

Before The Montana Tax Appeal Board

FILED

AUG 13 2021

Montana Tax Appeal Board

COLSTRIP PROPERTIES, INC.,

Appellant,

v.

**STATE OF MONTANA,
DEPARTMENT OF REVENUE,**

Respondent.

CASE №: PT-2021-7
Mobile Home Park

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER,
AND OPPORTUNITY FOR
JUDICIAL REVIEW**

STATEMENT OF THE CASE

This is an appeal by Colstrip Properties Inc. represented by owner Richard S. Burnett (Taxpayer) of a decision by the Rosebud County Tax Appeal Board (RCTAB) which upheld the Department of Revenue's (DOR) appraised value of a mobile home park located in Colstrip. We deny the Taxpayer's appeal and affirm the RCTAB decision upholding the value assigned to the property by the Montana Department of Revenue.

ISSUE TO BE DECIDED

Whether the Rosebud County Tax Appeal Board erred in affirming the DOR appraised value of \$136,623 for this property.

PROPERTY DESCRIPTION

The property subject to this tax appeal is a mobile home park on a parcel plotted by the previous owner, Western Energy, as a residential subdivision. In late 1999, Taxpayer bought the property in use as a mobile home park with over 100 mobile homes in place. The record and testimony during the MTAB hearing indicate there were 64 rentable spaces and 34 mobile homes on the property on the 2019-2020 tax cycle, with a valuation lien date of January 1, 2018. Because these mobile homes are taxed in Montana as personal property, the property in

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dispute in this case is the land and the utility improvements on the land. A previous opinion and order by the Montana Tax Appeal Board directed the DOR to value the property as one business. The DOR has honored that approach and therefore the subject property in this case encompasses the following twelve geocodes: 29-1151-34-3-23-01-0000, 29-1151-34-3-24-01-0000, 29-1151-34-3-25-01-0000, 29-1151-34-3-26-01-0000, 29-1151-34-3-16-01-0000, 29-1151-34-3-13-01-0000, 29-1151-34-3-14-01-0000, 29-1151-34-3-15-01-0000, 29-1151-34-3-07-01-0000, 29-1151-34-3-02-01-0000, 29-1151-34-3-04-01-0000, and 29-1151-34-3-03-01-0000. Each geocode represents one city block with space for several mobile homes. All properties are located in DOR neighborhood 229.210.C.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Department of Revenue Exhibits;

- A. Land Model Packet, MDOR bates numbered 000009-000011;
- B. Classification and Appraisal Notice, MDOR bates numbered 000030-31;
- C. CTAB Exhibit A: Property Record Card and appeal documents, MDOR bates numbered 000036-51;
- D. CTAB Decision, MDOR bates numbered 000052-54;
- E. 2019 State B Hotel/Motel Model, MDOR bates numbered 000400.

Colstrip Properties and Richard Burnett Exhibits;

- A-1. 3/9/21 Article by Pete Zimmerman at Daily Montanan;
- B-2. 3/26/14 Buy-Sell Agreement (Land) dated 3/26/14 for vacant land (not subject to this appeal), page 1 of 7;
- C-3. 2/5/21 Casper Star Article;

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- D-4. What is Colstrip...part of an article (no reference source);
- E-5. 1/2021 EDF case study article (select pages) - 3pages;
- F-6. Confidential Comparables for 11 Larkspur Drive - 2 pages MDOR 000268;
- G-7. 5/2/2008 Colstrip companies water lawsuit Billings Gazette articles -- 1 page;
- H-8. 2015 MCA 15-8-111 Market Value Standard-exceptions – 1 page;
- K-11. 3/13/20 Four Foundation Underpinning Bids – 4 separate pages;
- L-12. 3/12/13 Coal-fired Power plant article – Quartz 3 pages;
- M-13. TriMedia Envir. article on coal-fired power plants, unknown date – 1 page;
- N-14. 6/26/19 EIA article ‘Today in Energy’ – 2 pages;
- O-15. 4/25/21 Daily Inter Lake article – 1 page;
- P-16. Daily Montanan article approx. date 5/7/21, Colstrip Utilities sue NW Talen - 5 pages;
- Q-17. 5/13/21 Email with Krista Hazel – 2 pages;
- R-18. 12/5/2019 MTAB Opinion PT-2018-63 related to geocodes 29-1151-34-3-22-01-0000 and 29-1151-34-3-19-01-0000;
- S-19. 8/25/2000 MTAB Opinion PT-1999-45, related to the Taxpayer’s Mobile Home Park;
- T-20. Packet of pictures of parts of the different apartments owned by Taxpayer;
- U-21. Pages 11-12 from MTAB Opinion in transcript PT-1999-45;
- V-22. Packet of pictures (13) of motel PT-2021-1;
- W-00. (No Exhibit labeled W-23);
- X-23. ‘Not the Future’ article from Missoula Current, unknown date – 1 page.

