

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

DEC 14 2016

Montana Tax Appeal Board

Heather G. Richards,

Appellant;

v.

State of Montana,
Department of Revenue,

Respondent.

CASE No: PT-2015-31

**Findings of Fact,
Conclusions of Law, Order,
and Opportunity for Judicial
Review**

1. Before the Board is Appellant Heather Richards' appeal from the Gallatin County Tax Appeal Board's decision upholding Respondent State of Montana, Department of Revenue's (DOR) appraisal of Richards' property at 2743 Sheepshank Dr., Belgrade; geocode 06-0903-04-2-05-21-0000; legal description Minor Sub 170, S04, T01 S, R04 E, Lot 1, Acres 2.146.

ISSUE

2. Whether DOR properly appraised Richards' greenhouse and shop.
3. Appellant asks the Board to lower the value of her greenhouse to \$1,000 and shop to \$146,892. DOR valued those two improvements on her property at \$12,310 for the greenhouse and \$209,640 for the shop.

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4. DOR argued at the outset of the hearing that statute prohibits any change in value by either the county or state tax appeal boards, because Taxpayer did not allow an internal inspection of the subject property.

FINDINGS OF FACT

5. DOR was allowed to inspect the subject improvements on October 17, 2014 in anticipation of the 2015-2016 appraisal cycle.
6. Taxpayer received her assessment notice for the new appraisal cycle and timely submitted an AB-26 request for informal review of her property valuation to the DOR, which issued its determination letter to the taxpayer on October 2, 2015. DOR made some reductions to the greenhouse value but revised the shop from an unfinished pole barn to a finished garage, thus increasing its assessed value. The AB-26 determination letter made specific reference to DOR's inspection of the property, reasoning that upon viewing the poured concrete footer walls, the more accurate definition of the structure would be that of a framed timber construction for purposes of valuation. Taxpayer timely filed an appeal of the AB-26 determination to the Gallatin County Tax Appeal Board (CTAB), which held a hearing on December 2, 2015. Gallatin CTAB decided that Taxpayer had not overcome her burden to prove the full requested reduction, but did reduce the improvement total value from \$556,120 to \$551,000. (CTAB Ex. 11; Property Tax Appeal Form.)
7. Taxpayer timely appealed the CTAB decision to this Board, which conducted a hearing at 600 N. Park Ave., Helena at 1:00 PM on June 28, 2016 at which the following were present:

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- a. Heather Richards, taxpayer;
 - b. Lance Richards, taxpayer's representative;
 - c. John Richards, taxpayer's representative;
 - d. Elizabeth Roberts, attorney for DOR;
 - e. Janet Hoopes, DOR appraiser, as witness for DOR;
 - f. Roger Layton, DOR appraiser, as witness for DOR.
8. The following exhibits were introduced and admitted unless otherwise noted:
- a. Richards exhibits;
 - i. 1 – Profit and Loss by Job spreadsheet including various receipts for expenses related to construction of the shop,
 - ii. 2 –screen shots of greenhouse material costs from Farmtek Growers supply, www.growerssupply.com,
 - iii. 3 – Property record card for Tek Investments LLC comparable, geo code 06-0903-04-2-05-30 printed on 4/12/2016 from the State of Montana property database system (cadastral). This property included assessment of the remaining ½ greenhouse not purchased by the taxpayer,
 - iv. 4 – Property record card of the subject printed on 9/11/2015,
 - v. 5 – Property record card of the subject printed on 10/2/2015,

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- vi. 6 – Email exchange between Lance Richards and DOR Appraiser Hoopes between September 9, 2015 and October 1, 2015 regarding physical inspection of the property,
- vii. 7 – Thirteen exterior photographs of the subject property improvements,
- viii. 8 – Five interior photographs of the shop building,
- ix. 9 – Two pages of engineering sketches of the prefabricated structural insulated panel wall sections placed on top of the foundation walls to form the building walls of the shop,
- x. 10 – Four-page fee appraisal report of the subject property from Bishop Appraisal services for Big Sky Western Bank dated May 5, 2016,
- xi. 11 – Property Record card for Lehman comparable, geo code 06-1010-33-4-01-11 printed on 4/12/2016 from the State of Montana property database system (cadastral),
- xii. 12 – Property Record card for Ostrander comparable, geo code 06-0903-04-2-10-70 printed on 4/12/2016 from the State of Montana property database system (cadastral),
- xiii. 13 – Property Record card for Kristensen comparable, geo code 06-0903-04-2-05-11 printed on 4/12/2016 from the State of Montana property database system (cadastral), and

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xiv. 14 – Two-page email exchange between Lance Richards and DOR Appraiser Hoopes between December 17, 2015 and January 13, 2016 regarding physical inspection of the property.

b. DOR exhibits;

i. A – Property Record card of the subject printed on 11/12/2015,

ii. B – Aerial photo of the subject property showing all improvements,

iii. C – Seven pages of external and internal photos of the shop,

iv. D – Five pages of external and internal photos of the greenhouse,

v. E – Eight-page Cost method calculation worksheet for subject improvements exhibiting the various formulas used and totals derived under the DOR cost less depreciation approach to find market value of improvements,

vi. F – 2009 Property Record card of the subject printed on 6/3/2016,

vii. G – Email exchange between Lance Richards and DOR Appraiser Hoopes between September 9, 2015 and January 18, 2016 regarding physical inspection of the property.

