

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

MAY 24 2018

Montana Tax Appeal Board

CASE No: PT-2017-23

THOMAS & CAROLE ANGLAND,

Appellants,

v.

**STATE OF MONTANA,
DEPARTMENT OF REVENUE,**

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER,
AND OPPORTUNITY FOR JUDICIAL
REVIEW**

Before the Montana Tax Appeal Board is Appellant Thomas & Carol Angland's (Anglands) appeal from the Cascade County Tax Appeal Board (CCTAB) decision denying their appeal.

For the reasons provided below, the Anglands' appeal is denied in part.

ISSUES TO BE DECIDED

1. Whether the DOR determined the correct value of the Anglands' land and improvements.

FINDINGS OF FACT

Description of the Property

2. The property involved in this appeal is a home, garage, and lot in Great Falls described as follows:

Great Falls Twelfth Addition, S08, T20 N, R04 E,
Block 222, Lot 001, LT 1-W 20 FT LT 2; geocode 02-
3016-08-2-39-14-0000.

3. The property's land is 10,500 square feet. DOR Ex. F.

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4. On the land is a four-bedroom, 2 full bath home. *Id.* The home has a main floor, a basement, an attic, and a porch. *Id.* The upper exterior of the home is stucco, with the ground floor sided with wood. *Id.*
5. In the 2015 and 2016 tax cycle, the DOR determined the Anglands' land had a value of \$40,500 and the home a value of \$164,600 for a total market value of \$205,100. DOR Ex. A.

AB-26 Review

6. For the 2017/2018 tax cycle, on July 3, 2017, the Anglands received their assessment notice for the property which valued their property at \$216,100.
7. The Anglands requested an informal AB-26 review of the property's value.
8. As part of the AB-26 review, the DOR inspected the home.
9. The DOR issued its final determination letter on July 18, 2017. After completing an inspection of the Anglands' property, the DOR:

Re-measured the dwelling and garage. Considered changing the garage to attached from detached as it is attached to the 8x11 room on the s/end of the house. The garage attic area than (sic.) gets added to the house attic area as the grade of the house. I didn't feel that was accurate, so left garage as detached. Dwelling has 4 total bedrooms = 1 bedroom in attic, 1 bedroom in basement and 2 bedrooms on the main floor. 1 bath on main and 1 in basement. Verified type 4 attic is accurate. The house was remodeled in 1990 and the new garage was built in 1990 w/attic area above. Garage is 24x26 rather than 20x20 as we had. Changed the area of the basement to not include under the front stoop. Measured the 2 rooms (13x12 & 13x18) 390 sq. feet in the basement that are finished to typical quality. DOR Ex. B.

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10. As a result, the DOR determined the Anglands' property had a value of \$217,800; i.e. \$36,300 for their land and \$181,500 for their home. *Id.*

CCTAB hearing – appeal and outcome

11. On August 7, 2017, the Anglands appealed to the CCTAB.
12. On October 12, 2017, the CCTAB heard the Anglands' appeal.
13. After hearing all of the evidence, the CCTAB denied the Anglands' appeal.

MTAB hearing

14. The Anglands appealed to this Board on November 14, 2017.
15. Prior to the hearing before this Board, the DOR adjusted the value of the Anglands' property to \$216,100; finding the land had a value of \$36,300 and the home a value of \$179,800. DOR Ex. F. The reduction accounted for the DOR incorrectly measuring the Anglands' deck in its prior assessments. MTAB Hrg. 1:02 – 1:28.
16. The Anglands do not challenge the DOR's land value. MTAB Hrg. 1:33 – 1:50.
17. The Anglands appeared at the hearing. Mr. Angland presented their appeal and was the only witness in the Anglands' case.
18. This Board admitted the following exhibits submitted by the Anglands:
 - a. Taxpayer Ex. 1: Appeal to the Montana Tax Appeal Board;
 - b. Taxpayer Ex. 2: DOR's Responses to Questions;
 - c. Taxpayer Ex. 3: DOR's Responses to Second Set of Questions;
 - d. Taxpayer Ex. 4: DOR's Responses to Third Set of Questions;
 - e. Taxpayer Ex. 5: Listing for property at 300 31st Street, Great Falls, MT;

