

BEFORE THE MONTANA TAX APPEAL BOARD **FILED**

DEC 02 2020

**DAVID W. AND PAULA A. OSTBY,**

*Appellants,*

v.

**STATE OF MONTANA,  
DEPARTMENT OF REVENUE,**

*Respondent.*

**Montana Tax Appeal Board**

**CASE №: PT-2020-4**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, ORDER,  
AND OPPORTUNITY FOR  
JUDICIAL REVIEW**

#### **STATEMENT OF THE CASE**

Before the Board is an appeal by David and Paula Ostby of a decision from the Gallatin County Tax Appeal Board (GCTAB) upholding the Montana Department of Revenue's valuation of their home in Bozeman. At the conclusion of the hearing on December 11, 2019, the GCTAB made no adjustment to the property value. We affirm the GCTAB's determination.

#### **ISSUE TO BE DECIDED**

The issue before the Board is whether the Department of Revenue (DOR) correctly determined the market value of the Ostby's land and improvements for property tax purposes.

#### **PROPERTY DESCRIPTION**

The subject property is located at 2232 Bucks Run Court, Bozeman, with a land description of Headlands, S32, T01, S, R6 E, Acres 0.597, Plat J-346, Lot 9, and Geocode 06-0905-32-3-13-0000. The land comprises 0.597 acres. The improvements on the land consist of a home with three bedrooms, four full-baths and one half-bath, with a total gross living area

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of 4,324 square feet. *Dept. Ex. C.* The one-story home was built in 2010. Additional listings on the property record card include a 1,426 square foot attached garage with a finished attic, three decks, and two open porches. *Id.*

### **EXHIBIT LISTS**

The Board admitted the flowing exhibits submitted by Mr. Ostby:

Ex. 1: Montana Residential, Commercial, and Industrial Property Classification and Valuation Manual (Manual excerpt);

Ex. 2: Comparable sales report, consisting of five houses and the subject property.

This exhibit was prepared by the Department of Revenue (DOR) for the Gallatin County Tax Appeal Board (GCTAB);

Ex. 3: Google Maps image showing the location of DOR's comparables;

Ex. 4: Google Maps image showing the location of sales selected by Taxpayer that have occurred near the subject property;

Ex. 5. List of comparable houses closer to the subject property. The DOR prepared this exhibit for the CTAB hearing. Exhibit includes a handwritten note by Mr. Ostby from the GCTAB hearing;

Ex. 6: A map of the Highlands housing development showing the location of each lot;

Ex. 7: Handwritten notes by Mr. Ostby stating the reasons he believes the DOR's comparable houses are not valid;

Ex. 8: DOR's list of comparable houses used to establish market value and map;

Ex. 9: DOR's list of sales within the subject property's neighborhood/market area;

Ex. 10: DOR's list of sales not within the subject property's neighborhood/market area;

Ex. 11: State of Montana property record card showing the value history of the subject property;

Ex. 12: Screenshots from an undisclosed internet site, showing the sale history of

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three houses;

Ex. 13 & 14: State of Montana property record card for the subject property;

Ex. 15 & 16: Email correspondence between Mr. Ostby and Pamela Hamlin, assistant secretary GCTAB;

Ex. 16 & 18: Emails correspondence with MTAB regarding the scheduling order;

Ex. 19 Through 23: Email correspondence with DOR regarding tax information for this case;

Ex. 24 Through 28: Email correspondence with MTAB regarding hearing procedures;

Ex. 29 Through 33: Email correspondence with DOR regarding requests for discovery;

Ex. 34 Letter sent from DOR to Mr. Ostby regarding discovery;

Ex. 35 Through 41: Photos of the houses used by DOR as comparable to the subject property;

Ex. 42 Through 48: photos of houses neighboring the subject property;

Ex. 49 Through 51: Photos showing the view from the subject property;

Ex. 52: Liberty Mutual estimates to repair the subject property; and

Ex. 53: Photos of damage to the subject property.

