

<p>CHRISTINE AND LEE HUFFMAN, Appellants, v. STATE OF MONTANA, DEPARTMENT OF REVENUE, Respondent.</p>	<p>CASE №: PT-2022-7 FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER, AND OPPORTUNITY FOR JUDICIAL REVIEW</p>
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STATEMENT OF THE CASE

This is an appeal of a final decision by the Missoula County Tax Appeal Board (CTAB) denying Christine and Lee Huffman (Taxpayers) a reduction in value on the subject property located at 408 Connell Avenue, Missoula, Montana. The Taxpayers timely appealed that outcome to Montana Tax Appeal Board (MTAB) on January 27, 2022. We affirm the CTAB’s determination upholding the Department of Revenue’s (DOR or Department) appraised land value for the 2021/2022 valuation cycle.

ISSUE TO BE DECIDED

Whether the CTAB erred in affirming the DOR’s appraised land value of \$257,595 for this property. The value of the improvements was not appealed.

EXHIBIT LIST

The following evidence was submitted at the hearing:
Taxpayer Exhibits:

1. Appeal to CTAB
2. 07/09/2021 Property Classification and Appraisal Notice
3. 09/24/2021 Property Classification and Appraisal Notice
4. 823 Hilda Ave. Property Record Card
5. 817 Hilda Ave. Property Record Card

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6. 816 Hilda Ave. Property Record Card
7. 820 Hilda Ave. Property Record Card
8. 825 Ronald Ave. Property Record Card
9. 820 Ronald Ave. Property Record Card
10. 1125 Helen Ave. Property Record Card
11. Beverly Hills, CA Realtor.com listings
12. DOR Information Packet
13. 07/03/2017 Property Classification and Appraisal Notice
14. 10/11/2017 Property Classification and Appraisal Notice
15. 07/17/2017 Property Record Card
16. Missoula County Tax Statements 2001-2016
17. 06/05/2016 Property Record Card
18. 2017 Payment of Taxes Under Protest
19. 2021 Payment of Taxes Under Protest
20. 1305 Gerald Ave., 1330 Gerald Ave., 1434 Gerald Ave., 380 Keith Ave.,
415 McLeod Ave., and 828 Ronald Ave., Property Record Cards
21. 340 University Ave., 512 Connell Ave., 340 E. Beckwith Ave., and 336
Connell Ave. Property Record Cards
22. 1601 Helena Ave., 304 Daly Ave., and 314 Connell Ave. Property Record
Cards
23. 400 Connell Ave. and 436 Hastings Ave. Property Record Cards
24. 300 Keith Ave. Property Record Card and listing information
25. 1232 Gerald Ave. listing information and Property Record Card
26. 1019 Hilda Ave. listing information and Property Record Card
27. 1017 Hilda Ave. Property Record Card
28. 724 Gerald Ave., 606 Gerald Ave., and 2012 Hilda Ave. Property Record
Cards
29. 2217 Hilda Ave., 2230 Gerald Ave., 2200 Ronald Ave., 217 North Ave. E.,
and 639 E. Sussex Ave. Property Record Cards
30. 645 Woodworth Ave. and 655 Woodworth Ave. Property Record Cards

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31. 1231 Gerald Ave., 342 Eddy Ave., 415 McLeod Ave, 828 Ronald Ave., and 340 University Ave. Property Record Cards
32. 1231 Gerald Ave., 415 McLeod Ave., 828 Ronald Ave., 340 University Ave., and 342 Eddy Ave. Property Record Cards
33. 1434 Gerald Ave. and 1330 Gerald Ave. Property Record Cards
34. 340 E. Beckwith Ave., 336 Connell Ave., 404 Keith Ave., 314 Connell Ave., 304 Daly Ave., 1205 Gerald Ave., 533 Keith Ave., 400 Connell Ave., and 401 McLeod Ave. Property Record Cards
35. 140 E. Central Ave. Property Record Card
36. 910 Ronald Ave. Property Record Card
37. 2711 S. Higgins Ave., 435 North Ave. W., and 320 W. Kent Ave. Property Record Cards
38. 152 Fairway Dr., 108 Ironwood Pl., and 110 Ironwood Pl. Property Record Card
39. 208 Dean Stone Dr. and 217 Dean Stone Dr. Property Record Cards and listing information
40. 216 University Ave. and 330 Eddy Ave. Property Record Cards
41. 521 University Ave., 530 Connell Ave., and 524 McLeod Ave. Property Record Cards
42. 1521 Gerald Ave. and 1525 Gerald Ave. Property Record Cards
43. 304 Spanish Peal Dr. listing information and Property Record Card
44. Excerpt from Economics, 11th Edition, by Paul A. Samuelson
45. November 30, 2021, Blue Nile Diamond Prices
46. Comparisons of 408 Connell Ave., 1231 Gerald Ave., 340 University Ave., 828 Ronald Ave., 415 McLeod Ave., and 342 Eddy Ave. to the Subject Property
47. Santa Fe Community College Certificates of Completion of Education Qualifications for Real Estate Appraisal Licensing for Lee W. Huffman; Certificate of completion of Administrative Law: Advanced from The National Judicial College for Lee W. Huffman; Certificate of Appreciation

