

Before The Montana Tax Appeal Board

**FILED**

DEC 29 2020

Montana Tax Appeal Board

**KENNETH & TANYA KOZIMER,**

CASE No: PT-2020-26

*Appellants,*

v.

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

**STATE OF MONTANA,  
DEPARTMENT OF REVENUE,**

*Respondent.*

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**STATEMENT OF THE CASE**

This is an appeal of a decision by the Madison County Tax Appeal Board (MCTAB), which denied Kenneth and Tanya Kozimer request for a property value reduction on their condominium in Big Sky. The denial by the Madison board was entirely based on the Kozimers' refusal to allow a Department of Revenue appraiser entry into the condominium to conduct an in-person appraisal, after the Kozimers had requested that the Department reduce the appraised value. We reverse MCTAB's determination and reduce the appraised value to \$169,500.

**ISSUES PRESENTED**

Whether Mont. Code Ann. § 15-7-139 in this case prohibits this Board from adjusting the value of the property because an interior inspection was refused; and whether the Department of Revenue erred in arriving at an appraised value of \$196,100 for this property due to mistakes on the property record card.

**PROPERTY DESCRIPTION**

The subject property is in near the Big Sky Ski Resort in the Hill Condo Association. The condo is located in Madison County with a legal description of Hill Condo, S19, T06 S, R03

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E, Unit 8A, Innsbruck Building. Its Geocode is 25-0426-19-4-06-01-7071. The subject property is in DOR neighborhood 225.755.K. The unit measures 668 square feet with one bedroom and one bathroom.

**EXHIBIT LIST**

The following exhibits were submitted by the DOR:

- a. DOR Exhibit A: Kozimer Assessment Notice, bates pages 005-006;
- b. DOR Exhibit B: AB26 Request, pages 009-0010;
- c. DOR Exhibit C: AB26 Onsite Request Letter; page 0011;
- d. DOR Exhibit D: AB26 Determination Letter, pages 00104-00105;
- e. DOR Exhibit E: Assessment Information Packet, pages 0019-0027;
- f. DOR Exhibit F: Sales Packet, pages 0034-0039;
- g. DOR Exhibit G: Comparative Market Analysis, condo layout, pages 0040-0042;
- h. DOR Exhibit H: Diagram of Hill Condo floor plan, pages 0043-0044;
- i. DOR Exhibit I: Comparative property pictures, pages 0060-0081; and
- j. DOR Exhibit J: MCTAB Decision, pages 0097-0099.

The following exhibits were submitted by the Taxpayer:

- k. TXPR Exhibit 1: Letter and list dated 9-19-2019, two pages; and
- l. TXPR Exhibit 2: Kirk Dige - Landmark Real Estate email 7/19/2020, two pages.

The Board conducted a hearing in Helena on October 13, 2020, at which the following were present:

- a. Kenneth Kozimer, Taxpayer
- b. Teresa Whitney, Counsel for DOR

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- c. Brandy Hilton, DOR Area Manager
- d. Tierani Losing, DOR Modeler
- e. Chad Elser, DOR Area Manager

The record includes all materials submitted to the county tax appeal board including the transcript of the MCTAB hearing as well as additional materials submitted by the parties. Mont. Code Ann. §15-2-301(2)(b).

**PROCEDURAL HISTORY**

1. At MCTAB the Board declined to reach the merits of the fact-finding for the value of this property as the DOR argued at hearing that Mont. Code Ann. § 15-7-139 precluded the MCTAB from adjusting the value when an internal inspection of the property was not allowed by the Taxpayer.
2. The Taxpayer appealed that decision to this Board and asked this Board to consider his evidence and testimony despite the lack of an inspection of the inside of his condominium.
3. Prior to the hearing at MTAB, the DOR filed a motion with this Board to dismiss the appeal based on its reading of Mont. Code Ann. § 15-7-139, which states that MTAB may not change a taxpayer's property value if the Taxpayer refuses to allow a Department appraiser "on the land to inspect the property." We denied the motion and ordered parties to proceed to the hearing and allowed them to provide further evidence and testimony on the issue. *MTAB Dkt. 15*.
4. The order denying the motion to dismiss was based on our 2018 decision in *James C. & Barbara J. Sohm v. Montana Department of Revenue*, 2018 Mont. Tax Lexis 2. *Sohm*

