

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

SANDRA J. HARTMAN,)	DOCKET NO.: PT-2009-101
)	
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

Sandra J. Hartman (Taxpayer) appealed a decision of the Flathead County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of her property identified as Tract 2D and Tract 2CC, GOVL 4, Section 24, Township 31N, Range 22W, of Flathead County, State of Montana. The Taxpayer argues the DOR overvalued the property for tax purposes, and she seeks a reduction in value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on September 21, 2010, the Taxpayer was represented by Duane D. Hartman and Sandra J. Hartman, who provided testimony and evidence in support of the appeal. The DOR, represented by Michele Crepeau, Tax Counsel, Scott Williams, Regional Manager, and Don Leuty, DOR appraiser, presented testimony and evidence in opposition to the appeal.

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

Issue

The issue before this Board is whether the Department of Revenue determined an appropriate market value for the subject property for tax year 2009.

Summary

Sandra J. Hartman is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board affirms the decision of the Flathead 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 and testimony.
2. The subject property is a Whitefish Lake water front lot measuring 130 feet by 300 feet plus an additional 0.6 acres of unbuildable residual land in the rear of the lot, with the following legal description:

Tract 2D and Tract 2CC, GOVL 4, Section 24, Township 31N, Range 22W, of Flathead County, State of Montana.
(Exh. A.)
3. For tax year 2009, the DOR originally appraised the subject property at a value of \$2,205,838; \$2,108,773 for the land and \$97,065 for the improvements. (CTAB Exh. 2.)
4. The DOR used the cost approach to value the improvements and a CALP (Computer Assisted Land Pricing) model to value the land, as of the July 1, 2008 valuation date. (Exh. A, C & D.)
5. The CALP in this instance is based on 53 lake-frontage land sales. The CALP sales and the subject property are all located in Neighborhood 250, which is a geographic area designated by the DOR as having similar

- characteristics for purposes of valuation. In this instance, all the properties are located on Whitefish Lake with lake-frontage. (Williams Testimony, Exh. C.)
6. The Taxpayer filed a Request for Informal Review (AB-26) with the DOR. During the AB-26 process, the DOR adjusted the property value to \$1,903,610 for the land. After inspection the DOR appraiser adjusted the Condition, Desirability and Utility (CDU) factor to fair, in effect lowering the value of the improvements to \$90,815. (Leuty Testimony, CTAB Exh. D.)
 7. The Taxpayer filed an appeal with the Flathead County Tax Appeal Board (CTAB) on April 12, 2010, stating:
 - “1. Review & discuss location & physical characteristics of property
 2. determine (*sic*) value of property on open market” (Appeal Form.)
 8. The Flathead CTAB heard the appeal on July 15, 2010, and adjusted the DOR value on the subject land to \$1,755,000 and upheld the value placed on the improvements of \$90,815. (Appeal Form.)
 9. DOR appraiser Leuty testified at the CTAB hearing that the subject property had already received a 20% negative influence reduction prior to the AB-26 process based on the poor shoreline conditions. (Leuty CTAB Testimony.)
 10. The Taxpayer appealed to this Board on August 4, 2010, stating:

“The action taken by the Flathead Tax Appeal Board did not sufficiently consider my reasoning with respect to property comparisons for assessment, nor was I complete in my presentation.

Property comparisons for assessment involved beach front condition, poor drain-age on our lot, and effect of adjacent commercial property (not covered at county level).

One of the tax appeal boards concerns -while I was present- used the reasoning, “If we do this then others will...” This line of

reasoning is not part of the statutes', it shouldn't be applied when considering an appeal.

Admittedly, we were not present when the county board discussed our appeal. This possibility didn't occur to me at the time of the meeting, nor was this option presented to me.

The chair conducted a respectful meeting. ” (Appeal Form.)

