



## **Summary**

Mr. and Mrs. Grimm are the taxpayers in this proceeding and, therefore, have the burden of proof. Based on a preponderance of the evidence, the Board reverses the decision of the Lewis and Clark County Tax Appeal Board and modifies the DOR valuation of the subject property.

## **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 property is described as Lot C4 of the 3D Ranchettes Major Subdivision as shown on Certificate of Survey #3103117, Section 36, Township 10 North, Range 2 West, Lewis and Clark County, State of Montana. (Exh. A, p. 1).
3. For tax year 2008, the DOR appraised the subject property at \$254,914 (land at \$38,614 and improvements at \$216,300). (Exh. 1, p.1).
4. The Taxpayers agree with the \$38,614 appraised value of the land. (Grimm Testimony).
5. The Taxpayers filed an AB-26 Request for Informal Review on August 13, 2008, citing inaccurate data and inappropriate Grade and CDU (Condition, Desirability, Utility) used by DOR. (Exh. M).
6. The DOR reviewed the property and made adjustments to the appraisal which lowered the total value (land and improvements) from \$254,914 to \$248,100. (Exh. M).
7. The Taxpayers appealed the DOR decision to the Lewis and Clark County Tax Appeal Board (CTAB) on September 4, 2008, asserting that comparable properties had lower values. (Appeal Form).
8. The Lewis and Clark CTAB heard the appeal on September 29, 2008, and upheld the DOR value for the subject property. (Appeal Form).
9. The Taxpayers appealed to this Board on October 24, 2008. (Appeal Form). At the outset of the hearing, the Taxpayers revised the value they are requesting for the improvements to \$165,000 for a total value of \$203,614. (Grimm request).

10. The Taxpayers designed and built the subject improvements which include a house with attached garage and a detached garage. (Exh. 1, pp. 2-3). They first occupied the house in November 2007. (Grimm Testimony).
11. Initially the DOR valued the Taxpayers' house using the cost approach. (Exh. 1, p. 1). During the AB-26 review, the DOR valued the house using the market approach (Exh. 1, p. 1). The DOR appraiser identified the use of the cost approach as a mistake and specified that the property should have been valued using the market approach. (Hartford Testimony).
12. The DOR based residential market values for the current appraisal cycle on residential property sales which took place between 1996 and 2001. The characteristics of the sales properties are compared to the characteristics of the subject property to select those properties most comparable to the subject. The market value of the subject is then based on these comparable sales, after adjustments to make the comparable properties conform to the subject. (Swope Testimony).
13. There are a limited number of properties in the subject's neighborhood to analyze as comparables due to the subject property's characteristics and because many subdivisions in the area were developed after the appraisal period on which values were based. (DOR's Post-Hearing Written Submissions; Swope Testimony). Of the comparable properties used to value the subject, only one is located in the same neighborhood as the subject. The other comparables are located in surrounding neighborhoods. (Exhibit F).
14. In DOR's market approach, the land description for Comparable #1 on the comparable sales sheet specifies 1.05 acres of land. (Exh. F, DOR-GRI 000001). The deed for this sale, however, identifies the acreage of the property as 21.2864 acres. (Exh. 3, pp. 68-69).
15. The grade for Comparable #3 on the comparable sales sheet is 6+. (Exh. F, DOR-GRI 000001). The grade shown on the Property Record Card (PRC) for this property is 6. (Exh. 3, p. 54).
16. The grade for Comparable #4 on the comparable sales sheet is 6+. (Exh. F, DOR-GRI 000001). The grade shown on the Property Record Card (PRC) for this property is 6. (Exh. 3, p. 59).

17. The grade for Comparable #5 on the comparable sales sheet is 6+. (Exh. F, DOR-GRI 000001). The grade shown on the Property Record Card (PRC) for this property is 6. (Exh. 3, p. 54).
18. The market model which produced the comparable sales sheet was completed before the final values were set for Comparables #3, 4, and 5. The Department does not know what prompted the change in grade on each of these three properties. (Swope Testimony; DOR's Post-Hearing Written Submissions).
19. Given the problems with the market models and the lack of properties with characteristics comparable to the subject, the cost approach to value should carry the most weight for reconciliation of value for the subject property. (DOR's Post-Hearing Written Submissions).
20. A comparable sales sheet produced when a grade of 5+ is applied to the subject property identifies a market value for the subject of \$218,600 and a cost approach value of \$218,174. (Exh. J, p. 1). The differences between the market and cost valuations for the subject property are greater when a grade of 6 or 6- is used for the subject property. (Exh. F, DOR-GRI 000001; Exh. K, p. 1).

### **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. Class four property includes: single-family residences . . . ; [and] appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located . . . (Section 15-6-134(f)(i) and (iii), 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 property for tax year 2008. The Board will also address whether the grade should be reduced, as requested by the Taxpayer.

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. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (Mont. 1995); *Western Airlines, Inc., v. Michunovich* (1967), 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 Department may use different approaches (for example, market, income, and/or cost approaches), depending on available data, to appraise a property. *See, e.g., Albright v. Montana Department of Revenue*, 281 Mont. 196, 933 P.2d 815 (Mont. 1997).

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, the “market” approach using comparable sales is the preferred approach in valuing residential property when adequate data is available. Using the market approach in this case is complicated by the lack of properties with characteristics similar to the subject property’s and by the inconsistencies and apparent errors in the data entered in the market model for the properties identified as comparables.

The Board recognizes that a mass appraisal system will produce reliable indicators of market value most of the time, but not all of the time. Erroneous data is likely to be present in any data system as large as the mass appraisal data base. In the case before us, data errors appear to have affected the market model on which the value of the subject property is based and we cannot rely solely on the accuracy of the market approach in this instance. When market data is unreliable, the cost approach may be more accurate for valuing the property. In this instance, the cost approach is particularly applicable because the improvements are newly constructed. Based on the similarities of the comparable properties to the subject property, the Board adopts a grade of 5+ for the subject property. In addition, despite the problems with the data on comparables, the values produced by the market approach and the cost approach for a grade of 5+ are nearly identical and, therefore, instill greater confidence that the valuation of the subject property is accurate.

We must also raise an additional matter. When market data is relied on by the DOR to establish assessed value of real property and, when the taxpayer whose property is being assessed appeals that assessment and requests copies of otherwise confidential information on the properties being compared, the information must be produced according to the



**Order**

It is therefore ordered that the subject property shall be entered on the tax rolls of Lewis and Clark County at a value of \$218,174 (\$38,614 for land and \$179,560). The decision of the Lewis and Clark County Tax Appeal Board is reversed and the DOR's valuation is modified.

Dated this 21<sup>st</sup> day of January, 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 21<sup>st</sup> day of January 2009, 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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