

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

JUL 01 2024

Montana Tax Appeal Board

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Appellant,

v.

MICHAEL E. POTTER and JOYCE  
THARES,

Respondents.

CASE №: PT-2023-15

**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 Cascade County Tax Appeal Board (CTAB) granting in part Michael E. Potter and Joyce Thares, (Taxpayers) a reduction in value on the subject property located at 3100 9<sup>th</sup> Street South, Great Falls, Montana (Subject Property). The Department of Revenue (DOR) appealed that outcome to Montana Tax Appeal Board (MTAB) on November 27, 2023. We reverse the CTAB's determination.

**ISSUE TO BE DECIDED**

Whether the CTAB erred in partially 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. Property Comparisons from 2023 Appeal Information;
2. Shop Comparisons;
3. Property Information Spreadsheets;
4. Photos of Neighboring Properties and Shops.

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## DOR Exhibits:

- A. Property Record Card;
- B. 2022 Land Model;
- C. Map of Neighborhood;
- D. Photos of subject property;
- E. Comparable Sales Worksheet with Adjustments;
- F. Cost Calculations;
- G. DOR Policy 2-3-001.1;
- H. Appraiser Notes;
- I. Weighted Adjustment Spreadsheet.
- J. Rebuttal exhibit - Residential Appraisal Report.

## PROCEDURAL HISTORY

The DOR valued the Subject Property at \$902,140 for the 2023 and 2024 appraisal cycle, with the land valued at \$59,500 and the improvements valued at \$842,640. *MTAB Dkt. 4*. The Taxpayers filed an AB-26, Request for Informal Classification and Appraisal Review, with the DOR. The DOR sent a Form AB-26 Determination Letter to the Taxpayers dated August 9, 2023, denying the Taxpayers' request. *MTAB Dkt. 4*. The Taxpayers appealed the DOR's valuation to the CTAB on September 7, 2023, requesting a land value of \$56,400 and an improvement value of \$660,000. *Id.* The CTAB hearing was held on October 26, 2023, and the CTAB's decision granting in part the Taxpayers' application for reduction was sent to the parties on October 26, 2023. *Id.* The DOR appealed to MTAB on November 27, 2023, per Mont. Code Ann § 15-2-301, requesting a land value of \$59,500 and an improvements value of \$842,640, for a total of \$902,140. *MTAB Dkt. 1*. The MTAB hearing was conducted in Helena on April 9, 2024, at which the following were present:

- a. Joyce Thares and Michael E. Potter and, Taxpayers; and
- b. Dave Burleigh, DOR Counsel; Jason Boggess, Regional Manager; Cody Murphy, Appraiser; Jeanine Crouch, Modeler; and Cindy McGinnis, Paralegal.

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

## FINDINGS OF FACT

1. To whatever extent the following findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. The Subject Property is a home owned by Michael E. Potter and Joyce Thares in Cascade County. *MTAB Dkt. 4*. The Subject Property is located at 3100 9<sup>th</sup> St. South in Great Falls, Montana, and is also identified by geocode 02-3015-24-1-02-01-0000. *Id.* The Subject Property is 2.75 acres. *Ex. A*. The main house is 4,102 square feet with an 1,180 square foot attached framed garage. *Id.* The property also has a 3,192 square foot shop. *Id.*
3. The DOR valued the Subject Property at \$902,140 for tax years 2023 and 2024, allocating \$59,500 for the land and \$842,640 for the improvements. *MTAB Dkt. 4*. At the October 26, 2023, CTAB hearing, the Taxpayers requested the land value be reduced to \$56,400 and the improvements value be reduced to \$660,000 for a total market value of \$716,400. *Id.* The CTAB partially granted Taxpayers' request and lowered the Subject Property's value to \$763,800, allocating \$59,500 for the land and \$704,300 for the improvements. *Id.* The DOR appealed this decision to MTAB on November 27, 2023, reasserting that the total market value for the Subject Property should be \$902,140. *Id.*
4. At the MTAB hearing, Taxpayers argued that the Subject Property's property tax increase of 52% from the 2021/2022 tax cycle to the 2023/2024 tax cycle was excessive and not in line with tax increase that the rest of Montana is experiencing. *MTAB Hr'g Tr. 9:13-23*. Taxpayers stated that contrarily, the

