

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

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Montana Tax Appeal Board

CASE No: PT-2017-35

EDWARD G. BEAUDETTE,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

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

Before the Montana Tax Appeal Board is appellant Edward Beaudette's appeal from the Anaconda-Deer Lodge County Tax Appeal Board (CTAB) decision denying his appeal.

This Board held a *de novo* hearing on May 1, 2018.

For the reasons provided below, this Board reduces the DOR's value of Mr. Beaudette's residence but maintains the DOR's values for Mr. Beaudette's garage and his land.

ISSUES TO BE DECIDED

1. Whether the Montana Department of Revenue (DOR) properly and accurately valued Mr. Beaudette's land and improvements for his property at 118 N. Locust St. in Anaconda.

FINDINGS OF FACT

Description of the Property

2. The land in this appeal is described as follows:

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Northern ADD (Anaconda), S03, T04 N, R11 W, Block 7, Lot 3; geocode 30-1285-03-2-22-03-0000, at the address 118 N. Locust St., Anaconda, MT.

3. The land is 4,200 square feet.
4. On the land are the following improvements:
 - a. A 1,017 square foot two-bedroom, 1 bath residence; and
 - b. A detached 864 square foot garage.
5. For the 2015/2016 tax cycle, this Board found that this same property had a total market value of \$28,255. *DOR v. Beaudette*, 2016 Mont. Tax LEXIS 16 (Mont.Tax.App.Bd. 2016).
6. On July 3, 2017, the DOR issued its assessment notice to Mr. Beaudette for the property at 118 N. Locust Street. The DOR determined the land had a value of \$7,062 and the improvements had a value of \$66,538 for a total value of \$73,600.

CTAB hearing – appeal and outcome

7. On July 11, 2017, Mr. Beaudette directly appealed to the CTAB; foregoing a DOR AB-26 informal review. In his appeal, Mr. Beaudette relied on this Board's decision in PT 2016-2 and requested the CTAB find his land and improvements have a total market value of \$22,447.00.
8. The CTAB heard Mr. Beaudette's appeal on November 27, 2017.
9. The CTAB, relying on the sale of 109 N. Locust, a house almost directly across the street from Mr. Beaudette's property, denied Mr. Beaudette's appeal.

Appeal to MTAB

10. On December 22, 2017, Mr. Beaudette appealed the CTAB's decision to this Board.

Findings of Fact. Conclusions of Law and Notice of Opportunity for Judicial Review

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11. In his appeal, Mr. Beaudette claimed the decision in *DOR v. Beaudette*, PT 2016-2 was final and thus binding on the DOR. According to Mr. Beaudette, this meant the DOR must appraise the property using the income approach and presumably reach a value consistent with the value for the 2015/2016 tax cycle.

Prehearing Motion Practice

12. On March 9, 2018, Mr. Beaudette moved for summary judgment.
13. Echoing his initial appeal filing, Mr. Beaudette's motion centered on the legal theories of collateral estoppel and res judicata; asserting this Board's decision in *DOR v. Beaudette*, PT 2016-2 established the DOR must use the income approach to value his 118 N. Locust Street property.
14. On April 5, 2018, the DOR opposed Mr. Beaudette's motion for summary judgment.
15. On April 23, 2018, this Board denied Mr. Beaudette's motion. This Board found that Mr. Beaudette's motion mischaracterized this Board's prior decision. This Board, relying on Montana statutes and case law, had explicitly stated in its decision that the prior appeal (PT 2016-2) only applied to the 2015/2016 tax cycle and thus res judicata and collateral estoppel do not apply. This Board's decision suggested that if Mr. Beaudette was correctly interpreting the law, then every decision by this Board would establish the property value for the appealed property for all future tax cycles – whether the taxpayer or DOR was successful – and thus would render the statutory 2-year appraisal cycle for commercial and residential property outlined in MCA § 15-7-102(3)(a)(ii) unnecessary.

