



### **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**

Suhr/Waldron are the Taxpayers in this action and therefore bear the burden of proof. Based on a preponderance of the evidence, the Board modifies the findings of the Broadwater 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 upon 59.92 acres in Section 17, Township 0902, Range 020E, COS 2-214, Parcel B-2, Broadwater County, Montana. (DOR Exh. D.) The land value is not in contention.
3. The Taxpayers filed a Request for Informal Review (AB-26) on August 1, 2010. As a result of this review, the DOR increased the value of the improvements from \$256,403 to \$307,813. (DOR Exh. A.)
4. The increase in value occurred during the process of the informal review when DOR appraiser Mark Olsen visited the subject property and determined that certain outbuildings had not been placed on the property record card for tax purposes. As a result of that informal review, the total value of the subject property (land and improvements) was increased to \$345,586. (DOR Exh. A.)

5. The Taxpayers filed an appeal with the Broadwater County Tax Appeal Board (CTAB) on September 27, 2010, stating: “Tax appealed on AB-26. Mark Olsen reviewed protested assessment notice & raised the protested value of \$294,176 to an even higher amount of \$345,586. Addition was put on our house along with two metal buildings. House was originally assessed at \$90,395. Value of house addition and two metal buildings did not add another \$217,418 to property value, especially in today’s market. Original house has broken windows, faulty plumbing & electrical, missing siding & interior trim, foundation walls not backfilled or sealed, no renovation to old portion of house. House addition was new construction. Pictures available as documentation” (Appeal Form, DOR Exh. C).
6. A CTAB hearing was held on January 7, 2010 and the CTAB upheld the DOR’s valuation. (Appeal form.)
7. The Taxpayers appealed to this Board on January 12, 2010. Their reason for appealing was stated as: “This was the first time we had been thru the appeal process and were not aware of what back up receipts and documentation needed to be presented to prove our appeal. Our appeal includes items on the original appeal.” (Appeal form.)
8. The Taxpayers requested a total improvement value of \$248,000. (Appeal form.)
9. At the hearing before this Board, the Taxpayers focused their appeal on the value of the residence and did not challenge the value to the real property or the additional outbuildings on the property.
10. The residence at issue is a 2,376 square foot single family dwelling with a partial basement. A substantial portion of the square footage of the building is a new 1,288 square foot addition recently put on by Mr. Waldron. Exh. D. (PRC)

11. The DOR utilized the cost approach to value the improvements on the property. (DOR Exh. D.) 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. (DOR Exh. D.)
12. The DOR determined the residence has a construction quality grade of “5 plus,” or 1.17 in relation to average construction quality of 1.00. (DOR Exh. D.)
13. Using this cost approach, the DOR determined that the residence was valued at \$189,400, which included a determination that the building was slightly above average construction (“5 plus”), using standard building valuation models and costs, and was 92% complete at the time of the valuation date. (DOR Exh. D, Olsen testimony.)
14. The DOR provided a “percent complete” form which dictates the calculation for determining how much of a property is complete. (DOR Exh. H.)
15. Mr. Waldron testified a significant amount of renovation was required before the house would be considered complete or available to sell. He also testified he believed the residence was seriously overvalued, and that many renovations were required to even bring the property to “an average condition.” (Waldron testimony.)
16. Specifically, Mr. Waldron testified the property required replacement of all windows and siding, the foundation walls to be back-filled to protect the insulation, and certain renovation to the basement access be completed before the residence would be of average construction and saleable. (Waldron testimony, Exh. 1.)
17. The Taxpayers provided an estimate of \$73,775 for the work they believed was required for the house to be in saleable condition. Mr.

Waldron also provided several estimates from independent contractors for portions of the work to be done. (Exh. 1.)

18. In support of the Department's valuation, DOR appraiser Olsen testified that the residence was valued at \$57.19 per square foot, and that average home prices in Broadwater were valued between \$45 to \$60 a square foot. (DOR Exh. G, Olsen testimony.)

