

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

MAR 09 2023

Montana Tax Appeal Board

TIMOTHY FITZGERALD,

Appellant,

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2022-23

**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 Timothy Fitzgerald (Taxpayer) a reduction in value on the subject property located at 8300 Churchill Road, Manhattan, Montana. The Taxpayer appealed that outcome to Montana Tax Appeal Board (MTAB) on April 22, 2022. We affirm CTAB's determination.

**ISSUE TO BE DECIDED**

Whether CTAB erred in affirming the DOR total value of \$465,384, with a land value of \$342,454 and an improvement value of \$122,930.

**EXHIBIT LIST**

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Comments of MDOR Acre Model;
2. Demonstrative method chart.

DOR Exhibits:

- A. Appraisal notice of subject property;
- B. AB-26 and 12/10/2021 decision letter;
- C. CTAB appeal and decision;

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- D. Confidential information packet of subject property;
- E. Model land sales with aerial photo;
- F. Electronic spreadsheet with CALP of neighborhood 206.011.A.;
- G. Demonstrative formula chart.

**PROCEDURAL HISTORY**

The DOR valued the 15.7 acre property located at 8300 Churchill Road, Manhattan, Montana at \$465,384 for the 2021/2022 appraisal cycle, with the land valued at \$342,454 and the improvements valued at \$122,930. *Ex D.* The Taxpayer filed an AB-26, Request for Informal Classification and Appraisal Review, with the DOR on August 2, 2021, requesting a land value of \$195,562 and an improvement value of \$133,520. *Ex B.* The DOR sent a Form AB-26 Determination Letter to the Taxpayer dated December 10, 2021, denying the Taxpayer's request. *Id.* The Taxpayer appealed the DOR's valuation to the CTAB on January 3, 2022, requesting a land value of \$244,526 and an improvement value of \$122,930. *Ex C.* The CTAB hearing was held on March 23, 2022. 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 Mont. Code Ann § 15-2-301, requesting a land value of \$244,526 and an improvement value of \$122,930, for a total of \$367,456. *MTAB Dkt. 1.* The MTAB hearing was conducted in Helena on December 13, 2022, at which the following were present:

- a. Timothy Fitzgerald, Taxpayer; and
- b. Dave Burleigh, DOR Counsel; Kurt Swimley, Modeler; Garrett McGrath, Appraiser; and Pam Moore, Area Manager.

The record includes all materials submitted to CTAB, a recording of the CTAB hearing, all materials submitted to MTAB with the appeal, and additional exhibits submitted by the parties prior to and at 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 Taxpayer has a background in statistical modeling. *MTAB Hr'g Tr. 30:21-31:3*. He holds a Ph.D. in economics and has worked in academia and as a consultant. *Id.*
  
3. The Taxpayer testified the methodology used by the Department to value properties not only leads to high variance in the value of the subject property but in the land valuation model used by the Department from cycle to cycle. *MTAB Hr'g Tr. 5:22-6:9*. The Taxpayer testified he could not replicate the Department's statistical model, which he argued demonstrates flaws in the Department's methodology. *Id.* The Taxpayer argued that these flaws include: 1) The statistical model has a standard error that is too small, leading to high valuations of the subject property; 2) The use of neighborhoods in the land valuation model results in fewer observed sales, resulting in a less comparable pool of properties in the statistical model; 3) The changing of neighborhood boundaries between tax cycles results in drastically different values for the subject property; 4) In the previous tax cycle, the Department used water frontage and proximity to a park as influence factors, which were not used in the most recent land model; 5) The land model assumes all land is uniform in price although the comparable sales of land are different in location; 6) Taxpayers in different neighborhoods are treated unequally because comparison groups used to value properties are not consistent over time. *MTAB Hr'g Tr. 13:16-15:6, 15:19-16:7, Ex 1.*
  
4. The Department's reliance on corrections for the time of transactions also concerned the Taxpayer. *MTAB Hr'g Tr. 7:10-25*. The corrections or "time trending" in the model have resulted in a doubling of some observed transaction prices. *Id.* The Taxpayer argued the Department is already

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estimating the time-trended sales prices used in the land model, with some error. *Id.*, *MTAB Hr'g Tr. 11:3-6*. The Department uses a flexible, functional estimator or a sixth-order polynomial to time trend properties to account for variations in sales price over time. *Ex. 1, MTAB Hr'g Tr. 8:23-10:4*. The longer the period the properties are time trended, the more reliance is placed on the polynomial to account for time; some properties were time trended by as much as thirty months. *MTAB Hr'g Tr. 12:8-14*. The time trend error would likely be in the Department's favor because of the upward property values trend. *MTAB Hr'g Tr. 11:12-17*.

