

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE))	DOCKET NO.: PT-1997-93
OF THE STATE OF MONTANA,))	
)	
Appellant,))	
)	
-vs-))	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
SHANNON WADSWORTH,))	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondent.))	

The above-entitled appeal was heard on November 1, 1999, in the City of Great Falls, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

The Department of Revenue (DOR), represented by Appraisers Pete Fontana and Therese (Terri) Williams, presented testimony in support of the appeal. The taxpayer, Shannon Wadsworth, presented testimony in opposition to the appeal. Testimony was presented and exhibits were received, and a schedule for post-hearing submissions was established. Having received the post-hearing submissions in a timely fashion, the Board then took the appeal under advisement; and the Board, having fully considered the testimony,

exhibits, post-hearing submissions, and all things and matters presented to it by all parties, finds and concludes as follows:

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

East 35' of Lot 12, Block 556, Sixth Addition, with a street address of 517 - 4th Avenue Southwest, City of Great Falls, Cascade County, State of Montana, and the improvements located thereon; geo code #3015-11-2-15-04. (Assessor code #287200).

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$8,316 for the land and \$29,884 for the improvements.

4. The taxpayer appealed to the Cascade County Tax Appeal Board on December 19, 1997, requesting a reduction in value to \$6,069 for the land and \$14,540 for the improvements, stating:

Value determined by tax appeal board in previous years. DOR does not abide by MCA 1997 laws. Currently subject property is being sold under contract for deed at \$25,000.

5. In its January 30, 1998 decision, the county board adjusted the taxpayer's requested value for the improvements to \$23,280 and denied the appeal on the land, stating:

After hearing testimony and reviewing exhibits, the Board feels the cost approach more clearly reflects the condition of the house and garage. The new value on the improvements is \$23,280.00 with the land remaining at \$8,316.00.

6. The Department of Revenue appealed that decision to this Board on March 3, 1998, stating:

The nature of the proof adduced at the hearing was insufficient from a factual and legal standpoint to support the Board's decision.

DOR'S CONTENTIONS

DOR's Exhibit A is a Notice of Purchaser's Interest, which states that on November 1, 1997, the seller, Shannon Wadsworth, and the purchaser, Kevin R. Croy, entered into a contract for deed for the sale of the subject property. The original of the contract is escrowed at Bonded Escrow, 1104 - 20th St. So., Great Falls. Mr. Fontana testified that "It substantiates the claim that the county tax appeal board's decision was erroneous."

Exhibit B is a copy of the contract for deed, referenced in the Notice of Purchaser's Interest, which was also obtained by the DOR through Bonded Escrow. Mr. Wadsworth objected to the admission of Exhibit B on the grounds that it violated his right to privacy, but the

exhibit was admitted with the objection noted. The contract states that the total purchase price of the subject property is \$44,900.

Exhibit C is a two-page exhibit, consisting of the computer-generated property record card for the subject property, and the data collection form used to prepare the property record card. Mr. Fontana summarized the pertinent parts of the property record card as follows:

One-story frame dwelling, conventional style
Exterior walls: masonite
Roof type: hip
Roof material: asphalt shingle
Foundation: concrete
Basement: none
Heating & cooling system: central
Heating fuel type: gas
Heating system type: hot water
Heated floor area: 800 square feet
Total rooms: 6 (includes 2 bedrooms, 1 full bathroom)
Year built: 1910 Effective age: 1955
Physical condition: Poor
Grade: 4
CDU: Poor

Mr. Fontana testified that, "We recognize that the property is in less than fair shape, and we recognize that through the physical condition and the CDU." He stated that the subject improvements are located on a 4,375 square foot lot, which is basically a half lot, common in the older parts of Great Falls, where multiple houses were often built on one lot. The house includes an enclosed, frame back porch of 56 square feet and an open, frame front porch of 80 square

feet. The subject improvements include a 336 square foot garage, built in 1947, with a grade of 2 and a condition of poor.

Mr. Fontana testified that the house was built in 1910 and was assigned an effective age of 1955. He explained that "the DOR assigns an effective age to all properties and determines, by proper appraisal theory, that the life span of a house is approximately 60 years with no remodeling, physical updating or anything to the property. We've determined this house is pretty close to the end of its effective life...it will last about 10 more years. We've benchmarked the depreciation to say that the house is better than it was when it was built in 1910, obviously, because it's 80 to 90 years old and it's still standing and is still functional."