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from the New Mexico Supreme Court to Lee W. Huffman for service on the
Appellate Rules Committee

48. 12/07/2021 List of Exhibits
49. City of Missoula Neighborhood Council Map
50. University District Map
51. Missoula's National Register Historic Districts
52. University District Descriptions from University District Leadership Team
53. The University Area Homeowners Association, Inc. Certificate of
Incorporation and Articles of Incorporation
54. Letter from University Area Homeowners Association regarding zoning
language to limit size of new homes
55. Missoula Municipal Code 20.5.072 University District Neighborhood
Character Overlay
56. Missoula Municipal Code 20.05.010 Districts
57. Brint Wahlberg CV
58. Findings and Research by Brint Wahlberg regarding valuation of 1125
Helen property sale
59. 1125 Helen Ave. listing information
60. CTAB Decision
61. CTAB Hearing Transcript
62. Appellant's Request to Make Corrections to the CTAB Hearing Transcript
63. Email from Abe Hinderaker giving comparable properties if the home was
graded a 6 rather than a 7 with attached Property Record Cards
64. 607 E. Central Ave. Property Record Card
65. CTAB Appeal Form
66. 805 Hilda Ave. Property Record Card
67. 402 Eddy Ave. Property Record Card
68. 236 Eddy Ave. Property Record Card
69. 816 Hilda Ave. listing information
70. Home Tear Downs with New Construction with 510 McLeod Property
Record Card

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71. List of Exhibits provided to DOR on April 29, 2022
72. List of Exhibits provided to DOR on June 1, 2022
73. 06/24/22 AB-26 Request for Informal Classification and Appraisal Review
74. DOR Responses to Discovery Requests
75. 1531 Mansfield Ave. Property Record Card
76. Land Model Sales Information
77. 647 E. Kent Ave. Property Record Card
78. 205 North Ave. E. Property Record Card
79. Montana Reappraisal Plan
80. University District Map
81. Neighborhood Median Price
82. Fanning the Embers
83. 06/22/2022 Taxpayers' list of exhibits

DOR Exhibits:

- A. DOR Property Assessment Division Procedure 2-3-002
- B. Subject Property Record Card
- C. 2020-2021 Uniform Standards of Professional Appraisal Practice (USPAP)
- D. Land Model
- E. Missoula Neighborhood Information
- F. Neighborhood Map
- G. Zoning Map
- H. Traffic Data
- I. (No exhibit labeled I)
- J. 1125 Helen Ave. lot map and Property Record Card

PROCEDURAL HISTORY

The DOR valued the subject property at \$753,800 for the 2021/2022 appraisal cycle, with a land value of \$257,595 and an improvement value of \$496,205. The Taxpayers received a Property Classification and Appraisal notice dated July 9, 2021. *Taxpayer Sworn Statement, at 1, MTAB Dkt. 16.* On August 2, 2021, the Taxpayers filed an AB-26 request for informal classification and appraisal review. *Id.* A decision

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was rendered on the Taxpayers AB-26 on September 24, 2021, granting a partial reduction in the improvements value to \$418,005, bringing the total value to \$675,000. The Taxpayer appealed the DOR's valuation to the CTAB on October 15, 2021, requesting a value of \$202,995 for the land but not disputing the improvements value. A hearing was held on December 14, 2021. The CTAB's decision denying the Taxpayer's application for reduction was sent to the parties on December 30, 2021. The Taxpayer appealed to the Montana Tax Appeal Board (MTAB) on January 27, 2022, per Mont. Code Ann. § 15-2-301. *Appeal, MTAB Dkt. 1*. The Taxpayer requested, and after due consideration and without objection from the DOR, the Board granted an "on the record review" per MCA § 15-2-301(2)(b) in lieu of an in-person hearing. The DOR filed a sworn statement on June 1, 2022. The Taxpayer filed a sworn statement on June 3, 2022. The DOR filed their response to the Taxpayer's sworn statement on June 22, 2022. The last filing in the case was the Taxpayer's response to the DOR's sworn statement which was filed on June 24, 2022.

