

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

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Montana Tax Appeal Board

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Appellant,

v.

STEPHEN & DEANNE
STALNAKER,

Respondents.

CASE No: PT-2017-16

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

Before the Montana Tax Appeal Board is Appellant State of Montana, Department of Revenue (DOR) which has appealed the Gallatin County Tax Appeal Board (GCTAB) decision finding Stephen and Deanne Stalnakere's (Stalnakers) property had a total market value of \$426,816.

For the reasons provided herein, the DOR's appeal is granted.

FINDINGS OF FACT

Description of the Property

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

S29, T04 S, R04 E, C.O.S. 2712, Tract 1 in NE4, with the geocode 06-602-29-1-02-01-0000, with a common address of 65840 Gallatin Road, Gallatin Gateway, MT 59370.

2. The Stalnakers' land abuts the Gallatin River. Stipulated Ex. 3. The land and improvements were known as the Castle Rock Inn, now known as The Inn on the Gallatin. The Stalnakers had visited and

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recreated in the area for years. Looking towards retirement, they purchased the property in January 2013 for \$650,000. GCTAB Transcr. 12:7 – 9.

3. Since becoming the owners, Mr. Stalnaker testified that the retirement project has turned into a “seven day a week, 15 hour a day” commitment to renovating and operating a small business. GCTAB Transcr. 13:10 – 24.
4. The land owned by the Stalnakers, based on the Stalnaker’s 2012 Buy-Sell Agreement, totals 4.43 acres; with 1.9 acres submerged in the Gallatin River. Stipulated Ex. 3,4, 14, 21 and 26.
5. The land has the following improvements: a mobile home court, a 1,488 square foot cabin and accompanying garage which the Stalnakers use as a home, six rental cabins ranging from 384 square feet to 252 square feet, and an 1,140 square foot cafe. Stipulated Ex. 17 and 21; MTAB Hrg. 17:14 – 17:26; 2:04:30 – 2:05:30.
6. On the January 1, 2016 lien date for the 2017/2018 tax cycle, the DOR initially determined the Stalnakers’ land, as commercial tract land, had a value of \$265,386 and the Stalnakers’ improvements, all class coded as commercial improvements, had a value of \$382,514, for a total value of \$647,900. Stipulated Ex. 19.

AB-26 – outcome

7. The Stalnakers received their assessment notice on July 3, 2017 and requested a DOR AB-26 informal review of their property valuation on July 28, 2017. Stipulated Ex. 19. As noted below, the Stalnakers requested an AB-26 review about 25 days before they formally appealed their property values to the GCTAB.

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8. During the AB-26 review, the DOR conducted a site visit of the Stalnaker's property. MTAB Hrg. 17:36 – 18:03. The DOR at this time learned the Stalnakers' lived on the property and converted the largest cabin and garage from commercial class valuation codes to residential class codes. *Id.* This resulted in the property being considered for valuation as mixed-use property. As a result the DOR used the cost approach to value the entire property. *Id.* Because of the difficulty of finding comparable sales of property with mixed use, the DOR defaults its analysis to the cost approach as more defensible.
9. On August 10, 2017, the DOR issued its AB-26 determination which reduced the appraised value of the Stalnakers' property. The DOR found the Stalnakers' land had a value of \$277,336 -- \$12,000 more than the DOR's initial appraisal. The DOR reduced the value of the Stalnakers' improvements by approximately \$73,000, finding they had a value of \$309,330. The DOR's total value of the Stalnakers' property was \$586,666, which was approximately \$61,000 less than the DOR's initial determination of the value of the Stalnakers' property.

Stipulated Ex. 29 and 24.

GCTAB hearing – appeal and outcome

10. The Stalnakers appealed to the GCTAB on July 27, 2017.
11. The GCTAB held a hearing on August 30, 2017 using the DOR's AB-26 final determination values.
12. At the hearing, the Stalnakers disputed the size of the land they owned and thus their land value. The DOR's assessment notice stated the Stalnakers' owned 4.436 acres of land. The Stalnakers testified they owned only 2.530 acres of land and asserted the DOR had included 1.9 acres of submerged and unusable State-owned land in valuing their land.

