

TIMOTHY CHAMBERLIN,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE No: PT-2019-38

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

STATEMENT OF THE CASE

The Montana Tax Appeal Board (Board) is an independent agency not affiliated with the Montana Department of Revenue (DOR). Under the authority of MCA §15-2-301 this case is an appeal from the Yellowstone County Tax Appeal Board (YCTAB) hearing held on June 9, 2020, for tax years 2019 and 2020. The YCTAB decision upheld the Montana Department of Revenue's (DOR) assessment of the subject property's value. The Taxpayer filed an appeal of the YCTAB decision with this Board on December 30, 2019.

ISSUE TO BE DECIDED

The Taxpayer disputes the decision of the YCTAB, which upheld the DOR's determination of value at \$ 241,600. Taxpayer requests a value of \$230,000 for the land and improvements of his property.

PROPERTY DESCRIPTION

The subject property in this appeal is identified as 1123 Iristan Lane, Yellowstone County in Billings, Montana, Geocode: 03-1133-23-4-09-05-0000. The Legal Description is Lot 7, of the Connolly Subdivision, S23, T01N, R26E.

The improvements to the property consist of a split-level home with a full basement, three-bedrooms, a den, and two baths, which total 1230 square feet of livable space. *Dept Ex. A.* The residence was built in 1977 and is designated by the DOR to be in good condition, a category 8. The other improvements to the property consist of a large garage, concrete driveway, and deck. The subject property consists of 13,192 square feet on 0.30 acres in DOR Neighborhood 203.200E *Id.*

EXHIBIT LIST

The Board admitted the following exhibits submitted by the Taxpayer:

Ex. 1: Cover letter and analysis of comparable properties including a map and comparables sheet with color photos, pictures of the subject property and realtor ads;

Ex. 2: The proposed actual value of 1123 Iristan with a summary of purchase and source of value calculations. Also included were pictures of repairs to the deck;

Ex. 3: Explanation of value, with reasoning for them in memo form.

The Board admitted the following exhibits submitted by the DOR:

Ex. A: Confidential Assessment packet with Property Record Card and subject property photograph;

Ex. B: Comparable Sales Report, photos of comparable properties with a map of East Billings and the Appraiser Certificate;

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Ex. C: Request for Informal Classification and Appraisal Review AB-26 and Form AB-26 Determination Letter for case number 108867;

Ex. D: Appeal to the County Tax Appeal Board form with denial determination included with the YCTAB minutes;

Ex. E: Photographs of the subject property from Realtor.com;

Ex. F: Confidential Comparable Sales Report with all properties on dirt roads;

Ex. G: Comparable Sales Report used for the subject property at 1134 Iristan of other properties which taxpayer felt most closely mirrored his property;

Ex. H: Land Sales Model Information in Neighborhood 203.200 E and 203.200 EM for East Heights in Billings.

FINDINGS OF FACT

1. The Taxpayer purchased his Billings home at 1123 Iristan Lane on June 13, 2017, for \$245,000, and believes the subject property should be valued at \$230,000. The DOR valued the land and improvements at \$241,600. *MTAB Hrg. 3:1-2.*

2. The Taxpayer submitted a Form AB-26, to the DOR, for an Informal Classification and Appraisal Review on June 18, 2019. The presenting issue of concern was the 14% valuation increase, totaling \$29,900 on the subject property *Dept. Ex. C.*

3. The Department of Revenue sent a Letter of Determination to the taxpayer on October 9, 2019, stating that an external review was conducted on October 8, 2019, with the conclusion that no changes to the value were warranted. The property assessment value remained at \$241,600 for tax years 2019 and 2020 *Id.*

