

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

JOHN RICHARDS,

Appellant,

-vs-

THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA,

Respondent.

)
) DOCKET NO.: PT-2011-12
)
)

) FACTUAL BACKGROUND,
) CONCLUSIONS OF LAW,
) ORDER and OPPORTUNITY
) FOR JUDICIAL REVIEW
)
)
)

Statement of Case

John Richards (Taxpayer) appealed a decision of the Missoula County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of his property identified as 55 acres in Section 5, Township 14 North, Range 14 West, C.O.S. 5720, Parcel 2, less Tract 2A, C.O.S. 6049, Missoula County, State of Montana. The Taxpayer argues the DOR overvalued the property for tax purposes and he seeks a reduction in value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on July 24, 2012, the Taxpayer represented himself, providing testimony and evidence in support of the appeal. Tracy Sherron also testified on behalf of the Taxpayer. The DOR, represented by Amanda Myers, Tax Counsel, Candace Jerke, Commercial Appraiser, and Frank McCall, Agriculture and Forest Management Analyst, presented testimony and evidence in opposition to the appeal.

The Board having fully considered the testimony, exhibits, post-hearing filings, and all matters presented, finds and concludes the following:

Issue

The issue before this Board is whether the Department of Revenue erred in valuing the subject property for tax purposes for tax year 2011.

Summary

John Richards is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board upholds the decision of the Missoula County Tax Appeal Board.

Evidence Presented

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, verbal and documentary.
2. The subject property is 55 acres with the following legal description:
Land only in Section 5, Township 14 North, Range 14 West, C.O.S. 5720, Parcel 2, less Tract 2A, C.O.S. 6049, Missoula County, State of Montana. (DOR Exh. B.)
3. For tax year 2011, the DOR appraised the subject land at a value of \$258,647. (DOR Exhs. A & B.) The improvement values are not at issue in this matter.
4. The Taxpayer filed a Request for Informal Review (AB-26) on June 13, 2011, asking for an informal review meeting because "This is still used as grazing land other than 1 AC Farmstead (Trailer House located on this parcel) (55 acres total). I believe this is retaliation for my previous county tax appeal and state tax appeals – you know it is grazing!!" (Appeal Form.)
5. The DOR reduced the land value to \$211,829 by letter dated September 16, 2011. (DOR Exh. A.)
6. The Taxpayer filed an appeal with the CTAB on November 11, 2011.

7. The Missoula CTAB heard the appeal on November 22, 2011, and upheld the DOR land value for the subject property. (Appeal Form.)
8. The Taxpayer appealed to this Board on December 1, 2011, stating:

“The use of the land and inconsistencies of D.O.R. statewide appraisals of gravel pits vs. use & values are astronomically higher & not representative of market values of this land.”
(Appeal Form.)
9. The Board held a hearing in the matter and both parties presented evidence relating to the gravel permit.

Gravel Pit Permit

10. DOR discovered the gravel pit when the appraiser inspected the property for a different issue. At that time, all of the subject 55 acres were classified as agricultural land. (Testimony Jerke.)
11. After reviewing the permit, DOR noticed that the permit authorizes the mining of 22 acres. Based on the permit, DOR reclassified 22 acres of the Taxpayer's land to class four commercial land (Testimony Jerke.)
12. The permit shows the Taxpayer applied for a Department of Environmental Quality (DEQ) open cut permit allowing for a gravel pit in 2006. The application committed 22 acres to the gravel pit. The permit was issued May 19, 2008. Taxpayer began operation shortly thereafter. (DOR Exh. D, Permit #RDC-001.)
13. The permit included the Reclamation Bond Spreadsheet indicating that four acres of the 22 acres are currently bonded for mining, not the full 22 acres. (DOR Exh. D.)

Classification of Land

14. The Taxpayer submitted a list of 22 DEQ open cut permits for gravel pits. He included the property record cards for each property, which indicated the land type for appraisal basis. (Taxpayer Exh. 1-21.)
15. The property record cards submitted indicate many gravel pits are currently classified and taxed as agricultural land (Testimony Richards, Taxpayer Exh. 1-21.)
16. Because his gravel pit is classified and taxed as commercial land, as opposed to agricultural land, the Taxpayer argues the DOR is not treating all taxpayers fairly and equally. (Testimony Richards.)
17. DOR agreed with the Taxpayer regarding the current inconsistencies in the classification of gravel pits. It acknowledged that some are classified as agricultural land and some are classified as commercial land due to the difficulty in obtaining timely notice of gravel permits and operations. DOR is taking steps to resolve this situation (Testimony Jerke.)
18. In its post-hearing submission, the DOR evaluated the list of 22 gravel pits submitted by Taxpayer, found errors as well as post-lien date changes, and stated that it was correcting and reclassifying the property appraisals. (Post-Hearing Submission, Candace Jerke, August 24, 2012.)
19. DOR did adjust the original commercial appraisal on the subject property. This adjustment was made to ensure it was valued consistently with other gravel pits in Missoula County. (Testimony Jerke, DOR Exh. A.)
20. DOR testified that some gravel pits are used for personal use. These gravel pits do not require a DEQ open cut permit. The DOR does not classify these gravel pits as commercial land. (Testimony Jerke.)

