

JAN 27 2023

Montana Tax Appeal Board

SHARON LODGE,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2022-24

**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 Gallatin County Tax Appeal Board (CTAB) denying Sharon Lodge (Taxpayer) a reduction in value on the subject property located at 22445 Frontage Road, Belgrade Montana 59714. The Taxpayer appealed that outcome to Montana Tax Appeal Board (MTAB) on April 22, 2022. We modify the CTAB’s determination.

ISSUE TO BE DECIDED

Whether CTAB erred in affirming the Department of Revenue’s (“DOR” or “Department”) appraised land value of \$1,811,512 for this property.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits (confidential):

1. Discussion with rebuttal to DOR valuation w/tabbed exhibits #1-#9;
2. Appraisal information with standards;
3. Multiple maps with Taxpayer’s comparable sales property detail;
4. Google map detail of Taxpayer’s comparable sales;
5. Land comparisons with sizes and map;
6. DOR 2020 Land value spreadsheet.

BEFORE THE MONTANA TAX APPEAL BOARD
SHARON LODGE v. STATE OF MONTANA, DEPARTMENT OF REVENUE

DOR Exhibits:

- A. Subject property Appraisal Notice;
- B. AB-26 DOR Informal review request and 12/1/2021 DOR decision letter;
- C. CTAB form 401 county appeal and decision denying appeal;
- D. Confidential Sales Information Packet of subject property;
- E. Land sales and physical section map;
- F. Computer Assisted Land Pricing spreadsheet of neighborhood 206.011A.

PROCEDURAL HISTORY

The DOR valued the subject property at \$1,911,377 for the 2021/2022 appraisal cycle, with the nonqualified agricultural land valued at \$376, the Class 4 commercial land valued at \$1,676,410 and the improvements valued at \$234,591. *MTAB Dkt. 11, Ex. A.* The Taxpayer filed an AB-26, Request for Informal Classification and Appraisal Review, with the DOR on August 6, 2021. *MTAB Dkt. 11.* The DOR sent a Form AB-26 Determination Letter to the Taxpayer dated December 1, 2021, with a reduced property value of \$1,811,512. *Id.* The reason stated for the AB-26 adjustment was to correct the rentable lot spaces from 26 to 27 and to correct the acreage for the designated land beneath the mobile home park. The Taxpayer appealed the DOR's valuation to the CTAB on January 6, 2022, requesting a land value of \$1,042,670 and an improvement value of \$157,330. *MTAB Dkt 3.* The CTAB hearing was held on March 23, 2022, and the CTAB's decision denying the Taxpayer's application for reduction was sent to the parties on March 23, 2022. The Taxpayer appealed to MTAB on April 22, 2022, per Montana Code Annotated § 15-2-301. *MTAB Dkt 1.*

The MTAB hearing was conducted in Helena on October 18, 2022, at which the following were present:

- a. Sharon Lodge, Taxpayer, John Sinrud, Taxpayer Representative; and
- b. Dave Burleigh, DOR Counsel; Rachel St. Clair, DOR Appraiser; Pam Moor, DOR Area Manager; and Kurt Swimley, DOR Research Analyst (modeler).

BEFORE THE MONTANA TAX APPEAL BOARD
SHARON LODGE 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, additional exhibits submitted by the parties prior to and at the MTAB hearing, and a transcript of the MTAB hearing.

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 subject property is a 20.3-acre parcel of mixed-use commercial and non-qualified agricultural land with a single-family residence and 27 mobile home units. *Ex. D*. This appeal only concerns the 13.5 acres of commercial land under the mobile home park.
3. The Taxpayer retained the services of John Sinrud (Mr. Sinrud) as her representative in the MTAB proceedings. Mr. Sinrud is a licensed realtor in the state of Montana. *MTAB Hr'g Tr. 31:20*.
4. Mr. Sinrud argued the Department did not follow the Uniform Standards of Professional Appraisal Practice (USPAP) in their appraisal of the subject property. *MTAB Hr'g Tr. 14:23-17:6*. The Department used time-adjusted sales from as far back as 2016, while the Taxpayer claimed they were limited by a requirement to use sales in a roughly six-month period preceding the lien date of January 1, 2020. *MTAB Hr'g Tr. 17:13-20*. Mr. Sinrud testified the Department did not provide documentation on how the comparable properties used by the DOR were time-adjusted from the date of sale to the lien date of January 1, 2020. *Id.* Mr. Sinrud further alleged information about the comparable properties was not provided by the Department to support their value, including zoning, sewer, financing, time on the market, and arms-length sale documentation, which is information always included in a private fee appraisal. *MTAB Hr'g Tr. 17:19-18:14*. He also testified the comparable properties used by the Department vary

BEFORE THE MONTANA TAX APPEAL BOARD
SHARON LODGE v. STATE OF MONTANA, DEPARTMENT OF REVENUE

widely in value per acre from \$34,000 to \$84,000. *MTAB Hr'g Tr. 19:20-20:11.*
Ex. 5, 6.

