

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

JAMES L. KILHOF,)	
)	DOCKET NO.: PT-2009-19
Appellant,)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent.)	

James L. Kilhof (Taxpayer) appealed a decision of the Missoula County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR’s) valuation of his property identified as Tract 22 of the Jordan Ranch Tracts, Section 20, Township 13N, Range 15W, of Missoula, Montana. Taxpayer claims the DOR overvalued his property for tax purposes and seeks a reduction in the value assigned by the DOR. A hearing on the record was held by the State Tax Appeal Board (Board).

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

Kilhof is the Taxpayer in this action and therefore bears the burden of proof. Based on a preponderance of the evidence, the Board upholds the findings of the Missoula 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 on the record 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 Tract 22 of the Jordan Ranch Tracts, Section 20, Township 13N, Range 15W, Missoula County, Montana. (DOR Exh. C.)
3. The subject property consists of a log cabin and 2 sheds situated on 10 wooded acres. (DOR Exh. C.)
4. For tax year 2009, the DOR valued the subject property at \$209,944 by determining the land value at \$153,695 and the improvement value at \$56,249. (DOR Exh. C and CTAB Tr.)
5. The Taxpayer is asking for a value of \$140,000 consisting of \$100,000 for the land and \$40,000 for the improvements. (Appeal Form.)
6. The Taxpayer filed a Request for Informal Review (AB-26). During the AB-26 process the DOR reduced the value of the improvements from \$56,249 to \$50,249. (CTAB Tr.)
7. The Taxpayer filed an appeal with the Missoula County Tax Appeal Board (CTAB) on November 20, 2009, stating: “these

assessment (*sic*) market value has doubled for what reason? I want to see the model used to evaluate and I need to know who these people are that have been paying these prices, perhaps people from out of state. I have a whole list of reasons I have presented to property Assentant (*sic*) in Missoula I would like to also present to the tax Appeal Board.” (Appeal Form).

8. A hearing was held on January 11, 2010 and the CTAB upheld the DOR’s valuation. (CTAB decision attached to Appeal form.)
9. The Taxpayer appealed to this Board on February 8, 2010. His reason for appealing was stated as: “the parcels used in the Dept’s burden of proof were taken in “06” & “07” during the largest housing bubble in American history. these (*sic*) land values will not and have not held that value w/ the present economy!” (Appeal form.)
10. The Taxpayer submitted several exhibits during the CTAB hearing. (Exhs. 1 through 7.) The exhibits included photos and articles that were not relevant to valuing the property.
11. The DOR used a Computer Assisted Land Pricing (CALP) model to establish the original land value of \$153,695 for the subject property. The CALP is based on sales of 39 different properties. There was no indication that the sales were not arms length sales. (DOR Exh. D; CTAB Testimony.)
12. The CALP sales and the subject property are all located within Neighborhood 23 of Missoula County (the Potomac valley). (DOR Exh. D and CTAB Tr., pg 27.)
13. The DOR determined that one acre is the base size for valuing lots in Neighborhood 23. The first acre is valued at \$112,599 and

each additional acre would be valued at \$4,526. (DOR Exh. D.)
All of the sale properties used in the CALP were bare tract land and had sale dates prior to the revaluation date of July 1, 2008. (CTAB Tr., pg 27-28.)

14. The DOR utilized the cost approach to value the improvements on the property. (DOR Exh. C.)
15. This required that DOR calculate a value of the cabin based on new construction, and depreciate the value of the building to reflect its age and condition. (DOR Exh. C.)
16. The DOR also determined the subject property has a construction quality grade of 3 or .74 in relation to average construction quality of 1.00. (DOR Exh. C.)
17. The Taxpayer testified he believes the property sales in the DOR's CALP model are too old, the sales in the nearby valley do not compare with his property, the county roads are not maintained and several of his neighbors are junkmen with unsightly properties. (Kilhof Testimony.)
18. The Taxpayer testified that a shared well with the adjacent owner, his brother-in-law, might deter potential buyers and thus lower property values. (Kilhof Testimony.)
19. The Taxpayer acknowledged the subject property has a well on it, but is used by a neighbor who has an easement to get to it. (Kilhof Testimony.)
20. Neither party submitted any additional material to the State Tax Appeal Board.

Conclusions of Law

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

The Board has two issues to resolve in this matter: whether the value of the land and the value of the improvements were correctly adjusted by the Missoula County Tax Appeal Board.

It is true, as a general rule, the Department of Revenue appraisal is presumed to be correct and that 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 (Mont. 1995).

Board Discussion

The DOR used a CALP model based on verified land sales in Neighborhood 23, which includes the subject property. In this case, the CALP model indicated a value of \$112,599 for the first acre of land and \$4,526 per acre for each residual acre. Thus, the subject land was originally valued at \$153,695 for the 10 acres. All the CALP sales occurred prior to the assessment date of July 1, 2008, and were within Neighborhood 23.

The Taxpayer believes the subject property should be reduced in value because the CALP sales are too old to reflect current values and that economic factors, such as poor roads, mobile homes and junkyards in the area, should be reflected in the DOR's assessment.

The Taxpayer, however, was not able to demonstrate that land sales in the neighborhood are in fact declining in price or that his land is uniquely disadvantaged in comparison to the rest. 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 has failed to meet his burden to show that the DOR has erred.

The Taxpayer complains his land was valued at a time when the market was high and that the comparable land sales used by the DOR took place in an inflated market and do not predict the current value of his property. 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, 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 adjusted by calculating the average increase or decrease per month in that area. Sales that occurred after that 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.

Therefore, the Board upholds the CTAB decision.

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 Missoula County by the local Department of Revenue at a land value of \$153,695 and an improvement value of \$50,249, as determined by the Department of Revenue and affirmed by the Missoula County Tax Appeal Board.

Dated this 30th of April, 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.

