

BEFORE THE MONTANA TAX APPEAL BOARD

Don Goodspeed,

Appellant;

v.

**State of Montana,
Department of Revenue,**

Respondent.

CASE No: PT-2015-3

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER,
AND OPPORTUNITY FOR JUDICIAL
REVIEW**

1. Before the Board is Appellant Don Goodspeed's appeal from the Lake County Tax Appeal Board's (LCTAB) decision to affirm the Department of Revenue's (DOR) reclassification of his property from agricultural to residential located at 19571 MT Hwy 35, Bigfork; identified as geocode 15-3584-08-4-01-10-0000; legal description Flathead Lake Shore Tracts, S08, T25 N, R19 W, Lot 007, Port Lots 7&8, C.O.S. 2229.

ISSUE

2. Whether to classify as agricultural a property totaling 1.029 acres that contains both a dwelling and a three-year old vineyard of 190 grape vines that does not yet produce \$1,500 per year in revenue. (Ex. C.)
3. DOR argues that the property must be at least 2 acres in size; one acre for the vineyard as required by DOR administrative rules, and one for

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

the dwelling as required by statute. Goodspeed counters that the acreage requirement is arbitrary and that he will be able to produce far more than the statutorily required revenue of \$1,500 on a fraction of the acre DOR claims is required for agricultural classification.

FINDINGS OF FACT

4. The Board held a hearing on December 9, 2015 at which the following were present:
 - a. Don Goodspeed, representing himself;
 - b. Nicholas Gochis, attorney for DOR;
 - c. Bonnie Hamilton, DOR management analyst agriculture and forest specialist, as witness for DOR;
 - d. Amanda Bertelson, DOR Lake County residential agriculture appraiser, as witness for DOR.

(MTAB Hrg. Transcr.)

Goodspeed's Vineyard

5. Goodspeed purchased the property in 1972. (LCTAB Hrg. Transcr. 1:24-25.)

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED v. DEPARTMENT OF REVENUE

6. The 2015 property record card states that the property is 1.03¹ acres (Ex. E.) The property includes a two story dwelling of 2,804 square feet with a footprint of 1,236 square feet. (Id.)
7. An acre is 43,560 square feet, thus the dwelling's 1,236 square foot footprint is approximately 0.028 acres², or 2.7% of the property³.
8. During the Lake County Hearing Goodspeed described his background knowledge and long-term interest in vineyards and different grape varieties for winemaking. Goodspeed explained that he had been making small quantities of wine as a hobby for the prior fifteen years. (LCTAB Hrg. Transcr. 2:1-7.)
9. As he started to make plans to improve the subject property, he called the Lake County DOR office in August of 2011 to find out what the requirements were to qualify the property for agricultural classification. (Id. 2:16-25.) He testified that he was told that the only requirement was that the property must have one hundred vines planted as of January 1, 2012 and one hundred living vines when the DOR came out to inspect the property in April of 2012. (Id., 3:1-2.) The other requirement relayed to Goodspeed during the phone call was that he would have five years for the plants to mature and produce \$1,500 in annual sales revenue. (Id. 3:3-5.)
10. In 2011, Goodspeed prepared to plant a new commercial vineyard. Once he decided on the orientation of his rows, he hired an excavator to

¹ This Board cannot explain the difference between the 1.029 acres shown on the survey (Ex. C) and the 1.03 acres shown on the property record card but determines the difference is insignificant for the purposes of this opinion.

² $1,236 \div 43,560$

³ $0.03 \div 1.03$

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

clear the land and remove twelve large trees after which he had to lower the water table by installing drain tiles and rocks, and finally he terraced the property. (MTAB Hrg. Transcr. 5:16-21, 6:3-14.) By 11/16/2011 Goodspeed had planted 190 new vines. (Id. 5:6-8.) Goodspeed testified that he spent \$15,800 to plant the new vineyard. (Id. 6:10-15.)

