

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEALS OF 101) APPEAL NOS. 13-A-1021
FARMS, LLC from the decisions of the Washington) thru 13-A-1024
County Board of Equalization for tax year 2013.)
) FINAL DECISION
) AND ORDER

MIXED-USE PROPERTY APPEALS

THESE MATTERS came on for hearing October 1, 2013, in Weiser, Idaho before Hearing Officer Travis VanLith. Board Members David Kinghorn, Linda Pike and Leland Heinrich participated in this decision. Owners Ronald Johnson and Caroline Wichman appeared at hearing for Appellant. Assessor Georgia Plischke and County Appraiser Debbie Moxley appeared for Respondent Washington County. These appeals are taken from decisions of the Washington County Board of Equalization denying four (4) protests of valuation for taxing purposes of properties described by Parcel Nos. RP10N05W095720, RP10N05W096150, RP10N05W096020 and RP10N05W095450.

The issue on appeal concerns the market valuations placed on four (4) rural mixed-use lots.

The decisions of the Washington County Board of Equalization are modified.

FINDINGS OF FACT

Parcel No. RP10N05W095720 - Appeal No. 13-A-1021

The assessed land value of this 5.66 acre parcel is \$6,876, and the improvements' valuation is \$13,680, totaling \$20,556. Appellant requests the combined assessed value of all four (4) subject parcels be reduced to \$72,645.

Parcel No. RP10N05W096150 - Appeal No. 13-A-1022

The total assessed land value of this five (5) acre parcel is \$5,202, of which 2.5 acres

were assessed as a rural industrial tract for \$3,037. The remaining 2.5 acres were assessed for \$2,165 as non-irrigated agricultural land. The assessed value of the improvements on this parcel totals \$12,714.

Parcel No. RP10N05W096020 - Appeal No. 13-A-1023

The assessed value of the improvements on this parcel is \$574. Three (3) acres of this parcel were assessed as a rural industrial tract for \$15,645, while the remaining 18.64 acres were assessed for \$16,142 as non-irrigated agricultural land.

Parcel No. RP10N05W095450 - Appeal No. 13-A-1024

The assessed value of the improvements on this parcel total \$49,370. There are 6.5 acres of this parcel assessed as rural industrial land for \$41,897. The remaining 28.5 acres were assessed for \$24,681 as non-irrigated agricultural land.

The four (4) subjects are adjacent acreages located near Weiser, Idaho. The total combined assessed value of the parcels is roughly \$192,000. Appellant recounted the history surrounding the parcels. Prior to 2006, the subjects were operated as part of a confined animal feeding operation (CAFO). In June 2006, the Washington County Commissioners voted to not register subjects as a CAFO, which effectively ended the feedlot operation.

In May of 2006, subjects were listed for public auction. The Benedictine Monks of Idaho, Inc. (Monks) tendered the winning bid of \$30,000 and took title to the parcels. Other equipment which was previously associated with subjects, including some large commercial weight scales, was sold separately to other third-party buyers. Sometime after purchase, the Monks listed the subject properties through a local real estate firm with an asking price of \$190,000. The asking price was reduced multiple times over the next several years, though no buyer was found.

In 2010, the Monks approached Appellant to purchase subjects. Appellant made an offer to pay only the closing costs. The Monks agreed, so after paying closing costs in the amount of \$3,000, Appellant took title to the properties in May of 2010. It was noted the sale did not include any water rights, which are owned by a third party.

Next Appellant detailed some issues with the subject parcels. The first stemmed from the prior CAFO, which caused extensive damage to subjects' soil and water. Several government agencies and private environmental companies performed testing on subjects since at least 2002. In a letter dated October 26, 2012, the Idaho Department of Environmental Quality (DEQ) indicated there were some water contamination issues connected to the prior CAFO use. Specifically the letter stated "Nitrate detections in the monitoring well water samples ranged from 6.8 to 47 milligrams per liter (mg/L). Five of the monitoring wells had nitrate concentrations at or above the Environmental Protection Agency (EPA) maximum contaminant level (MCL) of 10 mg/L." In an earlier report issued by the DEQ in 2007, it was estimated that 31,400 cubic yards of manure still remained on the subject parcels, which equated to more than 10,000 pounds of nitrogen.

Similarly, testing of subjects' soils revealed further issues. In addition to some of the contamination detected in the water samples, subjects' soil rated poorly. Washington Group International conducted a soil sampling project, the details of which were provided in a report dated April 25, 2008. The boring logs mostly returned the same result, "poorly graded very fine to fine sand." This sandy characterization extended to roughly fifteen (15) feet deep, or in some instances even deeper. As noted by Appellant, such soil is not conducive to crop production. Appellant contended a lot of work would be needed to recondition the soil to a level where it

would support a crop.

