

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

APR 13 2017

Montana Tax Appeal Board

Timothy W. & Mary Ann Woods,

Appellants;

v.

**State of Montana,
Department of Revenue,**

Respondent.

CASE No: PT-2016-7

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

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1. At issue before the Board is Appellants Timothy W. and Mary Ann Woods' appeal from the Ravalli County Tax Appeal Board (CTAB) decision. At the CTAB hearing on January 22, 2016 the taxpayers disputed the DOR's valuation of both their land and the improvements. At the conclusion of the hearing, the CTAB found for the Montana Department of Revenue (DOR) and the Woods timely filed this appeal.
 2. The subject property is commonly known as 491 Arrow Hill Drive in Hamilton, Montana. The legal description is Lot 26 of Arrow Hill Subdivision, Sec. 9, T05 N, R20 W; geocode 1367-09-1-02-26-0000. The property consists of a single family home situated on a 2.47 acre lot. The appeal applies to tax years 2015 and 2016.

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ISSUE

3. Whether the DOR properly assessed the land and improvements on this property using a cost method to arrive at a market value of \$896,420 for tax years 2015 and 2016.
4. The Woods argue that the DOR's cost method to value the subject improvements did not arrive at a true market value and instead resulted in a higher value than similarly situated nearby properties valued using the comparable sales method.

FINDINGS OF FACT

5. The Board conducted a hearing on September 29, 2016 at the offices at 600 N. Park Avenue in Helena, Montana at which the following were present for the parties:
 - a. Timothy Woods;
 - b. Mary Ann Woods;
 - c. Anthony Zammit, counsel for DOR;
 - d. Annie Strain, appraiser for DOR; and,
 - e. Walter "Butch" Smith, lead appraiser for DOR;
 - f. Deb Reesman, Area IC Manager for DOR.
6. The DOR set the value of the land at \$136,960 and the improvements at \$759,460 for a total value of \$896,420.

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7. Taxpayers request a value for the land of \$100,000 and \$519,000 for the improvements for a total value of \$619,000.

8. The following exhibits were admitted:

a. Woods exhibits;

Ex. 1 – real estate listing history for 491 Arrow Hill Dr. (7 pages);

Ex. 2 – excerpts from Halverson Appraisal (9 pages);

Ex. 3 – complete Halverson Appraisal;

b. DOR exhibits;

Ex. A (sealed) – Realty transfer certificate;

Ex. B – Woods AB-26 Appeal packet;

Ex. C (sealed) – DOR's AB-26 Sales packet;

Ex. D (sealed) – DOR Assessment Information packet;

Ex. E (sealed) – DOR Comparable sales report;

Ex. F (sealed) – DOR Comparable sales report;

Ex. G – DOR Justification for value method;

9. Timothy and Mary Ann Woods purchased the property under appeal in August of 2014. Mr. Woods testified that between February 2014 and July 2014 there were four independent market appraisals obtained for the property. (MTAB Hr'g Transc. 4:10-13.) Mr. Woods testified that Ed

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Rose, a Hamilton appraiser, found market values for the property of \$600,000 and \$650,000, and Mr. Halverson, a Missoula appraiser, found market values of \$605,000 and \$619,000. (Id. 4:13-15.) Mr. Woods introduced a copy of an appraisal prepared by the Kenneth Halverson, a Montana certified residential appraiser, which was prepared for purposes of financing their purchase of the property. (Ex. 3.) Mr. Halverson appraised the property on June 23, 2014, and subsequently updated the appraisal on August 18, 2014. (Id.) The appraisal developed a sales comparison approach to estimate a value of \$605,000 in June, which was revised to \$619,000 as of 8/18/14 to reflect the Woods' contract sales price, as well a cost approach to value of \$883,400. (Id.) Mr. Halverson developed his sales comparison approach value using three comparables with values adjusted to the subject ranging from \$603,500 to \$807,135. (Id.) Mr. Halverson reconciled the cost and sales comparable values to reach a final appraised value of \$619,000 stating "most weight, in this appraisal opinion, was given to the value derived by the market approach, which is supported by the cost approach." (Ex. 3.)

10. Mr. Woods introduced four different real estate listings for the property, which include photographs of the home in 2002, 2005 and 2013, to demonstrate that a substantial remodel of the home in 2007 did not have a correspondingly substantial increase in the value. (Ex. 1.) The property was actively listed and marketed for sale continuously for the six years preceding the Woods' purchase. (Ex. 1, 3.) The Property and Listing History shows that the house was initially listed for \$1.8 million in 2008, and there are two pages of single spaced listing history showing the

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listing price of the property was periodically revised downwards for years until the date of the Woods purchase on August 18, 2014. (Ex. 1.)