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- f. Taxpayer Ex. 6: Picture of a shed at 300 31st Street residence;
- g. Taxpayer Ex. 7: Property Record Card for property at 720 40th St S., Great Falls, MT;
- h. Taxpayer Ex. 8: Property Record Card for property at 2819 7th Ave. S., Great Falls, MT;
- i. Taxpayer Ex. 9: Property Record Card for property at 320 36th St S., Great Falls, MT;
- j. Taxpayer Ex. 10: Property Record Card for property at 3610 6th Ave., Great Falls, MT;
- k. Taxpayer Ex. 11: Property Record Card for property at 300 31st St. S., Great Falls, MT;
- l. Taxpayer Ex. 12: Property Record Card for the Anglands' property;
- m. Taxpayer Ex. 13: Comparable Sales Report #1;
- n. Taxpayer Ex. 14: Comparable Sales Report #2;
- o. Taxpayer Ex. 15: MRA Analysis;
- p. Taxpayer Ex. 16: Anglands' response to DOR discovery requests (January 8, 2018);
- q. Taxpayer Ex. 17: Email from Brett Haverlandt discussing a purchaser would want brick over wood;
- r. Taxpayer Ex. 18: Letter from Mr. Angland to Dave Burleigh of the DOR about settling the appeal (January 13, 2018);
- s. Taxpayer Ex. 19: Correspondence from Mr. Angland to Dave Burleigh of the DOR for settlement purposes (January 18, 2018);
- t. Taxpayer Ex. 20: Letter from Mr. Angland to Mike Kadas of the DOR about settling the appeal (February 23, 2018); and
- u. Taxpayer Ex. 21: Letter from Mr. Angland to Dave Burleigh of the DOR with additional questions about how his property had been valued (February 10, 2018).
- v. Taxpayer Ex. 22: a larger copy of the DOR's comparables list.

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19. At the hearing, the DOR was represented by Dave Burleigh. The following witness testified in the DOR's case:
 - a. Joan Vining, DOR Property Assessment Division area manager; and
 - b. Brenda Ivers, DOR Property Assessment Division appraiser.

20. This Board admitted the following exhibits submitted by the DOR:
 - a. DOR Ex. A: 2017 Property Record Card;
 - b. DOR Ex. B: AB-26 Determination Letter (July 18, 2017);
 - c. DOR Ex. C: Email and attachments regarding comparable properties used in the DOR's market sales approach (August 1, 2017) [confidential];
 - d. DOR Ex. D: Cascade County Tax Appeal Board decision (October 12, 2017);
 - e. DOR Ex. E: 2017 Property Record Cards for comparable properties used by the DOR in its market sales approach (January 10, 2018) [confidential];
 - f. DOR Ex. F: 2017 updated Property Record Card and comparable sales as to the market value determination (March 1, 2018);
 - g. DOR Ex. G: Comparable Sales report as to DOR Ex. F (March 1, 2018) [confidential]; and
 - h. DOR Ex. H: CALP model for land sales used to value the Anglands' land [confidential].

21. Prior to any testimony, the DOR filed a list of objections to Mr. Angland's proposed exhibits. Despite these objections, all of the exhibits Mr. Angland submitted were admitted by this Board.

22. At the beginning of the hearing, Mr. Angland stated he wanted his property to be valued at \$209,148 or less and indicated a compromise would be \$208,500. MTAB Hrg. 7:38 – 8:48.

