

BEFORE THE MONTANA TAX APPEAL BOARD

State of Montana,
Department of Revenue,

Appellant;

v.

Edward G. Beaudette,

Respondent.

CASE No: PT-2016-2

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

Before the Board is State of Montana, Department of Revenue's (DOR) appeal from the Anaconda-Deer Lodge County Tax Appeal Board's (CTAB) decision to adjust the DOR's buildings value of three properties owned by Edward G. Beaudette (Taxpayer). The three properties are identified as follows: (1) 617 E. Park St., Anaconda; geocode 30-1285-03-4-44-05-0000; legal description W1/2 Lot 3, Block 33 of Anaconda original town site; (2) 619 E. Park St., Anaconda; geocode 30-1285-03-4-44-06-0000; legal description E1/2 Lot 3, Block 33 of Anaconda original town site; (3) 118 N. Locust, Anaconda; geocode 30-1285-03-4-44-05-0000; legal description W1/2 Lot 3, Block 33 of Anaconda original town site. In the interest of efficiency and with consent from the parties, this Board consolidated the three appeals under this cause number and heard them together.

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ISSUE

1. The issue before the Board is whether the CTAB correctly determined the value of three residential rental properties by its decision finding Taxpayer's arguments more credible and rejecting MDOR's cost and sales comparison methodologies. The land values are not an issue in any of the three appeals.
2. DOR appealed the CTAB's decision and asks this Board to reject the income model proposed by Taxpayer at the county hearing. DOR asks this Board to reinstate the values it calculated for each property using its market model for the neighborhood and comparable sales or a cost approach where appropriate.
3. The undisputed land values for each property are as follows: (1) 617 E. Park St. \$5,465; (2) 619 E. Park St. \$5,465; (3) 118 Locust \$5,808.
4. The building values as determined by the DOR, requested by the Taxpayer, and adjusted by the CTAB, for each property are set forth below:

Property Location	DOR value	Taxpayer's requested value	CTAB adjusted value
617 E. Park	\$41,635	\$18,000	\$24,501
619 E. Park	\$34,500	\$18,000	\$24,940

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118 N. Locust	\$54,692	\$12,500	\$22,447
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FINDINGS OF FACT

5. The Board conducted a hearing on June 14, 2016 at 10:00 AM at 600 N. Park Ave., Helena at which the following were present:
- a. Edward G. Beaudette, Taxpayer;
 - b. Anthony 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.

617 E. Park

6. Mr. Beaudette testified and described the improvements located at 617 E. Park as “a two bedroom home, with knob and tube wiring, poorly insulated, the kitchen was renovated in the 1960’s, but the rest of the home is in the condition from the 1930s. (MTAB Hrg. Transcr. 45:4-16.) The only other significant improvement was in 1965 when ‘old man Dewey’ jacked up the whole house to tear out the old rock and mortar foundation, poured a new concrete foundation and put it back down. (Id.) The only access to the basement is through an exterior staircase. (Id. 46:11-23.) There is a second house located on the property but Taxpayer uses it as a workshop and a place to store tools. (Id. 66:7-8.)

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7. In Taxpayer's opinion, the highest and best use for the home is as a low-income rental property. (Id. 24:22.) Taxpayer testified that there is a lot of low-income and federally subsidized housing in Anaconda and in his experience renting these types of properties in Anaconda for many years, the maximum the market will bear for the subject is the current rent at \$400 per month. (Id. 47:7-25, 48-40.)

8. Taxpayer testified that the property fronts the eastbound couplet of Highway 1, the main commercial drag in Anaconda. (Id. 19-20.) Taxpayer described the roadway as being in good repair and maintained by the Department of Transportation, but it also has an average daily traffic count of 5,570 cars while the comparable properties the DOR used to value this property are located at least 6 blocks away, in strictly residential neighborhoods, with an average daily traffic count of 500 cars per day. (Id.; Resp. Ex. 14; DOR Ex. 14.) Taxpayer argues that because the DOR comparable sales are not in close proximity to the 617 E. Park location they are not truly comparable properties. (Id. 21-24.)

9. Taxpayer described the location as "noisy, dusty, limited parking and bad social influences from the bars and restaurants and other types of businesses in that area. And based upon that, using the theory of substitution, you would not use the comparable sales presented in Exhibit 14 and relied up by the Department of Revenue to determine the fair market value of this property." (Id. 29:4-11.)

10. Taxpayer argues that the DOR should have used sales located on Highway 1 or in closer proximity to heavily trafficked commercial areas to accurately value the property. (Id. 29-33.) Taxpayer alleges that in

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Anaconda, the DOR's use of comparable properties located in residential areas, at least six blocks away, are not in an acceptable proximity to determine the value of the subject residence located in a heavily commercial and dilapidated area. (Id.) Taxpayer suggested that the DOR should have used comparable sales from the commercial area located around East Park Street to more accurately determine the market value this property. (Id.)