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MTAB hearing

16. This Board held a hearing on May 1, 2018 in Helena.
17. At the hearing, Mr. Beaudette represented himself and testified on his own behalf. He called the following witnesses:
 - a. Andrew Hagen, Area Manager, DOR Property Assessment Division – Deer Lodge County.
18. This Board admitted the following exhibits submitted by Mr. Beaudette:
 - a. Taxpayer Ex. A: Valuation of the 118 N. Locust St. property using the DOR's income approach;
 - b. Taxpayer Ex. B: 2017 Income and expense data for the property at 118 N. Locust St.;
 - c. Taxpayer Ex. C: 2017 property comparison;
 - d. Taxpayer Ex. D: Comparable sales; and
 - e. Taxpayer Ex. E: Photographs of the subject property.
19. At the hearing, the DOR was represented by Dave Burleigh. The following witnesses testified in the DOR's case:
 - a. Andrew Hagen, Area Manager, DOR Property Assessment Division – Deer Lodge County; and
 - b. Ross Halvorson, Management Analyst, DOR Property Assessment Division.
20. This Board admitted the following exhibits submitted by the DOR:
 - a. DOR Ex. B: Property Record Cards of Comparable Properties used in the DOR's comparable sales model;
 - b. DOR Ex. C: DOR Assessment Information Packet; and
 - c. DOR Ex. D: Land valuation – CALP.
21. Mr. Beaudette testified the total value of his property, including the land and the garage, is \$35,000 if he were to sell it on the open market. MTAB Hrg. 1:48:32 – 1:49:11. Regarding that value, Mr. Beaudette primarily argued his property is a rental property and thus a

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commercial property and should be valued using the income approach.

The majority of Mr. Beaudette's positions on market value were tied to this position.

Market value of Mr. Beaudette's land

22. To value Mr. Beaudette's land, the DOR testified it used its computer assisted land pricing (CALP) model to value Mr. Beaudette's land. MTAB Hrg. 2:59:45 – 3:01:48; DOR Ex. D. The DOR's model included 27 sales from Anaconda. DOR Ex. D. Using its CALP model, the DOR determined Mr. Beaudette's land has a value of \$7,062. MTAB Hrg. 2:58:30 – 2:59:10; DOR Ex. C and D.
23. Mr. Beaudette asserted that the land in the last tax cycle had a value of \$5,808 and he did not understand why it had increased by almost \$2,000 for the 2017/2018 tax cycle. MTAB Hrg. 1:46:20 – 1:46:50; DOR Ex. C. Mr. Beaudette stated he would "accept \$5,000" for the value of his land. MTAB Hrg. 1:47:35 – 1:47:47. Mr. Beaudette claimed he could buy a residential lot on N. Locust for about \$4,000 to \$5,000. MTAB Hrg. 1:47:51 – 1:47:58. But Mr. Beaudette presented no evidence directly challenging the DOR's land CALP or the market sales used in it.

Market value of Mr. Beaudette's residence

24. Regarding the value of his property, Mr. Beaudette challenged the DOR's value of his residence for the following reasons: (1) the residence is a rental and thus should be valued using the income approach; and (2) the comparable sales used by the DOR to value his residence with the market approach were not comparable to his property.

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Income Approach

25. Mr. Beaudette asserted his residence produces income, and thus should be valued as “a commercial income producing property” or a “commercial property” using the income approach. MTAB Hrg. 15:10 – 15:48; 16:20 – 17:48; 1:29:30 – 1:30:17; 1:31:02 – 1:32:30; 1:50:30 – 1:50:38. For his assertion, Mr. Beaudette relied on page 11 of the DOR’s 2017/2018 Reappraisal Plan, claiming the DOR must value the property based on use and must use the income method to value commercial properties. MTAB Hrg. 17:30 – 17:45; 1:07:18 – 1:07:31; 1:30:17 – 1:30:25.
26. The income approach requires the appraiser to evaluate income and expense information to determine net income. MTAB Hrg. 3:11:46 - 3:12:06 . According to the DOR, a cap rate will be used with the net income information to determine the market value of the property. *Id.* The DOR testified it cannot generate an income model based on one property’s income information because a single taxpayer’s income information may not accurately reflect the market. MTAB Hrg. 3:12:10 – 3:12:25; 3:22:40 – 3:24:06; 3:44:48 – 3:45:03. Instead, the DOR generates an income model based on income and expense information provided by many businesses. MTAB Hrg. 3:12:25 – 3:12:43. This information is then aggregated to create an income model to value a property using the income approach. *Id.*
27. Mr. Beaudette testified he rented the residence as Section VIII housing for \$375 per month. MTAB Hrg. 1:11:30 – 1:11:39. Mr. Beaudette admitted once he fixes up the property, he intends to rent it for \$450 to \$500 per month which is consistent with the Anaconda rental market with rentals for similar homes being \$250 to \$500 per month. MTAB

