STATE OF IDAHO)
County of KOOTENAI)ss
FILED 5-1-2023
AT 12:30 O'Clock P M
CLERK OF DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

ANDERSON FAMILY PROPERTIES,

Plaintiff,

vs.

KOOTENAI COUNTY, ET AL,

Defendant.

Case No. **CV28-19-2973**

MEMORANDUM DECISION AND ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

On April 24, 2019, Petitioners Anderson Family Properties, an Idaho Partnership (Petitioner) filed a Petition for Judicial Review. The case was assigned to District Judge Lansing L. Haynes. This Court's review of the file indicates there was no reassignment to Judge Lamont C. Berecz following Judge Haynes' retirement.

On February 18, 2020, an Order of Consolidation was filed, consolidating, based on the stipulation of the parties, Kootenai County Case No. CR28-18-6218 into this present case, Kootenai County Case No. CR28-19-2973.

On November 22, 2022, the Honorable Lamont C. Berecz issued a Memorandum Order & Decision Granting Motion for Partial Summary Judgment, which held, "In summary, the trial de novo will be limited to the 2018 tax assessment." Mem. Order & Decision Granting Mot. for Partial Summ. J. 5. That Memorandum Decision was filed on November 25, 2022. On December 27, 2022, the undersigned was reassigned this case. On February 15, 2023, a scheduling conference was held before the undersigned. At the conclusion of that hearing, this Court scheduled this case for a two-day court trial

beginning May 8, 2023.

On May 1, 2023, this case came to this Court's attention via the Respondent Kootenai County Assessor's Memorandum in Opposition to Petitioner's Motion for Reconsideration, being placed in the undersigned's queue. The Court then reviewed the entire court file.

On April 14, 2023, the petitioner filed Petitioner's Motion for Reconsideration, asking for reconsideration of the Court's Memorandum Order & Decision Granting Respondents' Motion for Partial Summary Judgment. Pet'r's Mot. for Reconsideration 1. In that motion, petitioners specified that it was not requesting a hearing on this motion. *Id.* Also filed on April 14, 2023, was Petitioner's Memorandum in Support of Motion for Reconsideration. Because no judgment was entered after the partial summary judgment decision, the petitioner's motion for reconsideration was timely under I.R.C.P. 11.2. However, it is unknown why petitioners waited until just before the Court trial to file such motion, especially given the fact that if Petitioner's motion were granted, the Court trial would change drastically from an appeal (a trial *de novo*) on the 2018 tax assessment, to an appeal (a trial *de novo*) on the 2018, 2019, 2020, 2021, and 2022 tax assessments. Pet'r's Mem. in Supp. of Mot. for Recons. 2. On April 28, 2023, respondents Kootenai County and the Kootenai County Assessor (Respondents) filed Respondent Kootenai County Assessor's Memorandum in Opposition to Petitioner's Motion for Reconsideration. Given that no hearing was requested by either party, the Petitioner's motion for reconsideration is at issue.

II. STANDARD OF REVIEW.

Petitioner correctly sets for the standard of review:

> A party making a motion for reconsideration is permitted to present new evidence but is not required to do so. *Johnson v. Lambros*, 143 Idaho 468, 147 P.3d 100 (Ct. App. 2006). "On a motion for

> reconsideration, the court must consider any new admissible evidence or authority bearing on the correctness of an interlocutory order. *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012)." *Demoney-Hendrickson v. Larsen*, ___ Idaho ___, ___ P.3d ___ (2023 Ida. LEXIS 43, Idaho Supreme Court Docket No. 49018, decided March 30, 2023). The trial court must consider new evidence or authority bearing on the correctness of a summary judgment order. *Fragnella* at 276, 281 P. 3d at 113. "[T]he standard of review for this Court when reviewing a district court's grant of summary judgment is well-settled: this Court 'uses the same standard properly employed by the district court originally ruling on the motion.' *Drakos v. Sandow*, 167 Idaho 159, 162. [Also, Fragnella at 276, 281 P.3d at 113).
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> Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Idaho Rule of Civil Procedure 56(c).

