

BEFORE THE MONTANA TAX APPEAL BOARD

Montana Tax Appeal Board

INGE CAHILL,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2021-34

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

This is an appeal by Inge Cahill (Taxpayer), represented by Mark Cahill, of a decision by the Flathead County Tax Appeal Board (CTAB) denying an application for reduction in value on her property located at 1725 3rd Ave. W, Columbia Falls, Montana, and affirming the Department of Revenue's (DOR) land and improvement valuation for the 2021/2022 tax cycle. The Taxpayer timely appealed that outcome to the Montana Tax Appeal Board (MTAB) on December 13, 2021. We modify the CTAB's determination and grant the Taxpayer's appeal in part, reducing the land value to \$241,304 and maintaining the taxable value for the improvements at \$340,400.

ISSUE TO BE DECIDED

Whether the CTAB erred in affirming the DOR appraised land value of \$268,116 and improvement value of \$340,400 for this property.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Property Record Card 1725 3rd Ave. W. pg. 1
2. Property Record Card 1725 3rd Ave. W. pg. 2

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3. Carmel Ford, *Cost of Constructing a Home*, NAHB Economics and Housing Policy Group, Jan. 2, 2020, <https://www.nahb.org/-/media/8F04D7F6EAA34DBF8867D7C3385D2977.ashx> (Partial)
4. Table of Single Family Price and Cost Breakdowns – 2019 National Results
5. Columbia Falls Home Construction Costs & Prices – ProMatcher Cost Report (Partial)
6. Richard Dews, *Real Estate Market Trends*, Flathead Beacon, July 15, 2020, <https://flatheadbeacon.com/2020/07/15/real-estate-market-trends-110/>
7. Richard Dews, *Market Trends: Land Sales Article*, Flathead Beacon, July 7, 2021, <https://flatheadbeacon.com/2021/07/07/market-trends-land-sales-2/>
8. Flathead County 2020-2021 Real Estate Tax Bill for 1030 Riparian Dr.
9. Flathead County 2020-2021 Real Estate Tax Bill for 1110 Riparian Dr.
10. Flathead County 2020-2021 Real Estate Tax Bill for 626 Zephyr Ct.
11. Flathead County 2020-2021 Real Estate Tax Bill for 1611 Grove St.
12. Flathead County 2020-2021 Real Estate Tax Bill for 149 Jorgensen Trail
13. Property Record Card 149 Jorgensen Trail
14. Map of DOR Comparable 5
15. Map with DOR Comparable 5 and 149 Jorgensen Trail
16. Map of DOR Comparables
17. Flathead County 2020-2021 Real Estate Tax Bill for 1725 3rd Ave. W.
18. Cahill % Complete Breakdown
19. Montana Insulation Contractors, Inc. Work Order
20. Property Record Card 1725 3rd Ave. W pg. 1 (with Taxpayer's adjustments)
21. Property Record Card 1725 3rd Ave. W pg. 2 (with Taxpayer's adjustments)
22. Property Record Card 1725 3rd Ave. W pg. 3 (with Taxpayer's adjustments)

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- 23. Map of the Subject Property and City Park
- 24. Map of the Subject Property and Right of Way
- 25. Letter from Dave Heine, Broker

DOR Exhibits:

- A. Property Record Card 1725 3rd Ave. W
- B. Pre-2020 Floorplan Sketch
- C. Pictures and Map of the Subject Property
- D. Percent Completion Breakdown
- E. Land Sales Comparables
- F. Emails
- G. AB-26 Request
- H. 8/5/21 AB-26 Response Letter
- I. Carmel Ford, *Cost of Constructing a Home*, NAHB Economics and Housing Policy Group, Jan. 2, 2020, <https://www.nahb.org/-/media/8F04D7F6EAA34DBF8867D7C3385D2977.ashx> (Complete) – 8 pages
- J. Columbia Falls Home Construction Costs & Prices – ProMatcher Cost Report (Complete)

PROCEDURAL HISTORY

The DOR valued the subject property at \$608,516 for the 2021/2022 appraisal cycle, with the land valued at \$268,116 and the improvements valued at \$340,400. *MTAB Hrg. Tr. 2:5-9; Ex. A, at 000003*. The Taxpayer filed an AB-26, Request for Informal Classification and Appraisal Review, with the DOR on July 8, 2021, requesting a land value of \$149,189 and an improvement value of \$150,192. *Ex. G*. The DOR sent a Form AB-26 Determination Letter to the Taxpayer dated August 5, 2021, denying the Taxpayer's request. *Ex. H*. The Taxpayer appealed the DOR's valuation to the CTAB on August 16, 2021, requesting a land value of \$187,681 and an improvement value of \$238,280. *MTAB Dkt. 1*. The CTAB hearing was held on November 10, 2021, and the CTAB's decision denying the Taxpayer's application for reduction was sent to the parties on November 15, 2021. The Taxpayer appealed to the

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Montana Tax Appeal Board (MTAB) on December 13, 2021, per Mont. Code Ann § 15-2-301, requesting a land value of \$131,760 and an improvement value of \$164,677, for a total of \$296,437. *MTAB Hrg. Tr. 5:3-22; MTAB Dkt. 2*. The MTAB hearing was conducted in Helena on April 19, 2022, at which the following were present:

- a. Mark Cahill, Taxpayer's representative (via Zoom); and
- b. Kristina Warren, DOR Counsel; Lori Gibson, DOR Appraiser (via Zoom); Dawn Cordone, DOR Area Manager for Flathead and Lincoln Counties (via Zoom).

