

Issue

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

Summary

The Taxpayers in this proceeding have the burden of proof. *Department of Revenue v. Burlington Northern, Inc.*, 169 Mont. 202, 545 P.2d 1083 (1976).) Based on a preponderance of the evidence, the Board modifies the decision of the Beaverhead 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, verbal and documentary.
2. The subject properties are described as 16 individual improvements, commonly known as Elkhorn Hot Springs Resort, located on leased Forest Service land, Section 29, Township 04S, Range 12W, of Beaverhead County, State of Montana. (Exh. C.)

GEO CODES

18-0585-29-4-02-04-0000	Lodge	\$98,300
18-0585-29-4-02-04-0001	Running Bear Cabin	\$20,000
18-0585-29-4-02-04-0002	Fawn Cabin	\$ 8,620
18-0585-29-4-02-04-0004	Bear Paw Cabin	\$30,540
18-0585-29-4-02-04-0005	Elkhorn Cabin	\$25,470
18-0585-29-4-02-04-0006	Spruce Tree Cabin	\$30,520
18-0585-29-4-02-04-0007	Antler/Moose Cabins	\$36,460
18-0585-29-4-02-04-0008	Ramshorn Cabin	\$30,100
18-0585-29-4-02-04-0010	Buffalo Cabin	\$17,080
18-0585-29-4-02-04-0011	Badger Cabin	\$17,090
18-0585-29-4-02-04-0012	Redhawk Cabin	\$18,160
18-0585-29-4-02-04-0014	Twill-do Cabin	\$17,240
18-0585-29-4-01-05-0000	Beaverhead Cabin	\$21,040
18-0585-29-4-02-04-4003	Elkhorn Hot Springs/Personal Cabin	\$62,650
18-0585-29-4-01-10-0000	Pool	\$19,000

(Exh. C.)

3. For tax year 2009, the DOR appraised the subject improvements as rural commercial properties at a total value of \$459,968. (Exh. 1b, Appeal Form.)
4. The DOR used the cost approach to value the subject improvements for the July 1, 2008 appraisal date. (Exh. C.)
5. Using the cost approach, the DOR calculated a value of the improvements based on new construction, and depreciated the value of those improvements to reflect its age and condition. (Hartz Testimony, Exh. C.)
6. The Taxpayers filed an appeal with the Beaverhead CTAB on September 27, 2009, citing “Value in excess of market. Arbitrary valuation methods used without enabling legislation. Taxable values doubled without enabling legislation. Reclassed (*sic*) property without notification and without enabling legislation. 18-0585-29-4-02-04-001 reappraised in 2008 without notification and increased again in 2009. 18-0585-29-4-04-4003 completed in 2008 with value based on cost of \$30,000. Now doubled.” (Exh. 1b, Appeal Form.)
7. At the CTAB hearing, Taxpayers presented a long list of disputes with the property descriptions on the DOR property record cards. As there had been no AB-26 and no informal review, the DOR was unable to comment on the challenges to the property descriptions. (Lovaas Testimony, Exh. 1b.)
8. The Beaverhead² CTAB heard the appeal on June 9, 2010, and upheld the DOR value for the subject property. (Appeal Form.)

² Taxpayers allege the Beaverhead County Tax Appeal Board was somehow not properly appointed by the County Commissioners. Pursuant to §§15-15-101, and 15-2-201, MCA, the County Commissioners in each county appoint the tax appeal board and the Board prescribes rules for those Boards. We presume that the Tax Appeal Board is properly appointed because this Board is notified of their appointments by the Commissioners. No evidence of the contrary was presented to this Board, and we decline to address the issue.

9. The Taxpayers appealed to this Board on June 11, 2010, stating:
“Decision predetermined prior to hearing. Denial of due process.”
(Appeal Form.)
10. The Taxpayers are asking for a total value of \$304,250 for all of the improvements. This value was derived from the 2002 appraised value of \$273,000 and the addition of the new cabin. (Lovaas Testimony, Appeal Form.)
11. The Taxpayers filed a Request for Informal Review (AB-26) on June 27, 2010. Since this was filed after the CTAB hearing, the DOR did not respond to the review. (Hartz Testimony.)
12. The improvements are used as part of the Elkhorn Hot Springs Resort business, which has a hotsprings pool, a main lodge, and cabins available for overnight rentals.
13. Three of the 16 properties are not rented out by the business. Lovaas deems two of the properties to be too degraded to be rentals, and one is the owners’ personal home. (Lovaas Testimony.)
14. Both the Taxpayers and the DOR submitted property record cards (PRC) for the current 2008 valuation cycle and the prior 2002 cycle. (Exhs. 1b, B and C.)
15. Taxpayers believe cabins should be classified residential based on a building inspection conducted by the Department of Labor stating they are single family residences or cabins. (Exh. 1b.)
16. After the original assessments were sent, appraiser Hartz removed a 12 feet by 20 feet garage building (which had been demolished), which reduced the total assessed value by \$7,700 to \$452,268. (Exh. C.)
17. After the CTAB hearing, Appraiser Hartz had an opportunity to measure the main lodge and discovered the second floor had less square-

footage than previously calculated and found a front porch and lean-to which were not on the original assessment. These corrections amount to a net reduction of \$9,230 which, Appraiser Hartz testified, needs to be removed from the current assessed value.

