

BARBARA & MICHAEL STARMER,  
  
Appellants,  
  
v.  
  
STATE OF MONTANA,  
DEPARTMENT OF REVENUE,  
  
Respondent.

CASE No: PT-2021-30  
  
**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, ORDER,  
AND OPPORTUNITY FOR  
JUDICIAL REVIEW**

**STATEMENT OF THE CASE**

This is an appeal of a decision by the Missoula County Tax Appeal Board (CTAB) granting Barbara and Michael Starmer (Taxpayers) a partial reduction in value on their property located at 8721 B Ranch Club Road, Missoula, Montana. The CTAB hearing was held on October 20, 2021, and the decision was issued October 27, 2021. The Taxpayers timely appealed that outcome to the Montana Tax Appeal Board (MTAB) on November 17, 2021. We modify the CTAB’s determination, and for the reasons discussed below, find that the cost method of appraisal as calculated by the Department of Revenue (DOR) provides the best indicator of value; therefore, we assign a value of \$451,940 to the subject property.

**ISSUE TO BE DECIDED**

Whether CTAB and DOR erred in arriving at their respective market values.

**EXHIBIT LIST**

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Property Assessment Division Sales Packet
2. Townhome # Actually Sold 2018-2019
3. Comparables on Your Sheet

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4. Not moved for admission
5. Comparable Sales Report Tax Year 2021
6. Not moved for admission
7. Chapwood Index – The Real Cost of Living Increase Index vs. Consumer Price Index
8. Shadow Government Statistics
9. Calculate Market Value

### DOR Exhibits:

- A. DOR CTAB Exhibits: Aerial Photo, AB26, AB26 Determination Letter, Property Record Card, and Comparable Sales Report with Adjustments
- B. Multiple Regression Analysis (MRA) Calculations
- C. Adjusted Sale Price
- D. Comparable Sales Calculation
- E. Comparability Points
- F. Weighted Estimate

### PROCEDURAL HISTORY

The DOR initially assigned a market value of \$475,600 to the subject property. *Ex. A, at 000009*. On June 14, 2021, the Taxpayers filed an AB-26 request for an informal classification and appraisal review. *Ex. A, at 000003*. Upon a site inspection triggered by the AB-26 request, there was an adjustment in the finished square footage of basement from 1,214 square feet to 1,074 square feet which resulted in a market value reduction. *Id., at 000007*. The DOR sent the Taxpayers an AB-26 Determination letter, dated September 3, 2021, reflecting the reduction in value to \$466,600. *Id.*

The Taxpayers appealed that adjusted value to the CTAB on September 9, 2021, and a hearing was held by the CTAB on October 20, 2021. The CTAB granted a partial reduction in value to \$442,556, by calculating the value based on an average of the sale price per square foot of the five comparable sales selected by the DOR. *MTAB Dkt. 1*. The Taxpayer appealed to MTAB on November 17, 2021, per Mont. Code Ann § 15-2-301. *Id.* The MTAB hearing was conducted in Helena on March 29, 2022, at which the following were present:

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- a. Barbara Starmer, Taxpayer; and
- b. Dave Burleigh, DOR Counsel; Michelle Staples, DOR Area Manager.

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 the transcript of 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 initially valued the subject property at \$475,600 for the 2021/2022 appraisal cycle, using the statutory statewide lien date of January 1, 2020. *Ex. A, at 000009; Mont. Code Ann. § 15-7-111.*
3. Throughout the appeal process, the Taxpayer has requested information related to the algorithm and calculations used by the DOR to mass appraise homes for tax valuation purposes. After the AB-26 meeting with Amanda Walton and Michelle Staples, the DOR provided a Comparable Sales Report with the dollar amount adjustment for each of the variables used in the market model in response to the Taxpayer's request for the equations attached to the variables. *Ex. A, at 000009.* On the appeal to CTAB Form 401, the Taxpayer again requested information on the algorithms used to value her home and the calculations used. *MTAB Dkt. 1.* In their decision, the CTAB stated that the Taxpayer requested the "specific algorithms used by the DOR's mass appraisal program to adjust comparables to subject property." *Id.* Some of the information the Taxpayer requested relates to how the subject property value was calculated and some of the information relates to the software itself. During the MTAB hearing, the Taxpayer indicated a concern with the software itself since it was developed by an out of state company and because, as she testified, if it was online, it was her belief it could be subject to tampering. *MTAB Hrg. Tr. 14:13-14:19, 18:14-20.*

