

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

AUG 03 2018

Montana Tax Appeal Board

CASE No: PT-2017-35

TIMOTHY W. WOODS AND MARY
ANN WOODS,

Appellants,

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 are appellants Timothy and Mary Ann Woods (Woods) appeal from the Ravalli County Tax Appeal Board (CTAB) decision denying their appeal.

This Board held a *de novo* hearing on May 8, 2018.

For the reasons provided below, this Board denies the Woods' appeal.

ISSUES TO BE DECIDED

1. Whether the Montana Department of Revenue (DOR) properly and accurately valued the Woods' land and improvements.

FINDINGS OF FACT

Description of the Property

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

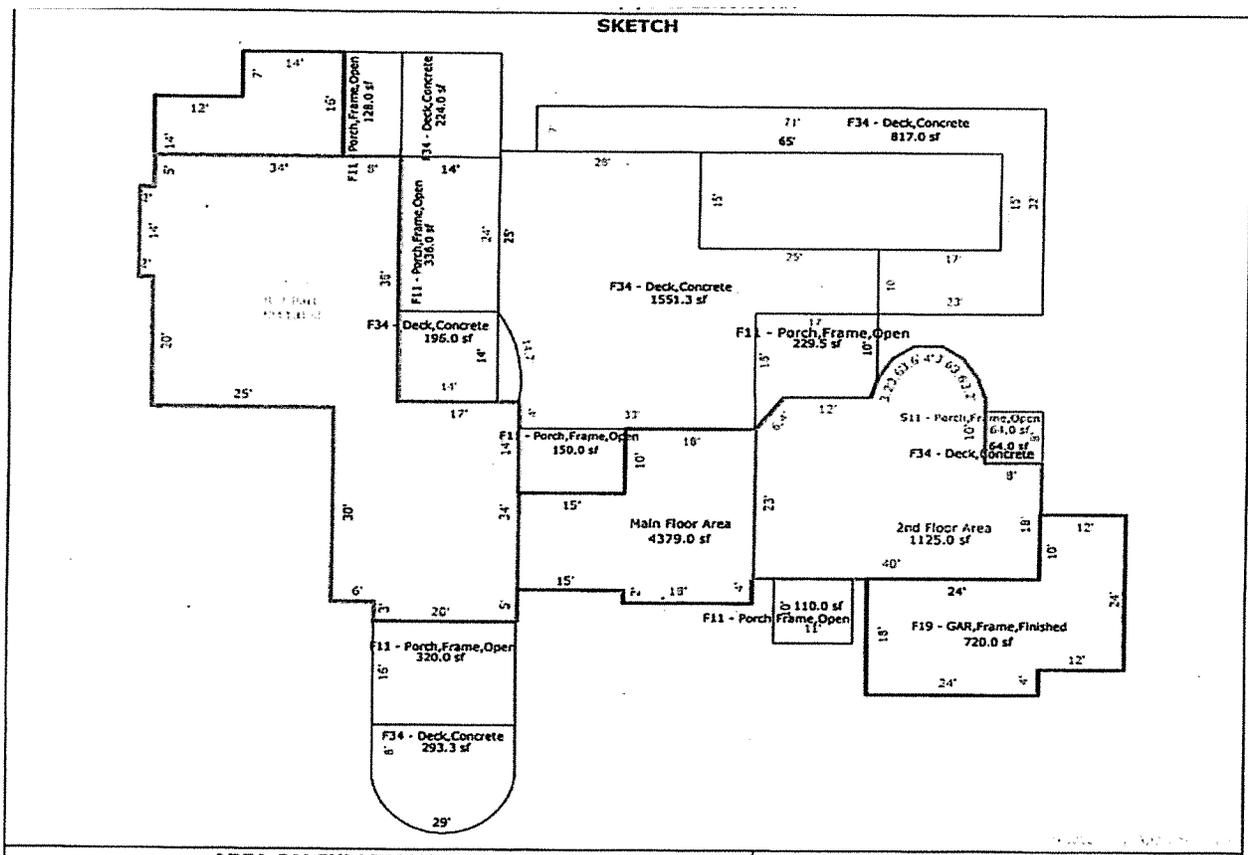
Arrow Hill, S09, T05 N, R20 W, ACRES 2.47, LOT 26,
geocode 13-1367-09-1-02-26-0000; with a common
address of 491 Arrow Hill Dr., Hamilton, Montana.

