

OCT 15 2024

Montana Tax Appeal Board

GLEN WOHL,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2024-8

**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 Missoula County Tax Appeal Board (CTAB) denying Glen Wohl (Taxpayer) a reduction in value on the subject property located at 3806 South Ave. West Missoula, Montana (Subject Property). The Taxpayer appealed that outcome to Montana Tax Appeal Board (MTAB) on January 9, 2024. We uphold the CTAB's determination.

ISSUE TO BE DECIDED

Whether CTAB erred in denying the Taxpayers' request for a reduction in value to the Subject Property.

EXHIBIT LIST

The Taxpayer attached the following exhibits to his notice of appeal:

1. Tabulation of Improved Sales, with property record cards and transfer documents;
2. Oral appraisal dated January 24, 2024; and
3. Megan L. Garland and Kraig P. Kosena's Appraiser's Qualification, license and insurance.

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The DOR submitted the following exhibits at the hearing:

- A. Property Record Card;
- B. Aerial Maps;
- C. Classification and Appraisal Notice;
- D. Calculation of Value;
- E. Missoula Warehouse Model Output;
- F. Land Model Summary;
- G. Full Land Model;
- H. Income Model; and
- I. 2023 DOR unloaded and overall cap rates.

PROCEDURAL HISTORY

The DOR valued the Subject Property at \$996,400 for the 2023/2024 appraisal cycle, with the land valued at \$224,185 and the improvements valued at \$772,215. *Ex. A.*

The Taxpayer appealed the DOR's valuation to the CTAB on July 27, 2023, requesting a total value of \$750,000. *MTAB Dkt. 3.* The CTAB hearing was held on December 19, 2023, and the CTAB's decision denying the Taxpayer's application for reduction was signed on December 22, 2023. *Id.* The Taxpayer appealed to MTAB on January 29, 2024, per Mont. Code Ann. § 15-2-301, requesting a total value of \$760,000. *MTAB Dkt. 1.* The MTAB hearing was conducted in Helena on July 18, 2024. Before the beginning of testimony, the Board granted a motion by the DOR to seal all confidential sales prices in evidence. *MTAB Dkt. 10; MTAB Hr'g Tr. 5:1-16.*

The following were present at the MTAB hearing:

- a. Kristina Warren, DOR Counsel; Cindy McGinnis, Paralegal; Helen Greenberg, Lead Appraiser; Jason Stevens, Modeler; and Michelle Staples, Area Manager.
- b. The Taxpayer did not attend the MTAB hearing. The Taxpayer was offered a Zoom telephonic option but did not join.

The record includes all materials submitted to CTAB, a recording of the CTAB hearing, all materials submitted to MTAB with the appeal, additional exhibits

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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 Board held a telephonic scheduling conference on March 7, 2024. *MTAB Dkt. 2*. During the call, the Board agreed to let the Taxpayer appear telephonically at the July 18, 2024, hearing. The Board scheduled a test call for July 15, 2024, to test the Zoom technology for the Taxpayer's convenience, in which the Taxpayer did not participate. Later that day, the Board received a letter from the Taxpayer dated July 11, 2024, requesting that the Board decide the appeal by reviewing all documents submitted and testimony at CTAB. *MTAB Dkt. 7*. The Taxpayer stated in his letter that he had no additional information to offer. *Id.* The Board issued an order stating that the MTAB hearing would still be held on July 18, 2024. The Taxpayer did not attend in person or by telephone. *MTAB Dkt 8*.
3. The Subject Property is a commercial property owned by Glen Wohl in Missoula County. *Ex. A*. The Subject Property is located at 3806 South Avenue West, Missoula, Montana, and is identified by its geocode 04-2199-25-3-08-03-0000. *Id.* The Subject Property's land encompasses 1.360 acres which includes six mini storage structures with various sized units. *Id.*
4. The DOR valued the Subject Property at \$996,400 for tax years 2023 and 2024, allocating \$224,185 for the land and \$772,215 for the improvements. *MTAB Dkt. 3*. At the December 19, 2023, CTAB hearing, the Taxpayer requested \$750,000 for a total value. *Id.* The CTAB denied the Taxpayer's request for a value reduction. *Id.* The Taxpayer appealed this decision to MTAB on January

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29, 2024, requesting that the total market value for the Subject Property be \$760,000. *Id.*

