

EVAN F. DANNO REVOCABLE
LIVING TRUST,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2024-28

**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 Flathead County Tax Appeal Board (CTAB) denying the Evan F. Danno Revocable Living Trust, (Taxpayer) a reduction in value on the subject property located at 144 Highland Ridge Drive, Kalispell, Montana (Subject Property). The Taxpayer appealed that outcome to Montana Tax Appeal Board (MTAB) on March 19, 2024. We affirm the CTAB’s determination.

ISSUE TO BE DECIDED

Whether CTAB erred in denying the Taxpayer’s request for a reduction to the Subject Property.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Photos of Subject Property’s House, Garage, and Soil;
2. Pages from MTAB PT-2021-42 Findings of Fact Dated August 15, 2022;
3. Property Classification and Appraisal Notice Dated June 30, 2023;
4. AB-26 Request for Informal Classification and Appraisal Review Dated July 14, 2023;

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5. JP Thomas Construction Estimate to Repair Subject Property;
6. Mont. Code Ann. § 15-8-111, & Mont. Code. Ann. § 15-7-102;
7. Evan F. Danno Letter to MDOR Dated September 20, 2023;
8. AB-26 Determination Letter;
9. Excerpt from MTAB Hearing Transcript PT-2021-42;
10. Photographs of Known Material Defects to Subject Property
11. Joe Thomas, Jr.'s Declaration of Repair for the Subject Property;
12. MDOR Residential Property Information Packet;
13. Land Sale Comps and Comparable Sales Report by MDOR and Taxpayers Land Comps Sales;
14. Land Comparable Sales within six months of January 1, 2022;
15. Home Comp Sales Comparable Sales within six months of January 1, 2022;
16. Advisory Memorandum from Montana Commissioner of Securities and Insurance;
17. Property Record Card for Subject Property; and
18. Exhibit was not admitted (withdrew at the hearing).

DOR Exhibits:

- A. Property Record Card and Pictures of Property;
- B. AB-26 Request;
- C. AB-26 Determination Letter;
- D. Residential Dwelling Cost Calculation for Subject Property;
- E. Comparable Sales Report; and
- F. 2022 Land Valuation Model.

PROCEDURAL HISTORY

The DOR valued the Subject Property at \$1,066,190 for the 2023/2024 appraisal cycle, with the land valued at \$133,347 and the improvements valued at \$933,190. *Ex. A.* The Taxpayer filed an AB-26, Request for Informal Classification

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and Appraisal Review, with the DOR on July 18, 2023, requesting a land value of \$80,750 and an improvement value of \$647,630. *Ex. B.* The DOR sent a Form AB-26 Determination Letter to the Taxpayer dated December 8, 2023, denying the Taxpayer's request. *Ex. C.* The Taxpayer appealed the DOR's valuation to the CTAB on December 22, 2023, requesting a land value of \$80,750 and an improvement value of \$647,630. *MTAB Dkt. 3.* The CTAB hearing was held on February 23, 2024, and the CTAB's decision denying the Taxpayer's application for reduction was sent to the parties on February 25, 2024. *Id.* The Taxpayer appealed to MTAB on March 19, 2024, per Mont. Code Ann § 15-2-301, requesting a land value of \$60,000 and an improvement value of \$530,000, for a total of \$590,000. *Id.* The MTAB hearing was conducted in Helena on October 1, 2024. At the MTAB hearing, the Taxpayer requested to exclude witnesses until after they have testified under Mont. Evidence R. 615 *MTAB Hr'g Tr. 5:1-19.* Both parties provided testimony, and the Board denied the Taxpayer's motion. The following were present at the MTAB hearing:

- a. Evan F. Danno, Taxpayer (via Zoom); and
- b. Kristina Warren, DOR Counsel; Andrew Pritchard, Lead Appraiser; Dawn Cordone, Area Manager; Jake Thiesen, Modeler; Kandy Fleurisma, Paralegal; and Marguerite Henning, Observer.

