

DONALD K. and CYNTHIA A.
MOEN,

Appellants,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2022-4

**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 Donald and Cynthia Moen (Taxpayers) a reduction in value on the subject property located at 3740 Bay View Road, Helena, Montana. The Taxpayers timely appealed that outcome to Montana Tax Appeal Board (MTAB) on January 13, 2022. We modify the CTAB’s determination.

ISSUE TO BE DECIDED

Whether the CTAB erred in affirming the Department of Revenue’s (DOR) value for one acre of land with 112 front feet on Hauser Lake, valued at \$310,240.

EXHIBIT LIST

The following evidence was submitted at the hearing:

DOR Exhibits:

- A. Property Record Card
- B. Photos
- C. Map
- D. Land Model
- E. AB-26 Request
- F. AB-26 Determination

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Taxpayer Exhibits:

1. Acceptance of tax appeal and response from Dave Burleigh;
Documents for tax appeal; Response from Dave Burleigh
2. Dates for responses and information; Requested information from MT
DOR; Responses from Roz Olson for requested information;
Instructions and discovery requests from DOR; Discovery requests
answered by Donald Moen
3. Description and Pictures of Moen Property; Property Record Card from
2016-2021; DOR land valuations for 2020 and formulation from
model; Property comparison values; Map and size of properties;
Comparison of lake front and square feet of property; Property reports
of 3730 Bay View Drive, 3740 Bay View Drive, 3750 Bay View Drive,
and 5380 Nesting Osprey Way; Gilman Property; Cost approach to
value DOR and evaluation of cost approach; CTAB Summary
4. Property Record Cards for 5496 Soaring Eagle Drive, 5483 Soaring
Eagle Drive, 5545 Woods Crossing Drive, 5600 Danas Point Drive, and
18961 Valley Drive
5. Property Record Cards for Deer Park Hauser Lake Homes Subdivision:
3815 Deer Park Drive, 3835 Deer Park Drive, 3863 Deer Park Drive,
3877 Deer Park Drive, Geocode 05-1996-17-1-01-35-0000, 3901 Deer
Park Drive; Appeal Summary.

PROCEDURAL HISTORY

The Taxpayers received their valuation assessment from the DOR setting the property value for 2021/22 at \$863,501 with an improvement value of \$552,160, a one-acre homesite value of \$310,240, and a 19.89-acre non-qualified agricultural land value of \$1,101. The Taxpayer filed a DOR AB-26 request for an informal classification and appraisal review on August 5, 2021, which resulted in minor reductions to the improvement value. The request for land value reduction within the AB-26 was denied on August 26, 2021.

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The Taxpayer then appealed that decision to the CTAB on September 20, 2021, and a hearing was held by the CTAB on December 16, 2021, in Helena. The CTAB denied the appeal. The Taxpayer appealed to the MTAB on January 13, 2022, per Mont. Code Ann § 15-2-301. *Id.* The MTAB hearing was conducted in Helena on June 28, 2022, at which the following were present:

- a. Donald Moen, Taxpayer;
- b. Dave Burleigh, DOR Counsel; Nick Harris, Modeler; Wanda Warsinski, Lead Appraiser; and Rosalind Olson, Area Manager.

The record includes all materials submitted to CTAB, a recording of the CTAB hearing, all materials submitted to MTAB with the appeal, 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 includes 20.89 acres of land. The home and garage are located on one acre assessed at market value, with the remaining 19.89 acres classified as non-qualified agricultural land assigned a statutory value. *MTAB Hr'g Tr. 30:18-22.*
3. Neither the value of the non-qualified agricultural land nor the value of the improvements are under appeal. *MTAB Hr'g Tr. 3:10-17.*
4. The Taxpayer argued that his one-acre homesite land is overvalued by about \$100,000. *MTAB Hr'g Tr. 82:21-22.*
5. The DOR approaches valuation of water-front properties near Helena by assigning neighborhoods. The different lakes around Helena constitute

