

AUG 05 2024

Montana Tax Appeal Board

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Appellant,

v.

GUNNER AND BETH JUNGE,

Respondents.

CASE №: PT-2024-2

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

STATEMENT OF THE CASE

This is an appeal of a final decision by the Sanders County Tax Appeal Board (CTAB) granting Gunner and Beth Junge, (Taxpayers) a reduction in value on the subject property located at 407 East 4th Avenue, Thompson Falls, Montana (Subject Property). The Department of Revenue (DOR) appealed that outcome to Montana Tax Appeal Board (MTAB) on January 3, 2024. We reverse CTAB's determination.

ISSUE TO BE DECIDED

Whether CTAB erred in granting Taxpayers' request for a reduction in value to the Subject Property.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Sanders County Tax Appeal Board Meeting PowerPoint;
2. Collection of 15 Photos of Subject Property;
3. Comparable Properties Document;
4. Cadastral Record of Home/Improvements;
5. MCA Code Sections;
6. Personal Notes and Statements of Fact;

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7. Property Record Card;
8. MDOR Dan Lapan Email Dated 11/27/2023;
9. MDOR Appraiser Dan Lapan's Certification;
10. Written Statement from SCTAB Hearing 12/4/2023;
11. Second Witness/Respondent Written Statement 1/29/2024; and
12. Articles on MT Property Tax Issues.

DOR Exhibits:

- A. Property Record Card;
- B. 2023 Land Moel Spreadsheet;
- C. Comparable Sales Spreadsheet;
- D. Procedure 2-3-001.1; and
- E. 2023-2024 Residential Classification and Valuation Manual.

PROCEDURAL HISTORY

The DOR initially valued the subject property at \$284,000 for the 2023/2024 appraisal cycle, with the land valued at \$52,241 and the improvements valued at \$231,759. *Ex. A.* Taxpayers filed an appeal dated July 26, 2023, to the CTAB requesting a total value of \$30,000. Taxpayers also filed an AB-26, Request for Informal Classification and Appraisal Review, dated July 26, 2023, with the DOR requesting a land value of \$35,238 and an improvement value of \$151,262 for a total value of \$186,500. *MTAB Dkt. 2.* The DOR performed an on-site review of the property on August 2, 2023. The DOR sent a Form AB-26 Determination Letter to the Taxpayer dated August 18, 2023, denying Taxpayers' request, and setting the value at 298,800, \$52,241 for the land and \$246,559 for the improvements. *Id.* Taxpayers resubmitted their appeal of the DOR's valuation request to the CTAB on November 24, 2023, requesting a total valuation \$30,000. *Id.* The CTAB hearing was held on December 4, 2023, and the CTAB's decision granting the Taxpayers' application for reduction was sent to the parties on December 6, 2023. The DOR appealed to MTAB on January 3, 2024, per Mont. Code Ann § 15-2-301, requesting a land value of \$52,241 and an improvement value of \$246,559, for a total of \$298,800. *MTAB Dkt.*

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1. The MTAB hearing was conducted in Helena on May 7, 2024, at which the following were present:

- a. Gunner and Beth Junge, Taxpayers; and
- b. Dave Burleigh, DOR Counsel; Cindy McGinnis, Paralegal; Dan Lapan, Area Manager; and Jason Stevens, Modeler.

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

FINDINGS OF FACT

1. To whatever extent the following findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. The Subject Property is land and a residential dwelling owned by Gunner and Beth Junge. *Ex. A.* The Subject Property is located at 407 East 4th Avenue, Thompson Falls, Montana, and is also identified by its geocode 35-3091-08-1-12-20-0000. *Id.*
3. At the conclusion of the AB-26 informal review, the DOR raised the Subject Property's improvements value from \$231,759 to \$246,559, resulting in a total value of \$298,800. *MTAB Dkt. 2.* The Taxpayer requested his market value be reduced to \$30,000 at the December 4, 2023, CTAB hearing, *Id.* The CTAB granted Taxpayers' request. *Id.* The DOR appealed to MTAB on January 3, 2024, and reasserted that the market value of the Subject Property should be \$289,800. *MTAB Dkt. 1.* Taxpayers maintained that the most recent valuation granted by the CTAB of \$30,000 is the most accurate value. *MTAB Dkt. 4.*
4. At the MTAB hearing, Taxpayers made a number of arguments including that an excessive property tax was being imposed on them, there are no comparable