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stands for the premise that there may be rare cases where an interior inspection may not be required for this Board to determine value. *Id.*

5. At the MTAB hearing, the DOR reiterated its argument that because no inspection was allowed, the MTAB is prohibited from adjusting the value under Mont. Code Ann. § 15-7-139. However, the DOR attorneys did acknowledge that under *Sohm*, this Board can consider valuation disputes where the inspection was also in dispute, taken on a case-by-case basis. 2018 Mont. Tax Lexis 2, *MTAB Hrg. Transcr. 02:59:15*.
6. From facts found at the full hearing, testimony given at the county hearing, for reasons stated below, and considering the holding in *Sohm*, we have decided that the lack of an internal inspection of this property is not dispositive and does not prevent us from considering the evidence and testimony and ruling on a market value.

**FINDING OF FACT**

7. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
8. The DOR valued the property at \$196,100 for 2019/2020 using the comparable market sales approach based on the value as of the January 1, 2018 lien date. *Dep. Ex. E*. To estimate market value, this approach considers reported sales of other similar properties adjusted for location, time of sale trended to the lien date, and similarity of amenities.
9. The Kozimers submitted a DOR AB-26 Request for Informal Review on June 18, 2019. The DOR responded in a letter dated July 12, 2019, requesting an on-site inspection, which the Kozimers refused. A final AB-26 Determination Letter was sent to the Kozimers on August 13, 2019. *Dep. Ex. C, D*. The AB-26 final determination letter

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stated that because there was no inspection, the DOR appraiser was unable to verify square footage, the number of bedrooms or bathrooms, and many other components that the DOR uses to value properties and cited Mont. Code Ann. § 15-7-139. *Id.*

10. The Kozimers filed a county appeal in Madison County on September 10, 2019, and the Madison County Tax Appeal Board heard a hearing on March 11, 2020. *MTAB Dkt. 1.* MCTAB upheld the Department's value, stating the rejection of entry inside the property, per Montana Statute, precluded them from adjusting value for lack of inspection of the condo. *Id.*
11. The Taxpayers appealed to the Montana Tax Appeal Board in Helena on March 26, 2020, and a hearing was held on October 13, 2020. *MTAB Dkt. 1.* Taxpayer appeared in person, representing himself. Mr. Kozimer has a formal education as an attorney and has been licensed to practice law in Georgia. *MTAB Hrg. Transcr. 00:14:30.*
12. There are 18 buildings in the Hill Condos complex. *MTAB Hrg. Transcr. 00:17:45.* Each building contained four studio apartments on the ground floor and two studios with lofts on the second floor when constructed. *Id. Dept. Ex. H.*
13. The condominium was built 45 years ago, and the Kozimers have owned the property for 37 years and made no capital improvements in that time. *MTAB Hrg. Transcr. 13:36, 16:15.* Mr. Kozimer has served terms as president and secretary of the Hill Condo's homeowners association, giving him insight into the Hill Condo association's changes. *Id.*

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14. The appraised value rose from \$157,400 to \$196,100 between the 2017/2018 to 2019/2020 tax cycle, resulting in a 20% increase. *Dept Ex. E, MTAB Hrg. Transcr. 16:03.*
  
15. Mr. Kozimer refused the Department's appraiser entry into the condominium to conduct an in-person inspection, citing a mistrust of DOR appraisers based on a bad experience with a Department appraiser sixteen years ago *MTAB Hrg. Transcr. 09:35.*
  
16. Mr. Kozimer testified that neither the DOR nor the MCTAB applied the correct inspection law to his case and that Mont. Code Ann § 15-7-139 does not apply. *MTAB Hrg. Transcr. 07:35.* Mr. Kozimer cited *James C. & Barbara J. Sohm v. Montana Department of Revenue*, testifying this is the new precedent and that the DOR cannot deny his right of appeal because the DOR appraisers have not conducted an on-site inspection of the interior of his property. 2018 Mont. Tax Lexis 2.
  
