

ROBERT & PATRICIA THUL,  
Appellants,

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,  
Respondent.

CASE №: PT-2023-11

**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 Cascade County Tax Appeal Board (CTAB) denying Robert and Patricia Thul, (Taxpayer) a reduction in value on the subject property located at 108 3<sup>rd</sup> Ave S, Belt, Montana (Subject Property). The Taxpayer appealed that outcome to the Montana Tax Appeal Board (MTAB) on October 27, 2023. We uphold the CTAB’s determination.

**ISSUE TO BE DECIDED**

Whether CTAB erred in denying Taxpayer’s request for a reduction in value to the Subject Property.

**EXHIBIT LIST**

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. MCA 15-8-111, Market Value;
2. MCA 15-7-106, Appraisal Certification;
3. MT Board of Real Estate Appraisers License Requirements;
4. MCA 37-54-201, Real Estate Appraiser License Scope & Display;
5. MCA 15-7-139 Entrance to Property for Appraisal;
6. A Crane Advertisement for Kitchen from 1949;

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7. Photograph of NW Corner of the 108 Property;
8. Photograph of SW Corner of the 108 Property;
9. Photograph of SE Side of the 108 Property;
10. Photograph of Displaced and Sagging Concrete Footing on the 108 Property;
11. Photograph of the Foundation of the 108 Property;
12. Photograph of the Rock Wall Embankment on the Opposite Side of Belt Creek;
13. Photograph of the Kitchen in the 108 Property Detailing the Crane Emblem;
14. Photograph of the Kitchen in the 108 Property;
15. Photograph of the Foundation of the 108 Property;
16. Photograph of the Eastside of the 108 Property;
17. Photograph of the Deterioration of Siding and Slab of 100 Property;
18. Photograph of the Foundation of 100 Property;
19. Photograph of the Foundation of 100 Property;
20. Photograph of Deterioration of the Siding and Slab of 100 Property;
21. Photograph of Deterioration of the Siding and Slab of 100 Property;
22. Photograph of Deterioration of the Siding and Slab of 100 Property;
23. Photograph of the Foundation of the 108 Property;
24. Photograph of the Foundation of the 108 Property;
25. Photograph of the Foundation of the 108 Property;
26. Drawing of a Modern Style Foundation;
27. Selection Rules and Adjustments Report for DOR's MRA.

DOR Exhibits:

- A. Property Record Card;
- B. Comparable Sales Report;
- C. Comparable Sales Worksheet;
- D. Neighborhood MRA Adjustments;
- E. Land Model.

**PROCEDURAL HISTORY**

The Department of Revenue (DOR) valued the Subject Property at \$189,800 for the 2023-2024 appraisal cycle, with the land valued at \$39,800 and the improvements valued at \$150,000. *Ex. A.* The Taxpayer appealed the DOR's valuation to the CTAB on September 27, 2023, requesting a land value of \$25,000 and an improvement value of \$75,000. *MTAB Dkt. 3.* The CTAB hearing was held in Great Falls on October 19, 2023, and the CTAB's decision denying the Taxpayer's application for reduction was sent to the parties on October 19, 2023. The Taxpayer appealed the CTAB's decision on the Subject Property and a neighboring property, MTAB Case Number PT-2023-12, to MTAB on October 27, 2023, per Mont. Code Ann § 15-2-301. The subject of this appeal is the property located at 108 3rd Ave. South, Belt Montana. The Taxpayer's appeal maintained his requested land value of \$25,000 for the land and \$75,000 for improvements, for a total of \$100,000. *MTAB Dkt. 1.* The MTAB hearing was conducted in Helena on January 30, 2024, at which the following were present:

- a. Robert Thul, Taxpayer; and
- b. Dave Burleigh, DOR Counsel; Curtis Tracy, DOR Appraiser; Jeanine Crouch, DOR Modeler; Katie Kakalecik, DOR Area Manager; and Kandy Fleurisma, DOR Paralegal.

