

DAVID JENSEN,

Appellant,

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Respondent.

CASE No: PT-2022-11

**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 Lewis and Clark County Tax Appeal Board (CTAB) denying David Jensen (Taxpayer) a reduction in value on the subject property located at 401 West Gail Street, East Helena, Montana. The Taxpayer timely appealed that outcome to the Montana Tax Appeal Board (MTAB) on February 25, 2022. We affirm CTAB’s decision upholding the Department of Revenue’s (DOR) assigned property value.

**ISSUE TO BE DECIDED**

Whether the CTAB erred in affirming the DOR total value of \$230,600, with a land value of \$72,580 and an improvement value of \$158,020.

**EXHIBIT LIST**

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. MCA 15-7-308
2. Emails between James Holmes and David Jensen
3. DOR’s Responses to Discovery Requests
4. Comparable Sales Report
5. Property Record Cards for 107 E. Groschell St.
6. Property Record Card for 209 E. Main St.
7. Property Record Card for 418 E. Groschell St.

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8. Property Record Card for 601 E. Riggs St.
9. Property Record Card for 6 W. Groschell St.
10. Property Record Card for 320 W. Groschell St.
11. Property Record Card for 404 W. Groschell St.
12. Property Record Card for 2114 Townsend Ave.
13. Property Record Card for 401 W. Gail St. (subject property) with pictures of flooding and a USDA map of a selenium plume
14. East Helena Aerial Map, Comparable Sales Report Analysis, MRA Estimates vs. Current Market Value Analysis, Current Market Value v. Current Cost Value Analysis
15. Neighborhood 205.329.1 Sales Map, 2020 Land Valuation, Data Quality for the Twenty-Five Data Points, Residential Land Market Analysis – Supplemental Data, Residential Land Market Value Analysis – Computation of Market Value per Sq. Ft. and Depreciation, 2020 Current Market Value Calculation for Subject Property.

DOR Exhibits:

- A. Subject Property Record Card
- B. (No exhibit labeled B)
- C. 2020 Land Valuation Model
- D. Sales Packet for Market
- E. Property Images
- F. CDU Fair Adjustment
- G. Neighborhood 205.329.1 Sales
- H. MRA Calculation Worksheet.

**PROCEDURAL HISTORY**

The Taxpayer received his notice of valuation assessment from the DOR setting the property value for 2021/22 at \$230,600 with an improvements value of \$158,020 and a land value of \$72,580. On August 6, 2021, the Taxpayer filed an AB-26 request for an informal classification and appraisal review with the DOR. The DOR conducted an on-site review of the subject property on September 23, 2021. On

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September 27, 2021, the Taxpayer emailed the DOR Appraiser, James Holmes, following the on-site review, requesting further information prior to the final AB-26 meeting. The Taxpayer did not receive a response, so he sent a follow-up email on October 30, 2021. On November 2, 2021, Mr. Holmes responded via email stating that an AB-26 Determination Letter had been sent to the Taxpayer on October 7, 2021. He further stated that the DOR determined the property characteristics of the subject property are correct and that the informal appeal had been closed with no change to the valuation of the subject property. *Ex. 2.*

The Taxpayer then appealed to the CTAB on November 5, 2021, and CTAB held a hearing on January 27, 2022. The CTAB denied the Taxpayer's appeal on January 27, 2022.

The Taxpayer timely appealed to the MTAB on February 25, 2022, per MCA § 15-2-301, requesting a total value of \$188,300. *MTAB Hrg. Tr. 2:11-17.* The MTAB hearing was conducted in Helena on July 12, 2022, at which the following were present:

- a. David Wayne Jensen, Taxpayer; Paul F. Jensen, Taxpayer's Witness;
- b. Teresa Whitney, DOR Counsel; John Davis, DOR Appraiser; Rosalind "Roz" Olson, DOR Area Manager for Lewis and Clark, Broadwater, Meagher, and Northern Gallatin Counties; Nick Harris, DOR Modeler; and James Holmes, DOR Appraiser.

The record includes all materials submitted to CTAB, a recording of the CTAB hearing, all materials submitted to MTAB with the appeal, exhibits submitted by the parties prior to and at the MTAB hearing, and a transcript of 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 residence located on the subject property is a three-bedroom, three-bathroom ranch style home built in 1970. *Ex. 13.*

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3. The Taxpayer testified that the subject property has 1,486 square feet of finished living area and that there have been no major upgrades to the subject property since 1970. *MTAB Hrg. Tr. 37:10-13*. The subject property has carpeted floors, original cabinets and countertops, and an additional unfinished 1,486 square foot full basement. *MTAB Hrg. Tr. 38:6-11; Ex. 13, at 3-4*.
  