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- different neighborhoods with Hauser Lake assigned to Neighborhood 443, Canyon Ferry being Neighborhood 444, and Holter being Neighborhood 446.
6. Properties that have lake frontage are valued using the front foot method. *MTAB Hr'g Tr. 57:15-25*. The subject property has 112 feet of lake front on Hauser Lake. *MTAB Hr'g Tr. 6:11-13; Ex. A, at 13*.
 7. The subject property has been placed in neighborhood land sales model 443, Waterfront Lakeside model. Within that neighborhood model the subject has been selected as Category 3 which is based on location within the neighborhood. That category is selected to reflect the value driven by market sale prices in that Category area. Category 3 is described by the DOR as lake front properties on Deer Park Road or Castles Road. *MTAB Hr'g Tr. 29:22-30:4; Ex. A, at 13*.
 8. The one-acre homesite of the subject property has a depth of 389 feet which is calculated by taking the one-acre homesite (43,560 square feet) divided by the 112 front feet. *MTAB Hr'g Tr. 30:5-17; Ex. A, at 13*.
 9. The subject property is narrow and steep on both sides of the homesite, with the terrain sloping away from the footprint of the home on either side to the property lines. Four retaining walls were installed to facilitate a level building site for the home and garage. The bottom retaining wall and the top retaining wall are each six feet tall. There is about a nine-foot drop from the top of the retaining walls to the ground below. A ravine runs diagonally through the SE side of the property further reducing level ground on the one-acre homesite. *MTAB Hr'g Tr. 7:22-23; Ex. 3, at 47-48a*.
 10. The Taxpayer testified that because of the steepness of his lot, he is unable to launch his boat from the subject property because of the difficulty of getting a boat and trailer on either side of his home down to the shoreline on his lot. His

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neighbor allows him to launch his boat via the neighbor's excavated ramp into the lake. *MTAB Hr'g Tr. 7:14-21.*

11. There is a dock at the subject property, but the steepness can make it more difficult to remove and store the dock in the off season. The Taxpayer also relies on the kindness of his neighbor who allows him to remove the dock for the winter via the neighbor's ramp. *MTAB Hr'g Tr. 8:5-10; Ex. 3, at 47.*
12. There is no steepness influence built into the DOR land valuation model for Neighborhood 443 and so no properties within this neighborhood have received a valuation reduction for steepness. *MTAB Hr'g Tr. 33:1-7.*
13. Ms. Warsinski testified that the DOR did not account for steepness in appraising the land of the subject property. She also testified that the DOR assigned no value for the retaining walls, which would be considered improvements, and that was consistent across all other properties that have retaining walls. *MTAB Hr'g Tr. 43:3-21.*
14. Ms. Olson testified that a steepness influence would only be applied if there was sales evidence that steepness was influencing the value of other nearby land sales, but there had not been any sales to support a negative influence for steepness to be applied to the Moen land. *MTAB Hr'g Tr. 64:23-65:3.*
Influences, like dock access, walkability, drivability, etc. can be accounted for if value changes caused by other factors can be derived from the market sales regression analysis. *MTAB Hr'g Tr. 65:23-66:7.*
15. Taxpayer calculated the value per foot of lake front by taking the valuation of \$310,240, divided by the 112 front feet, resulting in \$2,770 per front foot. *MTAB Hr'g Tr. 9:9-12; Ex. 3, at 61a.*

