

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

JUN 01 2022

Montana Tax Appeal Board

RONALD C. LINDSEY,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2021-33

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

STATEMENT OF THE CASE

This is an appeal of a decision by the Jefferson County Tax Appeal Board (CTAB) denying Ronald Lindsey's (Taxpayer) application for reduction in value on his property located on Quakey Gulch Way near Boulder, Montana. The CTAB hearing was held on November 3, 2021, and the decision was issued November 4, 2021. The Taxpayer timely appealed that outcome to the Montana Tax Appeal Board (MTAB) on December 6, 2021. We affirm the CTAB's determination.

ISSUE TO BE DECIDED

Whether the CTAB erred in affirming the DOR's appraised improvement value of \$2,300 for the subject property.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. 12/9/20 CTAB Hearing Audio
2. 11/3/21 CTAB Hearing Audio
3. 3/29/22 Taxpayer Written Statement with the following attachments:
12/1/20, Taxpayer Written Statement; 2020 DOR Property Record Card for the subject property; 1998 Tax Payment Information for the subject

BEFORE THE MONTANA TAX APPEAL BOARD
RONALD LINDSEY v. STATE OF MONTANA, DEPARTMENT OF REVENUE

property; 11/7/19, AB-26 Submission Letter by Taxpayer for the subject property to the DOR; 2005-2021 Jefferson County Tax Payment Information for the subject property; 2019 Property Record Card; Revised 2020 DOR Property Record Card for the subject property; and 2020 CTAB Appeal Form filed by Taxpayer for the subject property in Jefferson County signed on 5/31/2020 (pages 86 to 106).

4. 3/18/22 Taxpayer Written Statement to the Board with Requests for Evidence and Witnesses attached (pages 1 to 4).
5. 1/7/21 Taxpayer Written Statement with the following attachments: 1998 Real Property Tax Statement; 2018 Real Property Tax Statement; 2009 Property Tax Statement; 2010 Real Property Tax Statement; 2011 Real Property Tax Statement; 1998 Tax Payment Information; and 2005-2021 Jefferson County Tax Payment Information (pages 5 to 20).
6. Taxpayer 2021 MTAB Appeal Form 801 (Case No. PT-2021-9) with the following attachments: 7/22/21 Taxpayer Written Statement; Property Photos; 9/13/21 Taxpayer Written Statement; CTAB Appeal Form; 2021 Property Classification and Appraisal Notice; 2021 Property Record Card (masonry shed value at \$3,160); and 8/30/21 AB-26 Determination Letter (pages 21 to 40).
7. DOR Exhibits from 11/3/21 CTAB Hearing including: CTAB Appeal Form, 9/13/21 Taxpayer written statement; 2021 Classification and Appraisal Notice; 2021 Property Record Card (masonry shed value at \$3,160); 8/30/21 AB-26 Determination Letter; Assessment Information Packet; Form AB-26; 9/14/21 AB-26 Determination Letter; 2021 Revised Classification and Appraisal Notice; Lot Map; Aerial Property Photo; Property Photos; and MCA Statutes (pages 41 to 85).

DOR Exhibits:

- A. Property Record Card
- B. July 9, 2021, Original Assessment Notice
- C. 8/30/21 AB-26 Determination Letter

BEFORE THE MONTANA TAX APPEAL BOARD
RONALD LINDSEY v. STATE OF MONTANA, DEPARTMENT OF REVENUE

- D. 9/14/21 Revised AB-26 Determination Letter
- E. 9/21/21 Revised Assessment Notice
- F. 2021 Property Tax Statement
- G. Property History Notes
- H. Property Photos
- I. Maps of Property

PROCEDURAL HISTORY

The DOR valued the entire subject property at \$4,368 for the 2021/2022 appraisal cycle. *Ex. B, at 000019*. The land was valued at \$1,108 and the two structures on the land were valued at \$3,260. *Id.* After receiving his 2021/2022 property tax appraisal notice dated July 9, 2021, the Taxpayer disputed the value of the two structures and filed an AB-26 request for informal review with the DOR on July 22, 2021. *Ex. B, at 000018; Ex. 7, at 59*. A decision was rendered on the Taxpayer's AB-26 on August 30, 2021, denying an adjustment to the property value. *Ex. C; MTAB Hrg. Tr. 17:24-18:9*. Following the August 30, 2021, AB-26 Determination Letter, the Taxpayer again contacted the DOR which prompted further review. *Ex. D*. Upon further review, the value of the masonry shed, which was initially valued at \$3,160, was reduced to \$2,200 to account for a grade reduction from good to average, reflecting quality of construction. The eight-by-eight storage shed was valued at \$100 during the pendency of the county and state MTAB appeal. *Ex. A, at 000043; Ex. E, at 000023; MTAB Hrg. Tr. 5:11-12; 18:23-19:3*.

