BEFORE THE MONTANA TAX APPEAL BOARD

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Montana Tax Appeal Board

GRANT AND AUDREY KLECKNER, Appellants, v. STATE OF MONTANA, DEPARTMENT OF REVENUE, Respondent.	CASE №: PT-2024-4 **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 Missoula County Tax Appeal Board (CTAB) denying Grant and Audrey Kleckner (Taxpayers) a reduction in value on the property located at 1039 Anglers Bend Way, Missoula, Montana (Subject Property). The Taxpayers appealed that outcome to Montana Tax Appeal Board (MTAB) on January 4, 2024. For the reasons stated herein, we modify CTAB's determination.

ISSUE TO BE DECIDED

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

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Potential Material Inequities in Both Total and Lot Assessments;
2. Findings that MDOR Made Calculation Errors of Significance in the Regression Analysis it Conducted Specific to Subject Property; and
3. Informative Comparative Case Study on Recent Sales Activity for Canyon River.

DOR Exhibits:

A. Property Record Card for Subject Property;
B. Returned Residential Sales Verification Form for Subject Property;
C. Land Sales Map Aerial for Subject Property Neighborhood;
D. Land Sale Map for Subject Property Neighborhood;
E. 2022 Land Valuation Model for Subject Property Neighborhood;
F. 2023 MRA Coeffecients Report East Missoula/Seeley;
G. Realty Transfer Certificate for Subject Property; and
H. Comparable Sales Worksheet.

PROCEDURAL HISTORY

The DOR valued the Subject Property at $719,800 for the 2023/2024 appraisal cycle, with the land valued at $134,236 and the improvements valued at $585,564. *MTAB Dkt. 3*. The Taxpayers filed an AB-26, Request for Informal Classification and Appraisal Review, with the DOR on July 18, 2023, requesting a land value of $100,000 and an improvement value of $530,000. *Id.* The DOR sent a Form AB-26 Determination Letter to the Taxpayers dated September 15, 2023, maintaining the land value of $134,236 and reducing the improvement value to $542,564 for a total value of $676,800. *Id.* The Taxpayers appealed the DOR's valuation to the CTAB on October 16, 2023, requesting a land value of $100,000 and an improvement value of $530,000. *Id.* The CTAB hearing was held on November 27, 2023, and the CTAB's decision denying the Taxpayers' application for reduction was dated November 29, 2023. *Id.* The Taxpayers appealed that decision to MTAB on January 4, 2024, per Mont. Code Ann. § 15-2-301, requesting a land value of $100,000 and an improvement value of $530,000, for a total of $630,000. *MTAB Dkt. 1*. The MTAB hearing was conducted in Helena on May 2, 2024, at which the following were present:

a. Audrey Kleckner, Taxpayer; and
b. Samuel Kane, DOR Counsel; Cindy McGinnis, DOR Paralegal; Helen Greenberg, Lead Appraiser; Jason Stevens, Modeler; Michelle Staples, Area 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 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 consists of a 7,849 square foot lot and a residential dwelling owned by the Taxpayers in Missoula's Canyon River subdivision. *Ex. A, G.* The Subject Property is located at 1039 Anglers Bend Way in Missoula, Montana and is also identified by its geocode 04-2201-18-3-03-13-0000. *Id.*

3. After an AB-26 review, the DOR reduced the Subject Property value from $719,800 to $676,800 for tax years 2023/2024. *MTAB Dkt. 3.* At the November 27, 2023, CTAB hearing, Taxpayers requested the market value of the property be reduced further to $630,000, allocating $100,000 to the land value and $530,000 to the improvements value. *MTAB Dkt. 1.* The CTAB denied Taxpayers' request and maintained the DOR's value of $676,800. *Id.* Taxpayers appealed to MTAB on January 4, 2024, and reasserted that the market value of the Subject Property should be $630,000. *Id.* The DOR maintained that the most recent valuation upheld by the CTAB of $676,800 was the most accurate value. *Id.*

