

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ORVILLE W. & MARY CHIGBROW,)	DOCKET NO.: PT-2009-41
)	
Appellants,)	
)	FACTUAL BACKGROUND,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

Statement of Case

Orville W. and Mary Lou Chigbrow (Taxpayers) appealed a decision of the Missoula County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of their property identified as 114 Erika Court, Section 07, Township 12N, Range 19W, phase 2-lot 17, Lolo View Heights #5, a major subdivision of Missoula County, State of Montana. The Taxpayers argue the DOR overvalued the property for tax purposes, and they seek a reduction in value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on June 1, 2010, the Taxpayers were represented by Orville W. Chigbrow, who provided testimony and evidence in support of the appeal. The DOR, represented by Michele Crepeau, Tax Counsel; Wes Redden, Area Manager and Mark Flanik, DOR residential and agriculture appraiser, presented testimony and evidence in opposition to the appeal.

The Board having fully considered the testimony, exhibits, post-hearing submissions and all matters presented, 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

Mr. and Mrs. Chigbrow are the Taxpayers in this proceeding and, therefore, have the burden of proof. Based on a preponderance of the evidence, the Board affirms the decision of the Missoula County Tax Appeal Board.

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, verbal and documentary.
2. The subject property is described as 114 Erika Court, Section 07, Township 12N, Range 19W, phase 2-lot 17, Lolo View Heights #5, a major subdivision of Missoula County, State of Montana. (Exh. 2, p. 1.)
3. For tax year 2009, the DOR originally appraised the subject property at a value of \$256,300 (a land value of \$98,645 and improvements valued at \$157,655. (Flanik Testimony.)
4. The DOR used the market approach to value the subject property and the comparable sales properties for the July 1, 2008 appraisal date. (DOR Exh. 4.)

5. The DOR based residential market values for the current appraisal cycle on residential property sales which took place between January 1, 2002 and July 1, 2008. The characteristics of the sales properties are compared to the characteristics of the subject property to select those properties most comparable to the subject. The market value of the subject is then based on these comparable sales, after adjustments to make the comparable properties conform to the subject. (Redden Testimony, DOR Exh. 4.)
6. At the hearing, the Taxpayers adjusted the requested property value to \$238,100. The new value consisted of an uncontested land value of \$98,645 and \$139,455 for the improvements. (Chigbrow Testimony).
7. The Taxpayers filed a Request for Informal Review (AB-26). During the AB-26 process, the DOR reduced the value of the subject property from \$256,300 to \$255,100. This reduction was due to several adjustments, such as adjusting the number of bedrooms and addition of a deck. (DOR Exh. 1, Flanik Testimony.)
8. The Taxpayers filed an appeal with the Missoula CTAB on December 23, 2009, citing “The information on the attached sheet shows sold properties closer in age and physical proximity to my home than those used by the DOR in it’s (*sic*) informal review mailed on 12/1/09. I adjusted the comp sale prices by adding \$5,000 to compensate for the differences in the number of bedrooms. The land values for the properties on the downhill side of Erika Court are roughly the same shape but vary in the price/sq ft from \$10.89 to \$13.37. Please adjust my land sq ft from \$12.08 to \$10.89 to match the adjacent lot (116 Erika Ct).” (Appeal Form.)

9. The Missoula CTAB heard the appeal on March 1, 2010, and upheld the DOR value for the subject property. (Appeal Form attachment.)
10. The Taxpayers appealed to this Board on April 12, 2010, stating: “CTAB erroneously used the total living area as a divisor of the respective sales price of the comps to get an avg sq ft (*sic*) cost then used it to compute the value of this property. A more equitable method would have compared the separate land & bldg values to arrive at a market value.” (Appeal Form.)
11. At the hearing the Taxpayers adjusted the requested property value to \$238,100. This consists of an uncontested land value of \$98,645 and \$139,455 for the improvements. (Chigbrow Testimony.)
12. Taxpayers brought evidence of neighboring comparable property sales reflecting a lower sale price for the subject property. (Exh. A2 & A3.)
13. The Taxpayers also compiled a sales worksheet with properties they felt were more comparable to theirs. (Exh. A4.)
14. The DOR presented testimony and exhibits in opposition to the Taxpayers’ claims. (Exh. 1 through 7.)

