



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 whether the Department of Revenue determined an appropriate market value for the subject property for tax year 2009?

### **Summary**

Arda L. Boucher Trust is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board affirms the decision of the Madison County Tax Appeal Board.

### **Evidence Presented**

1. Due, proper and sufficient notice was given of this matter.
2. The subject property is a 45,346 square foot primary vacant land site described as:

Lot 26, Plat 4/244, Section 24, Township 06S, Range 02E, Diamond Hitch of Ski Moonlight, a major subdivision of Madison County, State of Montana. (Exh. A.)
3. For tax year 2009, the DOR appraised the subject land at a value of \$1,332,081. (Appeal Form, Exh. A.)
4. The DOR based the market value of the subject property on the use of a Computer Assisted Land Pricing Model (CALP), as of the July 1, 2008 valuation date (Olson Testimony, Exh. E.)
5. The CALP in this instance is based on 10 vacant land sales. The CALP sales and the subject property are all located in Neighborhoods 17A and 500 of Madison County, which are geographic areas designated by the DOR as having similar characteristics for purposes of valuation. In this

instance, all the properties are located in the Diamond Hitch Subdivision of Moonlight Basin. (Olson Testimony, Exh. E.)

6. The Taxpayer argues for a value of between \$600,000 and \$700,000 for the subject property. (Landers Testimony, Appeal Form.)
7. The Taxpayer filed an appeal with the Madison CTAB on October 7, 2009, stating: “Market Value per 2009 Assessment is too high. Included is a CMA Summary Report of all land sales from 1/1/08 until present.” (Appeal Form.)
8. The Madison CTAB heard the appeal on June 3, 2010, and upheld the DOR value of the land, based on other comparable properties. (Appeal Form.)
9. The Taxpayer appealed to this Board on July 1, 2010, stating: “The assessed value as of July 1, 2008 is incorrect due to the Defendant’s failure to account for the declining real estate market. The Defendant’s comparable sales are outdated and inaccurate. Moreover, the assessed value is grossly out of line with current values and is inequitable.” (Appeal Form.)
10. In a pre-hearing brief, the Taxpayer argued the effective date of the appraisal is unconstitutional. (Taxpayer’s brief dated September 10, 2010.)
11. The Taxpayer submitted an affidavit of Jeff Helms, a certified Montana real estate broker. Mr. Helms testified to listing Lot 39 of Diamond Hitch subdivision on December 11, 2007 for \$1,375,000 and later sold this property on January 20, 2009 for \$425,000. (Exh 1.)
12. The Taxpayer considered Lot 39 to be very a comparable property and believes its sale should be used to represent the down turn in the real estate market when arriving at a value for the subject property. (Landers Testimony.)

13. The Department's appraiser testified that the CALP for the subject property very accurately valued the land in question, and closely predicted a proper market value in this instance. (Olson Testimony.)

### **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 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).)
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 an independent appraisal to be considered, the taxpayer or the taxpayer's agent must meet the following requirements:
  - (a) submit a signed original long-form narrative appraisal, performed by an appraiser licensed by the state of Montana, or an appraiser who has been certified by a nationally recognized appraisal society or institute, to the local department office in the county where the property is situated;
  - (b) have a valuation date within six months of the base-year valuation date for the appraisal required in (1) (a) , or be adjusted by the department or the appraiser who performed and prepared the narrative appraisal to reflect changes in market conditions between the appraisal date and the base-year valuation date. (ARM 42.20.455(1).)

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. 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**

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.

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 (1<sup>st</sup> 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 computer modeling did not capture the downward trend of the market and believes the lack of sales after September 2007 represents this trend, leaving the subject property value to be grossly overstated. The Taxpayer also believes a value of between \$600,000 and \$700,000 would accurately reflect the market value as of July 1, 2008. The

Taxpayer attempts to justify the requested value by having Jeff Helms, a certified Montana real estate broker, analyze the sale of one single property sold after the valuation date of July 1, 2008. Mr. Helms concluded the value of the subject property was likely between \$425,000 and \$700,000 on July 1, 2008. The Board does not find this information sufficiently specific and comprehensive for use in determining a value for the subject property as of July 1, 2008. Even if the value established by the real estate broker was correct as of the date of the market analysis, it does not follow the criteria outlined in ARM 42.20.455 above, (appraisal by a registered appraiser and time trended to the appraisal date of July 1, 2008.)

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 10 vacant land sales. From that sample, the DOR adjusted these sale prices by applying a monthly percentage increase from the sales date to the valuation date. We find no substantial errors in the Department's valuation. Therefore, this Board does not give credence to the Taxpayer's contention that the DOR calculations were wrong or overstated. The majority of the sales were in very close proximity to the subject property. Two of the sales occurred less than a year before the valuation date, and set market values at approximately \$1.2 million per lot. Further proof of a third sale (not used in the DOR CALP model) was brought to the Board. The third sale occurred in April of 2008 (mere months before the appraisal date), again in close proximity of the subject property, and sold for \$1.4 million. These three sales validate the Department's value and support the valuation set by the CALP.

The Taxpayer argued that the use of the July 1, 2008 valuation date is unconstitutional and the use of this date allows the DOR to value property at the highest possible value.

All taxable class four properties in Montana must be appraised at its market value as of July 1, 2008 for the current appraisal cycle. This Board cannot consider evidence of valuation from after the valuation date set by statute. (*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. (For further example of this, all property owners received lower values from 2002 through 2009, although the evidence demonstrates that values were increasing during that timeframe. There is no argument from any taxpayer that they should be paying increased taxes when their property was being undervalued.) 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).

Thus it is the opinion of this Board that the assessed value set by the DOR is correct and upheld by the Madison County Tax Appeal Board is affirmed.

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**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 Madison County at a reappraisal value of \$1,332,081 as determined by the Department of Revenue and upheld by the Madison County Tax Appeal Board.

Dated this 13th day of December, 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 14th day of December, 2010, 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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