BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

RICHARD & MARY ANN POTTER, Appellants,	)	DOCKET NO.: PT-1997-62
-vs-	)	
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER and OPPORTUNITY FOR JUDICIAL REVIEW

The above-entitled appeal came on regularly for hearing on the 2nd day of March, 1998, in the City of Shelby, 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 taxpayers, represented by Richard Potter, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Pat Dringman, Tax Counsel, and Kevin Watterud, commercial appraiser, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter,

the hearing hereon, and of the time and place of said 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:

> Lots 1, 2, 3 plus vacated Alley, Blk 11, Shelby Second Addn., and the Improvements thereon, Shelby, Toole County, MT.

3. For the 1997 tax year, the DOR appraised the subject property at a value of $23,171 for the land and $19,500 for the improvements.

4. The taxpayer appealed to the Toole County Tax Appeal Board requesting a reduction in value to $22,858 for the land and $19,500 for the improvements.

5. The DOR adjusted the value of the land to $22,838 and the County Board adopted the values as presented by the DOR. The total value of the property for 1997 is $42,338.

6. The taxpayer then appealed that decision to this Board based on the issue of the change in the subject property value as determined by the DOR for the tax year 1996 and tax year 1997. The taxpayer appeal states "Land value no longer in dispute. 1996 and prior years value must be adjusted or 1997 appraisal is invalid and taxes assessed are based on figures more than current value."

7. The 1996 value for this property was $22,838 for the land, and

$35,800 for the improvements. The total value for 1996 was $58,638.

8. The subject property experienced no demolition or new construction between January 1, 1996 and January 1, 1997.

9. There are no property taxes delinquent on this property.

10. The Board has jurisdiction over this matter in accordance with 15-2-301, MCA.

TAXPAYER CONTENTIONS

The taxpayer stated that the question on appeal is not the current appraised value but the "VBR" (value before reappraisal). He argued that the 1996 value and the prior year's value must be adjusted, or the 1997 appraisal is invalid. He stated that he has been led to understand that the DOR will not adjust the current 1997 value for taxation to its actual value indication but will adhere to the phased in value. The appraised values on the property have been in dispute for many years. The values have been higher than he believed them reasonably to be and, although he questioned the values, he was not successful in getting them reduced. He stated that, although there was an adjustment by the local board for 1995, the DOR raised the value again for 1996.

When the DOR initially valued the property for 1997, the value was raised from $35,800 to $43,600. The building has not been in use as a hotel since 1985 because of its deteriorated condition. The taxpayer went through

the AB-26 filing and the value was adjusted. The taxpayer then went to the county tax appeal board to get the 1996 value adjusted, and the board instructed him they could not do anything with a prior year's value.

The taxpayer believes the land is still over valued, but he stated he could "live with that" if the value is adjusted so that he is paying taxes on the 1997 value. He is now being taxed on value at "a level far over the current assessed value." The taxpayer told the Board that the change in value has been a gradual decline, not something that occurred in one year. A change in the "VBR" would recognize that change and establish his value where it belongs for 1997.

DOR CONTENTIONS

The DOR agreed that the land value was adjusted in 1995 by a local board decision. In 1997 the value shown as the "VBR" was erroneously placed on the assessment notice at the value indication they had prior to the local board decision that lowered the value. The DOR adjusted that land value downward to the value established by the 1995 local board decision. Consequently the taxpayer is correct: there has been an adjustment in the land "VBR" because a mistake was made in 1996.

Mr. Watterud performed the appraisal on the subject property. The original value for the 1997 reappraisal was $67,488. It was comprised of $23,888 on the land and $43,600 on the improvements. The taxpayer filed an

AB-26 form with the DOR, and the value on the improvements was adjusted by Mr. Watterud after talking with Mr. Potter. He agreed that because of the poor condition of the building that has actually not been used as a hotel for several years, the value has declined. He agreed with the owner that there has been increased physical depreciation because of lack of use and maintenance. He lowered the improvement value to $19,500 because of this increased depreciation. He later corrected the land value because of the error discovered by the taxpayer.

Mr. Watterud explained his understanding of the implications of the law referred to as "Senate Bill 195" in response to questions by Mr. Dringman. He stated that Department of Revenue employees such as himself have been given training on how the statute (15-7-111, MCA) should be implemented. It is his understanding that the 2% change applies equally to property that experienced a value decrease as well as property that had a value increase. He explained his understanding of how the values are to be calculated based on the phase-in of the difference between the value before reappraisal and the 1997 reappraised value. He read a letter signed by the Director of the Department of Revenue (Ex B) as illustrative of the DOR position.

