

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

NOV 04 2016

Montana Tax Appeal Board

State of Montana,
Department of Revenue,

Appellant;

v.

Beaubien Family Trust,

Respondent.

CASE No: PT-2016-14

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

1. At issue before the Board is Appellant State of Montana, Department of Revenue's appeal from the Gallatin County Tax Appeal Board (CTAB) decision setting the value of improvements owned by the Beaubien Family Trust. At the CTAB hearing on November 4, 2015 the taxpayer disputed the DOR's valuation of the improvements set at \$986,910. At the conclusion of the hearing, the CTAB found for the taxpayer and reduced the value of the improvements to \$586,546.
2. The subject property is commonly known as 3250 Two Moons Road in Big Sky, Montana. The legal description is Meadow Village #1, 2nd filing, S36, T06, R03, E, Block 3, Lot 15A, AMND Plat 1012; geocode 06-0427-36-3-08-12-0000. The appeal applies to tax years 2015 and 2016.

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ISSUE

3. Whether the DOR properly assessed the improvements on this property using a cost method to arrive at a market value of \$986,910 for tax years 2015 and 2016.
4. Beaubien responded that the DOR's cost method to value the subject improvements resulted in a higher value than similarly situated nearby properties valued using the comparable sales method. Beaubien requests that this Board affirm the CTAB's decision to value the improvements at \$586,456.

FINDINGS OF FACT

5. The Board conducted a hearing on May 4, 2016 at the offices at 600 N. Park Avenue in Helena, Montana at which the following were present for the parties:
 - a. Frederick C. Beaubien, trustee for the Beaubien Family Trust;
 - b. Michele Crepeau, senior tax counsel for DOR;
 - c. John Elliott, lead appraiser for DOR; and,
 - d. Roger Layton, commercial appraiser for DOR.
6. The parties agreed that the value of the parcel of land was properly set at \$103,454 and was not in dispute.

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7. Beaubien testified that the DOR used the cost method to value the subject property while the DOR used the comparable sales method to value almost all the other residences located on the same street. (MTAB Hrg. Transcr. 6:3-8.) Beaubien argued that this discrepancy in methods resulted in an increase in value for his property over the 2008-2014 appraisal cycle from \$1,064,000 to \$1,090,000 while every one of the other properties he determined were comparable properties on the street decreased in value between 12 and 20 percent. (Id. 9:21-25; Ex. 1, 2, 3.)
8. Beaubien introduced Exhibit 3, a summary table of characteristics prepared by Beaubien to compare the subject property to four other homes located on Two Moons Road that were all valued by the DOR using a market sales method. Beaubien introduced Exhibit 4, a map showing that the subject property and the four homes listed on Exhibit 3 are all in close proximity to one another. Beaubien introduced Exhibit 5, an exterior photograph of the subject property and the property record card as he printed it from the Montana cadastral website. Beaubien then introduced Exhibits 6 through 10, which also include an exterior photograph and the property record card for each of the four homes, which is where he obtained the information used to prepare Exhibit 3. Beaubien argued that Exhibits 3 through 10 support his argument that the subject property is not so distinctly different from these other four properties that it had to be valued using a different method.
9. Beaubien acknowledged that the DOR did use the cost method to determine the market value of two nearby properties, but he distinguished those homes from the subject property in that they were

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considerably larger homes, and yet those homes also had significant reductions in their assessed value from the 2008 to 2014 reappraisal cycle. (MTAB Hrg. Transcr. 20-24.) Beaubien argued that there was enough data available to derive a market value for his home using the comparable sales market analysis and thus the DOR did not need to use the cost method which is inherently more subjective and leads to too much variance as it relates to residential property. (Id. 24:16-25; 25:1-18.)

10. During discovery Beaubien produced copies of four appraisals on the subject property which had been done for financing and estate planning purposes over a period of years. None were done for the purpose of setting a fair market value for taxation purposes. Beaubien described each of the appraisals pointing out various strengths and weaknesses of each one.
11. The first appraisal, the Barnes appraisal dated May 7, 2013, was completed by certified real estate appraiser John Barnes of Bozeman who calculated a value \$850,000. (Ex. G.) Beaubien argued that the Barnes appraisal was irrelevant for purposes of determining market value as of January 1, 2014 (the lien date for the current reappraisal cycle) because it was conducted seven months prior to that date. (Id. 31:1-25; 32:1-2.) The Barnes appraisal used only the sales comparison approach to determine an opinion of value and did not reconcile that value with a cost approach to value. The appraisal was not time trended to the lien date of January 1, 2014. (Ex. G.)

