

KYLE AUSTIN,

*Appellant,*

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

*Respondent.*

CASE No: PT-2019-27

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, ORDER  
AND OPPORTUNITY FOR  
JUDICIAL REVIEW**

**STATEMENT OF THE CASE**

This case concerns a 2.1-acre, vacant parcel of land in a commercially zoned area in Havre, Montana. It was purchased by the appellant Kyle Austin in 2016 for \$150,000. In 2019 the Department of Revenue appraised the land at a value of \$138,584, and Mr. Austin has contested this value as too high because the Department’s previous appraisal, made in 2017, was \$34,644. He has requested an appraised value of \$10,000. Mr. Austin’s county tax appeal was denied. He timely appealed to the State Board, and a hearing was held on June 11, 2020. Mr. Austin has brought this appeal on the belief that his federal and constitutional rights have been violated. He also believes that the new higher value for 2019 is a result of the classification of the land having been erroneously changed to commercial from residential yielding a higher value calculation. The evidence shows that this is not the case and that the Department made no error in classification or appraisal. We find for the Department of Revenue and uphold the valuation and classification of Mr. Austin’s property.

### **ISSUE PRESENTED**

The issue before this Board is whether Mr. Austin's land was properly classified as a commercial parcel and whether the 2019 appraised value of \$138,584 is accurate.

### **PROPERTY DESCRIPTION**

The property in this appeal is situated in the city of Havre. It has a geocode of 12-4440-01-4-01-04-0000. The legal description of the parcel is S01, T32 N, R15 E, 456648, PARCEL 000, TRACT IN S/2SE CONTAINING 2.12 AC. The property is registered to the address of 38504 US Highway 2, Havre, MT 59501-8232. The owner is Kyle Austin. (DOR Ex. J Property Record Card for Kyle Austin).

### **EXHIBIT LIST**

The Board admitted the following exhibits submitted by the Department of Revenue.

- A. Mr. Austin's 2019 Classification and Appraisal Notice from Hill County;
- B. Mr. Austin's completed AB-26 Form, seeking review of his classification;
- C. List of 2018 DOR land valuations in Havre;
- D. Map of Havre zoning districts dated October 2017, followed by six maps and aerials providing magnified detail of the commercial zones, including Mr. Austin's property;
- E. Two photographs of raw land;
- F. Documentation for Mr. Austin's purchase of his property, including realty transfer certificate with sales price, warranty deed, and a Department property record card referencing the sale;
- G. Mr. Austin's Hill County Real Property Tax Notices for 2019, 2018, and 2017.
- H. A real estate brokerage listing for sale of Mr. Austin's property from 2019, for \$500,000, and for subsequently reduced sales price of \$325,000;
- I. Map showing land valuations for all parcels in Mr. Austin's immediate vicinity;

BEFORE THE MONTANA TAX APPEAL BOARD  
*Kyle Austin v. Montana Dept. of Revenue*

- J. Property record cards for Mr. Austin and previous owners of the subject property, dating back to 2013;
- K. Job profile description for Commercial Appraiser for the Department of Revenue;
- L. List of 2019 property classification codes, and a listing of cycles and methods of appraisal for each class; and
- M. Various property record cards, photos, and floor space diagrams of commercial properties in the area surrounding the subject property.

The Board admitted the following exhibits submitted by Mr. Austin.

- 1. Deposition of Ray Muscarella. Appended to this deposition are the following:
  - a. Aerial photograph of Mr. Austin's property and surrounding properties;
  - b. State of Montana job profile for Commercial Appraiser;
  - c. Letter to the Editor from Kyle Austin, entitled "Annexation to Destroy Local Economy;"
  - d. Letter to City of Havre, protesting annexation, signed by multiple citizens;
  - e. Mont. Code Ann. § 7-2-4314, highlighted phrasing in subsection (d);
  - f. 14th Amendment of the U.S. Constitution;
  - g. Property record card for the subject property;
  - h. listing of cycles and methods of appraisal for each class of property;
  - i. Property record card for Calvin Simons;
  - j. Property record card for G and C Commodities;
  - k. Property record card for Shane Christiansen;
  - l. Property record card for Peter and Jeannie Steinmetz;
  - m. Property record card for Walmart;
  - n. Statement by CTAB upholding DOR's appraisal and classification;
  - o. Text of 42 U.S. Code § 1983;
- 2. Wikipedia entry for "Regulatory Taking." *Robert Hodge v. Muscatine County*, 196 U.S. 276 (1905). U.S. Supreme Court opinion;

