

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Appellant,

v.

MOUNTAIN STATES LEASING  
MISSOULA, LLC,

Respondent.

CASE №: PT-2023-19, 20, 21, 22, 23, 24

**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) granting Mountain States Leasing Missoula, LLC (Taxpayer) a reduction in value on the subject properties (defined below) located in Missoula, Montana. The Department of Revenue (DOR) appealed that outcome to Montana Tax Appeal Board (MTAB) on December 8, 2023. We reverse CTAB’s determination.

**ISSUE TO BE DECIDED**

Whether CTAB erred in reducing the DOR’s assessed value on the subject properties.

**EXHIBIT LIST**

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Taxpayer’s 2022 federal tax return;
2. Taxpayer’s 2022 profit and loss statement;
3. 2022 allocation of shared costs to buildings;
4. Taxpayer’s income valuation of each building using capitalization rate;
5. National Association of Realtors Metro Market Report for Missoula for the first quarter of 2022;

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6. (Taxpayer did not offer Exhibit 6 for admission);
7. Vacancy schedule of buildings;
8. 2022 rent rolls for buildings;
9. Lease termination provision for lease with State of Montana;
10. Appraisal report of Palmer Professional Park complex dated 1/10/2022;
11. Offer to purchase Palmer complex submitted by Newmark;
12. (Taxpayer did not offer Exhibit 12 for admission);
13. Resume of Tom Stevens; and
14. 2022 sales marketing for Palmer complex.

DOR Exhibits:

A. Property Record Cards:

- 19-A: Property record card for 2687 Palmer Street
- 20-A: Property record card for 2685 Palmer Street
- 21-A: Property record card for 2681 Palmer Street
- 22-A: Property record card for 2677 Palmer Street
- 23-A: Property record card for 2675 Palmer Street
- 24-A: Property record card for 2683 Palmer Street

B. Aerial Maps;

C. Appraisal Notice;

D. Income Analysis comparing Taxpayer reported income and DOR variables:

- 19-D: Income Analysis for 2687 Palmer Street
- 20-D: Income Analysis for 2685 Palmer Street
- (DOR did not offer Exhibit 21-D for admission)
- (DOR did not offer Exhibit 22-D for admission)
- (DOR did not offer Exhibit 23-D for admission)
- 24-D: Income Analysis for 2683 Palmer Street

E. Taxpayer's Profit and Loss statement with DOR Adjustments:

- 19-E: Profit and Loss statement for 2687 Palmer Street
- 20-E: Profit and Loss statement for 2685 Palmer Street

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- 21-E: Profit and Loss statement for 2681 Palmer Street
  - 22-E: Profit and Loss statement for 2677 Palmer Street
  - 23-E: Profit and Loss statement for 2675 Palmer Street
  - 24-E: Profit and Loss statement for 2683 Palmer Street
- F. Price per square foot analysis;
- G. Office Data Model;
- H. Model output; and
- I. Capitalization rate table.

**PROCEDURAL HISTORY**

The subject properties in this appeal consist of six separate buildings within the Palmer Professional Park Condominiums (Palmer Complex) along with the portion of the common area allocated to each. The properties, identified below, are located in Missoula and are owned by Mountain States Leasing Missoula, LLC (together referred to as “Subject Properties”). The DOR valued the individual properties, which includes land and improvements, for the 2023/2024 appraisal cycle as follows:

- \$5,266,500 for geocode 04-2200-17-2-16-01-7001, located at 2687 Palmer Street, Missoula (2687 Palmer);
- \$5,266,500 for geocode 04-2200-17-2-16-01-7002, located at 2685 Palmer Street, Missoula (2685 Palmer);
- \$6,193,300 for geocode 04-2200-17-2-16-01-7003, located at 2681 Palmer Street, Missoula (2681 Palmer);
- \$5,574,000 for geocode 04-2200-17-2-16-01-7005, located at 2677 Palmer Street, Missoula (2677 Palmer);
- \$4,737,593 for geocode 04-2200-17-2-16-01-7006, located at 2675 Palmer Street, Missoula (2675 Palmer); and
- \$1,315,300 for geocode 04-2200-17-2-16-01-7007, located at 2683 Palmer Street, Missoula (2683 Palmer). *MTAB Dkt. 3.*

