

DEC 22, 2020

Montana Tax Appeal Board

**MONTANA DEPARTMENT OF
REVENUE,**

CASE №: PT-2019-35

Appellant,

v.

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

LEROY & PATRICIA COLES,

Respondents.

STATEMENT OF THE CASE

This case concerns the classification for tax years 2019 and 2020 of grazing land owned by Leroy and Patricia Coles in Lewis and Clark County. The Lewis and Clark County Tax Appeal Board (LCTAB) heard this matter on February 14, 2020 and found that the Coles family can graze sufficient cattle so that their land merits classification as “qualified agricultural” for tax purposes, thus benefiting from a lower tax rate. The Department of Revenue appealed this decision, and a hearing was held before the Montana Tax Appeal Board on September 30, 2020. We uphold the LCTAB’s decision.

ISSUE PRESENTED

Whether the Coles have shown that their land can support 31 animal unit months (AUM) of grazing, the minimum AUM that must be proven for a parcel that has fewer than 160 acres to qualify for agricultural classification.

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PROPERTY DESCRIPTION

The physical address of this property is 5326 Blossburg Road, Canyon Creek. The property geocode is 05-1992-28-4-01-0000, and the legal description is Section 28, Township 11 North, Range 6 West, Butler Bar Placer MS1035, Lot 54A. The assessment code is 36419 and the subject property is in neighborhood 205.552. The current assessed values for the subject property are \$21,825 for the land and \$72,980 for the improvements, for a total value of \$94,805 for the 2019-2020 tax appraisal period. Previous values for the subject property shown on the Property Record Card were \$22,070 for the land and \$64,310 for the improvements, for a total of \$86,380 for the 2017-2018 tax period.

EXHIBIT LIST

The following Exhibits were submitted by the DOR:

- a. DOR Exhibit A: Assessment Information Packet and Property Record Card 0022 through 0029;
- b. DOR Exhibit B: Montana Cadastral maps of subject property.

The Following Exhibits were submitted by the Taxpayer:

1. TXPR Exhibit 1: Various maps of subject property-8 pages;
2. TXPR Exhibit 2: Photos of fencing-2 pages;
3. TXPR Exhibit 3: MCA and ARM information-10 pages;
4. TXPR Exhibit 4: Comparison on four years and checks-5 pages;
5. TXPR Exhibit 5: photos of pastures 2019-3 pages;
6. TXPR Exhibit 6: Photos of cows in pasture 2019-4 pages;
7. TXPR Exhibit 7: Fall pasture photos with water & cows- 3 pages;
8. TXPR Exhibit 8: Soil Survey and water from Web-4 pages;

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9. TXPR Exhibit 9: Photos of seasons and water rights 2012-2019-6 pages.

The record includes all materials submitted to the county tax appeal board, the transcript of the hearing at the county tax appeal board, and additional materials submitted by the parties. §15-2-301(2)(b).

FINDING OF FACT

1. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. Mr. and Mrs. Coles submitted to the DOR an application for Agricultural Classification and received a determination letter telling them that their land did not meet the requirements to be classified as agricultural land for tax year 2019. *LCTAB Hrg. Record. Ex. 3.* The application was denied because the property did not meet required grazing animal units' months. *LCTAB Hrg. Record. Ex. 1.*
3. The Lewis & Clark County Tax Appeal Board (LCTAB) heard the appeal on October 29, 2019 in Helena. Both sides were given the opportunity to provide evidence and testimony of their positions. The County Board granted the Taxpayer's appeal. *MTAB Dkt. 1.* LCTAB stated the taxpayer presented sufficient evidence to show that the Cole's land can support the necessary AUMs necessary to qualify as Agricultural land for purposes of classifying taxable land. *Id.*
4. The DOR appealed the county decision to MTAB, based on the Department's finding that the carrying capacity for grazing of the Coles' land is less than 31 Animal Unit Months. *MTAB Dkt. 1.*

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5. This board finds that over the last four years Mr. and Mrs. Coles leased their grazing rights to a neighbor who stocked their land with roughly 62 animal unit months (AUM) on roughly 100 of their 117 acres; and that in 2019 it was closer to 69 AUM. *Taxpayers Ex. 1-9.*
6. An animal unit month, or AUM, is the grazing of one cow-calf pair, for one month. Mont. Admin. R. 42.20.601 (4)(5).
7. Mrs. Coles produced receipts proving that she and her husband, in several recent years, produced over \$1,500 of feed for the cows belonging to her ranching neighbor, Mr. Burt, who wrote them checks for grazing his cattle on their land. *Taxpayer Ex. 4.*
8. This board finds that the land in question is meadowed bottom land, and naturally sub-irrigated, meaning that the property is perpetually wet from underground aquatic springs. This was shown convincingly by way of aerial satellite maps from Google, and Mrs. Coles' own photography, showing extremely green, lush, and soaked grazing areas throughout the grazing months, in contrast to much of the surrounding rangeland that is shown to be brown and dry. *Taxpayer Ex. 1,2, 5-9.* The DOR offered no disputation of this evidence or testimony.
9. Mr. John Davis, the appraiser for the Department of Revenue, testified that under the mass appraisal formula on which the Department of Revenue relies for determining the carrying capacity of grazing land, the Coles' property has a carrying capacity of only 23 AUM. *MTAB Hrg. 01:51:35.* By statute, grazing land only qualifies as agricultural land if it has a carrying capacity at or above 31 AUM. This threshold is set by the Governor's Agriculture Advisory Committee. Mont. Code Ann. § 15-7-201. The number of AUM set by the committee is intended to be the equivalent of \$1500 of

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income, the statutory minimum income for classification as ag land in the Montana tax codes.