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- 3. The land is 2.47 acres.
- 4. On the land are the following improvements:

A four-bedroom, four bath home with a total gross living area of 7,715 square foot. MTAB Hrg. 34:6 – 7. The home has a garage, several decks and several porches. DOR Ex. F. The home is marked by a complex design with numerous corners, as the sketch below reveals. DOR Ex. F; MTAB Transcr. 43:11 – 20.



- 5. For the 2015/2016 tax cycle, this Board found the land had a value of \$136,960 and the improvements a value of \$482,040 for a total market value of \$619,000. *Woods v. DOR*, PT-2016-7; Taxpayer Ex. 1; DOR Ex. D.

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6. On July 3, 2017, the DOR issued its assessment notice to the Woods for the 2017/2018 tax cycle. The DOR determined the Woods' land had a value of \$140,365 and the improvements had a value of \$743,835 for a total value of \$884,200. Taxpayer Ex. 6; DOR Ex. D.

CTAB hearing – appeal and outcome

7. On July 23, 2017, the Woods elected to forego the informal AB-26 review and instead appealed the DOR's assessment notice directly to the Ravalli County Tax Appeal Board. MTAB Transcr. 31:3.
8. On October 12, 2017, the CTAB heard the Woods' appeal. The Woods' argued that the decision in PT-2016-7 for the 2015/2016 tax cycle applied to the 2017/2018 tax cycle. CTAB Transcr. 5:13 – 16:14.
9. After hearing all the evidence, the CTAB denied the Woods' appeal and affirmed the DOR's value of \$884,200.

MTAB hearing

10. On November 2, 2017, the Woods appealed the CTAB's decision to this Board.
11. This Board held a hearing on May 8, 2018.
12. At the hearing, the Woods were represented by Timothy Woods. Mr. Woods testified on his own behalf. He called no other witnesses.
13. This Board admitted the following exhibits submitted by Mr. Woods:
 - a. Taxpayer Ex. 1: MTAB decision in *Woods v. DOR*, PT-2016-7 (dated April 13, 2017);
 - b. Taxpayer Ex. 2: March 4, 2018 Ravalli Republic Article;
 - c. Taxpayer Ex. 3: White Paper by Patrick Barkley;
 - d. Taxpayer Ex. 4: Maps of Arrow Hill area;
 - e. Taxpayer Ex. 5: MLS listings of property sales;
 - f. Taxpayer Ex. 6: DOR classification and appraisal of the Woods' property; and

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17. In the 2015/2016 tax cycle, the land had a value of \$136,960. Therefore, the land value had increased by approximately \$3,500 since the prior tax cycle. DOR Ex. D.
18. Mr. Woods presented little evidence directly challenging the DOR's land value. Instead, Mr. Woods' evidence mostly focused on the value of his improvements.

Market value of the Woods' improvements

19. Mr. Woods, in general claimed there was no basis for the DOR increasing the value of their property from this Board's value of \$619,000 to \$884,000; i.e. a 43 percent increase. MTAB Transcr. 6:6 – 6:10. Mr. Woods asserted this 43 percent increase was unwarranted because his property has not changed since the last tax cycle and the market for large homes has not improved since the last tax cycle. MTAB Transcr. 4:17 – 21; 5:14 – 17; 5:23 – 6:6; 8:12 – 9:14; Taxpayer Ex. 4.
20. Mr. Woods testified properties in his neighborhood are on the market for a long time before selling. MTAB Transcr. 10:3 – 10:21; 23:6 – 7; Taxpayer Ex. 5a - f.
21. Mr. Woods testified when these properties do sell, they often sell for approximately \$250,000 less than their listed price. *Id.*
22. Of those properties and sales Mr. Woods relied upon, five of them had residences ranging from 3,100 to 4,100 square feet; thus, smaller than Mr. Woods' residence. Taxpayer Ex. 5. The sixth property was a 3-bedroom, 4 bath, 5,648 square foot non-complex home which sold on March 14, 2017 for \$610,000. Taxpayer Ex. 5.
23. Mr. Woods presented a Ravalli Republic newspaper article about the real estate market in Ravalli County. Taxpayer Ex. 2; MTAB Transcr. 6:19

