BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

SCOTT REVOCABLE TRUST, Appellant, -vs- THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, Respondent.	)	DOCKET NO.: PT-2011-1 FACTUAL BACKGROUND, CONCLUSIONS OF LAW, ORDER and OPPORTUNITY FOR JUDICIAL REVIEW

Statement of Case

Scott Revocable Trust (Taxpayer) appealed a decision of the Gallatin County Tax Appeal Board (CTAB) relating to the DOR's classification of the Trust's three lots and common space located on Talus Trail in Big Sky, Montana as class four vacant residential property.

The Taxpayer argues the DOR assigned the wrong classification to the properties for tax purposes, and seeks agriculture classification, as "nonqualified agricultural land" under §15-7-202, MCA. At the State Tax Appeal Board (Board) hearing held on October 18, 2011, the Taxpayer, represented by Jerry T. Scott, provided testimony and evidence in support of the appeal. Michele Crepeau, Tax Counsel, represented the DOR. Mark Olson, DOR Area Manager, and Trish McGowan, DOR Appraiser, presented testimony and evidence in opposition to the appeal.

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 the subject properties are properly classified as class four tract land.

Summary

Scott Revocable Trust 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 Gallatin County Tax Appeal Board in determining 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 three vacant lots totaling 26.81 acres adjoining 51.31 acres of common space owned by the Taxpayer. The property is legally described as:

   > Section 17, Township 7S, Range 4E, Lots 38, 39 and 40 with common open space, in Porcupine Park subdivision Phase 1-4, a major subdivision of Gallatin County, State of Montana. (DOR Exh. A, Property Record Card.)

3. The DOR classified the subject property as vacant tract land (Class 4 property) for tax year 2009, valuing the subject property accordingly. The classification is the only question in this case. (Appeal Form.)
4. The Taxpayer is asking for the classification to be changed to nonqualified agricultural land (class 3 property) and the corresponding value assigned. (Scott Testimony, Appeal Form.)
5. Class 4 property is valued at a market rate, while class 3 agricultural property is valued at a much lower productive capacity rate.
6. The Taxpayer filed a Request for Informal Review (AB-26) with the DOR stating the taxable value does not reflect the market value. The DOR completed the informal appeal process on December 3, 2010, and explained the classification process to the Taxpayer by letter. No change in

classification was made. (AB-26 forms and reply letter dated December 2, 2010.)

7. The Taxpayer filed an appeal with the Gallatin County Tax Appeal Board (CTAB) on January 20, 2011, stating:

> "Total acreage (contiguous) is 78.42 (including the above 3 parcels and adjoining 51.31 acres of open space owned by the applicants. Nothing in covenants prevents property from being used for agricultural purposes. Property should be assessed as agricultural." (Appeal Form.)

8. The Gallatin CTAB heard the appeal on August 10, 2011, and disapproved the appeal.

9. The Taxpayer appealed to this Board on September 2, 2011, stating:

> "Case was originally appealed because assessor alleged covenants effectively prohibited agricultural use. There is no covenant prohibiting such use, and the assessor attributed the decision to legal guidance provided by Dept. of Revenue in Helena. In denying my request, the Gallatin County Tax Appeal Board specifically urged me to appeal this decision based on inconsistent guidance it has been given in appeals of this nature." (Appeal Form.)

10. This Board held a hearing in the matter. The issue in the case whether the acreage qualified to be taxed as agricultural property.

11. The Legislature has determined that the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capabilities of agricultural land, and specifically stated that 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 purchases. Section 15-7-201, MCA.

12. Under law, class three agricultural land is initially classified based on its acreage and use: contiguous land more than 160 acres is presumptively agricultural land. Land between 20-160 acres must meet certain statutory tests to be classified as agricultural, and land under 20 acres must meet a

more rigorous test. (Section 15-7-202, MCA; Testimony Olson.) Agricultural land is valued based on productive capacity.

13. The DOR argues the subject property is properly classified as class four tract land. The Department claims the evidence demonstrates that the covenants on the subject properties effectively prohibit agricultural uses. The Department cites several references in the covenants to demonstrate those restrictions and contends the properties must be classified as class four land instead of class three agricultural land. (Olson Testimony, DOR Exh C.) *See also* EP18, below.