The record includes all materials submitted to CTAB, an audio 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 residential home owned by Robert and Patricia Thul located at 108 3<sup>rd</sup> Ave S, Belt, Montana. *MTAB Dkt. 3.* The Subject Property is also identified by Geocode 02-2895-26-1-03-38-0000. *Id.* The site is 9,000 square feet in size and contains a single-family residence and a garage. *Ex. A.*

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3. The DOR initially appraised the subject land at \$39,800 and the improvements at \$150,000 for a total market value of \$189,800. *Ex. A.* At the October 19, 2023, CTAB hearing, Taxpayer requested the market value of \$100,000, allocating \$25,000 for the land and \$75,000 for the building and improvements. *MTAB Dkt. 3.* The CTAB denied the Taxpayer's request and maintained the DOR's values. *Id.* The Taxpayer appealed to MTAB on October 27, 2023, and reasserted the total market value of the Subject Property should be \$100,000. *MTAB Dkt. 1.* At the MTAB hearing, the Taxpayer wanted a market value closer to purchase price and amended his requested market value to \$75,000 for the land and improvements. *MTAB Hr'g Tr. 3:3-10.* The DOR requests a value of \$189,800 for the Subject Property. *MTAB Hr'g Tr. 2:23-3:20.*
  
4. At the MTAB hearing, Taxpayer argued that the Subject Property's value increase from \$121,700 to \$189,800, an increase of 56%, is not in line with inflation or what a willing buyer would pay for the Subject Property in its current condition. *MTAB Hr'g Tr. 8:2-14.* The Taxpayer believes the Subject Property's value should be lowered because it is in need of numerous repairs, is structurally unsound, and lies in a Federal Emergency Management Agency (FEMA) flood zone. *MTAB Hr'g Tr. 8:21-9:8.*
  
5. Taxpayer claimed that the official FEMA website listed the Subject Property as residing in a flood zone but did not enter any evidence relating to the flood plain at the hearing. *MTAB Hr'g Tr. 9:9-10:2.* When questioned by the Board, the Taxpayer responded that the Subject Property had not flooded since he purchased the property in 2012 from an estate. *MTAB Hr'g Tr. 13:16-19, 19:10-18.* The only documented evidence of the flooding the Taxpayer could find was in the local museum which indicated that the last flood was in 1953, although he testified local residents claim there was a similar flood in 1964. *MTAB Hr'g Tr. 18:12-21.* The Subject Property is located roughly fifty yards from Belt Creek. *MTAB Hr'g Tr. 20:25-21:9.*

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6. Taxpayer testified the home was constructed in 1889. *MTAB Hr'g Tr. 17:8-9*. Taxpayer submitted a copy of a 1949 advertisement for Crane Kitchens along with several exhibits demonstrating that the Subject Property has the same Crane Kitchen to showing it has not been renovated in many years. *Ex. 6, 13, 14; MTAB Hr'g Tr. 10:2-7*.
7. Taxpayer submitted additional exterior photographic evidence showing defects of the home and testified that the Subject Property has a two-to-four-inch drop between the northwest corner of the property and the southwest corner. *Ex. 7, 8; MTAB Hr'g Tr. 10:16-21*. Another exhibit showing the flashing on the east side of the house depicted what Taxpayer estimated was an eight-inch drop on the exterior of the home from corner to corner. *Ex. 16; MTAB Hr'g Tr. 15:22-25*. Taxpayer further testified that he has removed the flashing from the footing and found the siding was full of holes. *MTAB Hr'g Tr. 11:4-8*.
8. Taxpayer presented photo evidence showing that the concrete footing along the house was cracked and displaced. *Ex. 9, 10*. The Taxpayer testified that the footing has no reinforcement element to it and speculated that there is no rebar inside the concrete footing. *MTAB Hr'g Tr. 13:9-14:6*. He believes the foundation would be unlikely to crack if it contained rebar holding it together and speculated further the cracking and displacement of the footing was also caused by the soil shifting and past floods. *Id.*
9. Taxpayer testified that cracking and displacement is evident in other parts of the house, in particular, the stacked stone foundation beneath the home. *Ex. 11; MTAB Hr'g Tr. 14:8-24*. He further testified that the uneven nature of the interior of the home is apparent due to the fact that, "You can drop a marble on the floor and always find it, it's in the corner." *Id.* Taxpayer testified that the stacked stone foundation is fastened with dirt, not mortar. *Ex. 11; MTAB Hr'g Tr. 14:22-15:2*. He had considered removing the dirt and shoring the

