

# BEFORE THE MONTANA TAX APPEAL BOARD

Sheni, L.L.P.,

*Appellant;*

v.

State of Montana,  
Department of Revenue,

*Respondent.*

CASE No: PT-2015-5

**Findings of Fact,  
Conclusions of Law, Order, and  
Opportunity for Judicial Review**

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## STATEMENT OF THE CASE

1. Sheni, L.L.P., through owner-partner Michael Maddy, appealed a decision of the Lake County Tax Appeal Board (LCTAB) from the Department of Revenue (DOR)'s 2015 classification of the property located at 50230 Hwy. 93, in Polson, MT. Sheni contends that the DOR improperly failed to classify a one acre commercial parcel as an agricultural cherry orchard. Sheni contends there are an adequate number of trees in this plot, with adequate fencing around a well maintained orchard. The Montana Tax Appeal Board (MTAB) held a telephonic status conference on October 9, 2015 with the DOR and Maddy as designated representative for Sheni L.L.P. At the status conference, the parties stated they were both available for a December 8, 2015 hearing date and understood that the hearing would be held at

the MTAB office in Helena. On October 15, 2016, the Board sent the parties a written scheduling order to that effect along with dates for the exchange of exhibits prior to the hearing.

## ISSUE

2. The issue before the Board is whether the DOR determined an appropriate classification for the subject property; specifically whether the property and purported cherry orchard is maintained under standards of proper husbandry, which includes appropriate fencing, irrigation, weed and pest control and contains the minimum number of live trees in order to classify the orchard as agricultural under the specialty and unique crops rule for property tax year 2015. If an orchard is deemed by the DOR to be meeting good husbandry standards, it is granted provisional agricultural land classification status for five years at which time the orchard must meet a minimum productive value of \$1500 in crops per year. If that standard is met, provisional agricultural status is made permanent contingent on the taxpayer proving evidence of at least \$1,500 per year in production going forward.

## SUMMARY

3. Sheni, L.L.P. is the taxpayer in this proceeding and therefore has the burden of proof to establish that the DOR is incorrect. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995).

4. Based on a preponderance of the evidence, the Board denies the appeal and affirms the decision of the LCTAB, as described herein.

### FINDINGS OF FACT

5. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present verbal and documentary evidence.
6. The subject property is a 1.77 acre commercial tract in Lake County at 50230 US Highway 93, Polson, MT; geocode 3228-03-3-25-03; legal description Lakeview Village, S03, T22 N, R20 W, Lot 2, 77,047 Square Feet, Amnd of Amnd Lots 1 & 2.
7. In tax year 2015 Sheni filed an application on a 1.77 acre plot which was composed of 0.77 acres containing a commercial parking lot and 1.0 acre devoted to cherry tree cultivation. The application requested that the 1.0 acre plot be classified as agricultural, which would result in a lower assessed value (and hence lower taxes) on the 1.0 acre agricultural tract when compared to the tax rate on the 0.77 acre commercial tract. (MTAB Hrg. Transcr. 10:10-18.)
8. For tax year 2015, the DOR denied the application for agricultural classification and classified the one acre containing cherry plantings as commercial. The remaining 0.77 acre of the entire plot is used as a parking lot and its classification as commercial was not in contention. (Id. 8:16-23.) The proposed agricultural property sits along Highway 93 in the city of Polson and is surrounded by a commercial parking lot, commercial offices, apartment buildings and a marina. (Id. 9:5-16; see

also Appeal Form and Sheni Response to the Administrative Hearing Status Questionnaire.)

9. DOR's response to the Administrative Hearing Status Questionnaire anticipated that there may be issues of fact regarding classification and valuation of the subject property. Our task here was to decide whether the DOR's land classification was correct. (DOR's response to the Administrative Hearing Status Questionnaire, 1-2.)
10. Sheni filed an appeal with the LCTAB and a hearing was held on August 12, 2015. The original DOR findings that the one acre of unhealthy cherry tree plantings did not meet minimum orchard husbandry standards were upheld by the Lake County Board. (See LCTAB Hrg. Transcr.)
11. Sheni appealed to this Board on August 15, 2015, stating, "We have the proper number of trees and have adequate fencing in a maintained orchard. Every time I have met with DOR there is a new excuse!" (Sheni, L.L.P. Appeal Form. (Aug 24, 2015).)
12. The hearing before this Board took place on December 8, 2015 in Helena. Sheni, in spite of having previously agreed to the schedule, failed to comply with the Board's scheduling order, failed to appear, and failed to notify this Board or DOR of any reason for its absence. The DOR did appear with its attorney and witnesses and presented evidence on the record. (MTAB Hrg. Transcr. 2, 5.)