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five comparable properties the DOR used to value the Subject Property had an average increase of only 33.73%. *MTAB Hr'g Tr. 14:17-15:17*. Furthermore, properties located in the Subject Property's actual neighborhood, not the neighborhood created by the DOR for their assessment purposes, had an average increase of 27.894% on their market values. *Id.* Taxpayers define "actual neighborhood" as people that live in close proximity to the subject property. *Id.*

5. Taxpayers argued at hearing that properties in their actual neighborhood are inferior to properties in the DOR neighborhood used for valuation. *MTAB Hr'g Tr. 14:17-15:3*. Taxpayers testified that the Subject Property does not have river frontage, nor does it have a view of the river or surrounding mountains. *Ex. C; MTAB Hr'g Tr. 16:24-17:9*. The land the Subject Property resides on is lower in elevation than surrounding properties and Taxpayers described the lot as being, "sunk in." *Id.* Due to the Subject Property being lower in elevation, Taxpayers have no view of the river. *Id.*
6. Taxpayers presented twelve photos of neighboring homes and workshops in order to show that the neighborhood is not located in a housing development and that no property in the neighborhood has any views of mountains or the river. *Ex. 4; MTAB Hr'g Tr. 22:22-23:6*. Furthermore, Taxpayers contend that DOR's value of \$900,000 is a similar value to houses with views of river. *Id.*
7. Taxpayers next presented a spreadsheet highlighting the differences between the Subject Property's shop and other shops located in DOR Neighborhood 9 to show that the Subject Property's shop is overvalued and valued inconsistently compared to others. *Ex. 2; MTAB Hr'g Tr. 25:5-26:4*. Some of the inconsistencies Taxpayers emphasized were the differences in price per square foot, height adjustments, and deductions for lack of electricity for shops in Neighborhood 9. *Id.* The Subject Property's shop had a deduction of \$15,000 for not having electricity as of the lien date of January 1, 2022. *Id.* The Subject

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Property's shop has subsequently had electricity installed. *Id.* Taxpayers expressed doubt concerning the accuracy of the DOR's electricity deduction in Neighborhood 9 for other shops. *Id.*

8. Taxpayers also argued that the five most comparable properties the DOR used in valuing the Subject Property had discrepancies in how they were appraised as compared to the Subject. *Ex. E; MTAB Hr'g Tr. 28:18-29:13.* Taxpayers showed that Comp 1 is 812 square feet larger than the Subject Property with a total lot size of over three acres making it larger than the Subject Property. *Id.* The heating assessment for Comp 1 is \$2.36 less per square foot than the Subject Property, and the value per square acre is \$10,018.00 less than the Subject Property. *Id.* Comp 1 also contains a shop on its property which is similar to the Subject Property, albeit roughly half the size. *Id.* The shop for Comp 1 was valued at \$18,860 whereas the shop on the Subject Property was valued at \$117,630. *Id.* Taxpayers stated this resulted in an inequitable cost of \$11 per square foot for the shop in Comp 1 as compared to \$37 per square foot for the Subject Property's shop. *Id.* Taxpayers also noted that the property record card for Comp 1 listed a 1,920 square foot daylight basement whilst the DOR Exhibit E had no basement listed for Comp 1. *Id.* Similarly, Taxpayers stated the garage attached/detached column did not include the shop for Comp 1 despite it containing a shop. *Id.*
9. Taxpayers also discussed discrepancies with a second DOR comparable property, Comp 2. *Ex. 3, E; MTAB Hr'g Tr. 29:14-25.* Taxpayers contended that Comp 2 was not being charged for heating despite having electric baseboards. *Id.* Additionally, the property had no added value for plumbing, even though the property record card states the residence has 1½ baths. *Id.* Lastly, Taxpayers contended that the Subject Property's assessed land value was \$13,000 more per acre compared to DOR's Comp 2. *Id.*

