

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

DEBRA L. SYKES,)	
)	
Appellant,)	DOCKET NO.: PT-2008-2
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>
)	

The Taxpayer, Debra Sykes, appealed the decision of the Lake County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of her property identified as Lot 12 East Bay Subdivision, Section 33, Township 23 North, Range 19 West, Lake County, Montana. This appeal was heard March 18, 2009, in Polson, in accordance with an order of the Montana State Tax Appeal Board (the Board).

The Taxpayer authorized James E. Gates to represent her in this appeal. Mr. Gates and witness Stephen Stanley, Lake County Office of Emergency Management, provided testimony in support of Taxpayer’s appeal. The DOR, represented by Scott Williams, Regional Manager, and Jeff Megahan, Appraiser, presented testimony in opposition to the appeal. The Board allowed the record to remain open for a period of time for the purpose of receiving post-hearing submissions from both parties.

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

Issue

The issue before the Board is whether the Lake County Tax Appeal Board appropriately adjusted the 2008 assessed value of the Taxpayer's property after a gasoline fuel spill damaged the land and improvements.

Findings of Fact

1. Due, proper and sufficient notice was given of the hearing on this matter and of the time and place of the hearing. All parties were afforded opportunity to present evidence, verbal and documentary.
2. The Taxpayer's property is located between Highway 35 and Flathead Lake. (DOR Exh. B).
3. On April 2, 2008, a Keller Transport truck containing gasoline overturned on Highway 35 approximately 500 feet from Flathead Lake spilling about 6,400 gallons of gasoline. (DOR Exh. H)
4. The gasoline contaminated the Taxpayer's property, including soil and groundwater. (DOR Exh. H).
5. On April 19, 2008, five homes, including the Taxpayer's home, were evacuated because the homes had high levels of Volatile Organic Compound (VOC) vapors. (DOR Exh. H).
6. Remediation of the damage caused to the Taxpayer's property and the other four properties has been ongoing since April, 2008. (Testimony of Mr. Stanley).
7. Remediation on the Taxpayer's property has involved installation of an air abatement system, removal of highly contaminated soil, digging an interceptor trench across the lot to collect impacted ground water, and installing a groundwater monitoring system. (DOR Exh. H, I, J, & Testimony of Mr. Gates).
8. At the time of the hearing, the Taxpayer was still not allowed to live in the subject property. (Testimony of Gates).
9. The Taxpayer filed a Request for Informal Review (Form AB-26) on May 19,

2008, stating, “On 4/2/08 there was a gas tanker accident that left 5000 gal of gasoline in the ground, some of which is under our house. At this point in time no realtor will even list the property for sale.” (DOR Exh. C).

10. On October 3, 2008, the DOR reduced the assessed value of the subject property from \$220,769 for the land and \$146,931 for the improvements to a value of \$151,779 for the land and \$108,630 for the improvements. (DOR Exh. C & DOR post-hearing submission).
11. The Taxpayer filed a Property Tax Appeal Form with the Lake County Tax Appeal Board on November 3, 2008, stating: “We have been officially evacuated from our home since the gasoline spill April 2nd on Highway 35.” (DOR Exh. G).
12. The Lake County Tax Appeal Board heard the appeal on December 10, 2008. The county tax appeal board ordered the DOR’s 2008 appraised value reduced by 50%. This reduced the appraised value to a total of \$184,382, (\$110,382 for the land and \$74,000 for the improvements). (Property Tax Appeal Form.)
13. The Taxpayer appealed to this Board on January 8, 2009, stating, “I asked for property tax relief to \$0 and was granted a 50% reduction. I would like the opportunity to present more evidence as to why there should be a more substantial reduction.” (Property Tax Appeal Form).
14. Mr. Gates also presented information relating to a property that experienced a reduction in value due to a gasoline spill in 1992. Mr. Gates argued the 1992 spill was less serious, that the Sykes property was more severely impacted, and deserved a greater reduction in value. (Taxpayer Exh. A).
15. At the hearing Mr. Gates adjusted the Taxpayer’s requested value to \$100,000 based on a realtor’s opinion of value. (Testimony of Mr. Gates & Taxpayer Exh. D).
16. The DOR did not cross-appeal the CTAB decision and accepted the value set by the county tax appeal board. (Testimony of Mr. Williams).

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. (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).

Board Discussion and Conclusions of Law

The Board must determine, based on a preponderance of the evidence, the market value of the property. In determining this value, we look to whether the Lake County Tax Appeal Board appropriately adjusted the Taxpayer's 2008 appraised value in relation to the damage caused by a gasoline spill.

Without question, the gasoline spill and subsequent remediation efforts have reduced the value of the property. The Taxpayer has been denied the use and enjoyment of her home and land for almost a year. Even if she is able to return, the property has been altered by trenches, removal of old growth trees and shrubs, and installation of a vapor collection system beneath the floor and a permanent heat recovery ventilation unit to bring in fresh air from the outside.

The DOR appraised the subject land and improvements at \$367,700 on the appraisal date of January 1, 2008. After the gasoline spill, the DOR adjusted the valuation to \$260,409. The Lake County Tax Appeal Board further reduced the valuation of this property to \$184,382. The DOR signaled their willingness to accept this value by not cross-appealing the CTAB decision. After reviewing the evidence presented, the Board does not believe that additional reduction in value is warranted.

Order

IT IS THEREFORE ORDERED that the subject property shall be entered on the tax rolls of Lake County at a value of \$184,382 (\$110,382 for the land and \$74,000 for the improvements). The decision of the Lake County Tax Appeal Board is upheld.

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:

Debra L. Sykes
34193 Misty Lagoon
Polson, Montana 59860

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail

DOR Regional Office
Attn.: Scott Williams, Regional Manager
100 Financial Drive Suite 210
Kalispell, Montana 59901

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail
 Interoffice

DONNA EUBANK
Paralegal