



## Summary

Daniel J. and Bonnie R. Gebhardt 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 Meagher County Tax Appeal Board.

## Background and Evidence Presented

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. Both parties were afforded the opportunity to submit additional written statements to the Board.
2. The subject property is described as Section 18, Township 09N, Range 07W, Lots 3, 8, 9, 15, 16, 18, 19, 23 and 24, Arrowhead Meadows Estates, a major subdivision of the City of White Sulphur Springs, Meagher County, State of Montana. (CTAB Exhs. 19 - 27.)
3. The Taxpayers filed a Request for Informal Review (AB-26) on August 24, 2009. During the AB-26 process, the DOR made no adjustment to the value of the subject properties. (CTAB Exhs. 1 - 9.)
4. The Taxpayers filed an appeal with the Meagher CTAB on November 30, 2009, citing “The last 2 lots in the subdivision were exchanged as part of home sales/purchase price and were valued and appraised at less than what the dept of revenue appraised the lots. Outright sales of the last 5 lots (sold in 2007) averaged \$34,280/lot. Though listed for sale we have had no offers on lots since 2007. According to the US Census Bureau the population of Meagher County has decrease (*sic*), the median income is \$33,305, and there have been NO new private housing units authorized by building permits in either 2007 or 2008. Yet, the dept of revenue assessed value of this lot increased -315%.” The Taxpayers

- claim an increase of between 315% and 450%, depending on the lot.  
(Multiple Appeal Forms.)
5. The Meagher CTAB heard the appeal on March 23, 2010, and upheld the DOR value for the subject property. (Appeal Form attachment.)
  6. The Taxpayers were represented at the Meagher CTAB hearing by Bonnie R. Gebhardt. (CTAB Sign-in Sheet.)
  7. The DOR was represented at the CTAB hearing by Mark J. Olson, Area Manager, and Patricia Pallas, DOR Appraiser. (CTAB Sign-in Sheet.)
  8. The Taxpayers appealed to this Board on April 30, 2010, stating: “The denial by the Meagher Co. Tax Appeal Board was based on “asking price” yet property appraisals are based on previous, comparable sales. There have been no sales of property since 2007 and the DOR appraisal excluded the sales of 6 comparable lots in the subdivision between 2002 and 2008.” (Multiple Appeal Forms.)
  9. The Taxpayers submitted additional materials to this Board defending statements made during the CTAB hearing. (Exhs. G1 through G7.)
  10. Taxpayers calculated an average lot price of \$32,604 and an average per acre price of \$20,475 based on Arrowhead Meadows subdivision lot sales prior to July 1, 2008. (Gebhardt CTAB Testimony, Exh. G-7.)
  11. This average lot prices was based on calculating an average sales price without regard for size of lot or time-adjusting the sales. (Gebhardt CTAB Testimony.)
  12. The DOR presented testimony and exhibits to the CTAB and additional submissions to this Board defending the assessed value of the subject property. (CTAB Exhs. 1 through 37, Exhs. GEB-DOR3 through GEB-DOR180.)

13. The DOR used a CALP (Computer Assisted Land Pricing) model to establish the land value for the subject properties. The CALP in this instance is based on 14 vacant land sales, which are time-trended to provide a valuation for the lien-date. The CALP sales and the subject property are located in Neighborhoods 2A-2H & 12B, C, E & J of Meagher County, which are geographic areas designated by the DOR as having similar characteristics for purposes of valuation. Based on the CALP, the DOR set one acre as the base size for a parcel. In addition, the DOR determined the base acre value to \$36,820 and the value of each residual acre was \$12,870, again based on the CALP. (Olson CTAB Testimony, Exh. GEB-DOR 177.)
14. All of the sales in the CALP are derived from lots within White Sulphur Springs city limits. (Olsen CTAB Testimony.)
15. The subject lots were previously valued as rural lots. Because the lots are within the city limits, the lots are now valued as in-town lots, which increased their value for this tax year. (Olsen CTAB 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. It is the duty of the Department of Revenue to accomplish the appraisal of all taxable city and town lots. (§15-7-101 (b), 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. 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).)
  7. The development of sales comparison models using Property Valuation Assessment System (PVAS) is a requirement for property valuation during the reappraisal cycle. (ARM 42.18.110(8).)
  8. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
  9. 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).)
  10. 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.)

#### **Finding 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 properties 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 Taxpayers argue the DOR didn't use certain sales in calculating the assessed value for the subject properties. (See FOF 10). They believe if the DOR had used these sales, the value would be lower on the CALP. There is no indication, however, that the sales presented were verified to be arm's length transactions as required by §15-8-111(2), MCA. In fact, those sales occurred in trade for other properties, and have other factors that indicate the sale may not demonstrate market value as set out in statute.

This Board finds the evidence presented by the DOR did support the values assessed. The Department used arm's length sales of vacant land within the city limits, which was time-trended to the assessment date. (FOF 13 &14.) This Board also finds the Taxpayers have not provided evidence that the DOR appraised value for July 1, 2008 is not fair market value.

The Taxpayers further argue there were no land sales in Meagher County after 2007, thus affecting the values set by the DOR.

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. (FOF 13.) 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. Because the Department used time-trended values, there is no requirement that sales occur at the time of the assessment.

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 14 vacant land sales. From that sample, they applied a size adjustment in setting those values of a standard lot. As a result of this approach, smaller lots are valued higher per square foot than larger lots for the subject neighborhood. Those prices were then adjusted to the valuation date by applying the percentage increase or decrease property values experienced in that time frame. This is a well established appraisal method used by the DOR and mandated by the legislature. Therefore, this Board does not give credence to the Taxpayers' contention that the DOR calculations are erroneous.

The Taxpayers did make an effort to calculate their own value for the subject lots based on sales in the Arrowhead Meadows Subdivision prior to the July 1, 2008 assessment date. (FOF 10.) Unfortunately, they failed to adjust those calculations to the July 1, 2008 assessment date by time-trending or to make any size adjustments for economies of scale.

Thus it is the opinion of this Board that the assessed value set by the DOR is correct and the decision of the Meagher 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 values shall be entered on the tax rolls of Meagher County at a 2009 tax year value originally determined by the Department of Revenue and affirmed by the Meagher County Tax Appeal Board.

Dated this 17th of August, 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 18th day of August, 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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