

BEFORE THE MONTANA TAX APPEAL BOARD

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THE DEPARTMENT OF REVENUE	)	DOCKET NO.: PT-2013-26
OF THE STATE OF MONTANA,	)	
	)	
Appellant,	)	
	)	FACTUAL BACKGROUND,
-vs-	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
RUSSELL LEE VOYTOSKI, JR.,	)	FOR JUDICIAL REVIEW
	)	
Respondent.	)	

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**Statement of Case**

Department of Revenue (DOR) appealed a decision of the Cascade County Tax Appeal Board (CTAB) which placed an improvement value of \$87,181 on the subject property as a result of the Cascade CTAB's Memo and Order issued pursuant to § 15-15-103 (2), MCA, on February 18, 2014. DOR originally appraised the subject improvements at \$219,307 and valued the land at \$31,592. During the DOR AB26 informal review the value of the subject property was not adjusted because Taxpayer denied DOR's request for an internal inspection. Taxpayer appealed this decision to CTAB. CTAB affirmed DOR's valuation but its decision was later vacated and a value of \$87,181 was entered by CTAB. The DOR appealed the CTAB ruling. On appeal to this Board, Taxpayer did not contest the value assigned for the land, but sought to value the improvements at \$87,181.

The subject property is a unique log home and shop on a 116-acre tract skillfully built from the ground up by Mr. Russell Lee Voytoski (Taxpayer.) The house has three bedrooms and two bathrooms. Taxpayer, a native of Montana and a logging contractor, built the main residence over a period of fifteen years at times working eighteen hours a day. Ex. 4. The record shows that the Taxpayer overcame tremendous obstacles (including overcoming cancer and getting over the destruction of his trailer due to fire) and built the house against all odds through great persistence and self-sacrifice. *Id.* The house is located 34 miles southeast of Great Falls in Cascade County, Montana. DOR Ex. E. Taxpayer literally built the house by his own hands. The logs used in the main residence were cut, peeled and cured by the Taxpayer. The house has hand-peeled railings built from elk rubbed trees taken from the property. The fireplace is 6 feet-wide by 22 feet tall and made from moss rock. All the cabinets in the kitchen and both bathrooms are hand built. Construction on the residence ceased for two years in 2002 as the Taxpayer battled and overcame cancer and cancer treatment. In 2005, Taxpayer resumed working on his house and was able to move into the main house in 2007, even though the house had no plumbing, no electricity and had only the fireplace for heat. In 2010, Taxpayer also started work on a shop. Taxpayer admits that, to a wealthy out-of-state buyer who comes to Montana for recreation, his property may be worth more than it actually cost to build. Ex. 4. The DOR appraiser also

testified that the subject property might have a market value well above the DOR's appraised value.

Taxpayer allowed the DOR to conduct an external inspection but denied DOR's request for an internal inspection. Because Taxpayer denied DOR's request for an internal inspection, DOR did not amend the value set for the improvements during the AB26 review. DOR Ex. A at 3.

At the Montana Tax Appeal Board (Board) hearing held on March 3, 2015, the DOR was represented by tax counsel Michele Crepeau, DOR commercial and residential appraiser Elaine Axtman and DOR area manager Joan Vining, who provided testimony and evidence in support of the appeal. The Taxpayer, Russell Lee Voytoski, Jr., appeared on his behalf, and presented testimony, and evidence in opposition to the appeal.

The Board having fully considered the testimony, exhibits, and all matters presented, finds and concludes the following:

#### **Issue**

The issue before this Board is whether the Department of Revenue determined an appropriate market value for the subject property for tax year 2013.

## Summary

Russell Lee Voytoski, Jr., is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board reverses the default value granted the Taxpayer by the Cascade County Tax Appeal Board.<sup>1</sup>

## Findings of Fact

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present evidence, verbal and documentary.
2. The subject improvements are located upon a 116 acre tract with the following legal description:  
  
Certificate of Survey 3626, Section 12, Township 16 North, Range 5 East, County of Cascade, State of Montana, Assessor code 0004439300. Appeal Form.
3. The DOR classified subject property as agricultural land for valuation purposes with a homestead plot of one acre. Of the remaining acreage, 52.47 acres have been classified as agricultural and 62.530 acres have been classified as forest land. However, only the value of the improvements are before this Board.