The Montana Tax Appeal Board (MTAB) hearing was conducted in Helena on May 18, 2021, and the following were present:

- a. Richard S. Burnett; and

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b. Anthony Zammit and Dave Burleigh, DOR Counsel; Liz Franz, DOR Regional Manager, and Maureen Celander, DOR Commercial Appraiser for this area of Central and Eastern Montana.

The Board was represented at hearing by Board Members David McAlpin, Amie Zendron, and Fred Thomas. Board Member Thomas subsequently resigned his position and was replaced by Daniel Zolnikov. Board Member Zolnikov has read the case file and listened to the audio recording of the hearing and was therefore designated to participate in the deliberations and decision in the case. Mont. Code Ann. § 2-4-622.

The record includes all materials submitted to the county tax appeal board, the audio recording of the hearing at the county tax appeal board, and additional exhibits submitted by the parties for the MTAB hearing.

FINDINGS OF FACT

1. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. For the 2018/2019 tax cycle, using a lien date of January 1, 2018, the DOR valued the subject property at \$286,639. *Dept. Ex. B.*
3. The DOR inspected the property on November 25, 2020, and the property's overall value was reduced to \$136,623. *Dept. Ex. C.*
4. Taxpayer declined to file a Form AB-26 to request informal review by the DOR, and appealed directly to the RCTAB on July 10, 2019. A Rosebud County Tax Appeal Board hearing was held in the county seat of Forsyth on December 2, 2020. Taxpayer was represented by his son, Jerry Burnett, at the county hearing. *MTAB Hrg. Transcr. 26:3-4,*

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MTAB Dkt. 3. RCTAB upheld the DOR's combined value of the subject property at \$136,623 for "lack of evidence" presented by the Taxpayer. *Dept. Ex. C, MTAB Dkt. 3.*

5. The Taxpayer appealed the county decision to the MTAB on January 7, 2021, and the Board held a hearing on May 18, 2021. The appeal consisted of twelve different geocodes. The parties agreed to focus on one geocode for the hearing because, generally, all geocodes were valued with the same appraisal methodology. *MTAB Hrg. Transcr. 154:15-155:15.* The parties agreed to focus on parcel 29-1151-34-3-23-01-0000 for the hearing. *Id.* For all twelve geocodes, the Taxpayer requested a value of \$25,000, and the DOR requested a value of \$136,623. *MTAB Hrg. Transcr. 157:9-11.*
6. The subject property of this appeal, the mobile home park, is one of six properties Taxpayer concurrently appealed on the general theory of economic obsolescence. The basis of the Taxpayer's arguments in all six cases was the adverse economic effect on the market value of the Colstrip power plant pending shutdown. Taxpayer contends the town of Colstrip has a life span of forty-five to fifty years, and a town with an end date means the property's value in the town will also have a commensurate end date. *MTAB Hrg. Transcr. 6:17-23.* The Taxpayer contented that, with the "clock" running on the useful life of the town, as an entrepreneur and property purchaser, he would not purchase the property. *MTAB Hrg. Transcr. 7:3-5.* When valuing the property, Taxpayer argued the DOR appraisers failed to consider the potential lost of employment at the powerplant with the future shut down of the coal-fired electrical generating plant, and by association the shortened length of the town's economic life. *MTAB Hrg. Transcr. 13:21-14:13.* Taxpayer testified he believes the entire plant will close within five years, and unless remediation work is undertaken on a large scale at the power plant, the mobile home park will be valueless in four to five years. *Id.*