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12. The second appraisal, the Seipel appraisal dated July 30, 2015, was completed by certified real estate appraiser Joe Seipel of Great Falls who calculated a value of \$1,250,000 using the sales comparison approach and a value of \$1,029,285 using the cost approach. (Ex. H.) Beaubien argued that the Seipel appraisal did not accurately value the subject property because it used homes that are significantly larger and not in close proximity to the subject property. (Id. 33-35.) He pointed out that the Seipel appraisal did not consider a vacant land sale that occurred directly adjacent to the subject lot, and ultimately derived a land value of \$325,000 which is significantly higher than the parties agreed to land value of \$103,454. (Id. 35:24-25; 37-39.) Beaubien referred to the Seipel appraisal as “sloppy work.” (Id. 50; 24-25.) This appraisal was completed twenty months after the lien date for this appraisal cycle and established a final value for the subject property of \$1,250,000. The appraiser stated that his final value estimate was “based primarily on the Direct Sales Comparison approach with minimal supportive consideration given to the Cost Approach.” (Ex. H.) The appraisal was completed twenty months after the lien date for this appraisal cycle and not time trended back to January 1, 2014.

13. The third appraisal, the McCloy appraisal dated November 17, 2015, was completed by certified real estate appraiser Daniel McCloy of Bozeman who calculated a value of \$600,000 using the sales comparison approach. (Ex. J.) Beaubien argued that the comparable sales identified in the McCloy appraisal were in close proximity to the subject and therefore were more valid than the comparables used by either the DOR or the other appraisals and submitted that the \$600,000 fair market value

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accurately reflected the value of the subject property. (Id. 52:5-14.) The McCloy appraisal only used the sales comparison approach to determine an opinion of value and did not reconcile that value with a cost approach to value. The appraisal was not time trended to the lien date of January 1, 2014.

14. The fourth appraisal, the Strable appraisal dated April 2, 2010, was completed by certified real estate appraiser Greg Strable of Great Falls who calculated a value of \$760,000 using the sales comparison approach and a value of \$568,692 using the cost approach. (Ex. F.) Beaubien did not offer any testimony regarding the Strable appraisal. The Strable appraisal identified comparable sales in an extended neighborhood and set a value of \$760,000 for the subject property, concluding that the cost value of \$568,692 was “supportive,” but not determinative of value. The appraisal was not time trended to the lien date January 1, 2014.
15. DOR’s first witness was Roger Layton who has been employed for five years as a commercial appraiser in the Gallatin Valley DOR office. (MTAB Hrg. Transcr. 60:14-25.) Prior to his current job he spent 20 plus years in construction management, supervision and project development. (Id. 61:9-13.) He described the subject property, which underwent an extensive remodel and added substantial space in the mid-2000’s, as “very current and typical of upper end properties in the Big Sky area” with regard to the components, structural elements, design and exterior accoutrements. (Id. 62:10-18.)
16. Layton described how the DOR property record card for the property breaks down the cost components that add up to become the cost value

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for the property. (Id. 69:1-13; Ex. A.) Layton also described Exhibit B, which is a more detailed breakdown of the specific factors and cost figures the DOR used to arrive at its ultimate determination of value. (MTAB Hrg. Transcr. 69:1-19.) Layton described the quality of the subject property as being customized craftsmanship and design, and the detail of the improvements to be “very, very high.” (Id. 72:1-3.)