4. At the MTAB hearing, the Taxpayer contended that regressive property taxation was occurring in Montana. *MTAB Hr'g Tr. 6:7-23.* The Taxpayer expounded on that contention by stating that under the current appraisal methodologies, higher end, or premium, properties are not being assessed at market value, whereas other lower end properties are being assessed at market value. *Id.* She argued that this results in reductions in taxation for high end

properties and is not equitable to other taxpayers. *Id.* The Taxpayer stated that this inequity is most evident in valuation differences between homes on Anglers Bend Way, where the Subject Property is located, and more premium properties located nearby on Bandmann Trail. *Id.*

5. The Taxpayer focused on two property sales that occurred in the Subject Property's Canyon River subdivision roughly eight months after the lien date of January 1, 2022, for the 2023/2024 appraisal cycle. *MTAB Hr'g Tr. 7:15-8:24*. The first property that sold was located on Anglers Bend Way, the same street as the Subject Property, while the second property was located on Bandmann Trail. *Id.* The Anglers Bend Way property was appraised at $725,000 and was marketed for $705,000, whereas the Bandmann Trail property was appraised at $1,260,000 and was placed on the market for $2,300,000. *Id.* The Taxpayer argued that this pattern was representative of many property sales she had seen where the appraised value was inconsistent with the actualized market value. *Id.*

6. The Taxpayer testified that for the purpose of her presentation, she chose to define high end, or premium, properties as properties at or above a $1,500,000 valuation. *MTAB Hr'g Tr. 7:15-8:24*. This value was derived from taking the median home price in Missoula of $500,000 and multiplying it by three to sufficiently distance what the Taxpayer considered high end homes from more modest properties. *Id.*

7. The Taxpayer compared how assessment values had changed from the 2021/2022 tax cycle to the 2023/2024 cycle for homes located on Bandmann Trail and Anglers Bend Way and argued that she found a clear disparity between the two areas. *MTAB Hr'g Tr. 9:3-10:15*. Of the nine properties that exist on Bandmann Trail, the Taxpayer removed the homes with the two highest and two lowest values and used the five remaining properties to calculate an average appraisal increase between cycles of 9%. *Id.* According to

the Taxpayer's calculations, the lower value homes located on Anglers Bend Way experienced an average increase between cycles of 27%. *Id.* The Taxpayer noted that the values used in comparing these appraisal increases were taken from the previous cycle after the DOR had commoditized the lot values on Anglers Bend Way. *Id.* According to the Taxpayer, the commoditization of the lots occurred in the 2021/2022 valuation cycle when the DOR assigned a value of $125,000 on all the lots on Canyon River Road, Cahill Rise, and Anglers Bend Way, but not on Bandmann Trail. *Ex. 1*. This raised the value of several lots on Anglers Bend Way while reducing the value of several lots on Canyon River Road. *Id.* The Taxpayer also testified that she compared the growth in assessment for the properties located on Anglers Bend Way and Bandmann Trail for a five-year period from 2019 to 2024. *MTAB Hr'g Tr. 9:3-10:15*. During that five-year period, the values of the homes on Anglers Bend Way grew by an average of 54.3%, while the values of the homes on Bandmann Trail grew by an average of 12.9%. *Id.*

8. The Taxpayer stated that she does not disagree with the DOR's decision to commoditize the lots located on Anglers Bend Way, but she believes it is problematic to have commoditized the Canyon River lots. *Ex. 1; MTAB Hr'g Tr. 11:1-25*. The Taxpayer contended that commoditizing the entire subdivision caused the relative values of the properties located on Anglers Bend Way to be raised more than ten times what the properties on Canyon River Road experienced, and six times the values of Bandmann Trail. *Ex. 1; MTAB Hr'g Tr. 12:5-13*.

