

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

JAMES P. BRAGER,)	DOCKET NO.: PT-2009-44
)	
Appellant,)	
)	FACTUAL BACKGROUND,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

Statement of Case

James P. Brager (Taxpayer) appealed a decision of the Missoula County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of his properties identified as 12901 and 12903 Lewis and Clark Drive, Lolo, Montana, Tract in NW 1/4, Plat C’1, 1-11-20, Section 01, Township 11N, Range 20W, of Missoula County, State of Montana. The Taxpayer argues the DOR overvalued the properties for tax purposes, and he seeks a reduction in value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on August 25, 2010, the Taxpayer represented himself and provided testimony and evidence in support of the appeal. The DOR, represented by Michele Crepeau, Tax Counsel; Wes Redden, Area Manager and Larry Barrett, DOR residential and agriculture appraiser, presented testimony and evidence in opposition to the appeal.

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

Issue

The issue before this Board is did the Department of Revenue determine an appropriate market value for the subject property for tax year 2009¹?

Summary

James P. Brager is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board affirms the decision of the Missoula 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 properties are two single family residences on two contiguous parcels of land. 12901 Lewis & Clark Drive consists of a log cabin with 894 square feet plus a loft of 77 square feet built in 1890 situated on a one acre parcel. 12903 Lewis & Clark Drive consists of a rental house with 1,080 square feet built in 1920 situated on a five acre parcel. The legal description is as follows:

12901 and 12903 Lewis and Clark Drive, Lolo, Montana, Tract in NW 1/4, Plat C'1, 1-11-20, Section 01, Township 11N, Range 20W, of Missoula County, State of Montana. (Exhs. A & B.)
3. A map prepared by the Missoula County Survey department shows both properties in a flood plain. (Brager Testimony, Exh. C.)

¹ The Taxpayer raised an issue relating to his filing of an appeal under a separate statutory section, which he believed could be appealed with the current appeal. This appeal does not address this separate statutory issue, which will be addressed by the Board under a separate appeal number.

4. The Taxpayer testified the structures are very old and in disrepair. He also believes if the structures are damaged he would not be able to afford to rebuild because of the floodplain. (Brager Testimony.)
5. For tax year 2009, the DOR adjusted the appraised value during the informal review process (AB-26) for each property as follows;
 - a. Parcel 12901 value was adjusted to \$159,624; \$109,200 for the land and \$50,424 for the improvements.
 - b. Parcel 12903 value was adjusted to \$172,686; \$113,688 for the land and \$58,998 for the improvements. (Barrett Testimony, Exhs. A & B.)
6. The DOR used the cost approach to value the subject improvements and a Computer Aided Land Pricing (CALP) model to value the land. (Barrett Testimony, Exhs. A & B, CTAB Exh. J.)
7. The CALP is based on sales of 78 different properties. All sales and the subject property in the CALP are located within Neighborhoods 19, 20 and 21 of Missoula County (the Potomac valley). There was no indication that the sales were not arms length sales. (Redden Testimony, CTAB Exh. J.)
8. The DOR determined that one acre is the base size for valuing lots in Neighborhoods 19, 20 and 21. The first acre is valued at \$109,200 and each additional acre would be valued at \$3,400. (CTAB Exh. J.) All of the sale properties used in the CALP were bare tract land and had sale dates prior to the valuation date of July 1, 2008. (Redden Testimony.)
9. The Taxpayer filed an appeal with the Missoula CTAB on December 4, 2009, citing “These two properties are located in the floodplain. Houses & buildings are not on approved foundations according to present regulations. In the event these homes are destroyed I would probably not be able to rebuild (flood plain Regs) In that case the land value should be less than land outside of the floodplain also.” (Appeal Form.)

