

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

JUN 02 2017

Montana Tax Appeal Board

John Richards,

Appellant;

v.

**State of Montana,
Department of Revenue,**

Respondent.

CASE No: PT-2016-21, 22, 23, 24

**Findings of Fact,
Conclusions of Law, Order,
and Opportunity for Judicial
Review**

Appellant, John Richards, filed the following property appeals challenging the Department of Revenue's (DOR) property values and the Missoula County Tax Appeal Board's (MCTAB) decisions regarding the appropriate value for the following properties:

1. PT-2016-21: a 1996 Marlette manufactured home located at 13442 Vannoy Lane #6 in Greenough, geocode 04-2331-05-1-01-03-M001. DOR valued the home at \$49,200. Mr. Richards requested a value of \$30,000 due to depreciation of the home, a reduction from a previous appraisal cycle, and its rural location as incomparable to more urban sales of similar mobile homes closer to Missoula. The MCTAB reduced the DOR's valuation of the mobile home to \$41,000. Before this Board Mr. Richards requests the mobile home be valued at \$30,000.
2. PT-2016-22: Mr. Richards' home and land described as Lot 4, Double Arrow Ranch at 220 Crescent Mountain Court in Seeley

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Lake, geocode 04-2540-14-1-04-03-0000. The MCTAB reduced Mr. Richards's value from \$366,700 to \$349,750. Mr. Richards requests a value of \$322,946 due to the proximity of his home to a gravel pit and what he claims is the entire cost to cure his radiant heating system.

3. PT-2016-23: a 200-acre property located at 42990 Hwy 200 East near Clearwater Junction, geocode 04-2331-05-1-01-03-0000. The DOR appraised the homesite to have a value of \$76,900. The MCTAB reduced the forest land homesite value from \$76,900 to \$60,000. Mr. Richards requests the homesite be re-classified as agricultural land and valued at \$29,870.
4. PT-2016-24: a 50.62-acre parcel including an active commercial gravel pit, near Clearwater, legally described as S05, T14N, R14W, geocode 04-2331-05-1-01-02-0000. While 22.2 acres of the parcel are permitted for gravel mining, only 10.1 acres were being mined on the statewide lien date. Therefore, Mr. Richards asserts the remainder should be classified as agricultural land. The MCTAB decided that only 10.1 acres were being mined commercially, with the remainder used as agricultural land. Before this Board, Mr. Richards states the MCTAB failed to properly value the property and requests this Board find the 10.1-acre gravel pit classified as commercial property be valued at \$30,000.

ISSUES

1. Whether DOR properly appraised Mr. Richards' four properties for 2015 and 2016.

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2. Whether the DOR used acceptable methods to determine the classifications and values of his land and improvements that resulted in the fair market values.

FINDINGS OF FACT

3. Mr. Richards received his assessment notice for the 2015-16 appraisal cycle and timely submitted AB-26 review requests to the DOR.
4. After the AB-26 reviews concluded, Mr. Richards timely filed an appeal of the AB-26 determinations to the MCTAB, which held a hearing in Missoula on February 17, 2016.
5. After the hearing, the MCTAB adjusted the DOR's values for each of the four properties as follows:
 - a. As to Mr. Richards' 1996 Marlette mobile home, the MCTAB reduced the quality of the mobile home from "good" to "average" which resulted in the mobile home being valued at \$41,000;
 - b. As to Mr. Richards' home, the MCTAB reduced the DOR's value by \$16,950, for a total of \$349,750, which the MCTAB determined constituted Mr. Richards' reasonable cost to cure the home's noisy heating system;

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- c. As to Mr. Richards' forest land site, the MCTAB reviewed the DOR's comparable sales and reduced the value of the one acre forest land homesite from \$76,900 to \$60,000; and
 - d. As to Mr. Richards' gravel pit, the MCTAB found Judge Deschamps' opinion and order applied to the property and thus only 10.1 acres of the property – which was actively being mined – would be assessed as commercial property. The MCTAB, however, did not change the DOR's value for the 10.1 acres of commercial property.
6. Mr. Richards appealed the findings of the MCTAB to this Board within 30 days.
 7. This Board's record in hearing this appeal includes the complete MCTAB file and a transcript of the MCTAB hearing.
 8. Exhibits and witness lists were provided to the Board in advance of the hearing and exchanged between parties prior to the hearing.
 9. This Board consolidated and heard all four appeals at a single hearing in Helena on February 16, 2017.
 10. During the hearing, both Mr. Richards and the DOR offered testimony and exhibits in support of the values they seek.
 11. Mr. Richards submitted the following exhibits, which were admitted into evidence:

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- a. 1 – NADAguides.com Value Report of 1996 Marlette Lakecrest.
 - b. 2 – An affidavit from Scott Kennedy dated February 16, 2016. Mr. Kennedy provided an opinion about how Mr. Richards’ home’s proximity to the gravel pit would affect the property value.
 - c. 3 – John Richards Construction Company estimate for cost to cure geocode lot 2435-34-1-01-05-0000 dated November 6, 2009. Total cost of \$27,200. This estimate was offered in a previous tax appeal on the property as part of Mr. Richards’ request to reduce the DOR’s value of this lot.
 - d. 4 – Realty Transfer Certificate for sale of geocode 2435-34-1-01-05-0000 dated August 8, 2014 in the amount of \$28,000.
 - e. 5 – Estimate for Cost to Cure – 220 Crescent Mountain Court Heating System which includes an estimate by Mr. Richards as well as estimates from Plumb-Tech Plumbing and Heating LLC and Bushco Construction and Drywall (admitted as Taxpayer Ex. 2 before the MCTAB).
12. The DOR submitted the following exhibits, which were admitted into evidence:
- a. A – Assessment packet for Mr. Richards’ mobile home,

