

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

T.M.H. ENTERPRISES, INC.,)	DOCKET NO.: PT-2009-118
)	and cross appeal:
Appellant-Respondent,)	PT-2009-118X
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent-Appellant.)	

Statement of Case

T.M.H. Enterprise, Inc. (Taxpayer) appealed and the Department of Revenue (DOR) cross appealed a decision of the Gallatin County Tax Appeal Board (CTAB) relating to the DOR’s valuation of the property located at 22 Two Gun White Calf Road in Big Sky.

The Taxpayer argues the DOR overvalued the property for tax purposes, and seeks a reduction in value assigned by the DOR. The Department argues that the Gallatin County Tax Appeal Board erred in lowering the value of the subject property. At the State Tax Appeal Board (Board) telephonic hearing held on December 14, 2010, the Taxpayer was represented by Terrance Hofer, an officer of the corporation, who provided testimony and evidence in support of the appeal. The DOR represented by Amanda Meyers, Tax Counsel, Patty White, Area Manager, Tom Riley, Appraiser, presented testimony and evidence

in opposition to the appeal and argued for the value prior to the CTAB hearing.

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

Issue

The issue before this Board is did the Department of Revenue determine an appropriate market value for the subject property for tax year 2009?

Summary

T.M.H. Enterprise, Inc. is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board upholds the decision of the Gallatin County Tax Appeal Board.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter.
2. The subject property is a residential home situated on a 11,803 square foot land site described as:

Lot 12, Block 5, Section 36, Township 06S, Range 03E, Meadow Village #1, a major subdivision of Gallatin County, State of Montana. (Exh. A, Property Record Card.)
3. The DOR used the market approach to set the value for tax year 2009; valuing the subject property at \$684,000, with a land value of \$135,060 and an improvement value of \$548,940. (Appeal Form, 2009 Assessment Notice.)
4. The Taxpayer is asking for a value of \$390,000 consisting of \$50,000 for the land and \$340,000 for the improvements. (Hofer Testimony, Appeal Form.)

5. For the current cycle, the DOR based market values in this neighborhood on residential property sales which took place between June 2004 and October 2007. The characteristics of the “comparable properties” are compared to the characteristics of the subject property to select those properties most similar to the subject property. The market value of the subject property is then based on these “comparable sales” which are time-trended to the appraisal date. (Riley Testimony, Exh. D, Comparable Sales Report.)
6. The DOR testified the comparable properties used to value the subject property had very similar attributes to the subject property, such as number of bedrooms and baths and total square footage. (Riley Testimony, Exh D.)
7. To value residential property, the DOR takes into account the CDU (condition – desirability – utility) rating. The CDU reflects a composite of physical depreciation due to age and condition, as well as functional and external obsolescence that can be related to age, location, and economic conditions. Since CDU is the culmination of all three forms of depreciation, it is imperative the appraiser pay special attention to the assignment of this value to each property. (DOR Appraisal Manual.)
8. The DOR assigned the subject property a quality grade of “fair.” All of the comparable properties had higher grades than the subject. Four of the five comparable properties had a grade of “average” and the fifth one was in between fair and average. (Exh. D.)
9. The market value comparison assigns a total value to the land and improvements. To arrive at separate values for land and improvements, the DOR looks at sales of vacant land for reference purposes. The DOR used the Computer Assisted Land Pricing (CALP) model, based on sales of 36 different vacant land sales, and concluded a land value of \$104,500.

There was no indication that the sales did not meet the requirements of “market value.” (Riley Testimony, Exhs. A & E.)

