

MCLEOD FAMILY TRUST,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE No: PT-2024-24

**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 Anaconda-Deer Lodge County Tax Appeal Board (CTAB) denying the McLeod Family Trust, (Taxpayer) a reduction in value on the subject property located at 714 Black Bear Lane, Anaconda, Montana (Subject Property). The Taxpayer appealed that outcome to Montana Tax Appeal Board (MTAB) on February 27, 2024. We affirm the CTAB’s determination.

ISSUE TO BE DECIDED

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

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Taxpayers Brief Dated December 5, 2024, and Salient Facts;
2. Property Tax Assessment Analysis;
3. Updated Analysis of Land Assessments; and
4. Three-year tax assessments and Tax Assessment per square foot Land.

DOR Exhibits:

- A. Land Model;

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- B. Maps;
- C. Property Record Card and Photos;
- D. Cost Worksheet;
- E. Procedure 2-3-001.1;
- F. Appraiser Certification; and
- G. USPAP Standards 5 and 6.

PROCEDURAL HISTORY

The DOR valued the Subject Property at \$731,683 for the 2023/2024 appraisal cycle, with the land valued at \$359,493 and the improvements valued at \$372,190. *Ex. C*. The DOR sent a Classification and Appraisal Notice to the Taxpayer dated June 30, 2023. *MTAB Dkt. 3*. The Taxpayer appealed the DOR's valuation to the CTAB on July 31, 2023, requesting a land value of \$153,200 and an improvement value of \$269,400. *Id.* The CTAB hearing was held on January 24, 2024, and the CTAB's decision denying the Taxpayer's application for reduction was sent to the parties on January 25, 2024. *Id.* The Taxpayer appealed to MTAB on February 26, 2024, per Mont. Code Ann. § 15-2-301, requesting a land value of \$153,200 and an improvement value of \$269,400, for a total of \$422,600. *MTAB Dkt. 1*. On November 1, 2024, the Taxpayer contacted the Board and requested to submit a brief and evidence rather than attend the hearing because of health reasons. The Board granted the Taxpayer's request in an Order Vacating Scheduling Order and Setting New Schedule, dated November 4, 2024, and proceeded with the hearing as scheduled. The MTAB hearing was conducted in Helena on November 7, 2024, at which the following were present:

- a. Dave Burleigh, DOR Counsel; Brandon Whitaker, Area Manger; and Katelyn Thornton, Modeler.

The Taxpayer submitted a brief and evidence on December 6, 2024. *MTAB Dkt. 15*. The DOR responded with a brief on December 19, 2024. *MTAB Dkt. 16*.

The record includes all materials submitted to CTAB, a recording of the CTAB hearing, all materials submitted to MTAB with the appeal, additional exhibits

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submitted by the parties prior to and at the MTAB hearing, additional briefing 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 residential property owned by the McLeod Family Trust, on Georgetown Lake. *Ex. C.* The Subject Property is located at 714 Black Bear Lane in Anaconda, Montana, and is identified by its geocode 30-1375-07-3-02-14-0000. *Id.* The Subject Property is 0.572 acres and includes a single-family residence 3,216 square feet in total size, with a first floor living area measuring 1,680 square feet in size, and a basement measured at 1,536 square feet. *Id.* The Subject Property also includes a framed in porch and a wood deck. *Id.*

3. The DOR valued the Subject Property at \$731,663 for tax years 2023 and 2024, allocating \$359,493 for the land and \$372,190 for the improvements. *Ex. C; MTAB Hr'g Tr. 2:18-22.* At the February 23, 2024, CTAB hearing, the Taxpayer requested \$153,200 for the land and an improvements value of \$269,400 for a total value of \$728,380. *MTAB Dkt. 3.* The CTAB denied the Taxpayer's request for a value reduction. *Id.* The Taxpayer appealed this decision to MTAB on February 26, 2024, requesting that the Subject Property be assigned a land value of \$153,200 and an improvements value of \$269,400 for a total value of \$422,600. *MTAB Dkt. 1.*

4. DOR Lead Appraiser, Brandon Whitaker, testified that he valued the Subject Property using the cost approach. *MTAB Hr'g Tr. 5:17-19.* The Subject Property's land was valued using a land model created by DOR modelers using Georgetown Lake waterfront tracts. *Ex. A; MTAB Hr'g Tr. 6:8-7:20.* The model uses a base size of one acre and an incremental rate of 0.2530 to adjust