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 residential property owned by Evan F. Danno Revocable Living Trust, in Kalispell, Montana. *Ex. A.* The Subject Property is located at 144 Highland Ridge Drive, Kalispell, Montana, and is identified by its geocode 07-396-29-4-01-20-0000. *Id.* The Subject Property's land

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encompasses 12.75 acres but only 1 acre under the homesite is contested. *Id.* Included in the homesite is a single-family residence consisting of 2,109 square feet first floor living area with a 1,463 square foot basement and a 300 square foot loft. *Id.* The Subject Property also has a detached garage with an Additional Dwelling Unit (ADU). *Id.* Taxpayer is only contesting the improvements value and the value of the once acre under the improvements. *MTAB Hr'g Tr. 3:13-15.*

3. The Taxpayer argued that the Subject Property's assessed value is too high for the 2023/2024 tax cycle for five main reasons: 1) the improvements were assessed too high based on the percent increase in his neighborhood; 2) the improvement value should have been reduced by \$138,400 to correct material defects by a contractor; 3) the one acre of non-qualified agricultural land was assessed too high based on the comparable sales; 4) the Subject Property was double assessed for improvements including the land survey, road, septic, and utilities; and 5) the DOR speculates values using market trends which don't determine the actual assessed value as of the lien date of January 1, 2022. *MTAB Hr'g Tr. 8:19-9:16.*

4. The DOR valued the Subject Property at \$1,066,537 for tax years 2023 and 2024, allocating \$133,347 for the land and \$933,190 for the improvements. *Ex. A, MTAB Hr'g Tr. 3:10-12.* At the February 23, 2024, CTAB hearing, the Taxpayer requested \$80,750 for the land and an improvements value of \$647,630 for a total value of \$728,380. *MTAB Dkt. 3.* The CTAB denied the Taxpayer's request for a value reduction. *Id.* The Taxpayer appealed this decision to MTAB on March 19, 2024, requesting that the Subject Property be assigned a land value of \$60,000 and an improvements value of \$530,000 for a total value of \$590,000. *MTAB Dkt. 1; MTAB Hr'g Tr. 3:13-15.*

5. The Taxpayer argued that the Board should value the Subject Property similar to the value assigned during his previous appeal (PT-2021-42). *Ex. 2; MTAB*

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- Hr'g Tr. 7:11-8:8.* Taxpayer claims since his last appeal, the DOR has increased the one acre of land under the improvements by 40% and the improvements by 31%. *Id.*
6. The Taxpayer argued that CTAB failed to reduce the value of the Subject Property's improvements by \$138,400, the estimated cost for damages and defects to be repaired by an experienced contractor. *MTAB Hr'g Tr. 9:5-16.* During Taxpayer's last appeal, the CTAB reduced the value of the improvements by \$60,000 due to a damaged/discolored roof. *Id.* Because the roof is still damaged/discolored, Taxpayer argued that he is entitled to a reduction for this tax cycle as well. *Id.* The Taxpayer stated that the DOR told him that if he provided an estimate to repair any damage or defects, the DOR would in turn reduce the assessed value of the improvements, but that they failed to do so up to this point. *Ex. 5, 8; MTAB Hr'g Tr. 9:5-16.* As further attestation, the Taxpayer testified that during his 2021 MTAB hearing, DOR Appraiser, Doug Wilkinson, stated that if the Taxpayer presented a bid, the appraiser would adjust the Subject Property's value accordingly. *Ex. 9; MTAB Hr'g Tr. 11:18-25.*
 7. The Taxpayer included a contractor's estimate from JP Thomas Construction Ltd. which quoted him a cost of \$138,400 for repairs to the Subject Property. *Ex. 5, 7.* The Taxpayer also introduced a sworn statement from his contractor stating that his estimate was true and correct. *Ex. 11.*
 8. The Taxpayer presented photos of the Subject Property's roof to illustrate defects and discoloring, requiring a \$64,000 roof replacement. *Ex. 10; MTAB Hr'g Tr. 12:15-13:11.* The roof has discolored paint due to attempts to mask damage done when the replacement roof was installed. *Id.* The Taxpayer cites an advisory memorandum issued by the Commissioner of Securities & Insurance stating that replacement material must be of the same quality and color. *Ex. 16; MTAB Hr'g Tr. 12:15-13:11.* The memorandum also noted that

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all existing materials must be replaced to match the new materials if the same quality or color of the old materials is unavailable. *Id.*

