

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)
OF THE STATE OF MONTANA,) DOCKET NO.: PT-2003-17
Appellant,)
-vs-) FACTUAL BACKGROUND,
EUGENE & EVELYN GISSELBACK,) CONCLUSIONS OF LAW,
Respondents.) ORDER and OPPORTUNITY
FOR JUDICIAL REVIEW

The above-entitled appeal was heard on August 12, 2004, in Missoula, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. The Department of Revenue (DOR), represented by Randy Pierson, forest land and agricultural valuation specialist; Candace Jerke, agricultural appraiser; Rocky Haralson, area manager; and Regional Manager Jim Fairbanks, presented testimony in support of the appeal. The taxpayers, represented by Eugene Gisselbeck, presented evidence in opposition thereto.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of

the evidence. Testimony and exhibits were taken from both the taxpayer and the Department of Revenue.

The Board overrules the decision of the Missoula County Tax Appeal Board and grants the DOR's requested land classification.

FACTUAL BACKGROUND

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 opportunity to present evidence, oral and documentary.

2. The subject property is described as follows:

Land only, comprised of 13.76 acres located in the SW ¼ NW of Rd Plat B', Section 18, Township 14 North, Range 19 West, County of Missoula, State of Montana. (Geo-Code: 04-2326-18-4-01-07-0000).

3. For tax year 2003, the Department of Revenue appraised the subject property as tract land.

4. The taxpayers filed an appeal with the Missoula County Tax Appeal Board on October 10, 2003, requesting agricultural classification:

Taxes will be too high. We have lived here since 1970 have raised goats every year for our own use and some to sell. Value of products used for ourselves and those sold far exceeds \$1500 ever year. Land has produced pasture to meet our needs.

5. In its November 17, 2003 decision, the county board approved the appeal, stating:

The appellant owns 13.67 acres of which 12.76 is considered usable for agriculture. This puts him in the 'under 20 acres' regulations for the DOR. According to the DOR, his 12.76 acres will not support 30 AUMs, given the soil type and the fact that he does not irrigate.

The appellant did provide a Schedule F to the DOR indicating that he sold goats and goat products totaling more than the minimum \$1500 as per regulation ARM 42.20.620. He also testified that he has been raising goats on this land since 1970, 32 years, and has never had a problem providing for his herd.

As to the 30 AUM minimum regulation upon which the DOR disallowed the appellant's agricultural status, we must look to the intent of this Regulation. We can only assume, given the brief synopsis presented by the DOR, that the purpose of this 30 AUM regulation is: 1) to insure the carrying capacity of the land is not exceeded, caused by overgrazing, to the point of desertification; and 2) to distinguish for tax purposes between raising hobby animals (even for profit), from raising livestock as a major income producing activity. (The former simply for the purpose of obtaining the reduced tax status). In this case, the appellant, however small his herd and land size, is raising goats as his major source of income. He is not seeking agricultural tax status to avoid paying a higher rate. He is a legitimate full time goat herder.

Turning now to the problem of overgrazing, there might be a flaw in summarily applying AUM's to goats and sheep. The law was written with a calving cow and calf in mind and then

extended to other domesticated animals; and is furthermore based on 'farmer grown crops' irrigated or not. Goats and sheep have vastly different digestive systems and can eat a wider range of forage than other domesticated animals. In fact, goats and sheep can eat and digest noxious weeds that would sicken other animals. Herding of goats and sheep is actively encouraged and subsidized by state and local noxious weed control districts. If we include noxious weeds on the appellant's property, primarily knapweed of which there is plenty, along with forage produced on his land, there would seem to be enough to support his modest herd of goats without any long term deterioration to the land. Remember he had been herding goats on his land for 32 year. (sic)

The Board also feels that small farmers were not given due process on the change in regulations which became effective 1-01-2003, but utilized the 2002 year to determine qualification for agriculture classification. Appellants were not given any time to adjust operations to comply with these new regulations.

The appellant's request for agriculture classification is approved.

6. The DOR then appealed that decision to this Board on November 25, 2003, citing the following reason for appeal:

CTAB determination is contrary to administrative rules governing agricultural classification of land.

STATEMENT OF THE ISSUE

The taxpayers are requesting agricultural classification of land for the subject 13.76 acres, which is a non-irrigated property with native vegetation, upon which they raise goats and produce goat products. The DOR has denied their application for valuation as agricultural land pursuant to ARM 62.20.620, which addresses parcels of land less than 20 acres in size. The DOR has classified the acreage as tract land, which carries a higher taxable value.

