

AUG 27 2025

Montana Tax Appeal Board

SMYTHE FAMILY LLLP,

Appellant,

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2024-31

**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 Butte-Silver Bow County Tax Appeal Board (CTAB) granting, in part, Smythe Family LLLP (Taxpayer) a reduction in value on the subject property located at 214 South Washington Street, Butte, Montana (Subject Property). The Taxpayer appealed that outcome to the Montana Tax Appeal Board (MTAB) on March 20, 2024. We reverse the CTAB's determination.

**ISSUE TO BE DECIDED**

Whether the CTAB erred in granting, in part, the Taxpayer's request for a value reduction to the Subject Property.

**EXHIBIT LIST**

The following evidence was submitted at the hearing:

Taxpayer's Exhibits:

Taxpayer did not submit any exhibits.

DOR Exhibits:

- A. Property Record Card;
- B. Land Model Spreadsheet;
- C. Map of Subject Property;
- D. Neighborhood Map; and

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E. Post CTAB Adjustment PRC.

**PROCEDURAL HISTORY**

The DOR valued the Subject Property at \$141,100 for the 2023/2024 appraisal cycle, with the land valued at \$32,640 and the improvements valued at \$108,460. *MTAB Dkt 4*. The Taxpayer filed a Form AB-26, Request for Informal Classification and Appraisal Review, with the DOR on July 27, 2023, requesting a total value of \$82,000 for both land and improvements. *Id.* The DOR sent a Form AB-26 Determination Letter to the Taxpayer dated December 8, 2023, adjusting the total value of the Subject Property to \$124,300. *Id.* The Taxpayer appealed the DOR's valuation to the CTAB on January 5, 2024, requesting a total value of \$100,000. *Id.* The CTAB hearing was held on February 12, 2024, and the CTAB's decision granting in part the Taxpayer's application for reduction was sent to the parties on February 15, 2024. *Id.* The Taxpayer appealed to MTAB on March 20, 2024, per Mont. Code Ann § 15-2-301, requesting a total valuation of \$100,000. *MTAB Dkt 1*. The MTAB hearing was conducted in Helena on May 29, 2025, at which the following were present:

- a. Taxpayer's Representative and Taxpayer's Counsel were not present;  
and
- b. Dave Burleigh, DOR Counsel; Jon Kinzle, Commercial Appraiser; Tim Skop, Modeler, Cindy McGinnis, Paralegal; and Rian Kraus, Appraiser.

This case was originally set for a January 22, 2025, hearing. *MTAB Dkt. 10*. On January 21, 2025, Taxpayer's Representative sent a letter to the Board stating that he was unable to attend the January 22, 2025, hearing due to health reasons and requested that a new hearing be set one or two months later. *MTAB Dkt. 13*. The Board granted the request, and vacated the hearing, and set a scheduling conference for February 11, 2025. *Id.*

During the February 11, 2025, scheduling call, the Taxpayer's Representative and the DOR were both present and a new hearing was set for March 27, 2025. *MTAB Dkt. 16*. The Taxpayer's Representative also indicated that they hired outside legal counsel. *Id.*

On March 26, 2025, Chris Cox, son of the Taxpayer's Representative, emailed the Board stating that the Taxpayer's Representative was ill and would not be able to

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attend the March 27, 2025, hearing. *Id.* Mr. Chris Cox stated that he attempted to contact Mr. Tim Dick, the (Taxpayer's Counsel), but was only able to reach his office and not Mr. Dick himself. *Id.* The Board vacated the hearing and set a scheduling conference for April 8, 2025. *Id.*

The Board convened a telephonic scheduling conference on April 8, 2025, at 10:30 a.m. to set a date and time for the hearing. *MTAB Dkt. 17.* The Respondent was present and the Taxpayer's Representative was not. *Id.* The Board called the Taxpayer's Representative by phone, received no answer, and left a voice mail. *Id.* The Board waited until 10:35 a.m. before continuing the scheduling conference. *Id.* To facilitate efficient resolution of this appeal, the Board set a new hearing date for May 29, 2025, at 9 a.m. *Id.* The Board issued a Second Amended Scheduling Order on April 8, 2025. *Id.*

On May 28, 2025, the Board received a phone call from Mr. Dick during which he identified himself as Taxpayer's Counsel and requested a continuance on the hearing. *MTAB Dkt. 19.* Pursuant to the March 26, 2025, Second Order Vacating Hearing and Setting Scheduling Conference, the Board asked Taxpayer's Counsel to make the request in a motion showing cause. *Id.* Taxpayer's Counsel submitted a Notice of Appearance and Request for Extension on May 28, 2025, at 3:12 P.M. *MTAB Dkt. 18.* Taxpayer's Counsel stated that he was contacted on May 27, 2025, to appear in the hearing scheduled for May 29, 2025, and requested an additional 30 days to review the case file. *Id.* For lack of good cause showing, the Board denied the request. *MTAB Dkt. 19.*

