

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

SEP 06 2016

Montana Tax Appeal Board

Laurie L. Gebhart,

*Appellant;*

v.

State of Montana,  
Department of Revenue,

*Respondent.*

CASE No: PT-2015-35

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

Before the Board is Appellant Laurie L. Gebhart's appeal from the Teton County Tax Appeal Board decision denying Gebhart's appeal of Respondent State of Montana, Department of Revenue's valuation of Gebhart's property at 712 10<sup>th</sup> Ave. NW, Choteau; geocode 31-3486-24-3-04-04-0000; legal description Cowgill Add, S24, T24 N, R05 W, Block 012, Lot 005, Lts 5-7 and S2 of Lt 8.

**ISSUE**

1. Taxpayer is appealing the value of her lot and home in Choteau. DOR has valued the property for tax years 2015-2016 using a market appraisal methodology at \$49,100.
2. Taxpayer believes the property should be valued at \$28,700, the same value as it was appraised for by DOR during the 2008-2014 appraisal

cycle. Taxpayer argues the property had not had substantial change or improvement and therefore no higher value should be indicated.

3. Respondent DOR defends their market sales analysis of the subject by providing the adjusted comparable sales used to set the value for taxpayer's property.

### FINDINGS OF FACT

4. The Board heard the matter on the record without objection of the parties. The record includes all materials submitted to the county tax appeal board, the transcript of the hearing at the Teton county tax appeal board, and additional materials submitted by the parties.
5. Taxpayer submitted only the initial appeal form and a one page letter to support her argument that her property did not change in the value between the 2008 and 2014 reappraisal cycles. Taxpayer's arguments included:
  - a. She removed a room from her home.
  - b. That her other improvements to the home of roofing, siding and windows were maintenance and should not add value to the home.
  - c. That her taxes should not have gone up as much as other larger and higher quality homes in Teton County.
6. DOR submitted an opening brief including the affidavit of Teton DOR appraiser Debra Peace, as well as exhibits A-E:

Ex. A - Taxpayer's response to combined discovery requests.

Ex. B - Subject property record card.

Ex. C - One aerial photograph of the subject property block.

Ex. D - Three street level photographs of the home.

Ex. E - The comparable sale and model adjustment sheet used to determine a market value for the subject, containing subject data and corresponding data for the five comparable sales used (sealed).

7. DOR appraiser Peace spoke with the Taxpayer several times after the county appeal was filed and conducted a site visit where she remeasured the subject without the demolished addition and updated the property record card to reflect the correct size and grade of the subject.
8. Roofing, siding, and windows had been updated on the home in 2014 since the previous appraisal cycle. (CTAB Hrg. Transcr. 5:12-13.)
9. DOR also updated the subject property record card to reflect an additional plumbing fixture, the enclosed porch, and improved the condition, desirability, and utility factor from poor to fair to account for the updated roofing, siding and windows.
10. The county transcript indicates that while the taxpayer does not dispute that the updates were made to the home, she does not believe those updates should have added any value to the property. She testified that these sorts of updates were merely routine required maintenance.

11. Taxpayer disputed the comparable sales used, as they were not the same size and quality as the subject.
12. DOR appraiser testified during the county hearing that adjustments were made from the comparable sales to the subject to fully account for any differences in size or quality. (Ex E.)
13. Taxpayer did not, either at the county hearing or since filing her appeal with this Board, provide any alternative comparable sales or a private fee appraisal of her property to show that the DOR value was incorrect.

### CONCLUSIONS OF LAW

14. 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.

#### **Burden of Proof**

15. The taxpayer bears the burden of proving the error of DOR's decision. *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).
16. 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

17. “All taxable property must be appraised at 100% of its market value....”  
Mont. Code Ann. § 15-8-111.
18. “[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).
19. “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).
20. “[F]or the taxable years from .... (c) 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. 48.18.124.

21. To prevail in a challenge of DOR's assessment the taxpayer must prove:

- (1) that there are several other properties within a reasonable area similar and comparable to his;
- (2) the amount of the 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 ratio 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*, 133 N.W.2d 709, 711 (Iowa 1965)).

22. "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, ¶ 15, 383 Mont. 340, 344, 372 P.3d 447, 450 (citing *O'Neill v. Dep't of Revenue*, 2002 MT 130, ¶ 23, 310 Mont. 148, 155, 49 P.3d 43, 47); *Northwest Land & Dev. of Montana, Inc. v. State Tax Appeal Bd.*, 203 Mont. 313, 317, 661 P.2d 44, 47 (1983) overruled on other grounds by *DeVoe v. Dep't of Revenue of State of Mont.*, 263 Mont. 100, 866 P.2d 228 (1993).

\* \* \*

23. After a complete review of the county record, county transcript, and all other documents made a part of the record in this appeal, we find the

taxpayer has not met her burden in proving the DOR method or data is incorrect.

24. Taxpayer provided no specific flaws with the comparable sales used, nor did she provide any other more comparable sales or appraisal that contradicted the value set by the DOR.
25. During the Teton county hearing, DOR credibly defended the comparable sales used to value the subject, and explained the method for adjusting comparable sales to the subject to find equivalent value of the subject.
26. This Board finds that comparable sales used by the DOR are credible and were correctly adjusted to the subject property.
27. We find that the improvements made to the subject such as the new roofing, siding, and windows do add value to a home and would be considered favorably by a prospective home buyer when negotiating a sales price, i.e. market value of the home. We find an increase in the CDU grade from poor to fair for the home for these upgrades was reasonable.

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Gebhart v. DOR

**ORDER**

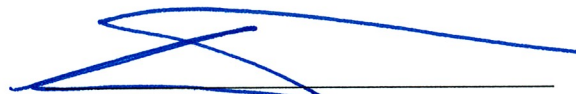
28. Laurie L. Gebhart's appeal and complaint is **denied**. DOR is ordered to maintain the property value at \$20,200 for the land and \$28,900 for the home for Tax Years 2015 and 2016.

**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 September 2, 2016.

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

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

  
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Valerie A. Balukas, *Member*  
MONTANA TAX APPEAL BOARD



## 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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Lynn Cochran, *Administrative Officer*  
MONTANA TAX APPEAL BOARD