14. The Taxpayer agrees the property does not qualify as actively-managed agricultural land but contends the properties should be classified as nonqualified agricultural land because it may be used as agricultural land and the covenants do not specifically prohibit agricultural use. (Scott Testimony.)

15. The Taxpayer also submitted a letter from Allan D. Malinowski, the president of the Porcupine Park Homeowner's Association, which also expresses the opinion that there are no covenants restricting small-scale agricultural activities. (Exh. 2.)

16. The Taxpayer originally purchased the property with the intent of subdividing the property into residential and commercial lots. Since the purchase, the Taxpayer has subdivided and platted the property and held it for sale. (Scott Testimony.)

17. The final plat for the property at issue stated its purpose to "provide residential and recreational lots." There is no indication in the platting or subdivision material that agricultural activities may occur. (DOR Post-Hearing Submission.)

18. There is an extensive set of covenants controlling the property in this subdivision, which include many restrictions to building and development of the properties. (Olson Testimony, DOR Exh C.)

    For example, the covenants state that owners

    a) Cannot carry on a livestock operation (no cattle can be grazed, no horses kept full-time, p.9).
    b) Cannot have an outdoor farming operation or orchard (no disturbance to the ground (pp.11&12).
    c) Cannot sell or have commercial transactions on premises, cannot have employees, or commercial traffic (p. 10).
    d) Cannot use extra water (p. 10).
    e) Cannot have commercial signage (p.11).
    f) Can have only a limited number of house pets (p.13).
    g) Must screen all equipment from view (p. 14).

19. The Board requested post-hearing materials relating to the final plat and zoning regulations for the Big Sky area, which was submitted to the Board. The materials include the Gallatin Canyon/Big Sky zoning regulations and the final plat for Porcupine Park subdivision.

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 this section 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. (§15-7-202, MCA, et seq.)
6. Class three property includes parcels of land of 20 acres or more but less than 160 acres under one ownership that are actively devoted to agriculture and that are not eligible for valuation, assessment, and taxation as agricultural land under § 15-7-202 (1)(a), MCA, because of the minimum acreage requirements. Those properties are considered to be "nonqualified 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 §15-15-101."
7. Class four property includes vacant residential lots and vacant commercial lots. (§§ 15-6-134(1)(f)(iv) and (g)(ii), MCA.)
8. 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 and Conclusions

This Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate classification for the subject properties. 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).

In this instance, the Board must review whether the land is properly classified as tract land or agricultural land. We look to the statutory framework for classification. First, we note that §15-6-134, MCA, states that class four property (tract land) includes all land except that specifically included in another class. (§ 15-6-134(1), MCA.) Class four property also specifically lists vacant residential lots as class four property. (§ 15-6-134(1)(f)(iv), MCA.) In contrast, the legislature has directed that bona fide agricultural land be classified and assessed at a market productivity value. (§ 15-7-202, MCA, *et seq.*)

The initial review for whether property may be valued as agricultural is based upon acreage. There is a presumption of agricultural valuation for those parcels (or group of parcels) which are 160 acres or more. A parcel or group of parcels, such as the group of parcels in question, which are more than 20 acres but less than 160 acres may be eligible for agricultural classification if they meet certain statutory requirements (such as income generation) set out in § 15-7-202(b)(i), MCA. Those parcels are called "nonqualified agricultural land" as set out in § 15-6-133(1)(c)[1], MCA, and are taxed at seven times the taxable rate of

[1] In 2005, the Legislature amended sections 15-7-202 and 15-6-133, MCA, to clarify that acreage between 20-160 acres would be specifically termed "nonqualified agricultural land" and valued at a higher productive rate than larger agricultural units. *See* Senate and House testimony, SB 74, 2005 Leg. Session.

agricultural land. *See* §15-6-133(3), MCA. The Taxpayer argues that the property in question is more than 20 acres, and thus qualifies for nonqualified agricultural valuation. The DOR contends, however, that the subject property does not qualify for agricultural valuation because the property has restrictions which effectively prohibit its use for agricultural purposes. In this instance, the parties agree that the property is currently not being put to use as agricultural property.

Land may not be classified as agricultural or nonqualified agricultural land if it has stated covenants or other restrictions that effectively prohibit its use for agricultural purposes. (§15-7-202, MCA.)

