

**FILED**

MAY 03 2021

Montana Tax Appeal Board

**BEFORE THE MONTANA TAX APPEAL BOARD**

**MARK REFLING,**

Appellant,

v.

**STATE OF MONTANA,  
DEPARTMENT OF REVENUE,**

Respondent.

**CASE No: PT-2020-48**

**ORDER GRANTING DEPARTMENT  
OF REVENUE'S MOTION FOR  
SUMMARY JUDGMENT,  
CONCLUSIONS OF LAW, ORDER  
AND OPPORTUNITY FOR JUDICIAL  
REVIEW**

**STATEMENT OF THE CASE**

This is an appeal from a decision by the Gallatin County Tax Appeal Board (GCTAB) in the matter of Mark Refling appellant, versus the Montana Department of Revenue (DOR) respondent. *MTAB Dkt. 1*. The county hearing was held on September 9, 2020, after which the GCTAB upheld the Department's tax classification of Mr. Refling's property as commercial. *Id.* Taxpayer timely appealed the county decision to this Board and filed a dispositive motion which may resolve the dispute on purely legal grounds. Both Taxpayer and DOR have filed Motions on Summary Judgment alleging that no issues of material fact exist in this dispute and the Board must resolve the case by interpreting the law to decide the proper classification of the subject property.

As reflected in the following decision and order, the Department's motion for summary judgment is granted, Mr. Refling's motion for summary judgment is denied, and the Department's classification for the property tax valuation cycle of 2019-2020 is upheld.

**ISSUE TO BE DECIDED**

Whether the Department of Revenue correctly classified Mr. Refling's condominium garage as a commercial class four property subject to a tax rate of 1.89% of market value.

**PROPERTY DESCRIPTION**

The property owned by Mr. Refling is a condominium garage identified as Geocode: 06-1010-34-2-45-55-7028. *MTAB Dkt. 11, Ex. A*. The property legal description is Unit 28 of BH Condominiums, Lot 12 in Block 2 of Belgrade Commercial Park Subdivision, Phase II in Gallatin County. *Id.* The property at issue is a storage condominium in the BH Condos located in the Belgrade Commercial Park, near the Bozeman airport.

**EXHIBIT LIST**

The Board admitted the following exhibits submitted by the Department:

- A. Property Classification and Appraisal Notice:
- B. PT-2019-16 Summary Judgment Findings of Fact, Conclusions of Law, Order and Opportunity for Judicial Review (MTAB 2019 decision);
- C. Affidavit of Mandy McClurg; and
  1. Excerpt from the *International Association of Assessing Officers (IAAO), Property Assessment Valuation Manual*, Highest and Best Use Analysis pages 27-33;
  2. *Declarations of Covenants, Conditions and Restrictions for Belgrade Commercial Park Phase II*;
  3. *Declaration of Unit Ownership for BH Condos and By-Laws of Blackhawk Condos Owners Association*; and
  4. *By-Laws of Blackhawk Condos Owners Association*.

D. Excerpt from the *Appraisal Standards Board, Uniform Standards of Professional Appraisal Practice Manual (USPAP) 2018-2019 edition*, Standard 1: Real Property Appraisal Development, pages 15-19.

Mr. Refling filed the Affidavit of Mark Refling in Support of Mark Refling's Civil Rule 56 Motion for Summary Judgment and did not file any additional exhibits with the Board.

The record includes the Gallatin County Tax Appeal Board record and materials submitted to MTAB with the appeal, and additional exhibits submitted by the parties with the Board.

#### FINDINGS OF FACT

1. The subject property was appealed to this Board previously with the ownership of MREF, LLC (MREF) on August 30, 2019. MREF is a limited liability company belonging to Mark Refling, the company's sole member. *Id. At 2*. MREF purchased the subject property on June 7, 2016. *MTAB Dkt. 11, Ex. C3 ¶4*. That appeal was denied when the Board granted the Department's motion for summary judgment on February 6, 2020. *MTAB Dkt. 11*.