11. Anaconda DOR residential appraiser Ms. Julie Goebel testified that when she values a property using a market method she looks for comparable properties with similar square footage and year built located in the same neighborhood. (Id. 103-104.) She testified that for DOR's modeling purposes Anaconda is divided into two neighborhoods – the east side and the west side. (Id. 100:1-3.) She explained that she evaluates how comparable potential properties are by looking at the comparability score generated by MDOR modeling software. (Id. 99-102.) The model calculates a numerical indication of how many factors the model had to adjust to make a comparable property similar to the subject property. (Id.) Ms. Goebel explained that the valuation modeling software chooses the comparable properties and scores each comparable sale based on the number of adjustments made to comport with the subject and make the subject property comparable to the sale property (i.e. adjustments for square footage, number of bedrooms, etc.). (Id.) Ms. Goebel testified that a lower comparability score is better, meaning the fewer adjustments to the subject. (Id.) She testified she would not use a comparable property if the comparability score exceeds 200. (Id.)

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12. Ms. Goebel testified that, as part of the AB-26 review, she looked at the five comparability scores used to determine this property's value and that she did not make any adjustments to the value of 617 E. Park because all of the comparability numbers were low, which indicated to her that they were good comparables. (Id. 106:13-22; DOR Ex. 2, 14.)

619 E. Park

13. Taxpayer testified that he owns the property located at 621 E. Park, which was his grandfather's barbershop and residence and his family's home until 1986. (Id. 86:17-19). Taxpayer purchased this neighboring property 619 E. Park in the early 90's and currently rents it for \$400 per month, which he believes is the maximum rent he can charge to keep his vacancy rate at a minimum. (Id. 68:11; 86:21-22) Taxpayer testified that he has made some improvements to the property over the years, including a new metal roof, however the windows and foundation still leak which makes it expensive to heat in the winter, which is why he believes he can not charge higher rent. (Id. 68-69.)
14. There is a second one-bedroom home located on the property, which has been unoccupied for the prior four to five years. (Id. 64:13-15.) Taxpayer testified that he could not keep renters in this second house because (1) it has poor insulation and its only heat source is a space heater and (2) it is located across the alley from a home where a woman disappeared, and then was occupied by a woman who is currently committed to the Warm Springs State Hospital and her boyfriend is in the Deer Lodge County jail for possession and manufacture of meth. (Id. 64:17-25.)

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Taxpayer believes its current use as a storage shed is the building's highest and best use. (Id.)

15. The property suffers not only for its location fronting Highway 1, but is located in a deteriorated neighborhood where a number of the houses and commercial buildings are empty. (Id. 26-27). This building is located 36 inches away from 617 E. Park and thus suffers from the same location deficits described previously as “noisy, dusty, limited parking and bad social influences from the bars and restaurants and other types of businesses in that area.” (Id. 24:6-9; 29:4-6.)
16. Taxpayer argues that the DOR erred when it used replacement cost new minus depreciation, the cost method, to value the property located at 619 E. Park. (Id. 50-51.) The DOR's property record card for the property shows that the house was built in 1913, has an effective age of 1940, and applies a factor of 38 percent good (or 62 percent depreciated) to arrive at the cost value. (DOR Ex. 15.) Taxpayer asserts that based upon his experience working on highway right of way valuation disputes, the cost method is not a reliable method to value properties that are depreciated by more than 50 percent. (Id. 23-26.) Taxpayer alleges that USPAP states an appraiser needs to look very carefully at a cost method of valuation if the depreciation exceeds 10 or 15 percent. (Id. 50:13-15.) Taxpayer argues that the cost method becomes unreliable as the age of the buildings increases, and that unreliability is demonstrated by the fact that the DOR uses the same ‘effective year of 1940’ to calculate depreciation not only for all three of his properties but also for all nine comparable sales properties seemingly without consideration for their actual age, location or condition. (Id. 50-251; DOR Ex. 14; Resp. Ex. 6;

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Resp. Ex. 11.) Taxpayer argues that there is another inherent problem with the DOR's reliance on the cost method to value this property because, by definition, it fails to consider the significant adverse market conditions which affect value, the home is located in a deteriorating neighborhood with a significant number of empty buildings in close proximity. (Id. 161:7-11.)

