

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

GARY & MARY SPAULDING,)
SOUTH HILLS RANCH) DOCKET NO.: PT-2006-6
Appellant,)
-vs-)
THE DEPARTMENT OF REVENUE) FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,) CONCLUSIONS OF LAW,
Respondent.) ORDER and OPPORTUNITY
FOR JUDICIAL REVIEW

The above-entitled appeal was heard on March 13th, 2007, in Helena, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law.

The taxpayers, Gary and Mary Spaulding, (Taxpayers), presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Steve Huntington, Area Manager, Mark A. Bumgarner, Appraiser, and Dallas Reese, Management Analyst, presented evidence and testimony in opposition to the appeal.

The duty of this Board is to determine the appropriate classification of the property based on a preponderance of the evidence. The Board allowed the record to remain open

for a period of time for the purpose of receiving post-hearing submissions from both parties.

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 an opportunity to present evidence, oral and documentary.
2. The subject property being considered is described as follows:

A tract of land containing 68.0 acres more or less in portions of the SE $\frac{1}{4}$ of Section 8, and the SW $\frac{1}{4}$ of section 9, Township 9 North, Range 3 West, P.M.M., Jefferson County, Montana. GEO Codes 51-1785-08-4-01-05 and 51-1785-09-3-01-01. (Property Record Card). Also known as South Hills Ranch located in the Crossfire Estates subdivision. (AB-26).

3. The Department of Revenue assessed this property as non-qualifying agricultural land for tax year 2006. (Exhibit A).
4. The Taxpayers filed a Request for Informal Review (AB-26) with the DOR on June 14, 2006, stating:

The land was acquired & used as dry land grazing. It supports 40+ AUM on a year in - year out basis. 40 AUM grazing translates to over \$2,000 grazing benefit. Request reclassification to dry land grazing as it has been for several decades.

5. The DOR denied the Taxpayers' request on August 8, 2006, for the following reasons:

Does not meet minimum qualifications for agriculture certification as set forth by Montana Code and Department of Revenue Policy and Procedures. (Exhibit 2).

6. The Taxpayer filed an appeal with the Jefferson County Tax Appeal Board on August 31, 2006, appealing the classification of the land based upon use, production and grazing benefit. (Exhibit D).
7. The Jefferson County Tax Appeal Board held a hearing on September 27, 2006. The Board issued a decision on October 3, 2006, upholding the DOR's classification of non-qualified agricultural land. (Exhibit D).
8. The Taxpayer appealed that decision to this Board on October 26, 2006, citing the following reasons for appeal:

The 2006 land classification of the South Hills Ranch, as well as the 2006 CTAB ruling, is incorrect due to the following reasons:

- A. The property was acquired in 1985 with the intended use of equestrian/ranch land. It has been used singularly as livestock grazing land for the full period of ownership. Grazing of the land is a legal use of the land. The property was correctly classified to its grazing usage in past years and thus, should be continued.

- B. The land has exceeded the minimum annual requirements of 30 AUMs' grazing for the past 21 years.
- C. The land has exceeded minimum annual requirements of \$1,500 income through grazing benefit for the past 21 years.
- D. The parcel's covenants are accepted with deed restriction concerning agricultural usage of the land. The net result of this deed restriction is that equestrian/ranch operations are allowed on the property subject to this appeal.
- E. The taxpayer believes that the Department of Revenue is not consistent in administering agricultural requirements across Jefferson County and/or the State of MT.
- F. The taxpayer believes that the Department of Revenue is not consistent in classifying agricultural property in Jefferson County and/or the State of MT according to Title 15 Montana Code Annotated and applicable Agricultural Administrative Rule.
- G. The Montana Department of Revenue is not complying with 15-9-101 MCA if reasonable consistency is not maintained concerning items "E and F" of this assessment protest.
- H. The basis of the Agricultural Land Tax Law and applicable Agricultural Administrative Rule concerning equestrian grazing does not comply with 15-9-101 MCA. My understanding of this statute is that taxation equity is an overriding requirement for Montana Property Taxation and it is particularly applicable to Value-In-Use property. (Exhibit D).