11. Goodspeed enthusiastically described the process of how he established his vineyard, starting with how he chose the 8 different grape varieties he planted because of their proven success as cold weather varieties. (Id. 8:8-10.) Because he planned to manage the vineyard by hand, and not use tractors or autopickers, he was able to use as little as five-foot spacing between some of the rows in the vineyard, although some varieties with more aggressive foliage patterns required row spacing between eight and ten-feet apart. (Id. 15:18-24, 16:5-12.) Goodspeed next described his continuing experiments with building trellis systems that maximize each variety's production capacity given the unique growing conditions that result from the vineyard's location adjacent to the lake. (Id. 16:12-25, 17:1-20.)
12. Goodspeed completed all of this work in 2011 in order to meet the DOR's administrative deadline that he have more than 100 living vines planted before January 1, 2012 with the expectation that the DOR would come and inspect the vineyard sometime in April of 2012 in order to classify the land as agricultural for the 2012 tax year. (Id. 5:1-6.)

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

13. In 2012, the DOR granted Goodspeed provisional agricultural status designation, which gave him 5 years to comply with the statutory requirement that he produce at least \$1,500 in agricultural revenue to maintain the agricultural classification. (Ex. 1.) (The DOR grants provisional agricultural status for those crops that reasonably take more than one year to harvest a crop that can produce revenue, traditionally cherry and apple orchards, along with Christmas tree farms. (MTAB Hrg. Transcr. 64-65.)) Goodspeed's provisional agricultural land classification was renewed in 2013 and 2014. (Ex. 2, 3.)
14. In 2015 DOR denied Goodspeed's application for agricultural classification. (Ex. 4) DOR's denial was based on the passage of new rules that state DOR will not grant agricultural classification to a property with both a residence and agricultural enterprise (like Goodspeed's) that is smaller than 2 acres. (Id.)
15. Goodspeed testified that he operates his vineyard as a serious business enterprise. (LCTAB Hrg. Transcr. 5:13-15.) Goodspeed described how he got involved with three other Montana grape growers who, with help from both the local County Extension Agent and USDA representative, formed a Montana Grape Growers Winery Association, of which Goodspeed currently serves as the Vice-President. (Id. 5:23-25, 6:1-3; MTAB Hrg. Transcr. 18-19.) Goodspeed testified that there is an existing viable market for Montana grapes because Montana wine growers who want to label their wine 'Made in Montana' must use something like sixty percent Montana grown grapes while currently most Montana wines are made using grapes from Washington and

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

Oregon. (MTAB Hrg. Transcr. 20:2-10.) One of the important benefits of the association is that the meetings provide an opportunity for grape growers and winemakers to get together and establish supply chains. (Id. 19:1-25, 20:1-10.) The association also brings together growers and winemakers to collaborate on issues specific to Montana producers, and brings in national expert speakers to talk about new specific grapes engineered for cold climates that can still produce marketable wine. (Id. 6:3-24.) Goodspeed testified that the association currently has 50 members and that 82 people attended the meeting in June of 2015, including people from the Chamber of Commerce who are interested in creating a map of the local vineyards for tourists who want to visit local breweries and wineries. (Id. 7:1-15.)

16. Goodspeed testified that he would not have gone through the effort and considerable expense to establish a viable commercial vineyard if he had known that the rules qualifying the property for agricultural classification could change at any time. (Id. 7:10-4.) Goodspeed testified that if he had known his property might not qualify for agricultural classification at some time in the future he would have still planted a vineyard, but it would have been much smaller, thirty to forty vines, producing enough grapes to allow him to continue with his own winemaking and sell a few to his friends. (Id. 7:14-17.)
17. Goodspeed testified that as of the summer of 2015 he was in year three of the vineyard and had not yet produced \$1,500 in agricultural revenue. (Id. 8:4-5.) Goodspeed testified confidently that he will have no problem producing \$1,500 of agricultural revenue by year five of the vineyard. (Id. 8:12-13.) This claim was not contested by the

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

department. He introduced photographs that show a healthy looking vineyard with large clusters of grapes. (Photos 1-4.)

