

JUN 06 2023

Montana Tax Appeal Board

RKRR HOLDINGS LLC,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2022-36

**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) partially granting RKRR (Taxpayer) a reduction in value on the subject property located at 2500 Highway 10 East, Clinton, Montana. The Taxpayer appealed that outcome to Montana Tax Appeal Board (MTAB) on November 30, 2022. We affirm the CTAB’s determination.

ISSUE TO BE DECIDED

Whether CTAB erred in partially granting the Taxpayer’s request for a reduction in the property’s appraised value placing a total value for the subject property at \$1,027,540.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Original AB-26 Application;
2. AB-26 Determination Letter;
3. CTAB Application;
4. CTAB Decision;
5. MTAB Application;

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6. Montana Cadastral Comparables;
7. Poor Henry's Cadastral and Taxpayer Conclusion.

DOR Exhibits:

- A. Subject Property Record Card;
- B. AB-26 and Response;
- C. Cost Analysis;
- D. Income Analysis;
- E. DOR Comparable Properties;
- F. Realty Transfer Certificate;
- G. Sales Verification Form;
- H. 2021 Cap Rate;
- I. Income Model (Electronic USB).

PROCEDURAL HISTORY

The DOR initially valued the subject property at \$1,473,800 for the 2021/2022 appraisal cycle, with the land valued at \$503,834 and the improvements at \$969,966. *Ex. B.* The Taxpayer filed an AB-26, Request for Informal Classification and Appraisal Review, with the DOR on January 1, 2022. *Ex. B.* The DOR sent a Form AB-26 Determination Letter to the Taxpayer dated March 2, 2022, partially reducing the Taxpayer's valuation to \$1,168,300. *Ex. B.* The Taxpayer appealed the DOR's revised valuation to the CTAB on March 23, 2022, requesting a land value of \$100,000 and an improvement value of \$550,000. *Ex. 3.* The CTAB hearing was held on November 19, 2022, and the CTAB further reduced the value of property to \$1,027,540. *MTAB Dkt. 6.* The Taxpayer appealed to MTAB on November 30, 2022, per Mont. Code Ann § 15-2-301, requesting a land value of \$100,000 and an improvement value of \$550,000, for a total of \$650,000. *Ex. 5.* The MTAB hearing was conducted in Helena on March 28, 2023, at which the following were present:

- a. Roy W. Handley, Taxpayer; and
- b. Dave Burleigh, DOR Counsel; Michelle Staples, Area Manager; and Helen Greenberg, Lead Appraiser.

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The record includes all materials submitted to CTAB, a recording of the CTAB hearing, all materials submitted to MTAB with the appeal, and additional exhibits submitted by the parties prior to and at the MTAB hearing.

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 business which serves the public as both a grocery store and a gas station. It is near the Interstate 90 Clinton exit and has a sign that is visible from I-90. The subject property is known as The Clinton Market. *MTAB Hr'g Tr. 82:2-4, 77:13-17.*
3. The DOR originally assigned the land and improvements a market value of \$1,473,800, but after the Taxpayer requested informal classification and appraisal review, the total valuation of the property was reduced to \$1,168,300 in order to "more accurately reflect market value." *Ex. B, MTAB Hr'g Tr. 46:15- 47:11.*
4. At the November 19, 2022, CTAB hearing, the Taxpayer requested the market value of the property be reduced further to \$650,000 allocating \$100,000 for the land and \$550,000 for the improvements. *MTAB Dkt. 6, MTAB Hr'g Tr. 3:7-15.* The CTAB granted the Taxpayer's request in part and reduced the market value of the property to \$1,027,540 allocating \$503,834 to the land and \$523,716 for improvements. *Id.* The Taxpayer appealed to MTAB on November 30, 2022, and reasserted that the market value of the property should be \$650,000. *Ex. 5.* The DOR maintained that the most recent valuation assigned by the CTAB of \$1,027,540 should be adopted. *MTAB Hr'g Tr. 3:16-20.*

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5. The Clinton Market is a separate entity from RKRR Holdings. *MTAB Hr'g Tr. 12:11-13:2, 19:5-16*. Mr. Handley testified the Clinton Market leases the subject property from RKRR Holdings. *Id.* The Clinton Market is also making payments to the previous owner of the Clinton Market. *Id.* Mr. Handley testified that when the previous owner is repaid, the property leases between RKRR Holdings and the Clinton Market will be renegotiated. *Id.* Mr. Handley expects the lease price to increase at that time. *Id.* RKRR Holdings is a family-owned company. *MTAB Hr'g Tr. 14:7-11*. Mr. Handley is a member of RKRR Holdings and has been authorized to represent RKRR Holdings in this matter. *Id, MTAB Hr'g Tr. 19:1-3*.

