

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ROBERT S. & NANCY C. FOSTER,)	
)	DOCKET NO.: PT-2009-140
Appellants,)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY
)	FOR JUDICIAL REVIEW
Respondent.)	

Statement of Case

Robert S. & Nancy C. Foster (Taxpayers) appealed a decision of the Gallatin County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of property located at 6090 Springhill Road, Belgrade, Montana. The Taxpayers argue the DOR overvalued the property for tax purposes, and seek a reduction in value assigned by the DOR. At the State Tax Appeal Board (Board) hearing held on July 21, 2011, the Taxpayers were represented by Robert S. Foster who provided testimony and evidence in support of the appeal. The DOR was represented by Michele Crepeau, Tax Counsel and Thomas Reilly, Commercial Appraiser.

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.

Issue

The issue before this Board is whether the Department of Revenue valued the subject property appropriately for tax purposes for tax year 2009?

Summary

Based on a preponderance of the evidence, the Board upholds the decision of the Gallatin County Tax Appeal Board.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present verbal and documentary evidence.
2. Robert S. & Nancy C. Foster are the Taxpayers in this proceeding and, therefore, have the burden of proof.
3. The subject property is a residential home and several other improvements (within 206.815 acres of agricultural land¹) with the following legal description:

Tract L of Certificate of Survey (COS) 2572, Section 02, Township 1 South, Range 05 East, Gallatin County, State of Montana. (Appeal Form, DOR Exh. B.)
4. For tax year 2009, the DOR used the cost approach to value the subject improvements, which is standard practice in valuing the improvements on agricultural land. The land is productive agricultural land, and was valued based on productivity as required by statute. This resulted in an original total value of \$528,482 for the subject property; \$57,272 for the land and \$471,210 for the improvements. (Exh. 1.)

¹ The agricultural land is separately valued pursuant to §15-6-133, MCA and is not at issue.

5. The cost approach required the DOR to calculate a value for the improvements based on new construction, and depreciate the value of the building to reflect its age and condition. (Reilly Testimony, DOR Exh. B.)
6. The DOR uses the Montana Appraisal Manual as a guide in valuing property. (Reilly Testimony, DOR Exhs. D, E & G.)
7. The DOR determined the residence has a construction quality grade of “6,” or 1.33 in relation to average construction quality of 1.00. (DOR Exhs. B, D & E.)
8. The Taxpayers filed a Request for Informal Review (AB-26) on October 5, 2009, asking for an informal review meeting with the DOR to provide additional information. (AB-26 Form, CTAB Exh. A.)
9. After review of the subject property the DOR made several adjustments to the value resulting in an increase from \$528,482 to \$535,532, including the land. (AB-26 Form, CTAB Exh. A.)
10. The Taxpayers filed an appeal with the Gallatin County Tax Appeal Board (CTAB) on August 19, 2010, stating “Valuation of buildings not accurate.” (Appeal Form.)
11. The Gallatin CTAB heard the appeal on March 2, 2011. The CTAB adjusted the value of the buildings from \$478,260 to \$456,295. (Appeal Form.)
12. The Taxpayers appealed to this Board on March 30, 2011, arguing the value of the buildings is still not accurate. (Appeal Form.)
13. The Taxpayers are asking for a value of \$307,000 for all the buildings and improvements. (Foster Testimony.)
14. The Taxpayers used \$50 per square foot construction cost to calculate the requested value. Mr. Foster submitted two estimates from contractors for

the construction of a 30 by 40 foot house to substantiate his construction cost. (Exh. 1, Foster Testimony.)

15. The Taxpayers contend the \$50 per square foot is a state-wide average and the Grade Factor and the Economic Condition Factor (ECF) applied to the DOR appraisal adjusts for the different housing markets. (Foster Testimony.)
16. The Taxpayers dispute the construction grade assigned by the DOR of “6” and are requesting a construction grade of “5 plus” or 1.165, claiming the house does not meet current building codes. (Foster Testimony, Exh. 1.)
17. The Taxpayers also submitted a Comparative Market Analysis, completed by Gregg Mortensen, a real estate broker for Keller Williams Montana Realty. Mr. Mortensen used five comparable properties to arrive at a value for the house only of \$205,000. (Exh. 2.)
18. The DOR submitted a post-hearing property comparison market model to verify the values derived from the Cost Approach. (Post-hearing Exhibit.)
19. The Taxpayers contend the DOR market model is invalid. (Post-hearing Exhibit.)