The Taxpayer timely appealed the DOR’s valuations directly to the CTAB on July 28, 2023, requesting the following values:

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- 2687 Palmer: \$1,214,582;
- 2685 Palmer: \$2,853,949;
- 2681 Palmer: \$4,408,485;
- 2677 Palmer: \$3,328,376;
- 2675 Palmer: \$2,683,171; and
- 2683 Palmer: \$246,365. *MTAB Dkt. 3.*

The CTAB hearing was held on November 8, 2023. Following the hearing, the CTAB modified the DOR's assessed values as follows:

- 2687 Palmer: \$1,551,214;
- 2685 Palmer: \$3,159,700;
- 2681 Palmer: \$4,915,500;
- 2677 Palmer: \$3,722,600;
- 2675 Palmer: \$2,762,900; and
- 2683 Palmer: \$272,700. *MTAB Dkt. 3.*

The DOR appealed to MTAB on December 8, 2023, per Mont. Code Ann § 15-2-301, requesting the following values:

- 2687 Palmer: \$5,266,500;
- 2685 Palmer: \$5,266,500;
- 2681 Palmer: \$6,193,300, which the DOR amended at the hearing to request \$5,120,100;
- 2677 Palmer: \$5,574,000, which the DOR amended at the hearing to request \$4,608,200;
- 2675 Palmer: \$4,737,593, which the DOR amended at the hearing to request \$4,423,900; and
- 2683 Palmer: \$1,315,300. *MTAB Dkt. 1; Ex. 19-A, 20-A, 21-A, 22-A, 23-A, 24-A.*

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The MTAB hearing was conducted in Helena on August 8, 2024, at which the following were present:

- a. John R. (Rick) Orizotti, Taxpayer Counsel; Teresa O’Keefe, Taxpayer’s Representative; Tom Stevens, Real Estate Appraiser; and
- b. Kristina Warren, DOR Counsel; Helen Greenberg, DOR Lead Appraiser; Jason Stevens, DOR Modeler; Michelle Staples, DOR 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.

Although each of the properties has a separate geocode and street address, all properties are part of a professional condominium complex owned by Mountain States Leasing Missoula, LLC. Taxpayer’s and DOR’s presentations at the hearing applied to all of the properties as a whole with a few minor exceptions. For this reason, this opinion encompasses the Board’s decision for all of the properties subject to these appeals. The properties have been assigned the following MTAB case numbers:

- 2687 Palmer: PT-2024-19;
- 2685 Palmer: PT-2024-20;
- 2681 Palmer: PT-2024-21;
- 2677 Palmer: PT-2024-22;
- 2675 Palmer: PT-2024-23; and
- 2683 Palmer: PT-2024-24.

**FINDINGS OF FACT**

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

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2. The properties that are the subject of this appeal are part of the Palmer Complex located on Palmer Street in Missoula. The Palmer Complex is a 17-acre complex which includes multiple properties with different geocodes, including nine separate office buildings, six of which are the subjects of these appeals. *MTAB Hr'g Tr. 7:11-8:10.*

**Taxpayer Valuation Method**

3. The Taxpayer's representative, Terry O'Keefe, testified that she calculated what she believed to be the value of each of the properties based on the Taxpayer's actual income and expenses for each building. *MTAB Hr'g Tr. 12:11-19:4.* She allocated the common area expenses based on either square footage or usage. *Id.* For example, she allocated janitorial expenses based on the clients that require Taxpayer to provide janitorial services. *Id.*
4. To support its calculations, the Taxpayer submitted its 2022 federal tax return and financial information as evidence of its income and expenses for the 2022 tax year. *Ex. 1, 2; MTAB Hr'g Tr. 10:8-12:7.*
5. Fee appraiser, Tom Stevens, testified on behalf of the Taxpayer arguing that the DOR erred in valuing the Subject Properties by valuing them as fee simple, rather than as leased fee since the Taxpayer has given up some of its rights by entering into long term leases with various tenants. *MTAB Hr'g Tr. 61:17-25.* He testified that the leases with the tenants that are government agencies are gross leases, meaning the Taxpayer is required to pay certain expenses, such as maintenance and janitorial in contrast to a triple net lease in which a tenant would pay certain expenses. *MTAB Hr'g Tr. 62:1-64:2.* Mr. Tom Stevens argued this causes the actual expenses to be higher than they would be with triple net leases. *Id.*

