

Summary

This appeal was brought by the Department of Revenue which therefore bears the burden of proof in this appeal. Based on a preponderance of the evidence, the Board upholds the decision of the Yellowstone 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 a new residential home with the following legal description: Block 004, Lot 01A, Independence Subdivision, S11, T01 N, R26 E, Yellowstone County, State of Montana. (DOR Exh. A, Property Record Card.)
3. The DOR valued the property at \$273,000: \$49,585 for the land and \$223,415 for the house. (DOR Exh. A, Property Record Card.)
4. Taxpayers requested an informal review with the DOR September 11, 2010 citing a declining market, worsening ground water problems and an appraisal that was almost twice what he invested in the property. (AB-26.) After viewing the property, the DOR declined to reduce the valuation. (Luke Mann Letter of 10/6/10.)
5. Taxpayers appealed to the Yellowstone CTAB on Nov. 3, 2010 stating “The appraisal does not reflect today’s housing market, the home prices of the subdivision or what my actual investment in the property.” They requested a value of \$170,000: \$10,000 for the land and \$160,000 for the house. (Property Tax Appeal Form.)

6. At the CTAB hearing, Taxpayers were represented by Mr. Roe and the DOR was represented by appraisers Luke Mann and Vicki Nelson.
7. The DOR presented a computer assisted land pricing (CALP) regression model based on 111 land sales in Neighborhood 200E that was used to establish the value of the subject land. (Exh. C.)The CALP established a base rate of \$4.50 per square foot.
8. The DOR presented a set of five comparable property sales within Neighborhood 200.E which were used to value the house. (Exh. D.) The comparable sales were all within the city limits of Billings, which the subject property is not. (Tr. pp. 20 – 21.) The subject property does not have city water or sewer services. (Tr. p. 21.) The subject property also does not have air-conditioning as do the comparable properties. (Tr. p. 13.)
9. The DOR responded that the lack of air conditioning had a minimal impact on the value of the home based on its sales analysis in the Billings Heights area. (Tr. p.22.)
10. Taxpayer testified that he built his house himself for \$160,000 in materials and subcontracts. He contends it is unfair to tax him on the value he created himself and asks that his value be reduced to his investment. He also stated that he paid \$10,000 for the land, but that the canal across the street from his lot causes flooding and rising groundwater which reduces the value of the land below his purchase price. He has installed an extensive drain system and a sump pump to deal with the groundwater, as well as a specially engineered septic system. (Tr. p. 29.)
11. The Yellowstone County Tax Appeal Board reduced the value of the property to \$225,000: \$35,185 for the land and \$189,815 for the improvements. The CTAB gave the following reasons for its decision:

Lot location is out of the city.
Water issues – proximity to the ditch
No air conditioning

(Exh. A, Yellowstone CTAB decision of 1/21/2011.)

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. 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).)

Board Discussion and Conclusions of Law

The Board must determine, based on a preponderance of evidence, whether the decision of the CTAB set the correct value for the subject property.

The Department alleges that the CTAB improperly lowered the valuation of the subject property. In the case before us, the CTAB determined that the valuation process used by the DOR did not take several critical factors into account when valuing the property. First, the subject property is not within the city limits and, among other differences, does not enjoy the advantages of city water and sewer services. All of the comparable properties presented by the DOR were within city limits. As a second issue, the property has substantial groundwater problems which cause ongoing problems for the Roes. None of the

comparable properties had groundwater issues. Finally, the Roe property does not have air conditioning. While the DOR did not consider these differences significant, the CTAB did. We note that the reason for having local tax appeal boards is to incorporate their judgment and knowledge of local property into the valuation review process. The DOR did not provide any evidence, other than appraiser testimony, that the factors the CTAB considered significant had no impact on the market value of the subject property. We find the DOR testimony did not convince us that the CTAB modifications of the value were incorrect. It is the experience of this Board that significant ground water issues and the lack of city services most certainly can affect valuation of a residential property.

Although Taxpayers did not appeal the CTAB decision, we would note that we cannot agree with the position they argued for in both hearings. Taxpayers state the difference in value between their requested \$160,000 and the DOR's \$223,415 is the value of Mr. Roe's labor and skill in building his own house and they should not be taxed on that. The statute, however, requires that all property be valued at its fair market value, no matter how that value is created, in order to equalize the tax burden fairly. Many homeowners contribute their own time and skill to improve or expand their homes and maintain their property. The process of valuation would be impossible if the DOR were required to calculate the value of owner improvements and subtract them from the fair market value. Mr. Roe's skills and labor have saved him an estimated \$100,000 but that does not reduce the fair market value which is required by statute.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property's value shall be entered on the tax rolls of Yellowstone County at a 2010 tax year value as determined by the Yellowstone County Tax Appeal Board.

Dated this 13th day of April, 2011.

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.