DOR'S CONTENTIONS

For the DOR, Ms. Jerke stated that the subject parcel is quite steep, 20 to 30 percent in slope, as evidenced in a topographical map and several photographs. (DOR Exhibits B and C).

Montana has five land classifications: agricultural; non-productive patented mining claims; non-qualified agricultural land; forestland; and tract land (market valuation).

Agricultural eligibility of land is addressed in Section 15-7-202, MCA. In addition, the DOR has implemented three administrative rules to administer agricultural land eligibility: ARM 42.20.620 (addresses ownerships under 20

acres in size); ARM 42.20.625 (addresses ownerships between 20 and 160 acres in size); and ARM 42.20.640 (addresses ownerships of 160 acres or more in size). In addition to these three rules, ARM 42.20.601 (definitions) defines agricultural terms used in all agricultural land administrative rules.

Because the subject parcel is smaller than 20 acres in size, it does not qualify as agricultural land pursuant to ARM 42.20.620. Therefore, the land was placed in tract land classification because it did not meet the qualifications for classification as timber, agricultural, or non-qualifying agricultural land.

The DOR defines the term "agricultural products" in ARM 42.20.601 (2):

- (2) "Agricultural products produced by the land" means crops or forage used to support livestock are grown directly in the land's soil. "Agricultural products produced by the land" does not mean land that is used as a "platform" for agricultural activities. Examples of agricultural activities that do not meet the definition "agricultural products produced by the land" are the feeding of livestock from external sources that allow stocking rates to exceed the carrying capacity or crops produced in potted soil that

are not grown directly in the land's soil.

DOR Exhibit C (photographs of the subject property) shows that hay is brought in as supplemental feed for the Gisselbeck livestock (goats). The goats are not fed exclusively from crops or forage that is grown directly in the land's soil, as required under ARM 42.20.601 (2).

Mr. Gisselbeck herds his goats because the property's fences are not adequate to contain them.

When the Gisselbecks applied for agricultural classification of land, he supplied a copy of his Schedule F (DOR Exhibit E) for tax year 2002. This document shows that Mr. Gisselbeck earned \$6,797 in agricultural income after expenses. The Schedule F was not actually submitted to the Internal Revenue Service; rather, he prepared this document specifically for the DOR because he does not earn enough income to file an income tax return.

For every DOR statewide reappraisal of property, the Governor will appoint a Governor's Advisory Committee on Land Valuation to assist the DOR in developing policy to use in the next appraisal cycle.

In June 2002, the Governor's Advisory Committee on Land Valuation recommended to the DOR that bona fide agricultural operations, which support livestock, must meet a minimum carrying capacity for the grazing land. The committee's recommendation was that the prior \$1,500 in agricultural income requirement for classification as agricultural should be converted to an expression of carrying capacity for livestock operations. Therefore, this advisory committee recommended that the minimum livestock carrying capacity for livestock operations on an agricultural property should be 30 animal unit months (30 AUM's).

The carrying capacity requirement was developed by the Department Head of the School of Agricultural Economics and Economics at Montana State University, using cattle as the basis and a \$1,500 agricultural income requirement. The 30-AUM carrying capacity figure represents enough grazing forage to support the necessary amount of livestock to produce \$1,500 in livestock income.

The 30-AUM's requirement for livestock operations replaced the need for annual \$1,500 agricultural income

receipts. Income receipts for livestock, unlike crops produced by the land, do not always represent income produced from the applicant's land. The DOR has, historically, had problems dealing with agriculture eligibility issues for small properties with livestock operations. The four primary reasons why the DOR has had a difficult time with this issue are:

- Livestock can be bought and sold in short timeframes to produce income receipts.
- Purchased livestock have an existing value before they are ever placed on the property.
- Landowners can overstock their land for a limited time period, exceeding the carrying capacity to produce agricultural income.
- Landowners can feed their livestock with forage, grain or supplements from sources outside the landowner's property.

Since the time of the hearing before the Missoula County Tax Appeal Board, the DOR has dropped the \$1,500 agricultural income requirement after meeting with representatives of the agricultural community. The only requirement in place for the determination of agricultural classification for parcels smaller than 20 acres is the 30 animal unit months of carrying capacity.

This recommendation is reflected in ARM 42.20.260 and ARM 42.20.625, Section 9.

(9) If the land is used primarily to raise and market livestock, the land must support 30 or more animal unit months of grazing carrying capacity, with cattle as the base, and the applicant must provide proof that the parcel or contiguous parcels indicated in the application marketed at least \$1,500 of gross income each year. A nine-month grazing season shall be the basis for calculating the number of animal units based on carrying capacity. The carrying capacity shall be based on information obtained from the United States natural resource and conservation service (NRCS) soil survey. If a soil survey does not exist, the carrying capacity shall be based on an estimate by the NRCS or the local county agricultural extension agent.

