

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

STACEY LYNN KECK,)	DOCKET NO.: PT-2012-42
)	
Appellant,)	
)	FINDINGS OF FACT,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

Statement of Case

Stacey Lynn Keck (Taxpayer) appealed a decision of the Missoula County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of her property located 4326 Sierra Drive, Missoula, Montana. The Taxpayer argues the DOR overvalued the properties for tax purposes, and seeks a reduction in value assigned by the DOR. The duty of this Board, 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. A hearing was held by the Missoula County Tax Appeal Board at which Taxpayer was represented by her father, Glen Wohl. Wes Redden, DOR area manager and Helen Greenberg, DOR appraiser, presented testimony and evidence in opposition to the appeal. The State Tax Appeal Board (Board) heard the matter on the record without opposition from the parties.

Issue

The issue before this Board is whether the Department of Revenue determined an appropriate market value for the subject property for tax year 2012.

Summary

Stacey Lynn Keck is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board affirms the decision of the Missoula County Tax Appeal Board.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter and of the deadlines for submission of materials. All parties were afforded opportunity to present evidence, written and documentary.
2. The subject residential property is a 1.41 acre lot with improvements. The legal description is as follows:

Lot 6A, Block 1, Double R Acres #1 Addition to the City of Missoula, Section 26, Township 13 North, Range 20 West, Missoula County, State of Montana, Geocode 04-2199-26-1-06-06-0000, Assessor Code 0001907403. (Appeal Form, DOR Exh. A.)
3. For tax year 2012, the DOR valued the subject property at \$154,362 for the land and \$305,638 for the improvements, for a total appraised value of \$460,000. (DOR Exh. A, Appeal Form.)
4. The Taxpayer is asking for a total property value of \$400,000. (Appeal Form) but did not distinguish between adjustments to the land or home.

5. The Taxpayer filed an appeal with the Missoula CTAB on November 21, 2011, stating:

Property was purchased November 19, 2009 by Glen and Johanna Wohl for \$400,000. Property was rented to daughter Stacey Keck until January 30, 2010. Sold to Stacey Keck (contract for deed) Feb. 5, 2010 for \$400,000. Property was not appealed by Glen Wohl upon purchase to due medical reasons. Market value has declined since Feb. 2010 sale. Taxpayer requests a \$60,000 reduction in total reappraised value. (Appeal Form.)

6. The Missoula CTAB heard the appeal on December 4, 2012, and upheld the DOR value on both the land and the improvements. (Appeal Form.)
7. The Taxpayer appealed to this Board on January 21, 2013, stating:

On behalf of my daughter, Stacey Keck, I am appealing the Missoula County Tax Appeal Board's decision for the following reasons:

Taxpayer burden of proof to determine market value is provided and determined by Montana law. The County tax appeal board failed to apply Montana law 15-8-111 which definitively defines market value. Brochures entitled "What is Market Value?" are prepared and distributed by the County Tax Appeal Board and the State Tax Appeal Board. The brochures state: "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." The legal criteria to establish market value for the property located at 4326 Sierra Drive, Missoula, MT 59804 was presented to the Missoula County Tax Appeal Board with absolute clarity on December 4, 2012. Based upon the above facts, the taxpayer's appeal should have been approved.

In reference to testimony by Helen Greenberg, Lead Appraiser, the record will show that she confirmed that a substantial land value had recently been granted to my adjoining property owner, Kirk Mace. Ms. Greenberg stated that my land value could not be adjusted because I had not appealed the land value. I explained to the board that my daughter's purchase of the premises included the house and land and the appeal is based on the total purchase price of \$400,000. Based upon the above facts the taxpayer's appeal should have been approved.

(Appeal Form Attachment.)

