

JENNIFER GALLAGHER,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE No: PT-2023-14

**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 Lewis and Clark County Tax Appeal Board (CTAB) denying Jennifer Gallagher, (Taxpayer) a reduction in value on the subject property located at 4855 N. Montana Ave (Subject Property), in Lewis and Clark County near Helena, Montana. The Taxpayer appealed that outcome to Montana Tax Appeal Board (MTAB) on November 2, 2023. We modify CTAB's determination.

ISSUE TO BE DECIDED

Whether CTAB erred in denying Taxpayer's request for a reduction in value to the Subject Property.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. 2022 Land Valuation Chart and Comparable Properties Map;
2. Comparable Sales Map and Property Record Card;
3. Market Analysis of comparable Properties Price Adjustments and Data.

DOR Exhibits:

- A. Aerial Map and Property Record Card;

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- B. Land Pricing Model for DOR Neighborhood 205.323;
- C. Land Sales Packet;
- D. Land Value Calculation for Subject Property;
- E. Photo of Subject Property;
- F. DOR Notes on comparable sales, Realty Transfer Certificates, Residential Sales Verification Forms, and related documents for comparable sales;
- G. Rebuttal Exhibit Neighborhood Area Map.

PROCEDURAL HISTORY

The Department of Revenue (DOR or Department) valued the Subject Property's 17,424 square feet of land at \$20,282 for tax years 2023 and 2024. *Ex. A.* The Taxpayer filed an AB-26, Request for Informal Classification and Appraisal Review, with the DOR on July 7, 2023, requesting a value of \$0.00. *MTAB Dkt. 3.* The DOR sent a Form AB-26 Determination Letter to the Taxpayer dated August 24, 2023, denying the Taxpayer's request. *Id.* The Taxpayer appealed the DOR's valuation to the CTAB on September 5, 2023, requesting the 2021/2022 valuation of \$1,882 be maintained for the 2023/2024 tax cycle. *Id.* The CTAB hearing was held on October 5, 2023, and the CTAB's decision denying the Taxpayer's application for reduction was sent to the parties on October 10, 2023. *MTAB Dkt. 1.* The Taxpayer appealed to MTAB on November 2, 2023, per Mont. Code Ann § 15-2-301, requesting a value of \$1,882. *Id.* The MTAB hearing was conducted in Helena on March 5, 2024, at which the following were present:

- a. Jennifer Gallagher, Taxpayer; and
- b. Dave Burleigh, DOR Counsel; Cindy McGinnis, Paralegal; Helen Zindler, Appraiser; Roz Olson, Area Manager; and Wanda Warsinski, Modeler.

The record includes all materials submitted to CTAB, a recording of the CTAB hearing, all materials submitted to MTAB with the appeal, additional exhibits submitted by the parties prior to and at the MTAB hearing, and a transcript of 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 Subject Property is a narrow, 30' x 580' 'non-buildable' strip of land owned by Jennifer Gallagher in Lewis and Clark County. *MTAB Dkt. 1; MTAB Hr'g Tr. 36:15-22*. The Subject Property is located at 4855 N. Montana Ave in the North Helena Valley and is also identified by geocode 05-1888-08-2-13-04-0000. *Id.* It is 17,424 square feet in total size and is in DOR Neighborhood 205.323. *Ex. A; MTAB Hr'g Tr. 30:18-23, 31:17-19*. Both parties agree that County building regulations require 10' setback, so no residential structures could be constructed on this 30-foot width parcel wider than 10 feet. *MTAB Hr'g Tr. 8:19-9:6; 30:11-23*.
3. The DOR valued the Subject Property at \$20,282 for tax years 2023/2024. *Ex. A*. At the October 5, 2023, CTAB hearing, the Taxpayer requested the market value of the property be reduced to \$1,882. *MTAB Dkt. 3*. The CTAB denied the Taxpayer's request and maintained the DOR's value of \$20,282. *Id.* The Taxpayer appealed to MTAB on November 2, 2023, and reasserted that the market value of the Subject Property should be \$1,882. *MTAB Dkt. 1*. The DOR maintained that the most recent valuation upheld by the CTAB of \$20,282 is the most accurate value. *MTAB Dkt. 4*. The DOR valued the Subject Property at \$112,000 but applied an 82% negative influence to account for the property being non-buildable, arriving at the \$20,282 taxable value. *Id.*
4. At the MTAB hearing, Taxpayer argued that the Subject Property's value is disproportionate in comparison to the comparable properties that were used to value it. *MTAB Hr'g Tr. 5:16-19*.
5. Taxpayer presented several aerial photographs of comparable properties that the Department used to value the Subject Property to show that the comparable