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10. Taxpayers then turned to DOR's Comp 3 where they questioned its overall comparability to the Subject Property. *Ex. 3, E; MTAB Hr'g Tr. 30:1-4.* Taxpayers testified that Comp 3 is listed as a single-story residence with minor concrete improvements that does not contain a detached shop. *Id.* Conversely, the Subject Property is two-story residence with extensive concrete improvements, an outdoor deck, and a shop on the premises. *Id.* Taxpayers had similar concerns about the actual comparability of DOR's Comps 4 and 5 to the Subject Property. *Ex. 3, E; MTAB Hr'g Tr. 30:23-31:2.*
11. Taxpayers presented the valuations for a number of properties they deemed to be more similar to the Subject Property and in the Subject Property's actual neighborhood. *Ex. 3.* The Taxpayers began with their previous home, a residence located on the same street as the Subject Property. *Ex. 3, A; MTAB Hr'g Tr. 31:3-20.* Taxpayers questioned why that residential improvement was valued at \$428,160 while the Subject Property's dwelling value was \$713,600. *Id.* Furthermore, Taxpayers argued that their previous home should have been used as a comparable property due to the many similarities it has with the Subject Property. *Id.* In addition to the similarity in location, Taxpayers provided that both the Subject Property and their previous home had exactly 4,102 square feet of living area. *Id.* Taxpayers conceded that unlike the Subject Property, their previous home did not have a shop and had a smaller total lot size. *Id.* However, Taxpayers argued that even if you took their previous home's taxable value and added the value of the Subject Property's differences, such as the shop and concrete features, their previous home would still be valued approximately \$150,000 less than the Subject Property. *Ex. 3, A; MTAB Hr'g Tr. 32:3-8.*
12. The Taxpayers also presented an extensive analysis of several more similar properties in the Subject Property's area. *Ex. 3; MTAB Hr'g Tr. 32:9-34:15, 34:23-35:8, 36:14-37:2.* In their analysis, the Taxpayers used assessed values for the 2023/2024 tax cycle rather than sales prices. *Ex. 3; MTAB Hr'g Tr.*



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36:1-6. Taxpayers' analysis included comparisons of price per square foot, heating adjustments, and analysis of the shops located on the properties, including electrical assessments, and compared price per square foot of the Subject Property's shop to basements of "similar properties." *Ex. 3; MTAB Hr'g Tr. 32:9-34:15, 34:23-35:8, 36:14-38:3, 39:1-8.* The DOR testified that they did not use any comparable properties in Exhibit E to value the Subject Property because of excess adjustments and switched to the cost approach. *MTAB Hr'g Tr. 75:9-22.* Additionally, the DOR did not use any of the Taxpayer's similar properties to value the Subject Property. *Id.* The DOR did use the comparable sales approach to derive a base acre and incremental acre rate to value the Subject Property's land. *Ex. B; MTAB Hr'g Tr. 70:22-72:9.*

13. Taxpayers stated that while they could not recall whether every similar property they discussed had sold between 2020 and 2022, they could confirm that their former home, the first similar property that was brought up, had been sold within that time period. *Ex. 3; MTAB Hr'g Tr. 42:12-43:7.* Additionally, Taxpayers' exhibit included five of the DOR's own comparable properties as similar properties and those five comparable properties were also confirmed to have been sold within the time frame. *Id.* All of Taxpayers' similar properties were within the Subject Property's DOR Neighborhood 9. *Id.* Taxpayers stated they did not know whether the similar properties they presented had also been appraised using the cost approach. *Ex. 1, 3; MTAB Hr'g Tr. 47:22-25.*
14. Taxpayers agreed that the valuation approach used to value the Subject Property was changed during the AB-26 review process from the comparable sales approach to the cost approach because of excess adjustments on the comparable properties. *MTAB Hr'g Tr. 46:5-8, 67:8-24.* Taxpayers agreed that the difference in value between the Subject Property being valued using the cost approach versus the comparable sales approach resulted in a 1.1% reduction in value. *Ex. 3; MTAB Hr'g Tr. 50:23-52:14.* However, Taxpayers disagreed that this percentage difference between the cost and sales approach

