

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-2024-33

**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 946 South Montana Street, Butte, Montana (Subject Property).¹ 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'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.

¹ Taxpayer listed the Subject Property's address as 926 South Montana Street, Butte, Montana, on the MTAB Appeal Form. However, the geocode provided by Taxpayer and the DOR's internal records make it clear that the Subject Property's address is 946 South Montana Street, Butte, Montana. The Board has corrected the listed address throughout the opinion for clarity and this change has no bearing on the outcome of this case.

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DOR Exhibits:

- A. Property Record Card;
- B. Commercial Secondary Sales;
- C. Neighborhood Pricing Map; and
- D. Area Photo.

PROCEDURAL HISTORY

The DOR valued the Subject Property at \$59,741 for the 2023/2024 appraisal cycle, with the land valued at \$48,721 and the improvements valued at \$11,020. *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 \$21,000 with the land valued at \$13,000 and the improvements valued at \$8,000. *Id.* The DOR sent an AB-26 Final Determination Letter to the Taxpayer dated December 8, 2023, denying the Taxpayer's request for a reduction. *Id.* The Taxpayer appealed the DOR's valuation to the CTAB on January 5, 2024, requesting a total value of \$40,000. *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 15, 2024. *Id.* The Taxpayer appealed to MTAB on March 20, 2024, per Mont. Code Ann § 15-2-301, requesting a total valuation of \$40,000. *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.*

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During the February 11, 2025, scheduling call, Taxpayer's Representative and the DOR were both present and a 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, Taxpayer's Representative's son, Chris Cox, emailed the Board stating that the Taxpayer's Representative was ill and would not be able to attend the March 27, 2025, hearing. *Id.* Mr. Chris Cox stated that he attempted to contact Mr. Tim Dick (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, but Taxpayer's Representative and Counsel were 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 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 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 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 Taxpayer's Representative and received no answer. *MTAB Hr'g Tr. 2:15-16*. The Board began the

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hearing without Taxpayer's Representative or Taxpayer's 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.

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 commercial property owned by Smythe Family LLLP.
Ex. A. The Subject Property is located at 946 South Montana Street, Butte, Montana, and is also identified by its geocode 01-1197-24-1-30-27-0000. *Id.* The Subject Property is 4,200 square feet in total size. *Id.*
3. The DOR valued the Subject Property at \$59,741 for tax years 2023 and 2024, allocating \$48,721 to the land and \$11,020 to the improvements. *Ex. A.* The Taxpayer filed a Form AB-26, Request for Informal Classification and Appraisal Review, requesting a total value of \$21,000 for the 2023/2024 appraisal cycle, allocating \$13,000 for the land and \$8,000 for the improvements. *MTAB Dkt. 4.* The DOR denied the Taxpayer's request citing the substantial increase in land values that had occurred between tax cycles. *Id.* The Taxpayer appealed the DOR's valuation to the CTAB on January 5, 2024, requesting a total valuation of \$40,000 for the land and improvements. *Id.* The Taxpayer argues that the Subject Property's total value should be reduced from \$59,741 to \$40,000 because the Subject Property is in poor condition, lacks heat, water, electricity, is only used for storage, and the land is overvalued. *Id.* Taxpayer also contends that the Subject Property's land value fails to consider the cost to remove the improvements and remediate the land. *Id.* The CTAB denied the Taxpayer's request. *Id.* The Taxpayer appealed the CTAB decision to the MTAB, requesting a total value of \$40,000. *MTAB Dkt. 1.* The DOR maintains that the \$59,741

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value assigned to the Subject Property is the most accurate estimation of value.
MTAB Dkt. 5.