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properties used to establish the land value before negative influence were applied are unlike her property. *Ex. 1; MTAB Hr'g Tr. 7:13-21*. The comparable properties were either significantly larger than the Subject Property or have dimensions that allow for a structure to be built within the zoned setback. *Id.* Taxpayer elaborated stating that while the Subject Property is a narrow strip of land with no structures on it, many of the comparable properties are more uniform and squarer shaped, allowing structures to be built more easily. *Ex. 1; MTAB Hr'g Tr. 7:23-8:18*. Furthermore, some of the photographs presented by the DOR depicted comparable properties which did have residential structures already built on them. *Id.* Taxpayer testified that some of the comparable properties containing residential structures sold for less than what the Subject Property was valued at even before the influence was applied, whereas the Subject Property contains no structures and is restricted by setbacks. *Id.*

6. Taxpayer testified that Helena Valley's urban residential mixed use zoning district regulations require a minimum setback of ten feet. *Ex. 1; MTAB Hr'g Tr. 8:19-9:9*. When applied to the Subject Property, this would leave a ten-foot strip of land available to build on. *Id.* When taken in conjunction with the restrictions created by existing utility easements which run both above and below ground, Taxpayer argues the Subject Property has significantly less value than any of the comparable properties used by the DOR to calculate the Subject Property's value. *Id.*
7. Taxpayer presented an aerial photograph of a triangle or wedge-shaped property (Wedge-shaped Property) used by DOR to calculate a negative influence which was applied to other non-buildable properties in the area, including the Subject Property. *Ex. 2; MTAB Hr'g Tr. 9:21-10:8*. The Wedge-shaped Property is in the city of Helena, approximately 6 to 8 miles from the Subject Property. *MTAB Hr'G Tr. 68:1-8*.

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8. Taxpayer disagreed with consideration of the sale price of the Wedge-shaped Property in valuing the Subject Property for two reasons. *Ex. 2; MTAB Hr'g Tr. 10:17-11:12*. First, Taxpayer testified that DOR personnel who were present at the CTAB hearing stated that the Wedge-shaped Property did not contain a building. *Id.* Taxpayer provided a property record card for the Wedge-shaped Property which showed that there is in fact a garage on the property described as framed, detached, and unfinished, and that the garage's inclusion in the value at the time of sale would have positively altered the Subject Property's sale price. *Id.* Additionally, the garage on the Wedge-shaped Property proves the lot is buildable when compared to the Subject Property. *Id.* Taxpayer's second concern with the Wedge-shaped Property's use in the Subject Property's valuation was that the Wedge-shaped Property was sold to an adjoining property owner. *Id.* The adjoining property owner who purchased the Wedge-shaped Property would be afforded greater benefit from use of the space than a non-adjoining property owner when compared to the Subject Property which is surrounded by other owners. *Id.* Taxpayer contended that the Wedge-shaped Property sale should not have been used when valuing the Subject Property. *Id.*
9. DOR introduced another exhibit which depicted a similarly shaped comparable property (Strip-shaped Property) sale that the DOR noted they "hope to use in the next cycle as an influence sale." *Ex. 4, F; MTAB Hr'g Tr. 12:17-25*. While Taxpayer agreed that the Strip-shaped Property is similarly shaped to hers, she objected to its use in valuing her property in the future as it was purchased by an adjoining landowner. *Id.* Taxpayer reiterated her argument that by absorbing that strip of land into the adjacent land ownership, that property owner is afforded a greater benefit than a buyer who did not already own the neighboring parcel. *Id.*
10. Taxpayer presented a market analysis conducted on the Subject Property. *Ex. 3; MTAB Hr'g Tr. 13:20-14:6*. The market analysis states that by using the

