

CALAME, LLC,

Appellant,

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Respondent.

CASE No: PT-2023-2

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, ORDER,  
AND OPPORTUNITY FOR  
JUDICIAL REVIEW**

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**STATEMENT OF THE CASE**

This is an appeal of a final decision by the Beaverhead County Tax Appeal Board (CTAB) partially granting Calame, LLC (Taxpayer) a reduction in value on the subject property located at 36680 Pioneer Mountain Scenic Byway, Wise River, Montana (Subject Property). The Taxpayer appealed that outcome to Montana Tax Appeal Board (MTAB) on January 27, 2023. We reverse the CTAB's determination and uphold the DOR's revised assessment.

**ISSUE TO BE DECIDED**

Whether CTAB erred in granting, in part, the Taxpayer's request for a reduction in value, and denying the Taxpayer's request to change the classification of the subject property's land from mixed residential/commercial use to agricultural use.

**EXHIBIT LIST**

The following evidence was admitted at the hearing:

Taxpayer Exhibits:

1. Real Property Tax Statements 2018-2022
2. Partial Property Record Card for Subject Property dated 7/11/2022

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

3. Information from DOR's Montana Residential, Commercial, and Industrial Property Classification and Valuation Manual from 2019 and 2020 regarding building grades
4. Cabin Photos
5. Contractor Evaluations marked #5 - withdrawn
6. Calame/Flying Cloud Ranch Summary of Airbnb Earnings and Fees
7. Job listing for ranch caretaker with list of responsibilities
8. Copy of check and information regarding 2022 haying operations
9. Beaverhead CTAB December 19, 2022, Decision Letter, and January 10, 2023, Clarification of BCTAB Appeal Decision.
10. House Bill 943 proposed legislation; excerpt from KTVH news article dated April 5, 2023; SB268 proposed legislation.

DOR Exhibits:

- A. Post-AB 26 Property Record Card for Subject Property dated 3/27/2023
- B. DOR Montana Agricultural Land Classification and Valuation Manual 2021-2022
- C. DOR Montana Forest Land Classification and Valuation Manual 2021-2026
- D. DOR Montana Residential, Commercial, and Industrial Property Classification and Valuation Manual 2021-2022
- E. DOR Commercial Cost Appraisal Guide 2021-2022
- F. Classification and Appraisal Notice for Subject Property dated 6/17/2022
- G. Request for Informal Classification and Appraisal Review (AB-26) received by DOR 7/18/2022
- H. Form AB-26 Determination Letter dated 9/22/2022 and Revised Property Classification and Appraisal Notice dated 9/28/2022 for Subject Property
- I. Photos of Subject Property
- J. Screenshots from websites and reviews related to Subject Property

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

- K. Aerial photo of Subject Property with labels indicating location of cabins
- L. DOR Inspection/Contact Notes
- M. Aerial photo with boundaries
- N. Comments/reviews from Airbnb website printed July 14, 2023 (Rebuttal)
- O. Excerpts from Airbnb website printed July 14, 2023 - (Rebuttal)
- P. Job listing for ranch caretaker from ranchwork.com dated June 21, 2020 (Rebuttal) (available on-line as of July 23, 2023)

**PROCEDURAL HISTORY**

The DOR initially valued the Subject Property at \$807,551 for 2021, which is the first year of the 2021/2022 appraisal cycle. *Ex. 2, F.* After performing an onsite review, the DOR raised the value of the Subject Property to \$889,081 for 2022, the second year of the 2021/2022 appraisal cycle, due to new construction. *Id.* The 2022 value included land valued at \$49,271 and improvements valued at \$839,081. *Id.* The Taxpayer filed a Form AB-26, Request for Informal Classification and Appraisal Review with the DOR on July 18, 2022, requesting a land value of \$35,960 and an improvement value of \$402,010. *Ex. G.* After performing its AB-26 review the DOR sent a Form AB-26 Determination Letter to the Taxpayer dated September 22, 2022, raising the overall value of the Subject property to \$1,130,839. *Ex. A, H.* The new value included land valued at \$158,719 and improvements valued at \$972,120, with the increase based on the DOR changing the classification of some of the subject land and updating its records to reflect the condition of certain buildings. *Id.* The Taxpayer appealed the DOR's valuation to the CTAB on October 28, 2022, requesting a land value of \$35,960 and an improvement value of \$517,515. *MTAB Dkt. 5.* The CTAB hearing was held on December 13, 2022, and the CTAB issued an opinion which incorrectly stated the CTAB's decision due to ambiguity in the text of the decision. *Ex. 9.* This decision was sent to the parties on December 19, 2022. *Id.* In that decision, the CTAB assigned a land value of \$130,000 and an improvement value of \$758,820, for a total value of \$888,280. *Id.* The CTAB later issued a Clarification of

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

BCTAB Appeal Decision, dated January 10, 2023 (Clarification), which clarified the CTAB's intent to value the land at \$130,000 and take no action to change the land-use classification. *Id.* The Taxpayer appealed to MTAB on January 27, 2023, per Mont. Code Ann § 15-2-301, requesting the improvements be valued at \$580,015 and that a portion of the property be reclassified from commercial back to mixed agricultural and residential. *MTAB Dkt. 1.*

The MTAB hearing was conducted in Helena on July 18, 2023, at which the following were present:

- a. Blake Tillotson, Taxpayer Representative; Scott Tillotson, Property Owner; Nancy Tillotson, Property Owner; Michael Bangerter, Contractor; and
- b. Dave Burleigh, DOR Counsel; Tedd Weldon, Lead Appraiser at the time of appraisal (now Area Manager); and Chad Elser, Area Manager at the time of appraisal (now Regional Manager).

