

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

AUG 31 2016

Montana Tax Appeal Board

Kurt W. Unger,

*Appellant;*

v.

State of Montana,  
Department of Revenue,

*Respondent.*

CASE No: PT-2015-27

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

Before the Board is Appellant Kurt Unger's appeal from the Deer Lodge County Tax Appeal Board's decision upholding Respondent State of Montana, Department of Revenue's valuation of Unger's property at 79 Stoneridge Overlook, Anaconda; geocode 30-1375-07-1-03-12-0000; legal description Pintler Vista Phase 1, S07, T05 N, R13 W, Lot 26, Acres 3.35, 299A.

This case is one of three<sup>1</sup> in which the hearing and evidence were consolidated, without objection of the parties, based on the similarity of the issues and evidence, and because Mr. Unger represented all the taxpayers involved.

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<sup>1</sup> The other two being *Mary Ruth Unger Trust v. DOR*, PT-2015-28; and *Michael and Linda Mikitish v. DOR*, PT-2015-29.

## ISSUE

1. Whether DOR appropriately valued the property for the 2015-2016 appraisal cycle.
2. Taxpayer argues that the DOR's assessed value for 2015-2016, which was an increase of over 15% from the DOR's 2008 assessed value, is not supported by market data because property values for the Georgetown Lake market area declined during this same time period. Taxpayer claims DOR improperly split the area into two neighborhoods, included in DOR's model sales that should not have been, and failed to include a sale which should have been in the DOR model.
3. DOR argues that the value of Unger's lot was accurately determined through mass appraisal using the Department's land model that was created using actual sale prices during the 2008-2014 reappraisal cycle.

## FINDINGS OF FACT

4. The Board conducted a hearing at 600 North Park Avenue, Helena at 10:00 AM on April 26, 2016 at which the following were present:
  - a. Kurt Unger, pro se taxpayer;
  - b. Michele Crepeau, attorney for DOR;
  - c. Julie Goebel, DOR appraiser, as witness for DOR;
  - d. Andrew Hagen, DOR area manager, as witness for DOR;
5. The parties argued for the property to be valued as follows:

BEFORE THE MONTANA TAX APPEAL BOARD  
Unger v. DOR

- a. Land:
  - b. DOR - \$180,620,
  - c. Unger - \$81,570;
- d. Improvements:
  - i. DOR – \$901,940,
  - ii. Unger - \$747,296.

**Procedural History**

- 6. On August 12, 2015, Unger filed an application for informal review (AB-26) of the newly assessed 2015 value. (Ex. A.) The AB-26 stated that recent lot sales supported a reduction in appraised value. (Id.) Unger requested the DOR assign a value of \$106,000 for the land and \$780,000 for the improvements. (Id.) On October 15, 2015, the DOR issued an AB-26 Determination Letter rejecting Unger's request but making small changes to the garage square footage, resulting in a minor reduction in valuation. (Id.)
- 7. Unger appealed the AB-26 determination to the Deer Lodge County Tax Appeal Board (CTAB). (Ex. B.) The CTAB held a hearing and considered evidence and testimony from both parties before it denied Unger's appeal.
- 8. Unger timely appealed to this Board.

**Subject Property, Neighborhood, and Model**

9. The property is 3.35 acres of land with a residence located in the Pintler Vista subdivision of Georgetown Lake.
10. DOR valued the property using the Computer Assisted Land Pricing model (CALP) software with local sales data. Sales are time adjusted to form a model of property values on the lien date, in this case January 1, 2014. The Georgetown Lake area is divided into at least two neighborhoods, each with a different CALP:
  - a. 13.P, including Pintler Vista and Maid Marion subdivisions;
  - b. 13.E, including Elk Meadows subdivision.
11. The 13.P CALP is derived from six property sales in Pintler Vista and Maid Marion, identified by their number on the 13.P CALP:
  - a. #1 - 2.6 acres of land sold on 6/21/2011;
  - b. #2 - 1.47 acre sale, with land values abstracted, on 7/23/2012;
  - c. #3 - Nelson purchase of 3.45 acres, as part of a 1031 exchange, on 10/14/2010;
  - d. #4 - 2.53 acres of land sold on 3/25/2008; and
  - e. two sales of the same 2.81 acres;
    - i. #5 - Dempster purchase on 4/11/2008; and
    - ii. #6 - Brandon purchase on 4/17/2009. (Ex. E.)