The Board admitted the flowing exhibits submitted by the DOR:

Ex. A: AB-26 request for informal classification and appraisal review, filed by Mr. Ostby, dated June 19, 2019;

Ex. B: AB-26 Determination Letter, showing that an adjustment was changed to the property information;

Ex. C: State of Montana property record card for the tax year 2019;

Ex. D: Property classification and appraisal notice September 30, 2019;

Ex. E: Comparable sales report, consisting of three houses and subject property;

Ex. F: Department of Revenue computer-assisted land pricing model, 2018 land

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valuation;

- Ex. G: County Tax Appeal form appealing to GCTAB, and associated documents;
- Ex. H: GCTB receipt and acceptance of Mr. Ostby's appeal for the 2019 tax year and emails between Mr. Ostby and Pam Hamlin, GCTAB assistant secretary; and
- Ex. I: GCTAB final decision.

Upon request of the Taxpayer at the conclusion of the hearing, both parties were allowed to provide supplemental information for the Board to consider in its deliberation. The Taxpayer submitted his supplemental information and sixty-two questions for the DOR on August 19, 2020. The DOR filed its notice declining to respond to the questions after the hearing was concluded, on September 2, 2020.

**FINDINGS OF FACT**

- 1. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
- 2. Mr. Ostby grew up dryland farm/ranch in Northeastern Montana. He graduated with a degree in chemical engineering from MSU and managed the design and construction of several nuclear projects. *MTAB Hrg. Transcr. 6:14*. During Mr. Ostby's life, he has had four new houses built for him and used his business experience to manage construction costs and identify cost saving materials. *Id.*
- 3. The Mr. Ostby purchased the subject land on January 16, 2004 and contracted for the construction of a house in 2010 for \$521,000. *MTAB Hrg. Transcr. 12:6*. For tax years 2019/2020 the DOR valued the subject land at \$210,177 and the improvements at \$713,523, for a total of \$923,700 as of January 1, 2018. *Dept Ex. C.*

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4. Mr. Ostby contested this 2019/2020 property appraisal by filing a DOR form AB-26 request for Informal Classification and Appraisal Review on June 19, 2019. *Dept. Ex. A.* The core issue of Mr. Ostby's contention was that the DOR value assigned to the property had increased by 47% in the previous three years. Mr. Ostby claimed that his neighbor's houses had been appraised for 34% less than his property and that the DOR improperly used the sale prices of homes outside of his neighborhood to establish his market value. *Dept. Ex. G.*
5. In response to Mr. Ostby's objections, the DOR sent an AB-26 Letter of Determination to Mr. Ostby on September 24, 2019, stating that the DOR had reduced the appraised value from \$932,900 to \$923,700. *MTAB Hrg. Transcr. 45:19.* This reduction was achieved by reevaluating some of the house's amenities, including plumbing fixtures, fireplaces, and a concrete patio. *Id.*
6. Mr. Ostby sought a further reduction and filed an appeal to the GCTAB on October 18, 2019, and a hearing took place on December 11, 2019. *Dept. Ex. I.*
7. The GCTAB heard the taxpayer's and DOR's arguments but did not reduce Mr. Ostby's value of \$923,700. *Id.*
8. Mr. Ostby appealed the GCTAB decision to this Board on January 13, 2020, seeking a valuation of \$722,000. *MTAB Appeal Form.*
9. For the appraisal cycle at issue in this appeal, the DOR used a sales comparison method of appraisal to determine the market value of the subject property. *MTAB Hrg. Transcr. 61:14.* There were six comparable property sales generated by the DOR mass appraisal software, of which the DOR used five. *MTAB Hrg. Transcr.*

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62:4. In the 2017/2018 appraisal cycle however, there were not enough comparable sales prior to January 1, 2016 to build a valid comparable sales model, so the DOR instead used a cost approach to value the subject property in 2017.

*MTAB Hrg. Transcr. 61:23.*

10. Mr. Ostby testified at the MTAB hearing if he were to list his home for sale in 2020, he would price it at \$820,000. *MTAB Hrg. Transcr. 24:24.*

11. Mr. Ostby asserted that he built his house for the lowest possible price, testifying his house has less detail and finish work than the houses around him. *MTAB Hrg. Transcr. 36:18.*

12. Mr. Ostby further testified that the primary factor used in the DOR sales comparison model is square feet. *MTAB Hrg. Transcr. 30:5.* Mr. Ostby contested this because his three-bedroom home has more square feet than the other five-bedroom houses the DOR compared the subject property to. Mr. Ostby claimed a five-bedroom house used in the DOR's model was not comparable to the three-bedroom subject property with similar square feet. *MTAB Hrg. Transcr. 12:5.*

13. Mr. Ostby introduced the Montana DOR Residential, Commercial, and Industrial Property Classification and Valuation Manual (Manual excerpt) that he asserts contains fifty pages for an appraisal process. He said the DOR ignored the manual and used only a square-feet calculation, treating him unequally from his neighbors. *MTAB Hrg. Transcr. 28:16.* Mr. Ostby provided no evidence that he has been treated differently than his neighbors beyond this assertion.

