



STEVE BULLOCK
GOVERNOR

Montana Tax Appeal Board

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February 13, 2015

Christos and Tammi Vlahos
832 Granite Estates Lane
Billings, Montana 59101

Teresa Whitney
Nicholas Gochis
Tax Counsels
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

Re: Christos and Tammi Vlahos v. Department of Revenue, PT-2014-3

Greetings:

The Board regrets that it made two errors in its recently issued decision on this matter. We are now issuing an amended decision to correct those errors.

We made an incorrect reference to the Department of Revenue appraiser at the hearing before the Yellowstone County Tax Appeal Board. That appraiser was Lynda Moore and not John Elliott (page one of the decision.)

We also made an incorrect reference to the Department of Revenue attorneys on the certificate of service. The attorneys of record were Teresa Whitney and Nicholas Gochis and not Amanda Myers and Michele Crepeau.

Sincerely,

A handwritten signature in cursive script that reads "David L. McAlpin".

David L. McAlpin
Chairman

Copy: Yellowstone County Appraisal Office
Yellowstone County Tax Appeal Board

BEFORE THE MONTANA TAX APPEAL BOARD

CHRISTOS and TAMMI VLAHOS,)	DOCKET NO.: PT-2014-3
)	
Appellants,)	<u>NUNC PRO TUNC</u>
)	FINDINGS OF FACT,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

Statement of Case

Christos and Tammi Vlahos (Taxpayers) appeal a decision of the Yellowstone County Tax Appeal Board (CTAB) of the Department of Revenue's (DOR) valuation of their property located at 832 Granite Estates Lane, Billings, Montana. The Taxpayers argue the DOR overvalued the property for tax purposes and seek a reduction in the value assigned to the land and improvements. The Yellowstone County Tax Appeal Board held a hearing in the appeal on July 23, 2014 and upheld the DOR valuation, as modified before the hearing. Christos Vlahos represented himself and his spouse as Taxpayers. Lynda Moore, DOR residential appraiser, presented testimony, and evidence in opposition to the appeal of the DOR's valuation on behalf of the Montana Department of Revenue. Taxpayers timely filed an appeal of this decision with the Montana Tax Appeal Board (Board).

The Board set the matter to be heard on the record without objection by the parties. The record includes all of the materials submitted to the county tax appeal board, the transcript of the Yellowstone County tax appeal hearing and additional materials submitted pursuant to the scheduling order in this matter.

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 subject property based on a preponderance of the evidence in the record.

Issue

The issue before the Board is whether the Department of Revenue valued the subject property appropriately for tax purposes for tax year 2014, adjusted to the July 1, 2008 lien date as set by administrative rule. ARM 42.18.124 (b).

Summary

Based on the record herein and applicable law, the Board affirms the values of the land and primary residence, and reduces the value of the detached garage/apartment.

Findings of fact

1. All parties had an opportunity to present documentary evidence.
2. The subject property is a single-family home with attached garage, and another detached garage containing a second-floor apartment, both on a 51,729-square-foot residential lot with the following legal description:

Lot 4, Granite Estates Lane Addition to the City of Billings, County of Yellowstone, State of Montana, geocode 03-1034-20-3-02-27-0000. Appeal Form, DOR Ex. A, p. 1; See also the quitclaim deed.

3. DOR adduced the following pieces of evidence:
 - A Property Record Card for the subject property. DOR Ex. A at 1-4.
 - An exterior sketch of the house. DOR Ex. A at 5.
 - Logs or notecard keeping track of appraisers' site visits. DOR Ex. A at 6.
 - Pictures of the subject property. Ex. A at 7.
 - An exhibit depicting Neighborhood 300, which DOR contends, is closely aligned and similar to market 3 area where the subject property is located. Ex. A at 8; See also Hr'g Tr. 43:12-25.
 - A vicinity map of the subject property. Ex. A at 9.
 - An exhibit B providing 22 sales listed in Neighborhood 300 in Lockwood prior to July 2008.
 - A Berkshire Hathaway Home services listing of the subject property for \$480,000. DOR Ex. C at 1-8.
4. The Taxpayer adduced the following pieces of evidence:
 - A July 23, 2014 Comparative Market Analysis (CMA) by Kim Edinger of Century 21 Home brokers estimating the property market value at \$408,000 (Edinger Analysis). Ex. 1
 - An August 21, 2014 Comparative Market Analysis (CMA) by W.F. Frosty Erben of Brokers Keller Williams, estimating the market value at \$389,700. (Erben Analysis) Ex. 1
 - A spreadsheet printout tabulating the costs of the lot and construction costs.

