

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

MAY 24 2018

Montana Tax Appeal Board
CASE No: PT-2017-24

ROBERT J. & PATRICIA THUL,
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 Robert and Patricia Thul's appeal from the Cascade County Tax Appeal Board (CCTAB) decision denying their appeal pursuant to MCA § 15-7-139.

For the reasons provided below, the Thuls' appeal is granted in part.

ISSUES TO BE DECIDED

1. Whether the DOR correctly determined the market value of the Thuls' land and improvements.

FINDINGS OF FACT

2. The property involved in this appeal is a garage and home in Belt, legally described as follows:

Belt Original Townsite, S26, T19 N, R06 E, Block 013, LTS 4A & 5 – 6; marked by geocode 02-2895-26-1-03-38-0000.

3. The land is 0.207 acres. DOR Ex. A.
4. On the land are the following improvements:
 - a. A 1,346 square foot home with three bedrooms and one and a half baths; and
 - b. A 480 square foot garage.

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5. The home was built in 1889. DOR Ex. C. According to Mr. Thul, the home has no historical significance. MTAB Hrg. Transcr. MTAB Hrg. 15:00 – 15:04.
6. Mr. Thul purchased the property in 2012 for \$75,000 from his sister-in-law. MTAB Hrg. 25:15 – 25:33. According to Mr. Thul, he purchased the property for the realtor's list price and the property had been on the market for more than a year. *Id.*
7. For the 2014 tax year, the DOR found the Thuls' land had a value of \$18,330 and their improvements a value of \$81,370 for a total market value of \$99,700. DOR Ex. B, p. 3.
8. For the 2015/2016 tax cycle, the DOR found the Thul's land had a value of \$20,700 and their improvements a value of \$76,500 for a total market value of \$97,200. *Id.* The DOR relied on a cost approach to value the Thuls' improvements. *Id.* For the 2015/2016 tax cycle, the Thuls requested an AB-26 review of the DOR' assessed value. *Id.* The DOR inspected the Thuls' home during the 2015/2016 tax cycle. MTAB Hrg. 50:06 – 50:24; DOR Ex. B. According to Mr. Thul, there have been no substantive changes to the home since the 2015/2016 tax cycle. MTAB Hrg. 50:06 – 50:24.
9. On or about July 3, 2017, the Thuls received their property assessment notice for the 2017/2018 tax cycle, which valued their property at \$98,400. DOR Ex. D. The DOR determined the Thuls' land had a value of \$25,100 and their improvements a value of \$73,300. DOR Ex. B. The DOR had assigned the Thuls' improvements had a condition desirability and utility rating (CDU) of fair. *Id.*

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10. On July 5, 2017, the Thuls requested an AB-26 informal review of the DOR's value and requested their land and improvements be valued at \$70,000. *Id.*
11. After inspecting the home as part of the AB-26 process, on July 19, 2017, the DOR denied the Thuls' request for reduction of value and instead determined the Thuls' property had been valued too low. *Id.*; DOR Ex. D. After the AB-26 inspection the DOR considered recent remodeling and rehabilitation to determine the Thuls' property had a total value of \$122,800.00. *Id.* The DOR maintained the Thuls' land had a value of \$25,100. Taxpayer Ex. A. The DOR, however, found the Thuls' improvements had a CDU of average and thus had a value of \$97,700. *Id.* \$122,800 is a \$25,600 increase in value – a 26 percent increase – from the prior appraisal cycle for the Thuls' property.
12. On July 18, 2017, the Thuls appealed the DOR's AB-26 determination to the County Tax Appeal Board. The Thuls requested their property be valued at \$75,000.
13. A hearing was held on October 26, 2017 in Great Falls.
14. The Thuls claimed their improvements were in poor condition and did not have a market value of \$97,700. CCTAB Hrg. Transcr. 2:22 – 4:14.
15. After hearing the evidence and reviewing the comparable sales provided by the DOR, the CCTAB affirmed the DOR's value of \$122,800.00.

