

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

Orville, Patty and Brian Lovaas are the Taxpayers in this proceeding and, therefore, 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 affirms 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 property is described as a 13,200 square foot lot with a small garage located on it. The property is located at 456 Thomsen Ave. Dillon, Montana. (CTAB Exh. C.)
3. For tax year 2009, the DOR originally appraised the subject property at a value of \$80,454; \$77,460 for the land and \$2,994 for the improvements. (Hartz Testimony.)
4. The DOR used a Computer Assisted Land Pricing (CALP) model to establish the land value for the subject land.
5. The DOR used the cost approach to value the subject improvement for the July 1, 2008 appraisal date. (CTAB Exh. C.)
6. The DOR calculated a value of the improvement based on new construction, and depreciated the value of the building to reflect its age and condition. (Hartz Testimony, CTAB Exh. C.)

7. The Taxpayers filed an appeal with the Beaverhead CTAB on September 27, 2009, citing “Building is a dirt floor shack used for storage. Value in excess of market. Arbitrary valuation methods used without enabling legislation. Taxable values doubled without enabling legislation. Have had for sale for 2 years. Cannot sell for DOR market value.” (Appeal Form, Exh. 1c.)
8. On the appeal form, the Taxpayers requested a value of \$51,500; \$50,000 for the land and \$1,500 for the improvements. (Exh. 1c.)
9. On February 25, 2010, in preparation for the CTAB hearing, the DOR discovered a discrepancy in the square footage of the land and reduced the land value to \$43,320 and also modified the improvement value to \$2,032 because it had no electricity and a dirt floor. (Hartz Testimony, Exh. 1c.)
10. On April 27, 2010, the DOR requested the Taxpayers and the CTAB to dismiss the hearing because the revised assessment value was less than the Taxpayers’ requested value and the Taxpayers did not respond to the new assessment. (Exh. 1c.)
11. On April 28, 2010, the Taxpayers notified the CTAB they did not want to dismiss their appeal. They lowered the requested value still further to \$31,500. (Lovaas Testimony, Appeal Form.)
12. The Beaverhead CTAB heard the appeal on June 9, 2010, and upheld the revised DOR value for the subject property. (Appeal Form Attachment.)
13. The Taxpayers appealed to this Board on July 11, 2010, stating:
“Decision predetermined prior to hearing. Denial of due process.”
(Appeal Form.)
14. The Taxpayers’ revised value was in part based on Ms. Lovaas’ claim that the land should be valued according to her costs, i.e., what she paid for it

- plus the cost of demolishing and removing the house originally on the lot. (Lovaas Testimony.)
15. The Taxpayers filed a Request for Informal Review (AB-26) on June 28, 2010. Since this was filed after the CTAB hearing, the DOR did not respond to the review. (Hartz Testimony, Appeal Form.)
 16. During the hearing, the Ms. Lovaas twice admitted she believed the market value of the subject property was \$50,000 as of July 1, 2008. (Lovaas Testimony.)
 17. The DOR used a Computer Assisted Land Pricing (CALP) model to establish the land value. The CALP is based on 30 vacant land sales. There was no indication that the sales were not arms length sales. (Hartz Testimony.)
 18. The DOR determined that 10,000 square-foot is the base size for valuing lots in the subject neighborhood. The first 10,000 square-foot are valued at \$3.50 a square-foot and each additional square-foot is valued at \$2.60. (Exh. 1a.)
 19. The DOR appraiser Hartz testified that the CALP value, after the square footage adjustment, was an appropriate market value for the property. (Hartz Testimony.)
 20. Lovaas submitted materials which calculated an average price per square foot of \$2.63. She did not factor in the economies of scale used by the DOR to value the base lot and residual square footage differently. She also discarded sales of properties she did not consider comparable, removing them from the calculations. (Lovaas Testimony, Exh. 1a.)

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. 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 property 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). In this case, the DOR did not have comparable properties that were vacant lots with garages, so they valued the structure using the cost method (cost of building new less depreciation) and then valued the land at market value with comparable vacant lots.

The Taxpayers initially appealed this property for a good reason: the DOR mistakenly doubled the square footage of the property on the property record card which set an erroneously high value. In this case, however, the DOR caught its mistake prior to the CTAB hearing and corrected the square footage, in effect lowering the assessed value to \$45,352, which was well below the Taxpayers' requested value. The Taxpayers, however, proceeded with the county and state tax appeal board processes.

The Taxpayers argued there were still problems with the assessed value and appealed to this Board asking that a value of \$31,500 be set on the subject property. The Taxpayers' chief argument was that the land should be valued by their version of the "cost approach," in essence, totaling up the investment that the Taxpayers had made in the property. The Taxpayers calculated their original cost and the cost of removing the uninhabitable house on the property when they bought it, and deem that to be the value. The law, however, clearly states that residential tract land shall be valued at its fair market value. *See* §15-8-

111, MCA. Fair market value is the value of the property when it changes hands between a willing buyer and willing seller. Ms. Lovaas has contested many assessments before this Board and should, by now, know the basic premise of assessment; that is, land is valued according to its fair market value.

In fact, Lovaas repeatedly admitted that the market value of the property is at least \$50,000. In the initial CTAB appeal, the Taxpayers asked for an assessment of \$51,500, which Lovass admittedly believed was the market value as of the assessment date. Lovaas repeated her assertion that the market value was \$51,000 when testifying to this Board.

There is no indication that the Department's valuation suffers from any errors or is miscalculated in any manner. We find the DOR appraisers to be credible and the evidence presented is sufficient to show accurate valuation for the valuation date of July 1, 2008. The Taxpayers admitted at hearing that they believed the fair market value to be higher than the value assessed by the DOR but wanted the tax value reduced anyway. We find their claims disingenuous and unsupported by any evidence.

Therefore, the Board upholds the CTAB decision.

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 Beaverhead County at a 2009 tax year value of \$45,352 as determined by the Department of Revenue and affirmed by the Beaverhead County Tax Appeal Board.

Dated this 16th 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.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of November, 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:

Orville, Patty and Brian Lovaas	<input type="checkbox"/> U.S. Mail, Postage Prepaid
228 E Spruce Street	<input type="checkbox"/> Hand Delivered
Missoula, Montana 59803	<input type="checkbox"/> E-mail

Rocky Haralson	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Patsy Hartz	<input type="checkbox"/> Hand Delivered
Beaverhead County Appraisal Office	<input type="checkbox"/> E-mail
205 E Center	<input type="checkbox"/> Interoffice
Dillon, MT. 59725-2601	

Derek Bell	<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 type="checkbox"/> Interoffice
Helena, Montana 59620	

Richard Gosman, Chairman	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Beaverhead CTAB	<input type="checkbox"/> Hand Delivered
P.O. Box 86	<input type="checkbox"/> E-mail
Lima, Montana 59739	

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