- A photocopy of a check showing the payment amount for a one-half interest in the lot.
 - A quitclaim deed for the lot.
 - Yellowstone County property tax statements for tax years 2013 and 2014.
5. For tax year 2014, the DOR originally assigned a total property value of \$476,212 after the informal review. Immediately prior to the CTAB hearing, DOR reduced the value of the improvements to \$400,385, and reduced the land value from \$62,951 to \$47,213 due to the size and unusual shape of the lot. Thus, the total value was reduced from \$476,212 to \$447,598. DOR Resp. to Admin. Hr'g Status questionnaire pp. 1-2, Hr'g Tr. 2:9-20.
 6. DOR phased-in the 2014 property value from January 2009 to December 2014 in equal increments to ease the impact of the increased valuations for the 2009 to 2014 appraisal cycle. Hr'g Tr. 8:1-9.
 7. DOR valued the subject property through the Replacement Cost New Less Depreciation (RCNLD) method of valuation, also commonly known as the "cost" method. DOR Resp. to Admin. Hr'g Status questionnaire, p. 2.
 8. DOR determined, through aerial photographs, that construction commenced on the house sometime in 2011 and was completed by 2012. The new construction escaped assessment until 2014. Back taxes

were only issued for tax year 2013. DOR Resp. to Admin. H'rg Status Questionnaire, p. 2.

9. The DOR computer assisted land pricing (CALP) multiple regression model determined a base lot size in Neighborhood 300. The CALP regression model set a value per square foot for the neighborhood, based on sales of 22 different properties, between May 2005 and June 2008, which sold prior to the statewide lien date of July 1, 2008. This data was used to support the value set by the DOR for the subject land. DOR Ex. B at 1.
10. CALP computed a base lot size of 15,000 square feet and a base rate of \$2.85 per square foot. CALP also determined that if the lot is larger or smaller than the base size, the residual rate of \$0.55 per square foot is added or subtracted from the base rate. DOR Ex. B at 1.
11. The lot size was determined to be 51,729 square feet. When DOR applied the base rate and the residual rate to the subject property, the computation yielded a lot value of \$62,951. *Id.*
12. DOR determined that a 25 percent deduction was warranted because of the odd lot shape and because of the easement used as an irrigation ditch through the lot. *Id.*; CTAB Tr. 25:2-9, DOR Resp. to Admin. H'rg Status Questionnaire, p. 2. According to the DOR appraiser's log, the

ditch takes up a “large percentage of the land.” DOR Ex. A at 6. Thus, applying the 25 percent reduction, the land was valued at \$47,213.

13. The Taxpayers filed an appeal with the Yellowstone County Tax Appeal Board (CTAB) on May 21, 2014, stating:

Your assessed value is overpriced for this Lockwood neighborhood; I’m surrounded by trailer houses. We only paid \$12,500 for the land and the buildings cost \$205,000, we have loan documents to show it. I also have listed the property for sale at your assessed price to prove that it’s too high and we have had zero offers and little interest. Also, 24,000 sq. ft. of this lot is used up by the Lockwood ditch easement which is outside of its easement boundaries by 10 ft. We are not allowed to use it. Please adjust your assessment. I would agree to around a \$300,000 value to resolve this matter and avoid any future appeals. *See* Appeal Form.

14. The Taxpayers then asked for a total appraised value of \$230,000 for the subject property, consisting of \$25,000 for the land and \$205,000 for the buildings. Appeal Form; DOR Resp. to Admin. Hr’g Status Questionnaire, p. 2.
15. The Yellowstone CTAB heard the appeal on July 23, 2014. The CTAB adopted the revised DOR improvement value of \$400,385, and affirmed the DOR land value of \$47,213. *See* Appeal Form.