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concerning value for the similar properties was homogeneous to the Subject Property. *Id.*

15. Taxpayers testified that the Subject Property's shop is approximately 3,000 square feet and is divided into two separate halves. *MTAB Hr'g Tr. 55:14-56:2*. One half is cold storage, and the other is Mr. Potter's work area. *Id.* The work area is sheet rocked, insulated, painted, has lights, and is considered finished. *Id.* The cold storage side is insulated and sheet rocked but is otherwise unfinished. *Id.* The shop is heated through a forced air furnace. *Id.* The shop also contains plumbing which is attached to a toilet and sink. *Ex. 4; MTAB Hr'g Tr. 56:13-19.*
16. During cross-examination, DOR Counsel presented a fee appraisal that was performed on the Subject Property at Taxpayers' request as a rebuttal exhibit. *Ex. J; MTAB Hr'g Tr. 58:23-59:9*. Taxpayers expressed general concerns regarding the accuracy and completeness of the fee appraisal as they had discovered inaccuracies in the report and had not been able to reach the appraiser to discuss his findings. *Ex. J; MTAB Hr'g Tr. 56:20-57:23, 59:13-17, 61:18-21, 64:8-65:15*. Taxpayers agreed with the DOR that the appraisal report estimated the Subject Property's value to be \$935,000 using the cost approach, with \$218,000 of that value being attributed to the Subject Property's shop. *Ex. J; MTAB Hr'g Tr. 60:20-61:3*. The DOR Area Manager, Mr. Boggess, testified that he also found a number of errors in the Taxpayers' independent fee appraisal. *MTAB Hr'g Tr. 105:20-106:10*. These errors included not listing adjustments for bathroom differences, using a \$15 per square foot adjustment for the basement when the appraisal itself indicated a \$10 per square foot adjustment, and failing to adhere to common appraisal practices such as bracketing the Subject Property with higher and lower valued properties. *Id.*
17. DOR Lead Appraiser, Mr. Murphy, testified he changed the methodology used to value the Subject Property during the AB-26 review process from the



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comparable sales approach to the cost approach. *MTAB Hr'g Tr. 67:8-24*. The methodology was changed because all the comparable properties that were originally used had excessive adjustments of over 50% between the sale price and adjusted price. *MTAB Hr'g Tr. 67:8-24, 95:16-25*. Mr. Murphy testified that DOR assessment procedure instructs appraisers to use the cost approach when three or more of the comparable sales are being adjusted by more than fifty percent. *Ex. G; MTAB Hr'g Tr. 83:7-84:2*. Mr. Murphy stated that this switch from using the comparable sales approach to using the cost approach occurs frequently. *MTAB Hr'g Tr. 87:14-16*.

18. Mr. Murphy testified that the Subject Property's land value was determined using the base rate and incremental rate. *Ex. B; MTAB Hr'g Tr. 70:14-72:3*. The base rate is the value of the first acre of the property, and the incremental rate is the value of any additional acres. *Id.* The base rate for the Subject Property was \$53,231 and the incremental rate was \$3,644 per acre for each additional acre. *Id.* The formula used to determine market value for the Subject Property's land is  $Y=M*X+B$ , where Y is the market value, M is the Subject Property's land size minus the base rate, X is the incremental rate, and B is the base value. *Id.* For the Subject Property's 2.75 acres, the land calculation resulted in a value of \$59,500. *Id.*
19. The DOR's land model land pulled sales data from Neighborhood 9 to determine the base and incremental rates. *Ex. B; MTAB Hr'g Tr. 72:6-9*. Neighborhood 9 encompasses a five-mile radius outside the city limits of Great Falls. *Id.*
20. DOR presented a Comparable Sales Report which included the Subject Property and five properties that the DOR deemed most comparable. *Ex. E; MTAB Hr'g Tr. 75:9-76:19*. The comparable sales method valued the Subject Property at \$912,800, however, Mr. Murphy did not adopt the comparable sales value because there were excessive adjustments on all comparable sales. *Id.*

