

Issue

The issue before this Board is whether the Department of Revenue valued the subject land appropriately for tax purposes for tax year 2009.

Summary

Based on a preponderance of the evidence, the Board upholds the decision of the Gallatin County Tax Appeal Board.

Evidence Presented

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 verbal and documentary evidence.
2. John and Beverlee Mollinet are the Taxpayers in this proceeding and, therefore, have the burden of proof.
3. The subject property is a single family home on a 10.08 acre residential rural lot with the following legal description:
 - Lot 2, Watkins Creek Meadows Subdivision, Certificate of Survey 1, Section 07, Township 12 South, Range 04 East, Gallatin County, State of Montana.
(Appeal Form, DOR Exh. B.)
4. For tax year 2009, The DOR originally valued the property at \$387,475; \$204,830 for the buildings and \$182,645 for the land. (Appeal Form.)
5. The Department used market value methods to value the subject property, including comparisons to sales of similar property. (Property Record Card, Exh. B.)
6. The Taxpayers filed an appeal with the Gallatin County Tax Appeal Board (CTAB) on October 10, 2009, stating “I am filing this appeal because for years my property has been improperly assessed.” (Appeal Form attachment.)

7. The Taxpayers asked for a value of \$147,200 for the subject property, consisting of \$80,000 for the land and \$67,200 for the buildings. (Appeal Form.)
8. The Taxpayers filed a Request for Informal Review (AB-26) on June 25, 2010, asking for an informal review meeting with the DOR to provide additional information. (AB-26 Form, Exh. C.)
9. After review of the subject property, the DOR adjusted the value of the home to \$146,960 and made no adjustments to the value of the land. (AB-26 Form, Exh. C.)
10. After the AB-26 process, the Taxpayers appealed only the value of the land to the Gallatin CTAB. (Mollinet Testimony.)
11. The Gallatin CTAB heard the appeal on June 8, 2011. The CTAB adjusted the value of the land to \$150,000 based on lack of year-round access, no snow plowing, lack of lake access and distance to highway. (Appeal Form.)
12. The Taxpayers appealed to this Board on June 30, 2011, stating:

“NOT ENOUGH TIME WAS ALLOWED ME TO MAKE A FULL PRESENTATION OR TO RESPOND TO ISSUES RAISED BY THE OPPOSITION. THUS SOME PERTINENT INFORMATION WAS NOT THOROUGHLY DISCUSSED AND CONSIDERED. THERE WERE ONLY TWO BOARD MEMBERS PRESENT INSTEAD OF THREE. THE COMPUTER COMPARISON MODEL USED WAS FOR ONE ACRE LOTS AND CONTAINED ERRONEOUS, DUPLICATION OF PROPERTIES AND AN OUT OF AREA PROPERTY.” (Appeal Form.)
13. The Taxpayers submitted testimony and materials arguing the DOR land model is flawed because it uses the same property more than once. They argue that the base size is improperly set at one acre, and one of the sales is very far from the subject property. (CTAB Testimony Mollinet, Letter of Sept. 22, 2011 from John Mollinet.)
14. The Taxpayers also argue there are properties, nearer and more comparable to the subject property, which have lower tax values. The

Taxpayers requested that their property be valued in comparison to properties in a subdivision in a neighboring county, the Wagon Track ranch area. The DOR contends that those properties are not a subdivision but are individual properties of more than 20 acres each valued as agricultural and not comparable to the subject property. (Testimony Mollinet, Elliott.)

15. The parties also provided several exhibits on location and sales price of these properties. (Testimony Mollinet, CTAB Exhibits.)
16. The DOR testified many of the properties used as comparables by the Taxpayers are classified as “agricultural” or “nonqualified agricultural” and could not be used in valuing the subject residential land. (Testimony Elliott.)
17. Agricultural land is used to produce agricultural products, and is valued on its productivity value instead of a market value. (§ 15-7-202, MCA, *et seq.*)
18. The DOR used a CALP (Computer Assisted Land Pricing model) to establish the original value of \$182,645 for the subject land. (Elliott Testimony, Exhs. A & G.)
19. The CALP in this instance is based on 78 vacant land sales within Neighborhood 2, 2A and 2B of Gallatin County. Neighborhoods are a geographic area designated by the DOR as having similar characteristics for purposes of valuation. (DOR Exhibit G.)
20. Based on the CALP, the DOR established a base rate of \$53, 800 for the first acre and a residual value of \$14,190 an acre for any residual acreage. (Testimony Elliott, DOR Exh. G.)
21. During the CTAB hearing, the DOR appraiser testified he also used three comparables sales in order to confirm the CALP values. (Testimony Elliott, DOR Exh. E.)

