

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

OCT 25 2024

Montana Tax Appeal Board

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Appellant,

v.

BUTTE TRAP & SKEET CLUB,

Respondent.

CASE №: PT-2024-20

**FINDINGS 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 Butte-Silver Bow County Tax Appeal Board (CTAB) granting Butte Trap & Skeet Club, (Taxpayer or BTSC) a reduction in value on the subject property located at 70 Basin Creek Road, Butte, Montana (Subject Property). The Department of Revenue (DOR) appealed that outcome to Montana Tax Appeal Board (MTAB) on February 15, 2024. We reverse CTAB's determination.

**ISSUE TO BE DECIDED**

Whether CTAB erred in granting Taxpayer a reduction in value on the land.

**EXHIBIT LIST**

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Portion of CTAB Hearing Transcript;
2. MDOR's Response to Taxpayer's Discovery Requests;
3. Montana Cadastral Property Record Cards;
4. Interactive Zoning Map;
5. Restated Articles of Incorporation of Butte Trap Club Filed with the Montana Secretary of State on May 1, 1987;

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6. Provisions from the Fish & Game Butte-Shooting Range Grant Project Agreement;
7. Article from The Montana Standard, "Planners OK 230 Acres Slated for Industrial Use," Dated April 4, 2013;
8. Published Order of the Planning Board re Growth Policy Amendment Application No. 29, Dated March 13, 2013;
9. Sections D, E, F, and G Regarding Zoning of Property;
10. Amendments to the Butte-Silver Bow Master Plan;
11. Colored Property Maps B3 and B4;
12. March 2016 Letter from Butte-Silver Bow Economic Development Coordinator and Map of Proposed TEDD Boundaries Regarding Rezoning to Light Industrial;
13. Notice of Public Hearing by Order of the Planning Board Regarding Zone Change Application No. 175, Dated March 30, 2016;
14. Letter from Butte-Silver Bow Economic Development Providing Notice of Public Meeting Regarding Zoning Changes, Dated March 31, 2016; and
15. Butte-Silver Bow County Targeted Economic Development District for the Basin Creek Technology Park, Dated April 5, 2016.

DOR Exhibits:

- A. Property Record Card;
- B. Assessment Notice;
- C. AB-26 Request for Informal Review and Determination Letter;
- D. Butte Commercial Land Model;
- E. Land Model Report and Sales Map;
- F. 2023-2024 Residential, Commercial, and Industrial Property Classification and Valuation Manual;
- G. MDOR Procedure 2-3-001.6, Final Valuation Determination – Commercial Property;
- H. (DOR Did Not Offer Exhibit H for Admission); and

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I. Rebuttal Exhibit I - Chapter 17.48 Nonconforming Uses.

**PROCEDURAL HISTORY**

The DOR valued the Subject Property at \$283,254 for the 2023/2024 valuation cycle, with the land valued at \$95,194 and the improvements valued at \$188,060. *Ex. A.* The land value was comprised of \$93,052 for the Subject Property's one acre of commercial tract land and \$2,142 for the remaining acres of non-qualified agricultural land. Only the value of the one acre of commercial tract land is at issue, and the value of the non-qualified agricultural land and the improvements are not disputed in these MTAB proceedings.

The Taxpayer filed an AB-26, Request for Informal Classification and Appraisal Review, with the DOR on July 27, 2023, requesting a land value of \$50,000 and an improvement value of \$150,000 for a total value of \$200,000. *Ex. C.* The DOR sent a Form AB-26 Determination Letter to the Taxpayer dated November 21, 2023, denying the Taxpayer's request. *Id.* The Taxpayer appealed the DOR's valuation to the CTAB on December 5, 2023, requesting a land value of \$50,000. *MTAB Dkt. 3.* The CTAB hearing was held on January 16, 2024, and the CTAB's decision granting the Taxpayer's application for reduction of land value to \$20,000 was sent to the parties on January 22, 2024. *Id.* The DOR appealed to MTAB on February 15, 2024, per Mont. Code Ann § 15-2-301, requesting that the one acre of commercial tract land be valued at \$93,052, for a total land value of \$95,194. *MTAB Hr'g Tr. 3:7-12.*

The MTAB hearing was conducted in Helena on July 30, 2024, at which the following were present:

- a. David L. Vicevich, Taxpayer Counsel; Jim Jones, Director Emeritus of Butte Trap & Skeet Club; and
- b. Dave Burleigh, DOR Counsel; Tedd Weldon, Area Manager; Tim Skop, Modeler; and Mike Davis, Appraiser; Kassie Hawbaker, Paralegal.

