

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

WARREN J. and MARCHETA M.)
BECKER,)
)
) DOCKET NO.:PT-2006-13
)
)
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)
OF THE STATE OF MONTANA,)
) ORDER and OPPORTUNITY
) FOR JUDICIAL REVIEW
)
) Respondent.)

STATEMENT OF CASE

The Taxpayers appealed a decision of the Yellowstone County Tax Appeal Board relating to the Department of Revenue's (DOR) valuation of their property identified as Assessor #D02610. They argue the DOR overvalued the property for tax purposes, and they seek a reduction in the Condition, Desirability and Utility (CDU) rating assessed by the DOR. At the hearing on September 5, 2007, at 2:00 p.m. in Billings, Montana, Warren and Marcheta Becker (Taxpayers) provided testimony and evidence in support of the appeal. The DOR, represented by Vicki Nelson and Genia Mollett, Appraisers, presented testimony and evidence in opposition to the appeal.

ISSUE

The issue before this Board is did the Department of Revenue determine an appropriate valuation for the subject property for tax year 2006? As a part of that valuation, did the DOR properly set the CDU for this property?

SUMMARY OF EVIDENCE

Mr. and Mrs. Becker are the taxpayers in this proceeding and, therefore, have the burden of proof. Based on the evidence and testimony, the Board affirms the decision of the Yellowstone County Tax Appeal Board and upholds the DOR valuation of the subject property.

FINDINGS OF FACT

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, oral and documentary.
2. The subject property is described as follows:

A 3.5 acre fraction of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8, Township 2 South, Range 24 East, Yellowstone County, Montana, and the improvements thereon, with a street address of 852 West 4th Street, Laurel, Montana. Geo Code 03-0821-08-4-05-33-0000, Assessor Code D02610. (DOR Exh. A, p. 4).
3. For tax year 2006, the DOR appraised the subject property at \$92,300 (\$39,600 for the land and \$52,700 for the improvements. (DOR Exh. A, p. 4).

4. The Taxpayers filed a Request for Informal Review (AB-26) for three properties, including the subject property, on November 23, 2005. The Taxpayers cited a concern about new subdivisions in the area reducing the value of their properties. (DOR Exh. B, p. 1).
5. The DOR reviewed the property in June 2006. (Nelson testimony). The DOR did not adjust the appraised value of the subject property saying, "There is no market data to suggest loss in value has occurred". (DOR Exh. B, p. 1).
6. The Taxpayers appealed the DOR's value to the Yellowstone County Tax Appeal Board (County Board) on November 7, 2006, citing the following reasons for the appeal:

The impact of a high density housing project in the middle of acreage parcels for agricultural. This devalues my property. This creates numerous problems for livestock due to dog problems, trash problems, trespassing. There have been photos sent to Dept. of Revenue of irrigation ditches being contaminated by alkali ground water from housing project being pumped on my property. (Attachment to appeal form dated November 7, 2006).
7. In its undated decision, the County Board denied the Taxpayers' appeal on the subject property, stating:

D02610 . . . is disapproved as the values set by Department of Revenue are fair and equitable. (Appeal form).
8. The Taxpayers appealed to this Board on May 4, 2007, stating:

For Property Tax Code #DO2610: I feel the CDU rating by the Dept of Rev. is too high for this property due to the age, desirability and area. Due to low income housing next to property which are brand new houses and are CDU rating [sic] lower than this property." (Appeal form).