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- b. B – Sales information packet for Mr. Richards’ mobile home.
- c. C – Mr. Richards’ mobile home Appraisal notice and AB-26 application.
- d. D – Mobile home property record cards and photos.
- e. E – Comparable sales information for Missoula County mobile homes.
- f. F – Residential Cost calculation work sheet for Mr. Richards’ mobile home.
- g. G – Worksheet for NADA mobile valuation procedure.
- h. H – Cover sheet for Mr. Richards’ residence assessment packet.
- i. I – Property record card and photos of Mr. Richards’ residence.
- j. J – Aerial map of neighborhood near Mr. Richards’ home and gravel pit.
- k. K – Mr. Richards’ home’s AB-26 application and determination.
- l. L – Computer Assisted Land Pricing (CALP) model used to value Mr. Richards’ Seeley lot.
- m. M – Comparable sales information used to value Mr. Richards’ home.

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- n. N – Marshall and Swift guide excerpts for depreciating radiant heating systems.
- o. O – Aerial sales map showing neighborhood comparable locations and sales prices.
- p. P – Mr. Richards’ forest land assessment packet.
- q. Q – Mr. Richards’ forest land Appraisal notice and AB-26 application.
- r. R – Forest land property record card and photos.
- s. S – Land map of Richards’ forest land.
- t. T – DOR administrative rules for homesite valuation on agricultural land.
- u. U – CALP valuation model for Mr. Richards’ forest land.
- v. V – Sales map for comparable sales proximate to Mr. Richards’ forest land.
- w. W – DOR disregarded sale information.
- x. X – DOR Procedure No. 2-3-002.1 – CALP – Computer Assisted Land Pricing (eff. July 16, 2013).
- y. Y – Mr. Richards’ gravel pit assessment packet.

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- z. Z – Judge Deschamps’ Opinion and Order in DV-12-1375 (March 24, 2014).
 - aa. AA – Mr. Richards’ gravel pit Appraisal Notice and AB-26 application.
 - bb. BB – Mr. Richards’ gravel pit property record card and photos.
 - cc. CC – DOR Procedure 2-3-022 – Gravel Pit Valuation (eff. June 17, 2015).
 - dd. DD – MT DEQ Permits and bonding information (approved April 2010).
 - ee. EE – MT DEQ Permits and bonding information (approved April 2010).
 - ff. FF – CALP model report for Mr. Richards’ gravel pit.
 - gg. GG – Regional sales map for Mr. Richards’ gravel pit.
13. The following witnesses testified at the hearing:
- a. Mr. Richards testified on his own behalf.
 - b. For the DOR:
 - a. Commercial and residential appraiser Candace Jerke;
 - b. Missoula County area manager Leslie Snyder; and

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c. Residential appraiser Brad Long.

PT-2016-21 Mobile Home

14. The mobile home is a 1996 Marlette, Lakecrest Model. DOR Ex. A. It is 52 feet long and 27 feet wide. *Id.* The home is situated on a large, rural land parcel 37 miles northeast of Missoula. *Id.* The home also has a second roof over the entire mobile home which also results in the home having a carport and a covered porch. *Id.* at pg. 5. The home has a septic system. MTAB PT-2016-21 Hrg. Transcr. 9:17 – 21.
15. In general, the mobile home is in a very rural setting and not in a traditional, suburban mobile home park. DOR Ex. D; *see also* DOR Ex. E. Mr. Richards’ mobile home, according to him, “lacks the amenities of having the neighborhood kept up, which definitely makes [the comparable properties] more attractive to a purchaser.” MTAB PT-2016-21 Hrg. Transcr. 14:1 – 5.
16. Mr. Richards testified about the condition of the home, stating the home “needed [to be] painted . . . it [has] chips and [needs] drywall repairs. It [has] smoke showing where the studs are in the walls. The carpet is bad in it. The flooring is bad in it.” MTAB PT-2016-21 Hrg. Transcr. 8:1 – 11.
17. Mr. Richards’ “ranch caretaker” lives in the mobile home. MTAB PT-2016-21 Hrg. Transcr. 17:18 – 20.

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18. Mr. Richards admitted he had not made any improvements to the mobile home, meaning “not one drop of paint in the ten years [he has] owned it.” MTAB PT-2016-21 Hrg. Transcr. 8:15 – 18. The mobile home’s condition, Mr. Richards stated, was “fair, not good, or average.” MTAB PT-2016-21 Hrg. Transcr. 11:3 – 4.
19. He also testified the cost of relocating his mobile home would be an important consideration by any buyer. MTAB PT-2016-21 Hrg. Transcr. 8:20 – 9:6.
20. Mr. Richards stated the second roof and carport would “have to be dismantled to move” the mobile home. MTAB PT-2016-21 Hrg. Transcr. 10:1 – 8.
21. He estimated the cost of moving his home would be \$5,000 - \$10,000. MTAB PT-2016-21 Hrg. Transcr. 9:4 – 5.
22. Mr. Richards testified a buyer would deduct these costs from the sale price. MTAB PT-2016-21 Hrg. Transcr. 9:3 – 9:6.
23. Mr. Richards testified that comparable sales used by the DOR from Missoula county were all located in high quality mobile home parks with paved streets and driveways. MTAB PT-2016-21 Hrg. Transcr. Tr. 13:23 – 14:11. He argued that due to these differences, his mobile home’s market value was significantly less than the comparable sales relied upon by the DOR. MTAB PT-2016-21 Hrg. Transcr. 14:24 – 15:9.