4. The DOR provided a comparable sales report for five sales used in Neighborhood 205.329.1 to value the subject property. *Ex. B*. The Taxpayer analyzed the five sales along with DOR valuations of three additional properties he selected that are located within a one block radius of the subject property. Not all of the properties the Taxpayer selected had sold during the applicable timeframe for the January 1, 2020 lien date. *MTAB Hrg. Tr. 13:15-21*. DOR used sales from 2017, 2018, and 2019 in the market model for East Helena for the January 1, 2020 lien date.
  
5. Of the five comparable sales presented by DOR, four are three-bedroom, one-bathroom homes, and one is a two-bedroom, two-bathroom home. *MTAB Hrg. Tr. 24:20-25*.
  
6. The Taxpayer pointed out the variation among the sale price, MRA value, and adjusted sale price for each of the five DOR comparable sales and the valuations of the three Taxpayer selected properties to the extent the information was available. *MTAB Hrg. Tr. 25:6-24; 44:22-47:6; Ex. 14*. The Taxpayer testified that he believed the difference between the sale price, MRA value, and adjusted sale price showed inconsistencies. *Id.* When asked if he understood how the DOR made adjustments to the comparable sales to compare them to the subject property, he stated that he had asked for this information throughout the process but did not receive it. *MTAB Hrg. Tr. 26:1-17*.

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7. The Taxpayer compared the amount of “finished living area” of the DOR’s five comparable sales to the finished living area of his property and pointed out the differences in the effective ages of the DOR’s comparable sales to the subject property. *MTAB Hrg. Tr. 27:18-31:24*. The Taxpayer introduced downloaded photos from a sales listing on the Multiple Listing Service (MLS) for one of the DOR’s comparable sales. *MTAB Hrg. Tr. 27:18-28:11*.
8. The Taxpayer also compared the finished living area, the effective ages, and property features of the three additional properties he selected within a one block radius of the subject property that he believed to be similar to the subject property. *MTAB Hrg. Tr. 33:1-24; Ex. 10*. He also provided interior photographs for one of the properties which he was able to download from a sales listing on the MLS. *Id.* One of the three properties the Taxpayer selected was not represented in the DOR’s model, which the DOR indicated may mean it did not sell during the applicable timeframe or that it was not a verified by the DOR as an arm’s length transaction. *MTAB Hrg. Tr. 35:14-36.19*.
9. The Taxpayer testified that the market value of four of the five comparable sales provided by the DOR increased between 5.9% and 24.3% from the previous cycle. In contrast, the Taxpayer testified that the market value of two of the three comparable properties that he presented decreased in market value, and one increased 9.7%. He further testified that the market value of the subject property increased 20.9% increase. *MTAB Hrg. Tr. 48:1-18; Ex. 14, at 5-6*.
10. The DOR argued that the prior cycle value that the Taxpayer was using to calculate the 20.9% increase in overall value of the subject property was based on a settled value that was agreed upon by the Taxpayer and DOR during the pandemic to avoid a going to a hearing. *MTAB Hrg. Tr. 88:5-23; 107:5-9*. The DOR further testified that the increase in the Taxpayer’s valuation from the prior cycle was, in part, the result of the DOR bringing the property back up to market value in the new cycle. *MTAB Hrg. Tr. 88:5-23*. DOR Appraiser, John

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Davis, testified that had the previous values been the actual assessed value rather than a settlement, the percent increases in Exhibit 14 would be different and would likely be closer together. *MTAB Hrg. Tr. 66:20-67:7.*

