

BEFORE THE MONTANA TAX APPEAL BOARD

JAMES C. & BARBARA J. SOHM,

Appellants,

v.

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

Respondent.

CASE No: PT-2017-18

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

Before the Montana Tax Appeal Board is appellants James and Barbara Sohm's appeal from the Lake County Tax Appeal Board, "LCTAB," decision denying their appeal pursuant to MCA § 15-7-139. Because they relied on MCA § 15-7-139 in reaching their decision, the LCTAB heard very limited testimony and evidence on whether the DOR properly valued the Sohms' property.

This Board held a *de novo* hearing on February 26, 2018. At the hearing, this Board took evidence and heard all arguments as to the Sohms' interpretation of MCA § 15-7-139 and the market value of their home.

For the reasons provided below, the Sohms' appeal is granted in part.

ISSUES TO BE DECIDED

1. Whether MCA § 15-7-139 applies when the DOR requests to inspect a taxpayer's home after the taxpayer has appealed to the county tax appeal board, even though the DOR in the previous tax cycle inspected the taxpayer's home, and no modifications were made to the home in the interim.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohn v. Montana Dept. of Revenue

2. Whether the DOR properly calculated the market value of the Sohms' residence.

FINDINGS OF FACT

Description of the Property

3. The land involved in this appeal is described as follows:

Mission Bay Preserve Orchard Phase 2, SO2, T22 N,
R20 W, Lot 11, with a common address of 100
Pheasant Ridge Ct., Polson, Montana and a geocode of
15-3228-08-1-08-11-0000.
4. The Sohms' land is a .81 acre lot in Mission Bay Preserve. DOR Ex. B.
5. The Sohms' home on the property is a custom built 3 bedroom, 2 full bath and 2 half bath residence built in 2012. *Id.* A 476 square foot space, described as a sewing room is above the semi-attached garage. Taxpayer's Ex. 25; MTAB Hrg. 46:52 – 46:54. The Sohms' home has views of Flathead lake, the Mission mountains, as well as a partial view of the Polson golf course. DOR Ex. B.
6. The home is marked by unique and personal features, including:
 - a. Reclaimed wood used for the oak flooring, fir ceilings, timbers and barn wood used throughout the home;
 - b. A custom tile mural behind the kitchen stove;
 - c. A custom metal railing with brand artwork on the deck;
 - d. A raised rock jacuzzi in the master bath with a wall fireplace;
 - e. Custom lighting inside and out;
 - f. The media/game room has a stainless steel full service bar and wall fireplace;
 - g. Custom made glass art with LED lighting in the bar mirror and shower door in the downstairs bath;
 - h. Hand distressed alder wood stairs; and
 - i. Oversized cedar siding. Taxpayers' Ex. 42.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

7. In the 2013 “Parade of Homes,” the Sohms’ home won awards for best architectural design and best landscaping. MTAB Hrg. 1:28:20 – 1:28:39.
8. For the 2014 tax year, the DOR valued the Sohms’ property using the market sales approach and determined their land had a value of \$307,484 and their improvements had a value of \$679,216, for a total value of \$986,700. DOR Ex. B.
9. For the 2015/2016 tax cycle, the DOR used the market sales approach and determined, after an AB-26 review, the Sohms’ land had a value of \$207,332 and their improvements had a value of \$649,868, for a total value of \$857,200. Taxpayer Ex. 54, p. 34, 50. The Sohms appealed this value to the LCTAB. The LCTAB lowered the DOR’s value of the Sohms’ land by approximately \$125,000, finding the Sohms’ property had a total market value of \$775,000. The DOR did not appeal the LCTAB’s decision. DOR Ex. B.
10. Using a statutorily mandated January 1, 2016 tax lien date for the 2017/2018 tax cycle, the DOR, using the cost approach, determined the Sohms’ improvements had a value of \$959,320.¹ DOR Ex. B. The DOR, using its computer assisted land pricing model (CALP), determined the land had a value of \$176,926. *Id.* Therefore, the DOR found the Sohms’ property had a total value of \$1,136,246. *Id.*

¹ While the DOR did not admit the computer assisted land pricing model (CALP) and show why it did not use the market sales approach to value the Sohms’ improvements, the DOR’s property record card indicates the market sales approach revealed a total market value of \$894,300 for the Sohms’ property. DOR Ex. B.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

11. The value of \$1,136,246 is approximately \$350,000 more than the Sohms' property's market value, after a reduction by the LCTAB, during the 2015/2016 tax cycle. *Id.*

AB-26 – appeal and outcome

12. For the 2017/2018 tax cycle, the Sohms did not request an AB-26 informal review by the DOR and instead appealed directly to the LCTAB. LCTAB Hrg. Transcr. 18:16 – 18.

LCTAB hearing – appeal and outcome

13. On June 6, 2017, the Sohms appealed the DOR's assessment notice to the LCTAB.
14. Prior to the LCTAB hearing, the DOR requested an inspection of the Sohms' property. Taxpayer Ex. 1. The Sohms denied the DOR's request. *See* Taxpayer Ex. 2; LCTAB Hrg. Transcr. 18:21 – 22; and 21:19 – 21.
15. The LCTAB heard the Sohms' appeal on September 7, 2017.
16. Mr. Sohm appeared on behalf of the Sohms.
17. Mr. Sohm explained he believed the DOR's assessed value was retaliation from their prior successful appeal:

My appeal presentation in 2015 was successful and the current assessment of \$857,200 was further reduced to \$775,000. At the conclusion of that appeal hearing, the MDOR representative, again I believe Jim, stated that next time, and I quote "he would guarantee me an assessment of \$1,100,000." I made notes of those comments at that time as well as a comment that was made by one of the county tax appeal board members that stated that sounded threatening. That prompted me to also request a copy of the audio recording of that hearing of the MDOR in Helena which I currently possess. When seeing my current 2017 tax assessment, I was surprised to see that it had risen from what the 2015 county tax appeal board had agreed was a fair valuation of \$775,000 to a current

BEFORE THE MONTANA TAX APPEAL BOARD

Janice & Barbara Sohm v. Montana Dept. of Revenue

adjustment of \$1,136,246, or an increase of 46.6%. This assessment fell precisely at the same level the local DOR employee had promised in 2015 at the conclusion of the county board hearing.² LCTAB Hrg. Transcr. 5:12 – 24.

18. Mr. Sohm admitted he denied the DOR's request, made prior to the LCTAB hearing, to enter his land or his home for an inspection. Instead, he relied on the fact he allowed the DOR to inspect his home during the 2015/2016 tax cycle and read the law to mean the prior inspection should satisfy MCA § 15-7-139. LCTAB Hrg. Transcr. 22:1 – 19; 23:13 – 19.
19. The LCTAB informed Mr. Sohm that applying MCA § 15-7-139, he had two options: "one is to allow the DOR access, second is to provide the Department with a fee appraisal." LCTAB Hrg. Transcr. 25:3 – 5.
20. The LCTAB made several rulings. First, the LCTAB stated it would issue a decision and Mr. Sohm could either: (1) appeal to the Montana Tax Appeal Board; or (2) the LCTAB would hold a hearing on or about October 26, 2017, to give the Sohms time to either allow the DOR to inspect the residence or for them to obtain an independent fee appraisal. LCTAB Hrg. Transcr. 21:16 – 25; 25:17 – 26:2.
21. Mr. Sohm concluded the hearing by stating:

I might be applying to go to Helena [i.e. appealing to the Montana Tax Appeal Board] only because I think that mine's going to be appraised a certain way. I think that all these should be appraised a certain way,

² Mr. Sohm testified that he was singled out and was the victim of bias and prejudice on behalf of certain DOR employees. As this Board lacks authority to make findings on such charges, it cannot and will not comment on the validity or invalidity of his allegations.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

I don't know as we should have any single doubts.
LCTAB Hrg. Transcr. 27:6 – 8.