22. The evidence presented demonstrated that the subject property is a fairly level parcel of land, on a forest service gravel road.
23. The comparables brought by the DOR were properties with similar characteristics to the subject property. For example, the properties were flat, treeless properties without lake access. (Testimony Elliott.)
24. The Taxpayers argued the subject property has several deficiencies compared to other properties in the West Yellowstone neighborhood, such as poor views, gravel roads and no lake access. (Testimony Mollinet.)
25. The DOR submitted an affidavit from Appraiser Elliott. Mr. Elliott testified he was familiar with the subject property, and surrounding area, and he believed the CALP accurately valued the land. (Testimony Elliott.)

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. It is the duty of the department of revenue to accomplish the classification of all taxable lands. (§15-7-101(1)(a), MCA.)
5. All lands must be classified according to their use or uses. (§15-7-103(2), MCA.)
6. The legislature has directed that agricultural land be classified and assessed at its productivity value. (§15-7-202, MCA, et seq.)

7. 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).)
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 appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
10. To achieve statewide equalization, all residential property in the state must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(1)(b).)
11. 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 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).

The Taxpayers, in this case, made arguments¹ and supplied information about sales and pending sales of other properties they considered similar land. The Taxpayers also submitted information about taxes paid and assessed values of properties they considered similar land. Unfortunately, some of the properties are not similar to theirs, as they are agricultural land. Insufficient information is provided about other properties to clarify whether those properties are truly comparable, so that the evidence presented by the taxpayer is of little probative value in this case. *See* E.P. 14. The Board cannot determine from this information if the properties used by the Taxpayers were classified as agricultural land or tract land, whether the properties were the same size, or if any adjustment were made to reflect the July 1, 2008 assessment date. Therefore, we find none of this information is extensive or credible enough to make a determination of value.

The DOR contends they have correctly valued the subject property using the CALP model for the West Yellowstone area. They provided comparable properties to demonstrate that the valuation was correct. (DOR Exh. E.)

The mass-appraisal techniques developed by the DOR are designed to find the value on the open market. As part of the standard mass appraisal system, the DOR used a CALP model based on 78 vacant land sales, verified

¹ Taxpayer argues that only two Board members heard the case at the County. Two Board members create a quorum sufficient to hear a case. The Taxpayer also claimed that insufficient time was given to present his arguments. The Taxpayer was granted additional time by this Board to retain legal counsel, and was provided with opportunity to submit additional evidence to the Board.

by the DOR to be arms length transactions, to determine the appropriate value for an acre of land in the Taxpayers' specific neighborhood. Review of the CALP indicates that the 78 sales provide a strong evidentiary basis to determine that the land value in this case is proper. If the same property sells more than once during the time period, both sales can be included in the CALP. This is a well established appraisal method used by the DOR and it conforms with the statutory requirement for a uniform method of appraisal.

This Board finds the appraisal methods used by the DOR do support the values assessed on the subject land in the West Yellowstone area. In this case, the DOR also completed a land sales comparison of three vacant land sales they considered very comparable to the subject property to verify the results of the CALP. The Board looks solely at the facts presented to determine market value and in this case concludes the Taxpayer has not provided sufficient evidence that the DOR appraised value for July 1, 2008 is incorrect. Further, the DOR evidence confirms that the value was properly set in this matter.

In this instance, the Gallatin County CTAB modified the subject land value by reducing it to \$150,000 to adjust for several deficiencies, such as the lack of year-round access. While we see no error in the DOR calculations, a county tax appeal board has superior knowledge of local land values and area comparisons. The DOR provided no argument or evidence for opposing the reduction by the county tax appeal board. Thus, it is the opinion of this Board that the value set by the Gallatin County Tax Appeal Board is within the range of reasonableness and shall be used as the value of the subject land.

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 land be entered on the tax rolls of Gallatin County at a 2009 tax year value \$150,000.

Dated this 14th day of December, 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 t his Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of December, 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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