

KEITH A. BRUSKI and BARBARA H. BRUSKI,

Appellants,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE No: PT-2024-5

**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 Fergus County Tax Appeal Board (CTAB) denying Keith and Barbara Bruski, (Taxpayers) a reduction in value on the subject property located at 7840 Maiden Road, Lewistown, Montana (Subject Property). The Taxpayer appealed that outcome to Montana Tax Appeal Board (MTAB) on January 12, 2024. We modify CTAB’s determination.

ISSUE TO BE DECIDED

Whether CTAB erred in denying Taxpayers’ request for a reduction in value on the Subject Property.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Exterior Photos of Subject Property;
2. Photos of Subject Property’s Skylight;
3. Page 4 of Property Record Card;
4. Keith Bruski Affidavit;
5. CAD drawing of Subject Property;
6. Excerpt of CTAB Manual;

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7. List of Fergus County Appointed Board Members;
8. CTAB Hearing Minutes;
9. Property Record Card from Cadastral;
10. Aerial Photograph of Subject Property;
11. Google search results from ourworldindata.org;
12. List of nearby land values and sales prices from Zillow.com;
13. Google search results for costs to drill well and install septic system;
14. Calendar showing days and hours Taxpayer worked from June 2023 to November 2023;
15. Timeline with estimated costs to repair skylights with photographs;
16. Estimated costs to repair skylight with wage rates; and
17. Taxpayer's Introduction, Summary and Addendum.

DOR Exhibits:

- A. Property Record Card for Subject Property;
- B. Photos of Subject Property;
- C. Land Valuation Model; and
- D. 2023-2024 Residential, Commercial, and Industrial Property Classification and Valuation Manual.

PROCEDURAL HISTORY

The DOR valued the Subject Property at \$285,791 for the 2023/2024 appraisal cycle, with the land valued at \$66,111 and the improvements valued at \$219,680. *Ex. A.* The Taxpayers filed an AB-26, Request for Informal Classification and Appraisal Review, with the DOR dated July 28, 2023, requesting a land value of \$64,100 and an improvement value of \$144,680. *MTAB Dkt. 3.* The Taxpayer also appealed directly to the CTAB by filing a Form MTAB-401 dated July 28, 2023, requesting a land value of \$64,100 and an improvement value of \$144,680. The CTAB acknowledged receipt of Taxpayers' appeal in a letter dated August 2, 2023. *Id.* The DOR sent a Form AB-26 Determination Letter to the Taxpayers dated October 16, 2023, denying the Taxpayers' request. *Id.* The CTAB hearing was held on December 12, 2023, and the CTAB's decision denying the Taxpayers' application for reduction was issued on

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December 12, 2023. *Id.* The Taxpayers appealed to MTAB on January 12, 2024, per Mont. Code Ann § 15-2-301, requesting a land value of \$44,000 and an improvement value of \$144,680, for a total of \$188,680. *MTAB Dkt. 1; MTAB Hr'g Tr. 6:11-17.* The MTAB hearing was conducted in Helena on September 24, 2024, at which the following were present:

- a. Keith A. Bruski, Taxpayer (via telephone).
- b. Dave Burleigh, DOR Counsel; Justin Burt, Appraiser; Wanda Warsinski, Modeler; James Holmes, Lead Appraiser; Kandy Fleurisma, Paralegal.

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

FINDINGS OF FACT

1. To whatever extent the following findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. The Subject Property is a residential home owned by Keith and Barabra Bruski. *Ex. A.* The Subject Property is located at 7840 Maiden Road in Lewistown, Montana and is also identified by its geocode 08-2576-06-2-04-01-0000. *Id.* The Subject Property is 37.508 acres in total size and is included in DOR neighborhood 208.001.4. *Id.*
3. The DOR valued the Subject Property at \$285,791 for tax years 2023 and 2024, allocating \$66,111 to the land and \$219,680 to the improvements. *Ex. A.* At the December 12, 2023, CTAB hearing, the Taxpayers requested the market value of the Subject Property be reduced to \$208,780, allocating \$64,100 to the land and \$144,680 to the improvements. *MTAB Dkt. 3.* The CTAB denied the Taxpayers' request and maintained the DOR's valuation of \$285,791. *Id.* The Taxpayer appealed to MTAB on January 12, 2024, and asserted that the market

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value of the Subject Property should be \$188,680, requesting that the land value be reverted back to its 2022 value of \$44,000 and the improvements be valued at \$144,680. *MTAB Dkt. 1; MTAB Hr'g Tr. 6:11-17*. The DOR maintained that the market value for the Subject Property was \$285,791. *MTAB Hr'g Tr. 6:8-10*.