17. During discovery, the DOR produced a document revealing that the DOR had calculated a market value of \$22,800 for this property, as compared to the cost value of \$45,430. (DOR Ex. 6.) The DOR's market value again used five comparable sales, two of which were also used as comparable sales to value 617 E. Park. However, the other three comparable sales were located on or at least much closer to East Park and produced a much lower market value (\$22,800) for 619 E. Park, as compared to the market value calculated for 617 E. Park (\$47,100) located 36 inches away. (Id. 65-68.) Taxpayer argued that these three comparable sales more closely resembled the actual conditions of the neighborhood and of this particular property than the comparable sales located in the strictly residential neighborhood used to determine the value of 617 E. Park. (Id.) Taxpayer argues that the DOR's comparable sales method for 619 E. Park is a much more accurate estimate of the actual market value of this property than the value determined by the cost method and is a much better representation of the actual market value of the property next door, 617 E. Park. (Id.)
18. Mr. Andrew Hagen, DOR Anaconda area manager, testified that the DOR used the cost method to value this property because the DOR will not use the market model to value a property that has two residences on

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it, even where the second residence has minimal utility. (Id. 144:1-18.) Ms. Goebel testified during that the AB-26 review she adjusted the value of the “back house” to reflect no heat source, and she changed the condition and utility rating to unsound. (Id. 103:19-22.) She did not however change the property record card to reflect the fact that there is only one habitable residence on the property. (Id. 144: 10-11.)

19. Ms. Goebel also testified that the east side of Anaconda is a homogeneous area distinctly different from the west side, which is its own neighborhood. (Id. 100: 1-6.) Ms. Goebel described “the east side as having narrower lots, and a lot of the properties had a house in the front and a house in the back, shotgun house.” (Id. 103: 7-12.)

118 N. Locust

20. Taxpayer testified that he purchased this home in 1980 for \$18,000 and lived in it as his first home. (Id. 62:13-15.) Taxpayer testified that the house is prone to flooding because of its proximity to Warm Springs Creek. (Id. 52:9-20). Taxpayer described it as a two bedroom and one bath home built in 1916. (Id. 52:6-7; DOR Ex. 10.) Taxpayer testified that there is a detached 2 car garage located on the back half of property which his brother-in-law built and uses free of charge. (Id. 60:9-16.)
21. Taxpayer testified that he rents the house for \$375 per month, which he believes is close to the maximum rent he can charge to keep his vacancy rate at a minimum. (Id. 61.)
22. Taxpayer testified that the average daily traffic count on Pennsylvania Ave. near the subject is 2,220. (Id. 20:20.) The route is the primary way

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for people to reach the hospital, the railroad to get to the roundhouse, and Washoe Park which is the site for many high school sports. (Id. 52-54.) The taxpayer testified that four of the comparable sales the DOR used to determine the value for this property were the same comparable sales that were used to value 617 E. Park, and that they suffer from the same disparities previously mentioned when compared to this property. (Id. 10-18; Resp. Ex. 10.) The comparable sales are located in neighborhoods with average daily traffic counts of 400 cars a day, they are not located in the flood plain, and they are located in purely residential neighborhoods without the unfavorable commercial influences of the hospital, railroad, Washoe park and a KOA-like campground. (Id. 28:18-25; 56:10-25.)

23. Taxpayer testified that he looked on the State of Montana's cadastral website to compare the DOR's assessed values for the other homes on this block. (Id. 59-60.) Taxpayer testified that the nature of the block and the characteristics of the homes are not sufficiently different to explain the \$20,000 - \$68,000 difference in DOR valuations between these homes, demonstrating how widely the DOR valuations vary among similar properties. (Id.) Taxpayer testified that the home located directly across the street from this property sold for \$20,000. (Id. 62:15-19.)

24. Ms. Geobel testified that when she reviewed the comparability scores for this property as part of the AB-26 review she looked at the five comparable sales used to support the value and the comparability numbers were low (good) so she did not make any adjustments to the value. (Id. 105:8-23.) Ms. Geobel testified that she had confidence in the

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comparable sales because they were the same types of houses located in the same neighborhood with similar year built. (Id. 103-104; Ex. 14.)

Facts Common to all Properties

25. Taxpayer testified that he grew up and has lived in Anaconda for many years and has many years of experience in the Anaconda market as a landlord. (Id. 32.) Taxpayer testified that using the DOR's values he would have to rent each property on E. Park for at least \$475 and Locust St. for \$610 a month, which in his experience far exceeds any actual rent that he could obtain for these three properties in their current condition and specific location within Anaconda. (Id. 70:16-18; 61:21-24.)

