

BEFORE THE MONTANA TAX APPEAL BOARD **FILED**

MAR 07 2019

Montana Tax Appeal Board

ELVIN P. & CRYSTAL J.  
HOPPER,

*Appellants,*

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

*Respondent.*

CASE No: PT-2018-50

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

The Montana Tax Appeal Board (Board) is an independent agency not affiliated with the Montana Department of Revenue (DOR). Under the authority of MCA §15-2-301 this appeal is an appeal from the Yellowstone County Tax Appeal Board (YCTAB) hearing held on August 31, 2018 for the 2018 tax year. The YCTAB decision upheld the Montana Department of Revenue's (DOR) 2018 assessment determination, which denied the Taxpayers' request to change the gross area square footage/valuation of their land, building and improvements. The Taxpayers filed an appeal with this Board, and requested a decision based on the record.

The Taxpayers believe sufficient evidence was provided to prove they are entitled to a reduction of their improvement size, and thus to the lower valuation. The Taxpayers are requesting the residence to be valued using their independent appraisal, which calculated 1,852 gross area square feet for the residence. (This is a change from the Taxpayers' request at the YCTAB to set the residence at 1,708 gross area square feet.) This change would yield a market value of \$63,000 for the land, and \$117,000 for the improvements, for a total of \$180,000.

The DOR valued the residence using a total gross area measurement of 1,875 square feet, as measured from the outside of the structure. This yields a market

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value of \$66,963 for the land, and \$125,737 for the building/improvements, for a total of \$196,500.

As reflected in the following opinion, the Taxpayers' appeal is denied.

**Property Description**

The subject land in this appeal is identified as Geocode 03-1032-36-2-11-12-0000; Property Location 1934 Poly Drive, Billings, Montana 59102; and Legal Description Lot 6, Block 3 of the Sweeney Carlson Subdivision, S36, T01, R25, Less 10 Feet LT 6. DOR Ex. A3.

The improvements to the property consist of a two story, three-bedroom, two-bath residence, which totals 1,875 gross area square feet of measured livable space. DOR Ex. A4. The residence was originally built in the 1950s, but it was remodeled in 1991. Id. As recorded by the DOR, the residence is in fair condition. Id. The other improvements and additions to the property consist of an 840 square foot detached garage which was built in 2015, two concrete slabs (13x20/20x12), a shed (8x16), an open porch (7x10) and a canopied area (8x14) at the back of the residence. YCTAB Hrg. 16:11-23, 17:1-8. The lot measures a total of 17,832 square feet. DOR Ex. A3.

**Findings of Fact**

The Board admitted the following exhibits submitted by the Taxpayer:

Ex. 1: Comparable property researched and found on Zillow.com, and submitted by the Taxpayers; home located at 510 Minnie Place in Billings, and listed for sale at \$185,000. The Taxpayers circled the features on the listing which differ from the subject property;

Ex. 2: Comparable property researched and found on Zillow.com, and submitted by the Taxpayers; home located at 480 Declaration Avenue,

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Billings, and listed for sale at \$208,900. The Taxpayers circled the features on the listing which differ from the subject property;

Ex. 3: Comparable property researched and found on Zillow.com, and submitted by the Taxpayers; home located at 319 29<sup>th</sup> Street West, Billings, and listed for sale at \$217,500. The Taxpayers circled the features on the listing which differ from the subject property.

Ex. 4: Taxpayers Appeal to the Montana Tax Appeal Board, filed October 1, 2018.

Ex. 5: Taxpayers' Summary Letter filed with the original appeal form to the MTAB.

Ex. 6: Uniform Residential Appraisal Report, prepared by Bryan Ratcliff from Ratcliff Real Estate Appraisals, LLC dated January 8, 2015. The report valued the property at \$179,000.00 using a sales comparison approach. Mr. Ratcliff recorded the residence as 1852 square feet of gross living area. The report was filed by the Taxpayers with the original appeal form to the MTAB.

Ex. 7: Minutes from the YCTAB hearing held on August 31, 2018, which include the YCTAB's decision to accept the MDOR's valuation of \$192,700.00.

Ex. 8-10: Hearing docket and attendance sheets for the YCTAB hearing held on August 31, 2018.

Ex. 11: Taxpayers' Appeal to the Yellowstone County Tax Appeal Board, filed June 25, 2018.