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- the value of the land from one acre to 0.572 acres. *Id.* The base rate for model 230.MJ3.A Georgetown Lake Waterfront Tracts is \$526,363, adjusted down to \$359,493. *Id.* Mr. Whitaker testified that the models fell within the DOR's statistical guidelines and are reliable. *MTAB Hr'g Tr. 7:22-23.*
5. The DOR applied two influences on the Subject Property. *Ex A, B; MTAB Hr'g Tr. 7:22-8:22.* The first was a positive influence of 114% because the Subject Property is located in a desirable area of Rainbow Point in Badger Bay, and the second was a negative influence of 69% because the main access road for Rainbow Point splits the Subject Property. *Id.* The DOR presented a map of the sales, showing how the DOR created the influences. *Ex. B; MTAB Hr'g Tr. 8:23-9:24.* Mr. Whitaker also testified that the Subject Property is more desirable because the lake frontage has deeper water conducive to docking boats and is not muddy compared to the south shore. *MTAB Hr'g Tr. 11:8-19.*
 6. DOR Modeler, Katelyn Thornton, testified that the influences added together equaled 0.79 and were then applied to the base rate of the DOR land model, which resulted in a reduction in value to the Subject Property. *MTAB Hr'g Tr. 20:1-16.* Ms. Thornton testified that all the land model statistical measurements, including the influences, were within DOR standards. *MTAB Hr'g Tr. 20:22-22:4.*
 7. The DOR calculated the Subject Property's land value using a land model that calculated a base rate and an incremental or decremental rate. *MTAB Hr'g Tr. 11:23-12:9.* Ms. Thornton testified and demonstrated the equation used to determine the base and decremental rates used to value the Subject Property. *MTAB Hr'g Tr. 21:23-24:24.* Using the Subject Property's actual size of 0.572 acres divided by the one-acre base size and the decremental rate of 0.253, the DOR determined the Subject Property's base land value. *MTAB Hr'g Tr. 11:23-12:9; 22:21-24.* Next, the DOR multiplied the Subject Property's land

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value by the two influences, a positive influence of 114% and negative influence of 69% to arrive at the final land value of \$359,493. *Id.*

8. Mr. Whitaker testified that the Subject Property's improvements were valued using the cost approach. *MTAB Hr'g Tr. 12:13-13:9*. Due to excessive adjustments made to the comparable properties in the sales comparison method and because the comparable properties had high comparability points, Mr. Whitaker followed DOR procedure 2-3-001.1 and valued the Subject Property using the cost approach. *Ex. E; MTAB Hr'g Tr. 16:7-23*.
9. The DOR determined the cost of the dwellings and deducted the depreciation of 22% to get the replacement cost new less depreciation value (RCNLD). *Ex. D; MTAB Hr'g Tr. 12:13-13:9, 14:1-16*. The RCNLD is then multiplied by the county index to adjust for the local cost of construction. *Id.* Next, the Subject Property's value is multiplied by the grade assigned by the DOR appraiser, but because the Subject Property was given a grade of average, or 1, the value would be the same when multiplied. *Id.* The residence of the Subject Property is valued at \$356,520. *Id.* Mr. Whitaker testified that he then added the building's additions, including an open porch and a wood deck, which accounted for an additional \$15,670, bringing the total cost of the improvements to \$372,190. *Id.*
10. Mr. Whitaker testified that the Subject Property was assigned a grade of five upon visual inspection by a DOR appraiser in 2017. *MTAB Hr'g Tr. 14:20-15:8*. Mr. Whitaker also testified that the depreciation was determined using the CDU or condition, utility, and desirability of the Subject Property. *MTAB Hr'g Tr. 15:11-23*.
11. Mr. Whitaker testified that he complied with Uniform Standard of Professional Appraisal Practice (USPAP) standards five and six related to mass appraisal.

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MTAB Hr'g Tr. 16:2-9. Mr. Whitaker testified that using USPAP standards one and two would be incorrect because they relate to individual appraisals of a single property. *Id.*

12. Due to health reasons, the Taxpayer could not attend the hearing and submitted a brief with exhibits as evidence. *MTAB Dkt. 13.* The Taxpayer argues he has a long history with the area, dating back to 1973. *Id.* The Taxpayer has handled over 300 market sales in the Georgetown Lake area. *Id.* The Taxpayer argues that building sites have evolved over the years because of environmental concerns and the need for approval from the Montana Department of Environmental Quality. *Id.* Building sites in the area require a minimum of two acres for a well and septic, and sites with less than two acres are much harder to develop. *Id.* Taxpayer stated that because of environmental factors, larger sites are more marketable. *Id.* The Taxpayer requested that the appraisal he submitted to the Anaconda-Deer Lodge County Tax Appeal Board be considered in this appeal. *Id.*
13. The Taxpayer also submitted a price per square foot comparison of the Subject Property to 14 Leaning Tree Lane. *MTAB Dkt. 13.* The Subject property has a price of \$14.43 per square foot, and 14 Leaning Tree Lane has a price of \$6.79 per square foot and is as much as four times the size of the Subject property. *Id.* The Taxpayer also compared the Subject Property's land tax assessment and price per square foot to comparable properties. *Id.* The Taxpayer asserts that the Subject Property has the highest price per square foot among the comparable properties he used, and the DOR failed to reflect the true development potential of the smaller lot. *Id.*

JURISDICTION AND STANDARD OF REVIEW

14. 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 DOR's decision to

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the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. *Mont. Code Ann. § 301*.

