

Issue

The issue before this Board is whether the Department of Revenue determined an appropriate market value for the subject property for tax year 2009.

Summary

The Kurilich/Hall family members are the Taxpayers in this action and therefore bear the burden of proof. Based on a preponderance of the evidence, the Board affirms the findings of the Butte-Silver Bow County Tax Appeal Board.

Findings of Fact

1. Due, proper and sufficient notice was given of this matter. This matter was set for hearing pursuant to §15-2-301, MCA.
2. The property at issue is described as the improvements located in the city of Butte at Block 30, Lots 001 & 002, of the Grand Avenue Addition, Section 19, Township 03 North, Range 07 West, Butte-Silver Bow County, Montana. (Exh. A.) The land value is not in contention.
3. The subject property was destroyed in a fire on August 6, 2008. The Taxpayers rebuilt the residence trying to duplicate the original building as closely as possible. During reconstruction, an additional 1000 square feet of living space was added. (Kurilich/Hall Testimony, Exh. 1.)
4. The DOR valued the property, utilizing the cost approach, at \$437,356; \$412,201 for the improvements and \$25,155 for the land. (Bumgarner Testimony, Exh. A.)

5. The Taxpayers filed a Request for Informal Review (AB-26) on August 27, 2010. The DOR made no adjustments to the property value. (DOR Exh. C.)
6. The Taxpayers filed an appeal with the Butte-Silver Bow County Tax Appeal Board (CTAB) on January 12, 2011, claiming the taxes are too high and the quality of construction is too high. (Appeal Form.)
7. A CTAB hearing was held on February 23, 2011 and the CTAB modified the DOR's valuation by lowering the value to \$361,800. (Appeal form.)
8. The Taxpayers appealed to this Board on March 24, 2011. (Appeal form.)
9. The Taxpayers request a value of between \$270,000 and \$280,000 for the residence. They also want their taxes reduced to the prior amount paid based on the neighborhood. (Appeal form, Kurilich/Hall Testimony.)
10. The residence at issue is a 4,266 square foot single family dwelling with an additional 2,438 square feet in the basement. This is new construction with 90% completed at the time of appraisal. (Exh. A.)
11. The DOR utilized the cost approach to value the improvements on the property. (Exh. A.) This method requires the DOR calculate a value of the improvements based on new construction, and depreciate the value of the building to reflect its age and condition. (Exh. A, Bumgarner Testimony.)
12. The DOR determined the residence has a construction quality grade of "6," or 1.33 in relation to average construction quality of 1.00. (Exh. A.)
13. Using this cost approach, the DOR determined that the residence was valued at \$412,201, which included a determination that the building was above average construction ("6"), using standard building valuation

- models and costs, and was 90% complete at the time of the valuation date. (Exhs. A & G, Bumgarner Testimony.)
14. The Taxpayers testified the new construction was not as nice as the original residence, where the original woodwork was mahogany and the new is #2 pine. They also testified the residence was on a busy street in a 100 year old neighborhood with a view of the “pit.” (Kurilich/Hall Testimony, Exh. 2.)
 15. The DOR provided notes from a field review and pictures of the Taxpayers’ residence to justify the quality and value assessed. (Exhs. D, E & F.)
 16. The DOR provided a schedule of values showing the total construction cost of the Taxpayers’ residence of \$405,800.75. (Exh. H.)
 17. At the conclusion of the hearing, the Board requested each party to supply market values of any comparable sales to justify the requested values.
 18. The DOR submitted a comparable sales report with three comparable properties listed. Unfortunately because of age, size or location, the model was inconclusive and showed a value higher than the original cost approach. (Exh. I.)
 19. As a post-hearing submission, the Taxpayers supplied an aerial view of their neighborhood with houses listing tax liabilities. No descriptions of the properties, their sizes, attributes, or ages were presented to allow an evaluation of their comparability. (Taxpayers Post-hearing Submission.)

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 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).
5. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (Rule 42.18.110(12), ARM.)
6. 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.)
7. The Department is directed to value property based on the market value. The taxes associated with a property are not set by the Department, but are set by state and local law. For example, properties receive different homestead exemptions and local SID's which may affect the individual property taxes. (§§15-6-134, 15-10-201, 15-10-420 MCA.)

Findings of Fact, Conclusions of Law and Board Discussion

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 improvements.

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).

The only issue before the Board is the value of the residence. In this instance, the Taxpayers did not address the valuation of the residence, but rather argued the tax liability imposed on the subject property is much higher than surrounding property, and much higher than in previous years. The Board requested post-hearing submissions, from both parties, to give the Taxpayers the opportunity to submit market comparable sales evidence. In spite of this, the Taxpayers merely resubmitted the tax liability disparities of surrounding properties. There was no evidence presented that would suggest the surrounding property was comparable in age, size, or quality of construction to the property at issue. Further, the value of the new improvement, with an additional 1000 square feet of value, and new construction, will be significantly different than the tax value of an older home. Finally, there was no evidence presented on the market value of the neighboring properties. Therefore, the Board cannot consider “tax liability” as any indication of comparable value.

This Board concludes the evidence presented by the DOR did support the values assessed. The value of the residence was determined using the cost approach because the DOR determined the property was new construction and no adequate comparable sales were available. The Board looks solely at the facts presented to determine market value and in this case also concludes the Taxpayer has not provided relevant evidence that the DOR appraised value for July 1, 2008 is incorrect.

In this instance, the Butte-Silver Bow County CTAB modified the subject property value by reducing the value by 10%. While we see no error in the DOR valuation, we find no reason in this instance to penalize the Taxpayer for filing this appeal by increasing the value above the CTAB value. Thus, it is the opinion of this Board that the value set by the Butte-Silver Bow County Tax Appeal Board is within the range of reasonableness and shall be used as the value of the subject improvements.

Therefore, the Board affirms the CTAB decision.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject improvements shall be entered on the tax rolls of Butte-Silver Bow County by the local Department of Revenue at the value of \$361,800, as modified by the Butte-Silver Bow County Tax Appeal Board.

Dated this 1st day of September, 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 1st day of September, 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:

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/s/ _____
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