

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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DEBRA AND PRESTON JONES,	)	
	)	DOCKET NO.: PT-2009-3
Appellants,	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE	)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	)	FOR JUDICIAL REVIEW
	)	
Respondent.	)	

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**Statement of Case**

Debra and Preston Jones (Taxpayers) appealed a decision of the Missoula County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of their property identified as 1349 Kelly Island Estates, Section 14, Township 13N, Range 20W, Lot 6 of Kelly Island Estates a major subdivision of Missoula County, State of Montana. The Taxpayers argue the DOR overvalued the property for tax purposes, and they seek a reduction in value assigned by the DOR. At the telephonic hearing held on February 9, 2010, the Taxpayers provided testimony and evidence in support of the appeal. The DOR, represented by Michele Crepeau, Tax Counsel; Rocky Haralson, Regional Manager, and Wes Redden, Area Manager presented testimony and evidence in opposition to the appeal.

The Board having fully considered the testimony, exhibits, post-hearing submissions and all matters presented, finds and concludes the following:

### **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**

Mr. and Mrs. Jones 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 Missoula 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 evidence, verbal and documentary.
2. The subject property is described as Lot 6 of the Kelly Island Estates Major Subdivision, Section 14, Township 13 North, Range 20 West, Missoula County, State of Montana. (Exh. 2, p. 2).
3. For tax year 2009, the DOR appraised the subject property at a value of \$402,600 (a land value of \$120,360 and improvements valued at \$282,240). (Exh. C).
4. The DOR used the market approach to value the subject property and the comparable sales properties for the July 1, 2008 appraisal date. (Exhs. C, D, E, F, G).
5. The Taxpayers are asking for a property value of \$392,100. (Appeal Form).
6. The Taxpayers filed an appeal with the Missoula CTAB on May 5, 2009, citing "Based on surrounding homes – our taxes are much higher than comparable houses." (Appeal Form).

7. The Missoula CTAB heard the appeal on November 9, 2009, and upheld the DOR value for the subject property. (Appeal Form).
8. The Taxpayers appealed to this Board on December 11, 2009, stating: “We are appealing the market value of our home due to a new appraisal dated 12-1-09 is (*sic*) \$392,100. We are asking that market be reduced from 402,600 to 392,100.” (Appeal Form).
9. The Taxpayers’ home was constructed in the prior reappraisal cycle in a new subdivision. The newly constructed buildings and improvements on the subject property were completed in 2008. (Exh. C, Testimony Debra Jones).
10. The DOR appraised the subject property, for the 2008 tax year, at \$276,226 using the cost approach. (Exh. C, Testimony Wes Redden).
11. The Taxpayer did not appeal the 2008 assessed value on the subject property. (Testimony Debra Jones).
12. Taxpayers also brought evidence to the hearing of neighboring properties paying lower taxes per square foot than theirs. (Exh. 1).
13. As directed by statute, when determining taxes owed, the DOR uses the difference between a value set in the last appraisal cycle and the current reappraisal value for “phasing-in” the tax valuation.

### **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. 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. (Section 15-7-112, MCA).
5. "Value before reappraisal (VBR)" is the 2002 tax year value adjusted for any new construction or destruction that occurred in the prior year. The VBR for the 2003 tax year and subsequent years is the same as the 2002 tax year value if there is no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes, or other changes made to the property during 2002 or subsequent tax years. (42.20.501(25), ARM).

### **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 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 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).

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. This Board finds that the evidence presented by the DOR did support the values assessed. This Board finds that the Taxpayers have not provided evidence that the DOR appraised value for July 1, 2008 is not fair market value. The appraisal referenced by the Taxpayer is both untimely for valuation purposes and not substantially different in value from the DOR valuation.

Additionally, the Taxpayers argue they pay more taxes than their neighbors even though the properties are similar. The parties agree this difference is not due to the 2009 assessed value, but stems back to the value before reappraisal (VBR). VBR is the assessed value of property at the end of the prior appraisal cycle. In this case, the subject property, being newly built, was only fully valued for one year in the prior cycle and was valued using the cost approach. All of the properties brought by the Taxpayers as comparable were valued using the market approach; in part, it appears, because the properties are a few years older than the subject property. The different methodologies resulted in a VBR variance of nearly \$42,500 from a similar property in the same subdivision.

In 2009 the Montana Legislature passed House Bill 658 enacting a new six year appraisal cycle. This bill also phased in any increases to property

valuations over that six year period. The phase-in value is calculated using the VBR and the current cycle valuation to determine the amount of value phased in over the six year cycle. The subject property, having a higher VBR, is taxed at a higher value to begin the phase-in process, but will have substantially equal taxable value at the end of the cycle to comparable property with similar market values. (§ 15-7-112, MCA).

There is no method for this Board to analyze the accuracy of Taxpayers' claim that the VBR is in error. The VBR, in this instance, was set during the prior appraisal cycle, and the Taxpayers failed to challenge the value during that time. They are now, by statute, prevented from appealing the VBR before this Board.

Thus it is the opinion of this Board that the assessed value set by the DOR is correct and the decision of the Missoula County Tax Appeal Board is affirmed.

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**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 Missoula County at a 2009 tax year value of \$402,600 as determined by the Department of Revenue and affirmed by the Missoula County Tax Appeal Board.

Dated this 2<sup>nd</sup> 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 3rd 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:

Debra and Preston Jones	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
1349 Kelly Island Court	<input type="checkbox"/> Hand Delivered
Missoula, Montana 59808	<input type="checkbox"/> E-mail

Rocky Haralson	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Wes Redden	<input type="checkbox"/> Hand Delivered
Missoula County Appraiser Office	<input type="checkbox"/> E-mail
2681 Palmer St., Ste. I	<input type="checkbox"/> Interoffice
Missoula, MT. 59808	

Michelle R. Crepeau	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Office of Legal Affairs	<input type="checkbox"/> Hand Delivered
Department of Revenue	<input type="checkbox"/> E-mail
Mitchell Building	<input checked="" type="checkbox"/> Interoffice
Helena, Montana 59620	

Dale Jackson, Chairman	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
1015 Washburn	<input type="checkbox"/> Hand Delivered
Missoula County Tax Appeal Board	<input type="checkbox"/> E-mail
Missoula, Montana 59801	

/s/ \_\_\_\_\_  
DONNA EUBANK  
Paralegal