

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

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Montana Tax Appeal Board

BEN & CARLA ANDRUS,

Appellants,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2022-15

**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 Beaverhead County Tax Appeal Board (CTAB) denying Ben & Carla Andrus (Appellants) a further reduction in value on the subject property located in Glendale, Montana. The Appellants appealed that outcome to Montana Tax Appeal Board (MTAB) on March 23, 2022. We affirm CTAB's determination in part and reverse in part.

ISSUE TO BE DECIDED

Whether CTAB erred in affirming the Department of Revenue's (DOR or Department) total value of \$185,417, based on a revised land value of \$81,857 and an improvement value of \$103,560.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Appellants Exhibits:

1. Glendale plat map (1 page) DOR Bates #126,
2. Four photos of subject property (2 pages),
3. Parcel valuation comparison table (1 page),
4. Tax protest form (1 page no receipt included),

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5. Beaverhead County Department of Environmental Health letter (1 page)
Bates #120,
6. Taylor Realty letter plus two maps (3 pages) Bates #121-123,
7. January 26 Andrus letter with appeal form 401 (3 pages) Bates #16-18,
8. February 23 Andrus presentation (4 pages) Bates #533-536,
9. March 9 Andrus Objections to No Decision (1 page) Bates #532.

DOR Exhibits:

- A. Appraisal Notice Bates #1-4,
- B. AB26 and Sept. 15, 2021 response Bates #7-9, 12,
- C. AB26 checklist, review notes & response Bates #5-6,
- D. Revised 2020-22 Property Record Card for residence Bates #83-87, 364-78,
- E. Revised map and photos Bates #309-13, 315-23,
- F. Comparable sales report Bates #133
- G. Vacant parcels' AB-26 responses Bates #20-25
- H. Revised 2020-22 Property Record Cards for vacant lots Bates #413-14,
431-32,
- I. Pictures of vacant parcels Bates #80-81
- J. Revised Land model sales info & maps; Land Model (electronic version
only) Bates #115-119, 537 confidential,
- K. Maps and Property Record Card for neighboring parcel Bates #108-114,
- L. New Department Procedure 2-3-001.1 Bates #304-308.

PROCEDURAL HISTORY

The DOR sent a Classification and Appraisal Notice dated July 9, 2021, (Appraisal Notice) to the Appellants valuing the four parcels and improvements thereon that comprise the 5.69 acre subject property at a total of \$232,347 for the 2021/2022 valuation cycle.

On September 14, 2021, the Appellants filed DOR Form AB-26, Request for Informal Classification and Appraisal Review. *Ex. B.* On January 26, 2021, while the informal review was in process, the Appellants filed an appeal with the Beaverhead County Tax Appeal Board (CTAB). *MTAB Dkt. 3.*

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The DOR sent the Appellants AB-26 Determination Letters for each geocode dated February 15, 2022, denying the Appellants' request for adjustments for Block 7, China Gardens, and Deep Water (individually defined below, together "Vacant Parcels") and raising the value of the Homesite from \$152,500 to \$161,463 to account for updated information regarding the home. *MTAB Dkt. 3*.

The CTAB hearing was held on February 23, 2022, in Dillon. At the beginning of the CTAB hearing, the DOR reduced the values of the Vacant Parcels by 70% based on a letter from the Beaverhead County Department of Environmental Health presented at the hearing which stated that the Vacant Parcels were unsuitable for development. After reducing the value of the Vacant Parcels, the DOR's amended value requested at CTAB was \$185,417 which included the reductions for the Vacant Parcels as well as the increased value assigned to the house during the AB-26. *MTAB Dkt. 3*. The CTAB denied the Appellants' appeal and affirmed the DOR's value of \$185,417, applying the new value to both 2021 and 2022. *Id.*

The Appellants filed a timely appeal of the CTAB decision to MTAB on March 23, 2022, and a hearing was set for August 9, 2022. *MTAB Dkt. 1*. On July 22, 2022, the Appellants filed a Motion for Summary Judgment. *MTAB Dkt. 11*. The Board vacated the August 9, 2022, hearing to allow the parties to file response and reply briefs to address the arguments made in the Appellants' filing. *MTAB Dkt. 13*. After reviewing the parties' written briefs, the Board denied the Appellants' motion on August 26, 2022, based on the DOR's argument that there were genuine issues of material fact and the Appellants' agreement with the DOR on that statement in their reply brief. Because there were genuine issues of material fact, the Board was required to hold a hearing to hear testimony and receive evidence and make a ruling on the factual disputes. *MTAB Dkt. 18*. The Board rescheduled a hearing for December 8, 2022. *MTAB Dkt. 20*.

On November 30, 2022, the Appellants filed a written challenge to the DOR's authority to assess tax on their property. *MTAB Dkt. 31*. The Board issued an order on December 2, 2022, to allow both parties to present their arguments on the challenge at the beginning of the hearing scheduled for December 8, 2022. *MTAB Dkt. 32*. The DOR filed its written response to the Appellants' challenge in advance of the hearing.

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MTAB Dkt. 33. The Board allowed both parties five minutes at the outset of the hearing to provide oral argument in support of their positions. After hearing the oral presentations and considering the written arguments, the Board determined that the DOR has the authority to value and classify property in Montana, the subject of this appeal, and proceeded with the hearing to determine the proper market value of the subject property.

The MTAB hearing was conducted in Helena on December 8, 2022, at which the following were present:

- a. Ben and Carla Andrus, Appellants (via telephone);
- b. Dave Burleigh, DOR Counsel; Chad Elser, DOR Regional Manager (Area Manager at the time of the appraisal); Tedd Weldon, DOR Area Manager (Lead Appraiser at the time of the appraisal); Tierani Losing, Modeler; Kandy Fleurisma, DOR Paralegal; and
- c. Two unidentified call-in observers who listened in but did not testify during the hearing.

The record includes all materials submitted to CTAB, a recording of the CTAB hearing, all materials submitted to MTAB with the appeal, and additional exhibits submitted by the parties prior to and at the MTAB hearing.