We need not, however, even reach the question of whether the properties are effectively restricted by the covenants from being used for agricultural purposes. The properties in this instance are not being actively managed for agricultural purposes, as required by § 15-7-202(1) and (2), MCA. *See* also *Department of Revenue v. Bernice F. Winters and Eugene Winters,* (Docket No. PT-2009-26, 05/26/10). It is further uncontested the subject properties were subdivided and platted as residential and commercial tracts, do not have actual agricultural activity, and are not eligible for taxation as agriculture land under §15-7-202(4), MCA. (*See* EP 17.)

The Taxpayer argues the properties fit the definition of nonqualified agricultural land as defined in §15-6-133 (1) (c), MCA, and therefore should be classified as class 3 nonqualified agricultural land. The Taxpayer misconstrues the statutory framework. Rather, nonqualified agricultural land must still meet active use requirements of agricultural valuation. *See* § 15-7-202(1)(b)(i), MCA.

Further, the DOR argues the subject properties are part of a platted subdivision with covenants which effectively prohibit agricultural uses, as defined in §15-7-202(4) and (5), MCA, and must then be classified as vacant

class four tract land under ARM 42.20.156(1). *See* EP 18. While we need not reach this issue to determine the land is properly valued as class 4 property, we concur with the DOR interpretation. In totality, the covenants listed in EP18 effectively prohibit agricultural use. By statute, agriculture refers to the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental nursery, and horticultural crops that are raised, grown or produced for commercial purposes. (§ 15-1-101 (1) (a) (i) (ii), MCA.) Under the covenants, the Taxpayer is prohibited from outdoor farming and ranching operations, growing fruits, vegetable and sod or orchards, (EP18(b), (no disturbing native ground), and fiber, livestock or poultry operations (EP18(a)), (only a few domestic animals allowed). No employees may be hired, and no commercial traffic may transport agricultural goods. (EP18(c)). The Board finds that the totality of the evidence demonstrates that the effect of the stringent covenants is to effectively prohibit a commercial agricultural operation. The law requires, however, actual agricultural use, not simply an absence of covenants effectively prohibiting it. See §15-7-202(1)(b)(i)(A). As previously stated, there is no debate that agricultural activity is not currently occurring. Rather, the Taxpayer would have to commence a commercial agricultural operation. The Board further finds that no evidence was demonstrated that an agricultural operation was in effect, planned to be in effect, or realistically contemplated on any of the lots in the subdivision in question.

The Montana statute is clear: all land must be classified according to its use. (§15-7-103(2), MCA.). The Montana legislature is also clear in its intent to value bona fide agricultural land separately from speculative market properties that do not reflect the productivity of the land. (§15-7-201, MCA.)

In this instance, the Board has reviewed the evidence and statutes and finds the land in question is in use as residential vacant lots. The Taxpayers arguments fall short and fail to prove the properties should be classified as non-qualifying agricultural land. The evidence further demonstrates that the land is not being used for agricultural purposes, and is effectively prohibited in its use for agricultural purposes.

It is the opinion of this Board that the classification set by the DOR is correct and upholds the decision of the Gallatin County Tax Appeal Board.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties shall be classified as class four vacant tract land as determined by the DOR and affirmed by the Gallatin County Tax Appeal 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:

Scott Revocable Trust P.O. Box 160189 Big Sky, MT 59716-0189	_X_ U.S. Mail, Postage Prepaid __ Hand Delivered __ E-mail
Mark Olson Trish McGowen Gallatin County Appraisal Office 2273 Boot Hill Court, Suite 100 Bozeman, Montana 59715	_X_ U.S. Mail, Postage Prepaid __ Hand Delivered __ E-mail __ Interoffice
Michele Crepeau Office of Legal Affairs Department of Revenue Mitchell Building Helena, Montana 59620	__ U.S. Mail, Postage Prepaid __ Hand Delivered __ E-mail _X_ Interoffice
Gallatin County Tax Appeal Board 311 West Main Room 306 Bozeman, Montana 59715	_X_ U.S. Mail, Postage Prepaid __ Hand Delivered __ E-mail

/S/_____
DONNA EUBANK
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