DOR's Exhibit E is a copy of a letter to Mr. Wadsworth from Mr. Fontana dated November 18, 1997, setting up a date and time for a review of multiple parcels of property, including the subject property. Mr. Fontana testified that the meeting was held, at which time the DOR requested internal inspections of the properties. He further testified that Mr. Wadsworth had granted the DOR access to three of the properties and had denied access to the other eight, including the subject property. Since no internal inspection

of the subject property was conducted, no adjustments were made by the DOR. Mr. Fontana stated that he believed the characteristics of the property obtained through the external review are "fairly accurate, and even if we did an internal review, I'm not sure we'd find that we would make many changes to the property."

The ECF (Economic Condition Factor) assigned to neighborhood 007, in which the subject property is located, is 121%. Mr. Wadsworth questioned the validity of this ECF in an area of old houses, as contrasted with the 96% ECF in the country club area, the location of "architecturally designed, professionally built homes, the finest homes in the city." Mr. Fontana explained that the ECF is a market adjustment factor that accounts for differences between the cost approach value and the market influences on value. In the country club area there are houses that cost between \$750,000 and \$1.4 million to build, "but there is no way that those houses would sell for that on the open market. A lot of those houses are built to the specification of the current owner, and when they sell, they sell for something less. They don't sell for what they cost to build. Those \$1.5 million houses that are costing out at \$1.5 million and marketing out at \$900,000 provide a less than 100% ECF." In the neighborhood of the subject property, "the homes are

affordable for people buying starter homes, and they are paying more for the houses than the replacement cost is, less depreciation, so the ECF needs to be more than 100%."

Exhibit D, the Montana comparable sales data sheet, is summarized as follows:

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5
Land Description						
Area (acres)	.10	.57	.17	.22	.14	.14
Dwelling Description						
Year built	1910	1950	1918	1952	1949	1940
Effective age	1955	1963	1955	1960	1960	1960
Bedrooms	2	2	2	2	2	3
Bathrooms	1	1	1	1	1	2
Total rooms	6	4	4	4	4	5
Finished basement (sf)	0	0	0	0	0	700
Grade	4	4	4+	4	4	4
Condition/Desirability/Utility (CDU)	Poor	Poor	Fair	Poor	Fair	Fair
Total living area (sf)	800	792	780	828	904	700
Garage area (sf)	336	0	0	308	375	280
Porch area (sf)	136	0	182	0	0	32
Pricing Data						
RCN	\$41,500	\$37,660	\$42,260	\$43,010	\$43,300	\$50,350
Percent good	45%	49%	55%	47%	58%	58%
RCNLD	\$22,600	\$22,330	\$28,120	\$24,470	\$30,380	\$35,330
Total OB&Y	\$680	\$740	\$1,240	\$550	\$1,510	\$2,590
Land value	\$8,316	\$11,003	\$10,566	\$12,121	\$9,666	\$9,666
Total cost	\$31,596	\$34,073	\$39,926	\$37,141	\$41,556	\$47,586
Valuation						
Sale date		12/94	5/94	6/93	12/95	4/95
Sale price		\$45,000	\$35,000	\$35,000	\$40,000	\$58,500
MRA Estimate	\$39,683	\$38,279	\$40,282	\$39,206	\$46,357	\$51,231
Adjusted sale Comparability		\$46,404	\$34,400	\$35,476	\$33,326	\$46,951
		47	65	66	70	71
Weighted estimate	\$39,351					
Market value	\$38,200					
Field Control Code Indicator	3					

The market value for the subject was derived by averaging the three middle values as follows:

		<u>Comparability</u>
Adjusted Sale - Sale #5	\$ 46,951	71
Adjusted Sale - Sale #1	\$ 46,404	47
MRA Estimate	\$ 39,683	
Weighted Estimate	\$ 39,351	
Adjusted Sale - Sale #3	\$ 35,476	66
Adjusted Sale - Sale #2	\$ 34,400	65
Adjusted Sale - Sale #4	\$ 33,326	70
$(\$39,683 + \$39,351 + \$35,476 / 3 = \$38,170 \text{ (rounded to } \$38,200)$		

Mr. Fontana testified that four of the five comparable properties are grade 4 and the other is grade 4+. The CDU's (condition/desirability/utility) are poor or fair. He believes that "comparables #1 and #3 are the most comparable to the subject property in style, amenities and condition." He circulated photographs of the subject property and the comparables, but did not enter them as an exhibit.

