

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ALLAN & VALERI McGARVEY,)	DOCKET NO.: PT-2010-33
)	
Appellants,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

Statement of Case

Allan and Valeri McGarvey (Taxpayers) appealed a decision of the Flathead County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of their lakefront property located on Hughes Bay, Flathead County, Montana. The Taxpayers argue the DOR overvalued the properties for tax purposes, and they seek a reduction in value assigned by the DOR. The duty of this Board, having fully considered the exhibits, evidence,¹ 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 on January 29, 2013 at which Taxpayers were represented by Allan McGarvey. Tax Counsel Michele Crepeau, Scott Williams, DOR regional manager and Dan Lapan and Michael Forster, DOR appraisers, presented testimony and evidence in opposition to the appeal.

¹ The Taxpayer filed a motion for "Exclusion of Inherently Misleading Comparable Sales Data and Appraisal Methodologies" evidence prior to the hearing. The DOR objected. This Board has reviewed the evidence and the motion is denied.

Issue

The issue before this Board is whether the Department of Revenue determined an appropriate market value for the subject property for tax year 2010.

Summary

Allan and Valeri McGarvey are the Taxpayers in this proceeding and, therefore, have the burden of proof. Based on a preponderance of the evidence, the Board upholds the decision of the Flathead 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 evidence, written and documentary.
2. The subject Flathead Lake-fronting property is described as follows:
Hughes Bay, Section 33, Township 26 North, Range 20 West, Block 002, Lot 008, Lot 009 and TR B8 & Hughes Bay Add. 1 & TR B in 10, and the improvements located thereon, Flathead County, State of Montana. (AB-26 form.)
3. The Taxpayers filed a Request for Informal Review (AB-26) June 28, 2010. The DOR reviewed the property value and reduced the improvement value to \$133,782. The land value, which was evaluated using the front-foot methodology, remained at \$916,160 resulting in a total market value of \$1,049,942. (Form AB-26, Taxpayer Exh. 1.)
4. The Taxpayers are asking for a total market value of \$779,400.
(Taxpayers' Binder, Tab N.)

5. The Taxpayers timely filed an appeal with the Flathead CTAB on July 19, 2011, citing the 2008 real estate market crash as the cause of plummeting Flathead lakeshore values. (Appeal Form.)
6. The Flathead CTAB timely heard the appeal on November 3, 2011, and upheld the revised DOR values. (Appeal Form.)
7. The Taxpayers appealed to this Board on November 9, 2011, attaching a lengthy argument in favor of using post-lien date sales information to determine the 2008 (lien-date) market value for the subject property. (Appeal Form attachment.)
8. At the hearing, Mr. McGarvey, on behalf of himself and his wife, testified that his lot suffers from several deficiencies, such as steep access requiring the use of a few feet of his neighbor's drive to enter his own driveway. He claims that creating separate access to his property would be extremely costly.
9. The Taxpayer, an attorney, provided an analysis of various post-2008 sales he used in valuing his property at \$779,400 (\$644,400 land and \$135,000 for the buildings.) (Taxpayers' Binder, Tab N.) Taxpayer testified that he was not an appraiser, did not have appraisal training or experience but was acquainted with valuation projects from his litigation experience.
10. To calculate a front-foot value for 2008, the Taxpayer found various sales from 2006 through 2011, and calculated differing front-foot values and adjustments based on his own reasoning. He included a discount for a lack of driveway. (Taxpayers' Binder, Tab N.)
11. The Taxpayers' primary argument stems from the DOR's use of sales data only through 2007. Mr. McGarvey argues that use of time-trended sales data through 2011 would give a much more accurate snapshot of

valuation as of the 2008 valuation date, and argues that it is proper appraisal technique to use such data as demonstrated in his calculations. (Testimony McGarvey.)

12. The DOR valued the property based on a cost approach methodology, which separately valued the subject land and the improvements. The cost approach (\$916,160 land and \$133,782 buildings) was slightly lower than the DOR market valuation approach. (DOR Exh. B.)
13. The computer assisted land pricing (CALP) model generated by the DOR for land valuation utilized 29 sales between 2004 to 2007, and time trended those sales to account for both the increase and decrease in the market during that time. (DOR Exh. G (confidential); Testimony Williams.)
14. The Department also brought to the Board examples of several comparable properties which had sold close to the lien date, to demonstrate that the CALP was accurate for valuation purposes of the subject property. (DOR Exhs. C, D, E and F.)
15. The DOR testified that Taxpayer's property is parallel to the county road, and does not suffer from legal access issues. (Testimony Williams.)
16. Scott Williams also testified that the properties used by McGarvey for comparison in his analysis are in areas that are not comparable to the subject property, as demonstrated on the DOR's Exhibit E. The properties are in a different neighborhood with lower sales prices than the subject neighborhood.
17. Additionally, Williams testified that the DOR gathered data through July 2008, and then used that data for valuation. He testified that there was no method for the DOR to use valuation data after 2008, and that it was improper for use in valuations.