9. DOR provided Taxpayers with the sales data for twenty properties sold in the Canyon River subdivision used to assess market value for the 2023/2024 cycle. *Ex. 1; MTAB Hr'g Tr. 12:21-15:7*. Fifteen of the properties were located on Anglers Bend Way, three were on Bandmann Trail, and two were on Canyon River Road. *Id.* The Taxpayer compared the assessed values for the properties with their actual sales price, but in order to do so, she had to adjust the sales

prices to the 2023/2024 tax cycle to account for date of sale relative to the common lien date. *Id.* The Taxpayer stated she used a market growth estimate of 10% to adjust the sales prices to the current cycle. *Id.* The Taxpayer testified that she chose the market growth estimate by studying market trends through information available online and felt that they were conservative estimates of market growth. *Id.* The Taxpayer further explained that when calculating the adjustments for her comparison, she considered when the property sold during the year, meaning a property which sold in July only received a five percent adjustment for half a year's growth instead of ten percent for a full year's growth. *Id.* When comparing the assessed values to the adjusted sales price, the Bandmann Trail properties were under-assessed by an average of 40% compared to their sales prices according to the Taxpayer's calculations. *Id.* The two Canyon River Road properties were under-assessed by an average of 25% based on the Taxpayer's calculation. *Id.* The Anglers Bend Way properties experienced no noticeable variation between assessed value and sale value based on the Taxpayers' calculations. *Id.* The Taxpayer argued that the results of the comparison support her contention that higher end property assessments are not capturing market value, unlike median priced properties which are being assessed properly. *Id.* The Taxpayer confirmed that the properties used in her comparison encompassed all sales that had occurred in Anglers Bend Way, Bandmann Trail, and Canyon River Road up until the time the comparison was made. *Id.*

10. The Taxpayer acknowledged that there are different market conditions affecting sale prices of higher end homes versus those affecting more modest homes, such as the fact that there are fewer potential buyers for higher end homes. *MTAB Hr'g Tr. 17:4-21.*

11. The Taxpayer also expressed concern with the DOR's DSSF variable used in their land model. *Ex. 2; MTAB Hr'g Tr. 19:6-21:3.* DOR Modeler, Jason Stevens, provided an explanation of the DSSF variable to Taxpayers prior to

the hearing, stating "it captures the time of market adjustment by square feet for each comparable to bring the comparable to the lien date." *Id.* The Taxpayer speculated that there may be an omitted variable in the DOR's calculations which causes the DSSF variable to be overstated, resulting in higher assessed values for homes such as the Subject Property. *Id.* The Taxpayer explained that a property comparable to the Subject Property, referred to as Comp 1, had a DSSF value of $199,703. *Id.* Comp 1 was sold 17 months from the lien date of January 1, 2022, so the Taxpayer divided the initial DSSF amount by 17 to reach a monthly DSSF value of $11,000. *Id.* The Taxpayer then added the DSSF value of $199,703 to Comp 1's actual sale price of $580,000 to adjust the sales price to the lien date and reached an adjusted value of $779,000. *Id.* According to the Taxpayer's calculation, the DSSF value overstated the value of the Comp 1 by $53,000 as compared to the DOR's assessed value of that property, which the Taxpayer argues is consistent with her concerns that the DSSF variable is overstating growth. *Id.* The Taxpayer conceded that she ignored compounding in her calculations as she argued that it added a great deal of complexity to the calculations for no real difference in resulting values. *Id.*

12. In order to calculate the estimated growth of Comp 1, the Taxpayer divided the DSSF variable of $199,000 by the sales price of $580,000. *Ex. 2; MTAB Hr'g Tr. 21:20-22:20.* The result suggests a 34.3% increase over the 17 months between the sale date and the lien date, which averaged out to about 2% growth per month, or 24% per year. *Id.* Using the Rule of 72, a calculation used to estimate the number of years it will take a property to double in value, the Taxpayer divided 72 by the 24% growth estimate and the result indicated that the property would double in value in three years. *Id.* This growth estimate indicated that as of 2023, Comp 1 should have been worth roughly $1,160,000, but the Taxpayer argued that it would not have been worth more than $950,000 on the open market in her opinion. *Id.* The Taxpayer stated that the DSSF

variable overestimating growth is significant because it pushes the assessments of surrounding properties such as the Subject Property upwards. *Id.*