Pet'r's Mem. in Supp. of Mot. for Recons. 2-3.

III. ANALYSIS

This Court has read the briefing submitted to the Court which resulted in Judge Berecz' Memorandum Order & Decision Granting Motion for Partial Summary Judgment. This Court has read Judge Berecz' Memorandum Order & Decision Granting Motion for Partial Summary Judgment. This Court has read Petitioner's Motion for Reconsideration, and Petitioner's Memorandum in Support of Motion for Reconsideration. This Court has read Respondent Kootenai County Assessor's Memorandum in Opposition to Petitioner's Motion for Reconsideration.

This case is an appeal from a decision of the Idaho Board of Tax Appeals. For the tax year 2017, the assessed value of Petitioner's property, with a timber exemption, was $279,095.00. Statement of Undisputed Material Facts (filed September 22, 2022) ¶3. In 2018, the assessor valued the Petitioner's property without the timber exception at $1,997,634.00. *Id.* at 5. Petitioner's property is a 5.1832-acre parcel, which consists of a peninsula on Lake Coeur d'Alene, having about 1,700 lineal feet of waterfront on Lake

Coeur d'Alene. *Id.* at ¶¶1-2. Petitioners appealed that decision to the Kootenai County Board of Equalization which on July 18, 2018, affirmed the removal of Petitioner's timber exemption. *Id.* at ¶7. Petitioner appealed that decision to this Court. *Id.* at ¶8. The Kootenai County Assessor separately appealed the Board of Equalization's decision to the Idaho Board of Tax Appeals (IBTA). The IBTA on March 27, 2019, entered its "Final Decision and Order" determining the assessment for 2018 was $1,430,000. *Id.* at ¶ 10. Petitioners appealed the IBTA's March 27, 2019, Final Decision and Order to this Court, starting this present case. As mentioned above, Anderson's appeal from the Kootenai County Board of Equalization to this Court was consolidated into this present case on February 18, 2020.

On September 22, 2022, the Respondent moved for partial summary judgment, requesting the Court grant partial summary judgment declaring the only assessment year at issue in this proceeding is assessment year 2018. Mot for Partial Summ. J. 2; Mem. In Supp. of Mot. for Partial Summ. J. 3-4. What is clear from the briefing on Respondents' motion for partial summary judgment, is the Petitioner appealed from the Assessor's 2018 "Assessment Notice" to the Board of Equalization, and only that decision. The Petitioner's then appealed that BOE decision to this Court, and only that decision. "Assessment Notices" from years 2019, 2020, 2021 and 2022 have been issued by the Assessor (Crotinger Decl. Exh. F, G, H and I), but none of those were timely appealed to the Board of Equalization. The timelines in I.C. §63-501(A) are mandatory. Petitioners cannot now have direct appeal to this Court for those years, bypassing the BOE and the IBTA. Having not timely appeal those decisions by the Assessor for those years, that failure by Petitioners is fatal, and there is no way Petitioners can magically resurrect into this appeal, those now long dead determinations by the Assessor. Petitioner's failure to timely appeal those decisions by the Assessor for those years causes this court to lack

subject matter jurisdiction under I.C. §63-511. The Petitioner is required to exhaust all administrative remedies before coming to this Court. *Fairway Development Co. v. Bannock County*, 119 Idaho 121, 804 P.2d 294 (1990); see also *Park v. Banbury*, 143 Idaho 576, 578-79, 149 P.3d 841, 853-54 (2006). For the years 2019, 2020, 2021 and 2022, Petitioner did not appeal the Assessor's determination, and now, Petitioner cannot proceed on those years in this case because Petitioner has not, and now cannot (as Petitioner is now time barred) pursue Petitioner's administrative remedies.

