

RL PROPERTIES, INC,

CASE No: PT-2024-83

Appellant,

v.

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

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

STATEMENT OF THE CASE

This is an appeal from the Butte-Silver Bow County Tax Appeal Board (CTAB) for the subject property located at 100 S Montana Street, Butte, MT (Subject Property). The Taxpayer appealed that outcome to the Montana Tax Appeal Board (MTAB) on December 10, 2024.

The Department of Revenue (DOR) filed a Motion to Dismiss and Brief in Support on January 30, 2025. Appellants filed a Response to the DOR’s Motion to Dismiss and Brief in Support on February 21, 2025. The DOR filed its Reply to Appellant’s Response to Department’s Motion to Dismiss on February 26, 2025. The matter is fully briefed, and the Board has reviewed the submissions of both parties. Because the Appellants failed to exhaust their administrative remedies, the Board grants the DOR’s Motion to Dismiss.

ISSUE TO BE DECIDED

Whether the Taxpayer exhausted all administrative remedies prior to appealing to the Montana Tax Appeal Board.

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EXHIBIT LIST

The following evidence was submitted with the Taxpayer's appeal to MTAB on December 10, 2024.

Taxpayer Exhibits:

1. Appeal Form MTAB-401, Appeal to the Butte-Silver Bow CTAB, dated April 29, 2024;
2. Butte-Silver Bow CTAB Final Determination Letter, dated November 14, 2024;
3. Certification of Occupancy for 100 S. Montana Street, Butte, MT;
4. Acknowledgment of Butte-Silver Bow CTAB Decision;
5. Email from Rusty Christensen to Fred Birch, dated March 1, 2023;
6. Appeal Form MTAB-401, Appeal to MTAB;
7. Form AB-26 Determination Letter, dated July 9, 2024;
8. DOR Letter dated April 22, 2024, and DOR Sales Packet;
9. Buyer's Statement, dated March 4, 2021;
10. RL Properties Amortization Table;
11. RL Properties Initial Escrow Account Disclosure Statement; and
12. RL Properties Disbursement Request and Authorization

The DOR submitted the following evidence with the Motion to Dismiss.

DOR Exhibits:

- A. RL Properties' Classification and Appraisal Notice, dated June 30, 2023;
- B. RL Properties Request for Informal Classification and Appraisal Review, dated April 9, 2024;
- C. RL Properties' MTAB-401 Appeal to CTAB;
- D. RL Properties Updated Classification and Appraisal Notice, dated July 8, 2024;
and
- E. CTAB Final Determination Letter, dated November 11, 2024.

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 R.L. Properties Inc. located at 100 South Montana Street, Butte, Montana. *Ex. 8*. The Subject Property is also identified by its geocode 01-1197-13-1-01-22-0000. *Id.*

3. The DOR valued the Subject Property at \$2,106,800 for tax years 2023 and 2024. *Ex. C*. Taxpayer's Property Classification and Appraisal Notice was mailed on June 30, 2023, and Taxpayer subsequently filed an AB-26 Request for Informal Review on April 9, 2024. *Ex. A, 8*.

4. During the AB-26 Informal Review process, the DOR amended the number of apartments in the Subject Property from 25 to 18. *Ex. 7*. Based on the updated property information, the DOR sent its Final Determination letter to Taxpayer on July 9, 2024, which lowered the Subject Property's value from \$2,106,800 to \$1,780,000. *Ex. 7, D*.

5. Taxpayer appealed the DOR's AB-26 Final Determination letter to the CTAB on April 29, 2024. *Ex. C*. The CTAB held its hearing on November 12, 2024. *Ex. E*.

6. At the CTAB hearing, Taxpayer's Representative, Mr. Birch, appeared and made several arguments relating to why the Subject Property's taxable value should be reduced. *Ex. E*. After presenting his arguments, Mr. Birch verbally stated he wanted to abandon his appeal. *Ex. E; CTAB Hr'g Tr. 37:45-38:25*. The CTAB accepted the Taxpayer's withdrawal and ended the hearing. *Id.* The CTAB closed the hearing without the DOR presenting evidence and without deliberations or issuing a final decision. *Ex. E*.

