



The Board denies the taxpayer's request for agricultural classification but does modify the determination of market value.

This decision modifies the decision of the Custer County Tax Appeal Board.

**STATEMENT OF ISSUE**

The issue before this Board is to determine whether the subject land should be classified and valued as agricultural or rural tract land.

**FACTUAL BACKGROUND**

1. Due, proper, and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The subject property is described as follows:  
  
40.530 acres, described as Tract 7, 20.200 acres, and Tract 8, 20.330 acres, of the Evergreen Partners Minor Subdivision, Section 29, Township 8 North, Range 49 East, Custer County, Montana.  
Assessor Number: 00RFE1803  
Geo-code numbers: 14-1742-29-4-03-01-0000 and 14-1742-29-4-02-03-0000
3. Mr. Toews owns a twenty-acre tract adjacent to the subject property, leases the taxpayer's property and was authorized to represent the taxpayer before the local board and this Board.

4. The DOR established a market value of the subject property at \$35,666 for tax year 2000.

5. Clarence Tieszen timely filed an appeal with the Custer County Tax Appeal Board on February 10, 2000, requesting a value of \$23,500, stating:

The proposed change of classification of the land from agricultural to rural tract land.

6. In an undated decision, the Custer County Tax Appeal Board denied the appeal, stating:

The reduction was not approved because of Montana Law 15-7-202. The county board ruled that the land in question is covered by subtitle (4).

7. The Taxpayer timely appealed the county decision to this Board on September 8, 2000 stating:

We purchased this land three years ago and it was taxed as agricultural land, it is used only as grazing land now so we appeal the increase in taxes.

8. Mr. Toews grazes cattle on the subject property, along with additional acreage that is not a part of this appeal.

#### **TAXPAYER'S CONTENTIONS**

Mr. Toews testified that he purchased his 20-acre tract in 1994, and has had access to the subject property since then.

Mr. Toews testified to his rationale for raising livestock and grazing the subject property, and has managed the land and paid taxes on the subject property according to the lease agreement with Mr. Tieszen. He referred to a copy of his lease (exhibit #1), and testified that he is responsible for the taxes on the subject property as part of the compensation for the lease. He also commented that taxes have increased since he has leased the property.

Mr. Toews contended that the use of the subject property has not changed and should qualify and be reclassified for agricultural status. Mr. Toews testified that he also leases two adjacent parcels, totaling approximately 480 acres. Taxpayer's exhibit #1 consists of a plat map depicting the general location of the subject property, the grazing agreement with Mr. Tieszen, and a copy of a letter to the Custer County Treasurer, stating that taxes were being paid under protest, signed by Eldon Toews and Carol Toews, dated November 27, 2000. The taxpayers state in the letter that they are paying the taxes under protest because:

In the last year our taxes have gone from \$3.30 per acre to approximately \$8.00 per acre. We can live with that for our 20 acres which have improvements on, but our protest is for the 40 acres of Clarence Tieszen's which we pay taxes for because we graze it. There have been no

improvements on that 40 acres which have no roads or building on it. 15-7-202 MCA, which is the governing land's (sic) eligibility for agricultural (sic) classification states on page 108, "If land has been valued, assessed, and taxed as agricultural land in any given year, it must continue to be valued, assessed, and taxed as agricultural...."

Taxpayer exhibit #2 is a portion of MCA, §15-7-202, Taxation, pages 107-108, generally describing criteria for agricultural classification.

Mr. Toews testified that he understood, upon creation of the subdivision with restrictive covenants, the value of the land per acre might have changed on paper, even though the land use has not changed on the unimproved tracts. He acknowledged that the subject property is part of the Evergreen subdivision tracts.

Mr. Toews testified that the subject property has been in agricultural use for years and the land use has not changed from grazing and raising livestock. Therefore, the DOR was in error when it changed the classification from agricultural to rural tract land.

Mr. Toews testified that he paid \$16,000 for his 20-acre tract in 1994.

Mr. Toews testified that he does not believe the restrictive covenants specifically disallow agricultural use on any of the nearby property. He testified that his

interpretation of the statutes and covenants seems to allow a broader use of land for agricultural purposes, and, in his opinion, a designated or use restriction on acreage for tax purposes on a small ranch is not reasonable or conducive to helping him stay in business.

Subsequently, Mr. Toews testified that all of the leased land has contributed to the total income. He could not specifically divide or designate the income generated from the subject property or separate from the total income from all of the property. It is his opinion the total income would meet the requirements described by statute to qualify if all of the acres of leased land could be valued together as agricultural.