FINDINGS OF FACT

1. To whatever extent the following findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. The DOR sent the Appraisal Notice dated July 9, 2022 to the Appellants notifying them that the four parcels and improvements thereon that comprise the 5.69 acre subject property was valued at a total of \$232,347 for the 2021/2022 valuation cycle. The total value consists of the following:
 - a. \$25,044 for geocode 18-0778-24-4-07-01-0000, a 0.28 acre vacant parcel (referred to herein as Block 7);
 - b. \$28,265 for geocode 18-0778-24-4-03-10-0000, a 0.42 acre vacant parcel (referred to herein as China Gardens);

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- c. \$26,538 for geocode 18-0778-24-4-03-01-0000, a 0.34 acre vacant parcel (referred to herein as Deep Water); and
 - d. \$152,500 for geocode 18-0778-24-4-02-17-0000, a 4.652 acre parcel including improvements (referred to herein as House Parcel or Homesite). The value of \$152,500 includes a value of \$57,903 for the land and \$94,597 for the improvements. *Ex. A.*
- 3. The Appraisal Notice showed an increase in the total value of the subject property from \$178,496 in the previous cycle to \$232,347 in the current cycle. The increase from the previous cycle was greater than 10%. *Ex. A.*
- 4. On September 9, 2021, the Appellants mailed DOR Form AB-26, Request for Informal Classification and Appraisal Review, to the Butte Field Office of the DOR, contesting the value of the subject property and requesting comparable sales data for the properties used to value the subject property. *Ex. B.* The DOR received the Form AB-26 on September 14, 2021. *Id.*
- 5. The DOR sent the Appellants a letter on September 15, 2021, acknowledging receipt of their AB-26. The letter further stated that because the AB-26 was filed more than 30 days after the date shown on the Appraisal Notice, any adjustments made would only apply for tax year 2022. *Ex. B.* The DOR appraiser testified to the same at the MTAB hearing on December 8, 2022. *MTAB Hr'g Tr. 64:20-65:11.*
- 6. On January 26, 2021, while the informal review was still in process, the Appellants filed an appeal with the CTAB. *MTAB Dkt. 3.* In their CTAB appeal, the Appellants requested a total land value of \$36,860, asking that their land be valued at “no more than surrounding property, and reduce buildings’ valuations by the same ratio, or provide the background data the DOR owes us (per AB26 request).” *Id.* The Appellants had requested comparable sales data

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for those properties used to value the subject property during the AB-26 process. *Ex. B.*

7. The Appellants further stated in the letter in support of their CTAB appeal that they were rescinding the confidentiality agreement they signed when they filed their AB-26. *MTAB Dkt. 3.*
8. On February 7, 2022, the DOR produced an information packet which they distributed to the Appellants on February 8, 2022. *Ex. C.* The DOR appraiser later testified at the MTAB hearing that the information packet sent to the Appellants included the neighborhood land model which includes residential sales data. *MTAB Hr'g Tr. 68:10-25.* The appraiser also testified during the MTAB hearing that he had a phone conversation with Mr. Andrus on February 8, 2022, to set up an internal/external review, but Mr. Andrus would not allow the site visit. *Id.* The AB-26 checklist submitted by the DOR indicates that as of February 10, 2022, the appraiser would drive by the property only, per the Appellants' request. *Ex. C.* The AB-26 checklist also indicates that the appraiser left a voicemail for the Appellants on February 10, 2022, to discuss their rescindment of the confidentiality agreement. *Id.* The AB-26 checklist further indicates that the AB-26 was closed on February 15, 2022. *Id.*
9. The DOR mailed the AB-26 Determination Letters dated February 15, 2022, to the Appellants. *MTAB Dkt, 3, Ex. G.* The DOR denied the Appellants' request for adjustments for Block 7, China Gardens, and Deep Water. *Id.* The DOR did, however, raise the value of the Homesite from \$152,500 to \$161,463. *MTAB Dkt. 3.* The DOR stated this change was due in part to updating their records to reflect an increase in the size of the residence from 1,308 square feet to 1,864 square feet, removing the porch from their records, and changing the method of valuation from the market approach to the cost approach. *Id.*

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10. Based on the Appellants' request, the DOR did not conduct a full onsite review of the house, but instead took photos from the county road and used GIS software to estimate exterior measurements. *MTAB Dkt. 3*. During the MTAB hearing, the DOR appraiser testified he made dimensional reductions which accounted for the structure's overhanging eaves when estimating the square footage of the house to only estimate the outside wall measurements of the home. *MTAB Hr'g Tr. 72:15-73:9*.
11. The AB-26 Determination Letters also addressed the Appellants' rescindment of the confidentiality agreement, stating that the DOR would not provide confidential sales data to them per their request, but that the DOR would provide it should the Appellants sign and return an enclosed confidentiality agreement. *MTAB Dkt. 3*.
12. The CTAB hearing was held on February 23, 2022. At the beginning of the CTAB hearing, the DOR reduced the values of the Vacant Parcels by 70% to \$7,513 for Block 7, \$8,480 for China Gardens, and \$7,961 for Deep Water after receiving a letter from the Beaverhead County Department of Environmental Health stating that the Vacant Parcels were unsuitable for development. *Ex. 5; MTAB Dkt. 3*. According to the letter, the parcels are small, not contiguous, and too close to Trapper Creek for the installation of wells, septic tanks, and drain fields, and therefore are not suitable for building homesites. *Id.*
13. Based on the letter from the Beaverhead County Department of Environmental Health, as well as the adjustments made during the AB-26 process, the DOR requested a total value of \$185,417, which consists of the following values: 1) \$7,513 for Block 7; 2) \$8,480 for China Gardens; 3) \$7,961 for Deep Water; and 4) \$161,463 for the Homesite (\$57,903 for the land and \$103,560 for the house). *MTAB Dkt. 3*.