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4. The Taxpayer filed an appeal to the Yellowstone County Tax Appeal Board on October 29, 2019, and a county hearing took place on December 4, 2019. Mr. Chamberlin did not call any witnesses. The Department called Denise Haeker, the appraiser, and Paula Gilbert, the area manager, as witnesses.
5. The YCTAB denied the Taxpayers appeal and affirmed the Department of Revenue's value on December 4, 2019. *Dept Ex. D.*
6. The Taxpayer appealed the YCTAB decision with this Board on December 30, 2019, and stated the DOR's comparable properties used in the county appeal were not similar enough to the subject property. Mr. Chamberlin listed the assessed value of several nearby properties, which he claimed had only minor differences from his residence, such as 1126 Iristan for \$232,900; 1134 Iristan for \$223,100, and 1131 Iristan for \$206,000. *Taxpayer Appeal Memo Dec. 30, 2019.* The taxpayer also objected to the use of the sale price of his subject property as one of the comparables used in the DOR documentation. *Id.* Taxpayer stated the algorithm from the DOR model was not provided prior to the hearing, so he could not use the purchase prices to calculate his property value. *Id.*
7. Taxpayer noted that CTAB member Jeff Weldon did not feel the sale and purchase of the property by the Taxpayer was an arms-length transaction. Another board member disagreed and said that the sale of the subject property was an arms-length transaction. There was a discrepancy with the number of bedrooms, after the DOR changed this information, the taxpayer stated he never received a new value after the discrepancy was corrected *Id.*
8. The Department of Revenue submitted their Answer to Mr. Chamberlin's appeal on January 29, 2020, stating the Complaint failed to state a claim against the

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Department of Revenue. *Resp's Answer Br. 2*. DOR also posited that they correctly applied Montana statutes and Department Rules, established case law, and used due process regarding the valuation of Taxpayer's property. *Id.*

9. On January 30, 2020, the Montana Tax Appeal Board, the taxpayer, and the DOR participated in a conference call to set a Scheduling Order for a hearing to take place on May 14, 2020.
10. On April 29, 2020, hearing date was vacated, another scheduling conference was set wherein Witness and Exhibit Lists were due May 29, 2020, and the new hearing date of June 9, 2020, was set.
11. At the hearing before this Board, the value determined for the subject property by the DOR was \$241,600, and the Taxpayer requested a value of \$230,000 *MTAB Hrg. 3:1-2*.
12. The Taxpayer presented his evidence and testimony, arguing that the properties he picked, using assessed values from his immediate neighborhood area (the street of Iristan) were more accurate than those properties used for comparable sales by the Department of Revenue. *MTAB Hrg. 8:3-8*.
13. Taxpayer also objected to the use of the subject property as a sale in the list of five comparable properties used to arrive at Mr. Chamberlin's fair market value. Taxpayer provided photographs of the properties chosen in his neighborhood that he considered more like his property. *Taxpayer Ex. 1A, 1B, 1C*.
14. Taxpayer testified that the lack of amenities on his street, such as school proximity, gravel streets, undeveloped lots, curbs, gutters, and lack of a view to Lake

Elmo, should discount the subject property's value. *MTAB Hrg. 29: 9-22, 11:14-25, 43:9-12*. The Taxpayer also testified that there were defects in the property that he was aware of at the time he bought it not accounted for in DOR's assessed value. *MTAB Hrg. 25:8-21*. Taxpayer argued that because he was under duress at the time of the purchase, he was not in a position to negotiate the price. *MTAB Hrg. 26:3-24*. The DOR testified that the appraisal program took into account the amenities, such as the view, fireplaces, wet bars, or landscaping, as reflected in the sales prices of homes in the neighborhood, thus there was no basis for discounting his property's value for the lack of amenities as the Taxpayer wanted. *MTAB Hrg. 64-66*.

15. Taxpayer also testified that the algorithm which included the purchase of his property in computing market value was incorrect because his purchase was not an arms-length transaction. Taxpayer argued that he was under duress when he purchased the property for \$245,000. *MTAB Hrg. 26-27*. The Taxpayer testified that he was going through a divorce at the time and was in immediate need of someplace to live. *Id.* The property was listed for sale at \$249,000, and he made one offer, which was accepted. *MTAB Hrg. 19:23-24, 20:1-18*. There was no give and take negotiation.