22. Despite offering a continuance to Mr. Sohm, the LCTAB issued a decision, signed and dated September 7, 2017, rejecting the Sohms' appeal because the Sohms did not allow the DOR to inspect their home or did not provide an independent fee appraisal pursuant to MCA § 15-7-139. Jim Sohm – Appeal to the Montana Tax Appeal Board, p. 6 (October 10, 2017); see also Taxpayer Ex. 12.
23. Mr. Sohm proceeded with the understanding the LCTAB had granted a continuance. Mr. Sohm, as a result, scheduled the DOR to inspect his property on or about September 29, 2017. Taxpayer Ex. 12.
24. However, on September 26, 2017, Mr. Sohm emailed CTAB Chairman Fred Nelson stating under his reading of MCA § 15-7-139, he would not allow the DOR to inspect his home, but only allow them to inspect his land. Taxpayer Ex. 6.
25. On September 28, 2017, Mr. Sohm emailed Chairman Nelson again, wanting to confirm the LCTAB would re-hear his matter on October 26, 2017. Taxpayer Ex. 8.
26. On or about September 28, 2017, Chairman Nelson informed Mr. Sohm he should not have granted a continuance and that Mr. Sohm could appeal to the Montana Tax Appeal Board. Taxpayer Ex. 54, p. 3 – 4.
27. In none of the email correspondence provided as evidence did Mr. Sohm state he intended on having an independent fee appraisal completed. *Id.*

MTAB hearing

28. On October 10, 2017, the Sohms appealed the LCTAB's decision to this Board.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

29. The Sohms requested this Board value their land and improvements at \$775,000 consistent with other homes and land in their neighborhood. *Id.* at p. 3. The Sohms asserted the DOR impermissibly increased the value of their property at a much higher percentage than their neighbors. *Id.* at p. 7 – 8. The Sohms attributed the DOR's increased value of their property to the DOR using the cost approach to value their property instead of the market sales approach. *Id.*
30. On February 26, 2018, this Board conducted a hearing at the Montana Tax Appeal Board office located at 600 North Park Avenue, Helena to consider evidence and testimony of the market value of the Sohms' property.
31. At the hearing, the Sohms were represented by Mr. Sohm. Mr. Sohm testified. He called no other witnesses.
32. This Board admitted the following exhibits submitted by Mr. Sohm:
 - a. Taxpayer Ex. 1: Email between DOR Lake County Appraiser Wayne Freeman and the Sohms dated August 28, 2017;
 - b. Taxpayer Ex. 2: Email between Wayne Freeman and the Sohms dated September 8, 2017;
 - c. Taxpayer Ex. 3: Email between LCTAB secretary Vicki Riebe and Fred Nelson concerning cancelling the second scheduled Sohm hearing dated September 11, 2017;
 - d. Taxpayer Ex. 4: Letter from retired attorney Bob Gannon to Mr. Sohm dated September 15, 2017;
 - e. Taxpayer Ex. 5: Email exchange between Mr. Sohm and Wayne Freeman dated September 8, 2017 through September 25, 2017;
 - f. Taxpayer Ex. 6: Letter and Legal Opinion by attorney Clinton Fischer, dated September 26, 2017;
 - g. Taxpayer Ex. 7: Letter from Mr. Sohm to Wayne Freeman dated September 28, 2017;

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

- h. Taxpayer Ex. 8: Letter from Mr. Sohm to Wayne Freeman dated September 28, 2017;
- i. Taxpayer Ex. 9: Letter from Mr. Sohm to Vicki Riebe dated September 8, 2017;
- j. Taxpayer Ex. 10: Email by Mr. Sohm to Wayne Freeman dated September 7, 2017;
- k. Taxpayer Ex. 11: Letter by Mr. Sohm to Vicki Riebe dated September 9, 2017;
- l. Taxpayer Ex. 12: Email from Vicki Riebe to Mr. Sohm dated September 19, 2017;
- m. Taxpayer Ex. 13: Screenshot from Montana Department of Revenue website;
- n. Taxpayer Ex. 14: Screenshot from Montana Department of Revenue website;
- o. Taxpayer Ex. 15: Screenshot from Montana Department of Revenue website;
- p. Taxpayer Ex. 16: Screenshot from Montana Department of Revenue website;
- q. Taxpayer Ex. 17: Screenshot from Montana Department of Revenue website;
- r. Taxpayer Ex. 18: MCA § 15-7-131;
- s. Taxpayer Ex. 19: Portion of the Montana Reappraisal plan for 2015 – 2020;
- t. Taxpayer Ex. 20: MCA § 15-7-110;
- u. Taxpayer Ex. 21: Portion of the Montana Reappraisal plan for 2015 – 2020;
- v. Taxpayer Ex. 22: Letter by Dennis Duty of Mission Bay Real Estate, LLC dated September 14, 2017;
- w. Taxpayer Ex. 23: Letter by Jeff Gallatin of Gallatin Construction dated September 15, 2017;
- x. Taxpayer Ex. 24: Property Record Card for the Sohms' property at issue;
- y. Taxpayer Ex. 25: Blueprint of the Sohms' residence;
- z. Taxpayer Ex. 26: Article II, Section 9 of the Montana Constitution;
- aa. Taxpayer Ex. 27: Letter from Mr. Sohm to Wayne Freeman dated September 11, 2017;
- bb. Taxpayer Ex. 28: Letter from Mr. Sohm to Deb Doney dated September 9, 2017;

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

- cc. Taxpayer Ex. 29: Email exchange between Mr. Sohm and Jessica Ball, dated September 13, 2017;
- dd. Taxpayer Ex. 30: Land Sales Comparison Map;
- ee. Taxpayer Ex. 31: Letter from Dennis Duty of Mission Bay Real Estate, LLC regarding land sales dated September 14, 2018;
- ff. Taxpayer Ex. 32: Email from Mac Swan to Mr. Sohm dated October 17, 2017;
- gg. Taxpayer Ex. 33: Letter from Dennis Duty of Mission Bay Real Estate, LLC regarding land sales dated October 20, 2017;
- hh. Taxpayer Ex. 34: Portion of the Montana Tax Appeal Board's pamphlet titled "How do I prepare for my real estate property tax appeal?";
- ii. Taxpayer Ex. 35: Letter from attorney Clinton Fischer to Mr. Sohm dated October 2, 2017;
- jj. Taxpayer Ex. 36: MCA § 15-7-139;
- kk. Taxpayer Ex. 37: List of area homeowners and the values of their properties from 2015 and 2017 as compiled by Mr. Sohm;
- ll. Taxpayer Ex. 38: List of area homeowners and the values of their homes and an assessed value per square foot as compiled by Mr. Sohm;
- mm. Taxpayer Ex. 39: Property land size ranking by Mr. Sohm;
- nn. Taxpayer Ex. 40: Home square footage ranking by Mr. Sohm;
- oo. Taxpayer Ex. 41: Decision by the LCTAB from the prior tax cycle, dated October 22, 2015;
- pp. Taxpayer Ex. 42: Description of the Sohms' home for a 2013 Parade of Homes;
- qq. Taxpayer Ex. 43: MLS data sheet for property at 109 Tundra Swan Way, Polson, MT;
- rr. Taxpayer Ex. 44: MLS data sheet for property at 222 Red Tail Road, Polson, MT;
- ss. Taxpayer Ex. 44.5: MLS data sheet for property at 112 Tundra Swan Way, Polson, MT;
- tt. Taxpayer Ex. 45: DOR Market Value Assessments – 17 Comparison properties – 2013 – 2017 (created by the Sohms);

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

- uu. Taxpayer Ex. 46: Email between Mr. Sohm and Wayne Freeman dated August 28, 2017 where Mr. Sohm denied an inspection of his home;
 - vv. Taxpayer Ex. 47: Letters from family friends and acquaintances attesting to the fact the interior of Sohms' home remains unchanged (September 11, 2017);
 - ww. Taxpayer Ex. 48: MLS listing of 148 properties compiled by the Sohms;
 - xx. Taxpayer Ex. 49: Letter from Representative Greg Hertz to Jim Sohm with his legal interpretation of MCA § 15-7-139(9);
 - yy. Taxpayer Ex. 50: Emails between Representative Greg Hertz, Research analyst Megan Moore, and DOR attorney Daniel Whyte (January 5, 2018 – January 8, 2018);
 - zz. Taxpayer Ex. 50.5: Missoulian Newspaper article on the increased costs of lumber for builders.
 - aaa. Taxpayer Ex. 51: Portion of the District Court decision in *Wood v. Dept. of Revenue*.
 - bbb. Taxpayer Ex. 52/53: Land Comparison Trends created by the Sohms.
 - ccc. Taxpayer Ex. 54 and 54a, 54b, and 54c: a 79-page narrative setting forth the Sohms' claims and arguments.
 - ddd. Taxpayer Ex. 55: Rebuttal statement
 - eee. Taxpayer Ex. 56: Assessment comparison; and
 - fff. Taxpayer Ex. 57: Summation/Closing Argument.
33. At the hearing, the DOR was represented by Dave Burleigh. The following witnesses testified in the DOR's case:
- a. Dan Lapan, DOR Property Assessment Division Region 1 area manager; and
 - b. Wayne Freeman, DOR Lake County Property Assessment Division appraiser.
34. This Board admitted the following exhibits submitted by the DOR:
- a. DOR Ex. A: Correspondence between the Sohms and the DOR;

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

- b. DOR Ex. B: 2017 Property Record Card for the Sohms' property;
- c. DOR Ex. C: Confidential land sales comparison map;
- d. DOR Ex. D: 2013 Property Record Card for the Sohms' property;
- e. DOR Ex. E: LCTAB Appeal and Decision (September 7, 2017);
- f. DOR Ex. F: Confidentiality agreement signed by James Sohm;
- g. DOR Ex. G: Porter Appraisal of the Sohm's property valuing their property on May 8, 2013 at \$900,000; and
- h. DOR Ex. H: Clinton J. Fischer Law Office, P.C. opinion on the Sohms' property issues (dated September 26, 2017); and
- i. DOR Ex. I: Cost Calculations for All Buildings (admitted as a demonstrative exhibit, MTAB Hrg. 3:51:43 - 3:51:50).

