SENATE TAXATION
EXHIBIT NO. 2
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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

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COVENANT INVESTMENTS, INC., Petitioner, v. STATE OF MONTANA, DEPARTMENT OF REVENUE, Respondent.	Cause No. DV-11-913A **ORDER ON PETITION FOR JUDICIAL REVIEW AND DECLARATORY JUDGMENT**

On September 23, 2011, Petitioner Covenant Investments, Inc. (Covenant), filed a Petition for Judicial Review pursuant to § 15-2-303, MCA, requesting review of a decision of the State Tax Appeal Board (STAB) and further requesting a declaratory judgment pursuant to § 15-1-406, MCA, that the portions of Montana law preventing the Montana Department of Revenue (Department) from adjusting property tax values during the interim of a six-year appraisal cycle are unconstitutional as applied to Petitioner and other similarly situated taxpayers. The parties have fully briefed their respective positions regarding the Petition for Judicial Review. Additionally, Covenant has moved for summary judgment on its Petition for Declaratory Judgment and the

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parties have fully briefed that motion as well. The Court held a hearing on the Petition on August 15, 2012.

BACKGROUND

This matter arises out of an appraisal and assessment by the Department of unimproved lots Covenant developed and continues to own in the Loyal Gardens Subdivision (Loyal Gardens), in the City of Bozeman, Gallatin County, Montana. Section 15-7-111, MCA, requires the Department to administer and supervise the appraisal of all residential land and improvements (class four property as defined in § 15-6-134, MCA) every six years. The Department was required to reappraise all residential property in the State as of July 1, 2008. Section 15-7-111, MCA; ARM 42.18.124. The appraised values established by the Department were placed on the tax rolls for the tax year beginning January 1, 2009. Section 15-7-111, MCA; ARM 42.18.124. Taxes will be assessed on a portion of the property's appraised value through tax year 2014. Section 15-6-134, MCA. Covenant's Loyal Gardens property in Gallatin County was reappraised as part of the Department's most recent reappraisal effort. Petition, p. 2, ¶ 7. The Department valued Covenant's properties using a sales comparison method of valuation using a computer assisted land pricing model (CALP). STAB Order, p. 2, ¶ 3; DOR hearing exhibit "B." In addition, the Department applied an influence factor of one hundred thirty-five percent to increase the value of Loyal Gardens. STAB Order, p. 3; Ex. C, STAB Hr'g; STAB Hr'g Tr. 17:7-20.

Covenant timely challenged the values established by the Department for tax year 2009. Petition, p. 2, ¶ 10. Additionally Covenant sought to have the value of its property further reduced for tax year 2010. Petition, p. 2, ¶ 10. It argued that the

existing property revaluation process set out in Title 15 of the Montana Code Annotated violated its right to equal protection and the provisions of Article VIII, Sections 3 and 4 of the Montana Constitution, because the process treated Covenant differently than other property taxpayers and caused it to bear a disproportionate share of Montana's tax burden. Covenant Notice of Cross Appeal, p. 1; Covenant's Response Brief, STAB Appeal, p. 4. Covenant alleged that its property values had declined significantly between the 2008 valuation date and November of 2009. Notice of Cross Appeal, p. 1. Based on this alleged change in value, Covenant argued its property was being taxed on a value that exceeded the actual fair market value of those properties. Notice of Cross Appeal, p. 1.

In support of its constitutional claim, Covenant offered appraisals conducted by W. Tony Bishop in February of 2008 and November of 2009 (2008 Bishop Report and 2009 Bishop Appraisal, respectively, or the Bishop Appraisals) (STAB Hearing Exhibits 3 and 6), and a report authored by Almy, Gloudemans, Jacobs & Denne (the Gloudemans report) (STAB Hearing Exhibit 2). The Gallatin County Tax Appeal Board (GCTAB) heard Covenant's challenge on August 19, 2011. *See, generally,* GCTAB Transcript. The GCTAB reduced the aggregate value of Covenant's properties as determined in the original assessment from $17,600,988 to $13,745,684 for tax year 2009, but declined to further reduce the values for tax year 2010 or rule on Covenant's constitutional challenge to the tax statutes. STAB Order p. 1; GCTAB Decision.

