

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

EDWARD & JOSEPHINE)	
DONLAN ESTATE:)	
c/o DON OLIVER,)	
)	
Appellant,)	DOCKET NO.: PT-1998-9
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on August 4, 1999 in the City of Thompson Falls, 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.

Don Oliver is the party in interest and presented evidence and testimony in support of the appeal. The Department of Revenue (DOR), represented by Staff Forester Randy Pearson and Appraiser Edward Thompson, presented testimony in opposition to the appeal. Testimony was presented and exhibits were received. 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:

FACTUAL BACKGROUND

- The property which is the subject of this appeal is described as follows:

Plat D1, Certificate of Survey #1329 (45.04 acres), and Plat D2, Certificate of Survey 1329 (1.82 acres). Both parcels are in Section 16, Township 21, Range 29 West, County of Sanders, State of Montana (Assessor Code - 5845).

- Approximately at the turn of the century, the Montana Power Dam at Thompson Falls was constructed and an easement for the right to flood was established. This property was one of many that we affected.
- Depending on the water level of the Clark Fork River, the subject property is either island property or riverbed.
- In 1994, it was made apparent to the DOR that the subject property was erroneously omitted from the Sanders County tax rolls. The last owners of record were the Donlans, now deceased. The property was placed in the Donlan Estate.
- Mr. Oliver became the party in interest to this property through the tax deed process in 1995. He received an "Assignment of Tax Sale Certificate" on July 18, 1995 from the Sanders County Treasurer.
- In 1995, the DOR put the subject property back on the tax rolls and it was determined to be class 4, commercial

property, with a market value of \$54,049.

- Mr. Oliver appealed the DOR's value determination of \$54,049 in 1995. The State Tax Appeal Board ordered the property be classified as class 10 timber land, PT-1995-10, Edward and Josephine Donlan Estate v. Department of Revenue.
- Neither the taxpayer nor the DOR appealed that decision to the District Court.
- In 1997, the DOR began a new reappraisal cycle and classified the property as non-qualified agricultural land, class 3. That designation carries with it an assessed value of \$1,557.
- On May 19, 1998, Mr. Oliver filed an appeal with the Sanders County Tax Appeal Board requesting a value of \$0 to \$500, stating:

Classification of land. In Sept. 96 the Montana State Tax Appeal Board ordered this property be classified as class 3 timberland. The DOR has changed this classification to increase the tax over 100%.

- On August 13, 1998, the Sanders County Tax Appeal Board denied Mr. Oliver's appeal, stating:

The classifications are set by statute.

- On September 8, 1998, Mr. Oliver appealed that decision to the State Tax Appeal Board, stating:

This property does not meet the description of forest land as described in 15-44-102 and 15-44-

104. As per 15-44-104 the land or timber should be reduced by 50% as a result of flooding.

TAXPAYER'S CONTENTIONS

Mr. Oliver referred to the Montana Code (MCA), *Chapter 44, Forest Lands Tax Act, 15-44-101 and 15-44-105*. This property meets this definition of forestland. The timber on this property was harvested at one time, which is evidenced by the presence of stumps that are visible when the water is lowered to its normal level. Mr. Oliver further contends that the value should be further reduced by 50% in accordance with *section 15-44-104, MCA. Reduction in valuation on forest lands for trees destroyed by natural disaster*.

The value determined by the DOR is entirely arbitrary and is illustrated by the DOR's own admission of error in appraising the property as commercial at a value of \$54,049 in the previous appraisal cycle. The property was later reclassified to timberland by the State Tax Appeal Board and the value was reduced (PT-1995-10). Mr. Oliver contends it is reasonable to leave the property classified as timberland.

DOR CONTENTIONS

The DOR contends the property does not meet the requirements to qualify the property as class 10 timberland, pursuant to the administrative rules of Montana 42.20.160 through 42.20.164. Exhibit H is the guidelines used by DOR appraisers in determining the proper property classification.

