

OCT 15 2024

Montana Tax Appeal Board

GLEN WOHL,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2024-9

**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 and Johanna Wohl (Taxpayers) a reduction in value on the subject property located at 2339 South Ave. West Missoula, Montana (Subject Property). The Taxpayer appealed that outcome to Montana Tax Appeal Board (MTAB) on January 9th, 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.

DOT Exhibits:

- A. Property Record Card;

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- B. Aerial Maps;
- C. Classification and Appraisal Notice;
- D. Calculation of Value;
- E. Missoula Retail Model;
- 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 952,100 for the 2023/2024 appraisal cycle, with the land valued at \$364,898 and the improvements valued at \$587,202. *Ex.*

A. The Taxpayers appealed the DOR's valuation to the CTAB on July 7, 2023, requesting a total land value of 750,000. *MTAB Dkt. 3.* The CTAB hearing was held on December 19, 2023, and the CTAB's decision denying the Taxpayers' application for reduction was signed on December 22, 2023. *Id.* The Taxpayers appealed to MTAB on January 29, 2024, per Mont. Code Ann. § 15-2-301, requesting a total of \$755,000. *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. 4:7-12.*

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 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 Board held a telephonic scheduling conference on March 7, 2024, during which the Board agreed to let the Taxpayer to appear at the July 18, 2024, hearing telephonically. *MTAB Dkt. 8*. The Board scheduled a test call for July 15, 2024, in which the Taxpayer did not participate. *Id.* The Board received a letter on July 15, 2024, from the Taxpayer dated July 11, 2024, requesting that the Board decide the appeal by reviewing all documents and testimony submitted at CTAB. *MTAB Dkt. 7*. The Taxpayer, in his letter, stated he has no additional information to offer. *Id.* The Board issued an order stating that the hearing would still be held on July 18, 2024. *MTAB Dkt. 8*. The Taxpayer did not attend in person or telephonically.
3. The Subject Property is a commercial property owned by Glen and Johanna Wohl in Missoula County. *Ex. A*. The Subject Property is located at 2339 South Avenue West, Missoula, Montana, and is also identified by its geocode 04-2200-32-2-76-60-0000. *Id.* The Subject Property's land encompasses 12,391 square feet and includes a 9,200 square-foot commercial improvement, a mini storage warehouse and parking. *Id.*
4. The DOR valued the Subject Property at \$952,100 for tax years 2023 and 2024, allocating \$364,898 for the land and \$587,202 for the improvements. *MTAB Dkt. 3*. At the December 6, 2023, CTAB hearing, the Taxpayers requested that the land value be reduced to \$273,867 and the improvements be reduced to \$476,163. *Id.* The CTAB denied the Taxpayer a reduction in value. *Id.* The Taxpayer appealed this decision to MTAB on January 29, 2024, requesting that the total market value for the Subject Property be \$755,000. *Id.*

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5. The Taxpayer appealed two similar properties to the CTAB; for efficiency, the CTAB heard both cases simultaneously. *CTAB Hr'g 0:06-0:55; 3:50-4:14*. The Taxpayer only appealed the Subject Property of this appeal from the combined CTAB hearing record. *MTAB Dkt. 1*.
6. The Taxpayer hired a Montana-licensed appraiser, Megan Garland of Kembel Kosena & Company, to present during the CTAB hearing. *CTAB Dkt. 1; CTAB Hr'g 4:23-4:50*. Ms. Garland testified that the information provided to the CTAB and marked as Exhibit 3 is not an appraisal but a consultation of comparable sales to the subject property tabulated into a list of 7 sales. *CTAB Ex. 6; CTAB Hr'g 5:25-6:10*.
7. Ms. Garland testified that the Subject Property has a lower land-to-building ratio than the rest of the comparable properties, except comparables six and seven. *CTAB Ex. 6; CTAB Hr'g 6:50-7:39*. The Subject Property has a land-to-building ratio of 1.3, while comparable properties one through five have a land-to-building ratio between 2.1 and 2.9. *Id*. Furthermore, comparable properties six and seven had a ratio of 1.4. *Id*. Ms. Garland testified that the lower land-to-building ratio of comparable properties allows for more parking, and the DOR should make a taxable value adjustment. *CTAB Hr'g 7:35-8:08*. Ms. Garland presented an analysis of an adjustment to the land-to-building ratio for the first five comparable properties, including an adjustment in the sales price. *Ex. 4, 6; CTAB Hr'g 8:10-12:20*.
8. Ms. Garland further testified that the other adjustment to the comparable sales price needed further adjustment because of the size price relationship between the Subject Property and the comparable properties. *CTAB Hr'g 12:05-13:10*. Using regression analysis, Ms. Garland determined that the Subject Property's land should be valued at \$82.00 per square foot. *Id*.