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14. At the conclusion of the hearing and deliberations, the CTAB denied the Appellants' appeal and affirmed the DOR's value of \$185,417, applying the new value to both 2021 and 2022. The county board cited Mr. Andrus's health as a good cause exception to the late filing of the AB-26 for 2021. *MTAB Dkt. 3.*
15. The Appellants filed a timely appeal of the CTAB decision to MTAB on March 23, 2022, per Montana Code Annotated § 15-2-301. *MTAB Dkt. 1.* In their appeal, the Appellants claimed several grievances:
 - a. The DOR did not explain the more than 10% increase in their property value from the previous cycle as required by Montana Code Annotated § 15-7-102(1)(b)(iv).
 - b. They refuted the DOR's claim that they denied DOR access to walk around the property as the DOR only asked to walk through the home. (The Appellants stated they believed they were not permitted to speak to the DOR after the CTAB secretary advised them they could not speak to the CTAB board members until the hearing.)
 - c. The DOR did not show authorization to collect, have, or use confidential sales data.¹
 - d. The DOR violated Montana Code Annotated § 15-7-102(2)(a) by failing to provide "sufficient information in a comprehensible manner designed to fully inform the taxpayer² as to the classification and appraisal of the property and of changes over the prior tax year."
 - e. The change from calculating the value of the subject property from the acre method to the square foot method appeared to double the valuation of the property from the previous valuation cycle.

¹ The Board notes that "confidential sales data" refers to sales data the DOR compiles to use in valuing Montana property, discussed herein.

² Black's Law Dictionary (11th Edition) defines the term "taxpayer" as someone who is subject to or pays tax. Under Montana statutes, rules, and case law, the term "taxpayer" includes, but is not limited to those who pay income tax and/or property tax. The term "taxpayer" as used in the statutes and case law referenced herein refer to one who is subject to or pays property tax.

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- f. That Montana Code Annotated § 15-7-102(3)(a) explicitly allows property owners to object electronically or by checking a box to meet the deadline to request DOR AB-26 informal review. *Id.*
16. The Appellants asked that the tax rate on their land be reduced to no more than that of surrounding property. *MTAB Dkt. 1*. The neighboring property is classified as nonqualified agricultural property and is valued at \$55.35/acre. *MTAB Dkt. 1; Ex. K*. The Appellants argued that assigning a value of \$619.92/acre to the subject property would result in a comparable tax rate as the neighboring property without changing the classification of the property. *Id.* The formula the Appellants provided to reach their requested value is: $[\$55.35 \times 7 \times 2.16\%] / 1.35\%$. *Ex. 3*. After applying this formula to each of their parcels, the Appellants requested the following values for the land: 1) \$174 for Block 7; 2) \$260 for China Gardens; 3) \$211 for Deep Water; and 4) \$2,264 for the 3.652 acre residual portion of the Homesite, which does not include a value for the 1 acre parcel beneath the house. *MTAB Dkt. 1*. During the MTAB hearing, the Appellants clarified that the \$2,264 they requested for the 3.652 acre residual portion of the Homesite would need to be added to the \$36,600 land value they were requesting for the 1 acre parcel under the house. *MTAB Hr'g Tr. 22:8-23:12*.
17. The Appellants requested the value of the improvements be left at the original assessment of \$94,597 before the DOR raised the value to \$103,560 during the AB-26 review. *MTAB Dkt. 1*. Alternatively, the Appellants requested the house be valued using the dimensions they provided of 1,277 square feet for the interior and 1,736 square feet for the exterior. *Id.*
18. During the April 21, 2022 scheduling conference, the Board explained that it would hear testimony and receive evidence at a hearing. To accommodate Mr. Andrus's health, the Board permitted the Appellants to appear at the hearing by

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telephone per their request. The Board initially scheduled the hearing for August 9, 2022. *MTAB Dkt. 2.*

19. On July 22, 2022, the Appellants filed a motion for summary judgment, stating, “We are not getting ‘sufficient information in a comprehensible manner designed to fully inform’ us on the central issues per MCA 15-7-102(2)(a).” *MTAB Dkt. 11.* They argued that the neighboring property was valued at \$36,600 for the first acre and \$55.35 for the residual portion, thus they were requesting values of: 1) \$174 for Block 7; 2) \$260 for China Gardens; 3) \$211 for Deep Water; and 4) \$38,864 for the Homesite, which includes \$36,600 for the first acre and \$2,264 for the remaining acreage. *Id.* These amounts are the same as those they requested in their initial MTAB appeal with the clarification that the Homesite value would include \$36,600 for the acre beneath the house.
20. The Board vacated the August 9, 2022, hearing to give the DOR an opportunity to file a response to the Appellants’ Motion for Summary Judgment and for the Appellants to file a reply to the DOR’s response. *MTAB Dkt. 13.*
21. The DOR responded on August 10, 2022, citing numerous genuine issues of material fact, including the dissimilar formulas and calculations each party used, whether the Vacant Parcels were valued in a different neighborhood than the Homesite, the classification of the subject property, and the dimensions of the improvements. *MTAB Dkt. 16.*
22. The Appellants replied on August 24, 2022, agreeing that there were issues of material fact in dispute. *MTAB Dkt. 17.* They also claimed not to have received the following documents which were included in a list of documents in the record provided by the DOR during discovery:
 - a. an official decision from CTAB as the one they received was not signed;

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- b. a copy of page 3 of the CTAB appeal form, indicating whether their appeal was granted, denied, or granted in part with the signature of the CTAB chair; and
 - c. two post-hearing documents they submitted to CTAB were not included in a list of documents in the record the DOR provided to the Appellants in discovery. *Id.*
- 23. The Appellants' reply of August 24, 2022, also states that "the first refusal of DOR to access our property was done by the DoR itself when [the DOR] summarily denied the Informal Review we requested over a year ago." *MTAB Dkt. 17*. They argued the next refusal was when the appraiser asked to walk through the house while the CTAB hearing was pending. *Id.* The Appellants later refused to allow the DOR access when the DOR's attorney requested the appraiser be allowed access to measure the exterior of the house during the MTAB discovery process to resolve the discrepancies between the dimensions calculated by the DOR and the dimensions provided by the Appellants. *Id.* The Appellants state in their reply that it would be irresponsible to allow the DOR personnel involved in the appeal or "anyone under their jurisdiction" access to measure their house. *Id.*
- 24. The Appellants' reply brief states they are asking for a total value of \$134,106, which includes \$39,509 for all four parcels of land and \$94,597 for the improvements. *MTAB Dkt. 17*. The reply states the DOR's increase to the valuation of the house should not apply to 2021, and that "the house is not a subject property for this Appeal." *Id.* The Appellants state that because the DOR switched to the cost method of valuation from the market method and applied that change to 2022 only, the value for both 2021 and 2022 should have been the amount shown under the cost method on the property record card prior to the DOR's adjustment at the AB-26. *Id.* In other words, the value of the house should be \$83,280 for both years, rather than \$94,597 for 2021 and \$103,560 for 2022.