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

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 improvement value has not been appealed and as such was not the subject of evidence during the appeal. The value of the improvements remains on the property record card at \$418,005.
3. The subject property's external wall of the home is 15 feet apart from the neighboring home on one side and 18 feet apart from the neighboring home on the other side. The home on the subject lot can only be orientated with the narrow side facing the street because of the lot size. The subject property has two multi-unit rental properties across the alley to the north. One at 403 Eddy

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with ten units and the other at 413 Eddy with four units. *Taxpayer Sworn Statement, at 9-10, MTAB Dkt. 16.*

4. The DOR appraised the land and improvements as a single unit using the sales comparison method. The DOR then subtracted the land value from this combined total to determine the improvements value. *Ex. A, at 318.* Land values are based on the comparable sales appraisal method using sales of raw and extracted land in neighborhood DOR valuation neighborhood 11.
5. Industry standard requires the DOR to “define the appropriate market area of consistent behaviors that applies to the properties being valued.” *Ex. C, at 455, 457.* The appraisers analyze the effect that “existing land use regulations, economic supply and demand, the physical adaptability of the real estate, neighborhood trends, and highest and best use of the real estate” have on use and value. *Id. at 457-58.* Based on the criteria above, the DOR delineates neighborhoods for the purpose of mass appraisal and when there are enough sales within a neighborhood, utilizes sales only from within a neighborhood to appraise the properties in that neighborhood. *DOR Sworn Statement, at 3, MTAB Dkt. 12.*
6. To track market information, the DOR uses several models. *DOR Sworn Statement, at 3, MTAB Dkt. 12.* That information guides the DOR in defining the boundaries of neighborhoods in Missoula.
7. The City of Missoula has created and mapped various neighborhood districts which are different than the neighborhoods created by the DOR and are created for reasons other than mass appraisal including creating, maintaining, and promoting a variety of housing opportunities. *DOR Sworn Statement, at 5, MTAB Dkt. 12; Ex. 49, 56.* The City of Missoula, the University District neighborhood council, and the University Area Homeowners Association

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consider the University District to include Hilda, Ronald, and Eddy avenues.

Taxpayer Sworn Statement, at 15, MTAB Dkt. 16; Ex. 49-55.

8. The subject property is in DOR's Valuation Neighborhood 204.011 (Neighborhood 11). *DOR Response to Taxpayer Sworn Statement, at 3, MTAB Dkt. 18.*
9. Neighborhood 11's boundaries are Eddy Avenue to the north, the University of Montana campus to the east, South Avenue to the south, and Higgins Avenue to the west. *DOR Response to Taxpayer Sworn Statement, at 3, MTAB Dkt. 18; Ex. E, F.*
10. The northern boundary of Neighborhood 11 is between Eddy Ave. and 6th Street because of the proximity to commercial areas and because the busy one-way streets confined by the Clark Fork River to the north result in higher traffic counts, more congestion, and more noise which cause physical, economic, and social influences that differ between the properties north of Eddy as compared to those properties south of Eddy. *DOR Sworn Statement, at 6, MTAB Dkt. 12; Ex. E, at 780; Ex. F, at 1505; Ex. G, at 1711; Ex. H, at 1710.* Further, the area north of 6th Street is zoned differently than those south of 6th Street by the city of Missoula, "indicating different uses and different markets." *DOR Sworn Statement, at 6, MTAB Dkt. 12; Ex. G.*
11. The higher traffic counts, indicated by green lines, along 5th and 6th street, as well as along E. Beckwith. *Taxpayer Response to DOR Sworn Statement, at 17, MTAB Dkt. 19; Ex. H.* However, the homes above and below E. Beckwith are within Neighborhood 11. *Taxpayer Response to DOR Sworn Statement, at 17, MTAB Dkt. 19; Ex. F.* The traffic map also indicates slightly higher traffic counts, indicated by blue lines, along Connell Ave., Daly Ave., and Beverly Ave. but the rest of the University District, including Hilda and Ronald, does

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not appear to have higher traffic counts. *Taxpayer Response to DOR Sworn Statement, at 17, MTAB Dkt. 19; Ex. H.*