The Department appealed the GCTAB's decision to STAB and Covenant cross-appealed. *See, generally,* Department's Notice of Appeal to STAB; Covenant Notice of Cross Appeal. STAB heard the appeals on May 19, 2011. STAB Order, p.1. The

Board modified the GCTAB's valuation decision and ordered the Department to further reduce Covenant's property values for tax year 2009. STAB Order, p. 15. STAB refused, however, to further reduce Covenant's values for 2010 on the basis that the tax statutes did not provide for mid-cycle reappraisals of property values for class four properties and Covenant's case did not present "sufficient legal authority for [STAB] to determine that the statutory framework set by the Legislature to be [*sic*] unconstitutional." STAB Order, p. 14.

Covenant has appealed STAB's decision relating to its constitutional challenge to this Court. Neither party has challenged STAB's decision regarding the 2009 valuation of Covenant's property. As a result, the issues before this Court on Covenant's Petition are Covenant's request for a declaratory ruling that the property reappraisal system set out in § 15-7-111, MCA, is unconstitutional as applied to Covenant and whether STAB's determination that Covenant failed to provide adequate legal authority to prove Montana's property tax process unconstitutional—and its concomitant refusal to approve a mid-cycle reappraisal of Covenant's property—is correct and supported by facts in the record.

STANDARDS FOR JUDICIAL REVIEW AND DECLARATORY JUDGMENT

Section 15-2-303, MCA, authorizes a party aggrieved by a final decision of the State Tax Appeal Board to petition for judicial review of that decision. Additionally, § 15-2-302(5), MCA, provides that

> [t]he decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the

(b) a tax authorized by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the date the notice of the tax due was sent to the taxpayer or, in the case of an assessment covered by the uniform dispute review procedure set forth in 15-1-211, within 90 days of the date of the department director's final decision. The court shall consolidate all actions brought under subsection (1) that challenge the same tax. The decision of the court applies to all similarly situated taxpayers, except those taxpayers who are excluded under 15-1-407.

(3) The taxes that are being challenged under this section must be paid under protest when due as a condition of continuing the action. Property taxes are paid under protest as provided in 15-1-402. All other taxes administered by the department, except estate taxes, are paid under protest by filing timely claims for refund and by following the uniform dispute review procedures of 15-1-211. Estate taxes are paid under protest by following the procedures set forth in Title 72.

(4) The remedy authorized by this section may not be used to challenge the:

(a) market value of property under a property tax unless the challenge is to the legality of a particular methodology that is being applied to similarly situated taxpayers; or

(b) legality of a tax other than a property tax or estate tax unless the review pursuant to 15-1-211 has been completed.

(5) The remedy authorized by this section is the exclusive method of obtaining a declaratory judgment concerning a tax authorized by the state or one of its subdivisions. The remedy authorized by this section supersedes the Uniform Declaratory Judgments Act established in Title 27, chapter 8. This section does not affect actions for declaratory judgments under 2-4-506.

Additionally, § 15-1-407(1), MCA, provides that, with certain exceptions not applicable in this instance, "an action pursuant to 15-1-406 is subject to the provisions of Title 27, chapter 8." Section 27-8-202, MCA, provides that

any person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have

determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

DISCUSSION

1. Petition for Declaratory Judgment

Covenant has requested a declaratory ruling from the Court that § 15-7-111, MCA, is unconstitutional as applied to Covenant because the statute violates its constitutional right to equal protection. Statutes, including those that govern property reappraisal, are presumed to be constitutional and courts must avoid an unconstitutional interpretation if possible. *Montanans for the Responsible Use of the Sch. Trust v. Montana ex rel. Bd. of Land Comm'r.*, 1999 MT 263, ¶ 1, 296 Mont. 402, 989 P.2d 800. The question a court must ask is not whether it is possible to condemn the statute or statutory scheme, but whether it is possible to uphold it. *Snidow v. State Board of Equalization*, 93 Mont. 19, 31, 17 P.2d 68, 71 (1932). A party challenging the constitutionality of a statute or statutory scheme bears the burden of proving, beyond a reasonable doubt, that the statute or scheme is unconstitutional. *Roosevelt v. Department of Revenue*, 1999 MT 30, ¶ 26, 293 Mont. 240, 975 P.2d 295.

