

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

GLEN & SUSAN GREEN,)	
)	DOCKET NO.: PT-2009-64
Appellants,)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY FOR JUDICIAL REVIEW
)	
Respondent.)	

Glen and Susan Green (Taxpayers) appealed a decision of the Missoula County Tax Appeal Board (CTAB) affirming the Department of Revenue’s (DOR) valuation of Taxpayers’ home. A hearing was held before this Board August 24, 2010 in Helena. Glen Green represented Taxpayers and Patty Lovaas, of Missoula, testified in support of the taxpayer. The DOR was represented by Bonnie Saxton, appraiser, and Derek Bell and Courtney Jenkins, tax counsels.

Issue

Did the DOR set an appropriate market value for the subject property for tax purposes for 2009?

Summary

The Taxpayers are the appellants in this case and therefore bear the burden of proof in this matter. Based on a preponderance of the evidence, this Board affirms the decision of the Missoula CTAB.

Background and 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 identified as 18750 Houle Creek Road in Frenchtown, parcel Section 20, Township 15N, Range 21W, Plat F3, Parcel XXX, Tract A Cos 1537 N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, Plat F3' 20-15-21. It is a 5.2 acre lot with house, garage and carport. (Property Record Card.)
3. The DOR valued the land at \$124,214, using a computer assisted land pricing model, and the buildings at \$101,657 using the cost method of valuation.
4. Taxpayers filed an appeal with the Missoula County Tax Appeal Board (CTAB) claiming "No economic condition factor allowed by law. Value in excess of market." (Sept. 28, 2009 Appeal Form.)
5. The Taxpayers claim the land value should be \$80,000 and the improvements valued at \$70,000. Mr. Green stated at the CTAB hearing that his claimed value is based on "one big guess." (CTAB Decision.) He submitted no evidence or comparables to support his requested reduction of the value of his improvements.
6. Taxpayers purchased the property in 1983 for \$63,000 and have since added a double garage, a carport and a lean-to shed. (Green Testimony.)
7. Taxpayers claim to have very little water from the well and argue that they should not be compared to the houses in the Hawthorne Spring area which have a good water system. He also asserted that the housing market has declined and there are now a lot of houses on the market for sale. (Green Testimony.)

8. Patty Lovaas, Mr. Green's CPA, presented her analysis of the DOR's valuation process in support of the Taxpayers' argument for lower valuation.
9. At the CTAB hearing, the DOR presented a computer assisted land pricing (CALP) regression analysis that lists the properties sold as tracts of bare land in the Taxpayers' Neighborhood 27 during the valuation period and derived a typical market value from those sales (Exh C). The DOR uses neighborhoods to define an area of similar properties with similar features. The data was used to calculate the land value of all parcels of land in the subject neighborhood, including the subject property.
10. At the CTAB hearing, Mr. Green was also given excerpts of a Montana Supreme Court case, *Albright v. Montana*, 281 Mont. 196, 933 P.2d 815 (1997), which explains and endorses the procedures used by the DOR to value real property using computer assisted technology to calculate averages and regressions
11. The Missoula CTAB upheld the DOR value. (Appeal Form and Attachment.)
12. For the hearing before the State Tax Appeal Board, Ms. Lovaas used the DOR CALP to create her own list of those properties, challenging the calculations, questioning the completeness of the list, and insisting many of the properties were not comparable to the subject property. She also presented a list of additional properties sold which she claims should have been included and would have produced a lower value for the subject property. (Lovaas Testimony.)
13. Through testimony to this Board, Ms. Lovaas also pointed out the sales prices of the CALP properties were increased 0.75 percent per month to reach a 2009 appraisal value so that the older the sale, the greater the increase. (Lovaas Testimony.)

14. Ms. Lovaas showed that there were no sales in the CALP after 2007, though she had found, through the Multiple Listing Service (MLS), 13 land sales and 40 land/residential sales between October 2006 and June 2008. She presented a spread sheet listing those properties. (Exh. 1-7.)
15. Only three of those sales appear to be bare land sales. (Exh 1-7.) Two of those sales are in the appropriate neighborhood and both properties are in the original CALP presented by the DOR, although earlier sales with higher prices are listed.
16. The DOR asserted in the post hearing submissions they could not find the later sales in their records. (Affidavit of Bonnie Saxton.)
17. Ms. Lovaas calculated a per-acre average for the 46 sales on the MLS list of \$44,509 which included the values of the buildings, as well as the land, on 40 of the properties. She testified that she did not remove the value of the improvements, make adjustments for the concept of economies of scale in land sales, or make an adjustment for the sales date in comparison to the appraisal date set in law.
18. In her calculations, Ms. Lovaas removed the properties from the CALP she deemed not comparable (those in the Hawthorne Springs and the Mahlum Meadows subdivisions) and calculated an average cost per acre of \$25,396 for the remainder. No evidence was introduced to support the argument that these properties removed were not comparable to the subject property.
19. In her calculations, Ms. Lovaas also removed properties from the CALP which had a current taxable value different from their purchase price, because she considered those to be errors in the CALP. (Exh. 1-6 Discrepancies.)
20. Neither the Taxpayers nor Ms. Lovaas presented evidence directly supporting their requested land value of \$80,000.