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- 20. The article states the housing market near the Woods’ property has stabilized. Taxpayer Ex. 2. However, according to the article, “People looking to retire now are not necessarily looking to make that kind of statement any more [in buying a large ‘McMansion’], They are OK with a cozy home rather than building a five-bedroom mansion. There’s not as much demand for that kind of home anymore.” Taxpayer Ex. 2; MTAB Transcr. 6:20 – 24. Mr. Woods testified this further showed the market for large homes like his has dwindled. MTAB Transcr. 6:24 – 25;
24. Mr. Woods then presented an independent appraisal completed by Edward Rose. MTAB Transcr. 11:14 – 16. Mr. Rose determined the Woods’ property, using the market approach, had a value of \$700,000. Taxpayer Ex. 7. Under the cost approach, Mr. Rose determined the Woods’ property had a market value of \$1,144,829. *Id.*; MTAB Transcr. 20:21 – 23. Reviewing Mr. Rose’s appraisal, it appears he adopted his market approach value and thus determined the Woods’ property had a market value of \$700,000. *Id.*; MTAB Transcr. 11:17 – 18; 21:1 – 5. According to Mr. Woods, the Rose appraisal affirmed his opinion that the DOR overvalued his property. MTAB Transcr. 11:20 – 21.
25. Mr. Woods admitted that the comparable sales used by Mr. Woods were smaller than his home and had values of approximately \$150 per square foot. MTAB Transcr. 21:21 – 22:4.
26. The DOR testified that Mr. Rose’s appraisal was plagued by several problems:
- a. Mr. Rose only considered one land sale, and provided inadequate information about that land

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- sale, when determining the value of the Woods' land. MTAB Transcr. 49:14 – 50:6.
- b. Mr. Rose failed to adjust the comparable sales for location, patios, porches, and decks or for the type of garage a comparable home had. MTAB Transcr. 42:8 – 13; 45:4 – 24.
 - c. Mr. Rose did not appear to adjust the comparable sales to account for the design or quality as far as the Woods' home. DOR Ex. F; MTAB Transcr. 41:8-15; 42:21 – 22.
 - d. Mr. Rose's comparable sales photographs have no information and some of the captions do not correspond with the photographs. MTAB Transcr. The DOR raised concerns there were no data points with the photographs to verify they correspond with the comparable properties. MTAB Transcr. 70:10 – 71:13.
 - e. Mr. Rose did not include a grade factor for the Woods' home as to the comparable sales. MTAB Hrg. 43:16 – 21. The DOR testified if you adjusted Mr. Rose's grade factor to something more appropriate to match the quality of the Woods' residence, the comparable sales would have values between \$800,000 and \$900,000. MTAB Transcr. 44:3 – 44:18.
 - f. Mr. Rose listed the home's interior and exterior as average and provided no explanation why it did not qualify as excellent. MTAB Transcr. 50:15 – 19.
 - g. Mr. Rose made no adjustments for functional obsolescence in his valuation of the Woods' home. MTAB Transcr. 46:20 – 21; 48:12 – 14.

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- h. Mr. Rose concluded the Woods' home is a typical home and did not have a complex design. MTAB Transcr. 43:16 – 20. The DOR testified there was no basis for this assumption because there are 15,996 homes in Ravalli County and only 91 homes are as big or bigger than the Woods' home. MTAB Transcr. 46:7 – 9. In the Hamilton area, only 18 homes are as big or bigger than the Woods' home. MTAB Transcr. 46:14 – 15. Lastly, in the Woods' neighborhood, only one home is bigger than the Woods' home. MTAB Transcr. 46:11 – 12.
 - i. The DOR then testified to following major problem with Mr. Rose's appraisal, "the average market value of homes in Arrow Hills subdivision is \$700,000. The median sale price is \$667,000 in Arrow Hill. [The Woods'] home exceeds the average so [Mr. Rose's] value of \$700,000 is not supported by anything other than three very questionable comps with poor adjustments." MTAB Transcr. 50:15 – 19.
- 27. The DOR explained how it valued the Woods' property, first by explaining the market approach followed by the cost approach.
- 28. The DOR testified under the market approach, the DOR finds properties that are comparable to the subject property. MTAB Transcr. 27:4 – 7; 29:6 – 17; 32:13 – 23. According to the DOR, these comparable sales are graded based on comparability points. MTAB Transcr. 39:16 – 17. The DOR seeks five comparable sales with each of those sales having comparability points under 200. MTAB Transcr. 39:16 – 18; 53:24. The DOR explained comparability points should be under 200 to ensure greater accuracy. *Id.*; MTAB Transcr. 52:10 – 13. The comparable properties are then adjusted so they are as similar as possible to the

