

**BEFORE THE MONTANA TAX APPEAL BOARD**

**FILED**

NOV 04 2016

Montana Tax Appeal Board

**State of Montana,  
Department of Revenue,**

*Appellant;*

v.

**Edward G. Beaudette,**

*Respondent.*

CASE No: PT-2016-17

**Order Denying Appellant's  
Request for Attorney Fees and  
Costs**

Before the Board is Edward G. Beaudette's (Taxpayer) motion for Attorney Fees and Costs. The motion has been fully briefed and is ready for decision.

**FINDINGS OF FACT**

1. On 11/2/2015 the Taxpayer filed an appeal with Anaconda-Deer Lodge County Tax Appeal Board (CTAB) contesting the Department of Revenue's (DOR) 2015 assessed land value of \$248,753 for a parcel of property identified as Geocode #30-1375-19-2-02-07-0000. (CTAB Ex. 1.) Taxpayer did not contest the DOR's 2015 improvements value. (Id.) This property is located on Georgetown Lake and will be referred to as the "Georgetown Lake" property.

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2. Taxpayer also filed three other appeals with the CTAB on other residential rental properties he owns in Anaconda and these will be referred to as the “rental” properties.
3. The CTAB held one combined hearing on 1/13/16 for all four of Taxpayer’s appeals, and on 1/13/16 reduced the values of the rental properties and on 1/14/16 adjusted the land value for the Georgetown Lake property to \$197,717. The CTAB gave the following reason for adjusting the Georgetown Lake value “Board adjusted price on land to property square footage owned (44,431) times State based rate \$4.45. Adjusting land value of \$197,717. Building value remains the same.” (Id.)
4. On 2/10/16, DOR appealed all four CTAB decisions to this Board. This Board initially docketed all four appeals under one docket number and issued a scheduling order on March 3, 2016. On March 17<sup>th</sup>, upon its own motion after consideration of the different issues, this Board decided to separate the appeals into two separate appeals, one for the three rental properties and one for the Georgetown Lake property. The Board created this separate appeal for the Georgetown Lake property. The Board kept all dates on the March 3, 2016 scheduling order intact, changing only the start time of the hearing from 1:00 p.m. to 10:00 a.m. on Tuesday June 14.
5. The March 3<sup>rd</sup> scheduling order set forth the following dates: requests for information had to be sent to the other party by March 18, all responses were due by April 15, witness and exhibit lists to be exchanged by June 3, and the hearing on the appeal was scheduled for

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10:00 a.m. June 14. The hearing on the rental properties was scheduled for 1:00 p.m. June 14.

6. Both parties timely filed witness and exhibit lists with this Board on June 3 in preparation for the hearings on June 14<sup>th</sup>.
7. On June 13, DOR filed a Notice of Withdrawal of Appeal for the Georgetown Lake property in which DOR represented that the Taxpayer had been notified and consented to the withdrawal.
8. Also on June 13, Taxpayer filed a Motion for Attorney Fees and Costs and a Brief in Support alleging that the DOR's withdrawal of its appeal alone on the eve of the hearing demonstrated that the appeal was frivolous and made in bad faith. Taxpayer argues that this Board has recognized the importance of the decisions of the local tax appeal boards and the DOR's appeal impugned the integrity of the CTAB. In essence, Taxpayer argues that DOR's appeal and subsequent withdrawal demonstrates in and of itself that the DOR appeal was filed in bad faith.
9. This Board treated DOR's captioned Notice of Withdrawal of Appeal as a Motion to Dismiss under Mont. R. Civ. P. 41(2), and granted that motion orally at the hearing on June 14. Rule 41(2) states "Unless the order states otherwise, a dismissal under this paragraph is without prejudice."

## CONCLUSIONS OF LAW

10. Mont. Code Ann. §15-1-222, the Taxpayer Bill of rights, states “A taxpayer is entitled to collect court costs and attorney fees from the department for frivolous or bad faith lawsuits as provided in 25-10-711.”