13. A different property that is located on Bandmann Trail had 0.8% growth per month which, according to the Taxpayer, indicates that the DOR perceives Bandmann Trail properties as having a slower rate of growth than Anglers Bend Way properties. *MTAB Hr'g Tr. 22:21-23:17*. The Taxpayer argued that this again indicates that values for those properties located on Subject Property's street, Anglers Bend Way, are overstated. *Id.*

14. The Taxpayer presented another property, Comp 5, which sold prior to Comp 1 and had a DSSF of $163,000. *MTAB Hr'g Tr. 21:4-11*. The Taxpayer stated that the greater the amount of time between the sale date and the lien date, the higher the DSSF impact. *Id.* The DSSF variable added to the sales price for Comp 5 resulted in an estimated market value of $795,000 which the Taxpayer contends is similarly overstated. *Id.*

15. The Taxpayer then moved to a spreadsheet contained in their Exhibit 2 which recalculated the DSSF at $7,000 per month. *Ex. 2; MTAB Hr'g Tr. 23:18-25:6*. The Taxpayer argued that if the DSSF was indeed being overstated, then it must be corrected in order to establish property tax equity, and the spreadsheet represented a potential way to recalculate the values. *Id.* The spreadsheet calculations did not use growth as indicated by the DSSF variable, but instead used growth as indicated by the average monthly increase in market value for the comparable properties, which was $7,000 per month. *Id.* Unlike the DOR calculations which measure growth using a full month convention, the Taxpayer used a half month convention which she contended is more accurate and reduces the amount of overstatement by roughly $5,000 per month. *Id.* The Taxpayer further stated that using a daily tracking convention instead of full or half months would result in even more accurate growth estimates. *Id.* The Taxpayer conceded that she did not attempt to figure out the DOR's weighted

estimate for use in her calculations and requested that instead the DOR recalculate the Subject Property using the Taxpayer's values. *Id.* Using the Taxpayer's calculation method, the Subject Property's assessed value would be reduced by approximately $36,000, although the Taxpayer conceded that the resulting assessed value is likely less than market value. *Id.*

16. The Taxpayer stated that when comparing the property valuation and assessment data, she could not find any information which supported the notion that the skewed data was in favor of the less expensive properties. *MTAB Hr'g Tr. 25:7-26:9*. However, the Taxpayer conceded that the less expensive properties have more data points available since there are more sales to choose from, the homes are more homogenous, and there is greater demand. *Id.*

17. The Taxpayer speculated that the DOR is also improperly valuing high end properties by failing to fully account for upscale finish work. *Ex. 3; MTAB Hr'g Tr. 27:1-28:22*. The Taxpayer described a home across the street from the Subject Property which had exotic and custom finish work added to it, which the Taxpayer estimated produced an extra three to four hundred thousand dollars in value which she believed was not accounted for in the assessment. *Id.*

18. The Taxpayer stated that she was not aware of whether the comparable properties used in her calculations were all built by the same homebuilder, although she speculated that some were built by a premium builder while others were custom built. *MTAB Hr'g Tr. 31:16-32:7*. The Taxpayer also stated that she used Phase One properties which, aside from one home, were all built between 2004 and 2007. *Ex. 1*; *MTAB Hr'g Tr. 31:16-32:7*.

19. The Subject Property was purchased on October 1, 2020, as part of a like-kind exchange under IRC § 1031, also referred to as a 1031 exchange. *MTAB Hr'g Tr. 32:24-33:*3.