4. At the MTAB hearing, the Taxpayer argued that the Subject Property was built primarily with used or secondhand materials and that it requires substantial repairs. *MTAB Hr'g Tr. 11:1-8*. Therefore, Taxpayer contended that the market value of the Subject Property should be less than what the DOR had appraised it for. *Id.*
5. Taxpayer presented photos showing that one of the major repairs needed to be conducted on the Subject Property is to repair a skylight. *Ex. 2; MTAB Hr'g Tr. 11:21-12:6*. The skylight was damaged on November 15, 2021, and has since incurred water damage, moss and mold growth, and decomposition, among other issues. *Id.*
6. Taxpayer also argued that the Subject Property itself, as well as its location, were too highly rated. *Ex. 10, 11; MTAB Hr'g Tr. 19:16-20:2*. Taxpayer contended that potential buyers would be deterred by the Subject Property's roughly 18-mile distance from the nearest town. *Id.* Consequently, resources such as healthcare facilities, shopping centers, and office buildings are not easily accessible. *Id.* Taxpayer also presented Google search results which indicated that more people prefer to live in urban rather than rural areas, and that society in general places less value on homes that are further from urban areas. *Id.*
7. Taxpayer presented a list of one-acre homestead values from properties located within a ten-mile radius of the Subject Property and extrapolated a per acre

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average price from the values. *Ex. 12, 13; MTAB Hr'g Tr. 21:5-14.* Taxpayer stated that the average per acre price for the properties was \$21,589, compared to the Subject Property's per acre value of \$66,111. *Id.* Taxpayer then added the cost it would take to build a well, install septic, and build a drain field to the average price per acre in order to match the amenities of the Subject Property, and arrived at a per acre average of approximately \$44,000. *Id.* Taxpayer stated that the sales prices used in this list were found on Zillow.com. *Ex. 12; MTAB Hr'g Tr. 35:13-36:6.* Additionally, Taxpayer conceded that the numbers used in the exhibit were listing prices, not sales prices. *Ex. 12; MTAB Hr'g Tr. 36:17-19.*

8. Taxpayer presented a calendar detailing the specific days and hours he spent repairing the Subject Property's skylight. *Ex. 14; MTAB Hr'g Tr. 24:4-19.* Taxpayer then multiplied the total amount of hours spent repairing the skylight by the prevailing wage rates for certain classes of tradesman as determined by the Montana Department of Labor to reach a final estimated labor cost of \$27,772. *Id.* Repairing the skylight required installing insulation, sheetrock, fascia, drip edges, and siding, as well as replacing windows, performing roof and electrical work, and painting, among other such tasks. *Ex. 15; MTAB Hr'g Tr. 24:22-25:7.* In total, Taxpayer estimated that between the current labor and material expenses, as well as the estimated costs for planned future repairs, the skylight will have cost between \$35,000 and \$47,000 to fully repair. *Ex. 15, 16; MTAB Hr'g Tr. 26:13-27:8.*
9. Taxpayer argued that the aspects of the Subject Property that are unfinished or in need of repair, such as the skylight, missing siding, missing roof panels, and a lack of fascia and drip edges, indicate that the DOR's appraisal value for the Subject Property is too high. *MTAB Hr'g Tr. 26:1-12.*
10. The Taxpayer submitted an affidavit to demonstrate that the DOR did not know how to measure the square footage of the Subject Property's residence

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properly. *Ex. 4; MTAB Hr'g Tr. 13:6-14:2*. The Taxpayer testified that the residence is an open floor plan, and the first floor is visible from the third floor. *MTAB Hr'g Tr. 35:5-12*. The Taxpayer testified that he measured the residence through the CAD drawing using internal measurements and came up with a total of 2,949.55 square feet. *MTAB Hr'g Tr. 29:18-30:24*. The DOR took both internal and external measurements of the residence and came up with a total of 2,736 square feet. *MTAB Hr'g Tr. 31:1-8*.