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sales in the Subject Property's neighborhood, the Subject Property should not be valued using the market sales approach, and the Subject Property's market value is unknown because the Subject Property has not been listed for sale, thus, any market value estimation would be pure speculation. *MTAB Hr'g Tr. 6:15-22, 14:25-15:10.*

5. Taxpayers asserted that the DOR often has incorrect or incomplete data and presented information from Montana Cadastral and Zillow.com which characterized multiple properties located near the Subject Property and their improvements. *Ex. 3; MTAB Hr'g Tr. 15:21-16:6, 20:2-21.* Taxpayers testified that a neighboring property was not listed as having a covered deck or radon mitigation systems installed, which it does, and also incorrectly listed the property as having an extra shed. *Id.* Taxpayers highlighted another property located in Thompson Falls which was described as being a vacant lot with no living units or dwellings. *Id.* Taxpayers disagreed with this assessment and stated that the property contains a mobile home. *Id.* A third property Taxpayers presented contained a storage shed that is similar in size to the shed located on the Subject Property but was appraised at no value. *Ex. 3; MTAB Hr'g Tr. 20:24-21:7.* Taxpayers questioned why this shed was appraised at no value when the sheds on the Subject Property were assigned a value. *Id.* Taxpayers presented another property which is located within a block of the Subject Property and sold during January of 2024. *Ex. 3; MTAB Hr'g Tr. 21:16-18.* Taxpayers questioned why this property was not used as a comparable sale. *Id.* Taxpayers presented more properties with similar issues regarding the accuracy and completeness of the property assessments. *Ex. 3; MTAB Hr'g Tr. 21:9-23:21.* Taxpayers stated they could not recall whether they had compared the assessments contained in their Exhibit 3 with property record cards issued by the DOR. *Ex. 3; MTAB Hr'g Tr. 23:22-24:6.*
6. Taxpayers then listed a number of issues they had with the DOR's appraisal of the Subject Property. *Ex. 4; MTAB Hr'g Tr. 30:21-32:4.* First, Taxpayers

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broadly objected to what they stated was a 62.4% increase in value from the 2021/2022 appraisal cycle to the 2023/2024 cycle. *Id.* Taxpayers also opposed that the Subject Property's paved driveway was assigned value during the AB-26 reappraisal review after not having been assigned a value until the 2023/2024 appraisal cycle. *Id.* The Taxpayer disagreed with the Subject Property construction being identified as conventional from the previously listed log construction during the AB-26 process. *Id.* Taxpayers stated that only one side of the Subject Property dwelling is framed with siding or sheeting, and the rest of the home is log. *Id.* Taxpayers testified that the heating listed for the Subject Property had been unchanged for 23 years before it was changed from electric baseboard heat during the AB-26 review process. *Id.* Taxpayers stated that this was incorrect, and the Subject Property is heated by a wood stove in the basement and a small propane fireplace on the upstairs level of the home. *Id.*

