

MCLEOD FAMILY TRUST,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2022-10

**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 McLeod Family Trust (Taxpayer) a reduction in value on the subject property located at 714 Black Bear Lane, Anaconda. The Taxpayer appealed that outcome to Montana Tax Appeal Board (MTAB) on February 25, 2022. We affirm the CTAB’s determination.

ISSUE TO BE DECIDED

Whether CTAB erred in affirming the Department of Revenue’s appraised land value of \$557,146 for this property.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Photo with house on Georgetown Lake shore front;
2. Photo with house on Georgetown Lake shore front;
3. MTAB FOF, COL from 10-23-2020;
4. Plat of Rainbow Estates;
5. Whitaker Land Model Sales Information for 3 properties;
6. USPAP Advisory Opinions;

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7. Photo's east of subject;
8. Photo's west of subject;
9. Omitted
10. Lake front Comparison;
11. Lake front Comp;
12. Lake front Comp;
13. Rainbow Bay photo;
14. Rainbow Bay photo;
15. Photo of other property;
16. Photo of other property;
17. Fancy property photo;
18. Smaller property photo;
19. Photo of 60 feet of shared lake front;
20. Photo of house (same as #17);
21. Photo of best lot in Badger Bay;
22. Appellant's Market Value Opinion.

DOR Exhibits:

- A. Property Record Card of Subject;
- B. 7-9-2021 Appraisal Notice;
- C. AB-26 Request;
- D. 10-31-2021 Determination Letter;
- E. Land Sale Comparison;
- F. Land Model Graphs;
- G. Not Admitted:
- H. Price Per Square Ft. Calculations;
- I. Public Manual Excerpt on Value of Land;
- J. Documents on Economies of Scale.

PROCEDURAL HISTORY

The DOR valued the subject property at \$557,146 for the 2021/2022 appraisal cycle, with the land valued at \$303,016 and the improvements valued at \$254,130. *Ex. A.* The Taxpayer filed an AB-26, Request for Informal Classification and Appraisal Review, with the DOR on August 9, 2021, requesting a land value of \$144,503 and an improvement value of \$254,130. *Ex. C.* The DOR sent a Form AB-26 Determination Letter to the Taxpayer dated October 13, 2021, denying the Taxpayer's request. *Ex. D.* The Taxpayer appealed the DOR's valuation to the CTAB, requesting a land value of \$144,505 and an improvement value of \$254,130. *MTAB Dkt. 4.* The CTAB hearing was held on January 20, 2022, in Anaconda, and the CTAB's decision denying the Taxpayer's application for reduction was sent to the parties on January 21, 2022. The Taxpayer appealed to MTAB on February 25, 2022, per Mont. Code Ann § 15-2-301, requesting a land value of \$144,505 and an improvement value of \$254,130, for a total value of \$398,635. *MTAB Dkt. 1.* The MTAB hearing was conducted in Helena on January 31, 2023, at which the following were present:

- a. Jack McLeod, Trustee and Taxpayer Representative; Daniel Sweeney;
and
- b. Kristina Warren, DOR Counsel; Brittney Mari (Barns), Modeler;
Brandon Whitaker, Appraiser; Tedd Weldon, Area Manger; and
Danielle Pease, Legal Intern.

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. MTAB had the audio of the MTAB hearing transcribed and it was included in the record.

FINDINGS OF FACT

1. To whatever extent the following findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. Mr. McLeod was a licensed appraiser for approximately 25 years until he recently retired his license. *MTAB Hrg Tr. 11:7-11.*