11. DOR Appraiser, Justin Burt, testified that he and another DOR appraiser performed the on-site review of the Subject Property with another appraiser because they were both new appraisers at the time. *MTAB Hr'g Tr. 48:17-50:6*. He testified that he and the other appraiser measured the first-floor square footage of the Subject Property residence around the exterior, which is how the DOR typically measures improvements. *MTAB Hr'g Tr. 48:17-50:6*. Mr. Burt further testified that they measured the second and third-floor square footage from both the exterior and the interior because the second and third floors are not rectangular areas, and the DOR appraisers were unable to see the specific areas of these floors from the exterior. *Id.* He further testified that he entered the measurements into the DOR's software to calculate the square footage and that he believed they measured and calculated it correctly. *Id.*
12. Taxpayer stated that he believed the square footage the DOR assigned to the Subject Property of 2,736 did not properly account for a new addition to the home that had recently been built but agreed that as of the DOR lien date of January 1, 2022, the square footage amount was correct. *MTAB Hr'g Tr. 31:12-24*.
13. Taxpayer testified that as of the January 1, 2022, lien date, the Subject Property was roughly 68 to 72 percent complete. *MTAB Hr'g Tr. 32:6-14*.

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14. Taxpayer testified that the Subject Property's wood foundation makes up less than 50% of the total foundation. *MTAB Hr'g Tr. 33:11-20*. Furthermore, the wood foundation sits on a concrete footer. *Id.* Taxpayer agreed that the Subject Property is custom built. *MTAB Hr'g Tr. 34:21-22*.
15. Mr. Burt, testified that at the conclusion of the AB-26 Review, DOR management decided to assign the Subject Property an override value of \$285,791, which was the original value assigned by the DOR. *Ex. A; MTAB Hr'g Tr. 45:17-46:22*. Mr. Burt stated that this was done to several different properties. *Id.* In the Subject Property's case, the override value was lower than what the value would have been had all of Mr. Burt's AB-26 on-site visit changes been adopted. *Id.*
16. Mr. Burt testified that he assigned the Subject Property a percent complete of 80% because approximately 600 square feet of the 2,736 total square feet were unfinished. *MTAB Hr'g Tr. 50:23-51:5*.
17. Mr. Burt stated that the DOR cannot enter multiple foundation types for a property. *MTAB Hr'g Tr. 51:8-21*. For a property such as the Subject Property, where the foundation is made primarily from one material and partially from another, the DOR must assign the foundation type as entirely made of one material or the other. *Id.* The foundation was listed as concrete for the Subject Property since the foundation is primarily made from concrete. *Id.* However, Mr. Burt testified that had the foundation been listed as wood instead, it would have had no impact on the Subject Property's value. *Id.*
18. The DOR determines the year built for a property by when construction began. *MTAB Hr'g Tr. 51:22-52:6*. For this reason, the Subject Property was assigned a year built of 1981. *Id.* Mr. Burt testified that adding an effective year to a property is a depreciation method that takes remodeling and maintenance of a

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property into consideration. *MTAB Hr'g Tr. 57:17-23*. The Subject Property had previously been assigned an effective year of 1990 prior to inspection. *Id.* However, the DOR removed the effective year to reflect that no significant life-extending measures had been taken to increase the value of the Subject Property. *Id.* Removing the effective year meant the value was depreciated from the original year built of 1981, which reduced the value of the Subject Property by \$23,540. *Id.* Mr. Burt testified that if the year built had been 1985, it would have increased the value of the Subject Property by \$11,770. *MTAB Hr'g Tr. 52:2-6.*¹

