

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

AUG 27 2025

Montana Tax Appeal Board

VIRGINIA APTS, LLLP,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2024-29

**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 Virginia Apts, LLLP (Taxpayer) a reduction in value on the subject property located at 230 South Washington Street, Butte, Montana (Subject Property). The Taxpayer appealed that outcome to 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 Exhibits:

Taxpayer did not submit any exhibits.

DOR Exhibits:

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

PROCEDURAL HISTORY

The State of Montana, Department of Revenue (DOR), valued the Subject Property at \$1,344,976 for the 2023/2024 appraisal cycle, with the land valued at \$64,616 and the improvements valued at \$1,280,360. *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 \$933,000 with the land valued at \$53,000 and the improvements valued at \$880,000. *Id.* The DOR sent an AB-26 Final Determination Letter to the Taxpayer dated December 13, 2023, adjusting the total value to \$938,500. *Id.* The Taxpayer appealed the DOR's valuation to the CTAB on January 12, 2024, requesting a total value of \$608,500. *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 value of \$608,500. *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 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

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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 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 written 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 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 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 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 Virginia Apts, LLLP.
Ex. A. The Subject Property is located at 230 South Washington Street in Butte, Montana, and is also identified by its geocode 01-1197-13-3-81-10-0000. *Id.* The Subject Property is 14,554 square feet in total size and includes a four-story apartment building. *Id.*
3. The DOR valued the Subject Property at \$1,344,976 for tax years 2023 and 2024, allocating \$64,616 for the land and \$1,280,360 for the improvements. *CTAB Ex. A.* The Taxpayer filed a Form AB-26, Request for Informal Classification and Appraisal Review, requesting a total value of \$933,000 for the 2023/2024 appraisal cycle, allocating \$53,000 to the land and \$880,000 to the improvements. *MTAB Dkt. 4.* The DOR partially granted the Taxpayer's request, adjusting the total value from \$1,344,976 to \$938,500. *Id.* The Taxpayer appealed the DOR's valuation to the CTAB on January 12, 2024, requesting a total valuation of \$608,500 for the land and improvements. *Id.* The Taxpayer's Representative informed the CTAB that to maintain insurance, the Subject Property's knob and tube wiring, as well as the boiler, need to be replaced at a total cost of \$330,000. *Id.* The CTAB denied the Taxpayer's request. *Id.* The Taxpayer appealed the CTAB's decision to MTAB, requesting a total value of \$608,500 to reflect the costs of necessary repairs. *MTAB Dkt 1.*
4. Taxpayer's Representative and Taxpayer's Counsel did not appear before MTAB. *MTAB Hr'g Tr. 2:12-18.* The Board called Taxpayer's Representative and received no response. *Id.* The Board also called the Taxpayer's Counsel and was informed the Counsel would not be appearing. *Id.*

5. DOR Commercial Appraiser, Jon Kinzle, testified that he valued the Subject Property using the income approach and believes the income approach is the most relevant valuation method to use due to the Subject Property generating rental income. *Ex. A; MTAB Hr'g Tr. 8:3-9, 9:19-22*. Mr. Kinzle also calculated the Subject Property's value using the cost approach, which output a higher total value of \$1,344,976 compared to the income approach value of \$938,500. *Ex. A; MTAB Hr'g Tr. 8:20-9:3*. The DOR opted to use the lower value determined using the income approach. *Id.*
6. Mr. Kinzle testified that he performed the final determination of value on the Subject Property and assisted the Taxpayer with the AB-26, Informal Classification and Appraisal Review. *MTAB Hr'g Tr. 7:15-8:9*. Mr. Kinzle stated that he adjusted the Subject Property's value using the Taxpayer's actual income and expense information in the income approach valuation and adjusted the capitalization rate used from one pertaining to large commercial properties to one specifically designed for Butte and Great Falls. *Id.* Mr. Kinzle stated that he used the Taxpayer's actual income and expense data because it was more specific to the Subject Property and resulted in a more accurate value. *MTAB Hr'g Tr. 15:11-20*. Mr. Kinzle stated that the DOR will occasionally make adjustments using a taxpayer's actual information and that he believes using the Taxpayer's specific information in this instance was fair to other taxpayers. *MTAB Hr'g Tr. 15:21-16:6*. Mr. Kinzle's adjustments resulted in the Subject Property's total value being reduced from \$1,344,976 to \$938,500. *MTAB Dkt. 4.*
7. The income approach valuation involved taking the Subject Property's net operating income (NOI) and dividing it by the capitalization rate to get the total value of \$938,500. *Ex. A; MTAB Hr'g Tr. 10:12-11:17*. The NOI attributed to the Subject Property is \$62,975. *Id.* The capitalization rate used in the Subject Property's income valuation was 6.71%, which included an effective tax rate of