16. Employees Denise Heaker and Paula Gilbert delivered the DOR testimony at MTAB, each with multiple years of experience not only in appraising but specifically working in the Billings Heights neighborhoods. The credible testimony was that there were a relatively large number of sales in the neighborhood, the neighborhood was well defined, the comparability points were lowest of the comparables used, thus adding up to a statistically significant and accurate estimate of the value of the subject property. *MTAB Hrg. 44-48*. The DOR even calculated the value using a different method replacement cost new, less depreciation. The sales comparison approach resulted in a value of \$241,600, and the cost approach resulted in a value of

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\$219,520. The DOR settled on the value of \$241,600, via the sales comparison approach, because it was reliable, defensible, and represented the best estimate of market value. *MTAB Hrg. 57:20-25.*

17. The DOR also testified explaining the differences between a public mass appraisal system done by the DOR per statutory mandate, and a private fee appraisal done by a licensed appraiser. While both are used to obtain an opinion of fair market value, the approaches do differ. The Taxpayer complained that the lack of amenities on his street obviously should lead to a reduction in the value of houses there compared to other areas in the Heights with curbs, gutters, paved streets, access to Lake Elmo, and proximity to local schools. *MTAB Hrg. 29:9-22, 11:14-25, 43:9-12.* The DOR's testimony in response was that the mass appraisal model used took these variances into account and that these factors standing alone would not have a statistically significant impact in the market. *MTAB Hrg. 64:23, 65:18.*

18. The DOR created a second comparable sales report using a comparable property suggested by the Taxpayer. *Dept. Ex. G.* Taxpayer claimed his property was more comparable to 1134 Iristan Lane. *MTAB Hrg. 49:2.* The DOR took the five comparables used to value 1134 Iristan Lane and compared them to the subject property. *Id.* While it resulted in a slightly lower property value of \$238,000, the comparability points were much higher than DOR's model, meaning it was less similar to the subject property than those sales used by the DOR to value the subject property. *Dept. Ex. G.*

19. The DOR used a well recognized and accepted method to determine fair market value. It did not manipulate the data in order to meet a preconceived outcome. There was a relatively large number (for Montana) of potentially comparable sales from which an opinion of value could be determined. The differences between the

comparable properties and the subject property were appropriately adjusted so that there was a fair basis for comparing sales, and with time trending to the lien date, a fair market value.

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

JURISDICTION AND STANDARD OF REVIEW

21. The Taxpayer filed a timely appeal of the YCTAB decision to the MTAB. Therefore, this Board has jurisdiction to hear and decide this matter. Mont. Code Ann. §15-2-3011(1)(b).
22. This Board hears CTAB appeals de novo. *CHS Inc. v DOR*, 2013 MT 100. “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. As such this matter is reviewed without giving deference to the YCTAB hearing and subsequent decision. *Id.*
23. “All taxable property must be assessed at 100 percent of its market value except as otherwise provided.” Mont. Code Ann. §15-8-111(1).
24. “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).

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25. The Department is authorized to use one or more approaches to value residential property, including the comparable sales or market data approach. *Albright v. State*, 281 Mont. 196, 208-09, 933 P.2d 815, 823 (1997).

26. “Sales Comparison Approach – One of the three traditional approaches to value by which an indication of the value of a property is arrived at by compiling data on recently sold properties which are comparable to the subject property and adjusting their selling prices to account for variations in time, location, and property characteristics between the comparable sales and the subject property.” *Montana Department of Revenue Appraisal Guide, Property Assessment Division, Valuation Date January 1, 2018*.

27. 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.” *Carey v. DOR*, 2018 Mont. Tax App. Bd. PT-2018-9; citing *Workman v. The Department of Revenue of the State of Montana*, 1997 WL 37203; citing *Western Airlines, Inc. v. Catherine J. Michunovich, et al*, 149 Mont. 347, 428 P.2d 3 1967.

28. “If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department... the owner may request an assessment review by submitting an objection on written or electronic forms provided by the department for that purpose.” Mont. Code Ann. §15-7-102(3)(a).

29. “[An] objection may be made only once each valuation cycle. An objection must be made within 30 days from the date on the assessment notice for a reduction in the appraised value to be considered for both years of the 2-year appraisal cycle. Any

reduction in value resulting from an objection made more than 30 days from the date of the assessment notice will be applicable only for the second year of the 2-year reappraisal cycle.” Mont. Code Ann. §15-7-102(3)(a)(ii).