BEFORE THE MONTANA TAX APPEAL BOARD  
*Kyle Austin v. Montana Dept. of Revenue*

3. Property Record Card for Tilleman Family One L.L.P.; and
4. Property Record Card for Harmon Properties.

**FINDINGS OF FACT**

1. Mr. Austin contested his 2019/2020 property appraisal by filing a DOR form AB-26 request for informal review, in which he requested the DOR review both the value of his parcel and its classification as a commercial property. DOR made no changes during its review, and the Taxpayer filed an appeal with the Hill County Tax Appeal Board. The county Board heard the dispute on October 30, 2019, and upheld both the Department's valuation and classification. *Dept. Ex. B.*
2. Mr. Austin claimed at his MTAB hearing that he purchased the property in 2016 for the purpose of building a brewpub/bar. *MTAB Hrg. 01:05:15.* The most recent appraised value at the time Mr. Austin purchased the property was \$34,644. *Dept Ex. F.*
3. Mr. Austin acknowledged at his MTAB hearing that although he requested a valuation of \$10,000 on his AB-26 review request, he believes the true value of the property is greater than \$10,000. Although he was vague, he indicated in his hearing that his 2017 appraisal might be closer to a proper valuation. He listed the property for sale in 2019 for \$500,000, and then again for \$325,000. *Dept. Ex. H.*
4. The property sits in a commercially zoned area with a variety of commercial businesses. *Dept. Ex. M.*
5. Mr. Austin presented property record cards for other properties in the area owned by commercial enterprises, whose overall appraisals stayed the same from one cycle

BEFORE THE MONTANA TAX APPEAL BOARD  
*Kyle Austin v. Montana Dept. of Revenue*

to the next, but whose lands increased in value while the improvements decreased, thereby seeming to keep the total appraised value at a roughly fixed amount. *Taxpayer Ex. 1(i) through 1(m)*. Mr. Austin believes this shows that he is being treated unequally because he has no structure on his land as do these other properties.

6. Mr. Austin made several federal legal claims, one under the 14<sup>th</sup> Amendment, one under 42 USC 1983, and one alleging a “regulatory taking” under the United States Constitution. He also alleges that the City of Havre illegally annexed the area in which his property is located. *MTAB Hrg., Taxpayer Ex. 1(d)*.
7. The Department presented credible and unrefuted testimony from Ms. Jenna Holt, the commercial appraiser for Hill County, who testified at MTAB and showed that the property record cards maintained by the Department of Revenue, going back many years prior to Mr. Austin’s purchase, listed the subject property as “class-coded 2107,” meaning a commercial classification. *MTAB Hrg. 01:28:14*.
8. Ms. Holt further testified that for many years up until 2019, the Department had *mistakenly* used the wrong mass appraisal model to calculate the value of this piece of land, using a residential appraisal model rather than the proper commercial model. *MTAB Hrg., Dept. Ex. G, J, L*. Ms. Holt explained this error yielded a value far below the market value for commercial land.
9. The Department also presented testimony at the hearing from the DOR Area Manager for Havre, Bryce VanOverbeke, with a background as a commercial fee-appraiser and as an expert witness to explain how the DOR accomplishes commercial appraisal methods in Havre and generally.

BEFORE THE MONTANA TAX APPEAL BOARD  
*Kyle Austin v. Montana Dept. of Revenue*

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

**JURISDICTION AND STANDARD OF REVIEW**

11. The Board must determine, based on a preponderance of the evidence, whether the Department of Revenue accurately valued Mr. Austin's property for tax years 2019/2020 and whether the Department accurately classified the property.
12. The Board has jurisdiction over this appeal, and its order is final and binding upon all parties unless altered upon review. Mont. Code Ann. § 15-2-301.
13. The Department's appraisals are generally presumed to be correct, and the Taxpayer must overcome this presumption, but the Department of Revenue also bears a minimum burden of providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428 P. 2d 3, 7, cert. denied 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).
14. The Board hears County Board appeals de novo. *CHS Inc. v. DOR*, 2013 MT 100. "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.

**BOARD DISCUSSION AND CONCLUSIONS OF LAW**

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

16. The goal of property appraisal is to arrive at a fair market value. Mont. Code Ann § 111. This means all property is appraised at 100% of market value. *Id.* “Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell...” *Id at (2)(a)*. In establishing a correct classification and value, the Department is mandated to “...use information available from any source considered reliable.” *Id at (3)*.
17. Mr. Austin has failed to provide evidence that the Department’s valuation and classification are incorrect. The Department’s decisions on these two matters are presumed correct unless shown by a preponderance of the evidence to be faulty. Nothing in the record indicates that the Department has over-assessed or misclassified Mr. Austin’s land. On the contrary, the record shows that by calculating the subject property value using the residential model rather than the correct commercial mass appraisal model, the Department *undervalued* this land for many years, including years during which Mr. Austin was the owner.
18. Mr. Austin has attempted to characterize this error by the Department, which accrued to his benefit, as an error in property classification, when in fact, it was an error in valuation method, but one that Mr. Austin is not in a position to challenge because it helped him, rather than hurt him. For several years he enjoyed an appraised value that was over \$100,000 too low. In 2019, when the department realized that it had, for many years, been giving an unjustified discount to owners of the subject property, it rectified the mistake and brought the valuation back up to the market price, resulting in a valuation that is still lower than Mr. Austin’s purchase price four years after he purchased it.
19. As to the commercial classification of the property, the land clearly sits in a commercially zoned area in Havre and is surrounded almost entirely by industrial and