5. In response, the Department argued they followed all International Association of Assessing Officers (IAAO) standards for mass appraisal and USPAP Standards 5 and 6, which relate to mass appraisal, while Mr. Sinrud was referencing USPAP Standard 1, which relates to fee appraisers. *MTAB Hr'g Tr. 88:10-89:10.*

6. Mr. Sinrud contended that there needs to be some “connectivity between the private sector appraisal and the Department’s mass appraisal.” *MTAB Hr'g Tr. 19:3-6.* He further argued that the comparable properties used by DOR in valuing the subject property were not similar in nature and size because the properties are too small or located well away from the subject property, specifically across the interstate or on busy thoroughfares. *MTAB Hr'g Tr. 14:23-17:6.* He asserted comparable properties closer to the interstate, with a higher retail value, were valued less than the subject property. *Ex. 5, MTAB Hr'g Tr. 19:20-21:15.* The subject property is located about a mile from the Department's comparable Properties 1 and 2 and about three hundred yards from the interstate frontage road. *Id.*

7. Mr. Sinrud provided a value-per-acre analysis indicating the subject property's DOR-assessed value is \$139,000 an acre, \$39,000 per acre more than the closest DOR comparable property used to value the subject. *MTAB Hr'g Tr. 22:15-24:8.* Mr. Sinrud argued that there is a systemic problem with the way the Department performs mass appraisals and there should be additional parameters to ensure comparable properties are similarly valued. *Id.* He further argued that houses built in the 40s and 50s, even those that have been remodeled, are not comparable to newly built homes because of different construction standards. *Id.* Mr. Sinrud argued that the information the Department provided to the Taxpayer is hard to understand, and individuals who appeal their taxes have trouble finding comparable properties for their case. *Id. MTAB Hr'g Tr. 27:22-28:4.*

BEFORE THE MONTANA TAX APPEAL BOARD
SHARON LODGE v. STATE OF MONTANA, DEPARTMENT OF REVENUE

8. Mr. Sinrud presented three comparable properties; all three are vacant land, and two were sold after the January 1, 2020, lien date. *Ex. 1, Tab 7, 8 & 9, MTAB Hr'g Tr. 39:3-42:11*. The Department contended that the Taxpayer's comparable properties are invalid because: 1) two of the properties sold during a different tax cycle (after the lien date), 2) one of the two properties sold after the lien date was not an arm's length transaction, 3) one of the two properties sold after the lien date was classified as agricultural, so it would not be considered in the commercial model used to value the subject property, and 4) the third property was much larger in size. *MTAB Hr'g Tr. 68:3-70:23*.

9. Mr. Sinrud presented the Gallatin Field Airport master plan to show that a portion of the subject property is within the land use plan of the airport. *Ex. 2, MTAB Hr'g Tr. 26:15-23*. Because the property is within the boundaries of the airfield's land use plan, the Taxpayer contends there are height restrictions that limit the use of the land. *MTAB Hr'g Tr. 24:13-18*. Mr. Sinrud testified that improvements on the subject property cannot be more than one story in height, and additional other regulations could also adversely affect the development potential of the subject property in the future. *MTAB Hr'g Tr. 25:10-26:7*. The Taxpayer has planned to expand the mobile home park to accommodate additional low-income housing, but one corner of the property has restrictions. *MTAB Hr'g Tr. 27:6-13*.

10. As of the lien date, January 1, 2020, there are no county or city zoning restrictions on the property, but the subject property is in the city/county planning area. *MTAB Hr'g Tr. 30:8-16*.

11. Due to the mix of land classification as both commercial and non-qualified agricultural land on the subject property, the DOR valued the improvements using the cost method, per its practice. *MTAB Hr'g Tr. 54:8-25, 63:3-12*.