10. The Taxpayer filed a Request for Informal Review (AB-26) with the DOR. The DOR completed the process on July 16, 2010 and adjusted the property land value to the assessed value of \$684,000. This reduction was based on a correction for the number of bathrooms in the house. (Riley Testimony, CTAB Exh. A.)
11. The Taxpayer filed an appeal with the Gallatin County Tax Appeal Board (CTAB) on August 16, 2010, stating:

“Your appraisal (*sic*) number (*sic*) are- not- close to reality. I’ve (*sic*) have the property for sale @ 399,000 - & haven’t have (*sic*) one offer in 6 mo.” (Appeal Form.)
12. The Gallatin CTAB heard the appeal on September 22, 2010, and adjusted the DOR value of the improvements to \$445,500 stating the following;

“Taxpayer presented evidence that the Department’s comparable sales information failed to consider the neighborhood specific to Big Sky.” (Appeal Form.)
13. The Taxpayer appealed to this Board on September 29, 2010, stating:

“The comp’s used by the state are from 2004-2005-2007. I can’t believe the 2008 sale presented @ the hearing sept (*sic*) 22nd – is not listed by any Realtor (*sic*) I checked with Sothebys & ERA. The property value is over accessed (*sic*). I have tried to sell the property now listed @ \$399,000.” (Appeal Form.)
14. The Taxpayer testified that he originally listed the subject property in December 2009 for \$440,000. The asking price was reduced to \$399,999 on July 17, 2010 and at the time of the hearing had still not sold. (Hofer Testimony, CTAB Exh. 1.)
15. The Taxpayer provided conflicting testimony regarding his listing of the property as "for sale by owner" in the last decade. He did not provide any

proof of the price, timeframe, or other substantiating evidence. (Hofer Testimony.)

16. The DOR submitted an additional comparable property at the CTAB hearing, with a sales date of March 24, 2008, to further validate their value. (CTAB Exh. 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. For the 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).)
5. 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).)
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.)

Board Discussion and Conclusions

This 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.

The Board has authority to hear evidence, find the facts, apply the law and arrive at a proper value for the subject property. It must base the determination on information “known and knowable” as of the lien date and cannot consider post-lien date information. *PacificCorp v. Department of Revenue*, 2009 Mont. Dist. LEXIS 594 (1st Judicial District Court, 2010.)

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 Taxpayer argues the DOR value is unrealistic in today’s real estate market and also argues the assessed value is even higher than would have been received at the height of the real estate boom. The Taxpayer’s only evidence is that the subject property is currently for sale at a value far less than the DOR’s assessed value and still has not sold.

This Board cannot consider evidence of valuation after the valuation date set by statute. All taxable class four property in Montana must be appraised at its market value as of July 1, 2008 for the current appraisal cycle. (*see* POL 4.) Property values fluctuate with the economic climate and the only way to achieve statewide equalization is to use the same date for all properties being valued. Thus, all taxpayers experience the same increase or decrease and

share the tax burden equally. Furthermore, using a specific valuation date is a well established and adjudicated method used by the DOR and mandated by the Montana legislature. *See, e.g.,* §15-7-111, MCA, § 15-8-201, MCA, *Albright v. Montana Department of Revenue*, 281 Mont. 196, 933 P.2d 815 (1997).

The mass-appraisal techniques developed by the DOR are designed to find the value on the open market as of the appraisal date. As part of the standard mass appraisal system, the DOR used a market approach to determine a value of \$684,000 for the subject property. The Department used five comparable properties which sold in the Taxpayers' neighborhood to value the subject property and they also verified the value by checking an additional comparable sale which was very close to the appraisal date. All of the comparable properties were within the same subdivision as the subject property. We find the comparable properties to be similar to the subject property and find no substantial errors in the Department's land valuation.

The Taxpayer did not present any relevant evidence to dispute the DOR comparables nor was any evidence presented to justify the requested value. Therefore, this Board does not give credence to the Taxpayers' contention that value is overstated.

The improvements at issue, however, appear to be less desirable than neighboring properties, which may affect the salability of this property in a recreational area with many high-end homes. In this instance, the Gallatin 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. The Board reviewed the photo evidence and comparable properties submitted by the DOR and finds the subject property suffers from a lower quality grade, thus justifying the reduced value set by the CTAB. (*See* EP 7 & 8) .

It is the opinion of this Board that the assessed value set by the DOR was correctly modified by the decision of the Gallatin County Tax Appeal Board.

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 Gallatin County at a 2009 value of \$550,000 as determined by the Gallatin County Tax Appeal Board.

Dated this 12th day of January, 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 this Order.

