

**BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA**

RICHARD & LAURA BENNETT,)	DOCKET NO.:	PT-2009-103
)		
Appellants,)		
)	FACTUAL BACKGROUND,	
-vs-)	CONCLUSIONS OF LAW,	
)	ORDER and OPPORTUNITY	
DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW	
OF THE STATE OF MONTANA,)		
)		
Respondent.)		

Richard and Laura Bennett (Taxpayers) appealed a decision of the Gallatin County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR’s) valuation of their property identified as Unit 5 C of S 386B, Cedar Winds Condo, Tracts 2,3,4 & 5 Section 12, Township 2S, Range 5E, of Gallatin County, Montana. Taxpayers claim the DOR overvalued their property for tax purposes and they seek a reduction in the value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on October 19, 2010, the Taxpayers were represented by Richard Bennett. Patty Lovaas also provided testimony and evidence in support of the appeal. The DOR, represented by Michele Crepeau, Tax Counsel; Patty White, Area Manager, John Elliott, Lead Appraiser and Trish McGowan, Residential 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

Richard and Laura Bennett are the Taxpayers in this action and therefore bear the burden of proof. Based on a preponderance of the evidence, the Board upholds the findings of the Gallatin 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 condominium unit located at 1612 West Olive Street, Bozeman, Montana. With the following legal description:

Unit 5 C of S 386B, Cedar Winds Condo, Tracts 2,3,4 & 5 Section 12, Township 2S, Range 5E, of Gallatin County, Montana. (Exh. E.)
3. For tax year 2009, the DOR originally valued the subject property at \$192,700 using the market approach, which valued the land at \$26,590 and the improvements at \$166,110. (McGowan Testimony, Exh. A.)
4. The Taxpayers are asking for a value of \$115,750 consisting of \$9,000 for the land and \$106,750 for the improvements. (Appeal Form.)
5. The Taxpayers filed a Request for Informal Review (AB-26) on October 7, 2009. During the AB-26 process the DOR made several changes to the appraisal, in effect reducing the value of the improvements from \$166,110 to \$158,415. (McGowan Testimony, Exhs D & E.)
6. The Taxpayers filed an appeal with the Gallatin County Tax Appeal Board (CTAB) on June 7, 2010, stating:

“DOR appraised value based on market values and sales data from 2006-2007, which does not reflect correct market conditions. Appears that 12/30/2002 appraisal changed on 4/1/03 to reflect higher reappraisal. In effect, this resulted in a hidden reappraisal to which we were never notified. DOR used other factors erroneously to increase appraised value, such as Economic Condition Factor. DOR increased land value 154% even though no improvements & this is (*sic*) condo unit and land is considered common area to condo association. Replacement cost per estimate from State Farm for condo = \$106,750.” (Appeal Form).

7. A hearing was held on July 14, 2010 and the CTAB upheld the DOR’s valuation. (Appeal form.)
8. The Taxpayers appealed to this Board on August 12, 2010. Their reason for appealing was stated as:

“DOR did not properly apply market value analysis to establish value. Comparable sales data used by DOR is not relevant or sufficient. Sale closest to 7/1/08 reappraisal date was 12/17/07. Other sales were 2 years earlier. At hearing DOR presented sales data after 7/1/08 and adjusted value. This data was not available to me before the hearing. DOR should have used construction cost method, since sufficient relevant comparative sales not available for residential condo unit. DOR valued condo land at 154% increase over 2002 appraisal based on land sales that were 1 to 3 miles away, including 2 commercial lots sold 4/2008 and 2 lots sold 10/2008 & 12/2008. This data also presented at hearing.” (Appeal form.)

9. The Taxpayers submitted an appraisal of the subject property completed on February 12, 2002, by Able Appraisals, Inc. of Belgrade, MT. The appraisal concluded the value as of February 12, 2002 was \$128,000. (Bennett Testimony, Exh. 5)
10. The DOR used the market approach to value the subject property and the comparable sales properties for the July 1, 2008 appraisal date. (Exh. F.)