This Court finds the appeal in the present case only concerns the 2018 decision by the Assessor, and the subsequent decisions of the successive administrative agencies for that 2018 decision. This Court agrees with Judge Berecz, when he wrote:

> A decision that the County improperly assessed the property in 2018 by removing the timber exemption will only result in adjusting 2018's assessment. The decision to not apply a timber exemption in 2019 or any later year is beyond the purview of this Court where such decisions were never appealed.
>
> Petitioner seems to argue that because timber exemptions may extend for up to 10 years any future decision by this Court which reinstated the timber exemption for 2018 must, of necessity, extend for the entire l0 year period. This argument is unavailing. While it is true that Idaho Code § 63-1703 provides for a 10 year period of exemption, there is an exception for when the property no longer meets the exemption. When the assessor determines that the land does not conform with the exemption, it must assess the value and recapture deferred taxes. There is no time limit for when the County may make such a decision. Nor is there any suggestion that the County, having determined at one point that land is eligible for a timber exemption, is precluded from changing that decision at any time. That is, nothing in the statute dictates that the County in 2019, 2020, 2021, or 2022, is bound by its decision in 2018.
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> Nothing prevented Petitioner from re-designating their land as having a timber exemption in 2019. If the County agreed and assessed their property with the exemption, Petitioner, under the statute, would have that exemption for the next 10 years barring a subsequent decision by the assessor that the property no longer qualified. Or, if the County disagreed with the designation in 2019, Petitioner would have had the right to appeal that decision. And Petitioner would have had the opportunity to try again in the years 2020 - 2022. It all depends on what the assessor decides each year. It is not elevating form over function or requiring pro forma redundancy to require an appeal of each year's assessment; rather, each year's assessment stands on its own. This reflects the reality that property uses can change and values are fluid from year to year.

> In summary, the trial de novo will be limited to the 2018 tax assessment.

Mem. Order & Decision Granting Mot. for Partial Summ. J. 4-5.

As mentioned above, "On a motion for reconsideration, the court must consider any new admissible evidence or authority bearing on the correctness of an interlocutory order. *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012)." *Demoney-Hendrickson v. Larsen*, ___ Idaho ___, ___ P.3d ___ (2023 Ida. LEXIS 43, Idaho Supreme Court Docket No. 49018, decided March 30, 2023). Petitioner has not provided the Court with any new evidence on reconsideration. Petitioner has not provided the Court with any new authority on reconsideration. Petitioner's legal arguments are repackaged, but are the same before this Court as they were presented to Judge Berecz.

Petitioner argued to Judge Berecz at summary judgment:

> The Assessor characterizes the issue in this appeal as the property's fair market valuation after the timber exemption's removal. The Assessor contends that since only the 2018 value after the timber exemption removal was challenged, AFP [Anderson Family Properties] may not challenge the assessed values for 2019, 2020, 2021, and 022. However, as argued previously, the issue in this appeal is whether the Defendants improperly removed AFP's forest land assessment option in 2018 because AFP's land no longer met the definition of forest land as it had in prior years. If successful on this issue, AFP is entitled to reinstatement of its I.C. § 63-1706 forest land assessment option removed in 2018. Since this option continues until removed, the option would continue for 2019, 2020, 2021, and 2022 if reinstated.

Pet'r's Opp'n to Resp't Kootenai County Assessor's Mot. for Partial Summ. J. 7 (footnote omitted). Petitioner continued:

> In *Fuchs v. State, Dep't of Idaho State Police, Bureau of Alcohol Beverage Control*, 152 Idaho 626, 630, 272 P.3d 1257, 1261 (2012), our Supreme Court held: "While pursuit of statutory administrative remedies is a condition precedent to judicial review under the APA, failure to exhaust administrative remedies is not a bar to litigation when there are no remedies to exhaust." *Lochsa Falls, L.L.C.*, 147 Idaho at 239–40, 207 P.3d at 970–71 (internal quotation and citation omitted)." Since the bare land and yield

assessment option was removed in 2018, there was no administrative remedy to exhaust for 2019, 2020, 2021, and 2022 regarding its removal as argued by the Assessor. The removal of the I.C. § 63-1706 assessment option required AFP to exhaust its administrative remedies regarding the 2018 removal decision and the failure to grant AFP's request to reinstate the I.C. § 63-1706 assessment option. AFP complied with the statute requiring it to exhaust its administrative remedies relative to this issue.