BEFORE THE MONTANA TAX APPEAL BOARD
SHARON LODGE v. STATE OF MONTANA, DEPARTMENT OF REVENUE

12. Non-qualified agricultural land is statutorily valued using agricultural production rates. *MTAB Hr'g Tr. 58:1-7*. The value of the non-qualified agricultural land was not reduced during the AB-26. *MTAB Hr'g Tr. 56:5-8*.
13. During the AB-26 informal review, the Department appraiser adjusted the rentable spaces available in the mobile home park, lowered the condition of the infrastructure to the lowest grade possible, and corrected the number of acres beneath the mobile homes, lowering the appraised value. *MTAB Hr'g Tr. 55:9-24*.
14. The Department created a land model to value the subject commercial land. *MTAB Hr'g Tr. 55:6-8*. The land in question is 13.5 acres of commercial land. Using the income approach, the Department considered a value of the subject property at \$708,600. *MTAB Hr'g Tr. 63:23-64:17*. However, the income approach was not used because the DOR estimated that the value of the land alone is worth more than what the income approach calculated for the land and improvements. *MTAB Hr'g Tr. 96:15-97:15*. The appraiser also argued that the Taxpayer was renting spaces in the mobile home park below market value, further making the income approach unusable to find market value. *MTAB Hr'g Tr. 64:9-17, 97:23-98:8*.
15. The Department's neighborhood land models for valuing property consist of validated sales of similarly situated properties with similar characteristics. *MTAB Hr'g Tr. 106:15-25*. If the Department modelers cannot find comparable sales of properties within a neighborhood, the appraiser will expand their search to adjacent neighborhoods. *MTAB Hr'g Tr. 74:3-8*. The Department may also go back six years to find valid sales for their model. *MTAB Hr'g Tr. 105:1-25*.
16. Neighborhood 206.111.D was created for the 2021/2022 reappraisal cycle. *MTAB Hr'g Tr. 77:1-83:6, 90:14-91:7*. For valuation purposes, the subject property was placed in the new neighborhood, 206.111.D, Belgrade Rural Airport. *Ex. E, F, MTAB Hr'g Tr. 61:17-22, 65:11-17, 73:5-8*. Neighborhood 206.11.D is the most dispersed of the neighborhoods within the model presented by the Department,

BEFORE THE MONTANA TAX APPEAL BOARD
SHARON LODGE v. STATE OF MONTANA, DEPARTMENT OF REVENUE

with some sales of properties spread north of the airport and south of Interstate 90. *Id. Ex E.* As justification for creating the new neighborhood 206.111.D the Department contends that the properties in this new neighborhood, 206.111.D, are growing faster than the subject property's original neighborhood, which encompassed the subject property. *MTAB Hr'g Tr. 100:3-19.* The Department modeler testified that neighborhood lines maybe be redrawn each reappraisal cycle by looking at the sales within different neighborhoods. *MTAB Hr'g Tr. 114:17-24.* The Department modeler believed the subject property neighborhood was stratified differently because of its proximity to the city limits of Belgrade. *Id.*

17. The subject property land was valued in its new neighborhood using a base rate for the first acre and an incremental rate to value the additional acres based on the sales in the land model. *MTAB Hr'g Tr. 103:21-104:12, 108:13-110:6, 109:7-17, 110:8-17.* While some sales used by the Department to build the new model were outside the subject property's neighborhood and had a different base rate, the incremental rate stayed the same across all neighborhoods in the model. *Ex. F.*
18. According to the DOR witness, the most comparable properties, in neighborhood 206.111.D, for valuing the subject property, are in a commercial area north of the airport and the Taxpayer's property is located south of the airport. *MTAB Hr'g Tr. 126:2-127:2.*

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

BEFORE THE MONTANA TAX APPEAL BOARD
SHARON LODGE 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, ¶ 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 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.

BEFORE THE MONTANA TAX APPEAL BOARD
SHARON LODGE v. STATE OF MONTANA, DEPARTMENT OF REVENUE

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. “[T]ax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer.” *Western Energy Co. v. Dep’t of Revenue*, 1999 MT 289, ¶ 10, 297 Mont. 55, 58, 990 P.2d 767, 769.

30. “Administrative agencies enjoy only those powers specifically conferred upon them by the legislature. Administrative rules must be strictly confined within the applicable legislative guidelines. Indeed, it is axiomatic in Montana law that a statute cannot be changed by administrative regulation. We look to the statutes to determine whether there is a legislative grant of authority.” *Bick v. State Dep’t of Justice, Div. of Motor Vehicles*, 224 Mont. 455, 457, 730 P.2d 418, 420 (1986).

31. The Board “may not amend or repeal any administrative rule of the department,” but may enjoin its application if the Board concludes the rule is “arbitrary, capricious, or otherwise unlawful.” *Mont. Code Ann. § 15-2-301(5)*.

32. 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)*.

BEFORE THE MONTANA TAX APPEAL BOARD
SHARON LODGE v. STATE OF MONTANA, DEPARTMENT OF REVENUE

33. “If the appeal is an appeal of the valuation of residential property, the state board shall consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and uses values obtained within the timeframe provided for in subsection (3)(a). The appraisal that is provided by the taxpayer is presumed to establish assessed value in the state board proceeding unless the department provides sufficient evidence to rebut the presumption of correctness, including another independent appraisal or other compelling valuation evidence. The state board shall address the taxpayer’s independent appraisal and the department’s valuation evidence in the decision.”
Mont. Code Ann. § 15-2-301(3)(b).
34. 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

35. This Board agrees with the Department that the income approach to valuation is not an appropriate method to calculate the value of the subject property. The land is classified as both commercial and non-qualified agricultural land, and there is a single-family residence located on the subject property as well, making this a mixed-use property. Because the non-qualified agricultural land is valued at the statewide average for productivity, the improvements on the remaining portion of the parcel must default to the cost method. As a result, the income method could not be used, so the land itself would need to be valued using the land sales model, as was done here. Additionally, we agree with the Department that it cannot use the income approach to value the property because the value derived from using the income approach is lower than the value of the land by itself.