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25. The Appellants argued that the letter they presented from Taylor Realty stating the Vacant Parcels are unmarketable is unrefuted testimony that the market price of that land is zero; however, they propose a value of \$620/acre to arrive at the same tax rate as the land surrounding them. *MTAB Dkt. 17*.
26. Under Montana Code Annotated § 25-20-56(c)(d), the Board may grant summary judgment on a claim without a hearing if the pleadings, discovery, and affidavits show that no genuine issue of material fact exists, and the movant is entitled to judgment as a matter of law. The Board denied the Appellants' motion on August 26, 2022, based on the DOR's argument that there were genuine issues of material fact and the Appellants' agreement with the DOR on that statement in their reply. *MTAB Dkt. 18*.
27. The Appellants sent an email to the Board and the DOR on September 2, 2022, stating that the documents listed in their reply of August 24, 2022, were still unaccounted for. The DOR replied to the Appellants on September 7, 2022, with copies of the documents the Appellants referred to, stating the DOR did not have a copy of page 3 of the CTAB's decision but that the DOR understood that the Appellants attached the document the CTAB likely intended to be its decision to their original MTAB appeal filing.
28. On September 9, 2022,³ the Board issued an order to reschedule the hearing and provide the Appellants with the entire MTAB record as of that date. *MTAB Dkt 19*.
29. On September 14, 2022, the Appellants responded to the Board's order stating they were still missing documents, including documents they submitted to CTAB themselves before and after their CTAB hearing. The Board issued an order on September 15, 2022, to set the hearing for December 8, 2022, to

³ The Order was dated and sent September 9, 2022, but erroneously stamped September 13, 2022.

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clarify the process, and to notify the Appellants they could submit additional documents per the scheduling order. *MTAB Dkt. 22*.

30. On November 2, 2022, the Appellants requested MTAB clarify the order issued September 15, 2022, and stated that none of the exhibits they provided to CTAB were in the MTAB record. *MTAB Dkt. 21*. On November 4, 2022, the Board issued an order again stating that either party could submit any additional documents not in the record. *MTAB Dkt. 22*.
31. On November 23, 2022, the Board issued a clarification stating the Board had received additional documents from CTAB on November 21, 2022, including the Appellants' exhibits from the CTAB hearing, which were not previously provided. *MTAB Dkt. 29*.
32. On November 30, 2022, the Appellants filed a challenge to the DOR's authority to assess tax on their property. *MTAB Dkt. 31*. The DOR sent an email stating they intended to respond to the challenge. Because the hearing date was approaching, the Board issued an order on December 2, 2022, to allow both parties to present their arguments on the challenge at the beginning of the hearing scheduled for December 8, 2022. *MTAB Dkt. 32*. The DOR filed its written response to the Appellants challenge on December 5, 2022, in advance of the hearing. *MTAB Dkt. 33*.
33. At the hearing, the Appellants argued that the DOR has never explained how their property is owned in "fee simple." *MTAB Hr'g Tr. 9:23-10:9*. They testified the DOR provided the deed to the property but nothing on the deed indicated "fee simple." *Id.* In response, the DOR argued that Montana Code Annotated § 70-15-203 states, "Every estate of inheritance is a fee, and such estate, when not defeasible or conditional, is a fee simple or absolute fee." *MTAB Hr'g Tr. 11:1-9*. The DOR further argued it is authorized in several places in the Montana Code to appraise and classify property, and the

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Montana Constitution contemplates the state government taxing its citizens and assessing and taxing property. *MTAB Hr'g Tr. 11:1-9; MTAB Dkt. 33*. The United States Constitution, Article I, Section 8, and the 10th amendment authorizes the states to tax citizens. *Id*

34. There was conflicting testimony and evidence as to whether the Appellants contested the value of the improvements on the property. *MTAB Hr'g Tr. 3:10-24; MTAB Dkt. 17*. The Board proceeded with the hearing on the assumption that the value of the improvements was still in dispute as the Appellants asked the value to be left at \$94,597, and the DOR was defending the value of \$103,560, which is the value it determined during the AB-26 review and which the CTAB affirmed. *MTAB Dkt. 1*. The Appellants alternatively requested in their appeal that the house be valued using the dimensions they provided of 1,736 square feet for the exterior. *Id*. However, in their reply to the DOR's response to their motion for summary judgment, the Appellants attached emails exchanged between the Appellants and the DOR which stated the Appellants calculated the exterior measurements at 1,717 square feet, which they acknowledged is 19 square feet less than they reported at the CTAB hearing. *MTAB Dkt. 17*. The DOR estimated the dimensions at 1,864 square feet. *Ex. D; MTAB Dkt. 3*.
35. The Appellants rescinded the confidentiality agreement they signed when they requested comparable sales data during the AB-26 process but did so in their appeal to CTAB. Shortly thereafter, the DOR prepared and sent the information the Appellants requested in their AB-26 form, including confidential sales data. *MTAB Dkt. 3*. The DOR also mailed additional sales data, including confidential sales data, to the Appellants as part of the discovery process prior to the MTAB hearing. When asked by the Board at the beginning of the MTAB hearing to clarify their position on holding sales data confidential, the Appellants argued that no confidential information was provided to them, so no confidentiality agreement was necessary. *MTAB Hr'g Tr. 6:18-7:25*.