The Board admitted the following exhibits submitted by the DOR:

Ex. A1: Montana Department of Revenue Assessment Information Packet, cover page;

Ex. A2: Montana Department of Revenue Assessment Information Packet, table of contents;

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- Ex. A3 – A7: Property Record Card 1934 Poly Drive, Billings, Montana 59102-1621 (tax year 2018);
- Ex. A8 – A10: Comparable Sales Report for Property 03-1032-36-2-11-12-0000, Market Area 0304 MKT Area Yellowstone containing three comparable properties;
- Ex. A11: Appraiser Certification;
- Ex. A12: Handwritten note card made and maintained by the DOR on the history of the property since 2002;
- Ex. A13: Request for Informal Classification and Appraisal Review (AB-26) submitted by the Taxpayers to the DOR received November 17, 2017;
- Ex. A14 – A15: Form AB-26 Determination Letter from the DOR to the Taxpayers dated May 18, 2018;
- Ex. A16: Yellowstone County Neighborhood 700 map;
- Ex. A17: Photographs of the Taxpayers' property;
- Ex. B1: Comparable Sales Report for Property 03-1032-36-2-11-12-0000, Market Area 0304 MKT Area Yellowstone containing five comparable properties.

1. The Taxpayers have owned the subject property since the Fall of 2014. YCTAB Hrg. 5:14-15. The property was previously owned by Mr. Hopper's mother who bought the home in the mid-90's, and subsequently made several renovations. Id. at 5:15-16, DOR Ex. A4.

2. On November 17, 2017, the Taxpayers submitted a Request for Informal Classification and Appraisal Review (AB-26) to the DOR. DOR Ex. A13. As the Taxpayers missed the filing deadline for year one in the tax cycle, only year two is under consideration in this appeal. Id. The Taxpayers, upon receiving their property tax notification for the 2018 tax year, realized the total recorded gross area square footage of their residence increased from the 1,708 square feet of all previous tax

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years to 1,952 gross area square feet. Id. This created a significant increase in the total value of the property. Id. “The issue this year as we noticed our residential property square footage grew by nearly 250 square feet. We made no improvements to the house. We did not file for any building permits.” YCTAB Hrg. 5:18-21.

3. The Taxpayers made inquiries with the DOR as to how the property could increase in size without any volitional acts on the part of the Taxpayers. Id. at 5. The Taxpayers were told “[T]he residential properties are measured on the outside of the house, and that ‘it has always been this way’”. Id. at 5:23-24.

4. On May 18, 2018, the DOR issued a Form AB-26 Determination Letter. DOR Ex. A14. The letter denied the square foot adjustments requested by the Taxpayers, but made several other minor corrections. Id. “Additional Notes: Remeasured 2<sup>nd</sup> story and removed 77 square feet, removed 6x12 wood shed, and added 13x20 concrete pad.” Id. The changes decreased the total gross area square footage of the residence from 1,952 to 1,875. YCTAB Hrg. 6:12-16.

5. Originally the DOR appraiser was not invited into the Taxpayers’ home for inspection and measurement. Id. at 17:23-25. When the AB-26 was filed, and a second DOR appraiser returned to the property, the appraiser was allowed inside the residence to verify and remeasure the entire structure. Id. at 16:7-10, 18:18-20.

6. The Taxpayers disagreed with the DOR’s final determination, and filed an appeal with the YCTAB on June 25, 2018. YCTAB Hrg. The YCTAB hearing was held on August 31, 2018. Id.

7. The Taxpayers appeared in person, and Mrs. Hopper spoke for herself and her husband. Id. The Taxpayers did not call any witnesses. Id.

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8. The DOR was represented by Gina Mullen, an appraiser with the DOR for 29 years, and Tammy Rau, a lead appraiser with the DOR for 12 years. *Id.* at 13:23-14:2.

9. At the onset of the hearing the DOR issued a statement amending the value of the property. *Id.*

“So, we previously had the land at \$70,000. It is amended now to \$66,963, and the improvements \$125,737 for a total of \$192,700.” *Id.* at 3:11-12. “The correction that the DOR made to this property when I amended the values is when I was preparing for this appeal, I noted that their legal description actually says, I believe its Lot 6 less the south ten feet, and the south ten feet had not been taken off. So, I corrected the [lot] size to 17,832 square feet, and then revalued the property. So, that’s what happened for the amendment.” *Id.* at 15:1-5.