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 foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. The DOR valued the subject property for the 2021/2022 valuation cycle using market data based on the January 1, 2020, statewide lien date. *MTAB Hrg. Tr. 37:1-12*. The market data used for the January 1, 2020 lien date was derived from sales of residential properties that took place during 2018 and 2019. *Id.* The data from those sales was then used to build a comparable sales method model that was used to calculate the value of the subject property utilizing characteristics of the subject property as of January 1, 2021. *Id.*
3. Based on the DOR's records from 2011 to 2018, the DOR believed the main floor of the subject property improvements was 1,444 square feet. *MTAB Hrg. Tr. 40:18-23; Ex. B*. In October 2020, Ms. Gibson conducted an exterior inspection of the subject property, remeasured and resketched the exterior of the buildings, and arrived at a square footage of 2,944. *MTAB Hrg. Tr. 40:24-41:6; Ex. A*. Ms. Gibson included photographs of the property which she took

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during this inspection to add to the existing photographs in the DOR records from 2011 and 2018. *MTAB Hrg. Tr. 41:7-14; Ex. C, at 000009-000010.*

4. The subject property fronts the Flathead River which is southeast of the property. *MTAB Hrg. Tr. 41:15-42:12; Ex. C, at 000011.* The subject property is also abutting, to the south, a city park maintained by the City of Columbia Falls. *Id.*

5. Tax bills for the five comparable sales the DOR used in valuing the subject property show an increase in land value from 2020 to 2021 between 35% and 56%. *Ex. 8-12.* The tax bill for the subject property shows an increase in land value of 188% in the same time period. *Ex. 17.*

6. Mr. Cahill testified that no explanation for the increase in value was provided as required per Mont. Code Ann. § 15-7-102(1)(b)(iv) which states that an explanation must be provided within the required valuation notices if the market value has increased by more than 10%. *MTAB Hrg. Tr. 11:13-17.* Montana Code Annotated § 15-7-102(1)(b)(iv) is a relatively new law with an effective date of October 1, 2021, meaning such information will be required for notices mailed after that date.

7. Mr. Cahill also argued that because the subject property is within the city limits, extracting separate values for land and improvements was noncompliant with Mont. Code Ann. § 15-8-111(9)(c) which states that land and improvements are separately assessed when the land is outside an incorporated city or town. *MTAB Hrg. Tr. 11:19-23.*

8. The DOR valued the land using the sales comparison approach and valued the improvements using the cost approach. *MTAB Hrg. Tr. 34:17-21.* Land is always valued using the sales comparison approach based on market transactions of vacant land or property with improvements extracted. *MTAB*

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Hrg. Tr. 60:1-61:2. Because of the incomplete construction of the improvements, the DOR was required to estimate a percent complete, and value the improvements using the cost approach. *Id.* Since there are very few sales of partially complete improvements that could be used to support a valuation of other partially complete improvements using the sales comparison approach, residential properties that are incomplete, such as the subject property, will be valued using the cost approach. *Id.*

9. When developing costs of construction to use for the cost approach, the DOR uses nationally accepted appraisal cost guides, including Marshall and Swift, and local construction cost data. *MTAB Hrg. Tr. 44:21-45:4.* The DOR will also review information by property owners. *Id.* Mr. Cahill provided a cost breakdown for a new roof and a patio roof. *MTAB Hrg. Tr. 44:11-45:4; Ex. F.* He testified that because of his connection to the building industry, he is able to secure materials at a lower cost than provided by the guides the DOR uses. Because the DOR develops costs from national and local sources to value all properties in Montana, the information provided by the Taxpayer did not change the DOR's valuation. *Id.* An individual taxpayer's ability to secure materials at a discount does not change the costs that would be incurred by other builders to reconstruct the property and therefore does not change the costs used in the cost method of valuation.
10. Mr. Cahill testified that as of January 1, 2020, the "house was still an empty shell, uninhabitable, and devoid of any interior improvements." *MTAB Hrg. Tr. 11:11-13.*
11. Ms. Cordone testified that the DOR used the land sales and construction cost data based on the lien date of January 1, 2020, to value the characteristics of the residence as of January 1, 2021, while the Taxpayer is incorrectly using the characteristics of the home as they were as of January 1, 2020, essentially

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confusing the valuation date and lien date. *MTAB Hrg. Tr. 64:3-65:5; Ex. A, at 000003-000004, 000007; Ex. 20, 21.*

