

BEFORE THE MONTANA TAX APPEAL BOARD

JEFFREY T. PATTERSON AND
DARLENE C. PATTERSON,

Appellants,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2024-3

**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 Missoula County Tax Appeal Board (CTAB) denying Jeffrey and Darlene Patterson (Taxpayers) an agricultural classification for the subject property located at 13400 Turah Road, Clinton, Montana (Subject Property). The Taxpayers appealed that outcome to the Montana Tax Appeal Board (MTAB) on January 4, 2024. We affirm CTAB's determination.

ISSUE TO BE DECIDED

Whether CTAB erred in denying Taxpayers' request to reclassify the Subject Property as agricultural land.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Emails between Taxpayer and Jeff Mosley;
2. Letter from Gerald W. Marks;
3. Emails between Taxpayer and Doug Stout;
4. Administrative Rule 42.20.681 Excerpt;
5. Taxpayers' CTAB Exhibits;
6. Partial DOR's CTAB Exhibits;

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7. Missoula County Property Fast Facts for Subject Property;
8. Transcript of the Missoula County Tax Appeal Board Hearing;
9. Second Report on Carrying Capacity by Jeff Mosley, dated June 5, 2024, and Montana State University Extension MontGuide Grazing Leases, MT201601AG;
10. Extension Bulletin 101: A Guide for Planning, Analyzing and Balancing Forage Supplies with Livestock Demand; and
11. Report on Calculation for Determining Carrying Capacity of Horses at 13400 Turah Rd, Clinton, MT by Gerald W. Marks.

DOR Exhibits:

- A. Agricultural Land Classification Application and Determination Letter;
- B. Agricultural Appraisal Manual Excerpt;
- C. Soil Data and Aerial Photos of Subject Property from PAD GIS Portal;
- D. DOR's Irrigated Grazing Calculation for Subject Property;
- E. Land Valuation Model;
- F. Rebuttal Exhibit – DOR CTAB Exhibits;
- G. Rebuttal Exhibit – DOR First Combined Discovery Requests;
- H. Rebuttal Exhibit – Emails between DOR and Taxpayer
- I. Rebuttal Exhibit – Taxpayer First Discovery Requests;
- J. Rebuttal Exhibit – DOR Responses to Taxpayer Discovery Requests;
- K. Rebuttal Exhibit – Taxpayer Responses to DOR Discovery Requests;
- L. Rebuttal Exhibit – Taxpayer's Supplemental Responses to First Discovery;
- M. Rebuttal Exhibit – June 4, 2024 Emails between DOR and Taxpayer;
- N. Rebuttal Exhibit – Report on Carrying Capacity by Jeff Mosley dated June 4, 2024;
- O. Rebuttal Exhibit – Email Correspondence between Jeff Mosley and DOR witnesses, Amanda Funke and Bill Billman;
- P. Rebuttal Exhibit – Amanda Funke Affidavit;

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- Q. Rebuttal Exhibit – Montana State University AUM Report, dated May 15, 2022; and
- R. Rebuttal Exhibit – Email Correspondence between Jeff Mosley and DOR Staff regarding 2024 Montana State University AUM Report.

PROCEDURAL HISTORY

Taxpayers submitted an Agricultural Land Classification Application for the Subject Property on July 31, 2023. *MTAB Dkt. 1*. On October 25, 2023, the DOR issued a determination letter denying the Subject Property's Agricultural Land Classification Application. *Id.* Taxpayers appealed the DOR's denial to the CTAB on November 3, 2023. *Id.* The CTAB hearing was held on December 6, 2023, and the CTAB's decision denying the Taxpayers' application for agricultural land classification was sent to the parties on December 8, 2023. *Id.* Taxpayers appealed to MTAB on January 4, 2024, per Mont. Code Ann § 15-2-301, requesting that the Subject Property's land be classified as agriculture. *MTAB Dkt. 2*. The MTAB hearing was conducted in Helena on June 6, 2024, at which the following were present:

- a. Jeffrey T. Patterson, Taxpayer; Gerald (Jerry) Marks, retired Missoula County Extension Agent (via Zoom); and Dr. Jeff Mosley, Montana State University Professor (via Zoom).
- b. Dave Burleigh, DOR Counsel; Cindy McGinnis, Paralegal; Michelle Staples, Area Manager; Doug Stout, Agricultural Appraiser; Amanda Funke, Business Analyst; and Bill Billman, Business Analyst.