Article II, Section 4 of the Montana Constitution and Article XIV, Section 1 of the United States Constitution establish the right to equal protection under the law. No distinction exists between the protections afforded by both constitutions. *Department of Revenue v. PPL Montana, LLC*, 2007 MT 310, ¶ 29, 340 Mont 124, 172 P.3d 1241. Both provisions demand that similarly situated persons should receive like treatment. *Blehm v. St. John's Lutheran Hospital, Inc.*, 2010 MT 258, ¶ 23, 358 Mont. 300, 246 P.3d 1024.

Courts review equal protection challenges using a three-step analysis. *Blehm*, ¶ 23. "Resolution of an equal protection challenge to a statute is determined by identifying the classes of persons involved; by determining the appropriate level of scrutiny; and applying the appropriate level of scrutiny to the situation involved." *Blehm*, ¶ 23. Covenant concedes that, for tax equalization issues, the appropriate level of scrutiny is the rational basis test. *See Kottel v. State*, 2002 MT 278, ¶ 52, 312 Mont. 387, 60 P.3d 403. "Under the rational basis test, the law or policy must be rationally related to a legitimate government interest." *Snetsinger v. Montana University System*, 2004 MT 390, ¶ 19, 325 Mont. 148, 104 P.3d 445.

To prove that the relevant statutes are unconstitutional as applied to Covenant, Covenant must prove that those statutes somehow treat it differently than other taxpayers. If it cannot be shown that Covenant has actually been treated differently than other similarly situated taxpayers, any as-applied constitutional analysis by the Court of the challenged statutes would be purely speculative.

Article VIII, Section 3 of the Montana Constitution requires the Department to "appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law." The plain language of this provision vests in the Legislature the duty to define the tax administration system. Legislative acts are presumed to be within the acting legislature's constitutional power. *McGowen v. Maryland*, 366 U.S. 420, 425-26, 6 L. Ed. 2d 393, 81 S. Ct 1101 (1961). This presumption applies despite the fact that, in practice, the laws can result in some inequality. *McGowen*, 366 U.S. at 425-26. In this case, the Montana Legislature enacted § 15-7-111, MCA, requiring the Department to reappraise class three, four and ten properties once every six years.

Article VIII, Section 4 of the Montana Constitution requires property values to be equalized. Section 4 mandates that "all taxing jurisdictions shall use the assessed valuation of property established by the state." The Legislature exercised its prerogative to define the scope of equalization necessary by adopting § 15-7-112, MCA. This statute requires that "[t]he same method of appraisal and assessment shall be used in each county of the state." Section 15-7-112, MCA, requires similar properties to have "substantially equal values at the end of each reappraisal cycle."

Covenant contends that § 15-7-111, MCA, violates its equal protection rights by causing Covenant to bear a disproportionate share of Montana's tax burden by taxing Covenant on an overstated property value, while taxing other Montana taxpayers based on fair or understated values. Covenant relies heavily on the Montana Supreme Court's decision in *Roosevelt v. Department of Revenue*, 1999 MT 30, 51, 293 Mont. 240, 975 P.2d 295. Covenant also relies on *Department of Revenue v. Barron*, 245 Mont. 100, 799 P.2d 533 (1990), in support of its argument that application of § 15-7-111, MCA, under the circumstances presented here violates Covenant's constitutional right to equal protection. The Department responds that Covenant's constitutional challenge must fail because Covenant has failed to provide sufficient evidentiary support for its assertion that the tax statutes treat it differently than other similarly situated taxpayers.

In *Roosevelt*, the Supreme Court addressed the constitutionality of a statute providing for an annual 2% phase-in of changes in property tax valuations as appraised in 1997. *See* § 15-7-111(1), MCA (1997). The Supreme Court determined the application of the law impermissibly created three classes of taxpayers: (1) those assessed based on a value greater than fair market value because their property value

declined from 1996 to 1997; (2) those assessed based on fair market value because their property values did not change; and (3) those assessed based on a value lower than fair market value because their property increased in value from 1996 to 1997. *Roosevelt*, ¶¶ 33-36.