The DOR position on changing the 1996 improvement value is that the taxpayer did not appeal the value in 1996, and that was the time to

question the 1996 value; hence the time for appeal has expired. VBR's may be adjusted, and the administrative rules 42.20.501-503 provide for that to occur; however, none of the reasons for such an adjustment are present in this property.

The DOR believes that the legislative intent in SB-195 is to have the 2% phase-in of the 1997 value apply to value increases and decreases alike. The DOR position is made clear in exhibit B, a letter to a state representative from the director of the DOR. The DOR has taken this position because it is necessary to apply the phase-in equally to all property to achieve equalization as required by the Montana Constitution.

The DOR adjusted the value of the subject property downward through its internal review process and recognized the increased depreciation from all causes for 1997. The taxpayer did not exercise his right to appeal in 1996, and the DOR was, therefore, denied the opportunity to change the value in 1996. It is the position of the DOR that this Board cannot adjust the 1996 value.

BOARD'S DISCUSSION

The taxpayer is not unhappy with the $17,350 reduction in value that everyone involved agrees happened. He wishes to pay his property taxes based on the value created by that reduction. He stated that, if he were

paying taxes on the $42,338 value as appraised by the DOR, he would not have filed this appeal. The taxpayer, the DOR, and this Board believe the value indication of the improvements is correct at the $19,500 as appraised. Even though the taxpayer stated that he still has some doubt about the land value, he presented nothing to refute that value.

The taxpayer is hopeful that this Board is able to reduce the 1996 value before reappraisal so that the value being "phased-in" is, in reality, the 1997 appraised value, rather than a value created by a calculation of 2% of the difference between the 1996 value and the 1997 reappraisal value. Unfortunately this Board does not have the jurisdiction to do what the taxpayer is asking.

The argument that the property value did not decline in one year but is only recognized in one year is, of course, a fact in this case. It could also be argued that in volatile market situations, real estate values fluctuate even more frequently than 12 month intervals. What is also a fact is the Montana appraisal plan at the time was based on a cycle that was three years in length. The previous value was placed on the assessment record in 1993 and then adjusted as discussed by both parties. The establishment of a base year for valuation purposes is still the current method under Montana statute 15-7-103(5), MCA.

When faced with an issue of value, where the appraised value is

not disputed by either party, the Board needs to clarify how the appellant was aggrieved by the decision of the local board. It is clear that, in this case, the taxpayer appealed because he wishes to pay his property taxes based on the value the DOR has determined through its recognized appraisal methods by its trained appraisal staff, rather than on a controlled and inflated value determined by a mathematical formula designed to slow the growth of property taxes. His property taxes have been kept artificially high, and he is paying a larger burden of property taxes than he would be if the values were allowed to go where the market indicates them to be. The property taxes of others, those who

had value increases, are being subsidized by this taxpayer because appraised values are not allowed to go where the market indicates them to be.

The Board did a comparison of the taxes being demanded on the subject property, based on the values as assessed, contrasted with those that would be paid if the actual value for 1997 would have been used for the assessment. The results of the comparison show this taxpayer is being asked to pay taxes on $15,974 more in property value than actually exists. The following table illustrates why the argument of the taxpayer is valid. The table contains two assumptions that are identified beneath the table. The land and improvement values have been combined for simplicity.

//

//

//

//

//

//

//

//

Reappraised Value	$42,338
Value Before Reappraisal (VBR)	$58,638
Change in Value	($16,300)

Value Phase-in Calculation

Change in Value	($16,300)
Phase-in Percentage	2%
Amount Phased-in	($326)

Value Before Reappraisal	$58,638

(VBR)

Amount Phased-in	($326)
Phase-in Market Value	$58,312

Estimated Taxes with the Phase-in Provisions		Taxes without the Phase-in Provisions		$ Amount Differences
Phase-in Market Value	$58,312	Market Value	$42,338	$15,974
Taxable Percentage	3.8384%	Taxable Percentage - *	3.8600%	
Taxable Value	$2,238.25	Taxable Value	$1,634.25	$604
Estimated Mill levy - **	0.466	Estimated Mill levy - **	0.466	
Estimated General Taxes	**$1,043.65**	**Estimated General Taxes**	**$762.02**	**$281.63**

Impact on State Mills with the Phase-in Provisions		Impact on State Mills without the Phase-in Provisions		
Phase-in Market Value	$58,312	Market Value	$42,338	$15,974
Taxable Percentage	3.8384%	Taxable Percentage - *	3.8600%	
Taxable Value	$2,238.25	Taxable Value	$1,634.25	$604
State Mills	101	State Mills	101	
States Portion of the Taxes	**$226.06**	**States Portion of the Taxes**	**$165.06**	**$61**

Assumptions: * Taxable percentage remains unchanged at 3.86%.
** Estimated mill levy remains unchanged.