MTAB hearing

16. The Thuls' appealed to this Board on November 16, 2017.
17. The Thuls' request this Board find their land and improvements have a total value of \$75,000.
18. On March 6, 2018, this Board conducted a hearing at the Montana Tax Appeal Board office located at 600 North Park Avenue, Helena.

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19. At the hearing, the Thuls were represented by Mr. Thul. Mr. Thul testified. He called no other witnesses.
20. This Board admitted the following exhibits submitted by Mr. Thul:
 - a. Taxpayer Ex. 1 – 11: A collection of 11 photographs of the Thuls' property and the neighbors' property; and
 - b. Taxpayer Ex. 12: Diagram showing how a home is usually built.
21. 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. Shawn Barber, DOR Property Assessment Division appraiser.
22. This Board admitted the following exhibits submitted by the DOR:
 - a. DOR Ex. A: Property Record Card;
 - b. DOR Ex. B: DOR Assessment Information packet, including the DOR's market sales approach for the Thuls' property, dated July 7, 2017 [Confidential];
 - c. DOR Ex. C: DOR's market sales approach for the Thuls' property dated October 25, 2017 [Confidential];
 - d. DOR Ex. D: Thuls' AB-26 request dated July 5, 2017;
 - e. DOR Ex. E: Thuls' CCTAB appeal and the CCTAB's decision; and
 - f. DOR Ex. F: DOR's land regression model for the Thuls' property [Confidential].

The DOR's case

23. Joan Vining of the DOR testified first. She has been the Cascade county area manager for thirteen years and supervises DOR appraiser Shawn Barber. MTAB Hrg. 34:10 – 34:40.

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24. Ms. Vining explained the DOR's market sales approach for valuing the Thuls' property with the lien date of January 1, 2016. The DOR used a computer system, Orion, to find properties comparable to the Thuls' property. These were properties within Belt and Cascade County rural towns, and which had comparability point scores below 200. The lower the comparability point score for the comparable sales, the more comparable the property is to the subject property and according to Ms. Vining, the more accurate the market sales approach will be. MTAB Hrg. 49:37 – 49:55. The DOR wants five comparable sales to validate a market sales approach to value. MTAB Hrg. 36:29 – 41:25.
25. Those five comparable sales are then adjusted for property differences from the subject, the adjustment meant to make the comparable value be as similar to the subject property as possible. These adjusted values are then averaged to calculate an indication of value of the subject property. MTAB Hrg. 41:00 – 41:31.
26. Because four of the comparable sales were from Belt, Montana, the DOR claimed the flood plain was considered in valuing the Thuls' property. MTAB Hrg. 23:30 – 24:00; 1:08:14 – 1:08:25.
27. Only arms-length transactions are inputted into the DOR Orion program. For example, Ms. Vining explained the Thul's purchase of their property for \$75,000 was not used in its market sales model because the sale had been between relatives. MTAB Hrg. 42:00 – 42:41.
28. Mr. Barber has been a residential and agricultural appraiser with the DOR for a year and eight months. MTAB Hrg. 52:30 – 52:38.
29. Mr. Barber explained he completed two market sales approaches for the Thuls' property. In the first market sales approach, Mr. Barber found the Thuls' home had a condition of fair and a total CDU of fair. When

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factored into his comparable sales approach model, Mr. Barber determined the Thuls' home had a value of \$73,300. During the AB-26 process, he inspected the Thuls' home. In inspecting the home, Mr. Barber determined because of the remodeling and rehabilitation the Thuls' home's condition was good, with a total CDU of average. This change resulted in different comparable sales being generated by the CALP, which in turn resulted in Mr. Barber finding the Thuls' home had a value of \$97,700. MTAB Hrg. 1:04:15 – 1:05:27; 1:11:30 – 1:14:49.

