

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-2004-1 |
|                           | ) | -and-                  |
| Appellant,                | ) | PT-2004-2              |
|                           | ) |                        |
| -vs-                      | ) |                        |
|                           | ) |                        |
| DIXIE M. DAVIS,           | ) | FACTUAL BACKGROUND,    |
| Respondent,               | ) | CONCLUSIONS OF LAW,    |
| -and-                     | ) | ORDER and OPPORTUNITY  |
| LOXI J. MAILAND,          | ) | FOR JUDICIAL REVIEW    |
| Respondent                | ) |                        |
|                           | ) |                        |

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The State Tax Appeal Board (Board) heard the above-entitled appeals on the record pursuant to Section 15-2-301, Montana Code Annotated:

**15-2-301. Appeal of county tax appeal board decisions.**

(2) . . . The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony.

Dixie M. Davis and Loxi J. Mailand (Respondent Taxpayers) submitted additional comments to the Board on August 22, 2005. The Department of Revenue (Appellant) submitted additional comments and documentation on September 6, 2005.

The duty of this Board is to determine whether the property owned by the Taxpayers qualifies for agricultural classification based on a preponderance of the evidence and applicable law and

administrative rules of the State of Montana. The Department of Revenue (DOR) is the appellant in this matter and, therefore, has the burden of proof.

By statute (15-2-301, Montana Code Annotated) this Board may affirm, reverse or modify any decision rendered by the county tax appeal board. The Board finds that the evidence does not support the decision of the Toole County Tax Appeal Board (CTAB) and this Board reverses the CTAB's decision.

#### **FINDINGS OF FACT**

1. Due, proper, and sufficient notice was given of this matter, of the deadline for the parties to submit additional comments, and of the deadline for the parties to respond to the initial submissions. All parties were afforded opportunity to present evidence.
2. The subject property owned by Dixie M. Davis is a vacant, forty-acre tract of land described as:

The northeast quarter of the southeast quarter of Section 25, Township 35 North, Range 2 East, County of Toole, State of Montana.
3. The subject property owned by Loxi J. Mailand is a vacant, forty-acre tract of land described as:

The southeast quarter of the southeast quarter of Section 25, Township 35 North, Range 2 East, County of Toole, State of Montana.
4. For tax year 2004, the DOR reclassified the subject properties from agricultural to non-qualified agricultural

land. The 2004 value of each parcel was then set at \$1,849.

5. On June 29, 2004, the Taxpayers filed appeals with the Toole County Tax Appeal Board (CTAB) stating:

I am appealing the reclassification of this land to non-qualifying Ag land because 1) the use remains strictly agricultural 2) the resulting taxes would be as much or more income than the land can realize, 3) identical land is taxed at a lower rate only because it is in a larger parcel 4) the guidelines used (size of parcel, income generated and animal units supported) are all artificial & discriminatory.

6. The CTAB heard the appeals on October 26, 2004, and found in favor of the Taxpayers, saying in part:

Based upon the land use, the land should revert to the previous taxable value of \$74. Small tracts of land being used strictly for agricultural purposes are forced to be reclassified as non-qualifying agriculture, which is unjust and arbitrary.

7. On November 15, 2004, the DOR appealed the CTAB's decision on the grounds that:

The nature of the proof adduced at the hearing was insufficient from a factual and a legal standpoint to support the [County] Board's decision.

8. This Board elected to decide these appeals based upon the record created before the CTAB and permitting each party the opportunity to supplement the record with additional comments and evidence pursuant to Section 15-2-301, Montana Code Annotated.

### DOR'S CONTENTIONS

At the CTAB hearing, Don South, DOR Appraiser in Toole County, testified that the DOR began reviewing agricultural properties in Toole County in April 2004 as a part of the regular statewide reappraisal process. The review was done to determine each parcel's eligibility to remain in an agricultural classification for property tax purposes. Based on the review, the classification of the subject properties was changed from agricultural to non-qualified agricultural land. (CTAB hearing transcript, pages 10-11)

The DOR cites Section 15-7-202, Montana Code Annotated, as the basis for this change. This section of law identifies the property that is eligible to be classified as agricultural. Parcels of 160 acres or more that are in one ownership and used for agricultural production are classified as agricultural. Parcels from 20 to 160 acres in size under one ownership are eligible for agricultural valuation if they meet the income requirement specified:

A parcel of land is presumed to be used primarily for raising agricultural products if the owner . . . markets not less than \$1,500 in annual gross income from the raising of agricultural products produced by the land. (Section 15-7-202, Montana Code Annotated, DOR Exhibit 5 submitted to the Board)

Rule 42.20.625 of the Administrative Rules of Montana (DOR Exhibit 4 submitted to the Board) further spells out the

criteria for parcels of 20 to 160 acres to be classified as agricultural. Subsection 9 of this Rule specifies that "If the land is used primarily to raise and market livestock, the land must currently support 30 or more animal unit (AU) months of grazing carrying capacity, with cattle as the base."

Marlyann Verploegen, Review Appraiser for DOR, submitted testimony to this Board stating that the Taxpayers provided an AB-3, Application for Agricultural Classification of Lands, to the DOR. Based on the information in the Application, the subject properties did not meet the income or production requirements to be classified as agricultural.