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, during, and after 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 ranch owned by Calame, LLC and is located at 36680 Pioneer Mountain Scenic Byway, Wise River, Montana. *Ex. A.* It is 159.76 acres in total size and contains a lodge, barns, sheds, corrals, and additional log cabins and structures. *Ex. A, H.*
3. The DOR originally assigned the land and improvements a market value of \$889,081 for 2022. *Ex. 2.* After the Taxpayer requested an informal

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

classification and appraisal review, the total valuation of the property was increased to \$1,130,839. *Ex. H.* The increase in value was due to 87.101 acres that was originally classified as agricultural land being reclassified to 77.951 acres of non-qualified agricultural land, two acres of land deemed residential land for two 1-acre build sites on non-qualified agricultural land for three residential dwellings, and 7.15 acres reclassified as commercial land based on the commercial activity of renting the cabins to the public via Airbnb website. *Ex. H; MTAB Tr. 122: 1-9.* In addition, the condition and classification of several cabins was adjusted, thereby increasing the overall valuation of the improvements. *Id.* No adjustments were made to the 72.659 acres of forest land. *Id.*

4. The Taxpayer appealed to MTAB on January 27, 2023, requesting the improvements be valued at \$580,015 and that the land be classified as mixed agricultural and residential. *MTAB Dkt. 1.* During the MTAB hearing, Mr. Elser testified that a property's classification is determined by its use. *MTAB Tr. 114:7-9.* The DOR maintained that their most recent valuation, given at the conclusion of the AB-26 review of \$1,130,839 for both land and improvements, should be maintained. *MTAB Tr. 3:1-3.*

**Years Under Appeal**

5. Taxpayer requested this appeal apply to the entire valuation cycle of 2021 and 2022. *MTAB Tr. 4:1-6.*
6. The DOR mailed the Taxpayer a 2022 Property Classification and Appraisal Notice on June 17, 2022, based on a mid-cycle reappraisal. *Ex. F.* The Taxpayer submitted a Request for Informal Classification and Appraisal Review to the DOR on July 16, 2022, for 2022. *Ex. G.* After conducting its informal review, DOR sent a Form AB-26 Determination Letter to the Taxpayer dated September 22, 2022. *Ex. H.* The DOR also included a revised

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

2022 Property Classification and Appraisal Notice dated September 28, 2022.

*Ex. H.*

7. Taxpayer filed their appeal with the CTAB on October 28, 2022. *MTAB Dkt. 5.* The deadline for appealing the 2021 valuation was 30 days after the Classification and Assessment Notice had been sent to the Taxpayers in 2021, while the deadline to appeal the 2022 valuation to CTAB was 30 days from the date on the notice of the DOR's determination. *Ex. H; Mont. Code Ann. § 15-7-102.*

**Agricultural Land Classification**

8. At the December 12, 2022, CTAB hearing, the CTAB partially granted the Taxpayer's request for reduction in market value, reducing the market value of the property to \$888,280. *Ex 9; MTAB Dkt. 5.* The CTAB Decision letter, which ambiguously stated the Board's decision had been to value the land at \$130,000 and classify the land solely as agricultural, was sent to the parties on December 13, 2022. *Ex. 9.* The CTAB sent out the Clarification, which stated the total valuation of the property listed in the former decision of \$888,280, including the land value of \$130,000, was correct, but the Board's intent was to take no action in changing the Subject Property's land classification as a change in land classification would negate the land value assigned by the CTAB. *Id.*
9. Mr. Elser stated that in the State of Montana, any property that is 160 acres or more automatically qualifies for agricultural classification. *MTAB Tr. 92:19-93:4.* Since the Subject Property is 159.76 acres, it does not meet that threshold and does not automatically qualify as agricultural land. *Id.* If the Taxpayer wanted the Subject Property to be classified as agricultural land, they would need to file an agricultural application with the DOR. *Id.* Since the Taxpayer did not file an agricultural application, the DOR adjusted the Subject Property from agricultural classification to a higher value as non-qualified agricultural,

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

which is the default classification for parcels of land between 20 and 159.999 acres. *Id.*

10. Mr. Elser testified that for the non-qualified agricultural land to be classified as bona fide agricultural land for tax year 2022, the Taxpayer would have had to file an agricultural application with the DOR and supply supporting documentation proving the Subject Property is part of a bona fide agricultural operation. *MTAB Tr. 100:16-23*. Mr. Elser testified that he had emailed the Taxpayer an application on December 20, 2022, but the Taxpayer never filed the form or provided any supporting documentation establishing the Subject Property as a bona fide agricultural operation. *MTAB Tr. 100:24-101:6*.
  
