

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

WILLIAM F. & MONICA)	
A. KLOCK,)	
)	
Appellants,)	DOCKET NO.: PT-1999-1 through 4
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeals were heard on February 16, 2000, in the City of Great Falls, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The taxpayers, represented by William Klock, presented testimony in support of the appeals. The Department of Revenue (DOR), represented by Pauline Merenz, appraiser, presented testimony in opposition to the appeals. Testimony was presented, and exhibits were received. The Board, having fully considered the testimony, exhibits, and all things and matters presented to it by all parties, concludes as follows:

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The properties which are the subject of these appeals are described as follows:

PT-1999-1: Land only described as 200 acres in Section 24, Township 18 North, Range 1 East, County of Cascade, State of Montana. (Assessor No. 0003760800).

PT-1999-2: Land only described as 160 acres in Section 13, Township 18 North, Range 1 East, County of Cascade, State of Montana (Assessor No. 000375000).

PT-1999-3: Land only described as 200 acres in Section 23, Township 18 North, Range 1 East, County of Cascade, State of Montana (Assessor No. 00030759800)

PT-1999-4: Land only described as 235.23 acres in Section 25, Township 18 North, Range 1 East, County of Cascade, State of Montana (Assessor No. 0003762300).

3. For the 1999 tax year, the DOR appraised the subject land as follows:

PT-1999-1: \$7,968

PT-1999-2: \$6,374

PT-1999-3: \$9,691

PT-1999-4: \$11,750

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4. The taxpayers appealed to the Cascade County Tax Appeal Board on September 29, 1999 requesting the following reduction in values:

PT-1999-1: \$6,755
PT-1999-2: \$5,398
PT-1999-3: \$8,395
PT-1999-4: \$11,660.61

The taxpayers cited the following reasons for appeal:

The county road that leads to this property is unsafe and is one of the worst roads in Cascade County. The county refuses to maintain it. By maintaining it, I mean, they won't mow the weeds, plow the snow, or blade it in the summertime. There is one driving lane down the middle, and in places, the sides are over a foot higher than the driving lane. Rain and snow wash ditches in the driving lane. Water has run across the road. Mud holes are 6-8 inches deep. We offered the county rock to put on it, but they turned us down. When wet, you need 4-wheeldrive to get up and down it. This is the only road into the property (Klock Rd.) It costs us extra to get our products to and from market, and also getting feed to our livestock in the winter. It could become a school bus route if it is fixed and maintained. We have pictures to substantiate this.

5. In its October 14, 1999 decisions, the county board denied the appeals, stating:

After hearing testimony and reviewing exhibits, the Board finds the value of the land set by the Dept. of Revenue is not impacted by the road conditions being appealed. The land values are upheld. This appeal is disapproved.

6. The taxpayers then appealed those decisions to this Board on October 27, 1999, stating:

I am protesting these taxes because the county refuses to maintain the county road leading to this property. They tax you whether you have a state highway leading to your property or a cow trail. I believe that property with a good road leading to it is worth more than one with a cow trail leading to it. I would call this road a cow trail because there is just a trail down the middle and the sides in most places a foot or more higher than the driving lane. The mud holes are 6-8 inches deep that cover the whole road. I would call this unsafe. I only own part of the property on one side of the road. The county won't plow the snow, mow the weeds, or do anything to it at all. I offered them rock to put on it. They said no. It is one of the worst in the county.

TAXPAYERS' CONTENTIONS

Mr. Klock presented a series of photographs (Taxpayers' Exhibit 1) depicting large mud holes and ruts in the one-lane, three-mile county road (Clock Road) which serves the subject properties. (He owns only the property along approximately one-half mile of this road). He also described how drifting snow conditions can make the road almost impassable in winter. Though he has not lived on the property "since about 1957," he testified that he grazes cattle on the acreage. The condition of the road hinders his ability to deliver feed to his cattle and to ship the cattle to market.

He described other road improvement efforts made in the county and questioned why Clock Road could not receive similar treatment. He testified that he has written to the Cascade County Commissioners on this subject but has been told by those officials that there is no money allocated to maintain and improve Clock Road. He also stated that he has offered the

appropriate county agencies the provision of rock to help to fill mud holes in the road. This offer has been rejected because the effort required to crush the rock would be too prohibitive.

