

**BEFORE THE MONTANA TAX APPEAL BOARD**

**FILED**

NOV 14 2018

**Montana Tax Appeal Board**

CASE No: PT-2018-42

DAVID & PAULA OSTBY,

Appellants,

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Respondent.

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

Before the Board is the appeal of David and Paula Ostby from the Gallatin County Tax Appeal Board decision denying their appeal of the Montana Department of Revenue's valuation of the Ostby's property in that county. The subject land in this appeal is described as follows: Headlands, S32, T01, S, R06 E, ACRES 0.597, PLAT J-346, LOT 9, geocode 06-0905-32-3-13-0000; with a common address of 2232 Bucks Run Ct., Bozeman, Montana. The land comprises 0.597 acres. The following improvements are on the land: A three bedroom, four full-bath, one half-bath home with a total gross living area of 4,324 square feet. MDOR Ex. B. The one-story home with attic was built in 2010. The additions to the home are a 1,426 square foot attached garage, three decks, and two open porches.

**ISSUE**

The issue before the Board is whether the Department of Revenue (DOR) correctly determined the value of the land, and improvements for property tax purposes.

**FINDINGS OF FACT**

1. The record includes all materials submitted to the Gallatin County Tax Appeal Board (GCTAB) and materials submitted to Montana Tax Appeal Board (MTAB). The matter was considered on the record without a hearing. All parties were afforded the opportunity to present additional evidence.
2. The taxpayers submitted the following exhibits which were considered by this Board:
  - a. Exhibit 1: Taxpayer's Letter: emailed on July 30, 2018
  - b. Exhibit 2: Taxpayer's Letter: emailed on September 18, 2018
3. The following DOR exhibits were submitted, and initially considered by the GCTAB:
  - c. MDOR Ex. A: Property Comparison Worksheet
  - d. MDOR Ex. B: 2018 Property Record Card (PRC) for the Ostbys
  - e. MDOR Ex. C: Comparison PRC for 1321 Headlands Ct.
  - f. MDOR Ex. D: Comparison PRC for 2261 Bucks Run Ct.
  - g. MDOR Ex. E: Comparison PRC for 2247 Bucks Run Ct.
  - h. MDOR Ex. F: Comparison PRC for 2224 Bucks Run Ct.
  - i. MDOR Ex. G: Comparison PRC for 2256 Bucks Run Ct.
  - j. MDOR Ex. H: Comparison PRC for 2237 Snow Flake Ct.
  - k. MDOR Ex. I: Comparison PRC for 2218 Snow Flake Ct.
  - l. MDOR Ex. J: Comparison PRC for 2254 Snow Flake Ct.
  - m. MDOR Ex. K: 20160108 Realty Trans. Cert. and PRC Lot 15
  - n. MDOR Ex. L: Comparison of Properties Sold in Headlands



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8. The Department issued its AB-26 determination letter on November 8, 2018. MDOR Ex.CC. The review did not result in any adjustments to the land value or improvement values. *Id.*
9. On December 7, 2017, the Ostbys appealed the Department's AB-26 results to the GCTAB. MDOR Ex.DD. They contended the Department's assessment of both their land and improvements should be reduced. They requested a land value of \$138,000, and a buildings and an improvements value of \$511,000, for a total value of \$649,000.
10. Although Mr. Ostby brought exhibits to the GCTAB hearing, they were not allowed to be presented because they had not been provided to the GCTAB and the MDOR in advance of the hearing as required by that Board. GCTAB Hr'g Tr., at 40:38-41:05; MDOR Ex.EE.
11. The Department compiled Exhibit A at Mr. Ostby's request during the AB-26 review; it includes information about the Ostbys' property and eight of their neighbors' properties. MDOR Ex. JJ, ¶¶7-8. Exhibits B through J are the 2018 property record cards for those eight properties. These properties' valuations were reviewed by the MDOR and were found to be accurate. There were substantial differences between these properties and the Ostbys' property, which accounted for the differences in value of the properties. *Id.*
12. Exhibit K is a Realty Transfer Certificate (RTC) for an April 8, 2016 sale of an unimproved parcel, and the Property Record Card (PRC) for this parcel, which is in the same subdivision and less than a block away from the Ostbys' property. This sale was after the January 1, 2016 valuation date, and the parcel was not used by the

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DOR to value the Ostby's property during the reappraisal cycle; it was only submitted by the department at the GCTAB hearing as an additional measure of support for the accuracy of the assessed value of the Ostbys' land. GCTAB Hr'g Tr., at 26:18-27.