9. Taxpayer contends she purchased a used greenhouse that did not have heat, concrete floor or footings, nor any other of the amenities which would support the value assigned to it by DOR. Taxpayer also presented

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testimony and evidence that her shop was a pole barn for purposes of valuation and therefore was overvalued as a finished garage.

10. Taxpayer's representative alleged that when Taxpayer asked for an informal review, DOR retaliated against her by changing the description of her shop and thereby increasing its value.
11. Taxpayer's representative claimed that comparable sales of pole barn structures did exist, in proximity to the subject, which should have been used to find the shop value through the sales comparison method of valuation. Taxpayer contends a sales comparison approach would more accurately reflect market value of the shop than the cost approach utilized by DOR.
12. Taxpayer's representative submitted exhibits documenting Taxpayer's offer to the DOR to physically inspect the property in 2015.
13. DOR contends that Taxpayer's agent had denied DOR physical access to inspect the property, and DOR was therefore compelled to estimate the value of the subject property which neither the CTAB nor the Montana Tax Appeal Board (MTAB) could adjust.
14. Mr. Richards offered unrefuted testimony during the hearing that while accompanying DOR staff on the physical inspection of the property, DOR had not requested an interior inspection. Despite confusing testimony about whether there ever was permission for an internal inspection of the greenhouse, the DOR made a reduction to estimate a fair value of the improvement without making an internal inspection.

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15. The DOR appraiser testified that the greenhouse did not have any external or internal heating systems and the correct dimensions of the structure are 18.5 by 48 feet.
16. Taxpayer submitted a receipt showing her purchase price for the used greenhouse was \$250, and requested a value of \$1,000 without adequately accounting for the market value of labor costs to reconstruct the improvement or the actual market value of construction materials used to frame and side the greenhouse walls.
17. DOR set market value for the greenhouse by calculating a 2011 average grade cost per square foot minus depreciation. They arrived at a value for the greenhouse of \$12,306 which included a heating system.
18. Taxpayer testified the greenhouse has no heating system, nor any concrete footings or curbing/flooring.
19. DOR's appraisers evaluated the best method by which to appraise the shop, first considering a sales comparison approach. This property with its many and varied improvements did not equitably compare to other comparable sales during the appraisal cycle. DOR determined comparability to other available sales was less valid due to high number of adjustments needed for each of the improvements. Rather than using a highly adjusted sales comparable method, DOR selected a cost less depreciation method to value the subject improvements as the more reliable method of finding market value of the subject improvements.
20. DOR appraiser Hoopes gave credible testimony regarding the evaluation she made to select the cost method as the most defensible method of

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finding market value for the subject. She testified that after review, the adjustments needed to equalize comparable sales properties to the subject exceeded allowable scores in DOR valuation software.

21. DOR claimed that the level of construction and finish of the shop was commensurate with a value significantly higher than a typical pole barn structure, and more accurately fit the valuation definition of a finished garage structure.
22. Taxpayer introduced a bank appraisal report of the subject property dated May 25, 2016 and argued that value assigned to shop of \$148,425 was the true market value which should be upheld by this Board. The report's cost approach value for the shop did not include an estimate of the level of finish or other amenities of the shop.
23. DOR appraiser Layton testified that Taxpayer's request to value the shop at approximately \$25 per square foot is not representative of a structure with the level of finishes found in photo of the shop. He estimated that the market value cost of building a similar shop would far exceed the \$25 per square foot value requested by Taxpayer, but may be correct for an unfinished pole barn structure.
24. Layton testified that the cost associated with placing prefabricated structural insulated panels building systems on four-foot-high concrete perimeter walls is an expensive building method most commonly found in fully finished garage buildings with more value than pole barn buildings.

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CONCLUSIONS OF LAW

25. The Board has jurisdiction over this case and its order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-301.

Burden of Proof

26. The taxpayer bears the burden of proving the error of DOR's decision. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
27. 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*, 149 Mont. at 353, 428 P.2d at 7.

Assessment

28. "All taxable property must be appraised at 100% of its market value...." Mont. Code Ann. § 15-8-111.
29. "[T]he Legislature intended the Department to utilize both the cost approach and the market data approach, depending upon the available market data, when it assesses property and estimates market value." *Albright v. State By & Through State*, 281 Mont. 196, 208, 933 P.2d 815, 823 (1997).
30. "[F]or the taxable years from.... (c) January 1, 2015, through December 31, 2016, all property classified in 15-6-134, MCA, (class four) must be

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appraised at its market value as of January 1, 2014.” Mont. Admin. R. 48.18.124.