5. The Taxpayer hired a licensed appraiser, Megan Garland of Kembel Kosena & Company, to perform an appraisal of the Subject Property and present her findings during the CTAB hearing. *MTAB Dkt. 1; CTAB Hr'g 1:16-1:33.* Ms. Garland testified that the information provided to the CTAB and marked as CTAB Exhibit 3 is a consultation of comparable sales to the Subject Property tabulated into a list of six sales. *MTAB Dkt. 1, 3; CTAB Hr'g 1:18-1:32.*
6. Ms. Garland testified during the CTAB hearing that the comparable sales have square foot pricing selling from \$40.00 to \$103 per square foot. *CTAB Hr'g 1:32-1:39.* Using a regression model, Ms. Garland plotted the Subject Property as a midlife property valued at \$39.00 per square foot. *CTAB Hr'g 2:11-2:48.* The comparables selected were located not only in Missoula, but also other surrounding counties. *CTAB Ex. 4.* Ms. Garland testified that the location of her comparable sales does not affect their compatibility with the Subject Property because they all receive approximately identical rent amounts. *CTAB Ex. 4; CTAB Hr'g 3:33-4:20.*
7. The Taxpayer testified at the CTAB hearing that the Subject Property has a low fence and no gates. *CTAB Hr'g 12:03-13:15.* Additionally, it lacks other standard security measures typical of other mini warehouses. *Id.*
8. The Taxpayer did not introduce any evidence or testimony during the MTAB hearing. Since the Taxpayer did not attend the MTAB hearing, the DOR's arguments were not refuted.
9. At the MTAB hearing, DOR Lead Appraiser, Helen Greenberg, testified that the Subject Property was valued using the income approach. *MTAB Hr'g Tr.*

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9:6-8. The income approach is the DOR's preferred method of valuing commercial properties because it represents market value which is what an investor would consider when evaluating a property. *MTAB Hr'g Tr. 10:18-24.* The DOR did value the Subject Property at \$994,425 using the cost approach to value. *MTAB Hr'g Tr. 11:1-8.* The DOR did not use the sales comparison approach because commercial properties are unique, and it is hard to develop an effective comparable sales model. *MTAB Hr'g Tr. 11:14-23.* Ms. Greenberg also stated that no mini storage properties in Montana are valued using the sales comparison method. *Id.*

10. When valuing a property using the income approach, only one total value is determined which is then apportioned between the land and buildings. *MTAB Hr'g Tr. 12:10-13:25.* The land value is first determined using comparable sales, and the remaining value is apportioned to the improvements. *Id.*
11. Ms. Greenberg testified that she assigned the Subject Property a rent rating of \$7.00 per square foot. *Ex. D; MTAB Hr'g Tr. 14:11-15:2.* The \$7.00 per square foot was multiplied by 19,440, the building's square footage, to get a potential gross income of \$136,080. *Id.* An allowance of \$14,697 to account for vacancy and collection was subtracted to get an effective gross income of \$121,383. *Id.* Next, expenses amounting to \$40,178 were subtracted from the effective gross income to get the net operating income of \$81,205. *Id.* Lastly, the net operating income was divided by the overall capitalization rate of 8.15% to get the final value of \$996,400. *Id.*
12. DOR Modeler, Jason Stevens, testified that he develops rent ratings using reported data from taxpayers. *MTAB Hr'g Tr. 24:13-25:15.* The rent ratings were created using 17 similar properties from the Missoula area. *MTAB Hr'g Tr. 26:1-27:23.* The rent rating is determined using a mini warehouse multiple regression analysis. *Ex. E, G, H; MTAB Hr'g Tr. 24:13-25:15.* Mr. Stevens

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testified that he checked the accuracy of the model by comparing it to other markets. *Id.* The rent rating developed by the DOR ranges from \$3.50 to \$10.50. *Id.* The Subject Property is assigned a rent rating of six or \$7.00 per square foot. *Ex. I, E; MTAB Hr'g Tr. 24:13-25:15.*

13. The DOR develops three urban capitalization rates, and the Subject Property was assigned the middle urban capitalization rate of 8.15%. *MTAB Hr'g Tr. 15:22-16:17.* The capitalization rate is determined by looking at commercial property sales in the “Big Seven” urban areas and dividing the sales price by the operating income. *Id.* An overall capitalization is the capitalization rate plus the effective tax rate. *MTAB Hr'g Tr. 18:6-14.* The DOR does not allow taxes to be used as an expense in the income approach and taxes are instead added to the capitalization rate to get an overall capitalization rate. *Id.*
14. Ms. Greenberg testified that she reviewed the Taxpayer's comparable properties and agreed that the comparable properties in Ravalli County might have similar construction costs, but their investment and cash flow are not comparable. *MTAB Hr'g Tr. 12:2-9.* Additionally, the comparable properties used by the Taxpayer were much smaller units or were located in different markets areas. *MTAB Hr'g Tr. 22:19-23:2.* DOR Area Manager, Michelle Staples, testified that there are multiple differences between the Subject Property and the comparable properties used by the taxpayer such as age, market location, and that some were sold after the 2023/2024 common statewide lien date *MTAB Hr'g Tr. 32:21-33:3.*
15. Ms. Greenberg testified that the Taxpayer did not report his income and expense information to the DOR and therefore it was not used in developing the model used to value the Subject Property. *MTAB Hr'g Tr. 15:5-21.* Ms. Greenberg testified that the Subject Property's value increased by 36% from

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the previous 2021/2022 valuation cycle and is consistent with taxable value increases in the Missoula area. *MTAB Hr'g Tr. 21:17-22:5.*

16. Ms. Staples gave uncontested testimony that she views the appraisal presented by the Taxpayer during the CTAB hearing as more of a comparative market analysis and that it fails to include the scope of a full appraisal. *MTAB Hr'g Tr. 31:1-8.*

JURISDICTION AND STANDARD OF REVIEW

17. 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.*
18. 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.
19. 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

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

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22. “[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)*.
23. 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).
24. 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.
25. “‘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)).
26. 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)*.

