

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	
)	DOCKET NO.: PT-2006-12
Appellant,)	
)	
-v-)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
MARK A. & MARKO PETERSON,)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondents.)	

STATEMENT OF CASE

The Department of Revenue (DOR) appealed the Yellowstone County Tax Appeal Board's (CTAB) decision to restore the agricultural classification to the Taxpayer's land for tax year 2006. The hearing in this matter was held on September 6, 2007, at 9:00 a.m. in Billings, Montana. The DOR, represented by Dallas Reese, Management Analyst, and Genia Mollett, Appraiser, presented testimony and evidence in support of the appeal. Mark A. Peterson (Taxpayer) presented testimony and evidence in opposition to the appeal.

ISSUE

The issue before this Board is: Does the subject property qualify for classification as Class 3 agricultural land?

SUMMARY OF EVIDENCE

The Department of Revenue is the appellant in this proceeding. As a general rule, the DOR is presumed to be correct and the taxpayer must overcome this presumption. The DOR should, however, bear a certain burden of providing documented evidence to support its classification. See Farmers Union Cent. Exch. v. Department of Revenue, 272 Mont. 471, 901 P.2d 561, 564 (Mont. 1995); Western Airlines, Inc., v. Michunovich (1967), 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).

The DOR contends the Yellowstone County Tax Appeal Board erred in their decision to reclassify the Taxpayer's property from nonqualified agricultural land to agricultural land. The Board affirms the decision of the Yellowstone 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.
2. The property which is the subject of this appeal is described as follows:

Land only consisting of the north half of the southwest quarter of Section 12, Township 2 South, Range 26 East, less

Certificate of Survey 1663, Yellowstone County, Montana, with a physical address of 5239 Helfrick Road, Billings, Montana; Geocode 03-0823-12-3-09-01-0000, Assessor Code D03305. (Exh. A, p. 1).

3. Beginning in tax year 2005, the DOR classified 78.11 acres of the subject land as non-qualifying agricultural (grazing) land. The farmstead acre and improvement values are not in contention. (DOR Exh. A; Mollett Testimony).
4. For tax year 2006, the Taxpayers appealed the DOR's classification of the subject property as non-qualified agricultural to the Yellowstone County Tax Appeal Board. The Taxpayers filed the appeal on October 21, 2006, citing the following reason for the appeal:
 - a) Loss of agricultural status. (Appeal Form).
5. In its May 4, 2007, decision, the CTAB granted the Taxpayers' appeal, stating:

Based upon the evidence given in testimony, in part, the nature of the property & creeks, this Board feels the thirty animal unit months can be met; therefore, the Board approves this appeal & the classification for the subject property is Class 3 agriculture. (Appeal Form).
6. The DOR appealed the County Board's decision to this Board on May 22, 2007, stating, "The nature of the proof

adduced at the hearing was insufficient, from a legal and a factual standpoint, to support the Board's decision." (Appeal Form).

7. The Taxpayers purchased the property in 1988 and have raised cattle there since 1989. They have a permanent, year-round herd. Currently, they have four calves, three cows, a two-year-old heifer and a horse, down from a 1999 high of sixteen cow/calf pairs and four horses. They buy hay, usually in September or October, and use it as supplemental feed for three or four months a year. (Peterson testimony; Exh. 3).
8. Because of prolonged drought, a spring on the subject property went dry in 2000 and, since then, the Taxpayers have hauled water for their livestock. They have reduced the number of livestock on their property because of the additional cost of hauling water. (Peterson Testimony).
9. The subject land was classified as agricultural until tax year 2005. (Exh. 7; Peterson Testimony).
10. On September 15, 2004, the Taxpayers submitted an Application for Agricultural Classification of Lands to the DOR. The DOR disapproved the application, saying, "Does not meet 30 AUM [animal unit months] minimum carrying capacity." (Agricultural Application).