4. Neither Taxpayer's Representative nor Taxpayer's Counsel appeared before MTAB. *MTAB Hr'g Tr. 2:10-18.* The Board called the Taxpayers Representative and received no response. *Id.* The Board also called the Taxpayer's Counsel and was informed Taxpayer's Counsel would not be appearing. *Id.*
5. DOR Appraiser, Jon Kinzle, testified that he used the cost approach method to determine the value of the Subject Property. *MTAB Hr'g Tr. 50:12-16.* Mr. Kinzle stated that he was prevented from using the income approach to value the Subject Property because DOR policy instructs appraisers to default to the cost approach when the improvements value produced by the income approach is lower than the land value calculated by the DOR. *MTAB Hr'g Tr. 51:5-17.* The sales comparison method was not used because the Subject Property is commercial, not residential. *Id.* The cost approach involves determining a property's replacement cost new less depreciation. *MTAB Hr'g Tr. 52:3-5.* Mr. Kinzle confirmed that the replacement cost new value was determined utilizing standard cost indices such as the economic condition factor (ECF) and County Index which account for local market conditions. *MTAB Hr'g Tr. 52:12-14.*
6. Mr. Kinzle assigned the Subject Property a physical condition rating of fair to account for its deterioration, and a functional utility rating of zero because it was not operating when the appraisal occurred. *Ex. A; MTAB Hr'g Tr. 51:20-52:2.* Mr. Kinzle noted that the functional utility score of zero caused a significant decrease in the Subject Property's value. *Id.* Mr. Kinzle assigned the Subject Property's improvements a percent good of 6%, which he stated reflects the improvement's poor condition. *Ex. A; MTAB Hr'g Tr. 52:15-23.* Mr. Kinzle testified that he was unable to inspect the interior of the Subject Property to confirm the lack of running water, but took the Taxpayer's word and accounted for the absence of water when assigning the improvements the percent good of

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6%. *Id.* Mr. Kinzle stated that the asphalt and concrete situated on the lot add additional value to the Subject Property. *Ex. A; MTAB Hr'g Tr. 52:6-53:4.* Mr. Kinzle assigned the asphalt and concrete a percent good of 51%. *MTAB Hr'g Tr. 53:1-4.*

7. 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 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.* However, no influence factor was applied to the Subject Property in this case. *MTAB Hr'g Tr. 54:1-3.* For the Butte Uptown Commercial Secondary land model, the base rate is \$149,315 and the base size is 43,560 square feet. *Ex. B; MTAB Hr'g Tr. 54:7-24.* The land model produced a final land value for the Subject Property of \$48,721. *Ex. A; MTAB Hr'g Tr. 55:6-7.* Mr. Kinzle stated that the Subject Property's land value is supported by it being located on the corner of a busy commercial intersection. *MTAB Hr'g Tr. 55:14-21.*
8. 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 R squared value. *Ex. B; MTAB Hr'g Tr. 57:15-58:25.* Mr. Skop testified that the R squared value for the Commercial Secondary land model is .84, which indicates variability in the model due to the variety of commercial properties and lack of vacant land sales. *Id.* Mr. Skop stated that even though the R squared value denotes some variability in the model, the R squared value was still within the DOR's desired parameters and signified that the land model is reliable and producing accurate values. *Id.*
9. Mr. Skop testified that he believes the land value is fair because the Subject Property could have reasonably been included in the Commercial Primary land model, rather than Commercial Secondary, since it is located on the corner of a busy commercial intersection. *MTAB Hr'g Tr. 59:5-14.* If the Subject Property

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had been included in the Commercial Primary land model, it would have received a 153% influence which would have increased the value substantially.
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*.
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

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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).
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

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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 affirms the CTAB's determination.
22. The Taxpayer's requested total value of \$40,000 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 the Taxpayer's arguments from the CTAB hearing for this case. The Taxpayer argues that the Subject Property's total value should be reduced from \$59,741 to \$40,000 because the Subject Property is in poor condition, lacks heat, water, electricity, is only used for storage, and the land is overvalued. Taxpayer also contends that the Subject Property's land value fails to consider the cost to remove the improvements and remediate the land. 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 \$59,741 because it is the best estimation of value and the appraisal properly accounts for the Subject Property's condition and deficient features. We agree with the DOR in this matter.
23. Mr. Kinzle testified that the cost approach was the valuation method used to value the Subject Property. Mr. Kinzle was prohibited from using the sales comparison approach to determine the Subject Property's value due to it being commercial rather than residential. An income approach valuation was conducted on the Subject Property, but the value was ultimately not used as DOR procedure requires appraisers to default to the cost approach when the income approach value is lower than the land value. Based on the testimony heard at hearing, the Board believes the DOR's utilization of the cost approach in valuing the Subject Property was proper.