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GCTAB Hrg. Transcr. 4:17 – 11:21. According to the Stalnakers, this overvalued their property value. *Id.*

13. The Stalnakers claimed the DOR's land value of \$277,336 should be reduced to \$151,358 because of the smaller land size. GCTAB Appeal Form p. 2. The Stalnakers requested the GCTAB find their property had a total value of \$533,872. *Id.* The Stalnakers, therefore, did not request the GCTAB reduce the value of their improvements. *Id.*
14. The DOR testified that after speaking with Mr. Stalnak, they "put 1.9 acres into exempt river tract land, so [it is] not being valued at all." GCTAB Hrg. Transcr. 18:15 – 16. Meaning, "only the 2.53 acres are . . . being valued as tract land" by the DOR which resulted in a land value of \$277,336. GCTAB Hrg. Transcr. 19:9 – 10.
15. The DOR also testified the Stalnakers' total property value of land and improvements had changed during the AB-26 review because the Stalnakers have a residence on the property and the "residence is getting valued residentially with a residential class code." GCTAB Hrg. Transcr. 18:18 – 19:4.
16. At the conclusion of the hearing, the GCTAB found the Stalnakers' land had a market value of \$117,486. The GCTAB did not articulate what portion of the land value of \$117,486 was submerged and whether it should remain tax exempt. The GCTAB maintained the DOR's value of \$309,330 for the Stalnakers' improvements. Therefore, the GCTAB found the Stalnakers' property had a total value of \$426,816; a value \$107,000 less than the value requested by the taxpayers.

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MTAB hearing

17. On September 26, 2017, the DOR appealed the GCTAB decision to this Board. The DOR asserted the GCTAB arbitrarily and wrongly reduced the Stalnakers' land value by approximately \$160,000.
18. On April 10, 2018, this Board conducted a hearing at the Montana Tax Appeal Board office located at 600 North Park Avenue, Helena, Montana.
19. At the hearing, the DOR was represented by Jessica DeMarois and Brendan Beatty. The following witnesses testified on behalf of the DOR:
 - a. Tom Reilly, DOR appraiser;
 - b. John Elliot, DOR lead appraiser; and
 - c. Bonnie Hamilton, DOR management analyst.
20. At the hearing, the Stalnakers were represented by Christopher D. Meyer. The following witnesses testified in the Stalnakers' case:
 - a. Stephen Stalnak.
21. This Board admitted the following stipulated exhibits presented by the parties:
 - a. Stipulated Ex. 1: Stalnak's appeal to the GCTAB;
 - b. Stipulated Ex. 2: Appraisal of Stalnakers' Property (dated November 28, 2012);
 - c. Stipulated Ex. 3: Recorded plat for the Stalnakers' land (dated December 22, 2008);
 - d. Stipulated Ex. 4: Amended recorded plat for the Stalnakers' land (dated July January 13, 2017);
 - e. Stipulated Ex. 5: Full transcript of the GCTAB appeal hearing on August 30, 2017;
 - f. Stipulated Ex. 6: Property record card for the Stalnakers' property;
 - g. Stipulated Ex. 7: The Stalnakers' Gallatin County Tax bill and county assessment information;