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**DOR Valuation Method**

6. The DOR values properties using models they create based on income and expense data voluntarily submitted by taxpayers. Each year, the DOR sends postcards and letters to all commercial property owners in Montana requesting income and expense information. *MTAB Hr'g Tr. 117:20-25.*
  
7. DOR Modeler, Jason Stevens, testified that the rent rates the DOR used to establish value for commercial properties in Missoula came from data submitted by 89 businesses in Missoula that voluntarily provided their income and expense data. *MTAB Hr'g Tr. 130:12-131:21.* The vacancy and expense information the DOR used to develop their models was derived from responses from 369 commercial property owners in the major seven areas that voluntarily responded to the DOR's request for information. *Id.* The major seven areas include Butte, Great Falls, Billings, Missoula, Helena, Bozeman, and Flathead (hereinafter referred to as the "Big Seven"). *Id.* Of the 369 properties that reported their information, 21 of them reported having vacancy. *Id.*
  
8. According to DOR testimony, there are about 4,000 to 5,000 businesses in Missoula. *MTAB Hr'g Tr. 74:10-12, 135:6-10.* Mr. Jason Stevens testified that the DOR initially looks at information voluntarily provided by taxpayers within a county to develop models, but if they do not receive enough responses, they will look to the Big Seven counties or statewide. *MTAB Hr'g Tr. 134:2-135:2.* They may also look beyond the typical two-year period in a valuation cycle, which is why their income model used information from 2018-2021 for the 2023/2024 valuation cycle. *MTAB Hr'g Tr. 133:14-22.* Mr. Jason Stevens testified that the DOR reviews information from third parties, such as CoStar, Sterling, and other advertisements, for rent ratings of properties listed for rent. *MTAB Hr'g Tr. 131:23-132:11.*
  
9. DOR Lead Appraiser, Helen Greenberg, testified as to the DOR's method of determining value using the income approach in mass appraisal. *MTAB Hr'g*

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*Tr. 75:19-76:2, 81:6-23.* Because the DOR uses mass appraisal to value property in Montana, they do not use individual taxpayers' income and expense data. *Id.* Rather, the DOR uses voluntarily reported income and expense data from taxpayers to calculate vacancy and expense percentages which are used to develop income models that will be used to value similarly situated commercial properties in particular area. *Id.* For office properties, the DOR allows expenses for management, utilities, insurance, reserves for replacement, maintenance, and miscellaneous expenses, which are analyzed by DOR modelers and broken down into percentages. *Id.* The DOR considers typical expenses under typical management to come up with their percentages which will be used to value commercial properties. *Id.* DOR modelers determined the expense variable for office properties, including the Subject Properties, for the 2023/2024 valuation cycle at 32.6%. *Ex. 19-D; MTAB Hr'g Tr. 75:19-76:2, 81:6-23.*

10. According to Ms. Greenberg, the DOR begins its calculation with potential gross rent as if 100% occupied, then applies a vacancy and collection percentage reduction to all properties even if the building is 100% occupied. *Id.* This calculation results in the effective gross income, which generally relates to actual income. *Id.* From there, the DOR subtracts expenses to get to net typical operating income, which is then divided by the capitalization rate to arrive at the value. *Id.*
11. The DOR calculates land values separately based on comparable sales. *MTAB Hr'g Tr. 76:13-21.* When utilizing the income method to value a property, the value of the land does not affect the overall value but is used to allocate the values between the land and the improvements. *Id.*
12. In addition to calculating the value of the Subject Properties using the income approach, the DOR also calculated the value using the cost approach, which determines the cost to replace the improvements as new less depreciation. *MTAB Hr'g Tr. 77:11-16.* Ms. Greenberg testified that in order to be within

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industry standards for mass appraisal, the DOR should be within a 20% window between values derived under the income approach and the cost approach. *MTAB Hr'g Tr. 77:23-78:8*. According to Ms. Greenberg, if the values reconcile, the DOR will generally use the income approach because it is the preferred method of valuation for commercial properties and a better indicator of market value. *Id.*