9. The Taxpayers purchased the subject property in March 2005 to provide a buffer against further development. (Nelson testimony, Becker testimony).
10. The improvements on the subject property were built in 1930. The DOR assigned an effective age of 1970, which reflects the maintenance and upkeep of this 705 square foot structure. (DOR Exh. A, back of p. 4).
11. The "Grades" used by DOR represent the quality of construction in a building and range from 1 to 9. The DOR sets the Grade of a building according to the construction materials and methods used at the time the building was constructed. The DOR assigned a Grade of 5 (average) to the subject property because the Department considered the materials and methods used in this home to be of average quality for 1930, the time when the home was constructed. (Nelson testimony; DOR Exh. A, back of p. 4).
12. The Taxpayers compared the Grade for this home to the Grade assigned to newly constructed homes across the street. The DOR assigned a Grade of 4 to the new homes,

indicating the construction methods and materials were slightly below average for 2005, the year they were constructed. (Taxpayers' Exh. 5; Nelson Testimony).

13. For CDU, the DOR rates four factors. The DOR assigned the following ratings to the CDU factors for the subject property:

Condition	7
Desirability - Location	7
Desirability - Building	7
Utility	6

Thus, the CDU calculation for the subject totaled 27, a 6.8 average when divided by four. Therefore, the DOR rated the CDU for this property as Average (7).

(Taxpayers' Exh. 2, p. 1).

14. The Taxpayers compared the CDU for the subject property to the CDU for newly constructed homes across the street. The DOR assigned the following ratings to the CDU factors for these homes:

Condition	10
Desirability - Location	7
Desirability - Building	7
Utility	7

The CDU calculation for these homes totaled 31, a 7.75 average when divided by four. However, the DOR also rated the CDU for these homes as Average (7), rather than

Good (8). (Taxpayers' Exh. 5, pp. 1-2; Taxpayers' Exh. 2, p. 1; Becker testimony).

15. The subject property still has 1930's wiring and 1930's plumbing and is not insulated. The home needs a new roof but the Taxpayers have been advised that they would have to tear off the whole roof because the existing rafters are not truss rafters as used in construction today. (Becker testimony).
16. The Taxpayers requested that the CDU for the subject property be reduced to 4 and the Grade be reduced to 3. (Becker Testimony).
17. The DOR relied upon the market approach in establishing the value for the subject property. (DOR Exh. F, p. 1).
18. The market approach uses data from the sales of similar properties located in the same neighborhood as the subject property. The value of each comparable sale property is then adjusted for any differences between that property and the subject property. (Nelson testimony).
19. The DOR used the sales of five comparable properties to establish a value for the subject property. Four of the five comparables were very similar to the subject and the fifth was a previous sale of the subject property itself.

For the current reappraisal cycle, all residential property had to be revalued by 1/1/2002. Thus, the sales used for comparables in this cycle had to occur before January 1, 2002. The five sales used as comparables in this case took place in the years 2000 and 2001. (DOR Exh. F, p. 1; Nelson testimony).

20. All the comparables are single story homes with living areas ranging from 705 to 816 square feet. They were built between 1916 and 1952 and had effective ages ranging from 1970 to 1980. The DOR rated the CDU for all five properties as average and assigned Grades ranging from 4+ to 5. The largest difference in the properties is the lot sizes which vary from 0.16 acres to the subject's 3.5 acres. (DOR Exh. F, p. 1).
21. After the DOR adjusted the sales prices of the comparables to account for the differences between each comparable and the subject, the five comparable properties ranged in adjusted market value from \$83,398 to \$95,360. In addition, the market approach includes a multiple regression analysis (MRA) estimate of value for the subject property. In this case, the MRA estimate was \$90,834. The final factor in this approach is a weighted

estimate of value for the subject property, which totaled \$92,129. (DOR Exh. F, p. 1).

22. The market value for the subject property is calculated by ranking all of these value estimates in ascending order, throwing out the two highest values and the two lowest values, averaging the three middle values and rounding the result to the nearest hundred. In this case, the resulting market value for the subject property was \$92,300. (DOR Exh. F, p. 2).

23. In May 2007, the Taxpayer wrote to the DOR requesting information relating to the appraisal of his property. DOR's reply stated that the DOR had provided to the Taxpayer a redacted copy of the comparable sales sheet and several other documents. (Taxpayers' Exhibit 5, p. 1). There is no evidence that the Taxpayer ever received an unredacted copy of the comparable sales used to value the subject property.