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- h. Stipulated Ex. 8: Sewer infrastructure for the Stalnakers' property;
- i. Stipulated Ex. 9: Montana Department of Transportation Quitclaim Deed of property to the Stalnakers (dated November 3, 2015);
- j. Stipulated Ex. 10: Internet article on navigable rivers and ownership of navigable rivers;
- k. Stipulated Ex. 11: Article titled, "Navigable Water Ways Owned by the State of Montana and Administered by the Department of State Lands."
- l. Stipulated Ex. 12: 1955 survey of the Stalnakers' land;
- m. Stipulated Ex. 13: Commercial insurance for Stalnakers' property;
- n. Stipulated Ex. 14: Commercial buy sell agreement for the Stalnakers' property;
- o. Stipulated Ex. 15: Stalnaker Promissory Note;
- p. Stipulated Ex. 16: Court petition for sale of property purchased by the Stalnakers (dated January 11, 2013);
- q. Stipulated Ex. 17: Photographs of the Stalnakers' improvements with descriptions of each photograph;
- r. Stipulated Ex. 18: Correspondence between Montana Department of Transportation and the Stalnakers about an excess land sale;
- s. Stipulated Ex. 19: DOR Classification and Appraisal notice (dated July 3, 2017);
- t. Stipulated Ex. 20: Stalnakers' Request for Information Classification and Appraisal Review (dated July 26, 2017, filed July 28, 2017);
- u. Stipulated Ex. 21: DOR Assessment Information Packet (run date of August 16, 2017) [confidential];
- v. Stipulated Ex. 22: November 28, 2012 appraisal of the Stalnakers' property;
- w. Stipulated Ex. 23: 2012 Title Insurance for the Stalnakers' property;

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- x. Stipulated Ex. 24: DOR's Revised Property Classification and Notice – as a result of the AB-26 review (dated August 23, 2017);
- y. Stipulated Ex. 25: Maps of the Stalnakers' property;
- z. Stipulated Ex. 26: Realty transfer certificate to the Stalnakers (dated January 28, 2013);
- aa. Stipulated Ex. 27: Cost calculations for the Stalnakers' mobile home court;
- bb. Stipulated Ex. 28: Pre-AB-26 and post-AB-26 flat values for the Stalnakers' mobile home court costs;
- cc. Stipulated Ex. 29: 2017 Property Record Card for the Stalnakers' property;
- dd. Stipulated Ex. 30: Pre-AB-26 and post-AB-26 assessment tabs for the Stalnakers' land;
- ee. Stipulated Ex. 31: 2013 – 2017 Orion assessment tabs for the Stalnakers' property;
- ff. Stipulated Ex. 32: 2013 – 2017 Orion final value tabs for the Stalnakers' property;
- gg. Stipulated Ex. 33: 2017 pre-AB-26 Orion screen captures; and
- hh. Stipulated Ex. 34: 2017 pre-AB-26 and post-AB-26 valuation methods.

22. Regarding the remedy sought, Mr. Stalnak testified he wants his valuation to be consistent in each tax cycle. MTAB Hrg. 2:39:55 – 2:41:19; 2:52:30 – 2:53:34. Mr. Stalnak wants a decision which ensures the DOR will not tax the disputed 1.9 acres because he contends he doesn't "own it and cannot use it." *Id.*; MTAB Hrg. 2:49:30 – 2:52:31.

The value of the Stalnakers' land

23. The DOR testified that when it met with Mr. Stalnak during the AB-26 process, he expressed concern that 1.9 acres of his property was under the Gallatin River and should not be valued. MTAB Hrg. 21:25 – 21:40. As a result, the DOR coded the disputed 1.9 submerged acres as tax

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exempt navigable river using class code 2159. Stipulated Ex. 21, Stalnaker – MDOR 000020; MTAB Hrg. 21:45 – 22:24. By using class code 2159, the DOR testified the tax rate for those 1.9 acres was zero percent. *Id.*; MTAB Hrg. 27:08 – 27:19. The DOR clarified that the 1.9 acres still had a value of \$59,200, but that the Stalnakers’ were not taxed on those 1.9 submerged acres. MTAB Hrg. 27:08 – 27:21; 1:04:01 – 1:05:53; Stipulated Ex. 29 and 30. Instead, the Stalnakers’ were only taxed on 2.53 acres of land. *Id.*