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average sale price per acre for the comparable properties used in the analysis, the Subject Property would have a fair market value of \$2,000. *Id.* Taxpayer stated that market analysis was prepared by a real estate agent and not a licensed appraiser and that she was not aware of what approach was used when selecting comparable sales. *Id.* Ex. 3; *MTAB Hr'g Tr.* 24:22-23:9.

11. Taxpayer testified that the Subject Property is bordered on all sides by her neighbors and the Taxpayer does not own any land adjoining the Subject Property. *MTAB Hr'g Tr.* 14:15-15:6. Taxpayer verified that she has given one adjoining property owner verbal permission to use the Subject Property as a roadway to reach their property, although she was unaware if her spouse had a more formalized written agreement. *Id.* Taxpayer stated that the neighboring property owners who were given verbal permission to cross the Subject Property have a separate, primary driveway on the opposite southeast side of their property, on which they can reach their property, whereas the Subject Property is an alternative access roadway. *MTAB Hr'g Tr.* 17:4-18:6. Taxpayer explained that there are also utility easements which run the full length of the Subject Property. *MTAB Hr'g Tr.* 15:19-16:2. There is a gas line which runs underneath the Subject Property, and powerlines which run above. *Id.* DOR did not challenge the existence of the easements.
12. Taxpayer testified that she cannot currently use the Subject Property to reach nearby parcels she owns and would need either a boundary relocation or an access point to be created for her to use the Subject Property as a driveway. *MTAB Hr'g Tr.* 18:9-12. Taxpayer's son and daughter also own nearby parcels but do not access their respective parcels using the Subject Property. *MTAB Hr'g Tr.* 20:4-21:4. Instead, the son and daughter use a gate access located on the back fence of Taxpayer's property adjacent to the Subject Property and then drive across the field located within as there are no roads between the two parcels. *Id.* Additionally, there is a large ditch that runs parallel to the Subject Property. *MTAB Hr'g Tr.* 22:21-23:19.

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13. Taxpayer estimated that she and her spouse bought the Subject Property around 2007. *MTAB Hr'g Tr. 21:5-7*. The Taxpayer stated that she has no use for the property and her husband bought it because he liked to have space whether it is used or not. *MTAB Hr'g Tr. 22:9-23:5*. For as long as Taxpayer has owned the Subject Property, it has never been included in any of the other parcels in the Munger subdivision, and it has always been a separate, distinct property. *MTAB Hr'g Tr. 21:10-19*.
14. DOR Appraiser, Ms. Zindler, testified that the Subject Property received a negative influence adjustment for being non-buildable which amounted to an 82% reduction in assessed value. *Ex. A; MTAB Hr'g Tr. 30:18-23*. Ms. Zindler testified that the sales of comparable properties listed in the Land Model, and used in valuing the Subject Property, were chosen by the land modeler. *Ex. C; MTAB Hr'g Tr. 34:17-35:1*. In this case, the twenty sales used in the land model were the only comparable sales available in the Subject Property's Neighborhood 205.323. *Id.*
15. Ms. Zindler testified that when reviewing the Subject Property in person for its AB-26 Review, she observed that the snow on the land was plowed and there were tire tracks on the ground indicating that it was in use. *Ex. E; MTAB Hr'g Tr. 36:15-22*.
16. Ms. Zindler testified that all the sales the DOR used in valuing the Subject Property were vetted as arm's length transactions. *Ex. F; MTAB Hr'g Tr. 37:17-38:1*. The non-buildable reduction influence was applied to the Subject Property prior to Taxpayer's AB-26 review. *MTAB Hr'g Tr. 41:5-14*. Furthermore, Ms. Zindler stated that in the Taxpayer's Market Analysis Exhibit 3, the comparable sales selected were from remote areas outside of the Subject Property's neighborhood, which would not comport with the state's procedures on valuation. *Ex. D; MTAB Hr'g Tr. 39:11-22*.