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

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**FINDINGS OF FACT**

1. To whatever extent the following findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. The Taxpayer of record is the Butte Trap & Skeet Club. *Ex. A.* The Subject Property is owned by a 501(c)(7) non-profit trap and skeet club and is used for shooting education and competitions. *MTAB Hr'g Tr. 5:18-21.* The Subject Property is located at 70 Basin Creek Road in Butte and is also identified by its geocode 01-1095-08-3-01-01-0000. *Id.*
3. The Subject Property is 39.88 acres in total size. *Ex. A.* One acre was carved out and classified as commercial tract land per statute by the DOR while the remaining 38.88 acres were classified as non-qualified agricultural land. *Ex. A; MTAB Hr'g Tr. 3:9-19.* The one acre of commercial tract land was valued at \$93,052 and the non-qualified agricultural land was valued at \$2,142, for a total land value of \$95,194 for tax years 2023 and 2024. *Id.* However, only the valuation of the one acre of commercial tract land is in contention as the Taxpayer did not dispute the value of the 38.88 acres of non-qualified agricultural land. *Id.*
4. At the January 16, 2024, CTAB hearing, the Taxpayer requested that the Subject Property's land be reduced in value to \$50,000. *MTAB Dkt. 3.* The CTAB granted Taxpayer's request for a reduction and set the land value at \$20,000. *Id.* The DOR appealed to MTAB on February 15, 2024, and reasserted that the correct market value for the Subject Property's one acre of commercial tract land is \$93,052. *MTAB Dkt. 1.*
5. At the MTAB hearing, Taxpayer testified that the Subject Property is governed by BTSC bylaws which restrict its ownership transfer to another non-profit. *MTAB Hr'g Tr. 5:18-6:4.* Additionally, the BTSC organization relies heavily on grant programs from the Montana Department of Fish, Wildlife, and Parks

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(FWP) to operate. Taxpayer argued that these grants place restrictions on the transferability of the property, specifically that the facility's personal property, moveable improvements, and other non-real property assets must be returned to FWP upon BTSC's dissolution. *Ex. 6; MTAB Hr'g Tr. 21:5-23:18*. This would include, for example, concrete pads which were constructed for parking. *Id.* Therefore, Taxpayer argued that the market value of the Subject Property should be lower than other similar properties to reflect the legal conditions imposed by the BTSC bylaws and FWP grants. *Id.*

6. Taxpayer witness and Director Emeritus of the BTSC, Jim Jones, testified that the BTSC was approached by Butte-Silver Bow County in 2013 to gauge whether the BTSC would be willing to voluntarily change their zoning classification from residential to light industrial. *Ex. 9; MTAB Hr'g Tr. 8:17-9:2*. Mr. Jones stated the BTSC acquiesced due to their desire to benefit the community and the benefit of not having future residential homes near the shooting range under the proposed zoning change. *Id.*
7. Mr. Jones testified that BTSC currently has no intentions of selling the Subject Property. *MTAB Hr'g Tr. 24:10-25:3*. When asked whether BTSC would decline a substantial offer of purchase if it was made today, Mr. Jones replied, "Yeah, definitely the answer would be no." *Id.*
8. Mr. Jones conceded that BTSC's bylaws do not actually restrict them from obtaining market value for the Subject Property if sold, but instead would require any profits after expenses to go to a 501(c)(3) corporation upon sale. *Ex. 5; MTAB Hr'g Tr. 28:23-29:12*.
9. Taxpayer also contended that the DOR made misrepresentations concerning the Subject Property's land classification at the CTAB hearing. *Ex. 1, MTAB Hr'g Tr. 6:5-15*. Specifically, Taxpayer alleges that the DOR presented testimony that the land classification was changed from commercial to industrial. *Id.*