11. When asked whether he had applied for agricultural classification for tax year 2022, Mr. Scott Tillotson stated that he was not aware he had to apply every year. *MTAB Tr. 45:18-46:17*. Furthermore, he did not know whether the DOR had supplied him with an application or not. *Id.*
  
12. The Subject Property contains 77.951 acres of non-qualified agricultural land. *MTAB Tr. 100:9-11*. Mr. Elser stated the DOR values non-qualified agricultural land based on the average grazing rate for the appraisal cycle as determined by the Governor's Agricultural Advisory Committee each reappraisal cycle. *MTAB Tr. 101:13-102:20*. For tax years 2021-2022, the value was \$55.35 per acre, and this was applied uniformly throughout the state. *Id.*
  
13. Mr. Blake Tillotson stated the Subject Property produces approximately 43.75 tons of hay per year. *MTAB Tr. 82:20-83:11*. Of this crop, roughly 20% of it is sold in Salt Lake City, Utah and a bale or two is sold to nearby neighbors who request it. *Id.* The bales typically sell for between \$350 and \$400. *Id.*

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

14. The Subject Property also contains 72.659 acres of land classified as forest land. *MTAB Tr. 104:19-24*. The classification of this portion of the subject land is not at issue in this appeal.

**Inspection**

15. Mr. Scott Tillotson testified that he had a verbal altercation with Mr. Weldon during an on-site review in which Mr. Weldon allegedly called Mr. Scott Tillotson a liar. *Ex. L; MTAB Tr. 28:22-32:6*. Mr. Weldon denied that he ever called Mr. Scott Tillotson a liar. *MTAB Tr. 149:9-10*. Mr. Elser also testified that he did not call Mr. Scott Tillotson a liar. *MTAB Tr. 90:25-91:1*. During a subsequent phone conversation between Mr. Scott Tillotson, Mr. Elser, and Mr. Weldon, another verbal altercation allegedly ensued between the parties. *Ex. L; MTAB Tr. 28:22-32:6*. Mr. Weldon testified that while on the phone call with Mr. Scott Tillotson, Mr. Scott Tillotson threatened to punch him. *MTAB Tr. 149:9-12*. Mr. Elser also testified that he heard Mr. Scott Tillotson threaten to punch Mr. Weldon during the phone call. *MTAB Tr. 91:2-3*.
16. Due to the previous encounters with the Taxpayer and the alleged threat against DOR personnel, Mr. Elser conferred with his deputy administrator and legal staff on how to proceed with the requested AB-26 review. *MTAB Tr. 91:4-17*. Their recommendation was to either send two DOR personnel to the Subject Property to conduct the review, or for Mr. Elser to take a law enforcement officer with him. *Id.* Mr. Elser decided against taking a law enforcement officer to maintain civility, but Mr. Scott Tillotson declined to allow a second DOR employee to accompany Mr. Elser onto the property to conduct another site review. *Id.* After further negotiations, the parties agreed to continue the review only via correspondence. *Id.*
17. Taxpayer contends that these two incidents have caused the DOR to weaponize the government against them. *MTAB Tr. 32:7-20, 163:13-164:13*. Taxpayer argued that this weaponization is further evidenced by the fact that the DOR



**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

has notified Taxpayers it plans to audit the income tax filings of members of the Tillotson family and their companies, and that the DOR valued a dog run on the Subject Property at \$2,800. *MTAB Tr. 32:7-20, 163:13-164:13, 23:1-8*. Mr. Elser testified that the DOR had not included a doghouse on the Subject Property's property record card. *MTAB Tr. 131:14-15*.

**Commercial Classification**

18. Mrs. Tillotson testified that she has always handled the bookkeeping for the Subject Property, paid the bills, and generally kept track of the finances. *MTAB Tr. 50:18-22*. She further stated the ranch has never been profitable and the Tillotsons have usually had to fund it every year personally, primarily due to the number of repairs and expenses the Subject Property requires. *MTAB Tr. 50:23-51:8*.
19. Taxpayers do not dispute that the ranch has rented cabins to the public. *Ex. 6*. Both Mrs. Tillotson and Mr. Scott Tillotson testified the purpose of starting Airbnb rentals was to try and offset the expenses of the ranch with rental income. *MTAB Tr. 44:6-14, 44:20-25, 51:9-21*.
20. Mr. Blake Tillotson stated since 2019, several cabins on the Subject Property have been listed on Airbnb as rentals. *MTAB Tr. 7:17-21*. He testified the rentals were paused briefly during 2020 due to the Covid-19 pandemic but rentals of cabins resumed shortly after. *Id.* He argued that the 7.15 acres the DOR has classified as commercial land due to the Taxpayer's Airbnb rental units should instead be classified as residential. *MTAB Tr. 8:19-9:1*.
21. The Taxpayer possesses a public accommodations license to operate and rent cabins on the Subject Property. *MTAB Tr. 58:20-59:12*.
22. Mrs. Tillotson testified that for the each of the years 2019 through 2022 the Subject Property generated cabin rental income of between \$16,129 and