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- Hrg. 43:05 – 43:14; 1:22:33 – 1:25:06. Nevertheless, using \$375 per month as the rent, Mr. Beaudette’s exhibit asserted this generated \$4,500.00 in annual gross income. Taxpayer Ex. A. Mr. Beaudette then reduced the \$4,500.00 in annual gross income by 20 percent to account for vacancy; resulting in \$3,600 in income. MTAB Hrg. 8:10 – 9:19; *Id.*; Taxpayer Ex. B. Mr. Beaudette calculated his total expenses to be \$1,374.00. *Id.* This then yielded a net income of \$2,226.00. Taxpayer Ex. A. Mr. Beaudette determined the cap rate should be 11.34 percent. *Id.* Using this cap rate, Mr. Beaudette determined his residence has a market value of \$19,629.00. MTAB Hrg. 7:33 – 7:42; *Id.*
28. The DOR agreed that Mr. Beaudette’s property is an income producing property. MTAB Hrg. 1:56:10 – 1:57:21; 2:13:20 – 2:13:27. However, the DOR testified as to page 11 of the 2017/2018 Reappraisal Plan, Mr. Beaudette’s property’s “value in use” is as a single-family residence. MTAB Hrg. 2:01:34 – 2:04:48; 2:10:15 – 2:10:40; 2:12:00 – 2:12:16; 3:13:23 – 3:13:51.
29. The DOR testified it did not undertake an income approach to valuing Mr. Beaudette’s property because they do not maintain records of residential rental data for single family dwellings and thus lack the data to prepare an income model for valuing residential rentals using the income approach. MTAB Hrg. 2:13:45 – 2:14:02; 2:23:25 – 2:32:30; 3:12:53 – 3:13:03; 3:43:58 – 3:44:09. Ross Halvorson testified the DOR has never maintained such data and has never used the income approach to value residential properties because administratively the DOR does not know which homes may or may not be rentals. MTAB Hrg. 3:44:20 – 3:44:42.

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30. Regarding the accuracy of Mr. Beaudette's income approach, Mr. Halvorson testified Mr. Beaudette used an inaccurate cap rate and that he did not develop an income or gross rent multiplier which would be needed for using an accurate income approach for residential rental properties. MTAB Hrg. 3:45:50 – 3:48:11; 3:49:05 – 3:50:29.

Market Approach

31. In valuing Mr. Beaudette's property, Andrew Hagan of the DOR testified it was valued based on its highest and best use: as a single-family residence. MTAB Hrg. 3:03:05 – 3:03:09; DOR Ex. D.
32. The DOR explained its market approach. The DOR creates a sales history file when properties sell. MTAB Hrg. 2:55:05 – 2:55:15. In examining those sales, the DOR then verifies the sale and ensures the sale price is accurate when placed into its file. MTAB Hrg. 2:55:15 – 2:55:35. Then, when the DOR undertakes its market approach, it makes various adjustments to these comparable properties, for example the square footage or the number of plumbing fixtures, so that the comparables in size and type mirror the subject property. MTAB Hrg. 2:55:35 – 2:55:56.
33. For each adjustment made to a comparable property to make it mirror the subject property, comparability points will be generated for that comparable sale. MTAB Hrg. 3:08:05 – 3:08:54. As a result, in the DOR's market approach, the more comparable a property is, the lower the comparability score the comparable property will have because fewer adjustments need to be done to mirror the subject property. MTAB Hrg. 3:08:05 – 3:08:35. The DOR testified anything with a comparability point score under 200 is deemed comparable. MTAB Hrg. 3:08:50 – 3:09:03.

