

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)
OF THE STATE OF MONTANA,) DOCKET NO.: PT-2006-10
Appellant,)
-vs-)
MICHAEL and ERIN BENGALA,)
Respondents.) FACTUAL BACKGROUND,
CONCLUSIONS OF LAW,
ORDER and OPPORTUNITY
FOR JUDICIAL REVIEW

The above-entitled appeal was heard telephonically on March 22, 2007, in Helena, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law.

The Department of Revenue (DOR), represented by Candace Jerke, Appraiser, and Wesley Redden, Area Manager, presented evidence and testimony in support of the appeal. Michael Bengala (Taxpayer) and Neal Valley (his agent), presented testimony in opposition to the appeal.

The Board allowed the record to remain open for a period of time for the purpose of receiving post-hearing submissions from both parties.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence.

FACTUAL BACKGROUND

1. The State Tax Appeal Board has jurisdiction over this matter pursuant to §15-2-301, MCA.
2. Due, proper, and sufficient notice was given of this matter, of the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
3. The subject property is a 5.2 acre tract of residential land described as follows:

Lot 24 of the Jordon Ranch Tracts Subdivision
in the N½, PL at H-8 Section 29, Township 13
North, Range 15 West, P.M.M. Missoula County,
Montana. Geo Code 04-2204-29-2-01-03-0000
(Property Record Card)
4. The subject property includes improvements consisting of a cabin and an outbuilding. The cabin is a one and one-half story structure with a daylight basement built on a wood foundation. The cabin has no central heating system and uses a wood stove for cooking and heating. There is a single bathroom in the basement that is only accessible to the main living area from the outside. The

property has a shared well located on a neighbor's property. There is no formal agreement with the adjoining property owner regarding the well. The outbuilding is in such poor repair that DOR allocated no value to it. (Testimony of Ms. Jerke and Appeal Form).

5. The Taxpayer does not reside on the property full-time, although the property has been rented out on at least one occasion. (Testimony Bengala).
6. All residential taxable property is valued based on a six year reappraisal cycle. The current values for all property reappraised on a six year cycle are based on the revaluation completed January 1, 2002, and effective January 1, 2003. These values are phased in until January 1, 2009, when a new six-year cycle begins. Section 15-7-111, MCA.
7. The subject property was appraised by the DOR at \$76,530 for the current six-year cycle. This amount is comprised of a land value of \$53,480 and \$23,050 for the improvements. (Exhibit B p.2).
8. The Taxpayer filed a Request for Informal Review (AB-26) on February 14, 2006. The taxpayer requested a reduction in the valuation of the property, stating the following reasons: (Exhibit B)

- a. Neighborhood Trend
- b. Access
- c. Topography
- d. Physical Condition
- e. Foundation
- f. Basement

9. On July 17, 2006, the DOR lowered the assessed value for the property and issued this response:

Size of house was incorrect as was some data. Corrected value on house from 23,050 to 20,140. Sales do not show that in this neighborhood parcels are selling for less than other places in the Potomac area. Value was lowered from 76,530 to 73,620. (Exhibit B).

10. The Taxpayer filed an appeal with the Missoula County Tax Appeal Board (CTAB) on August 18, 2006, requesting that the Board look at the inaccuracies in the Computer Assisted Mass Appraisal System (CAMAS) data and the assessor's review of June 2006. The Taxpayer also requested that the land value be reduced by 30% and improvements reduced to zero value. (Appeal Form).

11. A hearing was held on November 20, 2006, before CTAB. In its December 18, 2006, decision, the County Board ruled in favor of the Taxpayer stating:

The Board feels that because there lacked a long term, binding, and clearly defined water rights agreement with the adjacent well owner, the land appraisal should be reduced from the DOR's value. Likewise the building appraisal should be reduced to reflect the poor construction and deterioration over the years.

Testimony given indicated this building is far from meeting building code and would require considerable improvements to be marketable, let alone be eligible for buyer financing. The Board establishes a land value of \$36,000 and a building value of \$13,000. (CTAB Decision).

12. The DOR appealed the CTAB decision to this Board on January 9, 2007, claiming that the fact and nature of the proof adduced at the hearing was insufficient, from a factual and legal standpoint.
13. The DOR requested from this Board that the value of the subject property be set at \$73,620 as adjusted during the informal review process. (Exhibit A).
14. The DOR used a Computer Assisted Land Pricing (CALP) model to establish the original land value of \$53,480 for the subject property. The CALP is based on sales of 21 different properties. Each sale is reviewed to verify that it qualifies as an arms length sale. (Exhibit B p.9).
15. The CALP sales and the subject property are all located within Neighborhood 23 of Missoula County (the Potomac valley), with two-thirds of the sale properties within one mile of the subject property. (Testimony of Ms. Jerke; Exhibit B p.9)

16. Based on the CALP, the DOR determined that one acre would be the base size for valuing lots in Neighborhood 23. The first acre would be valued at \$45,500 and each additional acre would be valued at \$1,900. (Exhibit B-p.9) All of the sale properties used in the CALP were bare tract land and had sales dates prior to the revaluation date of January 1, 2002. (Testimony Ms. Jerke).
17. The DOR appraiser also reviewed recent vacant land sales and sales of land with improvements within the Potomac area in an effort to determine if land values are increasing. (Exhibit A p.10, 14 & 15; Testimony Ms. Jerke).
18. The DOR utilized the cost approach to value the improvements on the property. (Exhibit A p.6; Testimony Ms. Jerke).
19. This required that DOR calculate a value of the cabin based on new construction, and depreciate the value of the building to reflect its age and condition. (Exhibit A p.6).
20. The DOR also determined that the subject property has a construction quality grade of 3 or .68 in relation to

average construction quality of 1.00. (Testimony of Ms. Jerke; Exhibit A p.6).

