

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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MICHAEL S. ROGERS,	)	
	)	DOCKET NO.: PT-2009-98
	)	
Appellant,	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,	)	ORDER and OPPORTUNITY
	)	FOR JUDICIAL REVIEW
Respondent.	)	

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Michael Rogers filed an appeal with this Board on July 16, 2010 alleging six issues. The issues are set out in their entirety below:

1. Appellant was never given a chance to present his case.
2. The CTAB violated the American with Disabilities Act.
3. The CTAB violated state discrimination laws.
4. The CTAB violated due process by not allowing the district (sic) Court to process a Writ of Review filed on June 2, 2010 asking the Court to review the actions of the CTAB.
5. Appellant was never given notice of any July 14, 2010 hearing.

On July 14, 2010, the day of the CTAB hearing Appellant was having a procedure performed on his back to alleviate pain which is the bases (sic) of his disability. (Appeal letter attached to appeal form.)

## Factual Background

1. Taxpayer filed a Property Tax Appeal, stamped September 30, 2009, with the Yellowstone County Clerk and Recorder. The Yellowstone County Tax Appeal Board docketed the file, A-12-09. (Appeal Form)
2. The Department of Revenue valued the subject property at \$108,600 and the Taxpayer requested a value of \$71,856. (Appeal Form)
3. Montana law requires a taxpayer or representative shall attend the county tax appeal board hearing and testify under oath. *See* §15-15-103(1), MCA.
4. The county tax appeal board may waive the requirement to appear in person upon written request and concurrence of the Department. *See* §15-15-103, MCA.
5. On March 25, 2010, Taxpayer sent a letter to the Department of Revenue requesting the Department waive the requirement that the Taxpayer appear in person as required in §15-15-103, MCA, due to a disability and lack of transportation. (Rogers letter dated March 25, 2010)
6. There is no evidence that Taxpayer suffers from a disability requiring a legal accommodation. Taxpayer states he has severe back pain, and that he does not have transportation to access the Courthouse. (Letter dated March 25, 2010.)
7. By letter dated April 14, 2010, the Department informed the taxpayer it would not agree to waive the requirement to attend in person. (Monteau Moore letter dated April 14, 2010.)

8. On May 14, 2010, the Yellowstone County Tax Appeal Board sent written notice to the Taxpayer that a hearing was set for Wednesday June 2, 2010 at 1:15pm at the Yellowstone County Courthouse. (YCTAB Letter dated May 14, 2010)
9. Petitioner acknowledges receiving this letter. He informed the Board by letter that he did not anticipate being at the hearing due to lack of transportation and severe pain. (Rogers letter dated May 28, 2010; *see also* Email dated June 2, 2010).
10. The Yellowstone County Tax Appeal Board sent a second notice to the Taxpayer regarding the hearing set for June 2, 2010. (Letter dated May 27, 2010).
11. By letter dated May 28, 2010, the Taxpayer claimed an ADA (Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2000)) accommodation, requesting a modification of the hearing procedure. (Letter from Rogers dated May 28, 2010.) The ADA is a federal civil rights law that prohibits, under certain circumstances, discrimination based on disability and provides for regulations to cover access to all programs and services offered by the governmental entities.
12. On Wednesday June 2, 2010, the Taxpayer sent an email to the secretary again informing her that he would not be in attendance at the hearing due to his pain levels. (Email from Michael Rogers dated June 2, 2010 to Phyllis Brady)
13. Taxpayer apparently filed certain writs of prohibition and other filings in the 13<sup>th</sup> judicial District Court claiming a violation of the ADA laws. (Cause No. DV-10-1005.) None of the filings provided to this Board indicate that the Yellowstone County Tax Appeal

Board or the State Tax Appeal Board are listed as defendants in the actions.

14. The Yellowstone County Board issued a written decision on July 14, 2010, denying the property tax appeal pursuant to § 15-15-103(1), MCA. The Board stated in its opinion that it held the hearing and the Taxpayer did not appear or send a representative for the hearing.
15. The State Tax Appeal Board received Taxpayer's appeal and set the matter to be decided on briefs. (STAB Letter dated July 28, 2010)
16. Both parties filed additional briefs and materials with this Board, which included exhibits and arguments supporting the valuation of the property.
17. The Department provided a property record card of the subject property, comparable property information, and a computer assisted land pricing model for the subject neighborhood. (DOR Br. and accompanying exhibits.)
18. The Taxpayer provided photos of the subject property, and letters from others who have accessed the subject property. (Taxpayer Br. and accompanying exhibits.)

### **Findings of Fact, Conclusions of Law and Order**

Taxpayer has made several claims relating to the county tax appeal board hearing procedure, as well as contending his valuation is too high. We first address the issues relating to the hearing procedures.

### **Hearing Procedure**

Pursuant to state law, the Yellowstone County Tax Appeal Board notified the Taxpayer of the time and place for the hearing. Further, the hearing was scheduled for the county courthouse, which is the office

space provided to the tax appeal board as required by law. *See* § 15-15-101, MCA.

There is no indication in the file that the Yellowstone County courthouse is not ADA accessible, nor does the Taxpayer claim the courthouse is not ADA accessible.