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16. Taxpayer argued inconsistent values were assigned by DOR when value per front foot was compared. Adjacent to the subject property are 3710 Bay View Drive, 3730 Bay View Drive, 3750 Bay View Drive, and 5380 Nesting Osprey Way. These properties have 287 front feet, 347 front feet, 242 front feet, and 504 front feet, respectively. They are valued at \$313,740, \$314,940, \$312,840, and \$208,080, respectively. *MTAB Hr'g Tr. 9:9-22; Ex. 3, at 63*. If these values are divided by the front feet, the price per lake front foot is \$1,292.72¹, \$907.61, \$1,292.72, and \$412.86, respectively. *MTAB Hr'g Tr. 9:23-10:5; Ex. 3, at 61a*. The subject property has a \$2,770 per front foot value. The Taxpayer also calculated per square foot values for the properties adjacent to the subject property. Those values, respectively, are \$1.42, \$1.63, \$1.44, and \$0.32. The subject property has a \$7.12 per square foot value. *MTAB Hr'g Tr. 10:12-11:12; Ex. 3, at 61b-61d*.
17. The Taxpayer also calculated per square foot values using the incremental values by taking one acre taken out of the adjacent properties, stating that the removal of one acre represents the square feet that are not included within the base model of 100 front feet, and dividing the incremental value by this square foot value. For 3710 Bay View Road, this equates to approximately 2.1 cents per square foot. This value for 3730 Bay View Road is approximately 3.3 cents per square foot, for 3750 Bay View Road it is approximately 1.6 cents per square foot, and for 5380 Nesting Osprey Way it is approximately 1.3 cents per square foot. *MTAB Hr'g Tr. 11:13-12:19*.
18. The Taxpayer also brought evidence of other properties he argued were comparable to his but valued lower by the DOR. These were: 1) 5496 and 5483 Soaring Eagle Dr.; 2) 5545 Woods Crossing Dr.; 3) 5600 Danas Point Dr.; and 4) 4163 St. Clair Road. The two properties on Soaring Eagle Dr. are

¹ In the MTAB hearing and in Ex. 61a, the Taxpayer stated that the value per front foot of the 3710 Bay View Road property equates to \$1,292.72. Ex. 61b gives a per front foot value of \$1,093.17.

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categorized as primary lots. Woods Crossing and Danas Point are categorized as Category 1. St. Clair is categorized as Category 2. *Ex. 4.*

19. 5496 Soaring Eagle Dr. has 850 front feet and its valuation decreased from a 2020 value of \$291,250 to a 2021 value of \$215,000. *MTAB Hr'g Tr. 13:11-14; Ex. 4, at 92.* 5483 Soaring Eagle Dr. has 348 front feet and its valuation also decreased from a 2020 value of \$284,799 to a 2021 value of \$206,119. *MTAB Hr'g Tr. 13:14-17; Ex. 4, at 95.* The DOR has 5545 Woods Crossing Dr. as having no lake frontage; however, the Taxpayer alleges that it does. *MTAB Hr'g Tr. 13:20-14:5; Ex. 4, at 99.* 5600 Danas Point has a 2021 value of \$212,617. *MTAB Hr'g Tr. 14:7-10; Ex. 4, at 103.*
20. The Taxpayer argued that the comparable sales on Deer Park Road used by the DOR to value the subject property are not comparable because they are flatter than the subject property and 3815 Deer Park Road has 218 front feet. *MTAB Hr'g Tr. 14: 22-15:23; Ex. 5, C.*
21. The DOR valued the subject land based on a pricing model using the land model developed by using comparable land sales, which is labeled as the cost method in the Orion system. The DOR testified that there were at least 14 validated sales in the neighborhood, all used in the land model to estimate market value of the subject. *MTAB Hr'g Tr. 27:10-17.*
22. Ms. Olson testified that the DOR could use sales up to 6 years old in making the model, meaning that for the 2021/2022 valuation, which is based on sales from 2018 and 2019, sales from 2014 forward can be used because that is within 6 years of the January 1, 2020, lien date. *MTAB Hr'g Tr. 81:13-14.*
23. The base size and rate, and the incremental/decremental rate are determined by the land model. *MTAB Hr'g Tr. 46:1-7.* The base rate is determined by looking at the slope of the regression analysis. The base rate is where the slope of the