17. Layton testified that the DOR’s “first intent and our first desire, of course, is to use the comparable sales model because that’s defined by a willing buyer and a willing seller and what the market drives.” (Id. 75:4-7). However, if the DOR is unable to find comparable sales that reflect the value of the subject property they then turn to the cost method. (Id. 75:7-9.)
18. As part of the reappraisal process, the DOR first determines a tentative value for every property using the comparable sales model. (Id. 75.) The DOR appraiser must then review and assesses the accuracy of this value, and one way to do this is to check the comparability points assigned to potential comparable sales chosen in the modeling process. (Id.) The DOR’s computer model assigns comparability points to recent sales in order to determine how similar the subject property is to other properties that have sold during the reappraisal cycle in terms of features like square footage, the age of the home, the number of bedrooms and bathrooms, other amenities, and the overall quality of the home. (Id.) Layton explained that the higher the comparability points, the less comparable the properties are: properties with comparability points under 100 are good comparables, between 150 and 200 the comparables

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are considered marginal, and the DOR will not use comparable properties if the comparability points exceed 200. (Id. 75:19-25.) Layton testified that the DOR valued the subject property using a cost method in this reappraisal cycle because they were unsuccessful in finding comparable sales properties that were acceptable based on comparability points. (Id. 76: 1-4.)

19. Layton rebutted the Trust's contention that comparable sales did exist for the subject property (Id. 79:6-11.) Layton prepared a spreadsheet (Ex. D) comparing the various characteristics of the homes that Beaubien used to develop his calculation of fair market value in Exhibit 3. (Id. 79:21-25.) He further testified that the four properties chosen by Beaubien in Ex. 3 could not be used as comparables for the subject property because Beaubien confused DOR's assessed values with actual sales during the reappraisal cycle. (Id. 86:8-21.)
20. Layton further testified that the \$586,000 value that the Trust sought for improvements on the subject property (for a total value of improvements and land of \$690,000) was not representative of even the current value of the improvements. (Id. 89:14-25.) In fact, he stated that this value "would be unrepresentatively low...." (Id. 90:1-21.)
21. DOR's next witness was John Elliott who has been the lead appraiser in the Gallatin County office for 10 years. (Id. 104:20-25.) Elliott has been with the Department for 18 years, prior to becoming lead appraiser he was a residential and commercial appraiser. (Id. 105:9-19.) As part of discovery in this case, Elliott reviewed the four appraisals provided to the DOR by Beaubien. (Id. 106:7-13.)

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22. Elliott testified that he thought the Strable appraisal was not reliable principally because it was prepared in 2010 and the market in the Big Sky area has both dropped and recovered between that date and the lien date of January 1, 2014 thus making any time trending of the value “less than accurate.” (MTAB Hrg. Transcr. 107:8-17.)
23. Elliott then testified about the Barnes appraisal. (Ex. G.) He testified that he had no major concerns with the appraisal, that he thought Barnes had “made a good attempt at finding comparable properties, and he also made adjustments for the differences between the comparable properties and the subject property, so I believe he did a good job.” (Id. 108:9-16.) When asked if he could time trend the May 2013 appraisal to the lien date of January 1, 2014, Elliot opined that if the Barnes appraisal was time trended to the lien date it would have a value of \$900,000 for the land and improvements. (Id. 109:1-17.)
24. Elliott further testified that Barnes had done a number of fee appraisals over the years in the Big Sky area and that he believed him to be “a very good appraiser.” (Id. 110:5-19.)
25. Elliott next testified about the Seipel appraisal. (Ex. H.) Elliott testified that was unfamiliar with Seipel’s work. (Id. 112:3-22.) He opined that the appraiser did a “good job,” and that Seipel attempted to find comparable properties of similar quality. (Id. 113:1-15.) Elliott did not have major problems with the Seipel appraisal. (Id.)
26. The Seipel appraisal valued the property at \$1,250,000 million. (Ex. H.) Elliot testified that from the data he has examined, the Big Sky market

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appreciated about ten percent in the 2014 and about eight percent in 2015. When he took those numbers and time trended the \$1.2 million back to the January 1, 2014 valuation date he arrived at a value of \$1.05 million. (Id. 115:11-18.)