Mr. Fontana testified that the subject property had been valued by the DOR through the market approach rather than the cost approach. He justified this by explaining that there are three factors to consider when determining which approach to use when valuing a property. The first factor is the difference in the cost value versus the market value. If there is more than a 10% difference, the appraiser should consider using the cost approach. The second factor is the comparability numbers, which are shown on Exhibit D as 47,

65, 66, 67 and 71. These are statistical numbers, and if they are higher than 150, the appraiser should look at the cost approach. The comparability numbers on Exhibit D are all well under 150, indicating that the models are highly comparable to the subject property. The third factor to consider is the field control indicator, which is shown on Exhibit D as 3. This number can range from 1 to 5, with 3 being average. If the number is higher than 3, the difference between the market and the cost value is over 10%, and the comparability is greater than 150, the appraiser should consider using the cost approach rather than the market approach.

Mr. Fontana testified that the factors he described all indicate that the market approach to valuing the subject property is the correct approach rather than the cost approach, as determined by the Cascade County Tax Appeal Board, and he requested that this Board restore the value of \$38,200, the market value as determined by the DOR, to the subject property.

TAXPAYER'S CONTENTIONS

Mr. Wadsworth testified that the DOR had not been denied access to the house for an internal inspection. He stated that the house had previously been inspected and all of the information was on the old property record cards that

had been destroyed by the DOR. "It is a 1910 house, which is obvious by looking at it with its wood siding; long, narrow, single-hung windows; rock foundation; and brick chimney, which was originally set up for a coal stove." He stated that the property record card (exhibit C) contained errors in the physical characteristics of the property, specifically, the exterior walls are wood, not masonite; and the heating system type is forced air, not hot water.

The house, which is located at 517 - 4th Ave. SW, is near the railroad tracks, so you "hear a lot of railroad noise, a lot of banging cars." There is heavy traffic on 4th Avenue SW, and the house "is directly in line with the international airport runway, so we've got a lot of airplane noise coming over there."

Mr. Wadsworth testified that he purchased the house in 1988 for \$3,000. "It was in a run-down condition, and we spent between 14-18 months renovating it." In 1991 he sold the house on a contract for deed for \$28,000 or \$29,000, but in 1996 he took the house back and had to renovate it again. He then put the house on the market for sale for \$44,900. After 6 months on multiple listing with no offers, Mr. Wadsworth sold the house on a contract for deed for \$44,900. The property is currently in default, with the purchaser

owing about 6 months of back payments, and Mr. Wadsworth is anticipating that he will have to repossess the house.

Taxpayer's Exhibit 1 is a copy of the Square Foot Appraisal Form that Mr. Wadsworth used in conjunction with the Marshall Swift Residential Cost Handbook to value the subject property through the cost approach. This resulted in a value of \$10,332 for the house and \$7,000 for the land, for a total value of \$17,332. If the 121% ECF was added to this, it would result in a total value of \$20,971. Mr. Wadsworth determined that the estimated remaining economic life of the subject property is 20 years, and he used a factor of 80% for depreciation, as shown in the manual, with no adjustments for remodeling or other modifications to the property.

Taxpayer's Exhibits 2 through 11 relate to his comparable sales, as follows: Exhibit 2 is a Uniform Residential Appraisal Report, containing the cost approach valuation of the subject property and the sales comparison analysis of comparables #1 through #3; Exhibits 3 through 5 are the multiple listing information sheets, including pictures, of comparables #1 through #3; Exhibit 6 is the Sales Comparison Analysis of comparables #4 through #6; Exhibits 7 through 9 are the multiple listing sheets, including pictures, of comparables #4 through #6; Exhibit 10

is a copy of the property record card for property located at 310 - 7th Street North, which is directly across the alley from the subject property; and Exhibit 11 consists of seven color photographs, one of each of the six comparables and the property across the alley as described above. The details of the comparable properties are summarized as follows.

