

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

HD PARK, L.L.C.,)	
)	DOCKET NO.: PT-2009-107
Appellant,)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY
)	FOR JUDICIAL REVIEW
Respondent.)	

Statement of Case

HD Park, L.L.C., (Taxpayer) appealed a decision of the Yellowstone County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of property identified as Certificate of Survey (COS) 1037, Parcel 2, Yellowstone County, Montana. The Taxpayer argued the DOR overvalued the property for tax purposes, and seeks a reduction in value assigned by the DOR. The matter was heard before the State Tax Appeal Board on the record, without objection by the parties.

The Board having fully considered the testimony and exhibits from the record made before the Yellowstone County Tax Appeal Board, and all matters presented to this Board, finds and concludes that:

Issue

The issue before this Board is whether the Department of Revenue valued the subject property appropriately for tax purposes for tax year 2009?

Summary

HD Park, L.L.C. is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board reverses the decision of the Yellowstone County Tax Appeal Board and upholds the Department of Revenue value.

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 an unimproved .21 acre lot located next to the interstate with a two-sided billboard situated on it, with the following legal description:

Parcel 2, Tract 2, COS 1037, Section 34, Township 01 North, Range 26 East, Yellowstone County, State of Montana. (Appeal Form, CTAB Exh. A, pg 1.)
3. The Taxpayer was represented at the Yellowstone CTAB hearing by Jennifer Ray, Assistant Manager of HD Park, L.L.C. (CTAB Transcript, Appeal Form.)
4. The DOR was represented at the CTAB hearing by Vicki Nelson, Lead Appraiser. Ms. Nelson was also the appraiser who valued the subject property. (CTAB Transcript.)
5. The DOR originally used a Computer Assisted Land Pricing (CALP) model to establish the land value for the subject property for tax year 2009. This resulted in a value of \$58,012. (Nelson Testimony.)
6. The Taxpayer filed a Request for Informal Review (AB-26) on September 8, 2009, asking for an informal review meeting to provide additional information. (CTAB Exh. A, pg 4.)

7. After review of the subject property the DOR reduced the value by 77 percent to \$13,343. This adjustment was for size, shape and restrictions. (Nelson Testimony, CTAB Exh. A, pg 4.)
8. The Taxpayer filed an appeal with the Yellowstone County Tax Appeal Board (CTAB) on June 2, 2010, stating:

“This is raw un-developed land. This property is impaired due to no electricity/power source. We are requesting the value of this raw land to remain at the previous value.” (Appeal Form)
9. During the CTAB hearing, the Taxpayer requested the Board set the value of the subject property at the 2002 reappraisal value of \$2,131 based on the land being undeveloped and having no services on it. (Ray Testimony.)
10. The DOR used a Computer Assisted Land Pricing (CALP) model to establish the original land value of \$58,012 for the subject property. The CALP is based on sales of 13 different properties. There was no indication that the sales were not arms’ length sales. (CTAB Exh. B, p. 1; Nelson Testimony.)
11. The DOR further calculated a negative influence factor for oversized, undersized and oddly shaped properties based on 13 sales of like properties. This calculation resulted in the 77 percent reduction in the subject property value to \$13,343. (CTAB Exh. B, p.3.)
12. The CALP sales and the subject property are all located within Neighborhood 400.C of Yellowstone County. (CTAB Exh. B, p. 1.)
13. The Yellowstone CTAB heard the appeals on July 29, 2010, and modified the DOR value for the subject property. The following reason was stated:

“The appraised value for 2008 is set by this Board at \$36,000.00 which is based on the income method, not the cost method. During the testimony it was brought up the bill board sign has two faces and has two tenants on it. The standard income on the bill board signs are somewhere between \$250.00 to \$300.00 per month, per tenant. There are two tenants on this board which equates to \$600.00 a month, 7,200.00 per year. Based on the old real estate philosophy of five times annual gross income has a valuation of \$36,000.00.

That would give you a cap rate of around 15-20% which anybody would want to buy. The value of this property is set by this Board at \$36,000.00.”(Appeal Form Attachment.)

14. The Taxpayer appealed to this Board on September 3, 2010, stating:

“This property cannot be built on because of easement/oil pipe line. There are no services & no electric or power. The billboard is valued as personal property therefore we request the value remain at \$2,131.00.” (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. 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).)
5. For the taxable years from January 1, 2009, through December 31, 2014, all class four properties must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)
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. By law, billboards are considered class 8 personal property, and may be depreciated pursuant to administrative rule. Section 15-6-138, M.C.A., 42.21.154-156, A.R.M.

8. 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. *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 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, (1997).

When determining the market value of vacant land during mass appraisal, the DOR appraisers generally use a CALP model to determine land value. In this instance, Appraiser Nelson testified she had originally valued the subject property at \$58,012 using the CALP, but after reviewing the property during the AB-26 process she reduced the value to \$13,346 based on size, shape and restrictions of the subject property.

In this case, the Taxpayer supplied no evidence other than testimony that the subject property is raw undeveloped land impaired by lack of services, and should be appraised at a value set in 2002. Without providing evidence, the

Taxpayer fails to meet the burden showing that the DOR or the CTAB has erred.

The CTAB, however, increased the value of the property to \$36,000. The CTAB based this value on the income produced by the billboard sign located on the property. Billboard signs are considered personal property and are taxed separately from the real property. A billboard is considered a fixture and thus valuation is different than using the income approach for a property with land and improvements. We cannot affirm the CTAB value.

This Board concludes the evidence presented by the DOR did support the values assessed. This Board also concludes the Taxpayer has not provided evidence that the DOR appraised value for July 1, 2008 is not fair market value.

Thus it is the opinion of this Board that the assessed value set by the DOR is affirmed and the decision of the Yellowstone County Tax Appeal Board is reversed.

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 Yellowstone County at a 2009 tax year value \$13,343 as determined by the DOR.

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 t his Order.