The Taxpayer appealed the DOR's new valuation to the CTAB on September 20, 2021, and a telephonic hearing was held in Jefferson County on November 3, 2021. *Ex. 2*. The CTAB denied the Taxpayer's application for reduction. *MTAB Dkt. 3, at 3-4*. The Taxpayer timely appealed to the MTAB on December 6, 2021, per Mont. Code Ann. § 15-2-301. *MTAB Dkt. 1*. The MTAB hearing was conducted on April 12, 2022. The Taxpayer's request to appear by telephone was granted, and the following were present:

- a. Ronald C. Lindsey, Taxpayer; and
- b. Kristina Warren, DOR Counsel; Sallie Keener, DOR Appraiser; Sam Burden, DOR Lead Appraiser; Chad Elser, DOR Regional Manager.

BEFORE THE MONTANA TAX APPEAL BOARD
RONALD LINDSEY v. STATE OF MONTANA, DEPARTMENT OF REVENUE

The record includes all materials submitted to CTAB, a recording of the CTAB hearing, all materials submitted to MTAB with the appeal, and additional exhibits submitted by the parties prior to and at the MTAB hearing.

FINDINGS OF FACT

1. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. The \$1,108 land value of the 20.01 acres of land owned by Mr. Lindsey has not been appealed and as such was not the subject of evidence or testimony during the appeal. *MTAB Hrg. Tr. 5:7-10*. It remains on the Property Record Card at a value of \$1,108 with the classification of non-qualified agricultural land. *MTAB Hrg. Tr. 30:24-31:22; Ex. A*. All the land is classified as non-qualified ag land because the masonry shed is not a dwelling. *Id.*
3. The improvements were valued using the cost method with a lien date of January 1, 2020. *MTAB Hrg. Tr. 13:21-22; 14:5-7*.
4. When valuing structures on non-qualified agricultural land, the cost method must be used. *MTAB Hrg. Tr. 31:5-22*.
5. Under the cost method, cost of construction tables are developed by DOR vendors Marshall and Swift, and RS Means. *MTAB Hrg. Tr. 28:12-22*. These tables are a measurement of the present cost of building materials and construction labor, set by discussions with local contractors and surveys of building materials suppliers, and are then utilized to determine the replacement cost new (RCN). *Id.*
6. Using the cost approach to value in a mass appraisal system as required by Montana law, an RCN value is first assigned to each structure, then a discount is applied to reduce for the age of the structure to account for wear and tear.

BEFORE THE MONTANA TAX APPEAL BOARD
RONALD LINDSEY v. STATE OF MONTANA, DEPARTMENT OF REVENUE

This reduction is called depreciation and is intended to reflect its loss of value over time.

7. It is undisputed that there are three structures on the subject property. A masonry shed which measures twenty by twenty-four feet, an eight-by-eight shed, and a four-by-four shed. *Ex. H, at 000005-000006, 000008, 000138-000139, 000141, 000145, 000147, 000149-000150; Ex. 6, at 26-29; Ex. 7, at 71-72, 74.*
8. None of the structures have sewer, water, electricity, a heat source, or insulation. *MTAB Hrg. Tr. 10:12-14; 10:23-11:1.*
9. The four-by-four shed is currently used as an outhouse. *MTAB Hrg. Tr. 32:15-33:2.* It is undisputed by the parties that the outhouse is not taxed. Mr. Elser testified that the DOR has a policy of not taxing outhouses, therefore, the four-by-four shed has been deemed as having no taxable value and, as such, is not listed on the Property Record Card. *Id.*
10. The two remaining buildings on the land are taxable. One is a masonry shed and the other is an eight-by-eight shed that was built in 1996. *Ex. H, at 000005-000006, 000138, 000139, 000141, 000149; MTAB Hrg. Tr. 5:4-13; 8:13-15; 23:3-18.*
11. These two structures are listed on the Property Record Card under the Other Buildings and Yard Improvements section. *MTAB Hrg. Tr. 16:10-17:2; Ex. A, at 000043.* The first structure, the eight-by-eight shed, is described as “shed, frame” with an RRS1 code designation, which indicates that the structure has four framed walls. *Id.* The RCN of the eight-by-eight shed is \$1,420. *Id.* However, the taxable value is \$100 after being depreciated for age. The tax rate is only applied to the depreciated value of \$100, not the RCN.

BEFORE THE MONTANA TAX APPEAL BOARD
RONALD LINDSEY v. STATE OF MONTANA, DEPARTMENT OF REVENUE

12. The Taxpayer testified that the eight-by-eight “shed was built with \$150 and scrap material.” *MTAB Hrg. Tr. 10:8-10; Ex. 3, at 89*. The Taxpayer argues that the eight-by-eight shed should be deemed untaxable and removed from the property record card. *MTAB Hrg. Tr. 11:11-13; Ex. 3, at 87*. We find the eight-by-eight shed does have value whatever the materials used in its original construction and therefore must be valued at greater than zero.

13. The second structure, the masonry shed, is described as “shed, resident” with an RRS3 code designation, which is a software label indicating that the structure is a masonry shed with an intended use that is residential rather than agricultural or commercial. *MTAB Hrg. Tr. 17:3-23; Ex. A, at 000043*. It was given an average grade and a fair condition. *Id.* The RCN is \$9,738. *Id.* However, the taxable value is \$2,200 after depreciation for age. *Id.* The tax rate is only applied to the depreciated value of \$2,200, not the RCN.

