

Issue

The issue before this Board is whether the Department of Revenue valued the subject property appropriately for tax purposes for tax year 2009.

Summary

Based on a preponderance of the evidence, the Board modifies the decision 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 verbal and documentary evidence.
2. Robert S. & Nancy C. Foster, formally known as Springhill Enterprises, Inc., are the Taxpayers in this proceeding and, therefore, have the burden of proof.
3. The subject properties are vacant urban land with the following legal descriptions:
 - PT-2009-151: Lot 3A, Block 19, Plat D-5-A8, Armstrong Addition Belgrade, Section 02, Township 1 South, Range 04 East, Gallatin County, State of Montana. Consisting of 14,001 sq. ft.
 - PT-2009-150: Lot 5, Block 19, Plat D-5 & D-5-A8, Armstrong Addition Belgrade, Section 02, Township 1 South, Range 04 East, Gallatin County, State of Montana. Consisting of 7,000 sq. ft.(Appeal Form, DOR Exh. A.)
4. For tax year 2009, the DOR used a CALP (Computer Assisted Land Pricing model) to establish the original values of \$99,615 for Lot 3A and \$64,820 for Lot 5. (Kniffin Testimony, DOR Exhs. A & D.)
5. The CALP in this instance is based on 101 vacant land sales within the city of Belgrade. The DOR established a base rate of \$9.26 per square foot for the first 7,000 square feet and a residual value of \$4.97 per square foot for the remaining square feet. (Kniffin Testimony, DOR Exh. D.)

6. The CALP sales and the subject property are all located in Neighborhoods 11A, 11B & 11C. Neighborhoods are a geographic area designated by the DOR as having similar characteristics for purposes of valuation. (Kniffin Testimony, DOR Exh. D.)
7. The Taxpayers filed a Request for Informal Review (AB-26) on October 5, 2009, asking for an informal review meeting with the DOR to provide additional information. (AB-26 Form, Exh. B.)
8. After review of the subject property, the DOR made no adjustments to the value. (AB-26 Form, DOR Exh. B.)
9. The Taxpayers filed an appeal with the Gallatin County Tax Appeal Board (CTAB) on May 20, 2011, stating “Value” as the reason for appeal. (Appeal Form, DOR Exh. C.)
10. The Gallatin CTAB heard the appeal on June 1, 2011. The CTAB disapproved the appeal because the Taxpayer failed to prove the requested lower value. (Appeal Form.)
11. The Taxpayers appealed to this Board on June 30, 2011, arguing the value was too high. (Appeal Form.)
12. The Taxpayers are asking for a value of \$66,379 for Lot 3A and \$36,210 for Lot 5. (Foster Testimony, Appeal Form.)
13. The Taxpayers contend access is the main issue in this appeal. The subject properties have an irrigation easement running through the front portion of each lot. The only access from the street side would require a bridge to be built over the irrigation ditch because the property currently can only be accessed by vehicle through the alley. (Foster Testimony.)
14. The Taxpayers submitted an engineering estimate from C&H Engineering of \$20,000 to build a bridge across the irrigation ditch. They request the

property value be adjusted downward by the cost of building this bridge. (CTAB Exh. 1, Foster Testimony.)

15. The Taxpayers also argues for a value of \$7.46 per square foot be applied to their properties based on a sale of a lot that occurred in the Belgrade city limits on July 14, 2008. (Foster Testimony, CTAB Exh. 1.)
16. The DOR argues the Taxpayers were aware of the irrigation ditch at the time of purchase, therefore justifying the value.
17. The DOR also argues their value is justified based on the fact the Taxpayers listed their properties for sale at a value much higher than assessed by the DOR. (Kniffin Testimony, CTAB Exh. A.)

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. It is the duty of the department of revenue to implement the provisions for a general and uniform method of appraising city and town lots. (§15-7-103(1)(b), 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. 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).)
7. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
8. To achieve statewide equalization, all residential property in the state must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(1)(b).)
9. 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).

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).

The Taxpayers argue the subject properties are valued too high based on the sale of one property on July 14, 2008. They believe this sale occurred close enough to the assessment date to prove their requested value of \$7.46 per square foot. Mr. Foster also argues the subject lots should be assessed lower than other lots in Belgrade because of limited access over an irrigation ditch in the front portion of their properties.

The DOR argues their value is supported because the Taxpayers listed the properties for sale at a value higher than the assessed value. They further argue the Taxpayers were aware of this easement at the time of purchase and chose to purchase it anyway. The DOR contends they have correctly valued the subject properties using the CALP model for the Belgrade area.

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 101 vacant land sales. This is a well established appraisal method used by the DOR and conforms with the statutory requirement for a uniform method of appraisal.

This Board finds the appraisal methods used by the DOR do support the values assessed on vacant land in the Belgrade area. In this case, however, the subject properties are negatively influenced by an irrigation ditch and an easement which runs through the front portion of the lots which limits access to the property. The Taxpayers' prior knowledge has no affect on the market value of the property and their listing of the properties play no part in determining value, as only arm's length sales can be used in determining value and no sale had occurred.

Crossing the irrigation ditch will require the Taxpayers to expend extra expense in providing access from the street. Correcting this deficiency may be done by building a bridge, as the Taxpayers have suggested, or other remedies

may be found. Regardless of how the Taxpayer cures the deficiency, the Board finds these properties are negatively influenced compared to other vacant lots in Belgrade and, therefore, have less value.

The Board concludes, in this instance, the decision of the Gallatin County Tax Appeal Board be modified by a negative influence of 20% to show an appraised value for the subject properties of \$79,692 for Lot 3A and \$51,856 for Lot 5.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties be entered on the tax rolls of Gallatin County at a 2009 tax year value \$79,692 for Lot 3A and \$51,856 for Lot 5.

Dated this 18th day of October, 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 18th day of October, 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:

Robert & Nancy Foster 6090 Springhill Road Belgrade, Montana 59714-8721	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail
Pamela Kniffin Gallatin County Appraisal Office 2273 Boot Hill Court Suite 100 Bozeman, MT, 59715-7149	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail <input type="checkbox"/> Interoffice
Michelle R. Crepeau Office of Legal Affairs Department of Revenue Mitchell Building Helena, Montana 59620	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail <input checked="" type="checkbox"/> Interoffice
Gallatin County Tax Appeal Board 311 West Main, Room 304 Bozeman, Montana 59715	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail

/s/ _____
DONNA EUBANK
Paralegal