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34. Here, the DOR testified its market approach used comparable sales with comparability points ranging from 40 to 57. MTAB Hrg. 3:07:50 – 3:07:59. According to the DOR, this means the comparable sales used in its market approach were very comparable to Mr. Beaudette’s property. MTAB Hrg. 3:07:59 – 3:08:02.
35. Using these comparables, the DOR determined Mr. Beaudette’s property, the land and all improvements, had a value of \$73,600 which is more than the 109 N. Locust Street comparable property which has a DOR assessed value of \$71,200 despite being purchased in 2015 for considerably more. DOR Ex. C. However, the 109 N. Locust Street property does not have an 864 square foot detached garage like Mr. Beaudette’s property. *Id.*
36. Mr. Beaudette challenged the DOR’s market approach and did so by outlining the differences between his residence and the residence at 109 N. Locust Street which the DOR used in its market approach. In general, Mr. Beaudette argued his property, valued at \$73,600 should be less than the 109 N. Locust Street property which the DOR determined had a value of \$71,200 and thus reflects something wrong in the DOR’s appraisal method. MTAB Hrg. 31:15 – 32:00. Mr. Beaudette noted the basis for his knowledge: he has been a landlord in this neighborhood for 25 years. MTAB Hrg. 24:50 – 24:59.
37. Mr. Beaudette’s home is 1,017 square feet, with a 216 square foot deck. DOR Ex. C. Mr. Beaudette testified his home has an effective year of 1940. MTAB Hrg. ; Taxpayer Ex. C. Being an older home, the front door is original from 1916, while the back door is from the 1970s. MTAB Hrg. 28:10 – 28:28; Taxpayer Ex. C and E. The home is heated with a quad

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- heater, a small gas furnace, and some electric baseboard heating in certain parts of the house. MTAB Hrg. 27:08 – 27:58; *Id.* Seven of the windows are original from 1916, while two of the windows are from the 1970s. MTAB Hrg. 28:01 – 28:13. The home does not have a fireplace. *Id.* Mr. Beaudette described the home as a likely “tear down” if someone purchased the property. MTAB Hrg. 42:20 – 43:14.
38. The 109 N. Locust Street property, which the DOR used as a comparable sale in its market approach, sold in 2015. DOR Ex. C. The residence is 947 square feet with a 24 square foot porch. DOR Ex. B. Mr. Beaudette testified the 109 N. Locust Street residence, unlike his residence, had been remodeled and upgraded by a contractor in 1996. MTAB Hrg. 25:00 – 25:13; 3:34:40 – 3:34:56. The 109 N. Locust residence, therefore, had the following changes made in 1996: central gas forced air furnace, a gas fireplace, new windows, new doors, new wiring, new sheetrock, new insulation, and a new kitchen with tile and a stand-alone island. MTAB Hrg. 25:15 – 25:49; 28:00 – 29:15; DOR Ex. C. With these improvements, the DOR determined the home had an effective year of 1980 in its property record card. 26:56 – 27:06; DOR Ex. B. However, the DOR’s list of the five most comparable sales used in the market sales approach mistakenly listed the 109 N. Locust Street property as having an effective age of 1940. DOR Ex. B; MTAB Hrg. 2:40:10 – 2:41:18.
39. The DOR’s market approach determined the 109 N. Locust Street residence had a comparability points score of 40; meaning it was deemed to be significantly comparable to Mr. Beaudette’s home. DOR Ex. C. The DOR was uncertain whether fixing the effective age error would remove the 109 N. Locust Street property from the list of the five most