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Furthermore, the Appellants claimed the DOR does not have the authority to collect such sales information. *Id.* To prevent dissemination of confidential sales information during the MTAB hearing, the DOR refrained from identifying parcels with their sales prices during their presentation. *MTAB Hr'g Tr. 6:18-7:25.*

36. The Board adhered to its uniform practice of requesting that all proposed exhibits be moved for admission and explained that the opposing party would have a chance to object to any exhibit. *MTAB Hr'g Tr. 12:8-13:12.* The Appellants testified they felt ambushed because they were unaware of the procedure to admit documents to the record. *MTAB Hr'g Tr. 19:16-20. Id.* The DOR agreed to admit all the Appellants' exhibits at once and objected to Exhibits 5 and 6 on hearsay grounds. *Id.* The Board admitted all the Appellants' exhibits and preserved the DOR's objections in the record.
37. The Appellants argued that the DOR never explained the reason for the greater than 10% increase in their property value from the prior cycle, nor did they explain the reason for using square feet when valuing the subject property instead of acres. *MTAB Hr'g Tr. 24:1-16.* They further testified that because the DOR did not provide the data they requested (confidential sales data) during the AB-26 process until after they filed their CTAB appeal, they were unable to understand the appraisal process. *MTAB Hr'g Tr. 18:20-24, 22:8-23:7, 24:20-25:10.*
38. Evidence and testimony in this appeal is contrasting between parties as it relates to whether the DOR was allowed on the land or in the improvements for inspection and measurement of the improvements. The Appellants claim that when the DOR refused the Appellants' request for informal review (AB-26), the DOR also refused to inspect the property. *MTAB Hr'g Tr. 27:4-18, 46:9-17.* The DOR appraiser tried to inspect the property between the CTAB hearing and the MTAB hearing, but the Appellants informed the appraiser that they had

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missed their opportunity. *Id.* The Appellants testified they believed that neither the Appellants nor the DOR was supposed to communicate with the other while the CTAB appeal was pending. *Id.* The Appellants stated that the CTAB secretary told them they were not allowed to talk with anyone on the board or to CTAB, and their contact point should be the CTAB secretary. *MTAB Hr'g Tr. 46:22-47:5; Ex. 8; MTAB Dkt. 1.*

39. The Appellants claim the DOR knew or should have known the Vacant Parcels were unbuildable since a DOR appraiser looked at the property in previous years. *MTAB Hr'g Tr. 18:24-19:5.*
40. The Appellants argued at the hearing that the tax rate on their land should be no more than that of the neighboring property. *MTAB Hr'g Tr. 22:8-23:12.* The subject property and the neighboring property are very similar, but because their neighbor owns more than 20 acres, his land is classified as nonqualified agricultural land, which the Appellants testified they believe is based on an arbitrary rule. *MTAB Hr'g Tr. 22:8-23:12, 36:23-25; Ex. 3.*
41. The Appellants testified they attempted to get an independent fee appraisal but were unsuccessful because of the lack of sales of comparable properties for the appraiser to use in valuing the properties. *MTAB Hr'g Tr. 20:19-22:4.* The Appellants also introduced a letter from Taylor Realty stating that the Vacant Parcels are unmarketable, thus they argue the market value is zero. *MTAB Hr'g Tr. 19:9-11, 20:20-22, Ex. 6.* The Appellants testified that the comparable sales of properties used by the DOR in building the land model were either too far away, in the resort town of Polaris, or were classified as nonqualified agricultural land. *MTAB Hr'g Tr. 26:8-14.*
42. The DOR testified it initially appraised the subject property using the comparable sales approach to value. *MTAB Hr'g Tr. 61:13-16.* The land value was derived using a land sale model, and adjustments were made for

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differences in size and time of sale adjusted to statewide lien date. *MTAB Hr'g Tr. 63:9-11.*

43. When valuing a property, the DOR first creates neighborhoods consisting of groups of properties that are homogenous in nature and share similar physical, economic, governmental, and social factors. *MTAB Hr'g Tr. 49:1-12.* The DOR modelers then validate sales in those neighborhoods, put those sales into a model, run regression analysis on those models and then work with the appraisers to ensure those values are legitimate. *Id.* The DOR also time trends the sales validated in a neighborhood model to the lien date to ensure all properties are equalized. *MTAB Hr'g Tr. 55:4-11.* The DOR assigned the subject property to neighborhood 218.001, northeastern Beaverhead County.
44. The model used by the DOR does not account for building restrictions like those imposed on the Vacant Parcels because the DOR did not find sales of properties with such restrictions in those particular neighborhoods. *MTAB Hr'g Tr. 51:9-52:4.* Because of this, the DOR looked to other neighborhood land models from Beaverhead County and other counties with similar neighborhoods and used influence percentages built into those models to find a defensible reduction for unbuildable lot value of the Vacant Parcels. *Id.* On average, the models of other neighborhoods with sales of similarly restricted property suggested a 70% reduction in market value. *Id.* The area manager for the DOR, Chad Elser, testified that based on 10 to 15 other sales of non-buildable lots in the area, the DOR felt that the 70% reduction the DOR applied to the Vacant Parcels was fair. *MTAB Hr'g Tr. 94:5-95:1.*
45. The DOR uses an acre or square foot calculation in their model. *MTAB Hr'g Tr. 52:5-11.* The base size of land for the model used by the DOR to value the subject property was 43,560 square feet, roughly equal to one acre of land. *MTAB Hr'g Tr. 52:5-11.* The valuation under the square foot analysis is very similar to the valuation under the acre analysis but results in a value difference

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effected only by the rounding to the nearest dollar for the square foot analysis and to the nearest hundred dollars for the acre analysis. *MTAB Hr'g Tr.* 52:5-11, 86:5-9, 87:13-16; 99:3-7.

