

VIVIAN ALLEN,

*Appellant,*

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

*Respondent.*

CASE No: PT-2019-25

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

**STATEMENT OF THE CASE**

Per the request of the Taxpayer, this appeal is decided on the record without an in-person hearing. This Montana Tax Appeal Board (Board) is considering written submissions and all exhibits and testimony from a county appeal hearing. The appeal concerns the value of a legally described lot that sits next to the primary residence of Ms. Vivian Allen, in Hungry Horse, Montana. This piece of land was assessed by the Montana Department of Revenue (DOR) at a value of \$11,218, but Ms. Allen believes the property is worth \$3,197. The Flathead County Tax Appeal Board unanimously denied Ms. Allen’s appeal in this case. We affirm their denial.

**ISSUE TO BE DECIDED**

Whether the Department of Revenue properly appraised lot 8 of two lots purchased in 2018 by Ms. Allen. The other lot, lot seven, has a residual value of \$3,197, so the Taxpayer is appealing on the value of Lot 8.

### **PROPERTY DESCRIPTION**

The street address of the property in question is 223 First Avenue South, Hungry Horse, MT. The geocode is 07-4187-08-2-09-09-0000, S08, T30N, R19 W, BLOCK 6, Lot 8, ASSR# 0000978950.

### **EXHIBIT LIST**

The Board admitted the following exhibits submitted by the Taxpayer:

Ex. A-R1: August 2, 2019, CTAB letter about four appeals which were returned to give the listing of the value of each appealed property separately;

Ex. A-R2: DOR alleged comparables for improvements at 215 1<sup>st</sup> Ave. S. but shows land comparables instead, which are irrelevant. The cost and market values are both shown;

Ex. A-R3: Annotated Land Model Sales Information page provided by DOR showing all but one (land) property is Cost, not Market approach; most properties contained improvements;

Ex. A-R4: Taxpayer annotated property record card for parcel and improvements;

Ex. A-R5: Annotated property record cards for: the neighbor across the alley, the neighbor to the northeast fronting subject property. Exhibit shows how DOR changed them from market to cost in the last cycle;

Ex. R6: Annotated MCA showing any appeal of property valuation resulting in a tax difference of \$5 or more is recognized as validly appealable and expected by legislators to be honored as such. MCA 15-1-402 (8), 15-16-101 (6). MCA 15-16-118 (1), (2) and (3), 15-16-605 (3);

Ex. A-R7: August 21, 2019 FCTAB revised Appeal Docket letter;

Ex. A-R8: Bedroom radon levels, two- and one-half times the EPA safe level;

Ex. B: CTAB rationale for denying county FC-2019-14 and property Owner Rebuttal of the same;

Ex. C: Conclusion and Requests for relief from MTAB PT-2019-25;

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- Ex. D: Detailed Rebuttal of DOR at CTAB FC-2019-13, PT-2019-24;
- Ex. D-R9: Annotated MCA 15-8-307;
- Ex. D-R10: February 18 and 19, 2020 annotated Discovery requests and responses from DOR about legal guidance the DOR relies on about its survey and/or encumbrance assessment theories;
- Ex. D-R11: Annotated MCA 15-1-101, ARM 42-20-106;
- Ex. D-R12: Other annotated rules cited by DOR's Discovery Answer and MCA 15-7-113;
- Ex. D-R13: MCA 15-7-106, DOR employee training and etiquette, professional ethics, etc.;
- Ex. D-R14: Annotated DOR Land Sales Comparables grid with comparables;
- Ex. D-R15: Spreadsheet addressing DOR "comps" supplied on DOR Land Sales Comparables grid;
- Ex. D-R16: Property Record Cards for previous listed sales from the grid with subject property and seven other properties;
- Ex. D-R17: Map showing geographical and social neighborhood locations with detailed spreadsheet analysis of grid information using Cost method everywhere and other anomalies and facts;
- Ex. D-R18: May 29, 2020 letter from Mr. Don Barnhart, owner, B&F Excavating Company, Inc. stating Flathead County setback regulations prohibit an approved septic installation on property Lots 7 and 8;
- Ex. D-R19: January 6, 2020 letter from Hungry Horse County Water and Sewer District stating there is no city water or sewer on property;
- Ex. D-R20: GIS map printout from Flathead County Septic Permit Lookup, showing no logged septic on Lots 7 and 8;
- Ex. D-R21: December 24, 2019 letter form Flathead Electric Co-op and documentation that electric service is completely retired from property Lots 7 & 8;