31. To prevail in a challenge of DOR’s assessment the taxpayer must prove:

- (1) that there are several other properties within a reasonable area similar and comparable to his;
- (2) the amount of the assessments on these properties;
- (3) the actual value of the comparable properties;
- (4) the actual value of his property;
- (5) the assessment complained of;
- (6) that by a comparison his property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of the similar and comparable properties, thus creating discriminations.

DeVoe v. Dep't of Revenue of Montana, 233 Mont. 190, 194, 759 P.2d 991, 993-94 (1988) (quoting *Maxwell v. Shivers*, 133 N.W.2d 709, 711 (Iowa 1965)).

Inspection

32. “If a landowner or the landowner's agent prevents [DOR’s appraiser] from entering land to appraise or audit property or fails or refuses to establish a date and time for entering the land... the department shall estimate the value of the real and personal property located on the land.” Mont. Code Ann. § 15-7-139(6).

33. “A county tax appeal board and the state tax appeal board may not adjust the estimated value of the real or personal property determined under subsection (6) unless the landowner or the landowner's agent: (a) gives permission to the department to enter the land to appraise or audit the

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property; or (b) provides to the department and files with the county tax appeal board or the state tax appeal board an appraisal of the property conducted by an appraiser who is certified by the Montana board of real estate appraisers.” Mont. Code Ann. § 15-7-139(7).

* * *

34. The Board first addresses the claim that Taxpayer failed to allow inspection of the property. The Board cannot adjust a DOR value if a Taxpayer “fails or refuses to establish a date and time for entering the land...” Taxpayer’s AB-26 response from the DOR included the following language, “After reviewing your property record, photos from my property inspection, and photos you submitted, changes were made to the characteristics of your Shop and Greenhouse.” (CTAB Ex. 11 (emphasis added).) DOR emails indicated they could not make adjustments to the property value without conducting an internal inspection during the informal review. We find no evidence in the record that Taxpayer refused to let the DOR conduct an internal inspection.
35. The physical inspection requirements address situations where taxpayers do not allow DOR appraisers on their property to inspect. DOR appraiser Hoopes testified that she had conducted a physical inspection of the property on October 17, 2014. (MTAB Hrg. Transcr. 47:11-12). We find in this case a record indicating that permission was offered and accepted for a second inspection but that the parties could not agree on a date and time.

Cost Method

36. We find DOR used a consistent policy, a high comparability scoring method, to default to the use of the cost less depreciation approach as the most defensible method for valuing the subject. DOR was correct to use a cost method to value Taxpayer's improvements.

Greenhouse

37. A reasonable market value for the used greenhouse, which includes the labor and material costs to reconstruct the greenhouse with solid walls, is \$5,000 rather than the \$12,306 value sought by DOR. This reduction also accounts for the unrefuted testimony that the greenhouse has no heating system.

Shop

38. We find the DOR had sufficient information from their physical inspection and the photos of the shop provided by Taxpayer to determine it was more appropriate to value it as a finished garage. The Board considered but did not adopt the May 2016 appraisal report value because it does not consider the level of finish or amenities of the shop and was not time trended to January 1, 2014 statewide lien date. The shop's customized structural insulated panel system walls with four foot poured concrete stem walls do not equate to the cost of a pole barn classification and would not reflect an accurate replacement cost new less depreciation value of this building.
39. We do not find Taxpayer's argument credible that the DOR vindictively raised her improvement values in retaliation to the AB-26 challenge to

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the assigned values. We find the DOR met their obligation to make accurate changes to improvements not previously accurately appraised. DOR has the opportunity and obligation to revise property record cards to accurately reflect the actual condition of the property. It did so in this case.

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ORDER

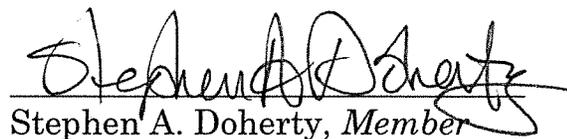
40. Heather Richards' appeal and complaint is **granted in part and denied in part.**
41. DOR is **ordered** to reduce the value of the greenhouse to \$5,000 and maintain the shop in the category of a finished garage with the value of \$209,640, as these changes relate to the property at 2743 Sheepshank Dr., Belgrade; geocode 06-0903-04-2-05-21-0000; legal description Minor Sub 170, S04, T01 S, R04 E, Lot 1, Acres 2.146.

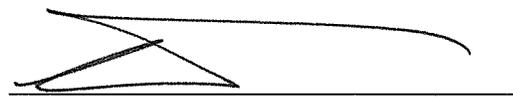
Notice: You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2).

Ordered December 14, 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

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Certificate of Service

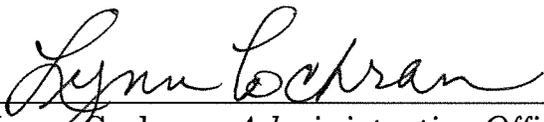
I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions Of Law, Order, And Opportunity For Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on December 14, 2016 to:

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Lynn Cochran, *Administrative Officer*
MONTANA TAX APPEAL BOARD