

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

**JOHN MCCATHARN, individually,
and as trustee on behalf of
JOHN MCCATHARN REVOCABLE TRUST,
Appellants-Petitioners,**

v.

No: D-202-CV-2016-00381

Bernalillo County
Valuations Protest Board
Protest re:
UPC No: 1-013-051-452084-4-01-19

**BERNALILLO COUNTY TAX ASSESSOR,
Appellee-Respondent.**

ORDER ON APPEAL

THIS MATTER having come before the Court upon McCatharn's appeal of the decision to reassess a substantial portion of their property; the Court having reviewed the parties' briefing; the Court having reviewed the file; and the Court being sufficiently advised:

THE COURT FINDS:

1. There is jurisdiction over the parties and the subject matter.
2. Further hearing on this matter is not necessary for an appropriate determination of the issues presented. *Nat'l Excess Ins. Co. v. Bingham*, 1987 NMCA 109; *State Trans. Dept. v. Yazzie*, 1991 NMCA 098; *Flagstar Bank v. Licha*, 2015 NMCA 086.
3. The appeal was timely filed.
4. McCatharn protests that the reassessment of about two-thirds of his property from agricultural to industrial use for tax year 2014 was not supported by substantial evidence, was arbitrary and capricious, and contrary to law. Appellant seeks to have that decision reversed and to restore the agricultural classification on his entire property.

5. It is undisputed that McCatharn's property had a history of agricultural use as a dairy until latter 2013 when the dairy closed. Subsequently, Appellant asserts he has been actively and consistently converting the property from dairy farming to meat cattle farming, thereby continuing its agricultural use, including revamping the dairy infrastructure and preparing the property for grazing usage.

6. Appellee points out that the property had only one or two cows present upon it at the time of inspection in early 2015 and that much of the prior dairy infrastructure had been removed. Further, Appellee noted the grass crop planted by McCatharn had failed and that no other agricultural product had been produced since the dairy closed in 2013. Appellee also established the property had been listed for sale as industrial and not agricultural property.

7. Appellant's property had been classified as agricultural for at least three (3) preceding years. He was entitled to a presumption that such use continued. Section 7-36-20 (A) NMSA.

8. The Court reviews administrative decisions under Section 39-3-1.1 NMSA and Rule 1-0174 NMRA to determine if the administrative decision was fraudulent, arbitrary and capricious, unsupported by substantial evidence, or not in accordance with law. *Rio Grande Chptr. of Sierra Club v. N.M. Mining Comm.*, 2003 NMSC 005. The Court's review is upon the whole record. *Las Cruces Prof. Fire Fighters v. Las Cruces*, 1997 NMCA 044.

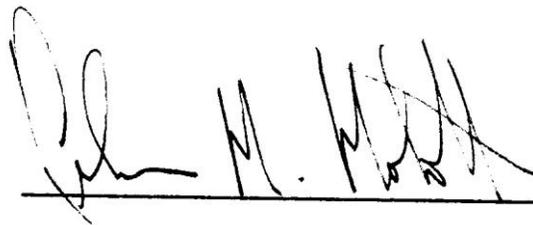
9. Upon review of that record, Appellee failed to rebut the presumption of continued agricultural use [Section 7-36-20 NMSA] under the facts and circumstances and its decision misapplied the law, was arbitrary and capricious in asserting the success of McCatharn's efforts was of great, even dispositive, effect, and the decision was not based upon substantial evidence. The decision should be reversed.

10. Specifically, while previous agricultural use as a dairy was indisputably changed in the prior tax year, 2013, Appellee insisted McCatharn's efforts to convert the property from that use to another clearly agricultural use – meat cattle raising – were not accomplished fast enough and were not sufficiently successful enough to warrant consideration as ongoing agricultural use. This was not sufficient to overcome the statutory presumption in favor of appellant and did not amount to substantial evidence of discontinued agricultural use.

WHEREFORE, it is Ordered:

Appellee's decision to reclassify all but 12.5 acres of Appellant's property on SR 47 as industrial for 2014 is reversed.

Appellee shall restore the agricultural classification for 2014 to all of Appellant's property at issue in this proceeding.

A handwritten signature in black ink, appearing to read "Alan M. Malott", written over a horizontal line.

Alan Malott
District Court Judge

Dated: __8-1-16

Copies of the foregoing were e-mailed, mailed, or delivered to the following on the date of filing/e-filing:

Domenici Law Firm, PC,
Pete V. Domenici, Jr., Esq.,
Reed Easterwood, Esq.
320 Gold Ave SW Suite # 1000
Albuquerque, NM 87102
(505) 883-6250
pdomenici@domenicilaw.com

Attorneys for Appellants

Charles Rennick, Esq.,
Marcus J. Rael, Jr., Esq.,
ROBLES, RAEL & ANAYA, P.C.
500 Marquette Ave. NW, Suite 700
Albuquerque, NM 87102
(505) 242-2228
charles@roblesrael.com

Attorneys for Appellee

A handwritten signature in cursive script that reads "Susan L. Gibson".

Susan L. Gibson, TCAA
Division XV