

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

SHANE T. KELLY,)	
)	DOCKET NO.: PT-2009-40
Appellant,)	
)	
vs)	
)	FINDINGS OF FACT,
THE DEPARTMENT OF REVENUE)	CONCLUSIONS OF LAW,
OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY
)	FOR JUDICIAL REVIEW
Respondent.)	

Shane T. Kelly (Taxpayer) appealed a decision of the Missoula County Tax Appeal Board (CTAB) affirming the Department of Revenue’s (DOR) valuation of his home in Missoula at 805 39th Street, Mountain Shadows, S05, T12 N, R19 W, Lot 5, Block 3 in Mountain Shadows Addition No 1, geocode 04-2093-05-1-25-05-0000. Taxpayer argues the property was overvalued by the DOR and seeks a reduction in value. The matter was heard before the State Tax Appeal Board on the record including post-hearing submissions from the Taxpayer and the DOR.

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

Shane Kelly is the Taxpayer in this proceeding and therefore bears the burden of proof. Based on a preponderance of the evidence, this Board upholds the DOR valuation.

Facts

1. Due, proper and sufficient notice was given of this matter and allowance of time for submission of evidence. Both parties submitted written statements to the Board.
2. The Taxpayer's property is a home on 10,293 square feet of land at 805 39th Street, Missoula, Montana. Using a market comparison, the DOR valued the property at \$272,900: \$120,180 for the land and \$152,720 for the building. (Property Record Card, CTAB Exh. A)
3. Taxpayer argued for a value of \$211,437: \$93,032 for the land and \$118,405 for the building. (Property Tax Appeal Form, 3/8/10.)
4. Taxpayer purchased the property on January 1, 2006 for \$200,000 and that was the basis of his request for an informal review with the DOR, filed September 1, 2009, at which his request for lower valuation was denied. (Property Tax Appeal Form, 3/8/10.)
5. His purchase price was also the basis of his appeal to the Missoula CTAB:

I paid 200,000 for this property on Jan. 1, 06. It was between a willing buyer and seller. This appraisal would mean my property increased \$18,300 in 4 years, and \$72,900 in the 2½ years since I lived in the house. This valuation is absurd, and I think most taxpayers would agree.

(Property Tax Appeal Form of Shane T. Kelly, December 15, 2009.)

6. The Missoula CTAB upheld the DOR value, citing the comparable market data submitted by the DOR and the lack of data from the Taxpayer challenging the DOR's value. (Letter of the Missoula County Tax Appeal Board, No. 09-130.)
7. Taxpayer appealed to this Board on April 9, 2010, stating:

I'm in the process of collecting evidence to present my case. I believe the property overvalued due to the fact I paid \$200,000 for the property 2½ years before the assessment date.(Property Tax Appeal form of Shane T. Kelly, April 9, 2010.)
8. Taxpayer submitted a written letter to this Board on June 17, 2010, with several arguments. He reduced his claimed value to \$210,076: \$91,671 for the land and \$118,405 for the building. He also cited factual errors in the CTAB hearing and decision, namely the date he purchased his property is cited in the CTAB decision as 2003 rather than 2006. Further, he stated that though the transcript states he had refused to submit his buy-sell agreement, he had, in fact, provided it to everyone at the hearing. (Letter of Shane T. Kelly, June 12, 2010.)
9. The buy-sell is included in the evidence forwarded to this Board by the CTAB. (Sale Agreement and Receipt for Earnest Money, 10/12/05.)
10. Taxpayer further challenges errors in his property record card (PRC) which were not at issue at the CTAB hearing. The PRC states the first floor square footage of his house as 1,590 per floor when he claims it is actually 1,560. He also disputes the ratio of finished basement to garage in the lower level. (Letter of Shane T. Kelly, June 12, 2010.)
11. Taxpayer submitted realtor listings for five neighborhood properties sold in late 2009 and early 2010 which he claims are more comparable to his property than the ones used by the DOR. All were considerably older than the subject property (built in 1996) and all are smaller. (Attachments, Letter of Shane T. Kelly, June 12, 2010.)

