

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

JAMES C. and ANN M. GRANT,)	DOCKET NO.: PT-2009-24
)	
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 the Case

James C. and Ann M. Grant (Taxpayers) appealed a decision of the Lake County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR’s) valuation of their property identified as Lot 3 of the Mary Ronan Cove Subdivision, Section 11, Township 25N, Range 22W, of Lake County, Montana. Taxpayers claim the subject property land is worth less than the appraised value set by the DOR and affirmed by the CTAB. Taxpayers were represented by James C. and Ann M. Grant at a hearing held before this Board on May 11, 2010 in Helena. The DOR was represented by Michele Crepeau, Tax Counsel, Scott Williams, DOR Regional Manager, and Monty Simonsen, DOR Appraiser, testified on the valuation.

The duty of this Board, having fully considered the exhibits, evidence submissions and all matters presented, is to determine the appropriate market value for the property based on a preponderance of the evidence.

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

The Grants are the Taxpayers in this action and therefore bear the burden of proof. Based on a preponderance of the evidence, the Board upholds the findings of the Lake County Tax Appeal Board.

Findings of Fact

1. Due, proper and sufficient notice was given of this matter. This matter was set to be heard in Helena pursuant to §15-2-301(2), MCA without opposition by the parties. All parties received the transcript of the county tax appeal board and were afforded opportunity to submit additional evidence.
2. The property is described as Lot 3 of the Mary Ronan Cove Subdivision, Section 11, Township 25N, Range 22W, of Lake County, Montana.
(Appeal Form)
3. Originally for tax year 2009, the DOR valued the subject property at \$796,020 by determining the land value at \$629,589 and the improvement value at \$166,441. (CTAB Tr. pp. 17-18, CTAB Exh. 2.)
4. The Taxpayers filed a Request for Informal Review (AB-26). During the AB-26 process the DOR reduced the value of the land from \$629,589 to \$400,977. The DOR also reduced the improvements value slightly from \$166,441 to \$162,223. (CTAB Tr. pp.17-18, CTAB Exh. 2.)
5. The subject property is 3.623 acres in size. Typical lakeshore property on Lake Mary Ronan is 300 feet deep with 100 feet of lakeshore, or roughly

$\frac{3}{4}$ of an acre. During the AB-26 process the lot was divided to represent a typical lakeshore lot nearest the lake and a residual back lot of 2.953 acres. The DOR valued the front lot at \$386,655 and the back lot at \$14,322 bringing the total land value to \$400,977. (Simonsen Testimony.)

6. The Taxpayers filed an appeal with the CTAB on November 18, 2009, stating: “The 2008 Tract Land Market Value was an unjust increase of almost 7½ times. This assessment was based on inflated selling prices of properties sold in the area in 2006 and did not accurately reflect the current value of our property. No properties were sold in the area from January 2007 through July 2008, but a like property was listed in December 2007 for \$750,000 and eventually sold in August 2009 for \$375,000. A Request for an Informal Review was filed and conducted. It resulted in a reduction of the Tract Land Market Value, but recent sales in 2008 and 2009 show it to be worth less. ” (Appeal Form).
7. The Taxpayers asked for a total property value of \$461,933 consisting of \$299,710 for the land and an uncontested value of \$162,223 for the improvements. (Appeal Form, Grant Testimony.)
8. A hearing was held on February 5, 2010 and the CTAB upheld the DOR’s valuation. (Appeal form.)
9. The CTAB concluded: “AB-26 reappraisal reduced land to \$400,977.00 which is fair and equitable reduction.” (CTAB decision)
10. The Taxpayers filed a timely appeal to this Board on March 3, 2010, indicating: “The Tract Land Value of the property as of 7/1/08 is less than the appraised value set by the Department of Revenue.” (Appeal form.)

11. The Taxpayer submitted several exhibits during the hearing. (Exhs. 1 through 5.) The exhibits included photos, Lake County lakeshore protection regulations, and a fee appraisal.
12. During the Taxpayers' presentation, they pointed out the back portion of the property is unusable, either because of covenants, property boundaries or marsh land. (Grant Testimony.)
13. The Taxpayer also argues their property is less desirable than surrounding lots. (Grant Testimony, Exh. 1.)
14. The Taxpayers did not object to the value of the improvements set at the AB-26 review. (Grant Testimony.)
15. The Taxpayer presented a fee appraisal completed by Jim Kampf for the purpose of determining a market value as of July 1, 2008 for the land only and not any of the improvements. The appraisal placed a value on the land of \$328,500. (Exh. 5.)
16. At the hearing, the Taxpayer adjusted the requested land value to \$328,500 based on the opinion of the Fee appraiser. (Grant Testimony.)
17. The DOR argued there are several inconsistencies within the fee appraisal. The most notable errors were calculation errors in the average per-foot sale price of water-front properties used to determine value decline. The errors demonstrated the calculations cannot be correct and thus the value is in question. (Williams Testimony, Exh. 5, pg. 2.)
18. The DOR utilized a market approach to value the subject property. (Exhibit 3B.)
19. The market approach requires the DOR to select a sufficient number of valid comparable sales and adjust each sale to the subject property. In this case property was selected from a variety of lakeshores property sales, prior to July 1, 2008, in Lake County. (Exhibit B, Williams Testimony.)

20. That sales information was entered into a computer assisted land pricing model (CALP) which set the average value at \$3,903.80 per foot of lake frontage. Adequate sales demonstrated the value set for the property at issue was consistent with the area sales as adjusted for time trends. (Exh. B.)

Conclusions of Law

The State Tax Appeal Board has jurisdiction over this matter. (§ 15-2-301, MCA.) The Board determines whether the Department has set the proper market value for the subject property. 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.) 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).) In addition, all taxable property must be assessed at 100% of its market value except as otherwise provided. (§ 15-8-111, MCA.)

It is true, as a general rule, the Department of Revenue appraisal is presumed to be correct and the taxpayer must overcome this presumption. *Western Airlines, Inc., v. Catherine Michunovich et al.*, 149 Mont. 347, 428 P.2d 3,(1967). 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).

Board Discussion

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.

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. The DOR used a CALP which is based on sales of vacant parcels in the area surrounding the subject property. In this case, the CALP indicated a value of \$3,903 per lake-frontage foot. (FOF 20.) This Board finds the evidence presented by the DOR did support the values assessed.

The Taxpayers presented an independent fee appraisal as allowed in §15-7-102(6) MCA. Unfortunately, errors pointed out by the DOR put the reliability of the appraisal in doubt. (FOF 17.) In fact, the historical data in the independent fee appraisal presented showed lakefront values, when correctly divided, support an even higher per-foot value than the DOR used.

The Board recognizes a portion of the subject property is less desirable for certain purposes due to covenants and other land imperfections. The DOR, however, also recognized these factors and significantly reduced the property value by \$233,000. Thus, the value set on the unusable portion is a significantly lower value than the lake frontage portion. That section is not legally a separate section of land, and still has a purpose as a driveway and a privacy buffer from the road. Thus, there is no indication the value of the whole parcel is incorrect.

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 affirmed.

Order

It is therefore ordered by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Lake County by the local Department of Revenue at a 2009 tax year value of \$563,200 as determined by the Department of Revenue and affirmed by the Lake County Tax Appeal.

Dated this 27th of May, 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 this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of May, 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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