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7. Taxpayer bought the property in 1999 with 101 full-sized trailers in place. As of the date of the hearing, the Taxpayer testified the property only has 34 full-sized trailer spaces occupied and therefore has a 70% vacancy rate. *MTAB Hrg. Transcr. 155:19-156:22, 192:1-9.* Taxpayer testified that each full-sized trailer pays his company \$185.00 lot rent per month and pays their own water and electrical utility costs. *Id.* The Taxpayer testified that the city of Colstrip charges the Taxpayer \$32 a month for water on 34 or 36 of the mobile home spaces, even though they are not rented and use no water. *Id.* To decrease some of the water costs, the Taxpayer removed some of the water delivery infrastructures to of portion of the mobile home lots. *Id.* According to the testimony of the Taxpayer, in 2013 the city of Colstrip passed an ordinance forcing the Taxpayer to pay for water even if the infrastructure to deliver the water had been removed. *Id.* The properties with the infrastructure removed are unable to be rented as mobile home spaces for lack of utility connections. *Id.*
8. On occasion, the Taxpayer has been able to rent some of the useable mobile home spots to recreational vehicles at the same rate as the mobile homes. *MTAB Hrg. Transcr. 156:24-157:6.*
9. Taxpayer contends that each of the twelve geocodes represents one city block. *MTAB Hrg. Transcr. 157:22-23.* The geocodes/blocks cannot be subdivided and marketed for sale without further development because the sewer and water lines are installed in the center of the block instead of a typical municipal development where the utilities are connected from the middle of the street. *MTAB Hrg. Transcr. 158:1-10.* Because the utilities are located in the middle of the blocks, Taxpayer testifed “there is a lot of maintenance on [the Taxpayer’s] blocks for water leaks and plugged sewers.”. *Id.*
10. Taxpayer testified that the subject properties are part of a pollution cleanup plan that is included in a federal superfund site. *MTAB Hrg. Transcr. 158:13-159:9.* The Taxpayer

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testified that the pollution under the property is water-based and primarily subsurface, mostly affecting the vegetation on the property. *Id.* All mobile homes on the Taxpayer's property have city water, so there are no potable water pollution issues. *Id.* The Taxpayer testified that the mobile home park was part of a legal settlement over the subsurface contaminates from 2002 to 2008. *Id.* The DOR appraisers testified they were not notified of a superfund site on this property in Colstrip and were unaware of the alleged ground contaminates when they performed their appraisal. *MTAB Hrg. Transcr. 183:21-24, 185:17-19.*

11. The DOR introduced the DOR's Classification and Appraisal notice for property 29-1151-34-3-23-01, showing that the property's assessed value in 2019-2020 had declined by \$2,387 since the last tax cycle in 2017-2018. *Dep Ex. B.*
12. DOR appraiser Maureen Celander testified that she revised the assessment of the property after her on site-review with Jerry Burnett on November 25, 2020. *MTAB Hrg. Transcr. 163:7-13.* Ms. Celander relied upon the cost approach to value the mobile home properties. *Dept. Ex. C., MTAB Hrg. Transcr. 163:14-23.* Ms. Celander testified that she used the cost approach in lieu of the income method because the Taxpayer removed previously rentable spaces, and the DOR did not have enough income and expense data to build an accurate and defensible income model for this unique property. *Id., MTAB Hrg. Transcr. 187:18-188:3*
13. Ms. Celander testified that when she valued the mobile home park, she valued the entire park as one parcel instead of each individual geocode. *MTAB Hrg. Transcr. 164:19-165:21.* Ms. Celander testified that under the mass appraisal method the DOR assigns properties a base rate or the price for one acre, then values the rest of the acres at the residual rate derived from the DOR's acre land model. *Id., Dept Ex. A.* She futher testified that by grouping all the geocodes together and only using one base rate instead of a base rate for

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each geocode, the overall appraised value was lower. *Id.* Valuing all the geocodes as one is a function of the previous tax appeal where the tax appeal board deemed that the mobile home park should be valued as one going concern. *Id.*

14. Ms. Celander determined there were 64 spaces available for rent in the mobile home park.

MTAB Hrg. Transcr. 171:11-172:12. Ms. Celander testified that the city of Colstrip provided her with a copy of the 2013 resolution requiring the Taxpayer to pay for water even if the infrastructure to deliver the water had been removed, as well as the number of metered spaces in the mobile home park. *Id.* From the information gained from Jerry Burnett and the city, Ms. Celander was able to map out which locations have mobile homes in place, which spaces were paying for city water, and where water meters were still in place. *Id., Dept Ex. C.*

15. The DOR introduced three cost templates it uses when valuing the improvements in mobile home parks. *MTAB Hrg. Transcr. 166:19-170:2, Dept. Ex. D.* Ms. Celander testified that when valuing a mobile home park using the cost approach, the DOR has five grades ranging from low to excellent, and the subject property has a blended grade of low/fair. *Id.* The subject property was assigned a blended grade of low/fair in part because the park's engineering was for a subdivision, not a mobile home park. *MTAB Hrg. Transcr. 168:14-169:2.* Because the park was originally meant to be a subdivision, the lot sizes are built to be single-family homes and some lots are graded fair rather than low. *Id.* Using the models, Ms. Celander found the value of the land to be \$85,383 and the value of the improvements to be \$51,240. *Dept. Ex. C.*

