

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

DANIEL E. JENSEN,)	
)	DOCKET NO.: PT-2011-13
Appellant,)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY
)	FOR JUDICIAL REVIEW
Respondent.)	

Daniel Jensen (Taxpayer) appealed a decision of the Missoula County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR’s) valuation of four commercial lots located at 7295 Hwy 10 West, Frenchtown, Montana. Taxpayer claims the DOR overvalued the properties for tax purposes and seeks a reduction in the value assigned by the DOR. A hearing was held by the Missoula County Tax Appeal Board at which the Taxpayer was represented by himself and Patty Lovaas, CPA. The DOR was represented by Mike Hartkorn, DOR appraiser and Wes Redden, area manager. A hearing on the record was held by the State Tax Appeal Board (Board).

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 properties based on a preponderance of the evidence.

Issue

The issue before this Board is did the Department of Revenue determine an appropriate market value for the subject property for tax year 2010?

Summary

Daniel E. Jensen is the Taxpayer in this action and therefore bears the burden of proof. (*Department of Revenue v. Burlington Northern, Inc.*, 169 Mont. 202, 545 P.2d 1083 (1976).) Based on a preponderance of the evidence, the Board upholds the findings of the Missoula County Tax Appeal Board.

Statement of Evidence

1. Due, proper and sufficient notice was given of this matter. This matter was set to be heard on the record pursuant to §15-2-301(2), MCA, without opposition by the parties. All parties received the transcript of the county tax appeal board and were afforded opportunity to submit additional evidence.
2. The properties at issue are four contiguous commercial lots located at 7295 Hwy 10 West, Frenchtown, Montana, with the following legal description:

Section 28, Township 14 North, Range 20 West, Lots 2, 3, 4 & 17 of Block 4, Missoula Industrial Park Subdivision, Missoula County, Montana. (DOR Exh. A, Appeal Form.)
3. Lots 2, 3, and 4 are vacant lots and the property improvements on Lot 17 are not at issue in this case. (Jensen Testimony.)
4. For tax year 2010, the DOR valued the subject lots individually with a total value of \$619,806. (DOR Exh. A, Appeal Forms.)
5. The Taxpayer is appealing the overall value of the land and is asking for the lots to be assessed as one lot at a value of \$205,537. (Appeal Form.)
6. The Taxpayer filed a Request for Informal Review (AB-26) on May 10, 2010 for each lot, asking for a review of the assessment. (DOR Exh.

- B.) The DOR made no adjustments to the assessments and responded to the Taxpayer in a letter dated October 1, 2010. (DOR Exh. B.)
7. The Taxpayer filed an appeal with the Missoula County Tax Appeal Board (CTAB) on December 29, 2010, stating: “Value in excess of market.” (Appeal Form).
 8. A hearing before the Missoula CTAB was held on November 22, 2011 and the CTAB upheld the DOR values. (Appeal Form.)
 9. The Taxpayer was represented at the CTAB hearing by Patty Lovaas, CPA. Mr. Jensen signed a Power of Attorney Agreement (POA) allowing Ms. Lovaas to represent him at the hearing and to receive DOR documents and materials used in valuing the subject properties. (CTAB Exh. 1.)
 10. The Taxpayer bought each lot at a different time because he considered them to be a good investment. (Jensen Testimony.)
 11. The DOR used a Computer Assisted Land Pricing (CALP) model to establish the land values in Neighborhood 802.1 of Missoula County. The CALP is based on sales of 16 different commercial property sales located within Neighborhood 802.1. All of the sale properties used in the CALP were bare tract land and had sale dates prior to the revaluation date of July 1, 2008. There was no indication that the sales were not arms length sales. (DOR Exh. E.)
 12. The DOR determined that 20,000 square feet is the base size for valuing lots in Neighborhood 802.1. The first 20,000 square feet are valued at \$7.46 per square foot and each additional square foot is valued at \$.30. By using the CALP, the DOR determined the individual lot values at \$155,719 for Lot 2, \$156,190 for Lot 3, \$156,412 for Lot 4 and \$151,485 for Lot 17. (DOR Exhs. A and E.)