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17. Ms. Warsinski testified that the DOR modeling process works by having appraisers gather all the vacant land sales in the area which are then passed off to the modeler who includes the data into a valuation model. *MTAB Hr'g Tr. 44:8-20*. The sales are then time-trended to the lien date, which for the tax cycle relevant to this appeal, was January 1, 2022. *Id.* Once the sales are analyzed and regressed, the model then displays any outlier properties. *Id.* The presence of outlier properties informs the modeler whether there needs to be an influence applied to any properties. *Id.* Influences are based on statistical market observations. *MTAB Hr'g Tr. 46:1-3*.
18. Ms. Warsinski testified the Subject Property's neighborhood 205.323, did not have any influence applied because there were no sales which indicated that there was an influence affecting the sales of properties, whether non-buildable or otherwise. *MTAB Hr'g Tr. 45:3-25, 56:7-18*., When there are properties in a neighborhood which should have an influence, but the sales in the neighborhood do not reflect any influencing factors, the DOR looks to other similar neighborhoods to determine if there is an influence which can be applied to those properties in other neighborhoods. The DOR did use an influence sale from a different DOR neighborhood to calculate the Subject Property's negative influence. *MTAB Hr'g Tr. 44:21-45:2. Id.* Ms. Warsinski also stated that it is the DOR's standard to apply only one influence on a property. *MTAB Hr'g Tr. 56:3-25*. Ms. Olson testified that there is no prohibition on applying two influences. *MTAB Hr'g Tr. 72:16-22*. Additionally, the DOR could apply an influence for the Subject Property being an easement or ditch, but the neighborhood did not have the sales necessary to calculate such as influence on the sales price of comparable sales. *MTAB Hr'g Tr. 56:3-25*.
19. The base size in the DOR's multiplicative model is 43,560 square feet, reflecting the total number of square feet in an acre. Ex. B; *MTAB Hr'g Tr.*

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46:4-14. Ms. Warsinski stated that base rate is determined from sales that were used and regressed in the statistical land model. MTAB Hr'g Tr. 46:15-24. The base acre rate in the Subject Property neighborhood is \$128,077, which was rounded up to \$128,100 per acre. *Id.* Ms. Warsinski testified that the benefit of using the multiplicative model for this property is that there is such a diverse range of properties in the neighborhood that if they only used the square foot model, for example, the model would overvalue the Subject Property compared to the acre model. MTAB Hr'g Tr. 47:1-7. Last tax cycle the Subject Property was valued using an incremental model but moved to a multiplicative model for the 2023/2024 tax cycle. MTAB Hr'g Tr. 68:11-69:23.

20. Ms. Warsinski defined the term incremental rate as how fast the base rate will grow or come down. Ex. B; MTAB Hr'g Tr. 47:8-20. She elaborated by stating that in the multiplicative model, the incremental rate is the economy of scale. *Id.* Economy of scale is the concept that the more land that is purchased, the less per square foot each additional portion of land will cost. *Id.* For the Subject Property, the incremental rate is 0.1438, which the DOR rounded to 0.14. *Id.* The incremental rate is used to adjust for properties either bigger or smaller than the base size lot of 10,000 square feet. Ex. B; MTAB Hr'g Tr. 46:4-8, 47:14-20.
21. The formula for the multiplicative model the DOR uses calculate land value is $Y = B * XM$. Ex. D; MTAB Hr'g Tr. 48:1-49:22. In the formula, Y is the market value, B is the base rate, and X is the base size converted to acres, and M is incremental rate. *Id.* For the Subject Property, this formula returned a value of \$112,678, which is the value of the parcel if it were buildable and had no influences applied. *Id.*
22. Following the valuation using the established value for a base acre, to account for being a non-buildable parcel, the Subject Property was given an 82% reduction in value. Ex. D; MTAB Hr'g Tr. 51:1-20. The negative 82% non-