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24. Mr. Richards then testified that his assistant, using an on-line National Association of Automotive Dealers (NADA) valuation software, computed the mobile home to have a value of \$23,661. Taxpayer Ex. 1. He argued that this method of valuation was more accurate than the methods used by the DOR. MTAB PT-2016-21 Hrg. Transcr. 15:9.
25. Mr. Richards testified he had prevailed in an appeal of the property in the previous appraisal cycle, wherein the MCTAB had reduced the value of his mobile home to \$35,000. MTAB PT-2016-21 Hrg. Transcr. 7:16 – 8:12. He argued that since the home was at least six years older, its value only further depreciated from the \$35,000 value found by the MCTAB. *Id.*
26. Therefore, Mr. Richards concluded: (1) the DOR should have depreciated the home more to account for his mobile home's condition; (2) the DOR should have relied on the prior CTAB value of \$35,000 when determining the mobile home's value; (3) the DOR should have reduced the mobile home's value because of the location of the home; and (4) the DOR should have reduced the home's value due to the costs associated with moving the home. MTAB PT-2016-21 Hrg. Transcr. 7:16 – 9:14; 14:14 – 15:4.
27. The DOR then testified to explain how it valued Mr. Richards' mobile home.

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28. The DOR used three appraisal methods to determine the appropriate value for the mobile home: (1) the comparable sales approach; (2) multiple regression analysis (MRA); and (3) replacement cost new less depreciation (RCNLD).
29. Regarding the comparable sales approach, the DOR compiled all of the mobile home sales in Missoula County. MTAB PT-2016-21 Hrg. Transcr. 25:12 – 26:3. The DOR used Missoula County sales because there were not enough sales of similar mobile homes near Seeley Lake/Clearwater Junction to provide a statistically significant sales model. *Id.*
30. Using the Missoula County mobile home sales, the DOR compiled a list of 279 mobile home sales. DOR Ex. B. These sales occurred between July 1, 2008 and December 31, 2013. *Id.*
31. The DOR then narrowed this list of 279 mobile home sales to what it determined were the five most comparable sales. MTAB PT-2016-21 Hrg. Transcr. 56:17 – 60:3.
32. The actual sales prices of these five mobile homes ranged from \$25,000 to \$56,000. DOR Ex. E.
33. The DOR adjusted the actual sales prices of these five comparable properties to the subject, based on grade and then condition, desirability, and utility (CDU rating). DOR. Ex. E.

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34. After making these adjustments, the DOR's five comparable mobile home sales had adjusted values ranging from \$40,025 to \$56,925. DOR Ex. E; MTAB PT-2016-21 Hrg. Transcr. 24:2 – 25:2.
35. Two of the comparable sales relied upon by the DOR provide some insight into how the DOR valued Mr. Richards' home.
36. Comparable three is a 26 feet by 56 feet 1995 Marlette located on Pelkey Drive in Missoula with an adjusted value of \$46,166. DOR. Ex. E. The home is in a trailer park which "has paved driveways and a clean neighborhood." MTAB PT-2016-21 Hrg. Transcr. 8:22 – 23. The home is also approximately five miles from downtown Missoula. The DOR graded the home as "average." *Id.* The DOR found the CDU rating for the home was "average." DOR Ex. E.
37. Comparable four is a 27 feet by 48 feet 1995 Marlette located on Mullan Road in Missoula with an adjusted value of \$40,025. *Id.* The mobile home is in a subdivision that "has paved driveways and a clean neighborhood." *Id.*; MTAB PT-2016-21 Hrg. Transcr. 8:22 – 23. The home is approximately five miles from downtown Missoula. *Id.* The DOR graded the home as "average." *Id.*; MTAB PT-2016-21 Hrg. Transcr. 25:12 – 26:3. The DOR found the CDU rating was "average." DOR. Ex. E.
38. Using the comparable sales approach the DOR reached a value of \$49,200 for Mr. Richards' mobile home. DOR Ex. E. The DOR

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determined the following for Mr. Richards' mobile: the grade was "good" and that the CDU rating was "average." *Id.*

39. According to Ms. Jerke, "Average is hard to define. It's just a normal house in a normal location." MTAB PT-2016-21 Hrg. Transcr. 41:4 – 5.
40. The DOR asserted Mr. Richards' home had both a porch and a car port attached to the home which contributed to a higher value than some of the comparable mobile homes. MTAB PT-2016-21 Hrg. Transcr. 56:17 – 60:3.
41. Regarding the CDU rating of Mr. Richards' home, the DOR did not adjust the CDU rating based on the location of Mr. Richards' mobile home. Ms. Jerke stated, "I mean they had a few animals around and they had – I mean, it's on a ranch. It's out in the beautiful Potomac/Greenough Valley. The location is a typical average location for my whole Potomac Neighborhood. I mean, a lot of places are out in the country . . . People desire to live out in the country. It's not a bad spot where the mobile home is sitting." MTAB PT-2016-21 Hrg. Transcr. 39:10 – 18.
42. As to the grade and CDU rating of the comparable mobile home sales, Ms. Jerke testified she had not inspected "the inside of all of these comparables," therefore she did not "know whether the inside conditions are comparable." MTAB PT-2016-21 Hrg. Transcr. 36:10 – 14.

