

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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THE DEPARTMENT OF REVENUE, )  
OF THE STATE OF MONTANA ) DOCKET NO.: PT-2004-3  
Appellant, )  
-vs- ) FACTUAL BACKGROUND,  
ANN C. (HAaS) SHORS AND ) CONCLUSIONS OF LAW,  
RICHARD S. SHORS ) ORDER and OPPORTUNITY  
Respondent, ) FOR JUDICIAL REVIEW  
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The State Tax Appeal Board (Board) heard the above-entitled appeal on the record pursuant to Section 15-2-301, Montana Code Annotated:

Appeal of county tax appeal board decisions.  
(2) . . . The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony.

Richard Shors (Respondent Taxpayer) submitted additional comments to the Board on August 24, 2005. The Department of Revenue (Appellant) submitted additional comments and documentation on September 6, 2005.

The duty of this Board is to determine the appropriate market value of the property based on a preponderance of the evidence and applicable law and administrative rules of the State of Montana.

The Department of Revenue (DOR) is the appellant in this matter and, therefore, has the burden of proof.

By statute (15-2-301, Montana Code Annotated) this Board may affirm, reverse or modify any decision rendered by the county tax appeal board. The Board finds that there is insufficient evidence to reverse or modify the decision of the Glacier County Tax Appeal Board (CTAB).

**FINDINGS OF FACT**

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.
2. The subject property is described as a vacant tract of land located in:

NE 1/4 of the SE 1/4 of the SW 1/4 of Section 17, Township 31 North, Range 12 West, Glacier County, State of Montana. Geo-code # 38-4305-17-3-04-01-0000. Assessor # - 52044.
3. For tax year 2004, the assessment notice dated 6/5/04 (exhibit #4) reflected a market of \$23,000.
4. The Taxpayer filed an AB-26 Property Review Form with the DOR on 6/4/04, stating:

We purchased this property for \$176.00. It consists of unfenced grazing land, which has no access. It is several miles from the nearest road, in the middle of property owned by the Big Spring family. Someone probably does graze cows on it, but no rent is paid to us. We receive no income at the present time from the property.

5. On 7/21/04, the DOR denied a reclassification of the property, stating:

No documentation returned to qualify it for Agricultural use. Size of parcel is under 20 acres.

6. The Taxpayer appealed that decision to the CTAB requesting a value of \$750. Based upon the reason for appeal, the taxpayer also asserts the property should be classified as agricultural:

The property is way over appraised by the department. Also it is agricultural land that has been wrongly and arbitrarily classified. The land has no access, is not fenced, and is poor land.

7. The DOR testified that the wrong value was erroneously printed on the 2004 assessment notice. The correct value for the property should have reflected \$15,000. This value is reflected on the revised assessment notice dated 10/26/04 (exhibit 4A).
8. On 10/27/2004, the CTAB granted the taxpayers appeal and set the value at \$75 per acre, or \$750 for the Taxpayers 10 acres (Appeal form with attached decision).
9. The DOR appealed that decision to this Board on 11/22/04, stating:

The nature of the proof adduced at the hearing was insufficient from a factual and a legal standpoint to support the board's decision.

10. The Board elected to decide this appeal based upon the record created before the CTAB and permitting each party the opportunity to supplement the record with additional comments and evidence, pursuant to Mont. Code Ann. §15-2-301. *Appeal of county tax appeal board decisions.*
11. The Board requested that the Taxpayer and the DOR address additional questions that were sent to the parties on 10/12/05.
12. The Taxpayer replied on 10/17/05.
13. The DOR replied on 10/24/05.
14. The Taxpayer responded to the DOR's submission on 11/7/05.

#### Issues

There are two issues that the Taxpayer addressed on the appeal form and before the CTAB:

1. The proper classification of the subject property
  - a. Class Three Agricultural Land pursuant to Mont. Code Ann. §15-6-133, §15-7-201 & §15-7-202. Montana ARM 42.20.620.
  - b. Class 4 Tract land pursuant to Mont. Code Ann. §15-6-134 & §15-8-111. Montana ARM 42, Chapters 18 & 20.