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. The legislature established a system of instruction, examination, and certification for all appraisers in order to produce more

- uniform appraisal of property throughout the state by encouraging technical training in the principles, methods, and techniques of appraising property and promoting a higher level of professionalism among appraisers. (§15-7-105, MCA.)
4. The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided. (§15-7-112, MCA.)
 5. 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.)
 6. The reappraisal of residential property consists of:
 - (a) field reviews;
 - (b) collection, verification, and analysis of sales information;
 - (c) data entry of missing or updated information, new improvements, and sales information;
 - (d) development and review of CALP models,
 - (e) development of sales comparison models/benchmarking;
 - (f) use of door hangers, where appropriate, to collect specific construction detail and building material information regarding a property when the property owner is not present and an internal inspection is not possible;
 - (g) use of self-reporting forms, where appropriate;
 - (h) generation and review of property record sheets (PRS) and comparable sales sheets; and
 - (i) final determinations of value.(ARM 42.18.110(1).)
 7. The development of sales comparison models using Property Valuation Assessment System (PVAS) is a requirement for

- property valuation during the reappraisal cycle. (Rule 42.18.110(8), ARM.)
8. 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.)
 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).

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. This Board concludes the evidence presented by the DOR did support the values assessed. This Board also concludes the Taxpayers have not provided evidence that the DOR appraised value for July 1, 2008 is not fair market value.

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. Sales that took place prior to that date are time-trended to achieve a market value for the date of valuation. Time trending requires calculating the average increase or decrease per month in a specific area and applying the percent change to verified sales data. (CALP Exh., Flanik test.) Sales that occurred after the valuation date may not be used for valuation of the property. Thus, all taxpayers are subject to the same market effects by virtue of the same tax appraisal date.

The Board recognizes that a mass appraisal system will produce reliable indicators of market value most of the time, but not all of the time. Erroneous data is likely to be present in any data system as large as the mass appraisal data base. The Taxpayers believe large computer systems are not infallible and erroneous data is present in the DOR’s the mass appraisal data base. They submitted extensive evidence in an attempt to show a more accurate market value, including two realtor market analyses and one created on their own, of the subject property.

(Chigbrow Test, Exh. A.) These analyses showed average prices of \$215,778 to \$229,350.

While the Taxpayers went to great lengths to provide the Board with data of comparable sales, the sales themselves did not occur on the valuation date and more than half the houses in one analysis were considerably older (36 to 50 years old) than the subject property. The analysis did not reflect any time-trending of the comparable properties to the assessment date of July 1, 2008, which can make a significant difference in a volatile market. Additionally, there is no indication that the sales presented were verified to be arm's length transactions as required by §15-8-111(2), MCA.

The evidence presented by the DOR was based on 130 sales. From that sample, the DOR selected five sales of nearby houses of comparable size and recent construction. Several of those houses were also in the Taxpayers' sample but when the sale prices were time-adjusted, the comparable properties averaged \$255,100. This is the value assigned by the DOR and the Taxpayers' evidence does not show those calculations to be erroneous.

Thus it is the opinion of this Board that the assessed value set by the DOR is correct and the decision of 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 subject property value shall be entered on the tax rolls of Missoula County at a 2009 tax year value of \$255,100 as determined by the Department of Revenue and affirmed by the Missoula County Tax Appeal Board.

Dated this 16th of June, 2010.

BY ORDER OF THE
STATE TAX APPEAL BOARD

/s/ _____
KAREN E. POWELL, Chairwoman

(S E A L)

/s/ _____
DOUGLAS A. KAERCHEK, 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 16th day of June, 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:

Orville and Mary Lou Chigbrow	<input type="checkbox"/> U.S. Mail, Postage Prepaid
114 Erika Court	<input type="checkbox"/> Hand Delivered
Missoula, Montana 59803	<input type="checkbox"/> E-mail

Wes Redden	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Mark Flanik	<input type="checkbox"/> Hand Delivered
Missoula County Appraisal Office	<input type="checkbox"/> E-mail
2681 Palmer St., Ste. I	<input type="checkbox"/> Interoffice
Missoula, MT. 59808	

Michelle R. Crepeau	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Office of Legal Affairs	<input type="checkbox"/> Hand Delivered
Department of Revenue	<input type="checkbox"/> E-mail
Mitchell Building	<input type="checkbox"/> Interoffice
Helena, Montana 59620	

Cyndie Aplin, Secretary	<input type="checkbox"/> U.S. Mail, Postage Prepaid
1015 Washburn	<input type="checkbox"/> Hand Delivered
Missoula County Tax Appeal Board	<input type="checkbox"/> E-mail
Missoula, Montana 59801	

/s/ _____
DONNA EUBANK
Paralegal