

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

DEC 29 2016

Montana Tax Appeal Board

Bruce Anfinson,

Appellant;

v.

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

Respondent.

CASE No: PT-2016-28

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

1. Before the Board is Appellant Bruce Anfinson's appeal from the Jefferson County Tax Appeal Board's decision granting in part and denying in part Anfinson's appeal of Respondent State of Montana, Department of Revenue's assessment of Anfinson's property on Travis Creek Road, Clancy; geocode 51-1783-30-3-01-10-0000; legal description S30, T09 N, R04 W, Acres 23.59, G Lots 6-7.

ISSUE

2. Whether DOR properly (1) classified and (2) assessed Anfinson's improvement, and (3) properly classified the acre upon which the improvement sits.
3. Anfinson argues that the improvement (1) is not commercial, (2) is overvalued, and (3) the one acre beneath the structure should not be reclassified from forest land to commercial.

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4. DOR responds that the property was properly classified and appraised according to statute, and that the law requires DOR to classify as commercial the one acre building site under a commercial building on forest land.

FINDINGS OF FACT

5. The subject property is 23.59 acres of land and a 1,328 square foot building approximately one mile off Travis Creek Road in rural northern Jefferson County. (Ex. D; MTAB Hrg. Transcr. 19:3-7.)
6. DOR previously appraised the land at \$8,929 and did not include the structure in the appraisal. In April of 2015, DOR added the structure to its records, classified it as residential, and appraised the property accordingly. (Ex. D.)
7. Anfinson filed an AB-26 informal review on October 26, 2015, arguing that, “the building is not a home but a pavilion made for weddings, parties, etc.” (Ex. A.) DOR appraiser Sallie Kenner made a site visit and determined that the structure was not a dwelling, but rather a “social hall for meeting.” (MTAB Hrg. Transcr. 29:21-30:2.) Keener’s changes generated a new valuation, specifically:
 - a. improvements - \$120,120;
 - b. one acre building site under the improvements - \$60,200;
 - c. the remaining 22.59 acres of forest land - \$4,625.

(Ex. B.)

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8. Anfinson appealed to the Jefferson County Tax Appeal Board (CTAB) on November 19, 2015, requesting a valuation of \$14,000 for the improvements and \$8,929 (last cycle's appraisal) for the land. The CTAB held a hearing on April 12, 2016, and rejected reduction of the improvements value, but reduced the value of the one acre building site to \$40,000 based on "comparable sales provided by State DOR." (CTAB Decision.)
9. Subsequent to the CTAB hearing, DOR made adjustments to its cost valuation model based on Anfinson's testimony about the lack of foundation and limited electricity and plumbing. (CTAB Hrg. Transcr. 51:10-53:24.) DOR reduced the base rate for interior construction \$4 from \$38.190 to \$34.190 per square foot, and reduced the grade factor from 1.00 to 0.84. (Ex. E, J.) These adjustments reduced the improvement assessment from the original \$120,120 to a revised valuation of \$96,790. (Ex. E, J.)
10. Between the CTAB and DOR reductions the parcel's total appraised value was reduced from \$184,945 to \$136,790.
11. Anfinson appealed to this Board, which conducted a hearing at 600 N. Park Avenue, Helena at 1:00pm on October 4, 2016 at which the following were present:
 - a. Bruce Anfinson, self-represented taxpayer;
 - b. Michele Crepeau, attorney representing DOR;
 - c. Sallie Keener, DOR appraiser, as witness for DOR;

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- d. Brandy Hilton, DOR area manager, as witness for DOR;
12. The following evidence was submitted at the hearing:
- a. Anfinson exhibit;
 - i. 1 - spreadsheet titled "Last Chance Pavilion Costs;"
 - b. DOR exhibits;
 - i. A – AB-26 form;
 - ii. B – "2015 Revised Classification and Appraisal Notice" dated November 11, 2015;
 - iii. C – CTAB appeal and decision (3 pages);
 - iv. D – property record card (4 pages);
 - v. E – worksheet for cost appraisal method;
 - vi. F – photos (5 pages);
 - vii. G (sealed) – valuation model;
 - viii. H (sealed) – map of comparable properties;
 - ix. I – TripAdvisor.com entry for Last Chance Ranch (3 pages);
 - x. J – revised worksheet for cost appraisal method.