COMP #1

Street address: 522 - 4th Ave. SW
Proximity to subject: across the street
Year built: 1919
Lot size: 25 x 125
Gross living area: 580 s.f.
Bedrooms: 1
Bathrooms: 1
Total Rooms: 4
Condition: average
Basement: cellar & crawl
Garage: none
Date of Sale: 8/13/93
Length of time on market prior to sale: 70 days
List price: \$22,500
Sale price: \$20,000
Price/gross living area: \$34.48
Net adjustments: +\$5,500
Adjusted sales price: \$25,500
DOR value: \$31,700 (\$11,700 or 58% over the sale price)

COMP #2

Street address: 506 - 3rd Ave. SW
Proximity to subject: down the alley; 1/2 block away
Year built: 1900
Lot size: 50 x 125
Gross living area: 578 s.f.
Bedrooms: 1
Bathrooms: 1
Total Rooms: 4
Condition: fair
Basement: none
Garage: shed
Date of Sale: 8/27/93
Length of time on market prior to sale: 35 days
List price: \$18,500
Sale price: \$16,000
Price/gross living area: \$27.68

Net adjustments: +\$9,000
Adjusted sales price: \$25,000
DOR value: not stated

COMP #3

Street address: 506 5-1/2 Ave. SW
Proximity to subject: One block south
Year built: 1956
Lot size: 37.5 x 125
Gross living area: 594 s.f.
Bedrooms: 2
Bathrooms: 1
Total Rooms: 4
Condition: fair
Basement: crawl
Garage: none
Date of Sale: 10/03/95
Length of time on market prior to sale: 201 days
List price: \$23,000
Sale price: \$10,500
Price/gross living area: \$17.68
Net adjustments: +\$10,500
Adjusted sales price: \$21,000
DOR value: \$26,800 (\$16,300 or 2.5 times the sale price)

COMP #4

Street address: 317 - 1st Ave. SW
Proximity to subject: 3 blocks north
Year built: 1910
Lot size: 25 x 125
Gross living area: 760 s.f.
Bedrooms: 2
Bathrooms: 1
Total Rooms: 4
Condition: average
Basement: crawl
Garage: 216 s.f. detached
Date of Sale: 8/11/93 per Exh. 6; oral testimony- 12/28/93
Length of time on market prior to sale: not stated
List price: \$32,900
Sale price: \$29,500
Price/gross living area: \$38.82
Net adjustments: none
Adjusted sales price: \$29,500
DOR value: \$40,200 (\$10,700 or 36% over the sale price)

COMP #5

Street address: 723 - 2nd Ave. SW
Proximity to subject: 4 block northwest
Year built: 1912
Lot size: 25 x 125
Gross living area: 800 s.f.
Bedrooms: 2
Bathrooms: 1

Total Rooms: 4
Condition: average
Basement: cellar & crawl
Garage: 240 s.f. detached
Date of Sale: 6/11/93
Length of time on market prior to sale: not stated
List price: \$26,500
Sale price: \$22,073
Price/gross living area: \$27.59
Net adjustments: none
Adjusted sales price: \$22,073
DOR value: not available

COMP #6

Street address: 511 - 2nd Ave. SW
Proximity to subject: 2 blocks
Year built: 1928
Lot size: 50 x 125
Gross living area: 884 s.f.
Bedrooms: 2
Bathrooms: 1
Total Rooms: 4
Condition: average
Basement: full, unfinished
Garage: none
Date of Sale: 12/28/95
Length of time on market prior to sale: not stated
List price: \$38,500
Sale price: \$35,000
Price/gross living area: \$39.59
Net adjustments: -\$3,600
Adjusted sales price: \$31,400
DOR value: \$56,100 (\$21,100 or 60% over the sales price)

Mr. Wadsworth described the property depicted on Exhibit 10 as a house located directly across the alley from the subject property, built in 1910 on a 50 by 150 foot lot. The main floor of the house is 1,082 square feet, and the basement floor is 810 square feet. The value was reduced on the AB 26 form, dated September 20, 1999, from \$58,400 to \$30,486, a \$27,914 or 48% reduction. The taxpayer had indicated on the AB 26 form that "the property had deteriorating foundation and basement floor, functional

obsolescence and overall structural condition in a declining neighborhood located 50 feet from a major bypass." Mr. Wadsworth stated that "this is right across the alley from mine. It's a bigger house with a basement, and it's valued at \$30,486. I think that warrants you shouldn't pay much difference in taxes."

