

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

SEP 06 2016

Montana Tax Appeal Board

ACDC, L.L.C.,

Appellant;

v.

State of Montana,
Department of Revenue,

Respondent.

CASE No: PT-2016-10

**Findings of Fact,
Conclusions of Law, Order,
and Opportunity for Judicial
Review**

Before the Board is Appellant ACDC, L.L.C.'s appeal from the Deer Lodge County Tax Appeal Board's decision to deny its appeal of Respondent State of Montana, Department of Revenue's (DOR), valuation of ACDC's property. The property is located at 621 E. Park St., Anaconda; geocode 30-1285-03-4-44-07-0000; legal description W1/2 Lot 2, Block 33 of Anaconda original town site (the "property").

ISSUE

1. The issue before the Board is whether the DOR correctly determined the value of the uninhabitable improvements located on the property.
2. Appellant argues that the market value of the improvements is no more than \$7,674, which is the value the DOR placed on the improvements

as of July 1, 2008 (the start of the prior reappraisal cycle), reduced by 48%, the reduction DOR placed on the land.

3. DOR is asking for an improvements value of \$14,720 as of January 1, 2014.

FINDINGS OF FACT

4. The Board conducted a hearing on June 14, 2016 at 3:00 PM at 600 N. Park Ave., Helena at which the following were present:
 - a. Edward G. Beaudette, Esq. representing ACDC, L.L.C. as the taxpayer;
 - b. Tony Zammit, counsel representing DOR;
 - c. Julie Goebel, DOR appraiser for Deer Lodge County, as witness for DOR;
 - d. Andrew Hagen, DOR Anaconda area manager, as witness for DOR.
5. The following exhibits were introduced and admitted:
 - a. by ACDC, L.L.C.;

Ex. 1 (also marked as Appellant #4) – the DOR’s Assessment Information Packet,

- b. by DOR;

Ex. 7 – 2015 Property Record Card run date 03/02/2016,

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Ex. 8 – 2015 Property Record Card run date 08/12/2015.

6. ACDC did not introduce exhibits 1-3 or 5 and DOR did not introduce exhibits 1-6.
7. Mr. Beaudette testified for ACDC and described the improvements as follows, “a two story brick building, it was built in 1908 by my grandfather. He operated his barbershop on the west side of the building. The east side of the building and the top two floors were used as residence for his family, and my father in particular.” (MTAB Hrg. Transcr. 2:10-14.) Mr. Beaudette testified that he inherited the property in 1986 from his aunt who was the last occupant of the home. (Id. 2:15-16.)
8. Mr. Beaudette testified that the DOR reassessed the property in 2012 after he transferred ownership of it to ACDC, a limited liability company. (Id. 3:2-5.) Change in ownership triggers a new property assessment, so at that time, the DOR reassessed the value of the land at \$9,495 and the improvements at \$52,360. (Id. 3:5-8.) Mr. Beaudette filed an AB-26 (informal appeal) and he met DOR’s representatives Julie Goebel and the previous DOR area manager at the property to conduct a walk through inspection. (Id. 3:8-10.) The walk through demonstrated that the building has substandard knob and tube wiring, no water or heat, falling plaster in places, rendering it unsound and not habitable. (Id. 3:10-14.) In October of 2013, as a result of the AB-26, the DOR adjusted the improvements value to \$13,230 and left the land value at \$9,495. (Id. 3:15-17.)
9. The current appeal is taken from the January 1, 2014 value the DOR assigned to the improvements for the current appraisal cycle, tax years 2015-2016, which increased the building’s value from \$13,230 to \$15,210

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while decreasing the land value from \$9,495 to \$5,465. (Ex. 4.) Mr. Beaudette argues that the DOR cannot justify its 2014 valuation that increased the value of uninhabitable improvements by 10% while the parcel of land they are located on decreased in value by 48% within the 3-month time span between October 2013 and January 1, 2014. (MTAB Hrg. Transcr. 3:21-25, 4:1-5.) Mr. Beaudette concluded that the value of the improvements should have decreased commensurate with the reduction in the value of the land because there were no changes to the building that would have increased its fair market value by 10 percent. (Id. 4:11-25, 5:1-2.)

10. After inspecting the building, Ms. Goebel agreed that it has no heat or plumbing fixtures, has some water damage, and will need new windows and a new roof — as such she determined that the building is unsound and will remain that way until such time as Mr. Beaudette starts to remodel it. (Id. 7:13-25). This determination is reflected on the DOR's property record card for the building where the Condition, Utility and Desirability (CDU) factors are noted as Unsound (1), which is the lowest possible rating. (Id. 11:14-25, Ex. 8.)
11. Ms. Goebel testified that DOR did not use a market model to value the building because there is not a market for buildings of the size and in the condition as the subject improvements so she used the cost method to value the building. (Id. 9:14-19.) The DOR cost method calculates the replacement cost new for a two-story brick building of the subject's size to be \$147,000 and given that the building is 106 years old, applied a depreciation factor of 90 percent — meaning the model determined that the building is ten percent good. (Id. 10:8-10.)