CONCLUSIONS OF LAW

30. To whatever extent the following conclusions of law may also be construed as findings of fact, they are construed accordingly.
31. The Taxpayer’s contention that the DOR could not use his purchase in their mass appraisal calculations because it was made under duress and therefore, not an arms-length transaction fails. The Taxpayer may have been under stress at the time of the purchase, he may have known about certain defects in the property which he would have to repair, the repairs may have cost some fee to complete, but these facts do not rise to the level of duress. Quite the opposite is true. The Taxpayer made an offer under no compulsion, which was \$4000 less than the listed sale price, and was accepted by the seller. There was no further back and forth, and no further negotiations. These facts do not scream out duress. These facts make this purchase and sale fall squarely in the category of an arms-length transaction. That being the case, the DOR committed no error in using this transaction in their calculations of value.
32. Further, the comparable properties used by the DOR in its calculations were not dissimilar. The DOR testified that it tests the similarity of property sales used in its models and assigns a comparability score from these properties to the subject property. *MTAB Hrg. 59:5*. The lower the score, the more comparable the properties and the fewer adjustments for the differences have to be made. The testimony presented showed these experienced appraisers had rarely encountered such low scores when conducting a comparable sale valuation. *MTAB Hrg. 75:9*.

33. The DOR used actual verified sales in its calculations, and because of the large number of sales, it was able to produce statistically valid comparisons. The Taxpayer's use of appraised values for the properties on his street does not demonstrate an out of bounds approach and end results by the DOR.

34. The DOR even went the extra mile in responding to the Taxpayer's concerns about the similarity of the comparable properties. It did so by taking the properties the Taxpayer argued should be used as comparables in the value calculations. *MTAB Hrg. 48:5*. The results were conclusive. The properties that the Taxpayer suggested be used had much higher comparability scores or points, thus meaning that they were, in fact, dissimilar. And further, when these properties were inserted into the exact same formula used to appraise the Taxpayer's property, the result was the comparability score for his property would have been higher than the one set by the DOR. *MTAB Hrg. 49:22*. Not a result the Taxpayer nor the DOR wanted or would use.

35. Finally, we cannot, on the evidence submitted, find any significant nor fatal flaws in the DOR's methodology and resulting value. The DOR followed its rules and complied with all applicable USPAP criteria. The comparable properties were quite comparable. The ultimate value of \$241,600 is within a few thousand dollars of the purchase price. A price that we conclude was not forced or under duress and was, in fact, an arm's length transaction. The Taxpayer did not meet his burden of proving the error of DOR's ways. The DOR's appraised value for this tax cycle of \$241,600 is affirmed.

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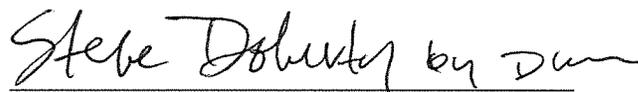
ORDER

The decision of the Yellowstone County Tax Appeal Board setting the value of the subject property at \$241,600 for this tax cycle is affirmed. The Taxpayer's appeal is denied.

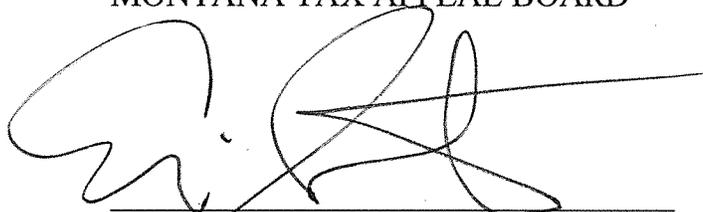
Ordered September 3, 2020



David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD



Steve Doherty, Board Member
MONTANA TAX APPEAL BOARD



Eric Stern, Board Member
MONTANA TAX APPEAL BOARD

Notice: You are entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. The Department of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. MCA §15-2-303(2).

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 September 3, 2020 to:

Timothy Chamberlin
1123 Iristan Kane
Billings, Montana 59105

Dave Burleigh
Montana Department of Revenue
P.O. Box 7701
Helena, Montana 59604-7701


Lynn Cochran, Legal Secretary
MONTANA TAX APPEAL BOARD