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9. During the CTAB hearing, the Taxpayers testified that having less parking affects the value of the property. *CTAB Hr'g 18:10-19:20*. The Taxpayer testified that the city of Missoula has enlarged South Avenue, and if he could rebuild his buildings, he would build them smaller to include additional off-street parking. *CTAB Hr'g 19:29-20:11*. Taxpayer testified that he has long term renters occupying the Subject Property and has maintained a low vacancy rate. *CTAB Hr'g 19:59-20:42*. The Taxpayer testified he keeps his rents fair because it is more profitable to keep a tenant than replace a tenant. *CTAB Hr'g 22:10-23:20*.
10. 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.
11. DOR Lead Appraiser, Helen Greenberg, testified that the Subject Property was valued using the income approach. *MTAB Hr'g Tr. 4:13-15*. Only one final value is determined when valuing a property using the income approach, and the DOR then apportions the final value between the land and buildings. *MTAB Hr'g Tr. 6:15-7:11*. The land value is first determined using comparable sales, and the remaining value is apportioned to the improvements. *Id.*
12. Ms. Greenberg testified that the DOR assigned a rent rating of \$11.25 per square foot to the Subject Property. *Ex. D; MTAB Hr'g Tr. 7:12-8:5*. The \$11.25 per square foot was multiplied by 9,200, the building's square footage, to get a potential gross income of \$103,500. *Id.* An allowance of 10.2% or \$10,557 to account for vacancy and collection was subtracted from the potential gross income to get the effective gross income of \$92,943. *Id.* Next, expenses amounting to \$26,395 were subtracted from the effective gross income to get the net operating income of \$66,548. *Id.* Lastly, the net operating income was divided by the overall capitalization rate of 6.99% to get the final market value of \$952,100, rounded to the nearest hundred. *Id.*

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13. The Subject Property has an overall capitalization rate of 6.99%, representing the “urban two” or middle capitalization rate. *MTAB Hr’g Tr. 9:13-25*. An overall capitalization is the capitalization rate plus the effective tax rate. *Id.* The tax rate is added to the capitalization rate because the DOR does not allow taxes to be added as an expense in the income approach. *Id.* Ms. Greenberg stated that she thinks the urban middle capitalization rate is the proper risk assessment because of the limited parking and the Subject Property’s location on a secondary artery. *Id.*
14. Ms. Greenberg testified that the DOR must use market rents to value properties, and management decisions regarding rent are not factored into the DOR’s income approach. *MTAB Hr’g Tr. 8:9-15*. Local taxpayers with similar properties provide information to the DOR to determine the nine rent ratings, including operating expenses, vacancy, and collection expenses. *Ex. H; MTAB Hr’g Tr. 15:2-16:11*. DOR Modeler, Jason Stevens, testified that the rent ratings were determined using regression analysis using data reported by eight similar commercial properties. *Id.* The Subject Property has a lower rent rating of four, or \$11.25, because of the mixed-use of the tenants. *Ex. E, H, I; MTAB Hr’g Tr 11:13-25, 15:2-16:11*. Additionally, the Taxpayer did not provide income and expense information to the DOR to help value the Subject Property. *MTAB Hr’g Tr. 8:17-9:2*.
15. If the DOR adjusts values for the land-to-building ratio, the DOR will typically develop an influencing factor derived from market sales, indicating that a property with a high land-to-building ratio is selling differently than similar properties. *MTAB Hr’g Tr. 10:1-19*. Ms. Greenberg reviewed the Taxpayer’s comparable properties and noted that several were sold after the DOR lien date of January 1, 2022, for the 2023-2024 tax cycle. *MTAB Hr’g Tr. 10:20-11:9*.