13. Ms. Lovaas argued that, since all lots are contiguous and under one ownership, they should be treated as one parcel. Ms. Lovaas developed her own valuation method from the CALP calculations, arriving at the requested value of \$205,537 using this method. (Lovaas Testimony, CTAB Exh. 2.)
14. The DOR agreed that the parcels may be placed on one tax statement. However, each parcel is a separately sellable parcel and must be valued as a separate and individual lot. (Redden Testimony.)
15. The DOR also argues that if the Taxpayer wants these properties assessed as one, then he must have them resurveyed as one property. (Redden Testimony.)
16. Ms. Lovaas testified she has seen and argued other cases where multiple contiguous lots are owned by the same owner and, even though they are subdivided, they are taxed as one parcel. (Lovaas Testimony.)
17. The Taxpayer previously owned Lot 5 in the same subdivision as the subject properties. He sold this individual lot in November, 2003 for \$72,500. (Hartkorn Testimony.)
18. The Taxpayer appealed to this Board on December 19, 2011. This reason for appealing was stated as: “Lots appraised separately. Should be combined for appraisal per MCA 15-8-307.” (Appeal Form.)

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. Montana statutes define individual parcels of land and the method of combining them.
 - (a) “Tract of record” means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.
 - (b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:
 - (i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or
 - (ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel. §76-3-103(16) MCA.
5. If the department receives the written consent of all persons with an ownership interest, the department may assess multiple parcels or tracts of land with common ownership collectively as a single tract of land. (§15-8-307(2), MCA.)
6. Commercial 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 42.18.113(7).)
7. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)

8. For the taxable years from January 1, 2009, through December 31, 2014, all class four property must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)
9. 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. (§15-7-112, MCA.)
10. The actual selling price of comparable sales must be adjusted to a value consistent with the base year. (ARM 42.20.454(1)(h).)
11. 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 properties 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. *Department of Revenue v. Burlington Northern, Inc.*, 169 Mont. 202, 545 P.2d 1083 (1976); *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 Taxpayer argues the DOR should have combined his four contiguous properties, because they are under one ownership, into one tract of land for tax purposes. The Taxpayer's representative, Ms. Lovaas, claims this would be consistent with several other tracts of land she has seen, but failed to supply the Board with any detailed evidence of those lots.

The Taxpayer believes combining the subject properties for tax purposes would allow him to receive the same consideration of economies of scale as other taxpayers. Ms. Lovaas attempts to do just that in her calculation of value. (*See* EP 13.) Ms. Lovaas also argues such treatment would be fair and equitable tax treatment as provided for in §15-8-307(2), MCA.

The Department argues that the lots are separate, and can be sold individually. Thus, in determining 100% of market value, the lots must be individually assessed.

There was no evidence presented that these lots suffer any deficiencies that would affect their individual market value. Montana statutes are clear on what constitutes a parcel or tract of land and how an individual can combine multiple parcels, and the Taxpayer has failed to do so in this instance. (*See* POL 4.) By the Taxpayer's own testimony, he purchased these properties separately as an investment and has even sold one previously purchased lot in this subdivision. (*See* EPs 10 & 17.) The Board finds they are clearly individual lots that can be sold separately which requires the DOR to value each lot individually.

The Legislature has mandated that the DOR assess all property in Montana at 100% of its market value. Given the statutory definition of market value, *i.e.*, the value at which property would change hands between a willing buyer and a willing seller, this Board concludes the evidence presented by the DOR did support the values assessed.

We have seen limited instances in which the DOR has taxed multiple lots as a single entity even though the lots have not been resurveyed to a single lot. Those cases generally demonstrate that the lots could not be individually sold due to disadvantage of size, location or the sharing of amenities and improvements precluding them from individual sale. (*See e.g. Roth v. DOR*, STAB PT-2010-12 & 13; *Manicke v. DOR*, STAB PT-2009-67.) There is no evidence of such a disadvantage in this case.

As part of the standard mass appraisal system, the DOR uses a CALP model, which in this case is based on 16 vacant land sales. (*See* EPs 11 & 12.) From that sample, they applied a size adjustment to set a value of a standard lot. As a result of this approach, smaller lots are valued at more per square foot than larger lots for the subject neighborhood. The Taxpayer fails to provide any evidence that the Department's value does not demonstrate market value for each lot.

This Board concludes the Taxpayer has not provided evidence that the DOR appraised value for July 1, 2008 is not fair market 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 subject properties be entered on the tax rolls of Missoula County at a total individual lot value of \$619,806 for tax year 2010, as determined by the Missoula County Tax Appeal Board.

Dated this 1st of March, 2012.

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 this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of March, 2012, 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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