Improvement Classification

13. Anfinson argued that the building is not commercial because it is only used seasonally for occasional business and because it lacks sufficient amenities. (MTAB Hrg. Transcr. 6:8-13, 11:11-12.) Anfinson cited no statute supporting these arguments, and introduced only a self-compiled spreadsheet of building costs without evidentiary support for the values contained therein.
14. Keener testified that she took photographs of the building's exterior and interior, along with two screen captures from Anfinson's business website. (MTAB Hrg. Transcr. 36:10-12.)
15. Photos of the property show the building with a sign: "Last Chance Ranch." The interior photos show approximately 6 tables with 4 to 6 chairs each. (Ex. F.)
16. The screen captures of the website show the following in the "About" section:

Last Chance Ranch Presents Wagonride Dinners at the Moose Cabin and Tipi. Experience an evening of good food and good times you're sure to remember for years to come! Travel back in time via our horse drawn wagons through high mountain timber to the Moose Cabin and Tipi. Enjoy a great gourmet meal, including fresh garden salad, homemade rolls, prime rib, potatoes du jour, steamed vegetables, huckleberry cheesecake, and cowboy coffee all served up family style. Live western entertainment by Montana's own Bruce Anfinson rounds out this unique evening. It's guaranteed fun!

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We are currently taking reservations for the summer season. Cost is \$85 per adult, \$70 per child 10 years and under and includes round-trip transportation from Helena.

17. Anfinson testified that he had hosted such dinners, including “under ten there this summer,” but was planning to cease such operations. (MTAB Hrg. Transcr. 6:17-23, 26:6-14.)
18. Both DOR’s evidence and Anfinson’s own testimony show the building was used for commercial purposes, albeit seasonally.

Improvement Valuation

19. Anfinson testified that the building is a pole barn with rough sawn boards and tar paper, summarizing, “my barn is built better than that place is.” He testified that there is no foundation, and that the floor sits on lumber sunk in the ground. The structure is not hooked up to the electrical grid, but there are solar panels. There is no plumbing, just two outhouses, and water is diverted from a nearby creek for washing dishes. Drinking water must be hauled in. Heating is done with one wood stove, and there is no cooling system. Propane is used for cooking and heating water on the stove. (MTAB Hrg. Transcr. 7:7-11:12; CTAB Hrg. Transcr. 6:3-10-24.)

Building Site Classification

20. Keener testified that “22.59 acres is valued as forestland, and then one acre, building site underneath the structure is valued at market.” (MTAB Hrg. Transcr. 31:10-11.)

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21. When asked by DOR's counsel why that one acre is valued differently, Keener responded, "It is in the code. I do not know the number of the code to quote it. That one acre is brought out for commercial, commercial or residential use." (MTAB Hrg. Transcr. 34:6-12.)
22. Later, during Hilton's testimony, DOR's counsel asked Hilton why the one acre was carved out as commercial. Hilton responded that, "Strictly due to the use of the property, the Department of Revenue's use and consideration by Montana code." (MTAB Hrg. Transcr. 55:15-19.)
23. DOR presented no legal authority for the one acre carve out.

Mont. Admin R. 42.20.750

24. "A market valuation will be made for each one-acre area beneath each residence(s) which is located on forest land..." Mont. Admin. R. 42.20.750(1).
25. The rule's subchapter definition for residence "includes all conventionally constructed homes, as well as all mobile homes and manufactured housing." Mont. Admin R. 42.20.106(19).

Mont. Admin R. 42.20.645

26. "Any portion of any parcel of land that is used as a residential, commercial, or industrial site..., shall not be classified as agricultural land, nonqualified agricultural land, or forest land." Mont. Admin. R. 42.20.645.