19. Mr. Burt testified that there is a 0.93 standard adjustment applied to all residential properties in the county, referred to as the county index. *MTAB Hr'g Tr. 52:13-23*. The county index accounts for local construction costs and adjusts the property values accordingly. *Id.*
20. Another adjustment that was applied to the Subject Property is the economic condition factor (ECF). *MTAB Hr'g Tr. 52:24-53:8*. The ECF is a statistical adjustment for the local market compared to the DOR's cost tables. *Id.* The ECF adjustment of 1.07% was applied to every cost appraisal in Fergus County. *Id.*
21. The Subject Property was assigned a percent good of 55%. *MTAB Hr'g Tr. 54:4-21*. Mr. Burt defined percent good as an estimate of the value of a property expressed as a percentage of its replacement cost after depreciation of all kinds have been deducted. *Id.* The Subject Property estimation of 55% good can also be phrased as 45% depreciated. *Id.*

¹ When later asked by the Board how much removing the effective year reduced the value of the property, Mr. Burt testified that it reduced it by \$11,770. The Board believes that while searching for the answer to the Board's question, Mr. Burt erroneously provided the amount the value would have increased had the DOR entered a year built of 1985, which was based on what the Board believes to have been a hypothetical scenario posed by DOR counsel. The Board believes the actual amount the value was reduced when DOR removed the effective year of 1990 is \$23,540. This has no effect on the Board's decision in this case.

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22. Mr. Burt updated many of the Subject Property's characteristics from what they were on the lien date of January 1, 2022, to what he observed during his on-site review on August 23, 2023. *Ex. B; MTAB Hr'g Tr. 56:3-58:16*. Some of the changes, such as changing the home style from modern to other and changing the story height from one to two to account for the third-floor area, did not impact the value of the Subject Property. *Id.* However, other changes, such as removing the effective year because there had been no significant changes made to the Subject Property that would extend its life, lowering the overall condition from average to poor, and changing the percent complete from 100% to 80% did affect the Subject Property's value. *Id.*
23. In addition to lowering the overall condition, Mr. Burt made other changes to the condition, desirability, and utility (CDU) score. *MTAB Hr'g Tr. 59:1-19*. One such change was to adjust the overall utility from fair to poor due to issues with the floor plan and the low bathroom count for a home of such size. *Id.* The overall desirability was also lowered from average to fair to account for issues in the interior of the home. *Id.*
24. Mr. Burt testified that lowering the Subject Property's condition in the CDU score from average to poor accounted for the skylight issues Taxpayer had raised. *Ex. D; MTAB Hr'g Tr. 63:8-22*.
25. Mr. Burt also made changes to the Subject Property's outbuildings. *MTAB Hr'g Tr. 61:8-13*. First, he removed the 336 square foot concrete slab that was listed on the property record as it was no longer present on the property. *Id.* He also changed the Subject Property's garage from a grade 4 to a grade 5, and slightly corrected its square footage. *Id.*
26. The Subject Property was assigned a grade factor of six, or good. *Ex. D; MTAB Hr'g Tr. 62:6-63:2*. Mr. Burt defined grade factor as a structure's overall quality and workmanship. *Id.* The qualities of a grade six property include good

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- quality materials and workmanship, custom workmanship, exterior ornamentation, architectural design, and quality interior finishes. *Id.* The Subject Property was assigned a grade factor of six instead of five because the architectural design and complexity are significantly higher than what you would find in a traditional box shaped, grade five home. *Id.* However, the Subject Property did not qualify as a grade seven home because it has more average or typical interior finishes and lower quality materials than a grade seven home would have. *Id.*
27. The replacement cost new less depreciation (RCNLD) for the Subject Property was \$285,791 after taking into account the depreciation multiplier of 55% good. *MTAB Hr'g Tr. 68:22-69:4.* The RCNLD accounted for the home itself, the outbuildings, and the land. *Id.*
28. Mr. Burt testified that the Subject Property experienced a value increase from \$207,341 to \$285,791 between the previous cycle and the 2023/2024 cycle due to an increase in value market-wide for Fergus County. *MTAB Hr'g Tr. 71:1-15.* This change was made prior to Mr. Burt's on-site visit and did not alter any of the property characteristics, it simply accounted for market changes. *Id.* Mr. Burt stated that the average increase for the county was approximately 50%, whereas the Subject Property only experienced an increase of 37.8%. *Id.* Furthermore, if the DOR had applied all the changes to property characteristics that Mr. Burt had noted during his on-site visit, the Subject Property's value would have been increased to \$324,371. *Id.*
29. DOR Modeler, Wanda Warsinski, defined base size as the typical lot size in a DOR designated neighborhood. *MTAB Hr'g Tr. 74:18-75:15.* The base size was one acre for residential properties in the Subject Property's neighborhood 208.001.4. *Id.* Ms. Warsinski defined base rate as the dollar amount per acre for the base size in the model. *Id.* The base rate is determined through the

