

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	DOCKET NO.: PT-2009-145
)	
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
WALTER and LOUISE SCHOCK,)	ORDER and OPPORTUNITY
)	FOR JUDICIAL REVIEW
)	
Respondents.)	

Statement of Case

The Department of Revenue (DOR) appealed a decision of the Lake County Tax Appeal Board (CTAB) relating to valuation of Walter and Louise Schock’s (Taxpayers) property located in Lake County at 34085 Connolly Way, Polson, Montana. The DOR argues the value attributed to the land by the CTAB does not accurately reflect the market value of the parcel as of July 1, 2008 as required by law. The case was heard on the record, with both parties submitting written evidence to be considered in addition to the material submitted at the CTAB hearing. We hereby incorporate the transcript and materials from that hearing into the matter before this Board.

The Board having fully considered the testimony, exhibits, and all matters presented, finds and concludes the following:

Issue

The issue before this Board is whether the CTAB determined an appropriate market value for the subject property for tax year 2009 in accordance with law.

Summary

Based on a preponderance of the evidence, the Board modifies the decision of the Lake 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 and testimony.
2. The subject property is a Flathead Lake waterfront lot measuring 90 feet by 370 feet plus an additional 0.1 acre of non-buildable land and .085 acre of residual land in the rear of the lot. The improvements situated on the property consist of a garage, converted to living space, two sheds, a concrete patio and dock. The following is the legal description:

Connolly Point Subdivision, Lot 12 & 1/8 interest in Lot 23, Section 29, Township 23N, Range 19W, of Lake County, State of Montana. (DOR Exh. A, Property Record Card (PRC).)
3. For tax year 2009, the DOR originally appraised the subject property at a value of \$911,493; \$862,540 for the land and \$48,953 for the improvements. The value of the improvements are not at issue in this appeal. (CTAB Exh. A.)
4. Connolly Point Subdivision was established in 1971 on a wetland area and raised with fill debris. (Taxpayers' Representative Karstens Testimony.)

5. The DOR used the cost approach to value the subject property and a Land Comparison model to break out the value of the land, as of the July 1, 2008 valuation date. (CTAB Exh. B.)
6. The Taxpayers filed a Request for Informal Review (AB-26) with the DOR. During the AB-26 process, the DOR appraiser adjusted the property value, based on a corrected front-footage of 90 feet, to \$896,289, \$848,290 for the land and \$47,999 for the improvements. (DOR Appraiser Bach Testimony, CTAB Exh. A.)
7. The Taxpayers filed an appeal with the Lake County Tax Appeal Board (CTAB) on December 20, 2010, stating:

“We purchased this property in 1975 for \$27,000 only improvements we made – remodeled a garage – 1 room & 1 bathroom & deck on house. In 2008 land value was \$209,362 Building was \$31,040 after reappraisal Land \$862,540 – Building 48,952. This was an increase of \$671,093. (400%)?” (Appeal Form.)
8. The Lake CTAB heard the appeal on April 12, 2011, and adjusted the DOR value on the subject property stating: “The evaluation more accurately reflects comparable value of \$525,000 for land and buildings \$47,999.” (Appeal Form.)
9. The Taxpayers were represented at the CTAB hearing by Kyle Karstens, and themselves. The DOR was represented by Appraisers Jim Bach and Monty Simonsen. (CTAB Sign-in Sheet.)
10. The Taxpayers submitted several general parcel information sheets on five properties they believe more closely represented the value of their property. (Karstens Testimony, CTAB Exhs.)
11. Based on the general parcel information sheets, the Taxpayers requested a value of \$502,540; \$462,540 for the land and \$40,000 for the improvements. (Appeal form.)

12. The DOR contends the properties presented by the Taxpayers had deficiencies ranging from two lots affected by a gasoline fuel spill to lots smaller than a standard lot. (Bach Testimony.)
13. The DOR appealed to this Board on May 12, 2011, stating:
“The values attributed to the land by the LCTAB do not accurately reflect the market value of the parcels as of July 1, 2008, as required by law.”
(Appeal Form.)
14. This Board ordered the DOR to submit information used to value the Taxpayers’ property, specifically the Computer Assisted Land Pricing model (CALP) and supporting materials. (Order sent August 30, 2011.)
15. The DOR submitted exhibits of material used in valuing the subject property. This material included a CALP based on 14 sales of water front lots in the same neighborhood as the subject property. The CALP established the original value of \$862,540 for the lot. (Post-hearing Exh. A.)
16. The DOR submission explained the methodology and calculations for computation of the land values for the subject neighborhood. The time-trending used by the DOR takes into account the increase and the decrease in the market during this appraisal cycle. This calculation arrived at a value for each sale as of July 1, 2008, the statutory appraisal date. (Post-hearing Exhs. B & C.)

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 property 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.)

Findings of Fact and Conclusions of Law

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate value for the subject property for tax year 2009. In this instance, we will review whether the DOR properly valued the subject property.

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 Taxpayers supplied five different properties on Flathead Lake they considered very comparable to the subject property. Based on these comparables they requested a total value of \$502,540.

This Board requested additional information to include all information used in valuing the subject property and concluded the DOR appraised the subject property using standard methodologies, including comparable sales and cost analysis, to determine market value. The DOR appraiser testified the subject property was assessed properly at 100 percent of market value. Adjustments were made, during the AB-26 process, to the land, correcting the lot size. He then verified his adjusted value with other comparable sales on Flathead Lake. The appraiser also testified the property was very attractive, in a very good location and therefore, he considered the adjusted DOR values to be correct.

We find that the Taxpayers failed to provide evidence that the value set by the DOR is not market value. The Taxpayers attempt to contradict the DOR's value by submitting general parcel information sheets about neighboring properties, yet they do not make any adjustments for size or property characteristics. The properties chosen by Taxpayers reflect their requested value, however, they had no way of knowing from the general parcel information sheets the properties were significantly discounted for various deficiencies. This Board was provided with information relating to the parcels with lower valuation. For example, two of the properties were given a 50 percent discount for a gasoline fuel spill that occurred on the property. No evidence was presented that Taxpayers' lot suffers from any deficiencies. Rather, testimony indicates that it is a prime lot.

The Board reviewed the evidence and comparable properties submitted by the DOR and finds no error in the Department's valuation methodology.

The CTAB reduced the value of the subject property from the DOR assessed value \$896,289 to \$572,999. While 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, in this case, however, the CTAB did not receive all the information used in valuing the subject property and the comparable properties. Thus, we find that the properties submitted by the Taxpayer are not comparable, and are not properly used to value the subject parcel.

Thus, it is the opinion of this Board that the assessed value set by the Lake County Tax Appeal Board is modified and the value determined by the DOR is affirmed.

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 Lake County at a 2009 tax year value of \$896,289 as determined by the Department of Revenue.

Dated this 26th day of September, 2011.

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 ____ day of September, 2011, 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:

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/s/ _____
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