

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

PAUL NEAL COOLEY,)	
)	DOCKET NO.: PT-2008-4
Appellant,)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent.)	

Statement of Case

The Taxpayer Paul Cooley appealed a decision of the Missoula County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of a manufactured home located on his property identified as Lots 23 & 24 in Block 47 of Homevale Addition, Section 28, Township 13 North, Range 19 West, Missoula County, Montana. The Taxpayer argues the DOR overvalued the property for tax purposes, and he seeks a reduction in the value assigned by the DOR. At the hearing on March 26, 2009, in Missoula, Montana, Cooley provided testimony and evidence in support of the appeal. The DOR, represented by Rocky Haralson, Regional Manager; Wes Redden, Area Manager; and Jim Wilcox, 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 whether the Department of Revenue determined an appropriate market value for the modular home located on the subject property for tax year 2008?

Findings of Fact

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 improvement is a modular home located on Lots 23 & 24 in Block 47 of Homevale Addition as shown on the Property Record Card (PRC), Section 28, Township 13 North, Range 19 West, Missoula County, State of Montana. The modular is one of two improvements on the property. (Post hearing submission, PRC).
3. Before the Taxpayer acquired the property, the prior owner purchased a new modular home in 2000 and obtained a variance from the City of Missoula to place the home on the property. The variance was only to be used by the original purchaser and could not be transferred. (CTAB Exh. 2).
4. The modular home was placed on a permanent foundation in 2000. (CTAB Exh. A, pg. 6).
5. The modular was de-titled as a mobile home and became real property in 2002. (Testimony of Mr. Wilcox).
6. The Taxpayer acknowledged that he had full knowledge of the limited nature of the variance when he purchased the property on March 27, 2006. (CTAB Exh. A, pg. 1).

7. The Taxpayer made a written guarantee to Stewart Title to indemnify Stewart Title in regard to the variance. The Title company did not list the variance as an exception in the title insurance for the property. (Exh. 1).
8. After buying the property, the Taxpayer applied for his own variance to retain the modular home in its current location. (Exh. F).
9. The Missoula Board of Adjustments denied the Taxpayer's request for relief on February 5, 2007. (Taxpayer post hearing submission).
10. The Taxpayer filed a petition for equitable relief from the Missoula Board of Adjustments' decision before Montana Fourth Judicial District Court, Missoula County. (Taxpayer post hearing submission). At the time of the State Tax Appeal Board's hearing, no ruling had been issued by the Court. (Testimony of Mr. Cooley).
11. The Taxpayer currently rents out the subject property on a month to month basis and has received rents in the neighborhood of \$800.00 per month. (CTAB Exh. 1).
12. The estimated cost of removing the subject property is between \$10,000 and \$20,000. (Exh. C).
13. For tax year 2008, the DOR appraised the property at \$256,676 (land at \$40,746 and improvements at \$215,930). The modular in question was valued at \$67,090 as part of the improvements. (Post hearing submission, PRC).
14. The DOR set the value based on the cost approach as determined by the Department's computer aided mass appraisal system (CAMAS). (DOR post hearing submission).
15. The Taxpayer disagrees with the \$67,090 value the DOR assigned to the manufactured home. The taxpayer is not appealing the \$40,746 appraised

value of the land or the \$148,840 value for the other improvements on the property. (Testimony of Mr. Cooley).

16. The Taxpayer filed an AB-26 Request for Informal Review on July 31, 2008, stating: “I am disputing the assessment and taxation of this property. It has a building that has been ordered removed by the City of Missoula and thus imports a negative value. It is unmarketable until the building is removed.” (CTAB Exh. A, pg. 9).
17. On August 5, 2008, the DOR reviewed the property and made no adjustments to the value of the subject improvement. (CTAB Exh. A, pg. 9).
18. The Taxpayer appealed the DOR decision to the Missoula County Tax Appeal Board (CTAB) on September 3, 2008, asserting that the building is a liability and requesting a zero value for the improvement. (CTAB Exh. A, pg. 8).
19. The Missoula County Tax Appeal Board heard the appeal on November 19, 2008, and upheld the DOR value for the subject improvement. The Board’s chairman wrote in the decision that: “The Property Tax Appeal Board feels as long as the manufactured dwelling by itself can be sold and moved, and that it currently produces income, it is considered real property and subject to taxation.” (Appeal Form).
20. The DOR made an offer to reduce the value of the subject property by \$20,000 to account for the removal cost. The Taxpayer rejected the offer. (Testimony of Mr. Redden).
21. The Taxpayer appealed to this Board on January 15, 2009, stating: “The building is a liability, has been ordered to be removed, is not real property as per Missoula City ruling.”(Appeal Form).

