

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

SEP 18 2024

Montana Tax Appeal Board

WALTER E. & BLOSSOM G.
SCHNABEL FAMILY LIMITED
PARTNERSHIP, LTD.,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2024-19

**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 Granite County Tax Appeal Board (CTAB) denying the Walter E. & Blossom G. Schnabel Family Limited Partnership, LTD. (Taxpayer) a reduction in value on the subject land located at 62 North Sun Bear Drive in Philipsburg, Montana (Subject Property). The DOR valued the 15.772 acre Subject Property at \$284,499 and the Taxpayer appealed the valuation to the CTAB requesting a value of \$134,003. CTAB heard the case on January 10, 2024, and declined to reduce the value of the land. The Taxpayer appealed to MTAB on February 12, 2024, per Mont. Code Ann § 15-2-301, requesting a land value of \$134,003. The MTAB hearing was conducted in Helena on Thursday, June 20, 2024, and we affirm CTAB's determination.

ISSUE TO BE DECIDED

Whether CTAB erred in maintaining the DOR-assessed value of the subject land.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. 2020 Land Class Codes.

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DOR Exhibits:

- A. Property Record Card;
- B. Aerial Map;
- C. Subdivision Map with Adjusted Comparable Sales;
- D. Whiskey Flats Neighborhood Map;
- E. Realty Transfer Certificate;
- F. Residential Sales Verification form;
- G. Land Model Spreadsheet;
- H. Land Sale Packet Cover Letter;
- I. Land Sale Packet;
- J. Land Calculation for Subject Property; and
- K. Photos of Subject Property.

PROCEDURAL HISTORY

The DOR valued the Subject Property at \$284,499 for the 2023/2024 appraisal cycle and notified the Taxpayers of that value by mailing them a Notice of Assessment, dated June 30, 2023. *Ex. A; MTAB Dkt. 3*. The Taxpayer appealed the DOR's valuation to the CTAB on August 2, 2023, requesting a land value of \$134,003. *MTAB Dkt. 3*. The CTAB hearing was held on January 10, 2024, and the CTAB's decision denying the Taxpayer's application for reduction was dated the same day. *Id.* The Taxpayer appealed to MTAB on February 12, 2024, per Mont. Code Ann § 15-2-301, requesting a land value of \$134,003. *MTAB Dkt. 1*. The MTAB hearing was conducted in Helena on Thursday June 20, 2024, at which the following were present:

- a. Gary L. Snyder, General Partner and Taxpayer Representative; Shari L. Snyder, General Partner; and
- b. Kate Talley, DOR Counsel; Cindy McGinnis, Paralegal; Tedd Weldon, Area Four Manager; Julie Goebel, Appraiser; and Timothy Skop, Modeler.

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

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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 contains 15.772 acres and is owned by the Walter E. & Blossom G. Schnabel Family Limited Partnership, LTD. *Ex. A.* The Subject Property is located at 62 Sun Bear Drive in Philipsburg, Montana and is also identified by its geocode 46-1573-24-2-02-23-0000. *Id.*
3. Taxpayer purchased the property in 2021, and DOR then reclassified it as tract land and valued it at \$134,003 for 2022. At the MTAB hearing, Gary Snyder, the Taxpayer's Representative (Taxpayer Representative) requested that the Subject Property be valued at \$134,003 based on the value established by the DOR in the previous appraisal cycle of 2021/2022. *MTAB Hr'g Tr. 3:1-9.* The DOR requested a value of \$284,499 for the Subject Property for the 2023/2024 tax years. *Id.*
4. Prior to purchase in June of 2021, the Subject Property was contiguous with other agricultural land in common ownership and met the statutory requirements to be classified as non-qualified agricultural land. *MTAB Hr'g Tr. 35:10-21.*
5. DOR Appraiser, Julie Goebel, stated that before the Taxpayer purchased the land, it was classified as non-qualified agricultural land because the land was owned by the subdivision as one parcel, and the parcel was over 20 contiguous acres. *Ex. E; MTAB Hr'g Tr. 25:1-4.* Ms. Goebel further defined non-qualified agricultural land for the purpose of classification as any land between 20 and

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160 acres in size and defined tract land as land under 20 acres in size. *MTAB Hr'g Tr. 22:16-18, 24:11-12.*