46. The base rate of the model used to value the subject property is \$36,616 per acre or per 43,560 square feet. *MTAB Hr'g Tr.* 52:15-53:3. The DOR determines the base rate by using independent variables to see how land values are impacted and then verifies the values using a statistical analysis. *Id.*
47. The incremental or residual rate used to value the remainder of the property is 0.2984. *MTAB Hr'g Tr.* 53:5-54-24. The incremental rate is used to adjust for differences in land sizes or account for additional or lesser sized parcels. *Id.* The incremental rate is developed using the land size and sale prices of sold properties in the sales model. *Id.* The formula used multiplies the base rate by the subject land size raised to the incremental rate. *Id.* The comparable sales are also time adjusted to the common January 1, 2020, lien date in Montana set by Montana Code Annotated § 15-7-111. *MTAB Hr'g Tr.* 84:20-25.

JURISDICTION AND STANDARD OF REVIEW

48. 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 Appellants filed a timely appeal of the DOR's decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. *Mont. Code Ann. § 15-2-301.*
49. This Board may hear appeals de novo. *Dept. of Revenue v. Burlington N.*, 169 Mont. 202, 213-14, 545 P.2d 1083 (1976). "A trial de novo means trying the matter anew, the same as if it had not been heard before and as if no decision had been previously rendered." *McDunn v. Arnold*, 2013 MT 138, ¶ 22, 370 Mont. 270, 275, 303 P.3d 1279, 1282.

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50. The Board's order is final and binding upon all parties unless changed by judicial review. *Mont. Code Ann. § 15-2 302(6)*.

CONCLUSIONS OF LAW

51. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
52. "All taxable property must be appraised at 100% of its market value...." *Mont. Code Ann. § 15-8-111*.
53. Per Montana Code Annotated § 15-2-301(5), MTAB is not bound by common law and statutory rules of evidence or rules of discovery in appeals of CTAB decisions and may affirm, reverse, or modify any decision.
54. DOR is entitled to a "presumption of correctness if its decisions are pursuant to an administrative rule or regulation, and the rule or regulation is not arbitrary, capricious or otherwise unlawful." *Burlington N.*, 169 Mont. At 214, 545 P.2d at 1090. However, DOR cannot rely entirely on the presumption in its favor and must 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).
55. 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.
56. "'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

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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)).

57. When construing a statute, it is the Board's role to "determine what in terms or substance is contained in it, and not to insert what has been omitted or to omit what has been inserted." *State v. Minett*, 2014 MT 225, ¶ 12, 376 Mont. 260, 263, 332 P.3d 235, 238; *Mont. Code Ann. § 1-2-101*.
58. "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*.
59. "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)).
60. "[T]ax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer." *Western Energy Co. v. Dep't of Revenue*, 1999 MT 289, ¶ 10, 297 Mont. 55, 58, 990 P.2d 767, 769.
61. The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. *Mont. Code Ann. § 15-1-101(1)(i)*.
62. The Legislature intended the Department to utilize several different approaches or combination of approaches, including the income approach, sales comparison approach, and cost less depreciation approach, depending on the market where the appraisals take place, when it assesses property and estimates

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market value. *Albright v. State*, 281 Mont. 196, 208-09, 933 P.2d 815, 823 (1997).

63. Under Montana Code Annotated § 15-7-139(7)(b), if a landowner refuses to allow DOR valuation staff to enter the land to appraise the property, the DOR is required to estimate the value of the property. Under Montana Code Annotated § 15-7-139(7)(a), neither the CTABs, nor MTAB may adjust the DOR's estimated value if a landowner refuses to allow the DOR access to the land unless the landowner provides an appraisal that meets the requirements set forth therein from a certified Montana appraiser.
64. Under Montana Code Annotated § 15-7-102(3)(a)(ii), property owners may file an objection (a DOR AB-26 informal review) for class three and class four property only once each cycle. A written objection must be made within 30 days from the date on the classification and appraisal notice for any reduction granted to be applied to both years in the cycle. If a property owner files an objection more than 30 days from the date on the classification and appraisal notice, but before June 1st of the second year of the cycle, any adjustment granted will only apply to the second year of the cycle.

DISCUSSION

65. The Board heard and considered arguments at the beginning of the hearing as to whether the DOR has legal authority to value and classify Montana property as a part of our state system of taxation. We are convinced by the authorities cited by the DOR in their briefing and oral arguments in favor of their legal authority to value and classify property.
66. The Board's role in valuation and classification disputes is to weigh the evidence and testimony presented and decide whether the DOR's appraised value is reflective of market value on the lien date. It is also this Board's duty to consider arguments and evidence and decide the correct classification of

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disputed property by interpreting the definitions of the various property classifications set forth by the Legislature into the Montana Code Annotated.

67. This Board is responsible for applying the law to the findings of fact above.
68. The Appellants argued that the DOR did not explain the more than 10% increase in their property value from the previous cycle as required by Montana Code Annotated § 15-7-102(1)(b)(iv). Subsection (iv) was added to the statute in 2021 and became effective October 1, 2021. This means that notices mailed after October 1, 2021, must include this information. The Notice in this matter was dated July 9, 2021, prior to the effective date, thus the DOR was not in violation of Montana Code Annotated § 15-7-102(1)(b)(iv) when it sent the Notice to the Appellants without an explanation of the increase.
69. The Appellants also argued that the DOR violated Montana Code Annotated § 15-7-102(2)(a) by failing to provide “sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.” This Board finds that the DOR provided the Appellants with multiple documents to explain how they valued the subject property, including the property record cards of the subject property, the dimensions of the subject home the DOR used to calculate value, a comparable sales report, the land model used to value the subject property, and a map of the subject property. The DOR also provided the Appellants with information regarding differences between the subject property and the neighboring property that led to the properties being classified and valued differently, including the property record card for the neighboring property and a map of the neighboring property demonstrating the difference in acreage of the neighboring property and the subject property. We find that the DOR provided the Appellants numerous documents with information and explanations to demonstrate how the subject property was valued. Thus, we disagree with the Appellants that the DOR was

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in violation of Montana Code Annotated § 15-7-102(2)(a) for failing to provide the required information.