13. The building located at 2687 Palmer Street is 40,000 square feet. *Ex. 19-A*. The DOR calculated its value under the income approach at \$5,266,500 and the value under the cost approach at \$5,325,314. *Ex. 19-A; MTAB Hr'g Tr. 76:9-12, 77:15-16*.
14. The building located at 2685 Palmer Street is 40,000 square feet. *Ex. 20-A; MTAB Hr'g Tr. 9:19*. The DOR calculated its value under the income approach at \$5,266,500, and the value under the cost approach at \$5,334,384. *Ex. 20-A; MTAB Hr'g Tr. 92:17-23*.
15. The building located at 2681 Palmer Street is 38,888 square feet. *Ex. 21-A*. The DOR calculated its value under the income approach at \$5,120,000, and the value under the cost approach at \$6,145,974. *Ex. 21-A; MTAB Hr'g Tr. 97:12-16*. The DOR initially valued 2681 Palmer at approximately \$6.25 million because they used a capitalization rate of 6.25%, which was adjusted to 7.56% to be consistent with the capitalization rate used to value the other buildings within the Palmer Complex. *MTAB Hr'g Tr. 97:12-16, 137:17-25*. Because the DOR adjusted the capitalization rate, thereby adjusting the value, the differences between the values under the income approach and the cost approach exceeded the 20% window the DOR typically targets. *Id.* Ms. Greenberg testified that this is not a requirement, but an International Association of Assessing Officers (IAAO) standard, and she would only need to have a legitimate reason for the difference in values to be outside those parameters. *MTAB Hr'g Tr. 98:19-99:6*. She further testified that if she did not

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have a legitimate reason for there being a greater than 20% difference between the values under the income approach and the cost approach, she would likely default to the value under the cost approach. *MTAB Hr'g Tr. 99:8-100:17.*

16. The building located at 2677 Palmer Street is 35,000 square feet. *Ex. 22-A; MTAB Hr'g Tr. 9:10.* The DOR calculated its value under the income approach at \$4,608,200, and the value under the cost approach at \$5,494,714. *Ex. 22-A; MTAB Hr'g Tr. 99:8-100:17.* The DOR initially valued 2677 Palmer using the 6.25% capitalization rate but later adjusted it to 7.56% similar to the treatment for 2681 Palmer. *Id.*
  
17. The building located at 2675 Palmer Street is 33,600 square feet. *Ex. 23-A.* The DOR calculated its value under the income approach at \$4,423,900, and the value under the cost approach at \$4,737,593. *Ex. 23-A; MTAB Hr'g Tr. 101:22-102:24.* The DOR initially valued 2675 Palmer using the cost approach to value due to the property having had a partial tax exemption in a previous cycle. *Id.* The Taxpayer had applied for and been granted a property tax exemption for the portion of the building rented by The University of Montana through a grant with the Mansfield Center, which qualified for an exemption as an organization engaged in education as permitted under Montana law. *Id.* Upon review, the DOR changed the valuation method from the cost approach to the income approach because The University of Montana had vacated the space which negated the property tax exemption it had been granted. *Id.*
  
18. The building located at 2683 Palmer Street is 10,000 square feet. *Ex. 24-A; MTAB Hr'g Tr. 9:17-18.* The DOR calculated its value under the income approach at \$1,315,300 and \$1,497,988 under the cost approach. *Ex. 24-A; MTAB Hr'g Tr. 103:1-104:12.*
  
19. The DOR assigned a rent rating of 4 to all of the Subject Properties based on rent rating tables derived from information voluntarily provided by taxpayers in

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the market area. *MTAB Hr'g Tr. 78:13-24, 83:6-17*. The rent rating table used for these properties is specific to offices and includes nine ratings. *MTAB Hr'g Tr. 78:13-24*. A rent rating of 4 equates to \$16 per square foot. *Id.* Ms.

Greenberg testified that the DOR saw market rents around \$20-\$25 per square foot in the Missoula area for the 2023 reappraisal cycle, which would equate to a rent rating of 5 at \$19.25 per square foot. *MTAB Hr'g Tr. 79:10-80:16*. Ms.

Greenberg further testified that she chose a rent rating of 4 for the Subject Properties to account for the economic and functional obsolescence arguments that were brought up during a CTAB hearing from a prior cycle. *MTAB Hr'g Tr. 79:10-80:16, 113:12-18*. Ms. Greenberg also stated that another reason she chose a rent rating of 4 was because many of the government tenants are paying \$15.50 per square foot under their lease agreements with the Taxpayer, and a rent rating of 4 equates to \$16 per square foot. *MTAB Hr'g Tr. 113:19-22*.