26. When questioned by the Taxpayer on cross-examination, Ms. Goebel could not describe where the neighborhood boundaries are in Anaconda other than there are at least two neighborhoods, the west side and the east side possibly using Pennsylvania Avenue as the division, with possible sub-neighborhoods within each, but she could not even testify as to whether there were actually sub-neighborhoods, let alone their distinct boundaries. (Id. 110-114.) Ms. Goebel did not bring a map of the neighborhoods to the hearing (Id. 112:18), and although DOR supplemented the record with a map post-hearing, this Board did not receive any testimony from DOR to support how the DOR's defined neighborhoods reflect similar housing characteristics. Taxpayer did not have any opportunity to question how the DOR defined the neighborhoods because the DOR's witness was unable to answer basic questions regarding the neighborhood's boundaries during the hearing. (Id. 110-114.)

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27. Taxpayer argues that the highest and best use for each of these three properties is as residential rentals and therefore the income method is the best way to value them. (Id. 25; 63.)
28. Taxpayer argues that a tax valuation system is illogical where the land values of each property are reduced in the new appraisal cycle while the improvement value of each of the buildings in these deteriorating neighborhoods increased. (Id. 21:19-25; 22:1-23.)

CONCLUSIONS OF LAW

29. 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.
30. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

Burden of Proof

31. 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).
32. 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.

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Assessment

33. “All taxable property must be appraised at 100% of its market value....”
Mont. Code Ann. § 15-8-111.
34. 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).
35. “[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).
36. 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.
37. “For the taxable years from January 1, 2009, through December 31, 2014, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of July 1, 2008.” Mont. Admin. R. 42.18.124(1)(b).
38. “For the taxable years from January 1, 2015, through December 31, 2016, all Class Three property (residential) must be appraised at its market value as of January 1, 2014.” Mont. Admin. R. 42.18.124(1)(d).

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Administrative Rules

39. “Income Approach’ means the value of a taxpayer’s building(s) is/are developed by using income and expense information obtained from commercial buildings across the state.” Mont. Admin. R. 42.20.106(12).
40. “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).
41. This Board finds that the DOR did not meet its burden to present sufficient evidence to support its value. When asked to explain its rationale for choosing appropriate comparable sales by location as compared to neighborhoods of the subject, the DOR witness could not identify where the neighborhood boundaries are, one of the most elemental steps the DOR uses to determine market values.
42. The DOR did not sufficiently explain why it chose the cost method and not the market method to value the home at 619 E. Park. While on its face the DOR’s argument that they have to use cost because of the two residences located on the property seems plausible, the argument was defeated by the repeated testimony of Ms. Goebel that many of the homes on the east side on Anaconda have a second shotgun house located on the property. Moreover, Taxpayer’s property located next door, 617 E. Park, also has a second house on the property, and yet the DOR was able to use a market method to value that property.
43. The DOR did not sufficiently explain why the comparable sales/market method calculated such vastly different values for 617 E. Park (\$47,100)

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and 619 E. Park (\$22,800), two very similar properties located 36 inches apart.

44. The Board has seen other valuations in small neighborhoods with few market sales result in questionable mass appraised values, and so takes care to consider localized testimony, including the conclusions of value reached by the CTAB in this case.
45. While the DOR witnesses were able to explain how the computer model valued each of these properties using their system of mass appraisal, they could not answer many of the reasonable questions posed by the Taxpayer. This Board holds hearings in tax appeals in part to assess and compare the credibility of both sides in tax appeals. In this case we found the Taxpayer's knowledge of the community and the local real estate and rental markets more credible than that of the DOR witnesses and to that degree we are swayed the values assigned by the DOR are not true market value as of the lien date. Taxpayer in this appeal has overcome his burden to disprove the DOR's value.
46. This Board affirms the values for each property as determined by the Anaconda-Deer Lodge County Tax Appeal Board.

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ORDER

47. DOR's appeal and complaint is **denied**.
48. It is therefore **Ordered** that the subject property values shall be entered on the tax rolls of Deer Lodge County for the tax years 2015 and 2016, as follows:
- (1) 617 E. Park St., Anaconda; geocode 30-1285-03-4-44-05-0000 at a total value of \$29,966; \$5,465 for the land and \$24,501 for the improvements.
- (2) 619 E. Park St., Anaconda; geocode 30-1285-03-4-44-06-0000 at a total value of \$30,405; \$5,465 for the land and \$24,940 for the improvements.
- (3) 118 N. Locust, Anaconda; geocode 30-1285-03-4-44-05-0000 at a total value of \$28,255; \$5,808 for the land and \$22,447 for the improvements.

Ordered October 28, 2016.



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



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



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. 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 October 28, 2016

Edward G. Beaudette

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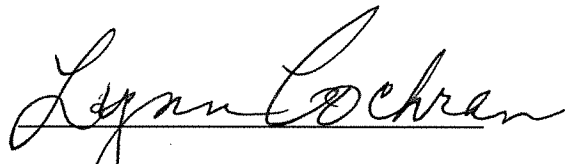
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Lynn Cochran, Administrative Officer