

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF VISION) APPEAL NO. 13-A-1027
QUEST DEVELOPMENT, LLC from a decision of)
the Fremont County Board of Equalization for tax) FINAL DECISION
year 2013.) AND ORDER

AGRICULTURAL EXEMPTION APPEAL

THIS MATTER 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. Owners Christy and Gene Kantack appeared at hearing for Appellant. Appraisers Kent Lords and Jeremy Dixon appeared for Respondent Fremont County. This appeal is taken from a decision of the Fremont County Board of Equalization denying a request for an agricultural exemption on property described by Parcel No. RP001680010040.

The issue on appeal is whether certain land qualifies for an exemption pursuant to the definition of land actively devoted to agriculture (Idaho Code § 63-604).

The decision of the Fremont County Board of Equalization is reversed.

FINDINGS OF FACT

The assessed land value is \$124,664. Appellant requests subject be granted an agricultural exemption, or in the alternative that subject’s market valuation be reduced to \$91,800.

The subject property is a vacant 6.12 acre lot situated in the North Fork Highlands subdivision near Ashton, Idaho. Appellant purchased subject in 2007 and since that time has attempted to grow trees (nursery stock) on the parcel. Appellant explained subject has no developed irrigation so the trees must be watered by hand. The lack of a regular irrigation system has negatively impacted yield. In fact, Appellant reported only 15% of the seedlings planted this year survived the hot and dry summer. Appellant also cited subject’s rocky, and in

some places steep, topography as further detriments to the nursery operation. Appellant is searching for a tree species that will survive subject's rough conditions. In Appellant's view, subject is being actively used for an approved agricultural purpose, even if the yield has been less than hoped.

Respondent contended subject did not qualify for the agricultural exemption primarily due to the low yield and the fact that not all of subject is used to grow trees. Based on superior performances of other nurseries, Respondent concluded subject was not actively devoted to an agricultural pursuit. Appellant explained there are some portions of subject on which trees will not grow. As such, Appellant has strategically planted those areas with the greatest chance of supporting trees. It was noted some of the other nurseries were situated on irrigated land with relatively flat topography, which helps improve production.

If it is determined subject does not qualify for an agricultural exemption, Appellant petitioned subject's assessed land value be reduced. Appellant reported there have been no sales in subject's subdivision, or in surrounding developments for several years. Due to the lack of recent sales, Appellant pointed to current listings of parcels located in subject's subdivision. The lot across from subject was on the market for 572 days with an asking price of \$79,000, or \$14,906 per acre, yet no offers were received. Appellant noted the asking price was roughly 33% below the 2013 assessed value. Appellant further remarked there were several other active listings with asking prices below assessed values.

Respondent provided information on four (4) vacant lot sales which closed during 2012. The sale parcels were located in the same development, but not in subject's subdivision. The lots were between 1.48 and 8.05 acres in size. The prices ranged from \$52,000 to \$289,546,

or from \$29,951 to \$35,968 per acre. In comparison, subject was assessed at roughly \$20,000 per acre.

Appellant challenged the comparability of Respondent's sales. According to Appellant, the development wherein the sales were located was much more desirable than subject's subdivision. The development includes nice access roads, common recreation areas, picnic tables, a basketball court, and other value-adding amenities. Respondent agreed the development was superior to subject's, and noted subject was assessed much lower than the price levels from the higher-end development.

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 issues before the Board concern whether subject qualifies for an agricultural exemption, and if not, whether subject's market valuation is proper. Appellant argued subject qualified for an agricultural exemption because the parcel is used to produce nursery stock. Respondent contended there was only minimal nursery stock use and therefore the exemption should be denied.

Idaho Code §§ 63-602K and 63-604 provide a property tax exemption for land which is actively devoted to agriculture. 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.

At 6.12 acres, subject meets the minimum size requirement under the above section. The question turns to whether subject is actively devoted to at least one (1) of the agricultural uses described. In this case, the focus is on nursery stock, which is defined in Idaho Code § 22-2302(11) as,

"Nursery stock" includes all botanically classified plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees, and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. The term does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flowers, bulbs and tubers of vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation.

Appellant provided photographs depicting trees on subject. Testimony was also offered regarding how the trees are cared for and that annual planting occurs. From the definition above, it appears the subject land is being used for the production of nursery stock, i.e. for an approved agricultural use.

Respondent's argument focused primarily on the fact that subject produced fewer trees than other nurseries. While the Board understands Respondent's position, there is nothing in the statute setting a minimum level of yield or performance. Some land is better suited for supporting a particular crop than another, but where a bona fide attempt is made to produce a crop, the less effective parcel should still qualify for an agricultural exemption. Such is the case

here, where Appellant is actively pursuing a nursery stock crop.

Appellant detailed several issues which have negatively impacted yield. Most notable was the lack of an improved irrigation system. Also cited was the somewhat challenging and rocky terrain. As a result of these issues, Appellant must selectively choose where to plant seedlings. Appellant is also in the process of identifying which species will survive and thrive on subject, which takes some time. These actions are all evidence of an active agricultural pursuit.

Respondent further took issue with the fact that no nursery stock has actually been sold. Appellant explained the plan is to produce enough stock so it can be sold, but the difficulties noted above have caused a delay in realizing this goal. Again, the statute does not require a certain amount of sales to qualify for the exemption. It is understood, particularly with trees, that it could take some time before the yield will be sufficient to allow for sales to third parties.

In the current case, Appellant has demonstrably made efforts to produce nursery stock. While the results have been less than desired, Appellant continues to pursue nursery stock production and intends to sell such stock in the future.

Based on the requirements of the controlling statutes, the Board is satisfied subject was actively devoted to agriculture for the 2013 tax year. Finding the exemption proper, there is no need to examine whether subject's market value assessment is proper because parcels under the agricultural exemption are not assessed at market value.

Given the above, the Board will grant Appellants agricultural exemption claim and reverse the decision of the Fremont County Board of Equalization.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the

Fremont County Board of Equalization concerning the subject parcel be, and the same hereby is, REVERSED. The subject land is to be assessed according to the County's agricultural land rate which is applied to similar land that is exempt under the agricultural exemption.

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 14th day of January, 2014.