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Ex. D-R22: December 26, 2019 email from NW Energy documenting that there is no natural gas on the property Lots 7 & 8;

Ex. D-R23: December 27, 2019 email from CenturyLink Telephone documenting that there are no phone service lines on the property;

Ex. D-R24: MCA 15-7-112, 15-7-131, 15-8-111 are codes ignored by DOR in their inequitable appraisals and assessments;

Ex. E: CTAB rationale for denying FC-2019-13 and property owner rebuttal of the same; and

Ex. F: Conclusions and Requests for Relief of MTAB with PT-2019-24.

Taxpayer Filings listed below:

Taxpayer Discovery Request for 12/30/2019 and 1/24/2020;

Taxpayer Answer to Requests on 2/12/2020;

Motion for Filing Deadline 2/28/2020;

Discovery Requests to MDOR 3/9/2020;

Submission of Exhibits and Arguments 4/23/2020;

Information letter for Final Arguments 5/26/2020; and

Taxpayer's Rebuttal Arguments 6/10/2020.

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.

Flathead County Tax Appeal Board exhibits incorporated by this Board:

A. Various photos of exterior of 215 1<sup>st</sup> Ave. S. house from all directions;

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- B. 2012 Remax letter from Bill Dakia to DOR with trend report and market price;
- C. Opening statement for 215 1<sup>st</sup> Ave. S. appealing value of \$41,950;
- D. 1997 Assessment Notice of subject property;
- E. Notes about when DOR would come to inspect and result;
- F. 2009 Assessment Notice of Lot 9 & 10;
- G. Approved Decision from FCTAB on 11/15/2012;
- H. Photos of drug drive thru for meth and pot;
- I. CAPNM letter 7/16/2016 about radon and asbestos;
- J. 2009 Assessment Notice for Lots 11 & 12 with total values;
- K. 2019 Classification & Appraisal Notice;
- L. 09/13/2009 agreement with Richard Tague about the 1993 Chevy Caprice Wagon;
- M. Photo of building with cross and ten commandments;
- N. DOR notes on letterhead for 215 1<sup>st</sup> Ave. S. and 223 1<sup>st</sup> Ave. S; and
- O. Memo of 215 1<sup>st</sup> Ave. S. Neighborhood Comparing Net Changes with Improvements only.

**FINDINGS OF FACT**

1. In June of 2018, Ms. Allen purchased two lots which sit east of her primary residence, to append them to her property, thereby making one large parcel. Ms. Allen paid \$16,000 for these two lots, numbered Lot 7 and Lot 8. *Taxpayer's Ex. C.*
2. Ms. Allen subsequently requested, in July of 2018, a "Delete and Combine" from both the County and the Department of Revenue, "in order to save on taxes." This is a process whereby the DOR must value the entirety of lots together as one parcel. Through an economy of scale, it may result in reducing the total valuation to less than the sum of the values for each lot separately. *Id.*

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3. Although the county combined the properties in their records, the Department testified it requires notification from the County to update the DOR property records, which had not yet been completed by the deadline for the 2019/2020 appraisal cycle. *FCTAB Hrg. 24:12, Taxpayer's Ex. D.* That process is appealable for the 2021/2022 valuation cycle.
4. The subject property of this appeal is Lot 8. The Department has appraised Lot 8 for land value only at \$11,218. It contains an old, uninhabitable small house, whose value was reduced to zero by the Department. *Dept. Ex. A.*
5. To find the market value of Lot 8, the Department compared the subject property to other comparable vacant land sales in the area, and Ms. Dawn Cordone of the Department of Revenue, Flathead county office, offered testimony during the County hearing defending the use of those comparable sales as appropriate. *FCTAB Hrg. 49:47.*
6. Ms. Allen believes both lots 7 and 8 should be assessed as "residual" lots "owing to [her] Delete and Combine" request made in July of 2018, and the notion that she could not build a home or place a septic system on either due to their small size. *Taxpayer's Ex. C.*
7. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

**JURISDICTION AND STANDARD OF REVIEW**

8. 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.