### **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.)

### **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).

Before reviewing the evidence presented, we first note this case occurred due to certain conflicts between the Taxpayers and the Department of Revenue. The Taxpayers testified they filed an appeal on the initial valuation. Upon review of the property, the DOR determined a significant amount of new improvements (specifically steel outbuildings) had not been valued, and the Taxpayers received a significantly increased valuation. In the filings to this Board, the Taxpayers testified they felt the valuation increase was punitive in nature. In contrast, the Department's appraiser testified he appraised the property after a subordinate related that the Mr. Waldron had acted in a threatening manner. Upon review of the property, the appraiser determined significant improvements were not on the DOR records. The appraiser also testified Mr. Waldron had acted in a threatening manner specifically to him. Upon review of the written evidence presented, there is no indication of punitive action on the part of the Department, nor threatening behavior on the part of the Taxpayers. We do not, however, discount the testimony presented

by both parties and recognize that significant discord occurred between the parties, due in part, to the nature of the procedure in this case. It is clear the parties' perceptions in this matter have been clouded by the unfortunate events leading to the case at hand.

In this instance, we will look solely at the facts presented to determine market value, as the above referenced interactions by the parties have not changed the requirements of due process or the definition of market value. The only improvement at issue in this matter is the residence, as the Taxpayers did not address the valuation of any of the outbuildings or other improvements. The Taxpayers testified the house was functionally unmarketable at the time of the appraisal date, and would require \$73,775 in labor and materials before the house could even be considered "average" for purposes of valuation. The Taxpayers brought a list of improvements they believe were needed, as well as several bids for the labor and material. Mr. Waldron testified he has been a contractor for over 35 years, and that his estimates are very accurate. The evidence indicated his estimates were very close, if not less, than the estimates he submitted for the work. *See FOF #15-17.*

The evidence presented, however, did not indicate all of the Taxpayers' renovations were required to make the residence saleable in "average" condition. Rather, the extensive renovations may, in fact, increase the grade and the condition of the property substantially. Thus, the evidence indicates the Taxpayers' requested valuation deduction is substantially too high to bring the property to an "average" condition.

In contrast, however, the documentary, photographic and testimonial evidence did not demonstrate that the subject property was properly valued on the top end of the average price per square foot, as argued by the DOR. *See*

*FOF #18.* The residence does suffer from deficiencies such as older windows with crumbling insulation, limited exterior access to the basement, and exposed Styrofoam insulation, for example.

Appraisal judgment is required to value any property, and in this instance we do not contest that the appraiser has significant appraisal experience. In the majority of cases, appraisal judgment should be upheld, and in this case, we again note that we cast no doubt on the knowledge and experience of the appraiser. There is, however, little indication in the documentary evidence that a grade 5 plus is proper for the subject residence. In review of the evidence, as of the lien date, the property would have required significant upgrades and modifications to be sold for market value as an “average” property. While not all of the Taxpayers’ upgrades are required to make the home saleable, the change to a grade 5 takes into account adjustments to reflect the deficiencies at the time of the valuation. We therefore order a reduction to a grade 5 for the residence.

We note the DOR will be reviewing the valuation upon completion of the renovations, which may trigger the use of new methodologies or determinations to set valuation.

Therefore, the Board modifies the CTAB decision.

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**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 Broadwater County by the local Department of Revenue at the value reflective of the assignment of a grade 5 to the subject residence.

Dated this 3<sup>rd</sup> day of June, 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 3rd day of June, 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:

William Waldron	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
2584 MT Highway 284	<input type="checkbox"/> Hand Delivered
Townsend, Montana 59644	<input type="checkbox"/> E-mail

Mark Olson	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Area Manager	<input type="checkbox"/> Hand Delivered
Broadwater County Appraisal Office	<input type="checkbox"/> E-mail
P.O. Box 1128	<input type="checkbox"/> Interoffice
Townsend, Montana 59644-1128	

Amanda Myers	<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	

Bill Hubber (via U.S. Mail)  
Chairman  
Broadwater County Tax Appeal  
Board  
20 Rodger Court  
Townsend, Montana 59644

/s/ \_\_\_\_\_  
DONNA J. EUBANK,  
Paralegal