#### DOR'S CONTENTIONS

At the CTAB hearing, the DOR was represented by appraiser's JoAnn Printy, Marlyann Lawson, and Area Manager, Nita Grendal.

Mrs. Printy testified that the property did not qualify as Class Three agricultural land due to the size, ten acres, and its inability to generate \$1,500 worth of annual agricultural income. Therefore, the property must be classified as Class Four tract land (Exhibits A & A-1).

Mrs. Printy testified, "...our land is based on computer assisted land pricing and this concept applied to all major land uses, residential, commercial, industrial and all three conventional basis for value are the front foot, the square foot, and the acreage. The computer assisted land pricing system is based on the principle that it is possible to arrive at a reasonable and satisfactory estimate of land value through the application of the various incremental adjustments and influence factors to a base price for a unit of land..." (CTAB transcript, pg. 27).

The property record card (PRC) for the subject indicates a market value of \$15,000. Mrs. Printy testified that the first acre is valued at \$8,700 and the remaining nine acres are value at \$700 per acre.

#### **TAXPAYER'S CONTENTIONS**

The Taxpayer's dispute with the DOR is the proper classification and the appraised value.

Mr. Shors described the property at the CTAB hearing as grazing land. It's always been agricultural land. The DOR, prior to 2004, has always classified the property as agricultural land. As a result of the DOR's reclassification in 2004 the taxes increased from \$7.69 in 2003 to \$139.50 in 2004.

Mr. Shors and his wife purchased the property from the Internal Revenue Service (IRS) in 1973 for \$265.

Because of the following characteristics, Mr. Shors asserts that \$75 per acre, or \$750 is a reasonable value for the property:

1. Remote location.
2. No access.
3. High-pressure gas pipeline easement.
4. No feasible potential for utilities.
5. Topography for the most part is steep to the river.

#### **BOARD DISCUSSION**

The CTAB granted the Taxpayer's their requested value of \$750. The DOR then appealed that decision to this Board pursuant to Mont. Code Ann. §15-2-301. The DOR is asking this Board to reinstate its market value determination of \$15,000 for the subject property.

Although the CTAB decision is silent with respect to the classification issue, it's apparent to this Board that the property does not meet the statutory and administrative rule requirements to be classified as Class Three agricultural land.

The issue then before this Board is the proper market value of the Taxpayer's ten-acre parcel.

The DOR is the appellant in this proceeding and therefore has the burden of proof. As previously noted, the Board elected to hear this appeal on the record pursuant to Mont. Code Ann. §15-2-301. *Appeal of county tax appeal board decisions.*

*(2) . . . The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony.*

Both parties submitted additional written testimony and evidence. In addition, the Board requested each party supplement the record with additional evidence. Both parties responded in a timely fashion.

The DOR testified that the market value for the property was established through a system know as the Computer Assisted Land Pricing (CALP). DOR Exhibit B is a list of twenty-four land sales. This document suggests these were the sales for the CALP model. It was the Board's opinion that Exhibit B was not a CALP model based upon previous hearings. The Board requested the DOR submit the CALP model that established \$8,700 for the first acre of land and \$700 per acre for the remaining nine acres. The DOR submitted the CALP and it reflects one hundred and seven sales. The accompanying letter states the sales in Exhibit B was prepared to illustrate the

sales closest in proximity to the subject property. These sales reflect an average per acre value of \$2,895. The subject property is valued at \$1,500 per acre.