11. To explain the variances that the Taxpayer had identified as inconsistencies, Mr. Davis testified that property values increase at different rates in the market, therefore, the sale prices of comparable properties are what dictate the value set by the DOR. *MTAB Hrg. Tr. 104:18-105:6.* He also testified that when the DOR reviews sales, it is possible for them to discover that some information regarding the property was incorrect in previous valuations. When the DOR updates or corrects such information, the resulting increase or decrease in valuation can cause the apparent discrepancies the Taxpayer described. *MTAB Hrg. Tr. 105:19-106:10.*
12. The Taxpayer testified that 4,725 square feet of the subject property's land are "not consistently viable" due to flooding issues. *MTAB Hrg. Tr. 38:15-39:2; Ex. 13, at 5-6.* The flooding impacts the on-street parking and destroys the asphalt on the adjoining street. *MTAB Hrg. Tr. 39:4-8; 41:3-5; Ex. 13, at 5-7.*
13. The Taxpayer introduced into evidence a 2017 map from the U.S. Department of Agriculture Farm Services Agency. *MTAB Hrg. Tr. 41:5-42:10; Ex. 13, at 8.* He testified the map shows the subject property is in a selenium plume, which is an EPA contamination site, and its location in the plume attaches stigma to the subject property. *Id.*
14. The subject property has an overall Condition, Desirability, Utility (CDU) score of fair. This is an average of the score given for condition, utility, and desirability. The subject property has a fair score for condition as well as for desirability of the property and the location. The subject property has an average score for utility. Most of the properties around the subject property have a higher overall CDU score of average as well as higher property and

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- location desirability scores of average. *MTAB Hrg. Tr. 74:15-25; Ex. A, 28; Ex. F.*
15. The Taxpayer testified that the DOR's fair grade of the property, given partly to compensate for the flooding issues, does not appear to change the value of the land. *MTAB Hrg. Tr. 48:21-49:4.*
  16. Mr. Davis testified that the reduction in value of the subject property resulting from the DOR changing the grade of the subject property to fair will reduce the value of the improvements rather than the value of the land. *MTAB Hrg. Tr. 104:1-6.*
  17. Mr. Davis testified that a fair score indicates that a home is slightly below average and/or that the property itself or the location has lower desirability. He testified that, in this case, the flooding and the plume contributed to the fair score the subject property was given. *MTAB Hrg. Tr. 66:10-18; Ex. A, at 28.* Mr. Davis testified that the lack of updates to the subject property also contributed to the fair score. *MTAB Hrg. Tr. 74:25-75:6.*
  18. Mr. Davis testified that land is not given a CDU score and the score given to an improvement on the land does not impact the land value. He testified that the land value is based off the land model which is not strictly based on square feet, but is based off of the base lot size rates and incremental rates set by the DOR. *MTAB Hrg. Tr. 67:17-68:4.* He testified that in this neighborhood, the base lot size is 10,000 square feet with a base rate of \$6.86 per square foot and a \$0.58 per square foot incremental rate. *MTAB Hrg. Tr. 102:9-14.*
  19. Mr. Davis testified that the grade is determined by the quality of the build at the time of construction. If a major remodel is done, the grade may change. *MTAB Hrg. Tr. 90:9-13.* He testified that if nothing has been updated, the DOR would not put an effective age on the property, but, depending on the types of

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- upgrades, the DOR would add an effective age rather than a grade change to account for the upgrades. For example, if upgrades are done that change the style but the “bare bones of the house” stay the same, the DOR would likely use a newer effective age rather than a grade change to account for those upgrades that effect the value. *MTAB Hrg. Tr. 90:24-91:16.*
20. Mr. Davis testified that the DOR adjusted the CDU downward in a previous cycle to account for the flooding and the plume. However, the DOR has not adjusted the grade, nor have they added an effective age since the subject property has not been updated. *MTAB Hrg. Tr. 91:18-92:17.*
21. The Taxpayer provided two alternative methods of computing the value of the subject property. The first method was based on a comparison of the values derived under the sales comparison approach versus the cost approach. *Ex. 14.* The second method calculates the value per square foot of the 1,486 square feet of living space based on certain information from the DOR’s land model. *Ex. 15.*
22. For his first method of calculating the value of the subject property, the Taxpayer compared the market value (under the sales comparison approach) to the cost value of the DOR’s comparable sales, as well as to the comparable properties he selected. According to the Taxpayer, the DOR’s comparable sales had a percentage difference between the sales comparison value and the cost value ranging from 1.2% to 5.35%. Two of the Taxpayer’s comparable properties had negative percent differences, meaning that the cost value was higher than the market value, while one comparable property had a market value that is 0.78% higher than cost value. The Taxpayer testified that the sales comparison value of the subject property is 15.65% higher than the cost value. *MTAB Hrg. Tr. 49:5-15; Ex. 14, at 8-10.*