20. DOR Modeler, Jason Stevens, stated that the DOR uses multiple regression analysis to create every market model. *Ex. H; MTAB Hr'g Tr. 40:10-41:17.* These market models use numerous variables in their calculations such as market sale price, square footage of the property, age, and more. *Id.* Mr. Stevens described the process as, "[taking] all the sales in a pot… and it comes up with a value for each one of those… variables with that coefficient value, and then we add those all up, and that's where we come up with our MRA estimate on each property." *Id.* Mr. Stevens stated that the Taxpayer's method of adding $199,000 onto her adjusted sales price works in isolation, but it does not result in accurate calculations when taking into account the other variables that affect a property. *MTAB Hr'g Tr. 44:3-8.* Mr. Stevens agreed with the Taxpayer's statement that the DOR will attribute a full month of growth to a property, even if it sold at the beginning of a month. *MTAB Hr'g Tr. 44:9-13.*

21. The geographical boundary of the Subject Property's Neighborhood 6.3 is the Canyon River subdivision, and no portion of that neighborhood is outside of Canyon River. *Ex. C, H; MTAB Hr'g Tr. 41:18-42:10.* Mr. Stevens testified that the data used for DOR's land model was derived from sales in the Canyon River subdivision that occurred in 2020 and 2021.[1] *Id.* However, the comparable sales worksheet does include data from sales outside of Canyon River because the DOR looks for comparable sales in a market area instead of being confined to a neighborhood. *Id.* The market area that the DOR used for the Subject Property's comparable sales worksheet stretched from East Missoula to Flathead County and included areas such as Seeley Lake and Condon. *Id.*

[1] The DOR testimony in this case referred to the sales of properties in 2020 and 2021 that were used in the model. The Board notes there is one 2019 sale included in the model for a property located on Bandmann Trail. The DOR's failure to state that one sale was from 2019 rather than 2020 or 2021 does not impact the calculations performed in the model, nor does it impact this Board's final decision. It is included here for clarification only.

22. Mr. Stevens testified that the DOR accounts for differences between riverfront properties and those located within the Canyon River Golf Course which results in roughly a fifty-to-sixty-thousand-dollar difference in value. *Ex. H; MTAB Hr'g Tr. 44:18-45:21*. A property's location is just one variable that the DOR uses when calculating comparability points. *Id.* Comparability points are used to pick properties which are deemed comparable to the Subject Property for valuation purposes. *Id.* Other variables used to calculate comparability points include the effective age of a property, style, square footage of living area, bedroom count, and basement finish. *Id.* A home with a low comparability points score is considered highly comparable to the Subject Property, whereas a high score is considered less similar. *MTAB Hr'g Tr. 47:4-9*. The recommended upper limit for comparability points is 200, although Mr. Stevens testified that occasionally the DOR will go over that recommended limit if there are unique circumstances. *Id.*

23. Mr. Stevens described the DOR's process of using Multiple Regression Analysis (MRA) as comparing the sales of different properties and breaking down the differences into variables which can then be compiled and analyzed. *Ex. H; MTAB Hr'g Tr. 49:19-50:9*. Mr. Stevens gave the example of two nearly identical houses where one sold for $40,000 more than the other due to having an 800 square foot garage that the other did not. *Id.* The DOR would break that difference down to a variable by dividing the $40,000 difference in sale price by the size of the garage to get a price per square foot variable of $50. *Id.*

24. Mr. Stevens next described the DOR's adjustment sales calculator which takes an MRA of the Subject Property and calculates the difference between it and the MRA of comparable properties. *Ex. H; MTAB Hr'g Tr. 50:11-23*. The difference is then added to the sales price to come up with the adjusted sales price. *Id.* Mr. Stevens confirmed that the adjusted sales price takes influence factors into account. *Id.*

25. Mr. Stevens testified that the DOR calculates a property's weighted estimate by taking the adjusted sales price and variability points and running them through a market model. *Ex. H; MTAB Hr'g Tr. 50:24-52:4*. Each adjusted sales price used will have been assigned a different weight due to comparability differences between properties. *Id.* The weighted estimate and the MRA estimate are two of the main ways that the DOR ensures their models are reflecting accurate information. *Id.*