The Supreme Court held that creating a class of property owners "assessed on a basis greater than the market values of their property while other property owners are assessed based on the actual, or less than the actual market values of their property" violates equal protection because it "causes the property owners in the first class to pay a disproportionate share of this state's property taxes." *Roosevelt*, ¶¶ 33-36. The Supreme Court also held that assessing property tax based on an inflated valuation is not rationally related to the legislative purpose behind § 15-7-111, MCA. In the district court, the Department itself identified the objectives of § 15-7-111, MCA, as expressly stated by the legislature in § 15-10-401, MCA:

> (1) The state of Montana's reliance on the taxation of property to support education and local government has placed an unreasonable burden on the owners of all classes of property described in Title 15, chapter 6, part 1.
>
> (2) Except as provided in 15-10-412, the people of the state of Montana declare that it is the policy of the state of Montana that no further property tax increases be imposed on property.

Roosevelt, ¶ 37. In response, the Supreme Court stated "we conclude that taxing property owners . . . based on 124% of the market value of his property, while taxing others in the state at less than the full market value of their property, is not rationally related to those objectives." *Roosevelt*, ¶ 38. Section 15-10-401, MCA, has not been amended in the time since *Roosevelt* was decided to change the stated objectives with regard to taxation of property in Montana.

Covenant asserts that § 15-7-111, MCA, as applied to Covenant in this case, is unconstitutional under the standard set out in *Roosevelt*. Covenant contends that, as in *Roosevelt*, the application of § 15-7-111, MCA, creates three classes of taxpayers within the subset of class four residential property owners. According to Covenant, those three classes are: 1) those property owners assessed based on a value greater than fair market value because their property value declined from July 1, 2008 to the present; 2) those assessed based on fair market value because their property values did not change; and 3) those assessed based on a value lower than fair market value because their property increased in value from July 1, 2008 to the present. Under its analysis, Covenant falls into the first classification, which forces Covenant to bear a disproportionate share of Montana's property taxes and thereby violates Covenant's equal protection rights in a similar manner as the property owner in *Roosevelt*.

At the outset, the Court notes a clear factual distinction between the challenged application of the tax statute in *Roosevelt* and the application of the statute that Covenant challenges here. In *Roosevelt*, the appellant challenged the method of applying the phase-in of changes in property values as determined at the time the property was revalued by the Department. Here, Covenant is no longer challenging the Department's initial revaluation of its property as of July of 2008, nor is it challenging any percentage phase-in process of a change in value as of July of 2008 from any prior valuation. Rather, Covenant is challenging the statute's failure to provide for any revaluation of class three, four or ten properties during the interim of the six-year appraisal cycle. The Court concludes, however, that this factual distinction does not render *Roosevelt* inapplicable to the outcome here.

In *Roosevelt*, the Montana Supreme Court quoted with approval language from the United States Supreme Court in *Allegheny Pittsburgh Coal Co. v. County Commissioners of Webster County, West Virginia*, 488 U.S. 336, 343, 109 S.Ct. 633, 638 (1989) as follows:

> The use of a general adjustment as a transitional substitute for an individual reappraisal violates no constitutional command. As long as general adjustments are accurate enough over a short period of time to equalize the differences in proportion between the assessments of a class of property holders, the Equal Protection Clause is satisfied. Just as that Clause tolerates occasional errors of state law or mistakes in judgment when valuing property for tax purposes, it does not require immediate general adjustment on the basis of the latest market developments. In each case, the constitutional requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners.

Roosevelt, ¶ 45. Thus, the Montana Supreme Court recognized that temporary disparities will exist in a six-year reappraisal cycle such as Montana's, but that such temporary inequities do not violate equal protection if equity is seasonally attained.

The Supreme Court has made similar statements in previous cases addressing constitutional challenges to Montana's tax statutes. For example, in *Patterson v. Department of Revenue*, 171 Mont. 168, 176, 557 P.2d 798, 802 (1976), the Supreme Court stated that

> [i]t must be recognized that in any cyclical revaluation plan temporary disparities within the cycle between individual property valuations both within the county and between counties are inevitable. Nonetheless such cyclical plans have been uniformly upheld against uniformity and equal protection attacks under state and federal constitutional provisions in the absence of intentional, systematic, arbitrary or fraudulent discrimination.

Similarly, in *Larson v. State and Department of Revenue*, 166 Mont. 449, 455, 534 P.2d 854, 857 (1975), the Supreme Court stated that "we are aware of the abundance of

authority which finds no violation of constitutional or statutory mandates in the temporary inequalities which accompany a cyclical plan of reappraisal."

