

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

HOMAD, L.L.C.)	
)	DOCKET NO.: PT-2010-30
)	
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent.)	

Statement of Case

Homad, L.L.C. (Taxpayer) appealed a decision of the Madison County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of a 10 acre parcel in the Sun West Ranch subdivision, a major subdivision of Madison County, State of Montana. The Taxpayer argues the DOR overvalued the land for tax purposes, and seeks a reduction in value assigned by the DOR. The matter was heard before the State Tax Appeal Board on the record.

The Board having fully considered the testimony and exhibits from the record made before the Madison County Tax Appeal Board and all matters presented to this Board finds and concludes the following:

Procedural Issue

We first address a procedural matter raised by the Taxpayer. The Taxpayer filed a motion to strike an affidavit of Mark Olsen presented to the

Board by the DOR on October 31, 2011. The Taxpayer argued that the affidavit was not timely filed, was not responsive to any issues he raised, and thus should be stricken from the record because it was substantive material filed after the initial filing date set. Because the affidavit was untimely, the Taxpayer did not have an opportunity to respond to the affidavit. The DOR did not file any response to Taxpayer's motion.

Due process requires that the parties be given an opportunity to fully present their case to this Board. As part of that opportunity to fully present their case, parties also must have the opportunity to respond to the arguments and evidence presented by the opposing party. Thus, we concur that the filing of the affidavit was untimely, and it is appropriate to uphold the motion to strike. The Olsen affidavit shall not be considered part of the record in this matter.

Issue

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

Summary

Homad, L.L.C. 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 Madison County Tax Appeal Board.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter. The matter was set on the record, without protest by the parties. Both parties were afforded the opportunity to submit additional written material to the Board.
2. The subject property under appeal is a 10 acre lot described as:

Section 20, Township 10S, Range 01E, Lot 7, Sun West Ranch Phase 2, a major subdivision of Madison County, State of Montana. (DOR Exh. A.)

3. The Taxpayer was represented in the matter by Lawrence T. Holden, Jr., who is the managing member of Homad, L.L.C.. (CTAB Attendance Sheet, Appeal Form.)
4. Brandi Hilton, Area Manager and Diane Brittan and Andrew Hagen, DOR Appraisers, represented the DOR at the CTAB hearing. (CTAB Attendance Sheet.)
5. For tax year 2009, the DOR appraised the subject land at a value of \$674,590. (Appeal Form & DOR Exh. A.)
6. The Taxpayer is asking that a value of \$539,000 be placed on the lot for the current appraisal cycle. (Appeal Form.)
7. The Taxpayer filed a Request for Informal Review (AB-26) on October 14, 2009. During the AB-26 process, the DOR concluded the subject property was accurately and fairly valued for the 2008 appraisal cycle. (AB-26, CTAB Exh. A.)
8. The Taxpayer filed an appeal with the Madison CTAB on January 19, 2011, stating:

“I believe the tract land is appraised at too high of value.” (Appeal Form.)
9. The Madison CTAB heard the appeal on June 16, 2011 and subsequently agreed with the value set by the DOR, disapproving the appeal. (Appeal Form.)
10. The Taxpayer submitted Declaration of Restrictions for the Sun West Ranch Subdivision, arguing that the purchase of a lot in this subdivision is only the right to build a structure under the strict supervision of the Architectural Review Committee. (CTAB Exh. 1.)

11. Mr. Holden also argues that, because of the restrictions, the size of the lot has little or no relevance in the determination of value. (CTAB Exh. 1.)
12. The DOR used a Computer Assisted Land Pricing (CALP) model to establish the land value for the subject property. The CALP in this instance was based on sales of 19 vacant land properties in the Sun West Ranch subdivision. All sales used in the CALP occurred between January 1, 2002 and July 1, 2008, which are time-trended to provide a valuation for the lien-date. (DOR Exh. C, Brittian Testimony.)
13. The CALP sales and the subject property are located within Neighborhood 21 of Madison County. Neighborhood 21 consists of only properties in the Sun West Ranch subdivision because of the size of the subdivision and exclusive amenities attached to the properties. There was no indication the sales were not arms length sales. (DOR Exh. C, Brittian Testimony.)
14. The DOR determined that one acre is the base size for valuing lots in the Sun West Ranch subdivision. The first acre is valued at \$564,790 and each additional acre would be valued at \$12,200. (DOR Exh. C.)
15. The Taxpayer does not believe the DOR value represented the decline in the real estate market from 2007 to the appraisal date of July 1, 2008 since there were no sales in the Sun West Ranch subdivision during that time. (Holden Testimony.)
16. The Taxpayer appealed to this Board on July 18, 2011, stating:

“I am appealing from the action of the Madison County Tax Appeal Board in sustaining the Dep’t of Revenue’s determination of appraised value for the land at issue here. I believe the land is appraised at too high a value.” (Appeal Form.)

17. Mr. Holden submitted a summary outlining the CTAB arguments as to why he believes the subject property is valued too high. (Taxpayer Pre-hearing submission letter dated September 29, 2011.)
18. The DOR submitted a paired sales analysis of properties sold more than once in Madison County used in calculating the monthly rate of change for the CALP time trending. This analysis shows a positive trending up to the appraisal date of July 1, 2008. (DOR Pre-hearing submission, Exh. A.)

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. 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. 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).)

6. 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).)
7. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
8. 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).)
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 2010.

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.

In this case, the Taxpayer argued the DOR did not calculate into their value the decline in the real estate market, starting in 2007 through the appraisal date of July 1, 2008. Mr. Holden further argues that size of the property in Sun West Ranch subdivision plays no relevance in the value because of the Declarations of Restrictions imposed on the property.

The mass-appraisal techniques developed by the DOR are designed to find the value on the open market as of the date for property tax

determinations. For this, the DOR used a CALP model based on 19 verified land sales in Neighborhood 21 in Madison County. (*See* EP 13.) Montana statute requires all land to be valued on the same date in order to produce uniform assessments across the state. *See, e.g.*, § 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 by the Department 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. The DOR's paired sales analysis (*See* EP 18) clearly shows the Department used sales of properties, within Madison County, right up to a sale on June 26, 2008 to establish the time trending for the CALP. The Board has no reason to doubt the accuracy of the time trending as applied to the subject neighborhood.

The DOR further applied a size adjustment in setting those values of a standard lot. Because of this approach, smaller lots are valued higher per acre than larger lots for the subject neighborhood. This is a standard valuation method which takes into consideration building sites and other needs for rural lots.

In this case, the Taxpayer presented no evidence that the individual property did not fit properly into the CALP calculations. 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 brought no evidence to counter the DOR's valuation. 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 and the decision by the Madison 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 land value shall be entered on the tax rolls of Madison County at a 2009 tax year value of \$674,590 for Lot 7 of the Sun West Ranch subdivision, as determined by the Department of Revenue.

Dated this 17th of November, 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 this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of November, 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:

Homad, L.L.C. P.O. Box 6347 Lincoln, MA 01773-6347	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail
Brandy Hilton Diane Brittian Madison County Appraisal Office P.O. Box 307 Virginia City, Montana 59755-0307	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail <input type="checkbox"/> Interoffice
Michelle R. Crepeau Office of Legal Affairs Department of Revenue Mitchell Building Helena, Montana 59620	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail <input checked="" type="checkbox"/> Interoffice
Laurie Buyan, Secretary Madison County Tax Appeal Board P.O. Box 278 Virginia City, Montana 59755	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail

/s/ _____
DONNA EUBANK
Paralegal