Appellant also furnished a report for DEQ from May 2010 titled Analysis of Brownfields Cleanup Alternatives (Brownfields). The report detailed the various issues related to subjects' prior CAFO use and proposed several cleanup alternatives. Each alternative was thoroughly detailed and costs for the various components were estimated. The report considered the costs associated with putting subject back to an agricultural use, or alternatively into a commercial/industrial use. The two (2) largest expenses were the costs for both manure and concrete removal. Estimates for removing the manure ran as high as \$495,000, and costs to remove the concrete were estimated as high as \$383,000. Fencing and road removal were rather minor costs in comparison, but were also included in the report. The other major cost item was installation of an irrigation system. This was estimated to cost as much as \$245,000. This latter item, however, would only be applicable if subjects were restored to a field crop use.

Due to the high costs of the various options discussed above, Appellant chose instead to make small incremental steps toward rehabilitating subjects. To date, only a few concrete feedbunks and a small amount of manure have been removed.

In addition to the contamination-related issues, Appellant detailed other detriments with the subjects. The prior owner installed various concrete, roadway, and fencing improvements. In the above-referenced Brownfields report, the DEQ estimated roughly nine (9) acres of the parcels were covered in roadways with connecting concrete feedbunks. An additional fifteen (15) acres were improved with "structural or feed storage facilities." Most of the extensive concrete work and other improvements are still scattered about the parcels. As noted by Appellant, the CAFO improvements would need to be removed before active farming, or even

some industrial use, could be pursued. Appellant made unsuccessful efforts to find a third-party farmer to lease the ground. Most farmers cited fear of equipment damage, due to the concrete and other improvements, as their primary reason for declining to lease the ground.

Appellant also noted the subject lands do not have any water rights which further frustrates attempts to begin farming operations. While there are several wells on the properties, Appellant testified only one (1) well was currently in operation. The others were described as old, inactive, hand-dug wells with no pumping equipment or electricity attached. Respondent was unaware of the well issues detailed by Appellant, however, maintained each well should still be assessed at the full rate.

Though subjects are currently unsuitable to support an agricultural crop, 49.64 acres were granted an agricultural exemption. The exemption was granted because Appellant herds approximately 100 goats on the parcels. Rather than add more chemicals to subjects' soil, Appellants elected to use goats for weed control purposes. The goats are rotated to different portions of the parcels and penned in with temporary electrical fencing. Respondent estimated the goats rotated over nearly 75% of subjects' acres, though Appellant believed it was closer to 95% coverage.

Appellant further contested the assessed values of two large concrete pads which straddle two (2) of the subject parcels. Appellant rents the concrete pads to a nearby hay farmer. The farmer uses the pads to temporarily store bailed hay until it can be transferred to a more permanent location. Appellant receives \$300 per year in return for the farmer's use of the pads.

Respondent explained subjects were inspected in preparation for the current 2013

assessment. This caused several changes from the prior year. The largest value change resulted from moving 49.64 acres from a rural industrial category to non-irrigated agricultural ground. Due to subjects' poor soil conditions, the parcels were placed into the second lowest non-irrigated category and assessed accordingly.

Subjects' other acreage remained in the rural industrial land classification (category) and was assessed at \$1,215 per acre. This was the uniform rate applied to all similar type properties located in the county. Due to a lack of recent industrial sales, the \$1,215 per acre rate has been in use for several years. A few sales, located both inside and outside the county, were offered to show the rural industrial assessment rate was still reasonable.

Other changes included adding five (5) wells to two (2) of the subject parcels. Respondent applied a value of \$6,000 for each well, which was the same rate applied to all wells in the jurisdiction. Appellant offered testimony that only one (1) of the wells was in operation and argued the others should be removed from the assessment.

Respondent also detailed the assessed values of the various other improvements situated on subjects. Most were considered as either "low" or "fair" grade construction, with a "fair" condition rating. Respondent applied an obsolescence factor between 40% and 60% to nearly all of the individual improvements. The total assessed value of the subject improvements' was \$76,338.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value, or as applicable exempt status. This Board, giving

full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

Idaho Code § 63-205 requires all non-exempt property be assessed annually at market value on January 1 of the applicable tax year; January 1, 2013 in the current instance. Market value is defined in Idaho Code § 63-201, as follows.

“Market value” means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

As currently assessed, subjects reflect multi-use assessments with two (2) different land type components, non-irrigated agricultural land and rural industrial acreage. The latter classification represents a property type which must be assessed at full market value. On the other hand, the first classification receives a partial exemption where the land is actively devoted to agriculture. The Board will first examine whether subjects duly qualified for the agricultural exemption.

To qualify for an agricultural exemption, land must satisfy the provisions of Idaho Code § 63-604, which provides in pertinent part:

(1) For property tax purposes, land which is actively devoted to agriculture shall be eligible for appraisal, assessment and taxation as agricultural property each year it meets one (1) or more of the following qualifications:

(a) The total area of such land, including the homesite, is more than five (5) contiguous acres, and is actively devoted to agriculture which means:

- (i) It is used to produce field crops including, but not limited to grains, feed crops, fruits and vegetables; or
- (ii) It is used to produce nursery stock as defined in section 22-2302(11), Idaho Code; or
- (iii) It is used by the owner for grazing of livestock to be sold as part of a for-

profit enterprise, or is leased by the owner to a bona fide lessee for grazing purposes; or
(iv) It is in a cropland retirement or rotation program.