6. Ms. Goebel testified that non-qualified agricultural land is valued using the average productivity of grazing land, whereas tract land is valued using comparable sales of vacant land. *MTAB Hr'g Tr. 25:5-10.* Furthermore, unlike non-qualified agricultural land, class four residential tract land is valued at full market value. *MTAB Hr'g Tr. 44:1-3.*
7. Before being purchased by the Taxpayer, the Subject Property was valued at \$873 in 2021 as it was classified as non-qualified agricultural land. *Ex. A; MTAB Hr'g Tr. 24:15-25:4.* Taxpayer Representative testified that the Subject Property was purchased in 2021 for the asking price of \$260,000. *MTAB Hr'g Tr. 36:10-12, MTAB Dkt. 6.* In 2022, the Subject Property's value was raised to \$134,003 to reflect the land being reclassified from non-qualified agricultural land to residential tract land because the parcel was less than 20 acres. *Id.* In 2023, the assessed value was raised to \$284,499 to reflect market appreciation from the previous valuation cycle. *Id.*
8. Ms. Goebel testified that she visited the Subject Property on June 4, 2024, to assess the property characteristics and take photos of the property. *Ex. K; MTAB Hr'g Tr. 31:20-34:1.*
9. The DOR received both a Realty Transfer Certificate (RTC) and a Residential Sales Verification Form (RSV) generated by the sale of the Subject Property and validated the sale as an arm's length transaction. *Ex. E, F; MTAB Hr'g Tr. 50:6-20.* DOR Modeler, Tim Skop, testified that when reviewing RTCs and RSVs to determine whether the transfer was a valid arm's length transaction, the DOR checks for whether any special considerations or extenuating circumstances occurred during the transfer. *Id.*

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10. As a valid arm's length transaction, the Subject Property's sale was used in the DOR's neighborhood land valuation model. *Ex. G; MTAB Hr'g Tr. 52:12-53:24*. The model uses the DOR's common statewide lien date of January 1, 2022, to determine market values for the 2023/2024 appraisal cycle. *Ex. G; MTAB Hr'g Tr. 51:6-18*.
11. Ms. Goebel testified that once the Subject Property was purchased by Taxpayer, it was no longer part of the larger contiguous parcel and did not meet the acreage requirement for non-qualified agricultural land. *MTAB Hr'g Tr. 41:1-6, 47:22-48:15*. As a parcel less than 20 acres in total size, the 15.772 acres of the Subject Property were no longer presumed to be agricultural and the parcel was required to be reclassified as class four residential tract land by statute. *Id.*
12. The DOR is required to value land according to its present use as of the 2023/2024 lien date. *MTAB Hr'g Tr. 44:1-19*. At the time of the lien date, the Subject Property was owned by the Taxpayer and did not automatically qualify for agricultural classification due to no longer being above 20 acres in total size. *MTAB Hr'g Tr. 37:18-38:8*. Ms. Goebel stated that the DOR could reconsider whether the Subject Property met the agricultural classification requirements if Taxpayer submitted an agricultural land classification application, but the Taxpayer had not done so. *Id.*
13. DOR Area Manager, Tedd Weldon, testified that the DOR is required by law to implement a "...general and uniform method of classifying lands in the state for the purpose of securing equitable and uniform basis of assessment of land for taxation purposes." *MTAB Hr'g Tr. 21:1-6*. Mr. Weldon clarified that this provision does not require the DOR to ensure that land in one county is valued the same as land in another county, only that the methods used to value the land are the same. *Id.*

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14. Mr. Skop testified that the DOR determines the market value of land by using neighborhood land models that derive values in part from multiple regression analysis of various validated land sales in a particular geographic area called a neighborhood. *Ex. J; MTAB Hr'g Tr. 12:23-13:22*. The value established by a neighborhood land model is contingent on sales prices of land, adjusted by the model from date of sale to the common lien date of January 1, 2022, and for location, among other factors. *Id.* The Granite County rural land model for neighborhood 246.001 was used to determine market value of the Subject Property. *Ex. G; MTAB Hr'g Tr. 53:11-54:4*. Sales contained in that model are from the same general rural Granite County area and the model does not contain sales from the towns of Philipsburg or Drummond. *Id.* The sales contained in the land model have the same physical, environmental, governmental, and social characteristics affecting the properties. *Id.*
15. The land model used to value the Subject Property contained 75 properties that sold between 2018 and 2022, 27 of which were located in the Subject Property's Whiskey Flats subdivision. *Ex. G; MTAB Hr'g Tr. 52:12-53:24, 58:1-5*.
16. The Granite County rural model documented an eight percent higher sale price per acre in the Whiskey Flats subdivision as determined by the 27 sales in that subdivision. *MTAB Hr'g Tr. 57:23-58:18*. Mr. Skop testified that "...in the case of Whiskey Flats, based on 27 sales in that subdivision, we found that they were selling about eight percent higher, so instead of \$47,000 we were looking at more closer to \$51,000 for the base acre in Whiskey Flats." *Id.* The eight percent influence is called a positive influence and was applied to the base rate of 47,000. *MTAB Hr'g Tr. 13:9-22, 15:21-23*. The resulting \$50,760 was then multiplied by the land size minus the one base acre and that product was then raised to the power of the incremental rate, which was 27.6249. *Id.* The calculation yielded a predicted market value for the Subject Property's land of \$284,499 as of January 1, 2022, for the 2023/2024 tax cycle. *Id.*

