

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

AUG 30 2016

Montana Tax Appeal Board

Daniel Klapan,

Appellant;

v.

State of Montana,
Department of Revenue,

Respondent.

CASE No: PT-2015-39

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

Before the Board is Appellant Daniel Klapan's appeal from the Deer Lodge County Tax Appeal Board (CTAB) decision ordering no adjustment be made to Respondent State of Montana, Department of Revenue's (DOR) valuation of Klapan's improvements at 9 Temple Ct, Anaconda; geocode 30-1377-23-4-03-05-0000; legal description Lost Creek Stock Ranch Estates #2 Lot 3 Amended, S23, T05N, R11W, Lot 3D, Acres 5.15, 197A Amended.

ISSUE

1. Whether DOR properly valued the improvements at \$176,940 for the 2015-2016 appraisal cycle.
2. Klapan requests the improvements be valued at \$155,000 arguing that he paid less than \$100,000 for his modular home, including the house's

delivery and installation, and that DOR did not account for deterioration in the improvements when assigning market value.

3. DOR counters that Klapan refused to allow its appraiser full access to the property and that such refusal binds the Board to uphold DOR's valuation.

FINDINGS OF FACT

4. The Board conducted a hearing at 600 N. Park Ave, Helena at 1:30pm on June 16, 2016 at which the following were present:
 - a. Daniel Klapan, taxpayer, pro se;
 - b. Michele Crepeau, attorney for DOR;
 - c. Julie Goebel, DOR appraiser, as witness for DOR;
 - d. Andrew Hagen, DOR Anaconda area manager, as witness for DOR;
5. The record includes all materials submitted to the county tax appeal board, the transcript of the hearing at the county tax appeal board, and additional materials submitted by the parties at the hearing.
6. The following exhibits were admitted:
 - a. Klapan exhibits;
 - i. 1 – 3 photographs of road,
 - ii. 2 – Majestic Homes purchase price letter,

- iii. 3 – handwritten calculation of house costs,
 - iv. 4 – 13 photographs of house and road,
 - v. 5 – property record card from 2/10/16,
 - vi. 6 – property record card from 8/13/15,
- b. DOR exhibits;
- i. A – property tax appeal form,
 - ii. B – property record card from 8/12/15,
 - iii. C – property record card from 5/17/16,
 - iv. D – 4 photographs of property exterior,
 - v. E (sealed) – land value model,
 - vi. F – floor plan of structure.
7. The property consists of a modular home with 1,749 square feet finished and a 1,749 square foot unfinished basement, plus a 2,016 square foot garage which were built in 2006 or 2007 on 5.15 acres of rural land north of Anaconda.
8. While Taxpayer did request a land value reduction from \$33,755 to \$30,000, no evidence was offered to support a value of \$30,000 for the land. During the prior cycle the improvements were valued at \$173,855. (Ex. B, C.)

9. For the 2015-2016 appraisal and valuation cycle, DOR initially valued the improvements at \$243,640 using the cost method, specifically \$211,750 for the residence and \$31,890 for garage. (Ex. B.)
10. The cost method calculates the current cost of producing an improvement of equal utility to the subject property, minus depreciation which is defined as the loss in value from all causes. 2015-2020 Montana Reappraisal Plan, 27,29.

AB26

11. Klapan filed an AB-26 request for informal review of the property valuation, but failed to include his phone number for appraiser Julie Goebel to contact him to arrange an inspection of the interior. (MTAB Hrg. Transcr. 33:3-4.)
12. Goebel did find a phone number for Kaplan in previous records for the parcel, but that number had been disconnected. (MTAB Hrg. Transcr. 33:4-6; CTAB Hrg. Transcr. 3:24-4:4; 7:4-6; 10:11-12.)
13. Goebel testified she stopped by his residence twice to request an inspection but the Taxpayer was not home and because of the posted no trespassing signs she did not enter onto the property but she did take some photographs from the road of the house and the garage. (MTAB Hrg. Transcr. 28:21-24.)