13. DOR's Lake County residential and agricultural appraiser testified at the Helena hearing that she reviewed the Sheni application for an agricultural land classification and conducted a site visit. (Id. 5-7.)
14. The DOR appraiser testified that she evaluated applications for an agricultural classification under Mont. Code Ann. § 15-7-202 and Mont. Admin. R. 42.20.683. (Id. 7:11-19.)
15. Based upon her inspection, experience and interpretation of the applicable statutes and regulations the appraiser denied Sheni's application for agricultural classification. Specifically, she found that the purported orchard did not contain the minimum number of live cherry trees and failed to meet established and prevailing husbandry practices. (Id. 11:21-25.) The requirement that the agricultural lands produce crops worth at least \$1,500 in value was not an issue in this classification and appeal (although the appraiser testified that it was her opinion that this tract would not produce crops of \$1,500 in value by five years), (Id. 31:1-12.).
16. In addition to the minimum number of 100 trees, the DOR considers accepted husbandry practices to include live trees that are thriving and growing, with proper irrigation, cultivation, weed and pest control and appropriate fencing to prevent crop losses to wildlife. (Id. 13:9-25.)
17. The appraiser further testified that the purported orchard failed to meet accepted fruit tree husbandry practices in the following particulars: fencing and irrigation, (Id. 16:13-25), trimming, (Id. 18:1-25, 19:10-14), weed control, (Id. 20, 21:1-5), tree wraps, (Id. 21:6-25,

18. Photographs indicated the orchard was fenced on only one side, and that the only irrigation was by a hose and lawn sprinkler. (Ex. D.)
19. No evidence was introduced that any weed or pest control was being employed to help the trees thrive.
20. The DOR also introduced properly authenticated photographs of both the subject trees and other comparable orchards in the area; it was obvious from the comparison that the subject trees did not demonstrate good, accepted husbandry practices. The trees are little more than sticks, stunted and lacking foliage. (Ex. D, E.)
21. Sheni presented no evidence whatsoever to this Board. Sheni failed to appear at the hearing on the appeal which it filed.

22. The Montana Tax Appeal Board has jurisdiction over this matter.  
Mont. Code Ann. § 15-2-301.

23. All taxable property must be assessed at 100% of its market value except as otherwise provided. Mont. Code Ann. § 15-8-111.
24. 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. Mont. Code Ann. § 15-8-111(2)(a).

25. Classification of lands as agricultural means that those lands are assessed on productive value. Mont. Code Ann. § 15-7-201. It is the text of the statute that such classifications and assessments be done at a value that is exclusive of values attributed to urban influences or speculation. *Id.*, see also Mont. Code Ann. § 15-7-202. Cherry orchards can qualify for such classification. Classification of land as commercial results in a tract being assessed at market value.
26. In order to obtain an agricultural classification for an orchard the subject property must meet the standards established by Mont. Code Ann. § 15-7-202.
27. MTAB must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. Mont. Code Ann. §15-2-301(4).
28. The Board must determine, based on a preponderance of the evidence, whether the DOR properly classified the subject property for tax year 2015. The Board has authority to hear evidence, find the facts, apply the law and arrive at a proper classification for the subject property. As a general rule, appraisal and classification by the DOR is presumed to be correct and the taxpayer must overcome this presumption. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995) (citing *Western Airlines, Inc. v. Michunovich* (1967), 149 Mont. 347, 353, 428 P.2d 3, 7, cert. denied 389 U.S. 952 (1967)). The DOR, however, bears a certain burden of providing documented evidence to support its assessed values. *Western Airlines*, 149 Mont. at 353, 428 P.2d at 7.