Issues raised separate from the substantive testimony

- 35. At the beginning of the hearing, the DOR filed a list of objections to Mr. Sohm's evidence and orally objected to Mr. Sohm's narrative. MTAB Hrg. 8:25 – 9:49. Despite these objections, this Board admitted all of the Sohms' evidence.
- 36. Regarding discovery, the Sohms made numerous requests for computer assisted land pricing (CALP) models and comparable sales information. The DOR admitted it failed to provide Mr. Sohm with any of the DOR's land sales information, meaning the CALP. The DOR also admitted it failed to provide Mr. Sohm with the comparable sales rejected in its decision to not use the comparable sales approach to value the Sohms' property. MTAB Hrg. 2:03:15 – 2:04:10; 3:17:46 – 3:19:55; Taxpayer Exs. 26, 27, and 28.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

37. Lastly, the DOR conceded there was some confusion at the LCTAB hearing and that MCA § 15-7-139 does not apply to the facts presented here. MTAB Hrg. 35:50 – 36:02; 2:26:48 – 2:27:42. Despite this concession, this Board addresses the issue in its Conclusions of Law.

The Sohms' case

38. Mr. Sohm first clarified he had presented the majority of his case in a 79-page narrative filed and marked as Taxpayer Ex. 54. MTAB Hrg. 7:39 – 8:20 (February 26, 2018).
39. Mr. Sohm first addressed the statutory interpretation of MCA § 15-7-139. MTAB Hrg. 14:50 – 16:07.
40. Mr. Sohm contended the DOR and LCTAB improperly interpreted MCA § 15-7-139. The LCTAB should have heard his appeal, and as a result his constitutional rights have been violated because he has been “forced unfairly” to appear before this Board. MTAB Hrg. 19:58 – 21:21; 1:51:46 – 1:52:02.
41. Mr. Sohm asserted “on the land,” as used in MCA § 15-7-139, refers to the land and does not require the internal inspection of their improvements. MTAB Hrg. 16:10 – 19:57.
42. To support his interpretation, Mr. Sohm relied on the following individuals' interpretation of MCA § 15-7-139: House District 11 Representative Greg Hertz, attorney Clinton Fischer, retired attorney Bob Gannon, and the DOR's chief legal counsel Dan Whyte. MTAB Hrg. 32:32 – 32:38, 52:08 – 54:30; Taxpayer Exs. 6, 49, and 50.
43. Mr. Sohm admitted he denied entry to the DOR on their land and into their improvements prior to the September 7, 2017 LCTAB hearing. MTAB Hrg. 1:53:45 – 1:54:04.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

44. However, Mr. Sohm testified two DOR appraisers saw their land and improvements in 2013 as part of the 2013 Parade of Homes. MTAB Hrg. 23:35 – 23:40; *see also* Taxpayer Ex. 42.
45. Mr. Sohm also testified that during the 2015/2016 tax cycle, two DOR appraisers again inspected their improvements; examining the Sohms' land and the interior of their home, including taking photographs and making measurements. MTAB Hrg. 24:10 – 24:30.
46. Mr. Sohm presented evidence there have been no changes to his home warranting another inspection. Taxpayer Ex. 47. All of this evidence, according to Mr. Sohm, showed MCA § 15-7-139 did not apply to his property. MTAB Hrg. 28:20 – 28:29, 50:45 – 51:00.
47. Regarding the market value of his home, Mr. Sohm collected data from Montana Cadastral to compare property values in Mr. Sohm's neighborhood.³ Mr. Sohm claimed this data showed the majority of his neighbors' property values decreased, while his property – using the LCTAB's determination of value of \$775,000 for the prior tax cycle as his property's value – had a 46 percent increase in value. MTAB Hrg. 26:28 – 27:06, 38:42 – 38:50; Taxpayer Ex. 37.
48. Mr. Sohm asserted the cost approach, which the DOR used to value his property, did not accurately determine market value because of the inherent subjectivity of this approach. MTAB Hrg. 41:22 – 25; 42:02 – 42:05. Instead, Mr. Sohm claimed only the market sales approach should

³ Montana Cadastral, available at: <http://svc.mt.gov/msl/mtcadastral/> (accessed on April 2, 2018).

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

- be used to determine their property's market value. MTAB Hrg. 42:09 – 42:12.
49. To support his assertion the market sales approach should have been used, Mr. Sohm provided three exhibits showing properties in his neighborhood selling for less than the DOR had valued their land and improvements. MTAB Hrg. 43:12 – 43:17; Taxpayer Exs. 43, 44, and 44.5.
50. These sales were:
- a. A property at 109 Tundra Swan Way which sold for \$800,000, referred to as the Hape property. Ex. 43; Ex. 54, p. 46; MTAB Hrg. 57:57 – 1:02:25.
 - b. A property at 222 Red Tail Road which sold for \$582,500, referred to as the Sutherland property. Ex. 44; Ex. 54, p. 46.
 - c. A property at 112 Tundra Swan Way which sold for \$855,000, referred to as the Zimmerman property. Ex. 44.5; Ex. 54, p. 46.
51. Mr. Sohm admitted the properties included in Taxpayer Exhibits 43, 44, and 44.5 were the only improved properties to sell in the Mission Bay Preserve over the last eight years. MTAB Hrg. 1:02:15 – 1:02:25. Two of the three sales, Mr. Sohm also admitted, were sold after the lien date and thus the DOR could not consider them in its market sales approach. MTAB Hrg. 1:58:00 – 1:58:16.
52. However, Mr. Sohm claimed the above property sales were at a loss to their owners; proving that properties in his neighborhood are not selling for the cost to purchase land and build a home. MTAB Hrg. 1:02:30 – 1:03:01; 1:03:45 – 1:05:19. Mr. Sohm testified these homes were selling for less than the cost to build those properties because of a poor housing

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

market for high-end custom-built homes and rapidly rising building costs. *Id.*

53. Mr. Sohm argued that Taxpayer Ex. 48 identified 148 comparable property sales, but acknowledged there was no comparability points analysis or time trending from sale date to lien date completed for those 148 sales. MTAB Hrg. 2:00:03 – 2:01:08. Mr. Sohm did not adjust any of the sales to his home's characteristics or age. MTAB Hrg. 2:04:17 – 2:04:39. Mr. Sohm also did not know how a DOR appraiser defines a comparable. MTAB Hrg. 2:03:04 – 2:03:07. As to the list of 148 properties, Mr. Sohm did not personally inspect any of the homes. MTAB Hrg. 2:01:08 – 2:02:47.
54. Next, Mr. Sohm challenged the accuracy of the DOR's cost approach to value their improvements. Mr. Sohm asserted the DOR's property record card had several errors which in total resulted in over-measuring the size of the Sohm residence by approximately 1,100 square feet. MTAB Hrg. 44:50 – 44:56.
55. First, according to Mr. Sohm, the room over their semi-attached garage is only 476 square feet and not 928 square feet, as stated on the DOR's property record card. This error increased his home's size by 452 square feet. Taxpayer Ex. 25; MTAB Hrg. 44:44 – 51:05.
56. Second, Mr. Sohm claimed the DOR had determined their home's basement was 2,560 square feet and was completely finished. MTAB Hrg. 44:44 – 51:05.
57. However, Mr. Sohm asserted only approximately 1,930 square feet of the basement is finished. *Id.*; Taxpayer Ex. 25. Mr. Sohm testified this means the DOR overcalculated the finished size of his basement by approximately 642 square feet. *Id.*; *see also* Taxpayer Ex. 54c.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