13. The Department responded to Mr. Ostby's request at the GCTAB Hearing, for a reduction in the property assessment due to 2010 hail damage and for a recharacterization of his deck material, by noting that an adjustment for these items could not be made because the appraiser was not allowed to visit the property to confirm the basis for these requests. GCTAB Hr'g Tr., at 28:10-28:40; MDOR Ex. JJ, ¶¶9-10.
14. After hearing all the evidence and testimony at the May 23, 2018 hearing, the GCTAB denied the Ostbys' appeal. MDOR Ex. FF.
15. On June 21, 2018, the Ostby's appealed the GCTAB's decision to the Montana Tax Appeal Board (MTAB). The Ostbys requested a land value of \$138,000, and improvements value of \$517,704, for a total value of \$655,704. MDOR Ex. GG. During a telephonic scheduling conference on July 24, 2018, Mr. Ostby requested that the MTAB proceed with considering this appeal based on the record, and without conducting a hearing. The MTAB issued a Notice of Briefing Schedule on July 25, 2018, allowing the parties to submit additional information on or before September 6, 2018, with responses due on or before September 18, 2018. MDOR Ex. HH.
16. The Department filed its Proposed Findings of Fact, Conclusions of Law and Order on September 6, 2018, incorporating

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the exhibits presented at the GCTAB hearing and other relevant documents including the following:

- a. MDOR Ex. AA: 20170703 Assessment Notice
- b. MDOR EX. BB: 20170707 Ostby's AB-26
- c. MDOR Ex. CC: 20171108 AB-26 Determination & Packet
- d. MDOR Ex. DD: 20171207 Ostby's Appeal to GCTAB
- e. MDOR Ex. EE: 20171212 GCTAB Acceptance Letter
- f. MDOR Ex. FF: 20180823 GCTAB Decision
- g. MDOR Ex. GG: 20180621 Ostby's Appeal to MTAB
- h. MDOR Ex. HH: 20180725 MTAB Notice of Briefing Schedule
- i. MDOR Ex. II: Prop. Assessment Division Procedure 2-3-001.1
- j. MDOR Ex. JJ: Affidavit of Dept. Appraiser Sheryl Velishek
- k. MDOR Ex. KK: Land Model Sales Information
- l. MDOR Ex. LL: Cost Calculations.

17. Although Mr. Ostby was not permitted to submit documents at the GCTAB hearing, he did submit several letters and documents for consideration by this Board. This Board made a transcript of the hearing before the GCTAB which was part of this Board's review. See Exhibits 1 and 2.

18. Chief among Ostby's complaints was that DOR Exhibit K was used to value his property, and it described a property sold after the lien date. The DOR submitted credible evidence that this sale was not used to value the property but was used as supporting evidence. He also requested corrections to DOR Exhibits L and M. It appeared

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that geocodes were transposed. The DOR provided corrected exhibits. DOR's evidence resolved any doubt about the procedures followed. See Exhibits 1 and 2.

19. Ostby complained that some of his neighbors' properties were appraised using a market sale approach, while his appraisal used a cost approach. The DOR submitted substantial credible evidence that the neighboring properties had insufficient similarities in the market area to enable the construction of a defensible sales comparison model. MDOR Ex. DD and GG. Ostby had no answer to this point. DOR's evidence adequately justified its process and the resulting value. See also Exhibits 1 and 2.

20. Ostby contended the DOR had sufficient access to his property during and after construction to obtain the information necessary to correct what he characterized as errors made describing his property. Exhibits 1 and 2. DOR responded that the house was constructed in 2010, and it is required to revalue such property every two years. The DOR also responded that it did not have access to the property during this cycle. MDOR Ex. JJ. Ostby provided no credible evidence to support his contentions, and on the relative importance of the alleged errors. The DOR adequately supported its position.