2. After MTAB upheld the DOR classification of the property, Mr. Refling transferred ownership of the condominium garage from his LLC to himself on April 21, 2020. *MTAB Dkt. 11*. Use of the property has not changed with the change in ownership; Mr. Refling previously and currently uses the property as storage space for his personal property. *MTAB Dkt. 9*. By the DOR's classification of Mr. Refling's storage condominium garage as class four commercial, it was assessed at the class four commercial tax rate of 1.89%. Mr. Refling believes that because the property is not used in the production of income and based on the definition of commercial property in Mont. Code. Ann. § 15-1-101(d), the property should be classified as class four property not specifically included in

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another class, entitled to the lower tax rate of 1.35% under Mont. Code Ann. §§ 15-6-134(1)(a) and (b). *MTAB Dkt. 7.*

3. Mr. Refling filed this new appeal with the Montana Tax Appeal Board (Board) on October 9, 2020. *MTAB Dkt. 1.* Subsequently, Mr. Refling filed a motion for summary judgment, and the DOR also filed a motion for summary judgment. *MTAB Dkt. 7 and 11.* Both parties believe no factual issues are in dispute, only a statutory interpretation of property tax classification law. *Id.* The issue was decided without oral arguments, following the filing of briefs and additional materials by both parties.

4. The subject property improvements share walls with other condominium garages in the development and is without windows, water, or a sanitary sewer connection as they are prohibited by condominium covenants, Owners' Association By-Laws, and local zoning. *MTAB Dkt. 9, ¶8, Dept Ex. C2.* Mr. Refling declares he does not conduct business, operate a trade, or generate any income from his property. *MTAB Dkt. 9, ¶4-6.* It is undisputed in the record that the property is used to store Mr. Refling's personal property, such as a camping trailer, motorcycle, and recreational equipment. *Id at ¶2.*

5. After the previous tax appeal was resolved by Order of this Board and not appealed by MREF to the District Court, and after Mr. Refling transferred ownership of the subject property from MREF to himself in his individual capacity, the DOR issued a revised 2019-2020 Property Classification and Appraisal Notice in the name of the new owner on June 19, 2020. *Dept Ex. A.* The new notice updated the record of ownership and continued to classify the subject property as class four commercial property subject to a tax rate of 1.89% of market value. *Id.* After his ownership change, DOR was obligated under Mont. Code Ann. § 15-7-102 to issue a new notice of assessment due to the change in ownership. The notice included right of appeal language that is standard in all assessment notices. DOR did not change his classification under the new ownership, and

Mr. Refling filed a new tax appeal of his classification with Gallatin County on July 8, 2020. *MTAB Dkt. 3.*

6. Mr. Refling filed an appeal with the GCTAB within the 30 days allowed by Mont. Code Ann. § 15-2-301. *MTAB Dkt. 1.* In the previous appeal, as well as the present appeal, Mr. Refling argued against only the Department's commercial classification of the subject property, but not the appraised valuation. *Id.* The difference in taxable value is \$340.74 under the higher rate of 1.89% versus the lower rate of 1.35% rate.

7. The GCTAB hearing was held on September 9, 2020 in Bozeman. *MTAB Dkt. 1.* At the conclusion of the hearing, the GCTAB upheld the Department's classification of the subject property as commercial, and thus sustaining the taxable rate as 1.89%. *Id.* During deliberations, the GCTAB discussed how the property was classified correctly using Montana law and appraisal analysis which properly applied a highest and best use test. *GCTAB hearing at 41:22-43:30.* The GCTAB suggested it was their view Montana law would need to be changed by the Legislature for Mr. Refling's property to be classified at the lower tax rate. *Id.*

#### **JURISDICTION AND STANDARD OF REVIEW**

8. The Board has jurisdiction over this appeal, and its order is final and binding upon all parties unless altered upon judicial review. Mont. Code Ann. §15-2-301.

9. The question of summary judgment rests on a two-prong test. Mont. Code Ann. § 25-20-56(c)(3). Summary judgment should be granted if the pleadings and other filings show that there is no genuine issue of material fact, and the moving party must show that it is entitled to judgment as a matter of law. *Id.* The moving party also carries the burden of proof. *Smith v. Burlington Northern & Santa Fe Ry.*, 2008 MT 225, ¶10, 344 Mont. 278, 187 P. 3d 639.

10. “If the moving party satisfies its burden of proof, the non-moving party must provide ‘material and substantial evidence, rather than mere conclusory or speculative statements, to raise a genuine issue of material fact.’” *Hiebert v. Cascade County*, 2002 MT 233, ¶21, 311 Mont. 471, 56 P.3d 848 (quoting *Stuart v. First Sec. Bank*, 2000 MT 309, ¶16, 302 Mont. 431, 15 P.3d 1198).

