

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

DONALD C. COWLES III,)	DOCKET NO.: PT-2009-106
)	
Appellant,)	
)	FACTUAL BACKGROUND,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

Donald C. Cowles III (Taxpayer) appealed a decision of the Gallatin County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR’s) valuation of his property located at 3100 Wagonwheel Road, Bozeman, Montana. Taxpayer claims the DOR overvalued his property for tax purposes and seeks a reduction in the value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on October 26, 2010, the Taxpayer represented himself and provided testimony and evidence in support of the appeal. The DOR, represented by Keith Jones, Tax Counsel; John Elliott, Lead Appraiser and Trish McGowan, Residential Appraiser, presented testimony and evidence in opposition to the appeal.

The duty of this Board, having fully considered the exhibits, evidence, submissions and all matters presented, is to determine the appropriate market value for the property based on a preponderance of the evidence.

Issue

The issue before this Board is whether the Department of Revenue determined an appropriate market value for the subject property for tax year 2009?

Summary

Donald C. Cowles III is the Taxpayer in this action and therefore bears the burden of proof. Based on a preponderance of the evidence, the Board modifies the findings of the Gallatin County Tax Appeal Board.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present evidence, verbal and documentary.
2. The property is a single condominium unit used as a rental, with the following legal description:

Unit 3, COS 526, Kent Hall Condo, Tracts A, Section 19,
Township 2S, Range 6E, of Gallatin County, Montana. (Exh. B.)
3. For tax year 2009, the DOR valued the subject property at \$184,500 using the market approach, which valued the land at \$38,289 and the improvements at \$146,211. (McGowan Testimony, Exh. B.)
4. The Taxpayer is asking for a value of \$140,000 consisting of \$20,000 for the land and \$120,000 for the improvements. (Cowles Testimony, Appeal Form.)
5. The Taxpayer filed a Request for Informal Review (AB-26) on October 5, 2009. During the AB-26 process the DOR visited the subject property and reviewed the comparable properties, but made no changes to the assessed value. (McGowan Testimony, Exh. D.)
6. The Taxpayer filed an appeal with the Gallatin County Tax Appeal Board (CTAB) on July 16, 2010, stating:

“This condominium was built in 1970 and has not been remodeled or upgraded. It still contains the original appliances and cabinets. In 2006 a unit exactly the same size and floor plan in this building was sold for \$150,000 (see comparable sales report). The unit that sold had several upgrades including a totally remodeled kitchen with all new appliances and cabinets. Both units have a single-car garage. Comparing the two units, my unit would sell for less than the unit sold in 2006. The appraised value on my unit is overstated and much greater than its market value. The comparable sales value on the comparable sales report is arbitrary, overstated, and inaccurate. A more accurate appraised value of this unit is \$140,000 which still represents an increase of 59% from the 2002 appraisal value. It should be noted that no physical inspection was made on either of these units for the reappraisal.” (Appeal Form).

7. A hearing was held on July 28, 2010 and the CTAB adjusted the DOR’s valuation to \$178,683, based on a weighted average of the comparables. (Appeal form.)
8. The Taxpayer appealed to this Board on August 27, 2010. The reason for appealing was as follows:

“The county tax appeal board reduced the appraised value of the subject property \$5,817 to \$178,683. I believe this reduction is insufficient and does not reflect the accurate value of the subject property.

1. The appraised value of the subject property is the same as the appraised value of Comp 1, Exhibit 1; however, at the date of the valuation July 1, 2008, the interiors of each condominium were much different. The subject property, built in 1970, has all of the original appliances and has not been upgraded. Prior to its sale on 9/1/2006, the kitchen of Comp 1 had been remodeled with new appliances, carpet was replaced with wood flooring, and repairs were made to the fireplace. This condominium sold for \$150,000. If the subject property had been sold at about the same date the sale price would have been \$20,000 to \$30,000 less than \$150,000.

2. The sale price per square foot of comparables 2 through 5, exhibit 1 are all much greater than the sale price of comparable 1 which is the same size and in the same building as the subject property. Yet on the July 1, 2008 appraisal, all of the properties with the exception of comparable 5 are appraised at the same value. A big inconsistency in the appraisals is that comparable 5 is appraised at \$34/sq.ft. (21%) less than the other properties yet its sale price was \$23/sq.ft. greater than the Kent-Hal (*sic*) condominium Comp 1. The sale price of the Kent-Hal (*sic*) condominium ranged from \$23/sq.ft. to \$30/sq.ft. less than the comparables in exhibit 1. I find it to be inaccurate that the Kent-Hal (*sic*) condominiums are valued at the same amount per square foot or an amount greater than the comparables in

exhibit 1. Based on the sale price data, the Kent-Hal (*sic*) condominiums should be valued less than the other condominiums.

