

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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McGIMPSEY FAMILY CEMETERY TRUST,	)	DOCKET NO.: PT-2009-17
	)	
Appellants,	)	
	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,	)	ORDER and OPPORTUNITY
	)	FOR JUDICIAL REVIEW
Respondent.	)	

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**Statement of Case**

McGimpsey Family Cemetery Trust (Taxpayer) appealed a decision of the Fergus County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of their property identified as C.O.S. #368, Tract in the NE4,NE4 of Section 34, Township 19N, Range 15E, of Fergus County, State of Montana. The Taxpayer argues the DOR land classification is incorrect, and it seeks reconsideration of the value assigned by the DOR. At the State Tax Appeal Board (Board) telephonic hearing held on July 1, 2010, the Taxpayer was represented by Phil McGimpsey. The DOR, represented by Michele Crepeau, Tax Counsel, and Jason Boggess, Area Manager, presented testimony and evidence in opposition to the appeal.

The Board having fully considered the testimony, exhibits, post-hearing submissions and all matters presented, finds and concludes the following:

### Issue

The issue before this Board is did the Department of Revenue determine the appropriate classification of tract land for the subject property for tax year 2009?

### Summary

McGimpsey Family Cemetery Trust is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board affirms the decision of the Fergus County Tax Appeal Board.

### Findings of Fact

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present evidence, verbal and documentary. Also, this Board takes notice of the transcript and all exhibits submitted during the Fergus CTAB hearing.
2. The subject property is a 9.374 acre lot with the following legal description:  
C.O.S. #368, Tract in the NE4, NE4 of Section 34, Township 19N, Range 15E, of Fergus County, State of Montana. (Exhibit A.)
3. For tax year 2009, the DOR appraised the subject property as agricultural rural tract land at a value of \$25,183. (Exh. A, Boggess Testimony.)
4. The subject property is used as a memorial site family cemetery with four gravestones and the cremated remains of family members scattered over the property. (McGimpsey Testimony.)
5. The Taxpayers established the family cemetery plot in 1998 when it was part of a 200-acre farm. At that time the DOR appraised the subject property value at \$1,077 as agricultural land. This is the value the Taxpayers feel is a fair value. (McGimpsey Testimony.)
6. In December 2002, the Taxpayers subdivided the property, transferring 191 acres to a family member and retaining the nine acres at issue in a family trust. The larger farm was subsequently sold. (McGimpsey Testimony.)

7. After the sale of the farm, the subject property was no longer a part of a larger agricultural operation and no longer qualified for valuation as productive farm land under §15-7-202(1)(a), MCA. (Bogges Testimony.)
8. Instead, the subject property is valued as tract land using market values, instead of lower agricultural productivity values as set out in §15-6-134(1)(a), MCA. (Bogges Testimony.)
9. The DOR used the market approach to value the subject property for the July 1, 2008 appraisal date. (Exh. A.)
10. The DOR used a CALP (Computer Assisted Land Pricing) model to establish the land value of \$25,183 for the subject property. The CALP in this instance is based on 68 vacant land sales. The CALP sales and the subject property are all located in Neighborhood 001 of Fergus County, which is a geographic area designated by the DOR as having similar characteristics for purposes of valuation. Based on the CALP, the DOR set one acre as the base size for a parcel in Neighborhood 001. In addition, the DOR determined a base acre value of \$12,455 and the value of each residual acre was \$1,518, again based on the CALP. (Bogges Testimony, Exh. C.)
11. Taxpayer testified the family decided not to incorporate the property as a public cemetery to avoid the paperwork and tax returns. (McGimpsey Testimony.)
12. The Taxpayer filed an appeal with the Fergus CTAB on October 28, 2009 after an unsuccessful informal review. The Taxpayer requested a reduction in the value of the subject land to \$1,077 and stated the following as the reason for the appeal:

“This property is a tract of WASTELAND currently being used only as a family cemetery plot. There is no water, utilities or usable improvements on the property. The tillable land was seeded with CRP grasses years ago

and is unkept. Fergus County's assigned market value in 2002 was \$1,461. Now \$25,183? It's time for a reality check, folks. An assessor's/appraiser's on site visit would be invaluable. Truthfully, if we didn't have four of our family members cremains scattered on this ground, Fergus County would be getting this back on a tax deed. The rate of appreciation for the assessments is simply unsustainable and unaffordable long term." (Appeal Form.)

