

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

AUG 27 2025

Montana Tax Appeal Board

SMYTHE FAMILY LLLP,

Appellant,

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2024-32

**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) denying Smythe Family, LLLP (Taxpayer) a reduction in value on the subject property located at 625 West Iron Street, Butte, Montana (Subject Property). The Taxpayer appealed that outcome to the Montana Tax Appeal Board (MTAB) on March 20, 2024. We affirm the CTAB's determination.

**ISSUE TO BE DECIDED**

Whether the CTAB erred in denying the Taxpayer 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. Subject Aerial Photo and Map; and
- D. Neighborhood Map.

**PROCEDURAL HISTORY**

The DOR valued the Subject Property at \$151,400 for the 2023/2024 appraisal cycle, with the land valued at \$25,953 and the improvements valued at \$125,447. *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 \$25,000 for both the land and improvements. *Id.* The DOR sent a Form AB-26 Determination Letter to the Taxpayer dated December 8, 2023, adjusting the total value to \$64,153. *Id.* The Taxpayer appealed the DOR's valuation to the CTAB on January 5, 2024, requesting a total value of \$25,000. *Id.* The CTAB hearing was held on February 12, 2024, and the CTAB's decision denying the Taxpayer's application for reduction was sent to the parties on February 14, 2024. *Id.* The Taxpayer appealed to MTAB on March 20, 2024, per Mont. Code Ann § 15-2-301, requesting a total valuation of \$25,000 *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, Mr. C.C. Cox (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, vacated the hearing and set a scheduling conference for February 11, 2025. *Id.*

During the February 11, 2025, scheduling call, Taxpayer's Representative and the DOR were both present, and the new hearing was set for March 27, 2025. *MTAB Dkt. 16*. 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 is ill and will not be able to 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.

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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 voicemail. *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 any further request in a written motion and show cause for a continuance. *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 at 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 starting the hearing, the Board called Taxpayer's Counsel and the individual who answered the phone confirmed that Taxpayer's Counsel would not attend 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 the Taxpayer's Representative or Counsel present. *MTAB Hr'g Tr. 2:16-18.*

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 Subject Property is a single-family residence owned by Smythe Family LLLP, in Butte, Montana. *Ex. A.* The Subject Property is located at 625 West Iron Street, Butte, Montana, and is also identified by its geocode 01-1197-13-3-01-11-0000. *Id.* The Subject Property is 6,000 square feet in total size. *Id.*
3. The DOR valued the Subject Property at \$151,400 for tax years 2023 and 2024, allocating \$25,953 for the land and \$125,447 for the improvements. *Ex A.* The Taxpayer filed a Form AB-26, Request for Informal Classification and Appraisal Review, requesting a total value of \$25,000 for the 2023/2024 appraisal cycle. *MTAB Dkt. 4.* The DOR completed the AB-26 review and partially granted the Taxpayer's request adjusting the total value from \$151,400 to \$64,153, allocating \$25,953 for the land and \$38,200 for the improvements. *Id.* The Taxpayer appealed DOR's valuation to the CTAB on December 28, 2023, requesting a total valuation of \$25,000 for the land and improvements. *Id.* The Taxpayer argues that the Subject Property's total value should be reduced from \$64,153 to \$25,000 because the Taxpayer purchased the Subject Property for \$25,000 in 2022. *Id.* The CTAB denied the Taxpayer's request. *Id.* The Taxpayer appealed the CTAB decision to MTAB on March 20, 2024, again requesting that the total value be reduced to \$25,000. *MTAB Dkt. 1.*
4. Taxpayer's Representative nor Taxpayer's Counsel appeared before MTAB. *MTAB Hr'g Tr. 2:10-18.* The Board called Taxpayers Representative before beginning the hearing and received no response. *Id.* The Board also called the Taxpayer's Counsel and was informed that Taxpayer's Counsel would not be appearing. *Id.*