Mr. Pearson testified "the valuation of land is a little

bit different than the valuation of real improvements. When you are dealing with the valuation of land, not all land is valued at market. Some types of property are valued at productive capacity. So you have two sides of the issue here, you must first determine the property classification for land before you can determine the valuation for the land. This particular procedure deals strictly with classification of land. When we look at any given parcel of land, the first question we ask ourselves, does this parcel in this ownership meet the eligibility requirements as forest land? If it meets those eligibility requirements, then that land is classified as forest land. If it does not meet those eligibility requirements, we move on to step two. Step two we ask ourselves does this parcel in this ownership meet eligibility requirements as agricultural land? If it meets those eligibility requirements as agricultural land, then we will classify it as agricultural land. If it does not meet those requirements as agricultural land then we move on to step three. Step three we ask ourselves does it meet the requirements as non-qualifying agricultural land? If it does, then we will place it in that category. If it does not we move onto our last step which is to value at market." Based on this process, it was determined that the property be classified as Class 3, non-qualifying agricultural land. 15-20-152 MCA, Valuation of nonagricultural land from 20 to 160 acres.

Mr. Thompson and Mr. Pearson testified that they did not agree with this Board's decision in PT-1995-10 to reclassify the property as class 10 timber land. Mr. Thompson testified ". . . we were very close to the end of our cycle, State Tax Appeal Board

chose to stand by their decision. At this point in time, we chose not to take it to Court because of the, it wasn't worth the cost basically and we were going to be able to be in a new cycle within a short period of time and we could rectify the error at that time . . .". The issue of non-qualifying agricultural land was never raised during the appeal in the previous appraisal cycle. It was Mr. Thompson's opinion that if the property had been classified as non-qualifying agricultural land, it's like there would not have been an appeal filed in 1995.

Mr. Pearson contends that, because the subject property and Mr. Oliver's adjacent property are not in the same ownership, it must be assessed separately. Therefore, the subject property, at between 20 and 160 acres in size, is classified as non-qualifying agricultural (15-6-133, MCA and 15-7-202, MCA).

BOARD DISCUSSION

Mr. Oliver owns 272 contiguous acres of land directly southwest of the property under appeal (exhibit F). The DOR testified that this adjacent property is classified as Class 10 timberland. The DOR, in the 1995 appeal, argued for a classification of commercial land, class 4, for the subject property. The Board was never presented an argument in favor of non-qualifying agricultural land until this current appraisal cycle.

Board exhibit #1 is titled "Process for obtaining an assignment of a tax sale certificate and issuance of a tax deed", and, in pertinent part, states the following:

2. **Sale of tax lien.** Each June the county treasurer

publishes a notice that it will conduct a tax sale (15-17-122 MCA). The purpose of the tax sale is to sell the tax lien. The sale is usually conducted in the middle part of July. The purchaser at the tax sale receives a "Tax Sale Certificate." If no person purchases the tax lien, the county is considered the purchaser and the tax sale certificate is issued in the county's name, (15-17-214 (1), MCA).

3. **Redemption.** The property may be redeemed at any time within the redemption period. The redemption may be made by the owner, the holder of an unrecorded or improperly recorded interest, the occupant of the property, mortgagee, vendor of a contract for deed or the successor in interest, lienholder or other person who has a properly recorded interest in the property. The redemption period for real property is thirty-six (36) months. The running of the redemption period begins with the first date of the tax sale.

5. **Notice of issuance of a tax deed.** Not more than sixty (60) days prior to, and not more than sixty (60) days following the expiration of the redemption period, a notice must be given to the owner of the property, occupant of the property, and mortgagee/vendor of a contract for deed. Persons who have a properly recorded interest in the property. Notice must be given not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed. The notices must be sent by certified mail . . . The notice must be published once a week for two consecutive weeks in the official newspaper of the county.

Mr. Pearson testified that when the redemption period has expired and the notification process is complete, the property will be incorporated with the taxpayer's adjacent 272 acres and classified as agricultural wasteland. The redemption period will expire in the year 2000. It is apparent that the tax deed process, with its five year redemption period and public notification, is in place to

protect an interested party in the property. It has a punitive effect upon the taxpayer in the present appeal.