26. The DOR's market value calculator uses the values calculated in the previous steps to determine an estimated market value for the Subject Property. *Ex. H; MTAB Hr'g Tr. 52:7-20*. The market value calculator takes the MRA of the Subject Property, the weighted estimate, and the adjusted sales prices of the five most comparable properties and removes the two highest and lowest values. *Id.* The remaining three values are then averaged to produce an estimate of market value. *Id.* For the Subject Property the remaining three values that were averaged were the adjusted sales prices for Comps 1 and 2 as well as the weighted estimate. *Id.* The resulting estimated market value for the Subject Property was $676,800. *Id.*

27. Mr. Stevens testified that the base size used in the Subject Property's land model was 10,000 square feet. *Ex. E; MTAB Hr'g Tr. 53:10-54:12*. This was determined by looking at the mean and median square footage of properties within the neighborhood. *Id.* In this instance, the base size was reflected as a square footage number, however, base size can also be reflected as acreage. *Id.* DOR also tests the base size values with frequencies which help confirm whether the values fall within acceptable ranges. *Id.* In this case, the frequencies were checked against the 20 vacant land parcels which sold in the Subject Property's neighborhood from 2020 through 2021. *Id.* No sales with improvements were included. *Id.* Mr. Stevens stated that in his opinion, the 20 sales used by the DOR were more than enough sales to ensure that the data produced by the land model was accurate. *Ex. E; MTAB Hr'g Tr. 54:13-55:5*.

28. The base rate for a 10,000 square foot property is $13.81 per square foot. The DOR reduced the Subject Property's land value based on the decremental rate of $1.74 per square foot under the 10,000 square foot base size. *MTAB Hr'g Tr. 56:14-58:3*. The decremental rate was calculated and applied based on the Subject Property's square footage of 7,849 being 2,151 square feet smaller in size than the neighborhood's base size of 10,000 square feet. *Id.* The decremental rate adjustment resulted in a $3,764 reduction in land value from the base rate for the Subject Property. *Id.*

29. Mr. Stevens described the Taxpayer's method of calculation as being different than the DOR's method due to the linear relationship of the math involved. *MTAB Hr'g Tr. 58:23-59:3*. The Taxpayer's calculations used sales prices and time trended linearly whereas the DOR considers many more variables when valuing property. *Id.* Mr. Stevens stated that in his opinion, large lots are not over-assessed. *MTAB Hr'g Tr. 59:17-18.*

30. The influence applied to Canyon River properties for being located on a golf course is uniform. *MTAB Hr'g Tr. 62:14-63:20.* Mr. Stevens stated that Canyon River property sales did not indicate that homes were selling for different amounts based on proximity to certain areas on the golf course. *Id.* Properties located on Bandmann Trail also have an influence added to their value for being located on the water. *Id.*

31. DOR Lead Appraiser, Helen Greenberg, testified that the DOR does not consider the Subject Property's sale to be a valid arms-length transaction primarily because of the involvement of trade in the transaction, so it was not used in the model to value Canyon River Properties. *Ex. B; MTAB Hr'g Tr. 66:23-67:8; MTAB Hr'g Tr. 69:15-21.* The Subject Property's sale to Taxpayers was made through a 1031 exchange. *Ex. B; MTAB Hr'g Tr. 66:23-67:8*. Ms. Greenberg stated that 1031 exchanges often have negative effects on the market value of a sale and that the Subject Property's sale was inconsistent

with other sales in the area which is why it was deemed invalid. *Id.* Furthermore, while the DOR does not have a strict policy of disregarding exchanged sales, it is a factor that is taken into account. *Ex. B; MTAB Hr'g Tr. 67:22-68:7.* Ms. Greenberg stated that 1031 exchanges are usually an indicator that there was some kind of concession that impacted the true market value of the property. *Id.* Ms. Greenberg testified that had the Subject Property's sale been validated and sold within the correct timeframe, it would have been used in the DOR's model. *Ex. B; MTAB Hr'g Tr. 69:15-21.*