12. Mr. Cahill testified that the DOR mischaracterized the property and made mathematical and methodology errors, so he recalculated the valuation using market data from his own research. *MTAB Hrg. Tr. 22:9-25; Ex. 7-11, 16, 17, 20-22; Ex. A, at 000003-000004, 000007.*
13. Mr. Cahill presented into evidence a July 7, 2021 article from the Flathead Beacon written by Richard Dews, the CEO of Glacier Flathead Real Estate, estimated the average price of one to five-acre parcels of land in Columbia Falls in 2020 was \$45,000 per acre. *MTAB Hrg. Tr. 13:6-9; Ex. 7.*
14. To recalculate the land value of the subject property, the Taxpayer multiplied the property size of 2.1 acres times the \$45,000 per acre price as determined by the article to arrive at a land value of \$131,760.¹ *MTAB Hrg. Tr. 22:9-25; Ex. 7-11, 16, 17, 20-22; Ex. A, at 000003.*
15. The DOR testified that Mr. Cahill made multiple mistakes in his mathematic calculations and his calculations did not follow accepted appraisal methodology. *MTAB Hrg. Tr. 64:3-65:5; Ex. A, at 000003; Ex. 21.*
16. The DOR testified that they used several comparable land sales, excluding sales that the DOR determined were not arm's length transactions in order to develop the land valuation model used to value the subject property's land. *MTAB Hrg. Tr. 43:1-16; Ex. E.* To support the DOR's land value, Ms. Gibson chose five comparable raw or extracted land sales along the river she felt were most representative of the Taxpayer's property. *Id.*

¹ It is unclear to this Board if Mr. Cahill considered additional information to calculate a value of \$131,760 for the subject property based in this information.

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17. Mr. Cahill argued that the inclusion of comparable sale #5 distorts the results under the DOR's methodology because it is a 1.86-acre plot, but the DOR has it listed as a 5-acre plot; because the DOR does not list any improvements on the property, but the aerial view of the 5-acre plot shows otherwise; and because it is outside of the city limits while the subject property is within city limits. *MTAB Hrg. Tr. 13:21-23; 16:10-17:12; Ex. 13, 14, 15, E.*

18. The DOR testified that comparable sale #5 is considered two parcels which have separate geocodes; however, the parcels must be sold together, so they are valued as one parcel. *MTAB Hrg. Tr. 43:17-22; Ex. E.*

19. Ms. Gibson testified that the subject property has a lesser price per square foot value than some of the comparable sales because the law of diminishing returns may dictate that smaller parcels will sell for more per acre or square foot than a larger parcel. *MTAB Hrg. Tr. 44:6-10; Ex. E.*

20. The DOR did not use a front foot method in this case because, unlike lake frontage, the market does not always support the frontage method when dealing with river frontage. *MTAB Hrg. Tr. 51:3-10.* For this reason, the DOR uses the acreage or square foot method to calculate the value of land along rivers.

21. Mr. Cahill introduced into evidence the results of a 2019 study conducted by the National Association of Home Builders (NAHB) which tended to show that 61% of the sales price of a single-family home goes to construction cost. *MTAB Hrg. Tr. 12:4-7; Ex. 3, I.* The study also conducted a construction cost survey and cost breakdown that tended to show that the total construction cost for a 2,594 square foot single-family home was \$296,652 which equates to \$114 per square foot. *MTAB Hrg. Tr. 12:7-10; Ex. 4.*

22. Mr. Cahill also introduced into evidence a ProMatcher Cost Report for the Columbia Falls area, which shows basic construction costs for custom homes in

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Kalispell was between \$98 and \$145 per square foot. *MTAB Hrg. Tr. 12:11-13; Ex. 5, J.*

23. Mr. Cahill also introduced into evidence an article from the Flathead Beacon written by Richard Dews, the CEO of Glacier Flathead Real Estate indicating that the median price for a single-family residence in Columbia Falls on January 1, 2020, was \$135 per square foot, which includes the value of the land. *MTAB Hrg. Tr. 12:24-13:2; Ex. 6.*

24. Using the information from the Exhibits noted above and the property record card (PRC) for the subject property, Mr. Cahill presented his adjustments to the DOR's calculation of value. Because the home is only one floor, Mr. Cahill excluded the DOR's deduction of \$8,807 for the basement and moved the entire 2944 square feet to the "unfinished area" line on the PRC. *MTAB Hrg. Tr. 24:5-25:6; Ex. 7-11, 16, 17, 20-22; Ex. A, at 000004.* Mutliplying this area by the \$115 per square foot value from the NAHB table, he arrived at a home value of \$338,560. *Id.*

25. Mr. Cahill testified that there was an existing gas boiler and a circulation pump to heat the home but there was no heat pump or forced air as listed in the DOR worksheet. *MTAB Hrg. Tr. 24:5-25:6; Ex. 7-11, 16, 17, 20-22; Ex. A, at 000004.* He also testified that there were no fixtures because the house was only a shell as of the lien date. *Id.*

26. In the DOR's valuation, the PRC shows a value of \$275,756 for the first floor. *MTAB Hrg. Tr. 37:24-38:4; Ex. A, at 000004.* This value includes the quality of construction, property characteristics, and square footage. *Id.* The total value, replacement cost new (RCN), without considering the percent complete, was \$438,716, which includes values for heating, plumbing, and additions. *Id.*

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27. The DOR does not use information provided by NAHB or ProMatcher because the information provided is not reliable for developing costs to value Montana properties. *MTAB Hrg. Tr. 56:20-57:15*. The NAHB study received usable responses from only 49 builders nationwide to compile its data and refers readers to Marshall and Swift for more specific cost estimating data. *MTAB Hrg. Tr. 31:23-32-1; Ex. 3-4, Ex. I*.