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14. Mr. Ostby also focused his critique of the DOR appraisal on the location of comparable properties used to determine his home's market value. He claimed that as they were located outside of his neighborhood, the DOR must have "cherry-picked" comparable properties to buttress the value generated for his home. *MTAB Hrg. Transcr. 111:2*. Mr. Ostby contends there were 25 properties sold within a half-mile of his property, and because the DOR used properties outside the area of his neighborhood, there are different "cost drivers" affecting the market value of comparable properties sold outside his neighborhood. *MTAB Hrg. Transcr. 111:2*.
15. Specifically, Mr. Ostby argued that the DOR's comparable properties are in neighborhoods with better amenities than his own, which would presumably increase their value relative to his property, including parks, schools, proximity to the college, and walking paths. *MTAB Hrg. Transcr. 31:1*.
16. Mr. Christian Bradbury, DOR's witness, refuted this claim regarding neighborhood amenities and argued the properties Mr. Ostby suggested the DOR use for comparison have comparability scores to the subject of above 200, which in the DOR system means they are lacking in similarity to Mr. Ostby's property to a great enough degree so as to be rejected by their model as unusable. *MTAB Hrg. Transcr. 57:20*.
17. DOR Area Manager Pam Moor testified modelers can weight their model to consider nearby sales and look in a certain neighborhood for comparable property sales, but barring that may expand the model boundary to other neighborhoods where more-comparable sales are documented. *MTAB Hrg. Transcr. 77:24*. If a model goes outside of the weighted neighborhood DOR modelers use regression

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analysis to relate the comparable property characteristics of sold properties to their sales price. *Id.*

18. Mr. Ostby's home is in DOR neighborhood 10.C which encompasses most of northeast Bozeman city limits. *MTAB Hrg. Transcr.* 87:3. Each neighborhood has its own characteristics, and because of the different characteristics, DOR appraisers weight the model to select comparable houses as close to the subject property as possible. *Id.*
19. Mr. Ostby presented pictures that show significant hail damages to the subject property. *Taxpayer Ex.* 53. Mr. Ostby contends this unrepairs damage would impact the value of his property. *MTAB Hrg. Transcr.* 23:22.
20. DOR witness Bradbury testified he observed hail damage to the home but decided it was not extensive enough to reduce the property's condition rating. *MTAB Hrg. Transcr.* 48:15. Mr. Bradbury testified that the minor cosmetic damage would not affect the marketability of the subject property. *MTAB Hrg. Transcr.* 49:18.
21. The DOR rated the subject property's condition as very good (9), the utility as poor (5), the property desirability as average (7), and the location as average (7). *Dept Ex. C.* Property factors are based on a scale, with 1 being the lowest and 9 being the highest. *MTAB Hrg. Transcr.* 47:10.
22. The DOR averages all the property factors, including condition, utility, desirability, and location. *MTAB Hrg. Transcr.* 50:8. Because Mr. Ostby's property factors are on average high, changing or adjusting one would not affect

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the average of all the property factors, and would therefore not lower the subject property's market value. *Id.*

23. DOR's witness, Area Manager Pam Moor, described in detail the property factors that the DOR considers when reviewing comparable sales. She explained regression analysis, a technique for measuring the magnitude of the market's response to data elements, and how regression analysis is used to relate the property characteristics of sold properties to their sales price. *MTAB Hrg. Transcr. 85:11*

24. The model used for the subject property included 33 variables that could be adjusted. *MTAB Hrg. Transcr. 84:10*. The comparable properties' primary adjustments included year built, attached garage, square foot, plumbing fixtures, and quality grade. *Id.*; *MTAB Hrg. Transcr. 54:4*.