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5. DOR Appraiser, Rian Kraus, testified that she used the cost approach method to value the Subject Property because the income approach is not appropriate for a residential property, and because the Subject Property is being renovated the market approach could not be performed. *MTAB Hr'g Tr. 44:16-45:8*. Ms. Kraus met with the Taxpayer's Representative and determined that as of January 1, 2023, the Subject Property was 41% complete. *MTAB Hr'g Tr. 45:19-46:3*. Ms. Kraus assigned the Subject Property a percent good of 55%, alternatively phrased as 45% depreciated. *Id.*
6. Ms. Kraus testified that she used the 2022 Butte Uptown land model to value the Subject Property's land. *Ex. B; MTAB Hr'g Tr. 13:8-10*. DOR Appraiser, John 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*. For the Butte Uptown land model, the base rate is \$77,138, and the base size is 43,560 square feet. *Id.* The final land value calculated using the land model is \$14,346. *MTAB Hr'g Tr. 28:5-9*.
7. DOR Modeler, Tim Skop, testified that there are several statistical measures that 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 Statistic. *Ex. B; MTAB Hr'g Tr. 17:17-20:15*. Mr. Skop testified that the COD and COV values of 19.34 and 24.97 respectively, were higher than preferred but stated that this indicated the model had high variance in the number and size of the properties it 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 Subject Property's land model was developed 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 produced an accurate land value for the Subject Property. *Id.*

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**JURISDICTION AND STANDARD OF REVIEW**

8. 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*.
9. 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.
10. 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**

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

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- 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).
15. 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.
16. “‘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)).
17. 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)*.
18. 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**

19. For the reasons set forth below, this Board affirms the CTAB’s determination.



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20. The Taxpayer's requested total value of \$25,000 is the same value that was sought at the CTAB hearing. 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 case. The Taxpayer argues that the Subject Property's total value should be reduced from \$64,153 to \$25,000 because the Taxpayer purchased the Subject Property for \$25,000 in 2022. The Taxpayer did not specify what portion of the value should be allotted to the land versus improvements. The DOR argues that the Subject Property's value should remain \$64,153 because the Subject Property was properly appraised and the Taxpayer did not provide sufficient information supporting the requested value. We agree with the DOR.
21. Ms. Kraus stated that the Subject Property was valued using the cost approach and that using the income approach would have been improper in this case, as the Subject Property is residential, not commercial. Furthermore, DOR policy prohibits the DOR from using the sales comparison approach due to the Subject Property being remodeled. Therefore, this Board believes that the DOR correctly chose the cost approach as the valuation method for the Subject Property.
22. Ms. Kraus testified that she conducted the Subject Property's AB-26 review and determined that the Subject Property has a replacement cost new value of \$137,166. Ms. Kraus applied multiple adjustments to the replacement cost new value, the most relevant of which are the percent complete factor, and the percent good factor. The percent complete of the Subject Property was determined to be 41%, which the Taxpayer's Representative agreed upon during the on-site review. The percent good factor, which accounts for depreciation, was determined to be 55%. After applying various adjustments to the Subject Property's replacement cost new value, the DOR determined the value of the improvements to be \$38,200. The testimony presented to the Board by Ms. Kraus clearly demonstrates that the improvements value assigned to the Subject Property considers all relevant factors.



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23. 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.
24. Taxpayer's argument that the Subject Property's value should be reduced to \$25,000 to match what he paid for the property in 2022 is unsupported by evidence. The Taxpayer presented no documentation confirming the sale price of the Subject Property, or any other evidence supporting the \$25,000 valuation. More to the point, while the sale price of a property and the market value of a property are often similar, there are many reasons why a property might sell for less than its market value. For instance, it is possible that the purchase of the Subject Property was not an arm's length transaction and was sold below market value, which would render the sales price meaningless for the purpose of assigning market value. Without any supporting evidence or further rationale, the Board cannot rely solely on Taxpayer's stated purchase price when determining the Subject Property's value. Additionally, the Taxpayer fails to point out any errors in the DOR's cost approach valuation. Therefore, this Board cannot grant the Taxpayer's request for a reduction in value to the Subject Property and must affirm the CTAB's determination.

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**ORDER**

25. The Board denies the Taxpayer's appeal and affirms the Butte-Silver Bow County Tax Appeal Board determination.

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