The Board has difficulty understanding the DOR's reasoning as to the different ownership issue. It appears the DOR's contention is the language in 15-6-133, MCA. *Class three property - description - taxable percentage. 1) Class three property includes: . . . (c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202 (1).* (emphasis supplied.)

In researching the legislative intent and change in the law, 15-6-133 MCA (c) *parcels of land of 20 acres or more but not less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202 (1). The land may not be devoted to a commercial or industrial purpose . . .*, was added to the Montana Code Annotated as a result of House Bill 643 from the 1993 Legislative session. The sponsor of House Bill 643 testified before the House Taxation committee, *"this bill establishes a recreational property tax which would be imposed on ranch or farm land that is being used primarily as a playground for out of state hunters and fisherman.*

The bill specifies that land over twenty acres not used predominantly for agricultural purposes will be subject to the full 3.68% (sic) assessment. Final determination of land use will be made from the County Assessor."

It's apparent the only logical reason the taxpayer would own this property is that it could adversely affect his adjacent 272 acres if someone else owned it. If Mr. Oliver didn't have the 272 acres, why would he have any interest in obtaining the subject property?

The Board, in its prior cycle decision, ordered this property to be valued consistently with the taxpayer's adjacent 272 acres. By doing so, the Board did not consider this property and the adjacent 272 acres to be in separate ownerships. In the Board's view, Mr. Oliver is the owner of this property and has portrayed himself as the owner by going through the tax deed process along with paying the real estate taxes. The assessment notices and tax notices have been sent to Don Oliver. The DOR has not illustrated to the Board that Don Oliver is not the owner of the subject property and by the DOR's own admission when the "redemption period" is satisfied, the property will be valued as agricultural Grade 6 wasteland.

CONCLUSIONS OF LAW

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

2. The subject property meets the definition of agricultural land. *15-7-202, MCA. Eligibility of land for valuation as agricultural.*

3. The subject property is agricultural land, *ARM 42.20.141 Agricultural land.*

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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 Sanders County by the Assessor of that county at the 1998 tax year value consistent with the determination of the assessed value of the agricultural, Grade 6 wasteland. The appeal of the taxpayer is therefore granted in part and denied in part and the decision of the Sanders County Tax Appeal Board is modified.

DATED this 17th day of September, 1999.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

JERE ANN NELSON, Member

JAN BROWN, 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 20th day of September, 1999, 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:

Don Oliver
249 Cherry Creek Road
Thompson Falls, Montana 59873

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

Edward R. Thompson
Appraisal Supervisor
Sanders County Courthouse
Thompson Falls, Montana 59873

Doris Grimm
Chairperson
Sanders County Tax Appeal Board
P.O. Box 875
Thompson Falls, Montana 59873

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter.
§15-2-302, MCA and §77-1-208, MCA .

2. **§77-1-208, MCA. Cabin site licenses and leases--method of establishing value.** (1) The board shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on appraisal of the cabin site value as determined by the department of revenue... The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustments as a result of phasing in values. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, Chapter 2. (Emphasis supplied).
3. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967).)
4. The Board concludes that the Department of Revenue has properly followed the dictates of **§77-1-208 (1), MCA**, in assigning a market value to the subject property for lease fee purposes.
5. The appeal of the appellant is hereby denied and the decision of the DOR is affirmed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall remain on the tax rolls of Mineral County by the local Department of Revenue office at the 2000 tax year value of \$23,000, as determined by the Department of Revenue and affirmed by this Board.

Dated this 23rd day of October, 2001.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

JERE ANN NELSON, 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 23rd day of October, 2001, 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:

Ellen Basque
c/o Marc Basque
H 77 Box 87
Dixon, Montana 59831-9601

Office of Legal Affairs
Department of Revenue
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Attn: Joyce Weaver
Mineral County Appraisal Office
County Courthouse
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Attn: James Fairbanks
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Department of Revenue
2681 Palmer
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Marvin Miller
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DONNA EUBANK
Paralegal