16. The Taxpayers appealed the Yellowstone CTAB decision to this Board on July 30, 2014, stating:

“There were mistakes made on the (State of Montana Property Record Card form.) Some were addressed and corrected 10 minutes prior to the hearing taking place (which lowered assessed values from 476k to 448k) and others were not brought back up during the board’s decision-making process, which seemed strange. I am not challenging the people involved just the computer program that generates these numbers as I can see possible flaws in the system. ... I have reviewed my actual cost of construction and bank cost breakdown for this entire property and can only justify 280k in cost and labor. If I could sell it for the tax assessed price of 480k that would net a profit of 200k on this property – 57% profit. I’ve never made that kind of profit margin in the last 20 years of building and selling homes. It is more like 10% to 20% max. I can provide these bank documents if needed. The two realtors I’ve talked to both say they could sell it for around 400k in this neighborhood (Kim Edinger 408K, (Frosty Erban 390k). Both these realtors live [in] and sell a lot of homes in Lockwood and, in my opinion, have the most experience in the area. I have tried to sell it at your price for the last 4 months with zero offers. Again, I appeal this decision. 400k should be a fair and acceptable assessment. *See Appeal Form.*

17. Taxpayers testified that there is a 20-foot utility ditch (easement) used by the City of Lockwood and that this easement is about 40 feet (into

his property) from the property line. Hr'g Tr. 18:1-6. In the appeal, Taxpayers allege that the easement takes up 24,000 square feet of the lot. *See* Appeal Form.

18. There are two living units on this property: the main house and an additional full living unit over the detached garage, which was valued as an additional house with an attached garage. DOR Resp. to Admin. Hr'g Status Questionnaire, p.2.
19. DOR determined that the two-story garage built in 2009 was a separate dwelling, because it had a stand-alone two-bedroom apartment over the garage. DOR valued this building at \$88,200. DOR Ex. A at 2. The appraisal for this building was done as a work around on the DOR valuation software, which does not allow a function to value this atypical building with both garage amenities below and a habitable apartment above. *See* DOR Ex. A at 7 (Pictures 4 and 5), Hr'g Tr. 28:17-24.
20. DOR attempted to value the two-story garage as an "additional house with an attached garage." DOR Resp. to Admin. Hr'g Status Questionnaire, p. 2.
21. To achieve this valuation, the DOR "tweaked" the computer system by entering a fictitious one square-foot marker for the first floor, which it valued at \$28,614 per square foot. The record indicates that the two-

story garage does not have any living space on the first floor. The entire first floor functions as a garage. Hr'g Tr. 29:1-16.

22. DOR then also valued the first floor as a stand-alone 1,500 square foot finished garage as an "addition" with a value of \$44,127, an amount of \$29.33 per square foot, and the finished deck as an "addition" of \$1,321 to the values determined for the first and second floor of this same building. *Id.*

23. DOR conceded that the first floor coded at one square foot was an "error in the system" and then amended the valuation to reflect a deduction of \$28,614 from its initial valuation of the garage and second floor apartment. Hr'g Tr. 28:8-12.

24. DOR valued the main house, completed in 2012, at \$253,155. Additions, such as a 453-square-foot deck (\$5,894) and an 885-square-foot garage enhanced the value of this dwelling by \$35,690 and comprised part of this total value. DOR Ex. A at 3.

25. DOR applied the following market adjustment factors to the detached garage and apartment built in 2009:

- Condition-Desirability-Utility Factor: Good (8)
- Grade 4 – FAIR (Grade Factor 0.85)
- A County Index of 1.010
- Economic Condition Factor (ECF) of 0.95 DOR Exh. A at 2.

The market adjustment factors and depreciation, when applied to the calculations, adjusted the value of the two-story garage from \$110,350 to \$88,200. DOR Ex. A at 2.

26. DOR applied the following market adjustment factors to the main house built in 2012:

- Condition-Desirability-Utility Factor: very good (9)
- Grade 6 – Good Grade (Grade Factor 1.33)
- A County Index of 1.010;
- Economic Condition Factor (ECF) of 0.95. DOR Ex. A at 3.