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. (Section 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.

(Section 15-8-111(2)(a), MCA).

4. Class four property includes: single-family residences . . .; [and] appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located . . .

(Section 15-6-134(f)(i) and (iii), 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 2006. The Board will also address whether the CDU should be reduced, as requested by the Taxpayer.

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 (Mont. 1995); Western Airlines, Inc., v. Michunovich

(1967), 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 a number of different approaches, e.g., market, income, and/or cost approaches, depending on available data, to appraise a property. Albright v. Montana Department of Revenue, 281 Mont. 196, 933 P.2d 815 (Mont. 1997).

Given the statutory definition of market value, *i.e.*, the value at which property would change hands between a willing buyer and a willing seller, the "market" approach using comparable sales is the preferred approach in valuing residential property when adequate data is available.

In this case, the DOR had an adequate number of sales to use the market approach for valuing the subject property. The DOR based their valuation on five comparable sales. Each comparable sale used was very similar to the subject. (See Findings 19 and 20). In fact, comparable #1 was a sale of the subject property itself. The DOR has provided documented evidence to support its assessed value and the Taxpayers have offered no evidence to discredit or counter the comparability of the sales used in this market approach.

The Board acknowledges the difficulty the Taxpayers faced in countering the DOR's assessed value when, as in this case,

there is no evidence or testimony to indicate that the DOR helped the Taxpayer understand the significance of the comparable sales in valuing the subject property. In addition, there is no evidence or testimony to indicate that the DOR provided the Taxpayer an unredacted copy of the comparable sales sheet prior to the hearing. Identification of comparable sales is fundamental to the market approach and essential to any taxpayer's ability to challenge the DOR's valuation of property appraised using that approach.

The DOR has an obligation to provide, prior to the hearing, complete information to taxpayers who have appealed their valuation, including Realty Transfer Certificates and unredacted comparable sales sheets so that taxpayers may verify the values relied on by the DOR in appraising their property. (See DeVoe v. Department of Revenue, 263 Mont. 100, 866 P.2d 228 (Mont. 1993)). Failure to disclose such information prior to the hearing deprives taxpayers of an adequate opportunity to research the information and prepare their own case.

In this hearing, the Taxpayers focused on the CDU and the Grade assigned to the subject property. They questioned how the CDU for their 1930 property could be the same as the CDU assigned to newly constructed homes across the street and how

the Grade for the subject could be higher than the Grade for those newly constructed homes.

According to the DOR appraiser, the DOR assigns a Grade for a building's quality of construction based on the materials and methods in use at the time the building was constructed. Consequently, it is possible for a recently constructed home, such as those across the street from the subject, to be assigned a lower Grade than a much older home, such as the subject. The Taxpayers did not provide any evidence to demonstrate that the Grade assigned to the property is erroneous, given that the Grade reflects construction practices current at the time of construction, not the age of the building.

In regard to the CDU, the Taxpayer's testimony about the subject property's plumbing, wiring, lack of insulation and structural issues suggests that the condition factor assigned to the house may be a point high, as may the desirability factor for the property. However, any small changes in the CDU would have very little, if any, effect on the final valuation of this property because the DOR valued the property using the market approach. Grade and CDU factors have less of an influence on valuation when the property is appraised using the market approach than when the cost approach is used.

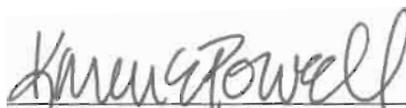
ORDER

IT IS THEREFORE ORDERED that the subject property shall be entered on the tax rolls of Yellowstone County at a value of \$92,300. The decision of the Yellowstone County Tax Appeal Board is affirmed.

DATED this 9th day of October, 2007.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)



KAREN E. POWELL, Chairwoman



SUE BARTLETT, Member



DOUGLAS A. KAERCHER, 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 9th day of October, 2007, 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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