7. Taxpayers also contended that aspects of the Subject Property were not appraised the same as other properties in the area. *Ex. 4; MTAB Hr'g Tr. 32:6-33:4.* Taxpayers pointed to the fact that a shed located on the Subject Property was appraised while other nearby properties did not have their similarly sized sheds appraised. *Id.* Likewise, the Subject Property's asphalt driveway was appraised when other properties in the area did not have their driveways appraised. *Id.*
8. Taxpayers testified that the Subject Property's log outbuilding was not built onsite as the property record card indicated, but rather was built offsite and then moved onto the Subject Property at a later date. *Ex. 4; MTAB Hr'g Tr. 33:1-4, 47:24-48:5.* Additionally, neither of the outbuildings located on the Subject Property have wheels attached to them. *Id.*
9. Taxpayers confirmed that as of the lien date of January 1, 2022, the Subject Property had two outbuildings and a paved driveway on the premises. *MTAB*

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Hr'g Tr. 45:17-23. Taxpayers also agreed that the two outbuildings and paved driveway on the property qualify as improvements according to the definition contained in Montana Code Annotated. *MTAB Hr'g Tr. 47:15-23.*

10. Taxpayers stated they were not familiar with how Zillow.com estimates property values and did not know whether Zillow.com is required to follow Montana law when estimating property values. *MTAB Hr'g Tr. 50:20-51:11.*
11. Taxpayers conceded that their requested value for the Subject Property of \$30,000 was not based on any sales data or physical factors but was, “a ballpark attempt to show how ludicrous...Montana Department of Revenue’s estimation is... If I want to sell my house for \$30,000, that’s what it’s worth.” *MTAB Hr'g Tr. 52:8-13.*
12. Taxpayers testified that the log outbuilding located on the Subject Property is not habitable as it has no heat, electricity, or plumbing. *MTAB Hr'g Tr. 53:19-54:5.* Taxpayers primarily use the log outbuilding for storage. *Id.*
13. DOR made several adjustments to the Subject Property during the AB-26 process such as changing the bedroom count from four to three, adjusting the attic height to be a half story, adding the asphalt driveway, and recording the basement finish and log outbuilding which were previously unaccounted for. *MTAB Hr'g Tr. 57:17-59:6, 95:10-25.* DOR Area Manager, Dan Lapan, testified that the change in bedroom count did not impact the value of the Subject Property. *Id.*
14. Mr. Lapan stated that during the AB-26 process he was denied an internal inspection of the Subject Property which would have allowed him to better assess whether the home was log built or conventional. *MTAB Hr'g Tr. 57:21-58:6, 59:7-25.* Without being able to enter the home, Mr. Lapan’s decision to change the categorization of the home construction from log built to

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conventional was based on his in-person impressions of the Subject Property as well as photos provided by Mr. Junge where nails appeared to be protruding from the exterior of logs similar to how nails would protrude from log siding or trim. *Id.* Mr. Lapan stated that the change from a log structure to conventional resulted in a reduction in value to the Subject Property. *Id.*

15. Mr. Lapan conceded that based on Taxpayers testimony, changing the Subject Property's heating from gas to electric was likely a mistake. *MTAB Hr'g Tr. 70:20-71:11, 94:14-20.* However, Mr. Lapan noted that for assessment purposes, the DOR considers both gas and electric to be non-central heating sources and this change did not impact the value of the Subject Property. *Id.*
16. Mr. Lapan testified that the sales approach is the preferred appraisal method for residential property as long as there are adequate comparable properties available. *MTAB Hr'g Tr. 60:1-16.* Mr. Lapan stated that there were five good quality comparable properties located reasonably close to the Subject Property that were within the same DOR neighborhood. *Id.* The value of the Subject Property using the cost approach would have been \$355,981, whereas the value using the comparable sales approach was roughly \$60,000 less. *Id.*
17. The DOR presented a land valuation model which was used to analyze verified vacant land sales using multiple regression analysis. *Ex. B; MTAB Hr'g Tr. 65:11-66:16.* The model produces one or more pricing categories which are then applied to the properties in question. *Id.* The land model used for the Subject Property was based on a 10,000 square foot base lot which is then priced up or down depending on whether the Subject Property is smaller or larger than 10,000 square foot in size. *Id.* The Subject Property is 22,356 square feet in total size. *Id.* The first 10,000 feet of the Subject Property was valued at \$3.00 per square foot and the remaining 12,356 square feet was priced at \$1.80 per square foot due to the incremental and decremental rates. The model produced a land value of \$52,241. *Id.* Mr. Lapan testified that the

model pulled sales data exclusively from the city of Thompson Falls and did not include sales data from the more rural areas located nearby. *Ex. B; MTAB Hr'g Tr. 67:9-12.*