29. In this instance, there is simply not a shred of evidence which would support an agricultural land classification (and substantially reduced assessed value) for the subject property.
30. First, Sheni failed to attend a hearing on an appeal that it filed. The DOR was put to the expense of transporting its witnesses to Helena and the administrative costs of preparing those witnesses and attorney preparations for the hearing. These costs are borne by the other taxpayers of the State. This behavior is especially egregious given that the taxpayer had previously agreed to the date, place and time for the hearing. Sheni failed to communicate its intentions with the Board or the DOR prior to the hearing in any manner whatsoever. Given the strong admonitions about attendance at hearings held by the County Tax Appeal Boards and subsequent consequences found in Mont. Code Ann. § 15-15-103(1), failure to appear is a serious matter.
31. Next, from the testimony and evidence presented it is hard to imagine anyone making a plausible argument that the subject property should be classified as agricultural. It is readily apparent that Sheni has failed to meet its burden.
32. In the case at bar, we are hard pressed to find any redeeming value in this unsupported and transparent attempt to qualify for a substantial tax break. The Legislature, cognizant of the difficulties faced by legitimate agricultural interests and desiring to give such interests incentives to stay in agri-business, has provided for special tax treatment of bona fide agricultural lands. In this case the DOR has



adopted rules on husbandry to execute the statute. The line between the statute and the rule on husbandry in this case is clear.

33. When we turn to the evidence presented at the hearing the conclusions of this Board and ultimate result are inescapable. No matter what standard is used to weigh the evidence – preponderance or even the beyond a reasonable doubt standard used in criminal law – this one acre plot with sickly plantings, insufficient irrigation, a paucity of pruning, weeds running wild, flimsy fences and horrific husbandry fails to move the needle at all towards an agricultural classification. We draw this conclusion not just from evidentiary photographs, but because the taxpayer did not bother to make any arguments to the contrary.
34. The DOR did its job. The LCTAB did its job. This Board will do its job. Each of the prior decisions was in accord with the law and the facts found in this case.

### CONCLUSION

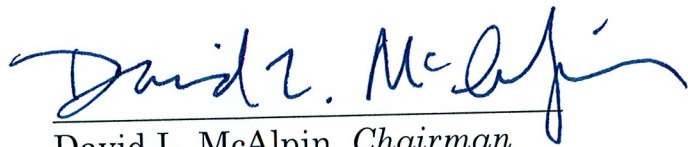
35. We find that, for the reasons stated above, the appeal by Sheni L.L.P. is denied.

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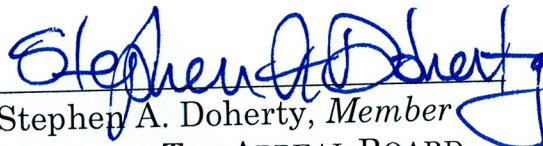
**ORDER**

36. IT IS THEREFORE ORDERED by the Montana Tax Appeal Board that the subject property shall be entered on the tax rolls of Lake County as commercial land for the 2015 tax year. Sheni's appeal that it be classified agricultural is denied. As Sheni did not appeal the land's classification as commercial we also conclude that it is correctly classified as commercial.

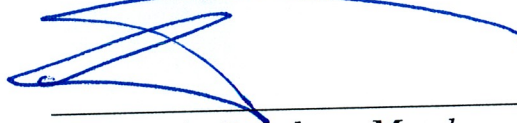
Ordered February 26, 2016.



David L. McAlpin, *Chairman*  
MONTANA TAX APPEAL BOARD



Stephen A. Doherty, *Member*  
MONTANA TAX APPEAL BOARD



Valerie A. Balukas, *Member*  
MONTANA TAX APPEAL BOARD

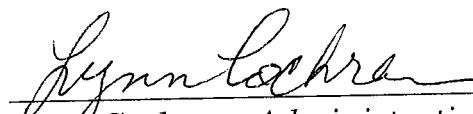
**Notice:** You are entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2).

## 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 United States Mail via Print and Mail Services Bureau of the State of Montana on 26<sup>th</sup> of February 2016 to:

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Lynn Cochran, Administrative Officer  
MONTANA TAX APPEAL BOARD