10. The Taxpayers were asked if the amendments made any difference to their appeal. *Id.* at 3:20. The Taxpayers replied in the negative, and the hearing moved forward. *Id.*

11. The Taxpayer read a statement into the record. YCTAB Hrg. She stressed the family’s history with the property dating back to the 1990s, when her husband’s mother owned the property. *Id.* at 5. “We have owned this property since the fall of 2014, and was previously owned by my husband’s mother who purchased it in the mid-90s. It’s a family property, and we’re familiar with the features and aspects of the property and have been for some time.” *Id.* at 5:14-17.

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**External Measurements**

12. The Taxpayer's main dispute was the gross area square footage of the residence, as measured by the DOR. YCTAB Hrg. "[O]ur biggest thing is square footage, because in the future regardless of what the State comes up with, we're still going to be paying on a larger square footage than we should. That's the huge thing." *Id.* at 10:19-21.

13. The Taxpayers stated they were previously taxed on a total of 1,708 gross area square feet for the residence. *Id.* at 6:2. For the 2018 tax year the DOR changed the square footage to 1,952. *Id.* at 6:9. When the AB-26 was performed by a second DOR appraiser, the DOR double-checked the measurements of the interior of the residence. *Id.* The DOR removed 77 square feet, for a small space created by a staircase leading to the second story of the residence, which should not be counted as gross area livable square feet. *Id.* at 6:11-12.

14. The adjustment made by the DOR reduced the home to 1,875 gross area square feet. *Id.* The Taxpayers agree the remaining difference of 167 square feet can be attributed to the original exterior measurements made by the DOR. *Id.* "The remainder of the difference can be found in areas such as the walls. The exterior walls make up a large part of the square footage difference between an exterior property measurement and the interior livable space measurement. We can't live inside of our walls." *Id.* at 6:12-16.

15. The Taxpayers requested a total value of \$180,000 for the land, residence and improvements. *Id.* at 8. The Taxpayers stated in calculating value they relied on three comparative properties (comps) listed for sale in their area. *Id.* at 8.

"We found several, at the time we submitted paperwork we found several nearby properties of a similar square footage. I believe I submitted three listed or I have them here with me. They're in a

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similar area, similar square footage. One of them is listed at being 1768, 1628, 1618 and then I circled several features. They all have forced air, central heating and cooling, finished basements. These are all aspects our house doesn't have. We don't have forced air, we don't have central air, we don't have a finished basement, so ... For our house to be listed at a price is comparable to these but we're missing several of these features that buyers look for, we didn't feel that was fair." *Id.* at 8:3-9, 11-13, Taxpayer Ex. 1-3.

16. During questioning at the YCTAB hearing the DOR contested the three comps presented by the Taxpayers. YCTAB Hrg. at 11. The DOR stated the Taxpayers' property is "considerably larger", and the comps were all in a different market area. *Id.* at 11:10-11.

17. The DOR focused their case on the way measurements are taken for all property assessments. *Id.* at 15-16. The DOR stated all properties in Yellowstone County are measured from the exterior. *Id.* at 16. "Although you may not be able to put your furniture there or walk across the floor, there are things in the walls that are imperative to that home. So that is just a consistent way all the homes are measured." *Id.* at 16:4-6.

18. The DOR also addressed the issue of the originally recorded 1,708 square feet. *Id.* at 17.

"So, what happened on this property, historically the square footage did not change in 2017. The square footage changed in 2016, and what happened was previously for the first several... [y]ears that even I worked here, we didn't have a sketch program in the computer, so all sketches were calculated by hand. Then

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when I went there and measured the new garage and added that, part of our process is to get every home sketched in the computer... So, when I sketched this home in there, I discovered that it had not been calculated correctly to begin with. So, there was a correction made to the record at that point to correct the square footage.” Id. at 17:8-17.

### **Comparable Sales**

19. The DOR uses a comparable sales approach to determine the market value of almost all residential properties in Yellowstone County. Id. at 21. The DOR software will select a set of comparable sales most similar to the subject property to indicate the market value. Id. “In the sales comparison approach, market value is estimated by comparing properties similar to the subject property that have recently been sold... .” *The Appraisal of Real Estate 11<sup>th</sup> ed.* Appraisal Institute 1996 p397.

20. The DOR handpicked the comps most like the subject property from the list of verified sales. YCTAB Hrg. at 25. The choice was made to handpick comps when the original software-generated list was not similar enough for the subject property. Id. at 25:18-21. “The reason I hand-picked, I’ll just say it. The main reason to be perfectly honest, I treat everyone on these busy streets the same way, is I think those busy streets have an additional negativity to them in the market place. So, I like to pick comps that are similar.” Id.