9. The Taxpayer contended that the peeling Sikkens product applied to the siding is a material defect with a replacement cost of \$30,500. *Ex. 10; MTAB Hr'g Tr. 13:16-14:3.* The Taxpayer presented photos showing the fading siding. *Id.* Taxpayer claims the siding needs to be sandblasted to bare wood and completely redone. *Id.* Taxpayer testified that the Sikkens product lasted for eight to ten years before the sun made the product start to crack and flake. *MTAB Hr'g Tr. 14:7-17.* The Taxpayer stated there is no warranty for the product and that it just breaks down over time. *MTAB Hr'g Tr. 14:7-17, 36:15-21.* On cross-examination, the Taxpayer testified that the fading roof and siding were only aesthetically displeasing and did not cause damage to the house. *MTAB Hr'g Tr. 33:16-21.*
10. The Taxpayer testified that the windows in the Subject Property are defective and need to be replaced. *MTAB Hr'g Tr. 14:19-15:4.* This is primarily because the windows are foam-clad and failed to keep argon between the windowpanes, resulting in fogging of the windows. *Id.* About a third of the 92 windows were replaced under a manufacturer's warranty. *Id.* As the windows fail, they are being replaced by the manufacturer. *Id.* The Taxpayer estimated it will cost \$42,000 to replace windows in the Subject Property. *Ex. 10; MTAB Hr'g Tr. 14:19-15:4.*
11. The Taxpayer testified that the Subject Property's deck is rotten and needs to be replaced at a cost of \$16,500. *Ex. 9; MTAB Hr'g Tr. 15:5-11.* Taxpayer has been continuously replacing rotten boards that become a safety concern. *Id.* Additionally, the Taxpayer testified it would cost \$1,800 to finish the ceiling in the laundry room. *Ex. 10; MTAB Hr'g Tr. 15:12-18.* The Taxpayer stated that two new vents need to be installed because of a condensation problem resulting from the vaulted ceiling, which will cost an additional \$600. *Id.*

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12. The Taxpayer testified that he had an insurance claim on the Subject Property that has paid at least \$150,000 to repair defects caused by the first contractor. *MTAB Hr'g Tr. 32:3-20, 35:2-14*. The Taxpayer has also made several upgrades to the property including the ADU. *Id.* On cross examination the Taxpayer stated he does not believe that \$150,000 in repairs and improvements should be added to the Subject Property's value, similar to how the Taxpayer claims the DOR should deduct the amount of the contractor's estimate. *Id.*

13. Taxpayer cites Mont. Code Ann. § 15-8-111, stating that market value is what a willing seller and willing buyer would pay for a property, knowing relevant facts, including material defects. *Ex. 6; MTAB Hr'g Tr. 9:23-10:10*. Furthermore, if the DOR uses the cost approach, which they did, they shall fully consider a reduction in value caused by physical depreciation or functional or economic obsolescence. *Id.* Additionally, in Mont. Code Ann. § 15-7-102, the Board may consider negative property features that differentiate the Subject Property from DOR comparable sales. *MTAB Hr'g Tr. 9:23-10:10, 12:7-13:11*.

14. The Taxpayer contended that the DOR increase of 40% for the land and 31% for the improvements was unsupported by market appreciation of comparable properties. *Ex. 3, 4, 12; MTAB Hr'g Tr. 16:22-17:20*. The Taxpayer testified that the DOR admitted the Subject Property did not have comparable properties because it is non-qualified agricultural land. *Id.* Instead, the DOR gave market appreciation as the reason for the more than 10% value increase on the Subject Property's Classification and Appraisal Notice. *Id.* Taxpayer stated that market appreciation is defined as "comparable properties within the area of the property that have seen an increase in value and are selling for more to date than they were during the time leading up to the last appraisal." *Id.* Taxpayer alleged the DOR used the cost method, which does not rely on comparable sales, and arbitrarily increased the property value without any specific information. *Id.*