Mr. Wadsworth presented three recent sales, without submitting exhibits, as follows: "I've got one at 409 - 5th Ave. SW. That property sold on August 17, 1999 for \$15,500 cash. Now I've got the property record card on it; it says \$40,500, which is \$25,000 over the sales price or 2.6 times the sales price. The second one I've got is 422 - 3rd Ave. SW. It sold on September 28, 1999 for \$26,000 on a conventional loan. DOR has it assessed at \$46,700, which is \$20,700 over the sales price or 80% over the sales price. The third one I have is 800 - 2nd Ave. SW, which sold on September 17, 1999 for \$29,200 on a conventional loan. The DOR has it appraised at \$63,000, which is \$33,800 over the sales price, which is 2.16 times the sale price. And that's the values I have there." (Mr. Fontana objected to this testimony, stating that "we are far away from the sales in the cycle. Those properties could be declining. We will measure that in the next reappraisal, but they have nothing

to do with the property values that existed from 1993 to 1996.")

Mr. Wadsworth concluded his testimony by stating that sales #4 and #5 (exhibits 6, 7 and 8) that he had presented "are around the same size as my property, the same area, much as we can tell it's the same. One sells for \$29,500, the other for \$22,073. I still maintain my value's around \$25,000 on the property."

BOARD'S DISCUSSION

The value before this Board is the reduced value of **\$23,280** for the subject improvements as determined by the Cascade County Tax Appeal Board. They had not adjusted the DOR's land value of \$8,316, so the land value is not an issue in this appeal. The DOR has requested that the value of the improvements be returned to **\$29,884**, with the land value remaining at \$8,316, for a total value of **\$38,200**. The taxpayer had not appealed the CTAB values, although in his response to the DOR's post-hearing submission, he requested that the Board "place a fair and reasonable value of \$25,000 on this property."

The Board took note of the fact that although Mr. Wadsworth had stated on the appeal form, "currently subject property is being sold under contract for deed at \$25,000," DOR's exhibit B, the contract for deed, states that the

total purchase price of the subject property is \$44,900. Although the contract for deed is dated November 1, 1997, which is after the 1993-1996 appraisal cycle, the Board still believes that it gives some indication of the value of the subject property. The Board assumes that the purchaser of the property was not limited to or coerced into buying that particular house, but he did buy it, for \$44,900. The Board assumes that he was willing to pay a 9% interest rate, which was higher than that of a conventional mortgage, because he apparently was not required to make any down payment, resulting in additional risk to the seller. The Board is puzzled by the terms of the contract regarding monthly payments and their duration, as stated on the first page, as follows: "*PRINCIPAL BALANCE--METHOD OF PAYMENT: The principal balance of Forty Four thousand nine hundred dollars \$44,900.00 shall bear interest at the rate of Nine per Cent (09%) per annum and shall be paid monthly in the amount of Five Hundred dollars and 00/100 (\$500.00) through December 1998 or until January 01, 1999.*" This gives no indication as to what was to happen after January 1, 1999. Was the purchaser then to seek other financing? The pages of the contract for deed were not numbered, and there appeared to be missing sections or pages. However, the Board was concerned mainly with the stated purchase price of \$44,900

and its indication of the taxpayer's true estimate of value, as contrasted with the \$25,000 amount he stated on the appeal form. Although Mr. Wadsworth did state that prior to selling the house on the contract for deed, he had it listed through multiple listing for \$44,900 and received no offers during the 6 months it was listed, he presented no exhibits to substantiate this oral testimony.

The Board addressed the post-hearing submission requested by Mr. Wadsworth and provided by the DOR. According to the record, Mr. Wadsworth had repeatedly attempted to obtain information from the DOR regarding the adjustments made on the DOR's comparable properties. Prior to the Cascade County Tax Appeal Board hearing, he had been provided with a copy of the model used to determine the adjustments and a copy of the DOR's *Book of General Evidence*, showing how to make the adjustments (CTAB hearing transcript, p. 39.) Mr. Wadsworth again requested more specific information on the adjustments that had been made to the DOR comparable properties, by letter dated March 11, 1998 to Peter Fontana; by letter dated April 8, 1999 to Virgil Byford in the Helena DOR office, who forwarded it to the Great Falls office; and by letters dated April 20 and April 22, 1999, to the Board. In a subsequent letter to the Board, dated August 28, 1999, Mr. Wadsworth stated that he