6. Mr. Handley argued that the valuation increase of the property is not in line with other comparable properties in the area. *MTAB Hr'g Tr. 8:11- 9:10*. Mr. Handley presented evidence of a nearby commercial property operating as a tavern that is the only other property open to the public in Clinton. *MTAB Hr'g Tr. 17:11-19*. The land value of the tavern was reduced during the previous tax cycle and the improvements value rose, leading to a small overall valuation increase for the 2021/2022 tax cycle. *MTAB Hr'g Tr. 10:9-20*. Mr. Handley argues this trend should apply to his property as well and the massive increase to the subject property shows the DOR has not appraised businesses correctly in the Clinton area for years. *MTAB Hr'g Tr. 10:12-11:20*. Mr. Handley further argued to make up for the many years of negligent valuations of the property, the DOR has tripled the value of The Clinton Market instead of applying gradual increases. *Id. MTAB Hr'g Tr. 15:13-16:2*. Mr. Handley believes the previous owner was given a tax break while RKRR holdings as the new owner is being punished for the DOR previously undervaluing the property. *MTAB Hr'g Tr. 16:5-12*.

7. Mr. Handley presented several different comparable properties. *Ex. 6*. To find comparable properties, Mr. Handley looked for similar sized properties in the vicinity of the subject property. *MTAB Hr'g Tr. 17:11-24*. Several of the

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- comparable properties were vacant lots or rental properties. *Id.* The comparable property relied on most by Mr. Handley was a local tavern (comparable 6-6) with rental apartments attached to the back of the building. *Id.*, *MTAB Hr'g Tr.* 57:6-10. Comparable 6-6 sits on a 1.18 lot and its land value dropped by 13.4% while the building value rose by 20% for the tax year 2021. *Ex.* 6-6.
8. Mr. Handley testified that he arrived at his requested \$650,000 valuation by averaging the tax increases/decreases from his comparable properties near the subject property. *MTAB Hr'g Tr.* 20:19-21:20. However, using the average increase/decrease in taxable value experienced by other commercial properties in the area, RKRR Holding's assessed value should be lower than the requested \$650,000. *Id.* Mr. Handley conceded that the CTAB did not consider the properties used in his averaging method to be comparable due to those properties being classified as residential. *Id.*, *MTAB Hr'g Tr.* 10:7-11.
 9. Mr. Handley testified since purchasing the subject property the floor in the grocery store has been replaced, and no improvements have been made to the fuel station outside of the market. *MTAB Hr'g Tr.* 24:6-15.
 10. In response to the Taxpayers arguments, the DOR Appraiser testified their appraisal of the property purported with all industry standards, Montana Code Annotated, and DOR administrative rules. *MTAB Hr'g Tr.* 27:18-21. Further, because of the switch from a 6-year appraisal cycle to a two-year appraisal cycle, the value increases for properties is not phased into their taxable value. *MTAB Hr'g Tr.* 27:22-28:3.
 11. The subject property was valued using the cost approach. *Ex. D.* The property had an overall rating of 6, with an income area of 7,238 square feet. *Ex. A, D.*, *MTAB Hr'g Tr.* 28:20-29:11. The DOR assigned a rent rating of \$16.25 per square foot, and 24.1% for expenses, for a net operating income of \$82,129. *Id.*

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The operating income is divided by the overall rate, or capitalization rate, to get the calculated income value. *Id.*