24. The DOR admitted that using class code 2159 was in error because pursuant to MCA § 15-24-1209, the Gallatin River has not been adjudicated by a Court as a navigable waterway. MTAB Hrg. 54:55 – 56:35; 1:26:41 – 1:27:43. The DOR claimed due to this error, the Stalnakers’ received a lower land value and tax bill than they should have. MTAB Hrg. 1:00:50 – 1:01:00. However, the DOR agreed that for this tax cycle, it would not change the class code for the submerged lands and would instead give the benefit of the error to the Stalnakers. *Id.*
25. The DOR determined the Stalnakers’ commercial tract land had a total taxable value of \$277,336. Using class code 2159 for the 1.9 acres, the Stalnakers were only taxed on the non-submerged 2.53 acres valued at \$218,136. Stipulated Ex. 24 and 29. The DOR used a computer assisted land pricing (CALP) model to value the Stalnakers’ commercial land; i.e. a comparable sales approach. MTAB Hrg. 23:28 – 23:36; 1:09:33 – 1:09:39.
26. In valuing the Stalnakers’ land, the DOR testified there was no water influence factor added, despite the “W” listed on the DOR’s property record card under the section titled “Infl Cds,” which presumably stands

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for “influence conditions.” Stipulated Ex. 29; MTAB Hrg. 24:42 – 25:12; 27:23 – 27:45; 50:41 – 51:57; 1:06:15 – 1:07:06.

27. The DOR did not submit as an exhibit its CALP model used for valuing the Stalnakers’ land. MTAB Hrg. 26:28 – 26:43; 1:03:05 – 1:03:38.
28. The DOR did testify it reviewed the CALP prior to the hearing and confirmed the accuracy of the CALP and that there was not a water influence factor applied in valuing the Stalnakers’ land. MTAB Hrg. 1:06:15 – 1:07:06.
29. Regarding the Stalnakor’s land value, the DOR did not provide any testimony or exhibits explaining what necessitated the increase in the Stalnakor’s land value since the 2015/2016 tax cycle. For the 2008-2014 tax cycle, the subject 4.43 acres of land had a value of \$176,428. Stipulated Ex. 29 and 31. For the 2015/2016 tax cycle, the Stalnakers’ 4.43 acres of land had a value of \$162,896; a 7.6 percent decrease from 2014. *Id.*
30. Mr. Stalnakor testified he wants this Board to issue a decision stating the Stalnakers will not have to pay taxes on the disputed 1.9 acres in future tax cycles. MTAB Hrg. 1:53:00 – 1:54:16; 2:39:55 – 2:40:11. Mr. Stalnakor presented exhibits which he claimed proved the State of Montana owns the 1.9 submerged acres under the Gallatin River; thus, he should never be taxed on those 1.9 submerged acres. MTAB Hrg. 2:37:21 – 2:39:52; 2:57:25 – 2:58:01; Stipulated Ex. 4, 10, 11 and 25.

Appropriate class code and valuation approach for Stalnakers’ improvements

31. In past tax cycles, the DOR had coded all of the Stalnakers’ improvements as class 4 – commercial property. MTAB Hrg. 17:36 – 17:50. However, during a site visit, the DOR learned one of the cabins and a garage associated with that cabin was used as a residence by the

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- Stalnakers. MTAB Hrg. 17:50 – 18:03. Because the DOR is statutorily required under MCA § 15-6-134 to value improvements based on use, the DOR testified it designated the cabin and accompanying garage as class 4 – residential property instead of as class 4 – commercial property. MTAB Hrg. 18:06 – 18:12; 1:29:20 – 1:30:21; 3:05:20 – 3:08:12.
32. The DOR testified the Stalnakers' commercial and residential improvements were valued using the cost approach because: (1) the DOR lacked a defensible model to use the income approach to value the mix of all of the residential and commercial improvements collectively; and (2) the DOR could not parse out the commercial property from the residential property to use two different approaches for each type of property. MTAB Hrg. 18:50 – 19:10; 48:13 – 50:13; 52:06 – 53:02; 57:15 – 58:10; 1:10:00 – 1:10:09; 1:30:39 – 1:32:33.
33. The DOR also clarified that it does not always use the income approach to value purely commercial properties because the approach may not capture market value for unique properties which do not fall squarely within the DOR's model. MTAB Hrg. 1:07:33 – 1:09:13.
34. According to the DOR, the residential tax rate is used for the residential improvements on the Stalnakers' property, while the commercial tax rate is used for the commercial improvements on the Stalnaker's property. MTAB Hrg. 53:06 – 53:50. The residential tax rate is 1.35 percent and thus lower than the commercial tax rate of 1.89 percent. *Id.*; MTAB Hrg. 1:15:33 – 1:16:03. The DOR testified this means the total tax rate for the Stalnakers' improvements are lower than if all of their improvements were designated as commercial. MTAB Hrg. 53:06 – 53:50; 1:04:10 – 1:05:35; Stipulated Ex. 30.

