BEFORE THE IDAHO BOARD OF TAX APPEALS

ENSIGN POINT CONSOLIDATED, Appellant, v. TWIN FALLS COUNTY, Respondent.	)	APPEAL NOS. 16-A-1112 thru 16-A-1122 FINAL DECISION AND ORDER

AGRICULTURAL EXEMPTION APPEALS

These appeals are taken from decisions of the Twin Falls County Board of Equalization denying requests for exemption for taxing purposes of properties described by parcel number on Attachment A. The appeals concern the 2016 tax year.

These matters came on for hearing October 26, 2016 in Twin Falls, Idaho before Board Member David Kinghorn. Attorney Steven Peterson represented Appellant at hearing. Deputy County Prosecuting Attorney Nancy Austin represented Respondent.

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

The issue on appeal concerns whether the subject properties should be assessed as land actively devoted to agriculture pursuant to Idaho Code § 63-604.

The decisions of the Twin Falls County Board of Equalization are affirmed.

FINDINGS OF FACT

Assessed values of the subject lots are detailed in Attachment A, as are Appellant's respective value requests.

The subject properties are a series of continuous vacant residential lots located in the Ensign Point subdivision in Twin Falls, Idaho. According to Respondent's information, the

combined acreage of the lots is 4.48 acres. Appellant calculated the same total acreage for the lots, however, contended an additional 2.933 acres be added, resulting in a total land size of 7.422 acres

Appellant explained subjects' subdivision began construction in 2006. The subdivision consists of roughly forty-nine (49) lots, some of which have been developed. The undeveloped subject lots are generally situated in the southwestern portion of the development. Beginning in 2012, Appellant contracted with a local tree nursery to house nursery stock. Trees were brought to undeveloped lots in the subdivision in pots. Because the trees did not sell as quickly as anticipated, they were planted in the ground in 2013. Since that time, many trees have been sold or otherwise removed and new trees have been planted.

Prior to 2016, the subject lots, plus an additional seven (7) lots, were valued as land actively devoted to agriculture. The special valuation treatment was lost for the 2016 tax year due to the sale (Higley Purchase) of two (2) centrally-located lots on the southern side of the subdivision. The sale, which involved two (2) members of the Appellant organization, interrupted the physical chain of contact between the subject lots under appeal here and the seven (7) additional lots referenced earlier. The result was the combined acreage of the subject lots no longer satisfied the five (5) continuous acre threshold identified in Idaho Code § 63-604. As such, the subject lots were assessed at full market value, rather than at the discounted agricultural land rate.

Appellant argued the subject lots satisfied the five (5) acre threshold if lot measurements extended to the centerline of the access roads. The parties noted the roadways were dedicated rights-of-way for the benefit of the city. Appellant further contended the entirety of the roadways

should be included in the size calculation because the roads are part of the farm land and are used to access the agricultural operation. Respondent argued the roadways should not be included in the size calculation because the roads are not owned by Appellant, but rather are dedicated rights-of-way for the use and enjoyment by the public. In Respondent's view, the size of the subject lots should match the size indicated by the respective legal descriptions contained in the recorded deeds, or as reflected on the subdivision's recorded plat map, neither of which include the acreage dedicated to the roadways.

In addition to the roadways, Appellant contended the Higley Purchase, which involved members of the organization, should also be included in the size calculation. Because the buyers were members of the limited liability company, Appellant reasoned the ownership was common between the Higley Purchase lots and the subject lots. Respondent countered the ownership was not common because the subject lots were owned by Appellant, which is a distinct legal entity, separate from its members.

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 issue here centers on whether the subject lots satisfy the requirements of Idaho Code § 63-604 to be assessed as land actively devoted to agriculture. For the reasons below, we find the subject lots do not qualify for the special assessment treatment.

Idaho Code § 63-604 provides in relevant 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.

(b) The area of such land is five (5) contiguous acres or less and such land has been actively devoted to agriculture within the meaning of subsection (1)(a) of this section during the last three (3) growing seasons; and

(i) It agriculturally produces for sale or home consumption the equivalent of fifteen percent (15%) or more of the owner's or lessee's annual gross income; or

(ii) It agriculturally produced gross revenues in the immediately preceding year of one thousand dollars ($1,000) or more. When the area of land is five (5) contiguous acres or less, such land shall be presumed nonagricultural land until it is established that the requirements of this subsection have been met.

