

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ARTHUR R. VENDER,)	
)	DOCKET NO.: PT-2009-105
)	
Appellant,)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY
)	FOR JUDICIAL REVIEW
Respondent.)	

Statement of Case

Arthur R. Vender (Taxpayer) appealed a decision of the Lewis and Clark County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of his property identified as Lot 00E, Phillips Cabin Sites Tract E, Section 11, Township 13 North, Range 07 West, Lewis and Clark County, State of Montana. The Taxpayer argues the DOR overvalued the property for tax purposes, and he seeks a reduction in value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on September 13, 2010, the Taxpayer represented himself, providing testimony and evidence in support of the appeal. Mary Vender also testified on behalf of the taxpayer. The DOR, represented by Brendan Beatty, Tax Counsel; Terry Swope, Area Manager and Brian Connolly, DOR appraiser, presented testimony and evidence in opposition to the appeal.

The Board having fully considered the testimony, exhibits and all matters presented, finds and concludes the following:

Issue

The issue before this Board is whether the Department of Revenue erred in valuing the subject property for tax purposes for tax year 2009?

Summary

Arthur R. Vender is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board upholds the decision of the Lewis and Clark County Tax Appeal Board.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present evidence, verbal and documentary.
2. The subject property is 2.25 acres, used for recreational purposes, on Stemple Pass, with the following legal description:

Lot 00E, Phillips Cabin Sites Tract E, Section 11, Township 13 North, Range 07 West, Lewis and Clark County, State of Montana. (Exh. B.)
3. For tax year 2009, the DOR appraised the subject property at a value of \$69,648 - \$54,425 for the land and \$15,223 for the improvements (as determined through the informal appeal process). (DOR Exhs. A & B.) The improvement values are not at issue in this matter.
4. The Taxpayer filed a Request for Informal Review (AB-26) on September 28, 2009, asking for an informal review meeting because of a 200% increase over 6 years. (Exh. A.)
5. The DOR adjusted the improvement value, but did not adjust the land value. (Exh. A.)
6. The Taxpayer filed an appeal with the Lewis and Clark County Tax Appeal Board (CTAB) on July 1, 2010, stating:

“Land value was determined by sales near Lincoln along the Blackfoot River and said property didn’t have large dredging cuts & rock piles taking up 50% of the acreage. Over 75% of the trees in area are dead due to disease & insects.” (Appeal Form.)

7. The Lewis and Clark CTAB heard the appeal on July 22, 2010, and upheld the DOR land value for the subject property. (Appeal Form.)
8. The Taxpayer argues the property is worth about half the value of neighboring properties because of an old placer mining claim and the damage incurred during the 1870’s. (Vender Testimony.)
9. Pictures submitted by the Taxpayer at the CTAB hearing attempted to show the deficiencies described by the Taxpayer. (Vender Testimony, CTAB Exh. 2, pp. 1-11.)
10. The Taxpayer appealed to this Board on August 14, 2010, stating:

“The land that is used for comp. values is worth more than my land. In past years, the state appraisal office has used false figures to increase property values.” (Appeal Form.)
11. Taxpayer testified that his property was less valuable due to excessive beetle-kill, as well as damage from old placer mining. Taxpayer also testified that the comparable properties used by the Department of Revenue were geographically distanced from the subject property, and thus not very comparable. (Vender Testimony.)
12. A CALP (Computer Assisted Land Pricing) model was used by the DOR to value the subject land. This resulted in a land value for the subject property of \$54,425. (DOR Exh. D.)
13. The CALP in this instance is based on 50 vacant land sales surrounding the small town of Lincoln. The CALP sales and the subject property are all located in Neighborhood 661-1, which is a geographic area designated by the DOR as having similar characteristics for purposes of valuation.

14. Based on the CALP, the DOR established a base rate size of one acre with a value of \$45,288 for the first acre and \$7,316 an acre for any residual acreage. (Swope Testimony, DOR Exh. D.)
15. During the hearing, the Taxpayer submitted pictures of four properties used in the CALP claiming they did not have the same deficiencies as the subject property. (Vender Testimony, Exhs. 1-4.)
16. Connolly testified that he was familiar with the subject property and that he believed that the CALP accurately valued the subject property. He further testified that the subject property is similar to many recreational properties in the Lincoln area, and is a desirable property due to the creek frontage and year-round access on Stemple Road. (Connolly Testimony.)

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. Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. (§15-8-111(2)(a), MCA.)
4. Residential lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models reflect July 1, 2008, land market values. (ARM 42.18.110(7).)

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).)
6. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (§15-2-301(4), MCA.)

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 land for tax year 2009. In this instance, we will review whether the DOR properly valued Taxpayer's property for tax purposes.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428, P. 2d, 3, 7, *cert. denied* 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

The Board reviewed whether the DOR valued the subject land correctly. The DOR is charged with appraising the property at full market value pursuant to §15-8-111, MCA. The most appropriate way to appraise property is to use the actual sale of the property or to extract data from the market, such as other sales of comparable properties. The DOR used a CALP model based on verified land sales in Neighborhood 661-1, which includes the subject property. In this case, the CALP model indicated a value of \$45,288 for the first acre of land and \$7,316 per acre for each residual acre. Thus, the subject land was

valued at \$54,425 for the 2.25 acres. All the CALP sales occurred prior to the assessment date of July 1, 2008, and were within Neighborhood 661-1.

The Taxpayer argues the CALP sales are unreliable due to the comparable properties being located closer to Lincoln and in some cases located on the Blackfoot River. He also argues the subject property has less value because of a high percentage of pine beetle infested trees and being an old mining claim with half of the property being covered by dredges and rock piles.

The DOR claims this is primarily recreation property with a creek running through it which makes it very desirable. The DOR testified the evidence presented in the CALP is a long standing appraisal method and accurately values the subject property.

This Board finds the evidence presented by the DOR did support the values assessed. There is no evidence presented that the subject property is more affected by beetle-kill than any of the surrounding properties, nor is there any indication that the property suffers from any other external deficiencies which would lower its market value. This Board also concludes the Taxpayer has not provided evidence that the DOR appraised value for July 1, 2008 is not fair market value.

Thus it is the opinion of this Board that the assessed value set by the DOR is correct and the decision of the Lewis and Clark County Tax Appeal Board is affirmed.

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 Lewis and Clark County at a 2009 tax year value of \$69,648 as determined by the Department of Revenue and affirmed by the Lewis and Clark County Tax Appeal Board.

Dated this 1st of October, 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 1st day of October, 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:

Arthur R. Vender	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
1606 – 8 th Avenue South	<input type="checkbox"/> Hand Delivered
Great Falls, Montana 59405	<input type="checkbox"/> E-mail

Terry Swope	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Brian Connolly	<input type="checkbox"/> Hand Delivered
Lewis & Clark County Appraisal Office	<input type="checkbox"/> E-mail
316 North Park Avenue Room 106	<input type="checkbox"/> Interoffice
Helena, Montana 59624-1772	

Michelle R. Crepeau	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Office of Legal Affairs	<input type="checkbox"/> Hand Delivered
Department of Revenue	<input type="checkbox"/> E-mail
Mitchell Building	<input checked="" type="checkbox"/> Interoffice
Helena, Montana 59620	

Mike Noble, Chairman	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Lewis & Clark County Tax Appeal	<input type="checkbox"/> Hand Delivered
Board	<input type="checkbox"/> E-mail
1519 Ohio	
Helena, Montana 59601	

/s/ _____
DONNA EUBANK
Paralegal