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<sup>1</sup> This default value had been entered into the County tax rolls because of the procedural error described in Findings of Fact ¶¶ 9-12 below.

4. For tax year 2013, the DOR appraised the subject improvements at a value of \$219,307 (\$177,730 for the single-family residence and \$41,577 for other buildings, a shed/well house, and a pole frame garage, and yard improvements.) DOR Ex. C.
5. Taxpayer filed an AB26 form for informal property review with the DOR on August 9, 2013. Ms. Axtman from the DOR Great Falls office telephoned Mr. Voytoski on September 25, 2013 to request an internal inspection. Mr. Voytoski declined to allow access. No adjustment was made because the DOR was denied access to the interior of the improvements. Appeal Form; Taxpayer, DOR Administrative Hearing Status Questionnaires at 1; Testimony Axtman DOR Ex. A at 3.
6. Appraiser Axtman wrote on the AB26 review form: "Without being able to conduct an internal inspection of the property, I believe the value of the property is fair and equitable." VOYTOSKI-DOR 000003.
7. Taxpayer filed an appeal with the Cascade County Tax Appeal Board (CTAB) on October 1, 2013. The Taxpayer requested a reduction in the value of the improvements to \$87,181. The land value is not in contention. Appeal Form.

8. The Cascade CTAB heard the appeal on November 6, 2013 and upheld the DOR value for the subject property. *See* Appeal Form.
9. At the time of the CTAB hearing, the appointment terms of Chairman Arthur W. Dickhoff and Member Jean Clary had expired. The Cascade County Commissioners planned to re-appoint these members but had not done so at the time of the hearing, so Dickhoff and Clary continued to sit on the board. The CTAB heard testimony, accepted evidence, and issued its decision on this appeal and two others it heard that day: *Hickory Swing, LLC v. Department of Revenue; CBA, LLC v. Department of Revenue.*
10. On December 3, 2013, Hickory Swing filed a complaint in the Montana Eighth Judicial District, Cascade County, alleging the November 6, 2013 hearings were invalid because Dickhoff and Clary's terms were expired at the time of the hearing.
11. On February 18, 2014, the CTAB issued a Memo and Order voiding the November 6<sup>th</sup> hearing and granting all appeals heard that day. The Memo stated that, because their terms had expired and they had not been reappointed to the Board, the CTAB failed to properly hear the three appeals scheduled that day for hearing. Under § 15-15-103 (2), MCA, the CTAB treated the matter as never being timely heard by the Board before it went out of session for calendar year 2013.

12. Accordingly, all taxpayer requested values for the three appeals heard on November 6, 2013 were adopted. By order dated October 14, 2014, the District Court issued its order concluding that the Cascade CTAB hearings on November 6, 2013 were considered not to have occurred.
13. DOR exercised its right of appeal to MTAB by timely filing their appeal in this matter.
14. This Board issued its order, dated November 6, 2014, stating that it would move forward with the Department of Revenue appeal in this matter.
15. At the hearing before this Board, the Taxpayer amended his requested improvement value upward to \$117,581.
16. DOR valued subject improvements using replacement cost new less depreciation method, using estimated costs of construction as of July 1, 2008, because the subject is incomplete and under construction.  
  
Incomplete improvements typically do not sell so the market approach and accompanying comparable sales would not be available or alternatively, few or any sales of incomplete comparable properties would not allow for effective appraisal of value. In addition, the improvements are located on contiguous agricultural land. When improvements are sold on agricultural land, the buyer is not required to report the sales price. Therefore, the DOR's market model would not

contain sales information for this type of improvement. Testimony Axtman.