16. While these mobile homes themselves are valued separately as personal property, DOR develops the replacement cost new for improvements associated with mobile homes such as electrical, water and sewer connections or patio and parking concrete pads using the Orion

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computer system. *MTAB Hrg. Transcr.* 172:19-25. After the Orion system calculates the replacement cost new for the property's improvements, the land value is added to the replacement cost for the total market value. *Dept Ex. C.*

17. Ms. Celander testified that the DOR does not generally use the income approach to value mobile home parks because it usually results in a value that is much higher than the cost approach and is not most indicative of what the market would bring for a mobile home park. *MTAB Hrg. Transcr.* 177:19-178:10. Ms. Celander testified that the cost approach brought the subject property's value more in line with the one or two mobile home park sales the DOR sees each tax cycle. *Id.* Both Ms. Celander and DOR regional manager, Liz Franz, testified that the income method was not used to value this property because the DOR did not possess enough income and expense information from mobile home parks in that part of Montana to create a valid income model. *MTAB Hrg. Transcr.* 177:18-188:3, *MTAB Hrg. Transcr.* 187:18-188:3.

18. Ms. Celander testified that in the valuation process, the DOR compared the subject mobile home park to other parks and was given the effective year of 2006. *MTAB Hrg. Transcr.* 183:4-15. She testified that even though the park was built in 1980, its effective year is 2006 because of the type of property and because some of the spaces are still being rented. *Id.* Ms. Franz testified that the 2006 effective year was not changed for the current tax cycle, and she could not say why the previous DOR appraiser selected it without reviewing the record. *Id.*, *MTAB Hrg. Transcr.* 191:12-18.

19. Ms. Celander testified geocode 29-1151-34-3-23-01-0000 consists of 10 mobile home lots and Taxpayer paid approximately \$8.42 per spot or a total of \$84.24 for 2019/2020. *MTAB Hrg. Transcr.* 175:20-176:14.

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20. There was some question raised for the first time during the MTAB hearing as to who owned the infrastructure for the utilities servicing the park. *MTAB Hrg. Transcr.* 180:17-182:25, 187:9-17. DOR appraiser argued that the Taxpayer benefits from the infrastructure for the utilities which run through the Taxpayer's property, which seems to indicate that the Taxpayer owns it. *Id.* The Taxpayer testified the infrastructure for the utilities was given to the city by previous owner Montana Power Company/Western Energy. *Id.*

JURISDICTION AND STANDARD OF REVIEW

21. The Montana Tax Appeal Board (Board) is an independent agency not affiliated with the Montana Department of Revenue (DOR). Mont. Const., Art. VIII § 7; Mont. Code Ann. § 15-2-101.

22. The Taxpayers filed a timely appeal of the RCTAB decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. Mont. Code Ann. §15-2-301(1)(b).

23. This Board has discretion to determine an appeal on the record or it may hear further testimony. Mont. Code Ann. §15-2-301(2)(b).

24. This Board may hear appeals de novo. *Department of Revenue v. Burlington N.*, 169 Mont. 202, 545 P.2d 1083 (1975). "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). As such, this matter will be reviewed without deference to the RCTAB hearing and subsequent decision.

25. The Board's order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-301.

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CONCLUSIONS OF LAW

26. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
27. "All taxable property must be appraised at 100% of its market value...." Mont. Code Ann. § 15-8-111.
28. 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).
29. 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. Inc.*, 169 Mont. at 214, 545 P.2d at 1090. However, DOR cannot rely entirely on the presumption in its favor and must show the propriety of their action. *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
30. The Taxpayer bears the burden of proving the error of DOR's decision. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.
31. The Legislature intended the Department to utilize a number of different approaches or combination of approaches, including the income approach, sales comparison approach, and

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cost less depreciation approach, depending on the market where the appraisals take place, when it assesses property and estimates market value. *Albright v. State By & Through State*, 281 Mont. 196, 208,-209, 933 P.2d 815, 823 (1997).

