

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

PATTY L. and ORVILLE LOVAAS,)	
)	DOCKET NO.: PT-2009-117
Appellant,)	
)	FACTUAL BACKGROUND,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

Patty and Orville Lovaas (Taxpayers) appealed a decision of the Missoula County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR’s) valuation of their property located at 228 East Spruce Street, Missoula, Montana. Taxpayers claim the DOR overvalued their property for tax purposes and seek a reduction in the value assigned by the DOR. After a hearing before the Missoula County Tax Appeal Board, the State Tax Appeal Board (Board) determined the appeal on the record.

The duty of this Board, having fully considered the exhibits, evidence, submissions and all matters presented, is to determine the appropriate market value for the property based on a preponderance of the evidence.

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

Patty and Orville Lovaas are the Taxpayers in this action and therefore bear the burden of proof. Based on a preponderance of the evidence, the Board modifies the findings of the Missoula County Tax Appeal Board.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter. This matter was set to be heard on the record pursuant to §15-2-301(2), MCA, without opposition by the parties. All parties received the transcript of the county tax appeal board and were afforded opportunity to submit additional evidence.
2. The subject property is a single family residence situated on a 3900 square feet lot with the following legal description:

Lot 18, Block 000 of the CP Higgins Addition, Section 22, Township 13N, Range 19W of Missoula County, Montana. (CTAB Exh. A.)
3. The subject property consists of a house on a stone and concrete foundation built in 1910, with a small garage. (Tillotson Testimony, CTAB Exh. A.)
4. The DOR used a market approach to set the value for tax year 2009; they originally valued the subject property at \$182,700 by determining the land value at \$92,508 and the improvement value at \$90,192. (Appeal Form.)
5. The Taxpayer is asking for a value of \$120,000 consisting of \$70,000 for the land and \$50,000 for the improvements. (Lovaas Testimony, Appeal Form.)
6. The DOR based market values in this neighborhood for the current appraisal cycle on residential property sales which took place between May 2006 and August 2007. The characteristics of the “comparable properties” are compared to the characteristics of the subject property to select those properties most similar to the subject property. The market value of the subject property is then

based on these “comparable sales” which are time-trended to the appraisal date. (Tillotson Testimony, Exh. B.)

7. The DOR used five comparable properties from the same neighborhood to value the subject property. The comparable properties were adjusted to conform to the attributes of the subject property; this includes a time adjustment to the assessment date of July 1, 2008. (Tillotson Testimony, Exh. B.)
8. The DOR testified the comparable properties used to value the subject property had very similar attributes, such as number of bedrooms and baths, total square footage, and the same Condition, Desirability and Utility (CDU). (Tillotson Testimony, Exh B.)
9. The Taxpayer filed an appeal with the Missoula CTAB on September 27, 2009, stating: “Value in excess of market. Cannot sell at DOR market value. Arbitrary valuation methods used without enabling legislation (ECF) Building is 99 years old without a foundation. Unsellable conventional financing methods. Comparable lot sale price without buildings.” (Appeal Form).
10. In preparation for the CTAB hearing, the DOR visited the subject property where it was discovered the property had a cellar and a garage that were not on the original appraisal. The DOR corrected the appraisal by increasing the value of the improvements to \$97,092. (Tillotson Testimony, Exh. A.)
11. A CTAB hearing was held on July 10, 2010. The Taxpayers argued there were discrepancies between the Computer Assisted Land Pricing Model (CALP) improvement values and their eventual assessed value. This variance averaged \$59,246 per property improvement.
12. The DOR only used the Computer Assisted Land Pricing (CALP) model for reference purposes, as the subject property was valued on the market basis. The CALP is based on sales of 31 different sales of properties, and set a base land

- value of \$92,508. There was no indication that the sales did not meet the requirements of “market value.” (Redden Testimony, CTAB Exh. B4 & B5.)
13. The CALP sales and the subject property are all located within Neighborhood 5 of Missoula County. (CTAB Exh. B4 & B5.)
 14. The CTAB found the land value to be correct at \$92,508 and lowered the DOR’s valuation on the improvements to \$84,484 based on the cost approach. The CTAB was troubled by the variation in the improvement values of the CALP and the appraised values of the same properties. (CTAB decision attached to Appeal form.)
 15. The Taxpayers appealed to this Board on September 27, 2010. Their reason for appealing was stated as: “Selective sales used in valuation-CALP. Omitted sales. Assigned values – all CALP sales \$59,246 excess assessed value.” (Appeal form.)
 16. The Taxpayer submitted an exhibit packet during the CTAB hearing. (Exh. 1.) The exhibit included cadastral records of comparable properties and Multiple Listing Service (MLS) properties sold in the 10B Downtown neighborhood of Missoula.
 17. Included in this exhibit packet is a spreadsheet showing the difference between the sales price and the assessed value of the DOR properties used in the Computer assisted Land Pricing Model (CALP). (Lovaas CTAB Testimony, CTAB Exh. 1.)
 18. The Taxpayers also presented a spreadsheet showing all sales in areas 10B & 10C of downtown Missoula collected from the MLS. Out of 113 sales, they compiled 30 sales which they believed to be most comparable to the subject property. Their analysis showed an average sale price of \$170,054 or \$32.00 per square foot. (CTAB Exh. 1.)
 19. The Department uses “neighborhoods” to group comparable properties and set valuation based on those comparable sales. Homogeneous areas within each

county are geographically defined as neighborhoods. The residential lots and tracts are valued through the Computer Assisted Land Pricing models (CALP) and the CALP models reflect July 1, 2008, land market values. (ARM 42.18.110(7).)

