

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEALS OF OLD) APPEAL NOS. 13-A-1039
CHERRY BUTTE RANCH, LLC from decisions) thru 13-A-1047
of the Fremont County Board of Equalization)
for tax year 2013.) FINAL DECISION
) AND ORDER

AGRICULTURAL EXEMPTION APPEALS

THESE MATTERS came on for hearing October 11, 2013, in St. Anthony, Idaho before Board Member David Kinghorn. Board Members David Kinghorn, Linda Pike and Leland Heinrich participated in this decision. Gene and Christy Kantack appeared at hearing for Appellant. Appraisers Jeremy Dixon and Kent Lords appeared for Respondent Fremont County. These appeals were taken from decisions of the Fremont County Board of Equalization (BOE) denying property tax exemption claims for properties described by parcel number in Attachment A.

The issue on appeal concerns whether certain land qualifies for a property tax exemption as land actively devoted to agriculture, pursuant to the definition in Idaho Code § 63-604.

The decisions of the Fremont County Board of Equalization are reversed.

FINDINGS OF FACT

The BOE assessed values of the nine (9) subject parcels are detailed in Attachment A.

Subjects are adjacent lots which comprise a rural residential subdivision located near Ashton, Idaho. When purchased by Appellant in 2002, the lots were originally a single 63.94 acre tract. In 2008, Appellant filed a subdivision plat, splitting up the original large parcel. None of the lots have been improved, nor have they ever been listed for sale.

Appellant contended subjects comprise an active nursery stock (tree farm) operation and should therefore be granted agricultural exemptions. In 2008, Appellant developed a business plan regarding the future use of the lots. The plan outlined two (2) objectives: 1) begin producing nursery stock, and 2) plant and harvest wildflower seeds. While the wildflower seed production has not been actively pursued, Appellant reported multiple efforts have been made to build a viable tree farm operation.

In support of classifying subjects as a tree farm, Appellant provided nursery/florist licenses issued by the Idaho Department of Agriculture (IDA) dating back to 2008. Appellant also furnished annual IDA certificates of nursery inspection. This was evidence that subjects have been regularly inspected and that the operation “is in compliance with Idaho Nursery and Florist Law.”

Appellant also detailed specific efforts made to transform subjects into a tree farm. First it was explained the decision to put subjects to a tree farm use was made because other agricultural pursuits were not feasible in Appellant’s view. Due to subjects’ somewhat steep and difficult terrain, the lots were not good candidates to support field crops. Likewise, Appellant viewed pursuit of a livestock grazing operation as not feasible due primarily to the increased numbers of wolves and grizzly bears in the area. Appellant stated that grazing cattle on subjects would attract predators, which would increase the danger of a person being injured. As such, Appellant decided the production of nursery stock was the best agricultural use.

Since at least 2008, Appellant has planted seedlings and trees on portions of the lots. For example, in May 2009, Appellant purchased 70 trees from the Arbor Day Foundation.

Appellant reported there were many other purchases but did not provide specific details. Appellant has also entered into agreements with area landowners to remove unwanted trees and re-plant them on subjects. In all, Appellant believes significant efforts have been made to transplant or grow trees on the subject parcels.

In bringing tree stock to subjects, Appellant has suffered a fair amount of loss. Some of the tree loss was characterized as normal, and some was attributed to subjects' difficult terrain and dry soil conditions. Appellant has attempted to grow different species of trees on subjects, with varying success. Recently, Appellant realized some success with blue spruce trees and anticipates increased production in this area. Appellant reported it has sold trees to third party buyers. Appellant provided evidence of one (1) such sale which occurred in December 2012 for \$1,235. Other sales were mentioned, but details were not shared. It was conceded the yield over the past few years has not been as much as hoped, but it was still maintained subjects' use qualified as land actively devoted to the production of nursery stock.

Respondent argued subjects did not qualify for an agricultural exemption for 2013. Specifically, the County questioned whether Appellant was in fact *actively* pursuing the production of nursery stock. Respondent conceded efforts had been made to grow trees. However in comparison to other nursery operations, the amount of nursery stock subjects produce was deemed insufficient to qualify for the exemption.