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23. The Taxpayer testified that the median percent difference between the sales comparison value and the cost value of the DOR's comparable sales is 3.91%, which equates to a \$9,020 median value adjustment, which when applied to the subject property yields a "comparable sales residential property median value" of \$208,420. The Taxpayer further testified that the median percent difference between the sales comparison value and the cost value of the of the properties he selected is negative 5.33% which equates to a negative \$12,291 value adjustment and, based on his calculations, results in a "comparable neighborhood residential property median value" of \$187,109. *MTAB Hrg. Tr. 49:16-50:3; Ex. 14, at 10.*
24. The Taxpayer arrived at the "comparable sales residential property median value" of \$209,420 by taking the current market value under the sales comparison approach of \$230,600 (as calculated by the DOR) and multiplying it by his calculated median value percentage increase of the sales comparison value over the cost value of 3.91% to yield a median value adjustment of \$9,020. He then added \$9,020 to the cost value of the subject property (as calculated by the DOR) of \$199,400 for a cost value of \$208,420.
25. The Taxpayer arrived at the "comparable sales residential property median value" of \$187,109 by multiplying \$230,600 by negative 5.33% to get a median value adjustment of (\$12,291) which he then subtracted from the cost value of the subject property to come to a value of \$187,109.
26. For his second method of calculating the value of the subject property, the Taxpayer used selected information from the DOR's land model to derive a per square foot calculation of value that he applied to the 1,486 square feet of living area of the home. In this analysis, the Taxpayer did not assign any value for the basement.

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27. The Taxpayer testified that the DOR's land model has a R-squared statistical rating of 0.725 and an adjusted R-squared rating of 0.671 but it should have a R-squared rating of at least 0.9. The Taxpayer's witness, Paul Jensen, testified that this is in accordance with the statistical industry and that the lower the number the more variability exists in the data. *MTAB Hrg. Tr. 51:23-53:5, 60:1-4; Ex. 15, at 2*. Paul Jensen is a Professional Engineer and licensed appraiser for Montana Department of Transportation properties, but he is not a licensed residential and commercial appraiser. *MTAB Hrg. Tr. 59:20-60:9*.
28. DOR Area Manager, Roz Olson, testified that the R-squared for the land valuation is 0.72 which complies with the IAAO industry standard range of 0.70 to 0.95. The adjusted R-squared is not rated by the IAAO. She also testified that the rest of the statistics for this valuation also complied with IAAO standards. *MTAB Hrg. Tr. 99:4-17; Ex. C*.
29. Ms. Olson testified that the number of sales<sup>1</sup> used in the land model comply with IAAO standards, which say the DOR should have at least three sales and that they should be the most current sales. *MTAB Hrg. Tr. 100:16-20*.
30. The Taxpayer testified that the wide dispersion of the data points (land sales) from the DOR's calculated median value causes the standard deviation bell curve to be wide and flat, which indicates a wide variance in values would occur. *MTAB Hrg. Tr. 53:7-14; Ex. 15, at 3*. Because of this, the Taxpayer analyzed the 25 sales data points for characteristics that differed from the subject property to create a list of properties sales that were not commercial sales, vacant land sales, or sales that did not occur in calendar year 2019. *MTAB Hrg. Tr. 53:14-19; Ex. 15, at 4*. The Taxpayer then removed any sales

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<sup>1</sup> The DOR witness's testimony indicates there were 24 sales in the land model; however, there are actually 25.

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for land not classified as grade 5, leaving 14 of the 25 original data points.  
*MTAB Hrg. Tr. 53:19-22; Ex. 15, at 4.*