58. So, Mr. Sohm declared the 452 square feet above the garage and the 642 square feet representing his unfinished basement when added together showed the DOR had overcalculated the size of his home by 1,094 square feet. *Id.* The DOR's value, Mr. Sohm declared, needed to be reduced by the value of the 1,094 square feet. *Id.*
59. However, the property record card for the property shows that the DOR only calculated 1830 square feet as finished in its cost calculation of the Sohms' basement. DOR Ex. D.
60. Lastly, Mr. Sohm challenged the DOR's land value for their .81 acre lot.
61. Regarding their land value, Mr. Sohm testified they purchased the land for \$350,000 in 2004 or 2005. MTAB Hrg. 1:05:45 – 1:05:52. Mr. Sohm also testified he was offered the opportunity to purchase the adjoining lot for \$40,000 in January or February of 2016. MTAB Hrg. 1:07:56 – 1:08:12.
62. Mr. Sohm expressed confusion about the V2 and V3 view designations for the land values used by the DOR; finding them inconsistent and purely subjective given their application in his neighborhood. MTAB Hrg. 56:04 – 57:25.
63. During the 2015/2016 tax cycle, Mr. Sohm noted the DOR determined their land had a value of \$138,000, while for the 2017/2018 tax cycle, it determined their land had a value of \$176,926. MTAB Hrg. 1:09:25 – 1:09:44. According to Mr. Sohm, no basis existed for the DOR's increase of their land value. *Id.*
64. Mr. Sohm testified he believed the land sales used by the DOR to determine their land's value were incorrect because lots in Mission Bay Preserve are not selling for what the DOR has valued his lot. MTAB Hrg. 1:10:43 – 1:11:50.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

65. At the hearing, Mr. Sohm did not present an independent appraisal prepared for this appeal. MTAB Hrg. 1:37:18 – 1:37:23. In 2013, the Sohms had an appraisal completed by Porter Appraisal (Porter) presumably for financing of their property. Porter valued the Sohms' land and improvements at \$900,000. 1:38:40 – 1:40:49; DOR Ex. G. This Board did not receive the entire Porter appraisal, but did admit five pages of the Porter appraisal. *See* DOR Ex. G.
66. Mr. Sohm testified the Porter appraisal was wrong and that the correct value of their land and improvements in 2013 was \$800,000. MTAB Hrg. 1:40:25 – 1:40:40. Mr. Sohm claimed Taxpayer Ex. 57 explained the \$100,000 error in the Porter appraisal. But Mr. Sohm never clearly explained why the Porter appraisal was \$100,000 too high.
67. Mr. Sohm also did not present a specific fair market value for his property, despite questioning from this Board about the appropriate value of their property. *See* MTAB Hrg. 54:55 – 55:01[Asking for a specific value]; 1:19:28 – 1:19:50 [Mr. Sohm testified he believed his property's value is somewhere between \$775,000 and \$857,000. \$775,000 was the value set by the LCTAB for the 2015/2016 tax cycle and \$857,000 was the DOR's value for the 2015/2016 tax cycle.].
68. Mr. Sohm stated he intended on selling their property in the future and for more than \$775,000. MTAB Hrg. 1:33:40 – 1:33:43; 1:36:50 – 1:37:13. Mr. Sohm stated he did not believe he would be able to sell the property for what he has invested in the land and improvements; which is over \$1 million. *Id.*
69. Mr. Sohm called no other witnesses. He did not, for example, call the other homeowners he spoke to; thus, they were not cross-examined. Furthermore, Mr. Sohm did not present any affidavits or sworn

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohms v. Montana Dept. of Revenue

statements from the individuals he referred to and relied upon both during the hearing and in his 79-page narrative.

The DOR's case

70. Dan Lapan testified first for the DOR.
71. Mr. Lapan has worked for the DOR as an appraiser since 2005. He started as a residential appraiser and was then promoted to a commercial appraiser in 2007 and worked as a commercial appraiser until 2016. He recently became area manager for Lake County and Sanders County. MTAB Hrg. 2:32:16 – 2:32:57.
72. Mr. Lapan is a certified residential, commercial, and agricultural appraiser. MTAB Hrg. 2:32:54 – 2:33:03.
73. Mr. Lapan trains appraisers in various counties and he trained Mr. Freeman, who appraised the Sohms' property. MTAB Hearing 2:34:10 – 2:35:00.
74. Mr. Lapan did not assist Mr. Freeman with the initial appraisal, but he did assist Mr. Freeman in preparing for this hearing; in particular Mr. Lapan reviewed all of the DOR's documents related to the Sohms' property and appeal, he drove through Mr. Sohm's neighborhood, and he looked at various properties in Mr. Sohm's neighborhood. MTAB Hrg. 2:35:30 – 2:36:08.
75. Mr. Lapan has personally appraised high-quality properties in Flathead County and Lake County. MTAB Hrg. 2:37:26 – 2:37:47.
76. During his testimony, Mr. Lapan explained the two appraisal approaches for valuing residential improvements: the market sales approach and the cost approach.
77. Mr. Lapan testified the DOR will not use the market sales approach if it lacks adequate comparable sales. MTAB Hrg. 2:49:48 – 2:51:31. A

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

comparable sale is considered a valid sale of a property with a home which has characteristics and from a neighborhood similar to the subject home. *Id.* The DOR uses a comparability database which looks at all the potential comparable sales and assigns a number – i.e. comparability points – to each comparable sale in its database for the neighborhood. *Id.* If a comparable sale has comparability points from zero to 100, the DOR is likely to use that property sale in its market sales approach. *Id.* If the comparability points are from 100 to 200, the DOR may or may not use the sale. *Id.* If the comparable sale has comparability points above 200 points, that means the home sale would need to be adjusted to such a degree that the DOR does not believe the sale is sufficiently accurate to be truly comparable; thus, the comparable sale will not be used. *Id.* Lastly, the DOR wants five acceptable comparable sales to complete a valid market sales approach. MTAB Hrg. 2:51:57 – 2:52:00.

78. For the Sohms' property, Mr. Lapan testified, there were only three neighborhood comparable sales and all three were above 200 comparability points. MTAB Hrg. 2:51:57 – 2:52:14, 3:15:30 – 3:15:36. According to Mr. Lapan, if an appraiser has less than five sales, and sales with comparability points above 200, the appraiser needs some very compelling evidence to still use the market sales approach. MTAB Hrg. 2:52:30 – 2:53:21.
79. Mr. Lapan clarified the DOR did use the market sales approach with a land regression analysis to value the Sohms' land. MTAB Hrg. 2:54:20 – 2:54:35.
80. If an appraiser cannot use the market sales approach to value the improvements, Mr. Lapan testified the appraiser must then use the cost approach. MTAB Hrg. 2:53:58 – 2:54:01.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

81. For the cost approach, Mr. Lapan stated the DOR first determines the replacement cost for the improvement by looking at regional construction cost data from Marshall & Swift as well as local costs to establish the cost of the building. MTAB Hrg. 2:44:30 – 2:45:44.
82. These costs for Lake County are then adjusted by a county index of .970 and an economic condition factor (ECF) of 1.00. *Id.*; DOR Ex. A.
83. After determining the replacement cost new, the building is depreciated based on its condition, utility, desirability, and age. MTAB Hearing 2:45:56 – 2:46:06.
84. For example, Mr. Lapan explained how the Sohms' garage was valued. An average garage like the Sohms' garage, with a standard quality of construction grade of 5, has a replacement cost new of \$63,000. The DOR then adjusted the value of the Sohms' garage to a replacement cost new value of \$90,000 to account for the Sohms' garage having a higher grade of 7, the ECF, and the Lake county index. MTAB Hearing 2:42:20 – 2:43:17.
85. Mr. Lapan testified the custom features of the Sohms' home are accounted for in the home's and garage's grade. 3:01:30 – 3:01:57, 3:05:00 – 3:05:36; *see also* DOR Ex. D. Homes are graded on a scale of 1 to 10 while garages are graded on a scale of 1 to 8. MTAB Hrg. 3:03:19 – 3:04:33. The Sohms' garage has a grade of 7 and the home a grade of 8. DOR Ex. A.
86. Lastly, Mr. Lapan reviewed the comparable sales provided by Mr. Sohm and contained in Taxpayer Exhibits 43, 44, and 44.5. Mr. Lapan testified about Taxpayer Exhibits 43 and 44.5. Mr. Lapan found both houses were older than the Sohms' home, they have less desirable views than the Sohms' property, and have less square footage than the Sohms' property.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohms v. Montana Dept. of Revenue

Therefore, Mr. Lapan claims the Sohms' property should be valued higher than either of those two sales of \$800,000 and \$855,000. MTAB Hrg. 3:10:20 – 3:11:44.

