

**BEFORE THE MONTANA TAX APPEAL BOARD**

**John C. Brenden,**

*Appellant;*

v.

**State of Montana,  
Department of Revenue,**

*Respondent.*

CASE No: PT-2015-36

**Findings of Fact,  
Conclusions of Law,  
Order, and  
Opportunity for Judicial Review**

1. Before the Montana Tax Appeal Board is Appellant John C. Brenden's appeal from the Daniels County Tax Appeal Board's decision denying Brenden's appeal of Respondent State of Montana, Department of Revenue's valuation of Brenden's property as follows:

- a. Parcel 1 – 480 acres of land in rural Daniels County, geocode 37-4797-14-3-01-01-0000; legal description S14, T35 N, R49 E, S2, NWNW, S2NW, SWNE;
- b. Parcel 2 – 80 acres of land in rural Daniels County, geocode 37-4797-21-1-01-01-0000; legal description S21, T35 N, R49 E, E2NE;
- c. Parcel 3 – 80 acres of land in rural Daniels County, geocode 37-4797-21-4-01-01-0000; legal description S21, T35 N, R49 E, E2SE; and

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- d. Parcel 4 – 160 acres of land in rural Daniels County, geocode 37-4899-01-3-01-01-0000; legal description S01, T36 N, R45 E, Acres 160, W.

**ISSUE**

2. Whether DOR properly valued Brenden's land.
3. Brenden generally argues that the parcels are assessed too highly considering the productivity of the land and other area disadvantages, and argues for them to be valued based on actual productivity.
4. DOR counters that it properly and uniformly applied the law.

**FINDINGS OF FACT**

5. The subject property consists of four parcels of land ranging from 80 to 480 acres, located in rural Daniels County. The parcels total 800 acres. (Ex. B.)
6. DOR classified all the parcels as agricultural and categorized portions thereof into the following agricultural productivity categories: summer fallow, dryland hayland, grazing land, irrigated land, CC (continuously cropped) farmland. (Ex. B.)
7. Of the 800 acres in dispute, 91.215 acres (11.4%) are categorized grazing land, 708.785 acres (88.6%) are categorized summer fallow. (Ex. B.)
8. DOR valued the land as follows:
  - a. Parcel 1 – \$102,599;

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- b. Parcel 2 – \$20,258
  - c. Parcel 3 – \$21,180
  - d. Parcel 4 – \$35,971.
9. Brenden filed an AB-26 informal review with DOR. The appeal was denied on October 19, 2015, because “the Department of Revenue reviewed the property and verified that we used the correct soil survey information, that the 70% adjustment was applied to summer fallow farmland, and that the formulas were accurate.” (AB-26 Determination Letter.)
10. Brenden filed an appeal with the Daniels County Tax Appeal Board (CTAB) on November 11, 2015. The CTAB held a hearing on December 8, 2015 and denied the appeal, citing “state regulations.” (CTAB Decision, CTAB Minutes.)
11. Brenden appealed to this Board on January 22, 2016. The Board conducted a hearing at 600 N. Park Avenue, Helena at 1:00 PM on September 20, 2016 at which the following appeared:
- a. John C. Brenden, self-represented taxpayer;
  - b. Michele Crepeau, counsel for DOR;
  - c. Frank McCall, DOR management analyst, as witness for DOR;
  - d. Bonnie Hamilton, DOR management analyst, as witness for DOR.
12. The following evidence was submitted at the hearing:

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- a. DOR exhibits;
  - i. A – appeal to MTAB (18 pages);
  - ii. B – property record cards (8 pages);
  - iii. C – document titled “Examples of Agricultural Land Productivity Valuation Formula;”
  - iv. D – spreadsheets on agricultural productivity and tax rate percentage (2 pages);
  - v. E – map titled “2013 Agricultural Land Classification & Fallow Adjustment Zones;”
  - vi. F – maps of parcels (3 pages).
- b. Brenden exhibits;
  - i. 1 – article titled “Property Tax System Working for all Montanans” by Mike Kadas (2 pages);
  - ii. 2 – spreadsheet titled “Commodity Prices (Current vs. 2015 Prices);”

**Productivity**

13. Brenden argues the productivity values assigned by DOR to agricultural land in his region are too high, and that agricultural land should be valued based on actual productivity of that parcel. (MTAB Hrg. Transcr. 10:3-13:17; 60:9-62:18). Specifically, Brenden noted the harsher weather of northeast Montana and questioned the accuracy of

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the regional adjustment zones for agricultural productivity. Brenden presented no evidence and did not cite any statute, or administrative regulation in support of this argument.

