BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

W. CRAIG HEYMANN, Appellant, -vs- DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, Respondent.	))))))))))	DOCKET NO.: PT-2010-31 FACTUAL BACKGROUND, CONCLUSIONS OF LAW, ORDER and OPPORTUNITY FOR JUDICIAL REVIEW

Statement of Case

W. Craig Heymann (Taxpayer) appealed a decision of the Lewis and Clark County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of his property located at 1618 East Lyndale, Helena. The Taxpayer argues the DOR overvalued the property for tax purposes and seeks a reduction in value assigned by the DOR. The State Tax Appeal Board held a hearing in the matter. W. Craig Heymann testified on his own behalf, presenting argument and evidence. Michele Crepeau, tax counsel, represented the DOR, and Stacie St. Claire, Appraiser for the DOR, testified and presented evidence on behalf of the Department.

The Board having fully considered the testimony and exhibits from the record made before the Lewis and Clark County Tax Appeal Board, the hearing before this Board, and all matters presented to this Board finds and concludes the following:

Issue

The issue before this Board is did the Department of Revenue determine an appropriate market value for the subject land for tax year 2010.

Summary

Heymann is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board modifies the decision of the Lewis and Clark County Tax Appeal Board.

Evidence Presented

1. The subject property is a single family dwelling on a lot located at 1618 Lyndale Avenue, in Helena. (DOR Exh. A, property record card.)
2. The DOR originally appraised the subject property at $160,600, and the Taxpayer filed for informal review. After review, the Department adjusted the value of the property to $145,400. (DOR Exh. B, Request for Informal Review dated August 12, 2010.)
3. The Taxpayer filed an appeal with the Lewis and Clark County Tax Appeal Board after receiving a decision from the DOR informal review process. (Property Tax Appeal form, dated January 7, 2011.)
4. The Lewis and Clark County Tax Appeal Board held a hearing and upheld the valuation set by the DOR during the informal review process. (Property Tax Appeal form, dated January 7, 2011.)
5. The Taxpayer filed an appeal with this Board, and a hearing was held in the matter.
6. At the hearing, the Taxpayer presented his assessment notices for this year and the prior cycle. (Exhibits 1, 2.)
7. He also presented information relating to neighboring properties on the market at the time of the hearing. (Exhibits 3, 4.)
8. The Taxpayer submitted data from the Montana Association of Realtors and the Moore Appraisal Firm in Helena which show historical data on median house prices in Helena from 2004 to 2010. (Exhibits 8, 9.)

9. The Taxpayer testified his property is next door to a vacant lot filled with junked cars, and on the other side of his property is a commercial concrete yard full of lumber forms. The property is a block from the rail yard. (Heymann Test. 43.)
10. At the CTAB hearing, the Taxpayer provided a comparable sales report generated by the DOR which listed some of the comparables used to value the Taxpayer's property, and also provided the current values of the comparables for tax purposes.
11. After adjustments stemming from the informal review, the value of the subject property was set at $145,400 by the DOR. The five most comparable properties were shown on the comparable property sheet. (Exh. 10. See also, DOR Exh. D, provided to the CTAB by the DOR.)
12. The DOR also submitted individual comparable sales sheets for each of the five comparable properties, showing the properties that were used to value them. (DOR Post-Hearing Exhs. A through E.)
13. The first comparable sold for $149,900 (comp. 1), with an adjusted sale price of $182,578. (DOR Exhibit D.) An adjusted sale price is the price at which the DOR calculates the comparable would sell if its features, such as size, number of bedrooms, and so forth, were adjusted to match the subject property. The sale price is also time-trended to July 1, 2008, the statutory valuation date, as part of the calculation.
14. In comparison, however, comp. 1 is being taxed by the DOR at a market value of $116,000 (Exhibit 10, stipulated as correct valuations for tax purposes by both parties. Trans. 34). The photos of comp. 1 indicate that the property is "nicer and more upscale" than the subject property. (CTAB Testimony, Trans. 15. *See also*, photographs in Exh. D.) Additionally, the comp. 1 property is

generally in better condition than the subject property, and so has a higher condition and utility (CDU) rating.

