

BEFORE THE IDAHO BOARD OF TAX APPEALS

TINA MARIE HOVEN,)	
)	
Appellant,)	APPEAL NO. 14-A-1167
)	
v.)	FINAL DECISION
)	AND ORDER
BOISE COUNTY,)	
)	
Respondent.)	
_____)	
)	
)	

AGRICULTURAL EXEMPTION APPEAL

This appeal is taken from a decision of the Boise County Board of Equalization denying the protest of valuation for taxing purposes of property described by Parcel No. RP08N05E016100. The appeal concerns the 2014 tax year.

This matter came on for hearing November 6, 2014 in Idaho City, Idaho before Board Member Leland Heinrich. Appellant Tina Marie Hoven was self-represented. Assessor Brent Adamson represented Respondent.

Board Members David Kinghorn, Linda Pike and Leland Heinrich participated in this decision.

The issue on appeal is whether the subject property qualifies for a property tax exemption as property actively devoted to agriculture, or in the alternative, whether subject’s market value assessment was over-stated.

The decision of the Boise County Board of Equalization is affirmed on both issues.

FINDINGS OF FACT

The assessed land value is \$27,000. Appellant contends the correct land value is \$300.

The subject property is a one (1) acre unimproved tract located in rural Boise

County. Subject is described as moderately to steeply sloped hillside.

Subject represents one (1) of three (3) adjacently situated parcels owned by Appellant. Combined, the parcels total roughly 12.5 acres. Prior to the 2014 tax year, land on all three (3) parcels received a property tax exemption as land actively devoted to agricultural use. Citing to a lack of observed agricultural activity on the parcels in 2013, Respondent removed the agricultural exemptions for 2014. Appellant explained for the last fifteen (15) years the parcels have been used to grow catnip for cat toys, which was argued to satisfy the agricultural use element needed for an exemption.

After learning the exemptions were being removed for 2014, Appellant filed an application to reinstate the exemption for the larger 6.5 acre homestead parcel, however, mistakenly omitted inclusion of the other two (2) parcels in the application. Respondent then concluded subject and the other parcel were not actively devoted to agriculture so exemptions were denied. The homestead parcel was granted an agricultural exemption for 2014.

On appeal, Appellant challenged subject's assessed valuation primarily on the basis of the acre's steep and difficult terrain. Appellant contended subject's steep slope was not amenable to residential development. A letter from a local builder characterized subject as unbuildable due to the estimated 45 to 60 degree slopes. Based on this, Appellant argued subject's assessed value was overstated. Respondent contended a steep slope does not necessarily mean a parcel is unbuildable, and further noted many developed parcels throughout the county are situated on steep hillsides or difficult terrain.

Respondent explained without a letter from the Central District Health District declaring subject disapproved for a septic permit, the property was not considered unbuildable.

Respondent offered information pertaining to three (3) vacant land sales in support of subject's assessed value. The sale properties were situated in subject's immediate area, which Respondent remarked was rare due to the remote location. Sale No. 1 was regarded as most comparable to subject in terms of access and sloping topography. It was noted approximately 25% of the .44 acre lot was level and the remainder was moderately sloped. This property sold in January 2013 for \$28,000. Sale No. 2 was described as being a level lot with decent access. This .47 acre lot sold in March 2013 for \$27,500. Respondent noted the more steeply-sloped lot sold higher than the level lot, which in Respondent's view illustrated the point a property's location in this particular area is the primary value influence, not its slope. Respondent's third sale involved a 5.14 acre lot which sold in June 2013 for \$82,000.

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.

The Board is presented with two (2) primary issues, each of which will be addressed individually. The first is whether subject qualifies for exemption as land actively devoted

to agriculture. The second issue concerns the correctness of subject's assessed market value.

For many years subject, along with the adjacent two (2) parcels owned by Appellant, received a property tax exemption as land actively devoted to agriculture. The exemption was removed for 2014 because Respondent did not observe an active agricultural operation during a roadside inspection in August of 2013. Appellant explained catnip is grown and harvested on various portions of the parcels. According to Appellant, catnip grows best in areas with a lot of shade and ample water. Therefore, the entirety of the parcels is not ideal for catnip production. In Appellant's view, the agricultural exemption should not have been removed because subject and the other parcels continue to be devoted to agricultural use.