17. DOR area Manager Chad Elser talked with Mr. Kozimer on June 17, 2019; he explained the process and procedures for the AB-26 review and requested an on-site inspection. *MTAB Hrg. Transcr. 01:34:15.* Mr. Elser sent a letter to Mr. Kozimer on July 12, 2019, asking for an on-site review. *Dep. Ex. C* Mr. Kozimer called the Madison County DOR office on August 2, 2019 and requested to talk to the area manager because he did not want to speak with Mr. Elser. *MTAB Hrg. Transcr. 1:35:50.* DOR area manager for Madison Park and Jefferson County, Brandy Hilton, returned Mr. Kozimer's call on August 6, 2020. *MTAB Hrg. Transcr. 02:09:02.* In that conversation, Mr. Kozimer informed her that he would not permit DOR access to his condominium for an on-site inspection, and Ms. Hilton responded that without entry onto the land to inspect the property, the DOR would be unable to adjust his property value. *Id.*

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18. Mr. Elser did not inspect the property and completed the AB-26 review with only the information provided by Mr. Kozimer in the AB-26 application. *Dep. Ex. D, MTAB Hrg. Transcr. 1:37:35.* The value of the subject property was not reduced in the AB-26 process. *Id.*
  
19. Mr. Elser testified that if he could have inspected the property and verified the number of bedrooms and bathrooms, the property's value would be reduced to \$169,500. *MTAB Hrg. Transcr. 1:43:20.*
  
20. Mr. Kozimer stated that he would allow the DOR to access his property for an inspection if the DOR gains access to the comparable properties so that they can understand the broad range of differences in the extent of renovations and capital improvements that some units have undergone. *MTAB Hrg. Transcr. 1:04:10.* Mr. Kozimer contends the DOR cannot use the data from a comparable property because “you cannot evaluate something you have never seen.” *Id.* Mr. Kozimer claims if the DOR imputes bad data, they will get out bad data “garbage in, garbage out.” *MTAB Hrg. Transcr. 1:13:00.*
  
21. Mr. Kozimer testified he allowed the DOR on the land because he cannot deny them access to the condo complex's common areas, including the parking lot, sidewalks, and stairwells in and around the buildings. *MTAB Hrg. Transcr. 1:06:12.* The property record card for the condominium shows that DOR did perform an external on-site inspection in 2003. *Dept. Ex. E.*
  
22. The Taxpayer’s primary argument was that his property is overvalued because the DOR property record for Mr. Kozimer’s condominium contains several errors, including an

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overstatement of the number of bathrooms and full bedrooms and the existence of a fireplace that was removed 15 years ago. *MTAB Hrg. Transcr. 26:40- 29:30.*

23. In support of his arguments, the Taxpayer testified that several of the comparable sale properties in the condominium complex have been extensively remodeled and renovated, to include such things as additional bedrooms, additional bathrooms, additional staircases, lofts remodeled into enclosed bedrooms, remodeled kitchens, and updated wiring, and increased square footage from 660 to up to 1100. *MTAB Hrg. Transcr. 1:15:15.*
24. According to the property record card, the DOR is assessing the property with a finished attic, Mr. Kozimer testified that he does not have a finished attic. *Dept. Ex. E, MTAB Hrg. Transcr. 25:14.* Mr. Kozimer does have a loft sleeping area open to the living area and contends that a loft is not an attic. *Id.*
25. Mr. Kozimer also argued that the DOR value was unreliable as the property record card indicates he is being assessed for a 175 square foot deck. He explained that it is not a deck, but instead, a common area stairwell landing shared with his three neighbors, and the landing should be assessed as a common element of the property. *Dept Ex. E, MTAB Hrg. Transcr. 21:00.. Id.* Mr. Kozimer measured the landing at 300 square feet and questioned why he is assessed for 175 square feet instead of 75 square feet. *Id.*
26. DOR area manager Ms. Brandy Hilton testified that all condos were assessed for a 175 square foot deck. *MTAB Hrg. Transcr. 02:14:37.*
27. On-site reviews can be external or internal, depending on the Taxpayers preference. *Hrg. Transcr. 1:47:30.* An external review consists of measuring the foundation for square feet and external observation. *Id.* If a DOR appraiser is not allowed inside the



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property, they cannot adjust any internal components without verifying them. *Id.* In this case, Mr. Elser was denied access to the property by Mr. Kozimer and did not do an external or internal review of the property.