The Taxpayer submitted three of its proposed exhibits to the DOR and MTAB the day prior to the hearing, six days after the deadline the Board set in its Scheduling Order of February 8, 2024. On the day of the hearing, the Taxpayer substituted one of its late-filed exhibits, a memorandum from Jeff Mosley dated June 4, 2025, with a second assessment from Jeff Mosley dated June 5, 2024. The DOR objected to the exhibits as untimely. DOR argued that the exhibits constituted a surprise that, together with DOR's inability to obtain information from the Taxpayer regarding the planned testimony of the Taxpayer's witnesses, made it impossible for the DOR to adequately respond to the Taxpayer's exhibits at the hearing. In order to move forward with the hearing, the Board allowed the Taxpayer to introduce the exhibits, marked Exhibits 9,

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10, and 11, but allowed the DOR 14 days to respond in writing to the untimely exhibits. In the Board's Post Hearing Order dated June 7, 2024, the Board granted the DOR 14 days from the date of the hearing to file a post hearing brief limited to a response to Taxpayer Exhibits 9, 10, and 11 and stated that no other submissions would be considered by the Board. On June 20, 2024, the DOR filed a Motion to Extend Briefing Deadline by one day in order to reference the hearing transcript in its brief that was anticipated to be provided to the parties by MTAB that same day. The Board granted the DOR's motion. Later that day, after granting the DOR's motion, the Board received the Taxpayer's objection to the DOR's motion to extend the deadline. The DOR submitted its response to the late filed exhibits and its rebuttal exhibits on June 21, 2024. The Taxpayer sent an email to the Board on June 27, 2024, responding to the DOR's post-hearing brief. On July 2, 2024, the Board issued a second Post Hearing Order acknowledging receipt of the Taxpayer's email and reiterating that no further submissions would be considered by the Board. The Board considers the record complete and submitted for final decision as of June 21, 2024, per Montana Code Annotated § 2-4-623(1)(a).

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, during, and after 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 7.97-acre parcel owned by Jeffrey and Darlene Patterson. *Ex. A; MTAB Hr'g Tr. 62:9-10.* The Subject Property is located at 13400 Turah Road in Clinton, Montana, and is also identified by its geocode 04-2094-01-2-02-01-0000. *Id.* The Subject Property consists of the Taxpayers'

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residence and is also used to operate Taxpayers' equine therapy business. *Ex. 6; MTAB Hr'g Tr. 58:12-21.*

3. Taxpayers submitted an Agricultural Land Classification Application to the DOR on July 31, 2023, requesting that the Subject Property's land be re-classified as agricultural for tax year 2024. *Ex. A.* The DOR issued a final determination letter on October 25, 2023, which denied Taxpayers' application stating that the Subject Property did not meet the minimum grazing animal unit months (AUM) requirement or the agricultural use requirement. *Id.*
4. Taxpayers appealed to the Missoula CTAB on November 3, 2023, requesting that the Subject Property be classified as agricultural land. *MTAB Dkt. 1.* The CTAB denied Taxpayers' application to reclassify the Subject Property as agricultural and instead maintained its classification as residential tract land. *MTAB Hr'g Tr. 72:21-73:8.*
5. At the MTAB hearing, the Taxpayer, Jeffrey Patterson, reiterated his contention that the Subject Property meets the requirements set forth in Montana Code Annotated § 15-7-202(3) to be classified as agricultural land. *MTAB Hr'g Tr. 10:8-11:18.* The Taxpayer argued that the statute allows for two different avenues to achieve agricultural eligibility. *Id.* According to the Taxpayer's argument, the first avenue for eligibility is that the property must produce at least \$1,500 in annual gross income, and the second avenue is that the land must be able to support the carrying capacity set forth by Montana State University, which for the years in question, was 25 AUMs. *Id.*
6. Taxpayer witness and Professor of Extension Range Management Specialist at Montana State University, Dr. Jeff Mosley, testified that in his opinion, the Subject Property has a carrying capacity of 33.3 AUMs. *MTAB Hr'g Tr. 17:13-21.*

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7. Dr. Mosley stated that he was familiar with Taxpayer's rotation management practices used for grazing on the Subject Property. *MTAB Hr'g Tr. 18:11-16*. However, Dr. Mosley clarified that he had not personally been to the Subject Property and his knowledge of Taxpayer's rotation management stems from conversations he had with Taxpayer's other witness, Jerry Marks. *Id.*

8. At hearing, Taxpayer substituted an exhibit¹ which described Dr. Mosley's first assessment of the Subject Property's AUMs with a second assessment in which Dr. Mosley made alterations to his calculation. *Ex. 9; MTAB Hr'g Tr. 11:19-12:5*. Dr. Mosley stated that he initially used a 75% livestock utilization factor in his first assessment (which the Taxpayer did not introduce), but he used a 25% livestock utilization factor in the second assessment which was presented to the Board at the hearing. *Ex. 9; MTAB Hr'g Tr. 20:20-21:6*. However, Dr. Mosley contended that the DOR's standard 25% livestock utilization factor which was used in his second assessment should not be the standard going forward as it fails to account for a three-to-five-inch stubble layer which is left over after the hay tonnage is clipped. *Ex. 9; MTAB Hr'g Tr. 30:18-32:20*. Dr. Mosley testified that the weight of forage plants is not linearly based, and their weight is most concentrated at their base. *Id.* Dr. Mosley contended that since the hay tonnage is not clipped at ground level, it does not account for the stubble layer where a majority of the plant's weight is concentrated. *Id.* Dr. Mosley stated, "The current procedure that's in the manual, the Montana Agricultural Land Classification and Valuation Manual for taxing the carrying capacity of irrigated pasture in Montana is incorrect, it's flawed, and it's indefensible." *Id.* Dr. Mosley testified that he raised these concerns to the DOR and was told that it would be discussed as a possible adjustment for the 2025/2026 valuation cycle. *Id.*