20. The DOR presented evidence comparing the per square foot sales prices of comparable office buildings in Missoula during 2020 and 2021, as well as a separate comparison of per square foot sales prices of comparable office buildings that sold in 2022 and later. *Ex. F-19; MTAB Hr'g Tr. 104:15-107:3*. The evidence presented also included a per square foot breakdown of the values the DOR calculated on the Subject Properties under the income and cost methods to demonstrate that the values assigned to the Subject Properties was in line with the sales prices of comparable office spaces in Missoula during the valuation cycle. *Id.* Ms. Greenberg testified that while the DOR does not use the sales comparison approach to value commercial properties, she prepared Exhibit F to check the values the DOR arrived at when assessing the Subject Properties. *Id.*
21. Ms. Greenberg testified that the Taxpayer's calculations of value for the Subject Properties appeared to start with collected rents, while the DOR's calculations start with potential rents. *MTAB Hr'g Tr. 118:7-15*. She further

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testified that collected rents would be more like effective gross income in the DOR's calculations, thus, the Taxpayer and DOR were beginning their calculations from different points, so she was not able to reconcile the Taxpayer's calculations of value with the DOR's. *Id.*

22. Ms. Greenberg pointed out that although the Subject Properties are all part of the Palmer Complex, each of the Subject Properties is a separate property and may be sold individually. *MTAB Hr'g Tr. 123:3-8*. She testified that if the Palmer Complex was a single 17-acre property with multiple buildings, the DOR's approach to valuing it may have been different. *Id.*

**Capitalization Rate**

23. When valuing the Subject Properties, the Taxpayer's Representative testified that she used a 7.75% capitalization rate which she derived from analyzing the National Association of Realtors Metro Market Report for Missoula for the first quarter of 2022 (NAR Report). *Ex. 5; MTAB Hr'g Tr. 32:17-34:2*. The Taxpayer's Representative arrived at a capitalization rate of 7.75% by averaging the Missoula capitalization rate of 8.5% with the U.S. average rate of 7.0% as reported on the NAR Report. *Id.* The Taxpayer's Representative testified that she did not know what information National Association of Realtors used or how it calculated the capitalization rates shown in the NAR Report. *MTAB Hr'g Tr. 35:6-22*.
24. The DOR developed six capitalization rates for the 2023/2024 valuation cycle that are used across the state to value commercial properties in both rural and urban areas. *Ex. I; MTAB Hr'g Tr. 81:1-3, 93:15-21*. The DOR's capitalization rates include an effective tax rate which differs based on whether the property is considered urban or rural. *Id.* The DOR used an overall capitalization rate of 7.56% in calculating the value of the Subject Properties. *Ex. A; MTAB Hr'g Tr. 80:19-23*.

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25. The DOR selected their Urban II capitalization rate used for office properties because the Subject Properties are located in Missoula, one of the Big Seven urban areas. *Ex. I; MTAB Hr'g Tr. 107:6-109:5*. The Urban I capitalization rates mean there is minimal risk for an investor, whereas Urban III capitalization rates equate to a much higher risk for an investor. *Id.* Ms. Greenberg testified that Urban III capitalization rates are more typically used in outlying areas, such as Condon or Seeley Lake, that are in Missoula County and are thus considered urban but are outside of the Missoula city limits. *Id.* Ms. Greenberg testified that most office buildings in Missoula are valued using a capitalization rate 6.25%, but she used the 7.56% rate for the Subject Properties due to the higher vacancy in those properties. *MTAB Hr'g Tr. 113:12-18*.