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43. The DOR also used the MRA approach to verify the accuracy of its comparable sales approach. MTAB PT-2016-21 Hrg. Transcr. 26:20 – 27:2.
44. The MRA approach “looks at other properties within the neighborhood and it takes all of those properties, all the sales from all of those properties, and puts it together, instead of just using the five that [the DOR] used to come up with the market. It’s actually using everything that was in that neighborhood to come up with a value.” MTAB PT-2016-21 Hrg. Transcr. 25:19 – 26:3.
45. The MRA approach yielded Mr. Richards’ mobile home having a value of \$47,136. DOR Ex. E.
46. The DOR then used the cost approach; i.e. replacement cost less depreciation. Using this method, the DOR calculated the replacement cost for the mobile home to be \$82,700. MTAB PT-2016-21 Hrg. Transcr. 28:16 – 29:7. Minus depreciation of 59 percent based on the home’s condition being “good” and the CDU rating being “average,” the DOR reached a value of \$48,790. MTAB PT-2016-21 Hrg. Transcr. 29:12 – 14. This amount was then increased by \$1,260 to account for the second roof and carport addition. This resulted in a total replacement cost new less depreciation value of \$50,050. *See* DOR Ex. D.
47. After completing all three valuation approaches, the DOR found all of the values were relatively close. The DOR adopted the comparable sales

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- value of \$49,200 as the value of Mr. Richards' mobile home. MTAB PT-2016-21 Hrg. Transcr. 25:5 – 13, 26:15 – 27:2, and 29:12 – 16.
48. During the AB-26 review, Ms. Jerke personally inspected the home. MTAB PT-2016-21 Hrg. Transcr. 19:24 – 20: 14.
49. Ms. Jerke testified the renters were present and she did not examine the entire house. MTAB PT-2016-21 Hrg. Transcr. 20:7 – 14, 30:5 - 7. However, she did not, after seeing Mr. Richards' mobile home, reduce the property value, adjust the grade, or adjust the CDU rating. MTAB PT-2016-21 Hrg. Transcr. 29:12 – 16.
50. DOR manager Ms. Snyder testified that despite the MCTAB adjustment under the previous cycle to a value of \$35,000, the legal mandate of the DOR is to value all properties during subsequent appraisal cycles with a goal of fair market value. MTAB PT-2016-21 Hrg. Transcr. 53:6 – 53:17.
51. DOR appraiser Mr. Long testified that the NADA on-line valuation presented by Mr. Richards had omitted a regional adjustment for wall thickness and corresponding insulation typically expected in the colder climates of the Northwest US. MTAB PT-2016-21 Hrg. Transcr. 64:12 – 65:25. He disputed that the lower value mobile homes selected by Mr. Richards's assistant in her NADA valuation would have been sold in Montana or transported here from the South. *Id.*

PT-2016-22 Mr. Richards' home

52. Before this Board, Mr. Richards testified his home's value should be reduced to \$322,946 because: (1) of its proximity to a gravel pit and (2) the noises made by the radiant heating system he installed using defective pex clamps that did not expand at the same rate as the expansion of the hot water pex piping, resulting in noises when the radiant fluids were circulated to heat the home. MTAB PT-2016-22 Hrg. Transcr. 2:9 – 4:2; 5:1 – 13 (February 16, 2017).
53. Mr. Richards testified his total cost to cure his heating system would be \$43,754. MTAB PT-2016-22 Hrg. Transcr. 2:21 – 3:2; Taxpayer Ex. 5.
54. Mr. Richards provided evidence that Plumb-Tech Plumbing and Heating LLC would charge \$7,500.00 to "install new clamps for heat system tubing." Taxpayer Ex. 5. Bushco Construction & Drywall provided an estimate of \$9,450.00 for sheetrock, drywall, and paint construction after Plumb-Tech Plumbing and Heating repaired the radiant heating system's clamps. Taxpayer Ex. 5.
55. Mr. Richards' estimate of \$43,760 did not provide any cite to any other estimates to explain why the cost of construction estimated by Plumb-Tech Plumbing and Heating and Bushco Construction totaling \$16,950.00 resulted in a total cost to cure of \$43,760. See Taxpayer Ex. 5; see also MTAB PT-2016-22 Hrg. Transcr. 2:21 – 23, 8:19 – 21. During

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- the hearing, Mr. Richards did not present further evidence explaining the additional \$26,810 required to cure his heating system.
56. Mr. Richards testified he researched seeking compensation from the maker of the clamps only to discover the company was no longer in business. MTAB PT-2016-22 Hrg. Transcr. 8:24 – 9:16. He claimed that he would be forced to disclose this defect upon selling the house and therefore should be allowed a further reduction in value to offset the cost to cure this defect. *Id.*
57. Ms. Snyder testified that she typically does not reduce the value of homes for the noise their heating system makes. MTAB PT-2016-22 Hrg. Transcr. 10:24 – 11:3. She reasoned that if the system was functional most homeowners would replace it at the end of its useful life or install a back-up system such as a wood stove. *Id.*; MTAB PT-2016-22 Hrg. Transcr. 24:4 – 25:1. She deemed that it was speculative that a buyer would demand a reduction for this defect and beyond the scope of her valuation. *Id.*
58. Ms. Snyder testified that several of the sales in the comparable sales model did not indicate that the proximity to the gravel pit reduced their values and that no reduction of Mr. Richards' home was justified for its proximity to the gravel pit. MTAB PT-2016-22 Hrg. Transcr. 18:6 – 11.
59. After Ms. Snyder's inspection of Mr. Richards' home, she offered to reduce the home's value to \$341,500 to account for the heating system

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deficiencies, but that Mr. Richards declined. MTAB PT-2016-22 Hrg. Transcr. 25:10 – 22.