31. The Taxpayer calculated the market value per square foot of living space for the 14 remaining properties and the depreciation applicable to those properties based on the Property Record Card information on the DOR's website. *MTAB Hrg. Tr. 54:1-17; Ex. 15, at 5.* He calculated the cost per square foot of living space by dividing the 2020 market value by the square feet of living space of each of the remaining properties. *Id.* He calculated his depreciation by subtracting 2020 market value as shown on the Property Record Cards from the market adjusted sales price for each property.<sup>2</sup> *Id.* He then used these calculations to derive the median cost per square foot of living space of \$158.39 and median depreciation of \$940.03 per year. *MTAB Hrg. Tr. 54:9-22; Ex. 15, at 5-6.* The Taxpayer used these values to calculate a value for the subject property of \$188,366.04. *MTAB Hrg. Tr. 54:16-55:4; Ex. 15, at 6.* No value was assigned to the basement, garage, patio, or deck.
32. The Taxpayer arrived at the value of \$188,366.04 by multiplying his calculated median cost per square foot of \$158.39 by 1,486 square feet to come to a value of \$235,367. He then multiplied his calculated median depreciation per year of \$940.03 by 50 years (the age of his property as of the lien date) to arrive at total depreciation of \$47,001.50. He subtracted \$47,001.50 from \$235,367 to arrive at a market value for the subject property of 188,366.04.
33. The two methods used by the Taxpayer to calculate market value resulted in values of \$187,109 and \$188,366.04 for the subject property. Therefore, the Taxpayer requested a value of \$188,300 for the subject property. *MTAB Hrg. Tr. 55:5-10; Ex. 14, 15.*

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<sup>2</sup> Exhibit 15 indicates the Taxpayer used the "Market Adjusted Sale Price less Improvement Value" from the DOR's land model. However, the figures the Taxpayer used were actually the Market Adjusted Sales Price and included the value of the improvements.

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34. To address the Taxpayer's inclusion of additional properties he believed to be more comparable than the DOR's comparable sales, Mr. Davis testified that the DOR software chooses the comparable sales with the best comparability points and that if there had been a property closer to the subject property that had good comparability points, the software would have chosen that sale as a comparable. *MTAB Hrg. Tr. 72:1-13.*
  
35. Mr. Davis testified that two of the comparable properties chosen by the Taxpayer had fewer square feet than the subject property to illustrate that the Taxpayer's comparables were inferior to the subject. *MTAB Hrg. Tr. 76:13-77:5.*
  
36. Mr. Davis testified that the DOR market analysis places weights on different attributes, like location, size, room count, etc. based on the area and uses those to find that most comparable properties. *MTAB Hrg. Tr. 77:7-78:7.*
  
37. Ms. Olson testified that the DOR considers distance by choosing the comparable sales with the lowest comparability points within the neighborhood, which is East Helena in this case. *MTAB Hrg. Tr. 86:3-10.*
  
38. Mr. Davis testified that the size of a bedroom does not affect the comparability points. *MTAB Hrg. Tr. 108:11-109:7.* Ms. Olson testified that the number of bedrooms adjusts the comparability points but does not affect the adjusted sales price. *MTAB Hrg. Tr. 84:19-85:3.*
  
39. The DOR has a policy of further examining and sometimes disregarding comparable sales that have comparability points over 200 as a check on the DOR's Orion valuation software system. The system automatically chooses the five comparable sales with the lowest number of comparability points. *MTAB Hrg. Tr. 85:2-23.*

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40. Mr. Davis testified that comparability points below 200 usually demonstrate that a property is very similar to the subject property. In this case, the DOR's comparable sales have comparability points ranging from 55 to 78 which indicates they are good comparables. *MTAB Hrg. Tr. 68:17-25.*
  
41. Mr. Davis testified that if the DOR removed 6 West Groschell from their comparable sales and replaced it with 320 West Groschell, which the Taxpayer asserts is a better comparable, the value of the subject property would have gone up. *MTAB Hrg. Tr. 69:1-11.* Mr. Davis testified that 320 West Groschell is smaller than the subject property, has fewer bedrooms, and is a lower grade of construction. *Id.*
  
42. The Taxpayer argued that home values are based on *finished* square feet. *MTAB Hrg. Tr. 113:1-2.* He valued only the finished main floor living area of the subject property in his analysis, without assigning any value to the basement or other improvements. *MTAB Hrg. Tr. 69:12-14; Ex. 14, at 10.*
  
43. Mr. Davis countered, stating that both the finished and unfinished portions homes must be valued, and the subject property has a total of over 2,800 square feet even though only the main floor is finished. When valuing property, the DOR measures everything from the outside and then attributes value to finished versus unfinished areas, considering the quality of finishes. *MTAB Hrg. Tr. 69:12-19.*
  
44. Ms. Olson testified that the sales comparison approach is the DOR's preferred method of valuation, and that the DOR needs a reason to use the cost approach rather than the sales comparison approach in order to be equitable. *MTAB Hrg. Tr. 89:1-15.*
  
