

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	DOCKET NO.: PT 1997-21
OF THE STATE OF MONTANA,)	
Appellant,)	
-vs-)	
SPENCER AND COMPANY, INC,)	FINDINGS OF FACT,
Respondent.)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on the 15th day of April, 1998, in the City of Helena, Montana, 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 Department of Revenue (DOR), represented by Terry Swope, Lewis and Clark County Field Operations Manager, and Kathy Macefield of the Helena City Planning Department presented testimony in support of the appeal. The taxpayer, represented by Steve B. Spencer, president, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

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 the opportunity to present evidence, oral and documentary.
2. The property involved in this appeal is described as follows:

Land only, 3.8 acres in Section 19, Township 10 North, Range 3 West, Helena, State of Montana (DOR ID# 1888-19-2-01-07-0000).

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$194,000.
4. The taxpayer appealed this value to the Lewis and Clark County Tax Appeal Board requesting Agricultural Classification.
5. In an undated decision, the county board granted the taxpayer's appeal, stating: "Board placed Ag. classification on land. No value set as DOR did not have this information."
6. On December 2, 1997 the DOR appealed that decision to this Board, 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."

DOR'S CONTENTIONS

Mr. Swope entered into evidence a copy of the January 31, 1997 DOR Procedure 1001 on Agricultural Eligibility (DOR Ex A). The procedure states, in part:

Ownerships Less Than 20 Acres in Size

The ownership cannot have deed restrictions, *zoning ordinances*, covenants, or other restrictions which preclude an agricultural operation. (emphasis applied-DOR)

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Mr. Swope testified that the foregoing was the basis of the denial of the taxpayer's application for agricultural classification; he felt the DOR did not have the authority to grant the request because of the zoning restrictions on the subject property.

Mr. Swope entered into evidence a copy of a June 12, 1997 letter to the taxpayer from Brandt Salo, Director of Building and Safety for the City of Helena. This letter stated: "...the proposed use of the property as a sod farm would be in violation of the established zoning." Further, "Nowhere is there an allowance for agricultural uses for profit (ie: a business operation) in the R-2 district." He also stated that, "...the zoning supersedes and negates the opportunity for any agricultural exemption."

Ms. Macefield testified that, following the taxpayer's proposal for use of the subject property as a sod farm, the City Planning Department reviewed its zoning ordinances and determined the property was zoned R-2, single family residential. Ms. Macefield provided a copy of the R-2 zoning requirements that identify the permitted uses and conditional uses that are allowed.(DOR Ex C)

Ms. Macefield stated that, at this time, the zoning ordinance does not allow the type of agricultural use requested by the taxpayer as either a permitted use or a conditional use. In order for the taxpayer to secure authorization for a sod farm, he would have to make application to the City Planning Department to amend the zoning ordinance to allow a sod farm as a conditional use, and then the taxpayer would have to obtain a conditional use permit for this type of operation. Public hearings before both the Zoning Commission and the City Commission would be required. Conditional use permits are issued on a case by case basis.

Ms. Macefield testified that, through a series of certificates of survey, boundary lines of the subject property have been redrawn and adjusted. She stated the property was not a platted subdivision, but nothing would prevent the sale of any of the property for residential use. Mr. Swope stated the Bill Roberts' Golf Course bordered the subject property on the west, south, and north sides with townhouses to the east.

TAXPAYER'S CONTENTIONS

Mr. Spencer testified he had owned the subject property for seven to eight years. He stated he had worked with the City of Helena to develop the subject property, to include a zoning application, a subdivision application, and a road relocation request; and all those efforts were denied.

He testified that an application for a conditional use permit would cost \$1,000 and that he has not made the application as the fee is out-of-line for an operation of his size. He does not believe the city zoning ordinance specifically disallows agricultural use of his property. He testified that, in the time he has owned the property, the taxes have increased as though it were "developable" land.

In an effort to create a way for his property to generate income to offset the property taxes, Mr. Spencer testified he researched state statutes and statutes seemed to allow for the development of a sod farm on property of less than 20 acres if the parcel produced \$1,500 in annual income. He does not remember ever seeing before a copy of the DOR procedures placed into evidence at this hearing. He subsequently seeded the land and sold a portion of the sod--to be harvested at a later date--and this sale generated \$1,500 (DOR Ex D). He stated he felt this sale met the requirements under statute to qualify for agricultural classification.

Mr. Spencer testified that the plat map from the county hearing (made part of the record of this hearing) has been approved and is recorded with the Lewis and Clark County Clerk and Recorder's office. He stated he can do nothing further with the development of the property until the issue of the width of the bordering access road is increased and a plan for sewer and water access is approved. The road is 30 feet wide and needs to be 60 feet, but he has been unable to come to an agreement with the City as to how that change would be accomplished, nor how city services would be accessed. He could sell any one of the lots, but the buyer would have to develop the parcel according to R-2 zoning requirements.

DISCUSSION

The issue before this Board is whether or not the subject property qualifies for and may be classified as agricultural land.

DOR exhibit D is a photocopy of a \$1,500.00 check of February 18, 1997 to the taxpayer from Robert Koch in payment "15000 ft for cut sod @ 10¢"; the taxpayer believes this check meets the statutory qualifications of §15-7-202(2)(a) and is, therefore, the taxpayer's authority to claim eligibility for agricultural classification:

Eligibility of land for valuation as agricultural.

(2) 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 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 or agricultural products as defined in 15-1-101;

§15-1-101 establishes that the growing of sod for commercial purposes meets the definition established for "agricultural" production.

To implement a statute, such as the foregoing, the DOR is required to develop administrative rules and procedures that interpret the meaning and intent of the law. Administrative rule, ARM 42.20.147, establishes the criteria for agricultural land valuation for land totaling less than 20 acres. One component is the necessity to provide proof that the property marketed at least \$1,500 of annual gross income. It is questionable that simply the copy of the face of a check (DOR Ex D) would meet the criteria established in ARM, which states that proof of income includes sales receipts, income tax statements, other written evidence of sales transactions, or canceled checks, which this board would interpret to be either the original check or a photocopy of the reverse of the check establishing it had been processed.

This is simply an academic point, however, as the procedure developed by the DOR (DOR Ex A) states quite simply that, with ownerships less than 20 acres in size, "The ownership **cannot have** deed restrictions, *zoning ordinances*, covenants, or other restrictions which preclude an agricultural operation." (emphasis supplied) It is apparent, from the testimony of Ms. Macefield, the taxpayer is not in compliance with the zoning restrictions, which regulate the use of the subject property. It is equally apparent that, until such time as the taxpayer moves upon the city to amend the zoning or issue him a variance for conditional use, the subject property cannot be considered for classification as agricultural for purposes of appraisal and assessment.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301 MCA.
2. The appeal of the Department of Revenue is hereby granted and the decision of the Lewis and Clark County Tax Appeal Board is reversed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the decision of the Lewis and Clark County Tax Appeal Board is reversed and, for the 1997 tax year, the subject property shall be valued at \$194,000 as determined by the Department of Revenue

Dated this 4th day of May, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. MCKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, 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.