11. Mr. Woods testified when they purchased the property, the home was missing a majority of its light fixtures, had no appliances or door knobs, the sprinkler system was not working and there had been no lawn care for one year. (Id. 13:13-17:11). Mr. Woods testified that the house had not been lived in for at least a year before they purchased the home. (Id. 39:20-21.)
12. Annie Strain, a residential and agricultural appraiser for DOR, testified that she first met Mr. Woods in early spring of 2014 when he came into her office to ask questions about the property taxes on the property. (Id. 21:5-25.) Mr. Woods wanted to know if he could appeal the DOR's assessed value, which at the time was just slightly over \$1.5 million (this was the value from the prior appraisal cycle of July 1, 2008 through the end of 2013). (Id.) Ms. Strain testified that he could not appeal the property's assessed value at that time because he did not own the property. (Id.)
13. Ms. Strain testified that Mr. Woods came back into her office that fall, after purchasing the property, and again had questions about filing an appeal and Ms. Strain explained that he would not be able to appeal the DOR's value until he received a new assessment notice from the DOR. (Id. 22: 2-10.)
14. Ms. Strain testified that the DOR gets notice that a property has changed owners from realty transfer certificates that are sent to their office by

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the [County] Clerk and Recorder's office. (Id. 22:17-20.) She testified that she subsequently reviews each realty transfer certificate for accuracy of data and confirms the sales price in order to make a determination as to whether she believes the sale should be included in the DOR's database of comparable sales that are used to help value properties for the next reappraisal cycle. (Id. 22:20-24.)

15. Ms. Strain explained that when she received a copy of the realty transfer certificate for the Woods purchase she wrote "Short Sale" and "Invalid" in the margin to indicate that she was not going to use the sale as part of the DOR's database. (Ex. A, Id.23:15-24:2). Ms. Strain testified that she did not want to include the sale in the database because she did not think the purchase price reflected a true marketed sale because it was a short sale which represents a duress sale. (Id.)
16. Ms. Strain testified that on April 1, 2015, she and DOR lead appraiser Butch Smith went out to tour the Woods property and had a discussion with Mr. Woods regarding the DOR's decision to use the cost method to reach market value of the home instead of comparable sales. (Id. 25:8-18.) During that visit Ms. Strain testified that they re-measured the inside and outside of the home and verified all of the DOR's data regarding the property and when she returned to the office she made some corrections to the [DOR's] record that she felt were warranted. (Id. 26:1-8.)
17. Ms. Strain testified that she made small corrections to the square footage and that she reduced both the DOR's quality factor on the residence, and the condition, desirability and utility (CDU) factor, because she felt it

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had been overstated and not consistent with other properties within that subdivision and neighborhood. (Id. 26:11-18.) Ms. Strain testified that she also made an adjustment to account for super adequacy, which she explained as follows, “the home is very, very large, considerable [sic.] larger than all house in that neighborhood, save one, and ... due to the principle of regression, which states that the value of a larger house will decrease by its association with smaller houses, so I made that adjustment as well.” (Id. 27:19-28:1). All of these adjustments contributed to the DOR’s new value for the property, which reduced the value from \$1.5 million in the prior appraisal cycle to DOR’s new value of \$896,000 for the current appraisal cycle. (Id.)

18. Ms. Strain testified that the new value also reflected the market conditions during this timeframe, “remember in that timeframe we also suffered a recession, so all properties, or almost all properties were selling for less than they had been previously, and also land values went down, and in that neighborhood land values went down, so that was also adjusted downward to reflect sales that were lower than they had been previously.” (Id. 28:2-7.)
19. Ms. Strain testified that the DOR used the cost method to establish the property’s market value, but that the DOR’s comparable sales analysis reached a value that was within one percent of the cost value. (Ex. D, Id. 28:21-29:19.) Ms. Strain explained that if the DOR is going to use a value determined by the comparable sales method they ideally want to have five properties selected as comparables with comparability points below 200. (Id. 29:20-31:2.)

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20. When the DOR used the comparable sales method to determine a value for the Woods' property, it only found three comparable properties, out of a total of 672 sales in the market model, and the comparability points of the three comparables ranged from 288 to 469. (Exs. C,E, Id. 35:22-24.) Ms. Strain explained that the comparability points represent the number of adjustments that are made to account for differences between the subject property and the comparables, i.e., differences in the acreage, neighborhood, year built, style, square footage, quality rating of the house, and the number of bedrooms and bathrooms. (Id. 31:5-12.)
21. Ms. Strain testified that she felt the cost method was a better indicator of value for the Woods property because the comparable sales method resulted in very high comparability points indicating that the number of adjustments that were made between the comparable property and the subject property rendered the resultant comparable sales value less reliable. (Id. 32:7-10.)
22. Mr. Smith, a lead appraiser for the DOR, testified that it was his understanding that the fee appraisals prepared by Mr. Rose and Mr. Halverson were prepared for the bank to establish a liquidation value which is established for a different purpose than trying to determine the current fair market value. (Id. 46:18-24.)
23. Mr. Smith then described why, in his opinion, the comparable sale number one in the Halverson Appraisal should not have been considered a good comparable to use in an appraisal. (Id. 47:9-52:7.)