Rulemaking

18. One statutory requirement for agricultural land classification is that “the land is an integral part of a bona fide agricultural operation.” Mont. Code Ann. § 15-1-202.
19. DOR management analyst Bonnie Hamilton testified that although Mont. Code Ann. § 15-1-201 requires DOR to classify and assess bona fide agricultural operations, no statute defines bona fide agricultural operation. (MTAB Hrg. Transcr. 66:9-11.)
20. Hamilton testified that DOR has a general legislative grant of authority under Mont. Code Ann. § 15-1-201 to adopt rules to implement statutes. (MTAB Hrg. Transcr. 67:10-13.)

Administrative Rule Definition of Bona Fide Agricultural Operation — Mont. Admin. R. 42.20.601

21. In 2003, DOR proposed and adopted Mont. Admin. R. 42.20.601 that defined bona fide agricultural operation as “an agricultural enterprise in which the land actually produces agricultural crops defined in 15-1-101, MCA, that directly contribute agricultural income to a functional agricultural business.” 13 Mont. Admin. Register 1464 (Jul. 7, 2003); 16 Mont. Admin. Register 1888 (Aug. 28, 2003).
22. The reasonable necessity DOR claimed for the 2003 rule in the notice of proposed rule was to “define the terms used in new sub-chapter 6 of

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

chapter 20. The terms being defined are common in the agricultural field.” 13 Mont. Admin. Register 1464 (Jul. 7, 2003).

23. In 2014, DOR proposed and ultimately amended Mont. Admin. R. 42.20.601, to add a minimum acreage requirement into the DOR’s definition of bona fide such that the property total “not less than 1 acre, excluding the 1-acre site beneath a residence.” 20 Mont. Admin. Register 2628 (Oct. 23, 2014); 23 Mont. Admin. Register 2994 (Dec. 11, 2014).
24. The reasonable necessity listed by DOR in the notice of proposed amendment in 2014 was “more clearly defining ‘bona fide agricultural operation’.” 20 Mont. Admin. Register 2628 (Oct. 23, 2014). This description is inaccurate at best. The 2014 amendment does more than clarify the definition, it adds an entirely new requirement: minimum acreage.
25. The notice for both the adoption and amendment of the definition of bona fide agricultural operation state that authority to make the rules is granted by Mont. Code Ann. § 15-7-111, and that the rules implement the following statutes:
 - a. Mont. Code Ann. § 15-1-101,
 - b. Mont. Code Ann. § 15-6-133,
 - c. Mont. Code Ann. § 15-7-201,
 - d. Mont. Code Ann. § 15-7-202.

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

13 Mont. Admin. Register 1466 (Jul. 7, 2003); 20 Mont. Admin. Register 2629 (Oct. 23, 2014).

26. No statute referenced either by DOR's witnesses nor by DOR's rulemaking notices includes a minimum acreage requirement to qualify for agricultural classification as a bona fide agricultural operation.

Administrative Rule on Specialty and Unique Crops — Mont. Admin. R. 42.20.683.

27. As part of the above rulemaking in 2014, DOR consolidated several specialty crop rules under a new rule which requires that “for valuation as agricultural land . . . the vineyard consists of contiguous parcels of land totaling not less than 1 acre.” Mont. Admin. R. 42.20.683(16)(a).
28. DOR's notice described the reasonable necessity for this change: “The department proposes adopting New Rule III to reduce confusion regarding the qualifications for agricultural land classification for specialty and unique crops.” 20 Mont. Admin. Register 2612 (Oct. 23, 2014). Again, the rule's amendment does more than “reduce confusion regarding the qualifications.” It adds a new qualification: minimum acreage.
29. Hamilton testified that the one acre requirement “wasn't something new” and had been a requirement in DOR's agricultural appraisal manual. The rule change simply adopted the manual's requirement into rule. (MTAB Hrg. Transcr. 65:19-23.)
30. Hamilton could not however, provide a rationale for why the Department adopted a one acre requirement, as opposed to a one-half

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODFIELD v. DEPARTMENT OF REVENUE

acre or ten acre requirement, other than that number had been in the manual. (Id. 63:10-24, 64:1-2.)