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foundation up with mortar but chose not to as it is considered a “significant improvement” by the municipal authorities for which there are additional considerations. *MTAB Hr’g Tr. 15:8-19.*

10. Taxpayer presented a photograph of a crumbling rock wall embankment across Belt Creek from the Subject Property which he testified appears to be made with the same materials and method of construction as the foundation under the Subject Property. *Ex. 12; MTAB Hr’g Tr. 15:4-7.* Taxpayer speculated that the same structural defects which caused the rock wall embankment to collapse were also affecting his foundation. *Id.* On cross examination, Taxpayer conceded that the embankment and the Subject Property’s foundation are exposed to different environmental conditions. *MTAB Hr’g Tr. 17:12-18:11.*
11. Additional photographs presented by the Taxpayer depict a vertical standpipe underneath the house showing that water has run through, and down, the face of the Subject Property’s stone foundation. *Ex. 23, 24, 25; MTAB Hr’g Tr. 15:21-16:4.* Taxpayer claims this leaking water has caused degradation of the foundation over time, including a pile of mud and rock which has formed at the base of the foundation. *Id.*
12. Taxpayer contended the condition, location, and significant age of the home should factor into its DOR value more. *MTAB Hr’g Tr. 17:3-9.* Taxpayer testified that the Subject Property was built in 1889, and that various aspects of the improvements, such as the siding, are likely at least sixty years old. *Id.* Furthermore, the condition of the siding is such that “you can poke your fingers right through it.” *Id.*
13. The Taxpayer presented testimony that he used an online age calculator to calculate an effective age of 1958 for the Subject Property. *MTAB Hr’g Tr. 8:21-9:8.* Taxpayer argues the effective age of the property should be closer to the 1950’s since the Subject Property has not been updated. *MTAB Hr’g Tr.*

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59:25-60:4. Additionally, the Taxpayer presented oral testimony that he had listed the subject property for sale at \$125,000 and did not get any offers.

*MTAB Hr'g Tr. 60:4-13.*

14. The Taxpayer introduced sections of the Montana Code Annotated showing the requirements to become a licensed private appraiser in the state of Montana. *Ex. 1, 2, 3, 4.* Taxpayer wanted to point out that there is a difference between a licensed appraiser and a qualified appraiser. *MTAB Hr'g Tr. 11:21-12:12, 19:5-9.*
  
15. The DOR valued the land using the base size, base rate, and the decremental rate. *Ex. E; MTAB Hr'g Tr. 38:11-40:24.* Base rate is a dollar amount per square foot for the base size in the model and is determined from the regression output of the model. *Id.* The DOR used a square foot model to value the Subject Property. *Id.* The square foot model has a base lot size of 10,000 square feet and the base rate for the model and Subject Property is \$4.15 per square foot. *Id.* The decremental rate is the adjustment rate for each square foot below the base size of the model. *Id.* The Subject Property was 1,000 square feet smaller than the base size of the model, so the decremental rate of 1.7 was multiplied by the 1,000 square foot difference to get 1,700. *Id.* The 1,700 was subtracted from the product of multiplying the base rate and base size lot to arrive at a final land value of \$39,800. *Id.* When using the market approach, the land value is subtracted from the comparable sales approach in order to determine the improvements value. *MTAB Hr'g Tr. 41:7-11.*
  
16. The DOR used the sales comparison approach to value the Subject Property. *Ex. C; MTAB Hr'g Tr. 33:6-8.* To value the Subject Property, the DOR used the rural Cascade County model. *MTAB Hr'g Tr. 44:24-45:5.* All comparable sales are located in the town of Belt, and DOR neighborhood 412. *Ex. B; MTAB Hr'g Tr. 36:14-17.* The DOR made adjustments to the comparable properties to align them with the characteristics of the Subject Property as of