87. Wayne Freeman testified next.
88. Mr. Freeman is an appraiser for the DOR. MTAB Hrg. 3:32:58 – 3:32:03. He has worked for the DOR for four years and has been an appraiser for three years. MTAB Hrg. 3:32:09 – 3:32:11; 3:34:30 – 3:34:38. He is IAAO certified, but is not a licensed private fee appraiser. MTAB Hrg. 3:34:48 – 3:35:05.
89. Consistent with Montana being a mass appraisal state, on an annual basis, Mr. Freeman appraises approximately 1,000 residential properties. MTAB Hrg. 3:36:08 – 3:36:19.
90. Mr. Freeman testified it takes him 30 to 45 minutes to value a property if he has to visit the property and inspect the property. MTAB Hrg. 3:37:50 – 3:38:05.
91. According to Mr. Freeman, any time an appeal is filed, the DOR requests to inspect the property. MTAB Hrg. 3:41:03 – 3:41:30.
92. Here, after the Sohms' appealed to the LCTAB, Mr. Freeman requested an inspection of the Sohms' property a week and a half before the LCTAB hearing. MTAB Hrg. 3:41:50 – 3:41:57. Mr. Freeman was denied access to the property. MTAB Hrg. 3:42:05 – 3:42:07.
93. Mr. Freeman testified he considered using the market sales approach to value the Sohms' home, but all of the neighborhood sales which potentially could be used had comparability points above 200. The lack of sufficient comparable sales prevented him from using the market sales approach. MTAB Hrg. 3:42:09 – 3:42:48; 3:48:40 – 3:48:43; 4:18:20 – 4:18:53.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

94. Mr. Freeman testified to the property sales presented by Mr. Sohm. Mr. Freeman testified that the Hape home was smaller and older than the Sohms' home. MTAB Hrg. 3:48:10 – 3:48:36; *see* Taxpayer Ex. 43. These were just two of several other adjustments he would need to make to be able to use the Hape home as a comparable sale in a market sales approach. *Id.*
95. After determining the market sales approach could not be used, Mr. Freeman had to use the cost approach to value the property. *Id.*; MTAB Hrg. Transcr. 4:19:10 – 4:19:55. He completed his appraisal of the Sohms' property in four to five minutes. MTAB Hrg. 3:43:20 – 3:43:35.
96. To complete the cost approach, Mr. Freeman relied on the information already in the DOR's computer system for the Sohms' improvements. MTAB Hrg. 3:44:10 – 3:44:19.
97. Mr. Freeman reiterated the factors included in the cost approach method, as discussed by Mr. Lapan. MTAB Hrg. 4:02:00 – 4:07:01.
98. Mr. Freeman reviewed Taxpayer Ex. 38 and found several errors in Mr. Sohm's data. MTAB Hrg. 4:07:30 – 4:09:18. According to Mr. Freeman, Mr. Sohm had determined his residence was 4,390 square feet when it is actually 5,120 square feet. Similarly, Mr. Sohm had determined the Hape residence was 3,486 square feet, when it is actually 2,913 square feet. Using the appropriate square feet for the Hape and Sohm residences, Mr. Freeman determined the Sohms' home has a value of approximately \$161.00 per square foot, while the Hape home has a value of \$224.00 per square foot; meaning the Sohms' home had been valued consistent with neighboring homes. MTAB Hrg. 4:09:22 – 4:10:36.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohms v. Montana Dept. of Revenue

99. Mr. Freeman admitted the DOR had not entered into evidence the CALP for the land sales model used to value the Sohms' land. MTAB Hrg. 4:13:05 – 4:14:08.
100. Mr. Freeman admitted the DOR did not provide this Board with the comparable sales approach data showing why the DOR rejected the market sales approach. MTAB Hrg. 4:17:30 – 4:17:49. Mr. Freeman also admitted he could not present documentation showing why the DOR used the market sales approach to value the Sohms' property for the 2015/2016 tax cycle, but could not use the market sales approach for the 2017/2018 tax cycle. MTAB Hrg. 4:20:48 – 4:21:42.
101. The DOR conceded it needed to adjust the sewing room above the garage size to 476 square feet and it needed to adjust the home's square footage from 2560 to 2558. MTAB Hrg. 2:31:10 – 2:31:50; 2:41:06 – 2:41:50. These changes would result in a reduction in the DOR's value of approximately \$13,000. MTAB Hrg. 3:02:38 – 3:02:45; 4:03:50 – 4:04:06.

The Sohms' rebuttal case

102. Mr. Sohm's rebuttal case mirrored the evidence and arguments presented in his case in chief as to MCA § 15-7-139, the value of his land, and errors made by the DOR valuing his home. MTAB Hrg. 4:35:30 – 4:58:30.
103. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

CONCLUSIONS OF LAW

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

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

105. The Sohms' timely appealed the LCTAB's decision to this Board. Therefore, this Board has jurisdiction to hear and decide this matter. *See* Mont. Code Ann. § 15-2-301(1)(b).

Rules of Evidence in MCA § 15-2-301 appeals

106. "In connection with any appeal under [Mont. Code Ann. § 15-2-301], the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act." Mont. Code Ann. § 15-2-301(5).

107. In an appeal under MCA § 15-2-301, this Board is not required to strictly enforce the rules of evidence. This Board can be far more relaxed as to the evidence heard and the evidence admitted. This benefits *pro se*, self-represented taxpayers. A taxpayer will often present evidence which contains hearsay and lacks foundation, and yet this Board may admit the evidence because of the leeway allowed in MCA § 15-2-301(5).⁴

108. Here, Mr. Sohm, throughout his hearing and exhibits, referred to conversations with attorneys, representatives, and neighbors; all of

⁴ It is important to recognize the concerns of the framers of the 1972 Constitution. They felt a need to provide independent citizen boards to act as a buffer between taxpayers and the Department of Revenue. They envisioned taxpayers representing themselves, not always needing to hire attorneys to represent their interests. They envisioned, not a court, always governed by a strict application of the rules of evidence or rules of civil procedure, but by neighbors in the community who would convene in less formal settings in order to resolve disputes. Montana Constitution, Article VIII, sec. 7; MCA §§ 15-15-101 – 102; MCA § 15-2-301; *see also* Sec. 36, Ch. 405, L. 1973; Sec. 38, Ch. 405, L. 1973; and Sec. 54, Ch. 405, L. 1973 [All original statutes passed pursuant to the 1972 Montana Constitution.].

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

which, if the rules of evidence were strictly applied, constituted inadmissible hearsay. *See* Montana Rules of Evidence, Rule 801. Mr. Sohm presented a list of what he termed comparable sales in Taxpayer Ex. 48, but he provided no foundation for those sales. *See* Montana Rules of Evidence, Rule 901. Because of MCA § 15-2-301(5), this Board admitted the evidence and considered it. The use of hearsay evidence and evidence with no foundation does affect the weight this Board gives such evidence. But, all of the evidence and argument Mr. Sohm, as a *pro se* taxpayer, wished to present and admit as evidence, was presented and admitted into the record at the hearing before this Board.⁵

De novo hearing

109. At the hearing, the Sohms asserted the LCTAB wrongly applied MCA § 15-7-139 which violated their rights.
110. This Board hears CTAB appeals *de novo*. *See CHS, Inc. v. DOR*, 2013 MT 100, ¶ 29; *Hoch v. DOR*, 1991 Mont. Tax LEXIS 6 (Mont. Tax.App.Bd. 1990); *DOR v. Wood*, 2014 Mont. Tax LEXIS 1 (Mont. Tax.App.Bd. 2014); and *ABBEY/LAND LLC v. DOR*, 2015 Mont. Tax LEXIS 3 (Mont. Tax.App.Bd. 2015) [citing *Montana Dep't of Revenue v. Burlington N. Inc.*, 169 Mont. 202, 545 P.2d 1083 (1976); *PacifiCorp v. Montana Dep't of Revenue*, 2011 MT 93, 360 Mont. 259, 253 P.3d 847.].
111. “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, ¶ 22.

⁵ As discussed *infra*, the informal nature of MCA § 15-2-301 hearings might not exist in a court proceeding.