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

\$34,171 per year before expenses. *Ex. 6; MTAB Tr. 52:1-25*. The expenses not accounted for in these Airbnb earnings include management fees, cleaning fees, and Airbnb service fees. *Id.* According to Mrs. Tillotson's testimony, the Game Cabin was rented for 29 days in 2022. *MTAB Tr. 53:1-24*. Additionally, the Bear Cabin was rented for 9 days, the Octagon Cabin was rented for 28 days, Chic's Cabin was rented for 11 days, and the Wash House was rented for 37 days in 2022. *Ex. 6*.

23. Mr. Scott Tillotson testified that the cabins are never rented during the winter months. *MTAB Tr. 34:1-8*. In response, the DOR presented rebuttal Exhibit N which contained several Airbnb guest reviews, one of which, dated December 2022, referenced how amazing the guest's stay was during Christmas. *Ex. N; MTAB Tr. 35:9-36:17*. Mr. Blake Tillotson stated that a possible reason behind the wintertime review was that a family friend was brought out to the Subject Property by the Taxpayer and in turn left the review to help the Taxpayer get more rentals in the future. *MTAB Tr. 36:24-37:5*. Mr. Blake Tillotson further stated that renting to family and friends and having them post reviews is a big part of the overnight rental industry. *Id.*
  
24. The DOR also referred to Taxpayer information regarding their rental listing available on the Airbnb website which lists winter trails as an amenity of the Subject Property. *MTAB Tr. 37:8-16*. Exhibit J, which includes screenshots from websites and reviews, described the Subject Property as having "winter access to hundreds of miles of back country terrain, groomed snowmobile trails, and private groomed Cross Country ski trails." *Ex. J; MTAB Tr. 37:17-38:8*. Taxpayer responded that they did not create this document, and it was instead published by a third party attempting to generate rentals for the Subject Property. *Id.*
  
25. Mrs. Tillotson testified that the third party the Taxpayer worked with to create listings relating to their rental business opened multiple websites promoting

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

rental of cabins on the ranch without the Taxpayer's knowledge. *MTAB Tr. 56:20-57:22*. She testified the Tillotsons were never consulted about what the website listings said or offered. *Id.* Furthermore, she testified she has attempted to find and shut down these websites with great difficulty. *Id.* Mrs. Tillotson stated that neither she nor any other owner of the Subject Property has ever given permission for a website to be created for the rentals, nor have they created their own websites. *Id.* Mrs. Tillotson also stated that to the best of her knowledge, all the websites advertising the Subject Property have been shut down. *Id.*

26. Mrs. Tillotson indicated that their lack of awareness of what was listed as amenities on the websites is evidenced by the fact that many of the listed amenities opened them up to liability. *MTAB Tr. 57:1-14*. She indicated that they are aware of how allowing guests to use the shooting clay range, pond, trails, and horse corral, as listed on the websites as amenities, would create liability. *Id.*
27. Mr. Blake Tillotson presented proposed House Bill 943 from the 68<sup>th</sup> Montana Legislative session in 2023 which, had it passed, would have classified "short-term rental" as any individually or collectively owned single-family house or dwelling unit that is offered for a fee for 30 days or less. *Ex. 10; MTAB Tr. 54:8-55:24*. He argued that the legislative intent of the bill was to protect property owners who minimally engage in the rental business to offset property taxes or fund a college education, such as themselves. *MTAB Tr. 56:1-16*.

**Commercial Classification of Caretaker Residence**

28. Classification of the Caretaker Residence as commercial hinges on the job duties of the caretaker. Evidence and testimony were offered by both parties in support of their contentions. The Taxpayer offered the text of a job listing Mr. Blake Tillotson contended was for the caretaker position on the Flying Cloud

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

Ranch, which was later filled by their current caretaker, Donny. *Ex. 7; MTAB Tr. 25:22-26:6*. DOR counsel objected to the admission of the exhibit, stating that it was improperly disclosed during discovery. *MTAB Tr. 26:9-25*. Mr. Burleigh stated that it lacked foundation because DOR understood the job listing was posted on a website called “ranch.com” which does not exist. *MTAB Tr. 26:9-25; MTAB Dkt. 19*. Mr. Scott Tillotson testified during the hearing that it was posted on a website called “ranchworks.com.” *MTAB Tr. 26:1-4*. After the hearing the DOR submitted a motion asking the Board to take judicial notice of a job listing they found at a website called “ranchwork.com” and that the website “ranchworks.com” did not exist. *MTAB Dkt. 19*. The job listing the DOR submitted as Rebuttal Exhibit P was like that offered by the Taxpayer as Exhibit 7 but the rebuttal exhibit job posting included additional duties related to the Airbnb. *Ex. P*. For example, in DOR rebuttal exhibit P under Guest Ranch Duties, the document listed the following duties: ...handle guest relations, guest check-in and check-out, and cleaning cabins after check-out. *MTAB Dkt. 19*. Whereas in the Taxpayers Exhibit 7 filed with the Board, the “caretaker duties” did not include these additional duties. *Ex. 7; MTAB Dkt. 19*.