5. The Taxpayer gave several reasons why the sales sample used by the Department did not fit the model. *MTAB Hr'g Tr. 16:8-17:07*. Of the fifteen sales used to value the 15.7-acre subject property, fourteen sales were under one acre, and one sale was two acres. *Id.*, *MTAB Hr'g Tr. 27:2-11*. The model had a smaller sample size than the previous cycle making the Taxpayer less confident in the model's predictions. *MTAB Hr'g Tr. 17:21-18:5*. The model also used sales from two different taxing cycles. *Id.* The Department's modeler, Mr. Swimley, testified the Department only uses sales in the model that are at most six years old and if the neighborhood lacks the required sales to create a reliable model, the neighborhood is expanded to find additional sales. *MTAB Hr'g Tr. 61:2-17*.
  
6. The Taxpayer also testified to several inconsistencies in the land model used by the Department. The land model for tax years 2019/2020 used 171 sales, while the land model for the tax year 2021/2022 used only 52 sales. *MTAB Hr'g Tr. 28:5-24*. Additionally, the Department excluded 22 other sales from the 2021/2022 model as invalid sales. *Id.* The sales excluded by the Department had a mean acreage of 19.1 acres, making them more comparable to the 15.7-acre subject property. *Id.* The Department's modeler testified that the Department removed many of the sales because they were not arm's length

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transactions and that an explanation of why the sale was removed is included in Exhibit F. *Ex. F, MTAB Hr'g Tr. 49:6-51:5.*

7. The Taxpayer testified the Department's judgment about whether to include a particular transaction in their model led to the dropping of 30% of the comparable transactions in the subject property's neighborhood during the current cycle and omitting 60% of the observed transactions during the 2019/2020 tax cycle. *MTAB Hr'g Tr. 7:18-8:7.*
  
8. When creating a sales model, the Department uses standards published by the International Association of Assessing Officers (IAAO) for mass appraisal and internal standards. *MTAB Hr'g Tr. 39:12-23.*
  
9. When constructing a land model, the Department's modeler testified the Department creates neighborhoods consisting of groups of properties that are similar in characteristics that will affect the property's value. *MTAB Hr'g Tr. 33:5-35:10.* The Department then develops a time trend using multi-polynomial regression. *Id.* The time trend is applied to all sales within a land sales model, including all neighborhoods in the model. *Id.* The area the land model covers can change depending on the area's economic development or if properties are selling differently than others based on location. *Id.* The Department's models are beholden to the sales that occur in the market area, and occasionally the Department needs to use sales further back in time to ensure the proper adjustments get made to simulate market conditions correctly. *Id.* Finally, the Department verifies all sales to determine which sales are valid. *Id.* Sales are not valid if they are not arm's length transactions, including estate sales, forced sales, sales between related entities or family members, and valid sales must be the fair market price. *Id.*

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10. The Department presented the County Rural North, Amsterdam & Churchill land model used to value the subject property. *Ex. F.*, The model was created by Mr. Swimley using sales not older than six years and within the Amsterdam, Churchill, and surrounding rural areas. *MTAB Hr'g Tr. 35:20-37:14*. The Department prefers to use the most up-to-date sales because they reflect market conditions. *Id.*
  
11. The Department's model considers different characteristics that may influence the value of a property. *MTAB Hr'g Tr. 39:1-11*. Between valuation cycles, the Department modelers reorganize data to better account for neighborhood characteristics. *Id.* For example, all properties in the Amsterdam & Churchill area with a water influence were placed into their own neighborhood to account for that particular characteristic. *Id.* The Department testified neighborhoods could change year to year because of the growth of different areas, and the Department tries to capture similar parcels that reflect the growth or changes in sales or market conditions. *MTAB Hr'g Tr. 48:3-48:9*. Additionally each tax cycle, the Department tests whether influence factors appear relevant to sales prices of properties and whether they exist in the field and the market areas. *MTAB Hr'g Tr. 61:22-62:14*. If there is evidence of an influence, the Department adjusts the model, and previous influences are retested to ensure they are still relevant in the current model. *Id.*
  
12. The base rate for the subject property, set by this Department model, is \$148,778. *MTAB Hr'g Tr. 42:24-43:15*. The model used to value the subject property uses a base size of one acre. *MTAB Hr'g Tr. 40:14-14*. The base size for the land model is determined by whether or not a parcel is located in an urban or rural area. *MTAB Hr'g Tr. 42:11-16*. The base rate is the typical sales price, based on observed data, and accounting for other characteristics in the model, the cost of one acre, that is time trend to the lien date. *MTAB Hr'g Tr. 42:24-43:15*.

