

MAY 02 2023

Montana Tax Appeal Board

STEVEN BRIAN AND THERESA W. LELAND,

Appellants,

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Respondent.

CASE No: PT-2022-34

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, ORDER,  
AND OPPORTUNITY FOR  
JUDICIAL REVIEW**

**STATEMENT OF THE CASE**

This is an appeal of a final decision by the Gallatin County Tax Appeal Board (CTAB) denying Steven Brian and Theresa W. Leland, (Taxpayers) a reduction in value on the subject property located at 1142 Barnard Ridge Road, Bozeman. The Taxpayers appealed that outcome to Montana Tax Appeal Board (MTAB) on October 20, 2022. We affirm CTAB’s determination.

**ISSUE TO BE DECIDED**

Whether CTAB erred in affirming the Department of Revenue’s (DOR or Department) appraised value of \$89,260.00 for this property.

**EXHIBIT LIST**

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Letter from Barnard Land and Livestock dated August 23, 2018;
2. Tarlow, Stonecipher, Weamer & Kelly letter;
3. Map and Chart of comparables;

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4. Email from DOR regarding grazing land per acre value dated June 1, 2021;
5. Pastures average chart;
6. Classification & Appraisal Notice;
7. CTAB Appeal with page #2;
8. Property Record Card Lot #29;
9. License Agreement with Barnard Land & Livestock LP;
10. Letter from Barnard Land and Livestock dated 3-2-2020;
11. Property Lease Agreement with Barnard Land and Livestock LP;
12. MT Cadastral Aerial photo;
13. MT Cadastral Topography map.

DOR Exhibits:

- A. MTAB Case# PT-2020-5, FOF, COL Opinion;
- B. 18<sup>th</sup> Jud. District Court Cause# DV-20-1225CX Order;
- C. AB-26 and Response;
- D. Property Record Card;
- E. Photos of subject;
- F. Satellite photos, sales info., market values using alternative methodology.

**PROCEDURAL HISTORY**

For the 2021/2022 appraisal cycle, the DOR valued the subject property at \$89,2608,260, with the land valued at \$88,200 and the improvements valued at \$1,060. *Ex. D.* The Taxpayers filed an AB-26, Request for Informal Classification and Appraisal Review, with the DOR on April 4, 2022, requesting a land value of \$7,202 and an improvement value of \$1,060. *Ex. C.* The DOR sent a Form AB-26 Determination Letter to the Taxpayers dated August 18, 2022, denying the Taxpayer's request. *Id.* The Taxpayers appealed the DOR's valuation to the CTAB on August 25, 2022, originally requesting a land value of \$7,173 and an improvement value of \$1,060. *MTAB Dkt. 4.* The CTAB hearing was held on October 12, 2022, and the CTAB's decision denying the Taxpayers' application for reduction was sent to the

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parties on October 12, 2022. The Taxpayers appealed to MTAB on October 20, 2022, per Mont. Code Ann § 15-2-301, requesting a total value of \$7,202. *MTAB Dkt. 1*. The MTAB hearing was conducted in Helena on January 19, 2023, at which the following were present:

- a. Steven Brian Leland, Taxpayer; and
- b. Dave Burleigh, DOR Counsel; and Laurie Blue, Appraiser; Pam Moor, Area Manager.

The record includes all materials submitted to CTAB, a recording of the CTAB hearing, all materials submitted to MTAB with the appeal, and additional exhibits submitted by the parties prior to and at the MTAB hearing.

**FINDINGS OF FACT**

1. To whatever extent the following findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. The Taxpayers acquired the subject property in 1985 when they assumed the previous owner's \$8,000 loan. *MTAB Hr'g Tr. 11:14-12:2, 14:12-17, 42:22-43:4*. A Bozeman attorney helped the Taxpayers transfer the property and conduct title work. *MTAB Hr'g Tr. 11:14-12:2*. The Taxpayers acquired title insurance when the loan was assumed. Once the access issue was discovered, the taxpayer was paid \$8,000 in acknowledgment that the property had no legal access at the time of purchase. *Id.*
3. Taxpayers' land shares a boundary with seven parcels, six of which have the same owner. The only way for Taxpayers to access their land by vehicle would be through an easement over that owner's property should that owner choose to grant an easement. *Ex. F*.
4. The Taxpayer presented a letter from his neighbor dated August 23, 2018, stating the Taxpayers did not have legal access to his property. *Ex. 1*. The prior owner of the subject property accessed the property through an agreement, but it was never