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (Section 15-2-301 MCA).
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. (Section 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. (Section 15-8-111(2)(a), MCA).
4. A manufactured home must be considered an improvement to real property for tax purposes if the running gear is removed and the manufactured home is attached to a permanent foundation. (Section 15-1-116(1)(a)(b), MCA. & 42.20.117(5)(a)(b) ARM).
5. A manufactured home that has been declared an improvement to real property must be treated by the department and by lending institutions in the same manner as any other residence that is classified as an improvement to real property. (Section 15-1-116(5) 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 improvement for tax year 2008.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the taxpayer must overcome this presumption. *See,*

e.g., Albright v. Montana Department of Revenue, 281 Mont. 196, 933 P.2d 815 (Mont. 1997).

The Taxpayer contends that the lack of a variance creates a zero value for the property. He testified that he attributed no value to the subject property at the time he purchased the lots and both improvements. He also testified that because the subject property is a modular home, it is personal property and not real property.

The DOR argues that the property has value, based on the cost approach, the income approach, and the market approach to value. Additionally, the DOR notes the taxpayer is receiving significant income from the property in its current location. Finally, there is no doubt that the Taxpayer, as the willing buyer of this property, purchased the property with a full understanding of the variance restrictions.

This Board disagrees with the Taxpayer that the subject improvement had no value at the time he purchased it. There is no doubt that Cooley purchased the improvement as a willing buyer with full knowledge of all relevant facts. (CTAB Exh. 1) Not only does the modular generate income in its current location, but the Taxpayer also has the ability to sell it and require the buyer to move it.

This Board recognizes that the Taxpayer is currently in litigation with the City of Missoula over the removal of the subject property. (FOF 10). Until a final decision is reached by the Court, the Taxpayer has full use and enjoyment of his property and the DOR must appraise it at 100% of market value. This is not to say, depending on the outcome of the litigation, that the improvement value may either be drastically reduced or may have a greater value.

Because the subject improvement is relatively new, the cost approach is a reasonable methodology to value the property. We find no issue with the

value set by the CAMA system. The Board also finds the property to have a negative influence attached to it until the issue of the variance is resolved. Therefore, the evidence indicates that the reduction of \$20,000 offered by the DOR in pre-hearing negotiations is proper. (FOF 20).

For the reasons discussed above, the DOR assessment for the subject improvement is modified from \$67,090 to \$47,090.

Order

It is therefore ordered that the subject property shall be entered on the tax rolls of Missoula County at a value of \$236,676 (\$40,746 for land, \$47,090 for the modular and \$148,840 for the remaining improvement). The decision of the Missoula County Tax Appeal Board is modified and the DOR's valuation is reduced.

Dated this 20th day of April, 2009.

By order of the State Tax Appeal Board

/s/ _____
Karen E. Powell, Chairwoman

/s/ _____
Sue Bartlett, Member

/s/ _____
Douglas A. Kaercher, 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 20th day of April, 2009, the foregoing Order of the Board was served on the parties hereto by the method indicated below and addressed as follows:

Paul Neal Cooley	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
5707 W. Harrier	<input type="checkbox"/>	Hand Delivered
Missoula, Montana 59808	<input type="checkbox"/>	E-mail

Rocky Haralson	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
Wes Redden	<input type="checkbox"/>	Hand Delivered
Jim Wilcox	<input type="checkbox"/>	E-mail
Missoula County Appraiser Office	<input type="checkbox"/>	Interoffice
2681 Palmer St., Ste. I		
Missoula, MT. 59808		

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

DONNA EUBANK
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