The situation created here is one that indicates an attempt at equity by the stated position that the phase-in of a percentage of value, whether up or down, has to be the same for each taxpayer. It is a situation that, while equitable in application of a method, disregards equalization of value for taxation purposes. This State does not have a constitutional or legislative history of asking its taxpayers to pay taxes on values that are not present. It has, in fact, adopted the premise that taxpayers are to pay property taxes on 100% of market value. One of the primary functions of the appeal system is to make decisions on valuation questions relating to assessment, and the guiding principles have always centered on achieving 100% of market value. For 1997 and 49 more years (based on 2% change/year to achieve 100% of market value), the phase-in system of assessment creates winners: those who will pay on a controlled indication of value that is significantly less than 100% of value; and losers: those who will now pay on something over 100% of value. Higher value properties in 1997, or those of increasing value, are being under-assessed even though they may be appraised correctly. Conversely, lower value

properties in 1997, or those of decreasing value, are being over-assessed even though they may be appraised correctly. Property with increasing value has essentially been granted partial tax exemption at the expense of property with decreasing value.

The amount of assessment that is being made over and above the true value of the property is effectively no longer a tax since the property tax is "ad valorem". The DOR appraisal indicates the value is not there, and through the assessment the resultant collection of money becomes something other than a tax on value, and is in effect a confiscation.

The DOR is charged with equalization of values by Montana statute, 15-9-101, MCA. There is nothing in the record to indicate that the DOR has not done so. The values may very well be equalized, but the market values as determined are not being utilized for assessment purposes. The market values merely are used to determine a basis for a "phase-in" that results in the tax burden being shared in an unequal fashion. The DOR cannot be faulted for following a procedure determined for it by the Montana

legislature. As an executive branch agency it has a duty to faithfully execute the law as established by the legislature.

"It is also a rule of statutory construction that the legislature acted with full knowledge and information as to the subject matter and existing conditions including the construction placed on previous law by executive officers acting under it." Helena Valley Irrigation Dist v.St. Hwy. Comm'n, 150 Mont. 192, 433 P 2d 791. The DOR is not at liberty to add something they might believe was omitted by the legislature, nor omit something that is written in the statute. The letter written by the DOR Director (Ex B) is an explanation to a legislator of how the DOR is administering a law that became effective over ten months before the letter was dated. That exhibit is not in itself indicative of legislative intent. We agree that the legislature intended the method of phase-in of value to be applied to properties of decreasing value as well as to properties experiencing an increase in value.

1-2-102, MCA, instructs: In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is

inconsistent with it.

15-1-101(1)(b), MCA defines assessed value as "the property value as defined in 15-8-111." 15-8-111(4), MCA, states, "For purposes of taxation, assessed value is the <u>same as appraised value</u>." (emphasis supplied) It is clear in this case that the appraised value for 1997 and the value upon which the taxes are being assessed are two different figures. We are forced to stray from the equation of appraised value and assessed value being the same. This creates an inconsistency between 15-8-111(4), MCA, and 15-7-111(1), MCA, that must be controlled by the particular provision of 15-8-111(4), MCA, <u>for purposes of taxation, assessed value is the same as appraised value</u>.

The decisions of the local tax appeal boards, this Board, and the Courts on judicial review, have heretofore been determinative of value as they relate to taxation. The provisions of a "phase in" as demonstrated here negate even the application of a reduction in value if found by any reviewing authority because, under those provisions, the change would be "phased-in" from the value before reappraisal. For the appellant who questions the market

value of his property under 15-7-102, MCA, 15-15-102, MCA, 15-2-301, MCA, or 15-2-303, MCA, even if a significant reduction in value was granted, there would be only the benefit of 2% of the difference between the reviewing authority decision and the value before reappraisal. Not only has the equalization of assessment been disturbed but so has the impact of review that is contemplated by the Montana Constitution and the Montana Code Annotated. The right of review remains, but the result is minimal if, in fact, valuation changes are found necessary. "It is STAB's duty to determine the individual effect of the discriminatory method of appraisal before STAB can affirm, modify, or reverse the County Tax Appeal Board." Dept. of Revenue v. Countryside Village, 205 Mont. 51 (1983). The right of review remains, but the taxpayer also has a right to the remedy, and that right is lost by the action of 15-7-111(1),MCA.