¹ The Taxpayer's exhibit which consisted of Dr. Mosley's first assessment was not introduced during the hearing. The DOR later introduced it as a rebuttal exhibit, labeled as Exhibit N. The Taxpayer's exhibit which consisted of Dr. Mosley's second assessment was introduced by the Taxpayer at the hearing and labeled as Exhibit 9.

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9. Dr. Mosley testified that he calculated the Subject Property's AUMs by first looking at the Montana State University Extension MontGuide for grazing leases, which indicated that the Subject Property's six acres of irrigated pastureland could be assigned between two and five AUMs per acre. *Ex. 9; MTAB Hr'g Tr. 21:12-22:24*. The next step was to then assess the Subject Property's health and management practices and adjust the AUMs up or down based on the practices. *Id.* The factors considered when determining the AUM count for the irrigated land were the type of irrigation used, whether the soil was fertilized, and the quality and level of grazing management implemented. *Id.* The initial assignment of up to five AUMs per acre of irrigated land was not changed or reduced due to the irrigation type, health of the stand, or the fertilization. *Id.* However, the AUM count per acre was increased by 1.3 times due to the rotational grazing practices used on the Subject Property which indicated optimal pervasive management. *Id.* Therefore, the six acres of irrigated pastureland at five AUMs per acre multiplied by the 1.3 adjustment for management practices resulted in an AUM count of 39 for the irrigated land. *Id.* However, not all of the Subject Property is irrigated pasture, and at least one acre needed to be removed to account for the home site. *Id.* There is also one acre of non-irrigated dry land pasture. *Id.* The carrying capacity of the one acre of dryland pasture was one AUM. *Id.* The irrigated pasture and dryland pasture combined resulted in a total carrying capacity of 40 AUMs for the Subject Property. *Id.* The final step was to divide the 40 AUMs by 1.2 to account for the definitional difference between a thousand-pound animal which is the scientific norm and a twelve-hundred-pound animal used in Montana and by the DOR according to law. *Id.* Dr. Mosley's calculation resulted in a final AUM count of 33.3 AUMs for the Subject Property. *Id.*
10. Dr. Mosley conceded that his calculation of 33.3 AUMs for the Subject Property performed in his second assessment did not fully comport with the methods the DOR is required to use for all taxpayers. *Ex. B; MTAB Hr'g Tr. 24:3-23, 26:12-30:12*. Dr. Mosley factored the Taxpayer's grazing

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management practices into his calculations even though the DOR's calculations do not consider them when calculating AUMs. *Id.*

11. Additionally, Dr. Mosley included land beneath the structures, corrals, and other hindrances when calculating AUMs. *MTAB Hr'g Tr. 28:4-30:12.* Dr. Mosley stated that he was unaware of where on the Subject Property the one acre of non-irrigated land was located. *Id.* Additionally, Dr. Mosley could not say for certain whether the agricultural improvements on the Subject Property were all located on the one acre designated as residential land, or what the size of the improvements were. *Id.*
12. Dr. Mosley agreed that in an email conversation dated March 28, 2024, between himself and the Taxpayer, Dr. Mosley wrote that he calculated the carrying capacity of the Subject Property to be 24.2 AUMs. *MTAB Hr'g Tr. 33:24-34:19.* Dr. Mosley admitted that his calculation of 24.2 AUMs was the result of using the 75% livestock utilization factor, which does not comport with the DOR's procedures. *Id.* He further stated that calculating the AUMs using the DOR's prescribed procedures would result in an amount much less than 24.2 AUMs. *Id.*
13. The DOR referred to a Natural Resource Conservation Service (NRCS) soil survey that was published regarding the soil of the Subject Property and surrounding areas and questioned whether the results of that survey, which indicated a carrying capacity of 0.11 AUMs per acre, would impact Dr. Mosley's calculations. *MTAB Hr'g Tr. 33:4-23.* Dr. Mosley stated that it would not because the NRCS soil survey rates are based on native vegetation and not seeded pasture and as he understood it, the Subject Property was seeded. *Id.* Dr. Mosley based this understanding on conversations he had with Taxpayer and Jerry Marks. *Id.* Taxpayer contended, and Dr. Mosley agreed, that the soil located on the Subject Property could be different than the soil on a

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neighboring property and that this could affect the crop production potential and thus, carrying capacity. *MTAB Hr'g Tr. 35:14-36:11.*