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17. The land model used to value the Subject Property had a statistical R-squared rating of around 83, which, according to Mr. Skop is “pretty good for rural areas where there’s a lot of differentiation in the data.” *Ex. G; MTAB Hr’g Tr. 56:22-57:19*. The R-square value is an indication of how well a model is describing data, and an R-square value above 70 denotes an accurate model. *Id.*
18. Mr. Weldon stated that the first property to sell in the Whiskey Flats subdivision sold in 2018 for \$60,000. *MTAB Hr’g Tr. 15:9-17*. Comparatively, the Subject Property sold in 2021 for \$260,000.
19. Mr. Weldon testified that the median residential value increase for Granite County from January 1, 2020, to January 1, 2022, was 67 percent. *MTAB Hr’g Tr. 19:11-15*.
20. The Taxpayer Representative made the argument that by the DOR not comparing the purchase of his land in other Montana counties, the DOR was in violation of the Montana Constitution Article VIII Property Tax Administration, Sections 3 and 4 by failing to equalize his purchase with other purchases in Montana. *MTAB Hr’g Tr. 19:11-25, 20:1-19, 69:2-9*. He argued that DOR should be comparing sales in Granite County to sales in rural eastern Montana. *Id.*
21. The Taxpayer Representative raised questions about the calculation of mills, specifically, who is in charge of determining the mills, how are the mills calculated, and why the mills raised his property tax. *MTAB Hr’g Tr. 8:5-17*.

JURISDICTION AND STANDARD OF REVIEW

22. The Montana Tax Appeal Board is an independent agency not affiliated with the Montana Department of Revenue. *Mont. Const., Art. VIII § 7; Mont. Code Ann. § 15-2-101*. The Taxpayer filed a timely appeal of the DOR’s decision to

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

23. 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.

24. 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

25. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

26. “All taxable property must be appraised at 100% of its market value....” *Mont. Code Ann. § 15-8-111*.

27. “[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)*.

28. DOR is entitled to a “presumption of correctness if its decisions are pursuant to an administrative rule or regulation, and the rule or regulation is not arbitrary, capricious or otherwise unlawful.” *Burlington N.*, 169 Mont. at 214, 545 P.2d at 1090. However, DOR cannot rely entirely on the presumption in its favor

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and must present a modicum of evidence showing the propriety of their action.
Western Air Lines v. Michunovich, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).

29. 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.
30. "'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)).
31. 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*.
32. In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it." *Mont. Code Ann. § 1-2-102*.
33. "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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34. “[T]ax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer.” *Western Energy Co. v. Dep’t of Revenue*, 1999 MT 289, ¶ 10, 297 Mont. 55, 58, 990 P.2d 767, 769.
35. “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).
36. “[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).
37. 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)*.
38. 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).
39. “Parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1), which are considered to be nonqualified agricultural land. Nonqualified agricultural land may not be devoted to a

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commercial or industrial purpose. Nonqualified agricultural land is valued at the average productive capacity value of grazing land.” *Mont. Code Ann. § 15-6-133(c)*.