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Mr. Murphy explained that the comparable properties' actual sales prices were around half or less of the adjusted sales prices. *Id.* This was primarily due to the comparable properties having large adjustments for grade per square foot, condition/desirability/utilities score per square foot, and detached garages. *Id.* Mr. Murphy testified that all of the comparable properties had fewer square feet of livable area or had smaller shops than the Subject Property. *Id.*

21. Mr. Murphy testified that he assigned the Subject Property a grade of 6. *Ex. F; MTAB Hr'g Tr. 78:1-21.* Mr. Murphy based his assignment of this grade on external observations of the Subject Property's quality of construction, the good quality of materials used, the good quality of fenestration, and the fact that the Subject Property was custom built and not mass produced. *Id.* All grade 6 homes are given the same grade multiplier score of 1.31, which will raise the value of the property to account for the higher costs involved in construction of the improvements. *Id.*
22. The Subject Property has depreciated 1% and is considered 99% good. *Ex. F; MTAB Hr'g Tr. 80:3-14.* Mr. Murphy stated that because the Subject Property was built in 2020, it's in very good condition and is practically still new. *Id.* Without the shop and outbuilding, the Subject Property's replacement cost new less depreciation was listed as \$713,600 by the DOR. *Id.*
23. The Subject Property's shop is valued at \$117,630. *Ex. F; MTAB Hr'g Tr. 80:18-81:18.* Mr. Murphy stated that the base value of the shop is \$8,062.70 plus \$39.64 per square foot to account for the grade. *Id.* To arrive at the final price, \$6,033 was added to the shop's value to account for a 2-foot height adjustment for higher walls, and the value was reduced by \$15,609 due to the shop lacking electricity at the time the DOR valued it. *Id.* The shop is considered unfinished and was given an average construction grade. *Id.* The DOR valued the shop at \$117,630 for the 2023/2024 tax cycle. *Ex. A.*

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24. Mr. Murphy explained that if a property does not show an adjustment for electricity, electricity is factored into the price per square foot value. *Ex. 2; MTAB Hr'g Tr. 90:9-91:6*. Values for electricity relate not only to the size of the property, but also the cost of introducing electricity to a building based on the type of construction. *MTAB Hr'g Tr. 92:9-19*.
25. Ms. Crouch testified that for the DOR land models, the DOR uses a straight-line regression which plots data points for sales and then runs a regression line through the data. *MTAB Hr'g Tr. 94:11-22*. The regression analysis gives the DOR their base acre value, as well as incremental and decremental rates. *Id.* For calculating the contributory value of aspects of the Subject Property, such as square footage, air conditioning, and heating, the DOR uses a multiple regression analysis. *Id.* Ms. Crouch defined base size for the DOR's acre model as a typical building site within the DOR neighborhood. *MTAB Hr'g Tr. 96:14-97:3*. It is generally the area that's necessary to contain the dwelling, a well or cistern, septic systems, and outbuildings. *Id.* For the Subject Property's neighborhood, the base size is one acre. *Id.* Base rate measures the value of that first acre, and for the Subject Property's neighborhood, it's \$53,231. *MTAB Hr'g Tr. 97:7-12*. The DOR tests its models against standards set by the International Association of Assessing Officers. *MTAB Hr'g Tr. 99:6-15*.
26. Ms. Crouch stated that Neighborhood 9, which the Subject Property resides in, does not have adjustments for river frontage or scenic views as those properties are contained in separate DOR neighborhoods. *MTAB Hr'g Tr. 94:23-95:12*.
27. Ms. Crouch agreed that while the cost approach was used to value the Subject Property after the AB-26 process, the land value specifically was essentially being valued using the market sales approach. *MTAB Hr'g Tr. 100:15-21*.
28. Mr. Boggess stated that he was not surprised the Taxpayers' former home was not selected as a comparable property. *MTAB Hr'g Tr. 107:20-108:4*. Mr.