28. Ms. Cordone testified that the information provided in the articles written by Mr. Dews is informative, but the values provided therein are averages that include million-dollar sales and hundred thousand dollar sales without regard to analyzing comparable properties as is required by both mass appraisal and fee appraisal standards. *MTAB Hrg. Tr. 69:9-70:2; Ex.6-7*.

29. In addressing the additional six fixtures on the PRC, Ms. Gibson testified that almost every dwelling has at least three additional fixtures because of the kitchen sink, the hot water heater, and a washing machine hookup. *MTAB Hrg. Tr. 46:15-25; Ex. A, at 000004*. Ms. Gibson estimated, based on the quality of construction, that the Taxpayer's home might have an additional three fixtures, examples of which could include an extra bathroom sink, a separate tub and shower unit, or a utility sink. *Id.*

30. Because the Taxpayer did not allow the DOR inside to inspect the interior of the improvements for valuation, the DOR estimated the residence was 51% complete on the valuation date, based on the exterior inspection and conversations with Mr. Cahill. *MTAB Hrg. Tr. 38:15-17; 42:14-24; Ex. D*. The DOR arrived at the percent complete by inputting the data the appraiser was able to collect regarding the following ten factors: Excavation; joist subfloor, floor; wall framing; wall sheathing; roof framing; roof cover; windows, exterior doors; roughed in plumbing; roughed in electrical; and roughed in heating. *Id.*

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31. Mr. Cahill argued that at the DOR's percent complete is incorrect, and that the residence was instead 45% complete. *MTAB Hrg. Tr. 13:24-15:15; Ex. 18, D.* To arrive at 45% the Taxpayer subtracted the 3% from the joist factor and also subtracted 3% from the factors that are impacted by whether there is a basement. *Id.* Mr. Cahill testified that there is only a slab foundation, therefore the floor joist factor should be deleted. *Id.*
32. In the DOR's valuation, the basement was given a negative value on the PRC because a lower cost is given to a slab foundation. *MTAB Hrg. Tr. 37:23-24; Ex. A, at 000004.*
33. Mr. Cahill contends that by including the cost of the plumbing and heating rough-ins within the percent complete for the price per square foot calculation while also adding more value for the rough-ins themselves, the DOR is essentially double taxing the value of the heating and plumbing rough-ins. *MTAB Hrg. Tr. 25:8-20; Ex. A, at 000004.* Therefore, in his calculations, Mr. Cahill further decreased the percent complete by the 7 percentage points the rough-ins were given and used 38% complete to arrive at a value of \$128,653. *MTAB Hrg. Tr. 26:11-16; Ex. 20-22.* He then added back in the 7% to come up with a value of \$23,699 for the roughed-in plumbing and heating. *Id.*
34. The additions listed on the PRC include the exterior improvements of the residence, which, in this case, includes the decks, porches, and an attached garage. *MTAB Hrg. Tr. 38:18-25; Ex. A, at 000004.* They are included within the cost summary and are impacted by the percent complete. *Ex. A, at 000004.*
35. The PRC contains a value of \$2,594 for a framed porch. *MTAB Hrg. Tr. 26:17-24; Ex. 20-22; Ex. A, at 000004.* Mr. Cahill testified that this structure is only a slab poured between the walls of the house and the walls of the garage but does not have its own separate framing. *Id.* Mr. Cahill argued that because it is only a slab and not a framed porch, he multiplied the 96 square feet by the

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\$3 per square foot price he testified that concrete cost in 2019 which comes to \$288 rather than the DOR's value of \$2,594. *Id.*

36. The PRC also contains a finished, framed garage with a value of \$36,432. *MTAB Hrg. Tr. 27:16-20; Ex. 20-22; Ex. A, at 000004.* Mr. Cahill testified that the garage should be valued at \$35.25 per square foot because the garage is a three-sided structure in that one wall is attached to the already existing wall of the home. *Id.* The structure is 780 square feet which when multiplied by \$35.25 arrives at a value of approximately \$27,500. *Id.*
37. The PRC has two entries for concrete decks with values of \$1,117 and \$2,834. *MTAB Hrg. Tr. 27:20-22; Ex. 20-22; Ex. A, at 000004.* The first is 227 square feet and the second is 576 square feet. *Id.* Mr. Cahill argued that the square footage of each structure should instead be multiplied by \$3 per square foot for values of \$549 and \$1,728 respectively. *Id.*
38. The PRC contains a value of \$14,697 for an enclosed porch. *MTAB Hrg. Tr. 27:1-14; Ex. 20-22; Ex. A, at 000004.* Mr. Cahill testified that the porch is not enclosed because there is only a roof, one solid wall, and one shear wall, but the other two sides are open. *Id.* Mr. Cahill argued that the value of this structure should instead be calculated by multiplying 288 square feet by \$14 per square foot, for a value of approximately \$4,027. *Id.*
39. Mr. Cahill's calculations for the additions listed in the cost summary of the PRC as discussed in sections 35 through 38 come to a total value of \$34,092 rather than the DOR's value of \$57,674. *MTAB Hrg. Tr. 27:22-24; Ex. 20-22; Ex. A, at 000004.* Adding Mr. Cahill's value of \$128,653 for the unfinished residence, \$23,699 for the value of the plumbing and heating rough-ins, and \$34,092 for the value of the additions, the improvements subtotal under the cost summary becomes \$186,444. *Id.*