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15. The Taxpayer argued that when valuing the Subject Property using the cost approach, the DOR's use of nationally published cost manuals violated the law. *Ex. 12; MTAB Hr'g Tr. 18:14-20:6*. Taxpayer cites Mont. Code Ann. § 15-8-111 and 15-6-134 to show that comparable properties used for valuation purposes must represent similar properties in an acceptable proximity to the valued property. *Id.* Additionally, the DOR shall use the same valuation method to value residential properties in the same neighborhood or subdivision unless there is a compelling reason to use a different approach. *Id.* The Taxpayer claims there are plenty of comparable properties to value the Subject Property and using a nationally published cost manual does not constitute similar properties within an acceptable proximity of the property being valued. *MTAB Hr'g Tr. 18:14-20:6, 37:14-25*. Taxpayer argued that the DOR should use "local geographical area, replacement cost new to depreciate" the Subject Property. *MTAB Hr'g Tr. 18:14-20:6*. Additionally, the Taxpayer claims the DOR used an economic condition factor of 32% to represent the market appreciation of the property. *Id.*

16. The Taxpayer argued that the DOR's comparable sales for valuing the Subject Property are not comparable for several reasons. *Ex. 13, 14; MTAB Hr'g Tr. 20:17-23:12*. The one acre is valued too high because the DOR comparable sales all sold for much lower than the Subject Property is valued. *Id.* Taxpayer contended that the comparable properties used by the DOR are closer to town, have easier ability to install utilities/access, and were not sold within six months of the 2023/2024 lien date, as required by Mont. Code. Ann § 15-7-102(3)(e). *Id.* Furthermore, the Taxpayer argued that the comparable properties include surveys, maintained roads, utilities, and higher quality soil in comparison to the Subject Property. *Id.* The Taxpayer averaged the sales price of the DOR comparables by dividing the sales price by the total acres of land and found an average sales price per acre of \$81,875 compared to the Subject Property's one acre which was assessed at a market value of \$132,700. *Ex. 14;*

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MTAB Hr'g Tr. 20:17-23:12, 24:3-5, 27:5-28:20. The Taxpayer argued that the Subject Property's land value should be reduced by \$35,000 to account for the amenities, such as utilities, septic and road, included in the comparable properties. *Ex. 13, 14; MTAB Hr'g Tr. 20:17-23:12, 27:5-28:20.* Because of the Subject Property's remoteness, the Taxpayer believes building these amenities would be more expensive. *MTAB Hr'g Tr. 27:5-28:20.* Additionally, Taxpayer alleges that the DOR added the amenities to the Subject Property's property record card and assigned them a value, causing several of the amenities to be doubled taxed. *MTAB Hr'g Tr. 27:5-28:20, 29:13-30:14.*

17. The Taxpayer analyzed the DOR's comparable property improvements, attesting that if you subtract the DOR land value from the sales price, you get the true value of the comparable improvements. *Ex. 15; MTAB Hr'g Tr. 24:7-26:16.* The Taxpayer focused on comparables with similar square footage in his comparison. *Id.* The Taxpayer testified that the DOR valued the Subject Property \$80,000 less than the Subject Property's direct neighbor, which is a larger property. *Id.* When averaging comparable properties, the Taxpayer estimated the Subject Property's improvements are worth \$679,950. *Id.* Taxpayer argued that the Subject Property's defects should further reduce the value to \$541,550. *Id.* The Taxpayer also believes the Subject Property's agricultural land is being taxed higher than his neighbors but is not contesting the value. *Id.*
18. When asked on cross-examination, the Taxpayer stated he did not want to fix the defects of the Subject Property because of the cost. *MTAB Hr'g Tr. 34:8-14.* The Taxpayer has sought damages from contractors for damage to the Subject Property, but the replacement work has also been defective. *Id.* Additionally, the Taxpayer did not want to replace defects for a second time because it was a hassle. *MTAB Hr'g Tr. 35:20-36:4.*

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19. As part of its appraisal process, DOR Area Manager, Dawn Cordone, testified that the DOR documents market appreciation and depreciation from one appraisal cycle to another. *MTAB Hr'g Tr. 41:9-14*. Within Flathead County, there are five market areas, and the Subject Property is part of the Kalispell area with an average appreciation of about 50% at the lien date of January 1, 2022. *MTAB Hr'g Tr. 41:18-42:12*. The January 1, 2022, lien date is used to create equity and fairness by valuing all properties on a common date. *Id.*

20. Ms. Cordone testified that the Subject Property's one-acre homesite was valued using comparable sales, and the improvements were valued using the cost approach. *MTAB Hr'g Tr. 42:22-43:13*.