29. Regarding the caretaker’s duties, Mr. Scott Tillotson testified that if there were Airbnb guests that had overstayed their reservation on the Subject Property, he would expect the caretaker to remove them. *MTAB Tr. 47:10-48:4*.
  
30. Mr. Blake Tillotson argued that as a mobile home the Caretaker’s Residence should not be taxed. *MTAB Tr. 12:16-18*. Mr. Scott Tillotson testified the caretaker’s mobile home does not rest on a permanent foundation and instead sits on its axels and wheels with a skirt around it. *MTAB Tr. 46:22-47:4*. Mr. Elser testified that the Caretaker’s Residence has been assessed as a residential dwelling on the Subject Property as far back as six years. *MTAB Tr. 111:6-23*. In 2022, it was adjusted to a commercial improvement. *Id.* The change was made based on conversations Mr. Elser had, as well as DOR documentation that indicated the person who lived in the house was an employee and, “an

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

integral part of the commercial operation of the rental of the five commercial cabins.” *MTAB Tr. 111:25- 112:4.*

**Quantity of Commercial Land**

31. The DOR classified 7.15 acres of the Subject Property as commercial land based on the buildings in that area being used for commercial purposes, as well as any of the surrounding land which helped generate income for the commercial entity. *MTAB Tr. 106:13-20.* The specific amount of land assessed as commercial was determined by looking at aerial maps of the Subject Property and comparing them to where rental cabins and the amenities advertised on rental listings were shown to be. *MTAB Tr. 110:1-8.* Mr. Elser stated that various internet listings advertising what the property had to offer influenced his decision to adjust certain portions of the Subject Property from residential to commercial. *Ex. J; MTAB Tr. 122:1-6.*
  
32. In response to questioning, Mr. Elser testified that the pond located on the Subject Property was classified as commercial due to its inclusion on rental listings as an amenity which clients may use. *MTAB Tr. 136:14-137:9.* He also classified the stretch of grass in between the cabins and the pond as commercial land due to his speculation that any clients wanting to use the pond would cross the stretch of grass to get to it. *Id.* He testified he had to use his best guess to carve out what he believed to be commercial property since the AB-26 review was done through correspondence, and he did not receive a map of commercial land from the Taxpayer which he testified he had requested. *Id.*
  
33. Mr. Elser testified that when valuing agriculture land, Montana law requires the DOR to value one acre as residential land for residential buildings located on non-qualified agricultural land. *MTAB Tr. 105:23-106:6.* If multiple residential buildings are located in an area larger than one acre, additional 1-acre plots must be valued as residential. *Id.* The DOR considers the Main Lodge, the Far Cabin, and the Ice House to be residential dwellings situated on non-qualified

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

agricultural land. *Id.* Since the Main Lodge, the Far Cabin and the Ice House do not fit on the same 1-acre residential plot, the DOR set aside a second 1-acre residential plot for those residential improvements. *Id.* Mr. Blake Tillotson stated that the Far Cabin and the Ice House are not located where the DOR had indicated they believed them to be on the map. *MTAB Tr. 107:13-108:17.* In response, Mr. Elser stated that if the two cabins were in fact further away from each other than DOR had estimated, this may require a third 1-acre residential plot to be created so that all three dwellings are located on residential land. *Id.*

34. To explain their method to assign a market value to the 1-acre residential plot in this valuation model, DOR testified that commercial land and residential land are valued using verified comparable sales in this market area. *MTAB Tr. 113:1-19.* The sales indicated a base 1-acre residential plot would be valued at \$36,600 per acre. *Id.* Mr. Weldon testified that he used the \$36,600 per acre market value consistent with rural land sales in Beaverhead County to value the two 1-acre residential plots of the Subject Property. *MTAB Tr. 151:7-10.*
35. The Subject Property is in DOR's Beaverhead rural geographic neighborhood. *MTAB Tr. 109:11-13.* Mr. Elser estimated the geographic neighborhood contained "about 20 to 25 sales" within the model, all of which were vacant, and time trended to the lien date of January 1, 2020, to set the base residential rate for tax years 2021 and 2022. *MTAB Tr. 109:14-24.*
36. Mr. Elser stated that the changes made to the Subject Property at the conclusion of the AB-26 review were to adjust the five rental cabins from residential to commercial, change the Caretaker's Residence from residential to commercial, and adjust the land classification according to Montana Code Annotated. *MTAB Tr. 120:15-21.*