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- subject property. MTAB Transcr. 35:13 – 20. For example, an adjustment for the functional obsolescence of the Woods' home was even included. MTAB Transcr. 51:7 – 17. Once the comparable properties values are adjusted, the DOR then can calculate the adjusted sales price of each of those comparable properties. MTAB Transcr. 35:19 – 22. Finally, the DOR uses the adjusted sales prices for these comparable properties to determine the market value of the subject property. MTAB Transcr. 36:1 – 11.
29. The DOR's market approach yielded three comparable properties, but their comparability points were 274, 337, and 406; higher than the 200 normally sought by the DOR. DOR Ex. D; MTAB Transcr. 32:18 – 23. These comparables were not within Mr. Woods' subdivision and were instead about 30 miles away from the Woods' property. MTAB Hrg. Transcr. 34:9 – 11; DOR Ex. D. With these comparable sales adjusted, the DOR determined the Woods' property had a total value of \$884,200. *Id.* The DOR testified it used the market approach, despite the high comparability points, because during the Woods' last appeal, the Woods argued the DOR should use the market approach to value their property. MTAB Transcr. 39:9 – 12.
30. The DOR also reviewed the Arrow Hill subdivision and the sales Mr. Woods referenced in Taxpayer Ex. 5. The DOR discovered those other sales were for inferior homes that were less complex than the Woods' home and 1,900 to 2,300 square feet smaller than the Woods' home. MTAB Transcr. 36:19 – 37:3.
31. Next, the DOR explained the cost approach used to value the Woods' home. For the cost approach, the DOR first determined what the

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- replacement cost new would be for a home just like the Woods' home. MTAB Transcr. 27:2 – 4; 28:19 – 29:6; 57:5 – 59:10. Using Marshall & Swift and other pricing indexes, the DOR calculated the cost to build the home. MTAB Transcr. 28:22 – 23. The DOR then adjusted this value with a grade factor of 1.57 and C&D of .80 to reach a replacement cost new of \$843,816. DOR Ex. D; MTAB Transcr. 58:11 – 59:10. The DOR next adjusted the replacement cost new to account for depreciation. DOR Ex. D; MTAB Transcr. 58:11 – 59:10. The DOR determined the home was 94 percent good, had an economic cost factor (ECF) of 0.97, and the county index was 0.970. DOR Ex. D; MTAB Transcr. 59:8 – 10. Using this information, the DOR determined the Woods' home had a replacement cost new less depreciation of \$746,310. DOR Ex. D; MTAB Transcr. 59:12 – 14.
32. The DOR also, using the same cost approach, determined the Woods' home's decks, porches, and their garage all had a total value of \$23,540. DOR Ex. D; MTAB Transcr. 59:20 – 25. Adding the two together, the DOR found the Woods' home had a total cost approach value of \$769,850. DOR Ex. D; MTAB Transcr. 59:16 – 17. Adding the land value derived from the CALP, the DOR's cost approach determined the Woods' property had a value of \$910,215. DOR Ex. D; MTAB Transcr. 59:17 – 19.
33. The DOR then reconciled the cost approach value and the market approach value and adopted the market approach value. According to the DOR, even when the comparability points of the comparable sales are all above 200, the DOR may adopt the market approach value if the market approach value is within 10 percent of the cost approach value.

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MTAB Transcr. 39:14 – 21. Here, the cost approach value and market approach value were within 3 percent of each other. MTAB Transcr. 40:3 – 4. Regarding the reconciliation of values, the DOR testified it used the market approach value to value the Woods’ property because it was lower than the cost approach value. MTAB Transcr. 52:15 – 18.

