

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ROBERT AND SUSAN OSBORN)
) DOCKET NO.: PT-2006-3
)
 Appellant,)
)
 -vs-) FACTUAL BACKGROUND,
) CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE) ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,) FOR JUDICIAL REVIEW
)
 Respondent.)

The above-entitled appeal was heard on October 26, 2006, in Livingston, 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 Appellants, Robert and Susan Osborn (Taxpayers), represented themselves. The Department of Revenue (DOR) was represented by Vicky Holland, Appraiser, and Mark J. Olson, Area Manager.

The Taxpayers presented evidence and testimony in support of the appeal. DOR presented evidence and 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. The Board affirms the decision of the Park County Tax

Appeal Board and upholds the values set by the Department of Revenue as revised through the AB-26 review.

FINDINGS OF FACT

The State Tax Appeal Board has jurisdiction over these issues pursuant to § 15-2-301, MCA.

Due, proper, and sufficient notice was given of this matter, of the hearing on the issues, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, verbal and documentary.

The subject property is residential property described as Lot 8A S/D 163, Block 3, of the High Ground Subdivision #2 in the City of Livingston, Montana, and improvements (Geocode 49-0802-12-3-03-03-0000; Assessor's code 24510). (Exh. D.)

The DOR's original 2006 value for the subject was \$34,861 for the land and \$329,570 for the improvements. (Exh. D.) On August 8, 2005, the Taxpayers filed an AB-26 Request for Informal Review noting differences in taxes between their property and other properties they considered comparable. (CTAB Exh. A.)

On June 29, 2006, DOR wrote to the Taxpayers with the results of the Department's review. DOR had made an internal and external inspection of the subject property and adjusted several items in their appraisal accordingly. The changes caused a reduction in the value of the improvements from the

original \$329,570 to \$299,240. (Exh. 1.) The value of the subject improvements was decreased because the appraiser felt, after inspecting the property, that the improvements had experienced more depreciation than had previously been allowed. (Holland testimony.) The land remained at a value of \$34,861. (Exh. 1.)

On August 15, 2006, the Taxpayers appealed the revised values to the Park County Tax Appeal Board (CTAB) saying, "Something is just wrong with our taxes when compared with comparable properties." (Appeal Form.)

The CTAB heard this appeal on September 14, 2006, and disapproved the appeal on the same day stating, "We heard no argument opposing the appraised value of the property, so it is the determination of the board that the appraised value is accurate and shall remain as determined." The CTAB also noted that they thought some of the comparable properties used in the hearing were "grossly undervalued", rather than the subject property being overvalued. (Exh. 3.)

The Taxpayers appealed the CTAB decision to this Board on September 21, 2006. In a letter attached to the Appeal Form, the Taxpayers stated their belief that the CTAB had not followed the tax codes and that the CTAB decision contradicted itself. (Appeal Form and attached letter.)

The Taxpayers purchased the subject property in July 2005 for \$395,000. (Robert Osborn testimony.) The process of looking for a house caused them to notice a considerable difference in the taxes on the subject property versus the taxes on other properties they considered comparable. (Letter attached to Appeal Form.)

At hearing, the Taxpayers introduced information on ten comparable properties. The information included the DOR appraised value for each property and a sales price or estimated market value. (Exhs. 7-18.) These exhibits also give the ratio of appraised value to market value for each property.

For the subject property and three of the comparable properties, a July 11, 2005, Uniform Residential Appraisal Report provides sales prices and dates of sale. (Exh. 7.) For the remaining seven properties, the asking price for the property or a realtor's estimate of the property's value is used as an approximation of market value. (Exhs. 12-18.)

The ratio of appraised value to sales price for those properties with sales prices was 59% for the property at 16 Cedar Lane (Exh. 9), 55% for 2407 East River Road (now addressed as 16 Rocky Hollow) (Exh. 10), and 59% for 313 So. Yellowstone (Exh. 11). By contrast, the ratio of appraised value to sales price for the Taxpayers' property was 85%. (Exh. 8.) The ratio

of appraised value to estimated market value for the other properties ranged from 2.5% to 68%. (Exh. 19.)