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- regression output of the model, and for the Subject Property's neighborhood, the base rate is \$64,100. *Id.*
30. The Subject Property's land value was determined by first taking the statewide average for non-qualified agricultural land of \$55.08 and multiplying it by the number of non-qualified agricultural acres present on the property, which was 36.508, to get a value of \$2,011. *MTAB Hr'g Tr. 77:3-78:7*. The \$2,011 value for the non-qualified agricultural land was then added to the base rate value of \$64,100 for the one-acre homesite to get a total land value of \$66,111. *Id.*
31. In order to determine whether the land model is producing accurate results, the DOR looks to statistical measures such as the coefficient of dispersion (COD), coefficient of variation (COV), price related differentials (PRD), R squared value, and T stat. *Ex. C; MTAB Hr'g Tr. 78:8-79:6*. Ms. Warsinski testified that an accurate land model will produce COD and COV levels below 20 and the Subject Property's COD and COV were 11.14 and 14.17 respectively. *Id.* The PRD value should be between 0.98 and 1.03 and the Subject Property's PRD value was 1.02, which is also within the acceptable range. *Id.* For the R squared value, anything above 0.70 is considered a sound model and the Subject Property's R squared value is 0.80. *Id.* Lastly, a T stat either above 2 or below -2 indicates a statistically sound model and the Subject Property's T stats were all within the acceptable range. *Id.* Ms. Warsinski stated that all of the statistical measures indicated that the land model produced accurate results. *Id.*
32. Ms. Warsinski testified that she agreed with the decision to value the Subject Property using the cost approach because not all of its land is valued at market value. *Ex. C; MTAB Hr'g Tr. 79:7-13*. Since roughly 36 acres of the Subject Property are designated as non-qualified agricultural land and are valued based on productivity value, it would have been difficult to find an accurate value when compared to other sales in the model which have all their acreage valued at market value, thus the sales comparison method could not be used. *Id.*

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33. The Subject Property's Lewistown Rural Land Model incorporated two DOR designated neighborhoods and was based on 44 sales. *Ex. C; MTAB Hr'g Tr. 80:17-81:1*. Ms. Warsinski stated that 44 sales were a great number of sales for a land model and that in some areas of the state, they are forced to use as little as five sales. *Id.* The two neighborhoods which were combined to produce the land model were similar to each other and shared the same attributes. *Id.*

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 DOR's decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. *Mont. Code Ann. § 15-2-301*.
35. 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.
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*.

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39. “[I]n connection with any appeal under [Mont. Code Ann. § 15-2-301], the Montana 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, 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).

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. 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)*.

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44. “Class three property includes...parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1), which are considered to be nonqualified agricultural land. Nonqualified agricultural land may not be devoted to a commercial or industrial purpose. Nonqualified agricultural land is valued at the average productive capacity value of grazing land.” *Mont. Code Ann. § 15-6-133(1)(c)*.
45. “Class four property includes...all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.” *Mont. Code Ann. § 15-6-134(1)(c)*.
46. “Each one-acre of land beneath any [residence(s)] located on nonqualified agricultural land is classified as class four land and valued according to the market value of comparable land.” *Mont. Admin. R. 42.20.655(2)*.
47. The Legislature intended the Department to utilize a number of different approaches or combination of approaches, including the income approach, sales comparison approach, and cost less depreciation approach, depending on the market where the appraisals take place, when it assesses property and estimates market value. *Albright v. State*, 281 Mont. 196, 208-09, 933 P.2d 815, 823 (1997).

DISCUSSION

48. The Taxpayer appealed the CTAB decision to this Board. This Board has the authority to perform a de novo review of a CTAB’s decision and affirm, reverse, or modify a CTAB decision. For the reasons stated herein, we modify the CTAB’s determination and reduce the percent complete from 80% to 70%.