Before beginning the hearing, the Board called Taxpayer's Counsel and the individual who answered the phone confirmed that Taxpayer's Counsel would not be attending the hearing. *MTAB Hr'g Tr. 2:14-15.* The Board then called the Taxpayer's Representative and received no answer. *MTAB Hr'g Tr. 2:15-16.* The Board began the hearing without Taxpayer's Representative or Taxpayer's Counsel present. *MTAB Hr'g Tr. 2:16-18.*

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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 duplex residential property owned by Smythe Family LLLP, in Butte, Montana. *Ex. A.* The Subject Property is located at 214 South Washington Street in Butte, Montana, and is also identified by its geocode 01-1197-13-3-81-14-0000. *Id.* The Subject Property contains two units and is 4,200 square feet in total size.
3. The DOR valued the Subject Property at \$141,100 for tax years 2023 and 2024, allocating \$32,640 for the land and \$108,460 for the improvements. *Ex. A.* The Taxpayer filed a Form AB-26, Request for Informal Classification and Appraisal Review, requesting a total value of \$82,000 for the 2023/2024 appraisal cycle. *MTAB Dkt. 4.* At the conclusion of the AB-26 Review, the DOR made an adjustment incorporating the Taxpayer's actual rental income information, which lowered the total value to \$124,300, allocating \$32,640 for the land and \$91,660 for the improvements. *Id.* The Taxpayer appealed the DOR valuation to the CTAB on January 5, 2024, requesting a total valuation of \$100,000 for the land and improvements. *MTAB Dkt. 4.* The Taxpayer's Representative stated at the CTAB hearing that the roof of the building needs replacement, and the Taxpayer's Representative estimated that a replacement would cost between \$20,000 and \$25,000. *Id.* The CTAB determined that due to the condition of the roof, a further reduction in value was necessary and adjusted the value of the Subject Property to \$112,300. *Id.* The Taxpayer appealed the CTAB decision to MTAB, requesting that the value be reduced to \$100,000. *MTAB Dkt. 1.* The

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DOR maintains that the total value of the Subject Property is \$124,300. *Ex. A; MTAB Hr'g Tr. 33:20-22.*

4. Taxpayer's Representative nor Taxpayer's Counsel appeared before MTAB. *MTAB Hr'g Tr. 2:10-18.* The Board called the Taxpayer's Representative and received no response. *Id.* The Board also called the Taxpayer's Counsel and was informed counsel would not be appearing. *Id.*
5. Taxpayer did not provide a cost estimate or bid supporting the Subject Property's roof replacement cost. *MTAB Dkt. 4; MTAB Hr'g Tr. 41:11-18.* The CTAB relied on the Taxpayer's Representative's verbal attestation when reducing the total value. *Id.*
6. DOR Appraiser, Jon Kinzle, testified that the Subject Property was valued using the income approach and the cost approach. *Ex. A; MTAB Hr'g Tr. 36:4-21.* The income approach was used to value the Subject Property and produced a value of \$124,300. *Id.* The DOR also valued the Subject Property using the cost approach which produced a value of \$131,680, but the cost approach value was ultimately not used. *Id.* Mr. Kinzle stated that the cost approach valuation took into account the Taxpayer's concerns regarding the roof condition through the physical condition and functional utility ratings. *Id.* The income approach valuation accounts for the deteriorated condition of the roof and property by incorporating the Taxpayer's actual income and expense information which reflects the Subject Property's existing rental rates in its current deteriorated state. *MTAB Hr'g Tr. 36:22-37:2.* The DOR argues that since the Subject Property's valuation already considers the need for a roof replacement, the value should remain \$124,300 rather than the adjusted value of \$112,300 assigned by the CTAB. *MTAB Hr'g Tr. 41:11-18.*
7. Mr. Kinzle testified that the DOR did not use the Taxpayer's income and expense information to override the Subject Property's net operating income (NOI) but

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instead used the information to assign a more accurate rent rating, which in turn resulted in a lower total value. *Ex. A; MTAB Hr'g Tr. 37:8-20*. The rent ratings were adjusted from rent rate five to rent rate four. *Id.*

8. Mr. Kinzle stated that the equation used to determine the land value was  $Y = B \times (x/k)^M$  where Y is the market value, B is the base rate, X is the Subject Property's land size, K is the model's base size, and M is the adjustment factor. *Ex. B; MTAB Hr'g Tr. 14:3-15:6*. The DOR used the Butte Uptown land model with a base rate of \$77,138, and a base size of 43,560 square feet. *Id.* The land model produced a value of \$32,640 for the Subject Property's land. *Id.*
9. DOR Modeler, Tim Skop, testified that there are several statistical measures which the DOR can examine to determine a model's accuracy such as the coefficient of dispersion (COD), coefficient of variation (COV), price related differential (PRD), R squared value, and T Stat. *Ex. B; MTAB Hr'g Tr. 17:17-20:15, 42:6-10*. Mr. Skop testified that the COD and COV values of 19.34 and 24.97 were higher than the DOR prefers, but stated that this indicated the model had high variance in the number and size of the properties the model contained, rather than indicating that the model is inaccurate. *Id.* The PRD, T Stat, and R squared value were all within the desired ranges. *Id.* The DOR developed the Subject Property's land model using twenty-one properties. *Id.* Mr. Skop stated that this was a sufficient number of properties to develop an accurate model. *Id.* Mr. Skop testified that he believed the land model is reliable and output an accurate land value for the Subject Property. *Id.*

## 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*. 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*.

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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 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)*.