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4. The Taxpayer contends that the actual value of her home is 1/3 less than the original DOR valuation of \$475,600 because, she argues, the 1/3 reflects the value increase that the artificially low interest rates cause in the loan amounts which should not be included in the cash assessment value of her home. *MTAB Hrg. Tr. 16:10-17:11; Ex. 7; Ex. 8.*
5. The Taxpayer testified that “Montana appraisers are using a sales comparison method while not making cash equivalence adjustments for artificially low interest rates available at that time.” *MTAB Hrg. Tr. 5:17-19.*
6. The Taxpayer testified that “property tax appraisers are required to make a cash value appraisal for all real estate.” *MTAB Hrg. Tr. 5:24-25.* Therefore, appraisals “must be adjusted for the influence of artificially low interest rates.” *MTAB Hrg. Tr. 6:1-2.* The Taxpayer testified that the cash value was considered in other states in which she has lived, and that the appraisal should be the “actual value of the property, not including the low interest rate.” *MTAB Hrg. Tr. 6:3-6.*
7. The Taxpayer testified that “Fannie Mae, Freddie Mac, and FNEMA bonds have an influence on the rates of home loans” requiring this adjustment. *MTAB Hrg. Tr. 6:15-16; Ex. 7, 8.* “The interest rates are now set by the Federal Reserve Banks” and “consequently, the price of the home is higher than the actual cash value.” *MTAB Hrg. Tr. 6:16-17; 7:15-16; Ex. 7, 8.*
8. The Taxpayer acknowledges that there is no law that she is aware of that requires the DOR to appraise houses based on a theory of cash assessment value. *MTAB Hrg. Tr. 29:23-30:4.*
9. The Taxpayer calculated her own market value by selecting comparable sales from the list of all Missoula sales provided to her by DOR and averaging their value per square foot. The Starmers removed patio homes and condos from the

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- list of sales in Exhibit 1, then calculated the average sale price for townhomes in the county to be \$379,373.59. *MTAB Hrg. Tr. 10:21-11:15; Ex. 1, 2.*
10. Utilizing the actual sale prices of the DOR's comparable sales, without adjustment for date of sale or other differences from the subject, the Taxpayer calculated an average sale price of \$415,400. *MTAB Hrg. Tr. 11:15-12:16; Ex. 3, 5.* The Taxpayer testified that "it is square footage and condition and location that actually determine the final sale value." *MTAB Hrg. Tr. 12:17-18.* The Taxpayer also found an average sale price of \$371,686.63 by utilizing the sale price of townhomes within a square foot range from 1,750 square feet to 2,800 square feet. *MTAB Hrg. Tr. 12:19-23; Ex. 3.*
  11. Area manager, Michelle Staples, testified that in the DOR mass appraisal process, all of the properties that need to be appraised are identified and then visited for external measurements and review of other characteristics like bedroom count, bathroom count, heating source, basement, basement finish, condition, location, and quality. *MTAB Hrg. Tr. 34:16-23.* That information is then inputted into the Orion mass appraisal software system and sketched into an Apex software which calculates the square footage. *MTAB Hrg. Tr. 34:24-25.* This is then used to set the value using either the cost approach or the market approach. *MTAB Hrg. Tr. 34:25-35:2.*
  12. Ms. Staples also testified to the DOR mass appraisal modeling process. *MTAB Hrg. Tr. 35:5-36:25.* The sales that have occurred in the two years before the lien date, in this case 2018 and 2019, are validated by the DOR appraisers and then all validated sales are entered into the Orion system. *Id.* Those sales are then stratified to neighborhoods and the property types within the neighborhoods. *Id.* A land model is created with the stratified sales and the modeler works with the appraiser to ensure the model is aligned with what the appraiser sees in practice. *Id.* After that, validated vacant land sales are input to set a land valuation for every property in the county. *Id.* The appraiser then

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applies the model to the land, making adjustments for positive and negative value influences. *Id.* The modeler and appraiser work together to determine what variables impact sale price. *Id.* The modelers will then utilize the Orion system that provides variables and co-efficiency to the variables. They run the calculations behind those variables, and develop a value at that point in time, to run the multiple regression analysis (MRA). *Id.* An automated software program then applies the comparable sales. *Id.* The modeler and appraiser then determine the relative weights of the variables between the comparable sales and deem which has the most impact in the market, with the area and the square footage being the first things they look at. *Id.* Once the five comparable sales are put onto the records, costs analysts look at Marshall and Swift, RS means, and local costs provided by local businesses to determine labor and material cost tables. *Id.* Appraisers are then given six months to go through all the properties within their assigned neighborhood, look at cost value and comparable values, and make a final value determination. *Id.*

