

3G PROPERTIES, LLC, and BROCK
JOHNSEN,

Appellants,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2024-79

**ORDER GRANTING
DEPARTMENT OF REVENUE'S
MOTION TO DISMISS,
STATEMENT 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 Gallatin County Tax Appeal Board (CTAB) denying 3G Properties, LLC, and Brock Johnsen (Taxpayer) a reduction in value on the subject property located at 1608 West Olive Street, Bozeman, Montana (Subject Property). The Taxpayer appealed that outcome to the Montana Tax Appeal Board (MTAB) on September 9, 2024.

The Department of Revenue (DOR) filed a Motion to Dismiss and Brief in Support on December 2, 2024. Appellants filed a Response to the DOR's Motion to Dismiss and Brief in Support on December 16, 2024. The matter is fully briefed, and the Board has reviewed the submissions of both parties. Because the Appellants failed to timely file their appeal, the Board grants the DOR's Motion to Dismiss for lack of jurisdiction.

ISSUE TO BE DECIDED

Whether CTAB erred in denying Taxpayer's request for a reduction in value on the Subject Property.

BEFORE THE MONTANA TAX APPEAL BOARD
3G PROPERTIES, LLC, and BROCK JOHNSEN v. STATE OF MONTANA, DEPARTMENT OF REVENUE

EXHIBIT LIST

The following evidence was submitted with the Motion to Dismiss¹:

DOR Exhibits:

- A. Property Classification and Appraisal Notice;
- B. Request for Informal Classification and Appraisal Review;
- C. Form AB-26 Determination Letter;
- D. Form 401 Appeal to the County Tax Appeal Board;
- E. CTAB Decision;
- F. Form 801 Appeal to the Montana Tax Appeal Board;
- G. Subject Property Rent Rates for 2020 and 2021;
- H. Letter from Taxpayer to DOR;
- I. "Income Apartment Method" Calculations; and
- J. Form 401 Appeal to the County Tax Appeal Board.

STATEMENT OF UNDISPUTED FACT

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

2. The Subject Property is a residential apartment complex owned by 3G Properties LLC and is located at 1608 West Olive St., Bozeman, Montana. *Ex. F.* The Subject Property is also identified by its geocode 06-0798-12-3-30-01-0000. *Id.*

3. The DOR valued the Subject Property at \$1,937,100 for tax years 2023 and 2024. *Ex. C.* Taxpayer received his Property Classification and Appraisal Notice on June 30, 2023, and subsequently filed an AB-26 Request for Informal Review on July 30, 2023. *Ex. A, B.*

¹ On November 19, 2024, Taxpayer submitted exhibits for use in the MTAB hearing, but did not submit any further exhibits with his Response to the DOR's Motion to Dismiss. None of the exhibits Taxpayer submitted for use at the MTAB hearing pertained to the timeliness issue discussed in this Order and are therefore not included in this exhibits list.

BEFORE THE MONTANA TAX APPEAL BOARD

3G PROPERTIES, LLC, and BROCK JOHNSEN v. STATE OF MONTANA, DEPARTMENT OF REVENUE

4. During the AB-26 Informal Review process, Taxpayer provided the DOR with updated rental rates for the Subject Property. *Ex. G.* Based on the updated rental rates, the DOR sent its Final Determination letter to Taxpayer on February 20, 2024, in which it lowered the Subject Property's value from \$1,937,100 to \$1,434,600. *Ex. C.*
5. Taxpayer appealed the DOR's AB-26 Final Determination letter to the CTAB on March 14, 2024. *Ex. D.* The CTAB hearing was held on July 31, 2024, and the decision denying Taxpayer's request was issued the same day. *Ex. E.*
6. Taxpayer filed an appeal with MTAB on September 9, 2024. *Ex. F.*
7. The DOR filed a Motion to Dismiss and Brief in Support on December 2, 2024, alleging that Taxpayer's appeal was filed untimely. *MTAB Dkt. 11.* Taxpayer filed a Response to the Motion to Dismiss on December 16, 2024, denying that his appeal was untimely. *MTAB Dkt. 14.*

JURISDICTION AND STANDARD OF REVIEW

8. 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.*
9. 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.
10. The Board's order is final and binding upon all parties unless changed by judicial review. *Mont. Code Ann. § 15-2-301(6).*

BEFORE THE MONTANA TAX APPEAL BOARD

3G PROPERTIES, LLC, and BROCK JOHNSEN v. STATE OF MONTANA, DEPARTMENT OF REVENUE

11. “(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:
 - (1) Lack of subject-matter jurisdiction;
 - (2) Lack of personal jurisdiction;
 - (3) Improper venue;
 - (4) Insufficient process;
 - (5) Insufficient service of process;
 - (6) Failure to state a claim upon which relief can be granted; and
 - (7) Failure to join a party under Rule 19.” *Mont.R.Civ.P. 12(b)(1)*.

12. “If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.” *Mont.R.Civ.P. 12(h)(3)*.

13. “If the appearance provisions of 15-15-103 have been complied with, a person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the Montana tax appeal board by filing with the Montana board a notice of appeal within 30 calendar days after the receipt of the decision of the county board. The notice must specify the action complained of and the reasons assigned for the complaint.” *Mont. Code Ann. § 15-2-301(1)(b)*.

