

BEFORE THE MONTANA TAX APPEAL BOARD **FILED**

SEP 04 2020

Montana Tax Appeal Board

VIVIAN ALLEN,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE No: PT-2019-24

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

STATEMENT OF THE CASE

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, filed on July 11, 2019, is an appeal from the decision by the Flathead County Tax Appeal Board (FCTAB) hearing held on October 17, 2019 for the 2019/2020 appraisal cycle. The FCTAB decision upheld the Montana Department of Revenue's (DOR) assessment determination of \$41,950, which denied the Taxpayers' request to value the subject property at \$36,060. The Taxpayer filed an appeal on November 14, 2019 with this Board, and requested a decision based on the record. The county appeal board unanimously denied her appeal, and we are deciding her appeal on the existing record without a hearing, by agreement of the parties. We affirm the county board's decision.

PROPERTY DESCRIPTION

The subject property in this appeal is identified as Geocode 07-4187-08-2-09-11-0000; Property Location 215 1st Ave. South, Hungry Horse, Montana 59919; and Legal Description Lot (s)7, 8, 9, 10, 11, 12, Block 6, Section 08, Township 30N, Range 19W for

.48 acres. *Dept. CTAB Ex. B.* The street address of her residence is 215 First Avenue South, Hungry Horse, MT.

ISSUE TO BE DECIDED

This valuation dispute regards only Ms. Allen's house (improvements only) and not her land. The Taxpayer spoke of the substantial deterioration of the building on the subject property. The Taxpayer stated she had no plans to rebuild the building and listed many of the undesirable traits of the building. At \$41,950, the current appraised value has a 116% increase from the previous value. The Taxpayer wants MTAB to grant and order decreases in the DOR valuation on the subject property. Taxpayer does not agree with any increased value on improvements until major repairs and upgrades have been made to the building. Ms. Allen challenges that her home was properly appraised by the Department of Revenue for fair market value due to its poor condition.

The DOR has accounted for the influence factor and depreciated condition of the property and stated when pricing fluctuates with mass appraisal and the market, the subject will not remain at a set rate. In a changing and increasingly valuable market.

EXHIBIT LIST

The following exhibits were submitted by Ms. Allen at the county hearing and before this board, and are incorporated herein:

- A. Photos of an abandoned structure on the subject property;
- B. Residential Sales Verification for 2018 purchase of subject property;
- C. Eight pages of written statement and testimony from Ms. Allen;
- D. Handwritten notes, apparently of a conversation with Doug Wilkerson;
- E. Notations by Ms. Allen regarding previous sales with a heading "1999"; Tax records for the previous owner of Lots 7 and 8 from 1999 and 2004.
- F. Classification and Appraisal notice for 2017, Lots 9 and 11.

G: 1999 Valuation for 223 1st Ave. S. with residual method by DOR; and
H: Demolition Bid from Bryan Miller 10/7/2019.

The Board noted the DOR has not submitted any additional exhibits at this time beyond the exhibits presented during the County hearing, which included:

Ex. A: DOR Confidential packet for the subject properties in both cases; and
Ex. B: Taxpayer's Request for Informal Classification and Appraisal Review with the determination letter from DOR and the appeal form to the County Tax Appeal Board.

FINDINGS OF FACT

1. The Taxpayer has owned the subject property since its 1997 purchase, which was the only time the property has been appraised. Taxpayer included DOR's assessment notices from 1997 through 2004, and noted previous valuations from the DOR included all the lots. *CTAB FC-2019-14, Allen Hrg. Minutes, page 1.*
2. The Taxpayer has gone through several informal reviews of this property with DOR for both classification and value assessments.
3. Taxpayer listed several of the undesirable features to the subject property such as: not built to code, collapsing roof, water damage inside, mildew and mold, asbestos, alleged drug use in the neighborhood, and nearby unusable buildings that are costly to remove. *Taxpayer CTAB exhibits A-O.* Included multiple photos showing deterioration of the log home, bad neighborhood photos, PRC's, assessment notices, asbestos and radon reports, and chart titled Neighborhood Comparables Net Changes (Improvements Only). *CTAB FC-2019-14, Allen Hrg. Minutes page 1, paragraph #2.*

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4. The FCTAB asked DOR about the coding process based on the property's characteristics and the data in the system. DOR witness Cordone referred to the condition of the improvements already being reflected in the valuation through depreciation. DOR stated the land valuation was decreased, but the cost method resulted in an increase due to the increasing cost of materials. The subject land value does reflect the location, but these go up and down based on the reappraisal process. *CTAB FC-2019-14, Allen Hrg. Minutes, page 2, paragraph #7.*

5. The FCTAB asked about the square footage on the PRC due to the 6.4K square foot unfinished area listed. DOR explained this is an portion not finished to standards. *CTAB FC-2019-14, Allen Hrg. Minutes, page 2, paragraph #8.*

6. The FCTAB confirmed that DOR had recognized the mold through depreciation, desirability, and utility and in the cost and design categories. The property is a Grade 3 and was further reduced for obsolescence and by reducing value 62% for depreciation. *Id.*