The taxpayer, seeing the only way to benefit from the known reduction in value in this case, asked this Board to adjust the 1996 value before reappraisal. The DOR argued correctly that this Board does not have the jurisdiction to alter the 1996 value. The time to change that value was

during the timely periods offered in 1996. That argument is, however, suggesting a crystal ball approach, since there was no way to know in 1996 that, even if the value declined in 1997, the assessed value would decrease at such a significantly restrained rate. Quite simply, to bring an appeal based on future possibilities would, in all likelihood, not be successful.

The Montana Supreme Court held in State ex rel. Schoonover v. Stewart, 89 Mont. 257 (1931), that; It is required that there shall not be any unfair discrimination among the several counties, or between the different classes of taxable property in any county, or between individuals.(emphasis supplied)

The Montana legislature has supported the premise that is contemplated by the Montana State Constitution and the decisions of the Montana Courts by providing a policy in Title 15 of the Montana Code Annotated.

> 15-7-131. Policy. It is the policy of the state of Montana to provide equitable assessment of taxable property in the state and to provide for periodic revaluation of taxable property in a manner that is fair to all taxpayers.(emphasis supplied)

The appeal of this taxpayer must be denied by this

Board as it has no authority to change the 1996 value. The road that was chosen to find the solution to the taxpayers' real complaint, altering the 1996 value to minimize the phase-in effect and to pay taxes based on the known value, is a road this Board cannot follow. The matter of equalization of values for assessment and compliance with the constitutional mandate to "Appraise, assess and equalize the valuation of all property which is to be taxed in the manner provided by law" is, of course, a duty of government itself.

It is the opinion of this Board that there are four areas where the phase-in provisions of 15-7-111, MCA, create conflict of statute, or create situations that are squarely at odds with statute and the Montana Constitution. These issues are: equalization of values for taxation purposes, the principles of statutory construction, the consfication of property, and the right of remedy.

Not only can the Board not change the 1996 value in this case, but it cannot formally rule with any jurisdiction on the constitutional issues raised by this appeal. The Montana Supreme Court, in Larson v. State and DOR, 166 Mont.

449 (1975), has retained that function for the courts.

This taxpayer has filed an appeal with this Board, appeared and presented testimony at hearing, and deserves a reasoned decision from this Board. We believe a court of competent jurisdiction may do what this Board cannot do and find the disparity in taxation created by the "phase-in" provisions of 15-7-111 unconstitutional.

CONCLUSIONS OF LAW

1. Article VIII, Section 3, Constitution of the State of Montana. Property tax administration. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

2. 15-7-131, MCA, Policy. It is the policy of the state of Montana to provide for equitable assessment of taxable property in the state and to provide for periodic revaluation of taxable property in a manner that is fair to all taxpayers.

3. 15-7-111, MCA. Periodic revaluation of certain taxable property. (1) The department of revenue shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. All other property must be revalued annually.

The revaluation of class three, four, and ten property is complete on December 31, 1996. The amount of the change in valuation from the 1996 base year for each property in classes three, four, and ten must be phased in each year at the rate of 2% of the total change in valuation.

4. 15-7-112, MCA. 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.

5. 15-8-111(4), MCA. For purposes of taxation, assessed value is the same as appraised value.

6. 1-2-102, MCA. In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

7. 42.20.501-503 Administrative Rules of Montana

8. *State ex rel. Schoonover v. Stewart,* 89 Mont. 257

(1931)

9. *Larson v. State and DOR*, 166 Mont. 449 (1975)

//

//

//

//

//

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that this appeal be denied, and the subject property shall be entered on the tax rolls of Toole County by the assessor of that county at the 1997 tax year value of $22,838 for the land and $19,500 for the improvements as determined by the DOR and affirmed by the Toole County Tax Appeal Board.

Dated this 12th of May, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

_____

(S E A L)

_____

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, 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.