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Land Value

49. The Taxpayer requested that the value of the 37.508 acres of land revert to the value placed on it for the 2021/2022 valuation cycle of \$44,121. That value combined the value placed on the 36.508 acres of class 3 non-qualified agricultural land and the one acre of class 4 residential land located beneath the improvements.
50. Under Montana Code Annotated § 15-6-133(1)(c), parcels of land that are between 20 and 160 acres under a single ownership that are not dedicated to a commercial or industrial purpose are generally classified as non-qualified agricultural property. Non-qualified agricultural property is valued throughout the state at the average productive capacity value of grazing land, which was \$55.08 per acre for the 2023/2024 valuation cycle. Because the Subject Property met these requirements, 36.508 acres were valued at \$55.08 per acre for a total value of \$2,011 for the 2023/2024 valuation cycle. This rate is set by Montana law each cycle and is applied to all properties statewide that meet the statutory requirements. For this reason, and because the classification of the 36.508 acres is not in dispute, the value of the 36.508 acres of nonqualified agricultural land will be valued at \$55.08 per acre, for a total of \$2,011. The remainder of this opinion will focus on the value of the one acre of residential property beneath the improvements on the Subject Property, as well as the value of the improvements.
51. Under Montana Code Annotated § 15-6-134(1)(c), one acre of property located beneath improvements on non-qualified agricultural land is classified as class 4 residential property and must be valued at market value. For the 2023/2024 valuation cycle, the DOR determined the market value of the one-acre homestead beneath the improvements on the Subject Property was \$64,100.
52. The Taxpayer presented sales listings to support his request for the land to revert to its 2021/2022 value. The listings presented in Exhibit 12 appear to have been printed on March 30, 2024. Because the valuation of properties

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under the sales comparison approach is based on the actual sales prices of similar properties in a particular neighborhood during a particular timeframe, neither the DOR, nor this Board, can use sales listings to determine the valuation of a property. The DOR develops its valuation models based on actual sales prices.

53. For the 2021/2022 valuation cycle, the DOR generally would have analyzed properties sold in the two years prior to the statewide lien date of January 1, 2020.² This means the DOR generally would have used sales prices for properties sold in 2018 and 2019 to develop its model for use in valuing properties in a particular neighborhood for 2021 and 2022.

54. For the 2023/2024 valuation cycle, the DOR used sales that took place during 2020 and 2021 to develop the model used to value all properties in the Subject Property's DOR neighborhood. The DOR testified that they saw a market-wide increase of approximately 50% in the values of properties in Fergus County in 2020 and 2021. The DOR presented evidence and testimony demonstrating that they developed their land valuation model based on 44 sales that occurred in the Subject Property's neighborhood during the requisite time period. Based on those sales, the DOR determined that the base rate for a one-acre parcel in the Subject Property's neighborhood was \$64,100. We believe the DOR arrived at the correct base rate for this neighborhood based on actual sales. Montana law requires one acre beneath improvements on non-qualified agricultural land to be valued at market value. Therefore, we believe the DOR correctly assigned a value of \$64,100 to that acre.

55. For these reasons, the Board does not believe reverting the land value to the value it was assigned in the previous cycle accurately reflects the market value of the Subject Property as of the state-wide lien date of January 1, 2022.

² The DOR may expand the parameters for sale date and location in certain circumstances, such as insufficient sales in a particular area. However, this is not at issue in this case and will not be discussed further in this opinion.

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Additionally, the Board believes the sales listings the Taxpayer presented were active listings as of March 30, 2024, which is the date the exhibit appeared to have been printed. This means that once those properties sell, the actual sales prices of those properties will be analyzed to determine if they will be appropriate to include in the development of the model for a future cycle.

56. The Taxpayer also argued that because the Subject Property was 18 miles from the nearest town, it was not as desirable as a property located closer to or in a town. The DOR used sales of nearby properties during 2020 and 2021 to value the Subject Property. The DOR uses separate models for rural and urban areas which are developed using sales during the requisite time period from those areas. For this reason, we believe the DOR properly accounted for the location of the Subject Property in assigning its value.

