

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Appellant,

v.

STANLEY R. & ANNETTE C.
BAYLEY TRUSTS,

Respondents.

CASE No: PT-2020-55

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

STATEMENT OF THE CASE

This is an appeal by the Department of Revenue (DOR) of a decision by the Yellowstone County Tax Appeal Board (YCTAB) which granted the Stanley R. and Annette F. Bayley Trusts (Taxpayer) request for a property value reduction on their townhouse located in Billings. We deny in part the DOR’s appeal and modify the YCTAB decision.

ISSUE TO BE DECIDED

Whether the Yellowstone County Tax Appeal Board erred in arriving at a market value of \$293,000 for this property.

PROPERTY DESCRIPTION

The physical address of this property is 317 Stonegate Circle Billings. The property Geocode is 03-0926-12-2-06-01-7008 and the Legal description is Plymouth Place Townhomes, S12, T01S, R25E, Unit 317, 2.777% Common Area Interest, (1/36%) LOC @ TR 3C COS 2991 (Less Colonial West Sub). The assessment code is 000A33771H and the property is in DOR neighborhood 203.981. The subject property improvements were built in 2007 and have a total area of 3,260 square feet.

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EXHIBIT LIST

The following evidence was submitted at the hearing:

Department of Revenue Exhibits;

- A. Property Record Card for subject, bates numbered 000128-133;
- B. Residential Sales Verification from Taxpayer, bates numbered 000068-69;
- C. 6/19/2020 Property Classification and Appraisal Notice, bates numbered 000173-176;
- D. AB26 Request, bates numbered 000004-8;
- E. AB26 Determination and Revised Property Classification and Appraisal Notice, bates numbered 000030-33;
- F. CTAB Appeal and Decision, bates numbered 000063-65;
- G. Comparable Sales Report for Tax Year 2020, bates numbered 000139-143 Confidential;
- H. Taxpayer's Fee Appraisal bates numbered 000145-172.

Stanley R. & Annette C. Bayley Trust Exhibits;

1. Real Estate Flyer for subject;
2. 2020 Revised Property Classification and Appraisal Notice for Townhouse Unit 317;
3. Montana Reappraisal Plan 1/1/2019- 3 pages;
4. Comparable Sales Report for Tax Year 2020, 8/6/20 Confidential;
5. Mr. Emch emailed response to questions about determination letter.

The Montana Tax Appeal Board (MTAB) hearing was conducted in Helena on May 13, 2021 and the following were present:

- a. Stanley R. Bayley, for the Stanley R. and Annette C. Bayley Trusts, via Zoom;
and
- b. Kristina Warren, DOR Counsel; Paula Gilbert, DOR Yellowstone County Area Manager, via Zoom, and Denise Haeker, DOR Appraiser for Billings, via Zoom.

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

FINDING OF FACT

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

2. The DOR valued the subject property at \$284,800 for the previous 2017/2018 appraisal cycle. *Dept. Ex. A.* For the tax cycle 2019/2020 using a lien date of January 1, 2018, the DOR valued the subject property at \$302,900. *Id.* Taxpayer purchased the subject property in September of 2019 for \$320,000. *Dept. Ex. B.* After verifying the sale and discussing the number of bedrooms in the property with Mrs. Bayley at her home, the DOR updated the property record card with the new information and revalued the property at \$336,500 for the tax year 2020. *Dept. Ex. C; MTAB Hrg. Transcr. 29:1-12.*

3. The Taxpayer disputed the updated value and filed an AB-26 request for informal review on June 18, 2020. *Dept. Ex. D.* Upon on-site inspection triggered by the AB-26 request, the DOR corrected the record to reflect a reduction to 75% finished basement, which caused a reduction in value. *Dept. Ex. E.* The DOR sent the Taxpayer an AB-26 Determination Letter, dated July 7, 2020, reflecting the reduction and a revised Property Classification and Appraisal Notice dated July 14, 2020, lowering the subject property value to \$325,300. *Id.*

