

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

CONNIE & THOMAS COSTANZA,)	DOCKET NO.: PT-2009-69
)	
Appellants,)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent.)	

Statement of Case

Connie S. and Thomas J. Costanza (Taxpayers) appealed a decision of the Lake County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of their property identified as Section 29, Township 23N, Range 20W, Lot 004, LT 4, Festvog Villa Site, of Lake 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 September 1, 2010, the Taxpayers were represented by Thomas J. Costanza, who provided testimony and evidence in support of the appeal. The DOR, represented by Michele Crepeau, Tax Counsel; Scott Williams, Area Manager, and Monty Simonson, DOR appraiser, presented testimony and evidence in opposition to the appeal.

The Board having fully considered the testimony, exhibits, and all matters presented, 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

Connie and Thomas Costanza are the Taxpayers in this proceeding and, therefore, have the burden of proof. Based on a preponderance of the evidence, the Board modifies the decision of the Lake 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 a 2 acre lot with 194 feet of Flathead lake frontage, with the following legal description:

Section 29, Township 23N, Range 20W, Lot 004, LT 4,
Festvog Villa Site, County of Lake, State of Montana. (Exh.
A.)
3. For tax year 2009, the DOR originally appraised the subject property at a value of \$1,910,363; \$1,627,763 for the land and \$282,600 for the improvements. (Exhs. A & J.)
4. The DOR used a CALP (Computer Assisted Land Pricing) model to value the subject properties. This resulted in a land value for the subject property of \$1,627,763. The CALP in this instance is based on 23 Lake frontage land sales. The CALP sales and the subject property are all located in Neighborhood 302.2, which is a geographic area designated by the DOR as having similar characteristics for purposes of valuation.

5. Based on the CALP, the DOR established a front foot value of \$7,714 per foot for the first 100 linear feet of waterfront property and \$4,626 a linear foot for any residual footage. (Williams Testimony, Exhs. A, G & J.)
6. All of the sales in the CALP are derived from water-front lots in the same neighborhood on Flathead Lake. (Williams Testimony, Exh. G.)
7. The Taxpayers filed a Request for Informal Review (AB-26) with the DOR. During the AB-26 process, the DOR adjusted the property value to \$1,272,994, reflecting a decrease in land value to \$975,851 due to a comparable sale with a similar mud-flat shore line. The improvement value was increased to \$297,143 because the appraiser determined the cost approach more accurately reflected the market value of the subject property instead of the market approach. (Simonson Testimony, Exh. A.)
8. The Taxpayers filed an appeal with the Lake County Tax Appeal Board (CTAB) on April 22, 2010, stating:

“LAND AND BUILDING NOT WORTH 1,272,994 (*sic*) NOT EVEN CLOSE.” (Appeal Form.)
9. The Lake CTAB heard the appeal on May 24, 2010, and upheld the DOR value on the land and increased the improvement value to \$350,000 based on Taxpayer’s appeal. (Appeal Form.)
10. The Taxpayers appealed to this Board on June 4, 2010, stating:

“1.) RAISED MY TAX BECAUSE I BROKE IT DOWN(*sic*)
2.) NEVER CONSIDERED MY APPRAISAL FROM A LICENSED + BONDED + CERTIFIED REALTOR.
3.(*sic*) I PROTESTED MY TAX IN 2003 WITHOUT A REPLY(*sic*)” (Appeal Form.)
11. The Taxpayers submitted a market analysis prepared by Wilma Mixon-Hall, a real estate broker in Polson, Montana, on September 8, 2009.

According to this analysis Ms. Mixon-Hall's opinion of fair market value of the subject property is worth approximately \$850,000 as of the date of the market analysis. (Exh. 1.)

12. The Taxpayers referenced several real estate advertisements showing asking prices for numerous Flathead lake properties as of August and September of 2010. (Costanza Testimony, Exh. 2.)
13. The Taxpayer further claims he protested his taxes in 2003 and no one ever contacted him about the claim. (Costanza Testimony, Appeal Form.)