had requested "information on the sales comparison approach, specifically each adjustment, knowledge and verification for each adjustment to each comparable, as well as a request for the 'MRA' calculation on the subject and each comparable property, but to no avail." The Board requested that, as a post-hearing submission, Mr. Fontana provide to the Board and to Mr. Wadsworth the factors that were used to make the adjustments. The information submitted by Mr. Fontana consisted of the model adjustments used to value the subject property and a copy of the DOR's *Book of General Evidence* to assist in the calculations for the subject property. Mr. Wadsworth responded to this submission by letter of November 5, 1999 to the Board, stating that "the DOR did not abide by the STAB order for detail information on the sales comparison approach." He further stated "It is assumed, by depriving this information the DOR does not have the facts or documentation to support the adjustments on said appraisal."

Mr. Wadsworth provided no documentation to substantiate his allegations that the DOR adjustments were faulty, and the Board is satisfied that the DOR did have adequate facts and documentation to support their adjustments, despite their apparent unwillingness to provide this information to

Mr. Wadsworth in a format that would not require him to perform the calculations.

Mr. Wadsworth disputes the DOR's assigning an effective age of 1955 to his 1910 house. The Dictionary of Real Estate Appraisal, Third Edition, defines effective age as "*the age indicated by the condition and utility of a structure.*" Mr. Fontana testified that if no updating or remodeling is done to a house, its life span is approximately 60 years. He testified that the subject property "will last about ten more years." Mr. Wadsworth testified that he had purchased the property in 1988 and spent 18-24 months renovating it. After selling the house in 1991 and repossessing it in 1996, Mr. Wadsworth again repaired and renovated the house. Although the Board has been given no history of remodeling or repairs to the house prior to Mr. Wadsworth's purchasing it, we know from the testimony that upgrading has been done to the property at least since 1988, thus extending its effective life. The Board has not been convinced by any evidence presented that the DOR's assigned effective age of 1955 for the subject property is inaccurate.

The Board addressed the question of which comparable sales were more comparable to the subject property, the DOR's or the taxpayer's. The DOR's comparable sales have been summarized on page seven of this decision. A summary of

the pertinent parts of Mr. Wadsworth's testimony and exhibits relating to his comparable sales follows.

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5	Comp #6
Land-sf	4,375	3,125	6,250	4,688	3,125	3,125	6,250
Year built	1910	1919	1900	1956	1910	1912	1928
Total Living Area	800 s.f.	580 s.f.	578 s.f.	594 s.f.	760 s.f.	800 s.f.	884 s.f.
Bedrooms	2	1	1	2	2	2	2
Bathrms.	1	1	1	1	1	1	1
Total rooms	4	4	4	4	4	4	4
Basement	Cellar	Cellar	None	Crawl	Crawl	Cellar	Full
Condit.	Average	Average	Fair	Fair	Average	Average	Average
Sale Price		\$20,000	\$16,000	\$10,500	\$29,500	\$22,073	\$35,000
Date of Sale		8/93	8/93	10/95	8/93	6/93	12/95
Price/gross living area		\$34.48	\$27.68	\$17.68	\$38.82	\$27.59	\$39.59
Net adjustments		+\$5,500	+\$9,000	+\$10,500	None	None	-\$3,600
Adj. sale price		\$25,500	\$25,000	\$21,000	\$29,500	\$22,073	\$31,400

The Board noted that Mr. Wadsworth indicated on his comparable sheet that the subject property has four total rooms, while the DOR's property record card indicates that it has six total rooms. Mr. Wadsworth orally presented the DOR's values for most of the above comparable sales, but since he neither stated the date that the DOR values were determined nor presented written exhibits to verify such values, the Board did not consider this testimony as being relevant. The photographs of the taxpayer's comparable properties (Exhibit 11) were taken in June of 1999, and the Board did not consider them to be valid representations of the properties at the time of the filing of this appeal.

Mr. Wadsworth also orally presented, without exhibits, three 1999 sales of properties he determined were

comparable, located near the subject property. The Board did not consider these as valid comparable sales, agreeing with Mr. Fontana's objection that "they have nothing to do with property values that existed from 1993 to 1996."