BEFORE THE MONTANA TAX APPEAL BOARD

James S. Barbara Sobhy, Montana Dept. of Revenue

112. This Board hears the Sohms' appeal *de novo*. This Board does not have to give any merit to the LCTAB's decision. Therefore, the LCTAB errors or omissions have no bearing on the evidence this Board admits nor the decision this Board makes. Any harm to the Sohms caused by any errors committed by the LCTAB are cured by this Board holding a *de novo* hearing and issuing findings of fact and conclusions of law addressing the merits of the Sohms' appeal. If either party is dissatisfied with the disposition here, MCA § 15-2-303 grants either party the right to request District Court review of these Findings of Fact and Conclusions of Law.⁶

Statutory Interpretation of MCA § 15-7-139

113. “[T]he goal of [statutory interpretation] is to give effect to the legislature’s intent, [and] begins with the text of the statute.” *Giacomelli v. Scottsdale Ins. Co.*, 2009 MT 418, ¶ 18. If the statute is “clear and unambiguous, no further interpretation is required.” *State v. Letasky*, 336 Mont. 178, 181 (Mont. 2007). “If the plain words of a statute are ambiguous, however, the next step in judicial interpretation of the statute is to determine the intent of the legislature.” *Infinity Ins. Co. v. Dodson*, 2000 MT 287, ¶ 46. “This is accomplished by examining the legislative history of the statute, including the title of the original bill.” *Id.* “When determining legislative intent, [the] interpretation must be reasonable.” *Id.* “Statutory construction should not lead to absurd results if a reasonable interpretation can avoid it.” *Letasky*, 388 Mont. at 181.

⁶ The framers' provided for two levels of buffering, both appeals before local voluntary boards of community members and appeals before the Montana Tax Appeal Board, before taxpayers are forced to District Court.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Johnson v. Montana Dept. of Revenue

114. MCA § 15-7-101(1) states the DOR has the duty to “accomplish the following:

- (a) the classification of all taxable lands;
- (b) the appraisal of all taxable city and town lots;
- (c) the appraisal of all taxable rural and urban improvements.”

115. MCA § 15-7-139, the statute at issue in this appeal, states:

(1) Subject to the conditions and restriction of this section, the provisions of 45-6-203 do not apply to property valuation staff employed by the department and acting within the course and scope of the employees’ official duties.

(2) A person qualified under subsection (1) may enter private land to appraise or audit property for property tax purposes.

(3)(a) No later than November 30 of each year, the department shall publish in a newspaper of general circulation in each county a notice that the department may enter property for the purpose of appraising or auditing property.

(b) The published notice must indicate:

(i) that a landowner may require that the landowner or the landowner’s agent be present when the person qualified in subsection (1) enters the land to appraise or audit property;

(ii) that the landowner shall notify the department in writing of the landowner’s requirement that the landowner or landowner’s agent be present; and

(iii) that the landowner’s written notice must be mailed to the department at an

BEFORE THE MONTANA TAX APPEAL BOARD

James F. Burkhardt, Schum v. Montana Dept. of Revenue

address specified and be postmarked not more than 30 days following the date of publication of the notice. The department may grant a reasonable extension of time for returning the written notice.

(4) The written notice described in subsection (3)(b)(ii) must be legible and include:

(a) the landowner's full name;

(b) the mailing address and property address;
and

(c) a telephone number at which an appraiser may contact the landowner during normal business hours.

(5) When the department receives a written notice as described in subsection (4), the department shall contact the landowner or the landowner's agent to establish a date and time for entering the land to appraise or audit the property.

(6) If a landowner or the landowner's agent prevents a person qualified under subsection (1) from entering land to appraise or audit property or fails or refuses to establish a date and time for entering the land pursuant to subsection (5), the department shall estimate the value of the real and personal property located on the land.

(7) 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

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Schmitt, Montana Dept. of Revenue

appeal board an appraisal of the property conducted by an appraiser who is certified by the Montana board of real estate appraisers. The appraisal must be conducted in accordance with current uniform standards of professional appraisal practice established for certified real estate appraisers under 37-54-403. The appraisal must be conducted within 1 year of the reappraisal valuation date provided for in 15-7-103(6) and must establish a separate market value for each improvement and the land.

(8) A person qualified under subsection (1) who enters land pursuant to this section shall carry on the person identification sufficient to identify the person and the person's employer and shall present the identification upon request.

(9) The authority granted by this section does not authorize entry into improvements, personal property, or buildings or structures without the permission of the owner or the owner's agent.

(10) Vehicular access to perform appraisals and audits is limited to established roads and trails, unless approval for other vehicular access is granted by the landowner.

(11) The department shall adopt rules that are necessary to implement 15-7-140 and this section. The rules must, at a minimum, establish procedures for granting a reasonable extension of time for landowners to respond to notices from the department.

116. MCA § 15-7-139(7) states if a taxpayer denies inspection of "land," the CTAB and this Board cannot adjust "the estimated value of the real or personal property." This implies the inspection of "land" includes both real and personal property. If not, then there would be no policy reason

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Schmitt, Montana Dept. of Revenue

to bar the adjustment of real property by this Board if an appraiser could see the land and not the inside of an improvement.

117. District Court Judge Seeley in *Wood v. Department of Revenue* in interpreting “land” under MCA § 15-7-139, stated:

Montana Code Annotated § 15-7-139 provides authority for a qualified state appraiser to enter private property for purposes of conducting an appraisal. If a landowner refuses to permit access, the statute authorizes the Department to "estimate the value of the real and personal property located on the land." Mont. Code Ann. § 15-7-139(6). Although Petitioners' arguments stress the fact that the statute uses the term "land" rather than residence, the statute, when read in its entirety, clearly authorizes an estimate of both. CDV-2014-349, 2015 Mont. Dist. LEXIS 74 (First Judicial District of Helena, December 8, 2015).

118. This Board has held MCA § 15-7-139(7) requires a taxpayer to allow the DOR to inspect both the land and the improvements so the DOR can properly determine property values. *DOR v. CBA, LLC*, 2015 Mont. Tax LEXIS 5 (Mont. Tax App. Board 2015)[“Section 15-7-139, MCA, is clear in that it requires the taxpayer to allow the DOR access into both the land and the improvements.”]; *DOR v. Voytoski*, 2015 Mont. Lexis 6 (Mont. Tax App. Board 2015)[“Section 15-7-139(7)(a) and (b) gives the Taxpayer a choice of either allowing an internal inspection or providing an independent appraisal.”]; and *Wadsworth v. DOR*, 2017 Mont. Tax LEXIS 4 (Mont. Tax App. Board 2017).
119. Given the decision in *Wood* and this Board’s prior decisions, MCA § 15-7-139(7) appears to require the taxpayer to allow the DOR to inspect both the land and improvements upon request. If the taxpayer denies the

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Schmitt, Montana Dept. of Revenue

DOR entry, the CTAB and this Board cannot reduce the value of the taxpayer's property.

120. However, the Sohms' contend that when MCA § 15-7-139(7) states "land" it means "land" and if the legislature intended to include improvements, the legislature would have included the term "improvements" as they did in MCA § 15-7-139(9). Furthermore, the Sohms contend MCA § 15-7-139(9) retains privacy rights for homeowners, and thus the DOR can only inspect the interior of a home with a homeowner's consent. If a homeowner refuses to provide consent to enter a home but does allow the DOR on the land, MCA § 15-7-139(7)'s recourse provision does not apply.
121. Given the above, this Board finds ambiguity exists. There appears to be two reasonable interpretations for MCA § 15-7-139(7).
122. To resolve this issue, this Board now turns to the legislative history of MCA § 15-7-139(7).
123. MCA § 15-7-139 became law with the enactment of HB 188 which Governor Judy Martz signed on February 6, 2003.
124. HB 188 had the short title, "Clarify authority to enter private property for prop. tax audit and appraisal."
125. On January 28, 2003, the Senate Tax Committee held a hearing on HB 188. Representative Devlin appeared and presented the bill. The following proponents spoke regarding HB 188:
 - a. Kurt Alme, Director of DOR;
 - b. Randy Wilke, DOR;
 - c. Harold Blattie, MACo;
 - d. Mary Whittinghill, Montana Taxpayer's Association; and
 - e. Todd Lovshin, MEA-MFT.
126. There was no opponents' testimony at the hearing.
127. Representative Devlin introduced the bill as follows:

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Salmon v. Montana Dept. of Revenue

This bill, its intention is to exempt appraisers from criminal trespass prosecution. . . The property owner may require that he or his agent may be present and they can work with the department to set up appointments. If an appraiser enters into private property, and no one is there, they may not enter into buildings or have free access to everything, this is just to do a visual inspection.

Senate Taxation Hrg. 22:12 – 24:05 (February 6, 2003).