21. The DOR presented information on the methods used to value the subject property. Appraiser Bonnie Saxton testified she used a cost method, instead of a market method, to value the buildings because she thought the improvements were not adequately comparable to those in the market method. The result was a slightly lower valuation than the market valuation, \$225,871 rather than \$229,000. (Property Record Card, Exh. D.)

22. In valuing the land, Ms. Saxton testified she had removed the later sales from the CALP in order to exclude the peak of the market when she saw land prices begin to drop back from its high point in the Hawthorne Springs sales.

23. In response to a request from the Board, the DOR submitted an amended CALP with the 20 previously omitted sales as a post-hearing submission. (P.H. Exh. A.) The result was that the base rate, that is, the rate for the first acre of a parcel of land, increased \$2,000 while the residual rate remained the same. All but three of the previously omitted sales were from Hawthorne Springs.

24. The CALP models used by the DOR time-trend the vacant land sale prices in a particular neighborhood to the statutory valuation date of July 1, 2008. This is done by calculating the rate of monthly increase in sale prices over the time period and applying that increase for the appropriate number of months to each of the sales. The increase in this case is .75 percent per month or 9 percent per year. (Exh. E. and Post Hearing Affidavit of Wes Redden.)

25. The DOR also calculates the typical size of a unit of land sold in a rural neighborhood, in this case one acre, to calculate a base rate for buying property in that location. Lots smaller or larger than that are valued by adding or subtracting land at the residual rate. The base rate calculated from the CALP is \$101,300 and the residual rate is \$5,700 so that the 5.02 acres of the subject property was valued at \$124,214.

26. The CALP contained an error in the Past Value for the last appraisal cycle which was corrected by Wes Redden's post-hearing affidavit. The figures do not impact the current values and were reported correctly on the Taxpayers' property record card (Exh. D.) and appraisal notice for comparison purposes.

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. All residential appraisers must receive specific training and testing to certify that they possess the required knowledge, skills, and abilities to perform residential property appraisals as outlined in rule ARM 42.18.206(1).
5. Residential 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 42.18.110(7).)
6. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)

7. 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).)
8. 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. (§15-7-112, MCA.)
9. The actual selling price of comparable sales must be adjusted to a value consistent with the base year. (ARM 42.20.454(1)(h).)
10. 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.)

Findings of Fact and Conclusions of Law

Taxpayers are the appellants in this case and therefore bear the burden of proof. (*Department of Revenue v. Burlington Northern, Inc.*, 169 Mont. 202, 545 P.2d 1083 (1976).) Having considered all the evidence, this Board concluded the Taxpayers did not meet that burden and we therefore affirm the values set by the DOR for the subject property.

Taxpayers offered many pages of listings and calculations but their evidence failed in several material ways.

First, Taxpayers attempted to provide additional sales data not used by the DOR. Those sales, however, were mostly properties sold with improvements on the property. For that reason, the DOR excluded those properties from the CALP. The DOR used only vacant land sales to value the subject acreage. The rationale was amply illustrated by Ms. Lovaas who

testified that she could not separate the value of land and buildings accurately and so she used the entire value, including the buildings, in calculating the average price of land on her MLS list of properties. It is self-evident that a lot with a house on it does not have the same value as a vacant lot. The Board finds that the DOR correctly excluded those sales from the CALP. The two properties presented by the Taxpayers that were bare land sales and were in the correct neighborhood were, in fact, included in the CALP with earlier sales prices.

The CALP is based on data reported to the DOR on Realty Transfer Certificates (RTC) which require the sellers to report the nature of the sale to enable the DOR to determine if the sale is valid. Foreclosures, bankruptcies and transfers between family members are removed from the list as they are not valid arms-length transactions useful for establishing market value. The MLS sales data do not contain such information and are not used by the DOR for that reason.

Additionally, the calculations Taxpayers presented based on their CALP revisions are not time-trended to arrive at the sale price had the land been sold on July 1, 2008. In a changing market, those adjustments must be made in order to arrive at the same appraisal date for all the property in the state (POL 7, 9). A monthly rate of appreciation across time is calculated from the CALP array of sales and that rate is applied to each purchase price to establish a valuation-date (7/1/08) value. In this way, values are set locally, neighborhood by neighborhood, on the same date in order to produce uniform assessments across the state. §§ 15-7-103(5), 15-7-111(3), 15-7-112, MCA.