11. When parties file concurrent motions for summary judgment the court must evaluate each party’s motion on its own merits. *Kilby Butte Colony, Inc. v. State Farm Mut. Auto Ins. Co.*, 2017 MT 246, ¶7, 389 Mont. 48, 403 P.3d 664.

#### CONCLUSIONS OF LAW

12. At both CTAB and MTAB the Taxpayer holds tightly to the notion that Mont. Code Ann. § 15-6-134, which includes the types of property classified as class four commercial property, is ambiguous to his property and that barring a statute explicitly prohibiting his use of his property for non-commercial purpose his theory prevails. Taxpayer argues in his motion the more general definition of commercial property found in Mont. Code Ann. § 15-1-101(d) should carry the day allowing the lower tax rate on his property. This Board, however, is not confined to the narrow reading of only the general statute. Instead, we are obligated to consider and interpret other statutes which have bearing on the classification of this property, specifically the full text of Mont. Code Ann. § 15-6-134.

13. We find the Taxpayer’s reading of law is without regard for other law which is more specific and does apply to this dispute, namely Mont. Code Ann. § 15-6-134(e)(iii) which further describes the various specific types of property included in the commercial class four property classification beyond the definition of commercial property in Mont. Code Ann. § 15-1-101(d). This section clearly includes commercial buildings and the land upon which such commercial buildings sit, and which we find applies to his property.

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When interpreting statute, a long-standing principle of legal analysis contends that the specific prevails over the general. *Omimex Can., Ltd. v. State*, 2008 MT 403, ¶ 21, 347 Mont. 176, 201 P.3d 3; Mont. Code Ann. § 1-2-102. DOR notes in its brief the Taxpayer ignores this distinction, and we agree. The Taxpayer's narrow reading of statute, confined to Mont. Code Ann. § 15-1-101(d) ignores other statutory language that broadens this inquiry. "Statutes and regulations must be interpreted in accordance with the plain language of the provision."

14. In addition, when possible, all provisions of a statute or regulation must be read together to give meaning to all." *Powell County v. County Vill., LLC*, 2009 MT 294, ¶ 15, 352 Mont. 291, 217 P.3d 508. The overriding task of the DOR and in fairness to all taxpayers is that DOR finds "market value" of property through accurate and defensible classification and valuation methods. Giving this Taxpayer a classification resulting in a lower rate and tax would be unfair and unequal to other taxpayers who own units in the same complex and make the highest and best use of their property. It is Mr. Refling's option to use the property as he wishes.

15. It is the task of the DOR and of this Board to consider all the applicable administrative rules and laws to decide these matters. Taxpayer makes the narrowest of reading of the law and without regard for other rules and laws written to provide equity of taxation. This Board must consider other relevant factors such as the highest and best use analysis of appraisal, and the legal mandate for the DOR to find market value, and equalization among taxpayers, all of which are relevant to and interactive with the interpretation of statute offered by this Taxpayer. Mont. Code Ann. § 15-8-111.

16. DOR's Motion for Summary Judgment argued the Taxpayer's renewed appeal was barred by the legal doctrines of res judicata and collateral estoppel. *MTAB Dkt. 11*. While well taken, the Board declines these arguments as the DOR issued a new assessment

notice to the Taxpayer providing information on his appeal rights once he transferred ownership of the property from MREF to himself as an individual. The Board honors the intent of the law in providing a new right of appeal, even within appeal cycle timeframes, when property ownership or classification is changed.

### **Highest and Best Use**

17. The goal of property appraisal is to arrive at a fair market value. Mont. Code. Ann. §15-8-111. As a preliminary matter required to establish the correct classification and value, the DOR is mandated to “...use information available from any source considered reliable.” *Id at (3)*. The DOR utilized guidelines from the *Appraisal Standards Board, Uniform Standards of Professional Appraisal Practice Manual (USPAP)*, which is a primary reference source when determining the classification and valuation of real property. *MTAB Dkt. 11, Ex. D*. USPAP Standards Rule 1-3 states that “...an appraiser must: ... develop an opinion of the **highest and best use** [emphasis added] of the real estate.” *Id at p.17*. The Board interprets “must” as mandatory and therefore the highest and best use analysis is not optional. Application of the analysis requires the appraiser to look to the potential, and not simply the actual, use of the property as an integral part of classification and valuation. As classification is an essential initial element in finding market value, the highest and best use analysis is an appropriate preliminary step in determining classification.