The DOR asserts that they changed the classification of the subject properties to non-qualified agricultural land because they are forty-acre parcels that do not meet the income/production requirements of state law to continue in an agricultural classification.

#### **TAXPAYERS' CONTENTIONS**

The Taxpayers state that the subject properties were given to them by their parents because they wanted them to own "a little piece of the place where we grew up . . .". They note that it was expected that the land "would continue to be used as part of the original ranch, now owned and operated by our brother." (Taxpayers' testimony submitted to the Board)

The Taxpayers point out that both parties agree the subject properties are used strictly for agricultural purposes. They also agree with the DOR that "the land is unable to support 30 animal units or produce \$1500 in annual income." However, they feel that the revised classification of the subjects is "discriminatory, unfair and contrary to the intent of the law" because the character of the property is no different from what it was when it was included in the acreage of the original ranch. It is the same type of land, used in the same way, without water and with no fences separating it from the rest of the ranch. "To tax it at several times the rate that is being applied to the rest of the ranch is discriminatory." (Taxpayers' testimony submitted to the Board)

The Taxpayers note that, if the subject were better land, able to meet the income or production requirements, it would qualify to be classified as agricultural land and would be taxed at a lower rate. Given the range of productivity of land in Montana, they believe that it is the opposite of equalization to apply a set of rules uniformly to all the land in the state based solely on the size of a parcel.

The Taxpayers cite Section 15-7-201, Montana Code Annotated, as establishing the intent that agricultural land must be classified according to its use and must be used for bona fide agricultural purposes. They point out that no one is

questioning that the subject properties are being used for bona fide agricultural purposes. Consequently, the Taxpayers contend that it is contrary to the legislative intent expressed in Section 15-7-201, Montana Code Annotated, to remove the subjects from agricultural classification.

#### BOARD DISCUSSION

The issue before the Board is the proper classification for the subject properties, forty-acre parcels used exclusively for agricultural purposes but unable to produce, as single parcels, \$1500 in annual gross income or to support thirty animal unit months. Both parties agree this statement reflects the facts of the case.

Section 15-7-111, Montana Code Annotated, requires the Department of Revenue to "administer and supervise a program for the revaluation of all taxable property within classes **three, four, and ten.**" (emphasis added) Class three property includes agricultural property. The current reappraisal cycle began on January 1, 2003 and must be completed by January 1, 2009. As a part of this reappraisal process, the DOR reviewed the agricultural classification of the subject properties.

Section 15-7-202, Montana Code Annotated, requires that agricultural valuation for parcels of 20 to 160 acres be limited to those that are under one ownership and that produce "\$1,500 in annual gross income from the raising of agricultural products

produced by the land." Rule 42.20.625(9), Administrative Rules of Montana, further specifies that property used primarily for livestock must support "thirty animal unit months of grazing carrying capacity" to qualify for agricultural classification. The subject parcels do not meet the qualifying income or production criteria. Consequently, as a part of the reappraisal process, the DOR re-classified the subjects from agricultural to non-qualifying agricultural land. Non-qualifying agricultural land, as a classification, recognizes that the property is not used for residential, commercial or industrial purposes and makes it possible to value the land as grazing land, rather than class four tract land.

This Board, like the DOR, is bound by the provisions of state law. We have no doubt that the situation presented in this case is not the set of circumstances the legislature had in mind when it passed 15-7-202, Montana Code Annotated. Nor do we dispute the logic of the Taxpayers' arguments. Nonetheless, that section of the law applies to this case, and we must find that the subject properties do not meet the requirements to be classified as agricultural land.

#### **CONCLUSIONS OF LAW**

1. The State Tax Appeal Board has jurisdiction over this matter. Section 15-2-301, MCA.



2. The State Tax Appeal Board may affirm, reverse or modify any decision rendered by the county tax appeal board. Section 15-2-301, MCA.
3. The DOR must revalue class three property periodically. Section 15-7-111, MCA.
4. Certain property must meet income requirements to be eligible for valuation as agricultural property. Section 15-7-202, MCA.
5. Certain property must meet criteria for agricultural valuation. Rule 42.20.625 Administrative Rules of Montana.
6. The appeal of the Department of Revenue is hereby granted and the decision of the Toole County Tax Appeal Board is reversed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties shall remain classified as non-qualifying agricultural land on the tax rolls of Toole County. The decision of the Toole County Tax Appeal Board is reversed.

Dated this 27<sup>th</sup> day of October 2005.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

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GREGORY A. THORNQUIST, Chairman

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JOE R. ROBERTS, Member

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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 27<sup>th</sup> day of October, 2005, 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:

Dixie M. Davis  
P O Box 896  
Troy MT 59935

Loxi J. Mailand  
P O Box 472  
Harlem MT 59526

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

Appraisal Office  
Toole County  
226 1st Street South  
Shelby, Montana 59474-1991

Larry Munson, Chairperson  
Toole County Tax Appeal Board  
Box 36 Star Rt.  
Shelby MT 59474

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DONNA EUBANK  
Paralegal