower than using the 12 year production history." (PT-2009-86 Appeal Form.)
7. The Taxpayers filed a timely appeal to this Board on June 24, 2010, stating: "Land overvalued due to non-compliance with Article VIII, section 3 of the Montana constitution and §15-7-112 MCA requiring equalization of property values across county lines." (Appeal forms.)
8. The Taxpayers have farmed in eastern Pondera County for over 100 years and are protesting approximately 1324 acres of agricultural property which is mostly classified as tillable non-irrigated land or summer fallow land. (Bjelland Testimony, Appeal Forms.)
9. The subject property is located in eastern Pondera County between two and six miles from Liberty, Toole and Chouteau Counties. (Bjelland Testimony.)
10. The Taxpayers contend the DOR is in violation of the Montana Constitution Article VIII, Section 3, which requires the state to appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law. (Bjelland Testimony.)
11. The Taxpayers also contend the DOR has not complied with §15-7-112, MCA, which requires the DOR to use the same method of appraisal and assessment in each county to the end that comparables properties with similar market values shall have substantially equal taxable values. (Bjelland Testimony.)

12. The Taxpayers believe their property has been assessed differently as compared to similar property in adjacent counties. (Bjelland Testimony, Exh 1. p. 4.)
13. The Taxpayers showed evidence that the 2008 assessed value of the subject property has increased as much as 65% over the 2002 appraisal cycle. (Bjelland Testimony, Exh. 1, p. 3.)
14. The DOR noted exhibits of DOR maps submitted by the taxpayer to the CTAB. (CTAB Exh. 7.) The DOR also submitted to CTAB a sample of the Taxpayers' crop insurance proven yields along with Property Record Cards (PRC) showing the production used in calculating the assessed value. (CTAB Exhs. G&H.)

Calculating Productivity for Agricultural Land

15. Agricultural property, including the subject property, is subject to reappraisal every six years. §15-7-111 (5), MCA.
16. For the first time since the 1960's, the Department initiated a comprehensive review of all agricultural lands for tax purposes during the recent reappraisal cycle. (Reese Testimony.)
17. The Governor's Agricultural Advisory Committee was appointed and met from 2006 through 2008 to make recommendations to the 2009 Legislature on the reappraisal of agriculture land. (Reese Testimony.)
18. Pursuant to those recommendations and statutory requirements, the DOR uses Natural Resources and Conservation Service (NRCS) soil mapping, Montana Agricultural Statistics, and local information to produce a county average spring wheat yield. (Reese Testimony, CTAB Exh. D.)

19. The DOR recognized the NRCS soil survey information for spring wheat production was based on high levels of management by a producer. The DOR adjusted the NRCS production by applying an adjustment based on a 12 year county average to each county to reflect “average management.” (Reese Testimony, CTAB Exh. F.)
20. The Taxpayers’ NRCS soil survey production has an average slightly higher than the average production indicated for Pondera County. (Reese Testimony.)
21. The Department uses spring wheat production and commodity pricing to arrive at gross income for valuation of agricultural land. Spring wheat is used as the base commodity in all Montana counties as it is the only commodity that can be grown in all areas. (Reese Testimony.)
22. The Taxpayers’ 10 year insurance average is very close to the DOR’s assessed production valuation. For example, the Taxpayers’ approved insurance yield for spring wheat was 34 bushel per acre and the average DOR assigned yield on the Taxpayers’ property was between 28 and 32 bushels per acre. (CTAB Exh. H.)

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§ 15-2-301, MCA.)
2. Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, non-irrigated use, and grazing use. (§ 15-7-201(2), MCA.)
3. Within each class, land must be sub-classified by production categories. Production categories are determined from the productive capacity of the land based on yield. (§ 15-7-201(3), MCA.)

4. It is true, as a general rule, the DOR appraisal is presumed to be correct and that the taxpayer must overcome this presumption. *Western Airlines, Inc., v. Catherine Michunovich et al.*, 149 Mont. 347, 428 P.2d 3(1967). The DOR should, however, 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).
5. As long as a taxpayer's property is not overvalued in the reappraisal process, he cannot secure a reduction in his own appraisal on the grounds that another taxpayer's property is under appraised. *Patterson v. Department of Revenue*, 171 Mont. 168, 557 P.2d 798 (1976).

Findings of Fact, Conclusions of Law, and Board Discussion

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation based on productivity for the subject property for tax year 2009. We find that the evidence presented by the Department is correct and accurate, and the Taxpayers failed to bring forward sufficient evidence to demonstrate that the production value assigned is incorrect.

The DOR is assigned by the legislature to mass appraise nearly four hundred thousand parcels of agricultural land during the reappraisal cycle. The legislative intent is very clear: agricultural land must be classified according to its use. Agricultural land must also be sub-classified by production categories. The department does this by compiling data and developing valuation manuals adopted by administrative rule. They are assisted in this endeavor by the Governor's Agriculture Advisory Committee, which makes recommendations on how the process should work. (§15-7-201 (7), MCA.)

The Taxpayers argue the production assigned to their land does not reflect an equal assessment when comparing their agricultural land in Pondera County with

similar agricultural land in adjacent counties. (FOF 12.) They further contend the valuation increase from last appraisal cycle to the current reappraisal cycle is out of line and unjustified. (FOF 13.)

The DOR contends it uses an adjustment factor for each county which varies depending on growing conditions. (FOF 19.) For purposes of developing productivity values, each parcel of land is assigned a soil type through the NRCS soil mapping process and an average production is derived for this soil type by collecting data from producers, the Farm Services Agency and Montana Agricultural statistics. (FOF 18.) An adjustment factor for the particular county (derived from an average production based on a 12 year county average) is then applied to calculate the ultimate production yield. (FOF 19.)

Generally, this may reflect superior land management, but it also verifies the fact that the DOR has not overvalued the production capacity. In this case, evidence indicates the Taxpayers' production is greater than the DOR assessed production. Evidence also indicates the subject property's soil survey production is higher than Pondera County's average production. The Taxpayers failed to provide evidence which proved the subject property was not valued correctly in Pondera County.

This Board disagrees with the Taxpayers' contention that the subject property value should be lowered because similar property in another county is assessed with a lower value. First, the Taxpayers failed to provide information relating to the soil types of the parcels in other counties. Thus, it is impossible for this Board to determine whether the productivity of the subject property is comparable to land in other counties.

Evidence shows the DOR applies adjustment factors for each county, based on the recommendation of the Governor's Agricultural Advisory Committee. The Board finds and concludes the method used by the DOR to value agricultural land in

Montana is the same in all counties, therefore, providing substantially equal valuations across Montana.

Lastly, it is uncontested that the Taxpayers' assessment increased as much as 65% from the last appraisal cycle. (FOF 13.) The large change in value for the subject property is likely caused by the failure of the state to perform a comprehensive agriculture reappraisal since the 1960s. Due to advances in mapping and data management, it is unlikely a large increase of this magnitude will be seen in the foreseeable future.

Thus, it is the opinion of this Board the method used by the DOR in assessing the subject property is correct and the decision of the Pondera County Tax Appeal Board as it applies to Taxpayers' valuation is affirmed.

Order

IT IS THEREFORE ORDERED the subject property has the proper productivity for summer fallow agricultural land. The valuation as set by the Pondera County CTAB is affirmed.

Dated this 17th day of August, 2010.

BY ORDER OF THE
STATE TAX APPEAL BOARD

/s/ _____

KAREN E. POWELL, Chairwoman

(S E A L)

/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.

