



## 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

Taxpayers are the appellants and therefore bear the burden of proof. (*Department of Revenue v. Burlington Northern, Inc.*, 169 Mont. 202, 545 P.2d 1083 (1976).) Based upon a preponderance of the evidence, this Board affirms the decision of the Missoula County Tax Appeal Board.

## Evidence Submitted

1. The properties which are the subject of this appeal are as follows:  
Geocode 04-1976-34-2-02-11-0000, 5 acres owned by Chad Murray.  
Geocode 04-1976-34-2-02-04-0000, 5 acres owned by Jennifer Nelson.  
Geocode 04-1976-34-2-02-02-0000, 5 acres owned by Judy Miller.  
Geocode 04-1976-34-2-02-03-0000, 8.08 acres owned by Harve R. Murray and Jolene Ann Murray. The properties are all in Section 34, Township 11 North, Range 19 West.
2. All four lots are contiguous parcels that were recently subdivided from one 23.08-acre parcel. (Exh. G) Because of land similarities and because all owners are from one family, the CTAB heard the cases together and rendered one decision. (Missoula CTAB decision, 5/22/10.)
3. The DOR valued the 5-acre lots at \$124,000 each and the 8.08 acre lot at \$142,480 as residential tract land. The property was reclassified after it was subdivided and title to three of the four lots transferred to other family members. (Saxton Testimony.)
4. Prior to the subdivision of the lots and the transfer of ownership, the 23.08 acre parcel had an agricultural value of \$746 for tax purposes. Taxpayers ask

that the individual parcels now be valued at \$746 each as the use of the land has not changed.

5. The owners of the 5-acre parcels appealed to the CTAB claiming: “This appraisal is an excess value of market. This reappraisal was without notice in previous cycle & valuation methods without legislation. Excess value on top of excess value.” (Appeal Form of Judy Miller, Sept. 29, 2009.)
6. The owners of the 8.08-acre piece appealed to the CTAB claiming: “This is the only access to our grazing land. This appraisal is in excess to market. Excess value on top of excess value. Arbitrary valuation methods used without enabling legislation.” (Appeal form of Jolene A and Harve R. Murray, September 29, 2009.)
7. Taxpayers were represented in the CTAB hearing by Patty Lovaas. She argued, on their behalf, the land should continue to be valued as agricultural land or, failing that, that the properties used by the DOR to value their lands are not comparable to their lots and resulted in over-valuation. (Lovaas testimony.)
8. Lovaas, on behalf of Taxpayers, presented evidence of sales that they claimed were closer to their property. One listing of 29 sales in the Upper Woodchuck area lacked dates or acreages and was not therefore useful for comparison. Other sales were presented but the prices were not time trended to the July 1, 2008 valuation date. (Exh.5.)
9. The DOR presented evidence of the land sales used to value the properties in a computer assisted land pricing (CALP) model for Neighborhood 16 from which they calculated a base rate for the first acre of \$100,083 and \$6,012 for each residual acre. The monthly rate of appreciation for the properties in the neighborhood is .7 per cent. (Exh. J.)
10. The DOR also presented the section of Montana law that determines when property is valued according to its agricultural productivity. Generally, parcels

of land larger than 160 acres that are not residential, commercial or industrial qualify for agricultural valuation under §15-7-202 (1)(a), MCA. Contiguous parcels of 20 acres or more under one ownership can qualify if the owner or family members market at least \$1,500 in agricultural products per year from the land under § 15-7-202 (1)(b)(i)(A), MCA. If the land does not meet the income requirements, the owner can apply to the DOR for agricultural classification if the parcel is within 15 miles of the family's agricultural entity and several other requirements enumerated in §15-7-202 (1)(b)(iii), MCA are met.

11. Taxpayers asserted that the land is still grazing land, its use was not changed when it was subdivided, and urge it should not be reclassified. However, they did not introduce any evidence addressing whether the land could survive any of the statutory tests after it was subdivided.
12. The Missoula CTAB rejected the agricultural land argument but decided that the Taxpayers' comparable sales were more closely similar to the subject property, even though they were from Ravalli County. The Board time-trended those sales to the valuation date and arrived at a value of \$72,595 for each of the 5-acre plots and a value of \$117,313 for the 8.08 acre parcel. (CTAB Decision, May 22, 2010.)
13. Taxpayers appealed that decision to this Board, with each appeal stating:

These contiguous parcels are all family members and should be allowed to remain grazing-ag. The use has not changed. Ravalli county CTAB has allowed contiguous parcels under 20 acres belong to family members to remain as agriculture, therefor (*sic*) Missoula County should be required to do the same. The value of parcels are an excessive value compared to the comp sales in Upper wood chuck. (Appeal Form, June 22, 2010.)
14. Taxpayers further submitted a statement to this Board summarizing their argument that the comparable property sales they submitted were not accepted

by the Missoula CTAB because they were not in Missoula County. “To achieve an accurate value all sales must be considered otherwise you have an unfair flawed method as the DOR’s CALP model proves.”

15. The DOR did not appeal the CTAB decision or submit further evidence to this Board.

### **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. Agricultural property is defined in § 15-7-202, MCA, as meeting one of two tests. Parcels larger than 160 acres and not residential, commercial or industrial are considered agricultural. Parcels larger than 20 acres but smaller than 160 acres must produce at least \$1,500 annual income from agricultural activities or the owner can apply to the DOR for consideration under a separate test if the land is part of a larger family farm and certain income requirements are met.
5. Residential lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models reflect July 1, 2008, land market values. (ARM 42.18.110(7).)

6. For the taxable years from January 1, 2009, through December 31, 2014, all class four properties must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)
7. The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided. (§15-7-112, MCA.)
8. The actual selling price of comparable sales must be adjusted to a value consistent with the base year. (ARM 42.20.454(1)(h).)
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.)

### **Findings of Fact 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 Taxpayers must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. *Department of Revenue v. Burlington Northern, Inc.*, 169 Mont. 202, 545 P.2d 1083 (1976); *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).

Taxpayers won the decision below but requested a further reduction from this Board, by requesting agricultural tax valuation. Their request, however, cannot be granted without disregarding the relevant statutes set out above. Their appeal form requests they be reclassified to agricultural valuation but they failed to show the requisite income to meet the statutory test and have not filed an application with the DOR to have their classification reconsidered.

Further, the Taxpayers contend the Missoula CTAB failed to consider comparable properties. Contrary to the Taxpayers' assertion (14 above), the Missoula CTAB did consider the comparable sales from neighboring Ravalli County in making their decision. They time-trended the sales submitted by the Taxpayers to arrive at the valuation-date value. State law requires the values be adjusted in this manner. *See* POL 5.

Therefore, we affirm the decision of the Missoula County Tax Appeal Board.

**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 Missoula County at a 2009 tax year value of \$72,595 on each of the five acre parcels and \$117,313 on the 8.08 acre parcel, as determined by the Missoula County Tax Appeal Board.

Dated this 18th of October , 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 18th day of October, 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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