4. The Taxpayer appealed that valuation to the YCTAB on August 12, 2020 for the 2020 tax year. *MTAB Dkt 3.* The YCTAB held a hearing on November 10, 2020. *Id.* YCTAB set the Taxpayer's property value at \$293,000, stating the CTAB believed the DOR used information outside of the normal appraisal time frames. *Id.*

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5. The DOR appealed to the Montana Tax Appeal Board on December 9, 2020. The Board held a hearing on May 13, 2021.
6. At the hearing, the Taxpayer pointed out the Property Classification and Appraisal Notice read, "the current assessed value column shows the value of real property as of January 1, 2018." *Taxpayers Ex. 2, MTAB Hrg. Transcr. 9:13-15*. Further, the Montana Department of Revenue's reappraisal plan states the DOR reevaluation of property is January 1, 2018, for the two-year valuation cycle beginning on January 1, 2019 through December 31, 2020. *Taxpayer Ex. 3, MTAB Hrg. Transcr. 9:17-10:22*. The Taxpayer understood this to mean the residential property will be valued as of January 1, 2018, and that values would be used for the whole valuation cycle. *Id.* The Taxpayer could not find anywhere in the Montana Code Annotated allowing the DOR to change the market value in the middle of a valuation cycle. *Id.*
7. Taxpayer claims the DOR is now using a valuation date of January 1, 2020. *MTAB Hrg. Transcr. 11:1-6*. DOR's Notice of Appeal requests the Board set aside the YCTAB decision because it did not reflect the value on January 1, 2020 and violates Mont. Code Ann. § 15-8-111(1). *MTAB Dkt. 1*. Taxpayer contends that because the DOR requested MTAB reevaluate the property as of January 1, 2020 the DOR is not following its own policies and procedures as laid out in its Classification and Assessment Notice and DOR's Reappraisal Plan. *Id., MTAB Hrg. Transcr. 11:6-22*. The Taxpayer further claims that using the January 1, 2020 valuation date is inequitable because all his neighbors were valued using the January 1, 2018 valuation date. *Id.*
8. Taxpayer claims that none of the comparable sales provided in the DOR's sales approach match the subject property as of January 1, 2018 because the comparables used by the DOR have significant differences from the subject property. *MTAB Hrg. Transcr. 12:6-18*. The Taxpayer pointed out that one of the DOR's comparables had fewer square feet and sold in

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2016 and 2019, with the 2019 sales price at \$10,000 less than the 2016 sale. *Id.*, *Taxpayer Ex. 4, Taxpayer Ex. 5*. Taxpayer contends the decrease in prices shows properties in the DOR neighborhood were trending down, or prices were further depressed and are now rising. *MTAB Hrg. Transcr. 12:19-13:13*. The Taxpayer contends that just because the DOR has county-wide data showing an increase in prices of 7%, the DOR should not apply the blanket average of 7% to the reappraisal process when there is data available for the Taxpayer's particular neighborhood. *Id. Taxpayers Ex. 5*.

9. The Taxpayer contends that some of the dates of sale for comparable properties used by the DOR in its evaluation were seven to eighteen months before the January 1, 2018 lien date. *Taxpayer Ex. 4; MTAB Hrg. Transcr. 13:10-13*. The Taxpayer believes with all the sales in Billings, the DOR should have been able to find sales closer to the January 1, 2018 lien date. *MTAB Hrg. Transcr. 13:10-13*.
10. The Taxpayer testified that DOR employee Mr. Emch emailed the Taxpayer explaining the increase property value was because the subject sales listing flyer stated the "basement was sheet rocked and ready for completion." *Taxpayer Ex. 5; MTAB Hrg. Transcr. 13:15-14:15*. The Taxpayer concluded that, to the DOR, this meant the property had a finished basement. *Id.* Additionally, the Taxpayer contended that the DOR stated the house was undervalued at the assessed value of \$302,900, as shown by the 2019 sales price of \$320,000. *Id.* Taxpayer argues the DOR did not know the basement's condition in 2018 or what the sales price would have been in 2018 and cannot apply information about the property as it existed in 2019. *MTAB Hrg. Transcr. 13:22-14:15*.
11. The Taxpayer testified that when they took possession of the property, there were two bedrooms, a family room, a bathroom, a storage area, and a mechanical room in the basement. *MTAB Hrg. Transcr. 15:20-16:15*. In the basement, the bathroom was finished, one bedroom was finished except for carpeting, while the other bedroom and the family