31. The notice for the adoption of the specialty crop rule states that authority to make the rules is granted by Mont. Code Ann. § 15-1-201, and that the rules are implementing the following statutes:

a. Mont. Code Ann. § 15-7-201,

b. Mont. Code Ann. § 15-7-202,

c. Mont. Code Ann. § 15-7-203,

d. Mont. Code Ann. § 15-7-206,

e. Mont. Code Ann. § 15-7-207,

f. Mont. Code Ann. § 15-7-208,

g. Mont. Code Ann. § 15-7-209,

h. Mont. Code Ann. § 15-7-210,

i. Mont. Code Ann. § 15-7-212.

20 Mont. Admin. Register 2612 (Oct. 23, 2014).

32. None of the statutes referenced either by DOR's witnesses nor by DOR's rulemaking notices includes a minimum acreage requirement to qualify for agricultural classification.

REPORT TO THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

33. Hamilton admitted that there is no minimum acreage requirement in Mont. Code Ann. § 15-7-202(2) for parcels of land totaling less than 20 acres under one ownership. (MTAB Hrg. Transcr. 65;5-23.)

Reclassification

34. On April 30, 2015, DOR mailed Goodspeed his 2015 application for agricultural classification noting that the application had been denied due to the requirements of Mont. Admin. R. 42.20.683 and Mont. Code Ann. § 15-7-202 and 15-7-206. (Ex. 4.)
35. Amanda Bertelson, a residential agriculture appraiser with the DOR, denied Goodspeed's agricultural classification in 2015 because the property did not have one acre for a vineyard and one acre for the home site, which she testified was required by Mont. Admin. R. 42.20.683 and Mont. Code Ann. § 15-7-206 and 202. (MTAB Hrg. Transcr. 38:9-10.)
36. Hamilton testified that DOR could not grandfather in Goodspeed's vineyard because Mont. Code Ann. § 15-7-101 requires the department to maintain current all classifications. (MTAB Hrg. Transcr. 54:3-8.)
37. DOR supports its reclassification from agricultural to residential on the basis of a series of administrative rules and statutes:
- a. Mont. Code Ann. § 15-6-134,
 - b. Mont. Code Ann. § 15-7-201,
 - c. Mont. Code Ann. § 15-7-206,

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED v. DEPARTMENT OF REVENUE

- d. Mont. Admin. R. 42.20.601(7),
- e. Mont. Admin. R. 42.20.683(16)(a),
- f. Mont. Admin. R. 42.20.655.

(MTAB Hrg. Transcr. 38:9-10; LCTAB Hrg. Transcr. 12:1-23.)

- 38. DOR argues that when read together these statutes and rules require a parcel classified as agricultural to have two acres, one acre for the production of the agriculture and one acre for the home-site. (MTAB Hrg. Transcr. 63:1-8.)
- 39. Goodspeed argues that the one acre requirement for a vineyard is arbitrary. (MTAB Hrg. Transcr. 71:14-21.) Goodspeed testified that he will produce more than \$1,500 of agricultural revenue on one quarter of an acre, and thus he was denied agricultural classification based on DOR's arbitrary interpretation of statute. (Id.) Goodspeed also argues that if the DOR is going to change the requirement for agricultural classification, his property should be grandfathered in because of its prior status as agricultural. (Id. 21:1-6.)

CONCLUSIONS OF LAW

- 40. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
- 41. The Board has jurisdiction over this case. Mont. Code Ann. § 15-2-301.

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

42. "The state [tax appeal] board shall give an administrative rule full effect unless the state board finds a rule arbitrary, capricious, or otherwise unlawful." Mont. Code Ann. § 15-2-301.
43. "The decision of the state board is final and binding upon all interested parties unless reversed or modified by judicial review." Mont. Code Ann. § 15-2-302.

Grandfathering

44. Goodspeed's request to grandfather the prior classification as agricultural is not possible given the statutory mandate that DOR "maintain current the classification of all taxable lands" therefore DOR has no power to retain a lapsed classification. Mont. Code Ann. § 15-7-101.