12. The change in zoning to higher density begins a block north, between 5th and 6th Street of the DOR's neighborhood line that is between Eddy and 6th Street. *Taxpayer Response to DOR Sworn Statement, at 17-18, MTAB Dkt. 19; Ex. G, F.*
13. The property located at 805 Hilda is outside the Neighborhood 11 line, between Eddy and 6th Street, but is still valued by the Neighborhood 11 model. *Ex. F.*
14. The properties located at 816 Hilda, 817 Hilda, 820 Hilda, 823 Hilda, 820 Ronald, and 825 Ronald are outside of Neighborhood 11 and are included in DOR's Neighborhood 5. *DOR Sworn Statement, at 7, MTAB Dkt. 12; Ex. F.*
15. At the CTAB hearing, DOR appraiser Abe Hinderaker testified that all of the lots from 820 Hilda to 825/820 Ronald will be considered Neighborhood 11 in the next assessment cycle. *Taxpayer Sworn Statement, at 19, MTAB Dkt. 16; CTAB Hr'g Tr. 30:25-31:2.* He testified that the reason those properties are currently Neighborhood 5 is because the homes are older and were built before 1900. *CTAB Hr'g Tr. 30:18-22.* However, only 823 Hilda was built before 1900. Further, 825 Ronald, 820 Ronald, 823 Hilda, and 820 Hilda, all in Neighborhood 5, have an average build year of 1913 while 236 Eddy, 828 Ronald, 342 Eddy, and 402 Eddy, all in Neighborhood 11, have an average build year of 1902. *Taxpayer Sworn Statement, at 17-18, MTAB Dkt. 16; Ex. 4, at 2; Ex. 7, at 2; Ex. 8, at 2; Ex. 9, at 2; Ex. 31, at 5; Ex. 32, at 8; Ex. 67, at 2; Ex. 68, at 2.*
16. In 2019, there were about 40 sales in Neighborhood 11 with parcel sizes ranging from 3,229 square feet to 17,856 square feet and adjusted sale prices for the land ranging from \$177,520 to \$806,160. *DOR Sworn Statement, at 4,*

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MTAB Dkt. 12; Ex. D, at 402. These were utilized in the DOR Computer Assisted Land Pricing (CALP) spreadsheet which is used to “help organize data and calibrate a standard size lot (base size), the value of the base lot (base rate), and an adjustment factor (residual or incremental) value for land sales in a particular taxing ‘neighborhood.’” *DOR Sworn Statement, at 3, MTAB Dkt. 12; Ex. A, at 317-31.*

17. Sales of vacant land in Neighborhood 11 are not common, but there were four during this appraisal period: 1) a 5,850 square foot lot sold for \$250,000; 2) a 5,843 square foot lot sold for \$220,000; 3) a 7,800 square foot lot sold for \$287,000; and 4) an 11,700 square foot lot sold for \$302,000. *DOR Response to Taxpayer Sworn Statement, at 6, MTAB Dkt. 18; Ex. D, 76.*
18. The Taxpayer argued that to get to the top value in the land adjusted sales price range using the DOR’s formula would require a lot of 87,725 square feet. He further argued that using this formula would also result in the smallest value possible (a one square foot lot) being \$218,407. The smallest property within the land model was a 3,229 square foot lot, while the largest was a 17,856 square foot lot. Within the land model sales information, the smallest lot does not have the lowest adjusted sale price and the largest lot does not have the largest adjusted sale price. *Taxpayer Response to DOR Sworn Statement, at 7-9, MTAB Dkt. 19; Ex. 75, 76.*
19. The 40 sales prices of the properties included in the model do not equate to the appraised values of the properties. Instead, all 40 of the Neighborhood 11 sales, which includes the vacant lot sales and the extracted land value of the sales of improved lots, were included in the CALP and then the resulting statistics were applied to the individual parcels to calculate their land values. *DOR Sworn Statement, at 3, MTAB Dkt. 12.*