Using the appraised value to market value ratios, the Taxpayers contend that the appraised value for their property is too high. They point to Montana's constitutional requirement that property values be equal and uniform and to a Montana Supreme Court case that sets out proof that a taxpayer may offer to demonstrate that property is being assessed inequitably. (Exh. 4.)

The DOR Appraiser, Vicky Holland, testified that the land of the subject property was valued using a CALP model (Computer Assisted Land Pricing). (Holland testimony; Post-Hearing Submission.)

DOR valued the improvements on the subject property using the cost approach. The Department could not use the sales comparison approach for the subject because not enough comparable properties were sold in Livingston from 1996 through 2001. The Department was limited to using sales that occurred in that period as the basis for setting values on the most recent assessment date, January 1, 2002. (Holland testimony.) In addition, the subject property was sold during that period and its sales price was higher than the appraised value set by DOR as of 1/1/02. DOR points to that sale as substantiation for their valuation. (Olson testimony.)

DOR cannot consider any sales that occur after the assessment date. Instead, those sales will become the basis for appraised values on the next assessment date. (Holland testimony.)

The Department questioned the comparability of the properties the Taxpayers offered in support of their contention that their property appraisal was too high. DOR pointed out ways in which the comparable properties differed from the subject property and indicated that, for two of the properties, there were sales during the assessment period that supported the DOR's values on those homes. (Holland testimony; Exh. B.)

BOARD DISCUSSION

The State Tax Appeal Board has jurisdiction over this matter pursuant to § 15-2-301, MCA. Robert and Susan Osborn are the Appellants in this proceeding and therefore have the burden of proof.

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 (Mont. 1995); Western Airlines, Inc., v. Michunovich (1967), 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).

All taxable property must be assessed at 100% of its market value unless otherwise provided. Section 15-8-111(1), MCA. The Department may use a number of different approaches, e.g., market, income, and/or cost approaches, depending on available data, to appraise a property. Albright v. Montana Department of Revenue, 281 Mont. 196, 933 P.2d 815 (Mont. 1997).

The Department used a CALP model, a type of sales comparison approach, to value the Taxpayers' land. They used a cost approach to value the Taxpayers' improvements because there were not enough sales of similar properties to value the improvements using a sales comparison approach. The subject property was sold prior to the January 1, 2002, assessment date and the price paid then was about \$350,000, somewhat higher than the DOR's appraised value of \$334,161. The Taxpayers purchased the property in July 2005 and again the sales price (\$395,000) was higher than the appraised value. These two sales demonstrate that the subject property is not overappraised.

However, in this appeal, the Taxpayers are not disputing the methods used to appraise their property nor the actual value determined by the DOR. What they are challenging is whether they are bearing an unfair proportion of the tax burden because of the ratio of their property's appraised value to its market value (sales price) in comparison to the same type of ratio for

other properties in their area. Equalization is the issue in this appeal.

The 1972 Montana Constitution requires the State to appraise, assess, and equalize the valuation of all taxable property. (Article VIII, Section 2, 1972 Montana Constitution). The Department is required to equalize the valuation of taxable property between individual taxpayers and to secure "a fair, just, and equitable valuation of all taxable property". Section 15-9-101(1), MCA.

The Taxpayers called the Board's attention to the case of Montana Department of Revenue v. State Tax Appeal Board, 188 Mont. 244, P.2d 691 (Mont. 1980). In particular, the Taxpayers pointed out the Court's statement that "[r]eduction [of an appraisal] is required where it is satisfactorily shown that under the system as applied it is impossible to meet both the true value and equality standards."

In the same case, the Court adopted criteria set out by the Iowa Supreme Court as "at least a starting place for actual comparison of true value to assessed value ratios." The criteria delineated by the Iowa Supreme Court found favor with the Montana Supreme Court:

In order to obtain relief upon the ground that his property is assessed inequitably, it is essential that the taxpayer prove (1) that there are several other properties within a reasonable area similar and comparable to his; (2) the amount of the assessments

on these properties, (3) the actual value of the comparable properties, (4) the actual value of his property: (5) the assessment complained of; (6) that by a comparison his property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of the similar and comparable properties, thus creating discriminations. Maxwell v Shivers, 257 Iowa 575, 133 N.W.2d 709, 711 (Iowa 1965).