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The testimony

23. To value the Anglands' home, the DOR used the market sales approach. MTAB Hrg. 1:27:50 – 1:27:55. The DOR considers the market sales approach a more reliable method for determining the market value of a residential improvement. MTAB Hrg. 1:28:50 – 1:28:54;
24. The market sales approach requires the DOR to find five or more comparable sales from a neighborhood similar to the subject's home. MTAB Hrg. 1:33:10 – 1:33:27; 1:37:55 – 1:38:27. The DOR seeks five comparable sales which have the lowest number of comparability points possible. MTAB Hrg. 2:08:40 – 2:09:08. The DOR seeks five comparable sales with all five sales having less than 200 comparability points. *Id.* For example, the DOR's comparable sales used to value the Anglands' home had comparability points from 60 to 92, meaning all of the sales were very comparable to the subject. MTAB Hrg. 2:09:10 – 2:09:24; DOR Ex. E and G. The comparable sales selected were time adjusted to the 1/1/2016 statewide lien date and adjusted to account for physical differences to be as similar to the subject home as possible. MTAB Hrg. 1:29:15 – 1:29:46; 1:44:34 – 1:44:54; 1:52:10 – 1:52:51; DOR Ex. G. By taking a weighted average of those adjusted comparable sales, the DOR established an indication of value for the subject home. DOR Ex. G.
25. Mr. Angland addressed four areas where he believed the DOR overvalued his home in using this market sales approach: (1) over-measuring the square footage of his deck; (2) including his basement utility tub as a bathroom fixture; (3) the inclusion of a fireplace in its appraisal; and (4) not accounting for his home being wood siding and not brick. MTAB Hrg. 15:25 – 24:26; Accounting for these adjustments and

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using the DOR's post-AB-26 value of \$217,900, Mr. Angland suggested his property be reduced by \$13,406.33 to a total value of \$204,393. MTAB Hrg. 1:00:35 – 1:01:27.

The Deck

26. Mr. Angland testified his deck is not 218 square feet, but instead 204 square feet; thus over-measuring his deck by 14 square feet. Taxpayer Ex. 19, 21; MTAB Hrg. 16:15 – 16:43.
27. DOR's March 2018 value of his deck was \$2,610. MTAB Hrg. 34:10 – 34:35. Mr. Angland, therefore, contended the deck should have a value of \$2,442. *Id.* Relying on these values, Mr. Angland asserted the DOR's March 2018 appraisal overvalued his deck by \$167.61. MTAB Hrg. 40:26 – 41:01.
28. Given the testimony the DOR had over-measured the Anglands' deck by 14 square feet, the DOR conceded the value of the Anglands' improvements could be downward adjusted to account for those additional 14 square feet to reach a total market value for the Anglands' property of approximately \$215,900. MTAB Hrg. 2:39:05 – 2:39:18.

Basement Utility Tub

29. Mr. Angland admitted his home's basement has a fixture with a utility tub. MTAB Hrg. 44:55 – 46:02. The tub has hot and cold water. *Id.* The tub, according to Mr. Angland, is dated 1938. *Id.*
30. Mr. Angland testified the basement utility tub fixture had not been included in prior appraisal cycles and thus should not be included in valuing his home for the 2017/2018 tax cycle like prior cycles. MTAB Hrg. 42:10 – 44:18; 46:00 – 46:32. Mr. Angland cited to testimony by the

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DOR appraiser at the CTAB hearing who testified the tub was so inconsequential, she wishes it had been left off the valuation of the Anglands' home. *Id.*; CTAB Hrg. Transcr. 20:10 – 12.

31. Removing the fixture would reduce the value of the home by approximately \$815. MTAB Hrg. 44:20 – 44:34.
32. The DOR testified its market model revealed each plumbing fixture in a home adds an average value of \$815 and thus the Anglands' basement has a fixture and should be valued consistent with the market model. MTAB Hrg. 2:16:10 – 2:16:42.

Stack and Fireplace

33. Mr. Angland asserted the DOR's value of his home should be reduced by approximately \$3,259 because he believed the DOR's value did not reduce for the home not having a fireplace. MTAB Hrg. 47:15 – 47:56; 48:30 – 49:37; Taxpayer Ex. F.
34. According to the DOR, their market sales approach for the Anglands' home did not include a fireplace or stack. MTAB Hrg. 1:45:31 – 1:45:37; 1:46:30 – 1:46:47; 1:52:58 – 1:53:03. To the extent a comparable had a stack or fireplace, according to the DOR the values of those superior features were removed from the comparable sales in the DOR's market sales approach model to make the comparable sales similar to the Anglands' home. MTAB Hrg. 1:45:31 – 1:46:17. Mr. Angland admitted the DOR did not list a fireplace or stack in his home's property record card. MTAB Hrg. 1:23:30 – 1:24:11.