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20. The CALP statistics are applied to individual parcels to determine land value using a formula of $\text{Base Rate} * \text{Base Size} + [(\text{Subject Size} - \text{Base Size}) * \text{Residual Rate}] = \text{land value}$. In this case, the CALP yielded a typical “residential base size of 7,800 square feet, a base rate of \$34.70 per square foot, and an incremental rate of \$6.70 (as rounded to the nearest nickel).” *DOR Sworn Statement, at 4, MTAB Dkt. 12; Ex. D, at 402*. This results in the subject property having a value of \$257,595 because $\$34.70 * 7,800 + [(5,850 - 7,800) * \$6.70] = \$270,660 + (-1,950 * \$6.70) = \$270,660 - \$13,065 = \$257,595$.
21. The Taxpayer argued that the DOR’s land value of \$257,595 equates to a \$44.03 price per square foot for the 5,850 square foot subject property when calculated using a straight per square foot formula rather than utilizing the base lot formula. *Taxpayer Sworn Statement, at 2, MTAB Dkt. 16*.
22. The Taxpayer pointed to five properties in the University District with an average size of 17,300 square feet and an average land valuation of \$334,377. He contends that, using a straight per square foot calculation, this equates to \$19.33 per square foot which, if applied to the subject property, would result in a land value of \$113,080. *Taxpayer Sworn Statement, at 8, MTAB Dkt. 16; Ex. 20*.
23. The Taxpayer then pointed to six lots with 11,700 square feet which all have the same value of \$296,790. He contends that using a straight per square foot calculation, this equates to \$25.37 per square foot which, if applied to the subject property, would result in a land value of \$148,414. *Taxpayer Sworn Statement, at 8-9, MTAB Dkt. 16; Ex. 21, at 1-8; Ex. 32, at 1-3; Ex. 34, at 1-11*.
24. The Taxpayer then pointed to ten properties with 7,800 square foot lots (7,800 square feet being the base lot) which all have a land value which, if using a straight per square foot formula, equates to \$34.70 price per square foot. He argued that if this price per square foot was applied to the subject property, the

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land value would be \$202,995. *Taxpayer Sworn Statement, at 9, MTAB Dkt. 16; Ex. 22; Ex. 34, at 12-25.*

25. The DOR countered the Taxpayer's arguments regarding the price per square foot valuation of the subject property, as well as the values the Taxpayer arrived at for the averaged 17,300 square foot lots, the 11,700 square foot lots, and the 7,800 square foot lots by stating that the straight per square foot calculation the Taxpayer used does not accurately reflect market value. *DOR Sworn Statement, at 7, MTAB Dkt. 12.* The DOR further stated that it used the same base lot formula (Base Rate * Base Size + [(Subject Size - Base Size) * Residual Rate] = land value) for all the properties and that the apparent declining per square foot values for larger properties is a function of the basic principle of "economies of scale." *Id.* Buyers in the neighborhood are buying for location in a highly desirable neighborhood, with lot size being a lesser consideration.
26. The Taxpayer also compared the subject property to the property located at 1125 Helen, which is a 5,840 square foot lot with a 2021 assessed land value of \$197,858. He argued that if the price per square foot of this lot was used to value the subject property, the subject property would have a lower land value of \$198,196. *Taxpayer Sworn Statement, at 9, MTAB Dkt. 16; Ex. 10.*
27. The DOR treated the property at 1125 Helen as an "outlier" for the 2021/2022 valuation cycle. That property spent more time on the market during 2019 and 2020 than is typical for properties in Neighborhood 11. The DOR appraiser determined the reasons for this include its proximity to student housing, its location on the corner of a busy alley, and the fact that it lacks a driveway into the garage. For these reasons, the DOR appraiser categorized it as an "other" land type which caused it to be valued differently from the other properties in Neighborhood 11 during the 2021/2022 valuation cycle. *DOR Sworn Statement, at 7-8, MTAB Dkt. 12.* Further, the sale of this property was after the

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- lien date and has not yet been verified as an arms-length transaction and will not be included in the model until the next valuation cycle. *DOR Sworn Statement, at 8, MTAB Dkt. 12.*
28. The Taxpayer's witness, Brint Wahlberg, testified at the CTAB hearing that 1125 Helen was on the market for an extended period because it had a rental lease through June. *Taxpayer Sworn Statement, at 10, MTAB Dkt. 16; CTAB Hr'g Tr. 26:23-27:6.* Mr. Wahlberg contends that the lack of driveway at 1125 Helen does not affect the value as the DOR alleged at the CTAB hearing. *CTAB Hr'g Tr. 9:13-21; 40:16-41:6; Ex. 59, 61.*
29. The Taxpayer also brought attention to six lots within Neighborhood 5 of the University District that are larger than the subject property but have lower 2021 land values. These are 823 Hilda, 820 Hilda, 817 Hilda, 816 Hilda, 825 Ronald, and 820 Ronald. These properties have an average lot size of 7,120 square feet with an average land valuation of \$161,332. *Taxpayer Sworn Statement, at 12-14, MTAB Dkt. 16; Ex. 4-9.*
30. Of the six properties the Taxpayer identified, the Eddy properties are next door to Neighborhood 11 properties while 817 Hilda and 820 Hilda are one house away from Neighborhood 11 properties. 805 Hilda is two houses north of 817 Hilda but is still valued in Neighborhood 11. *Taxpayer Sworn Statement, at 19, MTAB Dkt. 16; Ex. F.*
31. The Taxpayer contends that sales of properties where homes are demolished after purchase are in essence only purchasing the land and this is the market reality of the land value. *MTAB Dkt. 16, at 23.* The Taxpayer argues, using sales of properties where homes were demolished after purchase, that the DOR values small lots at 35% higher than the sale price while large lots are given a discount of 62.3% with an assessed amount that is only 37.7% of the actual sales price. *Taxpayer Sworn Statement, at 20-22, MTAB Dkt. 16.*