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24. Mr. Kinzle also described how he determined the Subject Property's replacement cost new value and applied standard adjustments such as the ECF and County Index to account for local market conditions. Furthermore, Mr. Kinzle showed that the Subject Property's value reflects the poor condition and lack of functioning utilities in its current state. This is clearly indicated by the notably low percent good factor of 6% assigned to the Subject Property, which can be alternatively stated as 94% depreciated. The asphalt and concrete were assigned a similarly low percent good factor of 51%, or 49% depreciated. Mr. Kinzle further testified that he assigned the Subject Property a physical condition score of two, or fair, and a functional utility score of zero, which lowered the value of the Subject Property significantly. The percent good factors combined with the low physical condition and functional utility scores demonstrate that the DOR has considered the Subject Property's deteriorated condition in its valuation. The Board believes that the Subject Property's improvements value of \$11,020 is fair and properly accounts for the condition of the Subject Property as well as the lack of heat, water, and electricity.
25. Additionally, Mr. Kinzle and Mr. Skop gave credible testimony concerning the Subject Property's land model which was used to determine the land value. Mr. Skop stated that the land model satisfies the various statistical checks, such as the R squared value, which are used to evaluate a model's accuracy. Furthermore, Mr. Kinzle and Mr. Skop both described how the Subject Property's land value is lower than it could be due to being placed in the Commercial Secondary land model versus the Commercial Primary model. Mr. Kinzle and Mr. Skop stated that the Subject Property is located in a heavily trafficked commercial area and could reasonably be assigned to the Commercial Primary model which would have significantly raised the land value. However, the DOR decided that the Commercial Secondary land model was slightly more appropriate in this case. Nonetheless, the fact that the Subject Property could have been placed in the Commercial Primary model indicates to the Board that

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the current land value determined using the Commercial Secondary model is quite fair.

26. Taxpayer argues that the DOR did not properly account for the poor condition of the Subject Property or its lack of heat, water, and electricity and that its value should be lowered to \$40,000. Taxpayer also contends that the Subject Property's land value fails to consider the cost to remove the improvements and remediate the land. However, the Taxpayer did not support these arguments for a value reduction with sufficient evidence. The DOR provided credible evidence and testimony that the Subject Property's improvements value accounts for the deterioration and lack of utilities through its percent good factor as well as the physical condition and functional utility scores. The Taxpayer fails to provide evidence pointing to the contrary and has not overcome the burden of proving that the DOR made an error in their calculations. Furthermore, based on the DOR's testimony, the Subject Property's land value is fair and potentially slightly below market value due to being placed in the Commercial Secondary land model versus the Commercial Primary land model. Lastly, the DOR is not required to consider what it would cost the Taxpayer to remove structures or remediate land in their assessment of the Subject Property. The DOR is tasked with valuing properties at 100% of market value as they were on the lien date, not what their potential value might be after significant reconstruction or remediation.
27. After considering all evidence and testimony, this Board believes that the DOR's assigned total value of \$59,741 properly accounts for the Subject Property's condition and is the most accurate estimation of market value. Therefore, we affirm the CTAB's determination.

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ORDER

28. 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:

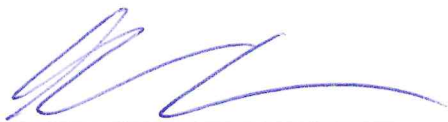
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