32. Ms. Greenberg testified that the Subject Property was on the market for 208 days ended up selling for less than it was listed for. *MTAB Hr'g Tr. 66:24-67:3.* Ms. Greenberg stated she did not know if the property would have sold had it stayed on the market for an additional 200 days. *Id.*

33. DOR Area Manager, Michelle Staples, testified that there were special circumstances surrounding a Bandmann Trail property referenced in Taxpayers' Exhibit 3 which resulted in it receiving a reduction in value when most other properties received an increase in value. *Ex. 3; MTAB Hr'g Tr. 73:21-74:14.* Due to the unique circumstances affecting that property's value, it was not included in the DOR's model. *Id.*

34. Ms. Staples testified that the DOR monitors whether the current assessed values for properties in an area are consistent with what the properties sell for by reviewing the price related differential (PRD). *MTAB Hr'g Tr. 75:6-24.* The PRD measures the regressivity or progressivity of the assessments. *Id.* Industry standards require that the DOR be within 0.97 to 1.03 percent of the assessed value. *Id.* Ms. Staples agreed that higher end homes have a greater degree of variability between their assessed value and sale price but maintained that the DOR's assessed values were consistently accurate. *MTAB Hr'g Tr. 78:14-79:10.*

JURISDICTION AND STANDARD OF REVIEW

35. 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.*

36. 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.

37. 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

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

39. "All taxable property must be appraised at 100% of its market value…." *Mont. Code Ann. § 15-8-111.*

40. "[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).*

41. 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).

42. 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.

43. "'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)).

44. 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.*

45. "[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.

46. 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).*

47. The Legislature intended the Department to utilize a number of different approaches or combination of approaches, including the income approach, sales comparison approach, and cost less depreciation approach, depending on the market where the appraisals take place, when it assesses property and estimates market value. *Albright v. State,* 281 Mont. 196, 208-09, 933 P.2d 815, 823 (1997).

DISCUSSION

48. The Board's role in cases such as this is to determine the market value of the property under appeal. The Board may only apply the laws as written to the facts as presented in making that determination. For these reasons, our decision is confined to the market value of the Subject Property for the 2023/2024 valuation cycle.

49. The Taxpayer testified and presented evidence regarding the DOR's valuation method for properties in the Canyon River neighborhood. The Taxpayer's main argument focused on the houses she referred to as high end or premium properties, those whose values were $1,500,000 or more, appreciating at a slower rate than the mid-range properties that were valued roughly in the $500,000 range. The Taxpayer acknowledged that the market is different for each of these types of properties and that there are more buyers, thus more competition for the mid-range properties. The Taxpayer acknowledged that there were fewer data points for the premium properties which made it more difficult for her to perform an analysis on the relationship between the sales prices and assessed values of the premium properties. Conversely, she was able to review more data points in her analysis of the mid-range properties because there were so many more sales of mid-range properties than there were of premium properties in the Canyon River neighborhood in the current valuation cycle. The Board notes, and the Taxpayer acknowledged, that there would be fewer buyers for the premium properties than there would be for the mid-range properties, thus less of a demand for the premium properties. This is part of the

reason the values for premium properties increased at a lower rate than did the values for mid-range properties from one cycle to the next in the Canyon River neighborhood.

50. In general, the models for the current 2023/2024 valuation cycle ideally use sales prices of properties sold during the two years prior to the lien date of January 1, 2022, which would be sales of properties occurring in 2020 and 2021, although it is permissible for the DOR to include older sales at times. The sales prices of those properties are then adjusted, or time-trended, through the DSSF calculation to show what the equivalent sales price would have been as of the lien date of January 1, 2022, for the current cycle. For this reason, comparing a DOR assessed value to the listing or sales price of a property is not necessarily a simple comparison. In general, when a property sells, that sales price is included in a subsequent valuation cycle if it is deemed a valid sale for purposes of inclusion in the model. Thus, if there is a difference in a property's assessed value versus its sale price, it will be taken into account in the next cycle. If premium properties are selling for more than they are assessed, the sales prices of validated sales will be included in the model for the following cycle. The same is true for properties that sell for less than the DOR's assessment. Thus, validated sales prices will then be used to value properties in the following cycle.