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40. Ms. Cordone contended that the Taxpayer incorrectly placed a value in the “unfinished area” portion of the cost summary, which is usually used when there is no intention to finish that area, such as an attic. *MTAB Hrg. Tr. 64:3-65:5; Ex. 21; Ex. A, at 000004*. She testified that the value of the home as completed should instead be listed in the cost summary and then the percent complete applied in the calculation portion of the PRC to account for the fact that the improvements were unfinished on the valuation date, rather than inserting a deduction into the cost summary portion. *Id.* By calculating the value of the residence based on a percent complete and then including that value in the unfinished area of the PRC, the Taxpayer applied the percent complete reduction to the value of the property twice. *Id.*
41. The DOR valuation also includes other buildings and yard improvements (OBY), which, in this case, include the framed garage, the lean-to, the asphalt, and the concrete. *MTAB Hrg. Tr. 38:22-25; Ex. A, at 000007*.
42. There is a right of way next to the subject property that is 60 feet wide, 18 of which are paved. *MTAB Hrg. Tr. 18:6-19:5, 23:11-17; Ex. 23, 24; Ex. A, at 000007*. This leaves 21 feet between the edge of the subject property and the paved street that is still part of the right of way. *Id.* Within that 21 feet is another section of pavement which Mr. Cahill asserts the DOR has included as part of the subject property within the OBY/flat values. *Id.* The DOR has given the asphalt an RCN value of \$6,127. *Id.* However, Mr. Cahill asserts that the asphalt was laid in late September 2019 for a cost of \$2.50 per square foot which equates to \$1,700 because the area, which is between the concrete aprons of the pole barn and the property corner, is 680 square feet. *Id.*
43. Mr. Cahill testified that the detached garage is actually a pole barn and lean-to that was constructed in 2015. *MTAB Hrg. Tr. 18:18-20:7; Ex. 24; Ex. A, at 000007*. There is heat, water for the heater, a sewer tap for a toilet that goes down to septic, and insulation within the garage; however, Mr. Cahill testified

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that the structure is not habitable because it lacks a solid foundation. *Id.* He testified that the construction of this structure in 2019 cost \$24 per square foot plus \$3 per square foot for the concrete slab, including labor costs, rather than the \$48 per square foot the DOR has valued the structure. *Id.*

44. Mr. Cahill argued that value of the pole barn should be calculated by multiplying the 1,600 square feet of the pole barn times \$24 per square foot to arrive at a value of \$38,400 and a value minus depreciation of \$32,847 rather than the DOR's value of \$76,556 and \$65,490 minus depreciation. *MTAB Hrg. Tr. 23:2-24:3; Ex. 7-11, 16, 17, 20-22; Ex. A, at 000007.* He argued the value of the lean-to should be calculated by multiplying the 600 square feet of the lean-to by \$4 a square foot to arrive at a value of \$2,400 and a value minus depreciation of \$2,053 rather than the DOR's value of \$2,589 and a value minus depreciation of \$2,040. *Id.* Mr. Cahill argued that the square feet of asphalt should be reduced to 680 square feet rather than the 2,000 square feet the DOR valued since that was the only part that was on the subject property, the remainder being located on the right of way, thus leaving a value of \$1,700 and a value minus depreciation of \$1,454. *Id.* Lastly, he multiplied the 400 square feet of the concrete slab by \$3 a square foot to arrive at a value of \$1,200 and a value less depreciation of \$1,027. *Id.* All of these values come to a total value less depreciation of \$37,381 for the OBY/flat value. *Id.*
45. The framed garage was added onto the record in 2016 by the appraiser's predecessor as an average garage with heat. *MTAB Hrg. Tr. 39:1-6; Ex. A, at 000007.* Ms. Gibson testified that this hearing is the first time the DOR has heard that the garage is a pole barn rather than a garage. *Id.*
46. In correspondence with the DOR, Mr. Cahill stated that the DOR's costs were erroneous. *MTAB Hrg. Tr. 45:9-46:14; Ex. F.* Ms. Gibson testified that (1) the pictures in Exhibit C make it appear that there is going to be an enclosed porch and the city permit estimated the completed value to be over \$14,000, which

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aligns with the DOR's completed value of \$14,600; and (2) Mr. Cahill was not considering the nationally accepted cost guides or local cost data the DOR uses to develop costs used in the cost approach to valuation. *Id.*