18. The DOR then presented the comparable sales worksheet used to appraise the Subject Property. *Ex. C; MTAB Hr'g Tr. 68:13-23.* The model took sales within the market area and chose the five most comparable sales based on which sales have the lowest comparability points. *Id.* A property's comparability points are based on roughly 15 to 20 variables such as difference in square footage of living area, whether the property has a garage, and the number of bathrooms. *Id.* The five comparable properties used in the model all had non-central heating like the Subject Property, so there were no adjustments made. *Ex. C; MTAB Hr'g Tr. 70:20-71:17.* However, Mr. Lapan stated that there was a \$2,500 adjustment increase made to Comp 5 for it not having a wood burning stove like the Subject Property has. *Id.*
19. DOR Modeler, Jason Stevens, testified that the models he creates are checked against a number of industry standard statistical parameters such as R squared, COD, PROD, P value, and T stats to ensure that the model is reliably estimating value. *Ex. B, C; MTAB Hr'g Tr. 100:6-103:13.* With respect to the comparable sales used, the main predictor of accuracy is the comparability points assigned to each property. *Id.* The comparable properties used to value the Subject Property were all within the same neighborhood and fell within the industry standard for comparability points. *Id.* Mr. Stevens also stated that he routinely compares models for different counties against each other to confirm that the models make sense statistically. *Id.*
20. Mr. Stevens testified that the DOR had more than adequate comparable sales to make an accurate model in this case. *MTAB Hr'g Tr. 103:18-104:9.* Mr. Stevens elaborated by stating that the Sanders County model had more than

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1,300 sales recorded when he first began working with it, which was the most sales Mr. Stevens had seen for that county in the last seven tax cycles. *Id.*

21. Mr. Lapan testified that two properties located in the Subject Property's neighborhood which Taxpayers argued should have been used as comparable properties were not used for specific reasons. *MTAB Hr'g Tr. 72:6-12*. The first property was excluded because it was a more recent sale that sold after the tax cycle in question. *Id.* However, Mr. Lapan stated that it would be considered as a comparable property in the next tax cycle. *Id.* The second property was not used because its comparability to the Subject Property was not deemed as high as other properties which were used in the model. *Id.*
22. Mr. Lapan stated that the Subject Property was appraised using the comparable sales method instead of the cost method because the criteria required by Property Assessment Division (PAD) procedure were met. *Ex. D; MTAB Hr'g Tr. 72:16-20*. PAD appraisal procedures 3.1a(i)A and 3.1a(i)C state that the comparable sales method should be used if the comparability points for at least three comparable sales are under 200, and if there is less than a 25% difference between the final values produced by the cost approach and sales comparison approach. *Ex. D; MTAB Hr'g Tr. 73:17-74:5*.
23. The DOR recorded the Subject Property as having a dry cabin worth \$22,440. *Ex. 1, E; MTAB Hr'g Tr. 75:7-77:10*. Mr. Lapan clarified that the name dry cabin used by the DOR does not infer that the cabin is habitable but is instead a moniker used to differentiate that type of outbuilding from a garage or shed. *Id.* Mr. Lapan described the difference between a dry cabin and a shed as the dry cabin being "a more extensive structure." *Id.* The dry cabin on the Subject Property is built from logs, which hold more value and are costlier to construct than framed outbuildings. *Id.* Mr. Lapan stated that the DOR can apply "mod codes" to structures which can further differentiate outbuildings by identifying whether the outbuilding has amenities such as plumbing, heating, or insulation.