BEFORE THE MONTANA TAX APPEAL BOARD  
Unger v. DOR

12. Taxpayer submitted a spreadsheet comparing the Georgetown Lake neighborhoods, (Ex. 5), and testified that despite some modest difference between Elk Meadows and Pintler Vista, “there’s not a lot different in this area.” (MTAB Hrg. Transcr. 23:18-24:9).

**Dempster-Brandon (#5 & 6 - 13.P CALP)**

13. Taxpayer argues that both the Dempster and Brandon purchases should be excluded from the model because they were not valid arms-length transactions, specifically because it was a private sale between related parties for business purposes.
14. Both sales prices are approximately 40% higher than sales #1 and #2. (Ex. E.)
15. On April 11, 2008, William Brandon as Vice President of the Brandon-Legg Development Corporation recorded a warranty deed transferring the property to Edna Dempster. (Ex. 9.4.) This is sale #5 on CALP 13.P.
16. On April 14, 2009, Edna Dempster filed a quit claim deed transferring the same property to William Brandon. (Ex. 9.6.) This is sale #6 on CALP 13.P.
17. Taxpayer introduced a letter from real estate broker Patty McDonald in which she states that she is a friend of Brandon, that Edna Dempster is Brandon’s life partner, and that she would not consider the transaction arms-length. (Ex. 9.7.)

BEFORE THE MONTANA TAX APPEAL BOARD  
Unger v. DOR

18. The 13.P CALP shows that the Dempster to Brandon sale (#6) is for exactly \$1,000 less than the Brandon-Legg to Dempster sale (#5). (Ex. E.)
19. Based on the timing of the deeds and the congruency of the purchase prices the Board concludes that the two sales taken together were not arms-length transactions and that neither should be included in the model.

**Nelson 1031 (#3 - 13.P CALP)**

20. Second, Taxpayer argues that the Nelson purchase (#3) should be excluded from the model because it was not an arms-length transaction, specifically because the purchase was part of a 1031 exchange which could distort the price.
21. The reported sales price is 43% higher than that for sales #1 and #4.
22. The Realty Transfer Certificate discloses that the sale was part of a 1031 exchange. (Ex. 10.3.)
23. Taxpayer submitted an exhibit with excerpts from various sources on appraisal practice. They generally state that 1031 exchanges require the reinvestment of proceeds from a prior sale within a limited period of time, and that this constraint may result in an inflated purchase price of the reinvestment property. (Ex. 11.)
24. Additionally, Taxpayer introduced a letter from buyers Rodney and Marilyn Nelson in which they state: "We definitely feel that we overpaid for the lot at that time but were influenced by many other

BEFORE THE MONTANA TAX APPEAL BOARD  
Unger v. DOR

factors, in spite of the inflated price,” and that “ ‘timing’ was of great influence to us” in the decision to buy. (Ex. 10.4.)

25. The Board concludes that the Nelson purchase was not an arms-length transaction and that the sale price was artificially inflated based on timing requirements of the Nelson’s 1031 exchange.

**Curran Sale**

26. Third, Taxpayer argues DOR improperly excluded the sale of Lot 3 in Maid Marion from their model. Because the property sold for significantly less than many lots in the area, Taxpayer argues, its exclusion from DOR’s model raises the valuation of all properties in the neighborhood.

27. Taxpayer claims the sale was an arms-length transaction for an advertised property. DOR argues that it was a private sale, and properly excluded from the model.

28. The Residential Sales Verification, sent to and completed by the sellers, states in two places that the property was advertised for sale. Moreover, sellers did not circle the option “Private Offer.” (Ex. 12.4, 12.5.)

29. Taxpayer submitted email chain between buyer Curran and sellers Gwen and Lew Mitchell. The exchange begins in July 2012 with Curran’s father emailing the Mitchells regarding their listing of Lot 3 in the Maid Marion subdivision. Curran’s father never purchased the property, but forwarded the email on to Curran. In February 2013, Curran emailed the Mitchells inquiring about property, to which

BEFORE THE MONTANA TAX APPEAL BOARD  
Unger v. DOR

Mitchells responded that the property was still for sale. (Ex. 12.7, 12.8, 12.9.)