Improvements

57. The Taxpayer presented evidence of what he considered to be defects in his improvements which should lower the value. The Taxpayer testified that he custom built the Subject Property improvements himself using primarily used or secondhand materials. He also presented evidence of a damaged skylight and related water damage, as well as missing siding, roof panels, fascia, and drip edge. The DOR testified that they removed the effective year of 1990 that had been applied to the residence in their system so that the residence would be depreciated from the original year built of 1981, rather than from 1990. This increased the depreciation and reduced the value of the residence. The DOR also lowered the CDU condition factor from average to poor which accounted for the skylight issue, lowered the overall CDU desirability factor from average to fair to account for some of the issues on the interior of the residence, and lowered the CDU utility factor from fair to poor due to floorplan issues, such as open bedrooms and low number of bathrooms for a residence of that size.

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58. The DOR defended its assigned grade factor of six (or good) to the residence because of its overall quality and workmanship. The DOR convinced the Board that the residence was properly assigned a grade factor of six rather than a grade five because the design and complexity of the residence were higher than what the DOR typically sees in the more traditionally built homes that are assigned a grade five. The DOR also convinced the Board that assigning a grade factor of seven would have been inappropriate because the interior finishes on the home were more average than what would be seen in a home assigned grade seven.

59. The DOR made several changes to its records regarding the Subject Property's characteristics when they performed the site visit as part of the informal review. The DOR testified that those changes would have resulted in the improvements being valued at \$324,371. However, the DOR opted to override that value for this cycle so that the improvements were instead valued at \$285,791 for the current valuation cycle, with the changes the DOR made in its records taking effect in the next valuation cycle.

60. There was a discrepancy between the Taxpayer's measurements of the residence and the DOR's measurements which led to some confusion regarding the proper valuation of the residence. The Taxpayer's measurements indicate the residence is 2,949.55 square feet based on internal measurements, while the DOR's measurements indicate the residence is 2,736 square feet based on both internal and external measurements. Although the Taxpayer used internal measurements, and the DOR used a combination of internal and external measurements, the DOR came up with fewer square feet in their measurements. The Taxpayer indicated the difference may be due in part to the DOR's measurements not including a new addition to the residence that was completed after the lien date.

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61. The DOR typically measures improvements based on external measurements. However, they measured the second and third floor using both interior and exterior measurements because of the open floor plan as it relates to the living area of these two floors. Had the DOR solely used external measurements, the living area square footage of these floors presumably would have been overstated which likely would have inappropriately increased the value of the Subject Property. Due to its unique layout, we agree with the DOR's approach to measuring the Subject Property residence. For this reason, and because the addition was not completed prior to the lien date of January 1, 2022, we believe the DOR's measurements more accurately reflect the square feet of the residence as of the lien date.

62. The Taxpayer disagreed with the DOR's original estimate that the residence was 80% complete and argued instead that he believed it was between 68% and 72% complete. The DOR did not dispute the Taxpayer's estimate. Due to the discrepancy between the DOR's and Taxpayer's measurements, the new addition to the residence, and the state of the repairs and remodel, we believe the Taxpayer is in a better position to determine the percent complete for this cycle, and the DOR did not dispute this. For this reason, the Board orders the DOR to reduce the percent complete of the Subject Property residence from 80% to 70%, which is the midpoint of the Taxpayer's estimate. We note that our decision to make this adjustment is for this cycle only. The DOR will recalculate the measurements of the improvements and the percent complete in a future cycle.

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ORDER

63. The Taxpayers' appeal is granted in part, and the CTAB determination is hereby modified.
64. The value of the Subject Property's land shall remain at \$66,111, which consists of \$64,100 for the one-acre homesite beneath the improvements, and \$2,011 for the 36.508 acres of non-qualified agricultural land.
65. The DOR shall reduce the percent complete of the Subject Property's improvements from 80% to 70% and recalculate the value of the Subject Property accordingly.

Dated this 17th day of December 2024.



A handwritten signature in blue ink, appearing to read "Travis Brown", written over a horizontal line.

Travis Brown, Chairman

A handwritten signature in blue ink, appearing to read "Amie Zendron", written over a horizontal line.

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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REVENUE*

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 December 17, 2024, to:

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Rina Sanderson, Legal Secretary