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Boggess speculated that because the sale date was in early 2021, it would have had to have been adjusted approximately twelve months from the base date which would add more weight as a coefficient causing the property to not be selected. *Id.* Additionally, the former home does not have the same size outbuilding, and there is approximately 1,400 square foot difference in gross living area. *Id.*

29. Mr. Boggess testified heating adjustments in the cost approach are used to represent the replacement cost new of the heating system. *MTAB Hr'g Tr. 108:5-109:2*. Hypothetically, two equally sized dwellings with identical heat systems should have the same price per square foot for heat. *Id.* Furthermore, the larger the property, the less it costs per square foot to heat based on the law of diminishing returns. *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)*.

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**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 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

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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. 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*.
40. "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)).
41. "[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.
42. "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).
43. "[A]dministrative regulations interpreting the statute made by agencies charged with the execution of the statute are entitled to respectful consideration." *Puget Sound Power & Light Co.*, 179 Mont. 255, 266, 587 P.2d 1282, 1288 (1978).



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44. The Board “may not amend or repeal any administrative rule of the department,” but may enjoin its application if the Board concludes the rule is “arbitrary, capricious, or otherwise unlawful.” *Mont. Code Ann. § 15-2-301(5)*.
45. 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)*.
46. “If the appeal is an appeal of the valuation of residential property, the state board shall consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and uses values obtained within the timeframe provided for in subsection (3)(a). The appraisal that is provided by the taxpayer is presumed to establish assessed value in the state board proceeding unless the department provides sufficient evidence to rebut the presumption of correctness, including another independent appraisal or other compelling valuation evidence. The state board shall address the taxpayer’s independent appraisal and the department’s valuation evidence in the decision.” *Mont. Code Ann. § 15-2-301(3)(b)*.
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. First, the Board would like to address the independent appraisal presented by the DOR as rebuttal Exhibit J. The Board finds that the independent appraisal does not meet the standards set forth in 15-2-301 M.C.A. The Legislature set a

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valuation date for the 2023/2024 tax cycle of January 1, 2022. The effective date of the appraisal is January 1, 2023, and is not within the required six months of the valuation date. Additionally, both parties expressed concerns about the accuracy of the appraisal and its procedures. The Board will not presume the appraisal to establish the taxable value of the subject property.

49. The Taxpayers argue that the subject property's tax increased by 52%. The DOR comparable properties had an average of 33.73% increase and similar properties in the subject's immediate neighborhood had an average increase of 27.89%. The Taxpayers have the burden of proving that the DOR made a mistake in its appraisal. Just because a property had a higher percentage value increase does not necessarily mean the DOR made a mistake in its appraisal process. Other properties in Neighborhood 9 had potentially similar percent increases, just not in the immediate area of the subject property. Properties must be valued using appraisal practices approved by the Montana Code Annotated, and using a percentage of taxable value to determine property value is not a generally accepted appraisal methodology. The testimony and evidence presented convinced the Board that the DOR did follow established practice, procedures of mass appraisal, and Montana law to determine the value assigned to the subject land and improvements.
50. The Taxpayers presented a comprehensive review of the DOR's comparable sales and properties similar to the subject property in its immediate neighborhood. The Taxpayers showed taxable value variations between the subject property, the comparable properties, and the similar properties, primarily focusing on a price per square foot and heating assessment analysis. While the Board is impressed with the details of the work, we must note that analyzing taxable value differences between properties using a price per square foot average method alone does not meet the Taxpayers' burden to prove the DOR used an incorrect method or made a mistake during its appraisal. Prices vary between properties for many reasons, including location, size, grade, and

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the utility of the improvements. Size is important because the Taxpayers' Exhibit 3 has properties ranging from 16 acres to 6,000 square feet, causing the price per square foot to fluctuate. DOR is limited to the sales comparison method or the cost approach when valuing residential properties to find value and cannot use or consider price per square foot. Lastly, the Taxpayers used DOR property valuations and not sales prices when evaluating the comparable and similar properties. The Taxpayers did include sales when available, but many of the properties in Exhibit 3 are based on taxable value and not sales prices. The Board finds the Taxpayers' evidence credible, but it does not convince the Board that DOR made a mistake in this appraisal.