9. At the hearing, the DOR presented a Declaration of Covenants, Conditions and Restrictions that prohibits agricultural operations. (Exhibit #3, Section XII, (4)).

This Declaration was recorded by the property owner who sold the land to Mr. Spaulding, but that property owner recorded the Declaration after Mr. Spaulding had an interest in the land under a contract for deed. The DOR contends that this restriction automatically places the property into a non-qualified agricultural classification. (§ 15-7-202,(4)MCA).

10. The Taxpayers disagree with the DOR contention that, even though there is a covenant on the subject property, they were granted a "positive covenant" to use the parcel in connection with an equestrian/ranch facility under a memorandum of agreement between themselves and the previous owner. (Exhibit H(4)).
11. The Taxpayers presented photographs (Exhibit L) and two witnesses to confirm their contention that this property could sustain the 30 animal unit months (AUM) required in the Administrative Rules of Montana (ARM) 42.20.625. (Exhibit 13). Mr. Herb Eskildson, retired rancher, testified that this property was of a similar nature to ranch land in the area and that 30 AUM is reasonable. Mr. Sam Gilbert, Forester, testified to the forage condition of the property and that there are several ways of calculating AUMs. In their opinions, the property was

well within the requirements to be classified as agricultural land.

12. The Taxpayers testified that they are running a ranch operation with at least four horses and, in the past, have run at least one cow/calf pair on the subject property. (Testimony of Mr. Spaulding). Their business entity is registered with the Secretary of State under the name of South Hills Ranch.(Exhibit J).
13. The Taxpayers also presented several exhibits showing their intent to start an equestrian facility and past rental agreements with customers for horses and tack. (Exhibits I&K)
14. The DOR presented several exhibits justifying the method it used in determining AUM for the subject property, in contrast to the contentions of the Taxpayers and their witnesses. (Exhibits 14,15,16&17).

BOARD DISUSSION

The State Tax Appeal Board has jurisdiction over this matter pursuant to §15-2-301, MCA.

This property has historically been granted agricultural classification for tax purposes. The Taxpayers protested the

2006 taxes after the DOR reclassified the land as non-qualifying agricultural land.

For property to be eligible for valuation as agricultural land, it must meet the criteria in § 15-7-202, MCA and Montana Administrative Rule 42.20.625.

A critical element for land to be classified as agricultural is that the land must be used for a bona fide agricultural operation. (§15-7-201 MCA.). In this matter, the Taxpayers argue that they graze a small number of their own horses on the property, and that this grazing activity qualifies as a bona fide agricultural operation. The Board disagrees. The purpose of agricultural classification for land, and its accompanying production requirements, is to encourage the productive use of agricultural land. See 15-7-201, MCA. A parcel of land of 160 acres or less is presumed to meet that requirement if the owner markets not less than \$1500 in annual gross income from the raising of agricultural products on the land. See 15-7-202 (1)(b)(i), MCA.

The Taxpayers failed to supply the Board with any proof that the subject property has been used for anything more than the grazing of personal hobby animals. No information on income from agricultural production for tax year 2006 was presented. The grazing on land by a horse or other animals

kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation. See Section 15-7-202(5), MCA.

There is some question as to whether restrictive covenants may be placed on a property after an owner has purchased the property under a contract for deed. Because there is currently no bona fide agricultural operation on the property, we do not need to reach a decision on this issue nor on whether a positive covenant exists in this instance.

The appeal of the Taxpayers is hereby denied and the decision of the Jefferson County Tax Appeal Board is affirmed.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall be entered on the tax rolls of Jefferson County by the local Department of Revenue office as non-qualified agricultural land, as determined by the Department of Revenue. The decision of the Jefferson County Tax Appeal Board is affirmed.

Dated this 6th day of June, 2007.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

KAREN E. POWELL, Chairwoman

SUE BARTLETT, Member

DOUGLAS A. KAERCHER, 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 June, 2007, 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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