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32. The Taxpayer also compared the values of multiple additional nearby properties of various sized parcels to argue that the DOR values smaller lots (like his) at a higher per square foot valuation than larger lots. *Taxpayer Sworn Statement, at 22, MTAB Dkt. 16; Ex. 25, at 4; Ex. 26, at 6.*
33. The Taxpayer also compared sales prices of multiple properties to the values calculated by the DOR. Some of the sales occurred outside of the required 2018/2019 timeframe to be considered for the 2021/2022 valuation cycle. *Taxpayer Sworn Statement, at 23-24, MTAB Dkt. 16; Ex. 24, 25, 26.*
34. The Taxpayer also compared values of properties in a neighborhood south of Neighborhood 11 to show that the larger lots in that neighborhood have lower values than those in the University District and to compare listing prices to the DOR's valuation calculations. *Taxpayer Sworn Statement, at 24-25, MTAB Dkt. 16, 38-39; Ex. 39, at 6; Ex. 70.*
35. The Taxpayer analogized that when diamonds increase in size from $\frac{1}{4}$ to $\frac{1}{2}$ carat, the price per carat increases by approximately four times. When the size of the diamond increases from $\frac{1}{2}$ carat to one carat, the price increases by approximately six times. *Taxpayer Sworn Statement, at 35, MTAB Dkt. 16; Ex. 45.* The Taxpayer argued that the market for diamonds demonstrates that declining marginal utility does not apply to all things and in the case of University District lots, the larger size does not cause declining marginal utility because of the ability to put a larger house on the property, the available distance between neighbors, the larger yard, and the option for lot splits. *Taxpayer Sworn Statement, at 36, MTAB Dkt. 16.*
36. The Taxpayer argued that the DOR's land valuation procedures allow for two different methods of land valuation. The first is the comparative unit method wherein the appraiser determines an average value per unit of comparison which can be found by calculating the median or mean sales price per unit. The

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second is the method the DOR used in this case, the base lot method wherein the appraiser establishes a standard/base parcel value using traditional sales comparison with the standard/base parcel acting as the subject property which is then used as a benchmark to establish individual parcel values. *Taxpayer Response to DOR Sworn Statement, at 11, MTAB Dkt. 19; Ex. A at 319.*

37. The DOR argued that the Taxpayer's requested value for the subject property fails to calculate the land value in accordance with Montana law and industry standards for mass appraisal purposes. *DOR Response to Taxpayer Sworn, at 6, MTAB Dkt. 18.* The DOR further argued that the base lot formula is recognized in the appraisal industry to produce credible mass appraisals. *DOR Sworn Statement, at 7-8, MTAB Dkt. 12.*

JURISDICTION AND STANDARD OF REVIEW

38. The Montana Tax Appeal Board is an independent agency not affiliated with the Montana Department of Revenue. *Mont. Const., Art. VIII § 7; Mont. Code Ann. § 15-2-101.* The Taxpayer filed a timely appeal of the CTAB's decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter, an appeal to MTAB from a decision of a CTAB. *Mont. Code Ann. § 15-2-301.*
39. This Board may hear appeals de novo. *Dept. of Revenue v. Burlington N., Inc.*, 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, 303 P.3d 1279 (2013).
40. The Board's order is final and binding upon all parties unless changed by judicial review. *Mont. Code Ann. § 15-2-301.*

CONCLUSIONS OF LAW

41. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

42. “All taxable property must be appraised at 100% of its market value....” *Mont. Code Ann. § 15-8-111*.

43. Except as otherwise provided in Montana Code Ann. § 15-2-301(2)(c), the Board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision in connection with any appeal under Montana Code Ann. § 15-2-301. To the extent Mont. Code Ann. § 15-2-301 conflicts with the Montana Administrative Procedure Act, § 15-2-301 supersedes that act. *Mont. Code Ann. § 15-2-301(5)*

44. 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. Inc.*, 169 Mont. at 214, 545 P.2d at 1090. However, DOR cannot rely entirely on the presumption in its favor and must show the propriety of their action. *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).