Classification as Agricultural

45. DOR argues that its rules require a parcel containing a residence and agricultural enterprise to be at least two acres to qualify for agricultural classification. Goodspeed counters that such a requirement denies agricultural classification on arbitrary criteria.
46. "The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted." Mont. Const. art III, § 1. "The legislative power is vested in a legislature...." Mont. Const. art V, § 1.

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

47. "The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by *law*." Mont. Const. art VIII, § 3 (emphasis added).
48. "A valid and enforceable agency rule cannot exceed its enabling statute..." *Glendive Med. Ctr., Inc. v. Montana Dep't of Pub. Health & Human Servs.*, 2002 MT 131, ¶ 29, 310 Mont. 156, 49 P.3d 560.
49. "Administrative agencies enjoy only those powers specifically conferred upon them by the legislature. Administrative rules must be strictly confined within the applicable legislative guidelines. Indeed, it is axiomatic in Montana law that a statute cannot be changed by administrative regulation. We look to the statutes to determine whether there is a legislative grant of authority." *Bick v. State, Dep't of Justice, Div. of Motor Vehicles*, 224 Mont. 455, 457, 730 P.2d 418, 420 (1986).
50. When construing a statute, the reviewing body is to "determine what in terms or substance is contained in it, and not to insert what has been omitted or to omit what has been inserted." *State v. Minett*, 2014 MT 225, ¶ 12, 376 Mont. 260, 332 P.3d 235; Mont. Code Ann. § 1-2-101.
51. "In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it." Mont. Code Ann. § 1-2-102.

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODPPEED V. DEPARTMENT OF REVENUE

52. Words used in the statutes of Montana are to be construed according to the context in which they are found, and according to their normal usage, unless they have acquired some peculiar or technical meaning. Mont. Code Ann. § 1-2-106. The starting point for statutory construction is the plain language of the statute, and if the plain language is clear and unambiguous no further interpretation is required. *Vader v. Fleetwood Enterprises, Inc.*, 2009 MT 6, ¶ 30, 348 Mont. 344, 201 P.3d 139.
53. “Where a taxing statute is susceptible of two constructions, any reasonable doubt as to persons intended to be within the particular tax should be resolved against the taxing authority.” *Nice v. State*, 161 Mont. 448, 453, 507 P.2d 527, 530 (1973).

Statutes on Agricultural Classification

54. DOR must classify all taxable lands, appraise all taxable city and town lots, appraise all taxable rural and urban improvements, and maintain current such classification and appraisal. Mont. Code Ann. § 15-7-101.
55. The statute DOR relies on for legislative authorization to make the rules in question requires DOR to “administer and supervise a program for the reappraisal of all taxable property within class three under 15-6-133....” Mont. Code Ann. § 15-7-111.
56. Class 3 property includes “agricultural land as defined in 15-7-202.” Mont. Code Ann. § 15-6-133.
57. The Legislature has specified that land parcels totaling less than 20 acres are eligible for valuation as agricultural if they are “actively

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

devoted to agricultural use” and produce “not less than \$1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101.”⁴ Mont. Code Ann. § 15-7-202(2).

58. Agricultural products include fruit. Mont. Code Ann. § 15-1-101(1)(a)(i).
59. Montana Code Annotated § 15-7-201 states the legislative intent for valuing agricultural property: “Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the *productive capability* of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.” (emphasis added).
60. The Legislature has not defined bona fide, therefore this Board must determine whether the plain meaning of bona fide is clear and unambiguous requiring no further interpretation. *Vader*, ¶ 30. The dictionary defines bona fide as “1. made or carried out in good faith; sincere: *a bona fide offer*. 2. Authentic; genuine.” The American Heritage Dictionary of the English Language, fourth ed., 2000 (emphasis in original.)
61. In *Northwest Airlines, Inc. v. State Tax Appeal Bd.*, 221 Mont. 441, 445, 720 P.2d 676, 678 (1986), the Montana Supreme Court struck down DOR’s decision to tax an airline on miles flown over Montana nonstop. The Court concluded “[t]he language of the statutes expresses no intent to consider activity other than that in Montana. Construing this language in favor of the taxpayer, as we must, we find that DOR had no

⁴ Mont. Code Ann. § 15-7-202(2)(a) includes an exception for grazing land that is inapplicable here.