3. The Kent-Hal (*sic*) condominiums were built in 1970, 13 to 19 years prior to all the listed comparables. The subject property is exactly the same as when it was built in 1970. Because of its age and condition, the subject property should be valued less than all of the comparables.

4. For the properties in exhibit 1, comparing the sales price with the July 1, 2008 appraised value, the Kent-Hal (*sic*) condominium appraised value increased 23%. The comparables 2 through 4 had increases of zero to two percent. Comparable 5, the closest to the subject property, had an 18% decrease between its sale price and its appraised value. I believe the 23% increase between sales price and appraised value for the Kent Hal (*sic*) condominiums based on the comparables, is unjustified and overstated.

5. All of the comparables in both Exhibit 1 and exhibit B are more than a mile from the Kent-Hal (*sic*) condominiums. All of the comparables are closer in distance to Montana State University, downtown, shopping malls, grocery and drug stores, and restaurants. The comparables are within walking distance of these places. For most people, the Kent-Hal (*sic*) condominiums are not within walking distance of any of the above mentioned businesses or MSU. Because of this the value placed on the location of the Kent-Hal (*sic*) condominiums should be less than the listed comparables.

6. Only two of the three members of the county tax appeal board were present for the hearing and made the reappraisal decision. I believe that my hearing was not heard fairly.

7. The appraisal values for the comparables listed in exhibit B were not provided, and I was unable to obtain these values due to the incomplete geocode. I do not believe these comparables should be used in the appraisal unless the July 1, 2008 appraisals are provided prior to the hearing.

It appears that the appraised values of the properties in exhibits 1 and B are based on their physical location, exterior appearance, and sale price. I believe the appraised value of my condominium is inaccurate as it does not take into account the age of the property or its interior condition. It is obvious that the interiors of the comparables are different as their sale price per square foot vary considerably for properties within the same condominium building. The value of my property's location when compared to properties outside the Kent-Hal (*sic*) building is totally subjective and has been overvalued.

I believe that my condominium should be valued at no more than \$140,000 as stated on the appeal form.”

(Appeal form Attachment.)

9. The Taxpayer submitted a spreadsheet outlining his argument that the DOR comparables' sale prices differ substantially from their assessed value. (Cowles Testimony, Exh. 1.)
10. This spreadsheet also contained properties the DOR submitted to the CTAB as current comparables. This Board will not consider these comparables since all but one¹ is beyond the appraisal date. (Exh. 1)
11. The DOR used the market approach to value the subject property and the comparable sales properties for the July 1, 2008 appraisal date. (McGowan Testimony, Exh. B.)
12. The Taxpayer testified that Comp #1 is the closest comparable to the subject property, however, this property has been upgraded extensively and has not changed since it was built in 1970. (Cowles Testimony, Exh. 1.)
13. The Taxpayer also believes the other comparable properties are all more desirable than his because they are closer to the university and downtown. (Cowles Testimony.)
14. The DOR based residential market values for the current appraisal cycle on residential condominium property sales which took place between January 1, 2002 and July 1, 2008. The characteristics of the "comparable properties" are compared to the characteristics of the subject property to select those properties most comparable to the subject. The market value of the subject is then based on these comparable sales. (McGowan Testimony, Exh. C.)

1. _____

¹ The Gallatin County CTAB apparently reviewed comparable properties that were sold after the assessment date. This practice is prohibited by law. *Pacificorp v. Dep't of Revenue*, 1st judicial District, ADV-2007-709 (Feb. 25, 2010.) Thus, in review of the evidence, we decline to consider any evidence of post-assessment sales.

15. The DOR used five comparable properties to value the subject property. The sales ranged from July 2006 to December 2007. The comparable properties are adjusted to conform to the attributes of the subject property, this includes a time adjustment to the assessment date of July 1, 2008. (McGowan Testimony, Exh. E.)
16. The DOR submitted post-hearing information on the assessed value of the comparable properties, at the request of the Board. (DOR Post-hearing Submissions.)
17. The assessed value of four of the comparable properties are less than the adjusted sales value determined on the DOR comparable sales sheet for the subject property. (DOR Post-hearing Submissions.)
18. The Taxpayer commented on the DOR post-hearing submissions and updated his spreadsheet to reflect the new information. (Taxpayer's Post-hearing submission.)

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (Section 15-2-301, MCA.)
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA.)
3. 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. (§15-8-111(2)(a), MCA.)
4. If sufficient relevant information on comparable sales is available, the department shall use the comparable sales method to appraise residential condominium units. (§15-8-111(4)(a), MCA.)

