

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

STEPHEN D. and PEGGY A. WOODS,)	DOCKET NOS.: PT-2009-42 &
)	CROSS APPEAL PT-2009-38
Appellants,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

Statement of the Case

Stephen D. and Peggy A. Woods (Taxpayers) appealed a decision of the Missoula County Tax Appeal Board (MCTAB) relating to the Department of Revenue’s (DOR’s) valuation of their property located at 2201 Rafferty Lane, identified as Lot 4 of the Maxwells Shieling Subdivision, Section 26, Township 13N, Range 20W, of Missoula, Montana. Taxpayer claims the DOR and the Missoula County Tax Appeal Board (MCTAB) applied an incorrect “percent complete” on their improvements, thus applying an inappropriate value on the subject property for tax purposes. Taxpayers were represented by Stephen D. Woods at the telephonic hearing before this Board held May 5, 2010 in Helena. The DOR was represented by Michele Crepeau, Tax Counsel, Rocky Haralson, DOR Regional Manager, Wes Redden, DOR Area Manager, and Helen Greenberg, DOR Appraiser, testified on the valuation.

The duty of the State Tax Appeal Board (STAB), having fully considered the exhibits, evidence submissions and all matters presented, is to determine the appropriate market value for the property based on a preponderance of the evidence.

Issues

The two issues before STAB are, first, whether the DOR and the MCTAB used an appropriate percent-complete when valuing the subject property, which was under construction for tax year 2009 and, second, whether MCTAB can set a value for the subject property for 2010.

Summary

Stephen and Peggy Woods are the Taxpayers in this action and therefore bear the burden of proof. Based on a preponderance of the evidence, STAB modifies the findings of the Missoula County Tax Appeal Board.

Findings of Fact

1. Due, proper and sufficient notice was given of this matter. This matter was heard telephonically pursuant to §15-2-301(2), MCA, without opposition by the parties. All parties received the transcript of the county tax appeal board and were afforded opportunity to submit additional evidence.
2. The property is described as 2201 Rafferty Lane and identified as Lot 4 of the Maxwells Shieling Subdivision, Section 26, Township 13N, Range 20W, of Missoula, Montana. (Appeal Form.)
3. For tax year 2009, the DOR valued the subject property at \$1,552,144 by determining the land value at \$307,412 and the improvement value at \$1,244,732. (MCTAB decision.)
4. The Taxpayers are asking for a value of \$415,280 consisting of \$115,280 for the land and \$300,000 for the improvements. (Appeal Form.)
5. The Taxpayers filed a Request for Informal Review (AB-26). During the AB-26 process the DOR reduced the value of the land from \$307,412 to

\$153,706. The DOR also reduced the improvement value from \$1,244,732 to \$1,042,752. (MCTAB Tr. and MCTAB decision.)

6. The Taxpayers filed an appeal with the MCTAB on November 13, 2009, stating: “1. Land valuation does not meet the Montana constitution requirement to appraise, assess and equalize the valuation of all taxable property. 2. Building valuation does not meet the Montana constitution requirement to appraise, assess and equalize the valuation of all taxable property. 3. Percent complete – The structure on this property was under construction at the time of appraisal. The percent complete used by the Department of Revenue is not accurate, resulting in too high an appraised value.” (Appeal Form.)
7. A hearing was held on February 2nd and 3rd, 2010 and the MCTAB modified the DOR’s valuation. (MCTAB decision attached to DOR complaint.)
8. The MCTAB concluded that the 100% value of the subject improvements to be \$806,875 based on the Taxpayers demonstrated value and in part the DOR’s costs and actual costs. (MCTAB decision.)
9. In its decision, the MCTAB found the buildings on the subject property to be 50% complete as of July 1, 2008. (MCTAB decision.)
10. The MCTAB also concluded a 100% value, on the subject property, as of January 1, 2010 of \$960,581. (MCTAB decision.)
11. The Taxpayers appealed to STAB on April 15, 2010, arguing the DOR and MCTAB used an improper percent-complete. (Attachment to Appeal form.)
12. The DOR uses a Percent Complete table in establishing a “percent complete” of partially completed new dwellings as of the General

Assessment date when determining the market value of a partially completed property. (2002 Montana Appraisal Manual, pg. 33-14.)

13. The DOR cross appealed the MCTAB decision as it relates to the 2010 tax year. (DOR closing.)
14. The Taxpayer submitted several exhibits during the MCTAB hearing. (Exhs. 1 through 6.) The exhibits included photos and spreadsheets relating to the completion the subject improvements.
15. The DOR lowered the value of the land during the AB-26 review process from \$307,412 to \$153,706. The Taxpayers did not object to the value of the land during the state tax appeal board hearing. Thus, the land is not at issue in this case. (DOR Exh. 3D1; MCTAB Testimony p. 152.)
16. The DOR utilized the cost approach to value the improvements on the property. (Exhibit 3B.)
17. This required the DOR to calculate a value of the improvements based on the department's cost model derived from material prices as of July 1, 2008. (Exhibit 3B, Greenberg testimony.)
18. The Taxpayers completed a Percent Complete Table for the DOR outlining which items of construction were complete and which items were not. A hand written explanation on the bottom of the table explains construction items as either complete or not complete, and partial completion equals not complete. (Exh. 3D2a.)
19. The Taxpayers testified they believe the DOR applied an improper percent-complete of 82% when calculating the value of the subject property. (Woods Testimony.)
20. The Taxpayers submitted evidence to STAB reflecting a 62% complete factor as of January 1, 2009 for their property. (Exh. 2.)