15. Comp. 2 is also being valued for tax purposes significantly below its sales price of $116,000 (sold June, 2005). Comp. 2 is being valued at $108,225 as only partially complete due to a renovation. (Exh. 10 and DOR Exh. B to Post-hearing Submission.)
16. Comp. 3 sold in August 2006 for $140,000 but is being valued for tax purposes at $116,500. (DOR Exh. D and Exh. 10.) Comp. 5 is the same property as comp. 3 and is located on Oakes St. The property was previously sold in May 2005 for $108,000.
17. When comparing comp. 3 and comp. 5, (the Oakes Street property that sold twice) the data on the DOR's comparable sheets are inconsistent. The input of inconsistent data will thus mathematically create inconsistencies in later calculations.
18. Primarily, the two sales generate significantly different adjusted sales prices. For example, the property sold for $108,000 in May 2005. When the comp. 3/5 house is used to value comp. 1, the adjusted sale price was $98,71 for the May 2005 sale. The same house sold again in August 2006, and the adjusted sales price was $130,751. When those sales are used to value the subject property, the May 2005 sale resulted in an adjusted sale price of $131,357. The August 2006 sale generated an adjusted sale price of $163,357.
19. The inconsistency continues when reviewing the comparable sales report provided for comp. 3/5 (the Oakes house.) When valuing comp. 3/5 for tax purposes, the two sales are used. The May 2005 $108,000 sale generates a very similar adjusted sale price ($108,031), as does the August 2006 sale ($140,000) with an adjusted sale price of $140,031. The final valuation for tax purposes,

however, was set at $116,500. (DOR Post-hearing submission, Exh. C, Exh. 10.)

20. Another inconsistency in the data is apparent in the DOR's comp. 4. Comp. 4 was shown as having an 897 square-foot basement area, and an 897 square-foot living area when used to value the subject property. (DOR Exh. D.)
21. The DOR submitted the comparable sales report for comp. 4, which indicated how the property was valued for tax purposes. On the comparable sales report, on which this property is listed as the subject property as well as the first comparable property, it is described as having no basement when it is the subject, and a basement when used as a comparable. (Post-hearing submission, DOR Exh. D). Additionally, the deck size was increased from 18 (as a comp.) to 168 (as the subject) on Exh. D. The DOR comparable sheet shows an actual sale price of $135,900 in 2007 and an adjusted sale price (adjusted to the *same* house, so there should be no differences) of $121,019 and an actual taxable value of $110,000, despite the DOR's assertion that values were increasing in the neighborhood.
22. Comp. 4 shows a sale price of $135,900 as of April 2007. (Exh 10). Its adjusted sales price for valuing the subject property is $149,025. (DOR Exh. E). The description, however, was subsequently changed to reflect removal of the basement, and additional concrete and wood deck. (DOR Exh. D).
23. Comp. 4 value for tax purposes is set at $110,130. (DOR Exh. D). For purposes of determining that value, the comparable sales sheet used the sale of comp. 4, but adjusted the sale price from $135,900 to $121,019. The comparables pulled for comp. 4 includes comp. 3/5 of the subject property, and also a property on East Lyndale which sold for $125,000 in August 2007.

24. In comparing the two Lyndale properties, the subject property has slightly more land and a small garage, but the other Lyndale property has a higher grade and more living space.
25. The subject property has 10,000 square feet of land, valued at $53,200. (DOR Exh. C, Property Record Card.) The DOR determined that a standard lot in this neighborhood is 9,000 square feet, with a base rate per square foot of $5.45 and a residual per square foot of $4.15. (DOR Exh. E, CALP.)
26. The data provided to this Board demonstrated that the values assigned for tax purposes for the comparable properties presented was substantially lower than the actual sales prices during the appraisal cycle. (Exh. 10.)

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. 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.)
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. The development of sales comparison models using Property Valuation Assessment System (PVAS) is a requirement for property valuation during the reappraisal cycle. (ARM 42.18.110(8).)
7. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
8. 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).)
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.)

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 2010.

Given the statutory definition of market value, *i.e.,* the value at which property would change hands between a willing buyer and a willing seller, the "market" approach, using comparable sales, is the preferred approach in valuing residential property when adequate data is available.

In this instance, the Taxpayer presents a variety of arguments that his property is overvalued for tax purposes. First, he provided this Board with historical trend data indicating that property values have dropped since the lien date, and thus his house should be valued at a percentage of the asking price of houses currently on the market. *See* EP 8. We cannot, however, adequately value a specific property using average market value numbers, particularly in comparison to properties on the market, without completed sales data. Further, we do not consider sales after the statutory valuation date set by the legislature to value property. POL 8. Thus, we cannot consider that to be a valid comparison of value.