11. The Taxpayers testified they believe the comparable sales properties used by the DOR are too old and that the DOR should use the cost approach to value their property. They submitted a value of \$106,750 based on an estimated replacement cost of \$854,000 for the entire eight unit condominium building. This estimate was prepared by the Taxpayers' insurance company using XACTWARE value replacement cost estimator software. (Bennett Testimony, Exh. 7.)
12. The DOR based residential market values for the current appraisal cycle on residential condominium property sales which took place between January 1, 2002 and July 1, 2008. The characteristics of the sales properties are compared to the characteristics of the subject property to select those properties most comparable to the subject. The market value of the subject is then based on these comparable sales, after adjustments including time adjustments, to make the comparable properties conform to the subject. (McGowan Testimony, Exh. K.)
13. The DOR used five comparables properties from the Bozeman area condominium neighborhoods 21, 21H, 31, 31H, 41 & 41H to value the subject property. The sales ranged from June, 2006 to December, 2007. (McGowan Testimony, Exh. C.)
14. The DOR used a Computer Assisted Land Pricing (CALP) model to establish the original land value of \$26,590 for the subject property. The CALP is based on sales of 17 different properties. There was no indication that the sales were not arms length sales. (Exhs. G, H & I.)
15. 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).
16. The DOR determined that 14,000 square feet is the base size for valuing lots in the subject neighborhood. The first 14,000 square feet are valued at \$8.66 a square foot and each additional square foot is valued at \$6.04. (Exh. G.) All of the sale properties used in the CALP were bare tract land, had sale dates prior to the revaluation date of July 1, 2008 and were from the Bozeman area neighborhoods which have many condominium complexes. (White Testimony.)
 17. The CALP was applied to the entire condominium complex consisting of 221,730 square-feet of which the Taxpayers own 1.666%. (Elliot Testimony, Exhs. G & J.)
 18. Patty Lovaas, the Taxpayers' witness, presented a packet of materials with her analysis of the DOR's CALP valuation process in support of the Taxpayers' argument for lower valuation. Materials included what she believed to be more comparable properties for determining land value, as well as criticism of properties included by the DOR due to the fact that after sale, select property was used for other things beside condominium units. (Lovaas Testimony, Exh. 12.)

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. 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. If sufficient, relevant information on comparable sales is available, the department shall use the comparable sales method to appraise residential condominium units. (§15-8-111(4)(a), MCA.)
 5. Each unit of a condominium project is considered a parcel of real property subject to separate assessment and taxation. Each unit owner must be assessed for the unit owner's percentage of undivided interest in elements of the condominium project owned in common by the unit owners. (§15-8-511(1), MCA.)
 6. All residential appraisers must receive specific training and testing to certify that they possess the required knowledge, skills, and abilities to perform residential property appraisals as outlined in this rule. (ARM 42.18.206(1).)
 7. 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).)
 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. 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).)
 10. The actual selling price of comparable sales must be adjusted to a value consistent with the base year. (ARM 42.20.454(1)(h).)

11. 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).

This Board concludes the evidence presented by the DOR did support the values assessed. This Board also concludes the Taxpayers have not provided relevant evidence that the DOR appraised value for July 1, 2008 is incorrect.

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 reality transfer certificates (RTC) on all sales that occur prior to the valuation date. In this case, the DOR used a market approach based on five verified sales in the Bozeman area condominium neighborhoods, which includes the subject property. This model indicated a value of \$192,700 for the subject property. (*See* EP 13.) The comparable properties used by the DOR were sales ranging from June 2006 to December 2007 and were time adjusted to the July 2008 assessment date. (*See*

EP 12.) We find the DOR's sales to be relevant and reliable evidence of market value for the subject property.

The Taxpayers complain the DOR comparable sales are too old to reflect a current value of the subject property and took place in an inflated market. Their appraisal data, however, is even older. Their own appraisal showed a value of \$128,000 in February of 2002, without any adjustment to the valuation date of July 1, 2008. (*See* EP 9.) Further, this appraisal value is more than the \$115,750 they have requested as a 2009 value for the subject property. The value requested was derived from a State Farm insurance general estimate, which we find has little probative value for evidentiary purposes. The data used by State Farm to develop the estimate was not specific to the Bozeman area, and was designed to measure replacement cost and not to determine market value as required by Montana law. Thus, we find the evidence presented by the Taxpayers to be of little relevance in valuing the subject property.

The Taxpayers' witness Lovaas compiled a great deal of information relating to the DOR's appraisal. She tried to discredit the DOR value by showing current values compared against the DOR adjusted sales prices. Some of the bare lots used in the CALP, for example, have since had commercial buildings erected on them. The subsequent use of the land in the CALP is irrelevant to the issue of valuing the subject land in this matter. The prices the lots sold for, during the relevant appraisal period, are what matters in calculating the fair market value of vacant land as of July 2008. This method of comparison has no merit in commonly used appraisal practices. We find Lovaas's testimony to be unconvincing, and the evidence presented not relevant to valuing the subject property.

The Taxpayers, therefore, were not able to demonstrate that the comparable sales used by the DOR did not represent an accurate value. 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 have failed to meet their burden to show the DOR has erred.

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 shall be entered on the tax rolls of Gallatin County by the local Department of Revenue at a value of \$185,005, as determined by the Department of Revenue and affirmed by the Gallatin County Tax Appeal Board.

Dated this 5th 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 this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of November, 2010, 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:

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/s/ _____
DONNA J. EUBANK, paralegal assistant