Id. The Subject Property's dry cabin had heat and electricity added as mod codes. *Id.* Mr. Lapan stated that he added these mod codes based on his exterior inspection of the dry cabin, as he was denied entry to assess the interior. *Id.*

24. Mr. Lapan testified that there were a multitude of reasons why the sheds contained in Taxpayers' Exhibit 1 were appraised inconsistently compared to the Subject Property's shed. *Ex. 1, A; MTAB Hr'g Tr. 77:17-79:5.* One of the sheds represented in Taxpayers' exhibit had no door attached to it and possessed only a simple roof. *Id.* Other sheds were valued less or given no value at all due to their extreme age and overall depreciation. *Id.* Comparatively, the Subject Property's shed has windows, a gambrel roof, a metal roof instead of shingles, and is generally a much higher quality outbuilding. *Id.* Mr. Lapan stated that both the Subject Property's shed and dry cabin had depreciation applied to their values. *Id.* The shed was deemed 78% good or 22% depreciated, and the dry cabin was deemed 81% good or 19% depreciated. *Id.*
25. Mr. Lapan explained that some of the mobile homes Taxpayers had referenced in their presentation were not listed on the same property record card as the land value on which they sit because they are on separate geocodes as personal property, and not real property. *MTAB Hr'g Tr. 79:6-16.* Additionally, if a mobile home is not owned by the owner of the real property on which it sits, this would also prevent it from being listed on the same property record card. *Id.* Mr. Lapan stated that many of the referenced mobile homes also qualify for an exemption based on being worth \$10,000 or less, and while they are considered for valuation purposes, they are exempt from taxes. *MTAB Hr'g Tr. 83:16-21.*
26. Mr. Lapan then clarified several aspects of how the DOR appraises specific household features. *Ex. A, 2; MTAB Hr'g Tr. 81:1-82:17.* He first testified that the DOR considers the lack of trim on windows and doors to be deferred

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maintenance which is common in older homes. *Id.* Next, regarding the Subject Property's cracked concrete, Mr. Lapan stated that cracking is extremely common with concrete and the DOR addresses the severity of cracking through depreciation. *Id.* Mr. Lapan testified that the DOR does not consider how many board feet were required to build the decking surface or whether the surface has warped. *Id.* The value of the deck comes from the measurement of the perimeter of the structure itself. *Id.* Mr. Lapan testified that the value of other property conditions such as radon mitigation and construction status are determined by the market itself and what the properties are selling for, not by DOR appraisal. *MTAB Hr'g Tr. 85:23-86:11.*

27. The Subject Property's outbuilding/yard improvements (OBY) grades for the dry cabin and shed were good and average respectively. *Ex. 4; MTAB Hr'g Tr. 84:8-23.* The OBY grade for the dry cabin of good reflects its higher quality log construction as well as the speculated presence of roughed in plumbing and heating. *Id.* The Subject Property's asphalt driveway was also given an OBY grade of average. *Id.* Mr. Lapan testified that like concrete, cracks in asphalt are accounted for through depreciation. *Id.* Mr. Lapan stated that in his opinion, the cracks in the asphalt driveway were not significant and appeared to have been sealed. *Id.* Therefore, the DOR assigned the asphalt driveway a percentage of 68% good or 32% depreciated. *Id.*
28. The Subject Property was assigned an effective age of 2005 despite the home being built in 1987. *Ex. A; MTAB Hr'g Tr. 90:17-91:12.* The effective age reflects the DOR's opinion that the Subject Property's depreciation is equivalent to a 17-year-old property that has had no upkeep or maintenance performed on it. *Id.*
29. Mr. Lapan conceded that the DOR does not have every shed, driveway, or garage properly accounted for in every county. *MTAB Hr'g Tr. 97:4-18.* Typically, new construction is only assigned to a property when they are

discovered during on-site visits to verify sales or confirm remodels. *Id.*

Otherwise, it's not uncommon for a shed or similar structure to be unknown to the DOR for several years. *Id.*