21. Ostby also complained about the deficiencies in his neighborhood. According to him the following diminished the value of his property and should have been considered by the DOR in its valuation process: he has no basement, he is unable to put in a well to irrigate (he is on city drinking water), he neighbors a commercial nursery, his neighbor keeps chickens and geese, his property is 3-5 feet lower than his neighbors, renters live on either side of him, and

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nearby lots and improvements are appraised at much lower values than his property. MDOR Ex. DD and GG, GCTAB transcript throughout. The taxpayer provided no substantial, credible evidence of the dollar value impact of each of the deficiencies he identified and claimed. Exhibits 1 and 2.

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

## CONCLUSIONS OF LAW

23. To whatever extent the foregoing findings of fact may be considered as conclusions of law they are incorporated accordingly.

## JURISDICTION AND STANDARD OF REVIEW

24. The Ostbys timely appealed the GCTAB's decision to the MTAB, which has jurisdiction over this case, and may determine the appeal on the record. Section 15-2-301, MCA. The MTAB follows a *de novo* standard of review when hearing matters appealed from a county tax appeal board. *CHS, Inc. v. Mont. State Dept. of Revenue, 2013 MT 100, ¶29, 369 Mont. 505,299 P.3d 813.*

## BURDEN OF PROOF

25. The taxpayer has the burden to prove error in the Department's assessment. Section 26-1-401, MCA; *Farmers Union Cent. Exch. v. Dept. of Revenue, 272 Mont. 471, 476, 901 P.2d 561,564 (1995), citing Western Airlines, Inc. v. Michunovich, 149 Mont. 347, 353, 428 P.2d, 3, 7 (1967).*

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26. However, the DOR cannot rely entirely on the presumption in its favor and must present a modicum of evidence to support its assessed values. *Id.*

ASSESSMENT

27. All taxable property must be appraised at 100% of its market value. Section 15-8-111, MCA. 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 sell and both having reasonable knowledge of relevant facts. *Id.* For the taxable years from January 1, 2017 through December 31, 2018, all property classified as a single-family residence under §15-6-134, MCA, must be appraised at its market value as of January 1, 2016. ARM 42,18.124(1)(d).
28. The Department is authorized to use one or more approaches to value residential property, including the comparable sales or market data approach and the cost approach. *Albright v. State*, 281 Mont. 196, 208-09, 933 P.2d 815, 823 (1997).
29. The Department met its burden of proof showing it correctly valued the Ostbys' land. The Department properly relied on a land model using comparable land sales to determine the Ostbys' land value. MDOR Ex. JJ, ¶ 12. The DOR's reliance was in accord with the law.
30. The Department met its burden of proof showing it correctly valued the Ostbys' improvements. The Department relied on the cost approach to calculate the value of the improvements given the lack of sufficient comparable sales in the neighborhood upon which

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to base such a valuation. Ex. LL. The Taxpayer offered no credible, substantive evidence to seriously contest this process or the resulting values.

31. The taxpayers did not meet their burden of proof. They did not demonstrate with substantial, credible evidence that the DOR erred either in its process, calculations or eventual values for the subject's property.

ORDER

- I. David and Paula Ostby's appeal is denied.
- II. The DOR's values of the taxpayer's property at 2232 Buck's Run Ct., Bozeman, Montana, geocode 06-0905-32-3-04-13-0000, for tax years 2017-2018 is affirmed:
- a. The land has a value of \$184,881;
  - b. The improvements have a value of \$606,810; and,
  - c. The total value is \$791,691.

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Ordered on November 14<sup>th</sup>, 2018.



A handwritten signature in black ink, appearing to read "David L. McAlpin".

David L. McAlpin, Chairman  
MONTANA TAX APPEAL BOARD

A handwritten signature in black ink, appearing to read "Stephen A. Doherty".

Stephen A. Doherty, Member  
MONTANA TAX APPEAL BOARD

A handwritten signature in black ink, appearing to read "Valerie A. Balukas".

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. The Department of Revenue shall promptly notify this Board of a 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

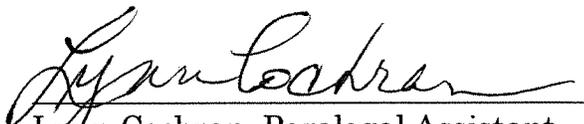
I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law & Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on November 14, 2018 to:

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