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- regression line stops. The base size is 100 front feet with a depth equating to one acre on the lake. *MTAB Hr'g Tr. 76:19-22*. The incremental and decremental rates are determined by the slope of the line. The incremental rates set a value per front foot for frontage more or less than the 100-foot standard base width applied statewide. *MTAB Hr'g Tr. 77:13-16*.
24. The models are additive models which only produce a straight-line regression, resulting in the same incremental/decremental value for each category. *MTAB Hr'g Tr. 61:1-62:7*. The models are created by using $Y=MX+B$ with Y being the time-adjusted sales price/market value or, in other words, the value the DOR is trying to determine, M being the subject land size, X being the land size adjustment factor which are the incremental/decremental values and the category value adjustments, and B being the base value. *MTAB Hr'g Tr. 67:10-69:12; Ex. 2, at 23-25*.
25. Mr. Harris testified that to create the model, appraisers first verify which sales are valid and a standardized model is created from a statewide template that is then populated with those valid sales within the neighborhood being modeled. The sales are then reviewed for value adjustments. "The regression model is calibrated for uniformity and goodness-of-fit statistics review and calibration is done multiple times to ensure accuracy." *MTAB Hr'g Tr. 71:24-72:5; Ex. D*.
26. Ms. Olson testified that to make a statistically significant model, she likes to see at least three sales in each Category of the model which is the land valuation procedure the DOR tries to follow. Ms. Olson further testified the model used to value the subject property has 14 to 15 verified sales and complies "almost too much" with the IAAO statistical standards. *MTAB Hr'g Tr. 63:19-64:22*. There were 17 market sales in the subject property's neighborhood in the relevant timeframe. *MTAB Hr'g Tr. 85:5-6; Ex. D*.

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27. The goodness-of-fit statistics are what measure the accuracy of the model. The T-stat is one such statistic. A T-stat value more than plus or minus two is considered a reliable indicator of market value influence, per industry standard. The T-stat for the Category 3 influence is -2.04229448. *MTAB Hr'g Tr. 72:6-73:22; Ex. D.*
28. Mr. Harris testified that he considered the category influence factor to be reliable because “the T-stat of that number represents over 95% confidence that the variable is significant. Also, the regressed value versus sales price ratio for the four sales in Category 3 are close to 100% which indicates market value.” *MTAB Hr'g Tr. 73:12-17.*
29. The other goodness-of-fit statistics are the coefficient of variable (COV), the price related differential (PRD), the coefficient of dispersion (COD), and the R-squared value. The COV is “the standard deviation as a percentage.” In this case, it is 5.71 which is within the industry standard range of 5 to 25. *MTAB Hr'g Tr. 74:1-16; Ex. D.* The PRD is a “statistic for measuring assessment regressivity or progressivity.” A PRD greater than one indicates that high value parcels are under appraised while a PRD less than one indicates that high value parcels are over appraised. The PRD in this case is one which Mr. Harris testified suggests that the DOR is “hitting market value well in the model.” *MTAB Hr'g Tr. 74:18-27:4; Ex. D.* The R-squared value is “the measure of strength of the relationship between the independent variables, such as land size and sales price, and the dependent variable which is what is being estimated, market value.” The closer to one the R-squared value is, the stronger the relationship between the independent variables and dependent variable is. In this case, the R-squared is .97. An R-squared value of above .7 is considered statistically sound. *MTAB Hr'g Tr. 75:5-20; Ex. D.*
30. One of the indices of goodness of fit for statistical measures was the COD or coefficient of dispersion. The DOR did acknowledge in its discovery response

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number two that COD was below the IAAO guideline of 5.0-25.0 at 4.01. This admission should be considered along with the other statistical measures of R-Square, COV, and PRD which are all within IAAO standards, but the model COD did not meet the IAAO standard.