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7. The CTAB mailed the meeting minutes and written determination to the Taxpayer on November 14, 2024.¹ *Ex. E*. The written determination states the appeal was withdrawn, and no adjustment was made. *Id.*
8. Taxpayer filed an appeal with MTAB on December 10, 2024. *Ex. F*.
9. The DOR filed a Motion to Dismiss and Brief in Support on December 2, 2024, alleging that MTAB lacks the subject matter jurisdiction necessary to hear the case. *MTAB Dkt. 6*. The DOR argue that the Taxpayer withdrew his appeal and left the CTAB no valid application for reduction to apply a final decision, thus failing to exhaust their administrative remedies. *MTAB Dkt. 6*. Additionally, the CTAB did not hear all evidence, testimony or deliberate during the hearing and made no final determination. *Id.* Taxpayer filed a Response to the Motion to Dismiss on February 21, 2025, alleging that a member of the CTAB was biased due to business relationships. *MTAB Dkt. 8*. Furthermore, Taxpayer's Representative stated they could not get a fair hearing at CTAB because of this conflict, and the proceedings could not continue. *Id.* The DOR filed a reply brief on February 26, 2025, arguing that it is undisputed that the Taxpayer withdrew his appeal and that MTAB lacks subject matter jurisdiction to hear the appeal. *MTAB Dkt. 9*.

JURISDICTION AND STANDARD OF REVIEW

10. 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*.
11. 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

¹ Despite the CTAB letter dated November 14, 2024, being labeled as a written determination, the letter did not contain a final determination as the appeal was withdrawn before the CTAB deliberated and issued its final decision.

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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.

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

13. “(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:
 - a. Lack of subject-matter jurisdiction;
 - b. Lack of personal jurisdiction;
 - c. Improper venue;
 - d. Insufficient process;
 - e. Insufficient service of process;
 - f. Failure to state a claim upon which relief can be granted; and
 - g. Failure to join a party under Rule 19.” *Mont.R.Civ.P. 12(b)(1)*.

14. 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)*.

15. A reduction may not be made unless the applicant makes an application, as provided in 15-15-102, and attends the county board hearing. An appeal of the county board's decision may not be made to the Montana tax appeal board unless the person or the person's agent has exhausted the remedies available through the county board. In order to exhaust the remedies, the person or the person's agent shall attend the county board hearing. On written request by the person or the person's agent and on the written concurrence of the department, the county board may waive the requirement that the person or the person's agent attend the hearing. The testimony of all witnesses at the hearing and the deliberation of the county tax appeal board in rendering a decision must be

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electronically recorded and preserved for 1 year. If the decision of the county board is appealed, the record of the proceedings, including the electronic recording of all testimony and the deliberation of the county tax appeal board, must be forwarded, together with all exhibits, to the Montana board. *Mont. Code Ann. § 15-15-103.*

16. 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).*

17. The valuation of property may not be reduced by the county tax appeal board unless either the taxpayer or the taxpayer's agent makes and files a written application for reduction with the county tax appeal board. *Mont. Code Ann. § 15-15-102.*

CONCLUSIONS OF LAW

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

19. “[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).*

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20. In connection with an appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. *Mont. Code Ann. § 15-15-101(6)*.
21. 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*.
22. 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*.
23. "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

24. For the reasons set forth below, this Board grants the Respondent's Motion to Dismiss.
25. The DOR filed a Motion to Dismiss and Brief in Support contending that MTAB lacked the subject matter jurisdiction necessary to hear this appeal because the Taxpayer failed to exhaust his administrative remedies when the Taxpayer withdrew his appeal at the CTAB hearing.
26. Taxpayer filed a response to the DOR's Motion to Dismiss, stating that he would not get a fair hearing and could not continue the appeal when there is a

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conflict of interest with the CTAB board. The audio recording of the CTAB hearing does not include any of the Taxpayers arguments relating to the CTAB board's alleged bias.

27. "If the appearance provisions of Mont. Code Ann§ 15-15-103 have been complied with, a person or the department... aggrieved by the action of the county tax appeal board may appeal to the Montana tax appeal board by filing a notice of appeal within 30 calendar days after the recipe of the decision of the county board." *Mont. Code. Ann. § 15-15-103*. The Taxpayer met the appearance provisions of Mont. Code. Ann. § 15-15-103. Additionally, the Taxpayer's notice of appeal was filed with this Board within 30 calendar days after receiving the CTAB decision. In the appeal to MTAB, the Taxpayer claimed the Subject Property was improperly assessed and should have been assessed as "unimproved/under construction" and also requested a refund because of this mistake. The Board accepted the Taxpayer's appeal as the provisions of Mont. Code Ann. § 15-15-103 had been met. The Taxpayer's application did not indicate any bias at the CTAB hearing.