Idaho Code § 63-604 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 the grazing of livestock to be sold as part of a for-profit enterprise, or is lease by the owner to a bona fide lessee for grazing purposes; or

(iv) It is in a cropland retirement or rotation program.

...

(7) as used in this section:

(a) "Contiguous means being in actual contact or touching along a boundary or at a point, except no area of land shall be considered not contiguous

solely by reason of a roadway or other right-of-way.

Under the above code section, there are several criteria which must be satisfied to qualify as land actively devoted to agriculture. The first relates to parcel size. On its own, subject does not meet the five (5) acre threshold to qualify under the above portion of the statute. However, subject is contiguous with two (2) larger commonly-owned parcels, which combined total more than twelve (12) acres.

Having determined the total land area is over five (5) acres in size, the inquiry turns to whether subject is actively devoted to agriculture as defined by the controlling statute. Appellant testified catnip is grown and harvested in different areas of all three (3) parcels, including the lower portion of subject. While not a “traditional” crop such as wheat or corn, catnip would qualify as a field crop for purposes of determining agricultural use.

Based on size and crop type, the basic requirements of the exemption are satisfied. However, there is another key element of the code section, that the land for which exempt status is sought must satisfy the necessary requirements each year. This does not mean an application must be filed annually. In fact, an application is not even required for the exemption. Rather, the property simply needs to satisfy the requirements set forth in the statute.

On appeal here, the burden is on Appellant to provide substantive evidence subject’s acre of land, or a clearly defined portion, was actively devoted to agriculture as of January 1, 2014, the relevant assessment date. See Idaho Code § 63-205. In this particular instance, Appellant did not provide sufficient evidence to clearly establish

subject, or a defined portion, was actively devoted to agriculture.

“A statute granting tax exemption cannot be extended by judicial construction so as to create an exemption not specifically authorized. Exemptions are never presumed. The burden is on a claimant to establish clearly a right to exemption. It must be in terms so specific and certain as to leave no room for doubt.” *Sunset Memorial Gardens, Inc. v. Idaho State Tax Comm’n*, 80 Idaho 206, 219, 327 P.2d 766, 774 (1958). Appellant offered verbal testimony a portion of subject was actively devoted to agriculture, but did not supplement the testimony with additional evidence, such as photographs or other proof of active agricultural activity. In all, Appellant did not demonstrate clear entitlement to the exemption for the 2014 tax year, so it must be denied.

The remaining issue in this matter concerns subject’s assessed market value. Idaho requires all non-exempt property to be assessed at market value. Idaho Code § 63-203.

Market value is defined in Idaho Code § 63-201, as,

“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.

Market value is estimated according to recognized appraisal methods and techniques. There are three (3) approaches to value, the sales comparison approach, the cost approach, and the income approach. *Merris v. Ada County*, 100 Idaho 59, 63, 593 P.2d 394, 398 (1979). A sales comparison approach is commonly used to develop a market value opinion for residential land like subject.

Respondent offered information regarding three (3) recent vacant land sales from subject's area. Sale prices were between \$27,500 and \$82,000, or an average of \$46,033 per acre. Sale No. 1 was described as most comparable because 75% of the .44 acre lot is moderately sloped, similar to subject. This property sold for \$28,000, or roughly \$63,600 per acre.

Appellant did not provide sales or other market-based information to support reducing subject's value. Rather, Appellant contended subject was unbuildable due to its steeply sloped topography. In this regard, Appellant offered an opinion letter from a local builder who indicated subject was unbuildable because of the slope. Subject's topography would likely present construction challenges, but this does not necessarily mean the acre is unbuildable. Respondent explained a property's inability to obtain a septic permit was a key element in establishing unbuildable status. Appellant inquired with the Central District Health Department about subject's ability to support a residence, however the inspection process was not completed. Without more information the Board is unable to conclude subject is unbuildable.

In appeals to this Board, the burden is with the Appellant to establish error in subject's valuation by a preponderance of the evidence. Idaho Code § 63-511. The burden of proof was not satisfied in this case. In all, subject's valuation appears reasonable given the sales information provided by Respondent. Error in subject's valuation was not demonstrated. As such, the decision of the Boise County Board of Equalization is affirmed.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Boise County Board of Equalization concerning the subject parcel be, and the same hereby is, AFFIRMED.

DATED this 2nd day of March, 2015.