128. Representative Devlin testified that HB 188 established that if the property owner does not allow the DOR on his or her land, out of “fairness” the taxpayer loses his or her appeal rights. Sen. Tax. Hrg. 24:33 – 24:38.
129. On HB 188, Mr. Alme, of the DOR, testified:

As representative Devlin explained, this is a bill that basically reestablishes the practice that has existed in Montana for the last 40 to 50 years relative to reappraisal. . . Basically what this bill is going to do is: one, to provide notice to taxpayers when an appraiser will be on their property; two, allow us to appraise all property and not miss property, or not be able to fairly assess property during reappraisal, and the third thing is to set forth a method for how to handle the appeal process when the department has no basis for understanding what the property is. As Mr. Wilke will explain, visual inspection in appraisal is critical and our ability now is, more and more properties becoming posted no trespassing across the state is becoming more and more restrained. . . Our practice used to be that if a property was posted no trespassing, our appraisers would nevertheless enter that property, go to the door, knock on the door, attempt to obtain the homeowner’s consent to inspect. If they could they would go forth with the appraisal and exit the property. If they could not, they would do a visual inspection of the property . . . exit the property and

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sobott - Montana Dept. of Revenue

then do an estimate based on what they had seen. What happened in the course of the last two years, this has been an issue building for several years, we have received indication from the attorney general's office that even that practice violates criminal trespass law in Montana. So we have instituted a department policy to not allow our appraisers to even go as far on to the property to even knock on the door. Sen. Tax. Hrg. 25:39 – 28:00.

130. Mr. Wilke explained how the DOR would implement HB 188 if it became law, stating:

Under this bill, if the owner is not available or has requested to not be present at the time of inspection, then the [DOR] employee will be allowed to take measurements, externally view and take a photograph of the property, and exit the property. In addition, we believe that there is an opportunity to possibly leave a self-reporting form to gather some additional information about the interior of the structure and also let them know that the appraiser was there as well. Sen. Tax. Hrg. 36:25 – 36:50.

131. Mr. Wilke reassured the committee the DOR appraisal staff will be restricted under HB 188 because:

The bill places important restrictions on department staff and you've heard some of them already. Examples are: while on the property, the staff simply cannot do any harm to the property, they can't go inside structures. Sen. Tax. Hrg. 38:17 – 38:40.

132. Mr. Wilke stated the DOR needed the bill so that appraisers could visually inspect property and "determine the basic characteristics which are absolutely essential in order to estimate value." Sen. Tax. Hrg. 39:05 – 39:17.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohms v. Montana Dept. of Revenue

133. Representative Devlin closed the hearing by stating HB 188 gives the DOR appraisers immunity if they follow the law, but if the appraiser enters buildings without consent or fails to follow department policy, the immunity would not apply. Sen. Tax. Hrg. 1:04:40 – 1:04:55.
134. The legislative history establishes MCA § 15-7-139 was passed to allow appraisers on land to visually inspect the land and improvements; to make measurements and take photographs. However, the property owner retains the right, as provided in MCA § 15-7-139(9), to prevent the appraisers from entering buildings or other improvements without consent. The taxpayer can consent to the DOR entering improvements for inspection purposes. However, MCA § 15-7-139(7)'s punitive provision only applies to the taxpayer who bars the DOR from entering land and completing a visual inspection.
135. Therefore, the LCTAB wrongly relied, and the DOR wrongly asserted at the LCTAB, that MCA § 15-7-139(7) applied to the Sohms' property tax appeal. The DOR has a right to enter the Sohms' land – after notice was provided – and complete a visual inspection of the land and home, take measurements, and take photographs. Furthermore, the DOR had already inspected the interior of the Sohms' improvements and completed a visual inspection of the improvements and the land in 2013 and 2014. Based on these facts, MCA § 15-7-139(7) does not apply to this appeal. Whether MCA § 15-7-139(7) applies in future appeals will require a fact intensive inquiry and will be decided on a case by case basis.

The LCTAB's Right to Continue a Taxpayer Appeal Hearing

136. Before addressing market value, this Board wants to address the Sohms claims the LCTAB acted with bias, in particular, by first granting the

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

Sohms a continuance to allow the DOR to inspect and then later, by rejecting the continuance.

137. MCA § 15-15-103(1) states the taxpayer who has appealed to a CTAB must attend the hearing, the CTAB takes testimony at the hearing, and then the Board issues a decision at the conclusion of the hearing. MCA § 15-15-103(1) states

The date of the hearing, the proceedings before the county board, and the decision must be entered upon the minutes of the county board, and the county board shall notify the applicant of its decision by mail within 3 days.

138. Nothing in MCA § 15-15-103 – or even MCA §§ 15-15-101 and 102 – state a county tax appeal board may start a hearing and then continue a hearing to allow a taxpayer to collect more evidence and issue a decision at a later date.
139. Here, the LCTAB should not have provided the Sohms with the option to continue the hearing. While this Board understands the Sohms' frustration, it appears that the LCTAB lacked the authority to grant a continuance. This Board finds the LCTAB had good intentions in trying to provide the Sohms' with an alternative to outright denial of their appeal. The LCTAB properly discovered its error and refused to hold a future hearing. While confusing to the Sohms, the proper law has been followed and the Board sees no substantial harmful bias on the part of the LCTAB nor permanent harm to the Sohms due to the LCTAB's error.

Market Value

140. "All taxable property must be assessed at 100 percent of its market value except as otherwise provided." MCA § 15-8-111(1).

BEFORE THE MONTANA TAX APPEAL BOARD

Julius & Barbara Sobra v. Montana Dept. of Revenue

141. “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.” MCA § 15-8-111(2)(a).
142. “As a general rule, . . . the appraisal of the DOR is presumed to be correct and the taxpayer must overcome this presumption. The Department of Revenue should, on the other hand, bear a burden of providing documented evidence to support its assessed values.” *Workman v. The Department of Revenue of the State of Montana*, 1997 WL 37203, *1 (Mont.Tax.App.Bd.), *citing Western Airlines, Inc. v. Catherine J. Michunovich, et al*, 149 Mont. 347, 428 P.2d 3, (1967).
143. Consistent with the above, the DOR must present credible evidence “to justify increasing the appraised value of [the taxpayer’s] property by an amount in excess of 100 percent from one appraisal cycle to the next.” *Devoe v. Dept. of Revenue of State of Mont.*, 263 Mont. 100, 113, 866 P.2d 228, 236 (1993) (affirming the holding of the District Court).
144. Once the DOR meets its burden, the taxpayer has the burden to show the DOR’s appraisal should be reduced. Mont. Code Ann. § 26-1-401; *Baitis v. Department of Revenue of the State of Montana*, 2004 MT 17, ¶28, 319 Mont. 292, 302, 83 P.3d 1278, 1284.
145. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. Mont. Admin. Reg. 42.18.134, formerly Mont. Admin. Reg. 42.18.110(12); *Rainbow Senior Living of Great Falls v. Montana Department of Revenue*, 2013 WL 6062167 (Mont.Tax.App.Bd.); *Keck v. Montana Department of Revenue*, 2013 WL 2476838 (Mont.Tax.App.Bd.).

BEFORE THE MONTANA TAX APPEAL BOARD

In re: Barbara Salton, Montana Dept. of Revenue

146. This Board, upon hearing a tax appeal, may increase or decrease a property value to ensure the property is “assessed at 100 percent of its market value.” *See Puget Sound Energy Inc. v. State Dept. of Revenue*, 2011 MT 141, 255 P.3d 171; and *O’Neill v. Department of Revenue*, 2002 MT 130, 49 P.3d 43.
147. Under Montana law, the DOR can use a combination of approaches – i.e. the market data approach, the income approach, and the cost approach – to value a property. *Albright v. State*, 281 Mont. 196, 208 - 209 (Mont. 1997). The DOR does not have to use only one approach when it “appraises property and estimates market value.” *Id.* at 208.
148. Given the discussion at the hearing about the market sales approach versus the cost approach and inherent subjectivity in one approach over the other, the Board wants to clarify how residential properties are valued.
149. The DOR values the land and the improvements separately and then combines both values together. To value land, the DOR uses computer assisted land pricing (CALP). The CALP includes vacant land sales which are used to determine the value of the land by the acre or square foot. Residential improvements, like homes, are valued using either the market approach or the cost approach. If the DOR uses the market sales approach, the DOR finds comparable sales and adjusts those comparable sales to determine the value of the taxpayer’s improvements. In the DOR’s market sales approach, comparability points place a number on the home sale to indicate how similar or dissimilar it is to the subject home. These comparable home values are then adjusted to closely mirror the subject home. If the comparability points are over 200, the DOR will not use the market sales approach because the home must be adjusted

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohms v. Montana Dept. of Revenue

to such a large degree to be similar to the subject home that the DOR believes the value will be inaccurate. As to the cost approach, the DOR uses Marshall & Swift cost table and local cost data to determine the replacement cost new of the improvements. The DOR reduces the replacement cost new by considering depreciation and obsolescence. Whether using the market sales approach or the cost approach, the DOR aims to fairly value the improvements. The CALP determined land value is combined with the value of the improvements to ascertain the full market value. Therefore, where the DOR's property record cards refer to the market sales approach or the cost approach, this refers to how the improvements have been valued, as the DOR uses a CALP to value the land.