17. Taxpayer participates in the Department of Revenue's property tax assistance program and receives an 80 percent reduction in tax liability. DOR Ex. C.
18. Taxpayer adamantly refused DOR's request to conduct an internal inspection of the improvements. The DOR appraiser made a best-educated estimate of the market value based only on the external inspection and an estimated percent complete. DOR Ex. A at 3.
19. The Taxpayer presented evidence of construction costs for the improvements of \$117,581 and \$130,292. *See* CTAB Ex. 2A; Appeal Form.
20. The Taxpayer testified that the residence had no electricity and no running water. The only source of heat is the fireplace. He starts an onsite generator in order to pump water. Testimony Voytoski, CTAB Tr.: 6:18.
21. The Taxpayer did not contest the percent complete (94 percent) determined by DOR. Testimony Voytoski, CTAB Tr.: 7:3.
22. The Taxpayer did not contest the DOR determination that the grade factor of the residential improvements was very good, a factor of 7, which means a multiplier of 1.55. He pointed out that there was a lack

of plumbing, electricity and only one heat source. Testimony Voytoski, CTAB Tr.: 6:18.

23. The Taxpayer objected to the DOR's presence on the property and the DOR's use of photographs of the interior that were obtained from an internet real estate listing for the property. Testimony Voytoski.
24. The DOR testified that the costs of construction alone are not sufficient to determine market value. Testimony Axtman.
25. The DOR argued that the Taxpayer had not included the value of the logs used in construction of the improvements in his accounting of his costs. Testimony Axtman.
26. The DOR argued that the Taxpayer had allocated too little value for his own labor in constructing the improvements to reflect true market value for the subject. Testimony Axtman.
27. Given that the residential improvements were not complete and the property was comprised of agricultural land, the DOR was unable to obtain comparable sales data. *See* Findings of Fact ¶ 16.
28. DOR set a grade factor multiplier of 1.4 for the shed and pole frame garage and 1.55 for the residence. DOR Ex. C.
29. DOR set an Economic Condition Factor (ECF) of .93 for the residence and 1.0 for the shed and pole frame garage. DOR Ex. C.

30. DOR did make reductions in the value of the residence for the absence of running water, plumbing and heating. DOR Ex.C; Testimony Axtman.

### **Principles of Law**

1. The Montana Tax Appeal Board has jurisdiction over this matter. §15-2-301, MCA.
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. §15-8-111, MCA.
3. 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. §15-8-111(2) (a), MCA.
4. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. ARM 42.18.110(12).
5. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. §15-2-301(4), MCA.

6. Section 15-7-139(7) states:

“A county tax appeal board and the state tax appeal board may not adjust the estimated value of the real or personal property determined under subsection (6) unless the landowner or the landowner's agent:(a) gives permission to the department to enter the land to appraise or audit the property; or (b) provides to the department and files with the county tax appeal board or the state tax appeal board an appraisal of the property conducted by an appraiser who is certified by the Montana board of real estate appraisers. The appraisal must be conducted in accordance with current uniform standards of professional appraisal practice established for certified real estate appraisers under 37-54-403. The appraisal must be conducted within 1 year of the reappraisal base year provided for in 15-7-103(6) and must establish a separate market value for each improvement and the land.” Mont. Code Ann. § 15-7-139.

7. Section 15-7-139(6) provides:

“If a landowner or the landowner's agent prevents a person qualified under subsection (1) from entering land to appraise or audit property or fails or refuses to establish a date and time for entering the land pursuant to subsection (5), the department shall estimate the value of the real and personal property located on the land.”

**Board Discussion and Conclusions of Law**

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject property for tax year 2013.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain 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).

The Taxpayer has never allowed DOR personnel access to the interior of the buildings. Section 15-7-139, MCA, is clear in that it requires taxpayer to allow the DOR access into both the land and the improvements. If the Taxpayer does not grant access to the DOR for an internal inspection, this section allows the DOR appraiser to make an educated estimate of the value of the subject improvement based on their experience and on the findings of the external inspection. This section also gives the Taxpayer the option of either allowing the internal inspection, or of providing the DOR with a certified appraisal from an independent appraiser. If a Taxpayer denies the DOR access for an internal inspection, a certified appraisal might dislodge DOR's valuation. As this Board decided in CBA LLC, it behooves the Taxpayer to either allow an internal inspection or provide a certified appraisal of the subject improvements. *See Principles of Law ¶¶ 5-6 above.*

Based on the record this Board will not venture to make its own estimates of the degree of completion of the improvements or will not make any adjustments on the estimates reached by the DOR.

