

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

DIEMERT RANCH, INC.,)	DOCKET NOS.: PT-2009-36 & 37
)	and Department of Revenue
Appellant,)	cross appeals PT-2009-59 & 60
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

Statement of the Case

Diemert Ranch, Inc. (Taxpayer) appealed a decision of the Liberty County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR's) valuation of their property identified as 527.27 acres in Section 3, Township 31N, Range 4E, and 324.53 acres in Section 4, Township 31N, Range 4E of Liberty County, Montana. Taxpayer claims the subject property does not have the productivity as appraised by the DOR and affirmed by the CTAB. The taxpayer argues the land should be valued according to the Conservation Reserve Program (CRP) contract on the subject property. The Taxpayer was represented by Edward E. Diemert, the Corporation's President, at the hearing held before this Board on May 13, 2010 in Helena. The DOR was represented by C. A. Daw and Teresa Whitney, Tax Counsel. Charles Pankratz, DOR Region 2 Manager, and MarlyAnn Verploegen, DOR Area Manager, testified on the valuation.

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 Department of Revenue determined the proper productivity for the subject property for tax year 2009.

Summary

Diemert Ranch is the Taxpayer in this action and therefore bears the burden of proof. Based on a preponderance of the evidence, the Board upholds the findings of the Liberty County Tax Appeal Board.

Findings of Fact

1. Due, proper and sufficient notice was given of this matter. This matter was heard in Helena pursuant to §15-2-301(2), MCA.
2. The property is described as 527.27 acres in Section 3, Township 31N, Range 4E, and 324.53 acres in Section 4, Township 31N, Range 4E of Liberty County, Montana. (Appeal forms.)
3. The DOR valued the subject property at \$86,609 for the 527.27 acres and \$62,777 for the 324.53 acres in the 2008 tax cycle. (Appeal forms.)
4. The Taxpayer filed a Request for Informal Review (AB-26). The DOR made no adjustment during the AB-26 process. (DOR Exh. A, B and C.)
5. The Taxpayer filed an appeal with the CTAB on December 21, 2009. The reason for appealing is stated as:

We are appealing this appraisal because of the following: in Montana Annotated Code 15-7-201 section (2) which states that

“Agricultural (*sic*) land must be classified according to its use, which classifications include but are not limited to irrigated use, non-irrigated use, and grazing use.” The key words here are not limited to.

This land is and has been enrolled in the CRP program, its contract price was set by the soil classifications established at that time of enrollment. No changes to soil classifications have been made. Also, no changes in contract prices have been made. This reflects that this land has not been subject to any changes stated in 15-7-201 sub-section (5)(a), “Net income must be determined separately in each land use based on production categories.” The net production income was established by the CRP contract at enrollment, this CRP contract has not been subject to changes in commodities prices. This lands value has not changed in value, determined by its net income. Remember, we believe that the words “not limited to” should be considered on this appeal. (Appeal form attachment).

6. The Taxpayer asked for a total property value of \$84,097 on the 527.27 acres and \$53,504 on the 324.53 acres. (Appeal Forms.)
7. A hearing was held on March 19, 2010 and the CTAB upheld the DOR’s valuation, but stated: “The tax appeal Board felt it didn’t have the authority to establish a new classification for CRP.” (Appeal form attachment.)
8. The Taxpayer filed a timely appeal to this Board on March 30, 2010, indicating the same argument as in the CTAB hearing (Appeal form.)
9. As the Taxpayer is a corporation, notification was sent that the Montana Supreme Court has required corporations be represented by legal counsel in matters before the Courts. The Board’s letter further advised Taxpayer that legal counsel, while advisable, was not required in property tax hearings before the Board with Taxpayer’s informed consent. (Board Letter of April 6, 2010.)

10. Edward Diemert, as the president of the Taxpayer Corporation, consented to waive legal counsel and appear on behalf of the corporation. (Diemert Testimony.)
11. The subject property is currently under CRP contract with Conservation Credit Corporation (CCC) and has been since 1998. (Diemert Testimony.)
12. The CRP program is a voluntary program which reimburses the landowner to remove the land from the current agricultural use and places it in a different agricultural use which lessens erosion and encourages wildlife habitat. (Diemert Testimony.)
13. The subject property was classified as summer fallow land before it was put in CRP. (Diemert Testimony.)