12. The DOR computer assisted land pricing (CALP) model derived a base lot size of 14,000 square feet and a typical price of \$8.91 per square foot for a lot that size. If the lot is larger or smaller the residual rate of \$1.23 per square foot is added or subtracted from the base price. (CTAB Exh. G.)
13. Taxpayer submitted calculations challenging the method of valuing the land on his lot. Taxpayer's lot is 10,293 sq. ft. and he asserts that the DOR should have subtracted the difference between his lot and the base lot size at the higher rate of \$8.91 instead of \$1.23. (Letter of Shane T. Kelly, June 12, 2010.)
14. Finally, Taxpayer submits that he is overcharged on vehicle taxes on a truck he purchased. (Letter of Shane T. Kelly, June 12, 2010.)
15. The subject truck was not mentioned in any proceeding up to this point and no facts, other than purchase price and valuation, were submitted.
16. The DOR was represented at the CTAB hearing by DOR appraisers Jason Hagen and Wes Redden. They presented evidence from the CALP model (CTAB Exh. G) and a set of five comparable property sales which predated the valuation date of July 1, 2008 (CTAB Exh.E). The comparables are recently built homes and closely comparable in size. The sale prices were time-adjusted to the valuation date as required by law.
17. The DOR also presented evidence that the valuation applied in the new cycle starting in 2009 would increase Taxpayer's property taxes \$24 the first year and will reduce his taxes by \$31 by the end of this taxing cycle. (CTAB Exh. C.)

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. 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).)

Board Discussion

As a general rule, the Taxpayer who seeks a reduction in the valuation of property bears the burden of proof, and the DOR valuation is presumed correct unless shown otherwise. Here, the two relevant claims made by the Taxpayer are based on his purchase price of the property and on the comparable properties he submitted in his appeal. (Letter, Shane T. Kelly, June 12, 2010.) Neither of these arguments can overcome the evidence presented by the DOR.

The price at which Taxpayer purchased the property, which he admitted was not supported by an arms-length market valuation done for him or for the lender at the time of the purchase, does not control the valuation process used by the DOR. The mass-appraisal techniques developed by the DOR are designed to find the value on the open market. For this, the DOR compared five recently-built houses in the neighborhood of the subject property which were sold prior to the July 1, 2008 valuation date. Those prices were then adjusted to the valuation date by applying the percentage increase or decrease property values experienced in that time frame. (FOF 16.)

In comparison, the supposedly “comparable” properties submitted by the Taxpayer were all houses smaller than the subject property and older. Two were more

than 50 years old, one more than 35 and two more than 20, while his house is fourteen years old. Most importantly, they sold after the valuation date and cannot, therefore, be used as evidence of value on July 1, 2008. (FOF 11.)

Property values fluctuate with the economic climate and the only way to achieve statewide equalization is to use the same date for all properties being valued. Thus, all taxpayers experience the same increase or decrease and share the tax burden equally.

Taxpayer's argument with the land valuation formula is also not persuasive. The CALP models are designed to establish a base price for a location in the neighborhood and a typical lot size. It is well established in appraisal practice that a slightly smaller or larger lot will not sell for a proportionally higher or lower price because the difference in lot size is not as significant as the location itself. Therefore, the size adjustments are made using a lower price-per-square-foot, as was done with the subject property.

The question of Taxpayer's truck tax is not properly before us as it was not argued in the proceedings below and the motor vehicle tax is imposed by the Justice Department, not the DOR (§15-8-202 MCA). An appeal must be made to the Justice Department before it can be considered by this Board (§15-15-201 MCA).

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 Missoula County by the local Department of Revenue at a value of \$120,180 for the land and \$152,720 for the improvements, as determined by the Department of Revenue and affirmed by the Missoula County Tax Appeal Board.

Dated this 28th day of July, 2010.

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 28th day of July, 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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Missoula, MT 59803

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Mitchell Building
Helena, Montana 59620

Michael R. Nave
Missoula County Tax Appeal Board
4605 Rattlesnake Dr.
Missoula, Montana 59802

/s/ _____
DONNA EUBANK
Paralegal