If a property can support at least 30 animal units months of carrying capacity, then that property is producing enough range forage to support enough livestock to produce the \$1,500 in income. The subject property did not produce crops during the tax year in question. Therefore, it must support at least 30 animal unit months of livestock carrying capacity.

DOR Exhibits F through H are documents discussing soil types and forage production pertinent to the subject property. According to the Natural Resource Conservation Service (NRCS) soil survey, most of the

subject property is dominated by two soil types whose forage production can be expected to support only 6 animal unit months. The Gisselbeck property falls well below the necessary total carrying capacity requirement of 30 AUM's. (DOR Exhibit A, page 9). It does not meet minimum acreage requirements for nonqualified agricultural land (Class 3) or for Class 10, forestland classification. The only remaining classification for this property is Class 4 - market valuation or tract land.

In summary, the DOR cited Section 15-7-103 (1), MCA, specifying general and uniform methods of classification and appraisal:

...it is the duty of the Department of Revenue to classify lands for the purpose of securing an equitable and uniform basis of assessment of lands for taxation purposes. The department must satisfy its statutory responsibility by insuring only bona fide agricultural operations receive Property Tax Class 3 treatment. To do other would foster inequitable treatment of similar types of properties and increase tax burdens on other taxpayers. It is not the legislature's intention for taxpayers to seek agricultural land taxation as a method of property tax relief.

TAXPAYERS' CONTENTIONS

The taxpayers' taxes increased 800 percent from 2002 as a result of reclassification of land.

Taxpayers' Exhibit 1 is a copy of the 2001, 2002, 2003 real property tax statements from the Missoula County Treasurer. In 2001, their tax bill was \$110.47; in 2002, \$122.38; in 2003, \$985.23.

Mr. Gisselbeck questions whether any of the committee members on the Governor's Advisory Committee on Land Valuation were goat farmers.

According to Mr. Gisselbeck, goats cannot be compared with cattle in determining the carrying capacity of land. Seven goats will eat what one cow will. Goats will eat noxious weeds, such as knapweed and buck brush, that cows will not. Mr. Gisselbeck has raised goats on the subject land since 1970 and he knows that goats must be fed hay every day. They can't be simply pastured. He uses knapweed hay to feed his goats because it has more protein, vitamins, and minerals than alfalfa hay. Goats actually prefer knapweed and broadleaf thorns to alfalfa or grass.

The Gisselbecks currently have 51 goats. They have had as many as 300 goats. They sell goats and goat products (milk and cheese) as their income source. They also consume some of the goat products themselves.

Up until 2003, the subject land was classified as agricultural. There was one other period of time when the DOR questioned the land's qualification as agricultural, but Mr. Gisselbeck was unclear on the details. Ultimately, that dispute resulted in agricultural classification.

BOARD'S DISCUSSION

The DOR has satisfactorily demonstrated that the subject land was classified in accordance with Section 15-7-202, MCA, ARM 42.20.620, ARM 42.20.601 (2), and ARM 42.20.625, Section 9.

The record indicates that the carrying capacity of the subject land is 6 animal unit months (DOR Exhibit A, page 9). Administrative rule (ARM 42.20.620 and 42.20.625, section 9) requires that the land must support 30 or more animal units months of grazing carrying capacity in order to qualify for agricultural classification if it is less than 20 acres in size. Mr. Gisselbeck purchases hay as a supplement to the native forage production.

The Board notes that this is a truly unfortunate case. Clearly, this is an agricultural operation for the taxpayers, from which they receive the livelihood. This is not an example of the kind of situation that prompted the DOR to amend its treatment of agriculture eligibility issues for small properties with livestock operations.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301, MCA.**
2. **§15-7-202, MCA. Eligibility of land for valuation as agricultural.**
3. **ARM 42.20.601 (2). Definition of agricultural products produced by the land.**
4. **ARM 42.20.620. Criteria for agricultural land valuation for land totaling less than 20 acres.**
5. **ARM 42.20.625 (9). Land must support 30 or more animal units of grazing carrying capacity.**
6. The appeal of the DOR is granted and the decision of the Missoula County Tax Appeal Board is overruled.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land remain on the tax rolls of Missoula County by the local Department of Revenue office at the value consistent with tract land, or market value, designation.

Dated this 10th day of September, 2004.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JERE ANN NELSON, Member

JOE R. ROBERTS, 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 10th day of September, 2004, 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:

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