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, nonirrigated use, and grazing use. (Section §15-7-201(2), MCA).
3. Agricultural land tax value is set according to the productivity of the land as set out in §15-7-201(3)(4), MCA.
4. Land under the CRP, the Integrated Farm Management (IFM) program, or any other program that reimburses the landowner to remove the land from the current agricultural use and place it in a different agricultural use shall be classified and valued in the same land use category the acreage was in when it became eligible for the programs. (42.20.640 ARM.)
5. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (Section 15-2-301(4), MCA.)

6. It is true, as a general rule, the Department of Revenue 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 Department of Revenue 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 (Mont. 1995.)

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.

The DOR contends all agricultural land in Montana has been valued in the same manner and in accordance with §15-7-201, MCA, and it would be against the intent of the legislature to assess similar agriculture land differently merely because of differing contracts on the property.

The Taxpayer argues the net income for the subject property is set by a CRP contract and is not subject to the production requirements of §15-7-201, MCA. The Taxpayer also believes this board has the latitude to adjust the assessment of the DOR since his property does not meet the productivity requirements.

The legislative intent is very clear, agricultural land must be classified according to its use. (§15-7-20(2), MCA). Administrative rule 42.20.640 ARM specifically addresses land in CRP, and states that CRP land shall be classified and valued in the same land use category the acreage was in when it became eligible for the programs.

The Taxpayer believes administrative rules are only guidelines and this board has the authority to overrule them. In §15-2-301(4), MCA, however, the guiding statute states: “The state tax appeal board must give an administrative rule full effect

unless the board finds a rule arbitrary, capricious, or otherwise unlawful.” There is no evidence in this matter indicating the rule is arbitrary, capricious or otherwise unlawful.

Thus it is the opinion of this Board the assessed value set by the DOR is correct and the decision of the Liberty County Tax Appeal Board is affirmed.

DOR Cross Appeal

The DOR filed a cross appeal in this matter arguing the Liberty County Tax Appeal Board decision improperly set the “value before reappraisal” and the phase-in for the subject property in its decision and accompanying letter

This Board did not hear testimony or receive evidence at the hearing because those issues were not addressed by the Taxpayer or the DOR before the Liberty County Tax Appeal Board. Further, this Board does not consider the decision and the accompanying letter to be an appealable decision under §15-2-301, MCA, §15-15-101, MCA, or Rule 2.51.307 ARM. The DOR cross-appeals on these issues are denied.

Thus, this decision does not address any issues relating to VBR or phase-in for agricultural property and should not be construed to affect any rights of the parties relating to “value before reappraisal,” “phase-in” or any similar issues addressed in the Lucas litigation in the 14th Judicial District.

Order

IT IS THEREFORE ORDERED that the subject property has the proper productivity and is properly classified as summer fallow agricultural land. The decision of the Liberty County Tax Appeal Board is affirmed.

Dated this 21st of May, 2010.

**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 21st day of May, 2010, 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:

Edward Diemert
219 East Nicklaus Avenue
Kalispell, Montana 59901

U.S. Mail, postage prepaid
 Hand delivered
 Interoffice
 Email

C.A. Daw & Teresa Whitney
Co-Counsels
Department of Revenue
Office of Legal Affairs
P.O. Box 7701
Helena, Montana 59604-7701

U.S. Mail, postage prepaid
 Hand delivered
 Interoffice
 Email

Liberty County Appraisal Office
P.O. Box 290
Chester, Montana 59522

U.S. Mail, postage prepaid
 Hand delivered
 Interoffice
 Email

Robert Mattson
Chairman
Liberty County Tax Appeal Board
P.O. Box 338
Chester, Montana 59522

U.S. Mail, postage prepaid
 Hand delivered
 Interoffice
 Email

/S/ _____
DONNA J. EUBANK, paralegal