14. Under cross examination, Brenden agreed that DOR is bound by statute to value agricultural land based on NRCS soil surveys and commodity prices. (MTAB Hrg. Transcr. 21:13-25.)
15. Additionally, although Brenden testified that the land is continuously cropped, DOR only values the property as fallow or grazing. (MTAB Hrg. Transcr. 23:8-19.)
16. DOR management analyst Frank McCall testified that categorizing Brenden's land as fallow results in a substantially lower value than if it were valued as continuously cropped. (MTAB Hrg. Transcr. 33:11-16.)
17. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

## CONCLUSIONS OF LAW

18. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
19. The Board has jurisdiction over this case and its order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-301.
20. DOR is entitled to a "presumption of correctness if its decisions are pursuant to an administrative rule or regulation, and the rule or regulation is not arbitrary, capricious or otherwise unlawful." *Dep't of*

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*Revenue v. Burlington N. Inc.*, 169 Mont. 202, 214, 545 P.2d 1083, 1090 (1976). However, DOR cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of their action. *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.

21. The taxpayer bears the burden of proving the error of DOR's decision. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967). To prevail in a challenge of DOR's assessment the taxpayer must prove:

- (1) that there are several other properties within a reasonable area similar and comparable to his;
- (2) the amount of the assessments on these properties;
- (3) the actual value of the comparable properties;
- (4) the actual value of his property;
- (5) the assessment complained of;
- (6) that by a comparison his property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of the similar and comparable properties, thus creating discriminations.

*DeVoe v. Dep't of Revenue of Montana*, 233 Mont. 190, 194, 759 P.2d 991, 993-94 (1988) (quoting *Maxwell v. Shivers*, 133 N.W.2d 709, 711 (Iowa 1965)).

22. "All taxable property must be appraised at 100% of its market value...." Mont. Code Ann. § 15-8-111.
23. For the taxable years from "January 1, 2015, through December 31, 2016, all property classified in 15-6-134, MCA, (class four) must be

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appraised at its market value as of January 1, 2014.” Mont. Admin. R. 42.18.124(1)(c).

24. “Assessment formulations’ by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion.” *Peretti v. State, Dep’t of Revenue*, 2016 MT 105, ¶ 15, 383 Mont. 340, 344, 372 P.3d 447, 450 (citing *O’Neill v. Dep’t of Revenue*, 2002 MT 130, ¶ 23, 310 Mont. 148, 155, 49 P.3d 43, 47); see *Northwest Land & Dev. of Montana, Inc. v. State Tax Appeal Bd.*, 203 Mont. 313, 317, 661 P.2d 44, 47 (1983) overruled on other grounds by *DeVoe v. Dep’t of Revenue of State of Mont.*, 263 Mont. 100, 866 P.2d 228 (1993).

\* \* \*

25. Brenden’s arguments address broad tax policy decisions that are constitutionally reserved to the legislature or to agencies to develop under the strict right to know and right to participate provisions of the Montana Constitution as implemented in statutes including the Montana Administrative Procedures Act.
26. The Board’s role is confined to weighing the evidence on valuation. The Board has no authority to judge or change policy. Mont. Const., art. 5, sec. 1; Mont. Code Ann. § 15-2-301(5).
27. Brenden failed to carry his burden to prove DOR erred in assessing his property and failed to prove that by a comparison his property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of similar and

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comparable properties, thus creating discrimination. Brenden offered no evidence which could prove DOR incorrectly valued his land.

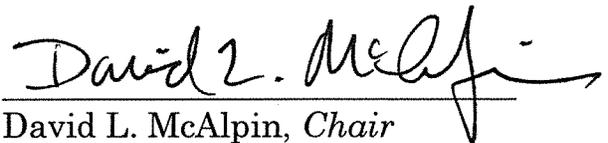
28. DOR properly valued Brenden's property according to statute.
29. Finally, it must be noted that although Brenden's land is continuously cropped, it is valued as summer fallow and grazing land, resulting in a substantially lower value than if the assessment reflected Brenden's actual use of the land.

**ORDER**

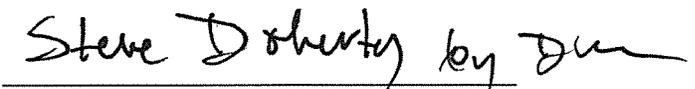
30. John C. Brenden's appeal and complaint is **denied**.

**Notice:** You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2).

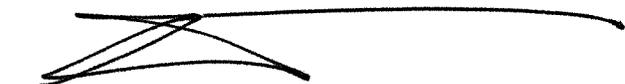
Ordered December 21, 2016.



David L. McAlpin, *Chair*  
MONTANA TAX APPEAL BOARD



Stephen A. Doherty, *Member*  
MONTANA TAX APPEAL BOARD



Valerie A. Balukas, *Member*  
MONTANA TAX APPEAL BOARD

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**Certificate of Service**

I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on December 21, 2016 to:

**John C. Brenden**

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**Michele Crepeau**

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Lynn Cochran, *Administrative Officer*  
MONTANA TAX APPEAL BOARD