

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

JUL 25 2018

Montana Tax Appeal Board

CASE No: PT-2017-34

PATRICK KELLY,  
JULIA MAXINE LLC,  
ST. MARIE HOUSING LLC,

*Appellants,*

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

*Respondent.*

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

Before the Montana Tax Appeal Board are appellants Patrick Kelly, Julia Maxine LLC, and St. Marie Housing, LLC (Mr. Kelly) appeal from the Valley County Tax Appeal Board (VCTAB) decision denying its appeal.

This Board held a *de novo* hearing on April 25, 2018.

For the reasons provided below, Mr. Kelly's appeals are denied.

This Board notes at the beginning of this decision, that there were some questions about the actual ownership of the properties at issue here. This Board's decision does not address or establish ownership of the St. Marie properties. *See* MTAB Hrg. 51:10 – 1:07:36; 1:39:40 – 1:39:44; 1:41:42 – 1:41:50. Therefore, any references to Mr. Kelly's land and improvements are to avoid lengthy and confusing prose as this Board decides the issues of market value of the land and improvements. They are not, in any way, a statement about the actual ownership of the land and improvements in St. Marie.

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## ISSUES TO BE DECIDED

1. Whether the DOR properly and accurately valued Mr. Kelly's land and improvements.

## FINDINGS OF FACT

### Description of the Property

2. This appeal involves 102 properties. DOR Ex. K. The land and improvements involved in this appeal are best described by the geocodes in DOR Ex. K.
3. These properties are in St. Marie, which is 17 miles north of Glasgow on the road to Opheim. The area used to provide housing for the Glasgow Airforce Base. Mr. Kelly testified that he, along with several other business partners, purchased the properties in 1985 or 1986 for approximately \$400,000. MTAB Hrg. 13:50 – 14:03. They sought to convert the land and improvements into a retirement community. MTAB Hrg. 29:25 – 29:27; 1:20:49 – 1:24:05; Taxpayer Ex. G, B, and B-1.
4. While initially successful, people eventually left St. Marie. *Id.* St. Marie has fallen into disrepair. Most of the homes are now uninhabitable and the entire St. Marie project has become the source of litigation. *Id.*; *New St. Marie, LLC v. Patrick Kelly*, Findings of Facts, Conclusions of Law and Judgment, No. DV-14-75 (MT 17th Judicial District Feb. 5, 2018).

### AB-26 – appeal and outcome

5. On July 3, 2017, Mr. Kelly received the assessment notices for the St. Marie properties as owner of record or point of contact. DOR Ex. A, B, and C.

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6. Mr. Kelly requested an AB-26 informal review of these assessment values. Mr. Kelly requested the DOR reduce the value of the properties to \$200 to \$400 per unit. MTAB Hrg. 3:14:23 – 3:14:51.
7. On August 9, 2017, the DOR denied Mr. Kelly's request. MTAB Hrg. 3:14:53 – 3:15:20.

**VCTAB hearing – appeal and outcome**

8. After several re-filings to include all of the geocodes and descriptions for the properties Mr. Kelly wished to appeal, Mr. Kelly perfected his appeal to the VCTAB on October 15, 2017.
9. On November 20, 2017, the VCTAB heard Mr. Kelly's appeal.
10. After hearing all of the evidence, the VCTAB denied Mr. Kelly's appeal

**MTAB hearing**

11. On December 19, 2017, Mr. Kelly appealed the VCTAB' decision to this Board. Mr. Kelly asked this Board to “find a solution/formula to assess the properties for less than the fair market value established at the GSA auction when the units had no individual market and were in good condition. . . If a solution is not found, Montana will lose a valuable asset that could be eventually valued at 100 million.”
12. This Board held a hearing on April 25, 2018 in Helena.
13. At the hearing, Mr. Kelly represented himself and testified on behalf of his appeal. He called no other witnesses.
14. This Board admitted the following exhibits submitted by Mr. Kelly:
  - a. Taxpayer Ex. A: Short Summary and Requests for State Tax Appeal Board;
  - b. Taxpayer Ex. B: Pamphlet for St. Marie's as a retirement community;
  - c. Taxpayer Ex. B-1: Another pamphlet for St. Marie's as a retirement community;