47. The OBY values are included within the improvement cost summary on the PRC, which shows a total improvement value of \$340,400. *MTAB Hrg. Tr. 39:12-40:5; Ex. A, at 000003.* The total improvement value is calculated by multiplying the RCN of the dwelling (which includes the application of a grade factor to the sum of costs including those for the structure, heating, plumbing, and additions) by ratios representing different factors such as percent complete, depreciation, and local and economic conditions (ECF). *MTAB Hrg. Tr. 38:11-14, 39:12-40:5; Ex. A, at 000003-000004.*
48. To arrive at the requested improvement cost value, the Taxpayer calculated an RCN of \$238,648 and an RCN less depreciation value of \$127,298, then added the OBY/flat value of \$37,381 for a total of \$164,677. *MTAB Hrg. Tr. 27:25-28:9; Ex. 20-22; Ex. A, at 000004.*
49. Mr. Cahill also argued that the subject property should receive an additional 20% reduction because the park adjacent to the subject property creates a blight that negatively impacts the value of the property. *MTAB Hrg. Tr. 20:8-22:5, 29:11-13, 32:17-20; Ex. 25.* In support of his argument, Mr. Cahill introduced into evidence a letter written by Dave Heine analyzing the effect of blight on previous sales of properties in the Flathead Valley. *Id.* Mr. Cahill testified that a potential buyer could easily see the vehicle traffic, haphazard parking, and other obnoxious activities stemming from the park. *Id.* He further testified that people use the park to access his property, despite his fence and no trespassing signs, leaving trash on and stealing from the property. *Id.* Mr. Cahill testified that the DOR reduced the value of the land in 2019 because, prior to Mr. Cahill building a 6-foot fence, there was a path that connected the park and the river that ran through the subject property. *MTAB Hrg. Tr. 20:23-21:9; Ex. 20; Ex.*

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A, at 000003. The value of the land as shown on the PRC in 2018 was \$124,310, while the value of the land as shown on the PRC in 2019 was \$93,150. *Ex. A, at 000003.*

50. To determine the effect of blight on properties, the DOR looks at the sales within the model. *MTAB Hrg. Tr. 47:13-48:17.* If the sales within the neighborhood are consistently showing a decrease in sale value in that neighborhood compared to the sales value of similar properties without that influence, the DOR will apply an influence percent reduction to adjust the value that will be reflected in the market land information on the PRC. *MTAB Hrg. Tr. 47:13-48:17, 63:12-17.*

51. The DOR testified they do not have market data to suggest that the blight the Taxpayer attributes to the subject property is decreasing the property's value. *MTAB Hrg. Tr. 40:11-16.* The DOR testified that there was a sale of a property near a river access that sold for above market in 2017 which would not support a reduction for blight; however, that sale was in the previous cycle and was not considered. *MTAB Hrg. Tr. 48:22-49:2, 63:3-17.* The DOR further testified that if there are several sales that support a reduction for blight, they will include an influence factor, but that was not the case during this cycle. *MTAB Hrg. Tr. 63:3-17.* However, there were sales in 2020 near parks that will be considered in the next cycle. *Id.*

52. Ms. Gibson testified that examples of sales impacted by blight discussed in Mr. Heine's analysis are from a recession market and that the properties used are not comparable to the Taxpayer's property. *MTAB Hrg. Tr. 49:3-10; Ex. 25.*

53. In correspondence with the DOR, Mr. Cahill stated there were multiple errors within the PRC. *MTAB Hrg. Tr. 45:9-46:14; Ex. A, at 000003-000004, 000007; Ex. F.* One such error was that public water and sewer are unavailable at his property. *Id.* Ms. Gibson testified that she changed that on the PRC,

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though the availability of city services is informational only and does not change value. *Id.* Mr. Cahill also identified an error on the PRC regarding the forced air and cooling. *Id.* Ms. Gibson testified that, currently, that does not impact the value because the percent complete is only considering a typical roughed-in heating system, but when the Taxpayer's home is complete, the DOR will update the record. *Id.*

54. Ms. Cordone testified that the DOR was very conservative in their value estimation for the subject property. *MTAB Hrg. Tr. 65:24-25.*

JURISDICTION AND STANDARD OF REVIEW

55. 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 CTAB's decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. *Mont. Code Ann. § 15-2-301.*
56. 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, 303 P.3d 1279, ¶ 22.
57. 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

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

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59. “All taxable property must be appraised at 100% of its market value....” *Mont. Code Ann. § 15-8-111*.
60. 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)*.
61. 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 show the propriety of their action. *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
62. 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.
63. 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).
64. “‘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

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(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).

65. “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)*.

66. 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)*.

67. “(a) Subject to subsection (7)(b), a county tax appeal board and the Montana tax appeal board may not adjust the estimated value of the real or personal property determined under subsection (6) unless the landowner or the landowner’s agent:
 - (i) gives permission to the department to enter the land to appraise or audit the property; or
 - (ii) provides to the department and files with the county tax appeal board or the Montana tax appeal board an appraisal of the property conducted by an appraiser who is certified by the Montana board of real estate appraisers. The appraisal must be conducted in accordance with current uniform standards of professional appraisal practice established for

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certified real estate appraisers under 37-54-403. The appraisal must be conducted within 1 year of the reappraisal valuation date provided for in 15-7-103(6) and must establish a separate market value for each improvement and the land.