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Brick versus wood siding

35. Mr. Angland testified in his experience brick homes sell for more than homes with wood siding and thus his wood sided home's value should be reduced to account for being wood sided. MTAB Hrg. 53:23 – 54:10.
36. Supporting his position, Mr. Angland presented an email from Brett Haverlandt of Dahlquist Realtors, which stated that after Mr. Haverlandt spoke to an appraiser, he believed a purchaser would want brick instead of wood and that brick would “command an adjustment range of 3k up to even 12k.” MTAB Hrg. 54:15 – 54:36; Taxpayer Ex. 17.
37. Mr. Angland asserted Taxpayer Ex. 17 constituted an independent appraisal. MTAB Hrg. 1:18:00 – 1:19:12.
38. The DOR testified its market sales model did not show a difference in market value between brick homes, wood sided homes, Masonite sided homes, or even metal sided homes. MTAB Hrg. 2:16:52 – 2:17:24. Nothing in its market model, according to the DOR, required a downward adjustment for the Anglands' home being wood sided. *Id.*
39. The comparable sales report provided by the DOR revealed the comparable sales considered the following exterior wall finishes: maintenance free aluminum, brick, and Masonite. DOR Ex. E. Supporting the DOR's assertion, the DOR's March 2018 comparable sales report reveals brick homes do not sell for more than either those with aluminum or Masonite siding. *Id.*
40. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

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CONCLUSIONS OF LAW

41. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
42. The Anglands timely appealed the CCTAB's decision to this Board. Therefore, this Board has jurisdiction to hear and decide this matter. *See* Mont. Code Ann. § 15-2-301(1)(b).
43. "In connection with any appeal under [Mont. Code Ann. § 15-2-301], the state 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).

Burden of Proof

44. "As a general rule, . . . the appraisal of the DOR is presumed to be correct and the taxpayer must overcome this presumption. The Department of Revenue should, on the other hand, bear a burden of providing documented evidence to support its assessed values." *Workman v. The Department of Revenue of the State of Montana*, 1997 WL 37203, *1 (Mont.Tax.App.Bd.); *citing Western Airlines, Inc. v. Catherine J. Michunovich, et al*, 149 Mont. 347, 428 P.2d 3 (1967).
45. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. Mont. Admin. Reg. 42.18.134, formerly Mont. Admin. Reg. 42.18.110(12); *Rainbow Senior Living of Great Falls v. Montana Department of Revenue*, 2013 WL 6062167 (Mont.Tax.App.Bd.); and *Keck v. Montana Department of Revenue*, 2013 WL 2476838 (Mont.Tax.App.Bd.).

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46. The taxpayer has the burden to show the DOR's appraisal should be reduced. Mont. Code Ann. § 26-1-401; and *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471 (Mont. 1995).

Independent Appraisal

47. MCA § 15-2-301(3) states this Board

. . . must consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was conducted within 6 months of the valuation date. If the state board does not use the appraisal provided by the taxpayer in conducting the appeal, the state board must provide to the taxpayer the reason for not using the appraisal.

48. Mr. Angland asserted at the hearing that Taxpayer Ex. 17 qualifies as an independent appraisal.
49. Taxpayer Ex. 17 is an email by realtor Brett Haverlandt to Mr. Angland. The email refers to a statement made by an unknown appraiser that brick homes have more value than wood-sided homes. This email does not meet the "standards set by the Montana board of real estate appraisers" to qualify as an appraisal. While this Board may consider Taxpayer Ex. 17 in this appeal, it does not qualify as an independent appraisal pursuant to MCA § 15-2-301(3) and thus the requirements outlined in MCA § 15-2-301(3) do not apply.