30. 82 days later, Mitchells signed a warranty deed on Lot 3 in favor of Chris Curran. (Ex. 12.1.)
31. Furthermore, Taxpayer submitted a signed statement from Curran in which he states: “The purchase was a private party sale. I was aware of the land being for sale from postings on Craigslist and a For Sale by Owner sign that was posted to a tree on the lot. There was no relationship between the seller and me prior to the purchase.” (Ex. 12.6.)
32. However, the Residential Sales Verification contains a handwritten note, signed by DOR appraiser Julie Goebel, stating: “Not a typical sale – Buyer verified it as a private offer & not advertised.” (Ex. 12.5.)
33. The evidence shows that the sale originated from an advertisement and consummated shortly thereafter by parties whose emails show they did not know each other. Curran confirmed this in his statement.
34. It appears Curran simply misunderstood the term of art “private sale” when responding.
35. The Curran sale was an arms-length transaction, not a private offer, and was improperly excluded from the model.

**Land**

36. Even DOR's 13.P CALP shows that something is amiss. All six properties in the model have actual sales prices above the January 1, 2014 time-trended value of the sales price. (Ex. E, see "Adjusted Sale Price (S) "Land Y.") In the aggregate, land in the neighborhood was worth 0.9073 times in 2014 what it was worth in 2008. (Id., see Market Adj. Factor) That is, DOR's model showed that land values decreased from 2008 to 2014, yet properties valued on this model purportedly increased in value.

**Improvements**

37. Taxpayer is appealing the \$814,000 valuation of his improvements for the 2015-2016 tax year. (MTAB Hrg. Transcr. 121:11.) This included a downward adjustment of \$11,000 to the home value after on-site inspection. (MTAB Hrg. Transcr. 126:25.)

38. Taxpayer argues that this 10% increase from the previous cycle lien date of July 1, 2008 is unwarranted in a declining market. (MTAB Hrg. Transcr. 121:14.)

39. Taxpayer researched the market, identified his own comparable sales and adjusted them to the subject, then performed his own market trend analysis to propose a market value of his improvements of \$747,000. (MTAB Hrg. Transcr. 127:3.) He applied a weighted average market decline of 8.2% to his improvements to find his proposed value. (MTAB Hrg. Transcr. 126:7.)

BEFORE THE MONTANA TAX APPEAL BOARD  
Unger v. DOR

40. Taxpayer focused his testimony on one comparable sale at 848 Georgetown Lake Road, (MTAB Hrg. Transcr. 130:24), which he considered to be the most comparable sale at \$326,700 adjusted to the subject as an equivalent value of \$700,000. (MTAB Hrg. Transcr. 127:3.)
41. Taxpayer testified that his improvements are graded by the DOR at an 8, whereas the comparable was graded by DOR as a grade 7. (MTAB Hrg. Transcr. 129:17-19.)
42. DOR objected to the underlying sales price data used by taxpayer in his market analysis. DOR questioned the comparable sales as not validated, and objected to their use without proper foundation. (MTAB Hrg. Transcr. 130:2.)
43. Taxpayer stated on cross by DOR that the cost tables he used in making his adjustments of comparable sales to the subject to identify his market adjustment were from a regional cost table for the northwestern United States. (MTAB Hrg. Transcr. 129:6-7.)
44. Goebel testified that without an adequate number of comparable sales for homes of similar high quality as the subject, DOR are duty bound to reject a market analysis of the improvements and therefore relied on a cost methodology to find the value of the subject.
45. Goebel testified that after attempting to find market comparable sales few were found and none were of the same grade as the subject therefore she defaulted to the cost analysis, per department practice. (MTAB Hrg. Transcr. 137:1-2.)

BEFORE THE MONTANA TAX APPEAL BOARD  
Unger v. DOR

46. Goebel testified that she had performed an on-site review of the subject property where she re-measured some dimensions of the improvements and made a value reduction of \$11,000. (MTAB Hrg. Transcr. 131:20.) Goebel testified that the square footage of Unger's one comparable was 2,070 as compared to the subject's 3,893 square feet. (MTAB Hrg. Transcr. 134:16-17.)
47. Goebel testified that she properly utilized the cost method of appraisal for the subject and that in that cost calculation used the Marshal and Swift valuation tables specific to that area of Montana. (MTAB Hrg. Transcr. 136:10-14.)
48. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

**CONCLUSIONS OF LAW**

49. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
50. The Board has jurisdiction over this case and its order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-301.