45. In response to the Taxpayer's method of calculating depreciation, Ms. Olson testified that the DOR uses depreciation tables that its mass appraisal cost

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teams develop every two years. *MTAB Hrg. Tr. 87:15-24*. She further testified that the DOR could not use the method the Taxpayer used to calculate depreciation in Exhibit 15-5 to come up with the correct depreciation for the subject property improvements. *Id.*

46. To address the flooding issue and selenium plume, DOR modeler, Nick Harris, testified that if the land model, through sales prices, demonstrate that there is a detriment to the land, the DOR then creates and applies a negative influence. For example, if the land model demonstrated that land on the plume in East Helena was selling for less than land off the plume, then the DOR would create an influence or category to reduce the land value of the properties on the plume. He testified that the sales in East Helena for this cycle did not dictate a difference in sales prices, so no influence was created. *MTAB Hrg. Tr. 93:1-94:14*.
47. To explain how the DOR time trends sales to the lien date, Mr. Harris testified that the time trend for the land model is the percentage obtained by taking the sales price divided by the assessed value at the lien date. Then that percentage is taken from all sales and averaged to determine the rate of change per year which is then broken down in the model by month and then added to the sales price to adjust the sales price from the date of sale up to the lien date. *MTAB Hrg. Tr. 114:16-19, 115:18-22*. For the market model, he testified that the time trend is based on improved sales while the land model time trend is based on land sales. *MTAB Hrg. Tr. 115:8-11*.
48. The Taxpayer alleged that the DOR failed to provide the information he requested during discovery in a timely matter, if at all. *MTAB Hrg. Tr. 14:8-24:15; 57:5-58:18*. Taxpayer had requested information related to the DOR comparable sales, as well as information related to numerous properties within a one block radius of the subject property, regardless of whether the properties

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had sold or not during the applicable time period for the January 1, 2020 lien date. *Ex. 3, at 1-7.*

49. The DOR countered, stating they sent all of the information they had. When the Taxpayer alerted the DOR that a file he had been sent did not contain certain information or was unusable, the DOR sent the information to him again right away. *MTAB Hrg. Tr. 15:18-16:4, 22:15-23:10.*
  
50. The Taxpayer acknowledged he received the information the DOR re-sent to him but claimed he did not receive it in a timely manner so that he could prepare and submit his exhibits to MTAB by the July 6, 2022 deadline. *MTAB Hrg. Tr. 16:5-23.* The Taxpayer acknowledged he was out of town during the discovery process and did not check the files sent by the DOR for several weeks after they were sent.<sup>3</sup> *MTAB Hrg. Tr. 16:5-23, 20:16-21:10, 23:13-24:4.*
  
51. To address the lack of interior photos of the comparable sales, Mr. Davis stated that during AB-26 reviews, the DOR will take interior photos, if allowed, but those photos are not kept beyond appeal timelines. *MTAB Hrg. Tr. 65:13-19.* Further, Mr. Davis stated that interior photos are not included as part of the public record, and they are generally kept on the appraisers' computer until the timeline for an appeal closes. *MTAB Hrg. Tr. 73:19-74:6.*
  
52. The Taxpayer stated that he requested but did not receive a breakdown of the sales prices for the DOR's comparable sales and the properties the Taxpayer selected, showing the allocation of sales proceeds to land and to improvements. *MTAB Hrg. Tr. 45:13; Ex. 14, at 2-4.*

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<sup>3</sup> According to the Scheduling Order, the deadline to respond to discovery requests was May 27, 2022 and the Witness and Exhibit lists were due July 6, 2022.

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53. Mr. Davis testified that the Realty Transfer Certificates the DOR receives when a property is sold do not break out the sale price attributed to the land versus the home because people do not usually allocate how much of the purchase price is attributable to land versus improvements. *MTAB Hrg. Tr. 67:8-16*. Therefore, the DOR does not have that information to give to the Taxpayer. *Id.*

**JURISDICTION AND STANDARD OF REVIEW**

54. 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, a direct appeal to MTAB from a decision of the DOR. Mont. Code Ann. § 15-2-302.
55. This Board may hear appeals de novo. *Puget Sound Energy, Inc. v. State*, 2011 MT 141, ¶ 30, 361 Mont. 39, 255 P.3d 171. "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).
56. The Board's order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-302.