25. Ms. Pam Moor further testified that an appraiser, when appraising a property, cannot just consider the house's overall square-foot as a predominant factor. *MTAB Hrg. Transcr. 84:16*. Main floor square-footage includes foundation and roof costs, so when determining square-feet, there is a difference between main level, basement, and second story square-footage. *Id.*

26. For the MTAB hearing, the DOR ran a sales comparison model using only properties in the subject property's immediate subdivision. *MTAB Hrg. Transcr. 57:16*. DOR found that all the properties had a high comparability rating, which means the properties were dissimilar to the subject and were therefore not valid for use in a model. *Id.* If the DOR would have used these properties in their sales

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comparison model, the appraised value of Mr. Ostby's property would have been higher. *Id.*

27. In the Bozeman area, the DOR has seen an average of about ten percent increase each year in the values of properties, including the subject property, according to Ms. Moor. *MTAB Hrg. Transcr. 58:14.*
28. The Taxpayer vociferously contended that the DOR did not follow its appraisal manual and "cherry-picked" properties to use as comparable properties, thus increasing his property's value. *MTAB Hrg. Transcr. 17:7.* The Taxpayer also spent considerable time prior to the hearing complaining in *ex parte* communications to the board about the DOR's alleged incompetence in timely providing him with information that he requested. *Ostby Email dated 5/18/20;* *Ostby Email dated 7/6/20;* *Ostby Email dated 8/18/20.* Because of his complaints and to avoid any undue advantage, the Board allowed him a period after the hearing to submit any additional information he thought would help inform the Board in making its decision. Instead of doing so, he submitted a detailed list of some sixty-two questions and demands of both the Board and the DOR with admissions against interest, replies to accusations, and insistence on admitting either malfeasance, incompetence, or both. *Ostby Email dated 8/18/20.* The Board eventually entered an order dated August 21, 2020, some 17 days after hearing the matter notifying Mr. Ostby the record is deemed complete and that the time for submitting evidence or making arguments was finished and would not be reopened. *Board's Post Hearing Order, Dkt. 14.* The DOR did not submit any evidence after the hearing. *Respondents Post Hearing Response to Appellant's Post Hearing Filing, Dkt. 15.*

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**JURISDICTION AND STANDARD OF REVIEW**

29. The Montana Tax Appeal Board is an independent entity not affiliated with the Montana Department of Revenue. Under the authority of Mont. Code Ann. § 15-2-301.

30. The Taxpayer filed a timely appeal of the BCTAB decision to the MTAB. Therefore, this Board has jurisdiction to hear and decide this matter. Mont. Code Ann. §15-2-301.

31. Mr. Ostby timely appealed the GCTAB's decision to the MTAB, which has jurisdiction over this case. Section 15-2-301, MCA. The MTAB follows a *de novo* standard of review when hearing matters appealed from a county tax appeal board. *CHS, Inc. V. Mont. State Dept. of Revenue*, 2013 MT 100, ¶29, 369 Mont. 505, 299P.3d 813. “A trial *de novo* means trying the matter anew, the same as if it had not been heard before and as if no decision had been previously rendered.” *McDunn v. Arnold*, 2013 MT 138 ¶ 14, 370 Mont. 270, 303 P.3d 1279.

**CONCLUSIONS OF LAW**

32. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

33. DOR is entitled to a “presumption of correctness if its decisions are pursuant to an administrative rule or regulation, and the rule or regulation is not arbitrary, capricious or otherwise unlawful.” *Dep't of Revenue v. Burlington N. Inc.*, 169 Mont. 202, 214, 545 P.2d 1083, 1090 (1976). 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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34. 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).
35. "All taxable property must be appraised at 100% of its market value...." Mont. Code Ann. § 15-8-111.
36. "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).
37. "[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).
38. For the taxable years from January 1, 2019, through December 31, 2020, all property classified in Mont. Code Ann. § 15-6-134, (class four) must be appraised at its market value as of January 1, 2018. Mont. Code Ann. § 15-7-111.
39. The DOR has submitted sufficient evidence on its findings and methodology to meet its initial standard of proof, and it is thus entitled to the presumption of correctness. In contrast, we find that the Taxpayer has not submitted substantial or credible evidence that the DOR failed in any way to treat similar properties in a similar fashion. There was no cherry-picking in this case.