27. Elliott next testified about the McCloy appraisal. (Id. 117:6-15; Ex. J.) Elliott questioned the reliability of this appraisal as it did not fully take into account the extensive remodeling which had been done on the property and it incorrectly used the actual age of the property [the year it was built] to calculate depreciation on the property, thus driving the value down. (Id. 118:2-14.) Elliott testified that the McCloy appraisal made no adjustments for the quality of construction between the subject property and the comparables that were used in the appraisal. (Id. 119:1-19.) Elliott does not believe the properties were comparable in quality of construction and materials. (Id. 121:6-8.)
28. Elliott's testimony ended with a discussion of the difference between fee appraisals and the mass appraisals that the DOR uses to value all properties in Montana. The rules for the mass appraisal of comparable properties are different than those for individualized fee appraisals. (Id. 122:1-25.) He testified that the first three appraisals were "good" (Exhibits F, G, and H) and that he had problems with the fourth appraisal (Exhibit J).
29. To whatever extent the subsequent conclusions of law may be construed as findings of fact, they are incorporated accordingly.

CONCLUSIONS OF LAW

30. 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. Section 15-2-301.
31. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
32. The taxpayer bears the burden of proving the error of DOR's decision. *Farmer's Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Airlines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
33. DOR, however, cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of its action. *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.
34. "All taxable property must be appraised at 100% of its market value except as otherwise provided." Mont. Code Ann. § 15-8-111(1).
35. "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)(a).
36. "Since market value is defined in Section 15-8-111, MCA... it follows that if market value is to be derived from analyzing comparable sales, that the sales must represent valid 'arm's length' transactions." 2015-2020

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- Montana Reappraisal Plan, 25 (adopted pursuant to Mont. Code Ann. § 15-7-11(5)).
37. “Comparable properties used for valuation must represent similar properties within an acceptable proximity of the property being valued.” Mont. Code Ann. § 15-8-11(3).
38. “[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).
39. “Assessment formulations by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion.” *Peretti v. State, Dep’t of Revenue*, 2016 MT 105, 383 Mont. 340, 344, 372 P.3d 447, 450 (citing *O’Neill v. Dep’t of Revenue* 2002 MT 130, 310 Mont. 148, 155, 49 P.3d 43, 47).
40. “For the taxable years from January 1, 2015, through December 31, 2016, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 2014. Mont. Admin. R., 43.18.124(1)(c).
41. “Mass appraisal’ is the process of valuing a group of properties as of a given date, using standardized methods, employing common data, and allowing for statistical data.” Mont. Admin. R. 42.20.106(13).

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42. “The state tax appeal board must consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was conducted within 6 months of the valuation date. If the state board does not use the appraisal provided by the taxpayer in conducting the appeal, the state board must provide to the taxpayer the reason for not using the appraisal.” Mont. Code Ann. § 15-3-301(3).

43. To prevail in a challenge to DOR’s assessment the taxpayer must prove that:

- (1) that there are several other properties within a reasonable area similar and comparable to his;
- (2) the amount of assessments on these properties;
- (3) the actual value of the comparable properties;
- (4) the actual value of his property;
- (5) the assessment complained of;
- (6) that by a comparison his property is assessed at a higher proportion of its actual value than the ration existing between the assessed and actual valuations of the similar and comparable properties, thus creating discriminations.

DeVoe v. Dep’t of Revenue of Montana, 233 Mont. 190, 194, 759 P.2d 991, 993-94 (1988) (quoting *Maxwell v. Shivers*, 257 Iowa 575, 579–80, 133 N.W.2d 709, 711 (1965)).

DISCUSSION

44. The evidence offered by the Taxpayer reveals the inherent difficulty of conducting mass appraisals of property. The taxpayer’s arguments that this property’s value increased while almost all others in the immediate vicinity decreased, and that this property was incorrectly assessed using

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a cost method while almost all the neighbors' were assessed using a comparable sales method, were not effectively rebutted by the DOR. The DOR's contention that it was not possible to find suitable comparable properties wilted under the analysis conducted in three of the four fee appraisals submitted into evidence which the DOR conceded were good appraisals. These appraisals all used sales of comparable properties in order to determine value. We conclude that the taxpayer overcame the presumption that the DOR correctly valued this property with the use of mass appraisal tools employing the cost method.

