

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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|                          |   |                       |
|--------------------------|---|-----------------------|
| RICK SHANNON,            | ) |                       |
|                          | ) | DOCKET NO.: PT-2009-7 |
| Appellant,               | ) |                       |
| -vs-                     | ) | FACTUAL BACKGROUND,   |
|                          | ) | CONCLUSIONS OF LAW,   |
| DEPARTMENT OF REVENUE    | ) | ORDER and OPPORTUNITY |
| OF THE STATE OF MONTANA, | ) | FOR JUDICIAL REVIEW   |
|                          | ) |                       |
| Respondent.              | ) |                       |

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Richard and Rose Shannon (Taxpayers) appealed a decision of the Cascade County Tax Appeal Board (CTAB) affirming the valuation of the Department of Revenue (DOR) of his property at 3116 First Avenue South in Great Falls, identified as Lot 005, Block 008, Black Eagle Falls Addition, S08, T20N, R04 E of Cascade County. Taxpayers claim the DOR has overvalued their property and seek a reduction in the value assigned. A hearing was held before this Board on April 30, 2010 in Helena. Taxpayers were represented by Richard Shannon and the DOR was represented by Michele Crepeau, Tax Counsel, and Joan Vining, Area Manager, who testified as to the valuation.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence provided in the appeal process. The Board, having fully considered the exhibits and submissions and all matters presented to it, finds and concludes the following:

## Issue

The issue before this Board is whether the DOR erred in valuing the land and buildings owned by Taxpayers.

## Summary

This Board concludes, based on a preponderance of the evidence, that the DOR's values for both land and buildings are correct.

## Findings of Fact

1. Due, proper, and sufficient notice was given of this matter, of the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. Taxpayers own a home, built in 1988, at 3116 First Avenue South in Great Falls.
3. DOR valued the land at \$29,100 and the house and garage at \$116,428 for a total of \$145,528. (Property Record Card 2/3/2010). Taxpayers appealed, seeking a value of \$25,000 for the land and \$94,802 for the buildings, for a total of \$119,802.
4. Taxpayers filed a timely AB-26 requesting an informal review by the DOR. The DOR determination on September 23, 2009 reaffirmed its appraisal. (Property Tax Appeal Form)
5. Taxpayers filed a timely appeal with the CTAB stating as the reason for appeal: "Should not have raised 58%-- went by values of new construction – (devalued by age not right – still to *(sic)* high on land – and house with potential problems not considered."
6. A CTAB hearing was held on December 3, 2009.

7. At the hearing, the Taxpayers submitted evidence and testimony about recurrent flooding in the basement of the house and several remedial steps he had taken with uncertain success as well as proposals for additional modifications. (Tr. p. 11 and generally.)
8. During the hearing, Taxpayer agreed to permit an internal inspection of the home, which he had previously refused to do, and the hearing was postponed for 12 days to allow for an inspection. (Tr. p. 22.) The hearing was continued and completed on December 15, 2009.
9. DOR appraiser Greg Newman testified that his inspection showed no obvious water damage in the basement and that the house was generally in good condition. The DOR declined to change the value assigned to the property.
10. The CTAB entered judgment for the DOR, finding that the values represented “the true market value of the property” on December 15, 2009.
11. Taxpayer filed a timely appeal to this Board on January 11, 2010, stating “Did fail to consider my evidence; did not consider potential problems of house & garage; how it would devalue. The property values are inflated as well as the evaluation of house & garage.”
12. After the CTAB decision but before the Board hearing, the DOR reviewed the property record card with the notes of the internal inspection and adjusted the valuation of the buildings to \$99,291, a reduction of \$17,137 in value. The grade was lowered from 5 to 4-plus and the CDU (condition, desirability and utility) from good to average. Combined with the \$29,100 land value, the DOR now values the property at a total of \$128,391. (Property Record Card 4/28/10.)

13. The total value sought by the Taxpayer increased between the CTAB hearing and his appearance before the Board to \$121,994, with \$95,994 for the buildings and \$26,000 for the land. (Testimony.)
14. Taxpayer testified to the extensive efforts he has taken to deal with the water problem in his basement, disputing DOR's CTAB testimony that no water damage was visible. He submitted photos showing where water-damaged boards had been removed.
15. Taxpayer disputed the grade assigned by the DOR of average quality, claiming that the appliances and fixtures were of the cheapest grade.
16. Taxpayer challenged the land values as based on the prices of recent vacant lots sold in Neighborhood 2 in Great Falls. Using the DOR's list of sales between 2002 and June of 2008 (DOR Exh. D), he averaged the prices of the five properties of the same size as his own. The Taxpayer time- adjusted the average price (\$21,787), to \$26,000 to bring it to current value.
17. Taxpayer also testified the only vacant lot close to his was a double lot bought for \$52,000. The purchaser divided the property in half and sold one parcel for \$31,000 and kept the other for his home. Taxpayer calculates the average for the two lots as \$26,000.
18. DOR Area Manager Vining testified the buildings were valued using a cost method because of a lack of truly comparable homes. Basing the Taxpayer's value on the sale prices of other homes of the same size would have resulted in a much higher valuation. She testified that flooding problems, cracked slabs and the use of sump pumps to keep basements dry is common in that neighborhood, and is reflected in the land values.

19. Vining further testified that the DOR requested permission to inspect the interior of the property when they met with Taxpayer to discuss his request for an informal review (AB-26) but it was denied at that time. After being admitted to the home, the value was adjusted.
20. Vining testified that the land value was set using sale prices that were time-adjusted to the date of assessment. The DOR used a computer assisted land pricing system (CALP) which, in this case was seen to have a high level of accuracy with an R-squared factor of 79.4%. The “R2” or “R squared” is the coefficient of determination in a CALP model, a measure of the predictive accuracy of the model. R2 values during the last cycle ranged from 0 to 1. The closer the value is to 100%, the more reliable to model’s estimate of value. (*Manicke v. DOR*, PT-2005-5, 08/31/06, p. 14.) The price per square foot derived from the CALP model of \$3.88 produces a \$29,100 value for a 7,500 square foot lot.

### **Conclusions of Law**

The State Tax Appeal Board has jurisdiction over this matter. (§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. (§15-8-111(2) (a), MCA). In addition, all taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA).

We note the parties have both adjusted their estimates so that their values are only \$6,397 apart, \$3,100 on the land and \$3,297 on the buildings.

This Board finds the DOR's evidence on the land is persuasive. The nearest lot in the comparison was recently sold for \$31,000 after it was subdivided. The other half of that lot was not sold in an arms-length transaction, so the hypothetical sale price of \$21,000 is not relevant. Thus, the average price of \$26,000 argued by the Taxpayer is incorrect and the \$29,100 value set for the land by the DOR seems very reasonable for a market value.

The Board notes the Taxpayer has presented extensive evidence of the shortcomings of his house and the DOR has acknowledged those problems after its inspection. The DOR, however, has the task of providing uniform valuations for all Montana homeowners and uses professional methods of assessment to achieve market value. As a result, it is generally stated that the DOR's valuation carries a presumption of correctness that must be overcome by the Taxpayer's evidence. (*Western Airlines, Inc., v. Catherine Michunovich et al.*, 149 Mont. 347, 428 P.2d 3,(1967).) In this case, there is no convincing evidence that the DOR continues to overvalue the home and this Board affirms the adjusted valuation.

**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 Cascade County by the local Department of Revenue at a value of \$29,100 for the land and \$99,291 for the improvements, as determined by the Department of Revenue.

Dated this 14th of May, 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 this Order.

CERTIFICATE OF SERVICE

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

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