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

CONCLUSIONS OF LAW

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

Jurisdiction

36. The Woods timely appealed the CTAB’s decision to this Board. Therefore, this Board has jurisdiction to hear and decide this appeal. *See* Mont. Code Ann. § 15-2-301(1)(b).
37. “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).
38. This Board hears CTAB appeals *de novo*. *See CHS, Inc. v. DOR*, 2013 MT 100, ¶ 29. “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

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39. 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).
40. However, “[a]s 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).
41. The taxpayer has the burden to show the DOR’s appraisal value should be reduced. Mont. Code Ann. § 26-1-401.

Prior Decisions by this Board

42. MCA § 15-7-111(1) states
The department shall administer and supervise a program for the reappraisal of all taxable property within class three under 15-6-133, class four under 15-6-134, and class ten under 15-6-143 as provided in this section. . . Beginning January 1, 2015, all property within class three and class four must be revalued every 2 years, and all property within class ten must be revalued every 6 years.
43. Under MCA § 15-6-134, Class 4 property includes residential and commercial only.
44. When the DOR values a property, it may use the market sales approach, the cost approach, or the income approach to ensure the property is “appraised at 100% of its market value.” MCA § 15-8-111.

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45. After the DOR values and classifies a property, it provides an assessment notice to the taxpayer. MCA §15-7-102. A taxpayer can challenge the DOR's assessment by requesting an informal review or appealing directly to the appropriate county tax appeal board. MCA §§ 15-7-102(3)(a), 15-15-102. After the county tax appeal board hears the appeal, a taxpayer has the right to appeal to this Board. MCA § 15-2-301. This Board then holds a trial de novo to find a property's market value. *Puget Sound Energy Inc. v. State*, 2011 MT 141, ¶¶ 30 – 37. The Montana Supreme Court has said this Board must be permitted to “assess a taxpayer's market value at 100% market value . . . To conclude otherwise would hamstring [this Board's] authority to . . . reach an independent assessment.” *Id.* at ¶ 37.
46. For each tax cycle, the DOR calculates new property values, the taxpayer receives an assessment notice regarding those values, and the taxpayer has the right to challenge those values and classifications. *See Hanley v. DOR*, 207 Mont. 302, 303 – 304, 673 P.2d 1257, 1257 (Mont. 1983). For each tax cycle, as noted in MCA § 15-8-111, the DOR must determine market value and can use the market sales approach, the income approach, or the cost approach to value the property depending on the DOR's available data. *See also Albright v. State*, 281 Mont. 196, 200, 213 – 214 (Mont. 1997). And if the taxpayer in a given tax cycle disagrees with the DOR's assessment, the taxpayer may request an AB-26 informal review, after which the taxpayer may appeal the assessed values to the CTAB and then to this Board. *Id.*; MCA § 15-7-102(3).
47. Regarding the legal effect of a decision by the CTAB or this Board, ARM 2.51.307(4) states,

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With respect to taxable real property and improvements thereon, the decision of a county tax appeal board shall be final and binding unless reversed or modified upon review by the state tax appeal board. If the decision of the county tax appeal board is not reviewed by the state tax appeal board, it shall be final and binding on all interested parties for all subsequent tax years unless there is a change in the property itself or circumstances surrounding the property which affect its value. Statutory reappraisal by the department of revenue pursuant to 15-7-111, MCA, is a circumstance affecting the value of real property and improvements thereon. *Emphasis added.*

48. In its current form, ARM 2.51.307 became effective on May 10, 1996. It was passed pursuant to MCA § 15-2-201 and gains authority from several of the statutes cited above: MCA §§ 15-2-201, 15-2-301, 15-10-304, and 15-15-103. ARM 2.51.307(4) summarizes how the Montana property tax assessment process works and confirms a new tax cycle and reappraisal period breaks the binding effect of this Board's decision in a prior tax cycle. So, a decision by the CTAB or this Board for residential properties will be binding until the next two-year statutory reappraisal cycle.
49. The decision in *Woods v. DOR* was issued on April 13, 2017. *See* 2017 Mont. Tax LEXIS 5 (Mont.Tax.App.Bd. 2017). This Board's order stated, "DOR is ordered to enter for tax years 2015 and 2016 a value of \$619,000." *Id.* at *17. Consistent with the law provided above, this Board's prior decision applied only to the 2015/2016 tax cycle and not the 2017/2018 tax cycle.
50. Furthermore, this Board's order noted the value of the property was based on the following: (1) the lien date being January 1, 2014, which is

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two years older than the lien date in the current appeal; and (2) the fact the market in the area appeared depressed at the January 1, 2014 lien date. *Id.* at *16. Given these facts, this Board determined the Woods' purchase price best reflected the market value. *Id.* However, this Board concluded, "This [market] anomaly may not be present after the recession ended." Such language and reasoning affirm the limited effect of this Board's prior opinion as to the Woods' property.