11. During the hearing Mr. Hartman did not argue the value of the improvements. Rather he presented 25 pictures and narrative outlining the various negative characteristics and deficiencies of the subject property. (Hartman Testimony, Exh. 1.)
12. Mr. Hartman believes there are no properties on Whitefish Lake that have the same negative characteristics as the Taxpayer's property. (Hartman Testimony.)
13. Mr. Hartman argued for a value of \$850,000: \$780,000 for the land and \$70,000 for the improvements based on what he considered unusual characteristics. (Hartman Testimony, Appeal Form.)
14. During the hearing Mr. Hartman had no justification for the requested value and admittedly believes the property would have sold for much more than the requested amount on July 1, 2008. (Hartman Testimony.)
15. The DOR provided a comparable sales report showing five properties with similar attributes and located very near the subject property to support its valuation. (Exhs. H, I and J.)
16. At the hearing, Williams explained the methodology and calculations for computation of the land values for the subject neighborhood. The time-trending of values takes into account the increase and the decrease in the market during this appraisal cycle, to arrive at a value for each sale as of July 1, 2008, the statutory appraisal date. (Williams Testimony.)

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 property 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).)

Findings of Fact and Conclusions of Law

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate value for the subject property for tax year 2009. In this instance, we will review whether the DOR properly valued the subject property.

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 Taxpayer argues there are no other properties on Whitefish Lake comparable to the subject property because of unusual characteristics and deficiencies. The only evidence the Taxpayer submitted were pictures of the subject property showing these deficiencies.

The mass-appraisal techniques developed by the DOR are designed to find the value of real property on the open market. As part of the standard mass appraisal system, the DOR uses a CALP model to determine the value of property within a specific neighborhood. In this instance, the appraiser determined that the CALP was accurate but the subject property required certain adjustments for deficiencies in the property.

We find and conclude that the Department's valuation method is correct and properly values the subject property. In this case, the CALP was based on 53 water-front land sales to determine the value of property within the subject neighborhood. This CALP model used a front-foot method to determine the value of waterfront property, which is a standard method in determining waterfront lot valuation. Regional Manager Scott Williams further refined the CALP to reflect the changes in property values during the reappraisal cycle by calculating both market appreciation and depreciation within in the subject CALP.

For the subject property, the DOR determined the subject property had a negative influence, based on adverse topography of a shallow, muddy shoreline which appears to be unique to the subject property. As a result of this negative influence, the appraiser determined a 20% reduction in the value of the land was appropriate. The appraiser also reduced the property further during the AB-26 process based on his inspection of the property. We find the Department's appraisers to be credible witnesses, and the evidence presented to be conclusive as to valuation of the subject property. The CTAB further

reduced the value of the land to \$1,755,000. We find there is justification for the additional reduction, granted by the CTAB, due to the location of the subject property. This property is a single family residential property located very close to commercial property (consisting of a resort and a multifamily condominium) which diminishes the desirability. Further, there is evidence of flooding problems for the subject property due to the paving of the adjacent property.

Thus it is the opinion of this Board that the value set by the DOR for the improvements is correct and the value of the land determined by the Flathead County Tax Appeal Board is affirmed.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property value shall be entered on the tax rolls of Flathead County at a 2009 tax year value of \$1,845,815 as determined by the Flathead County Tax Appeal Board.

Dated this 14th 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 t his Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th 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:

Sandra J. Hartman	<input type="checkbox"/> U.S. Mail, Postage Prepaid
P.O. Box 1911	<input type="checkbox"/> Hand Delivered
Whitefish, Montana 59937	<input type="checkbox"/> E-mail

Scott Williams	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Don Leuty	<input type="checkbox"/> Hand Delivered
Flathead County Appraisal Office	<input type="checkbox"/> E-mail
100 Financial Drive Suite 210	<input type="checkbox"/> Interoffice
Kalispell, MT, 59901	

Michelle R. Crepeau	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Office of Legal Affairs	<input type="checkbox"/> Hand Delivered
Department of Revenue	<input type="checkbox"/> E-mail
Mitchell Building	<input checked="" type="checkbox"/> Interoffice
Helena, Montana 59620	

Norma Weckwerth, Secretary	<input type="checkbox"/> U.S. Mail, Postage Prepaid
800 South Main	<input type="checkbox"/> Hand Delivered
Flathead County Tax Appeal Board	<input type="checkbox"/> E-mail
Kalispell, Montana 59901	

/s/ _____
DONNA EUBANK
Paralegal