10. Carrying capacity is the number of animals that the DOR determines can be grazed on the land without any injurious long-term effects to the vegetation or soil. To make this determination, the Department of Revenue relies, under statute, on Montana State University, which in turn relies on data from a computer model prepared by the Natural Resource Conservation Service (NRCS), which provides a soil survey via computer mapping tools and some site surveys. Mont. Code Ann. § 15-1-101. Mont. Code Ann. § 15-7-202(c)(3), Mont. Admin. R. 42.20.603, *MTAB Hrg. Transcr. 01:52:40*.
11. The NRCS has never sampled the Coles' soil. The nearest soil sample occurred 2.5 miles away, in which Mr. Davis testified is a non-irrigated parcel. *MTAB Hrg. Transcr. 01:49:50*.
12. Mr. Davis acknowledged that it is possible for a parcel to "slip through the cracks," meaning the NRCS software might not accurately determine the soil content or reflect sub-irrigated conditions for every parcel. *MTAB Hrg. Transcr. 02:48:40*.
13. No DOR employee has ever conducted a site visit to the subject property, although Mr. Davis said that he recently "found himself nearby" while driving on Blossburg road and viewed the property from a distance. *MTAB Hrg. Transcr. 02:14:00*. Mr. Davis of the DOR testified that whether the property is sub-irrigated is something that he cannot determine, because his job is to perform mass appraisal. *MTAB Hrg. Transcr. 02:03:30*.
14. Ms. Bonnie Hamilton, management analyst at the DOR's property assessment division, said that the Coles, by virtue of grazing 69 AUM, have only shown a *stocking rate*, and not a *carrying capacity*, of 69 AUM. *MTAB Hrg. Transcr. 02:19:49*. Stocking rate is the

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number of cow-calf pairs that are *actually grazed*, whereas carrying capacity is the number that is determined *can be grazed*, according to the NRCS soil survey for the land, without injurious effect to the land. Mont. Admin. R. 42.20.601(8), *Montana Department of Revenue, Montana Agricultural Land Classification and Valuation Manual 2019-2020*, 2019, Pg. 24.

15. Ms. Hamilton acknowledged that if in fact the Coles' property is adequately sub-irrigated, that such information could not be gathered from the NRCS mapping software, and further, that site visits are not made for purposes of classification but rather valuation only. *MTAB Hrg. Transcr.* 02:22:30, 02:23:55. Counsel for the Department further acknowledged in his closing statement that it is possible the NRCS maps could be incomplete. *MTAB Hrg. Transcr.* 02:39:35.
16. The Department may have suggested to Mrs. Coles, at some point in the review process, that she might retain a soil scientist or other specialist, who could produce a detailed study and report of the soil and present it to the DOR during the informal review period. *MTAB Hrg. Transcr.* 02:08:00, 02:24:35. The Department is unable to state conclusively that such a recommendation, or the consequences of not retaining such an expert, was in fact clearly made to the Coles. *MTAB Hrg. Transcr.* 02:24:35.
17. Mrs. Coles contacted the NRSC to request a soil survey of her property and was advised that the federal employee was not authorized to conduct this sort of consulting in addition to normal duties. *MTAB Hrg. Transcr.* 01:43:15.

JURISDICTION AND STANDARD OF REVIEW

18. The Montana Tax Appeal Board (Board) is an independent agency not affiliated with the Montana Department of Revenue (DOR). Mont. Code Ann. § 15-2-301.

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19. The Taxpayers filed a timely appeal of the LCTAB decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. Mont. Code Ann. §15-2-301(1)(b).
20. This Board hears CTAB appeals de novo. *CHS Inc. v DOR*, 2013 MT 100, 299 P.3d 813 (2013). “A trial de novo means trying the matter anew, the same as if it had not been heard before and as if no decision had been previously rendered.” *McDunn v. Arnold*, 2013 MT 138, 303 P.3d 1279 (2013). As such, this matter will be reviewed without merit to the DCTAB hearing and subsequent decision. *Id.*
21. The Board must determine, based on a preponderance of the evidence, whether the Department of Revenue accurately properly classified the property. As a rule, the Department’s appraisals are presumed to be correct and the taxpayer must overcome this presumption, but the Department of Revenue also bears a minimum burden of providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995); *Western Airlines, Inc., v. Michunovich*, 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).