(b) If a landowner or the landowner's agent prevents a person qualified under subsection (1) from entering land to appraise or audit property or fails or refuses to establish a date and time for entering the land pursuant to subsection (5), the department shall estimate the value of the real and personal property located on the land." *Mont. Code Ann. § 15-7-139(7)*.

DISCUSSION

Cost of Materials

68. When the DOR calculates the RCN of a property using the cost approach to valuation, it is calculating what it would cost to replace the structure based on costs developed from nationally accepted appraisal cost guides and local construction cost data. Such information is used to value all properties in Montana which are valued using the cost approach. Although Mr. Cahill is able to obtain materials for less due to his industry connections, the RCN is not based on what a specific builder would charge but rather on costs developed from a wide range of data that may represent what it would cost another builder to replace the structure. This Board finds that the evidence presented by Mr. Cahill, while informative, was narrow in scope and mostly unreliable for mass appraisal purposes. The NAHB study includes caveats stating that the sample size is small, that it does not control for differences in types of homes, and that it is "not a perfect tool for estimating costs for a particular house." *Ex. I.* The ProMatcher report also contains a disclaimer stating that it is intended for general information only and refers the user to a local service provider for information on a specific project. *Ex. J.* The Real Estate Market Trends articles written by Mr. Dews provide averages which include sales of all land or all homes within a certain time period and in a certain geographical location but do not differentiate among comparable properties as required under both

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mass appraisal and fee appraisal standards. As such, the Board declines to adopt the values provided in these sources for use in valuing the subject property as we believe the existing method employed by the DOR is more accurate and is applied equally to all taxpayers.

Percent Complete

69. Additionally, this Board is unable to find for the Taxpayer that the improvements were 45% complete rather than 51% complete.

70. First, Mr. Cahill's testimony focused on the condition of the improvements as of the lien date of January 1, 2020, while the DOR valued the improvements based on their condition on the valuation date of January 1, 2021, a full year later. Because the difference between the lien date and the valuation date may be easily confused at times, this Board would encourage the DOR to better explain this difference to taxpayers going forward. While the DOR appraisers may be trained in these matters and deal with them on a regular basis, most taxpayers do not. Due to an avoidable misunderstanding, Mr. Cahill's testimony focused on the condition of the improvements as they were a full year prior to the valuation date. This mistake is especially relevant in this case because the house was in the midst of a complete remodel which changed its characteristics significantly between those two dates. However, Mr. Cahill's testimony regarding the percent complete of the house was not the only reason the Board declines to find for the Taxpayer regarding the percent complete of the improvements.

71. This Board disagrees with Mr. Cahill's method of determining the percent complete of the improvements. Exhibit D shows the breakdown of the DOR's calculation of the percent complete of the improvements. To determine the percent complete, the DOR looks at multiple components of the structure and applies a set percentage for each component that is completed. The percentage points vary for certain components based on whether the structure has a

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basement or not. This opinion will focus on the components at issue here, which include the following along with the respective percentage points assigned to each completed component if the structure has a basement, as well as if a structure does not have a basement. They are as follows:

Component	Percent with basement	Percent w/o basement
Excavation: footings, foundation, basement, columns	11	8
Joist, subfloor, floor	3	3
Roof framing, ceiling joists, sheathing	8	9
Windows, exterior doors	8	9
Plumbing – roughed in	4	5

72. If a structure has a basement, the excavation accounts for three percentage points more toward the completion of the structure than it does if there is no basement. Because the percentage points for all components must equal 100%, this means that an additional percentage point is added to other components when there is no basement so that the percentage points add up to 100%.² In Exhibit 18, Mr. Cahill accepted the 8% complete for excavation since the house does not have a basement (as opposed to 11% for houses that have basements), but then rejected the addition of the three percentage points back in for the roof framing, windows, and plumbing. Selecting which percent complete to use for components when there is no basement but rejecting others as Mr. Cahill did here, would mean the values of the percentages when added up after the home is fully complete would only add up to 97% and could never be 100% complete based on this chart. If we reject the inclusion of the three percentage points added when there is no basement as Mr. Cahill did, and also reject the reduction of the three percentage points for excavation when there is no

² Exhibit D includes additional components and percentages not included here because they were not at issue in this matter. Such components added together equal 100% for a structure with a basement and 100% for a structure without a basement.

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basement (which Mr. Cahill did not do), we could ultimately see 100% completion on this chart. Either way, to use the chart where the home could ultimately be considered 100% complete, three percentage points would be added back to Mr. Cahill's calculation and the improvements would be considered 48% complete. That leaves the remaining three percentage point reduction Mr. Cahill calculated.