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memorialized in writing. *MTAB Hr'g Tr. 9:16-10:4*. Further, the platted road near the subject property which would have provided access to the subject property was never legally dedicated to the public. *Id.* The Taxpayer testified that the properties had been subdivided to sell but the development of the project went bankrupt when the sewer and water lines from the City of Bozeman to the subdivision were not installed due to the discovery of a potential superfund site intersecting the proposed route of the utilities. *Id.*

5. During the 2019/2020 tax appeal on this property, this Board set the Taxpayer's land value using the average sales price of land adjoining the subject property. *Ex. A*. In the instant appeal the Taxpayer objected to the Board's use of those sales as a basis for value, claiming the sales had occurred before the buyers discovered the lack of access, thus stripping away any residential value. *MTAB Hr'g Tr. 12:4-14, 14:19-15:23*. The Taxpayers appealed the valuation method used by MTAB to value the property for the 2019/2020 tax cycle to the Montana Eighteenth Judicial District Court. *Ex. B*. The District Court denied the Taxpayers petition for judicial review and upheld the September 11, 2020, MTAB decision. *Ex. B*.
6. In testimony before the Board during the hearing for the current appraisal cycle, the Taxpayer claimed the property has no residential value because without access no construction can take place including building a house, installing a septic system, or drilling a well. *Id.* A septic permit would only be available with vehicular access to service the system, and insurance is not available because emergency services vehicles cannot reach the property. *Id.* Because all the residential value is stripped away without these amenities, the Taxpayer believes the subject property should be valued equivalently to the neighboring properties classified as agricultural and used as grazing land. *Id.*
7. The Taxpayer testified the only access available to the subject property is by foot via an access license granted by his neighbor. *Ex. 9, MTAB Hr'g Tr. 13:18-14:6, 20:17-21:23*. The foot access license is revocable at any time for any reason with a

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30-day notice. *Id.* The Taxpayers accessed their property using the easement originally thought to be attached to the property via Barnard Ridge Road only three or four times with a vehicle, but now accesses his structures by use of the footpath. *Id.* Vehicular access is limited to Barnard Ridge Road, which is a field road presently accessible seasonally and only with permission from the neighbor on a case-by-case basis. *Id.* Taxpayers' neighbor has agreed to allow transportation of construction materials over his property and into the subject property for the Taxpayers to build a dry cabin. *MTAB Hr'g Tr. 25:23-26:4.* The Taxpayer testified he had not asked his neighbor for a permanent easement because he knew the answer would be no. *MTAB Hr'g Tr. 23:6-24:2.*

8. The Taxpayers lease the subject land to his neighbor for cattle grazing at a rate of \$1.00 per year. *Ex. 11.*
  
9. The Taxpayers did offer an alternative calculation to estimate the market value of their land. Based on the assumption the only use of the land to a buyer would be for grazing livestock, Mr. Leland calculated their grazing land value using the information he received from the DOR and United States Department of Agriculture (USDA) data averaging statewide pastureland value in Montana. *Ex. 4, 5, 8, MTAB Hr'g Tr. 16:1-18:5.* Using this information, the Taxpayers estimated the subject property value is equal to 88% of the average production for Montana. *Id.* The Taxpayers then multiplied the 88% production by the statewide average value per acre in Montana estimated by the USDA (\$700 per acre) to get a total of \$619.50 per acre. *Id.* The \$619.50 per acre was multiplied by the subject property size (11.625 acres) to reach a land value of \$7,201.69, the requested value for the subject property. *Id.* The Taxpayer also testified the value of the improvements should be \$1 because if all access is revoked via the 30-day notice provision in the remaining foot access license agreement, the improvements would be rendered valueless. *MTAB Hr'g Tr. 18:21-19:9.* The area manager for the Department testified that the Taxpayers' method for valuing the property does not comply with any International Association of Assessing Officers (IAAO) standard

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or Montana law. *MTAB Hr'g Tr. 66:4-6*. Further, the USDA agricultural table used by the Taxpayers to estimate the value of the property is an average per-acre price for properties statewide in Montana and is too broad to be a reliable way to value individual properties. *MTAB Hr'g Tr. 79:10-80:14*. Using a state average does not consider the circumstances of the sale or account for price differences between counties. *Id.*