Concluding subjects did not qualify for an agricultural exemption grant, the lots were assessed as rural residential property at full market value. Four (4) vacant lot sales from 2012 were offered in this regard. The sale properties were all located in a subdivision

regarded by both parties as superior to subjects'. The sales were used, however, as the most comparable and recent sales in subjects' immediate area. The sale lots ranged in size from 1.48 to 8.05 acres. Sale prices were between \$52,000 and \$289,546, or from \$29,952 to \$35,968 per acre. Respondent noted subjects were assessed lower than the sale properties.

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 first issue before the Board is whether the subject land qualifies for an agricultural exemption in the current tax year. The second issue concerns whether subjects' assessed values are proper. This latter issue need only be examined if it is determined subjects do not qualify for exempt status.

The agricultural exemption is found in Idaho Code §§ 63-602K and 63-604. Section 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 leased by the owner to a bona fide lessee for grazing purposes; or
- (iv) It is in a cropland retirement or rotation program.

...

(6) For purposes of this section, the act of platting land actively devoted to agriculture does not, in and of itself, cause the land to lose its status as land being actively devoted to agriculture if the land otherwise qualifies for the exemption under this section.

It was noted subjects were granted an agricultural exemption since at least Appellant's 2002 purchase. In 2008, the subject lots were created through subdividing. As noted above, the act of platting land would not in itself cause agricultural land to lose its status as being actively devoted to agriculture. Subjects have not been improved but remain largely in their original state. The question turns on whether the land's current agricultural use is a qualifying use under the exemption statute.

Respondent testified the exemptions were removed because there was some doubt concerning whether the land was actively engaged or used in a qualified agricultural pursuit. In Respondent's view, subjects' low yield compared to other tree farms, and the less-than-full tree coverage, was evidence the exemption should not be granted.

Appellants countered that extensive measures have been taken to transform subjects into a nursery stock production operation. Trees were planted on the sections of subjects deemed suitable for tree growth. Appellant has made numerous purchases of seedlings and has transplanted trees which were unwanted by other landowners in the area. It was noted Appellant holds a valid nurseryman/florist license from the IDA. The licensing agency has performed annual inspections of the subject properties and declared that they meet relevant nursery and florists laws.

The Board appreciates Respondent's position, however, the facts in this case support a different conclusion. While subjects' yield has been admittedly poor over the past several years, continued efforts have been made toward building a sustainable tree farm. New stock is regularly planted on the lots and some tree sales have occurred. The poor yield is likely due in part to the dry and steep conditions. Regardless, the above exemption statute contains no requirement regarding minimum productivity levels in order to qualify. For land areas over five (5) acres, the law only requires the land in question be actively devoted to an agricultural pursuit, one of which is the production of nursery stock.

Idaho Code § 22-2302 defines nursery stock as “. . . all botanically classified plants or any part thereof, such as aquatic or herbaceous plants . . . and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale.” Appellant planted several species of trees on subjects, all of which appear to fall within the definition of nursery stock.

From the record, the Board is satisfied subjects' current use qualifies the land for the agricultural exemption as requested. Subjects are actively devoted to the production of nursery stock. That Appellant has not realized the level of production initially envisioned, or that present with other operators, is not controlling. It is enough that active efforts are made to use subjects in furtherance of a qualified agricultural pursuit.

Having found the use of the subject land qualifies it for an agricultural exemption, the Board need not address whether Respondent's market value determination was proper.

Based on the above, the decisions of the Fremont County Board of Equalization are reversed. Subjects shall be assessed on the same basis and at the same rate applied to

similar land that qualifies as land actively devoted to agriculture pursuant to Idaho Code § 63-604.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decisions of the Fremont County Board of Equalization concerning the subject parcels be, and the same hereby are, REVERSED, granting agricultural exemptions to the land associated with these parcels.

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 13th day of February, 2014.