The Taxpayer subsequently requested he be allowed to submit his appeal in writing, as allowed by statute. *See* §15-15-103, MCA. Both the Department of Revenue and the Yellowstone County Tax Appeal Board denied his request to be heard on the record. While we specifically make no determination as to whether there has been a violation of the ADA in this matter, we note, however, best practice would have allowed the Taxpayer to make a presentation in writing for any legitimate reason, including a request for an ADA accommodation.

As it would have been best practice to allow a hearing on the record in this matter in order to remedy a potential accommodation violation, we will review Taxpayer's claim that his property is overvalued.

### **Valuation**

The Department filed information with this Board to support the Department's valuation of the subject property. The Taxpayer also provided information to this Board to support lowering the valuation of his property.

The property in question is located at 2467 N. 15<sup>th</sup> Road, Worden, Montana. The property is a 6,230 square foot lot with a single family residence on it. The Department valued the property at \$108,600. The Department valued the land at \$19,431 based on a computer assisted land pricing model. (See Exh D.). The value of the improvements was set by the Department at \$89,169.

Taxpayer claims his 118% increase since last year is unreasonable and may be retaliatory. The Department states that the difference between the current valuation and the prior valuation of \$49,900 is due to the fact that the Taxpayer's value was set in January 1997, and was held at that value by the Yellowstone County Tax Appeal Board in 2003. (DOR Br. 2, Exh E). We find the Department of Revenue's evidence credible, and find no retaliatory behavior on the part of the Department.

Taxpayer argues that his house is a modular. (Reply Br. 2) He also argues that no maintenance has been performed, other than a new roof and furnace. (Txpyr Br. 7.) Taxpayer has provided photos of the interior and exterior of the subject property. Further, he has provided letters from other people indicating his house suffers from some deferred maintenance needs in the interior of the house.

The Department was not permitted to access the property (DOR Eh. C. *See also* Txpyr Br. 6). Thus, the Department estimated the value of the improvements. According to law, this Board may not adjust the value of the subject property if the Department was not authorized to enter the property. *See* §15-7-139, MCA. We note, however, that the degradation of the property is clearly visible when viewed from public property, without accessing any portion of his private property.

We find the Department's evidence credible, and the value on the land properly set through the CALP. Unfortunately, the Taxpayer's failure to cooperate with government entities and his failure to allow the DOR access to the property has made it difficult, if not impossible, for the DOR and CTAB to accurately appraise his property. These actions leave the Taxpayer open to an inaccurate assessment with little legal recourse. It would behoove all parties to work collaboratively to allow

the DOR to properly value the property, which might have prevented the need for this appeal.

After review of the Taxpayer's evidence, however, we note the property suffers from neglect and could not be sold without either significant renovation or discounted price. Thus, we adjust the valuation of the improvements to the Department's replacement cost new less depreciation figure of \$57,198.

Therefore, we modify the land and improvement value to \$76,629. This adjusted value comports with the evidence presented. All of the Department's comparables appear to be stick-built homes, have detached garages, and appear to have been well-maintained. (*See* DOR Exh B.) The subject property, however, is a modular home and suffers from extreme deferred maintenance. The adjusted value of the subject property is still within the range of the values of comparable properties used by the Department.

### **Writ of Review**

The Taxpayer makes an additional claim that the Yellowstone County Tax Appeal Board "violated due process by not allowing the district Court to process a Writ of Review filed on June 2, 2010 asking the Court to review the actions of the CTAB." The information provided to this Board, however, indicates the Taxpayer has filed suit only against the Department of Revenue. We see no indication that the Yellowstone County Tax Appeal Board has been sued by the Taxpayer or in any way prevented the adjudication of a writ. Thus, we can make no determination about litigation against the Department of Revenue, which is a separate state agency from the Montana Tax Appeal Board and the county tax appeal board.

### Other issues

Rogers claimed the CTAB held *ex parte* conversations between the DOR and the county tax appeal board Chairman. The ban on *ex parte* conversations prevents the decision-maker and a party from holding substantive conversations about the case without the other party being present. It does not, however, prevent limited procedural discussions. We see no error in a conversation between the Chairman and a supervisor in the Department of Revenue in regard to the procedural matter before the Board. Further, if such error existed in regard to the substance of the case, the full review of the case by this Board eliminates any prejudice to the taxpayer.

Further, Taxpayer requests to know what rules the CTAB and this Board follow. The county tax appeal boards hold hearings pursuant to §15-15-101, MCA, *et seq* (which sets out specific requirements and notes that CTAB hearings are not subject to the Montana Administrative Procedures Act). In addition, the State Tax Appeal Board provides training to those boards pursuant to § 15-2-201, MCA. By written request, this Board will make those materials available. This Board is unaware of any prior request by the Taxpayer for the information.

For the above reasons, the value of the subject property is modified to \$76,629.

**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 Yellowstone County at a 2009 tax year value of \$76,629, as determined by the State Tax Appeal Board.

Dated this 4th 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 5th 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:

Michael S. Rogers  
2467 North 15<sup>th</sup> Road  
Worden, Montana 59088

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/s/ \_\_\_\_\_  
DONNA EUBANK  
Paralegal