28. Mr. Elser testified that if no internal components are in question, he will not request an internal on-site review of the property. *MTAB Hrg. Transcr. 01:51:49.*
  
29. Mr. Elser testified that he routinely does external on-site inspections unannounced, and The DOR has conducted around 200 external on-site inspections of the Hill Condo Complex. *MTAB Hrg. Transcr. 02:02:00.* Mr. Elser, the appraiser, in this case, has not been invited onto the property by any owner, and he relies on the DOR “policy of ingress and egress” to do his job. *Id.*
  
30. The condominium declaration was filed at the Madison County Court House. The decorations were recorded in 1974, have not been updated since they were filed, and did not include an architectural review the DOR could use to appraise the property. *MTAB Hrg. Transcr. 02:10:50.*
  
31. Ms. Hilton testified that the DOR does not have access to the MLS and can only view images on public websites like Zillow or Realtor.com. *MTAB Hrg. Transcr. 02:12:12.* The DOR was unable to view the pictures submitted by Mr. Kozimer of the comparable properties until presented to them by Mr. Kozimer. *Id.*
  
32. DOR’s policy is to only request an on-site inspection during the AB-26 process. *MTAB Hrg. Transcr. 02:22:00.* DOR does not try to inspect the property in between the AB-26 and a CTAB hearing. *Id.*

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33. Ms. Tierani Losing, the modeler for region four, testified her model is based on square footage and that the number of bedrooms will not change the value of a property. *MTAB Hrg. Transcr. 02:38:45*. Things that do add value to her model are square footage, bathrooms, and garages. *Id.* The comparable properties in the model are adjusted to account for differences in the subject property. *MTAB Hrg. Transcr. 02:41:30*.
34. Mr. Kozimer has never had his condominium independently appraised and does not have any data indicating property values have not increased since 2017 in the Big Sky area. *MTAB Hrg. Transcr. 1:18:00*.
35. Properties around Big Sky had appreciated at 8%-10% per year prior to the January 1, 2018 lien date for this property. *MTAB Hrg. Transcr. 02:42:20*.

**JURISDICTION AND STANDARD OF REVIEW**

36. The Montana Tax Appeal Board is an independent entity not affiliated with the Montana Department of Revenue. Under the authority of Mont. Code Ann. § 15-2-301.
37. The Taxpayer filed a timely appeal of the MCTAB decision to the MTAB. Therefore, this Board has jurisdiction to hear and decide this matter. Mont. Code Ann. §15-2-301.
38. 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 MCTAB hearing and subsequent decision. *Id.*

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39. 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.

**CONCLUSIONS OF LAW**

40. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
41. DOR is entitled to a “presumption of correctness if its decisions are pursuant to an administrative rule or regulation, and the rule or regulation is not arbitrary, capricious or otherwise unlawful.” *Dep't of Revenue v. Burlington N. Inc.*, 169 Mont. 202, 214, 545 P.2d 1083, 1090 (1976). 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.
42. 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).
43. “All taxable property must be appraised at 100% of its market value....” Mont. Code Ann. § 15-8-111.
44. “[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).

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45. “‘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, 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); see *Northwest Land & Dev. of Montana, Inc. v. State Tax Appeal Bd.*, 203 Mont. 313, 317, 661 P.2d 44, 47 (1983) (overruled on other grounds by *DeVoe v. Dep't of Revenue of State of Mont.*, 263 Mont. 100, 866 P.2d 228 (1993)).
46. If a landowner or the landowner's agent prevents a person qualified under subsection (1) from entering the land to appraise or audit the property or fails to refuse to establish a date and time for entering the land pursuant to subsection (5), the Department shall estimate the value of the real and personal property located at the land. Mont. Code Ann. § 15-7-139(6).
47. We find the Taxpayer did not prevent the DOR from entering “on the land ” per the definition of Mont. Code Ann. § 15-7-139(6). As a result of this finding, this Board will adjudicate the value of property in dispute.
48. DOR gave testimony at both county and state hearings indicating a formula is used to establish the number of bedrooms and bathrooms in these condominiums. We find that square footage and the number of bedrooms is established by formula and are not established by the interior inspection of these individual properties. Therefore, in this unique case, an internal inspection was not determinative of value.
49. Further, we find that the Taxpayer provided adequate documentary evidence during the hearing to prove he has not made capital improvements recently or at all to his property

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that would have caused his value to change on that basis, whereas comparable neighboring units, all built identically originally, have been substantially improved.