The Assessor points to *Fairway Development Co. v. Bannock County*, 119 Idaho 121, 124, 804 P.2d 294, 297 (1990) as support for its position. In *Fairway Development Co.*, the Idaho Supreme Court determined it lacked subject matter jurisdiction over a tax appeal. The taxpayer disputed Bannock County's classification of former apartments as condominiums assessable to the taxpayer. The Idaho Supreme Court held the appellant "...failed to comply with Idaho law regarding the appeal of a contrary administrative decision.." AFP appealed its contrary administrative decision in the present case. Its I.C. § 63-1706 tax assessment option was only removed once in 2018 by the Assessor. The removal was appealed in 2018 as required by statute. Thus, AFP did not fail to appeal the contrary administrative decision. Nor was it required to appeal the removal of its forest land tax assessment option each subsequent tax year, as argued by the Assessor.

Id. at 9-10.

Petitioner now argues to this Court on reconsideration:

> In this matter, the Petitioner did not appeal the correctness of the tax assessment as was the case in *Fairway Development Company v. Bannock County*, 119 Idaho, 804 P.2d 294 (1990). It appealed Kootenai County's decision that Anderson Family Property forfeited its I.C. § 63-1703(a) designation due to an alleged undisclosed change of use.
> Idaho Code section 63-501 is inapplicable to Anderson Family Property's appeal because its appeal has nothing to do with an assessment or a Chapter 6 exemption. Instead, Anderson Family Properties' appeal is controlled by I.C. § 63-1703 and must comply with the requirements of I.C. § 63-511 incorporated into I.C. § 63-1703. I.C. § 63-501 is not incorporated into I.C. §63-1703.

Pet'r's Mem. in Supp. of Mot for Recons. 5. While the evidence is unchanged, and the arguments are the same, the judge assigned for trial is different. The undersigned finds Judge Berecz decision should remain on reconsideration. This Court agrees with Judge Berecz and agrees with the following submitted on reconsideration by Respondent:

> The statutory language as set forth above is clear and unambiguous. The District Court concurred in its prior Memorandum and Order. Parcels in excess of five (5) acres that fall within the definition of "forest land," and

that haven't been converted to another use, are assessed based upon the timber exemption. When the land no longer qualifies as "forest lands," within the statutory definition, or when the land has been converted to another use, then the Assessor is obligated to forfeit the timber designation and to assess the property without regard to its ability to produce timber or forest products. See LC. § 63-1703, and 63-1702. There is a scenario where, if deferred taxes are sought to be recaptured as a result of the loss of the forest land designation, that the taxpayer can appeal that decision to the BOE as well. However, that is a wholly-separate issue, to-wit, the collection of deferred taxes, as opposed to the prospective assessment of the property, which is the issue at bar. In that regard, all issues related to assessments in a given tax year, including assessed valuations or exemption decisions must be appealed by the fourth Monday of June. See LC. § 63-50lA. There is no disputed issue of fact that there are no appeals, timely or otherwise, from the assessed valuations of the subject property for tax years 2019 through 2022 and the District Court's prior Decision on summary judgment was and is correct.

Resp't Kootenai County Assessor's Mem. in Opp'n to Pet'r's Mot. for Recons. 6-7.

IV. CONCLUSION AND ORDER.

For the reasons stated above,

IT IS HEREBY ORDERED Petitioner's Motion for Reconsideration is DENIED.

Entered this 1st day of May, 2023.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 1st day of May, 2023, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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Jeanne Clausen, Deputy Clerk