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the lien date, January 1, 2022. *Ex. B, C, D; MTAB Hr'g Tr. 49:25-50:3.* The DOR Modeler, Ms. Crouch, testified that when determining a comparable sales value, the DOR gathers seven different values, drops the two highest and two lowest values, and average the remaining values. *Ex. B, C; MTAB Hr'g Tr. 43:5-14.* The values that are averaged include the adjusted sale prices, the weighted estimate, and the Multiple Regression Analysis Value. *Id.* The DOR presented a comparable sales worksheet which displayed various calculations used to adjust the comparable properties to the Subject Property. *Ex. C; MTAB Hr'g Tr. 28:22-30:2.*

17. Ms. Crouch testified that the DOR software calculates comparability points by giving weight to certain key variables in the model and the weight of those variables helps determine a property's value. *Ex. C; MTAB Hr'g Tr. 30:3-13.* Once the weight is applied, the points go through the calculation of absolute difference and are then squared. *Id.* The comparability points of the comparable properties used to value the Subject Property are 31, 51, 52, 67, and 71. *Ex. C; MTAB Hr'g Tr. 44:18-20.* Any property with comparability points over two hundred is considered not comparable. *Ex. B; MTAB Hr'g Tr. 30:14-18.* In rural areas, it's not uncommon to see higher comparability points reaching into the hundreds. *Ex. C; MTAB Hr'g Tr. 44:10-20.* Regarding the Subject Property's comparability points, Ms. Crouch stated that, "in a rural model, in my opinion, that's pretty good." *Id.*
  
18. The DOR presented the neighborhood multiple regression analysis adjustment report which displays adjustments made in the multiple regression analysis, as well as the weights applied to key variables used to value the Subject Property. *Ex. D; MTAB Hr'g Tr. 31:9-14.* Ms. Crouch testified that some of the adjustments made to the Subject property were for difference in age, square footage of the basement, and difference in grade. *Ex. D; MTAB Hr'g Tr. 32:17-33:2.* Ms. Crouch defined grade as the quality of construction of a home, which



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includes the quality of workmanship and quality of materials used in the year it was built. *Ex. D; MTAB Hr'g Tr. 33:3-5.*

19. Ms. Crouch explained that the DOR can account for differences between properties using the condition, desirability, and utility calculation (CDU). *Ex. A; MTAB Hr'g Tr. 33:16-23.* The CDU is a composite score comprised of the overall condition of the property, desirability of the property, desirability of the location, and utility of the improvements on the property. *Ex. A; MTAB Hr'g Tr. 33:20-34:5.* The Subject Property's CDU scores were fair, fair, average, and fair, respectively. *Id.* Ms. Crouch stated that a condition rating of fair means that the home is livable but needs work. *Id.* Furthermore, in her opinion, after having viewed photos of the Subject Property, it did not constitute a lower condition rating of poor as it is not, "barely livable". *MTAB Hr'g Tr. 34:6-35:5.* Ms. Kakalecik, the Area Manager, testified the home was not hazardous to live in, and does not require substantial repairs, making the CDU score for the Subject Property correct. *MTAB Hr'g Tr. 57:11-21.*
  
20. Ms. Crouch testified the land model used to value the subject land did not have a locational adjustment or negative influence for a property in a flood zone. *Ex. E; MTAB Hr'g Tr. 35:8-16.* A modeler can account for negative influences, such as a flood zone, if sales in the model indicate they are affected by the flood zone. *Id.* Ms. Crouch testified that the DOR generally becomes aware that a negative influence is affecting sales either through investigation by appraisers after a sale, or by taxpayers notifying the DOR themselves. *MTAB Hr'g Tr. 35:17-36:1.* The model used to value the subject land had no negative influence for residing in a flood zone because the DOR had no evidence of individual properties being sold for less due to being in a FEMA flood zone. *Ex. E; MTAB Hr'g Tr. 36:2-5.* Additionally, all comparable properties used to value the Subject Property, except for one, were also located in the same FEMA flood zone adjoining Belt Creek. *MTAB Hr'g Tr. 37:16-19.*