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27. Although originally promulgated in 1985, this rule did not include language applying it to forest land until an amendment in 2003. 16 Mont. Admin. Register 1888 (Aug. 28, 2003).
28. DOR's notice for the amendment described the reasonable necessity for this change:

The department is proposing to amend and transfer ARM 42.20.159 (42.20.645) to sub-chapter 6. The rule clarifies that residential land cannot be classified as agricultural, nonqualified agricultural or forest land, except for the one-acre under a residence on agricultural land which is valued as agricultural land.

Contiguous ownerships greater than 160 acres in size are automatically granted agricultural classification unless precluded by some operation of law as mandated in 15-7-202, MCA or explained in ARM 42.20.156. The rule clarifies that land less than 160 acres in size, that does not meet agricultural, nonqualified agricultural, or forestland shall be appraised at its market value. If land cannot be classified and valued on its productive capacity, the only alternative is market value.

29. The notice states that the rule was written to implement the following statutes:
 - a. Mont. Code Ann. § 15-7-201 – Legislative intent--value of agricultural property,
 - b. Mont. Code Ann. § 15-7-202 – Eligibility of land for valuation as agricultural,
 - c. Mont. Code Ann. § 15-7-203 – Agricultural uses only considered in valuation,

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- d. Mont. Code Ann. § 15-7-206 – Improvements on agricultural land,
- e. Mont. Code Ann. § 15-7-207 – Continuation of valuation as agricultural land,
- f. Mont. Code Ann. § 15-7-208 – Reclassification by department,
- g. Mont. Code Ann. § 15-7-209 – Reclassification by owner--lien,
- h. Mont. Code Ann. § 15-7-210 – Tax on change of use of part of tract,
- i. Mont. Code Ann. § 15-7-212 – Tract crossing county line--whole.

13 Mont. Admin. Register 1503 (Jul. 17. 2003.)

- 30. None of these statutes concern or apply to forest land.
- 31. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

CONCLUSIONS OF LAW

- 32. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
- 33. 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.

Burden of Proof

- 34. DOR is entitled to a “presumption of correctness if its decisions are pursuant to an administrative rule or regulation, and the rule or

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regulation is not arbitrary, capricious or otherwise unlawful.” *Dep't of 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.

35. 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)).

Assessment

36. “All taxable property must be appraised at 100% of its market value....”
Mont. Code Ann. § 15-8-111.

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37. For the taxable years from “January 1, 2015, through December 31, 2016, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 2014.” Mont. Admin. R. 42.18.124(1)(c).
38. “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).

Statutes

39. When construing a statute, it is the Board’s role to “determine what in terms or substance is contained in it, and not to insert what has been omitted or to omit what has been inserted.” *State v. Minett*, 2014 MT 225, ¶ 12, 376 Mont. 260, 332 P.3d 235; Mont. Code Ann. § 1-2-101.
40. “In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.” Mont. Code Ann. § 1-2-102.
41. “When faced with a problem of statutory construction great deference must be shown to the interpretation given the statute by the officers or

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agency charged with its administration.” *Dep't of Revenue v. Puget Sound Power & Light Co.*, 179 Mont. 255, 262, 587 P.2d 1282, 1286 (1978) (citing *Udall v. Tallman*, 380 U.S. 1, 16 (1965)).

42. “[T]ax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer.” *Western Energy Co. v. State, Dep't of Revenue*, 1999 MT 289, ¶ 10, 297 Mont. 55, 990 P.2d 767.

Administrative Rules

43. “Administrative agencies enjoy only those powers specifically conferred upon them by the legislature. Administrative rules must be strictly confined within the applicable legislative guidelines. Indeed, it is axiomatic in Montana law that a statute cannot be changed by administrative regulation. We look to the statutes to determine whether there is a legislative grant of authority.” *Bick v. State, Dep't of Justice, Div. of Motor Vehicles*, 224 Mont. 455, 457, 730 P.2d 418, 420 (1986).

44. “A valid and enforceable agency rule cannot exceed its enabling statute....” *Glendive Med. Ctr., Inc. v. Montana Dep't of Pub. Health & Human Servs.*, 2002 MT 131, ¶ 29, 310 Mont. 156, 49 P.3d 560.

45. The Board “may not amend or repeal any administrative rule of the department,” but may enjoin its application if the Board concludes the rule is “arbitrary, capricious, or otherwise unlawful.” Mont. Code Ann. § 15-2-301.