The parties disagree on the total area of land to be measured and whether such total area is greater than five (5) acres. Appellant contended the access roads should be included in the measurement because the roads are used to service the agricultural operation. Respondent noted the roads are dedicated rights-of-way for the benefit of the public and because such roads are not owned by Appellant, it was argued they should not be included in the size calculation. We agree. As clearly illustrated on the plat map, each individual lot boundary stops at the edge of the respective roadways. And the acreage description associated with each lot includes only the acreage within the lot lines, not the roadways. The parties agree Appellant does not own the roadways, and as such, it does not logically follow the acreage associated with the roadways

should be included in determining the respective sizes of the subject lots owned by Appellant. The roadways belong to the City of Twin Falls, so it would be improper to include the acreage in the total land area calculation for Appellant's benefit. This follows too with Idaho Code § 63-201(24), which defines *record owner* as "the person or persons in whose name or names the property stands upon the records of the county recorder's office . . . ." We cannot impute land not owned by Appellant into the size calculation of the subject lots.

We similarly find the acreage of the two (2) lots included in the Higley Purchase should not be included in the size calculation. Appellant argued because the buyers in the Higley Purchase were members of the limited liability company, the acreage of the lots should be included in calculating subjects' total land area. While we understand Appellant's position, such runs contrary to well-established laws and legal concepts regarding the separation between owners and the business entities they own or operate. In this case, the buyers in the Higley Purchase elected to take title to the lots in their own names, not in the name of the organization. Under the law, a limited liability company is separate from its members or managers, however, Appellant would have us ignore this fundamental principle of separation between business entities and their owners. Just as there are benefits associated with a particular type of business entity, so too are there burdens, and Appellant must bear the burdens of its choice to organize as a limited liability company, even if such burdens are unforeseen or unintended. As such, it would be improper to include the acreage associated with the Higley Purchase in the calculation of subjects' total land area because the buyers are legally separate persons from Appellant.

"Exemptions are never presumed. The burden is on a claimant to establish clearly a right to exemption. An alleged grant of exemption will be strictly construed. It must be in terms so

specific and certain as to leave no room for doubt." *Bistline v. Bassett*, 47 Idaho 66, 71, 272 P. 696, 698 (1928). As applied here, we find Appellant failed to clearly establish a right to the relief sought. Appellant's position was unsupported by current law and long-established legal principles regarding property ownership and the separation between owners and their business entities.

We likewise find the subject lots do not qualify to be assessed as land five (5) acres or less actively devoted to agriculture. Though the tree nursery activity is a qualified agricultural use, and it was implied the other requirements were satisfied, Appellant failed to timely apply for the agricultural property designation applicable to agricultural land five (5) contiguous acres or less. Idaho Code § 63-602 provides in relevant part,

> (3) All exemptions from property taxation claimed shall be approved *annually* by the board of county commissioners or unless otherwise provided:
>
> > (a) Exemptions pursuant to sections 63-602A, 63-602F, 63-602I, 63-602J, 63-602K for land of more than five (5) contiguous acres, 63-602L(1), 63-602M, 63-602R, 63-602S, 63-602U, 63-602V, 63-602W, 63-602Z, 63-602DD(1), 63-602EE, 63-602OO, 63-2431, 63-3502, 63-3502A and 63-3502B, Idaho Code, *do not require* application or approval by the board of county commissioners. For all other exemptions in title 63, Idaho Code, the process of applying is as specified in the exemption statutes or, if no process is specified and application is necessary to identify the property eligible for the exemption, *annual application is required* . . . . (Emphasis added).

As the subject lots do not total more than five (5) contiguous acres, Appellant was required to file an application with the county board of commissioners in order to have the lots valued as land actively devoted to agriculture pursuant to the above code section. No application was filed, so the law is clear the requested valuation treatment must be denied.

All property not expressly exempt is subject to assessment and taxation. Idaho Code §

63-601. And all nonexempt property must be assessed annually at market value on January 1; January 1, 2016 in this case. Idaho Code § 63-205. Though details were not shared, Respondent developed market value conclusions for each subject lot. Appellant did not dispute or otherwise challenge Respondent's market value determinations. As such, we find Appellant failed to prove error in subjects' valuations by a preponderance of the evidence as required by Idaho Code § 63-511.

Based on the above, the decisions of the Twin Falls County Board of Equalization are affirmed.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decisions of the Twin Falls County Board of Equalization concerning the subject parcels be, and the same hereby are, AFFIRMED.

DATED this 13th day of March, 2017.