The Taxpayer pointed out during his testimony before CTAB that the property suffers because of no access, a gas pipeline easement, steep terrain, remote location, and lack of services. The Board also asked the DOR to address these issues when it established its value determination. The DOR reply states, *"...the multiple regression analysis used in the Rural Region 2 CALP model (as common to most of the CALP models throughout the state) included price, size, and time adjustment. There was no consideration given to any other factors such as access, services or topography as, in the interest of statewide consistency, these are not typically used in establishing the base values..."*. The DOR's response goes on to suggest that other counties have made attempts to quantify a loss in value for these various characteristics. This Board will not adopt these percentage adjustments for the fact that they are not applicable to the property in question. It's interesting to note that on the property record card for the subject, in the "LAND DATA & COMPUTATIONS" section, there are a number of influence codes that recognize some of the physical characteristics that have been raised by the taxpayer: topography, restrictions, no access; but no identifiable adjustments by the DOR were applied.

At the CTAB hearing, the DOR asserted that when establishing market value, equalization must be achieved. This Board is also mandated by statute with equalization.

*Mont. Code Ann. §15-7-112. Equalization of valuation. The same method of appraisal and assessment shall be used in each county of the state to the end that **comparable** property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided.(emphasis added)*

The Board does not dispute that the DOR employed the same appraisal methods, CALP, and used it throughout the State of Montana. The question here is the comparable properties that were used to value this particular property. Mont. Code Ann. §15-1-101. defines comparable property as:

- (e) The term "comparable property" means property that"*
  - (i) has similar use, function, and utility:*
  - (ii) is influenced by the same set of economic trends and physical, governmental, and social factors: and*
  - (iii) has the potential of a similar highest and best use.*

The Board understands that no two parcels are exactly alike; therefore, adjustments to the sales prices need to be made in order to reflect the differences.

*Direct Sales Comparison Method*

*This method compares the subject property with comparable vacant parcels that have been sold recently and process the sales prices into indications of value for the subject property by adjusting the sales prices for differences between the properties. The process involves four major steps: discovery and verification, selection of appropriate units of comparison, adjustments to sales*

*data, and application of adjustment techniques. (The International Association of Assessing Officers, Property. Assessment Valuation. 1977.)*

Many of the properties listed on Exhibit B, as noted by the DOR, have been developed. The subject property has little or no development potential without guaranteed access. Therefore, based upon the statutory definition of comparable property, and what little data the Board has in the record about the sales in the DOR's CALP model, it is our opinion that valuing the subject based upon the sales utilized by the DOR is not an accurate reflection of value for the subject property.

The Board also notes that with mass appraisal, the DOR's ability to accurately reflect the market value of a unique piece of property, such as this one, can be extremely problematic. It's apparent to this Board as it was to the CTAB; the lack of access is a significant factor in establishing the market value.

We would also note that this is an instance where the local knowledge supplied by a county tax appeal board may be particularly helpful. Mont. Code Ann. §15-2-301. *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... (emphasis supplied)*

The record lacks any supportable evidence to suggest that the

decision of the CTAB is not the best indication of market value for the subject property.

**CONCLUSIONS OF LAW**

1. The State Tax Appeal Board has jurisdiction over this matter. Section 15-2-301, MCA.
2. The State Tax Appeal Board may affirm, reverse or modify any decision rendered by the county tax appeal board. Section 15-2-301, MCA.
3. All taxable property must be assessed at 100% of its market value except as otherwise provided. Section 15-8-111(1), MCA.
4. The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. Section 15-2-301, MCA.
5. Section 15-7-202, MCA. Eligibility of land for valuation as agricultural.
6. Section 15-6-134, MCA. Class four property -- description -- taxable percentage.
7. Section 15-7-112, MCA. Equalization of valuation.
8. Section 15-1-101, MCA. Definitions.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Glacier County by the local Department of Revenue office at \$750.

The decision of the Glacier County Tax Appeal Board is affirmed.

Dated this 21st day of November, 2005.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

\_\_\_\_\_  
GREGORY A. THORNQUIST, Chairman

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JOE R. ROBERTS, Member

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SUE BARTLETT, 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 November, 2005, 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:

Ann C. (Hass) Shors and Richard A. Shors  
P.O. Box 10  
Cut Bank Montana 59427

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Property Assessment Division  
Glacier County  
Cut Bank, Montana 59427

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DONNA EUBANK  
Paralegal