**Quality of Cabins**

37. Mr. Blake Tillotson argued that the condition of several of the cabins located on the Subject Property should be reduced since their condition is worse than what the DOR has labeled them. *MTAB Tr. 9:24-12:18*. Specifically, he contended that the Game Cabin, the Bear Cabin, Chic's Cabin, the Wash Cabin, and the Far Cabin should all have their condition lowered. *Id.* Additionally, he argued the Caretaker Residence should not be taxed since it is a mobile home. *Id.*
38. Taxpayer requested the following reductions of the cabin values: Game Cabin, assessed at \$288,070, requested condition of poor, requested value of \$130,500; Wash House Cabin, assessed at \$38,120, requested condition of poor, requested value of \$20,000; Bear Cabin, assessed at \$39,330, requested condition of very poor, requested value of \$30,000; Octagon Cabin, assessed value of \$56,800, requested condition of very poor, requested value of \$25,880; and Chic's Cabin assessed value of \$46,540, requested condition of poor, requested value of \$34,760. The Far Cabin (Duplex) was assessed at \$25,450 and the Taxpayer requested a condition of unsound with a value of \$0. The Main Lodge was assessed at \$247,600 with a condition of fair. The Taxpayer requested a value of \$191,125 and did not contest the condition the DOR assigned to the Main Lodge. The Ice House was valued at \$137,130 with a condition of good and was listed as 61% complete. The Taxpayer requested a value of \$85,000 when completed and did not contest the condition the DOR assigned to the Ice House. *Ex. A; MTAB Dkt. 5; MTAB Tr. 11:6-12:18*.
39. Mr. Elser testified that he adhered to all state procedures when appraising the Subject Property and was guided by the 2021-2022 Montana Agricultural Land Classification and Valuation Manual; the 2021-2022 Montana Residential, Commercial, and Industrial Property Classification and Valuation Manual; the 2021-2022 Montana Residential Manual; the DOR's 2021-2022 Appraisal

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

Guide Commercial Cost Guide; and the Montana Forest Land Classification and Valuation Manual. *Ex. B, C, D, E; MTAB Tr. 93:16-96:6.*

40. Mr. Elser further testified that the Subject Property improvements were valued using the cost approach method. *Ex. E; MTAB Tr. 97:18-98:25.* This entails having an appraiser review the property and get the interior and exterior characteristics. *Id.* The information collected is entered into a DOR system which then performs the calculations based on the DOR's cost indexes. *Id.* The cost indexes are applied uniformly regardless of whether the property is labeled commercial or residential. *Id.*
41. Mr. Bangerter stated that at one point the Game Cabin had a back wall that was being pushed out by the roof structure. *MTAB Tr. 66:23-67:9.* He testified that it was in danger of collapsing and injuring someone, so the Taxpayer had it fixed. *Id.* Furthermore, in his opinion as a general contractor, the Game Cabin has a lot of log rot on it causing the logs to be soft or deteriorating. *Id.* He also claimed that rot could be identified on almost any log on the structure. *Id.*
42. Regarding the Bear Cabin, Mr. Bangerter testified that the floor system is falling apart, and there are ongoing plumbing issues each year. *MTAB Tr. 67:14-20.*
43. Mr. Bangerter stated half of Chic's Cabin is still in older condition while the other half is newer as an addition was built on to it a few years ago. *MTAB Tr. 67:22-25.* He testified there are also plumbing issues with this cabin which cause the pipes to freeze up almost every year that need to be fixed. *Id.*
44. The southern end of the Wash Cabin has been remodeled, but the other side has not been altered and is in "pretty poor condition" according to Mr. Bangerter. *MTAB Tr. 68:9-69:13.* He testified that there has been ice up to the underside of the floor during winter from the creek that runs next to it. *Id.* Additionally,



**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

the cabin is built on rock foundations which have not been re-mortared, and mortar has broken and cracked due to water which freezes underneath the cabin. *Id.*

45. According to Mr. Elser's testimony, a building's foundation is just one aspect of valuing the entire building. *MTAB Tr. 93:8-15*. A rock foundation does have an impact on the value, but it is not the only thing appraisers look at when determining the quality of construction materials used. *Id.*
  
46. Taxpayer requested the Far Cabin be classified as unsound. *MTAB Tr. 12:15-16*. Mr. Bangerter stated the Far Cabin is "pretty much trash," and he "wouldn't stay in that if you paid me to stay in it. It's ready to come down." *MTAB Tr. 69:17-18*. When asked on cross examination if someone could sleep in the Far Cabin, Mr. Bangerter responded that it was "inhabitable." *MTAB Tr. 73:12-18*. When asked a second time if someone could sleep in it, Mr. Bangerter's response was, "No. Maybe a homeless person." *Id.* When asked if it would cost money to build something that would look just like it, Mr. Bangerter replied, "Well, sure it would." *MTAB Tr. 73:19-21*.
  