12. To establish capitalization rates, the DOR collects income and expense information from taxpayers across the state which is compiled into different market areas. *MTAB Hr'g Tr. 29:21-30:22.* Market areas are divided between urban and rural with all of Missoula County being evaluated as urban. *Id.* The outlying towns in Missoula County, including Seeley Lake, Clinton, and Frenchtown, have been included in the urban model because of the growth of Missoula County. *Id, MTAB Hr'g Tr. 75:1-7.* To address the fact that some of the properties are not within the Missoula city limits, the DOR adjusts the investment class/capitalization rate accordingly. *Id.* The DOR has three urban capitalization rates to choose from when valuing the subject property, 1(good), 2(average), and 3(fair). *Ex. H, MTAB Hr'g Tr. 37:1-17, 52:1-9.* The effective tax rate is added to the capitalization rate to get the overall capitalization rate. *MTAB Hr'g Tr. 52:6-9.* The CTAB further adjusted the subject property's capitalization rate from .07 (1) to .08 (2) resulting in a value reduction. *MTAB Hr'g Tr. 36:16-25.*

13. The DOR testified the rent rating is derived from reported retail rents paid by taxpayers in Missoula County. *MTAB Hr'g Tr. 30:4-7.* The DOR has nine rent ratings depending on the use of the building. *Ex. H, MTAB Hr'g Tr. 31:3-6.* The rent rating of \$16.25 per square foot was derived by evaluating other information reported by businesses in Missoula County. *MTAB Hr'g Tr. 29:21-30:9.* RKRR Holdings did not provide any information relating to rents, income, or expenses to DOR. *Ex. A, MTAB Hr'g Tr.18:1-10, 19:17-19.* During the AB-26 process, the DOR Appraiser visited the property and lowered the rent rating from \$19.00 per square foot to \$16.25, for a value reduction of \$305,500. *MTAB Hr'g Tr. 34:8-12, 44:5-20.* The next lowest rent rating was \$12.75 which the appraiser did not feel was appropriate with \$20 per square foot being the average in Missoula. *MTAB Hr'g Tr. 34:23-35:9.* The \$16.25

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rent rating is comparable to properties in Frenchtown, Seeley Lake, and Lolo. *MTAB Hr'g Tr. 35:3-20.*

14. Vacancy and collection and other allowable expenses used in the income formula all come from information reported to the DOR. *MTAB Hr'g Tr. 40:1-3.*

15. The DOR further argued that Taxpayer's comparable 6-6 is not a comparable property because it is a bar and tavern, whereas the subject property is a grocery store and gas station which is not in the same class of investments. *MTAB Hr'g Tr. 22:1-21, 82:2-5.* According to the DOR Appraiser, the main reasons why comparable 6-6 would be valued much less than the Taxpayer's property are that the uses of the two buildings are different, access to the tavern is not as good, and comparable 6-6's land and income area are much smaller, limiting its commercial viability. *MTAB Hr'g Tr. 41:4-13, 56:13-22, 78:10-79:12.* The DOR contends these "are not mutually comparable identities for commercial purposes." *MTAB Hr'g Tr. 82:2-5.* Additionally, The DOR Appraiser attributed comparable 6-6's land value dropping and the subject property's land value increasing to a difference in market areas/neighborhoods. *MTAB Hr'g Tr. 57:22-58:5.* Comparable 6-6 is included in the Milltown/Clinton market area versus the subject property being in the commercial East Missoula market area. *MTAB Hr'g Tr. 41:20-42:2, 58:1-5.* The DOR Appraiser gave an example of the subject property being compared to gas stations in Bonner and East Missoula while comparable 6-6 was compared to Rock Creek Lodge, Harold's Club, etc. *MTAB Hr'g Tr. 41:23-42:2, 48:22-49:2, 64:8-65:3.*

16. The DOR Appraiser testified that the subject property may have been underassessed in previous years. *MTAB Hr'g Tr. 42:5-13.* The DOR is presently defending the assessed market values, not looking to penalize any taxpayers for prior tax cycles. *MTAB Hr'g Tr. 42:5-43:2.*