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

statutory authority to include nonstop flyover miles in the numerator of the apportionment formula.” *Northwest Airlines*, 221 Mont. at 445, 720 P.2d at 678.

62. As the Court found in *Northwest Airlines*, the plain language of the statute is clear that so long as land parcels smaller than 20 acres are actively devoted to agricultural use, there is one and only one criteria for classification as agricultural land: “\$1,500 in annual gross income from the raising of agricultural products.” See Mont. Code Ann. § 15-7-202.
63. Furthermore, the negative-implication cannon (*expressio unius est exclusio alterius*) requires interpreting “the expression of one thing in a statute to imply the exclusion of another.” *Dukes v. City of Missoula*, 2005 MT 196, ¶ 15, 328 Mont. 155, 119 P.3d 61. By including annual revenue but not acreage in the statute the legislature excluded acreage from consideration.
64. The Board is unable to find any statutory support for DOR’s minimum acreage requirement. The legislature neither authorized nor directed DOR to make rules requiring a minimum acreage for agricultural classification, specialty crop or otherwise, and the adoption of entirely new criteria for classification is an exercise of power constitutionally reserved to the legislative branch.
65. From the above we conclude that the legislature intended and authorized one criteria for agricultural classification of parcels smaller than 20 acres: \$1,500 in annual gross agricultural income.

Valuation of Improvements on Agricultural Land

66. DOR argues that statute requires one acre of land for the dwelling in addition to the one acre under agricultural cultivation required by the DOR's rules.

Statutes on Valuation of Improvements on Agricultural Land

Mont. Code Ann. § 15-7-206.

67. "One acre of land beneath agricultural improvements on agricultural land, as described in 15-7-202(1)(c)(ii) [residential use on agricultural land], is valued at the class with the highest productive value and production capacity of agricultural land." Mont. Code Ann. § 15-7-206.

68. DOR misreads the statute.

69. The statute simply changes the *valuation* of a part of land that is otherwise classed agricultural. The statute takes for granted that such land is still classed the same as the vineyard: agricultural. The intent of this statute is simply to impute the highest valuation for agricultural land on one acre when there is a dwelling present.

70. The use of the term "one acre of land" in the statute does not create an acreage ownership requirement, but rather delineates the extent to which the statute's effect (revaluation) applies. The one acre is not a threshold to trigger the statute but is instead a ceiling above which revaluation is not applied.

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

71. In essence, the statute imputes a uniform revaluation on one acre of agricultural classified land if any residential use exists, regardless of the parcel or dwelling's actual size.
72. For example, a 20 acre agricultural parcel with a sprawling 1 acre villa would see one acre revalued at the highest agricultural value. Similarly, a 20 acre agricultural parcel with a 100 square foot cabin would also see one acre revalued.

Mont. Code Ann. § 15-6-134.

73. Although not raised at the MTAB hearing, at the LCTAB hearing Bertleson briefly referred to Mont. Code Ann. § 15-6-134. This statute was not brought up on appeal to MTAB, and it nevertheless only applies to class four (residential) property. (LCTAB Hrg. Transcr. 12:4-14.)

*Administrative Rule on Valuation of Improvements on Agricultural Land —
Mont. Admin. R. 42.20.655*

74. Finally, the administrative rule on the subject does not support DOR's argument but rather comports with the Board's understanding and interpretation of Mont. Code Ann. § 15-7-206.
75. "An agricultural valuation will be made for each one-acre area beneath each residence(s) located on [the various types of agricultural land].... Each one-acre area beneath the residence(s) on agricultural land as stated in (1) shall be appraised according to the highest productivity value of *agricultural* land." Mont. Admin. R. 42.20.655(1) (emphasis added).

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

76. This rule explains more clearly what the statute states unartfully: up to one acre of agricultural land with a dwelling is revalued at the highest productive agricultural value. Neither statute nor rule impose a minimum acreage requirement for classification of the parcel as agricultural.