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13. Each acre after the base rate is multiplied by the incremental rate to value the additional acres of the subject property. *MTAB Hr'g Tr. 43:16-23*. Using the incremental rate also accounts for economies of scale and diminishing value rates depending on parcel size. *Id.* The incremental rate is determined through regression analysis. *MTAB Hr'g Tr. 43:24-44:16*. The base rate differs for each neighborhood, while an incremental rate is consistent over all neighborhoods in a given land model. *MTAB Hr'g Tr. 44:20-45:8*.
  
14. When creating models, the Department time trends individual comparable sales to current market conditions as is the industry standard set by IAAO. *MTAB Hr'g Tr. 45:9-46:10*. The Department develops sales ratios using sales prices over a given timeframe to time trend sales using regression analysis over a broader market area. *Id.* To develop the time trends, the Department takes the ratio of sales prices to the Department's previously assessed value and uses regression analysis to develop the average market adjustment that estimates a percent increase for sales over time within a market area. *MTAB Hr'g Tr. 59:1-23*. Sales from 2018 to the current lien date of January 1, 2020, were used as the sixth-order polynomial in the regression analysis. *Id.* To ensure reliability, the Department appraisers screen all options for time trends to ensure they are consistent. *MTAB Hr'g Tr. 45:9-46:10*. Further, the Department evaluates whether the time adjustment makes sense for older sales. *Id.*
  
15. The Department also has several standards to assess the reliability of the land model outputs. *MTAB Hr'g Tr. 54:1-55:14*. The primary test is the coefficient of determination (COD) which must be less than 15; the model used to value the subject property has a COD of 13.29. *Ex. F. Id.* The price-related differential (PRD) measures whether the model is progressive or regressive; a model should typically have a PRD between .98 and 1.03, and the model used to value the subject property has a PRD of 1.04. *Id.* The Department admitted it was moderately regressive but was confident that it is a good output for this model. *Id.* T stat indicates whether the model detects differences in influence

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variables used by the Department in the model. *MTAB Hr'g Tr. 56:6-57:2*. The T stat limit for a model is 2; the T stat in the model used to value the subject property was -2, which the Department testified is essentially the same as 2. *Ex F. Id.* R squared is the measurement of the model's fit to the data and how well the data is explained by the model. *MTAB Hr'g Tr. 57:4-17*. The closer the R squared is to 1, the better the data fits into the model; the model used to value the subject property has an R squared value of .83. *Id.*

16. The Department's modeler testified that the Taxpayer incorrectly used the "Market Adjusted Sales Price Less Improvement value" instead of "Market Adjusted Price Per Unit" to replicate the model and calculate coefficients in the land model, causing discrepancies in the Taxpayer's replicated model output. *MTAB Hr'g Tr. 48:12-22*. Additionally, The Department testified that neighborhoods in the model change every cycle because market delineations react to observed market behaviors and the Department cannot predict neighborhood growth in the future. *MTAB Hr'g Tr. 59:24-55:12*.
17. The subject property's improvements were appraised using the cost approach for estimating value. *Ex. D. MTAB Hr'g Tr. 88:22-89:18*. The subject property was classified as class four residential property. *Id. MTAB Hr'g Tr 90:11-91:4*. The sales comparison method for estimating value was not used because the property is unique, and any comparable sales would have required excessive adjustments. *Id. MTAB Hr'g Tr. 96:8-17*
18. To value the land of the subject property, the department's model values the base acre of the subject property at \$148,778 and each additional acre with an incremental rate of 0.3027. *Ex. F. MTAB Hr'g Tr. 91:17-92:18*. The subject property has been in neighborhood 206.013E for the last three reappraisal cycles. *MTAB Hr'g Tr. 101:1-12*. The subject property was purchased in 2008 for \$395,000. *MTAB Hr'g Tr. 92:23-93:4*.



**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. Per Montana Code Annotated § 15-2-301(5), MTAB is not bound by common law and statutory rules of evidence or rules of discovery in appeals of CTAB decisions and may affirm, reverse, or modify any decision.
  