14. The grade is based on the quality of construction and materials used in the year of construction. *MTAB Hrg. Tr. 22:8-12*. Condition of the masonry shed, as of the lien date, is addressed by the condition designation on the property record card which is factored after the grade is assessed. *MTAB Hrg. Tr. 26:16-22*.

JURISDICTION AND STANDARD OF REVIEW

15. 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 CTAB’s decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter, an appeal to MTAB from a decision of a CTAB. *Mont. Code Ann. § 15-2-301*.

16. This Board may hear appeals de novo. *Dept. of Revenue v. Burlington N., Inc.*, 169 Mont. 202, 213-14, 545 P.2d 1083 (1976). “A trial de novo means trying the

BEFORE THE MONTANA TAX APPEAL BOARD
RONALD LINDSEY v. STATE OF MONTANA, DEPARTMENT OF REVENUE

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, 303 P.3d 1279.

17. 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

18. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
19. "All taxable property must be appraised at 100% of its market value...." *Mont. Code Ann. § 15-8-111(1)*.
20. “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)*.
21. Except as otherwise provided in Montana Code Ann. § 15-2-301(2)(c), the Board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision in connection with any appeal under Montana Code Ann. § 15-2-301. To the extent Mont. Code Ann. § 15-2-301 conflicts with the Montana Administrative Procedure Act, § 15-2-301 supersedes that act. *Mont. Code Ann. § 15-2-301(5)*.
22. 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., Inc.*, 169 Mont. at 214, 545 P.2d at 1090. However, DOR cannot rely entirely on the presumption in its favor and must show the propriety of their action. *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).

BEFORE THE MONTANA TAX APPEAL BOARD
RONALD LINDSEY v. STATE OF MONTANA, DEPARTMENT OF REVENUE

23. The Taxpayer bears the burden of proving the error of DOR's decision. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.
24. “‘Assessment formulations’ by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion.” *Peretti v. State, 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. of Montana, Inc. 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 of State of Mont.*, 263 Mont. 100, 866 P.2d 228 (1993).
25. We find the Department of Revenue has met their burden of proof that they followed the law and administrative rules in setting the 2021/2022 value of these two structures. In fact, the evidence indicates they have made efforts beyond the norm to consider and act on the requests of the Taxpayer, as evidenced by the reductions in value they have made on the improvements after record review and on-site inspection.
26. The Taxpayer gave testimony that the value of the properties has been adjusted, suggesting that merely changing the value was somehow proof that the DOR did not accurately appraise the market value of his two buildings. *Ex. 3, at 86*. However, it should be noted that each time the DOR reviewed their appraisal at the request of the Taxpayer, they lowered the value of the improvements. We find that the DOR was responsive to the Taxpayer’s request and their reductions are evidence of the DOR’s willingness to work with the Taxpayer to find the market value of the subject property.

BEFORE THE MONTANA TAX APPEAL BOARD
RONALD LINDSEY v. STATE OF MONTANA, DEPARTMENT OF REVENUE

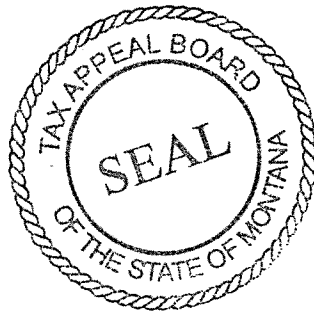
27. We find no evidence that DOR has made any effort over the years to over-value Mr. Lindsey's improvements, as claimed by the Taxpayer. *Ex. 3, at 89-91*. The Taxpayer's case lacked any evidence to back his contentions or any substance to overcome the credible testimony of DOR appraisers and other witnesses.

ORDER

28. The Taxpayer's appeal is denied.

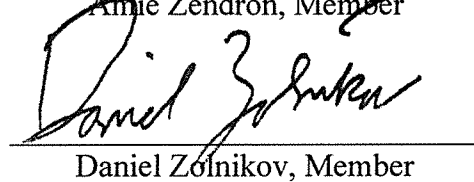
29. DOR is directed to maintain the Taxpayer's value at \$2,200 for the masonry shed and \$100 for the eight-by-eight shed for 2021 and 2022.

Dated this 1st day of June 2022.




David L. McAlpin, Chairman


Amie Zendron, Member


Daniel Zolnikov, 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. MCA §15-2-303(2).

BEFORE THE MONTANA TAX APPEAL BOARD
RONALD LINDSEY v. STATE OF MONTANA, DEPARTMENT OF REVENUE

Certificate of Service

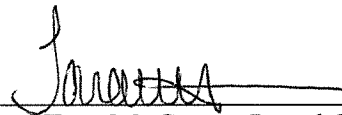
I certify that I caused a true and correct copy of the foregoing Findings of Facts and Conclusions of Law to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on June 1, 2022, to:

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