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buildable influence the Subject Property received was solely based on the sale price of the Wedge-shaped Property which was then regressed through the DOR's statistical model. *Id.* Ms. Warsinski testified that while the influence for the current tax cycle was based on only that one sale, the influence for the 2025/2026 tax cycle will incorporate the Strip-shaped Property sale. *Id.* Furthermore, Ms. Warsinski stated that the reason only one property was used in calculating the non-buildable influence was because there was only one property sale which was remotely comparable to the Subject Property. *Ex. F; MTAB Hr'g Tr. 52:1-14.* Therefore, the DOR took the non-buildable influence that had been applied to the neighborhood where the Wedge-shaped Property is located and applied it to the Subject Property in DOR neighborhood 205.323. *Ex. F; MTAB Hr'g Tr. 52:15-53:2.*

23. Ms. Warsinski testified that the Strip-shaped Property had previously sold and was valued at \$1.53 per square foot, whereas the Subject Property is currently assessed at \$1.16 per square foot. *MTAB Hr'g Tr. 53:17-54:6.* Ms. Warsinski stated that evidence indicates the DOR may be undervaluing the Subject Property. *Id.* Ms. Warsinski also expressed that she was not persuaded by the comparable properties Taxpayer presented in Taxpayer's Exhibit 3 because they were not fair and equitable, and they are not being used in the same general neighborhood as the Subject Property. *Ex. 3; MTAB Hr'g Tr. 54:7-17.*
24. Ms. Warsinski testified that while the Wedge-shaped Property's land value was determined without including its shed in the calculation, the sale price was calculated with the shed included, which was an error. *Ex. F; MTAB Hr'g Tr. 55:18-56:2.*
25. Ms. Warsinski stated that the DOR's models can take into account unique property characteristics such as whether a property has an odd shape or a gully running through it. *MTAB Hr'g Tr. 57:23-58:12.* These would be reflected as influence factors on the sales model. *Id.* In determining whether a property

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warrants an influence factor, appraisers will consider aerial photos as well as their own impressions from on-site inspections. *Id.* Furthermore, the zoning of a property is sometimes considered when valuing a property, however, Ms. Warsinski could not recall whether zoning was a factor in the Subject Property's valuation. *MTAB Hr'g Tr. 58:17-59:10.*

26. Ms. Warsinski testified that the model used to find an initial land value for the Subject Property had a calculated R-squared value of 81. This measurement, used in calculating the base acre value, falls within the acceptable range for R squared, as anything over 70 indicates a good model. *Ex. B; MTAB Hr'g Tr. 61:1-10.* Ms. Warsinski stated that another parameter which can be used to predict a model's accuracy is the T-stat. *Ex. B; MTAB Hr'g Tr. 61:16-62:22.* A T-stat that is close to plus 2 or minus 2 of the type pricing is considered an accurate model. *Id.* Two type pricings were used in the Subject Property's model, one for the Pay Dirt and Baily's subdivisions, and one for the Barnett subdivision. *Id.* The T-stats for both type pricings were 1.8 and -2.7 respectively. *Id.* Ms. Warsinski stated that these numbers indicated to her that the T-stat was predicting accurate outputs for the model. *Id.*
27. Ms. Olson, the DOR area manager, stated that in her opinion, the 82% influence applied to the Subject Property was appropriately applied as there were limited sales available for non-buildable or unusual properties, and no other method would have been fair and equitable. *MTAB Hr'g Tr. 65:14-66:10.* Furthermore, Ms. Olson stated that the method used by the DOR to estimate a reduction in value based on non-buildability was the most appropriate method as the DOR must base the influence on sales. *Id.* However, the lack of sales for non-buildable parcels does present a problem for the DOR when they're creating models for such properties. *Id.* To counteract this problem, the DOR will sometimes revalidate sales that were considered invalid and unusual based on factors such as their size and shape in order to use them in the models. *Id.* In this case the Wedge-shaped Property was used to create the negative influence