14. Dr. Mosley testified that his primary issue with the way the DOR calculated livestock carrying capacity is that they used the same procedures which he, in his capacity as Montana State University College of Agriculture's designated expert, had suggested for dryland livestock carrying capacity and applied them to irrigated grazing lands using hay tonnage. *MTAB Hr'g Tr. 36:12-37:9.* Dr. Mosley stated that his recommendations for how to calculate livestock carrying capacity were adopted by the DOR in 2014, and he only became aware of what he considered an incorrect usage of the calculation for irrigated grazing lands in March of 2024. *Id.*
15. Dr. Mosley conceded that Montana law designates Montana State University College of Agriculture to determine how many AUMs are necessary to meet the \$1,500 income threshold in statute but does not designate it to define DOR procedures or to classify property for tax purposes. *MTAB Hr'g Tr. 38:4-16.*
16. Mr. Marks testified that in his opinion, Taxpayer has excellent grazing management practices, which includes rotational grazing. *MTAB Hr'g Tr. 42:21-43:15.* Mr. Marks stated that the rotational grazing practices are the suggested method for property owners with smaller acreage such as the Subject Property. *Id.*
17. Taxpayer contends that the DOR's calculation is flawed because it only considers AUMs based on cows and not horses, and there are only horses on the Subject Property. *MTAB Hr'g Tr. 45:13-46:21.* Taxpayer further argued that cows and horses have different grazing habits which affects the carrying capacity of the land. *Id.* Mr. Marks stated that horses are generally heavier than cows and prefer to eat more grass compared to cows which have a wider diet

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consisting of grass, herbs, and forage. *Id.* Mr. Marks also testified that cows are ruminant grazers whereas horses will continue grazing even after they are full. *Id.* Mr. Marks testified that he believes the Subject Property can sustain more than 25 animal units for the summer months that the horses are allowed to graze based on his analysis using the guidelines in Extension Bulletin 101 (EB101) rather than DOR procedures. *Ex. 10, 11; MTAB Hr'g Tr. 45:13-46:21.*

18. Mr. Marks testified that the Subject Property has a portion of land that was gravel but is slowly being filled and leveled out with soil. *MTAB Hr'g Tr. 47:17-48:2.* The area does currently produce grazing, but the grazing has not been as efficient as other areas on the Subject Property thus far. *Id.*
19. Mr. Marks stated that he was not familiar with how the DOR calculates carrying capacity for tax classification purposes. *MTAB Hr'g Tr. 49:7-18.* Furthermore, he agreed that his estimate of carrying capacity did not comport with DOR methodology for calculating carrying capacity. *Id.*
20. Taxpayer testified that his grazing practices involved reseeding the Subject Property in the spring once the snow has melted. *MTAB Hr'g Tr. 50:1-51:12.* At the same time, the horses are taken off the pasture and moved inside to either the dry lot, arena, or stall so that the reseeded pasture has space to grow. *Id.* When the horses are not able to graze outside, their diets are supplemented with hay, alfalfa pellets, and other grains which Taxpayer purchases from regular hay providers. *MTAB Hr'g Tr. 50:1-51:12, 58:8-11.* Starting in May or June depending on the weather, the horses are gradually moved out into the pasture to feed. *MTAB Hr'g Tr. 50:1-51:12.* Initially, the horses are only let out for half an hour in the morning and a half an hour in the evening. *Id.* After two or three days, the time is increased to an hour in the morning and an hour at night. *Id.* Gradually, the horses are allowed outside to graze for two hours in the morning, and two hours at night. *Id.*

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21. Taxpayer irrigates the Subject Property using four shotgun sprinklers twice a day, once in the morning and once in the evening. *MTAB Hr'g Tr. 51:15-25*. The sprinklers cover the whole pasture and allow it to be continuously watered throughout the growing season. *Id.* The sprinklers are shut off around September when the grass's growth peaks and then naturally begins to slow down. *Id.*
22. The Taxpayer stated that while equine therapy is the primary business of the Subject Property, they do occasionally rent out pasture space and allow horses to be boarded there. *MTAB Hr'g Tr. 58:12-21*. Taxpayer has not boarded horses on the Subject Property for the last two years but stated that it was being considered for 2025. *Id.*
23. Taxpayer testified that the Subject Property produced \$2,400, or roughly eight tons worth of hay that was consumed by grazing. *Ex. 6, F; MTAB Hr'g Tr. 58:22-59:7*. Taxpayer calculated this by first determining how much hay would be consumed by eight horses during a three-month grazing window. *Id.* Taxpayer stated that horses eat on average 20 pounds of hay per day and for eight horses extrapolated over three months, this resulted in the equivalent of roughly eight tons of hay consumed by grazing. *Id.* Lastly, Taxpayer multiplied the eight tons of hay produced by the typical price of hay per ton during that time frame, which was \$300, to reach a final production output of \$2,400. *Id.*
24. Taxpayer stated that he has never had a grazing productivity study analyzing grass clippings conducted on the Subject Property. *MTAB Hr'g Tr. 62:5-8*.
25. Taxpayer disagreed with the measurements listed on the Subject Property's property record card for the outbuildings and yard improvements. *Ex. F; MTAB Hr'g Tr. 62:11-63:21*. However, Taxpayer did agree that the area of the garage