21. To value the Subject Property using the cost approach, the DOR confirms the property's characteristics and conditions to determine the Replacement Cost New (RCN) value for the improvements. *MTAB Hr'g Tr. 43:14-18, 45:15-25*. The DOR applies the square footage and condition to the national cost manuals to get a base replacement cost. *MTAB Hr'g Tr. 52:23-53:5, 53:15-54:15*. This analysis is based on the square footage of each floor of the Subject Property. *Id.* Then, the DOR makes adjustments for the utilities in the house, including heating and plumbing. *MTAB Hr'g Tr. 53:15-54:15*. Heating costs are included in the Subject Property's unfinished area because although it may not be finished, the space is still heated. *Id.* The DOR then adds in additions such as fireplaces, porches, and concrete to get a standard RCN for the property. *Id.*

22. The dwelling information is then multiplied by the Subject Property's grade factor. *Ex. D; MTAB Hr'g Tr. 54:13-55:14*. The DOR assigned the Subject Property a grade of 7, or 1.57, which means the Subject Property had additional costs for construction compared to a regular home with four walls or a more modest home. *Id.* The DOR takes the RCN and multiplies it by the grade factor. *Id.* The resulting value is then multiplied by the depreciation to get the Replacement Cost New Less Deprecation (RCNLD). *Id.* The depreciation of

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88%, or 0.12, adjusts the value of the Subject Property for defects. *Id.* The RCNLD is then adjusted by the percent complete assigned to the property by the DOR. *Id.* The land value is determined using comparable sales and is then added to the RCNLD to determine a total value. *MTAB Hr'g Tr. 27:1-4, 43:14-18.* To account for the low value of the Subject Property's agricultural land, the DOR only used comparable properties which contained no agricultural land when valuing the Subject Property's one acre, using the market approach. *MTAB Hr'g Tr. 44:21-45:2.*

23. The RCNLD includes a county index to apply a location factor to the cost tables to account for the location and market of the Subject Property. *MTAB Hr'g Tr. 45:20-46:7.* The DOR uses national publications for replacement cost new information but does also considers local factors. *Id.* The county index for Flathead is 0.93, and the DOR has adjusted the national cost tables by about 7% to account for the local market. *Id.* The DOR applied an economic condition factor of 32% to the Subject Property to account for non-qualified agriculture land and the inequities between the cost and market approaches. *Ex. D; MTAB Hr'g Tr. 55:15-56:19.* For the last step of the cost calculation, the DOR adds additional buildings and yard improvements to the adjusted RCNLD. *Id.* The additional buildings included the detached garage with the ADU. *Id.*
24. The DOR also calculates a value using the comparable sale method to ensure the cost and sales approaches to value reconcile. *MTAB Hr'g Tr. 44:21-45:2.* With the adjustment the DOR made during the cost analysis, the market and cost approaches reconciled within DOR standards. *MTAB Hr'g Tr. 60:19-61:11.* Additionally, Ms. Cordone testified that the market approach is more lenient regarding defects because the supply of properties has been minimal in Flathead County and buyers are just not as concerned about defects, they just want a property. *MTAB Hr'g Tr. 61:12-24.*

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25. Ms. Cordone testified that the Subject Property's basement is 1,463 square feet, but the DOR only considers 1,363 square feet as finished. *MTAB Hr'g Tr. 46:8-21*. The Taxpayer estimated it will cost \$1,800 to finish the basement, but the DOR deducted \$6,200 for the unfinished space. *MTAB Hr'g Tr. 49:22-50:6*. Additionally, the Taxpayer has enlarged the Subject Property's deck to 1,200 square feet, and the DOR valued the deck at 654 square feet, lowering the value of the Subject Property by about \$10,000. *MTAB Hr'g Tr. 46:22-47:22*.
26. Ms. Cordone testified that the Subject Property has a detached garage with an ADU built above the garage and one additional deck and concrete pad. *MTAB Hr'g Tr. 48:1-4*. Since the garage/ADU is not attached to the main dwelling, its own characteristics, condition, and age are considered when determining depreciation. *MTAB Hr'g Tr. 48:5-17*. The detached garages and ADU are valued at \$159,330, which is included in the improvement value to arrive at a final taxable value. *Id.*
27. Ms. Cordone testified that the DOR did consider the Taxpayer's defects to the Subject Property. *MTAB Hr'g Tr. 49:4-19*. To account for the defects, the DOR has not added an effective age to the Subject Property and does not recognize any improvements that have been made since construction. *Id.* The lower effective age increases the amount of depreciation allowed in the cost calculation, and Ms. Cordone estimated the final adjustment to be \$85,000-\$106,000 after considering the market adjustment. *Id.*
28. Ms. Cordone testified that the Taxpayer was not double taxed when the DOR calculated the value of the improvements to his land. *MTAB Hr'g Tr. 56:20-57:5*. The improvements the Taxpayer has claimed to be double taxed were accounted for in the land model, as well as in the type of improvements and location of the Subject Property. *MTAB Hr'g Tr. 56:24-59:4*. The land in the sales model recognizes attributes such as sewer and electricity in the land condition section. *Id.* The DOR assigned the Subject Property's one acre as