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- d. Taxpayer Ex. C: Cost estimates per unit for exterior and interior repairs to be habitable (dated May 4, 2010);
  - e. Taxpayer Ex. D: Montana Aviation Research (Boeing) property tax information;
  - f. Taxpayer Ex. E: MCA § 15-8-111 (2005);
  - g. Taxpayer Ex. F: Letter from Tully Tryon of the DOR; and
  - h. Taxpayer Ex. G: Video about St. Marie (available at: <https://www.youtube.com/watch?v=hIJfgJO3ut4>).
15. At the hearing, the DOR was represented by Dave Burleigh. The following witness testified in the DOR's case:
- a. Tully Tryan, Area Manager, DOR Property Assessment Division – Valley County; and
  - b. Ronnie Kulczyk, Commercial Appraiser, DOR Property Assessment Division – Valley County.
16. This Board admitted the following exhibits submitted by the DOR:
- a. DOR Ex. A: Classification and Appraisal Notice to Julia Maxine LLC, dated July 3, 2017;
  - b. DOR Ex. B: Classification and Appraisal Notice to Patrick Kelly, dated July 3, 2017;
  - c. DOR Ex. C: Classification and Appraisal Notice to St. Marie Housing LLC, dated July 3, 2017;
  - d. DOR Ex. D: Letter to taxpayer dated October 16, 2017;
  - e. DOR Ex. E: Unsound condos with water usage;
  - f. DOR Ex. F: Property Record Cards for Justice Maxine LLC properties;
  - g. DOR Ex. G: Property Record Cards for Patrick Kelly properties;
  - h. DOR Ex. H: Property Record Cards for St. Marie Housing LLC properties;
  - i. DOR Ex. I: VCTAB Decision dated November 20, 2017;
  - j. DOR Ex. J: 2014-2015 condo sales in St. Marie, MT;
  - k. DOR Ex. K: Affidavit of Kandy Fleurisma and comprehensive list of properties subject to this appeal;
  - l. DOR Ex. L: Cost breakdown of property at geocode 20-4361-32-1-01-11-B327; and
  - m. DOR Ex. M: CALP model.

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17. At the hearing, Mr. Kelly argued the DOR needs to either create a new system for evaluating St. Marie properties or should use a higher level of obsolescence in their cost approach to result in these properties having a value of close to zero and thus no taxes owed. MTAB Hrg. 1:10:10 – 1:14:20; 1:17:38 – 1:18:04. Mr. Kelly, citing MCA § 15-8-111, claimed there was no market, and thus no value. MTAB Hrg. 1:16:50 – 1:17:07; 1:46:19 – 1:46:23; 1:54:30 – 1:55:00; 3:34:30 – 3:36:30; Taxpayer Ex. E.
18. Mr. Kelly also proposed that if taxes are owed, they should apply when the properties are sold and not right now. MTAB Hrg. 1:55:30 – 1:57:08. Mr. Kelly admitted current Montana law does not allow for such a possibility. MTAB Hrg. 1:58:30 – 1:58:36.
19. Most of Mr. Kelly's exhibits and testimony were about the potential and possibilities at St. Marie and did not directly challenge the DOR's valuation of his land and improvements. Taxpayer Ex. B, B-1, and G.
20. The DOR testified it could not value the improvements on Mr. Kelly's properties using the market sales approach, because the DOR lacked sufficient comparable sales to build a defensible model. MTAB Hrg. 2:12:00 – 2:12:10; 3:04:32 – 3:04:46. Instead, the DOR used the cost approach to value the improvements on Mr. Kelly's properties. MTAB Hrg. 2:12:10 – 2:12:36.
21. Regarding its cost approach, the DOR used Marshall and Swift and other national cost manuals to determine a base price, wherein the DOR multiplied the base price by the improvement's square footage. MTAB Hrg. 2:18:18 – 2:19:26; DOR Ex. L.

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22. The DOR then reduced its replacement cost new values by finding the improvements had no plumbing or heating because of corrosion and years of non-habitation of the improvements. MTAB Hrg. 2:22:35 – 2:23:46; DOR Ex. L.
23. Next, the DOR further reduced the replacement cost new to account for depreciation, functional obsolescence, and economic obsolescence. The DOR determined the improvements had an effective age of 1950 and were only 12 percent good. MTAB Hrg. 2:25:20 – 2:26:20; DOR Ex. L. This signifies, mathematically, the DOR had determined Mr. Kelly's improvements had a CDU – condition, desirability, utility – of unsound. *Id.*; DOR Ex. K. According to the DOR, unsound is the lowest CDU it can give an improvement. MTAB Hrg. 3:23:40 – 3:24:03. The DOR also set the economic cost factor (ECF) for Mr. Kelly's improvements to .26. MTAB Hrg. 2:28:57 – 2:29:11; DOR Ex. L. The DOR testified, in Valley County they usually use an ECF of .75. MTAB Hrg. 2:29:40 – 2:29:49. The DOR testified it purposely used a lower ECF to help keep the values of Mr. Kelly's improvements as low as possible and to account for St. Marie being unique. MTAB Hrg. 2:28:57 – 2:29:11; 2:29:56 – 2:30:56.
24. Considering all of the depreciation pursuant to the above percentage good and ECF, the DOR determined a “two-story, duplex-style condominium unit with 1,508 square feet of living area” had a value of \$5,470. MTAB Hrg. 2:31:28 – 2:31:41; DOR Ex. L. Some of Mr. Kelly's improvements had a greater value or lesser value depending on the square footage of the building, the type of driveway, and other small changes. MTAB Hrg. 2:33:48 – 2:35:53; 2:39:10 – 2:39:22; DOR Ex. K. A few improvements had less depreciation because they were being rented,