The challenge for the Taxpayers is to locate and provide information on several comparable properties within a reasonable area and on the actual (i.e., market) values of those properties. The property in this case is residential property. The Taxpayers provided information on ten other residential properties. Of these, three have what appear to be actual sales prices. (Exh. 7.) For the other seven, the Taxpayers offered estimates of market value from a variety of sources (realtors, owners, etc.). While the Board may respect the judgment of such people, it is actual sales prices, not estimates, we must rely on as the indicator of market value. See Section 15-8-111(2)(a), MCA. The record provides actual sales prices for the properties located at 16 Cedar Lane, 2407 East River Road (now addressed as 16 Rocky Hollow), and 313 South Yellowstone.

The ratio of DOR appraised value to market value (July 2005 sale price) for 1008 Ridgeway Drive, the subject property, is 85%. (Exhs. 8 and B) For the first comparable property, 16 Cedar Lane, DOR reduced the appraised value in 2006 based on more accurate information about the size of an addition. (Exh.

B.) Using the revised appraisal, the ratio of DOR appraised value to market value (February 2005 sale price) for 16 Cedar Lane is 59% (Exhs. 9 and B.)

For the second comparable property, 16 Rocky Hollow, there is a discrepancy between the DOR appraised value reported by the Taxpayers (\$212,000) (Exh. 10) and the appraised value reported by DOR (\$214,700). (Exh. B.) Using the DOR value, the ratio of appraised value to market value (September 2004 sale price) is 56%. For the third comparable property, 313 South Yellowstone, the ratio of appraised value to market value (July 2004 sale price) is 59%. Summarized in table form, the ratio data is:

Property	Sale Date	DOR Appraised Value	Market Value	Ratio of Appraised Value to Market Value
1008 Ridgeway	July 2005	\$334,161	\$395,000	85%
16 Cedar Lane	Feb. 2005	214,289	365,000	59%
16 Rocky Hollow	Sept. 2004	214,700	385,000	56%
313 S. Yellowstone	July 2004	241,440	410,000	59%

The Board recognizes that the assessment date for the DOR values is January 1, 2002, and that all of the sale dates come after the assessment date. In addition, the Board questions the comparability of two of the properties, 16 Cedar Lane and 16 Rocky Hollow. These properties are 18 miles and 13 miles south of the subject property respectively (Exh. 7) and are located in rural areas. The subject property and the fourth comparable, 313 South Yellowstone, are in the City of Livingston. The DOR

pointed out that the city and the rural area south of the city are different marketing areas. (Olson testimony.) It is quite possible that the market values of properties outside of the city have increased faster than the values inside the city, which could account for at least some of the difference in ratios between the subject property and the rural comparables. Consequently, the Board is reluctant to place a great deal of weight on the comparability of these properties. Thus, there is only one property left to provide a comparison to the subject property. A single comparative property is insufficient for the Board to consider whether inequity in taxation has occurred.

The Board recognizes the complexity of Montana's property valuation and taxation systems and commends the work the Taxpayers have put in to provide the information we would need to find in their favor. Their work and their information have indeed raised doubts in our minds about the equity of their appraisal. However, we must rely on a preponderance of the evidence in reaching our decision, and there simply is insufficient information on "comparable properties within a reasonable area" for the Board to find in the Taxpayers' favor.

The Board finds that the DOR assessment for the subject property is supported by the evidence and that the evidence addressing the equity issue is not sufficient to enable the Board to find in the Taxpayers' favor.

The Board has identified what appears to be a mathematical error in the DOR valuation of the Taxpayers' property. The land value of \$34,861 and the revised improvements value of \$299,240 total to \$334,101, not to the \$334,161 indicated on the property record card for the subject property. (Exh. D.)

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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 Park County by the local Department of Revenue office at the value of \$34,861 for the land and \$299,240 for the improvements. The decision of the Park County Tax Appeal Board is affirmed.

Dated this 22nd day of January 2007.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

// _____
KAREN E. POWELL, Chairwoman

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SUE BARTLETT, 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 22nd day of January, 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:

Robert L. and Susan E. Osborn
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Livingston MT 59047

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414 East Callendar Street
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