Mr. Wadsworth disputed the comparable sales used by the DOR and provided his own comparable sales, which were disputed by the DOR. The Board considered at length the merits of the many arguments presented by both sides on this issue. Two of the DOR's comparable sales were 1995 sales, two were 1994 sales and one was a 1993 sale. Collectively, these were more recent sales than those presented by the taxpayer. Four of Mr. Wadsworth's comparable sales were 1993 sales and two were 1995 sales. There was no indication that Mr. Wadsworth had made any time adjustments to these sales. His two most recent sales, the 1995 sales, were comparables #3 and #6. Comparable #6 had sold for \$35,000, or \$39.59 per square foot of gross living area, the highest valued comparable he had presented. Comparable #3, which had sold for \$10,500, was the lowest valued comparable. This house had been listed at a price of \$23,000, and the realtor's sheet had stated, "seller motivated for quick sale." **15-8-111, (2)(a), MCA**, states "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." (Emphasis added.) The Board would agree with Mr. Fontana's contention that this sale would not be considered the best indicator for comparison purposes.

The subject property contains 800 square feet of living area, and the Board studied the figures presented by both the DOR and the taxpayer for the square feet of living space in the comparable properties. These numbers are summarized as follows, with variances from the subject area noted, as well as size adjustments made by the taxpayer to his comparables. The DOR's size adjustments were done through CAMAS (Computer Assisted Mass Appraisal System), and the Board does not know the precise adjustments made.

	Living area	Variance from subject	Adjustments made
DOR Comp #1	792 sq. ft.	-8 sq. ft.	No
DOR Comp #2	780 sq. ft.	-20 sq. ft.	Unknown
DOR Comp #3	828 sq. ft.	+28 sq. ft.	Unknown
DOR Comp #4	904 sq. ft.	+104 sq. ft.	Unknown
DOR Comp #5	700 sq. ft.	-100 sq. ft.	Unknown
SW Comp #1	580 sq. ft.	-220 sq. ft.	+\$5,000
SW Comp #2	578 sq. ft.	-222 sq. ft.	+\$5,000
SW Comp #3	594 sq. ft.	-206 sq. ft.	+\$5,000
SW Comp #4	760 sq. ft.	-40 sq. ft.	No
SW Comp #5	800 sq. ft.	-0-	No
SW Comp #6	884 sq. ft.	+84 sq. ft.	-\$1,600

The Board considered the price per square foot of gross living area for the comparable properties, with land values included, and sale prices before adjustments were made, as summarized in the following table:

	Sale price	Living area	Price per sq.ft.
DOR Comp #1	\$45,000	792 sq. ft.	\$56.82
DOR Comp #2	\$35,000	780 sq. ft.	\$44.88
DOR Comp #3	\$35,000	828 sq. ft.	\$42.27
DOR Comp #4	\$40,000	904 sq. ft.	\$44.25
DOR Comp #5	\$58,500	700 sq. ft.	\$83.58
SW Comp #1	\$20,000	580 sq. ft.	\$34.48
SW Comp #2	\$16,000	578 sq. ft.	\$27.68
SW Comp #3	\$10,500	594 sq. ft.	\$17.68
SW Comp #4	\$29,500	760 sq. ft.	\$38.82
SW Comp #5	\$22,073	800 sq. ft.	\$27.59
SW Comp #6	\$35,000	884 sq. ft.	\$39.59

The subject property contains 800 square feet of living space. The price per square foot according to the various values for the subject property would be as follows:

Contract for deed value of \$44,900	\$56.13 per sq. ft.
RTC value of \$25,000	\$31.25 per sq. ft.
DOR value (land included) of \$38,200	\$47.75 per sq. ft.
CTAB value (land included) of \$31,596	\$39.50 per sq. ft.

The average price per square foot of the DOR's five comparable properties is **\$54.36** ($\$56.82 + \$44.88 + \$42.27 + \$44.25 + \$83.58 = \$271.80 / 5 = \54.36). If the highest value of \$83.58 is removed, the average would be **\$47.06**. The average price per square foot of the taxpayer's comparables is **\$30.98** ($\$34.48 + \$27.68 + \$17.68 + \$38.82 + \$27.59 + \$39.59 = \$185.84 / 6 = \30.98). If the lowest value of \$17.68 is removed, the average would be **\$33.64**.