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35. The Stalnakers' argued the DOR should list all of the improvements as class 4 – commercial property and then apply the income approach to value the improvements. MTAB Hrg. 2:42:40 – 2:43:12. Mr. Stalnaker said the improvements had always been class coded as commercial in previous tax cycles. *Id.* Mr. Stalnaker testified he had concerns about his loan to purchase the property as well as his insurance if the DOR class codes some of the improvements as residential. However, Mr. Stalnaker admitted that his insurance company was fully aware that he has a personal residence on the property. *Id.*; MTAB Hrg. 2:44:46 – 2:45:11; 2:53:40 – 2:54:00; 2:54:50 – 2:54:55.

Value of the Stalnakers' improvements

36. The parties suggested at the beginning of the hearing that the value of the Stalnakers' improvements was not in dispute. MTAB Hrg. 59:40 – 59:45. Still, the DOR presented evidence supporting its value of \$309,330 and the Stalnakers' did present evidence implying the DOR had not properly valued their improvements.
37. The DOR during its site visit, found the Stalnakers made the following changes to the property: (1) a living space addition above the Stalnakers' residence; (2) a living space added above the Stalnakers' garage; and (3) nine RV lots. MTAB Hrg. 19:40 – 20:05; Stipulated Ex. 21.
38. The DOR's testimony and evidence established the DOR used the cost approach to value the Stalnakers' improvements. The DOR found the Stalnakers' improvements for the 2017/2018 tax cycle were almost \$190,000 less than the value the DOR had determined for the 2015/2016 tax cycle. Stipulated Ex. 21.
39. Mr. Stalnaker presented photographs showing the condition of some of the cabins. Stipulated Ex. 17. Mr. Stalnaker also described the condition

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of some of the improvements when he purchased the property. MTAB Hrg. 2:07:00 – 2:20:32. However, Mr. Stalnaker failed to present any evidence suggesting the DOR had failed to consider the condition of the buildings in finding the Stalnakers' improvements had a total value of \$309,330.

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

CONCLUSIONS OF LAW

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

42. The DOR timely appealed the GCTAB'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).

43. "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).

Burden of Proof

44. 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).

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45. However, the 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.

Scope of this Board's decision

46. Mr. Stalnaker testified he wants his taxes to be more consistent, and requested this Board issue a decision resolving certain tax disputes for future tax cycles.
47. Class 4 property is reappraised every two years. MCA § 15-7-111(1). In reappraising the property, the DOR must appraise all taxable property at "100% of its market value." MCA § 15-8-111.
48. After completing its reappraisal for the tax year, the DOR serves the taxpayer with a copy of the assessment notice. MCA § 15-7-102. The taxpayer has the choice to request an AB-26 review with the DOR and then appeal the AB-26 review decision to the appropriate county tax appeal board or to appeal the assessment directly to the appropriate county tax appeal board. MCA §§ 15-7-102(3) – (6); MCA § 15-15-102.
49. After the CTAB issues a decision, the taxpayer can then appeal the decision to this Board. MCA § 15-2-301.
50. This Board's decisions on market value are limited to the specific tax years before it. This Board's decisions do not and cannot apply to future tax cycles. The DOR must redetermine market value for every property in each reappraisal cycle. A decision by this Board dictating to the DOR the market value of the property for future tax years would not be binding because it would be at odds with Montana law concerning the DOR's statutory duties. If the Stalnakers' wish to

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challenge the DOR's assessments in future tax cycles, the Stalnakers must appeal those assessments when those appeals ripen. This Board, however, cannot issue a decision setting in stone a value for future tax years; it can only issue decisions for the tax years before it.