PT-2016-23 Forest land and homesite

60. Mr. Richards argued his homesite on this land should be classified as agricultural land due to mixed meadows and timber, and the sparse population of trees. MTAB PT-2016-23 Hrg. Transcr. 1:4 – 15; 9:20 – 10:2 (February 16, 2017). He asserted that minimal mature timber is available for him to log, and the agricultural classification is more accurate. MTAB PT-2016-23 Hrg. Transcr. 1:4 – 15.
61. Mr. Richards testified that in 2014 he personally sold a similar and nearby 2.73-acre parcel of land for only \$28,000. MTAB PT-2016-23 Hrg. Transcr. 9:20 – 10:2; *see also* Taxpayer Ex. 3. He claimed that parcel was more comparable than any of the extracted land comparable sales used in the DOR's land valuation model. MTAB PT-2016-23 Hrg. Transcr. 4:8 – 16.
62. Ms. Jerke testified that aerial photos showed the homesite is on forest land. MTAB PT-2016-23 Hrg. Transcr. 16:5 – 11. Ms. Jerke testified about the flow chart used by the DOR to define whether a homesite is on forest land. The DOR relies on GIS mapping of timber density to determine if the land constitutes forest land. MTAB PT-2016-23 Hrg. Transcr. 17:9 – 18:4. To qualify as forest land, the property must feature 15 acres of contiguous forested land at least 120 feet in width which can

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provide a level of timber productivity. See Mont. Admin. R. 42.20.705(1)(a); MTAB PT-2016-23 Hrg. Transcr. 21:1 – 17.

63. As to Mr. Richards' 2.73-acre sale for \$28,000 which he offered as a comparable, the DOR claimed the sale was not valid for comparison because the sale occurred outside of the appraisal cycle. MTAB PT-2016-23 Hrg. Transcr. 45:4 – 20; DOR Ex. W. The DOR also responded the low sale price failed to reflect the high cost of environmental remediation of the land. MTAB PT-2016-23 Hrg. Transcr. 44:12 – 45:22. The DOR presented a comparable property of 1.13 acres which sold for \$67,500. MTAB PT-2016-23 Hrg. Transcr. 46:7 – 10.

64. Ms. Jerke presented evidence of a comparable 1.13 acre homesite selling for \$67,500. MTAB PT-2016-23 Hrg. Transcr. 46:7 – 10. She also testified to another homesite of 1.33 acres selling for \$62,000, which equals \$46,616.54 per acre. MTAB PT-2016-23 Hrg. Transcr. 47:3 – 6.

PT-2016-24 Gravel Pit

65. Mr. Richards testified that despite Judge Deschamps' decision, the DOR ignored Judge Deschamps' decision and adopted administrative rules inconsistent with Judge Deschamps' ruling. MTAB PT-2016-24 Hrg. Transcr. 3:14 – 23 (February 16, 2017).

66. Mr. Richards testified that on the statewide lien date of January 1, 2014, all of this parcel, except for the 10.1 acres being actively mined, were

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- being grazed and as a result must be valued as agricultural land for tax purposes *vis a vis* the reasoning of Judge Deschamps. MTAB PT-2016-24 Hrg. Transcr. 7:6 – 9:15.
67. As to the gravel pit, Mr. Richards stated “the 10.1 acres of the gravel pit has a value, even on the high side” of \$30,000. MTAB PT-2016-21 Hrg. Transcr. 4:10 – 13.
68. Mr. Richards testified the actual use of the land is what should set the classification and value according to the higher authority of the district court. MTAB PT-2016-24 Hrg. Transcr. 2:4 – 3:7.
69. According to Mr. Richards, “The gravel pit operates some years . . . some years I don’t sell any.” MTAB PT-2016-24 Hrg. Transcr. 5:4 – 11.
70. Ms. Jerke testified the DOR used the permitted acreage of 22.2 acres to classify and value the land. MTAB PT-2016-24 Hrg. Transcr. 22:14 – 23:5. Ms. Jerke stated this was consistent with a new DOR Property Assessment Procedure No. 2-3-022, adopted on June 17, 2015 which valued the commercial gravel pit by the permitted acreage. DOR Ex. CC; MTAB PT-2016-24 Hrg. Transcr. 23:10 – 12.
71. Ms. Jerke then valued the 22.2 acres classed as commercial property using the base rate computer assisted land pricing (CALP) model. MTAB PT-2016-24 Hrg. Transcr. 4:6 – 7, 19:7 – 12.

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72. Ms. Jerke testified she visited the gravel pit during the AB-26 review. MTAB PT-2016-24 Hrg. Transcr. 32:3 – 7. In examining how Mr. Richards’ uses the 22.2 acres of his property, she testified, “There are no fences between the gravel pit and the other part, and the ones that are on the other side by the road are in dreadful, let’s see, there’s posts falling down and they’re not in very good shape. They could not, I don’t think, they could keep a horse in.” *Id.*
73. She also testified she did not see any animals on the property. MTAB PT-2016-24 Transcr. 32:9 – 10.
74. Instead, Ms. Jerke found “piles of gravel . . . piled around, some . . . roads . . . [and] vehicles parked on part of the facilities area. There is a shed over there, there’s other things parked.” MTAB PT-2016-24 Hrg. Transcr. 27:1 – 7.

