

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA)	DOCKET NO.: PT-1997-19
)	
Appellant,)	
)	
-vs-)	
)	
ARLENE N. WALL,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	ORDER AND OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on the 17th day of June, 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 Don Blatt, appraiser presented testimony in support of the appeal. The taxpayers, represented by John Wall and Kevin Wall, 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:

Tract 10, Certificate of Survey 506631, City of Helena, Lewis & Clark County, State of Montana (Geo Code 05-1888-20-2-04-37-000).

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$34,442.

4. The taxpayer appealed to the Lewis and Clark County Tax Appeal Board on September 16, 1997 requesting the land be classified as agricultural.

5. The county board approved the appeal on October 23, 1997, stating:

Approved, board up-held STAB's decision.

6. The appeal form indicated the DOR received the county board's decision on 11/2/97. The DOR appealed that decision to this Board on 12/2/97 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..

7. Based on the DOR receipt of the local board's decision, the appeal is timely filed with the State Tax Appeal

Board.

8. The subject property consists of 11.138 acres.

DOR'S CONTENTIONS

The DOR identified the subject property as being located in neighborhood #212, which is the Unionville area. The correct neighborhood is #206A and is valued at \$15,000 per acre. Mr. Blatt stated he is not requesting the neighborhood designation be corrected, rather the local board's decision be reversed since the property does not meet the provisions for agricultural classification as stated in §15-7-202, MCA.

Mr. Blatt testified the subject property is located within the Helena city limits and is zoned B-2, General Commercial. The zoning ordinance for B-2 (exhibit A, pgs. 7-8) states the "Permitted" and "Not Permitted" uses. Mr. Blatt stated that based on this exhibit, agricultural uses are not permitted.

Mr. Blatt referred to a decision of this Board, PT-1997-21, Department of Revenue v. Spencer & Company, Inc. In that decision, the Board addressed the issue of the zoning ordinance's and restriction's on the property in which the local board granted agricultural classification and this Board reversed their decision.

Mr. Blatt testified the property had been granted agricultural classification in the prior appraisal cycle. The property at that time was in excess of 20 acres. In 1995 the subject property was split and subsequent to that split the acreage became less than 20 acres.

TAXPAYERS' CONTENTIONS

Mr. Wall testified that the property has been vacant for approximately 20 years and the use has not changed.

Mr. Wall testified the market value for the subject property in 1996 was in excess of the current market value. Based on the DOR's explanation of the phase-in of market values, it will take 50 years to achieve the current value.

DISCUSSION

The DOR appealed the county board's decision based on subject property's ability to meet the eligibility requirements as defined in §15-7-202, MCA:

15-7-202. Eligibility of land for valuation as agricultural. (1) (a) 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. (b) (I) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership are eligible for valuation, assessment, and taxation as agricultural land if the land is used primarily for raising and marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101. A parcel of land is presumed to be used primarily for raising agricultural products if the owner or the owner's immediate family

members, agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products produced by the land. The owner of land that is not presumed to be agricultural land shall verify to the department that the land is used primarily for raising and marketing agricultural products. (ii)

Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(I) are eligible for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(I) if: (A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth in subsection (1)(b)(I) as defined in this section; and (B) the land is not devoted to a residential, commercial, or industrial use.(emphasis supplied)

(4) Land may not be classified or valued as agricultural if it is subdivided land with stated restrictions effectively prohibiting its use for agricultural purposes. For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.(emphasis supplied)

The physical characteristics of the subject property changed when the split took place in 1995. The total acreage is currently less than what is defined in §15-7-202, MCA; therefore, the subject property does not meet the eligibility requirements as defined in §15-7-202, MCA.

The taxpayer is subject to the phase-in provisions as defined in §15-7-111, MCA. This Board has addressed this issue in PT-1997-62, Potter v. DOR and PT-1997-68, Glacier Motor Inn, Inc. V. DOR.

CONCLUSIONS OF LAW

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

2. ¶15-8-111 MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. ¶15-7-202 MCA. Eligibility of land for valuation as agricultural.

4. PT-1997-62, Potter v. DOR and PT-1997-68, Glacier Motor Inn, Inc. V. DOR.

5. The appeal of the Department of Revenue is hereby granted and the decision of the Lewis and Clark County Tax Appeal Board is reversed.

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 \$34,442 as determined by the Department of Revenue.

Dated this 20th day of July, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. MCKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, 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.