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3. Mr. McLeod requested to correct the record regarding information relating to the prior McLeod Family Trust appeal and the October 12, 2020, MTAB decision. *Ex. 3, MTAB Hrg Tr. 5:17-6:4*. The Taxpayer property only has 110 feet of lakeshore frontage compared to the 300 feet noted in MTAB's prior decision. *Id.* The west side of the Taxpayer's lakeshore frontage juts out 27 feet into the lake and because of ice erosion, is unusable. *Id.* Mr. McLeod submitted a survey of the property showing 33' & 76' of lakefront footage. *Ex. 4*. The improvement value was reduced from \$295,000 to \$240,000 during the 2020 tax appeal because of a mismeasurement of the subject property, causing an overassessment. *MTAB Hrg Tr. 5:17-6:4*.
4. The subject property lot is 0.572 acres. *Ex. A*. Mr. McLeod testified the subject property is a narrow lot, and the improvements narrowly fit within the property's setbacks. *MTAB Hrg Tr. 7:1-5*. Other lots in the same development are much larger. *Id.* Further, because the lot is so narrow, a well and septic would not be permitted on the subject lot today. *Id.*
5. Mr. McLeod testified the subject property is on a central water system common to the development. *MTAB Hrg Tr. 7:7-13*. The source of the central water system is a common well shared with other neighboring properties. *Id.* The subject property also is required to pump all its "fluid feed" through a professional septic system up a hill, causing an additional expense to the Taxpayer. *Id.*
6. Of the three properties provided by the Department as comparable sales to the subject property, Mr. McLeod indicated that none of the three were valid or comparable sales. *MTAB Hrg Tr. 9:12-10:6*. The first property (30-1375-07-3-01-13-0000) is much larger at 6.97 acres and is not a lakefront property because it has a shared beach not deeded to the property. *Ex. 19, Id.* The second property (46-1374-13-1-01-11-0000) was sold by an estate, making it an invalid market transaction. And the third sale (46-1374-13-2-01-22-0000) is not a lakeshore

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property and is set back behind a neighboring property. *Id.* Mr. McLeod also highlighted Exhibit 21 as one of the premium lots in Badger Bay; the property is significantly larger with two lots and is assessed at \$2.51 per square foot. *Ex. 21, MTAB Hrg Tr. 20:23-21:2.*

7. Mr. McLeod argued the mass appraisal standard should not apply to the valuation of this individual subject property, because the Department is only looking at the subject property during the current appeal. *Id. MTAB Hrg Tr. 10:17-11:23.* The Taxpayer's reading of Universal Standard of Professional Appraisal Practice Standard 5 states, "the result in value is a probable value in mass appraisal." *Id., Ex. 6.* Mr. McLeod argued that Montana law dictates all property be appraised at its fair market value and not a probable value. *Id.*
8. Mr. McLeod argued the subject property is assessed at \$13.52 per square foot while neighboring properties are valued significantly less per foot. *MTAB Hrg Tr. 12:24-13:25.* Mr. McLeod gave several examples in addition to the comparable properties provided by the Department: the property directly to the east of the subject property is assessed at \$7.75 per square foot; the property directly west of the subject property is assessed at \$7.71 per square foot. *Id.*
9. Mr. McLeod presented three additional comparable properties to refute the Department's assigned market value. The additional comparable properties presented by Mr. McLeod included information regarding sales prices, sales date, lot size, and lake frontage. *Ex. 22, MTAB Hrg Tr. 14:23-15:16.*
10. Mr. McLeod estimated the market value of the subject property using his background of many years as a licensed Montana appraiser. *MTAB Hrg Tr. 21:14-22:19.* Mr. McLeod has appraised properties since the 1960s, including residential and commercial, and compiled valuations for litigation. *MTAB Hrg Tr. 6:6-9, 22:22-23:10.* Mr. McLeod testified to having an intimate knowledge of the Georgetown Lake area and testified that in this area people are looking for a

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property with good access, lake frontage, and a property that can be used all season long. *MTAB Hrg Tr. 23:12-24:9*. Mr. McLeod argued that land prices around Georgetown Lake are artificially inflated due to speculation of developers. *Id.* Mr. McLeod testified he verified all comparable properties and sales prices provided through the Multiple Listing Service. *MTAB Hrg Tr. 26:9-15*.

11. The Department used the cost approach to value the subject property's improvements because of the shortage of verified sales with lakefront property. *MTAB Hrg Tr. 30:23-31:3*. The Department used a lien date of January 1, 2020, when valuing the land using the sales comparison approach. *MTAB Hrg Tr. 31:19-25*.
12. The Department rebutted Mr. McLeod's comparable properties by testifying that comparable number one could not be used, comparable number two was a valid comparable property, and comparable three's sale date was after the lien date and could not be considered by DOR under the policies and procedures adopted in the DOR appraisal plan. *MTAB Hrg Tr. 31:8-11*. The Department testified the sale price presented by Mr. McLeod as comparable number three did not comport with the sales price reported on the realty transfer certificate. *MTAB Hrg Tr. 26:16-25, 29:1-17*. The difference in price between the subject property and the comparable properties presented by the Taxpayer was explained by the dollar per square foot calculation used by the Taxpayer to value the properties. *MTAB Hrg Tr. 31:12-18*. While the subject property was valued using the cost approach by the Department, the land itself was valued using a comparable land sales model for the area. *MTAB Hrg Tr. 38:16-22*. The Department calculates a value for one base acre with adjustments to account for parcels with more or less than one acre through their mass appraisal method, not the dollars per square foot method presented by the Taxpayer. *Id.*
13. For the 2019/2020 tax cycle, the subject property was appraised at \$355,820, and for the 2021/2022 tax cycle, at \$303,016. *MTAB Hrg Tr. 33:6-15*. The subject property value was reduced during the 2019/2020 because similar properties were