**Vacancy**

26. The Taxpayer marketed the property for sale throughout 2022. *Ex. 11; MTAB Hr'g Tr. 46:18-49:6*. They received an offer to purchase from a national real estate firm for \$22,000,000 dated April 5, 2022. *Id.* The Taxpayer countered at \$23,000,000, but the real estate firm declined. *Id.* The Taxpayer listed the Palmer Complex for \$25,000,000 and received another offer for \$22,000,000, which the Taxpayer did not believe to be a legitimate offer. *Ex. 11, 14; MTAB Hr'g Tr. 46:18-49:6*. The Palmer Complex was listed for sale for approximately nine months before the Taxpayer removed the listing to focus on finding tenants. *MTAB Hr'g Tr. 49:20-50:6*.
27. The Taxpayer has marketed the Subject Properties for rent and renovated vacant spaces to attract new tenants. *MTAB Hr'g Tr. 37:9-39:24*. However, as tenants have vacated, the Taxpayer has not been able to attract new ones. *Id.*
28. Several of the Taxpayer's tenants are government agencies. *MTAB Hr'g Tr. 43:1-44:17*. The Taxpayer's Representative testified that while these tenants may be in long-term leases, many of the leases include clauses that allow the

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tenants to terminate the lease with thirty days' notice should the tenants lose funding. *Ex. 9; MTAB Hr'g Tr. 43:1-44:17*. According to the Taxpayer's Representative, these provisions may contribute to the property appearing too risky for many national investors looking to purchase a property. *Id.*

29. According to the Taxpayer's fee appraisal, occupancy of the Palmer Complex was 81.9% at the time of inspection, meaning the vacancy was 18.1%. *Ex. 10*. According to information submitted by the Taxpayer, the vacancy rate of the complex was 32% as of July 1, 2022, although this figure includes the vacancy percentage of one of the buildings in the complex that is not at issue in this appeal. *Ex. 7; MTAB Hr'g Tr. 36:23-25*. The NAR Report, which the Taxpayer used to calculate its own capitalization rate, lists a vacancy rate for office properties of 4.7% for the fourth quarter of 2021 and 4.3% for first quarter of 2022. *Ex. 5*. The NAR Report lists a market rent of \$23.90 per square foot for the fourth quarter of 2021 and \$24.00 per square foot for the first quarter of 2022. *Ex. 5*.
30. The Taxpayer's Representative testified that the Subject Properties have had an increased vacancy rate due to people working from home rather than in the office. *MTAB Hr'g Tr. 37:12-38:8*. She further testified that the parking lot for the complex is shared by all of the tenants, so there may not be parking in front of a specific building, such as the buildings located at 2687 Palmer and 2675 Palmer. *Id.* The Taxpayer Representative argued that the challenges with parking make it more difficult to attract tenants and cause the Subject Properties to suffer some economic obsolescence as a result. *Id.*
31. Mr. Tom Stevens also argued that the Subject Properties experienced higher vacancy due to the economic downturn and people working from home at the time of the appraisal. *MTAB Hr'g Tr. 62:2-64:2*. He further argued that the Palmer Complex was experiencing some functional obsolescence because it was built for single user and government office use with shared parking and

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this arrangement is not as desirable in the current market. *Id.* Mr. Tom Stevens testified that functional obsolescence can be measured by analyzing rent loss. *Id.* According to Mr. Tom Stevens, this will demonstrate how functional obsolescence affects the Subject Properties' values and why the potential buyers decided not to go through with the purchase of the Palmer Complex in 2022. *Id.*

32. The DOR used a vacancy and collection rate of 7.7% in valuing the Subject Properties based on the income model developed by the DOR from the income and expense information voluntarily provided by taxpayers each valuation cycle. *MTAB Hr'g Tr. 93:15-19.* Ms. Greenberg testified that if she had received vacancy information from the Taxpayer for the 2023/2024 valuation cycle, she may have been able to make an adjustment in the valuations for the Subject Properties, but she did not receive that information. *MTAB Hr'g Tr. 87:12-18.* She indicated that the Taxpayer could provide their 2022 data to the DOR to be used in developing the model for the 2025/2026 tax cycle, since the data used for the 2023/2024 cycle is based on information received regarding 2020 and 2021 income and expenses. *MTAB Hr'g Tr. 82:1-6.* However, because information must be voluntarily provided to the DOR for that purpose, the DOR would need the Taxpayer's permission to include it in their models. *Id.*
33. Ms. Greenberg testified that if the DOR has documentation of large vacancies, they may adjust the investment class, the capitalization rate, or the rent rating to reflect a higher risk since those properties may need to offer a below market rent. *MTAB Hr'g Tr. 111:22-112:7.* However, she testified this is not something that is typically done because it creates inequity. *Id.* Ms. Greenberg testified that she is able to make adjustments if there is a reason for the vacancy that is presented to her, such as a defect in the building. *MTAB Hr'g Tr. 111:13-23.* She stated that she does not make determinations about business decisions, but in the absence of evidence of a defect, she must conclude that