20. All of the sale properties used in the CALP were properties with improvements. The improvements were abstracted from the sales price using the cost approach to arrive at a land value as of the valuation date of July 1, 2008. (Redden Testimony, CTAB Exh. B5.)
21. The Taxpayers argued the CALP is flawed because the base rate and the residual rate did not proportionally change between the appraisal cycles. The base rate per square foot increased from \$7.00 in 2002 to \$14.36 and the residual rate did not change. (Lovaas Testimony.)
22. The Taxpayers also argue the low R-Squared¹ or R² of 13.01% (out of 100) is a result of the poor data in the CALP model. (Lovaas Testimony.)
23. The DOR testified that the R² is not the only factor to show validity of the model's result. In the Redden affidavit, Mr. Redden testified to other methods of determining validity. (Redden Affidavit.)
24. Pre-hearing submissions from the Taxpayers state they believe only one of the five comparable properties used by the DOR to value the subject property is a valid sale. They contend comp. sales #2 and #4 were a split refinance, #3 land value was removed and square footage is in error and # 5 was too close to the university and a three story rental, making them all incomparable. (Taxpayer Pre-hearing Submission, Exh. STAB 2.)

¹ The "R²" or "R squared" is the coefficient of determination in a CALP model. The R² is a measure of the predictive accuracy of the model. R² values during the last cycle ranged from 0 to 1. The closer the value is to 1, the more reliable the model's estimate of value. (*Manicke v. DOR*, PT-2005-5, 08/31/06, page 14.) This same measure of predictive accuracy is often referenced as a percentage. The closer the value is to 100%, the more reliable the value is to the model's estimate of value.

25. The DOR submitted the Realty Transfer Certificates (RTC), as evidence, showing the validity of all the comparable sales used to value the subject property. (Affidavit of Glenda Tillotson, DOR Pre-hearing Submission.)

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. The development of sales comparison models using Property Valuation Assessment System (PVAS) is a requirement for property valuation during the reappraisal cycle. (ARM 42.18.110(8).)
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 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

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 2009 and if the CTAB appropriately adjusted the improvement value.

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).

In this case, the DOR used a market approach to determine a value of \$189,600 for the subject property. The Department used five comparable properties which sold in the Taxpayers' neighborhood to value the subject property. The DOR submitted the RTC of each comparable property to verify the validity of the sales. We find the comparable properties to be very similar to the subject, and properly value the subject property at 100% of market value. Taxpayers did not present any relevant evidence to dispute the comparables. There is no indication that the Department's valuation suffers from any errors or is miscalculated in any manner.

The Taxpayers, however, argue the subject property should be reduced in value because the improvement values on the CALP, on average, are \$59,246 less than the improvement values as assessed in 2009. They also argue that the base rate and the residual rate in the CALP did not proportionally change between the appraisal cycles (*See EP 21*) and point to the low R² of 13.01% as an indicator of invalid data. (*See EP 22.*).

We first note that there is no requirement that any property tax values change proportionately from one valuation cycle to the next. Rather, the Department is tasked with determining the proper market value for a property on the date of the appraisal. *See* §15-8-111, MCA. The current valuation has no relevance or relationship to the prior assessment value.

Additionally, the DOR used the market approach to value the subject property as a whole. Thus, the CALP itself was not used to value the subject property but is merely to determine the value assigned to the land within the total value. In developing a CALP, it is not unusual for the abstracted improvement values to be less than the eventual assessed value of those same improvements. This is because the improvement values on the CALP are derived from the sale date and have not yet been time-trended to the valuation date. Also, an R^2 value is frequently low where improvement values must be abstracted from the property sale prices to arrive at a land value, which is one reason that CALPs derived from vacant land sales are generally more reliable. We again note, however, the CALP was not used to value the subject property directly and thus it is not relevant to valuing the subject property.

In the past year, Ms. Lovaas has appealed many of her own properties and represented several different taxpayers during the CTAB process. In this instance, Ms. Lovaas argues primarily that the CALP is inaccurate. As demonstrated in the hearing process, however, the CALP was not used to directly value her property and thus has little relevance to this appeal.

It would benefit Ms. Lovaas to use the DOR informal review process (AB-26) before proceeding through the hearing process. The informal review helps taxpayers understand the appraisal process and the different methods of appraisal, so unnecessary time is not wasted in the hearing process arguing and explaining methods not used in valuing the subject property. In this instance, much of the appeal and subsequent argument focused on a method not used to value the property.

It is this Board's responsibility to determine if an appropriate value was assessed to the subject property. By law, all property must be appraised at 100% of market value using the most appropriate data. The evidence presented by DOR is more than sufficient to show an accurate valuation as of the assessment date of July 1, 2008. In fact, we find the comparable properties presented to be highly indicative of the market value, because they are very comparable to the subject property.

Therefore, the Board modifies the CTAB decision and upholds the original DOR valuation.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Missoula County by the local Department of Revenue at a value of \$189,600 as determined by the Department of Revenue. The Missoula County Tax Appeal Board decision is modified.

Dated this 15th of December, 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.