51. Overall, the Taxpayer presented a great deal of evidence and testimony about how she believed the DOR's process may be improved. However, the Taxpayer admitted the mid-range properties in the Canyon River neighborhood may be valued at market value, but argued the premium properties were not, which creates inequity. The Taxpayer also acknowledged that her calculations, such as those used to time-trend the property sales to the January 1, 2022, lien date contained fewer variables than does the DOR's DSSF calculation. For this reason, we find the DOR's inclusion of additional factors to be a better indicator of what the sales prices would have been on that lien date.

52. However, the Board disagrees with the DOR's argument that the Taxpayers' purchase of the Subject Property should be considered an invalid sale and excluded from the model used to value similar homes in the neighborhood. The Taxpayers purchased the Subject Property on October 1, 2020, within the time period for inclusion in the model for the current valuation cycle. The DOR argued that the sale was invalidated in part because it was a purchased as part of a 1031 exchange and in part because the sales price was lower than other sales prices in the neighborhood. While this Board understands there may be reasons to exclude certain sales when building a valuation model, we were not convinced by DOR's testimony that this sale should have been excluded from the model.

53. The DOR argued that the sale of the Subject Property on October 1, 2020, was for a lower amount than the neighboring properties that sold during that time frame. The DOR testified that the Subject Property had been on the market for 208 days before the Taxpayers purchased it. The Taxpayer testified that they negotiated the purchase price with the sellers, which was later further reduced to account for a faulty roof. The Taxpayer testified that a similar property near the Subject Property sold for somewhat more than the Subject Property just 40 days prior to their purchase of the Subject Property. The difference in the sales prices of those two properties could reasonably be explained by the Subject Property's smaller size and faulty roof at the time of sale. For this reason, the Board was not convinced that the sales price of the Subject Property alone would warrant its exclusion from the valuation model.

54. Additionally, the DOR testified that the sale of the Subject Property in 2020 was not included in the model used to value the Canyon River neighborhood properties because it was purchased as part of a 1031 exchange. The DOR testified that at times a 1031 exchange may indicate that there was a concession on the sales price that may impact market value. However, in this case, the property was on the market for 208 days when the Taxpayers purchased it. The Taxpayers negotiated a sales price with the sellers after the property had been

on the market for over half a year. No evidence or testimony was presented that would lead the Board to believe the sale was not an arm's length transaction between a willing buyer and a willing seller. Thus, the DOR did not convince the Board that the final sales price or the 1031 exchange should have caused the sale to be invalidated and excluded from the valuation model. Thus, the Board is left to determine how that exclusion may have impacted the valuation of the Subject Property.

55. The DOR presented evidence and testimony demonstrating that they valued the Subject Property land based off of numerous sales of unimproved lots in the Canyon River neighborhood that occurred during the requisite timeframe for building the 2023/2024 valuation models. For this reason, the Board agrees with the DOR's assessed land value of $134,236. However, we are not convinced the DOR was correct in excluding the 2020 sale of the Subject Property in the model for the current valuation cycle based on the testimony presented. The Board is unable to determine how this exclusion affects the value of the Subject Property or if there may have been other reasons to invalidate this sale. This Board is limited to the evidence and testimony presented in making its determination. For that reason, the Board modifies the CTAB valuation and grants the Taxpayer's request to value the improvements at $530,000 for the 2023/2024 cycle, for a total value of $664,236.

ORDER

56. The CTAB valuation is modified, and the Taxpayers' appeal is granted in part.

57. DOR is directed to maintain the value of the subject land at $134,236 and reduce the value of the Subject Property's improvements to $530,000, for a total value of $664,236.

Dated this 29th day of July 2024.

TAX APPEAL BOARD SEAL OF THE STATE OF MONTANA

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).*

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 July 29, 2024, to:

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