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is roughly 480 square feet, the arena is roughly 18,000 square feet, and that there are seven different improvements located on the Subject Property. *Id.*

26. Taxpayer agreed that the Subject Property has 6.97 acres of land remaining that could be irrigated for grazing after the DOR removed one acre to account for the home site as is required by policy. *MTAB Hr'g Tr. 65:3-20*. Taxpayer stated that the land covered by the corrals, arena, and other outbuildings are not irrigated for grazing. *MTAB Hr'g Tr. 64:6-14*.
27. The Taxpayer testified that his email response to Dr. Mosley on April 9, 2024, in which he wrote, "There's no question that my property will not sustain 24 to 25 AUMs, I am not arguing that it will," was based on his incorrect understanding of how AUMs are calculated. *MTAB Hr'g Tr. 66:9-67:3*. The Taxpayer stated that conversations with DOR personnel had led him to believe that the 25 AUM requirement for agricultural classification meant that he was required to have 24 to 25 cows on the Subject Property. *Id.*
28. When asked if he markets an agricultural product, the Taxpayer stated he has more than \$1,500 in income which he reported on his tax return and in his agricultural application based on the amount of hay he does not need to feed horses because they are eating grass. *MTAB Hr'g Tr. 67:4-68:25*.
29. DOR Agricultural Appraiser, Doug Stout, testified that he denied Taxpayers' Agricultural Land Classification Application because the Subject Property did not meet the AUM requirement and because it did not have an agricultural use. *MTAB Hr'g Tr. 72:23-73:16*.
30. The DOR presented a soil productivity survey from their GIS Portal which indicated that the Subject Property produces 0.110 AUMs per acre. *Ex. C; MTAB Hr'g Tr. 75:1-77:9*. The DOR also reduced the amount of the Subject

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Property's acreage that was considered for AUMs by 2.48 acres due to the presence of the arena, corrals, and other outbuildings which are not irrigated and do not grow vegetation. *Id.* The 2.48 acres that were not considered for the AUM calculation were in addition to the one acre that was removed for the homesite. *Id.* Mr. Stout stated that the DOR made a 0.623 per acre adjustment based on information from the NRCS soil survey to account for the fact that Taxpayers irrigate a portion of their pasture. *Id.*

31. The DOR also presented the neighborhood land model that was used to appraise the Subject Property's land. *Ex. E; MTAB Hr'g Tr. 77:18-79:6.* Mr. Stout testified that the formula used to calculate the land value is $Y=MX+B$ where Y is the market value, M is the adjustment factor, X is the land size, and B is the base value. *Id.* For the Subject Property, the formula produced a total market land value of \$133,420. *Id.*
32. Mr. Stout agreed that he gave the Taxpayer incorrect information regarding whether horses are considered livestock in bona fide agricultural operations when the Taxpayer was filing his Agricultural Land Classification Application. *MTAB Hr'g Tr. 81:1-14, 82:5-24.* Mr. Stout believed that there was a misunderstanding because he was referring to hobby horses, which are not considered a bona fide agricultural operation. *Id.*
33. DOR witnesses testified that the soil surveys used in the DOR's calculations are not created by the DOR but are provided to them by NRCS soil scientists. *MTAB Hr'g Tr. 92:8-93:4, 109:21-110:16.* The DOR witnesses further testified they are required to consider and use these soil surveys in their calculations. *Id.*
34. Mr. Stout conceded that categorizing the Subject Property as land type 1 in the DOR's Exhibit E was a mistake and the categorization should not have been included in the model. *Ex. E; MTAB Hr'g Tr. 93:20-94:3.* However, Mr. Stout

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stated that the categorization did not affect the value of the Subject Property.
Id.