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.)
2. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. (§ 15-7-102(6).)
3. The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested. (§ 15-1-402(1)(a).)
4. An aggrieved taxpayer has the option to file an AB-26 requesting an informal review with the DOR or file an appeal with the County Tax Appeal Board or bring a declaratory judgment action in the district court. Simply filing under protest is not sufficient filing to create an appeal under the statute. *See* §§15-2-301 through 303, MCA.
5. All residential appraisers must receive specific training and testing to certify that they possess the required knowledge, skills, and abilities to perform residential property appraisals as outlined by rule. (ARM 42.18.206(1). *See also* §15-7-105, MCA)
6. All taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA.)
7. 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).
8. 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).)
 9. For the taxable years from January 1, 2009, through December 31, 2014, all property classified in §15-6-134, MCA, (class four) must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)
 10. 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).)
 11. 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.)

Findings of Fact, 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. In this instance, we will review whether the DOR properly valued the subject property.

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).

Land Valuation

The mass-appraisal techniques developed by the DOR are designed to find the market value for all properties in Montana, including the subject property. As part of the standard mass appraisal system, the DOR used a CALP model based on 23 Flathead Lake water-front land sales. From this sample, the Department calculated a value set on the front-foot method for valuation – essentially valuing the number of feet of waterfront of the subject property. (*See* FOF 4). After completing this approach, the DOR appraiser determined the subject property had a negative “influence,” based on a shallow shoreline and fluctuating water levels, which results in a large mud flat for a majority of the year. As a result of this negative influence, a 20% reduction in the subject land value was given. (*see* FOF 6.)

The only evidence the Taxpayers submitted to contradict the Department’s value was a 2010 market analysis of the subject property, prepared by a local realtor, and 2010 real estate advertisements of current property for sale on Flathead Lake. (*see* FOF 10 & 11.) The Board does not find this information credible in determining a value as of July 1, 2008. Even if the value established by the Realtor 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.)

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. The Department develops trending data to determine a market value for the date of valuation from sales which occurred prior to the valuation date. 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. G, Williams Testimony.) 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. This requires that we find the market analysis not relevant in valuing the subject property.

Further, we cannot consider the real estate advertisements to be valid evidence of value as those sales have not been completed nor verified. Unless a validated sale has occurred between January 1, 2002 and July 1, 2008, it cannot be used to determine a market value for tax purposes in Montana. (*see* POL 10.)

Improvement Valuation

The Taxpayers also argue the improvement value of \$350,000 set by the CTAB is erroneous. The Taxpayers asked the CTAB for a total value of \$850,000 for the subject property, breaking it down to \$500,000 for the land and \$350,000 for the improvements. In making their decision, the CTAB agreed with the DOR land value set at \$975,851 and adjusted the improvement value to that of the Taxpayers. We can find no evidence supporting the \$350,000 improvement value. Further, the Taxpayers did not submit any evidence disputing the DOR's original improvement value of \$297,143. Thus, we modify the CTAB decision to reflect the DOR appraised value for the subject property of \$1,272,994 which is \$975,851 for the land and 297,143 for the improvements.

Protesting Taxes

The Taxpayers contest that property taxes were paid under protest in 2003, but no action was taken on those protested taxes. It is the responsibility of the taxpayers to take action by filing an appeal when filing taxes under protest. Without filing an appeal, no protest is perfected. See POL 2-4.

Conclusion

This Board concludes the evidence presented by the DOR did support the values assessed. This Board concludes the Taxpayers have not provided evidence that the DOR appraised value for July 1, 2008 is not fair market value. Thus it is the opinion of this Board that the assessed value set by the DOR is correct and the decision of the Lake County Tax Appeal Board is modified.

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 Lake County at a 2009 tax year value of \$1,272,994 as determined by the Department of Revenue.

Dated this 14th of September, 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 t his Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of September, 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/ _____
DONNA EUBANK
Paralegal