18. The two changes make the total improvement value \$443,038. (Hartz 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. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
5. The term "commercial", when used to describe property, means property used or owned by a business, a trade, or a corporation, or used for the production of income. (§15-1-101(1) (d)(i), MCA.)
6. 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).

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 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).

The Taxpayers made many arguments why the DOR appraisal is incorrect, but did not present any evidence other than a list of requested corrections to make the determination. We find that a list of requested correction is not reliable evidence to demonstrate an error by the DOR. No independent fee appraisals, independent verification of the square footage, or any other corroborating evidence were presented to support Taxpayers' claims.

It is certainly within a taxpayer's right to skip the informal review process (AB 26) and proceed directly to a county appeal. However, this case is a perfect example as to why the AB-26 process exists. In this instance, Patty Lovaas, who has repeatedly appeared before this Board, should have been well

aware of the process for successfully addressing errors in the property record card.

In this instance, it would have behooved the Taxpayers to contact the DOR in advance of the hearing and request a re-measurement of the subject property, if the Taxpayers believed the underlying measurements were in error. This is common practice, as demonstrated by the DOR's willingness to recalculate its value in the Taxpayers' favor after the DOR found errors in its calculations during an independent visit to the property. (*See* EP 16 & 17.)

Neither the CTAB nor this Board has the ability to complete an appraisal, measure the subject property or determine whether errors have occurred in the DOR appraisal. Our function is to look at all evidence presented to us, including the DOR appraisals and determine if the appraisals were completed in accordance with Montana statutes, commonly accepted appraisal methods and used appropriate judgment. Probative and reliable evidence of error by the DOR must be provided for any tax board to determine error in the DOR appraisal. Patty Lovaas failed to provide any relevant or probative evidence of any error.

At the hearing before this Board, Taxpayers complained they were denied their due process because the CTAB made a rapid decision which, they assert, must have been predetermined. After review of the CTAB transcript, this Board finds this complaint is without cause. A CTAB hearing normally is completed in less than one hour and in this case, the CTAB graciously allowed Taxpayers to provide rambling and unsupported evidence to the Board for several hours. This is ample time for a CTAB to make an informed decision.

It should be noted that the Taxpayers' prolonged testimony and complaints about the assessment were primarily disagreements with the technical descriptions of the property, which the CTAB is not staffed to

examine independently. The CTAB does not have appraisers and was not presented with any professional appraisals or third party verified information that would indicate the taxpayer provided verified complaints. The DOR does, however, have appraisers and most taxpayers go through the informal review process with the DOR first (which typically involves a visit to the property and a meeting with the taxpayer to examine the claims and make any necessary corrections.) In this instance, the Taxpayers chose not to do this. While it is the prerogative of the Taxpayer to go directly to hearing, the Taxpayer failed to provide any verifiable or objective evidence to the CTAB to support their claims that the DOR inaccurately valued the property. Mere testimony on the part of the Taxpayer is insufficient to find DOR error, and the CTAB properly denied the claims.

The Taxpayers also complain the DOR changed the classification of the properties from residential to commercial without notification. They further argue that all the properties were given the homestead exemption prior to this appraisal cycle and now only receive the comstead exemption. In review of the property record cards submitted, however, the properties were clearly classified as commercial rural in the last appraisal cycle, the same as the current cycle, and properly fit the definition of commercial property. (*See* §15-1-101 (1) (d)(i), MCA.)

The Board finds that all of the improvements, except the Taxpayers' personal residence, are used to produce income either directly or indirectly and are therefore correctly classified commercial. Taxpayers admitted at hearing that they treat the buildings as business property on their income taxes and take deductions for depreciation and business expenses. Commercial properties are often valued on the income method, which was not used here because of the lack of comparable data used to establish rental rates. Instead, the DOR valued

each improvement individually instead of as a business unit, leaving the Taxpayers' residence to be classified separately as residential property.

This Board concludes the evidence presented by the DOR is sufficient to show accurate improvement values and did not contain any material errors. The Taxpayer did not provide any relevant evidence to overcome the DOR's value. We do not find that the Taxpayer's rights to due process were violated.

Thus it is the opinion of this Board that the assessed value determined by the DOR is correct and the decision of the Beaverhead County Tax Appeal Board is modified to reflect a total improvement value of \$ \$443,038. The taxable value should also reflect a change in the classification of GEO code 18-0585-29-4-02-04-4003 to residential property.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties improvement values shall be entered on the tax rolls of Beaverhead County at a 2009 tax year value of \$443,038, as determined by the Department of Revenue, and reclassify GEO Code 18-0585-29-4-02-04-4003 to residential property. Thus, the decision of the Beaverhead County Tax Appeal Board is hereby modified.

Dated this 17th day of November, 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.

