

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

CAROLYN and STEPHEN NASO,)	DOCKET NO.: PT-2009-143
)	
Appellants,)	
)	FACTUAL BACKGROUND,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

Carolyn and Stephen Naso (Taxpayers) appealed a decision of the Flathead County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR’s) valuation of their property located at 632 Colorado Avenue, Whitefish, Montana. Taxpayers claim the DOR overvalued their property for tax purposes and seek a reduction in the value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on September 19, 2011, Stephen Naso represented the Taxpayers and provided testimony in support of the appeal. The DOR, represented by Michele Crepeau, Tax Counsel; Scott Williams, Regional Manager and Don Leuty, Appraiser, presented testimony and evidence in opposition to the appeal.

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

Carolyn and Stephen Naso are the Taxpayers in this action and therefore bear the burden of proof. Based on a preponderance of the evidence, the Board affirms the findings 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, verbal and documentary.
2. The property is a single family residential unit, with the following legal description:

Lot 02B Colorado Corner Phase 2, Section 25, Township 31N, Range 22W, of Flathead County, Montana. (DOR Exh. A.)
3. For tax year 2009, the DOR valued the subject property at \$206,700 using the market approach, which valued the land at \$108,721 and the improvements at \$97,979. (Leuty Testimony, DOR Exh. A.)
4. The Taxpayers are appealing the value of the land only, asking for a total value of \$178,198 consisting of \$80,219 for the land and \$97,979 for the improvements. (Naso Testimony, Appeal Form.)
5. The Taxpayers filed a Request for Informal Review (AB-26) on September 17, 2009. During the AB-26 process the DOR reviewed the comparable properties used in valuing the subject property and determined the appraised value was fair and reasonable for the assessment date of July 1, 2008. (Leuty Testimony, DOR Exh. B.)

6. The Taxpayers filed an appeal with the Flathead County Tax Appeal Board (CTAB) on February 24, 2011, stating:

“Our land was appraised at \$35.66 per sq. ft and the two houses on either side of us with identical homes were appraised at \$26.31 per sq. ft. We are asking that our land be appraised at the same dollar amount per sq. foot as our neighbors.” (Appeal Form.)
7. A hearing was held on March 23, 2011 and the CTAB adjusted the DOR’s valuation of the land to \$99,000. (Appeal form.)
8. The Taxpayers appealed to this Board on March 29, 2011 stating the land adjustment not fair or reasonable. (Appeal form.)
9. The Taxpayers submitted testimony that their lot size is very small and they are unable to build anything extra on it. They also argue lot values differ per square foot and they request the same value per square foot as neighboring lots. (Naso Testimony.)
10. The DOR used the market approach to value the subject property and arrived at the assessed value for the July 1, 2008 appraisal date. (Leuty Testimony, DOR Exh. D.)
11. The DOR used five comparable properties to value the subject property. The sales ranged from May 2006 to May 2007. The comparable properties are adjusted to conform to the attributes of the subject property. This includes a time adjustment to the assessment date of July 1, 2008. (Leuty Testimony, DOR Exh. D.)
12. The Taxpayers claim three of the five comparable sales used by the DOR are not good comparables because they have three bedrooms and two baths, where the subject property only has two bedrooms and one bath. (Naso Testimony.)
13. The DOR used a Computer Assisted Land Pricing (CALP) model to establish the original land value of \$108,721 for the subject property. The CALP is based on sales of 35 different properties in the Taxpayers’

- neighborhood. There was no indication that the sales were not arm's length sales. (Williams Testimony. DOR Exhs. G & H.)
14. The DOR determined that 10,000 square feet is the base size for valuing lots in this neighborhood. The first 10,000 square feet are valued at \$14.01 a square foot and each additional square foot would be valued at \$4.52 per foot. Thus, for lots smaller than 10,000 square feet, \$4.52 per foot is subtracted. (DOR Exhs. G & H.) All of the sale properties used in the CALP were bare tract land and had sale dates prior to the revaluation date of July 1, 2008. (Williams Testimony. DOR Exhs. G & H.)

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (Section 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. It is the duty of the Department of Revenue to accomplish the appraisal of all taxable city and town lots. (§15-7-101 (b), MCA.)
4. 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.)
5. 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).)

6. 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).)
7. 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).)
8. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
9. The actual selling price of comparable sales must be adjusted to a value consistent with the base year. (ARM 42.20.454(1)(h).)
10. 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.)

Findings of Fact, Conclusions of Law, and 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.

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 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 collects realty transfer certificates (RTC) showing sales prices for all sales that occur prior to the valuation date to assist in determining an average sales price in a neighborhood. (*See* §15-7-301, MCA, *et seq.*) In this case, the DOR used a market approach based on five verified sales in a specific neighborhood in the Whitefish area which includes the subject property. The comparable properties used by the DOR to value the subject property had been sold in arm's length transactions between May 2006 and May 2007 and were time adjusted to the July 1, 2008 assessment date. (*See* EP 11.) This model indicated a value of \$206,700 for the subject property. (*See* EP 3.)

The Taxpayers complain the DOR overvalued their land and request the same square foot value as the neighboring properties. (*See* EP 9.) They further argue this property is very small and is limited in value because there is no room for expansion.

In determining whether the value set by the Department is justified by market sales, we analyzed the comparable sales data provided by the Department. The mass-appraisal techniques developed by the DOR are designed to find the value on the open market. As part of the standard mass appraisal system, the DOR used a CALP model in this case based on 35 vacant land sales in this case. The DOR appraiser testified that smaller lots are valued higher per square foot than larger lots for the subject neighborhood, which is confirmed by review of the CALP sales. Sales prices were also adjusted to the valuation date by applying the percentage increase or decrease in property values experienced in that time frame. This is a well established appraisal method used by the DOR and mandated by the legislature. No evidence supports the Taxpayers' contention that the DOR calculations are erroneous.

While the calculations set by the DOR appear correct, the CTAB lowered the value of the subject property. CTABs are uniquely suited to evaluate local real estate markets and specific neighborhoods relative to their county and are able to apply this expertise to individual properties. We see no evidence in this matter that the CTAB incorrectly reduced the value of the subject property. Thus, it is the opinion of this Board that the value set by the Flathead County Tax Appeal Board is within the range of reasonableness and shall be used as the value of the subject land.

It is the opinion of this Board that the assessed value set by the Flathead County Tax Appeal Board be affirmed.

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 Flathead County by the local Department of Revenue at a total value of \$196,979.

Dated this 6th day of October, 2011.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

/s/ _____
KAREN E. POWELL, Chairwoman

/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.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of October, 2011, a copy of the foregoing order was served on the parties hereto by placing a copy in the U.S. Mail and addressed as follows:

Carolyn & Stephen Naso	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
305 Buffalo Trail	<input type="checkbox"/>	Interoffice
Somers, MT 59932-9722	<input type="checkbox"/>	Hand delivered

Michele R. Crepeau	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
Tax Counsel	<input checked="" type="checkbox"/>	Interoffice
Office of Legal Affairs	<input type="checkbox"/>	Hand delivered
Department of Revenue		
PO Box 7701		
Helena, MT 59604-6601		

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

Danene Thornton, Secretary		
Flathead County Tax Appeal Board		Via U.S. Mail, Postage Prepaid
800 South Main		
Kalispell, Montana 59901		

/s/

DONNA J. EUBANK, paralegal assistant