7. Vivian Allen testified she disagrees with the valuation because DOR appraiser Doug Wilkinson stated her value would not be reduced when he visited the next-door property. Flathead board member Scott Wurster commented the appraiser would not have known that information. *CTAB FC-2019-14, Allen Hrg. Minutes, page 3, paragraph #2.*

8. DOR noted the market approach analysis was not available for this property; thus cost approach had to be used *Dep. Ex. A*. Chairman Ryan asked DOR to address the taxpayer's concerns about market conditions and DOR explained the default appraisal method is market, but it was moved to cost because the subject property did fit those parameters. *CTAB FC-2019-14, Allen Hrg. Minutes, page 3, paragraph #6.*

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9. The property is so unique the DOR could find no sales with similar characteristics to the subject. The subject is a large warehouse/garage converted into a single-family residence.

10. The FCTAB noted in deliberations that there is a \$5,890 difference in value and that would amount to approximately \$50 in annual taxes. The building does devalue the property, but as a residence, it has some value. *CTAB FC-2019-14, Allen Hrg. Minutes, page 3, paragraph #7.*

11. The influence factor was used and further reduced the value. *Id.* The taxpayer did not show why her requested value was an accurate value or what it was worth with an outside fee appraisal. The CTAB felt the DOR's explanation accounted for the proper value. *Id.*

12. In deliberations, the FCTAB said the taxpayer's exhibit showed comparable valuation increases but was within the ten percent range and not out of line with the neighboring taxpayers. *Id.* The FCTAB felt the influence factor mitigates some of the depreciation, and this is a small difference in valuation. *Id.*

13. The Taxpayer's appeal was accepted by the MTAB on November 14, 2019, from a unanimous decision of the FCTAB that took place on 10/17/2019, denying the appeal. *CTAB FC-2019-14, Allen Hrg. Minutes, page 4, paragraph #1.* The Taxpayer clarified for the FCTAB that Lots 7, 11, and 12 are not contested. Lot 8 has the land contested, and Lots 9 & 10 only have improvements contested. MTAB Appeal Form, page of FCTAB letter.

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14. On December 12, 2019, the Montana Department of Revenue (MDOR) served an Answer to the Allen Appeal, denying all allegation set forth in the Complaint. *Resp's Answer Br. April 23, 2020.*
15. MTAB and the parties held a scheduling conference in December of 2019 and selected due dates for discovery requests (February 21, 2020) and opening briefs (March 20, 2020) and response briefs (April 17, 2020) with the Taxpayer's optional reply brief due May 8, 2020. *MTAB, Scheduling Order, Dec 18, 2019.*
16. The Taxpayer submitted several discovery requests to the MDOR on December 30th, and January 24, 2020. *Taxpayers Disc. Req. Dec. 31, 2019, Taxpayers Disc. Req. Jan. 21, 2019.* MDOR made a discovery request, and Ms. Allen answered on February 12 and February 28, 2020. An extension for presenting taxpayer arguments was requested. *Taxpayers Disc. Req. Feb. 28, 2019.*
17. On May 18, 2020, the MDOR filed its Response Brief to prove they met their burden of proof and valued the properties correctly. *Resp's Reply Br.*
18. The Taxpayer submits her rebuttal arguments for PT-2019-25 the taxpayer wants the value decreased on the assessment of improvements on the subject property. *App. Reply Br., including exhibits in Parts A, B, C, D, E, and F.*
19. In written testimony and before the county board, Ms. Allen has described her house variously as unique, obsolete, and in a state of disrepair. Taxpayer's Ex. A-F. She says it is a "white elephant" that cannot be valued using any method because "there is no DOR market approach model that is suitable to this building." *CTAB FC-2019-14, Allen Hrg. Minutes, page 3, paragraph #3.* She has produced

documentation showing that there is asbestos and radon, and she has produced photos showing areas of the house in very bad condition. *Id.*

20. In Ms. Allen's hearing and written submissions, she detailed the history of appraisals of this house, showing fluctuations in value on occasion from one cycle to the next, both up and down. She says she has appealed her appraisal on this house a number of times, and she has pointed out that the DOR used a cost analysis because they were unable to find a comparable property, but she further claims that the cost method is unsuitable because "neither I nor any owner of this building would ever think of replacing it." *CTAB FC-2019-14, Allen Hrg. Minutes, page 1, paragraph #5.* Parts of the house were built in the 1950s. She relates statements from persons familiar with the property and who work in the realty business, construction trades, and appraisal profession, who, she claims, have all told her that the building is overvalued by the Department of Revenue. *Id.*
21. Ms. Allen claims she received an assurance from Doug Wilkerson, a Department of Revenue appraiser, that the value "would not be raised" for the 2019 cycle, and she stated at the end of her county hearing that this assurance is the main reason she chose to appeal. *CTAB FC-2019-14, Allen Hrg. Minutes, page 3, paragraph #2.*
22. Ms. Allen has also recounted the many appraisals of her home during the roughly two decades in which she has owned the property, and she says that her neighbors' values in this cycle did not increase as much as hers. She also says she lives in a bad neighborhood where she believes "drug deals" and other disreputable behaviors occur.