Improvement Classification

46. DOR correctly classified the building as commercial based on Anfinson's use of it to host dinners and entertainment in exchange for financial compensation.

Improvement Valuation

47. Anfinson testified to the rudimentary nature of the structure, but introduced only one exhibit. His self-compiled spreadsheet of building costs was neither supported by receipts or other documents showing the costs he incurred, nor did it include the value of Anfinson's labor or lumber Anfinson harvested from his land. Law requires that property be appraised not based on the costs incurred acquiring or improving the property, but "at 100% of its market value." Mont. Code Ann. § 15-8-111. Anfinson failed to prove that the improvement is overvalued.

Building Site Classification

48. As noted above, DOR presented no legal authority for the one acre carve out from forest land. If there is statute or properly authorized rule allowing carve out, DOR did not present it and thereby failed to carry its threshold burden. Although several DOR administrative rules appear relevant, none authorizes the carve out from forest land.

Mont. Admin R. 42.20.750

49. This rule is limited to "area beneath each *residence(s)*." Mont. Admin. R. 42.20.750(1) (emphasis added). The rule's definition of residence cannot be construed to include commercial improvements. Mont. Admin. R. 42.20.106(19).

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50. This rule authorizes carve out for residences—not improvements generally—on forest land. Here there is no allegation that Anfinson’s improvement is a residence. Indeed, DOR’s case is that the property is commercial. Carve out of one acre associated with Anfinson’s non-residential improvement is not authorized by Mont. Admin. R. 42.20.750.

Mont. Admin. R. 42.20.645

51. This rule states that “[a]ny portion of any parcel of land that is used as a residential, commercial, or industrial site (except for the one-acre area beneath the residence on agricultural land, which is valued as agricultural land according to 15-7-206, MCA), shall not be classified as agricultural land, nonqualified agricultural land, or forest land.” Mont. Admin. R. 42.20.645.

52. The question is whether DOR lacked statutory authority to amend this rule in 2013 to make it apply to forest land.

53. The amendment to the rule applying it to forest land purportedly implements statutes that make no mention of forest land or improvements thereon. Indeed, all statutes referenced are in the agricultural subchapter of the appraisal chapter of Title 15. 13 Mont. Admin. Register 1503 (Jul. 17. 2003.)

54. Nothing in these statutes contains a legislative grant of authority to reclassify portions of forest land because of the presence of a commercial improvement, making DOR’s amendment applying the rule to forest land “arbitrary, capricious, or otherwise unlawful.” Mont. Code Ann. § 15-2-301.

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* * *

55. DOR met its threshold burden to show that the improvement was properly classified and assessed.
56. Anfinson failed to carry his burden to prove that by a comparison his improvement 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.
57. DOR failed to carry its threshold burden of proving the one acre carve out from forest land classification because of the commercial structure.
58. Montana Administrative Rule 42.20.750 does not apply to Anfinson's commercial building.
59. DOR unlawfully amended Mont. Admin. R. 42.20.645 to include forest land when no statutes that the rule purports to implement authorize such action or even mention forest land. We are unable to give full effect to the rule as applied by DOR to the one acre underneath Anfinson's commercial improvement on forest land.

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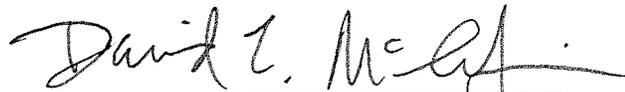
ORDER

60. Bruce Anfinson's appeal and complaint is **denied in part, granted in part.**
61. DOR's commercial classification of the building is **upheld.**
62. DOR's revised valuation (\$120,120) of the building is **upheld.**
63. DOR is **ordered** to classify as forest land all 23.59 acres of Anfinson's property on Travis Creek Road, Clancy; geocode 51-1783-30-3-01-10-0000; legal description S30, T09 N, R04 W, Acres 23.59, G Lots 6-7.

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 30, 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 30, 2016 to:

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Lynn Cochran, Administrative Officer
MONTANA TAX APPEAL BOARD