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10. The Subject Property's land is divided into two classifications for purposes of taxation. *MTAB Hr'g Tr. 40:11-14*. Out of the 39.88 total acres, only one acre where the improvements are located was classified as commercial tract land while the other 38.88 acres were classified as non-qualified agricultural land. *Id.* The one acre of commercial tract land was valued at \$93,052 using a DOR generated land valuation comparable sales neighborhood model, while the non-qualified agricultural land was valued at \$2,142 based on productivity set by the Legislature, for a total combined land value of \$95,194. *MTAB Hr'g Tr. 3:9-12*. DOR Appraiser, Mike Davis, testified that non-qualified agricultural land is valued based on statewide grazing productivity rates, not at market value. *MTAB Hr'g Tr. 44:3-13*.
11. DOR Area Manager, Tedd Weldon, testified that the DOR is legally required to classify land in Montana according to use. *MTAB Hr'g Tr. 86:7-12*. Mr. Jones stated that BTSC members pay membership dues to utilize the club and agreed that this constituted income. *MTAB Hr'g Tr. 26:4-10*. Therefore, the Subject Property's one acre in dispute was classified for taxation purposes as commercial tract land. *MTAB Hr'g Tr. 40:13-14*.
12. Taxpayer stated that the Subject Property's zoning regulations only permit light industrial use on the property. *Ex. 4, MTAB Hr'g Tr. 6:21-7:17*. Furthermore, contrary to other zoning ordinances in the state, Butte-Silver Bow's zoning ordinances do not permit lesser uses by default. *Id.* Taxpayer presented a list of permitted uses in Butte-Silver Bow's light industrial zones which does not include trap and skeet clubs, or any other type of shooting club. *Id.* Taxpayer argued that any potential sale of the Subject Property would therefore be limited to a buyer who intended to utilize the property for light industrial use, thus restricting its sale price and fair market value. *Id.*

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13. DOR witnesses testified regarding the land model used to estimate fair market value of the one acre in dispute. The DOR clarified that despite the Subject Property's DOR neighborhood model being named light industrial, the light industrial moniker was actually referring to the zoning rather than classification of the land as light industrial for taxation classification purposes, and the Subject Property's base acre is classified for taxation purposes as commercial. *MTAB Hr'g Tr. 49:1-8*. Mr. Jones agreed that an excerpt from the statutes which zoned the Subject Property as light industrial indicated that the zoning change would allow for both light industrial and commercial development. *Ex. 7; MTAB Hr'g Tr. 31:6-33:3*. Mr. Jones also agreed during cross-examination that according to the statute, if the Subject Property was sold, it could continue to operate as a trap and skeet club. *Id.* Mr. Davis stated that changing the Subject Property's neighborhood from a primarily commercially zoned neighborhood to light industrial actually decreased the value of the one acre of commercial tract land for purposes of taxation from \$149,315 to \$93,052. *MTAB Hr'g Tr. 47:13-48:2*.
14. Mr. Davis testified that the Subject Property's land value model calculated a base acre value estimated from validated sales using a multiplicative model of land sales in the area. *Ex. E; MTAB Hr'g Tr. 42:17-19, 72:21-25*. The DOR placed the Subject Property in a light industrial neighborhood land model to determine the land value. *Ex. E; MTAB Hr'g Tr. 53:13-17*. The Subject Property's light industrial neighborhood land model used four comparable light industrial land sales from Butte and Rocker to determine the base acre land value. *Ex. E; MTAB Hr'g Tr. 54:3-55:17*. The comparable sales were time trended to estimate adjusted sales prices which were accurate as of the common statewide lien date of January 1, 2022, for the 2023/2024 appraisal cycle. *Ex. D; MTAB Hr'g Tr. 74:12-21, 75:21-76:19*. The time trending adjusted for market appreciation between the actual sale date and common statewide lien date. *Id.*

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15. The DOR presented their commercial land model for Butte which was used to determine the base rate for commercial land and the incremental rate assigned to them. *Ex. D; MTAB Hr'g Tr. 48:8-16*. Mr. Davis described base size as the amount of land that is valued by the base rate. *MTAB Hr'g Tr. 50:4-13*. The base size is determined by the DOR's model, and for a property located in the Subject Property's light industrial neighborhood, the base size is one acre, or 43,560 square feet. *Id.* Mr. Davis then described base rate as the value of the one-acre base lot in the DOR's land models before other modifiers are applied. *MTAB Hr'g Tr. 51:8-16*. The base rate for the Subject Property's neighborhood 201.102 is \$93,052. *Ex. D; MTAB Hr'g Tr. 52:1-4*. Mr. Davis described the incremental rate as the rate attributable to excess square footage above the base size as well as the figure used to adjust the value of parcels that are less than the base size. *MTAB Hr'g Tr. 52:8-17*. Since the Subject Property's one acre of commercial land was neither above nor below the base size, there was no adjustment necessary, and the incremental rate was not applied when estimating the acre's value. *Id.*
16. Mr. Davis testified that BTSC's bylaws and their grants from FWP were not considered when the DOR appraised the Subject Property. *MTAB Hr'g Tr. 66:16-67:5*. Mr. Davis further stated as an analogy that what an owner owes on a property does not affect the ability to get fair market value for the parcel on the open market if sold. *Id.*
17. DOR Modeler, Tim Skop, testified that the land model met the standards for accuracy and that the model's R squared value, P value, and T stat all indicated a model which was reflecting the values for Butte commercial and the light industrial grouping well. *MTAB Hr'g Tr. 78:19-79:10*. Furthermore, Mr. Skop stated that there is no minimum number of sales required to value a property, and while more sales are usually better than less, using four sales to value the Subject Property, as was done in this case, was enough to ensure accuracy. *Id.*