31. To make the model statistically significant with the limited number of sales that occur within each category, all the categories are all included within the same model. To get different incremental/decremental rates, the categories would have to be in separate models. *MTAB Hr'g Tr. 62:12-25*. This is because the regression output produces a line with a slope that never changes. *MTAB Hr'g Tr. 77:20-23*. The value difference therefore is determined by the category/location rather than by the size. *MTAB Hr'g Tr. 78:4-22*.
32. Mr. Harris testified that because the regression results of the model are based on the relationship between adjusted sales price and land size, the outputs, or in other words, the land value, remains consistent. *MTAB Hr'g Tr. 76:11-18*.
33. Ms. Olson testified that location and sale price are the driving forces behind the category determinations. *MTAB Hr'g Tr. 58:3-24*.
34. The modeler looks at the percent differences between location sales to determine categories. *MTAB Hr'g Tr. 60:6-16*.
35. Mr. Harris testified that the categories for this model were determined by location and sales prices. *MTAB Hr'g Tr. 76:23-77:4*.
36. There are four main categories of Hauser Lake. Rainbow Drive is Category 1, Danas Point is Category 2, Deer Park is Category 3, and Lake Helena are regular lots. *MTAB Hr'g Tr. 58:23-59:5*.

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37. Category 4 properties are not accessible by road. Category 2 properties are wider than the subject property and have a value about \$40,000 higher than the subject property. *MTAB Hr'g Tr. 31:1-20*. Category 2 is considered the default value and does not have a category adjustment. *MTAB Hr'g Tr. 68:11-12; Ex. 2, at 23*. The primary lots along Lake Helena differ from the Category 3 of the subject property because the properties on Hauser Lake are nicer than the Lake Helena properties and the appraiser did not believe boats can be brought on Lake Helena, both of which make the Lake Helena area not as desirable as the Hauser Lake area. *MTAB Hr'g Tr. 35:23-36:3*. Regular or primary lots do not use influence factors for those properties. *MTAB Hr'g Tr. 35:5-8*.
38. The Taxpayer asserted that contrary to the testimony of Ms. Olsen, there is boat access on Lake Helena because Montana Fish and Game put a ramp into Lake Helena. *MTAB Hr'g Tr. 39:14-17*.
39. Each category has the same base size and incremental/decremental rate. The only variable that effects the appraisal value of each category is the base rate. *MTAB Hr'g Tr. 40:23-41:3; Ex. D*. Ms. Warsinski testified that changing the depth of the lots does not affect the value, only front footage does. *MTAB Hr'g Tr. 52:14-24*.
40. The average front feet within the land model are 367 front feet. The base size used in this, and other Montana water frontage models is 100 feet. Ms. Olson testified that when she and the modeler changed the base size to 200 front feet, the base rates decreased by half, meaning that the overall values stayed the same through the regression analysis method. *MTAB Hr'g Tr. 67:22-68:2; Ex. D*. Ms. Olson explained that result by testifying that location, i.e., being on a particular area of the lake, is the most important indicator of value, with lot width being a secondary consideration to buyers. *MTAB Hr'g Tr. 69:21-24*.

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41. Mr. Harris testified that all front foot models in Montana use 100 front feet as the base size. He was not sure how the 100 front feet base size was determined to be the standard. *MTAB Hr'g Tr. 76:1-10.*

42. The Category determines the base rate for a typical lot in that category, with Category 1 having a base rate of \$4,759, Category 2, \$3,474, Category 3, \$3,061, Category 4, \$769, and regular lot, \$2,022. Front feet over 100 feet has an incremental/decremental value added or subtracted of \$20 per front foot. *MTAB Hr'g Tr. 34:20-35:2; Ex. D.*

43. Using this front foot analysis, the base size for Category 3 of the subject property is 100 front feet which has a base rate of \$3,061 per front foot, rounded to \$3,100 per front foot. The incremental rate is \$20 for every front foot above 100. The decremental rate is also \$20 for every front foot below 100. *MTAB Hr'g Tr. 40:10-22; Ex. D.*

44. Ms. Warsinski testified that the neighborhood area of the subject property has characteristics more aligned with more valuable Category 2 properties but she felt that the subject property itself was more like other Category 3 properties and so she classified it as Category 3. This determination was partly based on a sale in Deer Park that had 103 front feet, similarly, narrow like the subject. *MTAB Hr'g Tr. 37:1-11; Ex. C, at 12.* The Deer Park area is harder to get to because the road is narrow and windy. *MTAB Hr'g Tr. 38:11-13.*