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 percent 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 singular 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. (42.18.110(12), ARM.)
6. 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.)
7. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law. (Constitution of Montana, Section 3. Property tax administration.)
8. The department has general supervision over the administration of the assessment and tax laws of the state, except Title 15, chapters 70 and 71, and over any officers of municipal corporations having any duties to perform under the laws of this state relating to taxation to the end that all assessments of property are made relatively just and equal, at true value, and in substantial compliance with law. The department may make

rules to supervise the administration of all revenue laws of the state and assist in their enforcement. (§15-1-201(1)(a), MCA.)

9. It is the duty of the department of revenue to implement the provisions of 15-7-101, 15-7-102, and this section by providing: (a) for a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of lands for taxation purposes.... (§15-7-103(1), MCA.)
10. The department shall adjust and equalize the valuation of taxable property among the several counties, between the different classes of taxable property in any county and in the several counties, and between individual taxpayers and shall do all things necessary to secure a fair, just, and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers. (§15-9-101(1), MCA.)

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 2010.

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).

In this instance, we find the Taxpayers' evidence fails to demonstrate that the DOR valuation is incorrect. Taxpayers provide no certified appraisal or appraisal expert. Mr. McGarvey admits he has no formal appraisal training or expertise. Further, the underlying data used in the Taxpayers' appraisal could not be verified as accurate by this Board. The comparable properties used by the Taxpayers were located in a separate area of Flathead Lake, with a different political subdivision, and significantly lower prices. We decline to find Taxpayers' evidence to be valid in setting value.

We next address the matter of sales after the valuation date. The Taxpayers argue, because an appeal is pending, that the DOR should be directed to assemble post-lien date information to adjust the Taxpayers' value to more accurately address the declining valuation as of the 2008 lien date. They argue that the sudden decline in sales activity in the months prior to the July 1, 2008 lien date results in a gap in the data that requires analyzing post-lien-date sales in order to determine the rate at which prices were declining during that time.

Montana statutes require all land to be valued on the same date in order to produce uniform assessments across the state. *See, e.g.,* §§ 15-7-103(5), 15-7-111(3), 15-7-112, MCA. *See also* Rule 42.18.124(b), ARM (setting the appraisal date for valuation as July 1, 2008 for the valuation period of 2009-2014). Thus, to assure that all Montana taxpayers are treated equally, all property must be valued for tax purposes on July 1, 2008. In this instance, however, the Taxpayers argue that we should direct the DOR to use post-lien-date sales for valuation purposes in order to accurately calculate the value on that date. Taxpayers do not advocate this remedy for all Montana taxpayers. Indeed, such

a process would, in effect, require the DOR to constantly revalue all properties as prices fluctuated. The Taxpayers here suggest that such a “hindsight” process only be used for taxpayers who appeal.

We note, however, Taxpayers’ requested remedy seems to present a serious Constitutional and statutory concern. Article VIII, section 3 of the Montana Constitution requires that the state shall appraise, assess and equalize the valuation of all property which is to be taxed in the manner provided by law. Equity requirements are also set out in §§15-1-201, 15-7-103, and 15-9-101, MCA. Without belaboring the point, appraising select properties using substantially differing data, acquired after the lien date, does not comport with Montana’s statutory framework requiring equal treatment.

There is no indication that the Department’s valuation suffers from any errors or is miscalculated in any manner, though it does not address sales after 2008. In fact, the evidence demonstrates that the DOR land valuation model actually trends the sales prices downwards after 2006. While the Taxpayers argue that their comparable sales indicate that the DOR did not adequately reflect a downward trend, we find insufficient evidence to demonstrate that a reduction in the subject property’s valuation is warranted.

We note, however, that evidence brought before this Board in this case and many other cases indicates that values on lakefront homes decreased since the 2008 valuation date, leaving taxpayers to be taxed on values above their actual market values. This problem, however, is not one that we have authority to remedy, or the authority to direct the DOR to remedy. *See, e.g. DOR v. Covenant*, PT-2009-113; *American Bank v. DOR*, PT-2011-7 and PT-2011-15 (on appeal to the Montana Supreme Court.) Rather, it is for the Legislature or the Courts to direct the appropriate remedy.

The evidence presented by DOR is sufficient to show accurate land valuation as of the assessment date of July 1, 2008, and the Taxpayers have failed to meet their burden to show that the DOR has erred.

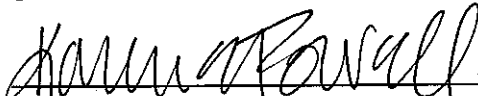
Thus it is the opinion of this Board that the assessed values set by the DOR are correct and the decision of the Flathead County Tax Appeal Board is affirmed.

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 Flathead County at a 2010 tax year values as determined by the Department of Revenue and upheld by the Flathead County Tax Appeal Board.

Dated this 8th of March, 2013.

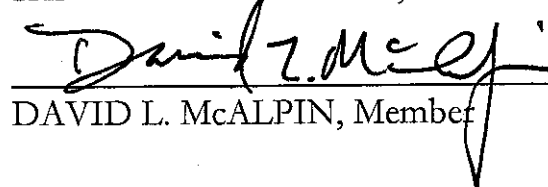
BY ORDER OF THE
STATE TAX APPEAL BOARD



KAREN E. POWELL, Chairwoman



SAMANTHA SANCHEZ, Member



DAVID L. McALPIN, Member

(SEAL)

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 8th day of March, 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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