

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

JERRY T. RAY,)	
)	DOCKET NO.: PT-2009-112I
Appellant,)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY
)	FOR JUDICIAL REVIEW
Respondent.)	

Statement of Case

Jerry T. Ray (Taxpayer) appealed a decision of the Yellowstone County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of property located at 2245 54th Street West, Billings, Montana, 59105. The Taxpayer argued the DOR overvalued the property for tax purposes, and seeks a reduction in value assigned by the DOR. The matter was heard before the State Tax Appeal Board on the record, without objection from the parties.

The Board having fully considered the testimony and exhibits from the record made before the Yellowstone County Tax Appeal Board, and all matters presented to this Board, finds and concludes that:

Issue

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

Summary

Based on a preponderance of the evidence, the Board upholds the decision of the Yellowstone 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 evidence, verbal and documentary.
2. Jerry T. Ray is the Taxpayer in this proceeding and, therefore, has the burden of proof.
3. The subject property is a residential home and a pole barn on a one acre farmstead (within 21.39 acres of agricultural land¹) with the following legal description:

Tract 2B of Certificate of Survey (COS) 1952, Section 32, Township 1 North, Range 25 East, Yellowstone County, State of Montana. (Appeal Form, CTAB Exh. A, p. 1.)
4. The Taxpayer was represented at the Yellowstone CTAB hearing by Jennifer E. Ray. (CTAB Transcript, Appeal Form.)
5. The DOR was represented at the CTAB hearing by Robin Rude, Area Manager and Vicki Nelson, Lead Appraiser. (CTAB Transcript.)
6. For tax year 2009, the DOR used the cost approach to value the subject improvements. The land is agricultural land, and was valued based on productivity. This resulted in a total value of \$450,044 for the subject property; \$12,097 for the land and \$437,947 for the improvements. (Nelson Testimony, CTAB Exh. A, p.1.)
7. The cost approach required the DOR to calculate a value for the improvements based on new construction, and depreciate the value of the

¹ The larger parcel of agricultural land is separately valued pursuant to §15-6-133, MCA and is not at issue.

building to reflect its age and condition. (Nelson Testimony, CTAB Exh. A, p.1.)

8. The Taxpayer filed a Request for Informal Review (AB-26) on September 10, 2009, asking for an informal review meeting to provide additional information. (AB-26 Form.)
9. After review of the subject property the DOR made no reduction in value. (AB-26 Form.)
10. The Taxpayer filed an appeal with the Yellowstone County Tax Appeal Board (CTAB) on June 4, 2010, stating:

“This home should be valued lower than the previous value. This is considered Farm Land, in the County, with no city services.” (Appeal Form.)
11. The Yellowstone CTAB heard the appeal on July 28, 2010.
12. During the CTAB hearing, the Taxpayer requested the CTAB set the value of the entire subject property between \$210,000 and \$380,000 and did not specifically object to the value of the land. (Ray Testimony.)
13. On behalf of the Taxpayer, Ms. Ray submitted four sales of properties in the Billings area that she considered similar to the subject property. These sales occurred from September, 2005 and January, 2008 and ranged in price from \$210,000 to \$380,000. (CTAB Exh. 1, Ray Testimony.)
14. The Taxpayer believes homes in this price range have fallen approximately 20 percent in value. (Ray Testimony.)
15. The Yellowstone CTAB affirmed the DOR’s value. (Appeal Form.)
16. The Taxpayer appealed to this Board on September 9, 2010, arguing value of home sales and property are down and the comparables sales indicate a lower value. (Appeal Form.)

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. 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).)
5. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
6. 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).)
7. Class four property includes all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land. (§15-6-134(1)(e).)
8. Each one-acre area beneath the residence on agricultural land shall be appraised according to the highest productivity value of agricultural land. (ARM 42.20.655(c).)
9. 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). Agricultural land is valued based on productivity. A residence on agricultural land, however, must be separately valued for tax purposes as class four property. (*See* POL 7.)

In this instance, the Taxpayer (through Ms. Ray) first argues that the property with the residence has declined in value, though the Taxpayer fails to provide specifics as to the dates of declining valuation. The Taxpayer fails to provide any evidence or data showing the valuation of the subject property is incorrect as of the statutory lien date of July 1, 2008.

Ms. Ray also argues the subject property is overvalued because it is agricultural land with no services. To further her argument, she submitted four property sales she considered comparable to the subject property. (*See* EP 13.) Ms. Ray contends the value of homes in this price range have fallen 20 percent.

In this case, the subject improvements, which are class four property, are located on agricultural land and valued using the cost approach. The agricultural land, which is class three property, is separately valued based on productivity and has a much lower valuation than residential property. (*See* POL 8.) Thus, there is no relevance to evidence of comparable properties

valued using the market approach because typical homes and the land under them are class four residential properties and valued using both land and improvements in totality.

The Board also finds even though the properties may appear, on the surface, to be comparable, there were no adjustments made for differing characteristics, location, age, size or quality. The Taxpayer made no effort to adjust the value of those sales to the July 1, 2008 appraisal date, and the subject land is separately classified as required by law. Thus, there is no useful comparison that can be made to the properties brought by the Taxpayer.

This Board concludes the evidence presented by the DOR did support the values assessed. This Board also concludes the Taxpayer has not provided any evidence that the DOR appraised value for the subject property as of July 1, 2008 is not fair market value.

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

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 Yellowstone County at a 2009 tax year value \$450,044 as determined by the DOR and affirmed by the Yellowstone County Tax Appeal Board.

Dated this 13th day of April, 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 13th day of April, 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:

Jerry T. Ray	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
2646 Grand Ave. Suite #1	<input type="checkbox"/> Hand Delivered
Billings, Montana 59102	<input type="checkbox"/> E-mail

Robin Rude	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Vicki Nelson	<input type="checkbox"/> Hand Delivered
Yellowstone County Appraisal Office	<input type="checkbox"/> E-mail
175 North 27 th Street Suite 1400	<input type="checkbox"/> Interoffice
Billings, MT, 59102	

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	

Edward Cross, Chairman	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Yellowstone County Tax Appeal	<input type="checkbox"/> Hand Delivered
Board	<input type="checkbox"/> E-mail
2440 Eastridge Drive	
Billings, Montana 59102	

/s/ _____
DONNA EUBANK
Paralegal