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24. First, comparable one was sold at a foreclosure sale so the sales price reflects a duress sale and not current fair market value. (Id.) Second, the comparable property consists of 36 acres with two homes on it, the original 1,200 square foot home (now a guest house), and a much larger 6,000 square foot home, that Mr. Smith estimated was only 70% completed at the time of sale. (Id.) The larger house had been exposed to the elements for many years and Mr. Halverson described the extensive work to cure necessary before the home would be habitable. (Id.) Mr. Smith testified that in his opinion the land for the comparable should have an adjustment of negative \$240,000 as opposed to the Halverson appraisal's adjustment of \$68,000 and that the guest house should adjust the value by at least \$120,000 as opposed to the \$5,000 adjustment Mr. Halverson made. (Id.)
25. Mr. Smith testified to other errors in the Halverson appraisal, including its incorrect use of listing prices for comparables four and five, and erroneously doubling the square footage of comparable number five (from 4,650 to 9,230) and also incorrectly identifying it as a one and a half story home when it is actually a two story house. (Id. 69:1-70:3.)
26. Mr. Smith testified that the reductions Ms. Strain applied (the twenty percent reduction for functional obsolescence, the four percent depreciation and the reduction in the CDU factor) resulted in a final cost value of \$896,000 which was within one percent of the DOR's value calculated using the comparable sales method, rendering the distinction meaningless. (Id.)

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27. The property record card for the property shows that the first floor of the home consists of 4,379 square feet, a 1,125 square foot second floor, and a 2,211 square foot fully finished basement. (Ex. D.)
28. To whatever extent the subsequent conclusions of law may be construed as findings of fact, they are incorporated accordingly.

CONCLUSIONS OF LAW

29. The Board has jurisdiction over this case and its order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. Section 15-2-301.
30. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
31. The taxpayer bears the burden of proving the error of DOR's decision. Farmer's Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont., 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); Western Airlines, Inc. v. Michunovich, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
32. The DOR, however, cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of its action. Western Air Lines, 149 Mont. at 353, 428 P.2d at 7.
33. "All taxable property must be appraised at 100% of its market value except as otherwise provided." Mont. Code Ann. § 15-8-111(1).
34. "Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any

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- compulsion to buy or to sell and both having reasonable knowledge of relevant facts.” Mont. Code Ann. § 15-8-111(2)(a).
35. “Since market value is defined in Section 15-8-111, MCA... it follows that if market value is to be derived from analyzing comparable sales, that the sales must represent valid ‘arm’s length’ transactions.” 2015-2020 Montana Reappraisal Plan, 25 (adopted pursuant to Mont. Code Ann. § 15-7-11(5)).
36. “Comparable properties used for valuation must represent similar properties within an acceptable proximity of the property being valued.” Mont. Code Ann. § 15-8-111(3).
37. “[T]he Legislature intended the Department to utilize both the cost approach and the market data approach, depending upon the available market data, when it assesses property and estimates market value.” *Albright v. State By & Through State*, 281 Mont. 196, 208, 933 P.2d 815, 823 (1997).
38. “Assessment formulations by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion.” *Peretti v. State, Dep’t of Revenue*, 2016 MT 105, 383 Mont. 340, 344, 372 P.3d 447, 450 (citing *O’Neill v. Dep’t of Revenue* 2002 MT 130, 310 Mont. 148, 155, 49 P.3d 43, 47).
39. “For the taxable years from January 1, 2015, through December 31, 2016, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 2014. Mont. Admin. R., 43.18.124(1)(c).

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40. “Mass appraisal’ is the process of valuing a group of properties as of a given date, using standardized methods, employing common data, and allowing for statistical data.” Mont. Admin. R. 42.20.106(13).
41. “The state tax appeal board must consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was conducted within 6 months of the valuation date. If the state board does not use the appraisal provided by the taxpayer in conducting the appeal, the state board must provide to the taxpayer the reason for not using the appraisal.” Mont. Code Ann. § 15-3-301(3).