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vacancy may be due to business or management decisions, which is not a valid reason to adjust the value of a property. *MTAB Hr'g Tr. 113:7-11.*

**Taxpayer's Fee Appraisal**

34. In order to refinance their loan, the Taxpayer's bank required a fee appraisal to be prepared on the Palmer Complex. *Ex. 10; MTAB Hr'g Tr. 44:20-46:2.* The fee appraisal, which has an effective date of January 3, 2022, values the Palmer Complex at \$20,100,000. *Id.*
  
35. DOR Area Manager, Michelle Staples, testified that she believed the fee appraisal presented by the Taxpayer supports the DOR's values. *Ex. 9; MTAB Hr'g Tr. 142:5-143:16.* She pointed out that the fee appraisal used a vacancy rate of 4.9% as compared to the DOR's vacancy rate of 7.7%. *Id.* She further testified that the fee appraiser's expense ratio for 2019 was 43.4%, and removing the real estate tax expense, as the DOR does, yields a rate of 30.5%. *Id.* For 2020, the fee appraiser's expense ratio was 43.6% before removing the real estate taxes. *Id.* For 2021, the fee appraiser's total expense was 38.6%, and removing the real estate tax yields a rate of 28.1%. *Id.* The DOR's used an expense ratio of 32.6%. *MTAB Hr'g Tr. 81:1-3.* Ms. Staples further testified that if she used the numbers from the fee appraiser's income analysis and removed the real estate taxes, and divided by a capitalization rate of 7% as the fee appraiser did, the values would calculate to \$26.2 million for 2019, \$27.5 million for 2020, and \$31.4 million for 2021 for the entire Palmer Complex. *Ex. 9; MTAB Hr'g Tr. 142:5-143:16.* Ms. Staples testified that the DOR's valuation of all of the properties within the complex combined, including those not under appeal, adds up to \$31.4 million. *Id.*
  
36. Ms. Staples further testified that the DOR used a capitalization rate of 6.38% with an effective tax rate of 1.18% for an overall capitalization rate of 7.56%. *MTAB Hr'g Tr. 143:17-145:2.* Of the properties the fee appraiser used to calculate the capitalization rate, there were two properties located in Montana,

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both in Billings. *Id.* The capitalization rate for one of the buildings was 8.3%. *Id.* According to Ms. Staples, that building was quite worn and represented a higher risk for a buyer. *Id.* The capitalization rate for the other was 6% and was similar to the Subject Properties because it was a federal building with long term leases. *Id.* This property was one building whereas the Subject Properties are multiple separate buildings. *Id.* Ms. Staples testified that she was surprised that the fee appraiser did not consider two Missoula commercial sales in her analysis because they were sold within the timeframe for the fee appraisal and for the lien date for the DOR's valuation. *Id.*

**JURISDICTION AND STANDARD OF REVIEW**

37. 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.*
38. 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.
39. 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**

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

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41. “All taxable property must be appraised at 100% of its market value....” *Mont. Code Ann. § 15-8-111*.
42. “[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)*.
43. 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).
44. 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.
45. “‘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)).
46. 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

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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*.

47. In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.” *Mont. Code Ann. § 1-2-102*.
  
48. “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)).
  
49. “[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.
  
50. 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)*.
  
51. “...[T]he Montana tax appeal 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 the appraisal was conducted within 6 months of the valuation date. If the Montana board does not use the appraisal provided by the taxpayer in conducting the appeal, the Montana board shall provide to the taxpayer the reason for not using the appraisal.” *Mont. Code Ann. § 15-2-301(3)(a)*.