Conclusions of Law

75. The Board has jurisdiction over this case and its order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-301.
76. This Board “is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.” Mont. Code. Ann. § 15-2-301(5).

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77. 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, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
78. However, DOR cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of their action. *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.
79. “All taxable property must be appraised at 100% of its market value....” Mont. Code Ann. § 15-8-111.
80. “Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.” Mont. Code Ann. § 15-8-111(2)(a).
81. “[F]or the taxable years from.... (c) January 1, 2015, through December 31, 2016, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 2014.” Mont. Admin. R. 48.18.124.

PT-2016-21 Mobile Home

82. The Board must consider the following in finding the market value of Mr. Richards’ mobile home: (1) what weight to place on the prior MCTAB valuation of \$35,000; (2) whether the DOR erred in grading Mr. Richards’

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mobile home as “good”; and (3) whether the DOR erred in finding the condition, desirability, and utility (CDU rating) of Mr. Richards’ mobile home is “average.”

83. First, Mr. Richards asserted six years earlier the MCTAB had found the home had a value of \$35,000. This Board will not rely on the MCTAB’s previous values when reaching a decision for this cycle. *See* Mont. Admin. R. 2.51.403(2).
84. Next, the MCTAB found Mr. Richards’ mobile home had a value of \$41,000. The MCTAB determined the condition of Mr. Richards’ mobile home was “average” instead of “good” and thus reduced the home’s value from \$49,200 to \$41,000.
85. This Board agrees with the MCTAB finding the mobile home’s grade should be reduced from “good” to “average.”
86. This Board heard credible testimony from Mr. Richards about his mobile home’s poor condition. He testified he had not painted the walls. MTAB PT-2016-21 Hrg. Transcr. 8:1 – 11. He testified to wood smoke “showing where the studs are in the walls.” *Id.* He testified to the carpets being poor, to chips in the dry wall, and lastly that he has not improved the property in six years. *Id.*; MTAB PT-2016-21 Hrg. Transcr. 8:15 – 18. This Board finds Mr. Richards presented sufficient evidence to reduce his mobile home’s grade from “good” to “average.”

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87. The DOR did not present sufficient evidence to rebut Mr. Richards' testimony. Ms. Jerke noted she walked through part of the home and examined the exterior. Ms. Jerke also testified after seeing the home, she did not adjust the mobile home's grade. However, Ms. Jerke did not describe the condition of the interior of Mr. Richards' mobile home. Instead, her testimony suggested – because she had not seen the interiors of the comparable mobile home sales used by the DOR – she lacked a possible baseline for determining whether Mr. Richards' home qualified as “good,” “average,” or “fair.” MTAB 2016-21 Hrg. Transcr. 36:10 – 17.
88. Next, the Board addresses the DOR finding Mr. Richards' mobile home has a CDU rating of “average.” Ms. Jerke testified that “average” CDU rating for a mobile home is “a normal house in a normal location.” MTAB PT-2016-21 Hrg. Transcr. 41:4 – 5. Reviewing comparable sales three and four of the DOR's comparable sales, both mobile homes are in Missoula. DOR Ex. E. Both were in mobile parks with paved roads and sidewalks. DOR Ex. E. Comparable three, valued at \$46,166, was slightly larger than Mr. Richards' mobile home with the additional amenities associated with a trailer park. DOR. Ex. E. Both mobile homes are “normal” mobile homes in “normal locations.” MTAB PT-2016-21 Hrg. Transcr. 41:4 – 5. Consistent with Ms. Jerke's definition of “average,” both comparable three and comparable four had a CDU rating of “average.” DOR Ex. E.

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89. This Board finds the evidence presented supports a finding that Mr. Richards' mobile home should have a CDU rating lower than comparable mobile homes three and four. Mr. Richards' mobile home is not a normal mobile home based on Ms. Jerke's definition of "average;" it does not sit in a normal mobile home location and it lacks normal mobile home amenities. His mobile home is on a rural plot of land thirty plus miles from Missoula. For the mobile home to then be located in a normal location, a buyer would need to remove the secondary roof on Mr. Richards' mobile home and then move it thirty or more miles to a new location; a cost which must be considered in determining the market value. This Board finds informed buyers would not pay \$49,200 to purchase Mr. Richards' mobile home when the same buyer could purchase a larger home near downtown Missoula in a trailer park for \$3,000 less. This Board must find market value under Mont. Code Ann. § 15-8-111, and the evidence shows a "willing buyer" and a "willing seller" would not exchange this mobile home at a price that equals the 17th highest mobile home sale in Missoula County.
90. This also reveals the problematic nature of the DOR's comparable sales model used when appraising Mr. Richards' mobile home. This Board recognizes the DOR lacked comparable sales in the Seely Lake/Clearwater area. The DOR used sales from Missoula County to find comparable sales. This resulted in the DOR comparing a mobile home on a rural plot of land to mobile homes near downtown Missoula and in traditional, "average" mobile home settings.

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91. The DOR’s grade and CDU rating determinations also affected its MRA approach and replacement cost new less depreciation (RCNLD) approach. First, the MRA approach relies on all of the Missoula County sales. These are the same sales which the DOR used to find five comparable mobile homes; five comparable “normal” mobile homes in normal locations. For the same reasons provided above, the MRA approach has similar flaws. Second, depreciation is determined based on the grade and CDU rating determinations made by the DOR. A reduction in the grade and CDU rating under the RCNLD approach should increase the depreciation of the property. Therefore, this Board finds the DOR reaching three similar values using the three different approaches is not dispositive. Instead, it merely reveals if the DOR’s grade and CDU rating determinations for a property are inaccurate, each valuation approach will result in similarly inaccurate values.
92. Based on the above, this Board finds Mr. Richards raised sufficient questions about his mobile home’s CDU rating. This Board also reduces the CDU rating for Mr. Richards’ mobile home to “fair.”