CTAB

14. Kaplan appealed the AB-26 denial to the Deer Lodge County Tax Appeal Board (CTAB). (Ex. A.)

15. The Deer Lodge County Tax Appeal Board held a hearing on the appeal on January 13, 2016 in Anaconda.
16. During the hearing, the DOR offered to inspect the property again to address Klapan's complaints, but Klapan refused. (CTAB Hrg. Transcr. 16:1-6; 17:1-4; 17:16-25.)
17. Klapan did offer a printed floor plan of his home into evidence and testified during the hearing that his basement was unfinished and unoccupied.
18. As a result, DOR made several changes to its appraisal based on Klapan's testimony, specifically
 - a. reduced the residence and garage's condition from good to average,
 - b. revised the basement classification from finished to unfinished,
 - c. revised the square footage of the home by removing 1 bedroom, 1 bath, and 1 family room. (Ex. B, C.)
19. These revisions reduced the valuation of the improvements to \$176,940, specifically \$159,320 for the residence and \$17,620 for the garage. (Ex. C.)
20. The CTAB affirmed DOR's revised appraisal but granted no further reductions. (CTAB Decision.)

MTAB

21. Before MTAB, Mr. Klapan testified that he, with help from his son, had prepared the site, and formed and poured both the foundation for his home and the foundation and floor of his garage. He explained that his work was substandard but that he could not justify the expense of

hiring dirt and concrete contractors to complete the work. (MTAB Hrg. Transcr. 8:14-20; 21:1-8.)

22. Mr. Klapan entered a letter from the manufactured home company he purchased the house from quoting \$98,760 for the home, delivery, and installation. (Ex. 2.)
23. Klapan estimated the following additional expenses for the improvements, totaling \$18,800:
 - a. basement – \$5,000,
 - b. well, pump, and lines – \$7,600,
 - c. septic – \$2,000,
 - d. power – \$2,200,
 - e. fencing – \$2,000. (Ex. 3.)
24. Klapan estimated the total value of his residence and improvements, other than the garage, to be \$117,560. (Ex. 2, 3.)
25. Klapan estimated \$20,000 in expenses to build the garage. (Ex. 3.)
26. When cross examined about what he would have had to pay for labor had he not done the work himself, Klapan estimated the following labor costs:
 - a. foundation of dwelling – \$16,000 to \$20,000,
 - b. garage – \$6,000 to \$8,000.

(MTAB Hrg. Transcr. 20:17-20.)

CONCLUSIONS OF LAW

27. 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

28. 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).
29. 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

30. "All taxable property must be appraised at 100% of its market value...."
Mont. Code Ann. § 15-8-111.
31. 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)).

32. "If a landowner or the landowner's agent prevents [DOR's appraiser] from entering land to appraise or audit property or fails or refuses to establish a date and time for entering the land... the department shall estimate the value of the real and personal property located on the land." Mont. Code Ann. § 15-7-139(6).
33. "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." Mont. Code Ann. § 15-7-139(7)

* * *

34. Klapan refused access to DOR's appraiser and failed to provide a certified appraisal, therefore the Board is statutorily bound to accept the DOR's valuation.
35. This Board has been forced to deny numerous appeals where an inspection is not allowed. *Wood v. Dep't. of Revenue*, 2014 WL 1464587 (Mont. Tax App. Bd.), aff'd by *Wood v. Dep't. of Revenue*, CDV-2014-349 (1st Jud. Dist); *Dep't of Revenue v. Voytoski*, 2015 WL 5565240 (Mont. Tax App. Bd.); *Dep't of Revenue v. CBA, LLC*, PT-2013-12 (Mont. Tax App. Bd.).
36. The Board recognizes that the Department did make an extra effort during the CTAB hearing to substantially reduce the value of the improvements based solely on Taxpayer's representations, and despite not being allowed an inspection. Were it not for that effort the value would still be \$277,395 rather than \$210,695.
37. While we respect the Taxpayer's wish for privacy from an internal inspection of his home, he cannot at the same time expect the DOR to make reductions without confirming the measurements and quality of the subject property in person. The Montana Code Annotated section 15-7-139(7) is clear.

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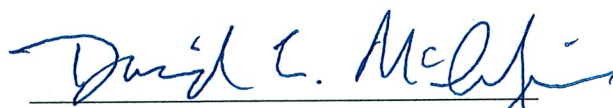
ORDER

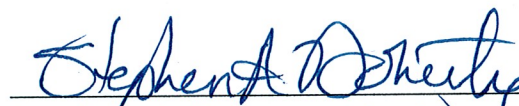
38. Daniel Klapan's appeal and complaint is **denied**.


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 August 30, 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

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 August 30, 2016 to:

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Lynn Cochran, *Administrative Officer*
MONTANA TAX APPEAL BOARD