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- they had functioning plumbing and heat, and were habitable; thus, warranting a CDU of poor or fair rather than unsound. *Id.*; DOR Ex. K.
25. The DOR testified, the above reductions and deductions result in a 97 percent decrease of the replacement cost new value of Mr. Kelly's improvements. MTAB Hrg. 2:47:20 – 2:47:38. According to the DOR, its value of the majority of Mr. Kelly's improvements were close to scrap or salvage value. MTAB Hrg. 3:15:35 – 3:15:52.
26. To value the land, the DOR used computer assisted land pricing (CALP) model. MTAB Hrg. 2:13:20 – 2:15:18. This model resulted in the DOR determining all of the land together, 296 acres, had a value of approximately \$2,500,000. MTAB Hrg. 2:13:20 – 2:13:50. This value was then apportioned to each lot, resulting in a value of \$2,254 for each lot. MTAB Hrg. 2:13:50 – 2:14:05; DOR Ex. M. The exception was a 17.55 acre vacant lot adjacent to the condominiums. MTAB Hrg. 2:14:08 – 2:15:18; DOR Ex. M. The DOR determined this 17.6 acre lot had a value of \$21,705. *Id.*
27. The DOR determined the majority of Mr. Kelly's properties had a total market value ranging from \$6,694.00 to \$7,724.00. MTAB Hrg. 2:32:00 – 2:32:15; DOR Ex. K. Three outlier properties, one of which included the 17.55 acre vacant lot, had total values of approximately \$22,000.00. DOR Ex. K.
28. These values, in general, were lower than the properties' values in the prior tax cycle. DOR Ex. F, G, and H.
29. The DOR testified there were 19 condo sales in 2014 and 2015 which indicate a market does exist for the habitable improvements. DOR Ex. J; MTAB Hrg. 3:05:00 – 3:07:34.

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

CONCLUSIONS OF LAW

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

**Jurisdiction**

32. Mr. Kelly timely appealed the VCTAB'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).
33. "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).
34. 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); *CHS, Inc. v. Montana Dep't of Revenue*, 2013 MT 100, 369 Mont. 505, 299 P.3d 813; *PacifiCorp v. Montana Dep't of Revenue*, 2011 MT 93, 360 Mont. 259, 253 P.3d 847.].

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35. “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.

### Burden of Proof

36. “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).
37. 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.); and *Keck v. Montana Department of Revenue*, 2013 WL 2476838 (Mont.Tax.App.Bd.).
38. The taxpayer has the burden to show the DOR’s appraisal should be reduced. Mont. Code Ann. § 26-1-401; and *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471 (Mont. 1995).

### Market Value

39. “All taxable property must be assessed at 100 percent of its market value except as otherwise provided.” MCA § 15-8-111(1).
40. “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.” MCA § 15-8-111(2)(a).

41. 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.
42. 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.
43. 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 property throughout the State and that it comports with the most modern and accurate appraisal practices available. *Id.* at 213.
44. The DOR presented a modicum of evidence supporting its values for Mr. Kelly’s properties. The evidence presented shows the DOR considered

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the conditions and desirability of Mr. Kelly's properties. The DOR reduced the values of these properties as much as possible given the unsound nature of the improvements and the situation within St. Marie.

45. Mr. Kelly did not meet his burden of proof showing the DOR did not properly value his land and improvements. Mr. Kelly's testimony focused on two issues: (1) a market doesn't exist for these properties; and (2) some sort of solution, ostensibly legislative, should be crafted for St. Marie. Regarding the first issue, the DOR presented evidence a market has existed for the buildings and land in St. Marie based on sales in 2014 and 2015 and may return. Furthermore, the DOR's values for Mr. Kelly's improvements, according to the DOR, are at scrap or salvage values. We find the DOR's value of approximately \$5,470 for most of Mr. Kelly's improvements – thus a total reduction of 97 percent from the replacement cost new – captures market value. Regarding the second issue, this Board, as established under MCA § 15-2-301 and Montana case law, exists in part, to determine the market value of land and improvements. This Board lacks any authority to direct legislative solutions. This Board cannot grant the second remedy Mr. Kelly requested.

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**ORDER**

1. For the reasons provided above, the taxpayers' appeal is denied.
2. For the 2017 and 2018 tax years, the DOR's value of the properties identified in DOR Ex. K are valued as established by the DOR for those properties as outlined in DOR Ex. K.

Ordered July 29<sup>th</sup>, 2018.



A handwritten signature in black ink, appearing to read "David L. McAlpin".

David L. McAlpin, Chairman  
MONTANA TAX APPEAL BOARD

A handwritten signature in black ink, appearing to read "Stephen A. Doherty".

Stephen A. Doherty, Member  
MONTANA TAX APPEAL BOARD

A handwritten signature in black ink, appearing to read "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).

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**Certificate of Service**

I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, Order and Notice of Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on July 25, 2018 to:

**Patrick Kelly**  
21 N. Last Chance Gulch, 3L  
Helena, MT 59601

**Montana Department of Revenue**  
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Lynn Cochran, Paralegal Assistant  
MONTANA TAX APPEAL BOARD