Upon questioning by this Board, Mr. Klock stated that his requested values were obtained through an estimate of the amount of extra gasoline his vehicle requires and the extra "wear and tear" experienced by his vehicle when he traverses the road in its present unmaintained condition. He believes that he is the only property owner who travels the road in the winter.

Taxpayers' Exhibit 2 is a copy of a letter from Mr. Klock to Montana State Senator Ken Messaros outlining the road maintenance problems which are the subject of this appeal.

DOR CONTENTIONS

At the hearing before this Board, the DOR agent mentioned the likelihood of its submission of a Motion to Dismiss the appeal for the reason that the appellants do not have legal standing to prosecute the appeal because the subject property's assessment was not based on market value; rather, it was based on the productive capacity of the land due to its designation as agricultural. Further, the maintenance, or lack thereof, has no bearing on the productive capacity of that land.

While the DOR did not actually move this Board for dismissal, this Board indicated that it would deny the motion

and that it would allow the taxpayers to present their case.

The DOR has valued the subject 795.23 acres at approximately \$45 per acre based on an assessment of the productive capacity of the land. It has not been valued through a market, or sales comparison, approach.

DOR Exhibit A contains copies of the property record cards for the subject properties. These documents show that the DOR has valued 736 acres as grazing land, 51.23 acres as fallow land and eight acres as wild hay land. The taxpayers do not dispute the amount of acreage in the assessment, nor the classification.

DOR Exhibit B is a copy of a document entitled "Classes, Grades and Values for Montana Agricultural Lands as Approved by the Department of Revenue." This document demonstrates the various values assigned to each classification of land. The taxpayers do not dispute the values assigned to each classification.

DOR Exhibit C is a copy of a plat map showing the location of the subject properties.

DOR Exhibit D is a copy of letter from the Cascade Public Schools to Mr. Klock, apparently in response to his request to have the Clock Road become a school bus route. This letter contains various reasons from that school district why it is unlikely that Clock Road will become a school bus route in

the foreseeable future.

BOARD DISCUSSION

This is clearly not a valuation issue. The taxpayers have testified that they do not dispute the amount of acreage in their assessment, nor the classifications of the land, nor the values assigned to the classifications of the land.

This appears to be a concern with a lack of road maintenance function by Cascade County, for reasons which appear to be primarily monetary. The taxpayers have contacted county officials, the Cascade School District, state and United States representatives to no avail, to date.

The Board sympathizes with the problems encountered by the taxpayers in their efforts and with the condition of the road with which the Klocks have to contend, as depicted in the series of photographs presented as evidence.

However, this Board has no authority to order county government to maintain county roads. The scope of this Board's jurisdiction is prescribed in Section 15-2-201, MCA, and is limited to a decision as to whether or not the Department of Revenue's determination of value has been reached in accordance with statute and administrative rule.

Lacking authority to intervene in the present dispute, the Board will deny the appeal of the taxpayers and will affirm the decision of the Cascade County Tax Appeal Board. The level

of authority necessary to accomplish the taxpayers' request lies with the board of county commissioners, pursuant to Section 7-14-2103 (4), MCA.

CONCLUSIONS OF LAW

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

2. **Section 7-14-2102. General powers relating to county roads - assignments of responsibility.** Each board of county commissioners may in its discretion do whatever may be necessary for the best interest of the county roads and road districts . .

3. **Section 7-14-2103. Duties of county commissioners concerning county roads.** (1) A board of county commissioners has general supervision over the county roads within the county. . . (4) A board of county commissioners may determine the level and scope of maintenance on a county roads under its jurisdiction, and a local entity or the state may not withhold funds based on the board's maintenance determinations. (Emphasis supplied.)

4. **Section 15-2-301 (4), MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.

5. The appeals of the taxpayers are hereby denied and the decisions of the Cascade County Tax Appeal Board are affirmed.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties shall be entered on the tax rolls of Cascade County by the Assessor of that county at the 1999 tax year values as determined by the Department of Revenue. The appeals of the taxpayers are denied and the decisions of the Cascade County Tax Appeal Board are affirmed.

Dated this 22nd of February, 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

(S E A L)

JAN BROWN, Member

JEREANN NELSON, 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 22nd day of February, 2000, 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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