JURISDICTION AND STANDARD OF REVIEW

30. The Montana Tax Appeal Board is an independent agency not affiliated with the Montana Department of Revenue. *Mont. Const., Art. VIII § 7; Mont. Code Ann. § 15-2-101*. The Taxpayer filed a timely appeal of the DOR's decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. *Mont. Code Ann. § 15-2-301*.
31. 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.
32. 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

33. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
34. "All taxable property must be appraised at 100% of its market value...." *Mont. Code Ann. § 15-8-111*.
35. "[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

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Procedure Act, this section supersedes that act.” *Mont. Code Ann. § 15-2-301(5)*.

36. 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).
37. 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.
38. “‘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)).
39. 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)*.
40. 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

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

DISCUSSION

41. The Taxpayer's presentation in this appeal covered a wide range of beliefs and philosophies related to public policy considerations of setting tax policy in Montana. He presented news articles and internet commentary challenging some of the fundamental authority of the State of Montana to assess values for property taxes. This Board, in rendering our decision, first wants to clarify what our opinions can and cannot do. MTAB can adjust the value set by the CTAB at \$30,000 to a value we believe better reflects market value or in other words what the Junges could sell their property for if they chose to sell. Our mandate is to hear the case, consider the testimony and evidence presented, and evaluate whether DOR made mistakes in setting the market value for Montana properties. The end product of our fact finding is to designate what we deem to be market value, after considering all of the evidence and testimony presented to us.
42. We do not have the jurisdiction or legal authority to dictate to other parts of state government what policies or laws they may adopt, or how to follow them.
43. During parts of their presentation the Taxpayer did seem to acknowledge the limitations of the tax appeal process: "...So my wife and I realized that you will make your decision today based on your, our case, the evidence, testimony, precedent, MCA, and a number of other laws." *MTAB Hr'g Tr.* 6:11-13. At other times it was unclear whether the Junges did agree that Montana law guides this Board. For example, DOR Attorney Burleigh asked: "Would you agree that your appeal here today is a process of law?" Mr. Junge responded: "I believe my opening statement said it was, yeah. It's just what law do we choose to follow." *MTAB Hr'g Tr.* 54:6-9.

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44. There were times during the hearing when questions were raised about whether the DOR and Taxpayer could agree on what was at issue during the appeal. During the hearing the Taxpayer argued that if the property was not on the market, it had no market value. *MTAB Hr'g Tr. 6: 11-13, MTAB Hr'g Tr. 54:6-9.*
45. The Board will do our duty and proceed within our legal limitations to adjudicate whether the DOR followed its own procedures and the laws of the State of Montana when assigning market value to Junges' property, and in the final analysis whether the DORs value of \$298,800 is justified.
46. This Board does not have jurisdiction to change the values of the Junges' neighbors' properties due to any DOR errors or omissions pointed out in the hearing. Similarly, this Board does not have jurisdiction to direct the executive or legislative branches of Montana state government to change their policies on when or how to conduct reappraisal, what tax rates should be applied, or whether taxes in general should be reduced or abolished. These decisions are reserved for the healthy debate between those branches of state government, subject to review by the judicial branch for compliance with the Montana Constitution and the courts' interpretation of the meaning of rules and statutes as written which apply at the time of the valuation of the Subject Property.
47. This Board can decide whether the DOR's use of the comparable sales method of finding market value for the subject property was appropriate and allowed under Montana law. This Board can decide whether the DOR erred in some way when choosing the most defensible method of valuation, and within that method evaluating the land and improvements and assigning a value to those properties in conformance with Montana law, DOR policies and rules, and standard mass appraisal practices for appraising these properties.