Appellant grazes roughly 100 goats on the four (4) subject parcels. The goats are rotated across the parcels using temporary electric fencing. Respondent estimated the goats graze 49.64 acres, or approximately 75%, of subjects. Appellant believed the goats covered closer to 95% of subjects.

From the record, the Board found there was a qualifying agricultural use associated with portions of each subject parcel. The goats clearly graze significant portions of subjects. The estimated size of those portions varied between the parties, though both indicated the majority of each subject was put to active grazing use. Respondent provided an aerial photograph of subjects which outlined the industrial and agricultural components. The industrial portions outlined on the photograph appear to encompass only those areas on which improvements are situated. Obviously, those portions which are improved cannot also support the grazing operation. Respondent properly excluded these areas from the agricultural use portion of subjects' assessments. Appellant did not provide competing evidence to demonstrate the area determined by Respondent was insufficient or otherwise in error. As such, the Board found no error with the non-irrigated portion of subjects' assessments, both in terms of acreage and the valuation rate applied.

The Board also agreed, at least mostly so, with the values of the scattered improvements. Respondent noted most of the improvements were aged and worn. Respondent also recognized a large obsolescence factor associated with most of the improvements. This was due to the fact that the improvements were originally designed to support a CAFO operation. The

improvements do not presently contribute to subjects' current use, but rather serve more as a detriment.

The Board did however have concerns with Respondent's treatment of the wells. Following a recent inspection of subjects, Respondent added five (5) water wells to two (2) of the subject assessments at a rate of \$6,000 each. Respondent noted \$6,000 is the value placed on all wells in the county. Appellant explained and offered sworn testimony that only one (1) of the wells works. The others were characterized as inoperable due mostly to a lack of pumps, pipes, and electricity. As such, Appellant argued only the operable well should be included in the assessments as adding value. On this point, the Board agrees with Appellant.

In their current condition, four (4) of the wells are not operational. In the Board's view, it does not follow that an inoperable well should be valued the same as one which works and most likely is in use. The record was not developed on whether the wells could be repaired or what costs might be associated with such a project. As they existed on January 1, 2013, however, four (4) of the wells were in a disabled state. Accordingly, the Board will remove the values for both wells from Parcel No. RP10N05W096020, and further remove the values for the two (2) wells on Parcel No. RP10N05W095450, leaving on the latter parcel just the one (1) operating well.

Finally, we turn to the assessed values of subjects' rural industrial acreage. Respondent explained the value rate used for several years was developed from past sales. The same \$1,215 per acre rate was applied to all "similar type" parcels. While there is nothing inherently wrong with Respondent's general approach, the Board did find a problem with its specific application to the subjects.

Appellant provided numerous reports and letters from private firms and government environmental agencies. The reports consistently identified serious water and soil issues with subjects as a result of the prior CAFO use. Third-party estimates to cure damages were quite significant. The cleanup efforts would most likely be necessary to transform subjects into a higher productive land use, whether that be industrial/commercial or agricultural.

Though details concerning the sales used to develop Respondent's industrial valuation were scant, there was no indication that any suffered the degree of environmental damage that is suffered by subjects. In the Board's judgment, subjects' unique and documented environmental situation should have factored more heavily into Respondent's market value conclusions. Accordingly, the Board will reduce subjects' industrial land values to reflect an assessment rate of \$500 per acre.

In appeals to this Board, the burden lies with Appellant to prove error in subjects' valuations by a preponderance of the evidence. See Idaho Code § 63-511. As to the agricultural portions of subjects, Appellant did not provide evidence sufficient to overturn the determination made by Respondent in terms of the acreage qualifying as land actively used for agricultural purpose. Nor was error proven in the rate of assessment. On other portions of the assessments, as detailed above, the Board did find that Appellant demonstrated error.

Based on the above, the decisions of the Washington County Board of Equalization will be modified to reflect a combined assessed value of \$126,382, as detailed in the final order below.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decisions of the Washington County Board of Equalization concerning the subject parcels be, and the same hereby are, MODIFIED as follows:

Parcel No. RP10N05W095720 - Appeal No. 13-A-1021

Rural Industrial Tract (5.66 acres)	\$ 2,830
Industrial Improvements	<u>\$13,680</u>
Total Assessed Value	\$16,510

Parcel No. RP10N05W096150 - Appeal No. 13-A-1022

Rural Industrial Tract (2.5 acres)	\$ 1,250
Non-irrigated Agricultural (2.5 acres)	\$ 2,165
Industrial Improvements	<u>\$12,714</u>
Total Assessed Value	\$16,129

Parcel No. RP10N05W096020 - Appeal No. 13-A-1023

Rural Industrial Tract (3 acres)	\$ 1,500
Non-irrigated Agricultural (18.64 acres)	<u>\$16,142</u>
Total Assessed Value	\$17,642

Parcel No. RP10N05W095450 - Appeal No. 13-A-1024

Rural Industrial Tract (6.5 acres)	\$ 3,250
Non-irrigated Agricultural (28.5 acres)	\$24,681
Industrial Improvements	<u>\$48,170</u>
Total Assessed Value	\$76,101

IT IS FURTHER ORDERED that any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellant.

DATED this 18th day of February, 2014.