

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

NORMAN B. CAREY,)	DOCKET NO.: PT-2010-26
)	
Appellant,)	
)	FACTUAL BACKGROUND,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent.)	

Statement of Case

Norman B. Carey (Taxpayer) appealed a decision of the Missoula County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of his property located at 1610 Clements Road, Missoula, Montana. The Taxpayer argues the DOR overvalued the properties for tax purposes, and he seeks a reduction in value assigned by the DOR. The duty of this Board, having fully considered the exhibits, evidence, submissions and all matters presented, is to determine the appropriate market value for the property based on a preponderance of the evidence. A hearing was held by the Missoula County Tax Appeal Board at which Taxpayer represented himself. Wes Redden, DOR area manager and Helen Greenberg, DOR appraiser, presented testimony and evidence in opposition to the appeal. The State Tax Appeal Board (Board) set the matter to be heard on the record without objection by the parties. The record includes the materials submitted to the county tax appeal board, the transcript of the hearing, and additional material submitted to this Board pursuant to the scheduling order in this matter.

Issue

The issue before this Board is did the Department of Revenue determine an appropriate market value for the subject property for tax year 2010?

Summary

Norman B. Carey 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 Missoula 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, written and documentary.
2. The subject property is a double-wide mobile home, on a permanent foundation, situated on a one acre lot with a 24 by 32 foot garage. The legal description is as follows:

Lot B of Hill Addition, Section 25, Township 13N, Range 20W, of Missoula County, State of Montana. (DOR Exh. C.)
3. For tax year 2009, the DOR valued the subject property at \$212,477 using the cost approach, with a land value of \$151,000 and the improvements valued at \$61,477. (DOR Exh. C.)
4. The Taxpayer is asking for a value of \$185,000 consisting of \$135,000 for the land and \$50,000 for the improvements. (Appeal Form.)
5. The Taxpayer acquired the property by purchasing it directly from the mortgage holders prior to the default of the loan by his daughter. (Carey Testimony.)

6. The DOR used the cost approach to value the subject improvements and a Computer Aided Land Pricing (CALP) model to value the land. (DOR Testimony, DOR Exhs. C, E & F.)
7. The CALP is based on sales of 30 different properties. All sales and the subject property in the CALP are located within Neighborhood 7 of Missoula County. There was no indication that the sales were not arms length sales. (DOR Exh. E.)
8. The DOR determined that one acre is the base size for valuing lots in Neighborhood 7. The first acre is valued at \$151,000 and each additional acre would be valued at \$8,200. All of the sale properties used in the CALP were bare tract land and had sale dates prior to the valuation date of July 1, 2008. (DOR Exh. E.)
9. The Taxpayer filed a Request for Informal Review (AB-26) on August 6, 2010. The DOR reviewed the property value and determined the value to be consistent with like properties based on data collected for the reappraisal cycle. (Greenberg Testimony, DOR Exh. A.)
10. The Taxpayer filed an appeal with the Missoula CTAB on November 4, 2010, citing: "I purchased the property in Aug. 09 for \$180,000. I installed new vinyl and a new roof. I have a buy/sell for \$187,500. I should not owe taxes on more than the purchase price or selling price." (Appeal Form.)
11. The Missoula CTAB heard the appeal on April 25, 2011, and upheld the DOR value of the subject property. (Appeal Form attachment.)
12. The Taxpayer appealed to this Board on April 26, 2011, stating: "I believe their own explanation substantiates the value along with the buy/sell I presently have on the property. No one should be required to pay taxes on more than the property is worth." (Appeal Form.)

13. The Taxpayer submitted a buy/sell agreement dated February 3, 2011 for \$187,500 to show the DOR did not value the property correctly. (Carey Testimony, Taxpayer Exh. 1.)
14. The DOR presented testimony and exhibits justifying the values set on the subject improvements using the cost approach. (DOR Exhs. E & F.)
15. The DOR calculated a value of the improvements based on new construction, and depreciated the value of the building to reflect its age and condition. (DOR Exhs. E & F.)
16. The DOR also submitted a land sales comparison and a like property valuation comparison to justify the value assessed on the property. (DOR Exh. D.)
17. The DOR was unable to use a market approach on the subject property because they do not maintain a market value model for manufactured homes. (Redden 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 properties must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)

5. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (Rule 42.18.110(12), ARM.)
6. 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, Findings of Fact, 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 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 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 Taxpayer argues he should not have to pay taxes on property values higher than the current value and should not be assessed any more than what he paid for the property. In this case, the Taxpayer supplied information about the sale of the subject property, which is substantially after the valuation date at issue.

The Board finds the evidence presented by the Taxpayer to be of little relevance in valuing the subject property. First, the sale of the subject property does not meet the definition of market value when the evidence demonstrated the property was not sold on the open market; rather the Taxpayer purchased the property under a distressed sale. (*See* EP 5.)

Second, the sale occurred after July 1, 2008 and has little bearing on the statutory value required to be set on this assessment date. (*See* EP 13.) Montana statutes require all land to be valued on the same date in order to produce uniform assessments across the state. *See, e.g.*, §§ 15-7-103(5), 15-7-111(3), 15-7-112, MCA. *See also* Rule 42.18.124(b), ARM (setting the appraisal date for valuation as July 1, 2008 for the valuation period of 2009-2014). Thus, the property must be valued for tax purposes on July 1, 2008.

There is no indication that the Department's valuation suffers from any errors or is miscalculated in any manner. The evidence presented by DOR is sufficient to show accurate land valuation as of the assessment date of July 1, 2008, and the Taxpayer has failed to meet his burden to show that the DOR has erred.

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

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the value of the subject property shall be entered on the tax rolls of Missoula County at a 2009 tax year value of \$212,477 as determined by the Department of Revenue and upheld by the Missoula County Tax Appeal Board.

Dated this 15th of July, 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 15th day of July, 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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