Covenant, however, specifically points to the Montana Supreme Court's statement in *Barron* that the Department "has the authority, when acting under its power to equalize, to change the taxable value of property in this state within an appraisal cycle to comply with its constitutional mandate to tax on a uniform basis." *Barron*, 245 Mont. at 111, 799 P.2d at 540. The Supreme Court further stated in *Barron* that, notwithstanding the general rule, temporary inequities violate the Montana and United States Constitutions under certain circumstances. This exception applies when there is "no way of knowing whether the inequities in valuations . . . are temporary or not." *Barron*, 245 Mont. at 111, 799 P.2d at 539. As a result, although the inequities "might be rectified by the values found at the end of the current revaluation cycle," if the values mitigate the problem at all, they would not be implemented until the following appraisal cycle began. *Barron*, 245 Mont. at 111, 799 P.2d at 539. Under these circumstances, the Supreme Court held that overstated property values causing some taxpayers to shoulder a disproportionate share of property tax violated equal protection and due process requirements, as well as Montana's equalization principles. *Barron*, 245 Mont. at 111, 799 P.2d at 540. Based on this statement in *Barron*, Covenant asserts that the general rule that temporary inequities which accompany a cyclical plan of reappraisal do not render the entire reappraisal plan unconstitutional does not apply in this case.

The Court notes a similar factual distinction between the present case and *Barron* as is evident in *Roosevelt*. In *Barron*, the taxpayer was challenging the methodology by which the Department made its initial appraisal of her property at the

outset of a five-year revaluation cycle. The Supreme Court determined, as in *Roosevelt*, that the manner in which the initial appraisal to determine value at the outset of a revaluation cycle is conducted must be nondiscriminatory and not result in a situation where any class of property owner bears a disproportionate share of the tax burden. As stated above, here Covenant is no longer disputing the Department's initial valuation of its property at the outset of the statutory six-year revaluation cycle, but rather is asserting that the statute is unconstitutional because the Department is not required or authorized to conduct mid-cycle revaluations in instances where property values may have increased or decreased since the initial valuation.

Notwithstanding the factual distinctions regarding the point in time during the reappraisal cycle that the taxpayer raised the issue regarding the valuation of the property being taxed, the clear statement by the Montana Supreme Court in both *Roosevelt* and *Barron* is that taxing a Montana residential property owner on a value which exceeds the actual market value of the property is constitutionally impermissible.

> [W]e conclude that taxing property owners . . . based on 124% of the market value of his property, while taxing others in the state at less than the full market value of their property, is not rationally related to [the] objectives [stated in § 15-10-401, MCA].

Roosevelt, ¶ 38.

Furthermore, the Montana Supreme Court has stated that, while the general rule is that temporary inequities in property valuation do not violate the Montana and United States Constitutions, the Department

> has the authority, when acting under its power to equalize, to change the taxable value of property in this state within an appraisal cycle to comply with its constitutional mandate to tax on a uniform basis.

Barron, 245 Mont. at 111, 799 P.2d at 540.

Thus, the Court agrees with Covenant that the failure to provide for mid-cycle reappraisals within § 15-7-111, MCA, can violate a residential property taxpayer's equal protection rights by causing that taxpayer to bear a disproportionate share of Montana's tax burden by taxing on an overstated property value, while taxing other Montana taxpayers based on fair or understated values. Assessing property taxes based on an inflated property valuation is not rationally related to the legislative purpose behind § 15-7-111, MCA. *See Roosevelt*, ¶ 38. The Court further observes that, if Covenant were required to pay property taxes on an overstated property value throughout the 6-year appraisal cycle, with the property values not reduced until the next tax-cycle reappraisal process, there is no procedure or remedy within the tax statutes by which Covenant could recoup those overpayments.

As noted above, the Department argues that Covenant has failed to establish a sufficient factual basis to support its claim that the lack of a mid-cycle reappraisal mechanism in § 15-7-111, MCA, subjects Covenant to disparate treatment and a disproportionate tax burden, thereby violating its right to equal protection as applied in this case. With regard to factual support of its "as applied" challenge to § 15-7-111, MCA, Covenant relies primarily on the 2008 Bishop Report, the 2009 Bishop Appraisal and the Gloudemans Report.