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17. The DOR presented 5 comparable sales that were closest in size and sold close to the lien date. *Ex. E, MTAB Hr'g Tr. 48:6-9*. The subject property is in the East Missoula Model. *MTAB Hr'g Tr. 48:22-49:2*. Because the property is valued using the income approach the land value is not broken out when valuing the property. *MTAB Hr'g Tr. 67:1-25*.
18. The DOR Appraiser presented a realty transfer certificate for the subject property including the post lien date sale price, which she testified “[shows] that the market even in the rural areas of Missoula County are appreciating,” and “supports the million-dollar value.” *MTAB Hr'g Tr. 53:5-54:6*. The DOR testified the subject property’s sale was not used in valuing the property because the sale occurred one year post lien date but did support the DOR valuation because the sale price is more than the proposed assessed value. *Id, MTAB Hr'g Tr. 55:19-56:2, 76:20-77:5*. The Taxpayer also returned a sales verification form confirming the subject property’s sales price. *Ex. G*.
19. The DOR Area Manager for Missoula testified that there has been significant growth in the areas surrounding the subject property stating that “as we talk about growth going on, there is a subdivision just west that just recently went up... Camas Loop just came online, and you’re seeing a lot of development just west of the Clinton Market as well.” *MTAB Hr'g Tr. 75:16-22*.

JURISDICTION AND STANDARD OF REVIEW

20. 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*.
21. 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

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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.

22. 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

23. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
24. “All taxable property must be appraised at 100% of its market value....” *Mont. Code Ann. § 15-8-111*.
25. “[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)*.
26. 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).
27. 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.

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28. “‘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)).
29. The term “improvements” includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. *Mont. Code Ann. § 15-1-101(1)(i)*.
30. “If the appeal is an appeal of the valuation of residential property, the state board shall consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and uses values obtained within the timeframe provided for in subsection (3)(a). The appraisal that is provided by the taxpayer is presumed to establish assessed value in the state board proceeding unless the department provides sufficient evidence to rebut the presumption of correctness, including another independent appraisal or other compelling valuation evidence. The state board shall address the taxpayer’s independent appraisal and the department’s valuation evidence in the decision.” *Mont. Code Ann. § 15-2-301(3)(b)*.
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 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).

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DISCUSSION

33. The Taxpayer requested the Board apply an average tax increase, derived from the assessed values of the properties near the subject property. The DOR used the income method to value the subject property supported by reliable data from both local and statewide sources. The Board finds the Taxpayer did not overcome the burden to prove the DOR made a mistake while assessing the property. Therefore, the value set by the CTAB is upheld.
34. The Taxpayer presented several neighborhood comparable properties. The comparable properties included vacant lots, rental properties, and one tavern in the local area. The Board finds that the comparable properties presented by the Taxpayer were not comparable to the subject property. The comparable properties presented all have different uses than the subject property; the comparable properties had not been sold recently and Taxpayer instead used the property's assessed value for comparison instead of market value. The Taxpayer's case focused on comparable 6-6, the local tavern, because it is the only other business and property in Clinton "open to the public." While it is the only other public place in Clinton, comparable 6-6 is not comparable to the subject property. The land use is not similar; the property and income producing area of the subject property are almost double in size. Additionally, comparable 6-6 is a mixed-use property used as a tavern and rental units, with inferior access compared to the subject property. While not used in valuing the property, the land model presented by the DOR included five recent sales that more closely matched the subject property. The Board acknowledges actual sales during a tax cycle constrain the DOR's models. The comparable sales presented by the DOR are not in the vicinity the Clinton Market but do show an appreciating market in Missoula County. Future sales of similar properties in the area would be a better indication of value for the subject property.
35. The Taxpayer valuation estimate is not consistent with appraisal industry standards. The Taxpayer arrived at their requested value by averaging the assessed

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value increase or decrease of neighboring properties and applying that average to the subject property. Montana Code Annotated 15-8-111 mandates the DOR to appraise commercial property using the appropriate uniform standard of professional appraisal practices for mass appraisal. The Board's job is to find market value for the subject property. Presenting an average tax increase is not evidence of the subject property's market value. Furthermore, the averaged tax increase/decrease presented by the Taxpayer cannot be used because the averages were derived from properties that are not based on actual sales or comparable in use to the subject property. The Board finds that DOR's use of the income approach to find market value was appropriate. While not used in valuing the property, the comparable properties provided by DOR did support the DOR assigned market value.