32. “Assessment formulations’ by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion.” *Peretti v. State, 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. of Montana, Inc. 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 of State of Mont.*, 263 Mont. 100, 866 P.2d 228 (1993).
33. “The state tax appeal board must consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was conducted within 6 months of the valuation date. If the state board does not use the appraisal provided by the taxpayer in conducting the appeal, the state board must provide to the taxpayer the reason for not using the appraisal.” Mont. Code Ann. § 15-2-301(3).
34. 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.
35. As in the case of his other companion appeals this year and other appeals in previous years, Taxpayer has focused exclusively on the general theory that the useful life of his property will end or be substantially impaired by the impending shut down of the Colstrip power plant.

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36. The Board does not disagree that the plant's lifespan is limited, but that lifespan is impossible to predict even in the near-term future. Our task is to evaluate first whether the DOR considered and accounted for all economic factors during their appraisal to achieve their presumption of correctness, and then decide whether the Taxpayer in this appeal provided the Board with enough credible evidence and testimony to convince us the value assigned to the property was not what a willing buyer and willing seller would exchange the property for in a market sale.

37. The Board listened to the Taxpayer's arguments with an open mind, but we were not provided with any specific evidence and little credible testimony to convince us the value was incorrect.

38. On the one hand the DOR did make reductions to the property and did inspect and research the property with the city of Colstrip. These efforts convinced us the DOR carefully considered available information and applied depreciation to reduce value which met the presumption of correctness in this case.

39. According to unrefuted testimony by the DOR witness, for geocode 29-1151-34-3-23-01-0000, each rentable mobile home spot has been reduced to a market value of approximately \$1,435.60, resulting in tax of approximately \$8.42 per lot per year. Although no evidence of any sales was presented, rents charged by the taxpayer of \$185/month would seem to make those spaces appealing in the marketplace if they were ever listed for sale.

40. On the other hand, the Taxpayer for the first time testified the property is the subject of a federal superfund site, and for the first time alleged that all the infrastructure under the surface of the land is owned by the City of Colstrip.

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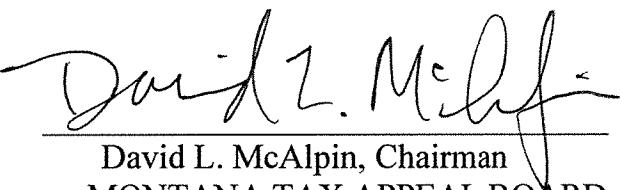
41. We are not able to give credence to those claims without any supporting evidence to support them. It is surprising these alleged facts were not disclosed to the DOR or to the RCTAB before the hearing before MTAB.
42. Taxpayers have the burden to show the DOR erred in assigning market value to property. A taxpayer must present specific evidence and provide more than general speculative testimony to meet the burden. The Taxpayer in this appeal is sincere in his intent but did not introduce convincing evidence nor credible testimony of specific valuation mistakes which would meet the legal standard for this Board to overturn the DOR value of his property.

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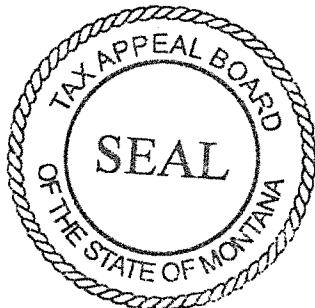
ORDER

43. Taxpayer's appeal is denied, and the decision of the Rosebud County Tax Appeal Board is affirmed.

Ordered August 13, 2021



David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD





Amie Zendron, Member
MONTANA TAX APPEAL BOARD



Daniel Zolnikov, Member
MONTANA TAX APPEAL BOARD

Notice: You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2). The Montana Dept. of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. MCA § 15-2-303(2).

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Certificate of Service

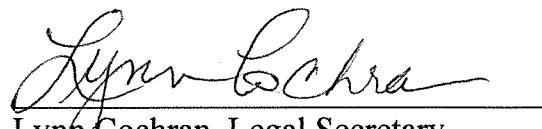
I certify that I caused a true and correct copy of the foregoing Findings of Fact, Conslusions of Law, Order, and Opportunity for Judicial Review to be sent by email and by United States Mail via Print & Mail Services Bureau of the State of Montana on August 13, 2021 to:

**Anthony R. Zammit
Dave Burleigh
Montana Department of Revenue
P.O. Box 7701
Helena, MT 59604-7701**

**Richard S. Burnett
Colstrip Properties, Inc.
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**Rosebud County Tax Appeal Board
c/o Amy Adler
PO Box 962
Forsyth, MT 59327**

**Kory Hofland, Property Assessment Division
Montana Department of Revenue
P.O. Box 7701
Helena, MT 59604-7701**



Lynn Cochran, Legal Secretary
MONTANA TAX APPEAL BOARD