**CONCLUSIONS OF LAW**

13. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
14. “All taxable property must be appraised at 100% of its market value....” *Mont. Code Ann. § 15-8-111(1)*.
15. “[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)*.
16. 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).



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17. 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.
18. "'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)).
19. 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)*.
20. 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**

21. For the reasons set forth below, this Board reverses the CTAB's determination.
22. The Taxpayer's requested total value of \$100,000 is the same value that was sought at the CTAB hearing. Taxpayer did not specify what portion of the value should be allotted to the land versus improvements. Since neither the Taxpayer's Representative nor Taxpayer's Counsel were present for the MTAB hearing, this Board has incorporated Taxpayer's arguments from the CTAB hearing for this



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case. Taxpayer argues that the Subject Property's total value should be reduced from \$112,300 to \$100,000 due to the roof needing to be replaced. The DOR argues that the Subject Property's value should be \$124,300, which is the amount assigned at the conclusion of the AB-26 review. The DOR contends that the CTAB's decision to reduce the Subject Property's value to \$112,300 is not based on evidence, but rather unsubstantiated verbal attestations. Furthermore, the DOR argues that the need for a roof replacement was already taken into account in the DOR valuation, so a further reduction is not necessary. We agree with the DOR.

23. Mr. Kinzle gave credible testimony that both the income approach and cost approach valuations conducted on the Subject Property accounted for the need for a replacement roof. While the income approach value was ultimately the method used, conducting a cost approach valuation allowed the DOR to compare the two values and ensure that the income approach is reliable. Mr. Kinzle testified that he accounted for the Subject Property's deteriorated roof in the cost approach valuation using the physical condition and functional utility scores. The Subject Property's first floor was assigned a physical condition score of fair, and a functional utility score of normal, whereas the second story's physical condition and functional utility scores were both assigned as fair. The total value of the Subject Property was estimated to be \$131,680 using the cost approach. However, the DOR opted to use the Subject Property's income approach valuation as it was lower, and mass appraisal puts more of an emphasis on the income approach for multi-family properties.
24. Mr. Kinzle testified that he accounted for the Subject Property's deteriorated roof in the income approach valuation by lowering the rent rate from five to four to better match the Taxpayer's existing rental rates with the roof in its current state. The DOR used the Subject Property's profit and loss statement provided by the Taxpayer to assign a lower rent rating. By using a rent rate which reflects what the actual tenants are willing to pay to live in the Subject Property, the DOR has ensured that the roof's deterioration is reflected in the estimated market value. If

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the market value of the Subject Property was incorrect due to the need for a replacement roof, as the Taxpayer argues, this would be reflected in Subject Property's rent. Since the Taxpayer is renting the Subject Property at the existing rental rates, and the DOR used this rate to determine the rent rating in the income calculation, the Board believes that the income approach value is accurate and indicates that the roof's deterioration has been factored into the Subject Property's total value.

25. Additionally, the evidence and testimony presented to the Board indicates that the land value assigned to the Subject Property is accurate. Mr. Skop described how the land model used to value the Subject Property contains a sufficient number of properties to create a reliable model, and that the land model satisfies the various statistical checks, such as PRD, R squared value, and T Stat which are used to determine a model's accuracy.
26. At the conclusion of the CTAB hearing, the Butte-Silver Bow Board further reduced the Subject Property's value from the post AB-26 review value of \$124,300 to \$112,300, citing the condition of the roof as rationale. While this Board believes that the CTAB made a well-reasoned decision given the information provided to them, the evidence and testimony presented to this Board shows that the post AB-26 review value of \$124,300 already accounts for the roof's deterioration. Therefore, we reverse the CTAB's determination and uphold the DOR's value of \$124,300.

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**ORDER**

27. The Board reverses the CTAB determination and upholds the DOR's value of \$124,300.

Dated this 27th day of August 2025.



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

Travis Brown, Chairman

A handwritten signature in blue ink, appearing to read "Adam Millinoff", written over a horizontal line.

Adam Millinoff, Member

A handwritten signature in blue ink, appearing to read "Christopher Murphy", written over a horizontal line.

Christopher Murphy, 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 August 27, 2025, to:

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Shane Cashin, Law Clerk