15. 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.
16. 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

17. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
18. “All taxable property must be appraised at 100% of its market value....” *Mont. Code Ann. § 15-8-111*.
19. “[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)*.
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.” *Burlington N.*, 169 Mont. at 214, 545 P.2d at 1090. However, DOR cannot rely entirely on the presumption in its favor

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- 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).
21. 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.
22. "'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)).
23. 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)*.
24. 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)*.
25. "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

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shall address the taxpayer's independent appraisal and the department's valuation evidence in the decision." *Mont. Code Ann. § 15-2-301(3)(b)*.

26. 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).

DISCUSSION

27. The Taxpayer did not dispute the value of the improvements, and this order will only address the land value of the Subject Property. The Taxpayer argued that the Subject Property's value is considerably higher than the surrounding properties in terms of price per square foot. The Taxpayer's argument is similar to the argument put forth in his last appeal, PT-2022-10. The Board finds the DOR's appraisal of the Subject Property credible and the Taxpayer's valuation method unconvincing. The Board upholds the DOR's value of the Subject Property.
28. The Taxpayer's appraisal method of dividing the property area by the sale price or appraised value of a property assumes that all land is valued equally regardless of acreage and does not consider diminishing returns or economies of scale. Montana Code Ann. § 15-8-111(3) directs the DOR to use mass appraisal methods when valuing class four residential property. The DOR uses verified data to value the land. The comparable properties used to value the land were within acceptable proximity to the Subject Property, and the statistical measurements for creating the base acre and decremental rate were within acceptable standards. Using the base acre method for mass appraisal where the DOR develops a base acre value and then reduces the Subject Property's value using the decremental rate is consistent with uniform appraisal principles whereas the Taxpayer's square foot divided by area method is not.

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29. The Taxpayer argues that smaller properties are more problematic to develop because of regulations for water and septic. The Taxpayer fails to acknowledge that as of the lien date for the 2023/2024 tax cycle, the Subject Property is already developed for water and septic, and a potential buyer would not face the problems with developing the site. While further development may be problematic, the Board cannot speculate.
30. The DOR applied two influences that the Board felt were proper. The first influence was applied due to the Subject Property being situated in a desirable area. The second influence was applied because the Subject Property has a road that crosses the property, making it less desirable.
31. While there is inconstancy with the price per square foot values as pointed out by the Taxpayer, the DOR rebutted that argument in their reply brief, stating that the Taxpayer picked properties that are significantly larger than the Subject Property and would have a lower price per square foot lower due to the principle of economies of scale. The DOR land model uses sales that are much smaller and more comparable to the Subject Property. Because the comparable properties used in the Taxpayer's analysis are larger, they would create inconsistencies, as argued by the DOR.
32. The DOR uses the land model on all similarly situated properties, creating equity among all the properties in the area. The DOR followed USPAP standards 5 and 6 for mass appraisal, while the Taxpayer used a method not recognized in professional appraising. The Taxpayer's "appraisal" submitted to the Anaconda-Deer Lodge County Tax Appeal Board does not meet the standards set out by the Montana Board of Real Estate Appraisers and was not conducted within six months of the lien date. Additionally, the Board did not adopt the Taxpayer's appraisal for the same reason in the case numbered PT-2022-10. Lastly, the Taxpayer did not show an error in the DOR's value. The Taxpayer merely pointed out inconsistencies with the price per square foot of

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other properties surrounding the Subject Property. For these reasons, the Board has declined to lower the value of the Subject Property and affirms the Anaconda Deer Lodge County Tax Appeal Board.

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ORDER

33. The Board denies the Taxpayer's appeal and affirms the Anaconda Deer Lodge County Tax Appeal Board.

34. For the 2023/2024 tax cycle the DOR will value the Subject property's land at \$359,493 and \$372,190 for the improvements.

Dated this 11th day of February 2025.



A handwritten signature in blue ink, appearing to read "Travis Brown", written over a horizontal line.

Travis Brown, Chairman

A handwritten signature in blue ink, appearing to read "Amie Zendron", written over a horizontal line.

Amie Zendron, 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

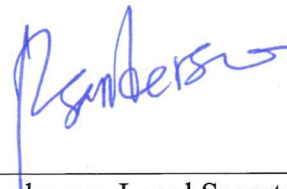
I certify that I caused a true and correct copy of the foregoing Findings of Facts and Conclusions of Law to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana February 11, 2025, to:

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