PT-2016-22 Mr. Richards’s home

93. The Board has two issues to consider in deciding whether to reduce the value of Mr. Richard’s home: (1) the proximity of the home to the gravel pit; and (2) the home’s heating system and the reasonable cost to cure therein.

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94. Mr. Richards had to show by a preponderance of evidence he is entitled to a greater reduction than the one granted by the MCTAB.
95. As to the gravel pit, this Board finds Mr. Richards failed to meet his burden of proof to show the home's proximity to the gravel pit decreases the property's value. The DOR presented several comparable sales which were close to the pit. MTAB PT-2016-22 Hrg. Transcr. 18:6 – 11. The DOR testified those property sale prices were not discounted due to their proximity to the gravel pit. *Id.* Admittedly, while these properties were not adjacent to the pit, they still were close enough to the pit to have the properties effected. The DOR properly relied on these comparable properties and thus this Board will not reduce the property value for its proximity to the gravel pit.
96. As to the home's heating system, the MCTAB reduced the property valuation by \$16,950. The MCTAB determined this would be a reasonable cost to cure the heating system supported by the evidence provided by Mr. Richards.
97. "A county tax appeal board is uniquely suited to evaluate local real estate markets and specific neighborhoods relative to its county and is able to apply this expertise to individual properties." *Cahill v. The Department of Revenue of the State of Montana*, 2012 WL 2244863, *4 (Mont.Tax.App.Bd.); see also *JEM LLC v. The Department of Revenue of the State of Montana*, 2011 WL 1457540, * 4 (Mont.Tax.App.Bd.); *Peretti v. The Department of Revenue of the State of Montana*, 2011 WL 1507563

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*4 (Mont.Tax.App.Bd.); and *Blair v. Potter*, 132 Mont. 176, 183, 315 P.2d 177, 180 – 181 (1957) (“Courts cannot be called upon, in every instance, to settle differences of opinion in this regard . . . courts would be converted into assessing boards.”).

98. This Board, consistent with the deference it at times has given to CTAB decisions, agrees with the MCTAB’s reasoning for reducing the home based on the reasonable cost to cure the defect. The MCTAB found \$16,950 represented the amount Mr. Richards would spend to cure the heating system defect. We find no evidence to disturb the reduction proffered by the MCTAB who has substantial knowledge of local market values. We did not receive sufficient evidence from Mr. Richards during the hearing to further reduce the value of his home. Therefore, this Board affirms the MCTAB’s finding valuing Mr. Richards’ home at \$349,750.

PT-2016-23 Forest land and homesite

99. The Board must determine the following as to Mr. Richards’ forest land homesite: (1) whether the DOR erred in its classification of the property as forest land; and (2) whether this Board heard sufficient evidence to reduce the MCTAB’s value of \$60,000 to Mr. Richards’ requested value of \$29,870.
100. Regarding the first issue, this Board finds Mr. Richards failed to meet his burden of proof showing the DOR improperly classified the property

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as forest land. *See Farmers Union Cent. Exch., Inc.*, 272 Mont. at 476, 901 P.2d 561 at 564. This Board finds the DOR properly classified the property and presented sufficient evidence supporting the property classification. *See* MTAB PT-2016-23 Hrg. Transcr. 16:5 – 11, 17:9 – 18:4, 21:1 – 7.

101. As to the second issue concerning the appropriate value for Mr. Richards' forest land homesite, Mont. Admin. R. 42.20.705 and Mont. Admin. R. 42.20.750 state the DOR will carve out one acre of forest land upon which the home sits and appraise that one acre at market value. The DOR adopted Mont. Admin. R. 42.20.705 and Mont. Admin. R. 42.20.750 consistent with Mont. Code Ann. § 15-44-105, which gives the DOR broad authority to adopt regulations related to the valuation of forest land. The presence of a regulation and broad regulatory authority differentiates this case from *Anfinson v. State of Montana, Department of Revenue*, where this Board found the DOR lacked statutory authority and had not adopted any regulations allowing it to undertake a one acre carve out of forest land and value that one acre as commercial property. 2016 WL 7496766 (Mont.Tax.App.Bd 2016).

102. In deciding the appropriate value of this one acre homesite, “a county tax appeal board is uniquely suited to evaluate local real estate markets and specific neighborhoods relative to its county and is able to apply this expertise to individual properties.” *Cahill*, 2012 WL 2244863 at *4; *see also JEM LLC*, 2011 WL 1457540, * 4 (Mont.Tax.App.Bd.); *Peretti*, 2011

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WL 1507563 *4; and *Blair*, 132 Mont. at 183, (“Courts cannot be called upon, in every instance, to settle differences of opinion in this regard . . . courts would be converted into assessing boards.”).