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1.18%. *Id.* Mr. Kinzle testified that the capitalization rate used applies to every similarly situated taxpayer. *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 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.* A 153% adjustment was applied to the land value to account for being multi-family use. *Id.* Mr. Kinzle testified that every multi-family commercial property in Butte Uptown had the same adjustment applied to them. *Id.* The land value estimated using the land model is \$64,616. *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.* 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, four of which were used to develop the multi-family influence. *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.*

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§ 15-2-101. When the Taxpayer files a timely appeal of the DOR's decision to the MTAB 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 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

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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 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 \$608,500 is the same value sought at the CTAB hearing. Since neither the Taxpayer's Representative nor Taxpayer's

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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 \$938,500 to \$608,500 to account for necessary updates to the electrical wiring and heating system. We disagree.

23. The DOR is required to value every property in the State of Montana at 100% of market value. When calculating market value using the income approach, the DOR deducted \$6,038 for expenses from the Subject Property's effective gross income to determine the NOI. By making an expense deduction, the DOR accounts for routine yearly maintenance that the Subject Property might incur. While the Board understands that fixing the Subject Property's electrical and heating issues may cost significantly more than the amount deducted for maintenance upkeep, these issues are not new to the Taxpayer and, therefore, constitute deferred maintenance. Deferred maintenance is considered a business decision in commercial mass appraisal and consequently does not affect the market value for property taxation purposes. While the Taxpayer has the liberty to postpone necessary repairs to the Subject Property if it wishes, it does not get to benefit from a lower taxable value for doing so. The DOR is not required to lower the Subject Property's market value to account for the accumulated deterioration caused by delaying repairs.
24. Additionally, even if the estimated repair costs could be subtracted from the Subject Property's total market value, the Taxpayer has not presented the Board with any documentation supporting the \$330,000 estimated cost for repairs. While the Board does not doubt that these repairs will be expensive, we cannot rely purely on Taxpayer's Representative's testimony as proof. Therefore, the Board does not believe that the DOR made an error in declining to deduct \$330,000 from the Subject Property's total value to account for the electrical and heating repair costs.

25. The DOR presented evidence showing how they arrived at the Subject Property's market value using the income approach. Mr. Skop gave credible testimony describing how the land model used to value the Subject Property contained a sufficient number of properties to create a reliable model. Furthermore, the land model satisfies various statistical checks such as the PRD, R squared value, and T stat which are used to determine a model's accuracy. The evidence and testimony presented to the Board indicated that the land value is accurate.
26. Mr. Kinzle testified to making a manual override in the income approach valuation, allowing the Taxpayer's actual income and expense information to be used, which resulted in roughly a \$400,000 decrease in the Subject Property's total market value. The Board is unclear as to why this override was made, as testimony from previous commercial property appeals before this Board indicated that the DOR does not use taxpayers' individual income and expense information in the income approach, as this would be inequitable to other taxpayers who were not valued the same way. While the Board feels that this choice is contradictory to previous testimony made before the Board, the DOR witnesses in this case stated that they believe this change is defensible and fair to all taxpayers, and absent a clear indication of the permissibility of this override, this Board declines to revert the Subject Property's value back to its previous amount of \$1,344,976.
27. Ultimately, the Taxpayer bears the burden of proving that the DOR made an error in its valuation, and the Taxpayer did not overcome the burden in this case. The Board believes that the DOR was correct to not deduct the estimated electrical and heating repair costs from the Subject Property's value and was not convinced by the Taxpayer's Representative's CTAB arguments in support of this value reduction. Additionally, aside from some questions concerning the DOR's ability to use a taxpayer's specific income and expense information, the Board believes that the DOR correctly applied the income approach to determine the Subject Property's value. The Board believes that the \$938,500 value properly accounts for the Subject Property's condition and is the best indication of market

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value. Furthermore, since the decision to use the Taxpayer's specific income and expense information resulted in a lower value for the Taxpayer, this Board has opted to keep the post AB-26 review value of \$938,500. Therefore, this Board affirms 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.

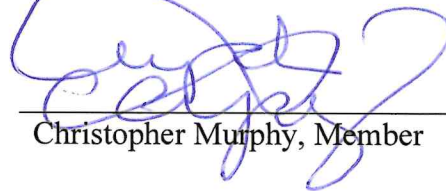
Dated this 27th day of August 2025.



Travis Brown, Chairman



Adam Millinoff, Member



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)*.

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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