The market adjustment factors and depreciation, when applied to the calculations, adjusted the value of the main house from \$253,155 to \$319,830. DOR Ex. A at 3.

29. The Property Record Card shows that DOR then made a further deduction of \$7,645 under the “OBY/Flat Values.” There is nothing in the record explaining this discount, and DOR does not explain why this further deduction was applied. DOR Ex. A at 1.

30. Taxpayers provided an exhibit showing all of their actual costs for the subject property: the lot cost \$25,000; the construction costs of the stand-alone garage and apartment were \$40,000; and the construction costs of the house were \$208,751.28.

31. Taxpayers presented two Comparative Market Analyses for the subject property. The analyses were prepared by W.F. Frosty Erben GRI, of

Premier Brokers Keller Williams of Billings, Montana, and by Kim Edinger of Century 21 Hometown Brokers of Billings, Montana.

32. The Erben analysis, dated August 21 2014, recommended a sales price of \$389,700 for the subject property. This analysis selected comparable properties selling in the price range of \$357,900 to \$415,600 with a median value of \$403,900. Erben indicated that there were five comparable properties in the neighborhood 300. These properties were close in age to the subject property and had similar amenities. The analysis did not "trend" back the reported values to the July 1, 2008 statewide lien date.
33. The Edinger analysis, dated July 23 2014, recommended a sales price of \$408,000 for the subject property. This analysis selected comparable properties selling in the price range of \$406,400 to \$409,500 with a median price of \$408,000. Edinger provided a list of six comparable properties. The analysis did not "trend" back the reported values to July 1, 2008.
34. The homeowner's insurance certificate shows that the house is insured for \$347,160.
35. Taxpayers provided a photocopy of a May 4, 2007 check for \$12,500 as evidence of what they actually paid for a one-half interest in the lot.

36. The DOR appraiser testified that neighborhood 300 has a trailer park to the south west of the subject property. *See* Hr'g Tr. 45:4-15. The trailer park is on the south side of Becraft Lane. *Id.* In addition, Taxpayer testified that there was "a lot of train stuff" near the vicinity of the subject property thus making it less desirable in his estimation. *See* Hr'g Tr. 44:17. The DOR appraiser considered the subject property more desirable because it is located at the end of a "quiet" cul-de-sac. *See* Hr'g Tr. 45:18-25.

Principles of Law

1. The Montana 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. §5-8-111, MCA.
3. Residential lots and tracts are valued using 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); *Perretti v. Montana Department of Revenue*, 2013 WL 5923066, at *4.
4. For the taxable years from January 1, 2009, through December 31, 2014, all class four property, which includes residential property, must be

appraised at its market value as of July 1, 2008. ARM 42.18.124(b); *Rainbow Senior Living of Great Falls v. Montana Department of Revenue*, 2013 WL 6062167, at *3; *Keck v. Montana Department of Revenue*, 2013 WL 2476838, at *3.

5. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. ARM 42.18.110(12); *Rainbow Senior Living of Great Falls v. Montana Department of Revenue*, 2013 WL 6062167, at *3; *Keck v. Montana Department of Revenue*, 2013 WL 2476838, at *3.
6. To achieve statewide equalization, all residential property in the state must be appraised at its market value as of July 1, 2008. ARM 42.18.124(1)(b).
7. The Montana 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.

Board Discussion and Conclusions of Law

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 2014.

Generally, the appraisal by the Department of Revenue is presumed to be correct and the Taxpayer has the burden of overcoming this presumption. The Department of Revenue bears 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 DOR may use different approaches (for example, market, income, and/or cost approaches), depending on available data, to appraise a property. *See, e.g., Albright v. Montana Department of Revenue*, 281 Mont. 196, 933 P.2d 815, (1997). In this instance, the DOR had discretion to use the “cost” approach.

The Board recognizes that a mass appraisal system will produce reliable indicators of market value most, but not all the time. The Board finds, however, that on the record presented, the inputs and computation affecting the final valuation of the two-story garage and apartment were not supported in the record. This Board cannot rely on the accuracy of the DOR valuation in this instance.