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primary or average pricing. *Id.* Primary lots usually don't have utilities; when a property does have utilities, it is reconciled or adjusted during the modeling process. *Id.* Additionally, the DOR considers "no access" to mean the owners have no legal right to access their property not, as the Taxpayer suggests, the lack of a road. *Id.*

29. Ms. Cordone testified that the DOR appraisers did take into account physical depreciation and functional and economic obsolescence as required in Mont. Code. Ann § 15-8-111(2)(b), using effective age, depreciation, quality of construction, and percent good in their cost calculations. *MTAB Hr'g Tr. 62:9-18.*
30. DOR appraisers do consider estimates for repairing defects. *MTAB Hr'g Tr. 62:22-64:14.* While the DOR does consider estimates, if their cost calculation already contains deductions for the items on the Taxpayer's estimate, the DOR will not make a dollar-for-dollar adjustment. *Id.* Ms. Cordone testified that the DOR usually prefers to see a few estimates to ensure they align and are supported by market considerations. *Id.* In this case, the DOR could not check market conditions because the estimate received had no date, was lacking building materials and could not be correlated to the statewide lien date. *Id.*
31. Ms. Cordone testified that the Taxpayer's Exhibit 13, or the comparable sales report, only illustrates what properties were selling for and was not used to value the Subject Property. *MTAB Hr'g Tr. 64:15-21.* Additionally, the DOR used the cost method because of the presence of the non-qualified agriculture land. *MTAB Hr'g Tr. 66:17-67:1.*
32. To account for the claimed defects, the DOR has not increased the effective age of the property and has assigned its full depreciation from construction in 2008. *MTAB Hr'g Tr. 69:22-71:25.* On cross-examination, when the Taxpayer

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questioned Ms. Cordone about his alleged defects, Ms. Cordone categorized them as deferred maintenance. *Id.* Additionally, Ms. Cordone testified that to get land values of comparable properties, they do not subtract the improvement values from the sales but use regression models to value the property. *MTAB Hr'g Tr. 75:15-76:15.*

33. DOR Region One Modeler, Jake Thiesen, testified that all models are built using sales that DOR appraisers have verified. *MTAB Hr'g Tr. 79:7-23.* Next, the DOR defines market areas and evaluates market trends to calibrate their models. *Id.* Land models are calibrated using straight-line regression. *Id.* The DOR does quality checks, looks for outliers, and finalizes their models. *Id.* To ensure accuracy, Mr. Thiesen uses the R squared, Coefficient of Dispersion, P values, and T values as statistical measurements. *MTAB Hr'g Tr. 80:1-5.* The model's statistical measurements used to value the Subject Property were within the standard range for accuracy. *MTAB Hr'g Tr. 83:19-21.*
34. Mr. Thiesen valued the Subject Property using the once-acre land model, which showed that one acre represents a typical lot valued at \$132,700. *MTAB Hr'g Tr. 81:12-18.* The base lot is determined by the pricing, location, and inferior or superior attributes. *MTAB Hr'g Tr. 81:20-82:10.* The base rate is adjusted using an incremental or decremental rate for parcels over the base acre. *MTAB Hr'g Tr. 82:11-22.* The model contained 45 sales, some with utility and surveys and some without. *MTAB Hr'g Tr. 83:22-84:17.* Land is valued with zero improvements, including utilities. *MTAB Hr'g Tr. 89:3-14.* Mr. Thiesen testified that the model covers a large area and shows that the base rate price is consistent with other areas in Flathead County. *MTAB Hr'g Tr. 86:12-20.*