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room needed flooring and paint. *Id.* The Taxpayer is unaware of when the basement was finished prior to his purchase. *MTAB Hrg. Transcr. 17:3-10, 50:17, 51:6.* After taking possession of the property, the Taxpayer continued to finish the basement and listed an estimated completion date of November 30, 2019 on the DOR's Sales Verification Form. *MTAB Hrg. Transcr. 49:14-50:2, Dept. Ex. B.* Taxpayer testified this was an estimate, but the work was not completed by that date. *Id.*

12. The Taxpayer testified he does not believe he paid the market price for the property because the homeowners association levied a \$2,000 exterior painting assessment against the house right after the purchase, so the Taxpayer's initially requested a value of \$318,000 on the AB-26. *MTAB Hrg. Transcr. 19:16-20, Dept. Ex. D.*

13. Lead Appraiser, Denise Haeker, testified that no DOR appraiser had visited the subject property since 2009. *MTAB Hrg. Transcr. 27:1-27:18.* DOR appraisers visit a property if a property is sold, a building permit is pulled or if a DOR appraiser discovered something new while in the area. *Id.* When the Property was valued for the 2019/2020 tax cycle, the DOR was unaware of the basement's condition and considered it unfinished. *Id.* After the sale, in early 2020, the DOR appraisers confirmed the basement improvements through a Sales Verification Form and physically visited the property and talked with Ms. Bayley but did not inspect the property's interior. *MTAB Hrg. Transcr. 27:21-29:12.* After verifying the sale, and based on that conversation with Mrs. Bayley, the appraiser estimated that the basement was 90% complete and valued the property at \$336,500. *Id.* The Taxpayer filed an AB-26 Form, and the DOR did an internal inspection. *MTAB Hrg. Transcr. 29:15-30:7.* After the inspection, the basement finish percentage complete was reduced to 75% complete, and the property was reassessed at \$325,300. *Id.*

14. Ms. Haeker testified that all the comparable sales used in the comparable sales report were within the same development as the subject property. *MTAB Hrg. Transcr. 30:16-31:15.*

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She further testified that the DOR enters comparable properties into a market sales method analysis to adjust for various factors such as location and date of sale to equalize comparables. The highest and lowest priced properties then are removed, and the remaining three properties are averaged and used in the comparable analysis to estimate market value. *Id.*, *MTAB Hrg. Transcr. 34:10-20*, *DOR Ex. G*. Ms. Haeker testified that because January 1, 2018, is the lien date on which all properties in Montana are valued, the DOR uses sales that occurred in 2016 and 2017 in their analysis. *MTAB Hrg. Transcr. 31:11-31*.

15. Paula Gilbert, the area manager for the Yellowstone County DOR office, testified that the DOR has the ability to update the property's characteristics during the valuation cycle, if there is new construction or a property is remodeled. *Id. MTAB Hrg. Transcr. 36:4-10*.
16. Ms. Haeker testified that when making adjustments to a property for a comparable sales analysis, DOR appraisers try to use homes as similar to the subject property as possible because they want the analysis to use comparable sales with as few adjustments to the property as possible. *MTAB Hrg. Transcr. 43:16-19*. She further testified that the comparable properties should be in the same DOR neighborhood as the subject property. *MTAB Hrg. Transcr. 44:12-15*. On cross-examination, Ms. Haeker testified that condominiums are not ideal to use as comparable properties when valuing townhomes because the condominium owner does not own the land beneath the property, unlike a townhome where the townhome owner owns the land beneath the property. *MTAB Hrg. Transcr. 45:1-25*.
17. Ms. Haeker testified that Mr. Bayley submitted a fee appraisal dated September 24th, 2019. It is the fee appraisal used for the financing of the property purchase by the Bayleys. *Dept. Ex. H, MTAB Hrg. Transcr. 31:18-23*. The appraisal shows a market value of \$321,000, with a full finished basement. *Id.*