70. The Appellants also argued that they only denied the DOR access to the house but did not deny access to the land to walk around the land. This Board understands the Appellants' reluctance to allow the DOR personnel into the house due to Mr. Andrus's health. However, if a landowner refuses to allow the DOR access to the land to appraise the property, the DOR is required to estimate the value of the property, and then the CTAB and MTAB may not change the DOR's value unless the landowner provides an appraisal from a certified Montana appraiser performed according to the requirements of Montana Code Annotated § 15-7-139(7)(a)(ii). The Appellants stated in the reply to their motion for summary judgment that the DOR first refused to access the property when they denied the informal review. They also state that the CTAB secretary told them they could not speak with the CTAB or board members until the hearing and that their only point of contact should be her. This Board agrees that parties should not be in direct contact with the CTAB board members while a hearing is pending. This is to avoid *ex parte* communication, which is communication between a party and board members without the other party present. This means appellants may not communicate with or correspond with CTAB board members in any way about their pending hearing unless the DOR personnel are also present. The same is true for the DOR. The DOR may not speak with CTAB board members about their pending hearing unless the appellant in that hearing is also present. The CTAB secretary's statement that the Appellants could not speak with the CTAB board members did not prevent the Appellants and DOR personnel from speaking with each other, nor did it prevent the DOR from being able to walk around the subject property land for appraisal purposes.
71. The Appellants provided copies of emails between themselves and the DOR in preparation for the MTAB hearing in which the parties calculated different measurements for the house. The DOR asked to come to the property to

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measure the outside dimensions of the house, but the Appellants did not grant the request. The Appellants stated in their reply to their motion for summary judgment that it would be irresponsible to allow access to the DOR now. Based on the evidence and testimony presented, this Board finds the DOR reasonably believed it was not permitted on the property to measure the house during the pendency of the AB-26 review and the CTAB and MTAB appeals. Because of this, the DOR was required to estimate the value per Montana Code Annotated § 15-7-139(7)(b). As a result, this Board may not reduce the value per Montana Code Annotated § 15-7-139(7)(a).

72. The Appellants also argued that the DOR did not show authorization to collect, have, or use confidential sales data. This Board notes that such authorization can be found in the Realty Transfer Act (Mont. Code. Ann. § 15-7-301, et seq.), and that Montana Code Annotated § 15-7-308 specifically states that information included on the Realty Transfer Certificates, including confidential sales data, is not a public record and must be held confidential by the county clerk and the DOR. The statute further states that such information may be shared with a property owner to demonstrate how the DOR valued their property once the property owner signs a written or electronic confidentiality agreement. The confidential information covered by the confidentiality agreement includes information such as the amounts people in their community paid or received when they purchased or sold their properties. The Appellants rescinded their confidentiality agreement in their CTAB appeal. The CTAB is separate from the DOR, so it is unclear when the DOR received the notice that the Appellants had rescinded that agreement. Although the DOR did send the sales data to the Appellants, the Appellants rescindment of the confidentiality agreement rescinded their entitlement to the sales data. Montana is a non-disclosure state regarding property sales prices, but the information is necessary for the DOR to value properties each valuation cycle. Thus, the Realty Transfer Act authorizes the DOR to collect such information to use in valuing Montana properties.

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73. The Appellants also argued that they initially believed the value of their land appeared to double when the DOR calculated it using square feet rather than acres. As stated above, the difference between using square feet and acreage in the calculation is a function of rounding and was not a factor in the increase in the value of the subject property in the current cycle. This Board finds the use of square feet over acreage in calculating the value made a minimal difference and the change in value from the prior cycle was a function of market sales and updated property characteristic information in the DOR's records.
74. The Appellants also argued that Montana Code Annotated § 15-7-102(3)(a) explicitly allows property owners to object electronically or by checking a box to meet the deadline to request informal review. This Board notes the statute allows property owners to request an informal review (AB-26) "by submitting an objection on *written or electronic forms provided by the department for that purpose* or by checking a box on the notice and returning it to the department in a manner prescribed by the department." (Emphasis added.) The Appellants testified that they attempted to file their AB-26 request online, and when that method failed, they called the DOR. They did not mail their request to the DOR until September 9, 2021, more than 60 days after the date shown on the Appraisal Notice and more than 30 days after the deadline. Based on the plain language of Montana Code Annotated § 15-7-102(3)(a)(ii), any adjustments made either through the AB-26 process or through an appeal only apply to the second year of the cycle, which is 2022 in this appeal. While we understand the Appellants' frustration with the process, the law provides all property owners 30 days from the date shown on their classification and appraisal notice to submit their AB-26 to the DOR or to appeal to CTAB. This deadline is clearly stated in the Appraisal Notice. The law speaks for itself and the evidence and testimony in this appeal are unrefuted that the Appellants submitted their AB-26 to the DOR more than 30 days after the date shown on the Appraisal Notice. While we agree that the value of the Vacant Parcels must be reduced, as discussed below, this Board does not have the legal authority to disregard

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Montana Code Annotated § 15-7-102(3)(a)(ii). Therefore, the 70% reduction in value for the Vacant Parcels may only apply to 2022, and not to 2021.

75. As to the subject of this appeal, the DOR must prove to the Board through evidence and testimony that they followed Montana law and appraisal practices in classifying and valuing the subject property. The Appellants have the burden to show the Board that the DOR valued their property incorrectly. The Board must decide the classification and valuation of the property based on the evidence and testimony presented.
76. The Appellants made a logical argument that if their land is identical or very similar to their neighbor's land, the parcels should all be valued the same. However, this view does not acknowledge that Montana law distinguishes or classifies differing uses of land. In Montana, the legislative branch of government sets classification categories for lands, typically based on size and use, and assigns varying categories to those property class definitions. The legislature has the legal authority to set qualification thresholds and to define agricultural uses and record them in the law, formally referred to as the Montana Code Annotated.
77. The neighboring land meets the requirements of Montana Code Annotated § 15-6-133(1)(c) and is therefore classified as nonqualified agricultural land because the parcels total over 20 acres. Montana Code Annotated § 15-6-133(3) states, "The taxable value of land described in subsection (1)(c) [nonqualified agricultural land] is computed by multiplying the value of the land by seven times the taxable percentage rate for agricultural land." Montana Code Annotated § 15-6-133(2) states, "Subject to subsection (3), class three property is taxed at 2.16% of its productive capacity value." How the value is set for nonqualified agricultural property is beyond the scope of this appeal. This Board notes that the value of nonqualified agricultural land in the 2021/2022 cycle is \$55.35 per square foot.