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

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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. "[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. 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)*.
31. 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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32. 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**

33. The Taxpayer showed extensive knowledge of statistical methods and model building. The Taxpayer presented logical arguments showing the land model used to value property may contain flaws. We appreciate the professional manner the Taxpayer and the Department engaged with each other to present the facts of the case.
34. However, this Board finds that the general evidence presented by the Taxpayer did not overcome the presumption of correctness given by law and precedent to the Department. The Taxpayer did not present sufficient evidence to show the Department erred when valuing the subject property. The Taxpayer presented several different general theories relating to the appraisal process used by the Department to value the subject property but ultimately did not convince the Board the DOR model used to value the subject property was unreliable.
35. The Taxpayer made reference to the Department's practice of time trending sales and the possibility of error in adjusting sales. The time trending of sales is necessary to treat all taxpayers equal. The Department has a duty under Mont. Code Ann. § 15-9-101 to equalize the valuation of taxable property among the counties, different classes of property and between individual taxpayers and shall do all thing necessary to secure a fair just and equitable valuation. Additionally, the time trending of properties is contemplated by the Uniform Standard of Professional Appraisal Practices Standard 5, covering mass appraisal and the IAAO. The Department rules allow the appraisers to use sales

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from as far back as six years allowing adjustment for up to 72 months. While the Board agrees that time trending can cause error, it is the only way for the Department to equalize taxes among similarly situated taxpayers. Especially in an active market such as Gallatin County, the use of more recent sales is preferred, but also relies on models with more sales than fewer as a more accurate predictor of market value. To achieve models with more sales in more rural neighborhoods, the Department must look back in time to find valid sales, and IAAO accepts more sales from a more historic list of sales as reliable. Lastly, the Department modeler testified to the procedure used to check the reliability of the time trending process and the Board found it credible.

36. While the Department did use a smaller sample size to value the subject property's land, the Board finds that the Department did have sufficient sales in this tax cycle to correctly value the property. The Department is allowed to use sales from as far back as six years. The Department testified that they try to use sales as close to the lien date as possible to reflect current market conditions, but it is not always possible. The model presented by the Department did not have any sales older than six years and sales that were not arm's length were properly excluded. Additionally, the sample size of a model will not always remain consistent. The Board acknowledges the Taxpayer's concern that the smaller sample size will result in a larger error rate for the model, but the Department is tasked with valuing all properties at market value and must balance these two factors. Any sales that are not market value should not be included in the land model to value property. The Department verifies all sales to ensure all data in the model is accurate. This verification process is set out in the Department's classification and valuation manual and is an important step to document uniform application of consistent valuation of properties. Lastly, while some of the similar sized properties were removed from the model due to validation issues the Department estimated the subject property value using the available sales. The Department does not control when or how sales occur, the

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Department can only use sales that are arm's length and occurred within the last six years, thus restricting usable data.

37. Bozeman and the surrounding area are a quickly growing market area. To keep up with the changing market values the Department must react to observed market behaviors. Because the Department cannot predict how a market area will perform, it must have the latitude to make changes to its model. The Department testified when creating neighborhoods, the Department looks for properties that are similar in characteristics that affect market value of the property. Looking at the Amsterdam/Churchill Rural model the properties included in the subject property neighborhoods are all similar in characteristics and the subject property was included in neighborhood 206.013E for the last three appraisal cycles.
38. Lastly, the Taxpayer was concerned that the Department removed several influence factors from the previous cycle causing inconsistency in the model. The Department testified that they removed all properties with the waterfrontage influence factor and placed them in their own neighborhood to account for the influence factor. The removing of the properties with the influence factor made the subject's property neighborhood more similar and consistent.
39. The Board finds that the methodology used by the Department to value the subject property is within an acceptable standard. The Department testified to the multiple tests and checks it performs to ensure their model is providing reliable data. While not perfect by these measures, all tests and checks were within the acceptable range. This is typically the case with mass appraisal required by state law. Additionally, just because the Taxpayer could not replicate the model does not mean the model is flawed. The Department testified that they thought the Taxpayer was using the wrong inputs and thus

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causing discrepancies. Models built by the Department are assembled by multiple people using a variety of information, and are complex at best.

40. The Taxpayer was very knowledgeable and knew a great deal about the model and regression analysis but did not overcome his burden of proving the Department error in its valuation. The Taxpayer testified about several areas that could potentially cause an error in the Department's model. However, the Board was unable to find a mistake and therefore must rule for the Department.


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**ORDER**

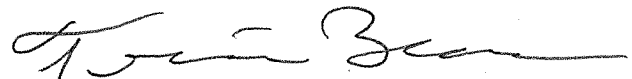
41. We affirm the CTAB's decision upholding the Department's valuation for the 2021-2022 tax cycle.

Dated this 9th day of March 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)*.

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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 8, 2023, to:

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