150. Under either the cost approach or the market sales approach, the DOR must decide the condition, desirability and utility (CDU) of the improvements. For the market sales approach, the comparable sales must be adjusted to match the CDU of the subject property's improvements. Under the cost approach, the CDU is considered in how much the replacement cost new is depreciated. Both approaches rely on the DOR appraiser and have some subjectivity.
151. As to market value, the DOR has to provide sufficient evidence supporting its value of the Sohms' land and improvements for this Board to presume the accuracy of the DOR's value.
152. Regarding the improvements, the DOR did not present the comparable sales model apparently showing the Sohms' home could not be valued using the market sales approach. This Board, therefore, did not receive foundation for documentation of the comparable sales and the reported high comparability points. This Board also lacked sufficient evidence

BEFORE THE MONTANA TAX APPEAL BOARD

Harry S. Barbara Solicitor, Montana Dept. of Revenue

explaining why some of Sohms' neighbors were valued using the market sales approach and not the cost approach if there were so few valid sales in the neighborhood during the relevant time period.

153. For example, the property at 109 Tundra Swan Way, in the same subdivision as the Sohms' property, in the 2015/2016 tax cycle had been appraised at \$937,834 with the DOR using the cost approach. However, for the 2017/2018 tax cycle, the same property had an assessed value of \$841,200, thus \$136,000 less than the previous tax cycle, with the DOR using the market sales approach. For the 2017/2018 tax cycle, the DOR had sufficient comparable sales to value the 109 Tundra Swan Way property using the market sales approach. Without the comparable sales approach data for the Sohms' home, the DOR did not explain why the 109 Tundra Swan Way property could be valued using the market sales approach while the Sohms' property could not.
154. Second, the DOR did not adequately support the Sohms' land value. The DOR admitted it did not introduce the CALP into evidence. Without the CALP, this Board lacked sufficient evidence supporting the DOR's value of the Sohms' land.
155. As noted in *Devoe*, the DOR needed to explain why the Sohms' property warranted a \$350,000 increase from the last tax cycle; or in the alternative a \$250,000 increase from its prior assessed value in 2015. The DOR failed to do so. The DOR did not present sufficient evidence supporting its value for the Sohms' property.
156. Next, Mr. Sohm failed to provide this Board with an accurate market value for his property. Mr. Sohm revealed flaws with the DOR's value and presented a list of Lake County property sales, but he did not present an independent appraisal with January 1, 2016 as the lien date.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

Furthermore, when asked at the hearing about his property's value, he provided the Board with a range from \$775,000 up to \$857,000.

157. Mr. Sohm also failed to present evidence of the appropriate land value for his property. He testified in 2016 he was offered a neighboring lot for \$40,000, but there was no other evidence suggesting \$40,000 represents the value of his land.
158. This leaves this Board to determine fair market value for the Sohms' property, as this Board finds the DOR failed to support its value and the Sohms failed to provide specific information about the value of their property. *See Puget Sound Energy, Inc.*, 2011 MT at ¶¶ 7 – 11, 36 - 37 [The Montana Supreme Court affirmed this Board independently finding market value where the DOR failed to support its value and the taxpayer poorly supported its value].
159. Admitted into evidence were five pages of a 2013 fee appraisal completed by Porter. DOR Ex. G. The appraisal found the Sohms' land and improvements had a market value of \$900,000. Mr. Sohm, at the hearing, asserted the value of \$900,000 was wrong and the value determined in 2013 was actually \$800,000. However, this Board heard insufficient evidence supporting Mr. Sohm's assertion the 2013 Porter appraisal inaccurately valued the Sohms' property.
160. Market sales presented by the Sohms supports the Porter appraisal value of \$900,000. The Hape property sold for \$800,000. The Hape home is smaller than the Sohms' home and was built in 2003; making it nine years older than the Sohms' home. The Zimmerman property sold for \$855,000. The Zimmerman home was built in 2006; making it six years older than the Sohms' home. The Zimmerman home is smaller than the

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm v. Montana Dept. of Revenue

Sohms' home too. Both the Zimmerman and Hape homes had allegedly inferior views too.

161. Also supporting the Porter appraisal, for the 2015/2016 tax cycle, the DOR found the Sohms' land and improvements had a total value of \$857,000.
162. Lastly, Mr. Sohm testified he had more than \$1 million invested in his land and improvements and when he sells their property, he hopes to sell it for more than \$775,000.
163. Weighing all of this evidence, this Board relies on the Porter appraisal – an independent appraisal at least in part under MCA § 15-2-301(3) – and finds the Sohms' property has a value of \$900,000. Without a current independent fee appraisal and given the deficiencies in the value presented by the DOR, this Board finds the Porter appraisal, supported by the three sales in Taxpayer Exhibits 44, 44.5 and 45, best reaches 100% of market value for the Sohms' land and improvements.
164. This Board now must determine the separate values for the land and the improvements based on finding a total market value of \$900,000.
165. In determining the market value of the land and improvements separately, this Board will consider evidence admitted at the hearing.
166. In the last tax cycle, the DOR found the Sohms' .81 acre parcel had a value of \$168,000. In the current tax cycle, the DOR determined the land had a value of \$176,926.
167. Taxpayer Ex. 52 showed land near the Sohms' property had the following DOR values: \$164,202, \$155,892, \$188,104, \$187,095, \$188,188, and \$163,050. The size of these land parcels was not provided. But these values indicate the Sohms' land has a value of approximately \$170,000.

BEFORE THE MONTANA TAX APPEAL BOARD

James & Barbara Sohm vs. Montana Dept. of Revenue

168. Reviewing Taxpayer Ex. 52 and DOR Ex. C, this Board finds \$168,000 equals the market value of the Sohms' .81 acre lot.
169. Subtracting \$168,000 from \$900,000, this Board finds the Sohms' improvements have a value of \$732,000; a reduction of \$227,320 from the DOR's assessed value for the 2017/2018 tax cycle.

Equalization

170. The Sohms' appeal narrative and Mr. Sohm's testimony at the hearing stated their land and improvements were treated differently by the DOR during the valuation process.
171. Because this Board has already found the DOR failed to present sufficient evidence supporting its assessed value, this Board does not need to address the Sohms' argument that the DOR failed to equalize the Sohms' property. *Albright*, 281 Mont. at 204 – 205 [If the DOR does not equalize a property value, the assessment notice to the taxpayer is unenforceable.].

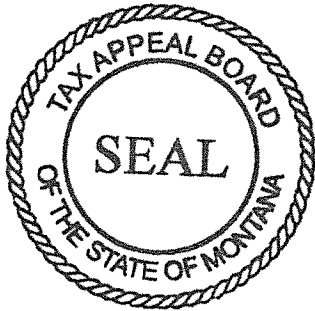
BEFORE THE MONTANA TAX APPEAL BOARD

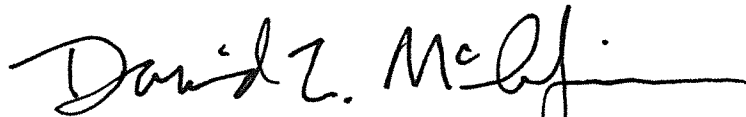
James & Patricia Sohm v. Montana Dept. of Revenue

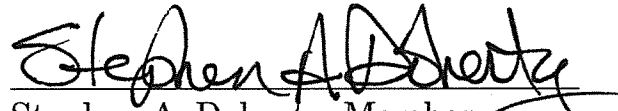
ORDER


1. The Sohms' appeal is granted in part.
2. For the 2017 and 2018 tax years, the DOR is ordered to value the Sohms' lot and improvements, identified by geocode 15-3228-08-1-08-11-0000, at \$900,000, with the land having a value of \$168,000 and the improvements having a value of \$732,000.

Ordered April 19th, 2018.




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).

BEFORE THE MONTANA TAX APPEAL BOARD


James & Barbara Sohm - Montana Dept. of Revenue

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 April 18, 2018 to:

James & Barbara Sohm
48901 Hwy 93, Ste A, #426
Polson, MT 59860

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



Lynn Cochran, Admin. Paralegal
MONTANA TAX APPEAL BOARD