BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

CAROL LEE HEIDECKER, Appellant, vs. THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, Respondent.	)	DOCKET NO.: PT-2009-141 FACTUAL BACKGROUND, CONCLUSIONS OF LAW, ORDER, & OPPORTUNITY FOR JUDICIAL REVIEW

Robert Heidecker, as personal representative of the estate of Carol Lee Heidecker (Taxpayer), appeals from the decision of the Department of Revenue (DOR) reclassifying 30 parcels of the Heideckers' land in the Bridger Lake Meadows Subdivision north of Bozeman as class four residential property. Taxpayer seeks the restoration of the agricultural classification that was previously assigned to the property. Taxpayer was represented at the hearing before this Board by Michael Green and Wiley Barker, attorneys with Crowley Fleck PLLP, and the DOR was represented by Amanda Myers, Tax Counsel, Mark Olson, Area Manager, and Lonnie Crawford, Appraiser.

The Board having fully considered the testimony, exhibits and all matters presented to this Board finds and concludes the following:

Issue

The issue before this Board is whether the Department of Revenue determined an appropriate classification for the subject properties, or more specifically, whether the subject properties qualify for agricultural valuation.

Summary

Carol Lee Heidecker is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board reverses the decision of the Gallatin County Tax Appeal Board which held that the property is appropriately classified as class 4 property.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter.
2. The subject properties are 30 vacant lots in the Bridger Lake Meadows subdivision, 3.5 miles north of Bozeman, totaling about 30 acres. Two other lots with older homes on them are part of the subdivision but are not included in this appeal. In addition, 201 acres of agricultural property are part of the Taxpayer's property, contiguous to the lots at issue, but not part of this appeal. (DOR Letter of Oct. 4, 2011 to Mr. Heidecker.)
3. In the 2009 reappraisal, the lots were valued as vacant residential properties rather than the agricultural classification they had been under previously. (DOR Exh. B, Property Record Cards.)
4. Taxpayer filed a request for an informal review stating that "Nothing has changed on the land or its usage. The land is still being used for agricultural purposes and should be taxed accordingly." (DOR Exh. C, Form AB-26.)

5. The DOR denied the request. "The covenants for the lots state each and every one of the lots shall be used for private residential purposes only. There will be no value change for 2009 and 2010, the lots will remain tract land." (DOR Exh. C, Sept. 7, 2010 letter from DOR to Robert Heidecker.)

6. Taxpayer appealed to the Gallatin County Tax Appeal Board (CTAB), again stating that the land "should remain agricultural according to its use." (DOR Exh. D, Property Tax Appeal Form.)

7. The CTAB denied the appeal, stating "The appellant's land in the platted subdivision meets at least 3 of the criteria for a subdivision and therefore cannot be considered agricultural land. The lands surrounding the parcels are still deemed to be agricultural." (DOR Exh. D, Property Tax Appeal Form.)

8. Taxpayer brought this appeal to the Board, stating: "The land classification was not changed back to agricultural as provided by Montana Law MCA 15-7-202(1)(a) and MCA 15-7-202 (4). Further, Montana Administrative Rules 42.20.156 and 42.20.606 do not support the DOR's change from agricultural to residential." (DOR Exh. D, Appeal Form)

9. During a hearing before this Board, both parties presented testimony and evidence.

10. Robert and Carol Heidecker purchased the land as a working dairy farm, and gravel pit prior to 1980, and they have resided in one of the two houses on the farm since then. Mr. Heidecker's uncle resided in the other. The dairy operation ceased shortly after the purchase and the land has been rented out continuously for grain and hay production. (Testimony Heidecker.)

11. Title to the land was transferred to Carol Heidecker prior to her death. Robert Heidecker serves as personal representative for the estate. (Testimony Heidecker.)

12. The land was platted for possible subdivision and approved by the County in 1995 when the uncle's failing health raised the possibility of a partial sale. The uncle's house and lot were sold after his death to Linda and Jerry Crisp but none of the platted lots have ever been sold or offered for sale. (Testimony Heidecker.)

13. The subdivision approval required that a fill site for fire protection be added to the site, as well as paved roads. A gravel quarry on the property was filled with water and a hydrant installed for fire protection. Roads had already been installed for the gravel operation. (Gallatin County Findings of Fact and Order, March 29, 1991; Testimony Heidecker.)

14. Covenants adopted by Heideckers at the time of the subdivision state that the land is to be used only for private residential single family dwellings. (Exh. 3, p. 12, §2.)