45. Ms. Warsinski testified that the property at 5380 Nesting Osprey Way mistakenly did not have a category applied which is why the value is low. The other properties adjacent to the subject property were categorized as Category 3 but probably should have been Category 2. *MTAB Hr'g Tr. 37:1-21; Ex. C, at 11.* Ms. Warsinski testified that the adjacent properties should be Category 2 based on their locations, but she would keep the subject property as Category 3

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because the adjacent properties are wider than the subject property. *MTAB Hr'g Tr. 46:23-47:17.*

46. In response to the Taxpayer's discovery request, the DOR sent a document with the valuations of requested comparable geocodes. Two of these geocodes are fronting the lake but were not valued using the front foot method. *MTAB Hr'g Tr. 51:13-18; Ex. 2, at 26.* Ms. Warsinski testified that those two properties were mistakenly not put into the correct neighborhood which resulted in them not being valued using the front foot method. She testified that this would be fixed for 2023. *MTAB Hr'g Tr. 51:23-25.*
47. Properties are valued based on the current characteristics, not on potential characteristics, i.e., that the property could be broken into smaller parcels at some time in the future. *MTAB Hr'g Tr. 87:12-17; 69:15-19.*

JURISDICTION AND STANDARD OF REVIEW

48. 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. Therefore, this Board maintains jurisdiction to hear and decide this matter, a direct appeal to MTAB from a decision of the DOR. *Mont. Code Ann. § 15-2-302.*
49. This Board may hear appeals de novo. *Puget Sound Energy, Inc. v. State*, 2011 MT 141, ¶ 30, 361 Mont. 39, 255 P.3d 171. "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, 303 P.3d 1279 (2013).
50. The Board's order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-302.

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CONCLUSIONS OF LAW

51. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
52. "All taxable property must be appraised at 100% of its market value...." *Mont. Code Ann. § 15-8-111*.
53. Except as otherwise provided in Montana Code Ann. § 15-2-301(2)(c), the Board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision in connection with any appeal under Montana Code Ann. § 15-2-301. To the extent Mont. Code Ann. § 15-2-301 conflicts with the Montana Administrative Procedure Act, § 15-2-301 supersedes that act. *Mont. Code Ann. § 15-2-301(5)*.
54. 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." *Dep't of Revenue v. Burlington N.*, 169 Mont. 202, 214, 545 P.2d 1083, 1090 (1976). However, DOR cannot rely entirely on the presumption in its favor and must show the propriety of their action. *Western Air Lines v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
55. 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.
56. "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

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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).

57. When construing a statute, it is the Board's role to "determine what in terms or substance is contained in it, and not to insert what has been omitted or to omit what has been inserted." *State v. Minett*, 2014 MT 225, ¶ 12, 376 Mont. 260, 332 P.3d 235; *Mont. Code Ann. § 1-2-101*.
58. "[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, 990 P.2d 767.
59. "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).
60. "[A]dministrative regulations interpreting the statute made by agencies charged with the execution of the statute are entitled to respectful consideration." *Dep't of Revenue v. Puget Sound Power & Light Co.*, 179 Mont. 255, 266, 587 P.2d 1282, 1288 (1978).

DISCUSSION

61. The Moens, as would any taxpayer, question why lots next to them with double or more lake frontage are not valued much higher than their own acre. Common sense would tell us that more of any rare commodity such as lake frontage would be worth more to any willing buyer. This thought pattern is perfectly logical but has been complicated by both the techniques of mass

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appraisal required by Montana law, and further exacerbated by several errors or omissions by the Montana Department of Revenue which had the effect of undervaluing the Moens' neighbors during the 2021/2022 appraisal cycle.