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18. Paula Gilbert testified that the DOR used the comparable sales method to value the subject property because that is the preferred method according to the International Association of Assessing Officers. *MTAB Hrg. Transcr. 54:13-14.*
19. Ms. Gilbert testified that the comparable properties selected by the DOR appraisers were the best available because they were sales that occurred before for the January 1, 2018 lien date, the comparable properties were in the same neighborhood and almost within the same block and were the most similar the appraisers could find. *MTAB Hrg. Transcr. 54:19-55:15.* As measured by comparability points assigned for similarity, the DOR considers anything less than 200 comparability points to be a good comparable sale to use. *Id.* The comparability scores for the properties, in this case, were 18, 73, 75. *Id.*
20. Ms. Gilbert testified that the DOR is tasked with valuing every property at its market value based on January 1st of the current year. *MTAB Hrg. Transcr. 56:11-57:1, 64:6-11.*
21. When asked what Montana Code Annotation section allows the DOR to reappraise a property which had been purchased within a valuation cycle, Ms. Gilbert stated Mont. Code Ann. 15-7-111(2), which allows the DOR to "adopt rules for determining the assessed valuation of new or remodeled property." *MTAB Hrg. Transcr. 58:9-59:2.* Ms. Gilbert and Ms. Haeker did not cite any DOR rules for revaluating property during a valuation cycle. *MTAB Hrg. Transcr. 58:9-61:13.*
22. When a sale occurs, the DOR must reevaluate the property. Ms. Gilbert testified DOR appraisers do not have discretion and must revalue properties when they are aware of a sale or improvements because the DOR is tasked with valuing all properties fairly [and equitably]. *MTAB Hrg. Transcr. 62:23-63:2.*

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JURISDICTION AND STANDARD OF REVIEW

23. 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.

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

25. 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).

26. 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 YCTAB hearing and subsequent decision.

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

CONCLUSIONS OF LAW

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

29. "All taxable property must be appraised at 100% of its market value...." Mont. Code Ann. § 15-8-111.

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30. 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).
31. 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).
32. 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.
33. 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 By & Through State*, 281 Mont. 196, 208-209, 933 P.2d 815, 823 (1997).
34. "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*,

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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).

35. “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).
36. 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, 332 P.3d 235; Mont. Code Ann. § 1-2-101.
37. 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.
38. “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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39. “[T]ax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer.” *Western Energy Co. v. State, Dep’t of Revenue*, 1999 MT 289, ¶ 10, 297 Mont. 55, 990 P.2d 767.
40. “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).
41. “[A]dministrative regulations interpreting the statute made by agencies charged with the execution of the statute are entitled to respectful consideration.” *Dep’t of Revenue v. Puget Sound Power & Light Co.*, 179 Mont. 255, 266, 587 P.2d 1282, 1288 (1978).
42. 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.
43. The Board finds that the best indication of value for the tax year 2020 is the recent sale price of the subject property for \$320,000. The DOR presented evidence that they are obligated to value any new construction as of January 1 of each year, and neither party presented the Board with enough evidence to show the status of the basement as of January 1, 2020.
44. The DOR relied on a sales flyer for the property and a sales verification form as proof that the basement was finished. The DOR did verify the sale with Ms. Bayley in early 2020 but did not inspect the property. The Board heard conflicting testimony that the work was not

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complete until after January 1, 2020, and the date the Taxpayer wrote on the Sales Verification form was an estimate. DOR did not visually inspect the property until the Taxpayer filed an AB-26, which was well past the January 1, 2020, valuation cutoff date.