47. Mr. Bangerter stated that in his opinion, the Ice House is approximately 75 to 80 percent complete. *MTAB Tr. 74:17-75:17*. It has electricity, insulation, siding, roofing, and partially complete plumbing. *Id.* The only incomplete aspects of the Ice House are that it has no interior doors, no countertops, and the partially completed plumbing. *Id.* Mr. Blake Tillotson commented that there is "basically an underground river coming up..." beneath the Ice House which has flooded the crawlspaces, rotted the wood, produced black mold, and has caused a nearby septic tank to overflow. *MTAB Tr. 76:6-77:6*.

**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*

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

*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.*

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.
50. 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**

51. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
52. The appeal to the county tax appeal board, pursuant to 15-15-102, must be filed within 30 days from the date on the notice of the department's determination. *Mont. Code Ann. § 15-7-102(6).*
53. "All taxable property must be appraised at 100% of its market value...." *Mont. Code Ann. § 15-8-111.*
54. "[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).*

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

55. 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).
56. 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.
57. “‘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)).
58. 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*.
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)).

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

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. “Administrative agencies enjoy only those powers specifically conferred upon them by the legislature. Administrative rules must be strictly confined within the applicable legislative guidelines. Indeed, it is axiomatic in Montana law that a statute cannot be changed by administrative regulation. We look to the statutes to determine whether there is a legislative grant of authority.” *Bick v. State Dep’t of Justice, Div. of Motor Vehicles*, 224 Mont. 455, 457, 730 P.2d 418, 420 (1986).
62. “[A]dministrative regulations interpreting the statute made by agencies charged with the execution of the statute are entitled to respectful consideration.” *Puget Sound Power & Light Co.*, 179 Mont. 255, 266, 587 P.2d 1282, 1288 (1978).
63. The Board “may not amend or repeal any administrative rule of the department,” but may enjoin its application if the Board concludes the rule is “arbitrary, capricious, or otherwise unlawful.” *Mont. Code Ann. § 15-2-301(5)*.
64. “If the appeal is an appeal of the valuation of residential property, the state board shall consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and uses values obtained within the timeframe provided for in subsection (3)(a). The appraisal that is provided by the taxpayer is presumed to establish assessed value in the state board proceeding unless the department provides sufficient evidence to rebut the presumption of correctness, including another independent appraisal or other compelling valuation evidence. The state board shall address the taxpayer’s independent appraisal and the department’s valuation evidence in the decision.” *Mont. Code Ann. § 15-2-301(3)(b)*.

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

65. 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).
66. The term "commercial", when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, including industrial property defined in subsection (1)(j), and excluding property described in subsection (1)(d)(ii). *Mont. Code Ann. § 15-1-101(1)(d)*.
67. 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)*.
68. 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)*.
69. Improvements on land classified as agricultural land, including one acre of real property beneath the improvements on such land must be valued at market value. *Mont. Code Ann. § 15-6-124*.
70. "Each one-acre of land beneath any residences located on nonqualified agricultural land is classified as class four land and valued according to the market value of comparable land..." *Mont. Admin. Rule 42.20.655(2)*.

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

71. “For class three property described in 15-6-133 and class four property described in 15-6-134, the objection may be made only once each valuation cycle. An objection must be made in writing or by checking a box on the notice within 30 days from the date on the classification and appraisal notice for a reduction in the appraised value to be considered for both years of the 2-year valuation cycle. An objection made more than 30 days from the date of the classification and appraisal notice will be applicable only for the second year of the 2-year valuation cycle. For an objection to apply to the second year of the valuation cycle, the taxpayer shall make the objection in writing or by checking a box on the notice no later than June 1 of the second year of the valuation cycle or, if a classification and appraisal notice is received in the second year of the valuation cycle, within 30 days from the date on the notice.” *Mont. Code Ann. § 15-7-102(3)(a)(ii)*.

**DISCUSSION**

72. This Board is bound by existing Montana law to presume the DOR arrived at the correct classification and value of these properties so long as the DOR presented a modicum of evidence to show they followed Montana law and industry standards in making their determination. In a tax appeal the taxpayer bears the burden of proving their case by convincing the Board the DOR had erred. To overcome the DOR’s presumption of correctness, the Taxpayer must show the DOR made mistakes, either in the data used or analysis applied to deem what land was agricultural and commercial, what portions of the improvements were used commercially, and if used commercially, what amount of land was commercial. The Taxpayer needed to prove their claim that the values and conditions the DOR assigned to their improvements was incorrect through credible evidence and testimony presented at the hearing. The role of this Board is to hear the testimony and see the evidence presented and judge whether the Taxpayer’s presentation and documents proved to us the DOR was wrong. For the reasons as stated below, this Board was not provided

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

the credible testimony and evidence required to convince us the DOR was mistaken.