62. The Taxpayer presented the theory that being able to split larger lots into several buildable frontage homesites is proof of higher value correlating to frontage as a leading factor to potential buyers. However, this Board is confined to properties as they sat on the lien date and no evidence was provided of sales which were contingent on lots being split and developed. Here again, the Board must decline the argument as speculative. If future sales in the coming valuation cycle offer proof that excess frontage drives sales the Board will welcome that future appeal and analysis.

63. The Taxpayer closed his arguments with the notion that in this accelerating market for prime waterfront in Montana many present owners will be priced (read taxed) out of the market. For better or worse Montana's system of property valuation is market based. In other words, value is whatever a willing buyer and a willing seller can agree to for a sale to consummate. We find that the DOR's use of the front foot method to assign value to the subject property was reasonably derived in a mass appraisal method from valid land sales. Clearly the DOR erred in undervaluing some nearby properties to the subject, but we are confined to consider the one acre under appeal.

64. However, the Taxpayer did testify credibly and introduce photographic evidence that his lot is steep which presents deterrents in a normal market for buyers who want gentle sloping land to the lakeshore where they swim and keep docks and launch boats at the beach. He also presented testimony and evidence that a small ravine dissects his property to further reduce the appeal of his land to willing buyers. Neither he nor the DOR provided the Board with any sales of steep lakefront lots which would inform us as to any negative

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market influence for steepness. These sales, if they existed, may have evidenced reduced sale prices for land with these characteristics.

65. We find that the lack of data, specifically sales of steep lakefront lots that justify a negative influence, does not prove the Taxpayer's lot is as valuable in the market as a flat or gently sloping lot in this neighborhood. The Taxpayer provided photographic evidence and credible unrefuted testimony of his lot being steep and very difficult for accessing the shore on his land to launch a boat. We believe this is a consideration buyers would heed. Even if a property owner did build a ramp into the water, they may not be able to drive down to the lake easily which could have an impact on a potential sale price. We conclude these factors were not applied to the value of his land and should have been. We will exercise our discretion to make a reduction for steepness to acknowledge these facts which do affect the use and thereby value of this land to willing buyers.
66. The Taxpayer presented credible evidence and testimony to convince the Board that the DOR failed to fully account for the steepness of the land and thereby overvalued it.
67. To establish market value, we look to the best available evidence in the record for the Board to consider, which is the valid sale of a similar nearby parcel of raw lakefront land purchased just before the 2020 lien date for \$300,000. *Ex. C*. The lot is similar in frontage and nearby to the subject on Hauser Lake. This evidence is a fair indication of the value, as the satellite images in evidence indicate that the physical characteristics of that lot sold are equal to or superior to the subject. We find that validated sale to be the best indication of the market value for Category 3 lakefront lots on Hauser Lake, and it comports with the locational considerations and statistical measurements used by the DOR in this neighborhood model.

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68. The Taxpayer's appeal is granted in part, and the CTAB's decision upholding the DOR is hereby modified.

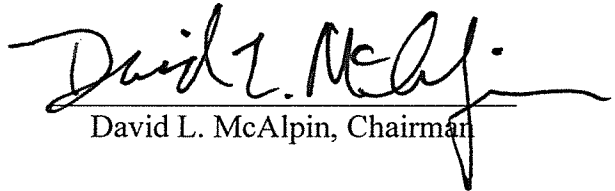
ORDER

69. The Taxpayer's appeal is granted in part.

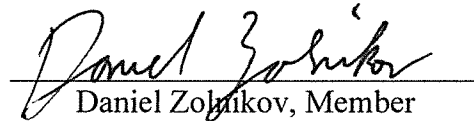
70. The DOR shall apply a land value of \$300,00 to the one-acre homesite for the 2021/2022 valuation cycle.

Dated this 15th day of September 2022.




David L. McAlpin, Chairman


Amie Zendron, Member


Daniel Zolnikov, 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

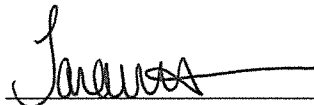
I certify that I caused a true and correct copy of the foregoing Findings of Facts and Conclusions of Law to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on September 15, 2022, to:

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