CONCLUSIONS OF LAW

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

15. “[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

BEFORE THE MONTANA TAX APPEAL BOARD

3G PROPERTIES, LLC, and BROCK JOHNSEN v. STATE OF MONTANA, DEPARTMENT OF REVENUE

Procedure Act, this section supersedes that act.” *Mont. Code Ann. § 15-2-301(5)*.

16. 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 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*.
17. “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*.
18. “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)).

DISCUSSION

19. For the reasons set forth below, this Board grants the Respondent’s Motion to Dismiss for lack of subject matter jurisdiction.
20. The DOR filed a Motion to Dismiss and Brief in Support contending that MTAB lacked the subject matter jurisdiction necessary to hear this appeal as it was filed untimely.
21. Taxpayer filed a response to the DOR’s Motion to Dismiss denying that the appeal was filed untimely. Taxpayer stated that the appeal was sent by mail on August 30, 2024, which fell within the 30-day deadline to submit an appeal and was therefore considered timely. Taxpayer further argued that multiple factors

BEFORE THE MONTANA TAX APPEAL BOARD

3G PROPERTIES, LLC, and BROCK JOHNSEN v. STATE OF MONTANA, DEPARTMENT OF REVENUE

may have affected how long the appeal took to be delivered including his mailbox being obstructed by neighboring vehicles, lack of parking enforcement by the City of Bozeman parking division concerning the vehicles obstructing his mailbox, and USPS being understaffed due to Bozeman's fast growth and the inability to hire and retain staff.

22. The Montana Code Annotated states in part that, “[An aggrieved party] may appeal to the Montana Tax Appeal Board by filing with the Montana board a notice of appeal within 30 calendar days after the receipt of the decision of the county board.” *See* Mont. Code Ann. § 15-2-301(1)(b). The statute is specific in that the appeal must be filed by MTAB within 30 days of receiving the CTAB's decision, not that it must have been mailed by that date. If the statute left any doubt as to when the document needed to be filed, the first page of the MTAB Appeal Form 801 itself states, “MTAB must receive your appeal within 30 days from when you received the decision you are appealing, or your appeal will not be considered.”

23. In this case, the Gallatin CTAB's decision was issued on July 31, 2024, and upheld the DOR's valuation. Taxpayer attests that he entered his MTAB appeal into the mail on August 30, 2024. MTAB received Taxpayer's appeal on September 9, 2024, nine days after the deadline. Taxpayer has not stated when he personally received the CTAB decision, which could affect when the 30-day appeal window began. Without other evidence, the Board must use the only definite date provided which is July 31, 2024, when the CTAB issued their decision. Taxpayer's argument that mailing his appeal documents within the 30-day window satisfies the timeliness requirements, even if the documents are received after the deadline, does not comport with the law. The statute clearly necessitates that the documents must be filed with MTAB within the 30-day timeframe, not that they are en route.

BEFORE THE MONTANA TAX APPEAL BOARD

3G PROPERTIES, LLC, and BROCK JOHNSEN v. STATE OF MONTANA, DEPARTMENT OF REVENUE

24. Furthermore, while this Board can appreciate Taxpayer's issues regarding obstructive neighbors and understaffed postal services, it remains the duty of an appellant to ensure that appeal documents are received within the prescribed time frame. As the issues described by Taxpayer have been ongoing, it was foreseeable that the mail might take longer than expected to reach its destination. Additionally, if Taxpayer had any concerns about being able to meet the deadline to file an appeal, there are other appeal options available in lieu of postal mail. In-person drop offs at our office in Helena are always allowed, and email submission of appeals are an option as long as MTAB subsequently receives the original signed documents.

25. Taxpayer's appeal was filed after the 30-day appeal window afforded to him by the CTAB's final determination and is considered untimely. Therefore, MTAB lacks the subject matter jurisdiction necessary to hear the appeal and the case is dismissed.

BEFORE THE MONTANA TAX APPEAL BOARD
3G PROPERTIES, LLC, and BROCK JOHNSEN v. STATE OF MONTANA, DEPARTMENT OF REVENUE

ORDER

26. The DOR's Motion to Dismiss is granted.

Dated this 12th day of February 2025.



A handwritten signature in blue ink, appearing to read "Travis Brown", written over a horizontal line.

Travis Brown, Chairman

A handwritten signature in blue ink, appearing to read "Adam Millinoff", written over a horizontal line.

Adam Millinoff, 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)*.

BEFORE THE MONTANA TAX APPEAL BOARD
*3G PROPERTIES, LLC, and BROCK JOHNSEN v. STATE OF MONTANA, DEPARTMENT OF
REVENUE*

Certificate of Service


I certify that I caused a true and correct copy of the foregoing Order Granting Department of Revenue's Motion to Dismiss, Statement of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on February 12, 2025, to:

3G Properties, LLC, and Brock Johnsen
Brock Johnsen
P.O. Box 972
Bozeman, MT 59771

Dave Burleigh
State of Montana, Department of Revenue
Legal Services Office
P.O. Box 7701
Helena, MT 59604-7701

Paula Gilbert
State of Montana, Department of Revenue
Property Assessment Division
P.O. Box 8018
Helena, MT 59604-8108

Becky Pape, Chairperson
Gallatin County Tax Appeal Board
P.O. Box 160088
Big Sky, MT 59716



Rina Sanderson, Legal Secretary