45. The Taxpayer bears the burden of proving the error of DOR's decision. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.

46. “‘Assessment formulations’ by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion.” *Peretti v. State, 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. of Montana, Inc. v. State*

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Tax Appeal Bd., 203 Mont. 313, 317, 661 P.2d 44, 47 (1983) overruled on other grounds by *DeVoe v. Dep't of Revenue of State of Mont.*, 263 Mont. 100, 866 P.2d 228 (1993).

47. 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, 332 P.3d 235; *Mont. Code Ann. § 1-2-10*
48. 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. § 1-2-10*
49. "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)).
50. "[T]ax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer." *Western Energy Co. v. State, Dep't of Revenue*, 1999 MT 289, ¶ 10, 297 Mont. 55, 990 P.2d 767.
51. "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).

DISCUSSION

52. The Taxpayer compared his land value to the values of the properties located at 816 Hilda, 817 Hilda, 820 Hilda, 823 Hilda, 820 Ronald, and 825 Ronald, which are located outside of Neighborhood 11. The Taxpayer argued that these properties are located within Missoula City's University District neighborhood zones and therefore in the same neighborhood. However, the DOR clarified that these properties are actually located within Neighborhood 5, a different DOR Neighborhood for mass appraisal purposes. Department of Revenue neighborhoods are identified to mass appraise properties fairly and equitably while city neighborhoods are identified for local governance purposes outside the scope of the DOR. The Department differentiates the neighborhood located a half block south of South 6th Street East up north to a half block north of South 5th Street East as Neighborhood 5 due to the lesser desirability of this neighborhood based on its heavy traffic flow of South 5th and 6th Street East and proximity to the Higgins downtown area. 6th Street East is a two laned one-way street heading east with higher traffic flow that connects Higgins Avenue South to Arthur Avenue. 5th Street East is a two laned one-way street heading west with higher traffic flow that connects Arthur Avenue to Higgins Avenue South. According to 2020 Montana Traffic Data, East Beckwith is the only other road that has similar traffic to South 5th and 6th Street East, but this street is a two lane, two way that allows access to the University District and the University. The traffic East Beckwith bares shows an equivalence of traffic to either South 5th Street East or South 6th Street East, but not both. The Taxpayer's argument that East Beckwith has an increase of traffic and does not result in a separation of the southern University District is flawed. This Board finds that while these five properties may be next to or near Neighborhood 11 properties, the Department has presented credible evidence to show that they are in a different and distinguishable DOR-delineated neighborhood from the subject property for valid reasons.

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53. The Department's appraiser stated that some of the properties identified by the Taxpayer were likely to be included in the DOR's Neighborhood 11 in the next appraisal cycle. These properties include 820 and 825 Ronald as well as 820 Hilda. These properties are one property below the half block line South of South 6th Street East that forms the boundary between Neighborhood 5 and 11. The Taxpayer argued that these properties should be used as comparable properties for the valuation of his property. The appraiser's CTAB response originally indicated that the build year was an important attribute that differentiated the homes in Neighborhood 5 from Neighborhood 11. This argument lacked credibility based on the age of the surrounding homes in Neighborhood 11 and was not maintained by the DOR during the MTAB appeal process. The DOR's brief to MTAB clarified that unlike Neighborhood 11 which is relatively quiet, Neighborhood 5 is impacted by two-lane, one-way streets, the Clark Fork River, higher traffic counts, closer proximity to bars and restaurants and general congestion. The DOR further claimed that these market influences are evidenced by market behavior which incorporated different sales trends, lot sizes and base rates. The Taxpayer's argument points out an inconsistency with the location of the properties in regard to the DOR's neighborhood boundary lines. These homes are on the border of Neighborhood 5 and Neighborhood 11 and likely should have been included in the DOR's Neighborhood 11. When properties are included in the incorrect neighborhood, they are paired with incorrect model sales, which give them a lower value. Redesignating these properties into the proper DOR neighborhood will unfortunately likely result in an increase in the values of these properties in the future, but it bears no weight on the Taxpayer's property for this appeal, his neighborhood, or the model used to value his land. This inconsistency should be remedied by the DOR in the upcoming appraisal cycle.
54. The Taxpayer compared his property valuation to 1125 Helen and argued that the Helen property is valued much lower. The DOR found reason to treat 1125 Helen as an outlier during the 2021/2022 cycle and was identified as "other".