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and the Strip-shaped Property was used to verify the negative influence. *Id.* Both were initially deemed invalid and later re-validated by the DOR. *MTAB Hr'g Tr. 73:16-21, 74:1-14.* Ms. Olson stated that the properties were normally invalidated because a neighboring property owner bought the properties and are usually just absorbed into the larger property. *Id.*

28. Ms. Olson stated that both the Wedge-shaped Property and the Strip-shaped Property sales were re-validated, but the Strip-shaped Property could only be used in the next tax cycle's model due to its date of sale being after the lien date for the present valuation cycle. *MTAB Hr'g Tr. 73:16-24.* Furthermore, Ms. Olson stated that in the future the DOR hopes to find two or three more unusual property sales in the neighborhood to create a non-buildable influence specifically for Neighborhood 205.323. *Id.* The Wedge-shaped Property was originally invalidated because it was sold to an adjoining neighbor. *MTAB Hr'g Tr. 74:1-14.*
29. Ms. Olson testified that if there were no other sales that could be used to derive an influence, the DOR would expand the market area and would look to those adjoining neighborhoods for suitable sales to create the non-buildable influence factor. *MTAB Hr'g Tr. 71:5-14.*
30. Ms. Olson testified that the DOR did not use the Strip-shaped Property in calculating the Subject Property's negative influence factor as the DOR found the property in their invalidated sales records and did not re-validate the property until the Subject Property was already on appeal to the CTAB. *MTAB Hr'g Tr. 71:23-72:15.* Ms. Olson did state, however, that the Strip-shaped Property would be used in the next tax cycle. *Id.*
31. The Market Analysis provided by the Taxpayer is not the same as a fee appraisal which would compel the Board to adopt its value before further analysis. *Mont. Code Ann. § 15-2-301(3)(b).*

JURISDICTION AND STANDARD OF REVIEW

32. 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 Taxpayer filed a timely appeal of the CTAB's decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. *Mont. Code Ann. § 15-2-301*.
33. 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.
34. 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

35. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
36. "All taxable property must be appraised at 100% of its market value...." *Mont. Code Ann. § 15-8-111*.
37. "[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)*.

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38. 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).
39. 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.
40. “‘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)).
41. 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*.
42. “[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.
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

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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]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).
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(5)*.
46. “If the appeal is an appeal of the valuation of residential property, the state board shall consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and uses values obtained within the timeframe provided for in subsection (3)(a). The appraisal that is provided by the taxpayer is presumed to establish assessed value in the state board proceeding unless the department provides sufficient evidence to rebut the presumption of correctness, including another independent appraisal or other compelling valuation evidence. The state board shall address the taxpayer’s independent appraisal and the department’s valuation evidence in the decision.” *Mont. Code Ann. § 15-2-301(3)(b)*.

DISCUSSION

47. The Board finds this case to encompass very unusual set of facts and circumstances that have challenged the DOR in estimating market value beyond most valuations they encounter. Because there were very few valid sales of non-buildable land parcels in the area, the DOR has premised their entire negative influence for the Subject Property on the sale of one other property.