13. Ms. Staples testified that Taxpayer Exhibits 2, 3 and 4 could not be used to appraise the property within the required appraisal standards because they do not take into account all of the property characteristics the DOR would consider in appraising the property and they contain information from sales occurring after the lien date. *MTAB Hrg. Tr. 39:14-40:17.*
  
14. Comparability points are measurements of comparability that are determined by the weights the modeler and appraiser put on certain characteristics and show how similar the sales are to the subject property, with lower numbers showing more comparability. *MTAB Hrg. Tr. 41:8-18; Ex. A, at 00015; Ex. 5.* The DOR has a policy of more closely examining comparable sales when they have comparability scores nearing or exceeding 200 comparability points. If at or exceeding 200 comparability points, DOR looks more closely to determine where the high number is coming from. *MTAB Hrg. Tr. 41:19-42:8.*

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15. The DOR does account for deterioration of the property in its appraisal and in this case did adjust the value of the driveway from \$4,709 to \$970 because of depreciation. *MTAB Hrg. Tr. 44:10-15; 46:14-24; Ex. A, at 000014.*
16. On the property record card, neighborhood 2.1 is the Mullan Ranch Club Area. *MTAB Hrg. Tr. 49:1-4; Ex. A, at 000010.* The “K” following the neighborhood number indicates that the property is a townhome or condo. *Id.*
17. The DOR market model for this neighborhood only used townhomes and condos. *MTAB Hrg. Tr. 49:5-7.*
18. In Missoula County, the whole county is used by the DOR to establish the market area and then neighborhoods are clustered together. *MTAB Hrg. Tr. 49:10-18.* When the system searches for comparable sales, it will try to stay within the same neighborhood cluster as neighborhood is one of the higher weighted variables. *MTAB Hrg. Tr. 49:21-50:9; See also MTAB Hrg. Tr. 76:10-19.* Additional weights are added to tell the system what neighborhoods to pull from if there are no comparable sales available in the subject property’s neighborhood. *Id.* In this case, that secondary neighborhood in the neighborhood cluster is neighborhood 4, the Rattlesnake area which is why the Brookside comparable was chosen. *Id.*
19. In this case, grade factor, home type (townhome), and neighborhood were the top three weighted factors. *MTAB Hrg. Tr. 75:14-17; Ex. E.*
20. The MRA value is calculated using the coefficients that are derived through the Orion system by the modelers and appraisers. *MTAB Hrg. Tr. 52:5-7; Ex. B.*
21. In most cases, the coefficients are a price per square foot. *MTAB Hrg. Tr. 56:14-19; Ex. B.* These coefficients multiplied by the property characteristics arrive at the MRA value. *MTAB Hrg. Tr. 56:20-21; Ex. B.*

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22. Ms. Staples testified that the MRA value in this case is high because within the 600 sales that developed the market model, the average size is 1200 square feet. *MTAB Hrg. Tr. 51:21-52:2*. The subject property is much larger with over 2,000 square feet above grade and an additional 1,000 square feet below grade which skews the MRA high. *Id.* The MRA value generated by the analysis was excluded under standard procedure as discussed below and was, therefore, not included in the final comparable sales calculation. *Id.*
23. When determining the comparable sales value, the weighted estimate of the subject and the five adjusted sales prices are arrayed. *MTAB Hrg. Tr. 52:17-52:24; Ex. D*. Then, the high and low values are excluded, leaving the three middle values which are then averaged. *Id.* That value is rounded to the nearest 100<sup>th</sup>. *Id.*
24. The weighted estimate of the subject property, around \$435,000 in this case, is determined by looking at the adjusted sales prices of the comparable sales. *MTAB Hrg. Tr. 53:4-55:8; Ex. F*. The contributory value of each comparable is determined by how many adjustments were made, thus determining the comparability points. *Id.*
25. The weighted estimate is included within the market value calculation which Ms. Staples testified, is part of appraisal methodology. *MTAB Hrg. Tr. 77:3-10*.
26. The DOR accounts for the fact that a subject property is a townhome or condo in the valuation by looking at the townhome variable and the coefficient related to that variable which looks at all of the sales in the model to find how the variable affects the value. *MTAB Hrg. Tr. 57:1-5; Ex. B*. In this case, the coefficient was approximately negative \$40,000, meaning that townhomes were selling for about \$40,000 less than otherwise comparable single-family homes. *Id.*