21. The DOR stated the choice to hand pick properties was to the Taxpayers’ advantage as it helped decrease the value of the subject property. Id. at 26:3-6.

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22. The YCTAB hearing concluded, and the board deliberated, weighed the evidence and testimony, and found in favor of the DOR. YCTAB Hrg. 34:3-6 (August 31, 2018).

23. On October 1, 2018 the Taxpayers filed an appeal with the MTAB. Taxpayers' Ex. 4. The Taxpayers requested a hearing on the record. Id.

24. Accompanying the Taxpayers' filing was a Uniform Residential Appraisal Report. Taxpayers' Ex. 6. The private fee appraisal was made by Bryan Ratcliff of Ratcliff Real Estate Appraisals, LLC (Billings, Montana) on January 8, 2015. Id. In their statement of the case the Taxpayers refer to a comment made by YCTAB Board Member Heinrich. Taxpayers' Ex. 4. Mr. Heinrich asked if the Taxpayers had an independent fee appraisal of the subject property. YCTAB Hrg. 9:6-7. The board member stated "... if you get one done, we're usually done." Id.

25. The Taxpayers also submitted a *Summary Letter* with their MTAB appeal form. Taxpayers' Ex: 5. The Letter requested the MTAB take into consideration the private appraisal, and use a total of 1,852 square feet for the residence as accounted by the appraiser. Id. The Taxpayers also addressed their concern over the internal vs. external measuring method the DOR utilizes. Id.

26. The letter went on to ask for a refund counting back to the time the "Less 10 FT LT 6" was transferred to the neighboring property. Id. "We also request a refund for the full number of years that property taxes were paid for the LESS THAN 10 FT by us the current property owners, and also by the previous owners, our family members, Sarah Bates and Elvin E. Hopper. The refund should be investigated and issued because it is a part of the inheritance we are entitled to but did not receive from our family upon their passing." Id.

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27. The Taxpayers' statement to the MTAB on appeal specifically asked the Board to "[s]et the square footage of our residential dwelling to a total of 1,852. Refund the difference between the DOR's measurement of 1,952 which increased our property tax payments since 04/2016. Research when the Lot size actually changed and issue a refund for any tax year the property was owned by Sarah Bates, Elvin Hopper." Taxpayers' Ex. 4.

28. The final determination made at the YCTAB hearing, and supported by evidence submitted in this appeal, is as follows:

- a. The land measured at 17,832 square feet with a value of \$66,963.
- b. The residence measured at 1875 square feet with a value of \$125,737.
- c. The total valuation of the land and improvements is \$192,700.
- d. The DOR corrected the lot size to the amended "Lot 6 Less 10 FT LT 6", and issued a refund in the amount of \$109.61 for the current tax cycle.

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

**CONCLUSIONS OF LAW**

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

31. The Taxpayers filed a timely appeal of the YCTAB decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. Mont. Code Ann. §15-2-301(1)(b).

32. This Board hears CTAB appeals de novo. CHS Inc. v DOR, 2013 MT 100. "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

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MT 138. As such this matter will be reviewed without merit to the YCTAB hearing and subsequent decision. *Id.*

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

34. “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.” Mont. Code Ann. §15-8-111(2)(a).

35. The Department is authorized to use one or more approaches to value residential property, including the comparable sales or market data approach. *Albright v. State*, 281 Mont. 196, 208-09, 933 P.2d 815, 823 (1997).

36. “Sales Comparison Approach – One of the three traditional approaches to value by which an indication of the value of a property is arrived at by compiling data on recently sold properties which are comparable to the subject property and adjusting their selling prices to account for variations in time, location, and property characteristics between the comparable sales and the subject property.” Montana Department of Revenue Appraisal Guide, Property Assessment Division, Valuation Date January 1, 2016.

37. “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.” *Carey v. DOR*, 2018 Mont. Tax App. Bd. PT-2018-9; citing *Workman v. The Department of Revenue of the State of Montana*, 1997 WL 37203;

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citing *Western Airlines, Inc. v. Catherine J. Michunovich, et al*, 149 Mont. 347, 428 P.2d 3 1967.

38. The Department can only assess property that has escaped assessment, been erroneously assessed, or been omitted from taxation if it is under the ownership or control of the same person who owned or controlled it at the time that it escaped assessment or was erroneously assessed. Mont. Code Ann. 15-8-601(1)(a).