CONCLUSIONS OF LAW AND BOARD DISCUSSION

22. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
23. We find that the Coles’ property meets the criteria for classification as qualified agricultural land. The Coles are required to show by a preponderance of the evidence that the Department’s decision was erroneous, *Dep’t of Revenue v. Burlington N. Inc.*, 169 Mont. 202, 214, 545 P.2d 1083, 1090 (1976), *Farmers Union Cent. Exch., Inc. v.*

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Dep't of Revenue of State of Mont., 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967), and the Coles produced convincing testimony and evidence, virtually none of which was refuted by the Department's witnesses or evidence, that their land is sub-irrigated, extremely lush and wet during the grazing months, and capable of sustaining 31 AUM required to be classified as qualified agricultural land.

24. The Department is defending the carrying capacity determination simply by pointing to the result of the mass appraisal, the NRCS soil survey, without any regard for on-the-ground facts about the Coles' land. The Department is entitled to a "presumption of correctness if its decisions are pursuant to an administrative rule or regulation, and the rule or regulation is not arbitrary, capricious or otherwise unlawful." But the DOR cannot rely entirely on the presumption in its favor and must present "a modicum of evidence showing the propriety of their action." *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7. Mr. and Mrs. Coles overcame this presumption with their evidence and testimony and have shown that their land can carry cattle at a rate higher than 31 AUM, which is the threshold at which the Department must classify the land as "qualified agricultural land." Mont. Admin. R. 42.20.620(9)(a).
25. Furthermore, as a matter of basic appraisal practice, Mr. Davis characterized the Department's approach as a "mass appraisal" which builds a computer model of grazing quality based everything except, arguably, the most important data item: the soil, grass and the irrigating profile of the specific land in question. Ms. Hamilton referred to carrying capacity that the NRCS computer spit out as "scientifically supported values," but we find it impossible to believe that this is the case, given what the Coles have shown us, and given that their presentation was generally unrebutted by the Department. Mr. Davis further described the need for the Coles to provide "scientific data" to make their case in the form of a paid scientist. But Mr. Davis also admitted that he did not

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visit the property even when he was at the property entrance, and he stated that he had no idea not only whether the Coles' property was sub-irrigated, but whether any of the neighboring properties were either. The Department has never found that the Coles have grazed their land in a way injurious to soil or vegetation, and we find nothing in statute or regulation which requires a landowner to hire a soil scientist to rebut a classification of grazing land based on the NRCS mapping data. In fact, under Montana law, the Department is required to take input of "any information provided by the taxpayer" including but not limited to local climate data. Mont. Code Ann. § 15-7-103(3). What the taxpayers provided here was ample to overcome the presumption that a Department's classification of land is correct. Our opinion is that the LCTAB was correct, and that Coles' property can support at least 31 AUM.

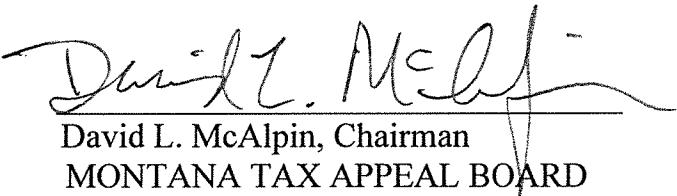
26. Finally, we recognize the DOR is not equipped to perform fee appraisal style analysis of every agricultural application they receive as they conduct their work under standards of mass appraisal. However, it is the role of this Board to arbitrate the testimony and evidence presented at hearing before us. We have found that the Taxpayer presented a variety of evidencary documents and credible testimony which overcame the DOR presumption of correctness. This is an occasion the tax appeals system is designed for, when the standard methods of mass appraisal somehow misses the facts of the situation. In this case the facts presented show the land produces more than \$1500 per year of value so we find for the Taxpayer.

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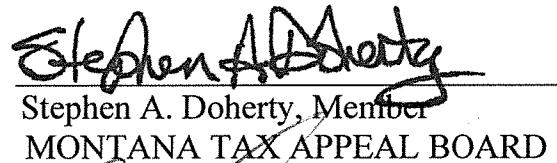
ORDER

27. The Montana Department of Revenue's appeal in this matter is DENIED, and the Department is ordered to classify the subject property as Agricultural Land.

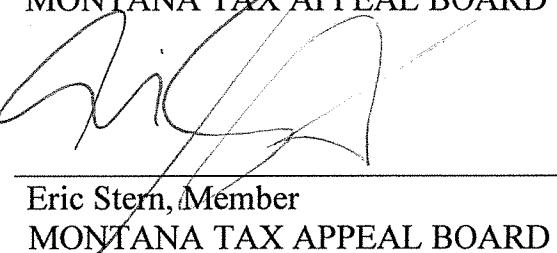
Ordered December 22, 2020



David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD



Stephen A. Doherty, Member
MONTANA TAX APPEAL BOARD



Eric Stern, Member
MONTANA TAX APPEAL BOARD

Notice: You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. The Department of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. Mont. Code Ann. § 15-2-303(2).

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Certificate of Service

I certify that I caused a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, Order and Opportunity for Judicial Review to be sent by email and by United States Mail via Print & Mail Services Bureau of the State of Montana on December 22, 2020 to:

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