50. The foregoing findings of fact support the notion that an inspection was not required to find market value. Therefore, evidence and testimony during the MTAB hearing provided a substitute for an interior inspection requested by the DOR via their interpretation of Mont. Code Ann. § 15-7-139.
  
51. There are some valuation disputes with unique facts that require this board, on a case-by-case basis, to hear testimony and consider evidence of market value. We recommend that all taxpayers allow interior inspection of their property, but we will occasionally resolve the dispute without the requirement of an interior inspection. As was the outcome in *Sohm*, this case has specialized facts such as near-identical floor plans, credible testimony, photographic evidence of the interior, and conflicting testimony from the DOR about whether an interior inspection is essential in their duties to find a value that makes inspection the exception to the rule. 2018 Mont. Tax Lexis 2. In *Sohm* the exception was a recent inspection and credible testimony of no changes. *Id.* In this case, two DOR witnesses indicated a standardized mass appraisal formula is used to set square footage and the number of beds and baths in this and other condominiums, the very reason given for the necessity of an inside inspection.
  
52. Finally, the law states, “on the land,” not inside the building. The law was written at a time when the DOR was being denied both types of inspections. Until and unless the Montana Legislature expands the law to include inside inspection, we will continue to consider disputes on a case-by-case basis where the facts surrounding inspection and the method of valuation are in dispute.

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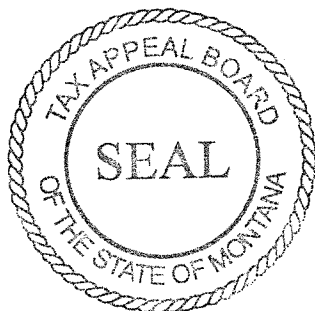
53. The comparable sales introduced by the DOR are credible and generally very similar to the subject, suggesting that the market for this property is quickly appreciating, as indicated by those nearby, similar sales. The record does not support the Taxpayer's requested reduction to the value of the 2017/2018 appraisal cycle. The DOR evidence supports the constant appreciation of value in this residential market.
54. However, the DOR's admission that the subject property record card contained errors causes us to make a reduction in value to account for these errors. Had the Taxpayer allowed internal inspection, this whole matter could have been corrected early on, and there may not have been the need for both tax appeal hearings.


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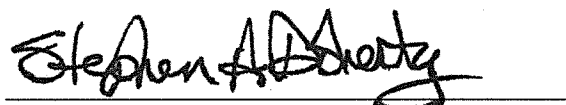
**ORDER**


- 55. KENNETH & TANYA KOZIMER's appeal and complaint are granted in part.
- 56. DOR is ordered to set the value of the property at \$ \$169,500 for the 2019/2020 tax years.

Ordered December December 30, 2020



  
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David L. McAlpin, Chairman  
MONTANA TAX APPEAL BOARD

  
\_\_\_\_\_  
Stephen A. Doherty, Member  
MONTANA TAX APPEAL BOARD

  
\_\_\_\_\_  
Eric Stern, 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. 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. 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 Opportunity for Judicial Review to be sent by email and by United States Mail via Print & Mail Services Bureau of the State of Montana on December 30, 2020 to:

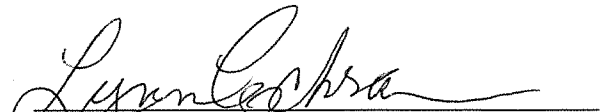
**KENNETH & TANYA KOZIMER**

1266 Hill Condos  
61 Wisconsin Creek Rd. West  
Sheridan, MT 59749

**Teresa Whitney**  
**Legal Services**  
**Montana Department of Revenue**  
P.O. Box 7701  
Helena, MT 59604-7701

**Madison County Tax Appeal Board**  
**c/o Laurie Buyan**  
PO Box 100  
Alder, MT 59710

**Kory Hofland, Property Assessment Division**  
**Montana Department of Revenue**  
P.O. Box 7701  
Helena, MT 59604-7701

  
\_\_\_\_\_  
Lynn Cochran, Legal Secretary  
MONTANA TAX APPEAL BOARD