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selling differently when a road traversed the property. *Id.* The Department applied an influence factor to account for the difference in sales that lowered the assessed value of the subject property. *Id.*

14. All sales in the Department's land model used to value the subject property land were validated lake frontage sales. *MTAB Hrg Tr. 38:1-2.* The Department modeler testified that Exhibit C, provided to the Taxpayer, included the three most comparable properties to the subject because they are also on the premier point with deep water frontage and have an inferior component driving the assessed value. *Ex. E, MTAB Hrg Tr. 41:3-22.* All three comparables have inferior components, including shared lake access, less desirable lots, and roads transgressing through the lots. *Id.* Eighteen valid sales are included in the land model relied upon to value the subject property. *MTAB Hrg Tr. 52:4-11.*
15. The Department's staff verifies all sales in the model. *MTAB Hrg Tr. 43:10-14.* To complete the verification, the staff mails and or talks with the buyers and sellers to validate that all sales included in the model are at market price. *Id.*
16. The Department's mass appraisal land model generates a base-acre method to value the subject property in the market area. The Department determines the value of a one-acre lot and extrapolates the additional or lesser acres. *MTAB Hrg Tr. 44:10-20.* The base-acre method considers the economies of scale, which states that as the size of the property increases, the price per acre will typically decrease. *Id.* The base lot value might be adjusted to meet market conditions depending on influence factors. *Id.* The Department's use of economies of scale is typical in the mass appraising profession. *MTAB Hrg Tr. 44:21-45:4.*
17. The Department applied a desirable influence factor to the subject property. *MTAB Hrg Tr. 45:5-18.* The 01-influence code used by the Department represents a highly desirable location on Georgetown Lake, including Rainbow Point, Badger Bay, and Piney Point. *Id.* The more desirable areas typically have a value

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adjustment of 16% higher. *Id.* The 02-influence code used by the Department references the less desirable components of the property, including inferior shape, roads, or restricted lake access. *Id.* The less desirable influence factor indicated that the property would only fetch 71% of the typical market value. *Id.* The two influence factors applied to the subject, when combined, reduced the subject lot value to 82% of the market value of a typical lot on Georgetown Lake. *Id.*

18. To calculate current market ratios, the Department tests its land model's accuracy by dividing the assessed value of a property by the adjusted sales price. *MTAB Hrg Tr. 49:18-50:12.* The International Association of Assessing Officers (IAAO) requires a ratio between 90 and 110 to be reliable. *Id.* All sales included the land model met IAAO standards. *Id.* When the Department made the same calculations using the Taxpayer's method of price per square foot, the ratios varied from 40% to 440%. *Id, Ex. 8.*
19. The Department's modeler testified the Department uses IAAO and Uniform Standards of Appraisal Practice (USPAP) Standards 5 & 6 to perform mass appraisal. *MTAB Hrg Tr. 51:17-52:2.*
20. The Department does not use the constant price square foot method to value property because of inaccuracies in the appraisal; the Department used the base-lot methodology. *MTAB Hrg Tr. 58:9-18.* Additionally, the Department did not use USPAP Standards 1 & 2 as recommended by Mr. McLeod because the property was not unique or had no special use as required by that standard. *MTAB Hrg Tr. 61:7-14.* The property did fall within the scope of mass appraisal and was appraised by the Department using USPAP mass appraisal Standards 5 & 6. *Id.*

JURISDICTION AND STANDARD OF REVIEW

21. 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 the MTAB.

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Therefore, this Board maintains jurisdiction to hear and decide this matter. *Mont. Code Ann. § 15-2-301*.