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21. Ms. Crouch testified that there is no adjustment for having a non-standard stone foundation versus a concrete one. *MTAB Hr'g Tr. 45:14-16*. Ms. Kakalecik stated that the material or quality of construction of a foundation aren't characteristics that affect the DOR's valuation of property. *MTAB Hr'g Tr. 58:3-12*. Instead, the DOR only determines whether a property does or does not have a foundation, it does not matter if it's timber, stone, or concrete. *Id.* Furthermore, the DOR needs market examples of a sold property with a similar defect to calculate an adjustment and, to the DOR's knowledge, there were no other sales of homes with stone foundations in the market area to calculate an adjustment for market value. *MTAB Hr'g Tr. 48:24-49:13*.
  
22. The DOR made adjustments to the comparable properties for age, differences in garages, enclosed porch, difference in decks, difference in land value, difference in plumbing fixtures, and difference in grade. *Ex. C; MTAB Hr'g Tr. 49:17-50:6*. The DOR appraiser gave the Subject Property an effective age of 1980. *Ex. A; MTAB Hr'g Tr. 47:16-24*. The max effective age used by the DOR is 60 years. *Ex. C; MTAB Hr'g Tr. 32:6-12, 46:6-11*. Ms. Crouch explained that the effective age has nothing to do with the year 1980 and, in theory, is the lifespan of the Subject Property. *MTAB Hr'g Tr. 50:8-12*. In theory, this house would stand until 2040, 60 years from 1980, if no maintenance or upkeep was ever preformed on the Subject Property.
  
23. Before testifying each DOR witness described their education, work history and appraiser training. Ms. Kakalecik and Ms. Crouch are both certified in IAAO 101 Residential Property and IAAO 300 Mass Appraisal as well as Uniform Standards of Professional Appraisal Practices (USPAP). *MTAB Hr'g Tr. 23:17-25, 55:7-24*. Mr. Tracy is certified in IAAO and USPAP courses. *MTAB Hr'g Tr. 51:1-7*.

**JURISDICTION AND STANDARD OF REVIEW**

24. 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*.
  
25. 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.
  
26. 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**

27. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
  
28. "All taxable property must be appraised at 100% of its market value...." *Mont. Code Ann. § 15-8-111*.
  
29. "[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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30. 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).
31. 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.
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. 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)).
33. 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*.
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

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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 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)*.
39. 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).
40. In valuing class four residential and commercial property . . . the department shall conduct the appraisal following Uniform Standards of Professional Appraisal Practice for mass appraisal promulgated by the appraisal standards board of the appraisal foundation. *Mont. Code Ann. § 15-8-111*.

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41. An appraiser employed by the Department (DOR) to appraise residential property shall obtain a certificate in appraising residential property. *Mont. Code Ann. § 15-7-107.*
  
42. To receive a residential appraiser certification all appraisers must receive specific training and testing to certify that they possess the required knowledge, skills, and abilities to perform residential property appraisal, including successful completion of the written IAAO residential examination. *Mont. Admin. R. 42.18.206.*

**DISCUSSION**

43. While the Taxpayer presented evidence showing the property has deteriorated conditions, the DOR presented more convincing evidence that the property was valued correctly at \$189,800. The DOR presented a valid sales model with nearby comparable property sales used to value the Subject Property. The Taxpayer presented valid arguments relating to the condition of the property and the effective age but did not meet the burden of proving that the DOR made a mistake.
  
44. The Taxpayer requested the purchase price of \$75,000 as the market value of the Subject Property at the hearing. The Taxpayer gave testimony that he purchased the property from an estate. A property sale from an estate is not considered an arm-length transaction or market value exchange of a property. Additionally, Mr. Thul purchased the property in 2012, and his purchase is not indicative of market value on the lien date of January 1, 2022. The second value requested by the Taxpayer of \$125,000 is similarly unsupported by the evidence and testimony presented. The Taxpayer presented oral testimony that he had listed the property for \$125,000 and gotten no offer. The only evidence the Taxpayer presents to justify a reduction in market value has to do with the property's condition.