**Burden of Proof**

51. 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).

BEFORE THE MONTANA TAX APPEAL BOARD  
Unger v. DOR

52. However, DOR cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of their action. *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.

**Assessment**

53. All taxable property must be appraised at 100% of its market value unless otherwise provided. Mont. Code Ann. § 15-8-111.
54. 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).
55. “Since market value is defined in 15-8-111, MCA 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’, it follows that if market value is to be derived from analyzing comparable sales, that the sales must represent valid ‘arm’s length’ transactions.” Page 25, 2015-2020 Montana Reappraisal Plan, Montana Department of Revenue adopted pursuant to Mont. Code Ann. §15-7-111(5).
56. 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).
57. “‘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, ¶ 15, 383 Mont. 340,

BEFORE THE MONTANA TAX APPEAL BOARD  
Unger v. DOR

344, 372 P.3d 447, 450 (citing O'Neill v. Dep't of Revenue, 2002 MT 130, ¶ 23, 310 Mont. 148, 155, 49 P.3d 43, 47).

*Taxable Years*

58. For the taxable years from January 1, 2009, through December 31, 2014, all property classified in 15-6-134, MCA, (class four, residential) must be appraised at its market value as of July 1, 2008. Mont. Admin. R. 42.18.124(1)(b).
59. "For the taxable years from January 1, 2015, through December 31, 2016, all property classified in 15-6-134, MCA, (class four, residential) must be appraised at its market value as of January 1, 2014. Mont. Admin. R. 42.18.124(1)(c).

\* \* \*

**Land**

60. DOR has not met its burden of presenting evidence to support its valuation. The Board finds the Taxpayer in this case has cast serious doubt on the accuracy of the value assigned to this property. We conclude the Taxpayer has overcome the presumption that the DOR correctly valued the land.
61. Taxpayers introduced sufficient evidence to cast credible doubt on the validity of at least two of the six sales data points used in the 13.P CALP and introduced credible evidence that one sale that was excluded meets the definition of a valid sale.

BEFORE THE MONTANA TAX APPEAL BOARD  
Unger v. DOR

62. This Board agrees with Taxpayer's assertion that the sales between Brandon-Legg Development Corporation, Edna Dempsey and William L. Brandon were likely transfers between related parties and should not have been verified as valid. This Board concludes it is not necessary to know what the relationship between the parties actually is; the deeds themselves imply that Ms. Dempsey was acting as a straw-man to move the real property out of the corporation and to Mr. Brandon individually. The Department should not have used these sales in its model without any verification that the transfers were actually arms-length transactions between unrelated parties.
63. Taxpayers submitted sufficient credible evidence to convince this Board that the Curran's purchase was an advertised arms-length transaction between unrelated parties and should have been included in the 13.P CALP, even if the model would have rejected the sale as an outlier. Mr. Mitchell marked the box on the sales verification letter stating that the lot was advertised for sale by owner. This Board finds it credible that Chris Curran may not have understood the distinction between the terms "private offer" and "for sale by owner."
64. Finally, Taxpayer presented evidence to call into question the Department's inclusion of the Nelson's sales price in the CALP model for neighborhood 13.P. While this evidence is not as compelling as the taxpayer's evidence relating to the Brandon-Legg/Dempsey transactions and the Mitchell-Curran sale, it does cast further doubt on whether the 13.P CALP used appropriate data.

BEFORE THE MONTANA TAX APPEAL BOARD  
Unger v. DOR

65. After considering all the evidence, the Board has arrived at the conclusion that the Department made a mistake when it valued Taxpayer's property using the 13.P CALP that determined the subject property's assessed value for this reappraisal cycle.
66. This Board agrees with the Taxpayers and finds that the Department failed to meet its obligation to value the subject property using verified valid sales that occurred at arms-length between unrelated parties. The Department has offered no credible explanation for why the Brandon-Legg-Dempsey and Dempsey-Brandon sales were included in the CALP model and why the Mitchell-Curran sale was excluded.
67. The evidence presented by the Taxpayer leaves us with the conclusion that the DOR's value is not market value, but our duty is to find a market value in tax appeals. This Board concludes that the most appropriate way to determine the 2015 market value for the Taxpayer's lot is to start with the DOR's assessed value for 2008 and apply the market trend as calculated by Department's verified sales data used in the broader market area.
68. The DOR's own 13.P CALP shows that properties in the neighborhood experienced a 10% reduction in value. The reduction reflected in the CALP is corroborated by the testimony of DOR's witness Jerome Patton in a similar case. Mr. Patton testified that the verified sales data for the market area show a decline of close to 10% between January 1, 2009 and the lien date of January 1, 2014 for properties that sold in the 13.P CALP neighborhood. This testimony supports Taxpayer's basis for the appeal which stated his (DOR assessed) value increased