12. Ms. Goebel explained that the \$22,725 value (combined land and improvements) assigned to the property after the AB-26 review in October of 2013 represented the value that the building would have had on July 1, 2008, the lien date for the 2008-2014 reappraisal cycle, not its appraised value in October of 2013. (Id. 13:19-22, 14:19-22.) Ms. Goebel explained that the difference in the improvements value in the six-years between July 1, 2008 and January 1, 2014, may be a result of “[m]aterial costs, labor cost, cost may have appreciated.” (Id. 14:12-14.) This logic applies to the cost method of valuation wherein the actual cost of materials to replicate a structure at the time of appraisal is calculated.

13. Mr. Hagen testified that the DOR calculated the land value as follows “[t]he 2014 values are from sales from 2008 through December 31, 2013. [a]nd in 2008 there was land value especially were very high and decreasing, and then after the financial issues of 2008, if you will, the market, the function of the market changed, and a lot of the values went down, not across the board, not in every area, not every type of property. . . . So the 2014 value is based on sales from ’08 through ’14, and market data says that people are paying this amount of money for this type of property.” (Id. 19:3-16.)

14. Mr. Hagen testified that the increase in the building’s value from the 2008 cycle to the 2014 cycle likely reflected an increase in the actual cost of the materials necessary to build the structure in Anaconda on the new appraisal cycle lien date of January 2014 as opposed to on July 1, 2008, the lien date for the 2008-14 appraisal cycle. (Id. 27:21-25, 28:1-6.)

CONCLUSIONS OF LAW

15. The Board has jurisdiction over this case and its order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-301.
16. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

Burden of Proof

17. The taxpayer bears the burden of proving the error of DOR's value. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
18. However, DOR cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of their action. *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.

Assessment

19. "All taxable property must be appraised at 100% of its market value..." Mont. Code Ann. § 15-8-111.
20. 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).

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21. “[T]he Legislature intended the Department to utilize both the cost approach and the market data approach, depending upon the available market data, when it assesses property and estimates market value.” *Albright v. State By & Through State*, 281 Mont. 196, 208, 933 P.2d 815, 823 (1997).
22. The Legislature has directed that the DOR use “a general and uniform method for purposes of appraising real property.” Mont. Code Ann. § 15-7-103.
23. “For the taxable years from January 1, 2009, through December 31, 2014, all property classified in 15-6-134, MCA, (class four residential) must be appraised at its market value as of July 1, 2008.” Mont. Admin. R. 42.18.124(1)(b).
24. “For the taxable years from January 1, 2015, through December 31, 2016, all property classified in 15-6-134, MCA, (class four residential) must be appraised at its market value as of January 1, 2014.” Mont. Admin. R. 42.18.124(1)(d).
25. Logic tends to support the taxpayer’s contention that the market value of an uninhabitable and unsound building could not possibly appreciate when it is located upon land that depreciated by almost 50% because of its location in an economically depressed market.
26. The DOR did not present evidence showing how the actual cost calculation for the building changed between the two cycles. All the DOR presented was testimony of its two witness who speculated that

the appreciation in value must have been a result of an increase material costs used in standard regional cost tables.

27. This Board finds that this speculative testimony is not sufficient to establish that the DOR met its burden to present evidence to support its increased improvement value. We note that in other hearings we have been presented with the specific cost calculations used to derive value via the replacement cost new less depreciation method of appraisal.
28. These conclusions leave us with an invalid value, but our duty is to find a market value in tax appeals. This Board concludes that barring any evidence from the taxpayer to the contrary, the most appropriate way to determine the 2015 value for the ACDC property is to keep the improvements value at the 2008 value.
29. In general the mass appraisal method of appraising property in Montana is the only viable way to achieve the results required by the Legislature within the timeframe and using the resources provided by law. But clearly mass appraisal has limitations as evidenced in this appeal of a very unusual property, where there are no valid market comparable sales. The alternative appraisal methods allowed by *Albright*, in this instance the cost method, can sometimes produce an illogical improvements value for unusual properties such as this subject.
30. With the information in the record of this appeal we find the taxpayer has met his burden to cast doubt on the outcome of the appraisal process for his property.

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ORDER

31. ACDC, L.L.C.'s appeal and complaint is **granted in part**.
32. DOR is **Ordered** to value the subject property at a total value of \$18,695; \$5,465 for the land and \$13,230 for the improvements, for tax years 2015 and 2016.

Ordered September 6, 2016.



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



Stephen A. Doherty, *Member*
MONTANA TAX APPEAL BOARD



Valerie A. Balukas, *Member*
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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. 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, 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 6, 2016 to:

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Michele Crepeau
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P.O. Box 7701
Helena, MT 59604-7701




Lynn Cochran, *Administrative Officer*
MONTANA TAX APPEAL BOARD