51. This Board's prior decision, therefore, has no binding effect on the value of the Woods' property for the 2017/2018 tax cycle both under the law and the reasoning included in this Board's decision.

Market Value

52. "All taxable property must be assessed at 100 percent of its market value except as otherwise provided." MCA § 15-8-111(1).
53. "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).
54. 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.
55. 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.

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1997). The DOR does not have to use only one approach when it “appraises property and estimates market value.” *Id.* at 208.

56. 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.

57. Regarding a taxpayer presenting an independent appraisal, MCA § 15-2-301(3) states,

The state tax appeal 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.

58. The Woods contend the DOR overvalued their property. The Woods obtained an independent appraisal by Mr. Rose which determined the

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Woods' property had a value of \$700,000; which would be \$184,200 less than the DOR's value.

59. However, there were several problems with Mr. Rose's appraisal. According to the DOR, Mr. Rose failed to adjust his comparable sales to account for the complexities of the Woods' residence. Mr. Rose determined the Woods' home was average, which conflicted with all the evidence this Board heard about the Woods' residence. Because of the numerous errors revealed by the DOR, this Board does not find Mr. Rose's appraisal credible and finds his final value does not establish market value for the Woods' property.
60. In contrast, this Board found the DOR's values for the Woods' property were supported by sufficient evidence. This Board heard testimony from the DOR explaining they valued the Woods' land using a CALP. The DOR provided the CALP. The DOR then explained, in detail, how it valued the Woods' improvements using both the market approach and the cost approach. As to each approach, the DOR explained the approach and then how it was used to value the Woods' property. The DOR's cost approach value and market approach value was within \$26,000 of each other. While the DOR's market approach relied on only three comparable sales with comparability points above 200, the fact the DOR's market approach and cost approach were so close supports the DOR's value of \$884,200 for the Woods' property.
61. Interestingly, remedying some of the errors in Mr. Rose's appraisal, the DOR found Mr. Rose's appraisal would have yielded a value of \$800,000 to \$900,000 for the Woods' property; again, consistent with the DOR's value of the Woods' property.

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62. This Board heard evidence the housing market on the lien date of January 1, 2016 had stabilized. Mr. Woods presented recent home sales. Those homes were selling for approximately \$150 per square foot. Applying \$150 square foot to the size of the Woods' residence yields an improvement value of approximately \$788,000; further supporting the DOR's improvement value of \$743,835.
63. Weighing all the evidence, this Board finds the Woods did not meet their burden of proof showing the DOR incorrectly valued their property.
64. Similarly, this Board finds the DOR presented sufficient evidence supporting its value of both the Woods' land and improvements.

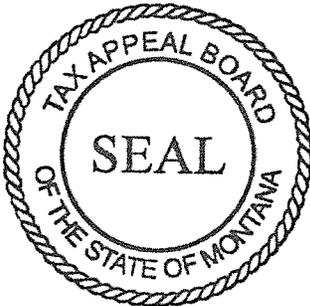
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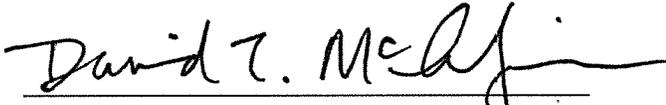
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ORDER

1. The Woods' appeal is denied.
2. For the 2017 and 2018 tax years, the DOR shall value the Woods' property, identified by geocode 13-1367-09-1-02-26-0000, as follows:
 - a. The land shall have a value of \$140,365;
 - b. The improvements shall have a value of \$743,835;
 - c. For a total value of \$884,200.

Ordered August 3, 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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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 August 3, 2018 to:

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491 Arrow Hill Drive
Hamilton, MT 59840

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Property Assessment Division
Department of Revenue
P.O. Box 8018
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Lynn Cochran, Paralegal Assistant
MONTANA TAX APPEAL BOARD

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