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52. 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**

53. For the reasons set forth below, the Board reverses the CTAB's determination as to the value of all six of the Subject Properties that are part of these appeals and upholds the DOR's valuations for the Subject Properties for the 2023/2024 valuation cycle.
54. The Taxpayer presented evidence and testimony to argue that the Subject Properties were experiencing functional obsolescence and that their values should be lowered as a result. We agreed with the Taxpayer that the Subject Properties present a unique situation due to their inclusion in a larger complex and the challenges the Taxpayer has experienced in trying to fill vacancies. However, we find that the DOR acknowledged and addressed these issues by using the lower rent rating of 4 and the higher Urban II capitalization rate in valuing the Subject Properties, which reduced their value.
55. This Board reviewed the fee appraisal submitted by the Taxpayer and heard the testimony of the Taxpayer's and DOR's witnesses. The fee appraisal included one value for all of the combined parcels in the Palmer Complex owned by the Taxpayer, while the DOR values each geocode separately. The fee appraisal calculated the capitalization rate used to value the Palmer Complex by analyzing the capitalization rate of several buildings sold within the time period of the DOR's lien date, including many sales that occurred outside of Montana. We also note that there were two sales of large office spaces in Missoula during the time period of the DOR's lien date that were not considered by the fee

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appraisal. No evidence or testimony was presented to explain why the fee appraiser did not consider these sales. We agree with the DOR that these sales support the DOR's values.

56. Additionally, had the fee appraisal treated real estate tax expenses and capitalization rates the same as DOR, we believe the fee appraisal value would have been more consistent with the DOR's value. For these reasons, we decline to adopt the value set forth in the fee appraisal.
57. The Taxpayer argued that the DOR should have used the Taxpayer's actual income and expenses as they provide the best indication of value. However, the DOR does not individually value property, but instead uses mass appraisal to value all properties in Montana. The Taxpayer provided income and expense information for 2022, which is information that may be used in building the model for the 2025/2026 valuation cycle but is not applicable for use in the 2023/2024 cycle. The DOR invites commercial property owners to submit income and expense information for use in building DOR models which will be used to value all commercial property in Montana. Because the DOR utilizes mass appraisal by law, they take into consideration all information submitted to calculate rent ratings, expense ratios, vacancy and collection ratios, and capitalization rates in building valuation models. We understand the Taxpayer's concern that only 369 properties from the Big Seven in Montana responded to the DOR's requests when the DOR estimates that there are approximately 4,000 to 5,000 commercial properties in Missoula alone. However, submissions from taxpayers are provided voluntarily, and the DOR can only use the data they receive in developing their valuation models.
58. The DOR invites all commercial property owners to voluntarily submit income and expense data each year for use in creating the models it will use to value all Montana commercial properties. Although the Taxpayer provided income and expense data to the DOR, the data they provided for 2022 could be used in

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developing the models for the 2025/2026 valuation cycle should the Taxpayers permit the DOR to use it. The DOR testified that it does not include this information in their models without taxpayers' permission so they would not have automatically included information they received for a CTAB hearing in a prior cycle for use in the current cycle's model. The Taxpayer may voluntarily provide their income and expense information for use in developing a future model should they wish to. However, it is not appropriate for the DOR to disregard market trends in mass appraisal, and substituting the Taxpayer's actual income and expense information, rather than using it in developing a model, would be inequitable as the DOR does not perform fee appraisals.

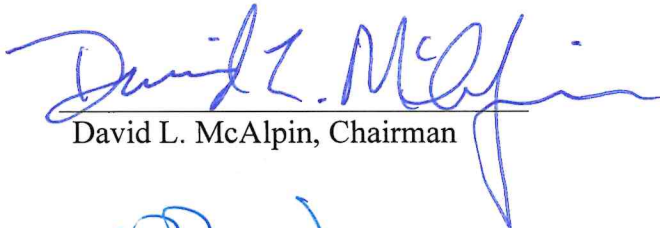
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**ORDER**

59. The CTAB's determination of value is reversed, and DOR's appeal is granted for MTAB Case Numbers PT-2023-19, 20, 21, 22, 23, and 24.
60. DOR is ordered to set the values for the Subject Properties as follows:
- a. 2687 Palmer: \$5,266,500;
  - b. 2685 Palmer: \$5,266,500;
  - c. 2681 Palmer: \$5,120,100;
  - d. 2677 Palmer: \$4,608,200;
  - e. 2675 Palmer: \$4,423,900; and
  - f. 2683 Palmer: \$1,315,300.

Dated this 5th day of November 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 November 5, 2024, to:

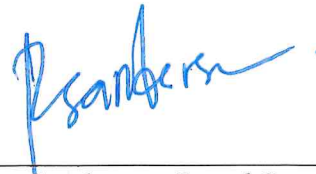
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Rina Sanderson, Legal Secretary