23. The Department used the cost method to arrive at a market value for Ms. Allen's house, and the property record card contains the various calculations made to arrive at a cost-method appraisal. *CTAB FC-2019-14, Allen Hrg. Minutes, page 2, paragraph #3*. At the county board hearing Ms. Dawn Cordone, the area manager for the Department, presented testimony on this property. She pointed out that Ms. Allen has never sought a fee appraisal. *Id.* She said the value is sustainable as a market value, and that people will "pay for inferior properties" because of the great demand for real estate in the area. *Id.* She said the many points made by Ms. Allen regarding the condition of the property and the obsolescence have all been addressed in the appraisal process. The grade, depreciation, and the cost and design rating were all adjusted downward. *Id. at page 2, paragraph #4*.
24. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

JURISDICTION AND STANDARD OF REVIEW

25. The Montana Tax Appeal Board is an independent agency not affiliated with the Montana Department of Revenue. We hear this appeal under the authority granted to us under MCA §15-2-301. This Board must determine, based on a preponderance of the evidence, whether the Department of Revenue accurately valued Ms. Allen's property for tax year 2019/2020.
26. We review this appeal from the Flathead County Board *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 MT 138.

CONCLUSIONS OF LAW

27. To whatever extent the following conclusions of law may also be construed as findings of fact, they are construed accordingly.
28. The Department's appraisals are generally presumed to be correct, and the Taxpayer must overcome this presumption, but the Department of Revenue also bears a minimum burden of providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428 P. 2d 3, 7, cert. denied 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).
29. We do not believe that Ms. Allen has made a showing that the Department has erred in its calculation of the value of her residence. It is true that the structure is unique from typical single-family homes in almost every way, and therefore the Department correctly used the cost approach to find the market value.
30. Very little of what Ms. Allen relies on is useful as evidence. She proffers a history of appraisals of this residence going back 20 years but does not seem to be focusing on the fact that she lives in a market where prices have increased dramatically and steadily in recent years.
31. Ms. Allen offers much hearsay from "people familiar with architectural design and engineering" but did not call them as witnesses although she was free to do so. She has never had a fee appraisal performed, and the closest thing to a viable written opinion she has presented is an email from Doug Dakin, a real estate broker, stating that he might list the entire property for \$70,000. As for her conversations with Mr. Wilkerson, even if we took his supposed utterances to Ms. Allen at face value, he

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could not be qualified to state off the top of his head, and prior to undertaking a full appraisal process, that her house, once appraised, would be at or below the assessed value of the previous cycle.

32. Furthermore, and more directly to the point, the house is not uninhabitable. She resides there, and therefore so could any other buyer. Even if the place would be difficult to repair, and even if it must be demolished in order to have a more modern structure to reside in, it does not change the fact that there is market value now. As Ms. Cordone of the Department of Revenue made clear, there is demand in the area for such properties with such structures. And Ms. Cordone further showed, unrebutted evidence, that the Department worked with Ms. Allen to achieve the lowest possible value by increasing the depreciation and lowering the various condition ratings so that the cost analysis would yield the lowest possible defensible market value.

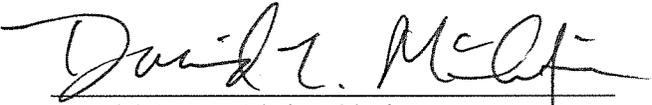
ORDER

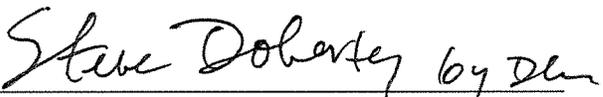
IT IS HEREBY ORDERED

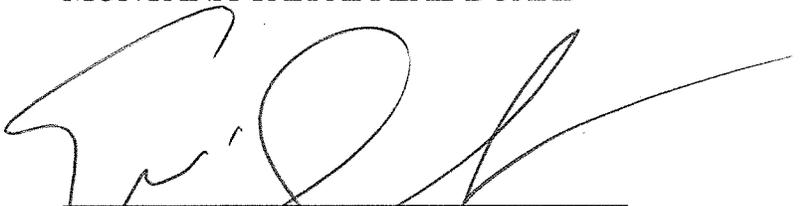
We hereby order that the Department of Revenue's entry of \$41,950 as the value of Ms. Allen's residence remain unaltered.

Ordered September 4, 2020.




David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD


Steve Doherty, Board Member
MONTANA TAX APPEAL BOARD


Eric Stern, Board Member
MONTANA TAX APPEAL BOARD

Notice: You are 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. MCA §15-2-303(2).

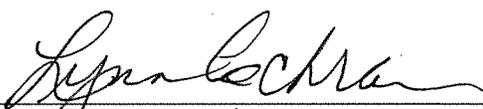
Certificate of Service

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 September, 4, 2020 to:

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

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