10. The Taxpayer contends his property values are \$94,900; \$53,000 for the land and \$41,900 for the improvements located at 12901 Lewis & Clark Drive and \$111,000; \$61,400 for the land and \$49,600 for the improvements located at 12903 Lewis & Clark Drive. (Appeal Form.)
11. The Missoula CTAB heard the appeal on March 2, 2010, and adjusted the DOR value of the land on both properties. The CTAB used sales of one acre parcels within the Taxpayer's immediate neighborhood to establish a base acre value of \$85,300 and a residual acre rate of \$1,122. This adjustment resulted in a land value for 12901 Lewis & Clark Drive of \$85,300 and for 12903 Lewis & Clark Drive of \$89,788. The CTAB declined to reduce the value of the improvements. (Appeal Form attachment.)
12. The Taxpayer appealed to this Board on March 12, 2010, stating: "The MCTAB stated in a letter that they believe the buildings on the two properties are probably overvalued. I want to resolve this." (Appeal Form.)
13. The Taxpayer accepts the CTAB value on the land and is only contesting the value of the improvements set by the DOR. (Brager Testimony, Appeal Form.)
14. The Taxpayer brought evidence to show how close his property was situated to the Bitterroot River and Lolo Creek and where in the floodplain the subject property was located. (Brager Testimony, Exh. 2.)
15. An e-mail from Todd S. Kliez, Floodplain Administrator for Missoula Office of Planning and Grants, was submitted by the Taxpayer, explaining he would be very limited in rebuilding options due to septic system regulations. (Brager Testimony, Exh. 4.)

16. The Taxpayer also supplied an estimate from MT Excavating to bring the existing improvements up to Missoula County Building Code. (Exh. 3.)
17. The DOR presented testimony and exhibits justifying the values set on the subject improvements using the cost approach. (Exhs. A & B.)
18. This required that DOR calculate a value of the improvements based on new construction, and depreciate the value of the building to reflect its age and condition. (Barrett Testimony, Exhs. A & B.)
19. The DOR also determined the subject properties have a construction quality grade of 4 or .85 in relation to average construction quality of 1.00. (Barrett Testimony, Exhs. A & B.)
20. Both buildings are habitable with the necessary plumbing, water and other basic amenities. The Taxpayer lives in one building, and occasionally rents out the other building on a temporary basis. Some improvements have been made to the buildings over time, including sheet rocking the interior and roof repair. (Brager 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. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (Rule 42.18.110(12), ARM.)
5. 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, Findings of Fact, 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 2009.

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 Department 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).

The Taxpayer argues the CTAB concluded the improvement values should be less than the assessed DOR values, but did not lower them because of the absence of evidence. He then argued to this board, and supplied evidence, (see EP 14, 15 & 16.) that the subject properties were deficient

because of age, deferred maintenance and their location in a floodplain. The Department contends that the improvements are properly valued.

The value of the improvements on the subject properties was determined using the cost approach because the DOR determined that no adequate comparable sales were available. The DOR appraised these properties at a grade 4 or fair grade to indicate “marked deterioration, but quite usable, though rather unattractive and undesirable.” (2008 DOR Appraisal Manual.) Grade 4 is assigned a .85 factor in relation to average construction quality of 1.00. The Taxpayer did not bring any relevant information to show that the property was not properly valued. The cost of bringing the property up to code is not relevant to valuing the current, usable structures. Further, the property value has already been reduced relative to the flood plain location, which is not at issue in this case. Evidence does show, however, that the improvements on the property are being used as habitable, rentable buildings and thus have value.

This Board concludes the evidence presented by the DOR is sufficient to show accurate improvement values and did not contain any material errors. The Taxpayer did not provide any relevant evidence to overcome the DOR’s value.

Therefore, the Board upholds the CTAB decision.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the values of the subject properties' values shall be entered on the tax rolls of Missoula County at a 2009 tax year value of; \$135,724 for 12901 Lewis & Clark Drive and \$148,786 for 12903 Lewis & Clark Drive, as determined by the Missoula County Tax Appeal Board.

Dated this 27th 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 27th 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:

James P. Brager	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
12901 Lewis & Clark Drive	<input type="checkbox"/> Hand Delivered
Lolo, Montana 59847-9719	<input type="checkbox"/> E-mail

Wes Redden	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Larry Barrett	<input type="checkbox"/> Hand Delivered
Missoula County Appraisal Office	<input type="checkbox"/> E-mail
2681 Palmer St., Ste. I	<input type="checkbox"/> Interoffice
Missoula, MT. 59808	

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	

Cyndie Aplin, Secretary	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
1015 Washburn	<input type="checkbox"/> Hand Delivered
Missoula County Tax Appeal Board	<input type="checkbox"/> E-mail
Missoula, Montana 59801	

/s/ _____
DONNA EUBANK
Paralegal