35. DOR Business Analyst, Bill Billman, testified that the DOR determined the Subject Property has 7.961 acres of land, of which 2.48 is unsuitable for grazing due to the presence of structures, corrals, or other hindrances. *Ex. C; MTAB Hr'g Tr. 102:4-103:2*. The remaining 5.49 acres was deemed irrigated grazing land. *Id.* Mr. Billman testified that he calculated the Subject Property's AUMs using Dr. Mosley's method, which does not comport with the DOR's required procedure under current Montana law. *Id.* When performing this calculation, the DOR considered only the 5.49 acres of usable irrigated grazing land, and the result was 19 AUMs. *Id.*
36. Mr. Billman stated that the DOR calculated the Subject Property's AUMs according to established DOR method by first removing one acre from the total acreage to account for the homesite. *Ex. C, D; MTAB Hr'g Tr. 103:7-24*. Next, the DOR took the 0.623 irrigated tons per acre that was assigned to the Subject Property by the soil survey from the DOR's GIS portal and multiplied it by 2,000, the number of pounds in a ton, to get a value of 1,246 pounds per acre. *Id.* The 1,246 irrigated pounds per acre was multiplied by the 25% livestock utilization factor to get 311.5 pounds consumed per acre. *Id.* The 311.5 pounds consumed per acre was then divided by 1,098, which represents the number of pounds in an AUM, to get 0.23698 AUMs per acre. *Id.* The last step was to multiply the 0.23698 per acre value by 6.97, the total number of useable acres, to get a final AUM value of 1.977 for the Subject Property. *Id.* Since the resulting 1.977 AUMs was below the 25 AUM threshold to be classified as agricultural, the Subject Property was classified as residential tract land. *MTAB Hr'g Tr. 106:14-19, 108:3-5*
37. Mr. Billman testified that if a taxpayer questions the amount of productivity the DOR has assigned to their property, having a range specialist conduct a soil or

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clippings report on the site would allow the DOR to use that more up to date data and recalculate the grazing productivity numbers. *MTAB Hr'g Tr. 107:18-108:2.*

38. Mr. Billman disagreed with Dr. Mosley's use of a 75% livestock utilization factor in the calculation for his first assessment as the DOR is required to use a 25% livestock utilization factor under current Montana law. *MTAB Hr'g Tr. 109:7-13.*
39. DOR Business Analyst, Amanda Funke, testified that the Subject Property does not meet the carrying capacity requirements to support agricultural classification. *MTAB Hr'g Tr. 119:4-12.* Ms. Funke further testified that she disagreed with Dr. Mosley's carrying capacity calculations because they were not in line with the standard process DOR uses based on current Montana law. *MTAB Hr'g Tr. 119:20-25.*
40. Ms. Funke testified that the DOR does not make adjustments based on stocking rate for management practices. *MTAB Hr'g Tr. 120:21-23.* Furthermore, income from equine therapy, livestock rentals, and pasture rental for parcels under twenty acres is not considered agricultural income for purposes of agricultural classification. *MTAB Hr'g Tr. 121:16-17, 122:4-11.*
41. Ms. Funke testified that the Subject Property's calculated productivity, which was listed as 0.623 irrigated tons per acre, did include the three-to-five-inch stubble layer left behind after the hay tonnage is clipped, which is contrary to Dr. Mosley's reasoning that a 25% utilization factor should not be used. *MTAB Hr'g Tr. 122:21-123:4.*

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JURISDICTION AND STANDARD OF REVIEW

42. 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. *Mont. Code Ann. § 15-2-301*.
43. 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.
44. 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

45. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
46. "All taxable property must be appraised at 100% of its market value...." *Mont. Code Ann. § 15-8-111*.
47. "[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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48. 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).
49. 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.
50. “‘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)).
51. 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*.
52. “When faced with a problem of statutory construction great deference must be shown to the interpretation given the statute by the officers or agency charged with its administration.” *Dep’t of Revenue v. Puget Sound Power & Light Co.*, 179 Mont. 255, 262, 587 P.2d 1282, 1286 (1978) (citing *Udall v. Tallman*, 380 U.S. 1, 16 (1965)).

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53. “[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).
54. 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)*.
55. For the purposes of [Mont. Code Ann. 15-7-202(1)²]...“marketing” means the selling of agricultural products produced by the land and includes but is not limited to...rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes...” Mont. Code Ann. § 15-7-202(1)(c)(i)(A).
56. “Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year that the parcels meet any of the following qualifications... except as provided in subsection (3), the parcels produce and the owner or the owner’s agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101...” Mont. Code Ann. § 15-7-202(2).
57. “For grazing land to be eligible for classification as agricultural land under [Mont. Code Ann. § 15-7-202](1)(b)³ and (2), the land must be capable of sustaining a minimum number of animal unit months of carrying capacity. The

² The Taxpayer cited to § 15-7-202(c)(i)(A), MCA for the definition of “marketing.” Subsection (1) of Montana Code Annotated § 15-7-202 addresses properties greater than 20 acres. Because this property is less than 20 acres, § 15-7-202(1), MCA does not apply to the Subject Property.

³ Because Montana Code Annotated §15-7-202(1)(b) addresses parcels of land that consist of 20 acres or more but less than 160 acres, this subsection is not relevant for this opinion.

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minimum number of animal unit months of carrying capacity must equate to \$1,500 in annual gross income as determined by the Montana state university-Bozeman college of agriculture.” Mont. Code Ann. § 15-7-202(3).