9. 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 AND BOARD DISCUSSION

10. To whatever extent the following conclusions of law may also be construed as findings of fact, they are construed accordingly.
11. 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).
12. Ms. Allen has failed to meet her burden in overcoming the presumption that the Department's valuation was correct. To set a market value for Ms. Allen's property, the Department has relied on two sets of information, a review of recent comparable land sales in the area and the price she paid for the property.
13. First, Ms. Allen has not presented any evidence or documentation to rebut the comparable sales data presented by the Department, which Ms. Cordone testified prove a fair value of \$11,218 for the lot. Second, Ms. Allen's purchase price in 2018

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within six months of the statewide lien date, for both the subject property and the lot next to it (Lots 7 and 8, together), totaled \$16,000. The total assessed value of those two lots is now \$3,197 (for Lot 7) and \$11,218 (for Lot 8, the subject), totaling \$14,415. This assessment gives her a discount from what she paid for the two lots, of over \$1500.

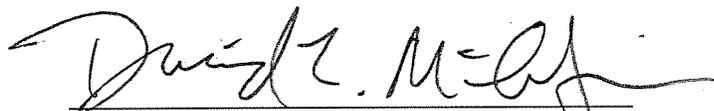
14. Much of Ms. Allen's written testimony relies on a conversation she reports to have had with a Mr. Doug Wilkerson of the Department, who, she claims, made representations to her about what she might expect in terms of an appraised value in the 2019/2020 assessment cycle. We do not find such conversations to be relevant, and there is no evidence that Ms. Allen rely on anything Mr. Wilkerson told her in taking any subsequent action. What matters is whether the appraisers who work for the Department of Revenue properly followed procedure and modeling for the Department's mass appraisal of Ms. Allen's property. We find, as did the County Board, that they did.

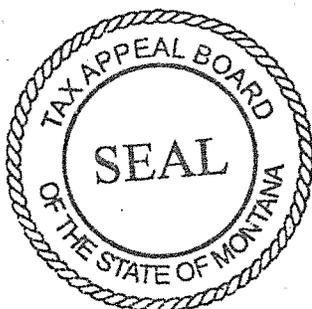
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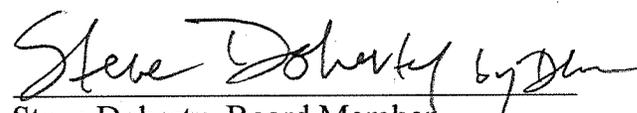
**ORDER**

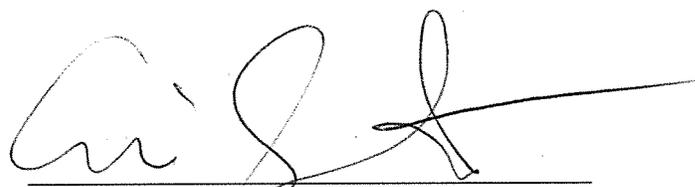
We, therefore, hold for the Department, and hereby order entry of an appraised value for the subject property of \$11,218.

Ordered September 4, 2020.

  
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David L. McAlpin, Chairman  
MONTANA TAX APPEAL BOARD



  
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Steve Doherty, Board Member  
MONTANA TAX APPEAL BOARD

  
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Eric Stern, Board Member  
MONTANA TAX APPEAL BOARD

**Notice:** You are entitled to judicial review of this Order by filing a petition in the 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).

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**Certificate of Service**

I certify that I caused a true and correct copy of the foregoing, Finding 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:

**Vivian Allen**

P.O. Box 190278

Hungry Horse, Montana 59919

**Brendan R. Beatty**

**Montana Department of Revenue**

P.O. Box 7701

Helena, Montana 59604-7701



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Lynn Cochran, Legal Secretary

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