103. This Board defers to the MCTAB’s finding the one acre homesite should be valued at \$60,000.
104. This Board did not hear sufficient evidence from Mr. Richards which required a reduction of the value established by the MCTAB. Instead, Mr. Richards provided the sale of a 2.7 acre property for \$28,000 which had significant remediation issues and a value well below the market value for a one acre homesite at market value. MTAB PT-2016-23 Transcr. 1:13 – 15, 9:10 – 10:22. Furthermore, the sale occurred on August 29, 2014, so the sale is irrelevant for this appraisal cycle.
105. This Board also failed to hear sufficient evidence to increase the MCTAB’s value of \$60,000 for the one acre homesite. Ms. Jerke provided evidence of a comparable homesite of 1.13 acres selling for \$67,500, which equals \$59,734.51 per acre. MTAB PT-2016-23 Hrg. Transcr. 46:7 – 10. Ms. Jerke then mentioned another homesite of 1.33 acres selling for \$62,000, which equals \$46,616.54 per acre. MTAB PT-2016-23 Hrg. Transcr. 47:3 – 6. None of this evidence supports increasing the MCTAB’s value for the one acre home site.

PT-2016-24 Gravel Pit

106. Mr. Richards' appeal concerning the valuation of the gravel pit requires this Board to address the following: (1) to what extent DOR procedure 2-3-002.1 applies to Mr. Richards' gravel pit and thus how much of Mr. Richards' property constitutes commercial property; and (2) whether Mr. Richards presented sufficient evidence establishing the gravel pit has a market value of \$30,000.
107. Mont. Code Ann. § 15-7-103(2) states, "All lands must be classified according to their use or uses."
108. Mont. Code Ann. § 15-7-202(5) states land will not be deemed agricultural land if the land is burdened by "stated covenants or other restrictions that effectively prohibit its use for agricultural purposes."
109. Interpreting these provisions, district court Judge Deschamps in *Richards v. Department of Revenue, State of Montana*, stated, as to the DOR's valuation of the exact same gravel pit before this Board, "There is no evidence that merely being permitted for use as a gravel pit, but not actually being operated as one, 'effectively prohibits' the use of the land for agricultural purposes." DV-12-1375, P. 7 (Mont. Fourth Judicial District, Missoula County, March 24, 2014). Judge Deschamps' decision mirrors the Montana Supreme Court's reasoning in *Department of Revenue v. Heidecker*, 2013 MT 171, 370 Mont. 464, 304 P.3d 726 (The Montana Supreme Court affirmed this Board finding agricultural land,

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- which had been subdivided, remained agricultural land because the owner continued to use the property for agricultural purposes.).
110. The evidence presented to the Board is that Mr. Richards operates a gravel pit on only 10.1 acres of the property and thus only 10.1 acres can be classified as commercial property.
 111. At the time the DOR mailed Mr. Richards his Assessment Notice, there was no applicable DOR policy to value this gravel pit based on the DEQ approved permit for 22.2 acres. If the subsequent policy is valid and legally defensible it will apply to the upcoming appraisal cycle. Because the DOR policy does not apply, this Board cannot ignore the reasoning and interpretation of law in Judge Deschamps' decision.
 112. Mr. Richards also raised a question about valuation and asserted the 10.1-acre gravel pit should be valued at \$30,000.
 113. This Board received insufficient evidence from Mr. Richards that 10.1 acres of commercial property should be valued at \$30,000. Mr. Richards' request relied upon the following: (1) the 2014 sale of 2.73 acres for \$30,000; and (2) an assertion the 10.1 acres is not always being used as a gravel pit and thus the property should be classified as agricultural land. *See Taxpayer Ex. 4; MTAB PT-2016-24 Hrg. Transcr. 4:1 – 5:19.*
 114. First, if this Board used Mr. Richards' sale for the gravel pit's property value, it would result in a per acre amount of \$10,989.10. 10.1 acres of

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property using Mr. Richards' sale would not equal \$30,000. The 2014 sale of property does not support Mr. Richards' position.

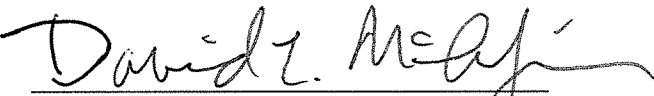
115. Second, Mr. Richards testified the DOR's classification is wrong because "the gravel pit operates some years . . . some years I don't sell any." MTAB PT-2016-24 Hrg. Transcr. 5:4 – 11. Mr. Richards failed to present sufficient evidence that the property has returned to agricultural use. Instead, the DOR testified and presented photographs of the property showing the 10.1 acres being used as a gravel pit and the lack of any evidence the property is being used for agricultural purposes. DOR Ex. BB and EE; MTAB PT-2016-24 Hrg. Transcr. 32:1 – 10 (Testimony by Ms. Jerke that there were no real fences on the property and she saw no animals on the property.).
116. Mr. Richards had the burden of proof to show his 10.1 acres of commercial property should be valued at \$30,000. *See Farmers Union Cent. Exch., Inc.*, 272 Mont. at 476, 901 P.2d 561 at 564. Mr. Richards failed to present sufficient evidence to satisfy his burden.

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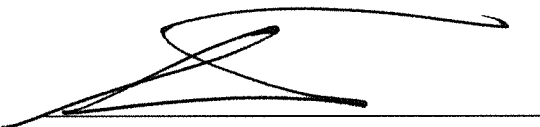
40.52 acres of the 50.62 acre parcel will be classified as agricultural land and be valued accordingly.

Ordered June 2nd, 2017.


David L. McAlpin, *Chairman*
MONTANA TAX APPEAL BOARD




Stephen A. Doherty, *Member*
MONTANA TAX APPEAL BOARD


Valerie A. Balukas, *Member*
MONTANA TAX APPEAL BOARD

Notice: You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2).

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Certificate of Service

I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, Order, And Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on June 2nd, 2017 to:

John Richards
P.O. Box 316
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Anthony Zammitt
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Lynn Cochran, Admin. Paralegal
MONTANA TAX APPEAL BOARD