13. The Fergus CTAB heard the appeal on January 12, 2010, and upheld the DOR value for the subject property. (Appeal Form.)
14. The Taxpayer appealed to this Board on February 8, 2010, stating:

"The appraised value does not fairly reflect the current use, the MDOR's comps used or the valuation testimony offered by the taxpayer at the Jan 12, 2010 Hearing. See transcript & admitted Exhibits. The Board's decision was arbitrary and capricious." (Appeal Form.)

#### **Principles of Law**

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA).
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA).
3. Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. (§15-8-111(2)(a), MCA).
4. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
5. Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a residential, commercial, or industrial use. (§15-7-202(1)(a), MCA.)

6. Section 15-7-202 (2), MCA, specifies:

Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year that the parcels meet any of the following qualifications:

(a) . . . the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products, as defined in §15-1-101, MCA.)

7. The DOR shall change the classification and valuation of land from class three to class four, as defined in §15-6-134, MCA, when the agricultural land does not meet the eligibility requirements in §15-7-202, MCA. The land will be valued at market value under class four instead of its productivity value. (ARM 42.20.156(1)(b) & (3).)
8. Property devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3 are exempt from taxation. (§15-6-201(1)(f)(ii), MCA.)
9. Every cemetery company which now or hereafter maintains a cemetery, shall place its cemetery under perpetual care and maintenance and establish, maintain, and operate a perpetual care and maintenance fund. (ARM 24.147.1314(1).)
10. The State Tax Appeal Board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (§15-2-301(4), MCA.)

**Board Discussion and Conclusions of Law**

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate classification on the subject property for tax year 2009.

As a general rule, the classification of property by the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. 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 (1995); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428, P. 2d, 3, 7, *cert. denied* 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

This case comes before this Board because of a substantial valuation change in the subject property. The large change in value for the subject property reflects the fact that the subject property is no longer attached to a large agricultural operation. (§15-7-202(1)(a), MCA). The DOR correctly argues there has been a change in classification of the subject property once it was subdivided. Thus, it no longer qualifies as contiguous agricultural property of more than 160 acres under Rule 42.20.609, ARM, which would allow the property to be classified as non-qualified agricultural property. (FOF 7.) It is not commercial, industrial, or agricultural and therefore is valued as tract land. (FOF 8.)

The DOR correctly calculated the subject property's value by comparing it to other tract land in that area. The DOR's CALP computed the market value for the subject property of \$25,183 based on the similar Fergus County tract land, and the Taxpayer submitted no evidence to dispute that value. (FOF 10.)

Taxpayer argues the land is a family cemetery and should be valued as a cemetery but admits the family chose not to do the paperwork to qualify it as a cemetery as they considered it to be burdensome. (FOF 11.) Were it to qualify as a cemetery, it would not be taxed at all. (§15-6-201(1)(f)(ii), MCA.)

Taxpayer expressed concern about the rate of valuation increase and posited an astronomical tax burden in future years, but the 2009 increase results from the

reclassification of the property from agricultural land, which is valued on productive capacity, to tract land which is valued at fair market value. The reclassification is a one-time event and though property values may rise in future it is unlikely to do so at the rate Taxpayer has just experienced.

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

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**Order**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property value shall be entered on the tax rolls of Fergus County at a 2009 tax year value of \$25,183 as determined by the Department of Revenue and affirmed by the Fergus County Tax Appeal Board.

Dated this 28th of July, 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 t his Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of July, 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:

Philip McGimpsey  
P.O. Box 1365  
Eagle, Idaho 83616

Fergus County Appraisal Office  
712 West Main  
Lewistown, Montana 59457

Michelle R. Crepeau  
Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, Montana 59620

Dorothy Spika, Secretary  
Fergus County Tax Appeal Board  
103 Hill Avenue  
Lewistown, Montana 59457

/s/ \_\_\_\_\_  
DONNA EUBANK  
Paralegal