This Board lacks jurisdiction to resolve submerged land ownership disputes

51. At the hearing, Mr. Stalnaker requested this Board resolve the ownership of the 1.9 acres under Gallatin River in large part because he obtained a loan to purchase the entire 4.3 acres.
52. The Montana Supreme Court has stated that this Board is "particularly suited for settling disputes over the appropriate valuation of a given piece of property or a particular improvement." *Hanley v. DOR*, 207 Mont. 302, 310, 673 P.2d 1257, 1261 (Mont. 1983). This mirrors the implication culled from a wholistic reading of MCA §§ 15-2-301, 15-15-102, 15-7-111, and 15-8-111 as outlined above.
53. In contrast, MCA § 15-24-1209 states:
 - (1) If the department reduces the amount of taxable property owned by a person or entity because of a determination that the property consists of the bed of a navigable river or stream, the department shall, as applicable, reduce the amount of tract land that is taxable or grazing land that is taxable before reducing the amount of irrigated land or non-irrigated land that is taxable.
 - (2) In the absence of adjudication by a court of competent jurisdiction of the ownership of the bed of any river or stream, it is the policy of the state that the department shall assess all land that is part of the bed and banks of a river or stream to the owner of record of the property.

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(3) The department shall notify landowners of their right to request and shall provide upon request a revised assessment for tax year 2008 for the bed of any stream:

(a) not adjudicated to be navigable by a court of competent jurisdiction; or

(b) not determined navigable at the time of the original federal government surveys of the public land as evidenced by the recorded and monumented surveys of the meander lines of the river.

54. MCA § 15-24-1209 states a court, not this Board, adjudicates “the ownership of the bed of any river or stream.” Nothing in MCA § 15-24-1209 states that this Board is a court with the purview to adjudicate “the ownership of the bed of any river or stream.”

55. Furthermore, nothing in the statutes or case law outlining this Board’s responsibilities and duties states this Board has jurisdiction to adjudicate land ownership or to rule upon the navigability or non-navigability of a waterway.

56. This Board must determine the appropriate market value of the Stalnakers’ property. Such a review may require this Board to decide whether the disputed property in the Gallatin River has any value to a potential buyer. However, this Board’s decision cannot and will not resolve the ownership questions the Stalnakers have regarding the disputed 1.9 acres submerged under the Gallatin River pursuant to MCA § 15-24-1209.

57. To the extent the GCTAB’s decision implicitly resolved the ownership of the submerged lands, the GCTAB’s decision is vacated.

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Class code for Stalnak's improvements

58. MCA § 15-6-134(2) states

If a property includes both residential and commercial uses, the property is classified and appraised as follows:

(a) the land use with the highest percentage of total value is the use that is assigned to the property; and

(b) the improvements are apportioned according to the use of the improvements.

59. Given some of the confusion at the hearing, this Board clarifies that the Stalnakers' improvements are all class 4 property, whether designated with the codes class 4 – commercial, or class 4 – residential.