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- comparable sales used in its market sales approach. MTAB Hrg. 3:11:00 – 3:11:31.
40. The DOR also admitted if the 109 N. Locust Street residence had significant remodeling, that would affect the residence’s condition, desirability and utility (“CDU”) rating of fair, which would in turn affect the comparability to Mr. Beaudette’s residence in the DOR’s market sales approach. MTAB Hrg. 3:21:04 – 3:21:52; 3:27:46 – 3:27:50; 3:34:48 – 3:36:06.
41. Mr. Beaudette testified the other four comparable sales – with comparability points ranging from 48 to 57 – were located in nicer residential parts of Anaconda and not in an industrial, low income area like his property. MTAB Hrg. 37:02 – 37:15; 46:17 – 51:45; Taxpayer Ex. D. Mr. Beaudette stated these alleged comparable properties have gas or forced air heat unlike his residence. MTAB Hrg. 36:50 – 37:02.
42. Mr. Beaudette suggested the DOR’s method of valuation for residential homes in Anaconda must be inflated because four of the comparable sales used had value increases of \$7,000 to \$20,000 from the 2015/2016 tax cycle which then results in an increase in the entire model. MTAB Hrg. 36:00 – 41:40; Taxpayer Ex. C.
43. Generally, the comparable sales presented by both Mr. Beaudette and the DOR showed residential properties in Anaconda in 2014 to 2015 were selling for approximately \$50,000 up to \$100,000. Taxpayer Ex. D [Note: Taxpayer’s exhibit did not include the correct sale price for the 723 E. Third Street property, which was provided in DOR Ex. B.]; DOR Ex. B.
44. Mr. Beaudette testified he undertook his own market approach, which resulted in his property having a market value of \$35,000 to \$40,000.

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MTAB Hrg. 1:49:30 – 1:49:50. Mr. Beaudette did not admit into evidence a copy of his market approach.

Cost approach

45. The DOR testified its market approach to valuing Mr. Beaudette's residence was confirmed by its cost approach because its cost approach value was only \$68.00 less than its market approach. MTAB Hrg. 2:21:06 – 2:21:35, 3:17:57 – 3:18:14; DOR Ex. C. The DOR started by calculating the replacement cost new for the residence. DOR Ex. C. The DOR determined Mr. Beaudette's home had a replacement cost new of \$97,234. *Id.* The DOR then reduced the replacement cost new by considering the grade factor, the economic condition factor (ECF), condition, desirability, and utility (CDU) and the county index. The DOR applied a CDU of fair, resulting in the home being deemed only 48 percent good. MTAB Hrg. 29:50 – 30:22; DOR Ex. C. The DOR calculated an ECF of 1.04. DOR Ex. C. The DOR used a grade factor of .85, which reflects the fair grade rating. After adjusting for the CDU, the ECF, grade factor, and the county index, the DOR found Mr. Beaudette's home had a replacement cost new less depreciation of \$47,080. DOR Ex. C.
46. For the 109 N. Locust Street home, the DOR determined the replacement cost new was \$95,309, thus \$2,000 less than Mr. Beaudette's home. Even though the home was completely renovated in 1996 and has more amenities than the 118 N. Locust Street residence, the DOR determined it also has a CDU of fair and a percent good of 58 percent. DOR Ex. C. The DOR also determined the home had a grade factor of .85. DOR Ex. C. Considering ECF, percent good, grade factor, and the county index,

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the DOR determined the 109 N. Locust Street property had a replacement cost new less depreciation of \$55,770; approximately \$8,000 more than Mr. Beaudette's residence. MTAB Hrg. 30:28 – 31:00; DOR Ex. B.

47. The DOR testified there was nothing in the testimony presented or the photographs provided by Mr. Beaudette which warrants the DOR finding Mr. Beaudette's home met their standard definition of poor condition. MTAB Hrg. 3:14:50 – 3:15:05.

Market value of Mr. Beaudette's garage

48. The DOR valued Mr. Beaudette's garage using both the market approach and the cost approach. DOR Ex. C.
49. As for the cost approach, the DOR first calculated the replacement cost new for an 864 square foot garage. DOR Ex. C. The DOR then depreciated the garage's value by finding the garage was built in 2002 and was 77 percent good; thus, 23 percent depreciation. DOR Ex. C. The DOR then further reduced the garage's value with a grade factor (GF) of .85. *Id.* After considering depreciation, GF, and economic cost factor (ECF), the DOR determined the garage had a market value of \$19,390. *Id.*
50. Mr. Beaudette testified the garage was built by his brother-in-law and he considers it to belong to his brother-in-law even though it is currently titled in Mr. Beaudette's name. MTAB Hrg. 1:40:55 – 1:41:00. Mr. Beaudette asserted, as a result, while the garage has value, it should not be included in the final valuation of his property because it is not part of the income producing portion of the property. MTAB Hrg. 1:40:44 – 1:40:55; 2:00:10 – 2:00:37. Mr. Beaudette claimed MCA § 15-6-134(2)

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supported his valuation position. MTAB Hrg. 1:42:50 – 1:43:15. While Mr. Beaudette contended the DOR’s value of his garage was too high, Mr. Beaudette admitted he did not submit specific evidence to challenge the DOR’s value of \$19,390. MTAB Hrg. 1:45:36 – 1:46:12.

51. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

CONCLUSIONS OF LAW

52. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

Jurisdiction

53. Mr. Beaudette timely appealed the CTAB’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).
54. “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).
55. Because under MCA § 15-2-301(5), this Board is not bound by the rules of discovery or the rules of evidence and may “affirm, modify, or reverse every decision,” this means this Board hears CTAB appeals *de novo*. *See CHS, Inc. v. DOR*, 2013 MT 100, ¶ 29.
56. “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.

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Burden of Proof

57. “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).

58. 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.).

59. 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

60. “All taxable property must be assessed at 100 percent of its market value except as otherwise provided.” MCA § 15-8-111(1).

61. “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).

62. 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

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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.

63. 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.

64. 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.

65. Mr. Beaudette argued the DOR should use the income approach to value his property because the property is being used by Mr. Beaudette to generate income which makes it a commercial property. For his position, Mr. Beaudette relied on page 11 of the DOR’s 2017/2018 Reappraisal Plan, section F titled “The Principle of Highest and Best Use” which states:

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The highest and best use for a property is the use that will produce the highest net return to the land for a given period of time within the limits of those uses which are legally permissible, physically possible, and economically feasible. In mass appraisal, the current highest and best use is usually considered to be the current use, that is, buildings will not be immediately demolished or replaced. However, this does not lessen the need to evaluate long-run highest and best use for different groups of property before reappraisal. The department is required to value based upon current use, known as value in use, due to statutory requirements.

Mr. Beaudette reads the above section, importantly titled “The Principle of Highest and Best Use,” out of context. This section refers to a property being valued based on its highest and best use as the property sits. While a property could have more value with certain changes, the DOR will value the improvements currently on the property. Nothing about this provision suggests highest and best use directs how the DOR classifies or class codes a property. Nothing about this provision requires the DOR to use a certain valuation methodology to value a property. As noted in *Albright*, the DOR can use any of the approaches to value a property to reach market value. This Board found nothing in the statutes or case law suggesting even commercial property – which receives a higher tax rate than residential property – must be valued using the income approach. This Board finds Mr. Beaudette’s arguments on this subject unavailing.

66. Next, this Board finds the DOR supported its value of the land using its CALP model. Mr. Beaudette did not meet his burden of proof showing

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- the DOR wrongly valued his land. As a result, this Board maintains the value of \$7,062 for the land.
67. As for the improvements, this Board finds there are two separate improvements to address: the garage and the home.
 68. Regarding the garage, Mr. Beaudette provided no evidence challenging the DOR's value of his garage. Mr. Beaudette testified he felt the DOR's value of \$19,390 was too high, but he provided no evidence showing why this Board should reduce the value.
 69. While he did not present any evidence challenging the DOR's cost approach value of his garage, Mr. Beaudette did argue that pursuant to MCA § 15-6-134(2), the garage is his brother-in-law's and should not be taxed because it is not part of the income generating portion of the property. First, Mr. Beaudette's reliance on MCA § 15-6-134(2) is misplaced, as that statute does not state the DOR does not value a residential improvement on commercial property. Instead, the statute states how the DOR should class code the property, which then affects the tax rate of those portions of the property. Using Mr. Beaudette's logic, if someone has a residence on an income producing property, the residence should not be valued and taxed because the property in general is a commercial property. MCA § 15-7-101(1)(c) states the DOR has a duty to appraise "all taxable rural and urban improvements" which directly conflicts with Mr. Beaudette's reading of MCA § 15-6-134(2).
 70. Given the lack of evidence disputing the DOR's value for the garage, this Board finds the garage has a market value of \$19,390.