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

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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

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- 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. 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

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- 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).
 48. All improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value. *Mont. Code Ann. § 15-6-134(1)(c)*.
 49. If the department uses the cost approach as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence. *Mont. Code Ann. § 15-8-111(2)(b)*.
 50. The department shall conduct the appraisal following the appropriate uniform standards of professional appraisal practice for mass appraisal promulgated by the appraisal standards board of the appraisal foundation. In valuing the property, the department shall use information available from any source considered reliable. Comparable properties used for valuation must represent similar properties within an acceptable proximity of the property being valued. The department shall use the same valuation method to value residential properties in the same neighborhood or subdivision unless there is a compelling reason to use a different approach.

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- (b) When valuing residential property under the cost approach, the department shall document why the comparable sales model does not support usage of the comparable sales approach, including an analysis of whether the cost approach is used for other class four residential property in the market area. Mont. Code Ann. § 15-8-111(3)(a) & (b).
51. For the purpose of this Mont. Code Ann. § 15-8-111, the term "compelling reason" includes but is not limited to the following:
- (a) there are no comparable sales in the neighborhood or subdivision;
 - (b) the comparable sales model prepared by the department shows that the subject property cannot be valued using the market sales approach; or
 - (c) other residential properties in the same neighborhood or subdivision are also valued using the cost approach and not the market sales approach. Mont. Code Ann. § 15-8-111(10).
52. A county tax appeal board or the Montana tax appeal board may consider the actual selling price of the property, independent appraisals of the property, negative property features that differentiate the subject property from the department's comparable sales, and other relevant information presented by the taxpayer as evidence of the market value of the property. Mont. Code Ann. § 15-7-102(6).
53. Each one-acre of land beneath any residents located on non-qualified agricultural land is classified as class four land and valued according to the market value of comparable land. *Mont. Admin. R. 42.20.655(2)*.

DISCUSSION

54. The Taxpayer did not dispute the value or classification of the non-qualifying agricultural land, so the Board will not address that section of the Subject Property.

55. The Board, in this instance, agrees with the DOR's use of the cost approach. The DOR calculated the sales and cost approach to value and found that they reconciled lending credibility to their value. The DOR demonstrated several compelling reasons to switch to the cost approach to value, including having no comparable sales available and the presence of land classified as non-qualified agricultural.

56. The DOR presented evidence that the land classified as non-qualified agricultural made it challenging to find comparable properties. Additionally, the closest comparable properties the DOR could find had excessive adjustments, making them unreliable. The Taxpayer claims that the comparable properties used to value the Subject Property are invalid; the Board would like to note that the DOR valued the Subject Property utilizing the cost approach to value and only presented the comparable sales report, or Exhibit 13, as an illustration of what properties were selling for. The Board agrees with the DOR that comparable properties have shown appreciation during previous tax cycles.

57. The Board does not agree with the Taxpayer's argument that since the cost method does not rely on comparable sales, any increase in property value is arbitrary. The DOR testified that they use national cost tables adjusted to local markets using a county index factor to tailor the cost manuals to the market or location. Additionally, the DOR used an economic condition factor to account for inequalities between the cost and market approaches, not as a measure of appreciation as suggested by the Taxpayer.

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58. The DOR did use comparable sales to value the land as part of the cost approach to value. The DOR presented a credible straight-line regression model showing the Subject Property's land value. Mr. Thiesen testified that he used several statistical measurements to verify the accuracy of the model output. The Board also agrees with the base rate of \$132,700. The DOR verifies all sales and groups them into market areas to calibrate their models. Forty-five sales and testimony relating to Mr. Thiesen seeing consistencies across Flathead County afforded the models more credibility. Additionally, the Board finds that all comparable properties used to value the land were within a reasonable distance from the Subject Property.
59. The Taxpayer argues that the comparable properties used to value the Subject Property's land are not comparable because of their amenities, such as location, utilities, and access. Mr. Thiesen testified that all land is valued as if it had no improvements, including utilities. Mr. Thiesen went on to say the property's location is considered in the model when determining a base rate, and the consistency seen across the county makes location less of a concern. Ms. Cordone testified that the Subject Property's land is on primary pricing, which usually does not include utilities; if the comparable properties have utilities, they are adjusted in the model to resemble raw land. The Board agrees with the DOR that the land is valued as raw and includes no amenities except legal access. The parties disagree about the definition of access, but the Subject Property does have legal access, and its value is not affected. The Board finds the Taxpayer's argument that he has been double taxed confusing. While the Taxpayer is taxed for the amenities attached to the land, the DOR testified they are taxed as improvements. The amenities are removed from the land before the land is valued. As Mr. Thiesen testified, all land in the model is valued with zero improvements, including all amenities mentioned by the Taxpayer.
60. Not all land is the same, so it's essential to look at its characteristics and the size as the DOR does when valuing properties. While two properties may look