Third, Taxpayers' exclusion from the CALP of properties in neighboring subdivisions was not supported by any evidence, other than their conclusory testimony, that those properties are not appropriate comparables. Taxpayer

also failed to provide evidence about the availability of water throughout the neighborhood and the impact that might or might not have on value.

Fourth, Taxpayers' analysis (see Exh. 1-6, "discrepancies") failed to recognize that certain properties valued on a productive basis as agricultural or forest land for tax purposes may still be used by the DOR to determine valid market sales data for a neighborhood. An agricultural producer will purchase land at market value, even though the same property is valued for tax purposes on a productivity basis. In the alternative, an investor can buy land near new developments for a tract land price and hold it as grazing or timber land until the housing demand makes development feasible. The important thing about those properties is the sale price, not the present use or its taxable value. As evidence of sale prices in the neighborhood, the sales prices of all properties are entirely valid.

The base acre price in Taxpayers' neighborhood is \$101,324 and the residual rate is \$5,700 for each additional acre. However, Taxpayers' price per acre is simply the total sale prices divided by the total acres. Taxpayer fails to account for the differences in a buyer's consideration when purchasing a larger or smaller parcel of land. Appraisal professionals reason that the purchaser is buying, most importantly, the location for their residence and land in excess of their basic requirements will be considerably less valuable than the first acre. Taxpayers' MLS analysis (Exh. 1-7.) has illustrations of this: #19, nearly 13 acres, sold for \$165,000 while a one acre parcel, #27, sold for \$92,000. The smaller parcel is just 8 percent the size of the larger and sold for 56 percent of the price. This concept can be called consideration of the economies of scale. A purchaser is likely to pay less per acre for a 100 acre parcel of land than for a 5 acre parcel of land.

Because Lovaas calculates an average acre-value, without regard for economies of scale, her value of \$25,396 (Exh. 1-6, p.6.) must be applied for every acre of taxpayers' property, which would result in a value of \$127,488 for the subject property's 5.02 acres, slightly higher than the \$124,214 arrived at by the DOR. Thus, even allowing the Taxpayers to limit the comparables to those they consider appropriate and using sale prices that have not been time-trended or broken down by base/residual rate, the Taxpayers' evidence simply reinforces the DOR calculations.

Both parties submitted post-hearing materials, requested by this Board at the hearing. In addition both parties submitted unrequested materials meant to refute the others' submissions. The Board does not find any of the post hearing material particularly relevant. Ms. Lovaas submitted 53 pages listing sales not on the amended CALP that she thinks should have been included. She averages the prices (\$84,950 per acre) without time-adjusting the sale prices and without indicating how this supports her clients' claim for an \$80,000 valuation for a 5-acre parcel. The DOR challenged Lovaas' exclusions from the initial CALP in their post hearing submission (P.H. Exh. B) but as pointed out above, even without them, the Taxpayers' calculations support the DOR valuation.

Taxpayers have clearly failed to present evidence that the DOR calculations are faulty or that valid alternative calculations should be adopted by this Board.

"The prime objective of mass appraisals for tax purposes is to equalize property values" according to the Montana Appraisal Manual, 2008, p. 30. The first step is to "incorporate the application of proven and professionally acceptable techniques and procedures." (*Id.*, p.30.) In this instance, the DOR used standard methods to calculate the land value for the subject property. (Ev. 8.) Further, the DOR analyzed the subject property to determine whether

the mass appraisal valuation was proper in this particular instance. The DOR appraiser testified that she reviewed the subject property, determined that the land value was correct, and determined that the cost approach was most proper for valuing the improvements. (*See Saxton Testimony.*)

We uphold the DOR valuation process, and the value set for the subject property.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties value shall be entered on the tax rolls of Missoula County at a 2009 tax year value of \$124,214 for the land and the \$101,657 for the buildings, as determined by the Department of Revenue and affirmed by the Missoula County Tax Appeal Board.

Dated this 8th 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 this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th 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:

Glen and Susan Green 18750 Houle Creek Road Frenchtown, Montana 59834	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail
Patty Lovaas 228 West Spruce Missoula, Montana 59802	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail
Wes Redden Bonnie Saxton Missoula County Appraisal Office 2681 Palmer Street Suite 1 Missoula, Montana 59808-1707	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail <input type="checkbox"/> Interoffice
Derek Bell & Courtney Jenkins Office of Legal Affairs Department of Revenue Mitchell Building Helena, Montana 59620	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail <input checked="" type="checkbox"/> Interoffice
Cindy Aplin (via US Mail) Missoula County Tax Appeal Board 1015 Washburn Missoula, Montana 59801	

/s/ _____
Donna Eubank, paralegal