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Additionally, there were major size variances between the properties, and one sale was a bank foreclosure, making the sale invalid. *Id.*

16. Ms. Greenberg testified that the DOR valued the Subject Property using the cost approach to value at \$974,898. *MTAB Hr'g Tr. 6:6-10.* Ms. Greenberg stated that she thought the income approach and cost approach reconciled. *Id.* Additionally, Ms. Greenberg testified the Subject Property's value increased 30% from the last tax cycle which is aligned with the Missoula County average increase of 30%-38%. *Ex. C; MTAB Hr'g Tr. 13:3-15.*
17. DOR Area Manager, Michelle Staples, gave uncontested testimony that the packet of comparable sales provided by the Taxpayer was not a valid appraisal. *MTAB Hr'g Tr. 21:3-18.* Ms. Staples testified that the Taxpayer's packet was more of a consultation and a tabulation of market land sales. *Id.*

JURISDICTION AND STANDARD OF REVIEW

18. 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.*
19. 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.
20. The Board's order is final and binding upon all parties unless changed by judicial review. *Mont. Code Ann. § 15-2-301(6).*

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CONCLUSIONS OF LAW

21. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
22. “All taxable property must be appraised at 100% of its market value....” *Mont. Code Ann. § 15-8-111.*
23. “[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).*
24. 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).
25. 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.
26. “‘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

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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)).

27. 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)*.
28. 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).
29. 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

30. 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 which for the 2023/2024 tax cycle. In his MTAB filing, the Taxpayer submitted a two-page oral appraisal dated January 24, 2024, well after the DOR lien date. At the CTAB hearing, the Taxpayer witness and certified appraiser, Ms. Garland, testified that she had only performed a consultation and had compiled

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a list of tabulated sales comparable to the Subject Property. Additionally, the DOR Area Manager, Ms. Staples, testified that the Taxpayer's packet was more of a consultation and a tabulation of market land sales. 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 Mont. Code Ann. § 15-2-301(3)(a) and not was given the weight of an independent appraisal.

31. The DOR is authorized to use several different methods to value a property. In this case, the DOR used the income approach, which the Board feels is the most defensible method. The DOR also valued the Subject Property using the cost approach to value. The difference between the values is less than \$25,000 and the DOR assigned the lower of the two values.

32. The Taxpayer brought licensed fee appraiser, Ms. Garland, to the CTAB hearing to testify about the Subjects Property's value. Ms. Garland compiled seven sales for the Taxpayers. Ms. Garland adjusted five of the comparable sales prices to bring them more in line with the Subject Property for the land-to-building ratio. The Board is unsure what adjustments Ms. Garland made to account for the "size price relationship" between the Subject Property and the comparable properties. The Board is also uncertain about how Ms. Garland's regression analysis was completed or if there were any safeguards to ensure its accuracy. On the other hand, the DOR provided both the land sales and income models used to determine the land value, and the rent rating used in the income approach to value the property. DOR also had the model's creator and lead appraiser testify to its accuracy. Additionally, the DOR's model had more inputs. The Board acknowledges that the Taxpayer's model measures sale price per square foot, and the DOR's model determines the rent rating. The Board finds the DOR's regression models more credible for finding the Subject Property's market value.

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33. Ms. Garland argued at the CTAB hearing that the first five properties had to be adjusted to fit the land-to-value relationship. The DOR presented uncontested testimony from Ms. Greenberg that the Subject Property was assigned a lower capitalization rate because of the lack of parking and location of the Subject Property. The Board agrees that the lower capitalization rates account for the lack of parking. Additionally, the DOR testified that they account for other property deficiencies when they see properties with the same deficiency sell differently on the market and affecting the final sales price. The DOR presented uncontested evidence that properties with limited parking in Missoula are not selling differently and do not have enough information to create a parking influence.
34. The Taxpayer argued that he keeps rents low to keep tenants in the building. The Taxpayer contested that it is less expensive to keep a current tenant than to find a new one. We understood the Taxpayer's argument but point out that the DOR is tasked with finding the market value of the Subject Property regardless of the property owner's management decision and using market rents is part of that process.
35. The Taxpayers had the burden to prove the DOR made a mistake in its appraisal. While the Taxpayer did present some valid arguments at CTAB, the DOR presented uncontested testimony and evidence at MTAB to discredit the Taxpayers' arguments. Because the Taxpayers did not overcome his burden, the Board must uphold the CTAB's determination.

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ORDER

36. The Taxpayers' appeal is denied
37. The DOR will value the Subject property at \$952,100 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:

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