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27. Except as provided in subsection (3)(b), the Montana tax appeal 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 the appraisal was conducted within 6 months of the valuation date. If the Montana board does not use the appraisal provided by the taxpayer in conducting the appeal, the Montana board shall provide to the taxpayer the reason for not using the appraisal. Mont. Code Ann. § 15-2-301(a).
28. 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

29. The Taxpayer presented a two page oral appraisal to the Board. For an appraisal to be considered a valid independent appraisal, it must have been conducted according to the Montana Board of Real Estate Appraisers standards and conducted within six months of January 1, 2022, the DOR's lien date for the 2023/2024 tax cycle. In his MTAB filing, the Taxpayer submitted his two-page oral appraisal dated January 24, 2024, well after the DOR's lien date. At the CTAB hearing, the Taxpayer's witness and certified appraiser, Ms. Garland, testified that she had only performed a consultation and had compiled a list of tabulated sales comparable to the Subject Property. Ms. Staples testified at the MTAB hearing that the Taxpayer's exhibit was a market comparative analysis and lacked the scope of a full appraisal. Because of the facts presented, the Board did consider the Taxpayer's market analysis. The Board does not believe the Taxpayer's appraisal meets the standards of Montana Code Ann. § 15-2-301(3)(a) and was not given the weight of an independent appraisal.

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30. The Taxpayer argued, at CTAB, that the Subject Property should be valued at \$39.00 per square foot. The \$39.00 per square foot value was determined using regression analysis, valuing the Subject Property as midlife property. The Taxpayer entered the regression curve into evidence at the CTAB hearing. The DOR also used regression analysis to determine the Subject Property's rent rating of \$7.00 per square foot. While the Taxpayer's regression Taxpayer's model arrived at a sale price per square foot and the DOR's model arrived at a rent rating, the Board found the DOR model more credible. Mr. Stevens built the model, presented uncontested testimony on how the model functioned, and the model was checked for accuracy.
31. The Board found the Taxpayer's regression analysis less credible because of the comparable properties used by Ms. Garland. Many of the comparables used by the Taxpayer were significantly smaller than the Subject Property and were after the DOR lien date of January 1, 2022, for the 2023/2024 tax cycle. Additionally, several of the comparable properties are in different market areas. At the CTAB hearing, Ms. Garland testified that the comparable properties receive similar rents and would, therefore, still be comparable. The Board heard credible, uncontested testimony from Ms. Greenberg about how the construction cost may be similar, but the investment and rent differed considerably depending on the location of the comparable properties.
32. The DOR's use of the income method to value the Subject Property was proper and the best indicator of market value. The Board agrees that a potential investor would look at the projected income of a property before investing. The Board also acknowledges that the DOR had few mini warehouse sales and the fact that the sales fluctuate in size, type of construction and location makes it hard to create a reliable sales comparison model. The Board finds the rent rating of 6 assigned to the Subject Property, also shown as \$7.00 per square

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foot, was proper. The middle cap rate of 8.5% was developed using sales from the biggest markets in Montana and is a reasonable measure of risk for the Subject Property. Lastly, the Board felt the urban middle capitalization rate was justified for the Subject Property's age, condition, and security.

33. The Taxpayer testified at the CTAB hearing about the Subject Property's lack of security infrastructure and technology. The Board did not receive conclusive, credible evidence to warrant a reduction for these alleged deficiencies.
34. The Taxpayer did not provide sufficient evidence to overcome the burden and did not demonstrate to the Board that the DOR's valuation was incorrect. The Board upholds the CTAB determination.

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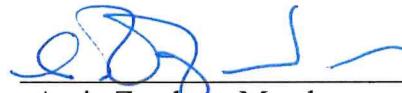
ORDER

35. Taxpayer's appeal is denied.
36. The DOR will value the Subject Property at \$996,400 for the 2023-2024 tax cycle.

Dated this 15th day of October 2024.



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)*.

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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 15, 2024, to:

Glen Wohl
2610 Glen Drive
Missoula, MT 59804

Kristina K. Warren
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 59604-8018

Cyndie Aplin
Missoula County Tax Appeal Board
c/o 1015 Washburn St.
Missoula, MT 59801



Rina Sanderson, Legal Secretary