11. DOR adopted the thirty AUM requirement for grazing land in their administrative rules through a negotiated rule-making process in 2003. The previous year, the Governor's Advisory Committee on Agricultural Land Valuation (Committee) had recommended the AUM requirement based on its finding that income receipts for livestock, unlike crops, do not always accurately represent the income produced by the land. Using market prices for cattle, the Committee determined that thirty AUM equaled the law's \$1,500 annual income requirement at the time of the Committee's report. (Exh. D; Exh. E; Reese Testimony).
12. DOR used soil survey information developed by the Natural Resources Conservation Service (NRCS) to determine the carrying capacity of the subject land. Based on this data, the DOR calculated the property's carrying capacity at just over nineteen AUM. (Reese Testimony; Exh. F; Exh. G).

PRINCIPLES OF LAW

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

3. Parcels of property between 20 and 160 acres under one ownership are eligible to be classified as agricultural if the land is used primarily for raising and marketing products defined as agricultural. (Section 15-7-202(b)(i), MCA).
4. A parcel between 20 and 160 acres is presumed to be agricultural if the owner markets at least \$1500 in annual gross income from agricultural products produced by the land. The owner of land that is not presumed to be agricultural must verify to the Department of Revenue that the land is used primarily for raising and marketing agricultural products. (Section 15-7-202(b)(i), MCA).

BOARD DISCUSSION AND CONCLUSIONS OF LAW

The issue before the Board is the proper classification for the subject property, a 78.11 acre parcel used exclusively for agricultural purposes, namely the raising of cattle.

The DOR contends that grazing land between 20 and 160 acres, like the subject property, must meet a thirty AUM carrying capacity requirement established by DOR in Rule 42.20.625(11), ARM. This Rule further specifies that carrying capacity may be based on information from the NRCS soil survey. NRCS' soil survey data indicates the subject property cannot meet a 30 AUM carrying capacity. Thus, according to

the DOR, this property is properly classified as non-qualified agricultural.

However, in a prior decision, this Board determined:

[T]he production requirements set forth in the administrative rule go beyond the statutory intent and have, in essence, denied appropriate classification of the subject property even though the evidence demonstrates that the land is "used primarily for raising and marketing agricultural products" as is required by §15-7-202(1)(b)(i), MCA.

. . . .

In requiring classification of the subject property as non-qualified agricultural land pursuant to Rule 42.20.625, ARM, the administrative rule is in conflict with the statute and we cannot give it full effect in this matter. (*The Department of Revenue of the State of Montana v. Norman Winters*, PT-2006-2.)

In this case, it is clear the Taxpayers raise and market agricultural products, specifically cattle, on the subject property, as required by §15-7-202, MCA. In the last six years, since the property's spring went dry, the Taxpayers have had at least five or six cow/calf pairs year-round and one or two horses. The Taxpayers acknowledge using hay for supplemental feeding in the winter for three or four months. Nonetheless, five animal units grazing for eight months is still forty AUM and a clear demonstration of an agricultural use.

The DOR does not dispute that the property is used for agricultural purposes. They only contend it does not meet the criteria set out in their administrative rules for grazing land to qualify for agricultural classification. As noted before, however, this Rule is in conflict with the statute and cannot be given full effect. The Board concludes the subject property is properly classified as Class 3 agricultural land for tax year 2006.

In 2007, the Legislature amended §15-7-202, MCA, to specify that grazing land of less than 160 acres must sustain a minimum number of animal unit months of carrying capacity in order to be eligible for classification as agricultural land. The new statutory language is effective for tax years beginning after December 31, 2006. Consequently, without a change in the soil survey data to indicate a change in the productive capacity of the subject property, this decision by the Board will only be effective until the new statutory language is implemented.

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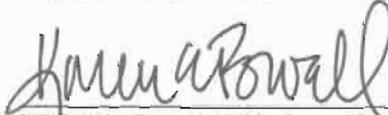
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ORDER

IT IS THEREFORE ORDERED that the subject property is properly classified as agricultural land. The decision of the Yellowstone County Tax Appeal Board is affirmed.

DATED this 18th day of October, 2007.

BY ORDER OF THE
STATE TAX APPEAL BOARD



KAREN E. POWELL, Chairwoman

(S E A L)



SUE BARTLETT, Member



DOUGLAS A. KAERCHER, 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 19th day of October, 2007, 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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