BEFORE THE MONTANA TAX APPEAL BOARD
SHARON LODGE v. STATE OF MONTANA, DEPARTMENT OF REVENUE

36. The Taxpayer has the burden of proving the Department erred and the valuation was incorrect. Based on the evidence and testimony presented, we do not believe the Taxpayer met that burden to receive the value requested. The Taxpayer presented evidence of sales prices of nearby properties the Taxpayer believed were comparable. However, we agree with the Department that the sales presented were not comparable to the subject property. Two of the properties sold during a different tax cycle, and the Department determined one of those sales was not an arm's length transaction. One of the properties was classified as agricultural, so the sale of that property would not have been included in the model used to value the subject property. The third property was much larger in size than the subject property and thereby deemed incomparable.
37. The Department presented sufficient evidence and testimony to show they followed Montana law, as well as IAAO and USPAP standards to value the subject property and thereby defend its presumption of correctness in calculating the value of the subject property. However, for reasons stated below, we do not believe the Department valued the subject property in the correct neighborhood.
38. Neighborhood 206.111.D was newly created for the 2021/2022 valuation cycle to account for the properties around the airport selling at much higher rate than the rural areas nearby. The Department's witness testified that the subject property could have been valued in multiple different neighborhoods. She testified that the subject property's inclusion in the Belgrade town planning would make it more comparable to the properties in neighborhoods 206.111 and 206.111.B, while its inclusion under the Airport Authority makes it more comparable to the properties in neighborhood 206.111.D.
39. The Department provided a map showing the location of the sales it used to create its model for the Taxpayer's new neighborhood. However, the Department did not provide a map showing the any neighborhood boundaries, nor could the Department draw the boundaries on the map provided when asked. The map

BEFORE THE MONTANA TAX APPEAL BOARD
SHARON LODGE v. STATE OF MONTANA, DEPARTMENT OF REVENUE

provided showed multiple sales in neighborhood 206.111.D, the neighborhood in which the subject property is located. Some sales are nearby but within highly developed industrial parks. Other sales are also physically proximate to the subject but across I-90 with very different characteristics for buyers.

40. The same map shows multiple sales to the west of the subject property in neighborhood 206.111.B, referred to as Belgrade Town Secondary. The Department's testimony indicated this neighborhood consists of commercial properties next to new residential areas. The neighborhood is in the town of Belgrade but "secondary in terms of commercial access and visibility." *MTAB Hr'g Tr. 90:17-25.*

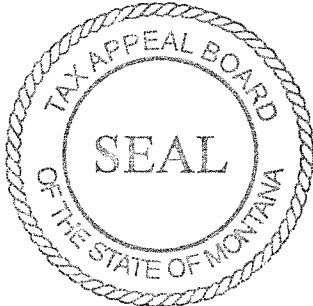
41. We are not convinced that the neighborhood the Department placed the subject property in, neighborhood 206.111.D, reasonably reflects sales truly comparable to the subject land, thus are not reflective of the market value of this property. This Board is convinced that the subject property is more comparable to the sales in neighborhood 206.111.B based on the evidence and testimony presented regarding the neighborhoods and the Department's testimony that the subject property could have been valued in multiple neighborhoods. The Board modifies the CTAB decision and directs the Department to recalculate the valuation for the subject property in neighborhood 206.111.B, rather than neighborhood 206.111.D, for the 2021/2022 valuation cycle.


BEFORE THE MONTANA TAX APPEAL BOARD
SHARON LODGE v. STATE OF MONTANA, DEPARTMENT OF REVENUE

ORDER


42. We modify the CTAB's decision, and the Taxpayer's appeal is granted in part.
43. The DOR is ordered to recalculate the value of the commercial land based on the model for neighborhood 206.111.B and apply that value for the 2021/2022 valuation cycle.

Dated this 27th day of January 2023.

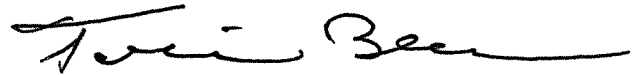




David L. McAlpin, Chairman



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)*.

BEFORE THE MONTANA TAX APPEAL BOARD
SHARON LODGE 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 January 27, 2023, to:

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