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27. Ms. Staples testified that these coefficients, produced by the Orion software, are verified by what the modeler and appraiser are seeing in the market though there is generally no evidence in the record to document this process. *MTAB Hrg. Tr. 57:16-20.*
28. However, the model does run statistical analysis and gives an r squared number to demonstrate accuracy, with one being the most accurate. *MTAB Hrg. Tr. 58:3-23; Ex. 10.* In this case, the r squared is 0.87, which in Ms. Staples experience, is reliable when considering the number of occurrences. *Id.*
29. With an r squared value of 0.8736, the standard of error in the valuation could be up to \$34,744.43. *MTAB Hrg. Tr. 68:9-21; Ex. 10.*
30. To further ensure accuracy, Tyler Technologies, the owner of the Orion software, runs quality assurance testing in conjunction with the DOR before the final determination of value. *MTAB Hrg. Tr. 59:6-13.*
31. A paired sale is when a property transfers twice within a short time period. *MTAB Hrg. Tr. 65:15-17.* Paired sales can support and confirm the appreciation within a market. *MTAB Hrg. Tr. 65:02-25.*
32. Comparable sales 1, 2, and 3 were all paired sales. *MTAB Hrg. Tr. 66:1-6; Ex. A, at 000015-000016.* Comparable 1 sold in 2017 and then again in 2019 for approximately 13% more than it did in 2017. *Id.* Comparable 2 sold in 2018 and then again in 2019 for approximately 20% more than it did in 2018. *Id.* Comparable 3 sold in 2018 and then again in 2019 for approximately 20% more than it did in 2018. *Id.*
33. The Taxpayers' property value increased approximately 18% in the 2021/2022 DOR valuation cycle which aligns with the appreciation the paired sales demonstrated. *MTAB Hrg. Tr. 67:3-6; Ex A, at 000010.*

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### JURISDICTION AND STANDARD OF REVIEW

34. 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*.
35. The 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.
36. 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

37. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
38. "All taxable property must be appraised at 100% of its market value...." *Mont. Code Ann. § 15-8-111*.
39. "In connection with any appeal under [Mont. Code Ann. § 15-2-301], the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act." *Mont. Code Ann. § 15-2-301(5)*.
40. 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,

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- 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 present a modicum of evidence showing the propriety of their action. *Western Air Lines v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
41. 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.
42. “‘Assessment formulations’ by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion.” *Peretti v. Dep’t of Revenue*, 2016 MT 105, ¶ 15, 383 Mont. 340, 344, 372 P.3d 447, 450 (citing *O’Neill v. Dep’t of Revenue*, 2002 MT 130, ¶ 23, 310 Mont. 148, 155, 49 P.3d 43, 47); see *Northwest Land & Dev. v. State Tax Appeal Bd.*, 203 Mont. 313, 317, 661 P.2d 44, 47 (1983) overruled on other grounds by *DeVoe v. Dep’t of Revenue*, 263 Mont. 100, 866 P.2d 228 (1993).
43. While the Board does understand the CTAB’s attempt to fairly value the Taxpayer’s home, the approach was based on an average of the comparable sales considered instead of legally required valuation based on adjusted comparable sales. MTAB has been given the mandate by the Montana State Legislature to find the market value of the property and the CTAB’s valuation method was not consistent with best appraisal practices. The Missoula County Tax Appeal Board decision is not affirmed.
44. The testimony of the DOR during the MTAB hearing left the Board in question of the adequacy of 2 of the 5 comparable sales used for the valuation of the Taxpayer’s property value using the market sales method of valuation. Comparable 4 had a high comparability score of 188 while comparable 5 had a high comparability score of 195. The DOR witness testified that a high

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comparability score over 200 should be “used with caution” but did not clarify the importance of a score of 200 and why this was the line in the sand. This left the Board in the position to decide the adequacy of the scores under, but near 200. Without a clear explanation and understanding, the Board is hesitant to accept the scores nearing 200 as adequate comparable sales in this appeal. The removal of these comparable sales forced the Board to question the valuation provided by the model. Without 5 acceptable comparable sales, the sales comparison method is a less reliable indicator of market value. We find that the DOR did not provide enough explanation to give the Board confidence in two of the comparables relied upon to calculate final market value which left the Board in question that the market sales approach was the most reliable.