73. Mr. Cahill calculated an additional reduction of three percentage points toward the completeness of the improvements by removing the percent complete for the joists because there are no floor joists on a slab. *MTAB Hrg. Tr. 15:5-7*. However, the category which includes joists also includes the floor and subfloor. If removal of this component in its entirety was appropriate when there are no joists as Mr. Cahill argues, the percent complete of the structure could never add up to 100% on this chart. Therefore, this Board finds that this component also includes the construction of the floor and subfloor. Because neither party presented evidence that the construction of the floor was not complete³, this Board finds that an additional three percentage point reduction is inappropriate. For the above stated reasons, this Board finds the DOR's calculation of 51% complete as of the valuation date of January 1, 2021 is correct based on the evidence presented.
74. We commend Mr. Cahill for a sincere effort to mirror the DOR's method of calculating the value of a partially complete improvement, but he failed to use methods and formulas consistent with best appraisal practice, therefore fell short in the credibility of his estimate of value.
75. The DOR visited the subject property in October 2020, just a few months prior to the valuation date. Because Mr. Cahill declined to allow the DOR into the improvements for appraisal purposes, as is the Taxpayer's right, Mont. Code

³ There is a separate component on the chart for floor coverings which is left unchecked on both Exhibit 18 and Exhibit D, which means neither party included it in their calculations as complete and is therefore not at issue here.

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Ann. § 15-7-139(7) requires the DOR to estimate the value of the improvements based on information available. If the DOR has valued a property according to Montana law and appraisal guidelines, the DOR's value is presumed to be correct. The Taxpayer then has the burden to prove to the Board that the DOR's valuation is incorrect. In this case for this appraisal cycle, the Board finds the Taxpayer did not overcome that burden with regard to the cost method of valuation and with regard to the percent complete of the improvements. The Board upholds the DOR's valuation of \$340,400 for the improvements.

Blight

76. The DOR testified that there was a 2017 sale that would not have supported a reduction for blight, but it was not considered in this cycle. The DOR also testified that there are several sales in 2020 near parks that were not considered in this cycle, but they will be considered for the 2023/2024 cycle. The DOR did not discuss any sales that either would or would not support a reduction for blight in the current cycle. This Board is not convinced that just because the sales discussed by the DOR were outside of the current appraisal timeline, that means a reduction is inappropriate in this cycle. The DOR previously reduced the value of the land between 2018 and 2019 by approximately 25% prior to the installation of the 6-foot fence around the property due to trespassers crossing the subject land on foot. The Taxpayer is now requesting a reduction of 20% based on his reading of information presented in the letter from Mr. Heine regarding blight, while the DOR contends a reduction is not supported. This Board notes that the letter from Mr. Heine, while informative, is not a fee appraisal. The letter is a market study of neighborhood blight which is based on sales of properties (most of which occurred during a recession market) that are not comparable to the Taxpayer's property. It also indicates the activities the Taxpayer described as blight (or external obsolescence) are less permanent than those affecting the properties discussed in the market study. The letter

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does not provide an opinion on whether or not the activities on the Taxpayer's property would reduce the sales price by a particular amount or percentage.

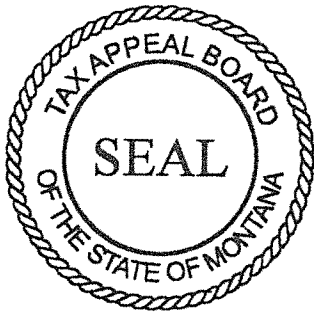
77. This Board was persuaded by Mr. Cahill that trespassers continue to enter the property to a lesser extent despite the fence. This Board also notes that the levels of trespassing and related nuisance issues Mr. Cahill testified to is likely to vary throughout the seasons. Because the Taxpayer has taken steps to mitigate the trespassing, including installing a 6-foot fence and purchasing the neighboring parcels, and because the issues described are not likely to be as significant year-round, this Board is not convinced that the land value should be reduced by 20%. However, this Board was persuaded that the trespassing and related activities may have an impact on what a willing buyer would pay for the property despite the lack of sales to show what impact such activities had on other similarly situated properties during the appraisal timeframe. This leaves the Board with the task of determining how much of a reduction is warranted in the current cycle. Because the DOR previously reduced the land value by 25% prior to the installation of the fence, the Board finds that a 10% reduction for the land is appropriate for this cycle. The Board's decision applies to this cycle only. The DOR will analyze and consider more recent sales of properties neighboring parks during the next cycle. For these reasons, the Board finds that the land value should be reduced by 10% (or \$26,812) from \$268,116 to \$241,304 for the 2021/2022 valuation cycle.

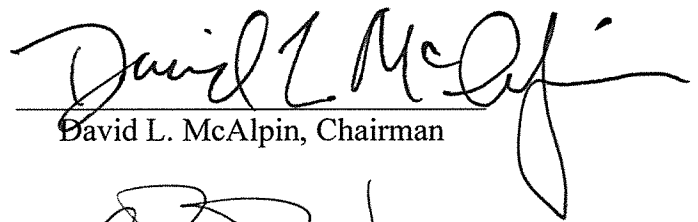
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ORDER

78. The Taxpayer's appeal is granted in part.
79. The DOR is ordered to set the 2021/2022 taxable value for the land located at 1726 3rd Ave W, Columbia Falls, Montana at \$241,304 and to maintain the taxable value for the improvements at \$340,400.

Dated this 15th day of July 2022.

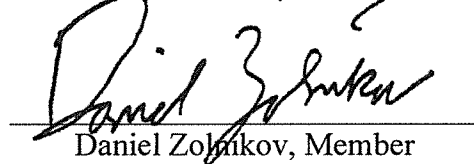




David L. McAlpin, Chairman



Amie Zendron, Member



Daniel Zolnikov, 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 July 15, 2022, to:

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