58. “The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.” Mont. Code Ann. § 15-7-202(4).
59. “The term ‘agricultural’ refers to: (i) the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and (ii) the raising of domestic animals and wildlife in domestication or a captive environment.” Mont. Code Ann. § 15-1-101(1)(a).
60. “The term ‘livestock’ means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.” Mont. Code Ann. § 15-1-101(1)(m).
61. “The department shall implement the provisions of [Mont. Code Ann. §§] 15-7-101, 15-7-102, and [15-7-103] by providing...for a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of lands for taxation purposes...” Mont. Code Ann. § 15-7-103(1)(a).
62. “All lands must be classified according to their use or uses.” Mont. Code Ann. § 15-7-103(2).
63. “For the 2023-2024 appraisal cycle, the minimum carrying capacity for grazing land to be eligible for agricultural classification is 25 AUMs as determined by

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the Montana State University - Bozeman, College of Agriculture, in accordance with ARM 42.20.620.” Mont. Admin. R. 42.20.681(7).

64. “‘Animal unit’ means a cow/calf pair, including a mature cow of approximately 1,200 pounds and a calf as old as 6 months, or their equivalent.” Mont. Admin. R. 42.20.601(3).
65. “‘Animal unit month’ means one animal unit grazing for one month. One animal unit month represents the amount of forage needed to properly nourish one animal unit for one month without injurious effect to vegetation on the land.” Mont. Admin. R. 42.20.601(4).
66. “‘Bona fide agricultural operation’ means an enterprise in which the land actually produces agricultural products provided under the term, agricultural, defined in 15-1-101, MCA, that directly contribute agricultural income.” Mont. Admin. R. 42.20.601(6).
67. “‘Carrying capacity’ means the amount of grazing that a pasture will sustain without injurious effect to vegetative growth due to the quality of the soil and the environment where it occurs.” Mont. Admin. R. 42.20.601(7).
68. “‘Income from agricultural production’ means the gross income received from the sale of food, feed, fiber commodities, livestock, poultry, bees, biological control insects, fruits, vegetables, and also includes sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes, income from farm rental, the sale of draft, breeding, dairy, or sporting livestock, the share of partnership or family corporation gross income received from a farming or ranching business entity, or the taxpayer's share of distributable income from an estate or trust involved in an agricultural business. When the income from agricultural production is used to qualify land for

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agricultural land classification, it must be reportable income for income tax purposes...” Mont. Admin. R. 42.20.601(12).

69. “The base crop for valuation of irrigated land is alfalfa hay adjusted to 80% of the sales price, and the base crop for valuation of nonirrigated land is spring wheat. The base unit for valuation of grazing lands is animal unit months, defined as the average monthly requirement of pasture forage to support a 1,200-pound cow with a calf or its equivalent.” Mont. Code Ann. § 15-7-201(5)(c).
70. “The governor shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics. The advisory committee shall include one member of the Montana state university-Bozeman, college of agriculture, staff. The advisory committee shall...
- (b) recommend to the department any adjustments to data or to landowners’ share percentages if required by changes in government agricultural programs, market conditions, or prevailing agricultural practices...
 - (c) recommend appropriate base periods and averaging methods to the department...
 - (g) provide methods for adjusting agricultural land productivity values when more site-specific data is available and pertinent...”
- Mont. Code Ann. § 15-7-201(7).
71. “Multiple parcels of land, totaling less than 160 acres, both contiguous and noncontiguous, under one ownership, actively devoted to agricultural use and part of a bona fide agricultural operation may be classified as agricultural land for the current tax year if the property owner submits an Agricultural Land Classification Application (application) to the department by March 1 and the land meets all of the production and income requirements provided in this rule, ARM 42.20.682, and ARM 42.20.683 for agricultural land classification...”
- Mont. Admin. R. 42.20.620(1).

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72. In submitting an application for agricultural land classification on multiple parcels of land totaling less than 160 acres, both contiguous and noncontiguous under one ownership: “(5) The property owner must submit documentation to verify \$1,500 annual gross income or more in sales of agricultural products, other than livestock, marketed by the property owner, the property owner's family members, or the property owner's agent, employee, or lessee.

Acceptable income documentation includes:

- (a) sales receipts, cancelled checks, copies of income tax statements, or other written evidence of sales transactions;
 - (b) annual rental or lease payments of at least \$ 1,500, if the land is in an agricultural use and capable of sustaining that agricultural use; or
 - (c) annual rental payments of at least \$ 1,500, from the CRP, or a similar program.”
- (6) For parcels of land under 20 acres, (5)(b) and (c) are not considered eligible agricultural income sources.” Mont. Admin. R. 42.20.620(5) and (6).

73. “Land used to raise livestock must have the capacity to produce forage based on the United States Department of Agriculture, [NRCS], soil survey to support a minimum carrying capacity expressed in animal unit months, as provided in 15-7-201, MCA, and ARM 42.20.681. The department calculates the carrying capacity for:

- (a) non-irrigated native grazing land from the NRCS soil survey information;
- (b) non-irrigated domestic grazing land, by increasing the estimated non-irrigated native grazing land carrying capacity in (a) by 50 percent; and
- (c) grazing land from site-specific and pertinent information provided by the property owner.”