In the instant case, DOR has been denied access to the interior of the residence, garage and shed. DOR obtained photographs of the interior from a publicly available real estate listing. The photographs accurately depict, and the Taxpayer's testimony corroborates, that the improvements were of high quality and were built with Taxpayer's "own hands." Taxpayer has every right to be proud of his craftsmanship and efforts over the years. The pride in those substantial accomplishments in the face of difficult times, however, is insufficient to cast much doubt on the DOR's efforts, methodology, or conclusions. The Taxpayer's hard work, persistence and skill, are all laudable. Unfortunately, all these factors convince the Board that the market value of the subject property is higher than the actual construction costs expended by Taxpayer. In some ways, the assessment of DOR is a compliment to the skill and diligence of the taxpayer. His self-sacrifice, resilience, and skill are all reflected in the market value as assessed by the DOR.

DOR rated the subject residence at Grade 7. According to the Montana Appraisal Manual these are "residences of high quality construction, built with high quality materials, workmanship and custom craftsmanship. Exterior

ornamentation shows refinements with good quality fenestration throughout.” Montana Appraisal Manual at 271. The Grade Factor 7, which results in a multiplier of 1.55 for the residence and a multiplier of 1.4 for the shed and garage, were factors determined by the DOR appraiser as a result of her years of experience. Taxpayer argued that the lack of plumbing, electricity and heat were items that needed to be considered. DOR did, however, consider them and make appropriate deductions in the overall value of the residence. The lack of access to the interior of the building meant that DOR was required to make good faith estimates of the grade and degree of completion. The DOR determined that the improvements were 94 percent complete. The taxpayer did not controvert the 94 percent complete. The Board finds the DOR estimates to be reasonable and appropriate.

Taxpayer contended that, because the actual costs of construction for the improvements were at most \$130,292 (*See* Findings of Fact ¶ 19), the DOR should have used the actual construction costs as the value of the improvements. While the Taxpayer built the improvements for less than what the DOR valued the improvements, we note that the DOR’s legal mandate is to value the subject property at market value, not at the cost expended by the Taxpayer. This is especially true in this instance where the Taxpayer was the

builder and developer who realized substantial cost savings by using his own labor and expertise in improving the subject property.

### Conclusion

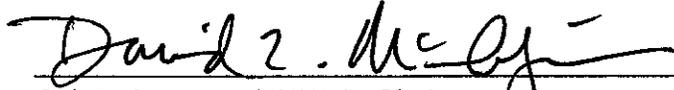
On the evidence presented, we conclude that the DOR's actions were entirely reasonable and legal. The Taxpayer cannot prevent the DOR from doing its job and then complain that the job done was inaccurate. The Taxpayer has not met his burden of persuading this Board that the DOR's actions, findings, or calculations were in error. The DOR has met its burden of proving credible evidence and testimony of the validity of the valuation they assigned to the subject property. Thus, the Board upholds the assessed value set by the DOR for the improvements of \$219,307. The default decision of the Cascade County Tax Appeal Board setting the value at \$87,181 for the improvements is reversed.

Order

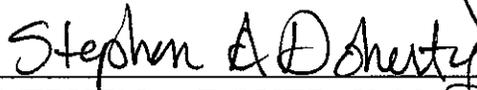
IT IS THEREFORE ORDERED by the Montana Tax Appeal Board of the State of Montana that the subject property value shall be entered on the tax rolls of Cascade County at a 2013 tax year value of \$219,307 for the subject improvements as determined by the Montana Department of Revenue.

Dated this 21<sup>st</sup> of April, 2015.

BY ORDER OF THE  
MONTANA TAX APPEAL BOARD



DAVID L. McALPIN, Chairman



STEPHEN A. DOHERTY, Member



VALERIE A. BALUKAS, Member

(SEAL)

**Notice:** You are entitled to judicial review of this Order in accordance with Section 15- 2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21<sup>st</sup> day of April, 2015, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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