11. Montana Code Ann. §25-10-711(1) states:

In any civil action brought by or against the state, a political subdivision, or an agency of the state or a political subdivision, the opposing party, whether plaintiff or defendant, is entitled to the costs enumerated in §25-10-201 and reasonable attorney fees as determined by the court if:

(a) The opposing party prevails against the state, political subdivision, or agency; and

(b) The court finds that the claim or defense of the state, political subdivision, or agency that brought or defended the action was frivolous and pursued in bad faith.

12. Montana Code Ann. §15-15-104 states, in relevant part, “a person or the department, on behalf of the state, or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board under 15-2-301.”

13. Taxpayer was well prepared for his other hearings in front of this Board on June 14<sup>th</sup>, and this Board believes Taxpayer’s assertion that he expended significant time and resources to prepare his defense for the Georgetown Lake property. However, there is no evidence in the record to suggest the DOR acted in bad faith when it filed its appeal with this Board. The local tax appeal boards were established by the

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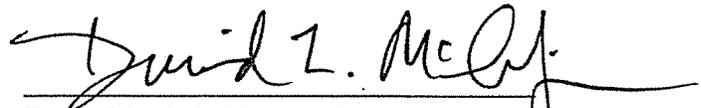
1972 Constitution to provide taxpayers an opportunity for a local independent review of the DOR appraised values for property tax purposes. The CTABs are truly independent from the DOR and thus, the right to appeal CTAB decisions to this Board applies equally to taxpayers and the DOR.

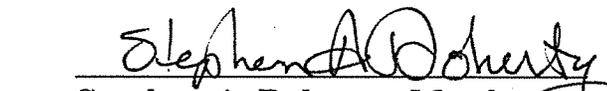
14. While Taxpayer is correct that both this Board and the Montana Supreme Court have recognized that local tax appeal boards have superior knowledge of local land values and area comparisons, this Board rejects Taxpayer's argument that the DOR impugned the integrity of the CTAB by exercising its rights to file an appeal with this Board.
15. While this Board certainly does not condone the DOR's withdrawal of its appeal on the eve of trial, that act alone does not sufficiently establish that it filed the appeal frivolously and in bad faith. This Board did not hold a hearing on the merits of the appeal that would establish the factual record to determine whether the appeal was filed frivolously or in bad faith.
16. The Board agrees with the DOR's arguments in its brief that Taxpayer was not the prevailing party in this appeal. The appeal was dismissed without prejudice and without entry of judgment, therefore while Taxpayer was the prevailing party at the CTAB there was no prevailing party in front of this Board. There is no evidence that Taxpayer did not agree to the dismissal.
17. It is this Board's conclusion that Taxpayer's Motion for Attorney Fees and Costs be DENIED.

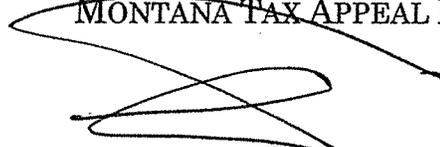
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Ordered November 4<sup>th</sup>, 2016.



  
David L. McAlpin, *Chairman*  
MONTANA TAX APPEAL BOARD

  
Stephen A. Doherty, *Member*  
MONTANA TAX APPEAL BOARD

  
Valerie A. Balukas, *Member*  
MONTANA TAX APPEAL BOARD

**Notice:** You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2).

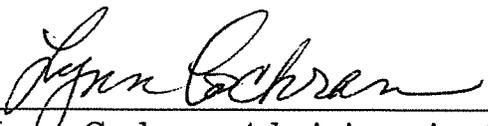
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**Certificate of Service**

I certify that I caused a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on November 4, 2016 to:

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Helena, MT 59601

Anthony R. Zammit  
MT Department of Revenue  
Office of Legal Services  
P.O. Box 7701  
Helena, MT 59604-7701

  
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Lynn Cochran, Administrative Officer  
MONTANA TAX APPEAL BOARD