28. The DOR filed a Motion to Dismiss, stating that the Taxpayer had failed to exhaust his administrative remedies as stated in Mont. Code Ann § 15-15-103(1). The DOR argued that because the Taxpayer withdrew the appeal, the CTAB had no valid application for reduction allowing the CTAB to grant or deny a reduction in value. Further, the DOR argued that because the CTAB did not hear testimony from all witnesses, deliberate, or issue a final decision, the CTAB letter dated November 14, 2024, did not qualify as a determination but was more akin to a minute entry.

29. To determine if the Taxpayer failed to exhaust all administrative remedies, we must look at the relevant sections of Mont. Code Ann. § 15-15-103(1). First, a reduction may not be made unless the applicant makes an application, as provided in 15-15-102, and attends the county board hearing. *Mont. Code Ann.*

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§ 15-15-103(1). In this case, the Taxpayer did make an application to the CTAB, and did attend the CTAB hearing thus satisfying Mont. Code Ann. § 15-15-102. The CTAB had the authority to change or fix any assessment by the DOR.

30. “An appeal of the county board's decision may not be made to the Montana Tax Appeal Board unless the person or the person's agent has exhausted the remedies available through the county board. In order to exhaust the remedies, the person or the person's agent shall attend the county board hearing.” *Mont. Code Ann. § 15-15-103*. Mont. Code Ann. § 15-15-103(1) is clear that administrative remedies must be exhausted before an appeal to this Board is made, the question that remains is when the administrative remedies were exhausted. When reviewing the statute, the Board focuses on the section that reads “an appeal of the County Board Decision.” *Mont Code Ann. § 15-15-103(1)*. From the record it is clear that the CTAB never issued a final decision. The CTAB did not have an opportunity to issue a decision or deliberate because the Taxpayer withdrew or abandoned the appeal. Additionally, because the appeal had been withdrawn or abandoned, the CTAB had no valid application for reduction to apply its decision if it was issued, additionally, the Taxpayer has no final CTAB decision on which to appeal.
31. The Board also emphasized “has exhausted the remedies available through the county board.” *Mont Code Ann. § 15-15-103(1)*. The CTAB has the authority to change any assessment or fix any assessment at some other level. *Mont. Code Ann. § 15-15-101(6)*. In reviewing the Taxpayer’s application to the CTAB, they requested the CTAB change the Subject Property’s status to reflect that its unimproved/under construction, which is an issue the CTAB could have remedied at hearing. The CTAB did not have the opportunity to address the Taxpayer’s concerns because the appeal was withdrawn. While the Board understands the Taxpayer’s concerns regarding CTAB bias, the reason there is an appeal system in place is to address issues such as bias at CTAB hearings.

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Additionally, the CTAB record submitted to MTAB did not indicate any issue of bias. The Taxpayer's Representative could have addressed the bias issue prior to or at the CTAB hearing, and accommodations could have been made. To appeal a decision of the CTAB, a Taxpayer must first exhaust all administrative remedies, including obtaining a final decision from the CTAB.

32. While the statute does specify "to exhaust the remedies the taxpayer or their agent must attend the CTAB hearing." *Mont. Code Ann. § 15-15-103(1)*. The Board feels this is only one requirement and not an exhaustive list. In connection with an appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. *Mont. Code Ann. § 15-15-101(6)*. The power granted to CTAB by Montana to amend DOR assessments, is also an administrative remedy that could have been perused if the appeal had not been withdrawn. Because the application for reduction was withdrawn during the CTAB hearing and no final decision was issued, the Taxpayer failed to exhaust their administrative remedies.

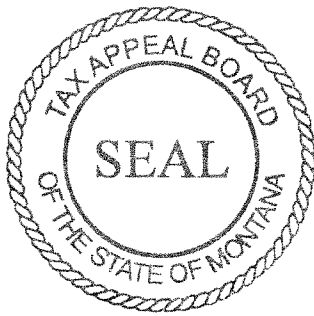
33. There was no judgment entered at the CTAB hearing because the application for reduction was withdrawn, thus leaving no decision to appeal from. Additionally, no claims were settled at the county level. Because the application for reduction was withdrawn during the CTAB hearing and no final decision was issued, the Taxpayer failed to exhaust their admirative remedies.

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ORDER

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

Dated this 25th day of March 2025.



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

Travis Brown, Chairman

A handwritten signature in cursive script, 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)*.

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Certificate of Service

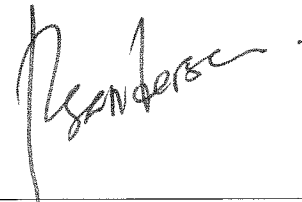
I certify that I caused a true and correct copy of the foregoing Findings of Facts and Conclusions of Law to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on March 25, 2025, to:

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