DISCUSSION

42. We conclude that the taxpayer overcame the presumption that the DOR correctly valued this property using the cost method to determine value.
43. The taxpayer submitted sufficient and probative evidence to overcome the presumption given to the DOR. The real estate listing history for the property shows that it was actively listed for sale and marketed for many years. The evidence in this case convinces us that seller kept reducing the price, over a number of years, until it reached a price point where a willing buyer was interested in purchasing the property. While there is testimony in the record that the recession had a negative influence on home sales and prices, the DOR’s market model contained 672 sales for this neighborhood, which indicates that the market was active and the Woods property sold when the listing price of the house reached an equilibrium that matched buyer demand.

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44. We note that both the DOR and Mr. Halverson's appraisals determined a value for the property using the cost method that were within two percentage points of one another, that does give this Board confidence in the cost method used by both the DOR and Mr. Halverson. However, the evidence presented by Mr. Woods supports the Board's conclusion this is an anomalous case where the replacement cost to build the home exceeds its true market value. This anomaly may not be present after the recession ended, but Mr. Woods presented unique and compelling evidence that the market value for this property, as of July 1, 2014, was significantly below the \$896,000 assessed by the DOR.
45. Market value is defined as "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). In this unusual appeal, the taxpayer was able to provide evidence demonstrating that a willing seller existed for many years, however there were no willing buyers until the price dropped all the way down to \$619,000. The property's continuous and long exposure on the market, while 672 other properties in the market model exchanged hands, indicates that using the cost method to reach a value of approximately \$890,000 did not reflect the actual true market value.
46. Both Mr. Woods and the DOR's witnesses testified that the home was substantially larger than every other home in the subdivision, but for one. The Board agrees with both parties that its atypical large size actually detracts from its market value, however the cost approach

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which mechanically determines value by simply adding up the number of finished square feet, will result in an increased value simply because the home is larger. In this case, Ms. Strain offset this mechanical increase in value by using her experience and judgment to apply a 20 percent reduction for functional obsolescence attributed to the home's large size. The resulting disparity between the cost value and the sales price leads this Board to conclude that the 20 percent reduction for functional obsolescence was not sufficient to reflect the true market value. This Board finds it reasonable to conclude that a buyer in the market is not willing to pay substantially more for a home because it includes a 2,211 square foot finished basement, which is larger than many homes in Montana.

47. The Board finds that the purchase price the Woods paid for the property reflects 100% of its market value as of the DOR's appraisal date of January 1, 2014. Neither party presented any testimony to support or dispute the land value, therefore this Board accepts the DOR's land value as assessed. Accordingly, the Board enters the following decision and Order in this matter.

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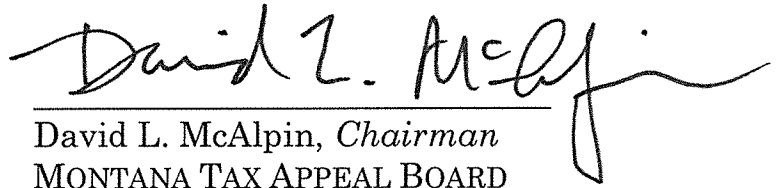
ORDER

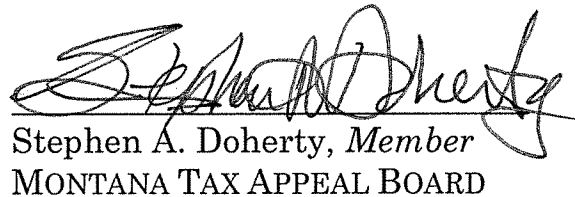
48. The appeal by the Woods in this matter is hereby granted.
49. DOR is ordered to enter for tax years 2015 and 2016 a value of \$619,000 for the Woods property; a land value of \$136,960 and an improvements value of \$484,020.

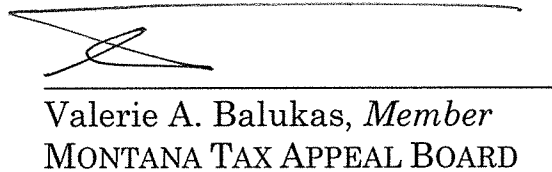
Notice: You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2).

Ordered April 13th, 2017.




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


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


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

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the following Order to be mailed on the 14th day of April, 2017 to the following:

Timothy & Mary Ann Woods
491 Arrow Hill Drive
Hamilton, MT 59840

Anthony Zammit
MT Department of Revenue
Office of Legal Services
P.O. Box 7701
Helena, MT 59604-7701

Ravalli County Tax Appeal Board
215 S. Fourth, Suite C
Hamilton, MT 59840-2853

Property Assessment Division
Department of Revenue
P.O. Box 8018
Helena, MT 59604-8018


Lynn Cochran, Admin. Paralegal