5. Each unit of a condominium project is considered a parcel of real property subject to separate assessment and taxation. Each unit owner must be assessed for the unit owner's percentage of undivided interest in elements of the condominium project owned in common by the unit owners. (§15-8-511(1), MCA.)
6. Residential lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models reflect July 1, 2008, land market values. (ARM 42.18.110(7).)
7. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
8. For the taxable years from January 1, 2009, through December 31, 2014, all class four properties must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)
9. The actual selling price of comparable sales must be adjusted to a value consistent with the base year. (ARM 42.20.454(1)(h).)
10. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (§15-2-301(4), MCA.)

Findings of Fact, Conclusions of Law, and Board Discussion

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject property for tax year 2009.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of

providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428 P. 2d 3, 7, *cert. denied* 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

The mass-appraisal techniques developed by the DOR are designed to find the value of real property on the open market. As part of the standard mass appraisal system, the DOR collects realty transfer certificates (RTC) for all sales that occur prior to the valuation date. *See* §15-7-301, MCA, *et seq.* In this case, the DOR used a market approach based on five verified sales in a specific neighborhood in the Bozeman area (which includes the subject property.) The comparable properties used by the DOR to value the subject property had been sold in an arms length transaction between July 2006 to December 2007 and were time adjusted to the July 2008 assessment date. (*See* EP 15.) This model indicated a value of \$184,500 for the subject property. (*See* EP 3.)

The Taxpayer complains the DOR overvalued his property and made several contentions relating to age, location, and condition and assessed and market values. (*See* EP 8.)

To support its valuation, the DOR contends the subject property is desirable because of low turnover in renters and the fact it is now located within city limits of Bozeman. The DOR also contends that assessed values are commonly different from sales price due to time adjustments and adjustments made in the market analysis.

In determining whether the value set by the Department is justified by market sales, we analyzed the comparable sales data provided by the Department. In general, the Board finds the DOR market analysis methodologies to be correct. In this case, however, post-hearing information

indicates the assessed value set out on the property record card on four of the comparable properties are far less than represented on the Comparable Sales Report used to value the subject property. (*See* EP 16.) For example, Comparable #5 had a sales date closest to the assessment date (December 21, 2007) and sold for \$200,000. (*See* EP 15) The DOR applied an adjusted sales price of \$199,133 (*See* EP 15) when valuing the subject property, but the DOR only assessed a value of \$164,200 (*See* EP 16) to this comparable property for the 2008 appraisal cycle. Thus, there is a \$34,933 difference between the value used to set the subject's valuation and the value assessed. All of the comparable properties, including the example, are condominiums with the same characteristics, and are substantially similar in size to the subject property, so little adjustment is necessary.

The variation in valuation from comparable modeling to assessed valuation was true for four of the comparable properties presented. Thus, the valuation used in valuing the subject property is significantly different than the value actually assessed.

While in certain cases the comparison between assessed value and value for use in the comparable sales model may be irrelevant (such as agricultural land, or land subsequently developed), in this instance, the condominium market has many verifiable and comparable sales which can be used for market modeling purposes with very little adjustment. The DOR provided no explanation for why there is such a difference between the "comparable sales value" used to value the subject property and the actual assessed value as set out on the property record cards.

The Board concludes that the present value assigned to the subject property is not justified by the evidence. Thus, we must look to the market values of comparable properties to determine a proper market value for the

subject property. We find the assessed value of comps 2, 3, 4 & 5 of EP15, 16 & 17 to be the most comparable to the subject property, and thus also find the average value of those properties to be most determinative of the subject property's value. We therefore order that the Taxpayer's property be valued at \$160,850.

Therefore, the Board modifies the CTAB decision.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Gallatin County by the local Department of Revenue at a value of \$160,850.

Dated this 17th day of November, 2010.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

/s/ _____
KAREN E. POWELL, Chairwoman

/s/ _____
DOUGLAS A. KAERCHER, Member

/s/ _____
SAMANTHA SANCHEZ, Member

Notice: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of November, 2010, a copy of the foregoing order was served on the parties hereto by placing a copy in the U.S. Mail and addressed as follows:

Donald C. Cowles, III
1400 N. Rouse Ave.
Bozeman, MT 59715-2941

_____ U.S. Mail, Postage Prepaid
_____ Interoffice
_____ Hand delivered

Keith Jones
Tax Counsel
Office of Legal Affairs
Department of Revenue
PO Box 7701
Helena, MT 59604-6601

_____ U.S. Mail, Postage Prepaid
_____ Interoffice
_____ Hand delivered

Gallatin County Appraisal Office
2273 Boot Hill Court Suite 100
Bozeman, MT 59715-7149

_____ U.S. Mail, Postage Prepaid
_____ Interoffice
_____ Hand delivered

Gallatin County Tax Appeal Board
C/o Crystal Turner
311 West Main, Room 306
Bozeman, Montana 59715

Via U.S. Mail, Postage Prepaid

/s/ _____
DONNA J. EUBANK, paralegal assistant