18. The Department’s appraiser in this case, Mandy McClurg, filed an affidavit explaining the process by which she analyzed the property to determine the highest and best use as commercial. *MTAB Dkt. 11, Ex. C*. Notably, Ms. McClurg followed the *International Association of Assessing Officers (IAAO), Property Assessment Valuation Manual*, which lays out a four-step test to determine the highest and best use of a property, including an examination of the maximally productive legal and physical uses of the property. *MTAB Dkt. 11, Ex. C 1*. The IAAO manual states the criteria are



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considered sequentially, and thus the elements of legally permissible and physically possible are the initial focus of the test. *Id at 30*. Mr. Refling has not pointed to any flaw in Ms. McClurg's methodology.

19. The first criteria focus on whether a use is legally permissible. *Id*. This considers not just laws and zoning regulations, but also any private restrictions. *Id*. Mr. Refling's condominium garage is governed by an owner's agreement titled *Declarations of Covenants, Conditions and Restrictions for Belgrade Commercial Park Phase II*. MTAB Dkt. 11, Ex.C 2. This document states that the facility "...shall be restricted to commercial business, light manufacturing or similar non-residential uses...." *Id at p.5 sec.1*. These declarations seem to legally confine the property to a highest and best use that is exclusively commercial regardless of how the owner has chosen to use the space.

20. Another document, *Declaration of Unit Ownership for BH Condos* contains a certificate of exemption from subdivision review which states that "...the project is nonresidential." MTAB Dkt. 11, Ex. C 3. p.35. Also, the *By-Laws of Blackhawk Condos Owners Association* state that: "No owner or tenant may utilize his Unit, or permit another to use such Unit, for residential purposes." Ex. C 4. p. 18(vi).

21. The DOR also considered the location of the complex in classification of the property under Montana Law. Dept. Ex. C ¶ 8. The area surrounding the condominiums consists of commercial warehouses and retail businesses. *Id*. The DOR classified and appraised the land and all the other units in the complex as commercial. GCTAB hearing at 30:00-45. Classifying this property in a manner unlike the other units in the same complex and at a lower tax rate would expose DOR equalization claims from similarly situated condominium owners.

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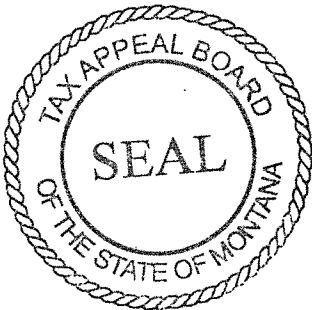
22. In conclusion, the Board finds that Mr. Refling's arguments did not overcome the statutory analysis conducted by the department. In support of that, Ms. McClurg's required highest and best use examination confirmed class four commercial classification of the property for purposes of taxation.

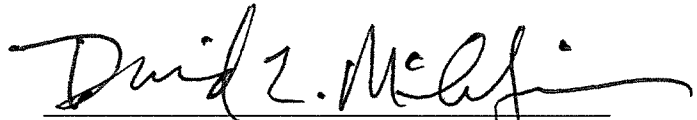
**ORDER**

IT IS THEREFORE ORDERED by the Montana Tax Appeal Board:

22. The Montana Department of Revenue's motion of summary judgment is granted, and the classification of the subject property as commercial is upheld.
23. Mark Refling's motion for summary judgment is denied.
24. The subject property will be taxed at the class four commercial rate of 1.89%.

Ordered May 3, 2021



  
David L. McAlpin, Chairman  
MONTANA TAX APPEAL BOARD

  
Amie Zendron, Board Member  
MONTANA TAX APPEAL BOARD

  
Fred Thomas, 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).

**Certificate of Service**

I certify that I caused a true and correct copy of the foregoing Order to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on May 3, 2021 to:

**Mark Refling**  
2618 Spring Creek Drive  
Bozeman, Montana 59715

**Nicholas J. Gochis, Katherine E. Talley**  
**Montana Department of Revenue**  
P.O. Box 7701  
Helena, Montana 59604-7701

  
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Lynn, Legal Secretary  
MONTANA TAX APPEAL BOARD