The Taxpayer makes two additional arguments, which we will address together. First, the Taxpayer argues his property has been graded as "fair" while all of the comparable properties were graded as "good." He argues his property is less valuable than the comparables, yet valued higher for tax purposes. Additionally, the Taxpayer argues the comparable properties presented in this case all have significantly lower appraisal values for tax purposes than his property.

The Taxpayer reviewed the comparable properties used to value his property, and determined the comparable properties are being taxed at a lower value than the sales prices used to value his property. This occurs because the comparable properties have been adjusted to match the subject property – and thus the adjustments are upward in this case. That fact, in and of itself, is not a fatal flaw to the valuation in question. It does require, however, that we examine the evidence to determine whether the subject property has the correct valuation.

The Taxpayer also points out that the comparable properties are being valued for tax purposes lower than the actual sales prices of those properties. His property, however, is being valued at a significantly higher value in comparison. He argues that his property has negative features which should not justify a higher valuation than the comparable properties.

After review of the evidence, there is no doubt the Taxpayer raises an issue of concern. In reviewing the map, the subject property is significantly closer to the railroad tracks, and is within a mixed commercial and residential area, which is not the case for the comparable properties. The other properties, while in the same neighborhood, are not in mixed residential-commercial areas, and are not as close to the railroad tracks. *See* Exh. 6. A portion of the increased value of the subject property appears to stem from the fact that the subject lot is significantly larger than the comparable properties. *See* DOR Exh. C. Thus, in this instance, the subject property has a small house, in "fair" condition on a larger lot in a less desirable area for residential purposes. The evidence demonstrates that the location of the property is somewhat less desirable than the comparables in its current use. When reviewing the CALP, the vacant lot with the lowest valuation was adjacent to the railroad tracks, which further confirms that proximity to the rail tracks is a negative feature for valuation. *See* DOR Exh. E. We find that the evidence demonstrates that the subject property suffers from deficiencies which negatively affect its value in comparison to the comparables presented.

This Board has reviewed all of the evidence in depth, examined all of the comparables that have been presented, and weighed the data received. In this instance, the Board finds the Department's valuation for the subject property is above the market value.

The indicators which bring this Board to this determination include the fact that a similar property within the same block as the subject property sold less than a year before the lien date for $125,000. While the CALP indicates that land values were increasing in this neighborhood, the evidence brought to this Board demonstrates that all of the comparables shown to the Board received lower valuations for tax purposes than their own sale prices. *See* comp. 1, comp. 2, comp. 3, comp. 4, and comp. 5, Exh. 10. When the valuation of the comparables generated by the Department for tax purposes is significantly lower than the subject property, and the subject property has some deficiencies that the comparables do not, it is proper to review whether the valuation in this instance in correct.

While it may be true that this fact is a "coincidence and not causal," as stated by the DOR, that does not explain what appears to be a decline in values in the neighborhood, as demonstrated by the lower valuations for tax purposes in comparison to the sales prices. Nor does the DOR refute the inconsistency of the data presented in this case. The evidence in this case demonstrates the Taxpayer's property is overvalued in comparison to the other neighborhood properties presented to this Board. Further, the evidence demonstrates some inconsistencies in valuation for the comparable properties. *See* EP 12-22. Additionally, uncontroverted testimony indicates the subject property suffers from close proximity to industrial properties, including junked cars, a lumber yard and the train tracks. Thus, setting a value for the subject property at a higher value than neighboring properties, with similar or preferable traits, does not comport with the evidence presented in this matter.

In determining a fair market value, we look to the evidence presented to this Board. The Taxpayer testified that his property could be sold on the assessment date for $120,000. A similar property, within one block of the subject property, sold for $125,000 less than a year before the lien date. The properties the DOR considers to be comparable are valued for tax purposes between $125,900 and $116,500. The subject property suffers from negative influences, in comparison to several of those comparable properties. We thus determine, based on the evidence, that the value requested by the Taxpayer of $120,000 is within a range of the market value and will therefore set the value at $120,000. The decision of the Lewis and Clark 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 property shall be entered on the tax rolls of Lewis and Clark County at a value of $120,000 as determined by this Board.

Dated this 23rd day of November, 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 this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23rd day of November, 2011, a copy of the foregoing order was served on the parties hereto by placing a copy in the U.S. Mail and addressed as follows:

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