BEFORE THE MONTANA TAX APPEAL BOARD  
*Kyle Austin v. Montana Dept. of Revenue*

commercial concerns. *Dept. Ex. M, H, I.* Furthermore, Mr. Austin says that he purchased the property for the purpose of building a brewpub/bar, giving credible testimony that this is a commercial property. *MTAB Hrg. 01:05:15*

20. Mr. Austin also indicated during his hearing that the valuation he requested on his AB-26 review form, \$10,000, was not a seriously intentioned request and that he “can’t really disagree” with the idea that the market value of his land is much higher. Indeed, the record shows that he paid \$150,000 for the property in 2016 and that he recently listed the property for sale at \$325,000, marked down from \$500,000. *Dept. Ex. H.* At his hearing, Mr. Austin did not provide any credible explanation at all for why he is seeking this level of value for a piece of land that he seems to be arguing is worth somewhere between \$10,000 and \$34,644.

21. Finally, Mr. Austin makes an unusual point that might best be described as an equalization claim. He has cited four commercial properties whose appraised values remained roughly the same from one cycle to the next, apparently because in each property the Department simultaneously decreased the land value and increased the value of improvements. Mr. Austin seems to be implying that this shows some manipulation by the appraisers, and he further argues that because he has no buildings on his property, like these other comparable properties, that he is therefore being deprived of the same benefit of manipulation. This argument fails for two reasons. First, he has selected only a few properties with which to try to prove this phenomenon, out of a great many more improved commercial properties in the greater area. Second, none of these properties were mis-assessed for value due to a technical error, which is the case with his property, nor has Mr. Austin shown that the appraised values of these properties do not reflect market values. As counsel for the Department noted at the hearing, if anyone should have been complaining about the

BEFORE THE MONTANA TAX APPEAL BOARD  
*Kyle Austin v. Montana Dept. of Revenue*

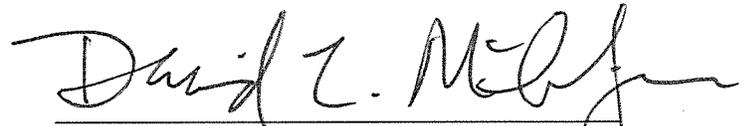
error in the mass appraisal, it should have been Mr. Austin's neighbors, not Mr. Austin. *MTAB Hrg. 01:14:57.*

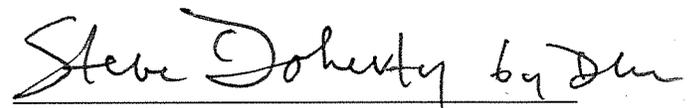
22. As to Mr. Austin's federal claims, in the first instance, we do not reach the need to decide any constitutional issues as we have found the DOR did not err by overvaluing this property, and in the second, this board is not the proper venue to bring a Federal Constitutional claim.

**ORDER**

The Hill County Clerk and Record shall make no change to the existing 2019 appraised value and classification of Mr. Austin's property.

Ordered September 2, 2020.

  
\_\_\_\_\_  
David L. McAlpin, Chairman  
MONTANA TAX APPEAL BOARD

  
\_\_\_\_\_  
Steve Doherty, Board Member  
MONTANA TAX APPEAL BOARD

  
\_\_\_\_\_  
Eric Stern, Board Member  
MONTANA TAX APPEAL BOARD

**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. MCA §15-2-303(2).

BEFORE THE MONTANA TAX APPEAL BOARD  
*Kyle Austin v. Montana Dept. of Revenue*

**Certificate of Service**

I certify that I caused a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, Order and Opportunity for Judicial Review to be sent by United States Mail via Print, Email and Mail Services Bureau of the State of Montana on September 2, 2020 to:

**Kyle Austin**  
38504 US Highway 2  
Havre, Montana 59501

**Brendan R. Beatty**  
**Montana Department of Revenue**  
P.O. Box 7701  
Helena, Montana 59604-7701

  
\_\_\_\_\_  
Lynn Cochran, Legal Secretary  
MONTANA TAX APPEAL BOARD