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48. To resolve these preliminary matters, the Board will state again that our jurisdiction does not extend beyond determining whether the DOR treated the Taxpayer fairly and equitably to their neighbors, correctly selected and applied the most defensible appraisal method to find value, and most importantly reasonably executed their duty of correctly estimating the market value of the subject property on the lien date of January 1, 2022. That judgement is all that is required or allowed of our Board and that is what MTAB will decide in this opinion.
49. We will begin with an analysis of whether the DOR was justified in evaluating the Subject Property using the comparable sales approach. The income method could not be used as this is a residential property which does not generate income. This leaves two options, the comparable sales approach, and the cost approach. The cost method is also known as the cost to build less depreciation. It is undisputed that the DOR calculated the value of the Subject Property using a cost approach but disregarded that approach as less reliable, in part because it yielded an estimate of market value more than \$60,000 greater than the comparable sales approach. To rely on the comparable sales approach the DOR is required by policy to meet several criteria. The DOR's own policy was entered as exhibit D, which indicated that given enough sales to generate as statistically significant model, the DOR needed to meet two additional tests to continue their appraisal using the comparable sales approach to value: 1) comparability points generated by the DOR software for the comparable sales selected have to be less than 200 for at least three of the comparable sales, and 2) sales and cost methods can differ by no more than 25%. These requirements were met, and we therefore agree with the DOR that its use of the comparable sales method was the most appropriate way to evaluate the Subject Property and logically the most reliable way to estimate market value of the Subject Property. *Ex D, bates 191.*

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50. Regarding whether the DOR had enough comparable sales data from Thompson Falls to evaluate the Subject Property using the comparable sales method, the DOR testimony was credible. DOR's exhibit B land model listed fifteen comparable land sales used to establish land value, all within the Junges' neighborhood. Exhibit B had a least three of the five comparability scores for the comparable sales selected under 200, per policy. In response to the comparable sales presented by the Taxpayer as more accurate, Mr. Lapan testified that while Mr. Junge did provide nearby sales from a Zillow search, they were not used by the DOR as one of them was after the lien date, "it was a more recent sale, so that will be factored in going in the future if it meets the criteria in picking compared to his. The other one just wasn't a comparable, as comparable of a property, so it didn't get chosen." *MTAB Hr'g Tr. 72:6-12*. He testified that sale was not selected by the software as it had a comparability score which exceeded 200.
51. As to the overall value selected from the two possible approaches to value, comparable sales and cost methods, the DOR appraiser testified that using the cost method would have yielded an even higher value. Mr. Lapan testified the cost method value was \$355,981, about \$60,000 more than the value estimated using the comparable sales method." *MTAB Hr'g Tr. 60:11-16*. When asked on direct examination why he used the comparable sales method to appraise the subject property instead of the cost method Lapan replied, "It met the criteria for doing so with our established criteria. All comparability points were less than 200, and the cost approach and the sales comparison approach were less than 25 percent difference between the two values." We find his testimony credible and uphold the decision that the comparable sales method did meet the requirements and was the most reliable method to establish market value of the Subject Property.
52. The Taxpayer's presentation critiqued not only the method chosen but questioned whether the property record data relied upon by the DOR was trustworthy based on what Taxpayer considered to be numerous inaccurate

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datapoints in the Montana Cadastral, which is Montana State Library's and DOR's on-line property record system.