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similar, the characteristics and size will set them apart. That's why the DOR has created regression models. The DOR uses the models to ensure equity among similarly situated taxpayers. As the Taxpayer suggests, the DOR cannot simply subtract the land value from the sales price to get the improvement value. Alternatively, the DOR cannot divide the land value by the acres to get a cost per acre. The DOR is mandated to use mass appraisal to value property in Montana. The regional model used by the DOR is credible and accounts for the different land size and characteristics of a property.

61. The Board found the DOR's cost calculation credible. The DOR ensured the property characteristics were correct, including the grade of seven. The DOR determined a replacement cost new for the Subject Property using a nationally published cost table. The DOR subtracted depreciation from the replacement cost new to get the RCNLD. The RCNLD is then adjusted for the parts of the Subject Property that are unfinished and then multiplied by a county index of 7% to adjust for local market conditions. To account for defects and deferred maintenance, the DOR did not assign an effective age increasing its depreciation to the Subject Property and has not recognized any improvements since the property's construction. DOR testified that the Taxpayer benefits from this because the unfinished laundry room and the enlarged deck are discounted. While the Subject Property does need some maintenance, it is usually done in the ordinary course for a property built over fifteen years ago. Additionally, the Taxpayer testified on cross-examination that he did not want to replace the defects because of cost and hassle, and that the defective roof and siding did not cause actual damage to the house.

62. Ms. Cordone's testimony convinced the Board that in the Flathead County market, due to low inventories, property defects don't matter as much as they did during the 2021/2022 tax cycle. While the Board can consider negative property features, it declines to do so because the DOR has already considered them when doing its cost calculation. The Taxpayer also cited Mont. Code

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- Ann. § 15-7-102(3)(e) to say sales of comparable properties must be within six months of the lien date. Any appraisal submitted must be within 6 months of the lien date, not sales of comparable properties. The sales prices of comparable properties should be time trended to the lien date if possible.
63. The Board agrees with the Taxpayer's definition of market appreciation but only agrees that the local market should measure it. The DOR presented sales of similar properties and other evidence to show that there has been significant market appreciation in the region and Flathead County since the 2021/2022 tax cycle.
64. The Taxpayer argued that the DOR should reduce his property value by the amount of the contractor's estimate. The DOR did testify that they considered the estimate but found it lacking. The DOR testified that the contractor's estimate had no date and thus could not be correlated to the lien date. Additionally, the DOR needed help determining what part of the repairs were material and labor. Because of this, the DOR could not compare the estimate to market conditions. The DOR further testified that the Taxpayer's defects were accounted for through effective age, depreciation and the unrecognized improvements made by the Taxpayer. The Board is unaware of any DOR policy or procedure requiring them to adopt a contractor's bid. Lastly, the Taxpayer testified that some of the defects have been or are covered by warranties. The DOR has already made satisfactory adjustments for claimed defects, the Board declined to make any further adjustments. We believe the DOR correctly valued the property for the 2023/2024 valuation cycle.

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ORDER

- 65. The Board denies the Taxpayer's appeal and uphold the Flathead County Tax Appeal Board.

- 66. The DOR is ordered to set the value of the property at \$1,066,537, with the land valued at \$133,347 and the improvements valued at \$933,190.

Dated this 3rd day of December 2024.



A handwritten signature in blue ink, appearing to read "Travis Brown", written over a horizontal line.

Travis Brown, Chairman

A handwritten signature in blue ink, appearing to read "Amie Zendron", written over a horizontal line.

Amie Zendron, 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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REVENUE*

Certificate of Service

I certify that I caused a true and correct copy of the foregoing Findings of Facts and Conclusions of Law to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on December 3, 2024, to:

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