Mont. Admin. R. 42.20.620(7).

74. “(1) Productivity is determined using the [NRCS] soil surveys. The productivity determination is specific to the agricultural land use classification under typical management practices.
- (2) Productivity is adjusted to reflect, as near as possible, typical management practices for an area using the following procedures:

...

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- (b) for irrigated lands, the soil survey productivity for tons of irrigated alfalfa hay per acre is adjusted on a county-by-county basis;
- (c) for grazing land, the production for the amount of air-dry herbage grown in "unfavorable" condition years is used to determine the land's productivity in animal unit months based on the requirements to sustain a 1,200-pound animal unit;
- (d) the department will use the following formula to calculate the carrying capacity for nonirrigated native grazing land:
 - (i) per-acre per-year dry herbage production multiplied by 0.25 equals the per-acre per-year dry herbage production consumed by livestock;
 - (ii) per-acre per-year dry herbage production consumed by livestock divided by 1,098 pounds of dry herbage production consumed per-month per-animal unit equals the animal unit months per acre (AUMs/acre); and
 - (iii) livestock acres grazed multiplied by AUMs/acre equals the total AUMs; and
- (e) for nonirrigated hay land, the midpoint production of the amount of air-dry herbage grown between "unfavorable" condition years and "normal" condition years divided by 2,000 pounds is used to determine the land's productivity in tons per acre."

Mont. Admin. R. 42.20.604

DISCUSSION

- 75. The issue the Board must decide in this case is whether the DOR erred in denying the Taxpayer's application for agricultural classification of the Subject Property. For the reasons stated herein, the Board finds that the DOR correctly concluded that the Subject Property does not meet the requirements to qualify for agricultural classification.
- 76. The factors the DOR must consider when making this determination include the use of the property and its carrying capacity. The testimony in this case focused mainly on the carrying capacity of the property. In order for the Subject Property, which is used for grazing, to be considered agricultural, it would need to support 25 AUMs. The Taxpayer submitted evidence and witness testimony that the Subject Property can support more than 25 AUMs, although one of the Taxpayer's witnesses conceded that his calculations did not comport with DOR procedures and the other witness could not say whether or

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not his calculations comport with DOR procedures. Following DOR procedures, which are based on current Montana law, the DOR determined the Subject Property could support less than two AUMs.

77. The DOR procedures are based on Montana law. The Taxpayer argued that his witness, Dr. Mosley, is an expert in his field and created the process for the DOR to determine carrying capacity. This Board notes that Dr. Mosley is responsible for providing the calculations to determine how many AUMs equates to \$1,500 each cycle. That number this valuation cycle is 25 AUMs. That is the extent of Dr. Mosley's authority when it comes to classification for tax purposes. He does not determine how the DOR uses AUMs in its calculation to qualify property as agricultural for tax purposes. That process is determined by the legislature, and both the DOR and this Board are bound by those laws. The Extension Bulletin the Taxpayer and his witnesses relied on relates to land use and may assist a landowner in deciding how to stock or lease their property to meet their individual goals, but it is not guidance on agricultural classification for tax purposes.
78. The Taxpayer argued that the DOR did not test his soil and therefore could not know what the Subject Property is capable of growing. DOR witnesses testified that they are required to use the NRCS soil report in their calculations but stated that if the Taxpayer decided to have a range specialist perform a clippings or soil analysis specific to his property in the future, the DOR would consider the results of those tests in its calculations. We find the DOR followed procedure in using the NRCS soil report and note that the Taxpayer has the option of having a range specialist perform analyses to provide more specific information to the DOR for use in future calculations.
79. We understand that the Taxpayer and his witnesses believe the DOR's methodology is flawed. However, that methodology is based on existing Montana law. We note that the Taxpayer and his witnesses approached the

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AUM calculation based on guidance for landowners in determining how to use their land or in estimating the value of grazing leases, while the DOR approached the AUM calculation based on established Montana law and DOR policy for property tax classification as it is applied to all similarly situated taxpayers in Montana. DOR witnesses testified that they would discuss the Taxpayer's witness's arguments with the Agricultural Land Valuation Advisory Committee for possible proposed legislative changes during a future legislative session.

80. Whether or not the legislature decides to change the laws in the future, this Board must decide this matter within the confines of the law as written for the valuation cycle at issue. We find that the DOR correctly denied the Taxpayer's application for agricultural classification of the Subject Property after applying existing Montana law in their analysis. The Subject Property is properly classified as residential tract land for the 2023/2024 valuation cycle.

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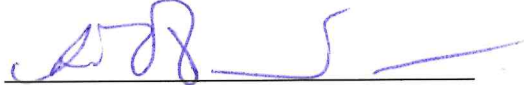
ORDER

80. The Taxpayer's appeal is denied.
81. The DOR is ordered to maintain the classification of the Subject Property as residential tract land.

Dated this 19th day of September 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 September 19, 2024, to:

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