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45. The Taxpayer presented oral evidence that the Subject Property is within a FEMA flood zone. The DOR agreed with the Taxpayer that the Subject Property is in the FEMA flood zone. The DOR also presented oral testimony that all but one comparable property used to value the Subject Property was in the FEMA flood zone. Due to the proximity of Belt Creek to the town of Belt, many of the town's houses are potentially in the FEMA flood zone. Because the majority of the DOR's comparable properties are also located in the FEMA flood zone and are not selling differently, no credible evidence was tendered to convince the Board that the Subject Property's market value is affected by being in a FEMA flood zone.
  
46. The Taxpayer next argued that the poor condition of the improvements of the Subject Property merits a value reduction. The Taxpayer provided photos showing the damage to the siding of the house and the foundation, as well as photos showing the kitchen has not been remodeled in some time. While the Board found Taxpayer's evidence credible, the DOR did consider the property's condition in its model and in the final determination of market value. The DOR presented evidence showing adjustments made to the property via the lower grade assigned to the property and the CDU of the property. The Board found the DOR's evidence credible, and the adjustments to the property were proper. Based on the evidence presented, the Board agrees with the condition and CDU set by the DOR. The house may require repairs but is still completely livable.
  
47. The Board does find the DOR's methods for assessing a foundation somewhat lacking. The DOR testified appraisers look to see if the property is sitting on a foundation or not. The Board understands that the DOR needs sales to effectively estimate negative influences, such as a stone foundation, and that it lacked that evidence for its model. However, the type and condition of a foundation are things most home buyers will consider and should be afforded more consideration when valuing a property. The Board feels that the Subject Property's foundation condition is typical of a house of its age.

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48. Lastly, the Taxpayer argued that the effective age of the house is incorrect because the Subject Property has not been updated, including its kitchen. The DOR testified that the effective age has more to do with the life span of the improvement versus the updates done to the house. The DOR determines the effective age of a property by estimating how long the improvement would stay standing if no maintenance or upkeep was performed. While the DOR appraiser has been to the property and inspected it, the Taxpayer testified that he used an online age calculator. The Board does not know what kind of age calculator the Taxpayer used or what is considered in its calculation. On the other hand, the DOR appraiser visited the property and saw the maintenance standards of the owners and the depreciation of the Subject Property.
49. The DOR presented its regression analysis land model for rural Cascade County and the Multiple Regression Analysis model for making adjustments to comparable properties. The Board felt the DOR did a good job in finding comparable properties, and this fact is evident through the low comparability points assigned to the comparable properties selected. The comparability points were all significantly under the 200-point score maximum limit set as the DOR standard. While the properties are not completely comparable, the DOR did make the necessary adjustments to bring them in line and accounted for different property features and sale dates. The DOR's use of the decremental rate to value the land is reasonable in valuing the Subject Property's land. The Board found the DOR model and comparison properties to be reliable and that the Taxpayer did not meet his burden.



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50. The Department has been authorized by the Montana Code Annotated to use mass appraisal and the sales comparison method. The sales comparison method for finding a market value is the DOR's preferred method of valuing a residential property. The Taxpayer argued that there is a difference between a licensed appraiser and a DOR qualified appraiser. The DOR witnesses testified to their training and experience. The Board finds that the DOR employees are qualified to use mass appraisal to value the subject property. The Board agrees with the Taxpayer that the DOR witnesses do not hold the same qualifications as fee appraisers pursuant to the standards set out in Montana Code Annotated. The DOR appraisals are not a fee appraisal and are not required to adhere to Mont. Code. Ann. § 37-54-202.


**BEFORE THE MONTANA TAX APPEAL BOARD**  
*ROBERT & PATRICIA THUL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

**ORDER**

51. We affirm the CTAB's decision upholding the DOR's valuation.
52. The DOR is ordered to maintain the subject property value of \$189,800 for the 2023-2024 tax cycle.

Dated this 22nd day of April 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)*.

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*ROBERT & PATRICIA THUL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

**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 April 22, 2024, to:

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Rina Sanderson, Legal Secretary