39. “If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department... the owner may request an assessment review by submitting an objection on written or electronic forms provided by the department for that purpose.” Mont. Code Ann. §15-7-102(3)(a).

40. “[An] objection may be made only once each valuation cycle. An objection must be made within 30 days from the date on the assessment notice for a reduction in the appraised value to be considered for both years of the 2-year appraisal cycle. Any reduction in value resulting from an objection made more than 30 days from the date of the assessment notice will be applicable only for the second year of the 2-year reappraisal cycle.” Mont. Code Ann. §15-7-102(3)(a)(ii).

41. This Board’s jurisdiction is limited to hearing and adjudicating matters in the current tax cycle. Mont. Code Ann. 15-2-306. Consideration of past tax cycle refunds is under the purview of the Board of County Commissioners. Mont. Code Ann. 15-16-603.

42. The essence of the Taxpayers’ case focuses on determining how the DOR is required to measure a residence for property tax valuation. Taxpayers’ Ex. 4.

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43. The actions and requirements of a property tax assessor with the DOR are outlined in the Montana Department of Revenue Appraisal Guide, Property Assessment Division. This 525-page guide binds the assessors to a very specific set of actions. *Id.* The DOR assessors are under obligation, as established by this document, to create a “footprint” of a any residence measured. *Id.* at p.87. This “footprint” is then used to create a sketch in the DOR database, and to “... provide an accurate calculation of square footage.” *Id.*

44. The Montana Department of Revenue Appraisal Guide, Valuation Date January 1, 2016, defines gross area as: “The total floor area of a building measured [f]rom the exterior of the walls.” *Id.* at p. 505.

45. This Board concludes the DOR appraisers fulfilled their regulatory obligation by remeasuring the Taxpayers’ residence, and in this case reducing the total gross area square footage to 1875. The practice of external measurement to find gross area is correct and is uniformly applied across Montana in fairness to all taxpayers.

46. The DOR, while preparing for the YCTAB hearing, found a discrepancy with the total square footage of the land. YCTAB Hrg. The statement “Less 10 FT LT 6” was not originally taken into consideration. DOR Ex. A3. The property record card was corrected, and the DOR issued a refund for the current property tax year in the amount of \$109.61. YCTAB Hrg. 15:1-5. If a taxpayer can prove they are due a refund past the current tax year, they must look to the board of county commissioners. Mont. Code Ann. 15-16-603.

47. The Taxpayers are concerned with the duration of the discrepancy. Taxpayers’ Ex. 4. The Taxpayers asked this Board to look back to the number of cycles the Taxpayers overpaid for their assessment. *Id.*

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48. This Board concludes the matter is beyond our jurisdiction. Mont. Code Ann. §15-2-306. The MTAB only maintains statutory authority to accept, deny or adjust property valuations, and order refunds for taxes paid under protest for the current property tax cycle. Id.

**ORDER**

IT IS HEREBY ORDERED the Taxpayers' appeal is denied. Consistent with the DOR's AB-26 determination, the adjustments made by the DOR at the YCTAB hearing and the YCTAB decision, this Board orders the following concerning the property identified by geocode 03-1032-36-2-11-12-0000 for the 2018 tax year:

- a. The land measured at 17,832 square feet shall have a value of \$66,963.
- b. The residence measured at 1875 square feet shall have a value of \$125,737.
- c. The total valuation of the land and improvements is \$192,700.

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*Bivla P. & Crystal J. Hopper v. Montana Dept. of Revenue*

Ordered March 7, 2019



*David L. McAlpin*  
David L. McAlpin, Chairman  
MONTANA TAX APPEAL BOARD

*Steve Doherty by DLH*  
Steve Doherty, Member  
MONTANA TAX APPEAL BOARD

*Valerie Balukas*  
Valerie 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. The Department of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. Mont. Code Ann §15-2-303(2).

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**Certificate of Service**

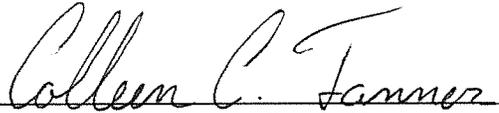
I certify that I caused a true and correct copy of the foregoing Order to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on March 7, 2019 to:

**Elvin P. & Crystal J. Hopper**  
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Billings, Montana 59102

**Jessica M. DeMarois**  
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Colleen C. Tanner, Law Clerk  
MONTANA TAX APPEAL BOARD