8. Taxpayer argues that §15-8-111, MCA, requires the value to be set at market value regardless of date.
9. Taxpayer argues that the price paid for the subject property on November 19, 2009 was, in fact, lower than the value set by the

DOR. Taxpayer provided a real estate flyer showing a previous January, 2008 sale of the same property for \$464,900 and documents confirming that her father and mother paid \$400,000 for the subject property in late 2009, evidencing a decline in value. She argued that the DOR should have considered the post-lien date sale price of \$400,000 on November 19, 2009 in valuing her property. (Exh. C, November 2, 2009 Purchase Documents: buy-sell agreement, sale closing statement, realty transfer certificate; notice of purchase interest, and a copy of the plat.)

10. The DOR relies upon §§ 15-8-111, 15-7-111, and 15-6-134, MCA, to contend that it cannot consider post-valuation-date comparable data.
11. The DOR provided comparable sales to the subject property to support the appraised value on July 1, 2008. (DOR Exh. B.)
12. The DOR presented a realty transfer certificate (RTC) from a previous sale of the subject property on January 4, 2008 for \$464,900. (DOR Exh. B-4.)
13. DOR also relies on § 15-7-309(2), MCA, stating that sale price shall not be the sole determinant of assessed value.
14. Taxpayer, in filings submitted to this Board, agreed with four of the five comparables used by the DOR in the CTAB appeal but contends that comparable number two (*see* DOR Exh. B) was invalid because the home had a finished basement whereas the Taxpayer's home and the other comparables only had crawlspaces (Wohl Letter of March 18, 2013.)

15. Taxpayer provided no other factual evidence to overcome the presumption that the DOR's valuation was correct.

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. 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).)
5. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)

Board Discussion, 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 2012.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. 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 (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.)

First, we will address the valuation date. Montana statute requires a July 1, 2008 valuation date (*see* POL #4.) The sale of the property relied upon by the Taxpayer in November of 2009 is thus not compelling evidence of what the value was on July 1, 2008. Taxpayer's appeal has failed to acknowledge that Montana law and administrative rule compels the DOR to set values for the six-year appraisal cycle based on a date certain in the interest of being fair to all taxpayers. That date is July 1, 2008 and that date cannot be changed or ignored.

Taxpayer has also failed to meet her burden to show that the DOR erred in valuing the subject property. The Taxpayer does not agree with the comparable sales data provided by the DOR but did not provide any evidence to show that the data was in error. No appraisal or list of comparables was presented to challenge the valuation process used by the DOR.

We find the evidence presented by DOR is sufficient to show accurate property valuation as of the assessment date of July 1, 2008. The Taxpayer has challenged one of the comparables presented in the CTAB hearing as not truly comparable. The DOR valuation process, however, is based upon comparable sales which used sale prices to set neighborhood values. (DOR Exh. B3.) The list of five comparable sales was selected by the DOR to show the county tax appeal board that the value assigned was reasonable and even includes a valid sale of the subject property close to the lien date.

Finally, the Taxpayer brought no evidence that a neighboring taxpayer's valuation change due to "flood issues" is relevant to the subject valuation. Therefore, we need not address this issue.

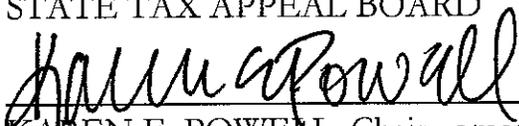
The burden of proof in this appeal is on the Taxpayer to show, through a preponderance of the evidence, that the assessed value of the property is incorrect. We find that burden has not been met. Thus, it is the opinion of this Board that the assessed value set by the DOR is correct, and the decision of the Missoula County Tax Appeal Board is affirmed.

Order

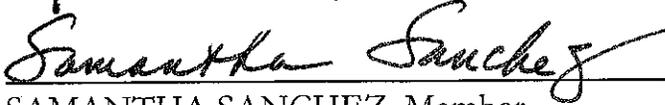
IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the value of the subject property shall be entered on the tax rolls of Missoula County at a 2012 tax year value of \$460,000 as determined by the Department of Revenue and affirmed by the Missoula County Tax Appeal Board.

DATED this 5th of June, 2013.

BY ORDER OF THE
STATE TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman

(SEAL)


SAMANTHA SANCHEZ, Member


DAVID L. McALPIN, 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 5th day of June, 2013, 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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