53. We find the DOR witnesses testified in response to the critiques with reasonable explanations for each of the Taxpayer's alleged mistakes. While DOR acknowledged some omissions in the record of neighboring properties, they convinced the Board these did not corrupt the method used to find value or by association the final value DOR established for the subject.
54. Taxpayer noted that various mobile homes in Thompson Falls were not listed on the property record system. DOR testimony rebutted that by explaining that mobile homes are legally defined as personal property and do not always show up on the real property record system. Mr. Lapan also explained a mobile home may not be owned by the record owner of the land, so the geocode and property record would be distinct. Also, that mobile homes valued at less than \$10,000 are exempt from taxation so may not be listed on the state property website.
MTAB Hr'g Tr. 83:18-21.
55. Regarding the photographic evidence and testimony provided by the Taxpayer specific to the characteristics of their home, the DOR was not allowed to inspect the interior of the property, so they made estimates. As is their right, Taxpayer presented testimony and photographs at MTAB as to why the DOR's data was incorrect and therefore unreliable. We find the only issue raised in the hearing that may have affected value was whether the home was a log construction or a combination of log construction and conventional framing. DOR testimony was that the home was recorded in the property record as framed construction which yielded a lower value than log construction of the same size. While the Taxpayer argued for a log construction as more accurate, we find the lower value associated with a mixture of frame and log construction is reasonable. *MTAB Hr'g Tr. 30-31 25, 1-2; MTAB Hr'g Tr. 95:15.* We were not convinced by the evidence of other minor defects or

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unfinished finish carpentry would have had any significant bearing on total value.

56. The final point of contention in this appeal was whether the log structure in the Junges' back yard described by DOR as a dry cabin was properly entered into the property record when the DOR was made aware of it seven years after it was placed on the property. Taxpayer contended the structure was merely a storage shed similar to his other outbuilding, which both parties referred to as a storage shed. The DOR, after the on-site review, revised their description of the log structure from a default of storage shed to a dry cabin. The change was due to observing a heater vent fixture on the exterior wall of the structure, a plumbing vent extending from the roof, and other amenities such as metal roofing, a small porch or deck, and log construction, all of which distinguished it from the DOR definition of storage shed based on more amenities and a higher cost of construction. The change led to an increase in value to \$22,440.
57. During the hearing the Board asked what features determined the most accurate valuation of the log structure. Mr. Lapan testified "There's a wide range, a shed is a very basic structure... The dry cabin is a more extensive structure that like in this case this one's constructed out of logs, real logs. There's a much greater value or cost in constructing something out of logs versus framed, and also a lot of time there are people that are living in dry cabins in some cases..."
MTAB Hr'g Tr. 75-76:18-25, 1-11.
58. The Junges' log structure meets the definition of a habitable building with plumbing and heating built into the structure. While they may not use it for habitation, market value is based upon the potential use of the property rather than the current use as a storage area. While the Junges may presently use the log structure only for storage, a buyer in the market would pay for its potential as a guest cabin, and we daresay most sellers would market it as such to maximize profit in sale. We therefore find that the DOR's assignment of dry cabin and associated value are upheld.

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59. So, in conclusion we uphold the value assigned by the DOR. We don't fault the Taxpayer for asking for a review, but a review may lead to a more accurate property record, and occasionally that more accurate record yields a higher value. Nor do we fault the DOR for adjusting the record to be more accurate, in fairness to all taxpayers. The Taxpayers exercised their right of appeal and presented their evidence and testimony. Our Board fully considered all testimony and evidence presented in making our determination. We find that the DOR did apply the correct method of valuation because it had enough market sales, and that it correctly evaluated the Subject Property by that method to arrive at a defensible market value. We believe the DOR's assessment of the Subject Property reflects market value as of the lien date. Any discrepancies presented by the Taxpayer in the property record system for this property or nearby properties did not sway the Board that the DOR value was in error. Therefore, the Taxpayers did not meet their burden to overturn the value assigned by the DOR and accordingly, we find the value of the land and improvements is \$298,800 for 2023 and 2024.

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ORDER

60. The CTAB's determination is reversed.
61. The DOR shall assign a value of \$52,241 for the Land and \$246,559 for the improvements to the property for a total value of \$298,800 in 2023 and 2024 and notify interested parties of that determination.

Dated this 5th day of August 2024.




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)*.

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Certificate of Service

I certify that I caused a true and correct copy of the foregoing Findings of Facts and Conclusions of Law to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on August 5, 2024, to:

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