

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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REX and SUSAN BOLLER,	)	DOCKET NO.: PT-2009-66A-D
	)	
Appellants,	)	
	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE	)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	)	FOR JUDICIAL REVIEW
	)	
Respondent.	)	

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Rex and Susan Boller (Taxpayers) appealed the decision of the Department of Revenue (DOR) and the Missoula County Tax Appeal Board (CTAB) regarding the valuation of their four condominium units in Missoula. Rex Boller represented the Taxpayers and the DOR was represented by Michelle Crepeau, Tax Counsel, Mark Flanik, Appraiser, Rocky Haralson, Area Manager and Larry Barrett, Appraiser. The matter was heard before this Board on August 30, 2010 by telephonic hearing.

**Issue**

Did the DOR use the correct method of valuation and set an appropriate value for the property for 2009?

**Summary**

The Taxpayers are the appellants in this case and therefore bear the burden of proof in this matter. Based on a preponderance of the evidence, this Board affirms the decision of the Missoula CTAB.

## Background and Evidence Presented

1. Taxpayers are owners of four condominiums in Missoula located at 624, 626, 628, and 630 Whitaker Drive, parcels 04-2093-04-2-14-01-7001, 04-2093-04-2-14-01-7002, 04-2093-04-2-14-02-7101, and 04-2093-04-2-14-02-7102, respectively. They are two duplexes, each with two units. (DOR Exh. A – D.)
2. The DOR used a cost indicator of valuation to value the units at \$182,187 each for 628 and 630 and \$187,702 for 624 and 626.
3. Taxpayers filed a form AB-26 requesting an informal review with the DOR on September 10, 2009. Their reason for the request: “The exact duplicate of this duplex sold for \$250,000 at 632-634 Whitaker. Therefore an individual unit  $250,000 / 2 = 125,000$  is the maximum value.” (AB-26, Sept. 9, 2009.)
4. The DOR reduced the value of each unit to \$165,622 for 624 and 626 and \$165,107 for 628 and 630, with the explanation: “When the appraisal data was updated your value changed.”(AB-26, Feb. 9, 2010.)
5. Taxpayers filed an appeal with the Missoula CTAB on 2/18/10 stating as the reason for the appeal: “Informal review AB-26 Jason Hagen did not consider comparable sales, cost approach, nor income approach as provided (see his files for supporting documents provided.) Owner will provide these plus more at appeal.”
6. The Missoula CTAB modified the DOR’s valuation by allowing a higher rate of depreciation than the 27% allowed by the DOR depreciation charts. The CTAB applied a 35% depreciation rate and this lowered the values to \$157,850 for 624 and 626 and \$157,335 for 628 and 630. (CTAB Decision, April 22, 2010.)

7. Taxpayer appealed to this Board on May 3, 2010, challenging the DOR's and CTAB's refusal to look at the sale of a comparable duplex and for not using a higher depreciation rate in calculating the replacement cost new less depreciation (RCNLD). (Attachment to appeal form.)
8. A telephonic hearing was held before this Board on August 31, 2010.
9. Taxpayers insist that the sale of an identical duplex immediately next to the subject properties should have been considered by the DOR in making a market valuation. Further, Taxpayers argued that the 27% depreciation allowed by the DOR, increased to 35% by the CTAB, was inadequate and should have been 50% based on the age of the units, 35 years at the time of the valuation date. (Attachment to appeal form.)
10. The DOR pointed out that the Taxpayers had converted the two duplexes into four separate condo units by recording a Declaration of Condominium, Covenants, Conditions and Restrictions for Boller Condominiums on Jan 2, 2008. (DOR Exh. E.)
11. According to §15-8-111(4)(a), MCA, the DOR shall use the comparable sales method to appraise residential condominium units if sufficient relevant information is available. If not available, subsection (c) requires that the DOR use the construction-cost method of valuation.
12. The DOR, through appraiser Flanik, testified that it could not use the evidence of the neighboring rental duplex as a comparable sale because it is not comparable to condominiums. The only other condominiums nearby were not comparable as they were newer, larger and of a higher grade of construction. Therefore, the DOR used the construction-cost method to determine value. (Flanik Testimony.)