36. The income method used by the DOR followed all industry standards and is a credible calculation to find market value using mass appraisal. The rent rating of \$16.25 is acceptable. The DOR Appraiser testified lowering the rent rating would undervalue the property and the Board agrees. The rent rating used by the DOR is derived using reliable information from fellow taxpayers in Missoula County. The testimony presented convinced this Board that the Clinton Market is paying a similar rent rating to market/gas stations in Frenchtown, Lolo, and other areas that are similar to Clinton.
37. Similarly, the Board found using the urban average capitalization rate reasonable. The DOR developed the cap rate using reliable data from across the state from similar income-producing properties. The Board is aware of the growth of Missoula County, and convincing testimony and exhibits were presented showing that growth. Additionally, the DOR Area Manger testified to new housing developments being built in the Clinton area which support increased revenues of the subject property.

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38. Because the Clinton area and Missoula County are growing, the Board agrees with the DOR's change from a rural to an urban cap rate. While the property was valued last cycle using a rural cap rate, areas of increased growth like Clinton are not comparable to other rural areas statewide. The Board heard testimony relating to the DOR's switching the Clinton Market from a rural to an urban cap rate and adjustments were made in the "investment class" to account for this change. Additionally, the Board received testimony from the DOR Appraiser that the Clinton Market was given a cap rate of urban good in the original assessment, similar to properties on Reserve Street in Missoula. The Board is left wondering what adjustments were made to the Clinton Market's cap rate when the DOR switched from a rural to urban cap rate. Similarly, the Board heard testimony how properties in the city of Missoula are appraised using a rent rating of \$20.00 per square foot. In its original appraisal, the DOR assigned the Clinton Market a rent rating of \$19.00 that was later revised to \$16.25. The Clinton Market is located outside of Missoula in a rural area; while the board agrees Missoula County is growing, the capitalization rate and rent rating need to reflect that this is not a commercial property in the city of Missoula.
39. The DOR has the difficult job of appraising all properties in Montana every two years. The testimony relating to under-assessments in past tax cycles, the switching from rural to urban capitalization rate and the increased rent rating created a situation where the Taxpayer experienced a significant increase in assessed value. On the contrary, there was evidence presented that the subject property recently sold for more than the assessed value. Although the sale occurred post-lien date and was not used to value the Clinton Market, it is still strong evidence validating that the proper adjustments were made during the AB-26 and CTAB process. The Board lauds the DOR's policy of not penalizing for under-assessment in previous tax cycles. Additionally, the DOR correctly testified that properties are not entitled to incremental value increase as requested by the Taxpayer. The Montana Code Annotated directs the DOR to value all properties at 100% of market value every two years.

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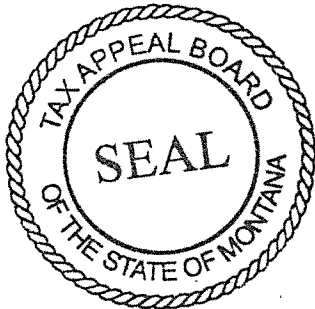
40. Clinton is in an appreciating market. The testimony relating to new development in the area and the related comparable sales are credible evidence the area is growing. The DOR's use of the income method, using adjusted figures, produced a value the Board feels best reflects market value. The Taxpayer presented no evidence the DOR erred in its adjusted appraisal nor did the Taxpayer present an independent appraisal. Accordingly, the Board upholds the Missoula County Tax Appeal Board value of \$1,027,540.

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ORDER

41. The Taxpayer's appeal is denied. The Board agrees with the taxable value set at CTAB.
42. The DOR is ordered to set the taxable value of the property at \$1,027,540.

Dated this 6th day of June 2023.




David L. McAlpin, Chairman


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 June 6, 2023, to:

Roy W. Handley RKRR Investments of MT LLC
PO Box 270
Clinton, MT 59825

Dave Burleigh
State of Montana, Department of Revenue
Legal Services Office
P. O. Box 7701
Helena, MT 59604-7701

Kory Hofland
DOR PAD
P.O. Box 8108
Helena, MT 59604-8108

Missoula County Tax Appeal Board
Cyndi Aplin
County Tax Appeal Board Secretary
1015 Washburn
Missoula, MT 59801



Lynn Cochran, Legal Secretary