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48. Case law has established 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). While the DOR has provided a modicum of evidence that they followed established methods in valuing the Subject Property, the Board does not believe the assessed value accurately reflects market value.
49. We find, for the reasons stated below, that while the single sale chosen to establish the negative influence applied to the Subject Property for non-buildability was the only sale available in the legal timeframe, that sale was not comparable to the Subject Property in almost every aspect, and as a result of failing to otherwise account for those dissimilarities between properties, the influence applied was not a reliable indicator of value for the Subject Property.
50. The Taxpayer provided significant credible evidence and testimony to convince the Board of the differences between the Wedge-shaped Property, the lone comparable sale used to calculate the negative influence, and the Subject Property. The Board is not convinced the influence applied would reflect real life market behavior between the two properties with the facts presented.
51. First, the DOR admitted during their testimony that they had failed to extract the improvement value considered in the sale price of the comparable when they calculated the influence. That calls into question whether its influence was a valid market sale price which should have been relied upon. *MTAB Hr'g Tr. 66:16-25*.
52. Second, the comparable was a different size and shape as compared to the Subject Property. The Wedge-shaped Property was 1,500 square feet while the Subject Property is a long narrow strip of 17,424 square feet.

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53. Third, the Subject Property is in Lewis and Clark County with different zoning and other site-specific factors which may influence sale price, while the comparable is in the city of Helena. We don't fault the DOR for looking outside the neighborhood to find sales reflective of negative influence because there were no other sales within the neighborhood. However, that sale is not indicative of value for other reasons than its location.
54. Fourth, no testimony was offered to reassure the Board that the comparable sale was an arm's length transaction. In fact, both sales used by DOR to create and validate their negative influence were considered invalid until the DOR needed a sale to create the negative influence factor and a sale to verify the negative influence. Both the Wedge-shaped Property and the Strip-shaped Property were purchased by adjacent landowners and adjoining buyers could have overpaid or underpaid depending on their motives or other unknowns. Additionally, both the Taxpayer and the DOR agreed that these non-buildable sales are usually absorbed into the neighboring buyers' land, which in this case is not an option because the Taxpayer's land does not adjoin the Subject Property. The Board was left to wonder whether the sale price of the Wedge-shaped Property was truly reflective of a market value sale anything like the considerations at play if the Subject Property was sold on the open market.
55. Finally, no other adjustments were made to the negative influence applied to reflect other negative factors attached to the Subject Property. The Subject Property carried two utility easements, but no testimony was offered regarding whether the comparable sale had similar negative attributes. We would have to assume the comparable didn't suffer similar negative influences. This difference could have a significant weight in the sale price of the Subject Property and should have been accounted for in some way.
56. Because the Taxpayer presented credible evidence that the Subject Property is significantly different from the Wedge-shaped Property used to create the

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negative influence applied to the Subject Property, we are not convinced the DOR's assessed value is indicative of the market value of the Subject Property. However, the Board was also not convinced that the Taxpayer's requested value of \$1,882 was reflective of market value. This leaves the Board with the task of determining how much of a reduction is warranted in the current cycle. Due to the different uses of the Wedge-shaped Property and the Subject Property, as well as the relative proximity of the two properties to other property owned by each respective owner, we find a higher negative influence of 90% would be more applicable for the Subject Property. This higher negative influence would account for the easements and other dissimilarities with the one comparable relied upon. We hope that more sales of small oddly shaped unbuildable parcels will give the DOR the data it needs to accurately value the Subject Property and similar unique parcels in 2025/2026.

57. The Board's decision applies to this cycle only. The DOR will analyze and consider more recent sales of small unbuildable properties during the next cycle.
58. We modify CTAB's determination accordingly.

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ORDER

59. The DOR is ordered to recalculate the subject property's value using a 90% negative influence to account for the factors stated above. That new value shall be maintained for the 2023/2024 valuation cycle.

Dated this 30th day of May 2024.




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

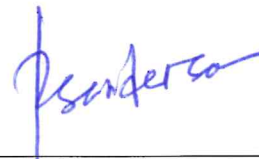
I certify that I caused a true and correct copy of the foregoing Findings of Facts and Conclusions of Law to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on May 30, 2024, to:

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