51. While the Taxpayers focused on an extensive analysis of comparable properties, the DOR switched to the cost method to value the Subject Property during the AB-26 process. The Board received very little testimony relating to mistakes with the DOR's cost method to value the Subject Property. The DOR presented credible evidence that the comparable sales had excessive adjustments, which made them less reliable. We find the choice of using the cost method over the comparable sales method was reasonable and is supported by Albright. *Albright v. State*, 281 Mont. 196, 208-09, 933 P.2d 815, 823 (1997). The DOR was able to consider the Subject Property's individual characteristics and calculate a defensible replacement cost new less depreciation value. While the Board acknowledges that the heating assessment impacts the final market value, the Taxpayers' price per square foot compared to other property's heating assessment did not convince the Board their heating assessment could be too high. The Subject Property's heating assessment is among the higher heating assessments presented by the Taxpayers in Exhibit 3. However, because the house is newer and the heating system is newly installed, the Board would expect it to have very little depreciation, supporting a higher heating assessment.

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52. The Board finds it valid that the DOR relied on the cost method to value the property. The DOR followed its procedures when many of the comparable sales had excessive adjustments of 50% or more and switched to the cost method. The Board hopes that the cost approach is applied in similar situation without having a taxpayer appeal or file an AB-26 to trigger the change. Additionally, the DOR's use of the base and incremental rates to determine land value was proper.
53. The Taxpayers also argued that the shop on the Subject Property was valued too high. The Taxpayers presented the price per square foot for comparable and similar shops. While the Taxpayers' Exhibit 2 includes all this information, it also reveals that the Taxpayers compare the Subject Property's shop to several different types of shops of varying size, including pole garages, lean-tos, and attached and unattached garages, some of which were much older and more depreciated than the Subject Property's shop. During the hearing, the Taxpayers compared the Subject Property's shop to daylight basements. The Board does not find this argument credible, as a detached framed shop is not comparable to a basement, pole barn, or lean-to, in this situation. Additionally, all the shops in Exhibit 2 are varying sizes and are not comparable on a square foot basis. The DOR testified garages and shops are all valued at a base rate. The square feet of the shop are multiplied by the building's grade, and any deductions or additions are added to the final value. The Board finds the Subject Property's shop's average grade of construction acceptable as the shop was recently built, and the photos of the shop show no defects. The DOR's addition of \$6,033 due to the height of the shop is an acceptable way to account for construction with higher walls and thus more desirable space to a future buyer, as the two-foot height adjustment was obtained from the Marshal and Swift cost manuals, a credible source. The Board finds that the DOR did not make an error when valuing the shop located on the Subject Property.
54. The Board upholds the DOR's taxable value and reverses the CTAB decision.

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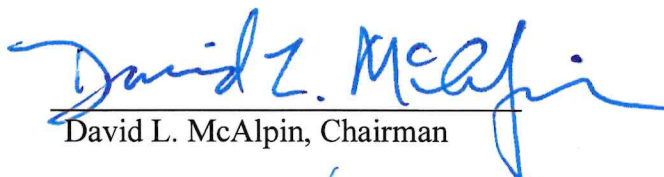
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**ORDER**

55. The value of the Subject property will be set at \$902,140 for the 2023/2024 valuation cycle.

Dated this 1st day of July 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 July 1, 2024, to:

Dave Burleigh  
State of Montana, Department of Revenue  
Legal Services Office  
P.O. Box 7701  
Helena, MT 59604-7701

Joyce Thares  
Michael E. Potter  
3100 9th St S  
Great Falls, Montana 59405

Bonnie Fogerty  
Cascade County Tax Appeal Board  
325 2nd Ave North  
Great Falls, MT 59401

Paula Gilbert  
Department of Revenue, Property Assessment Division  
P.O. Box 8018  
Helena, MT 59604-8108



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Rina Sanderson, Legal Secretary