The 2008 Bishop Report and 2009 Bishop Appraisal establish that the value of Covenant's Loyal Gardens property decreased in the approximately 16-month time period following the Department's July 1, 2008, valuation. Specifically, the 2009 Bishop Appraisal states that the Loyal Gardens values were 36.5 percent lower on November 3, 2009, than they were on February 14, 2008. (STAB Order, p.7; Exs. 3 and 6, STAB

Hr'g). Indeed, the Department does not dispute the fact that the value of Covenant's property decreased subsequent to July of 2008 when the Department valued the property.

The Gloudemans Report was the result of a study commissioned by the Department to "examin[e] the decline in property values across the state following the valuation in July, 2008 up to June, 2010." (STAB Order, p. 8; Ex. 2, STAB Hr'g). The Gloudemans Report states that "[w]hile the picture remains generally good, changing market conditions have resulted in areas of under-valuation and, more seriously, over-valuation, particularly for residential properties in certain parts of the state." (Ex. 2, p. 2, STAB Hr'g). The Gloudemans Report further states there has been a significant decline in value of some areas of Montana, "resulting in assessment levels well above 100% of market value." (Ex. 2, p. 1, STAB Hr'g.) "[The] report identifies the decline in Bozeman as 21.9 percent, one of the highest in the state . . . ." (STAB Order, p. 8.) Conversely, other Montana property values have remained the same or have slightly increased in value. (Ex. 2, pp. 10, 11-12, 15-17, 18, 23-25, STAB Hr'g.)

The Department asserts that the Gloudemans Report is of a generic nature and does not provide specifics regarding how Covenant's property valuation compares specifically with other properties. While this assertion may be correct, the Court concludes that the Gloudemans Report, in conjunction with the 2009 Bishop Appraisal, establishes that the value of Covenant's Loyal Gardens property decreased between July 1, 2008, and November 3, 2009, while the value of some other residential properties throughout Montana has either increased or remained essentially the same during the same time period. Furthermore, it does not appear that this decrease in

value is temporary or part of a typical cyclical fluctuation. The Court further concludes, therefore, that the 2008 Bishop Report, the 2009 Bishop Appraisal and the Gloudemans Report provide a sufficient factual basis on which to determine that Covenant has been subject to disparate treatment in the application of § 15-7-111, MCA, in that the statute has caused Covenant to bear a disproportionate share of Montana's tax burden by taxing Covenant on an overstated property value, while taxing other Montana taxpayers based on fair or understated values.

Based on the above, the Court concludes that Covenant has met its burden of establishing, beyond a reasonable doubt, that § 15-7-111, MCA, as applied to Covenant, is unconstitutional by failing to provide for a mid-cycle reappraisal of Covenant's residential property and thus causing Covenant to pay a disproportionate share of property taxes. Therefore, the Court further concludes that Covenant is entitled to judgment as a matter of law on its Petition for Declaratory Judgment and that its Motion for Summary Judgment in that regard should be granted.

2. Petition for Judicial Review

Covenant also has Petitioned for Judicial Review of STAB's decision refusing to reduce Covenant's property values for 2010 on the basis that the tax statutes did not provide for mid-cycle reappraisals of property values for class four properties and concluding that Covenant's case did not present "sufficient legal authority for [STAB] to determine that the statutory framework set by the Legislature to be unconstitutional." *See* STAB Order, p. 14. The Court has concluded above that Covenant has established beyond a reasonable doubt that § 15-7-111, MCA, is unconstitutional as applied to Covenant by failing to provide for mid-cycle revaluations of class four

properties. As a result, the Court must conclude that STAB's determination that Covenant did not provide sufficient legal support for its contention that § 15-7-111, MCA, is unconstitutional as applied in this instance because the statute does not authorize mid-cycle revaluations was erroneous. Therefore, the Court further concludes that Covenant's Petition for Judicial Review must be granted and STAB's decision must be reversed.

Therefore, **IT IS HEREBY ORDERED** as follows:

1) Covenant's Motion for Summary Judgment is GRANTED and its Petition for Declaratory Judgment also is GRANTED; and

2) Covenant's Petition for Judicial Review is GRANTED and STAB's July 22, 2011 Order is REVERSED. The Department is directed to conduct a mid-cycle reappraisal of the value of Covenant's real property for the 2010 tax year.

Dated this 2nd day of November, 2012.

HON. HOLLY BROWN
District Judge

cc: Michael W. Green/D. Wiley Barker, Esq.
Michele R. Crepeau/Amanda L. Myers, Esq.
emailed 11/2/12