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71. This Board now turns to the market value of Mr. Beaudette's residence, which requires reviewing Mr. Beaudette's income approach and then the DOR's market approach and cost approach.
72. First, this Board does not find Mr. Beaudette's income approach credible and thus Mr. Beaudette did not meet his burden of proof showing his income approach is accurate and thus encapsulates the market value of his home. Mr. Beaudette's income approach was generated using his actual rent. But, Mr. Beaudette did not generate a model based on average rent in Anaconda and thus did not create a gross rent multiplier which considered a pool of income data from various rentals and not just his rental. Mr. Beaudette's income approach, according to the DOR, had an inaccurate cap rate. When considered together, this Board finds Mr. Beaudette's income approach has too many flaws and thus does not provide the market value of his residence.
73. Furthermore, the DOR testified it lacked the necessary data to generate a model and value Mr. Beaudette's residential rental using the income approach. Without such information, the DOR appropriately, and consistent with Montana law, valued Mr. Beaudette's property using the other two approaches: the market sales approach and the cost approach.
74. This Board also finds the DOR's market approach had a significant error. The DOR's market sales approach relied on the April 2015 sale of the 109 N. Locust Street property. However, the DOR's market sales approach for that property did not have the correct effective age for the 109 N. Locust Street property, which likely resulted in an erroneous adjustment for the property. The DOR's market sales approach listed

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both Mr. Beaudette's residence and the 109 N. Locust Street residence with a CDU of fair. This Board heard credible testimony from Mr. Beaudette that the 109 N. Locust Street property received the following remodeling in 1996: new windows, new doors, a gas fireplace, forced air, new sheetrock and insulation, an addition, and a tile kitchen with a standing island. Reviewing all of this information, this Board finds the 109 N. Locust Street property was an inadequate comparable which undermines the accuracy of the DOR's market approach. This Board, therefore, finds the DOR presented insufficient evidence showing its market sales approach calculated the market value of Mr. Beaudette's home.

75. Regarding the DOR's cost approach, Mr. Beaudette presented sufficient evidence that this Board needs to adjust the DOR's cost approach. The DOR found Mr. Beaudette's residence had an effective age of 1940, had a CDU of fair, and thus was 48 percent good. Mr. Beaudette's testimony, however, calls into question his residence being 48 percent good. Most of the windows are from 1916. One of the doors is from 1916. His residence has antiquated wiring and presumably not new sheetrock or insulation. The home does not have central heat, but instead a few different heating systems. Mr. Beaudette described the home as a "tear down." The DOR determined the 109 N. Locust Street home – with all of its superior improvements – also had a grade of fair. Mr. Beaudette's home cannot be accurately graded as fair if the 109 N. Locust Street home has a grade of fair. This Board finds sufficient evidence was presented to reduce the CDU for Mr. Beaudette's

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residence to poor and thus finds the residence is only 38 percent good.

This results in Mr. Beaudette's residence having a value of \$37,274.

76. Adding the value of the land, the garage, and Mr. Beaudette's residence together, the total market value of Mr. Beaudette's property is \$63,726; which is approximately \$8,000 less than the total value of the 109 N. Locust Street property which does not have a garage. This Board believes a value of \$63,726 closely matches the market based on the sales information provided by the DOR and other evidence and testimony presented at the hearing.

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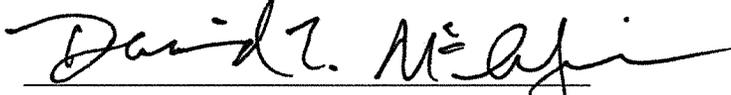
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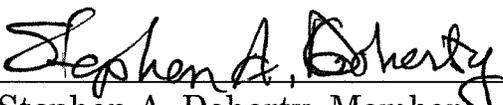
ORDER

1. Mr. Beaudette's appeal is granted in part.
2. For the 2017 and 2018 tax years, the DOR shall value Mr. Beaudette's property, identified by geocode 30-1285-03-2-22-03-0000, as follows:
 - a. The land shall have a value of \$7,062;
 - b. The residence shall have a value of \$37,274;
 - c. The garage shall have a value of \$19,390;
 - d. For a total value of \$63,726.

Ordered July 29th, 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).

Findings of Fact, Conclusions of Law and Notice of Opportunity for Judicial Review

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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, and Notice of Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on July 25, 2018 to:

Edward G. Beaudette
636 N. Davis Street
Helena, MT 59601

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


Lynn Cochran, Paralegal Assistant
MONTANA TAX APPEAL BOARD