**CONCLUSIONS OF LAW**

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



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59. 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)*.
60. 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).
61. 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.
62. “‘Assessment formulations’ by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion.” *Peretti v. State, Dep’t of Revenue*, 2016 MT 105, ¶ 15, 383 Mont. 340, 344, 372 P.3d 447, 450 (citing *O’Neill v. Dep’t of Revenue*, 2002 MT 130, ¶ 23, 310 Mont. 148, 155, 49 P.3d 43, 47); see *Northwest Land & Dev. of Montana, Inc. v. State Tax Appeal Bd.*, 203 Mont. 313, 317, 661 P.2d 44, 47 (1983) overruled on other grounds by *DeVoe v. Dep’t of Revenue of State of Mont.*, 263 Mont. 100, 866 P.2d 228 (1993).
63. 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

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what has been inserted.” *State v. Minett*, 2014 MT 225, ¶ 12, 376 Mont. 260, 332 P.3d 235; *Mont. Code Ann. § 1-2-10*.

64. “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*.
  
65. “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)).
  
66. “[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.
  
67. “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).
  
68. “...[Realty Transfer Certificates] and the information contained in the certificate are not a public record and must be held confidential by the county clerk and recorder and the department...The confidentiality provisions do not apply to compilations from the certificates, to summaries, analyses, and evaluations based upon the compilations, or to sales data used by the

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department to value residential property in a property taxpayer's market model area after the property taxpayer signs a written or electronic confidentiality agreement.” *Mont. Code Ann. § 15-7-308(a)*.

**DISCUSSION**

69. The Taxpayer provided a comprehensive argument in support of his requested value; however, the Board declines to adopt the value proposed by the Taxpayer for the following reasons.
  
70. The Taxpayer’s first method of calculating the value of his property involved a comparison of the values of certain properties derived under the sales comparison approach versus the values derived under the cost approach. One issue with this strategy is that he used values assigned by DOR to other properties in his calculations rather than sales prices of those other properties. The DOR testified that the properties the Taxpayer selected to compare his property to were not necessarily comparable to the subject property. The values of each of the properties the Taxpayer selected were based on sales of properties comparable to each of those properties, meaning different comparable sales may have been used to value those properties than were used to value the Taxpayer’s property due to the differences in the characteristics of each of the properties. Thus, to comport with appraisal best practices, the Taxpayer’s property must be valued based on comparable sales of property and not on other property values. Due to this unorthodox method, we find the value he advanced less credible.
  
71. Additionally, this Board is not convinced that comparing differences in values derived under the sales comparison approach versus the cost approach among several properties and using the resulting median difference yields a more credible result than that reached by the DOR using industry accepted mass appraisal procedures. The DOR’s cost tables are developed every cycle from national and local data and reflect market prices. The costs of different building

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materials will not always increase and decrease in proportion to each other. For these reasons, this Board is not convinced that using a median difference between sales comparison value versus cost value of several different properties as the Taxpayer argued, yields a credible value.

72. To be clear, this Board does not believe that simply using sales rather than values would cure the deficiencies the Board notes in the Taxpayer's calculations. Certainly, the Board commends the Taxpayer for his thoughtful and thorough examination of the value of his property, but we were not convinced the Taxpayer's methods of calculating the value of the subject property resulted in a credible proposed value.
73. For the second method of valuing the subject property, the Taxpayer performed calculations to come up with his own median per-square-foot cost and depreciation. This Board was not convinced that these calculations result in credible cost data or depreciation values. Again, the Taxpayer relied on values of other properties rather than sales of comparable properties. This Board finds that using the median per square foot value of selected properties, without regard for the properties characteristics, does not result in a credible per square foot value. Other than grade, there was no indication that any other characteristics were considered in that calculation.
74. As for the depreciation, this Board does not find using a comparison of the adjusted sale price to the 2020 market value a reliable indicator of annual depreciation. Even if the Board were to agree with the Taxpayer's calculations of the per square foot value and of the depreciation, the Taxpayer only calculated the value of his property using the 1,486 square feet of finished living space, and did not include a value for the basement, garage, patio, or deck. Regardless of whether the basement of the subject property is finished or not, it still has value, as do the other improvements to the property.