Valuation of Land

21. DOR submitted the Computer Assisted Land Pricing (CALP) formula used for the valuation of the subject gravel pit, based upon sales of tract land. The DOR appraiser explained that, in rural Missoula County, commercial land is valued using the same sales data as all other tract land. (Testimony Jerke, DOR CTAB Exh. B, pp. 9-10.)
22. Taxpayer disputed the use of the CALP by the DOR. He stated only three of the 39 sales used in the CALP model took place in 2008, the year he began operation. (Testimony Richards.)
23. He further claimed the number of sales transactions were too large to determine a valid market value. (Testimony Richards.)
24. DOR countered that land sales in other years used in the land value calculation are time-adjusted and that the greater the number of sales used, the more accurate the predictive values are. (Testimony Jerke.)

Reclamation Bond

25. Taxpayer argues he is allowed to mine only four acres, in accordance with the Reclamation Bond, not 22 acres. (DOR Exh. D.)
26. Taxpayer claimed the 18 remaining acres of the 22-acre mining permit are used for grazing. When questioned, Taxpayer testified that the 18 acres are leased on a month-to-month basis, providing grazing of four to five horses at \$25 per horse per month. (Testimony Richards.)
27. DOR testified that other DOR county appraisers and the Industrial Bureau of DOR appraise gravel pits as tract land and include the entire parcel cited in the open cut permit. (Testimony Jerke.)
28. DOR testified it does not have any way to determine when a Reclamation Bond is increased in order to enlarge a gravel pit operation.

The gravel pit operator does not have to report to the DOR when this is done. Nor is DEQ mandated to report this to DOR. (Testimony Jerke.)

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.)
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA.)
3. Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. (§15-8-111(2)(a), MCA.)
4. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
5. 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 and Conclusions of Law

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject land for tax year 2011.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and 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. *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).

Gravel Pit as Commercial Property

The Taxpayer is claiming that he is a victim of discrimination because of the differences in the classification of other gravel pits in Montana. The Taxpayer claims that his property should properly be valued as agricultural land, except for the four acres subject to the Reclamation Bond. The Montana Supreme Court, however, has stated that a taxpayer does not qualify for a reduction in assessed value by showing that another taxpayer is incorrectly valued: "as long as a taxpayer's property is not overvalued in the reappraisal process, he cannot secure a reduction in his own appraisal on the ground that another taxpayer's property is underappraised." *Patterson v. DOR*, 171 Mont. 168, 176, 557 P.2d 798, 803(1976). Taxpayer's testimony and evidence admits he is operating a commercial gravel pit on the property. His list of gravel pits that are treated as agricultural is not comprehensive and does not, therefore, prove that the DOR fails to value all other gravel pits in the same manner. The evidence demonstrates that many Missoula County gravel pits are valued as commercial land. DOR agreed with the Taxpayer on the discrepancies, and is responding to this situation by searching for gravel pits that may have been classified incorrectly and reclassifying those brought to their attention by Taxpayer. We find that the mandate of the DOR is to classify all gravel pits, except those used for personal use, as commercial land whenever it becomes aware of their existence. We find no convincing evidence of intentional or widespread unequal treatment on the part of the DOR.

The Taxpayer's second argument is he mines only the four acres covered by the Reclamation Bond, not the entire 22 acres for which he obtained a

mining permit. He claims that the remaining 18 acres are leased for grazing. There was no documented evidence, however, that the grazing animals were not on his adjacent agricultural land, not here at issue, rather than the land surrounding the gravel pit. The Taxpayer's argument falls short and fails to prove the 18 acres are being used as agricultural land. Moreover, the evidence shows the open cut permit grants the operator the opportunity to mine the entire 22 acres. We note that the CTAB upheld the classification of the full 22 acres subject to the permit because the value of the property on the open market would take the entirety of the permit into account and not just the land subject to the current Reclamation Bond. We have often noted that in matters of local values, the CTABs have unique knowledge of markets and conditions.

More importantly, the evidence fails to demonstrate that the Taxpayer is experiencing any prejudicial considerations on the part of DOR because of prior appeals.

Valuation of Gravel Pits

Taxpayer disputed the use of CALP by the DOR stating that the values for the subject land are too high. He stated that only three of the 39 sales used in the CALP model occurred in 2008, the year his gravel pit began operation, and thus were not credible evidence of the value of his property.

The DOR testified that all sales of tract land since the last reappraisal are included in the CALP and the sales that occur in earlier years are time-adjusted to 2008 values. The DOR uses all sales because the greater the number of sales used, the more accurate the predictive values are.


Thus, the Board finds that the land is not being used for agricultural purposes; the classification and valuation set by the DOR is correct; and there is no discrimination on the part of the DOR. This Board upholds the decision of the Missoula County Tax Appeal Board.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property value shall be entered on the tax rolls of Missoula County at a 2011 tax year value of \$211,829 as determined by the Department of Revenue and affirmed by the Missoula County Tax Appeal Board.

Dated this 20th of September, 2012.

BY ORDER OF THE
STATE TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman

(SEAL)


SAMANTHA SANCHEZ, Member


KELLY BLAHERTY-SETTLE, 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, 2012, 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:

John Richards
P.O. Box 316
Seeley Lake, Montana 59868

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail

Missoula County Appraisal Office
2681 Palmer Street Suite 1
Missoula, Montana 59808-1707

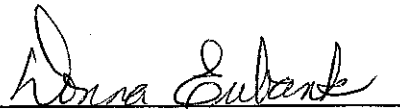
U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail
 Interoffice

Amanda Myers, Tax Counsel
Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail
 Interoffice

Cyndie Aplin, Secretary
Missoula County Tax Appeal Board
1015 Washburn Street
Missoula, Montana 59801

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail



DONNA EUBANK
Paralegal