30. Mr. Barber testified the CDU of the Thuls' home would have been good, but he lowered it to average based on Mr. Thul's statements about the home's foundation problems. *Id.*
31. Mr. Barber valued the Thuls' land using software comparing extracted land sales in the county, known as CALP. DOR Ex. F; MTAB Hrg. 59:00 – 59:23. This means the land was valued separately from the improvements. *Id.*
32. Mr. Barber explained the effective age as how much economic life is left in the home if there were no improvements to the home. MTAB Hrg. 1:08:56 – 1:10:20. Mr. Barber testified homes, with no improvements or maintenance, have a typical economic life of 60 years. *Id.* So, the Thuls' home was built in 1889 and if there was no maintenance done to the home, the home would have exhausted its economic life in 1949. *Id.* Mr. Barber determined the home's various improvements meant the Thuls' home had an effective date of 1990; meaning the home had an economic end date of 2050. *Id.*

The Thuls' case

33. Mr. Thul asserted his home was not comparable to the homes used by the DOR in its comparable sales approach. MTAB Hrg. 7:00 – 7:10.

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34. Mr. Thul noted the following problems with his home which warranted reducing the DOR's assessed value:
- a. The footings are cracked and displaced or sagging; causing the roof to sag and the home's foundation being severely out of level. Taxpayer Ex. 1, 2, 4, 5, 6, 7; MTAB Hrg. 8:20 – 8:37; 8:41 – 8:48; 9:00 – 9:30.
 - b. The paint is peeling on the exterior of the house. Taxpayer Ex. 3; MTAB Hrg. 8:36 – 8:39.
 - c. There is no rebar used in the home's concrete foundation, which a foundation should have. MTAB Hrg. 9:00 – 9:10; Taxpayer Ex. 12.
 - d. The home has knob and tube wiring used in homes built from 1880 to 1930. MTAB Hrg. 10:20 – 10:31.
 - e. The home has vermiculite insulation. MTAB Hrg. 10:35 – 10:42.
 - f. The home has experienced flooding several times. MTAB Hrg. 1:29:56 – 1:30:04.
 - g. There is no insulation in the home's outer walls, which can result in the home's pipes freezing. MTAB Hrg. 11:15 – 11:22; 22:50 – 22:59.
35. According to Mr. Thul, to the best of his knowledge, none of the comparable homes used by the DOR in its market sales approach had significant problems with their foundations or their footings. MTAB Hrg. 9:28 – 9:31; 1:28:00 – 1:28:40.
36. Mr. Thul also noted one of the comparable sales used was constructed of stone walls, and not wood siding like his home. MTAB Hrg. 1:28:43 – 1:29:43. While another comparable sale, according to Mr. Thul, has a concrete basement. MTAB Hrg. 1:31:00 – 1:31:32.
37. Mr. Thul also believed the above information showed the DOR erroneously determined the home had an effective age of 1990. MTAB Hrg. 12:42 – 13:12.

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38. Mr. Thul testified he had made the following necessary repairs – “forced maintenance” – to his home and provided an estimate of the costs of those repairs:
- a. New siding for the home in 2012 for \$1,000;
 - b. New siding for the garage in 2013 for \$1,000;
 - c. New plumbing in 2014 for \$150;
 - d. After the old furnace no longer worked, a new furnace and AC unit in 2014 for \$3,500;
 - e. New, on demand water heater in 2014 for \$3,000;
 - f. New laminate countertops in 2014 for \$200;
 - g. New flooring in 2014 for \$1,000;
 - h. New carpet in 2014 for \$1,000; and
 - i. New garage floor in 2015 for \$850. MTAB Hrg. 26:07 – 30:08.

39. Mr. Thul testified the above “forced maintenance” did not increase the value of his home. MTAB Hrg. 30:20 – 30:33.
40. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

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 Thuls 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).

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***De Novo* Hearing**

44. This Board hears CTAB appeals *de novo*. See *CHS, Inc. v. DOR*, 2013 MT 100, ¶ 29; *Hoch v. DOR*, 1991 Mont. Tax LEXIS 6 (Mont.Tax.App.Bd. 1990); *DOR v. Wood*, 2014 Mont. Tax LEXIS 1 (Mont.Tax.App.Bd. 2014); and *ABBEY/LAND LLC v. DOR*, 2015 Mont. Tax LEXIS 3 (Mont.Tax.App.Bd. 2015) [citing *Montana Dep't of Revenue v. Burlington N. Inc.*, 169 Mont. 202, 545 P.2d 1083 (1976); *PacifiCorp v. Montana Dep't of Revenue*, 2011 MT 93, 360 Mont. 259, 253 P.3d 847.].
45. “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.