10. The Taxpayer testified he had built a yurt on the property 15 years ago, but the wind destroyed the yurt 13 years ago. *MTAB Hr'g Tr. 32:22-33:25*. After the yurt's destruction, the Taxpayers started to build more permanent cabins that are still located on the property today. *Id.* The Department believed the only structure on the property was a yurt when it valued the improvements at \$1,060 for the 2021/2022 tax cycle. *MTAB Hr'g Tr. 49:5-60:4*. The Department did an onsite inspection triggered by the appeal and discovered the two wooden structures and the new construction of a foundation and walls for a cabin on the top of the hill. *Id., Ex. E.*
11. The Department testified it valued the subject property for the 2021/2022 appraisal cycle using historical sales from the area and the September 11, 2022, MTAB decision from the previous tax cycle. *Ex. A, MTAB Hr'g Tr. 46:14-48:14, 56:19-57:20*. The Department time trended all sales used to value the subject property to the statewide lien date of January 1, 2020. *Id., MTAB Hr'g Tr. 60:1-3*. The Department appraiser testified the 2021/2022 value of \$82,200 placed on the subject property was fair. *MTAB Hr'g Tr. 49:18-50:2*.
12. The Area Manager for the Department testified the sales relied upon by MTAB in the previous tax cycle were the most comparable sales for valuing the subject property. *MTAB Hr'g Tr. 65:19-66:3*. The sales were similar in topography and were in the same subdivision that was never completed, with similar potential access issues. *Id.*

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13. Under normal circumstances the Department would account for limited access by applying a negative influence on a property *MTAB Hr'g Tr. 66:11-17*. The Department examines the characteristics of all the land sales, up to six years old, in the area, and looks for reasons a property might sell differently to justify an influence. *Id.* To determine the influence factor for land with limited access, the DOR would seek other sales with limited access for comparison. *MTAB Hr'g Tr. 66:11-67:19*. If the Department finds a property is selling differently for a certain reason, such as lack of access as in this case, the Department then extrapolates an influence percentage reduction for the market area to reflect that negative influence in the market. *Id.* Each model has a different reason for poor access and the percentages can change depending on the access. *Id.* The influence factor can be applied to other properties which may have similar negative influences. *Id.* The Area Manager testified she was unaware of any property sales in the market area model without any access. *Id.* When developing the poor access influence, the Department testified all sales were from Gallatin County. *MTAB Hr'g Tr. 69:9-17*.
14. For the 2021/2022 valuation cycle, the Department followed the method for valuing the property determined by MTAB during the previous appeal and rather than apply the influence factor to the property's value. *MTAB Hr'g Tr. 71:8-73:3*. If the Department had applied the typical negative influence factor generated by the mass appraisal land model, the subject property value would be valued at \$280,000. *MTAB Hr'g Tr. 56:19-25, 82:24-25, 83:1-2*.

### JURISDICTION AND STANDARD OF REVIEW

15. The Montana Tax Appeal Board is an independent agency not affiliated with the Montana Department of Revenue. *Mont. Const., Art. VIII § 7; Mont. Code Ann. § 15-2-101*. The Taxpayers filed a timely appeal of the DOR's decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. *Mont. Code Ann. § 15-2-301*.

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16. This Board may hear appeals de novo. *Dept. of Revenue v. Burlington N.*, 169 Mont. 202, 213-14, 545 P.2d 1083 (1976). “A trial de novo means trying the matter anew, the same as if it had not been heard before and as if no decision had been previously rendered.” *McDunn v. Arnold*, 2013 MT 138, ¶ 22, 370 Mont. 270, 275, 303 P.3d 1279, 1282.
17. The Board’s order is final and binding upon all parties unless changed by judicial review. *Mont. Code Ann. § 15-2-301(6)*.

**CONCLUSIONS OF LAW**

18. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
19. “All taxable property must be appraised at 100% of its market value....” *Mont. Code Ann. § 15-8-111*.
20. “[I]n connection with any appeal under [Mont. Code Ann. § 15-2-301], the Montana board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act.” *Mont. Code Ann. § 15-2-301(5)*.
21. 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.” *Burlington N.*, 169 Mont. at 214, 545 P.2d at 1090. 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 v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).



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22. The Taxpayer bears the burden of proving the error of DOR's decision. *Farmers Union Cent. Exch. v. Dep't of Revenue*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.
23. "'Assessment formulations' by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion." *Peretti v. 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. 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*, 263 Mont. 100, 866 P.2d 228 (1993)).
24. 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, 263, 332 P.3d 235, 238; *Mont. Code Ann. § 1-2-101*.
25. 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*.
26. "When faced with a problem of statutory construction great deference must be shown to the interpretation given the statute by the officers or 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)).
27. "[T]ax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer." *Western Energy Co. v. Dep't of Revenue*, 1999 MT 289, ¶ 10, 297 Mont. 55, 58, 990 P.2d 767, 769.