73. There was no dispute that the 159.76 acres of land did not automatically qualify as agricultural land because Taxpayers do not meet the 160-acre statutory threshold. Some of the land may still have qualified for agricultural classification if it met certain eligibility requirements and if the Taxpayers had applied demonstrating such to the DOR. The Taxpayer bears the responsibility for obtaining an application form and timely applying for bona fide agricultural classification by the deadline to demonstrate eligibility. It is undisputed that the application was not filed, so we need not discuss the bona fide agricultural classification further. We find that the DOR properly classified 77.951 acres of non-qualified agricultural land.
74. Neither is there a dispute that some portion of the property is used commercially for guest cabin rentals. Any claim that commercial classification is nullified by how little profit is made or how few weeks or months of the year they are rented finds no foundation in Montana law. Taxpayers testified that cabins were rented, and income was generated. A bill introduced in the legislature and not passed does not show legislative intent to overlook commercial activity. Further, the Taxpayer's argument that their cabins were not rented in the winter was rebutted by evidence the DOR submitted showing reviews posted online by a guest claiming to have spent "an amazing Christmas" at the ranch. Evidence and testimony provided by both parties confirm that those five cabins on the Flying Cloud Ranch were advertised and available for rent throughout the year, clearly qualifying that portion of the land and those improvements as commercial for purposes of taxation. As stated above, the timing of when cabins were available to rent throughout the year does not impact their classification as commercial. The fact that they were available and rented during the year qualifies them as commercial for the year at issue.

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

75. Due to conflict between parties, a more complete in-person inspection of the property was not conducted, which could have resolved some of the uncertainties in this dispute. Because of the dispute between parties and related allegations, the DOR was not allowed inside the improvements, so best effort at accuracy was limited to viewing of internet advertising photographs, estimates of commercial acreages came from review of aerial maps, and a visual review from adjoining land. From that starting point, it was then up to the Taxpayer to present credible evidence to the Board that the DOR came to the wrong conclusion and overvalued the improvements. Based on the quality of the interior in the photos provided at hearing, we are not convinced the DOR set improvements values too high. The cabins do have exterior flaws typical for their age and method of construction. Taken as a whole, and given the apparent condition of the interiors, not to mention the willingness of the public to rent them, we are not convinced that the cabins or other improvements are overvalued.
76. The Board has fully weighed the evidence and testimony regarding how much of the land was used for the commercial activity and we find that the DOR reasonably assigned 7.15 of the acres to the commercial activity. The Taxpayers argued that parts of the land such as the firepit and the pond were not commercial and unrelated to the cabin rentals, but this claim was controverted by rental website advertising clearly promoting these activities to potential renters. Despite Taxpayers' claims they were unable to control the advertising, no documentary evidence was presented to convince the Board an effort had been made to correct the advertising or to bar guests from using those amenities. The burden of proving that a fire pit or a swimming pond are not available to renters when they are advertised, was not met. Therefore, the DOR presumption that these amenities were part of the commercial operation is upheld. We affirm the DOR's classification of 7.15 acres of commercial land.



**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

77. We are convinced that the ranch manager/caretaker had at least some responsibilities related to the rentals during the year at issue, such as opening and closing some of the cabins, greeting guests and helping them if needed, and potentially assisting to handle a situation in which a guest refuses to leave per the testimony of Mr. Scott Tillotson. These responsibilities do attach the Caretaker Residence to the commercial cabin rental enterprise. This finding was further confirmed when the DOR moved for the Board to take judicial notice of a job posting which did include some of these expected duties. The job listing submitted by the DOR was printed from a website available to the public which indicated the job was filled. We find the Caretaker's Residence is properly classified as commercial based on credible evidence submitted by the DOR that the Taxpayers had publicly advertised the job duties to include duties related to the rental enterprise.
78. This Board must carefully consider the credibility of the evidence and testimony submitted to us when deciding whether the Taxpayer has met their burden to prove the DOR's alleged mistakes. That burden was not met in this case, and we find that the DOR properly and correctly classified and valued the subject property and therefor deny the Taxpayer's appeal.
79. Under Montana law, the Taxpayer failed to timely submit an appeal for the 2021 tax year. Additionally, the June 16, 2022, Classification and Appraisal Notice from which the Taxpayers appealed only applied to tax year 2022. Taxpayers filing was untimely for 2021 review. Failure to meet that deadline for 2021 narrowed the appeal to the second year of the cycle, 2022. The classification, condition, and values assigned to the improvements by the DOR are upheld for 2022.

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

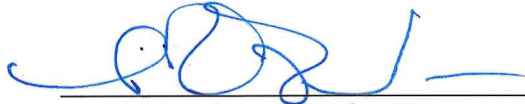
**ORDER**

80. DOR will maintain the value assigned to the property of \$1,130,839 for 2022. The land will remain at the value of \$158,719 and improvements will be maintained at the value of \$972,120.

Dated this 1st day of November 2023.



  
David L. McAlpin, Chairman

  
Amie Zendron, Member

  
Travis Brown, 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)*.

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*CALAME, LLC v. STATE OF MONTANA, DEPARTMENT OF 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 November 1, 2023, to:

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Rina Sanderson, Legal Secretary