

Summary

Gregory L. Hampton is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board modifies the decision of the Lewis and Clark 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 verbal and documentary evidence.
2. The subject property is described as 7160 Trout Creek Rd, Section 17, Township 11N, Range 01W, Parcel 26A, Lot 26A-1, Certificate of Survey #3082210 of Lewis and Clark County, State of Montana. (Exh. C, Property Record Card).
3. For tax year 2009, the DOR appraised the subject property at a value of \$92,732 (a land value of \$73,466 and improvements valued at \$19,266). (Exh. C).
4. During the hearing, the Taxpayer requested a total property value of \$80,000. (Testimony Mr. Hampton).
5. The Taxpayer based his requested property value on an appraisal completed on November 19, 2008 for Mountain West Bank and also noted that he purchased the property for the appraisal amount in April of 2009. (Exh. 1 and Testimony Mr. Hampton).
6. The Taxpayer filed an appeal with the Lewis and Clark CTAB on November 23, 2009, citing "I bought this property for appraisal price \$80,000.00 that's the best & most accurate value." (*sic*) (Appeal Form).
7. The Lewis and Clark CTAB heard the appeal on January 11, 2010, and upheld the DOR value for the subject property. (Appeal Form).
8. The Taxpayer appealed to this Board on January 18, 2010, stating: "I had an appraisal done by the bank I purchased this property from. Appraisal was done in Nov. 08 & came in @ 80,000(*sic*). The County had 20 acre comparables my property is 3.6 acres some in a floodplain. " (Appeal Form).
9. The Taxpayer submitted evidence that the subject property was located in a Federal Emergency Management Area (FEMA) Special Flood Hazard Area. (Exh. 2).

10. The DOR used a Computer Assisted Land Pricing (CALP) model to establish the original land value of \$73,466 for the subject property. The CALP is based on land sales, in this case 39 different sales, which had sales dates prior to the revaluation date of July 1, 2008. Each sale is reviewed to verify that it qualifies as an arms-length sale, and any improvements are removed from the calculation. (Exh. A).
11. Based on the CALP, the DOR determined that one acre would be the base size for valuing lots in Neighborhood 551. The first acre would be valued at \$36,500 and each additional acre would be valued at \$100. (Exh. A).
12. The DOR computed an influence factor for the property in the York area of Neighborhood 551. (Exh. B). DOR appraiser Terry Swope testified that the properties within the York area were more desirable and sold for a higher value than other properties in the neighborhood. (Testimony Mr. Swope).
13. The DOR utilized the cost approach to value the improvements on the property. (Exh.C).
14. This required that DOR calculate a value of the structure on the property based on new construction, and depreciate the value of the building to reflect its age and condition. (Exh. C, Testimony Mr. Swope).
15. The DOR also determined that the subject property has a construction quality grade of 2 in relation to average construction quality. (Exh. C, Testimony Mr. Swope).

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (Section 15-2-301, MCA).
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. (Section 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. (Section 15-8-111(2)(a), MCA).
4. Class four property includes: single-family residences . . .; [and] appurtenant improvements to the residences or dwelling units, including the parcels of land upon

which the residences and dwelling units are located . . . (Section 15-6-134(f)(i) and (iii), MCA).

Board Discussion and Conclusions of Law

The Board has two issues to resolve in this matter, whether the value of the land and the value of the improvements were correctly upheld by the Lewis and Clark County Tax Appeal Board.

It is true, as a general rule, the DOR appraisal is presumed to be correct and the taxpayer must overcome this presumption. The DOR should, however, bear a certain burden of providing documented evidence to support its assessed values. *Western Airlines, Inc., v. Catherine Michunovich et al.*, 149 Mont. 347, 428 P.2d 3(1967).

Land Value

The Board first reviews whether the DOR valued the subject land correctly at \$73,466.

The DOR is charged with appraising the property at full market value pursuant to § 15-8-111, MCA. The most appropriate way to appraise property is to use the actual sale of the property or to extract data from the market, such as other sales of comparable properties.

The DOR used a CALP model based on verified land sales in Neighborhood 551, which includes the subject property. In this case, the CALP model indicated a value of \$36,500 for the first acre of land and \$100 per acre for each residual acre. However, the DOR applied an influence factor to the York area of Neighborhood 551 of 200%. Thus, the subject land was valued at \$73,466 for the 3.326 acres. All the CALP sales occurred prior to the assessment date of July 1, 2008, and were within Neighborhood 551.

The Taxpayer argues the CALP sales are unreliable due to the large variance of the lot sizes. He also argues that the appraisal on which he bought the property with should have been considered as the most appropriate value.

We note that the sales used in valuing this property relate to the valuation date for the current reappraisal cycle which is July 1, 2008. The appraisal referenced by the Taxpayer is not substantially different in value from the DOR valuation. The evidence presented by DOR

is sufficient to show accurate land valuation, and the Taxpayer has failed to meet his burden to show that the DOR has erred.

Therefore, the Board upholds the Lewis and Clark CTAB decision and leaves the land value at \$73,466 as originally appraised by the DOR.

Improvement Value

The second question presented is whether the improvements on the subject property were appropriately valued.

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 value of the improvements on this property was determined using the cost approach because the DOR determined that no adequate comparable sales were available. (Exh C).

The DOR appraised this cabin at a grade 2 or poor grade and assigned a grade factor of .63 in relation to average construction quality of 1.00. (Exh. C) However, according to the DOR Montana Appraisal Manual (standard valuation materials of which we take judicial notice), Grade 2 or poor grade should have been assigned a grade factor of .49 relative to average construction. Thus, there is some error in the Department's calculation.

Evidence also shows that this property, however, is little more than an upgraded shed. The Board notes that the dwelling sets on concrete blocks for a foundation, no basement, no central heating system, no plumbing, and limited electrical. Evidence demonstrates the improvements fit the definition of grade 1+ (or cheap grade), according to the appraisal manual, with a factor of .36 of average construction quality.

By correcting the grade change to the subject property improvements, the Board arrives at a value of \$11,373.

Thus, it is the opinion of this Board that the value for the improvements is \$11,373. The decision of the Lewis and Clark 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 Lewis and Clark County at a 2009 tax year value of \$84,839. The decision of the Lewis and Clark County Tax Appeal Board is modified.

Dated this 5th day of March, 2010.

BY ORDER OF THE
STATE TAX APPEAL BOARD

/s/ _____
KAREN E. POWELL, Chairwoman

/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 8th day of March, 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:

Gregory L. Hampton
2012 Sweetgrass Rd.
Helena, Montana 59601

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail

Rocky Haralson
Terry Swope
Wanda Hartford
Lewis and Clark County Appraiser Office
P.O. Box 1722
Helena, MT. 59624-1722

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail
 Interoffice

Brent Coleman
Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail
 Interoffice

Mike Nobel
Chairman
Lewis and Clark County Tax Appeal Board
1519 Ohio
Helena, Montana 59601

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail

/s/ _____
DONNA EUBANK
Paralegal