BEFORE THE MONTANA TAX APPEAL BOARD  
Unger v. DOR

significantly during a period when by all accounts the market value for property in the area declined. *Mark & Linda Ransford v. Dept. of Revenue*, 2016 WL 4251603 (Mont. Tax App. Bd.).

69. Starting with the 2008 assessed value of \$107,541 and applying a 10% reduction determines that the value for the land as of January 1, 2014 is \$96,786.
70. This Board acknowledges that DOR must use mass appraisal to accomplish statewide valuations, and that DOR is not provided with enough resources to thoroughly research each and every sale. Under present law the DOR staff must rely on voluntary sales verification forms to validate sales. The result of that system may be imperfect CALP neighborhoods where very few sales are available as comparables. In this case the Board heard credible evidence and testimony from a taxpayer and witness who spent hours investigating and critiquing sales used to form the basis of value in this neighborhood. The results of his work raised serious questions that the value calculated by mass appraisal methods was not market value.

**Improvements**

71. We find use of cost less depreciation was the best way for DOR to value subject improvements.
72. DOR did make a good faith attempt to value the subject through a market sales methodology and there were not enough verified sales of improvements in the area with equivalent quality to the subject to be

BEFORE THE MONTANA TAX APPEAL BOARD  
Unger v. DOR

able to defend that method of finding the subject value. *Abbey/Land LLC v. Dept. of Revenue*, 2015 WI 5565232 (Mont. Tax App. Bd.).

73. While the Taxpayer made a reasonable case to use his own market methods and trend analysis to estimate a value for his home and improvements, he did not overcome the presumption of correctness for the DOR's cost method. The Taxpayer used his own mathematical trending and adjustment formulas for grade and size based largely on the validity of only one comparable sale which was not of the same quality rating as his home. His methods also admittedly used a materials cost table not specific to the market area.
74. Taxpayer did not debunk the cost approach to value used by the DOR to meet his burden of overcoming the assumption of DOR being correct. *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).
75. Under *Albright*, the DOR is allowed to use other methods to find value for improvements when comparable market sales are rare or dissimilar to subject properties. *Albright v. State By & Through State*, 281 Mont. 196, 933 P.2d 815 (1997).
76. The Board does not prefer the cost method given any alternative, but in this case finds it was an acceptable method to find value for the subject.
77. We conclude the value assigned by the DOR to the improvements through the cost method is correct.

BEFORE THE MONTANA TAX APPEAL BOARD

Unger v. DOR

ORDER

78. Kurt W. Unger's appeal and complaint is **granted in part**.
79. DOR is **ordered** to enter a value of \$96,786 for Unger's land at 79 Stoneridge Overlook, Anaconda; geocode 30-1375-07-1-03-12-0000; legal description Pintler Vista Phase 1, S07, T05 N, R13 W, Lot 26, Acres 3.35, 299A. The improvements value for the property remains at \$901,940.

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

Ordered August 31, 2016.



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

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

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

BEFORE THE MONTANA TAX APPEAL BOARD

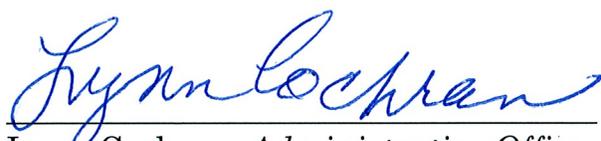
Unger v. DOR

**Certificate of Service**

I certify that I caused a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on August 31<sup>st</sup>, 2016 to:

**Kurt W. Unger**  
79 Stoneridge Overlook  
Anaconda, MT 59711

**Michele Crepeau**  
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Lynn Cochran, *Administrative Officer*  
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