40. “All lands must be classified according to their use or uses.” *Mont. Code Ann. § 15-7-103(2)*.
41. “Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.” *Mont. Code Ann. § 15-8-111(2)*.
42. “Properties in 15-6-134, under class four, are assessed at 100% of market value.” *Mont. Code Ann. § 15-8-111(8)(d)*.
43. “The department shall administer and supervise a program for the reappraisal of all taxable property within classes three and four. The department shall adopt a reappraisal plan by rule. The reappraisal plan adopted must provide that all class three and four property in each county is revalued by January 1 of the second year of the reappraisal cycle, effective for January 1 of the following year, and each succeeding two years...” *Mont. Code Ann. § 15-7-111(5)*.
44. “Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less

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the current year's newly taxable value, plus one-half of the average rate of inflation for the prior 3 years." *Mont. Code Ann. § 15-10-420(1)(a)*.

DISCUSSION

45. The Taxpayer Representative made various arguments that the methods used by the DOR were in violation of the Montana Constitution's requirement that assessment be equalized among taxpayers.
46. The Taxpayer Representative similarly argued that the methods used to set a market value on his land were a sales tax, presumably because the comparable sales method of valuation relies upon market sales to establish value. We were not convinced that his use of the term "sales tax" accurately reflects the market sales approach to finding value, and do not find this argument persuasive that the DOR erred in appraising the land by relying on sales of nearby properties.
47. These arguments are not supported by Montana law and are irrelevant to the jurisdiction and review of tax appeals. Tax appeal decisions in cases such as this are limited to determining the correct market value.
48. Similarly, although the Taxpayer Representative raised the issue of mills applied to tax for calculating the tax due, MTAB has no jurisdiction to set or adjust mills, nor any jurisdiction to set or adjust tax rates. These policy decisions are left to elected county officials and the Montana Legislature.
49. Regarding the Taxpayer Representative's contention that sales in other parts of Montana should have been compared to his sale, it would not be fair or reasonable for the DOR to consider sales in the far reaches of eastern Montana to establish the market value in Philipsburg. It is far more equitable that the DOR evaluated the 27 sales in the Taxpayer's own Granite County subdivision to find market value, and we believe they did so correctly.

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50. In turn, there is no better evidence of market value for this Board to consider than the actual sale price of the Subject Property. That price is in evidence and uncontroverted. The value in dispute has been set higher than the sale price by the DOR to account for the appreciation of value between the sale date of June 10, 2021, and the statewide lien date of January 1, 2022. We find that appreciation over those six months to be realistic in an increasing regional real estate market in a desirable location in Granite County, Montana.
51. We can reasonably conclude the market value of land in Philipsburg is appreciating when we consider the testimony of Mr. Weldon that lots in this subdivision were priced 5 years ago at as low as \$60,000, but the Taxpayer paid \$260,000 in 2021. Using the market value standard established by the Legislature, the present value determined by the DOR is higher than the value determined when the subject was re-classified as tract land, but we believe the new value correctly reflects that market value appreciation over the time period.
52. The Taxpayer Representative cited no violations of Montana law by the DOR, and even if he disagrees with the law as written, it is the Montana Legislature which writes the law, not the DOR.
53. DOR witnesses explained the reason the appraised value increased, which was that it had been properly re-classified from non-qualified agricultural land, and upon sale was correctly re-classified for its use on the lien date as tract land.
54. The DOR credibly testified that once properly classified, the 2023/2024 land model used to determine market value justified the positive influence in this subdivision of 108% compared to other land in this Granite County rural neighborhood. We find their method was properly executed and their value is upheld.

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55. The responses of the witnesses to Board questions and the cross-examination posed by the Taxpayer Representative convinced this Board the DOR employees understood and could explain the methods used and why they are reliable predictors of market value within the confines of statutes, administrative rule, and DOR policy under which the DOR does its work.
56. MTAB's review is confined to whether the Taxpayer provided sufficient evidence and testimony to convince this Board that the DOR erred in setting the market value of the Subject Property. We find that Taxpayer Representative did not provide sufficient evidence and testimony to prove any error by the DOR in valuing his land for 2023/2024.

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ORDER

57. The decision of the Granite County Tax Appeal Board is upheld, and the value assigned to the subject land shall be maintained at \$284,499 for 2023/2024.

Dated this 18th day of September 2024.



David L. McAlpin
David L. McAlpin, Chairman

Amie Zendron
Amie Zendron, Member

Travis Brown ^{for DLM}
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

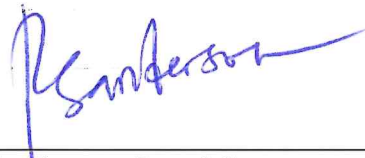
I certify that I caused a true and correct copy of the foregoing Findings of Facts and Conclusions of Law to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on September 18, 2024, to:

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