13. In calculating the construction cost as the replacement cost new less depreciation, the DOR used depreciation charts developed by the DOR based on rental data from across the state, which allows 27% depreciation for a 35 year old building. (DOR Exh. I.)
14. Taxpayers argued that this was unfair as the property had not changed since the units were turned into condominiums. They are rented to the same tenants for the same rents and used in the same way. (Boller Testimony.)
15. Taxpayers claimed in their pre-hearing materials that the CTAB decision was unduly influenced by material inappropriately sent to the CTAB by the DOR after the hearing, which they were not afforded an opportunity to review and challenge. (Boller Letters, May 3, 2010 and August 18, 2010.) This matter was not raised during the hearing.

### **Principles of Law**

1. The State Tax Appeal Board has jurisdiction over this matter. (§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. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
4. The valuation of residential condominium units is limited to market valuation if comparable sales are available or construction cost method if they are not. (§15-8-111(4)(a) and (c), MCA, and ARM §§42.20.105 and 106.)

5. The same methods of appraisal and assessment must be used throughout the state to achieve equalization of property values. (§15-7-112, MCA.)

### **Board Findings and Conclusions**

The Taxpayers are the appellants in this case and therefore bear the burden of proof. Taxpayers have not shown that the methods and valuation procedures used by the DOR are faulty or result in an unfair value. The only comparable that the Taxpayers put forth was a rental duplex, which is not the same as a condominium either in market value or statutory treatment. The regulation on what constitutes comparable properties clearly states: “condominiums are comparable to other condominiums;” (ARM §42.20.106(3)(x).) The Taxpayers are very familiar with real estate practices and testified at the CTAB hearing that they converted their duplexes into condominiums because they thought they would make more money from them in the long run (Tr. p. 5).

Taxpayers argued the units should not be treated differently than duplexes because their use has not changed, but neither the DOR nor this Board has the authority to violate the clear language of the statute mandating they be treated differently. (§15-8-111(4)(a) and (c), MCA.)

Taxpayers also argued the appraiser should have used a 50 percent rate of depreciation, considerably more than is allowed by the state’s depreciation tables, because in his judgment that would be a fairer rate. The DOR is mandated to equalize taxation across the state and to achieve that they use a standardized and well-known set of tables for arriving at property valuation so that all similar properties have similar values. (§15-7-112, MCA.)

The material complained of by Taxpayers that was sent to the CTAB after the hearing was the depreciation tables used by the DOR. The materials were discussed during the hearing and the DOR offered to supply them to the

CTAB and to the Taxpayer, which was done after the hearing. The materials were received by the CTAB after the Board had written their decision and did not, therefore, influence the outcome. Furthermore, Taxpayer had adequate opportunity to disagree with the tables during the hearings, which he did. He submitted no contradictory evidence supporting his claim for 50% depreciation at either hearing. We find the submission of the depreciation tables was not inappropriate and did not disadvantage the Taxpayer.

The Missoula CTAB raised the depreciation rate from 27% to 35%, though without any statutory authority and without any evidence presented by the Taxpayers to show unusual conditions that warrant exceptional treatment. The DOR's depreciation tables are based on statewide studies and then adjusted for each county to reflect differences in the way property depreciates. (ARM §42.22.1308 and CTAB Tr. p.19.) We find the DOR's values reasonable but as the DOR has not cross-appealed the decision of the CTAB, we affirm that decision.

**Order**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property value shall be entered on the tax rolls of Missoula County at the 2009 tax year values as determined by the Missoula County Tax Appeal Board.

Dated this 16<sup>th</sup> of September, 2010.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

/s/ \_\_\_\_\_  
KAREN E. POWELL, Chairwoman

( S E A L )

/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 t his Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16<sup>th</sup> day of September, 2010, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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U.S. Mail, Postage Prepaid  
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 E-Mail

/s/ \_\_\_\_\_

DONNA EUBANK

Paralegal