Market Value

50. "All taxable property must be assessed at 100 percent of its market value except as otherwise provided." MCA § 15-8-111(1).
51. "Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any

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- compulsion to buy or to sell and both having reasonable knowledge of relevant facts.” MCA § 15-8-111(2)(a).
52. This Board, upon hearing a tax appeal, may increase or decrease a property value to ensure the property is “assessed at 100 percent of its market value.” *See Puget Sound Energy Inc. v. State Dept. of Revenue*, 2011 MT 141, 255 P.3d 171; and *O’Neill v. Department of Revenue*, 2002 MT 130, 49 P.3d 43.
53. Under Montana law, the DOR can use a combination of approaches – i.e. the market data approach, the income approach, and the cost approach – to value a property. *Albright v. State*, 281 Mont. 196, 208 - 209 (Mont. 1997). The DOR does not have to use only one approach when it “appraises property and estimates market value.” *Id.* at 208.
54. The Montana Supreme Court in *Albright* concluded:
- We recognize that the Department’s method of assessing property and estimating market values is by no means perfect, and will occasionally miss the mark when it comes to the Constitution’s goal of equalizing property valuation. However, perfection in this field is, for all practical purposes, unattainable due to the logical and historical preference for a market-based method, and the occasional lack of market data. Nonetheless, we conclude that the Department’s interdisciplinary method – which utilizes the market data approach, the income approach, the cost approach, or some combination of those approaches – is a reasonable attempt to equalize appraisal of real property throughout the State and that it comports with the most modern and accurate appraisal practices available. *Id.* at 213.
55. First, the Anglands are requesting the DOR in a mass appraisal state, complete a perfect fee-style appraisal. As the Montana Supreme Court

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- noted in *Albright*, perfection is unattainable when considering the DOR task of valuing hundreds of thousands of properties in Montana.
56. Second, as to the market value of their home, the Anglands' request this Board reduce the DOR's value to account for the following:
- a. The deck being 204 square feet and not 218 square feet;
 - b. To remove an improperly included fireplace and stack;
 - c. To account for wood siding and not brick; and
 - d. To remove the basement utility tub plumbing fixture.
57. The DOR determined the Anglands' deck was 218 square feet. The Anglands assert their deck is 204 square feet. This Board finds credible evidence was presented showing the Anglands' deck is 204 square feet. Furthermore, the DOR conceded this Board could reduce the value of the deck by 14 square feet. Mr. Angland testified the difference between the DOR's value and his value for the 14 square foot difference is \$167.61.
58. Despite Mr. Angland's assertions, the DOR's market sales approach model removed the values of a fireplace and stack. Mr. Angland agreed the DOR's market sales approach did not include a fireplace or stack for his home. This Board declines to make any adjustment.
59. The DOR's value included a fixture for the Anglands' basement utility tub. Mr. Angland agreed the plumbing fixture exists. The fact one of the fixtures is a utility tub does not matter in the market sales approach. The fact the DOR failed to include the fixture in its prior assessments provides no dispositive effect. This Board declines to reduce the value of the Anglands' home for a plumbing fixture which clearly exists.

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60. Lastly, the DOR testified the market sales approach found no difference between brick homes and homes with wood siding. DOR Ex. G supports the DOR's testimony. Taxpayer Ex. 17, which Mr. Angland relied in requesting a reduction for his home having wood siding, was an email containing hearsay. Mr. Angland provided no other support. So, the Anglands provided insufficient evidence showing this Board should decrease the value of the Anglands' home because it has wood siding.
61. Reducing the value of the Anglands' home to account for a 204 square foot deck, this Board finds the Anglands' improvements have a value of \$179,632.39. With the value of the land of \$36,300 not in dispute, this Board finds \$215,932.39 to be the market value of the Anglands' property.

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ORDER

1. The Anglands' appeal is denied in part.
2. For the 2017 and 2018 tax years, the DOR is ordered to value the Anglands' property, identified by geocode 02-3016-20-4-02-05-0000 as follows:
 - a. The Anglands' land has a market value of \$36,300; and
 - b. The Anglands' improvements have a market value of \$179,632.39;
 - c. For a total value of \$215,932.39.

Ordered May 24, 2018.



A handwritten signature in black ink, appearing to read "David L. McAlpin".

David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD

A handwritten signature in black ink, appearing to read "Stephen A. Doherty".

Stephen A. Doherty, Member
MONTANA TAX APPEAL BOARD

A handwritten signature in black ink, appearing to read "Valerie A. Balukas".

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 May 24, 2018 to:

Thomas & Carole Angland
2800 4th Ave. North
Great Falls, MT 59401

Dave Burleigh
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Lynn Cochran, Admin. Paralegal
MONTANA TAX APPEAL BOARD