#### **DOR'S CONTENTIONS**

The DOR contends that the taxpayer does not meet the general statutory requirements shown in *MCA §15-7-202, Eligibility of land for valuation as agricultural*

(4) Land may not be classified or valued as agricultural if it is subdivided land with stated restrictions effectively prohibiting its use for agricultural purposes. For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.

DOR acknowledged that the classification of the subject property to rural tract land should have occurred when the property was subdivided and recorded.

To implement a statute, such as the foregoing, the DOR is required to develop administrative rules and procedures that clarify the meaning and intent of the law. ARM 42.20.147, established the criteria for agricultural land valuation for land similar to the subject property. One component is the necessity to provide proof that the property produced at least \$1,500 of annual gross income during the year in which agricultural classification is sought.

Regardless of covenant restrictions, the DOR additionally contends that the taxpayer did not submit any evidence that would meet the criteria established in ARM; specifically, proof of income including sales receipts, income tax statements, other written evidence of sales transactions, or canceled checks, that could be interpreted to be the viable documentation of income from the total leased and/or subject property.

The DOR testified that it is apparent that the taxpayer is not in strict compliance with the restrictive covenants for the Evergreen subdivision, that in part state: (exhibit E)

Section 3      THE FOLLOWING RESTRICTIONS ARE PLACED UPON THE PROPERTY:

11. No tract shall be used for any business or trade nor shall any noxious or offensive or illegal activities be carried on or permitted.

USE RESTRICTIONS:

2. Paraphrased by the Board, specifically limits the number of animals per tract regardless of the number that the taxpayer grazes on the subject property
3. The following animals are specifically prohibited: cows, goats, buffalos, pigs and no animals shall be kept for sale purposes. (emphasis supplied).

The DOR contends that it is apparent that until such time as the taxpayer is able to amend, and/or repeal the protective covenants that pertain to cattle, etc., with fellow landowners or neighbors, or secure a variance for conditional use, the subject property cannot be considered for classification as agricultural for purposes of appraisal and assessment.

Mr. Zuelke entered into evidence a copy of a draft form letter (sent to the taxpayer) stating

“... the land you own in the Pine Hills area of Custer County has restrictive covenants on it that precludes it’s (sic) classification as agricultural land...”.

The DOR identified the subject property as being located in Neighborhood 007.5 as illustrated on exhibit H. Exhibit H is the DOR’s Computer Assisted Land Pricing Model (CALP) and exhibit I illustrates the method the DOR applied to value the subject property. The following summarizes and illustrates the pertinent data and DOR testimony with respect to exhibits H and I:



Exhibit H:

Valuation Date: 1/1/96 Neighborhood: 007.5

CALP Model Base Size 10 (acres)  
Base Rate \$1,100  
Adj. Rate \$1,100

	Sale Date	Sale Price	Lot Size (acres)
#1	2/93	\$10,000	10.176
#2	6/93	\$20,000	10.331
#3	10/93	\$ 8,000	10.133
#4	10/93	\$ 8,000	10.095
#5	12/94	\$12,000	13.719
#6	3/95	\$12,800	10.165

Exhibit I

Neighborhood 007.5

	Sale Date	Sale Price	Lot Size (acres)	\$/acre
#1	1/96	\$ 7,000	10.101	\$693
#2	12/98	\$12,500	13.719	\$911
#3	9/00	\$15,000	10.101	\$1,485
#4	10/00	\$17,000	10.445	\$1,628
				\$1,179 Average
#5	8/99	\$20,000	21.436	

$\$933$  (sale #5) /  $\$1,179$  (average) = 79%

$\$1,100$  (base rate from exhibit H) \* 80% =  $\$880$

Mr. Zuelke testified that  $\$880$  per acre was used to value the subject property:

Tract 7	20.20 acres	\$880	\$17,776
Tract 8	20.33 acres	\$880	\$17,890
Total	40.53 acres	\$880	\$35,666
Rounded			\$35,600

Mr. Zuelke suggested that the comparable neighborhood designation is correct, and that the Custer County Tax Appeal Board decision should be affirmed since the property does not meet the provisions for agricultural classification as stated in §15-7-202, MCA, therefore, upholding the DOR's value determination of \$35,600 for tracts 7 and 8.

#### BOARD'S DISCUSSION

There are two issues before this Board:

- I. Property classification.
- II. Market value.