Burden of Proof

46. “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).
47. 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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48. 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).

Market Value

49. "All taxable property must be assessed at 100 percent of its market value except as otherwise provided." MCA § 15-8-111(1).
50. "Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts." MCA § 15-8-111(2)(a).
51. 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.
52. 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.
53. Montana uses mass appraisal methods to establish property values, 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

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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.

54. The Thuls did not present evidence disputing the DOR's land value of \$25,100. This Board, therefore, examines the market value of the Thuls' improvements, which turns on whether the improvements should have a CDU of average or fair.
55. The DOR had two values for the Thuls' improvements which depended on the CDU given to the improvements on the lien date of 1/1/2016. Prior to the AB-26 process, the DOR determined the Thuls' improvements had a CDU of fair. The DOR then inspected the Thuls' improvements and determined the CDU was average.
56. The DOR, however, had inspected the Thuls' improvements in the 2015/2016 tax cycle and found the improvements had a total market value of \$76,500, not \$97,700. Mr. Thul testified there had not been any substantial changes since the DOR inspected the residence during the 2015/2016 tax cycle.
57. Mr. Thul presented evidence his home has significant structural problems, which includes a foundation with no rebar which then has become unlevel and cracked and displaced footings.
58. Mr. Thul also credibly testified while he did purchase the home from his sister-in-law, he purchased it for \$75,000 which had been the property's listing price. Furthermore, Mr. Thul credibly testified the

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property had been on the market for more than a year until he purchased the property.

59. This Board finds the DOR presented sufficient evidence supporting its value of the Thuls' improvements, but that Mr. Thul overcame the presumption by providing credible testimony and photographic evidence of the condition of his improvements and distinguishing his home from the comparable sales. This Board also relies on the fact the DOR inspected the Thuls' improvements in the 2015/2016 tax cycle and found the improvements had a market value of \$76,500. There were no changes or alterations of any significance to the improvements prior to the January 1, 2016 lien date. This confirms \$97,600 does not represent the market value of the Thuls' improvements. Given this evidence, the Board finds for the 2017/2018 tax cycle the CDU of the Thuls' improvements should be fair. This Board, therefore, adopts the DOR's values contained in their original assessment of the Thuls' property. *See* DOR Ex. B.

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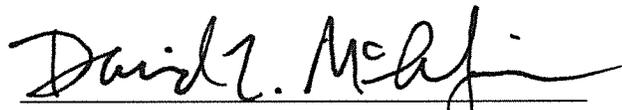
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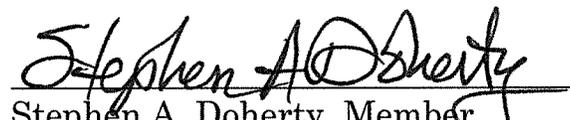
ORDER

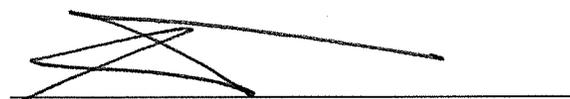
1. The Thuls' appeal is granted in part.
2. For the 2017 and 2018 tax years, the DOR is ordered to value the Thuls' land and improvements, identified by geocode 02-2895-26-1-03-38-0000, is valued as follows:
 - a. The land is valued at \$25,100; and
 - b. The improvements are valued at \$73,300;
 - c. For a total value of \$98,400.

Ordered May 24th, 2018.




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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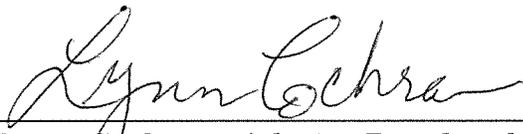
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Certificate of Service

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:

Robert J. & Patricia Thul
108 3rd Ave S
Belt, MT 59412

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