21. The Taxpayers submitted a summary of the MCTAB improvement value and using the 62% complete factor calculated a value of \$506,075 for the house and garage as of January 1, 2009. (Exh. 3.)
22. The Taxpayers acknowledged during the STAB hearing that the proper date for setting the percent-complete factor was January 1, 2009. (Woods Testimony.)
23. The subject property was considered 100% complete by the Taxpayers in April of 2009. (Woods Testimony.)
24. The DOR stated, during their closing statement, they were not cross appealing the MCTAB value for the improvements of \$806,875. Further the DOR did not object to a percent-complete in the range of 62% to 82%. (DOR closing.)

Conclusions of Law

The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.) STAB 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.) The Department is responsible for periodic reevaluation of taxable property and setting up a reappraisal plan pursuant to §15-7-111, MCA. 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).) In addition, all taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA.)

It is true, as a general rule, the Department of Revenue appraisal is presumed to be correct and 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).

Board Discussion

This case came to STAB with many outstanding issues including the valuation date, a proper determination of the percent-complete, and the valuation for tax year 2010. During the STAB hearing, however, the parties agreed or did not contest the following matters. (FOF 15, 22.)

1. The 2009 full value of \$960,581 as set by the Missoula CTAB.
2. The value of the land as set by the DOR after the AB-26 review process of \$153,706.
3. The effective appraisal date of July 1, 2008 as set out in ARM 42.18.124(b).
4. The proper date to determine a percent-complete for tax purposes is January 1, of each tax year pursuant to §15-7-111, MCA, and §15-8-201, MCA.

Therefore, this leaves STAB with only two issues:

1. To determine if the MCTAB applied an appropriate percent-complete on the subject property under construction for the 2009 tax year.
2. If the MCTAB can set a value on the subject property for the 2010 tax year.

Percent Factor

The question in this matter is how to properly value a residence that is under construction during the valuation process. Property under construction as of January 1 of the current tax year is valued by the DOR at its percent-complete. The percent-complete is determined by the part of construction that is finished as of the appraisal date. (FOF 17.) The MCTAB set the percent of completion of the subject property at

50% as of July 1, 2008. The Taxpayers believe the 50% figure to be arbitrary and capricious. They also argue the DOR's calculated percent-complete of 82% as of January 1, 2009 is too high and requested this board to lower said percentage to 62%.

The DOR requested the Taxpayers to fill out an informational survey indicating the approximate completion of various stages of the construction project, which the Taxpayers appear to have done to the best of their ability. (FOF 18.) This survey initially showed the percent-complete of the subject property on January 1, 2009 as 72% complete. After discussions with the DOR, the Taxpayers were told if a portion of the construction was not complete it was calculated as 0% complete. Using this information, the Taxpayers recalculated the survey and came up with a 62% completion factor for their house and garage. (FOF 20.) The DOR, without a physical inspection of the subject property, also recalculated the survey numbers and set the completion factor at 82%. There was no indication in the record for the justification for the recalculation.

In this instance, there is no indication the DOR appraiser did any due diligence to determine the information provided by the taxpayer was incorrect. There is also no indication the taxpayer incorrectly or inaccurately filled out the requested form. While we respect the knowledge and ability of the DOR appraisers, we do not believe it is appropriate to request information and subsequently change the information without justification.

STAB finds the MCTAB erred in setting the percent-complete factor at 50% on July 1, 2008, since the appropriate date is January 1, 2009. Therefore, we set the percent-complete of the subject property at 62% as of January 1, 2009. That percent shall be applied to the MCTAB value of \$806,875 for the improvements.

Future Value

In its decision, MCTAB set the values of the subject property for tax year 2010. The DOR cross appealed for the sole purpose of modifying the MCTAB decision to reflect only the value of the property as of the statutory lien date of January 1, 2009, and not for future tax years.

The DOR argues the MCTAB improperly set the value for the subject property for the 2010 tax year. (FOF 13.) During the MCTAB hearing, confusion set in surrounding when the completion factor was applied relative to the value. According to rule, class four properties must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).) The DOR values property under construction at a percent of its completion on January 1 of each year until the construction is complete. (§15-7-111, MCA.)

STAB finds MCTAB correctly set the market value of the subject property as of July 1, 2008, but incorrectly applied the percent-complete factor on the same date. MCTAB went beyond their authority when they set a future market value for the subject property for 2010.

Therefore, MCTAB decision for 2010 is void.

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 calculated using a percent-complete factor of 62%. It is further ordered the decision of the Missoula County Tax Appeal Board pertaining to the 2010 tax year is void.

Dated this 21st 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 24th 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:

Stephen & Peggy Woods	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
130 Red Cloud Way	<input type="checkbox"/> Hand delivered
Hailey, Idaho 83333	<input type="checkbox"/> Interoffice
	<input type="checkbox"/> Email

Michele Crepeau	<input type="checkbox"/> U.S. Mail, postage prepaid
Tax Counsel	<input type="checkbox"/> Hand delivered
Department of Revenue	<input checked="" type="checkbox"/> Interoffice
Office of Legal Affairs	<input type="checkbox"/> Email
P.O. Box 7701	
Helena, Montana 59604-7701	

Missoula County Appraisal Office	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
2681 Palmer Street	<input type="checkbox"/> Hand delivered
Suite 1	<input type="checkbox"/> Interoffice
Missoula, Montana 59808-1707	<input type="checkbox"/> Email

Dale Jackson	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
Acting Chairman	<input type="checkbox"/> Hand delivered
Missoula County Tax Appeal Board	<input type="checkbox"/> Interoffice
2160 Nuthatch	<input type="checkbox"/> Email
Missoula, Montana 59808	

/s/ _____
DONNA J. EUBANK, paralegal