If the property meets the test to qualify as agricultural, pursuant to **MCA §15-6-133**, then the market value is a non-issue.

**MCA §15-7-202, (4) clearly states, Land may not be classified or valued agricultural if it is subdivided land with stated restrictions effectively prohibiting its use for agricultural purposes** (emphasis supplied). The DOR testified that an error was made on its part when the property was not reclassified as Class 4 property, pursuant to **MCA §15-6-134**. This change in classification should have occurred at the time the land was subdivided and the covenants were recorded.

Mr. Toews and the DOR agree that prior to tax year

2000, the property was classified and valued as though agricultural. The DOR informed the taxpayer of the error and changed the classification from agricultural land to rural tract land (Exhibit D). **MCA §15-8-601. Assessment revision - conference for review**, authorizes the DOR correct an erroneous assessment.

The Custer County Tax Appeal Board was correct in denying a change in property classification.

The second issue before the Board is the proper market value of the property. Market value as pursuant to **MCA §15-8-111 (2)(a) 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.** The DOR testified they have no reason to believe that the purchase of the property at \$23,500 did not meet the definition of market value.

Mr. Toews indicated that his adjacent 20-acre parcel was purchased in 1994 for \$16,000 or \$797 per acre. Mr. Toews indicated the subject property was purchased in and around that time frame for \$23,500 or \$580 per acre. The DOR did not present any evidence or testimony to refute

either transaction.

The DOR has determined the subject to be in neighborhood 007.5. Exhibit H suggests a value of \$1,100 per acre, with no adjustment for size. Based solely on exhibit H, the value of the subject would be \$44,583 (\$1,100 x 40.53 acres). Mr. Zuelke prepared exhibit I, which he testified was his effort to reflect an adjustment for size. The sales identified on exhibit I occurred after the DOR's date of value of January 1, 1996. ***MCA, §15-1-111. Periodic revaluation of certain taxable property. (1)...The revaluation of class three, four, and ten property is complete on December 31, 1996...*** (emphasis supplied). The DOR's adjustment factor of 80% illustrated on exhibit I was developed from sales that occurred after January 1, 1996. The DOR is commended for the creative approach to find a reasonable valuation method and in attempting to validate an adjustment for larger parcels. In the process it appears to be recognizing inappropriate sales data.

Exhibit B illustrates that eight tracts exist in the subject subdivision. The DOR could have contacted the buyers and sellers of the remaining tracts to determine if a separate CALP model should have been created. ***ARM,***

*42.8.107, (6) Residential lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP model reflects January 1, 1996 land market values (emphasis supplied).*

Based on the testimony, the taxpayer is requesting the market value to be equal to what was paid for the property. **ARM 42.20.455 Consideration of sales price as an indication of market value.** (4) *When a tax appeal board decision indicates that the adjusted selling price is market value for the property under appeal and the department files no further appeal within the time prescribed by law, the adjusted selling price shall become the value for assessment and taxation purposes until such time as changing circumstances with respect to the property requires a new valuation and assessment.*

Mr. Toews testified that Mr. Tieszen purchased the subject property in and around 1994 for \$23,500. This was the same time frame the DOR was analyzing sale data for the current appraisal cycle. That purchase price forms the basis for the taxpayer's requested value in this appeal. The DOR representatives did not dispute the testimony nor

raise any concerns about the validity of the sale. The Board, will, therefore, adopt this value as the best indication of market value for ad valorem tax purposes for tax year 2000.

#### **CONCLUSIONS OF LAW**

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301 MCA.
2. MCA, §15-1-111. Periodic revaluation of certain taxable property.
3. §15-6-133 MCA. Class three property
4. §15-6-134 MCA. Class four property
5. §15-7-202 MCA. (4) Eligibility of Land for Valuation as Agricultural.
6. §15-8-111 MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
7. MCA §15-8-601. Assessment revision - conference for review.
8. ARM, 42.8.107 (6) Residential lots and tracts are valued through the use of CALP models.

9. ARM 42.20.454, Consideration of Sales Price as an  
Indicator of Market Value.

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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 Custer County by the local Department of Revenue office at the value determined by the State Tax Appeal Board of \$23,500 for tax year 2000. The appeal of the taxpayer is therefore granted in part and denied in part, and the decision of the Custer County Tax Appeal Board is modified.

Dated this 8th day of May, 2001.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

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GREGORY A. THORNQUIST, Chairman

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JEREANN NELSON, Member

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LARRY L. 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 8th day of May, 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:

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DONNA EUBANK  
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