15. The covenants also prohibit the keeping of animals, such as horses and cattle, for commercial purposes. (Exh. 3, p. 13, §6.)

16. In 1996, the Heideckers inquired about whether continued agricultural use was permitted by Gallatin County Subdivision regulations and were told that no provisions barred such use. (Exh. 5, April 10, 1996, Letter from Belgrade City-County Planning Office.)

17. The Heideckers rented the land to Steve and Jeff Toohey to raise grain and hay in exchange for one-third of the proceeds and have filed farm operating plans with the Gallatin County FSA. (Exh. 6.) That arrangement continues to this day. (Testimony Heidecker.)

18. Mr. Heidecker amended the covenants on Nov. 9, 2010 to permit the use of the lots for "agricultural, residential and wildlife purposes only. Only small grains, hay, and wildlife feed plots may be seeded. No other use shall be permitted. . ." The amendment was agreed to by the Crisps, the only other residents of the subdivision. (Exh. 4.)

19. Mark Olson, Area Manager for the DOR, testified that parcels were reclassified as residential because of two subsections in the statute defining agricultural land. Section 15-7-202(4) states:

> Parcels that do not meet the qualifications set out in subsections (1) and (2) may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

Section 15-7-202(5) states:

> Land may not be classified or valued as agricultural land or nonqualified agricultural land if it has stated covenants or other restrictions that effectively prohibit its use for agricultural purposes.

20. Mr. Olson also cited regulations promulgated by the DOR in ARM 42.20.156 that define the criteria for changing the classification of agricultural land if it is part of a platted subdivision and contains three or more of the following physical site improvements:

> (i) a city or community sewer system;(ii) a city or community water system; (iii) street curbs and gutters; (iv) a paved or all-weather gravel road that meets county standards; (v) a storm sewer system; (vi) underground or aboveground utilities that may include gas, electricity, telephone, or cable television; (vii)streetlights; (viii) a fire hydrant; (ix) landscaping developed for the aesthetic benefit or security of all the landowners;

The subject properties, he testified, meet four of these criteria, and therefore, fail the agricultural definition under subsection (4). The subdivision has paved roads, utilities, a fire hydrant and landscaping. (Exh.

A.) Photos were submitted showing the roads, utility installations and the fire hydrant fill point. (DOR Exh. I.)

21. Mr. Olson also testified that the covenants in force at the time of the reappraisal limited the land use to residential, so that the properties also failed under subsection (5). (Testimony Olson.)

22. Taxpayer testified that the lots do not have utilities, except for the two pre-existing houses, and presented in evidence a bid he received from Northwest Energy to install utilities to the subdivision lots. (Exh. 7.) The fire hydrant has been decommissioned at the request of the fire department because the annual testing caused problems to their equipment due to leeches from the pond clogging the pumps. He also disputed the landscaping, saying that other than planting small trees randomly around the property to provide wildlife shelter, he had not installed any such improvements. The central road also existed prior to the subdivision, as it serviced the gravel pit.

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.)
2. It is the duty of the department of revenue to accomplish the classification of all taxable lands. (§15-7-101(1)(a), MCA.)
3. It is the duty of the department of revenue to implement the provisions of 15-7-101, 15-7-102, and 15-7-103 by providing for a general and uniform method of classifying lands in the state for securing an equitable and uniform basis of assessment of lands for taxation purposes. (§15-7-103(1)(a), MCA.)

4. All lands must be classified according to their use or uses. (§15-7-103(2), MCA.)
5. The legislature has directed that bona fide agricultural land be classified and assessed at its productivity value. (§15-7-201(3), MCA, et seq.)
6. Under §15-7-202, MCA, land can qualify as class three agricultural under three different tests. Under subsection (1)(a) land or contiguous parcels of land totaling 160 acres or more under one ownership is presumed agricultural, if none of the parcels are devoted to residential, commercial or industrial use. Under subsection (1)(b) land or contiguous parcels of land under one ownership totaling more than 20 acres but less than 160 acres is agricultural if actively devoted to agriculture and producing $1,500 per year in income. Under subsection (2) land totaling less than 20 acres which is devoted to agricultural use and produces $1,500 income, with some additional qualifications not relevant here, can also be classified agricultural. Those properties totaling less than 160 acres are considered to be "nonqualified agricultural land" and are taxed at seven times the rate of qualified agricultural land. (§15-6-133(1)(c), MCA.) Actively devoted means "land primarily used for raising and marketing products that meet the definition of agricultural in §15-1-101". Class three property is valued according to its productivity.
7. Class four property includes vacant residential lots and vacant commercial lots, which are valued according to their fair market value. (§§ 15-6-134(1)(f)(iv) and (g)(ii), MCA.)
8. The DOR promulgated a rule which states that the Department shall change the classification and valuation of land from class three, as

defined in § 15-6-133, MCA, to class four, as defined in § 15-6-134, MCA, when:

> (a) the land contains covenants or other restrictions that prohibit agricultural use or the cutting of timber, other than that required as part of a timber management plan or a conservation easement;
> (b) the agricultural land does not meet the eligibility requirements in 15-7-202, MCA; (ARM 42.20.156(1).)

9. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (§15-2-301(4), MCA.)

Board Discussion, Findings of Fact and Conclusions of Law

This Board must determine whether the DOR set an appropriate classification for the subject properties as tract land (class 4) rather than agricultural land (class 3.) The Board has authority to hear evidence, find the facts, apply the law and arrive at a proper classification for the subject properties.

As a general rule, the appraisal and classification of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The Department of Revenue should bear a certain 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).

The Legislature has made clear its intent that bona fide agricultural properties must be protected from the influences of market speculation in stating that agricultural land "be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes." (§15-7-201) Further, that section and other sections of law state that agricultural land must be classified according to its use.

The Department did not dispute the Heideckers' evidence at the hearing that the land is actually being used to produce agricultural crops, alfalfa and hay, but claims that the fact of subdivision by the owners prevents it from being treated as agricultural. This argument was the reason for the reclassification and the reason given for denying the request for informal review. (EP 5.)

We find the Department's change in classification is in direct conflict with the statutory intent. This change in the classification seems to impose the very "urban influences" and "speculative purposes" the statute seeks to avoid and fails to classify the land according to its use. It also ignores the fact that the language of §15-7-202(4), MCA, (mentioning subdivision), upon which the DOR relies, begins with the limitation that it applies to "parcels that do not meet the qualifications set out in subsections (1) and (2)." Those qualifications (for agricultural classification) are that contiguous parcels under one owner total more than 160 acres or, if less than 160 acres, be actively devoted to agricultural use. The subject property meets both tests because, in the aggregate, it totals 240 acres, less a few acres for the two residences on the property, and it is actively devoted to agricultural use. The subdivision of the land, therefore, is not relevant to its classification because subsection (4), by its own terms, does not apply to the subject property.

Further, we question the application of the administrative rule promulgated by the Department. We find the evidence demonstrated that the land does not meet any three of the criteria set out in the regulations (See EP 19) necessary for subdivision treatment as there is no longer a fire hydrant, at the request of the fire department, and there are no utilities to the lots. It is also worth noting that none of the lots have ever been sold or offered for sale and, without remedying the fire hydrant problem, cannot be sold in future according to the terms of the county's subdivision approval.

The Department further claims the restrictive covenants adopted by the Heideckers in creating the subdivision "effectively prohibit its use for agricultural purposes." Covenants are not statutes or regulations imposed by a governmental authority. They are agreements between neighbors to use or not use land in certain ways and are enforceable only by those neighbors. The only neighbors the Heideckers have are the Crisps who bought the other house which predated the subdivision. They have never objected to the agricultural use of the surrounding acres. They specifically agreed when the covenants were amended to permit agriculture. Most importantly, the fact that the Heideckers have continuously raised agricultural crops on the land for the 14 years between the adoption of the first set of covenants and the 2010 amendment is clear proof that the covenants have not "effectively prohibited" them from using it for agricultural purposes. Clearly, the requirements of §15-7-202(5), MCA are not met and the land cannot be disqualified from agricultural classification by the covenants.

We note, however, that the language of the regulations (ARM 42.20.156(1)(a)) under this section refer to covenants that "prohibit" which is a more stringent test than the "effectively prohibit" contained in the statute. The legislative language is controlling in this case, and we note that

the administrative rule appears to be significantly more expansive than the controlling statute.

The decision of the Gallatin County Tax Appeal Board is reversed and the Department is ordered to restore the agricultural classification to the subject properties.

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties shall be entered on the tax rolls of Gallatin County under an agricultural classification, as determined by this Board.

Dated this 6th day of December, 2011.

BY ORDER OF THE
STATE TAX APPEAL BOARD

/s/_____
KAREN E. POWELL, Chairwoman

(S E A L) /s/_____
DOUGLAS A. KAERCHER, Member

/s/_____
SAMANTHA SANCHEZ, 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 6th day of December, 2011, 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:

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