22. 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.
23. 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

24. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
25. “All taxable property must be appraised at 100% of its market value....” *Mont. Code Ann. § 15-8-111*.
26. “[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 conflicts with the Montana Administrative Procedure Act, this section supersedes that act.” *Mont. Code Ann. § 15-2-301(5)*.
27. 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

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- 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).
28. 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.
29. "'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)).
30. "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).
31. "[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).
32. 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)*.

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33. 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)*.
34. “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)*.
35. 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

36. The Taxpayer did not dispute the appraised value of the improvements and only asked for a reduction in land value. The Taxpayer argued their land was appraised considerably higher than the surrounding properties. The Board finds the Department’s appraisal of the subject property credible and the Taxpayer’s valuation method uncredible. Therefore, the Department’s valuation of the property is upheld.
37. The Taxpayer argued that the property should be appraised as individual property. The Department is tasked by the Montana Code Annotated § 15-8-111(3) to use

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mass appraisal to value all class four properties in Montana. The Taxpayer presented a USPAP advisory opinion stating: “There is a special use property for which it has been determined that mass appraisal is not appropriate. This property will be appraised as an individual property.” The Taxpayer presented no evidence on why his property would be considered a special use property. When appraising the subject property, the Department has never considered the property to be of special use and has consistently appraised the property using mass appraisal. While this appeal only focuses on the subject land, the Department defended its assigned value using mass appraisal. The Department followed all uniform appraisal methods for mass appraisal, including a land model based on eighteen verified sales in the market area. The Department verified the land model met all IAAO standards. The Board finds the mass appraisal conducted by the Department as required by law to be credible.

38. The Taxpayer used a square foot method for valuing the subject property where the appraised value is divided by the area of the property to estimate market value. The square foot method assumes all land is valued equally regardless of acreage and does not consider diminishing returns or economies of scale. While the Taxpayer’s method is a simple way to consider land value, Montana Code Annotated § 15-8-111(3) directs the Department to use mass appraisal methods when valuing class four residential property. In extracting a property value using mass appraisal, the Department used information from reliable sources verified by their appraisers, and the property being valued was within acceptable proximity to the comparable properties. To account for the economies of scale in the land model, the Department determines the value of a one-acre lot and extrapolates the additional acres to find a final value. The base acre method used by the Department considers the economy of scale as required by uniform appraisal principles, whereas the Taxpayer’s square foot method does not.

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39. Additionally, the Taxpayer's method produces a wide range of prices per foot that the Board finds does not represent the market in the area. The properties presented by the Taxpayer were not time-trended to the statewide lien date, contributing to the wide ranges of prices per acre. The Department did time-trend its sales from date of sale to the common statewide lien date to equalize all sales. Lastly, the Taxpayer's square foot method does not consider the Department's duty to equalize the valuation of taxable property among counties, classes, and between individual taxpayers.

40. The Department presented evidence that purchasers in the area are concerned with lake frontage. Buyers will pay more for a smaller lot if it has lake frontage. We find that Rainbow Point is very attractive to buyers in this market because of the lake frontage and is not located near the highway. Of the three comparable properties the Taxpayer presented, the subject property was superior.

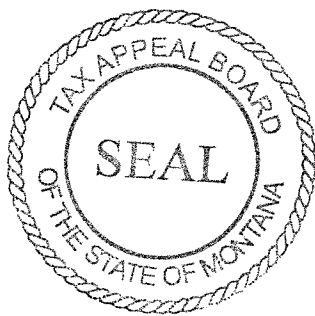
41. While the Taxpayer did submit three comparable sales that the Department partially refuted, based on the evidence presented, the Board cannot find any significant or fatal flaws in the Department's valuation of the subject property. The Department followed uniform appraisal methods as directed by the Montana Code Annotated. The Board has rejected the square foot valuation method in prior cases brought by the Taxpayer and subsequent cases before the Board. Therefore, the Taxpayer did not meet his burden of proving an error in the appraisal of the subject property. The Department's appraised value of \$303,016 for the land and \$254,130 for the improvements is upheld.

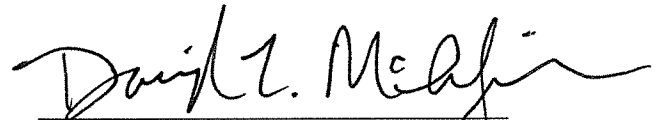
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ORDER

42. The Department shall maintain the appraised value of \$303,016 for the land and \$254,130 for the improvements for the 2021/2022 tax cycle.

Dated this 26th day of April 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 April 26, 2023, to:

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