21. The Taxpayer testified that he believes the property sales in the DOR's CALP model are too old, the sales in the nearby valley do not compare with his property on the ridge, that the county roads are not maintained and several of his neighbors are junkmen with unsightly properties. He believes that this all contributes to a declining neighborhood instead of a stable one. (Testimony Mr. Bengala).
22. The Taxpayer believes that his neighborhood is unique because there are significant unfinished structures and an increase in mobile homes and junkyards being placed near dwellings. (Exhibit 1)
23. Mr. Valley, testifying in support of Mr. Bengala's claim, notes that the roads leading to the subject property are deeded to the County but have never been maintained. The roads only get limited maintenance by another property owner in the area. (Testimony of Mr. Valley).
24. The Taxpayer testified that a shared well with the adjacent owner, who has tried to shut off the water,

might deter potential buyers and thus lower property values. (Exhibit 1).

25. The Taxpayer acknowledged that a well could be drilled on the subject property but could not verify quality of the water. (Taxpayer's post-hearing submission).

26. The Board asked the Taxpayer to submit a basis for the 30% reduction he requested for the land value during the hearing before this board. In his post-hearing submission, the taxpayer assigned a reduction of 10% to each of the following three categories:

- a. Evidence had not been established that properties in our neighborhood are selling for as much as those in the general Potomac area.
- b. The neighborhood is in a declining rather than a stable economic trend.
- c. The roads in the immediate area are dirt rather than semi-improved.

BOARD DISUSSION

The Board has two issues to resolve in this matter, whether the value of the land and the value of the improvements were correctly adjusted by the Missoula County Tax Appeal Board.

It is true, as a general rule, that the Department of Revenue appraisal is presumed to be correct and that 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. Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3,(1967).

Land Value

The Board must determine if the CTAB valued the subject land correctly at \$36,000.

The DOR is charged with appraising the property at full market value pursuant to § 15-8-111, MCA. The most appropriate way to appraise property is to use the actual sale of the property or to extract data from the market.

The DOR used a CALP model based on verified land sales in Neighborhood 23, which includes the subject property. In this case, the CALP model indicated a value of \$45,500 for the first acre of land and \$1,900 per acre for each residual acre.

Thus, the subject land was originally valued at \$53,480 for the 5.2 acres. All the CALP sales occurred prior to the assessment date of January 1, 2003, and were within Neighborhood 23.

The Taxpayer believes that his land value should be reduced 30% because DOR failed to adequately support the assessment. He also believes that the CALP sales are too old to reflect current values and that economic factors, such as poor roads, mobile homes and junkyards in the area, should be reflected in the DOR's assessment.

We note that the sales used in valuing this property relate to the revaluation date for the current reappraisal cycle, January 1, 2002. In addition, the Taxpayer was not able to demonstrate that land sales in the neighborhood are in fact declining in price. The evidence presented by DOR is sufficient to show accurate land valuation, and the Taxpayer has failed to meet his burden to show that the DOR has erred.

The CTAB found that the lack of a well agreement on a shared well was enough of a detrimental factor to reduce the subject land value by 20%. This Board does not agree because there is no evidence that there are any restrictions for this property, or the surrounding area, that would preclude the drilling of a well. Whether the land does or does not have a

well is the choice of the land owner and has no effect on the valuation of the land itself.

Therefore, the Board modifies the CTAB decision and sets the land value at \$53,480 as originally appraised by the DOR.

Improvement Value

The second question presented is whether the improvements on the subject property were appropriately valued.

The DOR argues that the CTAB improperly adjusted the valuation of the subject improvements, and that the proper value for the improvements is \$20,140. The Taxpayer argues that the CTAB decision to reduce the improvement value from \$20,140 to \$13,000 is equitable.

The value of the improvements on this property was determined using the cost approach because the DOR determined that no adequate comparable sales were available. (Exhibit A p.6).

The DOR appraised this cabin at a grade 3 or low cost grade. Grade 3 is assigned a .68 factor in relation to average construction quality of 1.00. Evidence shows that this property, however, is little more than an upgraded root cellar. The Board notes that the property has an untreated wood foundation, no central heating system, a wood stove for cooking & heating, and a bathroom in the basement that is only

accessible to the upper floors by going outside. Evidence demonstrates that the improvements are in poor condition, grade 2, with a factor of .49 of average construction quality.

By applying the grade change to the subject property, the Board arrives at a value of \$14,510.

Thus, it is the opinion of this Board that the value for the improvements is \$14,510. The decision of the Missoula County Tax Appeal Board is modified.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land and improvements shall be entered on the tax rolls of Missoula County by the local Department of Revenue at the value of \$53,480 for the land and \$14,510 for the improvements.

Dated this 11th day of July, 2007.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

/s/_____
KAREN E. POWELL, Chairwoman

/s/_____
SUE BARTLETT, Member

/s/_____
DOUGLAS A. KAERCHER, 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 11th day of July, 2007, 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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