

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-2024-30

**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 216 South Washington 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'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. Comparable Sales Data; and

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D. Aerial Photos with Property Boundaries and Neighborhood
Designations.

PROCEDURAL HISTORY

The DOR valued the Subject Property at \$92,900 for the 2023/2024 appraisal cycle, with the land valued at \$14,346 and the improvements valued at \$78,554. *MTAB Dkt 4*. The Taxpayer filed a Form AB-26, Request for Informal Classification and Appraisal Review, with the DOR on July 27, 2023, stating the “assessed value exceeds fair market value on the assessment date.” *Id.* The DOR sent an AB-26 Determination Letter to the Taxpayer dated December 4, 2023, increasing the total value to \$93,500. *Id.* The Taxpayer appealed the DOR’s valuation to the CTAB on January 4, 2024, requesting a total value of \$57,000. *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 value of \$57,000. *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 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.*

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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 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 file 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 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.*

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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 single-family residential property owned by Virginia Apts, LLLP. *Ex. A.* The Subject Property is located at 216 South Washington Street, Butte, Montana, and is also identified by its geocode 01-1197-13-3-81-12-0000. *Id.* The Subject Property is 2,040 square feet in total size and contains a single level home. *Id.*
3. The DOR valued the Subject Property at \$92,900 for tax years 2023 and 2024, allocating \$14,346 for the land and \$78,554 for the improvements. *MTAB Dkt.*
4. The Taxpayer filed a Form AB-26 Request for Informal Review on July 27, 2023, requesting a total value of \$57,000 for the 2023/2024 appraisal cycle. *Id.* The DOR stated in its December 4, 2024, AB-26 Determination Letter that a value adjustment was made during the AB-26 informal review, increasing the Subject Property's value to \$93,500 due to a 5x8 porch being unaccounted for. *Id.* The Taxpayer appealed the DOR's valuation to the CTAB on January 4, 2024, requesting a total valuation of \$57,000. *Id.* The Taxpayer did not distinguish what portion of the value should be attributed to the land versus the improvements. *Id.* The Taxpayer's Representative argued at the CTAB hearing that the Subject Property's value should be reduced due to being located on a smaller sized lot with no yard. *Id.* The CTAB denied the Taxpayer's request for a value reduction. *Id.* The Taxpayer appealed the CTAB decision to MTAB on March 20, 2024, requesting that the value be reduced to \$57,000. *MTAB Dkt. 1.*

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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 that the Counsel would not be appearing. *Id.*
5. DOR Appraiser, Rian Kraus, testified that she performed the Subject Property's appraisal and was assigned to assist the Taxpayer with the AB-26 Informal Review. *MTAB Hr'g Tr. 24:17-25*. Ms. Kraus testified that she believes the sales comparison approach is the most relevant methodology to value the Subject Property. *MTAB Hr'g Tr. 25:5-10*. Ms. Kraus stated that she made minimal adjustments to the five comparable sales used in the comparable sales analysis to value the Subject Property. *MTAB Hr'g Tr. 26:23-24*. The DOR's computer assisted mass appraisal (CAMA) system selected comparable properties to value the Subject Property and determined that the comparability points for the five comparable properties are 27, 34, 36, 40, and 40. *Ex. C; MTAB Hr'g Tr. 28:22-29*. Ms. Kraus stated that the low comparability points indicate that the properties are highly comparable to the Subject Property. *Id.* Using the five comparable properties, the weighted average, and the multiple regression values, the DOR removes the two highest and two lowest values and average the remaining three values to find a value for the subject property. *MTAB Hr'g Tr. 31:9-15*. For the Subject Property, the weighted estimate, comparable property #2, and comparable property #3 were the three values used in the sales comparison calculation. *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, Jon 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.* The incremental and decremental

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rates, which allow the DOR to adjust values for lots that are larger or smaller than the base size, are .5495.¹ *Ex. B; MTAB Hr'g Tr. 27:20-24*. Ms. Kraus confirmed that the decremental rate was used in the Subject Property's valuation to account for its smaller lot size. *Id.* The land value estimated 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 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 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 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 produced an accurate land value for the Subject Property. *Id.*

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*. 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*.

¹ Ms. Kraus stated that the incremental rate allows the DOR to adjust value for lots that are larger or smaller than the base size. We believe she meant to say that the incremental and decremental rates allow for this. For purposes of this opinion, we have included the decremental rate in her testimony. The inclusion of decremental rate in the testimony was made purely to maintain accuracy and did not affect the outcome of the case.

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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, 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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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.
20. The Taxpayer requested that the Subject Property's value be reduced from \$93,500 to \$57,000, but did not make a distinction between what portion of the requested value should be assigned 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

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CTAB hearing into this case. Taxpayer argues that the Subject Property's value should be reduced to \$57,000 because it is located on a smaller sized lot and has no yard. We disagree, as the DOR's valuation of the Subject Property already takes into account the smaller sized lot and absence of a yard.

21. Ms. Kraus gave credible testimony that the five comparable sales used to value the Subject Property had very low comparability points, indicating that they required minimal adjustments to bring their characteristics in line with the Subject Property. The Board is satisfied that the comparable properties used to value the Subject Property are comparable and supports their use in the sales comparison calculation. Additionally, the DOR can adjust the values for lots that are smaller or larger than the land model's base size using either the incremental or decremental rate. Since the Subject Property has less square footage than the base size listed in the land model, Ms. Kraus applied the decremental rate when calculating the land value to account for the size discrepancy. The incremental and decremental rates are the primary method in which the DOR can account for differing lot sizes and the use of the decremental rate in this instance indicates to the Board that the Subject Property's smaller lot size has been adequately accounted for.
22. Furthermore, the property record card presented by the DOR clearly shows that the condition, desirability, and utility scores (CDU) assigned to the Subject Property already reflect the impact that the lack of a yard has on the property's attractiveness. The Subject Property's locational and property desirability were both assigned CDU scores of five, indicating poor desirability. The Board believes that these scores fairly account for the lack of a yard.
23. 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

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model's accuracy. The evidence and testimony presented to the Board indicate that the land value is accurate.

24. Ultimately, it is clear to the Board that the Subject Property's smaller lot size and lack of a yard have been accounted for in the DOR's valuation. The comparable properties used in valuing the Subject Property were of similar size and were deemed highly comparable by the DOR's CAMA system. The Subject Property also had the decremental rate applied to it when determining the land value, which addresses the smaller lot size. Lastly, the Subject Property's CDU scores reflect the decreased desirability of the Subject Property, in large part due to the smaller sized lot and lack of a yard. The Board is satisfied that these factors properly address the Taxpayer's concerns and that the DOR made an accurate estimation of market value. Therefore, this Board affirms 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:

C.C. Cox
Virginia Apts, LLLP
P.O. Box 4695
Butte, Montana 59712

Tim Dick
Timothy M. Dick P.C.
P.O. Box 645
Butte, Montana 59703-0645

Dave Burleigh
State of Montana, Department of Revenue
Legal Services Office
P.O. Box 7701
Helena, MT 59604-7701

Paula Gilbert
State of Montana, Department of Revenue
Property Assessment Division
P.O. Box 8018
Helena, MT 59604-8018

Jessica Cunneen
Butte-Silver Bow County Tax Appeal Board
155 W Granite
Butte, MT 59701



Shane Cashin, Law Clerk