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40. The DOR may use any of three acceptable methods to determine the fair market value of a property. In this case, the Department relied on the sales comparison approach because there were sufficient sales in the Bozeman area of properties comparable to Mr. Ostby's. The DOR's use of this method in this appraisal cycle followed the standards and rules set forth in Montana Administrative Rules, the relevant statutes, and case law. The DOR proved that the properties used as comparable properties in their modeling were, in fact, comparable to the subject property, as indicated by the testimony that each of the properties used rated less than 200 on the comparability scales, meaning that the properties were, by all measures, comparable.
41. The DOR also took an extra step and built a sales model using the properties suggested by the Taxpayer using the same program it used to arrive at its appraisal value (different input data subjected to the same program). When the dust settled from this computer run, the results were that the Taxpayer's property's value would have increased had the suggested properties been used to build the model of comparable sales. The DOR provided substantial, credible testimony to this effect; the Taxpayer provided nothing that seriously questioned this conclusion. The old saying that "garbage in, garbage out" ruins the validity of computer projections and modeling aptly describes, in this instance, the Taxpayer's contentions.
42. While we accept that the Taxpayer's engineering degree and long history of real-world experiences in managing complex construction projects give him a unique perspective of the construction business, these factors do not qualify him as an expert in the appraisal of either real property or improvements thereon. His contention that long unrepairs hail damage would automatically translate into a significant decrease in his house's value compared to his neighbors' houses also

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fails as a matter of law. The DOR's testimony that it took the hail damage into account when rating the CDU components as reflected on the property record cards is credible. Further, adjustments made to some factors in the model do not mathematically result in significant swings in the result.

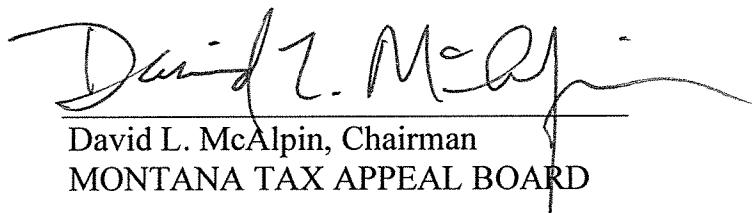
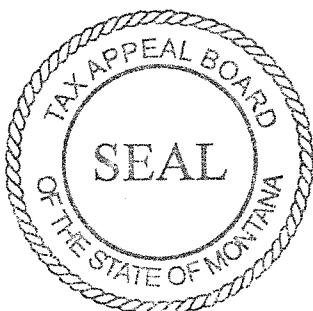
43. The Gallatin County Tax Appeal Board is affirmed. The Taxpayer's appeal is denied.

**ORDER**

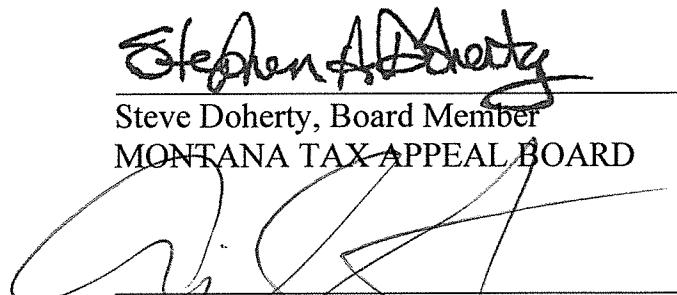
44. Mr. Ostby's appeal and complaint are denied, and the BCTAB decision is affirmed.

45. DOR is ordered to set the value of the property at \$923,700 for 2019/2020 tax years.

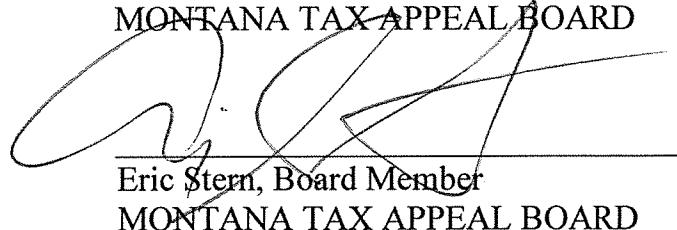
Ordered December 2, 2020



David L. McAlpin, Chairman  
MONTANA TAX APPEAL BOARD



Steve Doherty, Board Member  
MONTANA TAX APPEAL BOARD



Eric Stern, Board Member  
MONTANA TAX APPEAL BOARD

**Notice:** You are entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. The Department of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. MCA §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 and Opportunity for Judicial Review to be sent by Email, United States Mail via Print and Mail Services Bureau of the State of Montana on December 2, 2020 to:

**David W. and Paula A. Ostby**  
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Lynn Cochran, Legal Secretary  
MONTANA TAX APPEAL BOARD