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The DOR chose to treat the Helen property as an outlier due to the longer than typical time it sat on the market and certain physical property factors, so it was treated as a unique case and received a lower value. This property was considered an exception to the mass appraisal norms that were consistently used throughout the rest of Neighborhood 11. The value assigned to this property does not impact other properties that were valued using the Neighborhood 11 model. We do not find it reasonable to change the Taxpayer's value based on one outlier while all other Neighborhood 11 properties were appraised using the same model as the Taxpayer's property. The Department should review whether 1125 Helen should be considered an outlier in the next valuation cycle. However, considering the attention this property has received during this appeal, it is important to keep in mind that 1125 Helen is not the property being reviewed during this appeal.

55. The Taxpayers main argument focused on the concept that different sized lots are valued differently per square foot. The Taxpayer utilized a variety of examples to show how larger lots tend to be valued at less per square foot while smaller lots tend to be valued at more per square foot. The Taxpayer argued that the base lot method of valuing land was inconsistent with true land valuation, and that other recognized methods were more accurate. Many of the Taxpayer's examples utilized small lot sizes compared to large lot sizes to form this argument. This argument focused on a cost per square foot method versus the Department's approach of utilizing the base lot method which removed outliers and utilized all relevant sales in the neighborhood to identify statistical trends and incremental rates per square foot. The Taxpayer argued that some items such as diamonds do not have a diminishing rate of return per carat, but instead show an increasing rate of return per additional carat. The Department's mass appraisal method utilizing real market purchases showed that larger lots statistically do have a diminishing rate of return and have a lower cost per square foot. If the sales data in Neighborhood 11 had shown an increasing rate

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of return for larger properties, the Department's values would have also shown this trend.

56. The Taxpayer also focused on the sales price of a limited number of vacant land sales and questioned if the value of improvements was valued higher than necessary. This argument was flawed since there were only 4 lots without improvements and those lot sales were a fraction of the handful of the sales used in the 40 plus sales used to create the land model. This argument could be made if the Taxpayer was appealing a valuation of a lot without an improvement. Utilizing only lot sales would ignore the fact that vacant and "tear down" lot sales are in the vast minority, while the majority of sales were of lots with improvements. The Department's property valuation model's use of a combination of market sales that included vacant lots and lots with improvements removed allowed for the fairest and most equitable evaluation of property.

57. The Department's appraisal method implements a statistical model that takes into consideration the housing market's economies of scale instead of utilizing the Taxpayer's suggested exponential increase. Although other appraisal methods may also be possible, the Department's current method allows for the reasonable implementation of the Legislature's directive of mass appraisal. The Board finds that the Department's use of CALP statistics applied to individual parcels to determine land value created a rational determination of a reasonable base size, base rate, and incremental rate, which resulted in a fair and equitable formulaic valuation of the Taxpayer's land and improvements in the DOR's Neighborhood 11.

58. The Taxpayer pointed out inconsistencies regarding neighborhood outlines that were of interest and could be addressed in the future but had no impact on the Taxpayer's property and the Department's valuation method. The Taxpayer's

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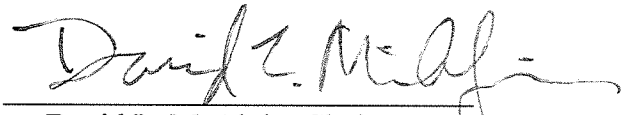
main arguments and critiques of the DOR's mass appraisal method did not persuade the Board that the DOR's valuation of his property was incorrect. The Taxpayer's method of calculation seemed to assume that lot sizes should be valued by the price per square foot instead of utilizing market sales to identify trends and equate the diminishing rates of return for the land. The DOR's method of using real market data to identify market value was not proven to be inconsistent or inaccurate by the Taxpayer and will not be overturned.

ORDER


59. The Taxpayer's appeal is denied.
60. DOR is directed to maintain the value of the subject land value of \$257,595 for the 2021/2022 valuation cycle.

Dated this 15th day of September 2022.

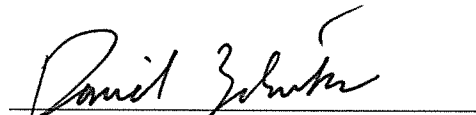




David L. McAlpin, Chairman



Amie Zendron, Member



Daniel Zolnikov, Member

Notice: You are entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. The Department of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. MCA §15-2-303(2).

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 September 15, 2022, to:

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