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28. “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).
29. “[A]dministrative regulations interpreting the statute made by agencies charged with the execution of the statute are entitled to respectful consideration.” *Puget Sound Power & Light Co.*, 179 Mont. 255, 266, 587 P.2d 1282, 1288 (1978).
30. 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(5)*.
31. The term “improvements” includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. *Mont. Code Ann. § 15-1-101(1)(i)*.
32. The Legislature intended the Department to utilize a number of different approaches or combination of approaches, including the income approach, sales comparison approach, and cost less depreciation approach, depending on the market where the appraisals take place, when it assesses property and estimates market value. *Albright v. State*, 281 Mont. 196, 208-09, 933 P.2d 815, 823 (1997).
33. Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to residential, commercial, or industrial use. *Mont. Code Ann. § 15-7-202*.

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**DISCUSSION**

34. The Taxpayer brought three new arguments to the Board during this appraisal cycle to show his property value was incorrect, all variations of the belief that the value assigned by the MTAB did not fully consider his lack of access. The facts of the case were substantially the same as in the previous appeal. The essence of this appeal was that due to the lack of access, the land had virtually no value to a buyer in the market. The value requested by the Taxpayers was their logical deduction of the value of the land as grazing land leased to their neighbor.
35. The Taxpayer's first new argument was that the comparable sales around him established by the 2020 MTAB decision as the best indicators of value were not valid at the time of sale as neither the buyer nor the sellers realized no easement to access the land being purchased was in place. He reasoned that this claim, if true, would invalidate the sales as comparable properties, since the buyers and sellers would not have been fully informed at the time of purchase. Taxpayers argued had the buyer been fully informed, he would have paid much less, and in turn Taxpayers' land should be valued for much less than the average sale price of the adjoining properties. Mr. Leland speculated that his theory was correct but failed to submit any evidence or testimony from buyers, sellers, or experts to support this theory. We decline to adopt the Taxpayer's argument as it relies primarily on speculation with no evidence or witness testimony to support it.
36. The second argument was that assuming his premise that the only use of his land was for grazing due to the limited access, he offered a method whereby he believed the MTAB could set a value equivalent to the value of adjoining properties classified as agricultural. He was clear that he was not asking for his land to be reclassified as agricultural, but he wanted to argue for an agricultural method of valuing his land. Mr. Leland failed to acknowledge that agricultural land in Montana has a value dictated by statute based on productivity rather than dictated by market sales. We find his land is properly classified and valued as market value land using comparable sales. Montana law does not allow the Board

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to assign agricultural values to land which does not meet agricultural standards of classification.

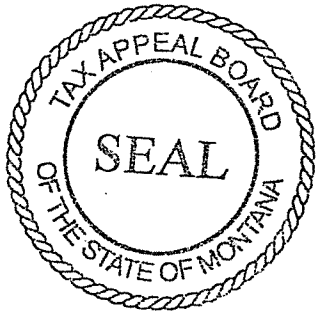
37. The Taxpayers offered alternative arguments of value. However, they were without legal basis or commonly accepted appraisal standards. These arguments and efforts were thoughtful and reasonably presented but did not give this Board the substance to overcome the presumption that the value assigned by DOR is correct.
  
38. Finally, the Taxpayers argue that their land value could not be correct if the Department can find no comparable sales which lacked any access. While it may be true that there were no comparable sales which lacked access, neither party submitted evidence which could have given this Board an alternative basis for evaluating the market influence of nearly total lack of access and how that may affect a sale in the market. A market value for the land still must be assigned for this case to be resolved. In the previous case MTAB used sales which were very similar to the subject to estimate market value. We find those sales are the best available information provided, and we maintain it is the best indicator of value with the evidence and testimony presented.

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**ORDER**

The Taxpayer's appeal is denied. The Department shall maintain the value of the subject property at \$88,200 for the land and the improvements valued at \$1,060 for a total value of \$89,260 for the 2021/2022 appraisal cycle.

Dated this 2nd day of May 2023.



  
David L. McAlpin, Chairman

  
Amie Zendron, Member

  
Travis Brown, Member

**Notice:** You are entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. The Department of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. *Mont. Code Ann. §15-2-303(2)*.

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**Certificate of Service**


I certify that I caused a true and correct copy of the foregoing Findings of Facts and Conclusions of Law to be sent by email and/or United States Mail via Print & Mail Services Bureau of the State of Montana on May 2, 2023, to:

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