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75. With regard to the issues of flooding and the selenium plume, this Board finds that these reasonable reductions in value were applied in a previous cycle to reflect these deficiencies when the DOR lowered the grade of the improvements from average to fair. The results of that change carry through to and are applied in the current cycle.
76. The Taxpayer testified that he did not receive much of the information he requested from the DOR. The DOR testified they provided all of the information they had. The Board notes that some of the information the Taxpayer requested relates to sales information for properties that did not sell during the applicable time frame. Not all transfers are sales. Some transfers result from a gift or inheritance, in which case there would be no sales price. The DOR does not include sales that are not verified as arm's length transactions, such as a sale between family members, in its model as the sales price of such sales may not be indicative of fair market value. This Board finds that, with the exception of the information contained on Exhibit H discussed below, the DOR made a good faith effort to timely provide the information they are required to provide. The Taxpayer expressed frustration that he received some corrupted files during discovery that had to be re-sent and thus did not receive them in a timely manner to submit his exhibits to MTAB before the July 6, 2022 due date. While this Board understands that frustration, we note that part of the delay was due to the Taxpayer being out of town per his own admission. Discovery closed on May 27, 2022, and the Taxpayer testified that he contacted the DOR in late June regarding the corrupted files. The DOR took steps to remedy the situation when the Taxpayer alerted them to the problem, and the Taxpayer admitted he ultimately received them although later than anticipated. The fact that certain files were not usable could have been discovered earlier had the Taxpayer tried to access them earlier.
77. The Board notes that the DOR introduced its Exhibit H at the hearing in rebuttal to the Taxpayer's Exhibits 14 and 15. For the reasons stated above, this Board was not convinced the Taxpayer's proposed value was credible, and the

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inclusion of Exhibit H did not affect the Board's decision. However, the Board notes that the Taxpayer claimed to have requested the information found in Exhibit H on how certain calculations were performed throughout the process, beginning with the AB-26. Thus, this information should have been provided to the Taxpayer much earlier in the process. This Board never received a satisfactory answer from the DOR as to why this information was not provided when it was initially requested, much less why it was provided on the day of the hearing. Nor did the Board receive a satisfactory answer as to why the DOR cancelled the meeting it had scheduled with the Taxpayer at the Taxpayer's request. To be clear, this Board finds that the methods the Taxpayer used to calculate the value of his property did not yield credible values, and that result would be the same whether or not the Taxpayer adjusted the properties he analyzed based on the information provided in Exhibit H. However, this Board is troubled by the DOR's decision to delay providing information and to cancel a meeting requested by a taxpayer. Taxpayers have a right to appeal the valuation of their property every cycle.

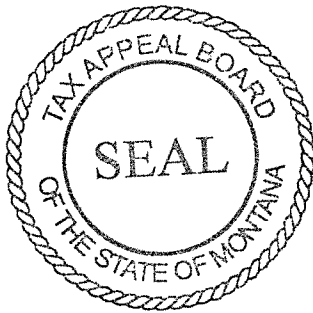
78. Although we are troubled by some of the DOR's actions in this case, for the reasons stated above, this Board agrees with the DOR's valuation of the subject property.

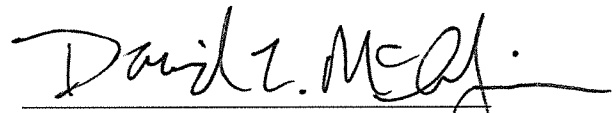
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**ORDER**

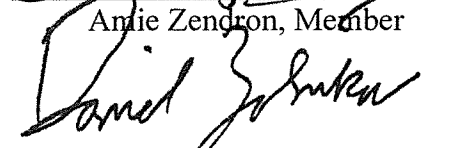
79. The Taxpayer's appeal is denied.
80. The DOR is directed to maintain the value of the subject property improvements at \$158,020 and the land at \$72,580 for a total of \$230,600 for the 2021/2022 valuation cycle.

Dated this 7th day of October 2022.



  
\_\_\_\_\_  
David L. McAlpin, Chairman

  
\_\_\_\_\_  
Annie 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. MCA §15-2-303(2).

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**Certificate of Service**

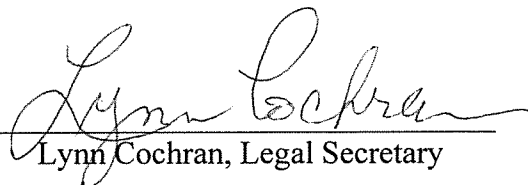
I certify that I caused a true and correct copy of the foregoing Findings of Facts and Conclusions of Law to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on October 7, 2022, to:

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