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18. Mr. Weldon testified that every other trap and skeet club he reviewed prior to the hearing had also been classified as commercial and contained non-qualified agricultural land. *MTAB Hr'g Tr. 90:13-90:23*. Additionally, like the Subject Property, the other trap and skeet clubs had no property tax exemptions currently applied to them. *Id.*

**JURISDICTION AND STANDARD OF REVIEW**

19. 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 DOR's decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. *Mont. Code Ann. § 15-2-301*.
20. 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.
21. 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**

22. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
23. "All taxable property must be appraised at 100% of its market value...." *Mont. Code Ann. § 15-8-111*.
24. "[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

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rules of discovery and may affirm, reverse, or modify any decision. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act.” *Mont. Code Ann. § 15-2-301(5)*.

25. 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.*, 169 Mont. at 214, 545 P.2d at 1090. However, DOR cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of their action. *Western Air Lines v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
26. The Taxpayer bears the burden of proving the error of DOR’s decision. *Farmers Union Cent. Exch. v. Dep’t of Revenue*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.
27. “‘Assessment formulations’ by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion.” *Peretti v. 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. 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*, 263 Mont. 100, 866 P.2d 228 (1993)).
28. 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*.
29. “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

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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)).

30. 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)*.
31. The Legislature intended the Department to utilize a number of different approaches or combination of approaches, including the income approach, sales comparison approach, and cost less depreciation approach, depending on the market where the appraisals take place, when it assesses property and estimates market value. *Albright v. State*, 281 Mont. 196, 208-09, 933 P.2d 815, 823 (1997).

**DISCUSSION**

32. We find the subject one acre in dispute is correctly classified by DOR as class four commercial land. Regardless of zoning, the classification applied by the DOR complies with the use definition of class four commercial land. *Mont. Code Ann. § 15-6-134*.
33. There was confusion surrounding the classification and zoning of the Subject Property which led Taxpayer to believe the property was classified as industrial rather than commercial. However, the confusion ultimately had no bearing on the value of the Subject Property.
34. We find the land model DOR generated and used to determine a base acre market value of \$93,052 for this property is supported by Montana law, and the basis for establishing the model value therein was four validated sales of similar properties. That is why we find the value placed on the one acre is an accurate reflection of the market value of the subject land.

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35. This Board is not at liberty to reduce value based on a future scenario of what would happen if the property was ever sold. In the future, if the property was sold, any detrimental effect of grant agreements on market value would be determined at that time in negotiations between a buyer and seller. It would be inappropriate for this Board to speculate as to the potential effect of any encumbrances on that future market value. Speculation is beyond the scope of MTAB's statutory duty to decide the case and determine market value as of the common statewide lien date of January 1, 2022.
36. The reasoning provided by CTAB when reducing the value of the property, that the non-profit status reduced value, was not legally supported and seemed to be based on speculation.
37. The Taxpayer did not convince this Board that the DOR erred in assigning market value to this property.

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**ORDER**

38. The CTAB decision is reversed, and DOR's appeal is granted.

39. The DOR is ordered to value the one acre of commercial land at \$93,052.

Dated this 25th day of October 2024.



  
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David L. McAlpin, Chairman

  
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Amie Zendron, Member

  
\_\_\_\_\_  
Travis Brown, 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)*.



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**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 October 25, 2024, to:

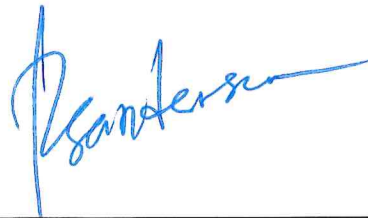
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