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).)
6. To achieve statewide equalization, all residential property in the state must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(1)(b).)
7. Class four property includes all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land. (§15-6-134(1)(e).)
8. For an independent appraisal to be considered, the taxpayer or the taxpayer's agent must meet the following requirements:
 - (a) submit a signed original long-form narrative appraisal, performed by an appraiser licensed by the state of Montana, or an appraiser who has been certified by a nationally recognized appraisal society or institute, to the local department office in the county where the property is situated;
 - (b) have a valuation date within six months of the base-year valuation date for the appraisal required in (1) (a), or be adjusted by the department or the appraiser who performed and prepared the narrative appraisal to reflect changes in market conditions between the appraisal date and the base-year valuation date. (ARM 42.20.455(1).)
9. Each one-acre area beneath the residence(s) on agricultural land shall be appraised according to the highest productivity value of agricultural land. (ARM 42.20.655(c).)
10. For each reappraisal period, the department shall develop and adopt the Montana Appraisal Manual to be used during the reappraisal cycle. (ARM 42.18.121(1).)
11. 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.)

Board Discussion 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 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).

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). Agricultural land is valued based on productivity. A residence on agricultural land, however, must be separately valued for tax purposes as class four property. (*See* POL 7.)

In this instance, the Taxpayers first argue that the DOR used an improper grade in valuing their property. They believe a grade of “5 plus” would more closely represent the subject property because their property has many deficiencies compared to new construction and current building codes. The DOR contends this property is a construction grade “6” because it has been extensively remodeled and the quality of the remodel has increased the grade and condition. (*See* EP 7.) In reviewing the evidence presented, we find the property is properly set at a grade 6.

Mr. Foster also contends the subject property is overvalued because of the cost per square foot used by the DOR to complete a cost approach

appraisal. He argues for a \$50 per square foot building cost based on estimates he requested from contractors around the state. (*See* EP 14.) The Taxpayers' construction estimates, however, do not adequately reflect the size and quality finish work of subject property or the location, and are not a realistic valuation to build a large multi-story house with the quality construction of the subject property.

The DOR has the task of providing uniform valuations for all Montana homeowners and uses standard methods of assessment to achieve market value. Using a standard cost approach methodology provides a realistic and uniform method to determine the market value of a residence on agricultural property by calculating the cost of replacement and adjusting that for age and location. The DOR demonstrated that the calculations were accurate and appropriate for the subject property. Appraisal judgment is required to review and confirm the value of any property, and in this instance it was not contested that the appraiser has significant appraisal experience. In this case, we find the DOR appraiser and the evidence presented to be credible, we find no substantial errors in the DOR's valuation, and there is no convincing evidence that the DOR incorrectly valued the improvements.

The Taxpayers and the DOR submitted market information to support their estimate of value. The subject improvements, which are class four property, are located on agricultural land and valued using the cost approach. Thus, there is little relevance to evidence of comparable properties valued using the market approach because typical homes and the land under them are class four residential properties and valued using both land and improvements in totality. Even though the Taxpayers' realtor made adjustments in the comparables when presenting a market analysis, the evidence is insufficient to affect the value the subject property as it is inconsistent with standard appraisal

practices, and insufficient to be considered an appraisal completed in accordance with ARM 42.20.455(1). (*See* POL 8.)

This Board concludes the evidence presented by the DOR did support the values assessed. In this instance, the Gallatin County CTAB slightly modified the subject property value. We find no reason in this instance to penalize the Taxpayer for filing this appeal by increasing the value above the CTAB value. Thus, it is the opinion of this Board that the value set by the Gallatin County Tax Appeal Board is within the range of reasonableness and shall be used as the value of the subject improvements.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject improvement values shall be entered on the tax rolls of Gallatin County at a 2009 tax year value \$456,295 as determined by the Gallatin County Tax Appeal Board.

Dated this 22nd day of August, 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 t his Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of August, 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:

Robert & Nancy Foster 6090 Springhill Road Belgrade, Montana 59714-8721	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail
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Thomas Reilly Gallatin County Appraisal Office 2273 Boot Hill Court Suite 100 Bozeman, MT, 59715-7149	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail <input type="checkbox"/> Interoffice
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Michelle R. Crepeau Office of Legal Affairs Department of Revenue Mitchell Building Helena, Montana 59620	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail <input checked="" type="checkbox"/> Interoffice
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Gallatin County Tax Appeal Board 311 West Main, Room 304 Bozeman, Montana 59715	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> E-mail
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/s/ _____
DONNA EUBANK
Paralegal