DOR’s evidence and exhibits support DOR’s valuation of the lot and the main house. However, DOR has not provided credible evidence to support the valuation of the two-story garage and apartment. Taxpayers have met their burden of proof by casting doubt as to the method of valuation of

the two-story garage and apartment and the final valuation amount. First, the “error in the system” casts doubt whether the evidence supports the DOR initial valuation of the two-story garage and apartment. *See* ¶ 22. Secondly, the testimony of the DOR appraiser that they “tweaked” the computer system in valuing the two-story garage and apartment, leads the Board to look more closely at the DOR valuation. *See* ¶ 20.

Taxpayer has requested that the Board value the subject property in the range of \$390,000 to \$400,000. The crux of Taxpayer’s argument is that DOR double counted the cost of the shared roof and foundation systems for the garage in calculating the taxable value of the garage and apartment. Taxpayer contends that the garage and the separate apartment should not be valued separately. The Taxpayer testified that he did not duplicate expenses in constructing both the garage and the “dwelling” on top of the garage. Because the structure shares a roof and foundation, it should not be valued as an “additional house with [an] attached garage.” The Taxpayer contends they are not two separate buildings and therefore their shared systems, such as roof and foundation, should not be double counted for the purposes of valuation. Further, he argues, DOR incorrectly charged him \$29.33 per square foot for 1,500 square feet for the garage, as if the garage had its own “separate roof system” and as if it was its “own separate building.”

The threshold question to consider is whether DOR overvalued the two-story garage and apartment for the purposes of valuation. The two-story building, which consists of a 1,500-square-foot garage space, 400-square-feet of second floor living area and a 100-square-foot attic, was valued at \$110,350 before market adjustment factors and depreciation were applied. After the market adjustment factors and depreciation were applied, its value reduced to \$88,200. The work around the DOR appraiser applied to the computer model is an attempt to value this building as a two-story apartment with an attached garage. The Board concludes that the DOR overvalued the two-story garage and apartment as an additional house with an attached garage by not accounting for duplicated building systems. The Property Record card shows that DOR attempted to justify the valuation by subtracting \$28,614 from the Replacement Cost New Less Depreciation amount. The correct computation should have been to subtract \$28,614 from the property record page prior to running the software to re-compute the replacement cost new of the dwelling built in 2009. The DOR's subtraction and the computation described above are not mathematical equivalents. When thus applied, the computation reduces the final valuation in favor of the taxpayer. The correct value of the garage and apartment should be \$65,329. The Board accepts the DOR's reduction of \$7,645 in the "OBY/Flat Values" category of the Property Record Card.

The Board finds that the total value of the subject property should be \$424,727, as follows:

	\$319,830 DOR RCNLD value for the main house
+	\$47,213 DOR land value
+	\$65,329 MTAB amended garage/apartment value
-	\$7,645 DOR deduction for "OBY/Flat values"
	<u>\$424,727</u>

Taxpayer further contended that, because the actual costs of construction for the improvements were about "280k in cost and labor," the DOR's use of the "cost" approach should arrive at a value close to his actual construction costs. While the Taxpayer built the improvements for less than what the DOR valued the improvements, we note that the DOR's legal mandate is to value the subject property at market value, not at the cost expended by the Taxpayer. This is especially true in this instance where the Taxpayer is a professional builder and developer, who realized substantial cost savings by using his own labor and expertise in improving the subject property.

However, taxpayers should be able to understand how their appraised value is calculated and be confident in that calculation. The record in this case does not reflect these goals.

Therefore, the Board affirms in part and reverses in part the CTAB decision consistent with this opinion.

Order

IT IS THEREFORE ORDERED by the Montana Tax Appeal Board that the subject property be entered on the tax rolls of Yellowstone County for 2014 tax year at a total property value of \$424,727, as determined by this Board.

Dated this 13th day of February 2015.

BY ORDER OF THE
MONTANA TAX APPEAL BOARD

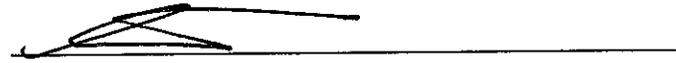


DAVID L. McALPIN, Chairman

(SEAL)



STEPHEN A. DOHERTY, Member



VALERIE A. BALUKAS, 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 13th day of February, 2015, 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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