60. This Board finds, pursuant to MCA § 15-6-134(2)(b), the Stalnakers' improvements were properly class coded.

61. At the hearing, the Stalnakers' suggested MCA § 15-6-134(2)(a) requires the DOR to class code all of the Stalnakers' improvements as commercial. Such a reading is inconsistent with the plain language of the statute and erroneously mixes the concepts of land and improvements. The DOR class coded the Stalnakers' land as commercial tract land, consistent with MCA § 15-6-134(2)(a). However, MCA § 15-6-134(2)(a) does not require the DOR to class code class 4 improvements in the same way as it class codes land. Instead, as noted in MCA § 15-6-134(2)(b), improvements are class coded based on use. Mr. Stalnak admitted several improvements are being used for a residential use. Because of these statutes and the evidence presented at the hearing, this Board cannot legally class code the Stalnakers' residential improvements as

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Market value of the Stalnakers' land and improvements

62. "All taxable property must be assessed at 100 percent of its market value except as otherwise provided." Mont. Code Ann. § 15-8-111(1).
63. "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).
64. 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.
65. 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.
66. The Montana Supreme Court in *Albright* concluded:

We recognize that the Department's method of assessing property and estimating market values is by no means perfect, and will occasionally miss the mark when it comes to the Constitution's goal of equalizing property valuation. However, perfection in this field is, for all practical purposes, unattainable due to the logical and historical preference for a market-based method, and the occasional lack of market data. Nonetheless, we conclude that the Department's interdisciplinary method – which utilizes the market data approach, the income approach, the cost approach, or some combination of those approaches – is a reasonable attempt to equalize appraisal of real

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property throughout the State and that it comports with the most modern and accurate appraisal practices available. *Id.* at 213.

67. First, the DOR met its burden of proof showing the GCTAB incorrectly valued the Stalnakers' land. The DOR had designated the disputed Gallatin River property, all 1.9 acres, as tax exempt. Therefore, the GCTAB wrongly reduced the size and thus the value of the Stalnakers' land.
68. The DOR did not provide a CALP for its land value. However, the DOR testified it had reviewed the CALP prior to the hearing and assured this Board the DOR had not added a water influence factor in valuing the Stalnak's land.
69. In contrast, the Stalnakers presented no substantive evidence challenging the DOR's value of their land.
70. Given the DOR's testimony at the hearing and the evidence presented, this Board affirms the DOR's determination the non-submerged lands have a market value of \$218,136 and the submerged lands have a market value of \$59,200.
71. Lastly, regarding the value of the Stalnakers' improvements, the Stalnakers asserted they were not in dispute. However, this Board wants to make the record clear. This Board finds the DOR presented sufficient evidence supporting its value of the Stalnakers' improvements and heard insufficient evidence from the Stalnakers' warranting a reduction of the DOR's value. This Board, therefore, maintains the DOR's value of \$309,330 for the Stalnakers' improvements.

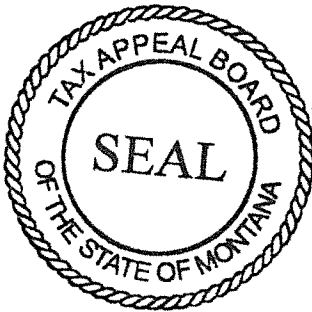
BEFORE THE MONTANA TAX APPEAL BOARD

Montana Dept. of Revenue v. Stephen & Deanne Stalnak

ORDER

1. The DOR's appeal is granted.
2. For tax years 2017 and 2018, the DOR is ordered to value the Stalnakers' property, identified by geocode 06-602-29-1-02-01-0000, as follows:
 - a. The 1.9 acres of submerged land remains tax exempt and has a value of \$59,200;
 - b. The 2.53 acres of non-submerged lands have a market value of \$218,136;
 - c. The improvements have a market value of \$309,330;
 - d. For a total value of \$586,666.
3. The DOR shall enter these values for the property based on the above.

Ordered July 13th, 2018.



David L. McAlpin

David L. McAlpin, Chairman
MONTANA TAX APPEAL
BOARD

Stephen A. Doherty

Stephen A. Doherty, Member
MONTANA TAX APPEAL
BOARD

Valerie A. Balukas

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


Montana Dept. of Revenue v. Stephen & Deanne Stalnaker

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 July 13, 2018 to:

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Lynn Cochran, *Admin. Paralegal*
MONTANA TAX APPEAL BOARD