Mr. Wadsworth had questioned the validity of the DOR's comparable properties, bringing up specific points about each property, which are summarized as follows. **Comparable #1**, which is located 16 blocks from the subject property, is on a 27,176 square foot lot, while the subject property is

on a 4,375 square foot lot. It was built in 1950 and assigned an effective age of 1963, compared to the 1910 subject property with an effective age of 1955. Mr. Wadsworth testified that comparable #1 was "completely flooded in the 1964 flood and probably had to be completely rebuilt...and was probably partially rebuilt after the 1975 flood." Mr. Wadsworth agreed that DOR's **comparable #2** was "a good one; close to the property," although its land value was \$1.41 a square foot compared to the subject land value of \$1.90 a square foot, and in 1963 a building permit was issued for a new foundation. **Comparable #3** is a 1952 house with an effective age of 1960, located approximately one mile from the subject property. Mr. Wadsworth contended that the house was moved to its present location in 1952. **Comparable #4** has an effective age of 1960, a CDU of "fair", which is one step better than the subject, and has new vinyl siding, new casement windows and new doors, according to Mr. Wadsworth. **Comparable #5** has an effective age of 1960. Mr. Fontana addressed each of the taxpayer's expressed concerns, explaining the adjustments that had been made.

When asked if the DOR comparable sales were the "best comparables available," Mr. Fontana testified, "Absolutely. Look at the comparability statistics on them. As a professional fee appraiser, if I did a fee appraisal and

somebody handed me these five comps, I'd say those look great." DOR's exhibit D, the Montana comparable sales data, indicates a field control code of "3." The DOR's *Book of General Evidence* states, **"For properties less than \$100,000, a field control code of 3 or less is considered reasonable."** The comparability numbers for the five properties shown on exhibit D are 47, 65, 66, 67 and 71. The *Book of General Evidence* states, **"Under 100 is GOOD comparability."**

The Board is unable to determine from the evidence presented precisely why the values of the DOR comparable properties are consistently higher than those of the taxpayer's comparable properties. Perhaps the area immediately surrounding the subject property, in which the taxpayer's comparables are located, was a declining neighborhood at the time of the last appraisal cycle, as Mr. Wadsworth has indicated it is now. The DOR comparables for the most part were located in areas of neighborhood 007 and 007C that were farther away from the subject property than were the taxpayer's comparables. Perhaps the area in which the subject property is located should be designated as a subneighborhood, particularly if it is a deteriorating area. The subject property may be overbuilt for its immediate neighborhood, as indicated by its 800 square feet of living space compared to the smaller living space area in

taxpayer's comparables numbers one through four. No paired sales were presented by either the DOR or the taxpayer to indicate how values in the neighborhood were changing over a period of time.

The Board does not believe that adequate evidence was presented to support the Cascade County Tax Appeal Board's decision that the cost approach is a more accurate means of determining value in this case.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**

2. **§15-2-301, MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, 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.

3. **§15-7-112. Equalization of valuations.** The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided.

4. **§15-8-111, MCA. Assessment - market value standard -**

exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

5. The appeal of the DOR is hereby granted, and the decision of the Cascade County Tax Appeal Board is reversed.

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

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 Cascade County by the Assessor of that county at the value of \$8,316 for the land as determined by the DOR and upheld by the Cascade County Tax Appeal Board, and \$29,884 for the improvements as determined by the DOR. It is further ordered that the DOR shall correct the following physical characteristics on the subject property record card: change the exterior walls from masonite to wood, and the heating system type from hot water to forced air. The appeal of the DOR is therefore granted, and the decision of the Cascade County Tax Appeal Board is reversed.

Dated this 23rd of December, 1999.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JAN BROWN, Member

JEREANN NELSON, 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 23rd day of December, 1999, 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:

Shannon Wadsworth
3303 Upper River Road
Great Falls, Montana 59405

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

Appraisal Office
Cascade County
300 Central Avenue
Suite 520
Great Falls, Montana 59401

Nick Lazanas
Cascade County Tax Appeal Board
Courthouse Annex
Great Falls, Montana 59401

DONNA EUBANK
Paralegal