45. The DOR's multiple changes to the property's value also raise some concern. Ms. Haeker testified in early 2020, a DOR appraiser visited the property and assessed the property's basement as 90% complete based on a conversation with Ms. Bayley, but the appraiser did not inspect the basement. After the Taxpayer filed an AB-26, a DOR appraiser did inspect the interior of the property and lowered the basement to 75% complete. While the Board acknowledges the DOR did lower the property's value when they reduced the percent complete of the basement, it still leaves questions about the basement's status on January 1, 2020. The Taxpayer did provide testimony that the basement was partially finished as of the sale date, justifying the higher value. Additionally, the DOR testified they were unaware of the improvements before the sale and had not visited the house since 2009.
46. While the Board does not know the status of the basement on January 1, 2020, the sale that occurred three months prior is the best evidence of the property's value. The Taxpayer testified the property was predominantly in the same condition as when the property sold in late September of 2019. Additionally, the property was appraised by an independent fee appraiser in September, less than three months before January 1, 2020. The Board finds the appraisal meets the standards set by the Montana Board of Real Estate Appraisers and is a validation of the sale price as a reliable indication of market value.
47. The Taxpayer testified the DOR should value the property as of January 1, 2018, using only information known to the DOR 2018. While the Board agrees the DOR should not use comparable sales after the January 1, 2018, lien date, the DOR is allowed to update a property's characteristics during a valuation cycle. Mont. Code Ann § 15-7-111(2) allows

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the DOR to adopt rules for determining the assessed value of new or remodeled property. The DOR has since promulgated Mont. Admin. R. 42.20.504 and 42.20.515 to assess the value of newly taxable property. The DOR did not change the condition, the desirability, or the utility of the property; the DOR only updated the basement from unfinished to 75% finished. Furthermore, the Board believes the DOR's valuation was equitable because the DOR witness testified the 2018 market sales analysis used to value properties in Yellowstone County, including the Taxpayer's neighbors, was used to value the subject property. Using the 2018 model may have benefited the Taxpayer because most property values have been rising and including new additional sales may have increased the property's estimated market value.

48. Lastly, while the Board considered the comparable sales approach, it was not as persuasive as the September sale and independent fee appraisal. We note that the Board found the DOR's comparable properties acceptable. Not only did the comparable properties have low comparability scores which validate the comps selected, but they were also within acceptable proximity of time and location of the subject property in the realm of best practice of appraisal theory.

49. The Legislature has defined market value as the "value at which property would change hands between a willing buyer and seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts." The Board understands the DOR must update properties when new construction is identified, but because the status of the basement is uncertain as of January 1, 2020, the Board finds the recent sale and independent appraisal are the best indications of market value for the subject property. The Board sets the value of the property land and improvements at the sale price of \$320,000 for 2020.

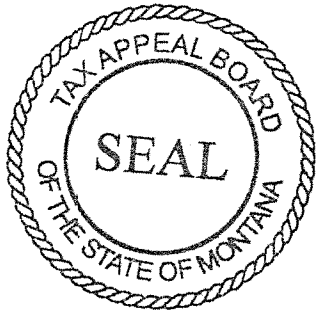
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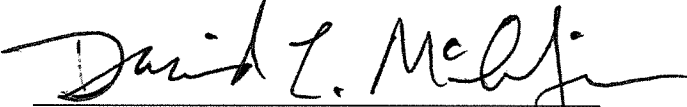
ORDER

50. State of Montana, Department of Revenues appeal and complaint is denied in part.

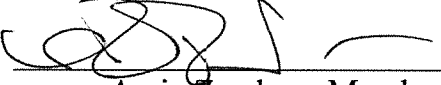
51. MDOR is ordered to set the property's taxable value at 317 Stonegate Circle, Billings, at \$320,000.

Ordered June 11, 2021

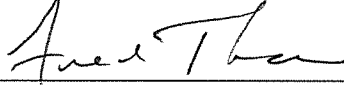




David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD



Amie Zendron, Member
MONTANA TAX APPEAL BOARD



Fred Thomas, 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, Conclusions 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 June 11, 2021 to:

Kristina K. Warren
Montana Department of Revenue
Legal Services
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