* * *

77. The record establishes that Goodspeed runs a bona fide commercial agricultural operation which will satisfy the only statutory criteria for agricultural classification: \$1,500 annual agricultural revenue when the vines reach year five and are able to produce a viable crop of grapes.

78. DOR's promulgation of Mont. Admin. R. 42.20.601(7) and 42.20.683(16)(a) unlawfully exceeded the Legislature's intent and grant of authority by adding a minimum acreage requirement where statute explicitly sets only one qualification: \$1,500 annual agricultural revenue.

79. The rules arbitrarily deny agricultural status to vineyards using modern varieties and nonmechanized growing techniques which despite their small size are capable of producing many times the statutory revenue requirement of \$1,500 annual agricultural revenue. We are unable to give DOR's rules full effect.

80. Neither Mont. Code Ann. § 15-7-206 nor Mont. Admin. R. 42.20.655, impose a minimum acreage requirement for agricultural classification

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

of properties with dwellings, but rather revalue an area up to one acre on such properties, regardless of their acreage.

81. It is not lost on the Board that without agricultural classification the land in question has a much higher tax value as residential property. Until the Montana Legislature passes laws to draw that distinction in land classification, the taxpayers have met the legal requirements under the law as it is written to be classified as agricultural, and their view, and lake frontage cannot be considered.

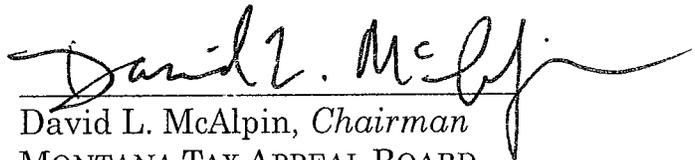
82. This Board may rule only on the issue before it and the decisions of this Board apply only to the taxpayers bringing the appeal, and not to all similarly situated taxpayers. *Sheehy v. Dept. of Revenue*, 1992 WL 137764 at 10.

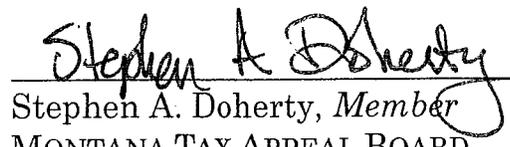
BEFORE THE MONTANA TAX APPEAL BOARD
DON GOODSPEED V. DEPARTMENT OF REVENUE

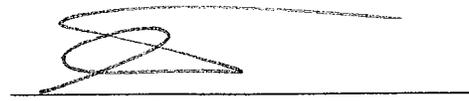
ORDER

82. Goodspeed's appeal and complaint is **granted**.
83. DOR is **ordered** to classify as agricultural the property at 19571 MT Hwy 35, Bigfork; geocode 15-3584-08-4-01-10-0000; legal description Flathead Lake Shore Tracts, S08 T25 N, R19 W, Lot 007, Port Lots 7&8, C.O.S. 2229. Because of the dwelling, one acre is to be valued at the highest productive value and production capacity of agricultural land, the remaining 0.029 acre is to be valued according to its use as a bona fide agricultural property.

Ordered March 21, 2016.


David L. McAlpin, *Chairman*
MONTANA TAX APPEAL BOARD


Stephen A. Doherty, *Member*
MONTANA TAX APPEAL BOARD


Valerie A. Balukas, *Member*
MONTANA TAX APPEAL BOARD

BEFORE THE MONTANA TAX APPEAL BOARD
DON GOOSBORN v. DEPARTMENT OF REVENUE

Notice: You are entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2).

Certificate of Service

I certify that I caused a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, and Order to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on 22nd of March 2016 to:

Don Goodspeed
19571 MT Hwy 35
Big Fork, MT 59911

Nicholas Gochis
Montana Department of Revenue
Legal Services Office
125 N. Roberts St.
P.O. Box 7701
Helena, MT 59601-7701



Lynn Cochran, Administrative Officer
MONTANA TAX APPEAL BOARD