45. “[T]he Legislature intended the Department to utilize both the cost approach and the market data approach, depending upon the available market data, when it assesses property and estimates market value.” *Albright v. State*, 281 Mont. 196, 208, 933 P.2d 815, 823 (1997).
46. The Taxpayer argued that state law requires cash value appraisal. However, Montana law does not require a cash value appraisal as suggested by the Taxpayer, but instead requires a fair market value appraisal. *Mont. Code Ann.* § 15-8-111.
47. The Taxpayer stated that the DOR did not oblige her request to provide the information and algorithms from the Orion computer software, which was developed by an out-of-state company, that is used by the DOR for modeling the state’s property values. The DOR indicated that its inability to obtain and share this information was based, at least in part, on the program’s proprietary information. The Taxpayer admitted that the modeling software’s calculations could be correct and that the Taxpayer’s concerns were based on her concerns about other non-industry related voting tabulation software as well as the fact that the Orion software was developed outside of Montana.

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48. The Taxpayer's reasoning for requesting a lower valuation of her property was based on economic concerns of artificially low interest rates and high inflation. Although market forces do have an impact on monetary policy and interest rates, these forces are part of what creates market data and cannot be parsed out. MTAB has been tasked with finding the property's market value. These valuations are identified with dollars and the factors that dictate today's monetary policy are nonconsequential to the value of these dollars used to measure the value of all Montana properties. It is also noted that interest rates affect the market as a whole and thus impact all participants in the Montana market which results in it being one of many government and non-government factors that create the market in its entirety. Once a factor impacts the market, no matter how substantial, it becomes part of the market. The Taxpayer's evidence was based on cash value appraisals and sought to point out flaws with disregarding cash value appraisal theories. Montana Law requires the DOR find the market value but does not authorize the DOR to utilize the cash value appraisal theory presented by the Taxpayer in its process. *Mont. Code Ann. § 15-8-111*. The Board was not persuaded that the evidence introduced by the Taxpayer was reliable or relevant to the DOR's legal mandate of valuing all Montana properties, therefore the Taxpayer has failed to meet her burden to demonstrate the DOR incorrectly valued her property.
49. The Board does have some concerns regarding the Taxpayer's limited access to certain information and data she requested early in the appeal process and which the DOR could have provided earlier than it did. We note that the Taxpayer requested additional algorithm and valuation information from the DOR during the AB-26 process and the CTAB process. The DOR did not make much of this information readily available. While some of the information may have been proprietary software information that the DOR did not have access to, the DOR did provide in-depth modeling information to the Taxpayer during MTAB's discovery process with additional worksheet facsimiles provided for the MTAB hearing. The DOR's failure to provide this information during the

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AB-26 and CTAB process limited, to some extent, the Taxpayer from being able to further understand and critique the DOR's methods during the appeals process.

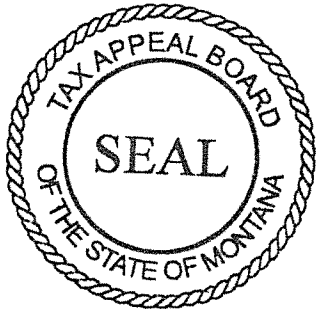
50. MTAB believes the DOR should have provided this Taxpayer a more complete accounting of the adjustments made between the comparable sales and the subject property earlier in the process to allow her to use this information in the preparation of her tax appeal. In this appeal, the information was requested and should have been provided. While most taxpayers do not ask for this depth of information, in this case it was requested and should have been provided earlier in the appeal process.
51. This Board does not affirm the CTAB's decision. We found two of the five comparable sales the DOR relied upon in determining the value of the Taxpayers' property were questionable, and in our judgement the Taxpayers did not overcome their burden of proof. MTAB is still required to fulfill the Legislature's mandate of finding the property's market value.
52. Based on the above, MTAB has determined that DOR's estimate of value using the cost method is the most reasonable method to establish market value for the subject property. Therefore, this Board sets the value of the subject property at \$451,940 as calculated by the DOR using the cost method.

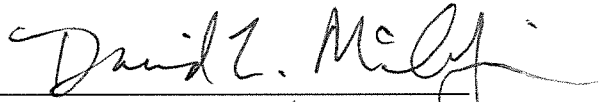
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**ORDER**

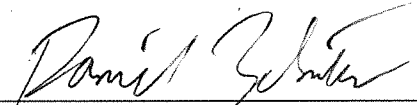
53. The Taxpayers' appeal and complaint is denied.
54. The DOR is ordered to set the 2021/2022 taxable value for the property located at 8721 B Ranch Club Road, Missoula, Montana at \$451,940.

Dated this 9<sup>th</sup> day of June 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 June 9, 2022, to:

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