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INTEROFFICE MEMORANDUM

TO: Local Government Advisory Council

FROM: Dan Whyte, Deputy Chief Legal Counsel
Legal Services Office

RE: *Department of Revenue v. Heidecker*

DATE: April 7, 2014

On July 2, 2013, the Montana Supreme Court handed down *Department of Revenue v. Heidecker*, 2013 MT 171, 370 Mont. 464, 304 P.2d 726. In that case, the Bridger Lake Meadows (BLM) subdivision covenants limited construction to “one single family residence structure”. The covenants also prohibited the landowners from engaging in activities that would result in noise or vibration, light, odor, dust, smoke, or other pollution. The covenants further prohibited landowners from owning or keeping livestock or other animals used for commercial purposes. Section 15-7-202(5), MCA, precludes classification of land as agricultural if the land was encumbered by covenants that prohibit agricultural use: “Land may not be classified or valued as agricultural land or nonqualified agricultural land if it has stated covenants or other restrictions that effectively prohibit its use for agricultural purposes.”

The Department determined that, based on Montana law, the BLM subdivision covenants restricting use required the parcels in the subdivision to be valued as residential property under § 15-6-134, MCA. Heidecker appealed arguing that the property had been continuously used for hay and grain operation and therefore met the definition of agricultural property under § 15-6-133, MCA.

The Court held that despite the subdivision’s restrictions on the land, classification of property should not be determined from the restrictive covenants, but on its actual use. The Court ultimately held:

- 1) It is not the responsibility of the DOR to enforce the contractual rights provided by the covenants when the land continued to be used for agricultural purposes.
- (2) The Court's decision comports with the principle of Montana's tax system -- specifically under § 15-7-103(2), MCA -- that "[a]ll lands must be classified according to their use or uses." The Court noted that it is the Legislature's intent to keep legitimate agricultural properties safe from urban influences and the speculative nature of residential property.
- (3) The DOR retains the ability to evaluate in the future whether BLM continues to be used for "bona fide" agricultural purposes by considering the sale of lots and whether Heidecker stops using the property for agricultural purposes.

As a result of the *Heidecker* decision, there may be subdivisions that will require further consideration of whether the subdivision should be classified as class four (residential) or class three (agricultural or non-qualified agricultural). Those owners who had appealed the property values at the time of the *Heidecker* litigation have been reviewed for reclassification. The Department is continuing to review subdivisions throughout the state to determine the correct classification. For those subdivisions that question classification, the appraisal appeal processes in the Montana Code Annotated and the Administrative Rules of Montana is available.

Additionally, the Department is reviewing the statutes and rules discussed by the Montana Supreme Court to determine whether amendment to those statutes and rules is necessary.