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78. The subject property is classified as class four residential property. Montana Code Annotated § 15-7-103(6) requires all class four property to be valued as provided in § 15-7-111 on its market value. Montana Code Annotated § 15-8-111(1) and (8)(d) require class four properties to be assessed at 100% of market value. Class four property is taxed at 1.35% of market value under Montana Code Annotated § 15-6-134.
79. We find that within the constraints of these laws, the DOR has properly classified the Appellants' parcels as class four residential property. Unlike their adjoining neighbor, the Appellants' 5.69 acres of land cannot be classified as nonqualified agricultural land under existing Montana law as they own less than the statutory minimum of 20 acres. The neighbor's land they compare their land to is more than 20 contiguous acres thereby qualifying as nonqualified agricultural land under Montana Code Annotated § 15-7-202.
80. The Appellants were clear that they were not requesting their land be reclassified. However, they provided a formula, $[\$55.35 \times 7 \times 2.16\%] / 1.35\%$, which would yield a value of \$620 per acre, which they calculated to provide the same tax rate as their neighbor's nonqualified agricultural land. We decline to adopt the values sought by the Appellants because their land does not qualify for the same treatment under the Montana law classifying different types of land by size and use. It is clear by the size of the Appellants' parcels that they do not meet the standard set forth in law to be classified as agricultural, thus they do not qualify to be taxed at a similar rate. Class four property, such as the Appellants' property, must be valued at 100% of its market value based on Montana law and standard appraisal practices. This Board does not believe the resulting value the Appellants requested is indicative of market value and declines to adopt the values they request.
81. The DOR reduced the value of the Vacant Parcels by 70% at the CTAB hearing after receiving evidence they were not suitable for development. The

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Appellants argued that the statement in the Taylor Realty letter that the broker believed there was no way they could sell the Vacant Parcels was proof that the value of the Vacant Parcels is zero. Rather than request a value of zero, the Appellants argued for a value of \$620 per acre based on the formula discussed above. We are not convinced by the evidence the Appellants presented that the value of the Vacant Parcels is zero or that the Board would be justified in reducing the values as much as the Appellants requested. Although the Vacant Parcels are small and not suitable for development, they still have value. We agree with the DOR's 70% reduction in value for the Vacant Parcels. Based on evidence and testimony presented, the DOR applied their standard procedures to correctly assign the influence factor of "unbuildable" to the lots and correctly reduced the value by 70% as applied to other unbuildable lots. We uphold the 70% reduction the DOR applied to the Vacant Parcels.

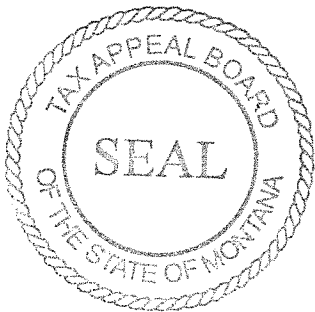
82. The Board will apply the law as required and affirm the CTAB's decision in part and reverse in part. The Appellants have not provided any credible evidence and testimony to convince us the DOR has erred in their valuation and classification of these parcels of land or the improvements, thus we affirm the CTAB's decision as to the value of the subject property. We reverse the CTAB's decision to apply the 70% reduction in value of the Vacant Parcels to both years of the valuation cycle because plain language of the statute is clear that the changes may only apply to the second year of the cycle (2022), and there is no legal authority granted to CTAB or MTAB to make an exception for an untimely filed appeal.

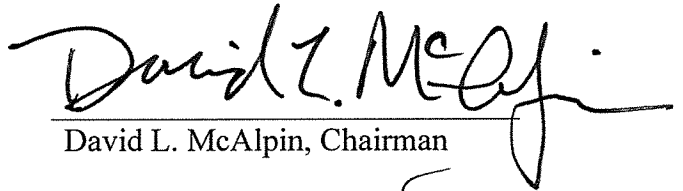
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ORDER

83. We affirm the CTAB's decision upholding the DOR's valuation for 2022.
84. We reverse the CTAB's decision to apply the DOR's 70% reduction to the value of the Vacant Parcels to 2021.
85. The DOR shall maintain the land value of the three Vacant Parcels at \$25,044, \$28,265, and \$26,538 for 2021 and at \$7,513, \$8,480, and \$7,961 for 2022.
86. The value of the improvements on the land shall remain at \$97,597 for 2021 and \$103,560 for 2022.
87. The DOR shall maintain the land value of the Homesite at \$57,903 for both 2021 and 2022.

Dated this 2nd day of March 2023.




David L. McAlpin, Chairman


Amie Zendron, 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

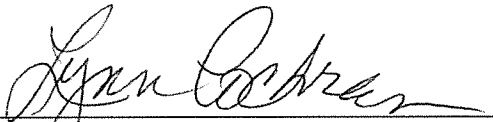
I certify that I caused a true and correct copy of the foregoing Findings of Facts and Conclusions of Law to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on March 2, 2023, to:

BEN & CARLA ANDRUS
P.O. Box 8
5100 Trapper Creek Rd
Melrose, Montana 59743

Dave Burleigh
STATE OF MONTANA, DEPARTMENT OF REVENUE
Legal Services Office
P. O. Box 7701
Helena, MT 59604-7701

Kory Hofland, Division Administrator
DOR PAD
340 North Last Chance Gulch
Helena, MT 59601-5012

Amy Walker, Secretary
Beaverhead County Tax Appeal Board
2 South Pacific Street, CL#1
Dillon, MT 59725



Lynn Cochran, Legal Secretary