45. While we are satisfied that the taxpayer submitted sufficient and probative evidence to overcome the presumption given to the DOR, we are not convinced that \$586,546 requested by the taxpayer accurately sets the fair market value of this property. We rely upon the testimony of the DOR appraiser that this value would be unrepresentatively low for a typical, high end, quality property in this Big Sky neighborhood. In reaching this conclusion we do not accept the findings of the Gallatin County Tax Appeal Board.
46. Fortunately, the Board is not left adrift in this situation with the taxpayer demonstrating that the DOR's appraisal is, in this instance, flawed and the DOR casting serious doubt on the validity of the analysis and proposed value submitted by the taxpayer. The evidence and testimony in this case included four fee appraisals of the subject property and provide the Board with ample material to determine the fair market value of this property.

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47. The Strable appraisal established a value for the subject property of \$760,000 as of April 2, 2010. While the taxpayer was comfortable with this figure, we find the testimony of DOR's lead appraiser in Gallatin County to be more credible. He did not find it to be useful in setting a fair market value as of January 1, 2014. He also stated that time trending would be problematic given the up and down fluctuations in the market over this specific four-year period. The Board finds that this appraisal should not be used to determine fair market value.
48. The McCloy appraisal set a value of \$600,000 for the subject property as of November 7, 2015. While the taxpayer was also comfortable with this figure, DOR was most certainly not. Along with the almost two-year gap between the date of the appraisal and January 1, 2014 lien date, the DOR identified significant problems with the methods and analysis used in this appraisal, which leads us to conclude that it should not be used to determine fair market value.
49. The Seipel appraisal set a value of \$1,250,000 for the subject property as of July 30, 2015. This appraisal was favorably reviewed by the DOR and the testimony about time trending the value to \$1,050,000 as of January 1, 2014 was credible and reasonable. The taxpayer had significant problems with this appraisal, entering testimony about it which demonstrated that the appraiser either missed or omitted a comparable sale of land immediately adjacent to the subject property. In this instance, we find that the taxpayer's testimony about the errors in the appraisal are sufficient and the Board will not to use it to determine fair market value.

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50. Finally, the Barnes appraisal set a value of \$850,000 for the subject property as of May 7, 2013. The taxpayer did not testify to any significant problems with this appraisal, other than to question its relevancy as it was done some seven months before the appraisal cycle lien date of January 1, 2014. DOR's testimony was that this was a good appraisal done by an appraiser with knowledge of local market conditions in the Big Sky area. When asked if time trending the value to the reappraisal cycle date was possible, DOR's lead appraiser did so straightforwardly, estimating a value, rounded off, of \$900,000 for the land and improvements. The Board finds that the value determined in this appraisal is well supported in the record, that it was done in close proximity to the cycle's appraisal date and accepted by the DOR in testimony at the hearing. Accordingly, the Board enters the following decision and Order in this matter.

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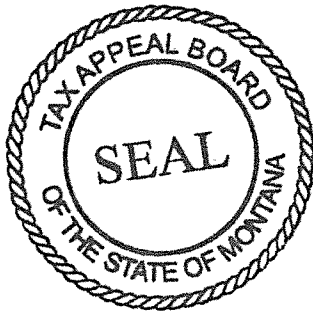
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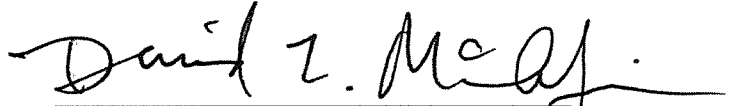
ORDER

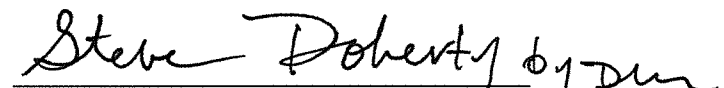
51. The appeal by the DOR in this matter is hereby **denied**.
52. The decision of the Gallatin County Tax Appeal Board is **vacated**.
53. DOR is **ordered** to enter for tax years 2015 and 2016 a value of \$900,000 for the Beaubien Family Trust property; a land value of \$103,454 and an improvements value of \$796,546.


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).

Ordered November 4th, 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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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 November 4, 2016 to:

Frederick C. Beaubien, Trustee

Beaubien Family Trust
7818 North Arroyo Drive
Paradise Valley, AZ 85253

Michele R. Crepeau

Montana Dept. of Revenue
Office of Legal Services
P.O. Box 7701
Helena, MT 59604-7701



Lynn Cochran, *Administrative Officer*
MONTANA TAX APPEAL BOARD